INTEGRATING MEDIATION INTO TAX DISPUTE RESOLUTION FRAMEWORKS:

A COMPARATIVE STUDY OF ZAMBIA, KENYA AND SOUTH AFRICA

BY

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DEDICATION

To my partner, Musonda Stephen Chungu, whose unwavering motivation and encouragement have been instrumental in the completion of this dissertation. This work is dedicated to you for always believing in me.

To my younger siblings Wila Kapila, Wanjivwa Sheba Nampungwe and Zengelwa Christina Nampungwe, this dedication is a reminder that no dream is beyond your reach. Believe in yourselves, work hard and never doubt your ability to achieve your dreams.

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ABSTRACT

The study examines the integration of mediation in the tax dispute resolution framework in Zambia, with specific focus on whether the current primarily adjudicative system adequately accommodates alternative dispute resolution mechanisms. It examines the legal framework governing tax disputes in Zambia, including administrative objection procedures, the Tax Appeals Tribunal and judicial oversight, and assesses the extent to which these processes incorporate or exclude mediation. The study further undertakes a comparative analysis with Kenya and South Africa to identify how structured alternative dispute resolution mechanisms have been incorporated into tax dispute resolutions systems in comparable jurisdictions. The study finds that Zambia's tax dispute resolution framework remains largely adversarial and lacks a formalised mediation mechanism, resulting in increased reliance on litigation. In contrast, Kenya and South Africa demonstrate more developed approaches that integrate alternative settlement procedures and administrative alternative dispute resolution mechanisms, thereby improving efficiency, reducing costs and enhancing taxpayer engagement. The study concludes that there is a clear need for reform in Zambia through the introduction of a structured, institutionalised mediation framework within tax dispute resolution, which would promote efficiency, reduce backlog of cases before the tribunal and the court, as well as enhance overall effectiveness of tax administration.

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CHAPTER ONE: GENERAL INTRODUCTION

1.0 Introduction

An effective tax system is generally understood to comprise several interrelated aspects including: tax policy planning, tax legislation drafting and enactment, tax administration and enforcement, tax compliance and tax dispute resolution.[1] In order to ensure the proper functioning of the tax system, effective tax dispute resolution mechanism must be timely, efficient and cost effective.[2] As emphasised by the International Monetary Fund, such mechanisms play a critical role in promoting certainty and confidence in a tax system. [3] However, traditional litigation processes are often criticised for being adversarial, costly and time consuming, which has led many jurisdictions to explore Alternative Dispute Resolution ("**ADR**") mechanisms in tax dispute resolution, as complementary approaches.

ADR, as defined by the Learned Authors of *Black's Law Dictionary* refers to procedures for resolving disputes outside the court system[4] and is generally characterised by flexibility, informality, cost efficiency, settlement-based outcomes, an emphasis on mutually agreed solutions, and neutrality. [5] It stands in contrast to the litigious nature of the traditional court system, hence it is referred to as "*alternative*".[6] Overall, ADR offers substantial benefits, including enhanced efficiency, reduced costs and the promotion of amicable outcomes.[7]

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[1] B Tran-Nam and M Walpole, 2016 14(2) *'Tax Disputes, Litigation Costs and Access to Tax Justice'* **eJournal of Tax Research** 319 https://www.researchgate.net/publication/316506429_Tax_disputes_litigation_costs_and_access_to_tax_justice Accessed 4th December 2025

[2] M N Umenweke and N.B. Amadi, '*Exploring the potentials of Alternative Dispute Mechanisms in Tax Dispute Resolution'*, 2022 4(2) ***International Journal of Comparative Law and Legal Philosophy*** 141 https://www.nigerianjournalsonline.com/index.php/IJOCLLEP/article/view/3033/0 Accessed 6th December 2025

[3] Int'l Monetary Fund [IMF] & OECD, Tax Certainty: IMF/OECD Report for the G20 Finance Ministers 32 http://www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20- finance-ministers-march-2017.pdf

[4] B A Garner *Black's Law Dictionary* (9th Ed Thomson Reuters 2009) 91

[5] D Ilter and A. Dikbas (2008) 'The Use of Key Attrıbutes In Alternatıve Dıspute Resolutıon (ADR) Process Desıgn' in A Dainty (Ed) Proceedings 24th Annual ARCOM Conference Cardiff, UK, 1-3 September 2008, (Association of Researchers in Construction Management), p. 459 https://www.arcom.ac.uk/-docs/proceedings/ar2008-455-464_Ilter_and_Dikbas.pdf

[6] M N Umenweke and N B Amadi, '*Exploring the potentials of Alternative Dispute Mechanisms in Tax Dispute Resolution'*, 2022 4(2) ***International Journal of Comparative Law and Legal Philosophy*** 141 https://www.nigerianjournalsonline.com/index.php/IJOCLLEP/article/view/3033/0 Accessed 6th December 2025

[7] F Younas *'Alternative Dispute Resolution (ADR) Future of Justice System'* **International Journal of Law and Policy** (2025) 3(9) https://dio.org/10.59022/ijlp.365 36 Accessed 22ndNovember 2025

While ADR encompasses various mechanisms, this study is primarily concerned with mediation as the most suitable mechanism for tax dispute resolution due to its emphasis on facilitated dialogue and voluntary settlement, which promotes cooperative resolution of disputes, and preserves ongoing relationships between taxpayers and revenue authorities, thereby offering a less adversarial and more collaborative approach to resolving disputes.[8]

According to the *Black's Law Dictionary*, mediation is defined as a method of non-binding dispute resolution involving an impartial third party who facilitates communication between parties in order to assist them in reaching a mutually agreeable settlement.[9] In the context of tax disputes, mediation is increasingly recognised as a mechanism that promotes cooperation between disputing taxpayers and taxing authorities.[10]

Despite its growing recognition internationally, the integration of mediation into tax dispute resolution systems remains uneven across jurisdictions. This study therefore examines the integration of mediation in tax dispute resolution, with a comparative focus on South Africa and Kenya, in order to assess the extent to which Zambia may draw lessons for reforming its own tax dispute resolution framework.

1.2 Background

Taxation constitutes the primary source of government revenue and taxation remains the largest source of public revenue in Zambia.[11] Given its compulsory nature, taxation inevitably gives rise to disputes between taxpayers and revenue authorities, particularly in relation to assessments, interpretation of tax legislation, and the determination of tax liability. [12]

[8] F Younas *'Alternative Dispute Resolution (ADR) Future of Justice System'* **International Journal of Law and Policy** (2025) 3(9) https://dio.org/10.59022/ijlp.365 36
[9] B A Garner *Black's Law Dictionary* (9th Ed Thomson Reuters 2009) 1100
[10] L L Arzumanova, 'Mediation as an Alternative Form of Pre-Trial Settlement of Tax Disputes: Doctrinal Approaches and Law Enforcement' (2021) 5(3) *Law Enforcement Review* 156
[11] OECD, *Revenue Statistics in Africa: Zambia* (OECD Publishing 2023) https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-tax-revenues/revenue-statistics-africa-zambia.pdf>accessed 14th November 2025
[12] M Walpole and B Tran-Nam *'Access to Justice: How Costs Influence Dispute Resolution Choices'* (School of Taxation and Business Law, The University of New South Wales, 2023) https://www.researchgate.net/publication/265258923_Access_to_tax_justice_How_costs_influence_dispute_resolution_choices accessed 14th November 2025

In Zambia, tax disputes are primarily resolved through a statutory framework that begins with administrative objection procedures under the relevant tax legislation, followed by appeals to the Tax Appeals Tribunal and, ultimately, the Supreme Court. This structure reflects a predominantly adversarial and litigation-based approach to tax dispute resolution, which often resembles traditional court proceedings in both formality and procedure.

However, the litigation based model has been increasingly criticised for its inefficiencies, particularly delays, high costs, and procedural complexity. These challenges remain evident in practice. For instance, the dispute in the seminal case of *Zambia Revenue Authority v Nestle Zambia Limited*[13] which took several years to reach final determination, highlighting the time-intensive nature of tax litigation and its impact on both taxpayers and the revenue authority. Such delays undermine efficiency in the tax administration and may negatively affect taxpayer confidence in the dispute resolution system.

The challenges associated with litigation based dispute resolution have been acknowledged within the Zambian judicial system. In March 2019[14] Irene Mambilima CJ, as she then was, in support of the promotion of ADR in improving access to justice and reducing delays in the judicial system opined as follows:

> *"The court processes often take too long to conclude, causing congestion in our judicial system. And in many instances, we have found that not all of these disputes require court intervention. As the Judiciary, we recognised this deficiency.… Measures to promote ADR as an alternative to litigation can be stepped up so that courts can be left to deal with deserving cases. Globally, it is accepted that ADR mechanisms such as reconciliation, adjudication, mediation and arbitration are effective and efficient in resolving disputes. The mechanism provides a much more sustained and mutually beneficial resolution of conflicts through negotiation"*

In response to these challenges, there has been growing recognition of Alternative Dispute Resolution (ADR) mechanisms as complementary tools to litigation. The *Constitution of Zambia*[15]

[13] [2025] ZMSC 20.
[14] IC Mambilima, 'Speech at the Open Day of Alternative Dispute Resolution, Chartered Institute of Arbitrators (Zambia Branch), March 2019'.
[15] Amendment Act No 2 of 2016 of the Laws of Zambia.

as per *Article 118 (2) (b)* and *(d)* expressly promotes the principles of access to justice and timely dispute resolution, thereby providing a foundation for the use of ADR in appropriate circumstances. In addition, *Section 9* of the *Tax Appeals Tribunal Act*[16] grants the Tribunal discretionary powers aimed at facilitating the just, speedy and inexpensive settlement of disputes, thereby reflecting legislative recognition of flexible dispute resolution principles with in the tax framework.

Among the various forms of ADR, mediation has increasingly emerged as a preferred mechanism in the pursuit of justice due to its potential to facilitate efficient, cost effective and less adversarial resolutions of disputes between taxpayers and revenue authorities. Despite these developments, Zambia's current tax dispute resolution framework does not provide for an institutionalised mechanism for domestic tax disputes. In contrast, jurisdictions such as Kenya and South Africa have progressively integrated mediation into their tax dispute resolution systems as part of broader ADR reforms aimed at efficiency, reducing litigation burdens and enhancing access to justice.

This comparative variance raises an important legal question as to whether the absence of a formal mediation framework within Zambia's tax dispute resolution system limits the effectiveness, accessibility, and efficiency of tax justice delivery, particularly when measured against progresses in Kenya and South Africa. This study therefore situates mediation as a central point of inquiry in assessing whether Zambia's tax dispute framework requires reform to align with emerging comparative and international best practices.

1.3 Statement of the Problem

Tax dispute resolution in Zambia is governed by a statutory framework comprising *inter alia*, the *Income Tax Act*[17], which provides for administrative objection procedures, and the *Tax Appeals Tribunal Act*[18], which establishes the Tax Appeals Tribunal as the first appellate forum for taxpayers dissatisfied with decisions of the Zambia Revenue Authority ("ZRA") as well as the *Tax Appeals Tribunal Rules*[19] which prescribe the procedural framework governing the operations of

[16] Act No.1 of 2015 of the Laws of Zambia
[17] Chapter 323 of the Laws of Zambia
[18] Act No.1 of 2015 of the Laws of Zambia
[19] SI No.37 of 2022 of the Laws of Zambia

the Tribunal. Appeals from the Tax Appeals Tribunal lie to the Supreme Court, thereby reinforcing a structured but predominantly adversarial litigation based system of dispute resolution.

In practice, the ZRA also utilises internal administrative review and escalation procedures aimed at facilitating the early resolution of disputes. These procedures operate within the institutional hierarchy of the Authority and primarily involve review by heads of department within the same tax administration structure. Accordingly, the review process remains internal to the ZRA and does not constitute an independent and neutral dispute resolution mechanism within the statutory tax dispute framework. This internal administrative structure operates alongside the broader constitutional framework governing dispute resolution in Zambia.

The *Constitution of Zambia* provides for the promotion of Alternative Dispute Resolution (ADR), particularly under *Article 118(2) (b)* and *(d)*, which emphasises expeditious justice and accessible justice. However, despite the existence of court-annexed mediation and broader ADR mechanisms within Zambia's legal system, there is no specific statutory framework within the Income Tax Act or the Tax Appeals Tribunal Act expressly providing for or regulating mediation as a structured mechanism for resolving domestic tax disputes. The existing ADR related mechanism within tax law is largely confined to Mutual Agreement Procedures (MAP) under double taxation agreements, which form part of Zambia's international tax dispute resolution framework. MAP is, however, limited in scope to cross-border tax disputes and does not extend to domestic tax disagreements between taxpayers and ZRA.

In contrast, jurisdictions such as Kenya and South Africa have expressly incorporated ADR mechanisms, including mediation and facilitator-driven processes, within their tax dispute resolution frameworks through statutory and institutional reforms aimed at improving efficiency, reducing reliance on litigation, and promoting cooperative resolution between taxpayers and revenue authorities. These jurisdictions demonstrate a more structured integration of mediation as part of their tax administration and dispute resolution systems.

The absence of a formalised and institutionalised mediation framework within Zambia's domestic tax dispute resolution system, despite constitutional recognition of ADR and the existence of detailed statutory procedures under the Income Tax Act and Tax Appeals Tribunal Act, therefore reveals a legislative and institutional gap. This gap raises the question of whether the current litigation dominated framework adequately promotes efficiency, accessibility, and cost-effective resolution of tax disputes in line with constitutional principles and comparative best practices. This study therefore examines the extent to which mediation is recognised within Zambia's tax dispute resolution framework and assesses, through a comparative analysis of Kenya and South Africa, whether its integration could enhance the effectiveness of tax dispute resolution in Zambia.

1.4 Objectives of the Study

The general objective of this study is to examine the extent to which Zambia's current tax laws have integrated mediation within the tax dispute resolution framework, and to draw lessons from Kenya and South Africa.

The specific objectives of this study are to:

- **a.** Examine the legal framework governing tax dispute resolution in Zambia, including existing ADR mechanisms, and the extent to which mediation is integrated within the framework.
- **b.** Analyse the tax dispute resolution frameworks of Kenya and South Africa and the extent to which mediation has been integrated within their respective jurisdiction as ADR mechanisms.
- **c.** Conduct a comparative analysis of the tax dispute resolution frameworks of Zambia, Kenya and South Africa in relation to the integration of mediation.
- **d.** Identify the reforms and lessons that Zambia can draw from Kenya and South Africa to enhance the integration of mediation into tax dispute resolution.

1.5 Research Questions

The following are the research questions:

- **i.** What is the legal framework governing tax dispute resolution in Zambia, and to what extent is mediation recognised within that framework?
- **ii.** How are the tax dispute resolution frameworks of Kenya and South Africa structured and to what extent is mediation integrated within their respective ADR mechanisms?

iii. How do the tax dispute resolution frameworks of Zambia, Kenya and South Africa compare in relation to the integration of mediation?

iv. What lessons and reforms can Zambia draw from Kenya and South Africa to enhance the integration of mediation in tax dispute resolution?

1.6 Significance of the study

This research evaluates the adequacy of Zambia's tax dispute resolution framework, particularly in relation to the limited integration of mediation as a form of ADR. It highlights the practical implications of relying primarily on litigation as a mode of dispute resolution, including delays, high cost and limited accessibility of justice to taxpayers.

By undertaking a comparative analysis with the tax dispute resolution frameworks of Kenya and South Africa, both of which have incorporated ADR mechanisms, particularly mediation and facilitator-driven processes through legislative reforms, this study provides insight into how similar mechanisms may be integrated into Zambia's framework to enhance efficiency, reduce costs and promote more collaborative resolution of tax disputes.

Additionally, this research seeks to contribute to the existing academic literature on mediation in tax disputes, with specific relevance to developing jurisdictions where litigation remains the dominant mechanism, where reforms towards more flexible, efficient and consensual dispute resolution models are increasingly being adopted.

1.7 Scope of Study

The focus of this research is on the integration of mediation into tax dispute resolution in Zambia, particularly drawing lessons from Kenya and South Africa as regional jurisdictions with more developed tax dispute resolution frameworks. It examines the legal and institutional frameworks governing tax dispute resolution in the three jurisdictions, with particular focus on the role and integration of mediation. The research further considers the potential benefits of mediation and the legislative reforms that may be required for its effective incorporation into Zambia's tax dispute resolution framework

1.8 Research Methodology

This research adopts a qualitative doctrinal legal research methodology. It primarily involves the analysis of primary and secondary legal sources to examine the integration of mediation in tax dispute resolution. Primary sources include local and foreign legislation, subsidiary legislation and case law. Secondary sources comprise textbooks, journal articles, policy papers, dissertations and reputable internet based material. Newspaper articles are also used where relevant to provide contextual background and illustrate present developments relating to the integration of ADR.

1.9 Literature Review

Although extensive international scholarly work exists on ADR generally and tax dispute resolution specifically, there remains limited comparative literature examining the integration of mediation into tax dispute systems within African jurisdictions. Existing literature focuses predominantly on Kenya and South Africa, with very limited analysis of Zambia's legal framework. This study therefore seeks to address that gap by comparatively examining the integration of mediation into tax dispute resolution in Kenya and South Africa, and the extent to which Zambia may draw lessons from these jurisdictions.

The literature reviewed recognises mediation as an increasingly important tool for modern dispute resolution systems and highlights both the benefits and institutional challenges associated with integrating mediation into tax dispute frameworks. The reviewed literature further reveals a significant research gap concerning the position of mediation within Zambia's tax dispute resolution framework.

i. Conceptual Foundations of ADR and Mediation in Dispute Resolution

Younas[20] examines ADR as a broad framework encompassing mediation, negotiation and conciliation, emphasising that these processes are not intended to replace the judiciary but to complement it by providing faster, less formal and more cost effective solutions. The Author explains that ADR mechanisms have gained increasing global acceptance because they provide

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[20] F Younas *'Alternative Dispute Resolution (ADR) Future of Justice System'* **International Journal of Law and Policy** (2025) 3(9), 33-49 https://dio.org/10.59022/ijlp.365 Accessed 10th November 2025

faster, less formal and more cost effective methods of dispute resolution while promoting party autonomy, dialogue and preservation of relationships.

Particularly relevant to this study is the author's discussion of mediation as a mechanism capable of encouraging dialogue and preservation of relationships, rather than adversarial confrontation. This study further identifies important challenges affecting ADR processes, including lack of public awareness, enforceability concerns and concerns emerging from neutrality and competence of facilitators.

Although the paper is not situated specifically within the context of tax law, it provides an important conceptual foundation for our understanding and rationale behind integrating mediation into specialised dispute resolution systems such as tax administration. The concerns raised regarding facilitator independence and public confidence are especially relevant to tax disputes, where revenue authorities occupy position of institutional advantage.

ii. Efficiency, Fairness and Taxpayer Confidence in Tax Dispute Resolution Systems

Tran-Nam and **Walpole**[21] argue that effective tax dispute resolution systems are fundamental to maintaining fairness and voluntary compliance within any modern tax system. According to the authors, tax disputes mechanisms must be impartial, accessible and efficient in order to promote tax morale and taxpayer confidence. This study highlights several weaknesses associated with litigation based tax systems, including technical complexity, high costs and procedural delays, which may discourage taxpayers from pursuing legitimate claims. Through examination of Australian tax dispute mechanisms, the authors demonstrate how ADR processes may enhance access to justice, reduce costs and improve efficiency.

Although the study is based in Australia, its observations are broadly relevant to developing jurisdictions such as Zambia, where adversarial dispute resolution mechanisms may similarly limit accessibility and efficiency. The study therefore supports the broader argument for integrating mediation into tax dispute systems as a means of improving tax payer confidence.

[21] B Tran-Nam and M Walpole, 2016 14(2) *'Tax Disputes, Litigation Costs and Access to Tax Justice'* eJournal of Tax Research https://www.austlii.edu.au/au/journals/eJlTaxR/2016/13.pdf>accessed 14th November 2025.

Mathews[22] examines the use of negotiation, mediation and arbitration in resolving disputes between the Internal Revenue Services (IRS) and taxpayers in the United States, illustrating the practical integration of ADR mechanisms within tax administration. The study demonstrates that the IRS prioritises early resolution of disputes through administrative appeals and formal ADR programmes. The author identifies mediation as particularly valuable because it introduces an independent third party capable of facilitating communication and promoting balanced outcomes between taxpayers and revenue authorities. The study further identifies important characteristics of mediation, including flexibility, voluntariness, confidentiality and informality.

However, Matthews also acknowledges that effectiveness of mediation depends heavily on institutional design, mediatory impartiality and willingness of the parties to negotiate in good faith. The study therefore provides useful comparative insight into both the opportunities and institutional challenges associated with integrating mediation into tax administration.

Collectively, these studied demonstrate that ADR in tax disputes primarily justifies the basis of efficiency, cost efficiency and improved taxpayer compliance. However, they also reveal a recurring concern that the success of ADR is heavily dependent on institutional design, particularly the independence of facilitators and the willingness of revenue authorities to engage in settlement discussions.

iii. International Tax Dispute Resolution and the Role of Mediation

Markham[23] examines the evolution of tax dispute resolution, within international taxation and highlights the increasing incorporation of ADR mechanisms into cross-border tax disputes. The study argues that effective dispute resolution mechanisms are essential for promoting certainty and predictability within international tax systems. Although Mutual Agreement Procedures ("**MAPs**") remain the primary method for resolving treaty disputes, the author notes that their non-binding nature limits their effectiveness, resulting in delays and prolonged stalemates. Against this background, mediation is identified as a particularly suitable mechanism for developing countries

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[22] G P Mathews, *'Using Negotiation, Mediation and Arbitration to Resolve IRS-Taxpayer Disputes'* (2004) 19 Ohio State Journal on Dispute Resolution 709

[23] M Markham, '*Litigation, Arbitration and Mediation in International Tax Disputes: An Assessment of Whether This Results in Competitive or Collaborative Relations'* 11 Contemporary Asia Arbitration Journal (2018) 277-304 https://ssrn.com/abstract=3295813 >Accessed 15th November 2025

because it promotes cooperative settlement while avoiding sovereignty concerns associated with binding arbitration. .

Markham further argues that mediation facilitated by suitably qualified and independent experts may significantly improve efficiency and reduce court congestion. The study is particularly relevant because it demonstrates the growing legitimacy of mediation within specialised tax contexts and reflects a broader global shift toward collaborative forms of dispute resolution.

iv. Comparative Experiences from Developed Jurisdictions

Stilwell[24] evaluates the Canadian tax dispute resolution system and highlights persistent challenges despite reform efforts such as the Appeals Renewal Initiative. These include delays, backlogs and poor communication, particularly affecting unrepresented taxpayers. The study identifies mediation as a complementary mechanism capable of addressing factual disputes, valuation issues and assessment objections. Drawing on OECD recommendations and comparative experiences from Australia, the United Kingdom and the United States of America, the study shows that mediation enhances efficiency, communication and cost reduction.

Professor Fayle[25] further supports this positon that mediation offers more important advantages over adversarial litigation because it encourages open discussion, reduces hostility and facilitates practical settlement of disputes. However, the author also identifies barriers to the effective integration of mediation in tax disputes, particularly where statutory provisions predetermine certain legal outcomes or where disputes involve highly technical interpretation of the statute. However, the author concludes that mediation may still facilitate more efficient, equitable and satisfactory dispute resolution while preserving relationships between disputing parties.

Collectively, these studies demonstrate both the practical advantages and structural limitations associated with mediation in tax disputes, thereby providing important comparative insights for developing jurisdictions in the integration of mediation into tax.

[24] K D Stilwell, *Mediation of Canadian Tax Disputes* (LLM thesis, University of Toronto 2014) mmmmmhttps://utoronto.scholaris.ca/server/api/core/bitstreams/81a26f4e-a6e8-488f-b865-94ebeb70f04b/content> Accessed 10th April 2026

[25] R Fayle, '*Mediation in Tax Disputes*' 1999 2(2) **Journal of Australian Taxation** 93 https://classic.austlii.edu.au/au/journals/JlATax/1999/9.html Accessed 24thNovember 2025

Afiyati et al[26] find that the current tax dispute resolution system in Indonesia, which is primarily litigation based, is increasingly less useful due to prolonged process time, high costs and growing backlog of cases in the Tax Court. The authors argue that this situation weakens the key principles of tax dispute resolution, primarily simplicity, speed and low cost, and ultimately limits taxpayer's access to timely justice and legal certainty. The findings of this study illustrate the gap in the Indonesian tax procedural law in providing for mediation as part of the tax dispute resolution process, in contrast to the mandatory pre-trial mediation in civil proceedings which does not particularly align with tax dispute resolution. This observation contributes to the overburdening of the Tax Court and prolongs finality of tax disputes. To address these challenges, the authors propose the introduction of mediation into tax dispute resolution, through legislative reforms as a mechanisms to enhance efficiency, reduce caseloads and improve overall dispute resolution outcomes.

This study provide both the practical benefits and limitations of integrating mediation into tax dispute processes by offering valuable insights for evaluating whether similar ADR mechanisms may enhance the efficiency and fairness of tax dispute resolution in Zambia.

v. African Comparative Perspectives on ADR in Tax Disputes

Despite the growing body of literature from developed jurisdictions, the applicability of these models in African tax systems remains uncertain due to structural and institutional differences. African tax administrations often operate under resource constraints, limited technical capacity, and stronger control of revenue functions, all of which influence how ADR mechanisms are implemented in practice.

Nigeria

Within the African context, several studies illustrate the potential role of mediation ADR in strengthening tax dispute resolution systems. **Umenweke** and **Amadi**[27] examine the Nigerian tax

[26] R Afiyati, S Sudarsono, T Negara and I Koeswahyono, 'Tax Dispute Settlement Mediation Arrangements in the Future Tax Court' (2022) 11(5) *International Journal of Research in Business and Social Science* 503–511.
[27] M N Umenweke and N.B. Amadi, '*Exploring the potentials of Alternative Dispute Mechanisms in Tax Dispute Resolution'*, 2022 4(2) ***International Journal of Comparative Law and Legal Philosophy*** 141 https://www.nigerianjournalsonline.com/index.php/IJOCLLEP/article/view/3033/0 Accessed 6th December 2025

dispute framework and argue that the country's litigation based system is characterised by procedural rigidity, multiple appellate stages and significant costs to taxpayers. The authors observe that tax disputes in Nigeria proceed through conventional adjudicative channels, beginning with appeals to the Relevant Tax Authority ("**RTA**") and subsequently the Nigerian Tax Appeal Tribunal ("**NTAT**"), without formally recognised ADR mechanisms within tax administration.

The study argues that the absence of ADR contributes to delays and inefficiencies in tax administration. Consequently, the authors recommend for the incorporation of ADR mechanisms as a means of simplifying tax collection. The study is particularly relevant because it demonstrates structural challenges common to Zambia's tax systems and highlights the potential value of mediation as a complementary mechanism to litigation.

Tanzania

Nsimba[28] examines the legal and institutional challenges affecting the use of ADR in resolving tax disputes in Tanzania. The author situates ADR within the constitutional framework of Tanzania, which promotes efficient and expeditious justice, and within statutory reforms that have introduced tax specific dispute resolution structures such as the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal. While these institutions formally recognise ADR mechanisms such as mediation, conciliation and arbitration, the study highlights that their practical implementation remains weak due to legal uncertainty and institutional limitations.

A key issue identified is the inconsistency in the governing legislation, particularly the conflicting use of terms such as "amicable settlement" and "mediation" across different statutory provisions and rules. This discrepancy creates uncertainty regarding the applicable procedures and weakens the efficiency of ADR within tax dispute resolution. The author further highlights the absence of clear procedural guidelines governing how ADR should be commenced and conducted within tax proceedings, resulting in ad hoc and inconsistent application.

[28] M A Nsimba, 'Legal and Institutional Challenges in Resolving Tax Disputes through Alternative Dispute Resolution in Tanzania' *International Journal of Science and Research Archives* (2026) 18(1) 206

In addition, the study identifies significant institutional challenges including limited technical capacity, shortage of specialised tax professionals, and delays caused by backlog of cases. The research also highlights concerns relating to impartiality, particularly given the central role of the revenue authority in both tax administration and dispute resolution processes. These structural weaknesses, combined with repeated legislative amendments and inadequate technological integration, contribute to inefficiency and undermine confidence in ADR mechanisms.

Nsimba concludes that although ADR is formally recognised within Tanzania's tax dispute framework, it remains largely underdeveloped in practice. The study therefore calls for legislative harmonisation, clearer procedural rules, and strengthened institutional capacity to make ADR an effective component of tax dispute resolution.

vi. Kenya: Development and Implementation of Tax ADR Systems

Kanyi[29] analyses Kenya's tax dispute resolution framework prior to the enactment of its formal ADR framework on tax, applying the Dispute System Design ("**DSD**") evaluation model developed by Ury, Brett and Goldberg. The DSD model emphasises the intentional design of dispute resolution systems that promote interest based approaches such as mediation and negotiation rather than purely adversarial procedures. The author's findings revealed that Kenya's earlier tax dispute framework lacked adequate integration of interest based mechanisms, thereby limiting accessibility, transparency, fairness and efficiency within tax dispute resolution.

Building upon this earlier study, **Dr. Muigua**[30] examines of Kenya's reformed tax dispute framework and the formal integration of ADR mechanisms into tax administration. The author highlights the constitutional recognition of ADR in Kenya, the establishment of procedures governing suitability assessment for ADR and the oversight role exercised by courts and tribunals in ADR proceedings. The author also notes that the Kenyan Revenue Authority ("**KRA**") has recorded considerable success through ADR processes, particularly in reducing costs, preserving

[29] B G Kanyi, *'Kenya's Tax Dispute Resolution System: A Dispute System Design Evaluation'* (LLM Thesis, Strathmore Law School 2019) http://su-plus.strathmore.edu/handle/11071/662 Accessed 9th December 2025

[30] Hon Dr K Muigua, *'The Alternative Dispute Resolution (ADR) Framework for Tax Dispute Resolution in Kenya'* (2023) ADR 11(3) https://ssrn.com/abstract=4733539 Accessed 8th December 2025

relationships between taxpayers and the revenue authority and, improving administrative efficiency.

Despite these developments, the author identifies several deficiencies that continue to affect the effectiveness of ADR in Kenyan tax disputes. These include restrictive timelines, uncertainty regarding when ADR should or should not be pursued, the requirement to obtain permission from the tribunal or court to pursue out of court settlement, and the possibility for conflict of interest arising from the use of KRA employees as facilitators in ADR proceedings.

Dr. Muigua's analysis of Kenya's ADR framework provides insights into the implementation, strengths and limitations of ADR in a developing country context. Kenya therefore offers an important comparative model for evaluating whether similar reforms may be implemented within Zambia's tax dispute framework.

vii. South Africa: Institutionalisation of ADR in Tax Disputes

Within the South African context, **John**[31] examines the legal and institutional frameworks governing tax objections disputes and highlights South Africa as one of the more developed African jurisdictions in integrating ADR into tax administration. The study shows that the Constitution, the Tax Administration Act 2011 and the Tax Dispute Resolution Rules collectively provide for the use of mediation and other ADR mechanisms in resolving tax disputes. It further identifies key institutional actors, including SARS, the Tax Board and the Tax Court, and concludes that South Africa's relatively clear legal framework and institutional support have facilitated the use of ADR in tax dispute resolution.

Building on this framework, **Moosa[32]** argues that ADR under the Tax Administration Act promotes efficient, cost-effective and fair resolution of tax disputes outside formal litigation processes. The study highlights important procedural safeguards within the South African framework, including confidentiality protections, timelines and suitability assessments aimed at ensuring fairness in ADR proceedings. A central contribution of the study is its examination of

[31] F John, 'The Legal and Institutional Frameworks Governing Tax Objection Disputes in Tanzania and South Africa: A Comparative Analysis '*International Journal of Law Management & Humanities'* (2024) 7(4) 1904.
[32] F Moosa, 'A Taxpayer's Right to Fair Alternative Dispute Resolution' *Journal for Juridical Science* (2024) 49(2) 69.

concerns relating to facilitator independence and fairness. Moosa argues that the appointment of officials from the South African Revenue Service ("SARS") as facilitators creates tension between their institutional obligation to recover tax revenue and their duty to act impartially during ADR proceedings. According to the author, this arrangement may undermine taxpayer confidence and create a reasonable apprehension of bias.

The study is significant because it demonstrates that the successful integration of mediation into tax administration depends not only on legislative recognition but also on institutional safeguards capable of protecting fairness, neutrality and taxpayer confidence. South Africa's framework therefore provides important comparative lessons for jurisdictions seeking to incorporate mediation into tax dispute resolution systems.

Similarly, **Yokwana**[33] critically examines the constitutional and procedural dimensions of ADR in South African tax disputes, with particular focus on the right to fair dispute resolution under section 34 of the Constitution. The author argues that the appointment of South African Revenue Service ("**SARS**") officials as facilitators may raise concerns regarding impartiality and undermine confidence in the neutrality of the process. The study emphasises that while ADR offers efficiency benefits, its legitimacy depends on strong safeguards ensuring independence, confidentiality and procedural fairness.

While countries such as Kenya and South Africa demonstrate more developed institutional frameworks for ADR, other jurisdictions such as Nigeria and Tanzania continue to face challenges relating to legal uncertainty, institutional capacity and inconsistent implementation.

viii. Zambia

In Zambia, tax dispute resolution framework has historically been dominated by adjudicative processes, with limited integration of consensual dispute resolution mechanisms. Although institutional reforms have been undertaken overtime, including restructuring of the tax appeals tribunals, these reforms have largely focused on procedural adjudication rather than the

[33] M N Yokwana, *A Taxpayer's Right to Fair Alternative Dispute Resolution* (LLM research paper, University of the Western Cape, Department of Mercantile and Labour Law 2024) https://uwcscholar.uwc.ac.za/server/api/core/bitstreams/d7aceb4c-815c-45d9-8ed7-de7c69aba47f/content Accessed 1 May 2026.

development of structured ADR frameworks. This has contributed to a persistent gap between formal recognition of ADR and its practical integration.

Within Zambia, scholarly works relating specifically to mediation in tax remains limited. **Mpembamoto**[34] in examined the former Revenue Appeals Tribunal. His analysis underscored that an efficient tax dispute resolution mechanism is indispensable for political, social and economic growth. The study assessed the effectiveness of the Tribunal as a tool for enhancing speedy delivery of justice through adjudication of tax disputes in line with the existing legal framework and institutional framework of the Revenue Appeals Tribunal, and it identified several challenges that impeded its efficiency. These included delayed delivery of rulings, unenforceability of Tribunal decisions which rendered it 'toothless' as illustrated in the case of *Muhammed Hussein v Zambia Revenue Authority*[35], the narrow scope of its jurisdiction, and the excessive centralisation of its operations. To enhance the Tribunal's effectiveness, the author recommended decentralisation of its operations, expansion of its jurisdiction to cover all matters relating to tax administration, appointing of suitably qualified personnel, and curtailing the lengthy appellate procedure by limiting appeals to the Supreme Court.

Although the study provides important historical context regarding Zambia's tax dispute framework, it does not examine mediation or ADR mechanisms within tax administration. The study therefore reveals a significant gap concerning the potential integration of mediation into Zambia's tax dispute resolution framework.

Ng'ona[36], provided an analysis of the role of adjudicative tribunals in promoting speedy and accessible justice in Zambia, with specific focus on the Competition and Consumer Protection Tribunal ("**CCPT**"). Although his analysis is situated outside the field of tax law, the study offers valuable insight into how ADR mechanisms and tribunal based processes function within the Zambian administrative justice system. The scholar highlights challenges faced in traditional court

[34] K Mpembamoto, *'An Evaluation of Revenue Appeals Tribunal'* (LLB Dissertation University of Zambia, 2009) p20-36 https://dspace.unza.zm/items/9b9e4a33-49fe-4956-9770-baf4ee1469f1 Accessed 1st November 2025
[35] 1999RAT/13
[36] S Ng'ona '*Alternative Dispute Resolution- The Role of Adjudicative Tribunals in Providing Speedy Adjudication: The Case of The Competition and Consumer Protection Tribunal of Zambia*' (PhD Thesis University of Lusaka 2021) https://research.unilus.ac.zm/items/a4b38c59-c860-4505-8440-321344c914bd Accessed 1st November 2025

systems such as procedural delays, limited institutional capacity and inadequate utilisation of ADR despite its statutory foundation.

The findings are relevant to this study because they demonstrate that concerns regarding efficiency and accessibility extend beyond tax law and form part of broader challenges within Zambia's justice system. The study therefore supports the need to examine whether mediation may strengthen efficiency and accessibility within Zambia's tax dispute framework through comparative lessons drawn from Kenya and South Africa.

The reviewed literature therefore establishes that while mediation is widely recognised as a valuable tool in dispute resolution, its effectiveness in tax systems depends on legal clarity and administrative willingness. However, there remains limited focused research on how these conditions operate within Zambia's tax dispute resolution framework, particularly in relation to the potential integration of mediation.

1.10 Ethical Issues

The study does not raise any significant ethical concerns as it is doctrinal in nature and relies exclusively on publicly accessible information. If in any event, confidential information is collected, utmost confidentiality will be upheld to ensure persons affected by such disclosure are safeguarded from any adverse consequences by the disclosure of such information.

1.11 Chapter Outline

Chapter One of this study introduces the research and covers the background, statement of the problem, objectives of the study, research questions as well as the literature review. Chapter Two examines the legal framework governing tax dispute resolution in Zambia, with particular focus on the extent to which mediation is integrated within the existing dispute resolution mechanisms. Chapter Three analyses the tax dispute resolution framework in Kenya and South Africa, with particular emphasis on the integration of mediation within their respective frameworks. Chapter Four provides a comparative analysis of the Zambian and Kenyan tax dispute resolution frameworks, with emphasis on the role of mediation. Finally, Chapter Five concludes the study, outlines the findings and recommends reforms that can be implemented for the successful integration of mediation to enhance the effectiveness, fairness and efficiency of Zambia's tax dispute resolution framework.

1.12 Conclusion

This chapter demonstrates that one of the essential aspects of an efficient tax system is the establishment of dispute resolution mechanisms that are timely, accessible and cost effective. This principle aligns with the Constitution of Zambia's mandate to ensure that justice is administered expeditiously and in a cost effective manner.

One such mechanism that has gained global recognition in addressing the inefficiencies in the resolution of tax disputes is the integration of mediation as a form of ADR. The findings suggest that mediation is not merely a supplementary mechanism but a potentially essential tool for enhancing efficiency in tad dispute resolution systems. It can enhance efficiency, reduce costs and promote cooperative relationships between taxpayers and revenue authorities through facilitated dialogue and consensual settlement of disputes.

Accordingly, this study will proceed on the basis that the absence of a formalised mediation framework within Zambia's tax dispute resolutions system constitutes a structural deficiency, and it will therefore focus on Zambia's tax dispute resolution framework while drawing lessons from Kenya's and South Africa, with a view to proposing reforms for the effective integration of mediation in tax dispute resolution in Zambia.

CHAPTER 2: TAX DISPUTE RESOLUTION IN ZAMBIA

2.1 Introduction

This chapter examines the legal and institutional framework governing tax dispute resolution in Zambia. It focuses on the procedures available to taxpayers who seek recourse against decisions of the taxing authority that they consider to be based on an erroneous application or interpretation of the law. In this regard, the chapter analyses the constitutional, statutory and institutional structures governing tax objections, appeals and dispute resolution under Zambian law.

The chapter also examines the administrative procedures under the Income Tax Act, the appellate jurisdiction of the Tax Appeals Tribunal established under the Tax Appeals Tribunal Act and the role of the superior court in the adjudication of tax disputes. The Zambian tax dispute resolution framework is primarily anchored in tax-specific legislation, which establishes administrative mechanisms through which taxpayers may object to assessments and seek internal review by the revenue authority. In addition to administrative processes, the tax dispute resolution legal framework provides for the establishment of the Tax Appeals Tribunal mandated to adjudicate tax disputes. Decisions of the Tribunal may further be appealed to the Supreme Court, thereby situating tax dispute resolution within a formal and primarily adversarial system of dispute resolution.

Particular attention is given to the extent to which alternative dispute resolution mechanisms, particularly mediation, have been integrated into the tax dispute resolution framework in Zambia. In this regard, the chapter considers whether mediation is expressly integrated within the statutory tax dispute resolution framework or merely recognised indirectly accommodated within general ADR principles. The chapter further assesses whether the current legal framework sufficiently incorporates consensual dispute resolution mechanisms or whether there exists a gap in the formal recognition or integration of mediation in tax disputes in Zambia.

2.2 Constitutional Foundation for Dispute Resolution and ADR in Zambia

The *Constitution of Zambia* provides the principal legal framework within which all laws, including tax legislation, must operate.[37] In the context of dispute resolution, it places a mandate

[37] Amendment Act No. 2 of 2016 of the Laws of Zambia, art 1(1)

on courts in the exercise of their judicial authority to promote alternative forms of dispute resolution, including traditional dispute resolution mechanisms, and to ensure expeditious delivery of justice.[38] These provisions highlight the existence of a constitutional commitment to efficiency, accessibility and flexibility in the administration of justice.

These constitutional principles are significant in the resolution of tax disputes which often involve complex technical issues, high financial value and a high volume of cases before administrative and judicial bodies. The need for expeditious justice therefore becomes particularly relevant in ensuring that disputes between taxpayers and the Zambia Revenue Authority ("**ZRA**") are resolved in a manner that is both timely and cost effective. Similarly, the constitutional recognition of ADR suggests an intention to encourage mechanisms that reduce reliance on formal adjudication and promote consensual settlement where applicable.

However, despite the establishment of a general foundation for ADR, the *Constitution* does not prescribe specific mechanisms for its implementation in specialised areas such as tax law. As a result, the extent to which ADR is operationalised depends on sector-specific legislation. In the case of tax, this raises the question of whether the existing statutory framework gives practical effect to the constitutional mandate, particularly in relation to the use of mediation as a form of dispute resolution.

Therefore, while the Constitution merely provides a foundational basis for the use of ADR in dispute resolution, its implementation within Zambia's tax system remains largely dependent on legislative design and institutional practice. This reveals a gap between the constitutional intent and statutory implementation.

2.3 General Framework for Mediation in Zambia

In Zambia, mediation is recognised within the broader legal framework as one of the ADR mechanisms available for settlement of disputes outside the formal court process. Its utilisation is encouraged through court-annexed mediation under the High Court Rules, which provide for referral of matters to mediation, appointment of mediators, confidentiality of proceedings and procedural guidelines governing the mediation process.[39] The use of mediation is generally

[38] Ibid art 118(2)
[39] Statutory Instrument No 72 of 2018, Order XXXI Rule 2.

intended to promote consensual settlement, reduce litigation and facilitate more efficient resolution of disputes.

However, in practice, the development of mediation within Zambia is primarily utilised within general civil litigation and court-annexed mediation processes rather than as a structured mechanism within specialised statutory regimes. While this demonstrates an established acceptance of mediation within the legal system, its application remains sector-neutral and dependent on judicial or party initiative rather than statutory prescription in specific areas of law.

Therefore, despite its general recognition within the Zambian legal system, mediation has not been expressly institutionalised within the Zambian domestic tax dispute resolution framework. Its absence in this specialised context underscores a gap between the general availability of ADR mechanisms in Zambia and their structured integration into tax specific dispute resolution processes.

2.4 Institutional Framework for Tax Administration in Zambia

Tax in Zambia is administered by the Zambia Revenue Authority ("**ZRA**"), which is established under the *Zambia Revenue Authority Act*[40]. The ZRA is mandated to assess, charge, levy and collect various forms of revenue on behalf of the Government.[41]

The administration of tax in Zambia is largely carried out through a self-assessment system, under which taxpayers are required to declare their income, compute their tax liability and submit returns to the Authority within statutory due dates. The Commissioner General, as the Chief Executive Officer of the Authority[42] and is vested with wide statutory powers to assess tax liability, enforce compliance and take measures where taxpayers fail to meet their statutory obligations. These powers include the imposition of penalties, the raising of additional assessments and the enforcement of collection through statutory recovery procedures.

According to administrative guidance issued by the ZRA regarding the dispute resolution process, taxpayers are encouraged to first seek resolution through internal escalation procedures before

[40] Chapter 321 of the Laws of Zambia, Section 9.
[41] Ibid s11 (1).
[42] Ibid s19 (1).

formally lodging objections under the Income Tax Act.[43] These procedures may involve escalation to relevant heads of department, including the Commissioner for Domestic Taxes, Commissioner for Customs Services, Commissioner for Business Facilitation, or the Director of Investigations, depending on the nature of the dispute. Although these procedures are not expressly codified in tax legislation, they form part of the administrative practice of the Authority and reflect an internal attempt to facilitate the early resolution of disputes within the tax administration framework.

Within this institutional framework, the ZRA functions both as the administrator of the tax system and as the primary decision maker in the initial determination of tax liability, thereby raising structural concerns regarding the impartiality and neutrality of institutional dispute resolution. Tax disputes commonly arise where a taxpayer disagrees with an assessment issued by the ZRA, fails to comply with statutory obligations or contests the interpretation of tax legislation applied in determining tax liability. The initial stage of dispute resolution is therefore embedded within the administrative structure of the Authority itself, where taxpayers may lodge objections against assessments for internal review.

While this internal mechanism is intended to provide an opportunity for early settlement of tax disputes, it remains part of the same administrative structure responsible for the initial decision making. Accordingly, concerns may arise regarding the independence of the process at the initial stage of dispute resolution, particularly where taxpayers are dissatisfied with outcomes of internal reviews. Accordingly, the administrative framework of tax collection and assessment forms the foundation upon which the formal tax dispute resolution system is built, leading to more structured mechanisms such as the Tax Appeals Tribunal and the Court.

2.5 Administrative Objection Procedure under the Income Tax Act

The *Income Tax Act* provides the primary statutory framework governing the assessment and collection of income tax in Zambia. The Act establishes a structured procedural framework within which taxpayers are required to comply with their obligations through self-assessments, subject to verification and enforcement by ZRA through the Commissioner General. [44]

[43] Zambia Revenue Authority, *The Dispute Resolution Process* (August 2024) available at: https://www.esseclearing.com/uploads/public_documents/Dispute_Resolution_Process_pdf-_Aug2024.pdf Accessed on 1 May 2026

[44] Chapter 323 of the Laws of Zambia, s106.

The principal mechanism, for resolving tax disputes at the administrative level under the *Income Tax Act*, allows a taxpayer who is dissatisfied with an assessment to lodge an objection with the Commissioner General for reconsideration within 30 days of the assessment.[45] Upon receipt of the objection, the Commissioner General is required to review the assessment and may confirm, vary or set it aside.[46] This process constitutes an internal administrative review mechanism within the ZRA.

Although the objection procedure provides an avenue for resolving disputes without immediate recourse to adjudication, it remains institutional in nature, as the decision is reviewed within the same authority that issued the original assessment. This structure raises important concerns regarding independence and perceived neutrality in the resolution of tax disputes.

If a taxpayer remains dissatisfied with the outcome of the objection, the dispute may proceed to the Tax Appeals Tribunal in accordance with the *Tax Appeals Tribunal Act*, thereby transitioning from administrative review to formal adjudication.[47]

In addition to objection and appeal procedures, the Income Tax Act also recognises Mutual Agreement Procedures ("**MAP**") as a mechanism for resolving tax disputes arising under double taxation agreements.[48] Therefore, MAP is an international tax dispute resolution mechanism designed to address issues relating to double taxation and treaty interpretation between Zambia and other jurisdictions.

However, MAP is limited in scope as it applies exclusively to cross-border tax disputes and does not extend to purely domestic tax controversies between taxpayers and the ZRA. As such, while MAP introduces an element of negotiated resolution within the Zambian tax framework, it applies strictly to international tax matters and does not operate as a general alternative dispute resolution mechanism within domestic tax administration.

Accordingly, the administrative dispute resolution framework provided by the *Income Tax Act* is primarily structured around administrative objections and appellate processes rather than consensual mechanisms such as mediation. While the objection procedure provides an internal

[45] Ibid s108.
[46] Ibid.
[47] Ibid s109.
[48] Ibid s74.

avenue for reconsideration of assessments, it remains largely institutional and adversarial in nature, with limited incorporation of facilitated settlement mechanisms.

2.6 Appeals to the Tax Appeal Tribunal

A taxpayer who remains dissatisfied following the review of a decision of the Commissioner General, may appeal to the Tax Appeals Tribunal (the "**Tribunal**").[49] The Tribunal is established under the Tax Appeals Tribunal Act[50], which mandates it to hear and determine appeals arising from decisions of the Commissioner General under various tax specific legislation, *inter alia*, the Income Tax Act and any other tax legislation, as well as any matter prescribed by the Minister by statutory instrument as being appealable under the relevant Acts.[51]

The Tribunal is comprised of members appointed by the Minister, including three legal practitioners with sufficient knowledge and experience in tax matters of not less than ten years, as recommended by the Judicial Service Commission, two qualified accountants certified by the Zambia Institute of Chartered Accountants and two persons from the business community.[52] From among the appointed legal practitioners, the Minister appoints a Chairperson and Vice Chairperson.

The Tribunal process is further guided by prescribed procedural timelines which regulate the filing of appeals, responses and other procedural steps.[53]. While these timelines promote procedural efficiency and certainty, they also reflect the formal structures and rigid nature of the adjudicative process, leaving limited procedural flexibility for facilitative forms of dispute resolution such as mediation. ADR processes require procedural adaptability, including party driven scheduling and mutual negotiation, which may not align with strict adjudicative timelines. This structural design therefore reflects a preference for formal adjudication over consensual settlement mechanisms, despite the Tribunals mandate to refer matters for alternative settlement.

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[49] Act No 1 of 2015 of the Laws of Zambia, s7.
[50] ibid s3.
[51] Ibid s5 (a).
[52] Ibid s4.
[53] Ibid s8.

The establishment of the Tribunal introduces a more independent and specialised forum for the resolution of tax disputes, thereby addressing some of the limitations associated with internal administrative review by the revenue authority.

Although the Tax Appeals Tribunal does not expressly establish mediation as a formal dispute resolution mechanism, it grants the Tribunal broad discretionary powers to adopt procedures capable of facilitating the just, speedy and inexpensive settlement of disputes.[54] This provision arguably reflects limited legislative recognition of ADR, albeit without establishing a structured mediation framework.

However, despite its specialised nature, the Tribunal remains firmly embedded within a litigation based dispute resolution structure, with no formal incorporation of consensual mechanisms such as mediation.

2.7 Appeals to the Supreme Court

A party dissatisfied with the decision of the Tax Appeals Tribunal may appeal to the Supreme Court.[55] The Supreme Court exercises appellate jurisdiction over decisions of the Tribunal and serves as the apex court with final judicial authority in the determination of tax disputes within the domestic legal framework. Additionally, it has the discretion to refer a matter back to the Tribunal for re-hearing, confirmation, reduction, increment or annulment of the assessment or decision made by the Tribunal and may make such further or other order on appeal, whether as to costs or otherwise, as the Court may deem necessary.

However, in practice, appeals before the Supreme Court may be time consuming owing to the Court's broad appellate jurisdiction and the volume of matters before it. Consequently, aggrieved parties may incur substantial litigation costs and experience significant delays before obtaining final determination of their dispute.

The availability of further appeal to the Supreme Court reinforces the formal and adjudicative nature of Zambia's tax dispute resolution framework. While this appellate procedure arguably promotes certainty and judicial oversight, it also reflects continued reliance on litigation based

[54] Ibid s9.
[55] Ibid s15.

mechanisms for the resolution of tax disputes. Consequently, the framework provides limited scope for consensual or facilitated dispute resolution mechanisms such as mediation.

2.8 Extent of Integration of Mediation in Zambia's Tax Dispute Resolution Framework

Having examined the constitutional, legislative and institutional framework governing tax dispute resolution in Zambia, it is necessary to assess the extent to which mediation has been integrated within the existing system.

At constitutional level, mediation and other forms of ADR receive indirect recognition which requires courts to promote alternative forms of dispute resolution where appropriate. This provision reflects a broader constitutional commitment towards improving access to justice, enhancing efficiency in dispute resolution and reducing excessive reliance on formal litigation. The constitutional recognition of ADR therefore provides a foundation upon which mediation may potentially be incorporated into specialised areas of law, including tax dispute resolution. Therefore, implementation of mediation remains dependent upon enabling legislation.

The *Tax Appeals Tribunal Act* provides for the discretionary referral of tax matters for settlement through settlement mechanisms that are speedy and inexpensive. However, there are no provisions governing the appointment of facilitators, confidentiality of discussions, commencement of proceedings or procedural timelines. The absence of such provisions limits the practical utilisation of mediation within the tax dispute resolution system and creates uncertainty regarding how mediation would operate if parties sought to pursue it.

Therefore, mediation in Zambia is recognised in the broader legal system through court-annexed mediation procedures applicable to civil disputes which are before the High Court, therefore not extending to the tax disputes. Accordingly, the integration of mediation within Zambia's tax dispute resolution framework remains limited.

The above analysis highlights the existence of a significant gap between the constitutional endorsement or ADR and its practical implementation with Zambia's tax dispute resolution framework. This gap is particularly apparent when compared with jurisdictions that have adopted structured legislative mechanisms for mediation in tax disputes.

2.9 Conclusion

The analysis in this chapter demonstrates that Zambia's tax dispute resolution framework is primarily structured around administrative and adjudicative mechanisms, beginning with internal processes within the Zambia Revenue Authority, followed by statutory objection procedures, appeals to the Tax Appeals Tribunal, and ultimately appeals to the Supreme Court. This framework is predominantly hierarchical and litigation-based in nature, with disputes progressing through increasingly formal adjudicative stages.

While the constitutional framework encourages the use of ADR mechanisms in appropriate cases, and the Tax Appeals Tribunal Act provides limited procedural flexibility aimed at facilitating efficient resolution of disputes. However, these provisions do not amount to a structured or institutionalised mediation framework within domestic tax dispute resolution. Instead, ADR remains largely indirect and informal within the tax system.

Accordingly, the Zambian tax dispute resolution framework reflects a strong reliance on adversarial processes, with limited incorporation of consensual dispute resolution mechanisms such as mediation, creating an evident gap between the constitutional recognition of ADR and its practical implementation within tax-specific legislation.

CHAPTER 3: TAX DISPUTE RESOLUTION IN KENYA AND SOUTH AFRICA

3.1 Introduction

This chapter examines the legal and institutional frameworks governing tax dispute resolution in Kenya and South Africa, with particular focus on the extent to which mediation and ADR mechanisms have been integrated within their respective tax systems. Kenya and South Africa have been selected for comparative analysis due to their progressive development if structured tax dispute resolution frameworks which incorporate ADR mechanisms within their formal administrative and adjudicative processes.

Accordingly, this chapter evaluates the constitutional foundations, statutory frameworks, institutional structures and operational procedures governing tax dispute resolution in Kenya and South Africa. It also examines the extent to which mediation has been operationalised within these systems, including the role of administrative authorities, tribunals and courts in facilitating consensual dispute resolution.

The analysis undertaken in this chapter is intended to inform the subsequent comparative evaluation in Chapter Four on possible reforms that Zambia may adopt from the experiences of Kenya and South Africa within its tax dispute resolution framework.

KENYA

3.2 Constitutional Foundation of ADR in Kenya

The legal foundation of ADR in Kenya is primarily derived from the *Constitution of Kenya*, which vests judicial authority in the courts and tribunals, and requires the judiciary in the exercise of such authority to promote alternative forms of dispute resolution[56]. In particular, the Constitution of Kenya expressly recognises reconciliation, mediation, arbitration and traditional dispute resolution mechanisms as appropriate mechanisms for the administration of justice, provided that such mechanisms do not contravene the Bill of Rights or principles of justice and morality.[57] Further to the constitutional recognition of ADR, the Constitution of Kenya places a mandate stating that

[56] Constitution of Kenya 2010, art 159 (2)(c)
[57] Ibid art 159 (3)

national laws shall provide for the procedures to be followed in settling of intergovernmental disputed by ADR mechanisms, including negotiation, mediation and arbitration.[58]

This reflects a deliberate shift from exclusive reliance on formal adjudication towards the promotion of more flexible, accessible and efficient dispute resolution mechanisms. The constitutional framework has had a significant impact on the development of Kenya's dispute resolution architecture. It has influenced both judicial practice and legislative reform, leading to the integration of ADR mechanisms within specialised areas of law, including commercial disputes, labour disputes, and importantly, tax administration. In the context of tax law, this constitutional foundation has enabled the development of structured ADR mechanisms that allow tax disputes to be resolved through consensual processes without undermining the authority of revenue administration bodies.

Accordingly, the constitutional recognition of ADR in Kenya is significant as it serves as the normative foundation upon which the statutory and institutional frameworks governing tax dispute resolution are built. It provides for the legal authority for the integration of mediation within tax dispute resolution processes, ensuring that ADR is embedded within the broader justice system rather than operating as an external or informal mechanism.

3.3 Tax Administration in Kenya

Tax in Kenya is administered by the Kenya Revenue Authority ("**KRA**"), which is established under the *Kenya Revenue Authority Act*[59] and is mandated to assess, collect and account for government revenue.[60]

In carrying out its functions, the KRA through the Commissioner General, is vested with authority to verify compliance, issue assessments, impose penalties and enforce the collection of taxes.[61] These powers place the KRA at the centre of both tax administration and the initial resolution of tax-related disputes.

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[58] Ibid art 189 (4)
[59] Kenya Authority Act No 2 of 1995, art 3(1).
[60] Ibid art 5(2).
[61] Ibid art 11(3).

The Kenyan tax system is primarily a self-assessment system under which taxpayers are individually required to declare their income, compute their tax liability and submit returns within prescribed statutory timelines. It is therefore premised on voluntary compliance, supported by post assessment verification by the KRA. While this system enhances efficiency, it creates inherent risk of disputes arising from differences in interpretation, audits or disagreement over the application of tax laws.

The structure of tax dispute resolution in Kenya is therefore aimed at prioritising administrative resolution at the earliest possible stage. This is reflected in the internal review mechanisms within the KRA, which allow disputes to be reconsidered before escalation to the Tax Appeals Tribunal. This administrative stage is significant because it provides the first opportunity for the resolution of disputes without resort to litigation, and forms the foundation upon which alternative dispute resolution mechanisms, including mediation, are later integrated.

3.4 Administrative Objection Procedure

The administrative objection procedure constitutes the first formal stage of tax dispute resolution in Kenya. The procedure is governed primarily by the *Tax Procedures Act*, which establishes the right of a taxpayer to challenge a tax decision made by the Commissioner of the KRA.

A taxpayer who is dissatisfied with a tax decision of the KRA, which may be an assessment, determination of tax payable by the taxpayer, decisions on application by a self-assessment taxpayer, a refund decision and a demand penalty may object to the decision of the Commissioner as the first statutory stage of tax dispute resolution.[62] The objection must be lodged within thirty days of the decision and must clearly and precisely set out the position of the taxpayer's grounds of objection.

Objections are initially considered by an internal dispute resolution committee comprising the Audit Manager, the Compliance Manager, the Policy Unit Technical Manager and the Head of the relevant station.[63] This internal review process is intended to facilitate the early resolution of

[62] Tax Procedure Act No.29 of 2015, s51 (1).
[63] B. G. Kanyi, *Kenya's Tax Dispute Resolution System: A Dispute System Design Evaluation* (LLM Dissertation, Strathmore Law School 2019) p44.

disputes by allowing assessments to be reconsidered within the revenue authority before matters proceed to the Tax Appeals Tribunal or other formal adjudicative forums.

Upon consideration of the objection, the Commissioner may allow the objection in whole or in part or disallow it by issuing an objection decision.[64] Where the tax payer remains dissatisfied with the objection decision, an appeal may be lodged before the Tax Appeal Tribunal within thirty days of notification of the decision[65], in accordance with the Tax Appeals Tribunal.[66]

Accordingly, the administrative objection procedure demonstrates Kenya's preference for resolving tax disputes at the earliest stage before resorting to formal adjudication. This institutional framework subsequently provides a foundation upon which ADR mechanisms, including mediation, have been integrated into the tax dispute resolution process.

3.5 Tax Appeals Tribunal

The second stage of tax dispute resolution in Kenya is through the Tax Appeals Tribunal ("**TAT**"), established under the *Tax Appeals Tribunal Act*.[67] The TAT is mandated to hear appeals from taxpayers who remain dissatisfied with the objection decision of the Commissioner of the KRA, in respect of matters arising under tax legislation, upon the taxpayer giving notice in writing to the Commissioner.[68]

Proceedings before the TAT are adjudicative in nature, requiring parties to present either oral or affidavit evidence, as the TAT may direct[69], thereby affording both parties an opportunity to be heard. This quasi-judicial constitutes the first independent appellate body within Kenya's tax dispute resolution framework, in contrast to internal KRA reviews, which are conducted by officers within the KRA.

Although the Tribunal provides an adjudicative mechanism for determining tax disputes, Kenya has progressively recognised that not every dispute requires formal litigation. Consequently, its tax dispute resolution framework permits suitable disputes to be referred to Alternative Dispute

[64] Tax Procedure Act No 29 of 2015, s51 (8).
[65] Ibid s51 (12).
[66] Ibid s52 (1).
[67]Ibid. s3
[68] Ibid s12.
[69] Ibid s16 (2).

Resolution mechanisms, including mediation, thereby encouraging consensual settlement without the necessity of a full adjudicative determination where appropriate.[70]

3.6 Appeals to the Courts

A party who remains dissatisfied with the decision of the TAT may appeal to the High Court and subsequently to the Court of Appeal on a question of law only[71], and where permissible to the Supreme Court. The appellate structure provides for judicial oversight of tax disputes and ensures that questions of law are subject to review by the superior courts, which may be time consuming and costly, thereby reinforcing the importance of ADR mechanisms that facilitate the early and consensual resolution of tax disputes.

Recognising these challenges, the Tax Procedures Act empowers the Court or the TAT to permit parties to settle a tax dispute through an ADR process within one hundred and twenty days from the date of such permission is granted. This statutory recognition of ADR demonstrates Kenya's legislative commitment to encouraging negotiated settlement of suitable tax disputes alongside the conventional adjudicative process.

3.7 Alternative Dispute Resolution and Mediation in Tax Dispute Resolution

Article 159(2)(c) of the *Constitution of Kenya*[72], read together with *section 55* of the *Tax Procedures Act* [73] and *Section 28* of the *Tax Appeals Tribunal Act* [74], provides the legal foundation for the integration of ADR mechanisms with Kenya's tax dispute resolution framework. While the constitutional mandates the promotion of the use of ADR, the tax specific legislation operationalises the principle by empowering the courts and the TAT to permit parties to a tax dispute to settle the matter out of court or out of the Tribunal through ADR processes.

The implementation of this framework is governed by the *Tax Procedures (Settlement of Tax Disputes out of Court or Tribunal) Regulations*[75], which prescribe the procedure for the consensual settlement of disputes.[76] The process is voluntary in nature and requires the agreement of both

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[70] Ibid s28.
[71] Tax Procedure Act No 29 of 2015, s56 (2).
[72] Constitution of Kenya 2010.
[73] Tax Procedure Act No 29 of 2015.
[74] Tax Appeals Tribunal Act No 40 of 2013.
[75] Tax Procedures (Settlement of Tax Disputes out of Court or Tribunal) Regulations Legal Notice 123 of 2020).
[76] Ibid reg 3.

parties before a dispute may be referred for ADR. However, not every dispute is suitable for settlement through ADR. Matters involving questions of statutory interpretation, disputes that would result in outcomes contrary to the Constitution or tax legislation, and cases involving allegations of tax fraud are excluded from the process.[77] These limitations reflect a legislative intention to reserve ADR for disputes capable of negotiated settlement while ensuring that matters of public importance or legality remain subject to formal adjudication.

Once a dispute has been referred for ADR, the parties nominate a facilitator, subject to the consent of the opposing party to the dispute, whose role is to assist them in reaching a mutually acceptable settlement.[78] To preserve the integrity and credibility of the process, the Regulations require that the facilitator be independent and free from any conflict of interest.[79] A facilitator who has previously participated in the dispute or represented the taxpayer in any matter or possesses any interest in the tax dispute is required to disclose such conflict of interest to the parties and recuse themselves.[80] These safeguards are intended to promote impartiality and enhance confidence in the ADR process.

The Regulations further require that disputes referred to ADR be concluded within the prescribed statutory period, failing which the matter reverts to the court or the Tribunal for determination. [81] The imposition of strict timelines demonstrates that ADR is intended to complement rather than delay the adjudicative process by providing an efficient avenue for the early resolution of suitable disputes.

In addition to statutory framework, the KRA developed and adopted the *Kenya Authority Alternative Dispute Resolution (ADR) Framework*[82] in 2019 to operationalise the use of mediation in the settlement of tax disputes. The ADR framework was established to provide general guidance of stakeholders engaging in ADR to resolve tax disputes, by encouraging cooperation between taxpayers and the revenue authority, reduce reliance on litigation and facilitate mutually acceptable

[77] Ibid reg 4.
[78] Ibid reg 5.
[79] Ibid reg 5(5).
[80] Ibid reg 5(7).
[81] Ibid reg 4(d).
[82] Kenya Revenue Authority, *Alternative Dispute Resolution (ADR) Framework* (Tax Dispute Resolution Division, Kenya Revenue Authority) https://www.kra.go.ke/images/publications/ADR-FRAMEWORK.pdf> Accessed 1 June 2026.

outcomes while preserving tax compliance.[83] It therefore provides an institutional mechanism through which ADR principles are implemented in practice within Kenya's tax administration system. Unlike a purely litigation-based model, the ADR Framework seeks to facilitate collaborative engagement between taxpayers and the revenue authority with the objective of resolving disputes before they progress to formal adjudication.

Importantly, the ADR Framework gives practical effect to *Article 159(2) (c) of the Constitution of Kenya*, *section 28 of the Tax Appeals Tribunal Act* and *section 55 of the Tax Procedures Act* by operationalising the use of ADR within the tax dispute resolution process. Unlike the Tax Procedures (Settlement of Tax Disputes out of Court or Tribunal) Regulations, which primarily govern the referral of disputes that are already before the TAT, the ADR Framework expressly provides for the resolution of disputes through mediation at the administrative stage. [84] Under the ADR Framework, where a taxpayer lodges an objection against a tax decision and the Commissioner is minded to partially amend the decision or decline the objection, the Commissioner in charge of dispute resolution may, at the request or with agreement of the taxpayer, afford the parties an opportunity to engage in ADR before issuing an objection decision. This facilitates the early and consensual resolution of disputes, reducing the need for formal litigation and promotes cooperative engagement between taxpayers and the KRA while preserving the parties' right to proceed through the statutory dispute resolution process where mediation is unsuccessful.

A settlement concluded out of court or tribunal is recorded in writing and, once duly executed by the parties, constitutes a final and binding resolution of the dispute which enforceable through the issuance of the necessary assessment or adjustment by the Commissioner.[85] The settlement remains confidential and does not create judicial precedent. Consequently, the process promotes flexibility and candour in negotiations while enabling disputes to be resolved without the adversarial consequences associated with formal litigation.

Accordingly, Kenya has moved beyond constitutional recognition of ADR by establishing a structured legislative and institutional framework for mediation in tax disputes. Notwithstanding

[83] Ibid p3.
[84] Ibid p9.
[85] Tax Procedures (Settlement of Tax Disputes out of Court or Tribunal) Regulations Legal Notice 123 of 2020) Regulation 8(3) (c).

these developments, the Kenyan framework still reflects certain structural weaknesses. While ADR is strongly supported in legislation, it is limited by the nature of the matters that are excluded from being resolved through ADR. This suggests that although it is recognised, it is not set as a default resolution in tax matters.

SOUTH AFRICA

3.8 Constitutional and Legal Framework for ADR in South Africa

Unlike Kenya, whose Constitution expressly recognises mediation and other forms of ADR as mechanisms for the administration of justice, the *Constitution of the Republic of South Africa* does not specifically provide for ADR. However, the constitutional framework provides a foundation for the development of efficient and accessible dispute resolution mechanisms.[86] The Constitution guarantees every person the right to have disputes resolved in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum established by law.[87] In addition, the Constitution requires public administration to be governed by values and principles that include accountability, efficiency and responsiveness.[88] These constitutional provisions have influenced the development of administrative and statutory mechanisms aimed at resolving disputes in a manner that promotes efficiency and fairness. Consequently, South Africa has adopted a tax dispute resolution system that combines formal adjudication with consensual settlement processes.

3.9 Tax Administration in South Africa

Tax in South Africa is administered by the South African Revenue Services ("**SARS**"), established under the *South African Revenue Service Act*[89]. SARS is responsible for the administration and collection of taxes and is empowered to issue assessments, conduct audits, impose penalties and ensure compliance with tax legislation.[90] Tax disputes commonly arise where taxpayers disagree with decisions taken by SARS in the administration of tax legislation. In such circumstances, the

[86] Constitution of the Republic of South Africa (1996), s34.
[87] Ibid s33 (3) (a).
[88] Ibid s195.
[89] South African Revenue Services Act No 34 of 1997, s2.
[90] Ibid s4.

taxpayer is afforded an opportunity to challenge the decision through statutory objection and appeal procedures.

3.10 Tax Administrative Objection Procedure

The first formal stage of dispute resolution is the objection procedure used by a taxpayer who is dissatisfied with an assessment or decision of SARS, by lodging an objection within the prescribed period, setting out grounds upon which the decision is challenged.[91]

Where the taxpayer remains dissatisfied with the outcome of the objection, an appeal may be lodged in accordance with the dispute resolution procedures established under the *Tax Administration Act*[92] ("**TAA**").

3.11 Tax Board and Tax Court

The second formal stage of tax dispute resolution in South Africa is conducted through specialised forums namely the Tax Board and the Tax Court. A taxpayer that is dissatisfied with the outcome of an objection decision may appeal the matter to the Tax Board or Tax Court as the rules may prescribe.[93] The jurisdiction of the Tax Board is limited to less complex tax disputes and is intended to provide a more accessible and efficient mechanism for the resolution of certain appeals where the tax in dispute does not exceed the amount prescribed by the Minister or by agreement between the taxpayer and the SARS.[94] If the taxpayer or SARS is dissatisfied with the Tax Board's decision, an appeal may be lodged to the Tax Court within the prescribed time.[95]

The Tax Court is a specialised forum with expertise in tax matters and is empowered to hear appeals arising from decisions of SARS and the Tax Board.[96] Proceedings before the Tax Court are adversarial in nature and involve the presentation of evidence and legal arguments by both the taxpayer and SARS.

Accordingly party dissatisfied with the decision of the Tax Court may, in appropriate circumstances, appeal to the Provincial Division of the High Court and subsequently to the

[91] Tax Administration Act No 28 of 2011, s104.
[92] Ibid.
[93] Ibid. s107 (1).
[94] Ibid s109.
[95] Ibid s114.
[96] Ibid s117.

Supreme Court of Appeal. This appellate structure ensures judicial oversight while maintaining a specialised forum for the determination of tax disputes.

3.12 Alternative Tax Dispute Resolution Framework in South Africa

South Africa has developed a structured Alternative Dispute Resolution ("ADR") framework within its tax dispute resolution system through rules issued under the *Tax Administration Act 28 of 2011*.[97] Following the lodging of an appeal against a decision of SARS, a dispute may be referred to ADR either at the request of the taxpayer or where SARS considers the matter suitable for consensual resolution.[98] The process is voluntary and operates on the basis that the parties to the dispute retain their full rights to proceed with the formal appeal process before the Tax Board and Tax Court should settlement through ADR not succeed.[99]

The ADR procedure is regulated by detailed rules which regulate its commencement, conduct and termination. These rules provide for the appointment of a facilitator subject to the agreement of both parties, whose role is to assist the parties in engaging in discussions aimed at resolving the dispute.[100] The process is conducted on a without-prejudice basis and information disclosed is generally confidential and inadmissible in subsequent proceedings, thereby encouraging open negotiation between parties.[101] The facilitator is required to act independently and impartially in guiding the parties towards a fair and expeditious resolution of the dispute without imposing a binding agreement.

Where an agreement is reached, the dispute may be resolved in whole or in part, while any unresolved issues may proceed to the Tax Board or Tax Court for determination.[102] The process is also subject to strict timelines, generally requiring conclusion within ninety days from commencement, thereby ensuring that ADR functions as a time-efficient mechanism within the broader dispute resolution framework. Although the process is not formally labelled as mediation, it is facilitative in nature and incorporates key features of mediation, as it relies on neutral assistance to enable parties to reach a negotiated settlement rather than an adjudicated outcome.

[97] Ibid s103.
[98] Ibid s144 (1).
[99] Tax Administration Act No.28 of 2011: Dispute Resolution Rules, rule 14(1).
[100] Ibid. r16 (1).
[101] Ibid r14 (2).
[102] Ibid r23 (4).

Overall, the South African framework reflects a structured and institutionalised approach to the resolution of tax disputes through consensual processes embedded within the formal tax appeal system. Accordingly, South Africa's approach remains procedural and facilitator-driven within the existing SARS dispute resolution framework.

3.13 Conclusion

Both Kenya and South Africa have progressed beyond a primarily adversarial approach to tax dispute resolution by incorporating ADR mechanisms, including facilitative processes that resemble mediation, within their statutory and institutional frameworks. Although the nature and depth of ADR integration differs between the two jurisdictions, both demonstrate an emerging recognition that consensual dispute resolution can operate alongside formal adjudicative structures.

However, the analysis also shows that ADR in both jurisdictions remains differently structured and institutionally embedded, with varying degrees of formality, independence and procedural design. These differences provide useful comparative insight into how mediation may be integrated within specialised tax dispute resolution systems. While both systems demonstrate a shift from purely adversarial tax litigation, Kenya's model offers more clarity on the integration of ADR, whereas South Africa provides stronger institutional control.

Accordingly, the experiences of Kenya and South Africa form the basis for the comparative analysis in the next chapter, which evaluates their approaches and draws lessons for the possible reform of Zambia's tax dispute resolution framework.

CHAPTER 4: COMPARATIVE ANALYSIS OF THE INTEGRATION OF MEDIATION IN TAX DISPUTE RESOLUTION FRAMEWORKS BETWEEN ZAMBIA, KENYA AND SOUTH AFRICA

4.1 Introduction

This chapter undertakes a comparative analysis of the integration of mediation within the tax dispute resolution frameworks of Zambia, Kenya and South Africa.

Kenya and South Africa are utilised as comparative standards because both jurisdictions have taken significant steps towards integrating ADR mechanisms into their tax dispute resolution frameworks. Therefore, the experiences of these jurisdictions provide useful insights into the legal, procedural and institutional measures necessary for the successful implementation of mediation in tax disputes, thereby providing useful insights for possible reforms in Zambia.

The chapter examines the extent to which mediation has been integrated into the respective legal and institutional frameworks of the three jurisdictions. It identifies similarities and differences in approaches adopted, evaluates the effectiveness of those approaches and considers the practical lessons that may be drawn for Zambia. Through this analysis, the chapter seeks to determine whether the formal integration of mediation has contributes to more efficient and accessible tax dispute resolution systems in Kenya and South Africa.

4.2 Integration of Mediation in Tax Dispute Resolution Frameworks

The three jurisdictions illustrate varying degrees of integration of mediation within their tax dispute frameworks.

In Zambia, although the constitutional framework encourages the use of ADR mechanisms, there is no dedicated statutory framework governing mediation in tax disputes. The dispute resolution process remains primarily administrative and adjudicative, progressing from internal objection procedures within the ZRA to the Tax Appeals Tribunal and ultimately to the Supreme Court. However, although the Tax Appeals Tribunal has the discretion to refer matters for resolution through alternative means capable of facilitating the just, speedy and inexpensive settlement of disputes, there is no supporting legislative framework governing the procedure for resolving tax disputes.

In contrast, Kenya has a more structured and institutionalised approach. Mediation is expressly supported by the Constitution of Kenya [103]and is operationalised through the *Tax Procedures* Act[104], *Tax Appeals Tribunal Act*[105], and other subsidiary legislation such as the *Tax Procedures (Settlement of Tax Disputes out of Court or Tribunal) Regulations*[106] and the *Kenya Revenue Authority ADR Framework*[107]*,* which facilitates the use of mediation at both the administrative and appellate stages of tax disputes.

South Africa similarly demonstrates a structured approach through the *Tax Administration Act*[108] and the *Tax Administration Act: Dispute Resolution Rules*[109], which expressly provide for ADR processes following the lodging of an appeal against an objection decision. Though not expressly integrating mediation, the system allows disputes to be referred to facilitator guided processes.

Kenya and South Africa have transformed mediation and ADR from a general principle into operational tax dispute resolution mechanisms through detailed legislative frameworks. By contrast, Zambia has largely confined ADR to a constitutional aspiration without corresponding tax-specific implementation measures.

4.2.1 Comparative Assessment of Legislative Integration

The preceding analysis establishes that the legislative integration of mediation within the three jurisdictions varies considerably. While all three jurisdictions recognise the importance of efficient dispute resolution, the degree to which it has been institutionalised differs significantly. The comparison reveals that the effectiveness of mediation within tax dispute resolution is fundamentally reliant on the existence of a clear legislative framework that defines its scope, procedures and legal consequences.

As discussed above, the recognition of ADR generally is primarily constitutional in nature. Although the Constitution encourages the promotion of ADR and the Tax Appeals Tribunal

[103] Constitution of Kenya 2010.
[104] Tax Procedure Act No. 29 of 2015.
[105] Tax Appeals Tribunal Act No. 40 of 2013.
[106] Tax Procedures (Settlement of Tax Disputes out of Court or Tribunal) Regulations Legal Notice 123 of 2020).
[107] Kenya Revenue Authority, *Alternative Dispute Resolution (ADR) Framework* (Tax Dispute Resolution Division, Kenya Revenue Authority) https://www.kra.go.ke/images/publications/ADR-FRAMEWORK.pdf> Accessed 1 June 2026.
[108] Tax Administration Act No.28 of 2011
[109] Tax Administration Act No.28 of 2011: Dispute Resolution Rules

possesses limited procedural flexibility, there is no dedicated statutory framework regulating mediation in tax disputes. Consequently, taxpayers and revenue authorities lack clear guidance regarding the commencement of mediation, the appointment of mediators in tax dispute mediation, confidentiality requirements and settlement procedures and the legal effect of mediated agreements. The lack of such provisions limits the practical utilisation and contributes to the continued reliance on formal adjudicative mechanisms.

Kenya adopts a more broad approach by integrating mediation within multiple levels of its legal framework. Constitutional recognition is supplemented by comprehensive legislative provisions, subsidiary regulations and administrative guidelines issued by the KRA. This layered framework provides legal certainty and institutional support for the use of ADR throughout the dispute resolution process. The Kenyan model establishes the importance of aligning constitutional principles with practical implementation measures to ensure that mediation functions as an effective dispute resolution mechanism rather than a mere policy objective.

Similarly, South Africa has established a specific statutory framework for ADR within tax disputes through the *Tax Administration Act* and the *Tax Administration Act: Dispute Resolution Rules*. Although the South African framework does not expressly employ the terminology of mediation, the facilitator-driven procedures incorporate many of its fundamental characteristics, including voluntary participation, negotiated settlement and impartial facilitation. This demonstrates that the effectiveness of mediation is determined not by the terminology used, but by the procedural safeguards and institutional structures supporting the process.

Consequently, the comparative analysis suggests that constitutional recognition alone is inadequate to facilitate the meaningful integration of mediation within tax dispute resolution. Rather, effective implementation requires supporting legislation, procedural rules and institutional mechanisms capable of translating broad constitutional principles into practical dispute resolution processes. The experiences of Kenya and South Africa illustrate that the integration of mediation is most effective where it is supported by substantive legal and institutional framework.

4.3 Comparative Analysis of the Mediation Process in Tax Disputes

a. Initiation of mediation

The Kenyan tax dispute resolution framework incorporates a structured ADR mechanism which may be initiated with the agreement of the parties and may occur following referral by the Court or the Tax Appeals Tribunal. In addition, the KRA ADR Framework permits the utilisation of mediation at the administrative stage before the issuance of an objection decision, thereby facilitating the early resolution of disputes. Similarly, South Africa permits disputes to be resolved through agreements reached during ADR proceedings. Where settlement is achieved, the agreement is implemented within the statutory dispute resolution framework, while unresolved issues may proceed to the Tax Board or Tax Court.

By contrast, Zambia's tax dispute resolution framework does not provide a dedicated mediation mechanism. Although the Tax Appeals Tribunal Act empowers the Tribunal to refer matters to any other course capable of facilitating the just, speedy and inexpensive settlement of disputes, the initiation of such processes remains largely at the discretion of the Tribunal. This limits the accessibility and practical utilisation of ADR within tax disputes.

The differences in the initiation of mediation across the three jurisdictions are significant in defining the accessibility and effectiveness of ADR in tax disputes. In Kenya, the ability to initiate mediation at both the administrative stage and during formal proceedings before the Tax Appeals Tribunal ensures that disputes may be determined at the earliest possible stage. The ability to resolve matters at an early stage is particularly significant in tax matters, which may be lengthy thereby affecting both revenue collection and taxpayer compliance. Similarly, South Africa's framework allows for referral of disputes to facilitator-driven proceedings after objection decision has been made. This ensures that ADR is incorporated into the formal tax dispute resolution system at an earlier stage, despite being restrictive.

However, Zambia's reliance on the Tax Appeals Tribunals referral of matters to alternative settlement means that parties cannot predictably access ADR. The absence of laws allowing parties to initiate mediation or ADR in tax matters without the Tribunal's referral demonstrates limited access to ADR.

b. Role of Facilitators

Facilitators play a central role in the effectiveness of mediation in tax disputes. In both Kenya and South Africa, facilitators play a structured and defined role in guiding parties in reaching mutually acceptable settlements, without imposing binding decisions. In both jurisdictions, facilitators are required to act independently and impartially which is critical in the promotion of fair and efficient resolution of disputes.

In contrast, the absence of formally designated mediators or facilitators under Zambia's tax dispute resolution framework represents a significant gap. While the Tribunal may refer matters for alternative resolution, there are no provisions regulating the appointment of facilitators following such referral.

c. Confidentiality

Confidentiality constitutes an important feature of effective mediation, as it encourages parties to engage openly in negotiations without fear that disclosures will be used against them in subsequent proceedings. In Kenya and South Africa, ADR processes are protected by confidentiality provisions which ensure that communications and documentation exchanged during ADR proceedings are generally treated as confidential and without prejudice, rendering them inadmissible in subsequent proceedings should the parties fail to reach a settlement. This promotes openness during negotiations.

This protection is significant because it enhances trust in the mediation process and encourages genuine compromise between parties. It also reduces the risk of strategic behaviour where parties may withhold information due to fear of litigation.

Conversely, the Zambian framework does not expressly provide confidentiality safeguards in relation to tax related ADR. As a result, the treatment of information disclosed during such proceedings remains uncertain, thereby limiting the effectiveness of alternative resolution efforts that may occur.

d. Settlement Outcomes

The legal effect of settlement agreements reached through mediation is a key factor in determining the effectiveness of ADR systems. In Kenya, mediated settlements are reduced into writing and, once executed by the parties, constitute a final and binding resolution of the dispute. This ensures certainty and finality to the parties while avoiding the likelihood of further litigation.

Similarly, South Africa permits disputes to be resolved through agreement or settlement during ADR proceedings. Although unresolved issues may proceed to the Tax Board or Tax Court, settlements concluded by the parties are recognised and implemented within the statutory dispute resolution framework. Zambia, however, lacks a clearly defined mechanism for giving legal effect to mediated settlements within its tax legislation.

e. Timelines

One of the justifications of integrating mediation in tax dispute resolution is time efficiency. Both Kenya and South Africa have incorporated procedural timelines that govern the initiation and completion of ADR processes. These timelines ensure that disputes are resolved within a reasonable period and prevent mediation from becoming an additional layer of delay.

In Kenya and South Africa, structured timelines promote efficiency and ensure that ADR contributes to meaningfully reduce the backlog within the tax system and promotes efficiency of the process.

Although Zambia's tax dispute resolution framework contains procedural timelines governing objections and appeals, it does not establish a dedicated mediation framework with corresponding timelines for facilitated settlement. Consequently, opportunities for the early and consensual resolution of disputes remain limited.

4.4 Evaluation of the Integration of Mediation in Tax Dispute Resolution

The above comparative analysis of Zambia, Kenya and South Africa demonstrates that although the three jurisdictions recognise the importance of efficient dispute resolution, the extent to which mediation has been integrated into tax dispute resolution frameworks varies significantly. The differences are not only procedural but reflect fundamentally different approaches to the role of mediation within their tax administration systems.

Kenya presents the most comprehensive framework model of integration among the three jurisdictions. The incorporation of ADR into its constitutional provisions, tax legislation, subsidiary regulations and administrative frameworks developed by the Kenya Revenue Authority, demonstrated the intentional policy choice to embed mediation within its tax dispute resolution system. This multi-layered structure facilitates the utilisation of mediation at both the administrative and appellate stages of tax disputes, thereby enhancing accessibility at multiple stages of the disputes resolution process and reducing reliance on formal litigation.

Similarly, South Africa has incorporated ADR into its tax dispute resolution framework through the Tax Administration Act and the Tax Administration Dispute Resolution Rules. Although the South African framework does not expressly describe the process as mediation, its facilitative nature reflects many of the core characteristics of mediation, including voluntary participation, confidentiality, impartial facilitation and negotiated settlement. The framework therefore demonstrates that mediation principles may be successfully incorporated within specialised tax dispute resolution systems without compromising the authority of the revenue administration or the integrity of the tax system.

By contrast, Zambia's framework remains primarily administrative and adjudicative in nature. While the Constitution encourages the use of ADR mechanisms and the Tax Appeals Tribunal possesses limited procedural flexibility to adopt alternative procedures, mediation has not been expressly integrated into tax-specific legislation. Consequently, taxpayers largely remain dependent on objections and appeals as the primary means of resolving tax disputes.

The experiences of Kenya and South Africa further illustrate that the integration of mediation does not replace formal adjudication but rather complements it. In both jurisdictions, mediation operates alongside existing objection, appeal and court processes thereby providing parties with an additional mechanism for resolving disputes while preserving their right to proceed to formal adjudication where settlement cannot be achieved. This balanced approach promotes efficiency while maintaining legal certainty and procedural fairness.

Accordingly, the evaluation on Zambia’s current framework does not fully utilise the potential benefits of mediation in tax dispute resolution. The absence if a structured framework limits consistency, predictability and accessibility. Thereby reducing the practical benefits of ADR within the tax system. In contrast, Kenya and South Africa illustrate that when properly institutionalised, mediation can strengthen tax dispute resolutions systems by promoting cooperation and early settlement.

4.5 Challenges in the Integration of Mediation in Tax Dispute Resolution

Despite the incorporation of ADR mechanisms within the tax dispute resolution frameworks of Zambia, Kenya and South Africa, certain limitations affect the effectiveness and consistency of meditation across the three jurisdictions. These challenges may be structural, institutional and procedural in nature, thereby influencing the extent to which mediation can be effectively utilised in tax disputes.

One of the main challenges is the institutional positioning of mediation within tax administrative systems. In South Africa for instance, ADR is embedded within SARS and functions as a facilitative extension of the formal dispute resolution process, with strict procedural timelines that may limit flexibility in complex disputes. This involves resolution of tax disputes by internal staff of SARS as facilitators. While this ensures administrative efficiency, it raises concerns over the perceived independence and neutrality of facilitators who operate within the same institution.

Similarly, in Kenya, although ADR is more developed, its effectiveness is restricted by procedural requirements for referral through the Tax Appeals Tribunal or Court in certain instances, as well as strict timelines governing initiation and conclusion of the process. In some instances, disputes are referred to alternative resolution settlement with the permission of the Tribunal or the Court, which may delay early settlement and reduce the preventive value of mediation in avoiding litigation.

Another challenge relates to the suitability of tax disputes for mediation. Not all tax disputes may be appropriate for negotiated settlement, particularly complex matters requiring statutory interpretation or those requiring establishment of legal precedent. In such cases, the most appropriate mechanism remains adjudication.

Accordingly, while mediation offers significant advantages in tax dispute resolution, its effectiveness is dependent on the existence of clear institutional frameworks, adequate capacity and appropriate safeguards to ensure fairness, consistency and legitimacy.

4.6 Lessons for Zambia

The comparative analysis of Kenya and South Africa provides valuable lessons for the development of Zambia's tax dispute resolution framework. While Zambia has established administrative and adjudicative mechanisms for the resolution of tax disputes, the experiences of Kenya and South Africa demonstrate that mediation can effectively complement formal dispute resolution processes without undermining legal certainty or revenue collection.

A key lesson emerging from both Kenya and South Africa is the importance of express statutory express statutory recognition of mediation within tax-specific legislation. In both jurisdictions, ADR mechanisms are supported by clear legislative and procedural frameworks which define their scope, operation and legal effect. This contrast with Zambia, where mediation is only directly supported through constitutional recognition of ADR, with no dedicated provisions governing mediation in tax disputes. The enactment of tax-specific provisions providing for mediation would therefore provide greater certainty and encourage its practical use.

Further, the Kenyan and South African frameworks establish procedures relating to the initiation of ADR, appointment of facilitators, confidentiality, settlement and timelines. Such procedural clarity promotes consistency, transparency and confidence in the dispute resolution process. Zambia may therefore benefit from adopting a similar framework to regulate the conduct of mediation in tax disputes.

The comparative analysis also highlights the importance of early dispute resolution mechanisms. In Kenya particularly, mediation may be utilised at both administrative and appellate stages, thereby allowing disputes to be resolved before they escalate to formal litigation. This approach reduces the burden on tribunals and courts while promoting cooperative engagement between taxpayers and the revenue authority. Zambia could benefit from introducing an early-stage mediation mechanism to facilitate prompt resolution of disputes and reduce the backlog within formal adjudicative bodies.

Another important lesson concerns the role of independent and qualified facilitators. Both Kenya and South Africa emphasise the need for neutrality and independence in the facilitation of tax disputes. This enhances confidence in the integrity of the process and ensures fairness in outcomes. In the absence of a dedicated cadre of trained mediators in Zambia, the effectiveness of any future mediation framework may be limited. It is therefore essential that Zambia develops a pool of accredited tax mediators with expertise in both tax law and dispute resolution.

The comparative experience further demonstrates that mediation should not be viewed as a substitute for formal adjudication, but rather as a complementary mechanism within a broader dispute resolution system. In both Kenya and South Africa, taxpayers retain the right to proceed to tribunals or courts where settlement cannot be achieved. This ensures that mediation enhances rather than restricts access to justice. Zambia should therefore ensure that any future mediation framework is designed to operate alongside, rather than replace, existing objection and appeal mechanisms.

Finally, the experiences of Kenya and South Africa illustrate the importance of institutional confidence and stakeholder acceptance in the success of mediation frameworks. The effectiveness of ADR depends not only on legal provisions but also on the willingness of both tax authorities and taxpayers to engage in the process. Building this confidence requires awareness, training, and clear procedural safeguards that ensure fairness and consistency.

Accordingly, the comparative analysis suggests that Zambia has significant scope to strengthen its tax dispute resolution framework through the formal integration of mediation. Such reform would align Zambia with emerging regional best practices and contribute to the more efficient, accessible and responsive tax dispute resolution system.

4.7 Conclusion

This chapter has comparatively examined the tax dispute resolution frameworks of Zambia, Kenya and South Africa with particular focus on the integration of mediation within their respective systems. The analysis demonstrates that while all three jurisdictions recognise the importance of efficient dispute resolution, Kenya and South Africa have taken significant steps towards the formal institutionalisation of mediation and other ADR mechanisms within tax dispute resolution. Through legislative provisions, procedural rules and structured facilitative processes, both jurisdictions have created opportunities for the consensual resolution of tax disputes alongside traditional adjudicative mechanisms.

In contrast, Zambia's tax dispute resolution framework remains largely administrative and adversarial in nature, with limited statutory recognition of mediation in tax-specific legislation.

Although the Constitution promotes the use of ADR and the Tax Appeals Tribunal possesses limited procedural flexibility, there is no comprehensive tax framework governing the use of mediation in tax disputes. The comparative analysis therefore reveals a gap between the general recognition of mediation within Zambia's legal system and its practical integration into tax dispute resolution.

The comparative analysis further suggests that the differences between the three jurisdictions reflect varying levels of institutionalisation of alternative dispute resolution within tax systems. Where mediation is fully integrated into legislative and administrative structures, as in Kenya and South Africa, it operates as a functional component of tax governance rather than an optional procedural mechanism. This highlights that the effectiveness of mediation is dependent not only on legal recognition but also on the existence of supporting institutional and procedural frameworks.

Accordingly, the experiences of Kenya and South Africa provide valuable guidance for the potential reform of Zambia's tax dispute resolution framework. The lessons identified in this chapter form the basis for the recommendations proposed in the following chapter regarding the formal integration of mediation into Zambia's tax dispute resolution system.

CHAPTER 5: CONCLUSIONS, SUMMARY AND RECOMMENDATIONS

5.1 Introduction

This chapter outlines the conclusions drawn from study and proposes recommendations for the progression of Zambia's tax dispute resolution framework. The recommendations are informed by the analysis of the Zambian legal framework and the comparative examination of Kenya and South Africa.

The first research question sought to determine the extent to which mediation has been integrated into Zambia’s tax dispute resolution framework. The study established that although the Constitution of Zambia promotes the use of alternative dispute resolution mechanisms, the Tax Appeals Tribunal Act provides limited procedural flexibility. Further, mediation has not been expressly integrated into tax-specific legislation. Tax disputes continue to be resolved primarily through objections, appeals and adjudication.

The second research question examined how mediation has been integrated into the tax dispute resolution frameworks of Kenya and South Africa. The study found that both jurisdictions have adopted structured legislation and procedural frameworks that facilitate the use of mediation and ADR in tax disputes respectively. Kenya has established a comprehensive framework through constitutional provisions, tax legislation and subsidiary regulations and the Kenya Revenue Authority ADR Framework. Similarly, South Africa has incorporated ADR through its Tax Administration Act and the Tax Administration Act: Dispute Resolution Rules, through facilitator-driven procedures with characteristics of mediation.

The third and final research question examined the tax dispute frameworks of Zambia, Kenya and South Africa, providing a comparative analysis in the integration of mediation in the jurisdictions and outlining possible lessons for Zambia. The study found that the experiences of Kenya and South Africa demonstrate that mediation or facilitator driven proceedings can effectively compliment formal adjudication through the establishment of clear legislative provisions, appointment of independent facilitators, confidentiality safeguards and structured settlement procedures. The study found that introduction of institutionalised mediation and would improve effectiveness of the tax dispute resolution system by encouraging early settlement of disputes, reducing the caseload of the Tax Appeals Tribunal and the Supreme Court and fostering cooperative engagement between taxpayers and the ZRA.

Overall, the study finds that Zambia's tax dispute resolution framework remains largely formal and adjudicative, with limited incorporation of mediation as a structured tax dispute resolution mechanism. In contrast, Kenya and South Africa demonstrate more developed systems where mediation or facilitator-driven ADR is integrated into tax administration and appeal processes. This comparative difference highlights the potential of institutionalising mediation in Zambia's tax dispute resolution framework for efficiency, accessibility and enhanced cooperation between taxpayers and the ZRA.

5.2 Findings of the Study

The study established that Zambia's tax dispute resolution framework is primarily administrative and adjudicative in nature. Tax disputes are generally resolved through internal objection procedures before ZRA, appeals to the Tax Appeals Tribunal and, where necessary, further appeals to the Supreme Court. Although the Constitution of Zambia encourages the use of Alternative Dispute Resolution mechanisms, mediation has not been expressly incorporated within tax-specific legislation.

The study further found that while the Tax Appeals Tribunal possesses limited discretion to adopt procedures capable of facilitating the efficient resolution of disputes, there is no comprehensive tax specific legislative framework governing the use of mediation in tax disputes. Consequently, taxpayers remain largely dependent on formal and adversarial mechanisms for the resolution of disputes.

The comparative analysis reveals that Kenya and South Africa have adopted more structured approaches to the integration of mediation and ADR within their tax dispute resolution systems. Kenya provides for ADR through a combination of constitutional principles, tax legislation, subsidiary legislation and administrative practice, while South Africa has incorporates structured facilitator-driven ADR mechanisms within its tax administration framework. These jurisdictions demonstrate that mediation can operate effectively alongside formal adjudicative processes without undermining legal certainty or tax administration.

Accordingly, the study finds that there is a clear gap between the constitutional recognition of ADR in Zambia and its practical implementation within the domestic tax dispute resolution framework.

5.3 Recommendations

Founded upon the above key findings and conclusions, the study shall proceed to make the following recommendations:

5.3.1 Statutory Recognition of Mediation in Tax Dispute Resolution

The study recommends that Zambia introduced a statutory framework for mediation within tax dispute resolution. This may be achieved through amendments to the Tax Appeals Tribunal Act or enactment of relevant tax legislation expressly providing for mediation as a recognised dispute resolution mechanism. Such provisions would provide legal certainty and establish a clear basis for the use of mediation within the tax dispute resolution framework.

5.3.2 Development of a Comprehensive Tax Mediation Framework

In addition to recommendation of a formal tax mediation framework, the framework should provide regulation of mediation proceedings such as the initiation of mediation, appointment of mediators, confidentiality of proceedings, settlement procedures and timelines, while incorporating safeguards to ensure the independence and impartiality of mediators. This would enhance consistency, transparency and confidence in the process, and promote the fair resolution of tax disputes.

5.3.3 Introduction of Pre-Tribunal Mediation

The study further recommends the introduction of a mandatory or voluntary pre-tribunal mediation stage through which eligible tax disputes may be referred to mediation before proceeding to the Tax Appeals Tribunal. Such a mechanism would promote the early resolution of disputes and ensure that only matters which cannot be resolved through mediation proceed to formal adjudication, thereby reducing the Tribunal’s caseload and improving efficiency.

5.3.4 Establishment of a Tax Mediation Unit

It is further recommended that a dedicated Unit be established under the Tax Appeals Tribunal framework. This Unit should be responsible for facilitating mediation proceedings between taxpayers, maintaining a panel of qualified mediators and administering mediation proceedings. The Unit should be staffed by individuals with expertise in both tax law and dispute resolution.

5.3.5 Legal Recognition and Enforcement of Mediated Settlements

The study recommends that mediated settlement agreements be accorded legal recognition and enforceability upon endorsement by the Tax Appeals Tribunal or a competent court. This would strengthen confidence in mediation, encourage compliance with settlement agreements, and ensure that mediated outcomes are legally binding.

5.3.6 Capacity Building and Institutional Training

Finally, the study recommends capacity building within relevant tax and dispute resolution institutions to ensure effective implementation of mediation, including training in negotiation and mediation techniques.

5.3.7 Legislative Harmonisation of ADR Frameworks

The study recommends harmonisation of tax dispute resolution legislation with a broader integration of ADR and constitutional principles. Such harmonisation would ensure that the Constitutional promotion of ADR is reflected in sector specific legislation, including tax laws.

5.4 Conclusion

The comparative analysis reveals that Kenya and South Africa have adopted more structured approaches to the integration of mediation and alternative dispute resolution within tax dispute resolution systems. Kenya provides for ADR through a combination of constitutional principles, tax legislation, subsidiary regulations and administrative practice, while South Africa incorporates structured, facilitator-driven settlement mechanisms within its tax administration framework. These jurisdictions demonstrate that mediation can operate effectively alongside formal adjudicative processes without undermining legal certainty or the integrity of tax administration.

Accordingly, the study finds that there is a clear gap between the constitutional and policy recognition of alternative dispute resolution in Zambia and its practical implementation within the tax dispute resolution frameworks.

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