



DTOS

TAX
ADVISORY

GUIDE TO THE DIFFERENT STAGES OF TAX LITIGATION IN MAURITIUS



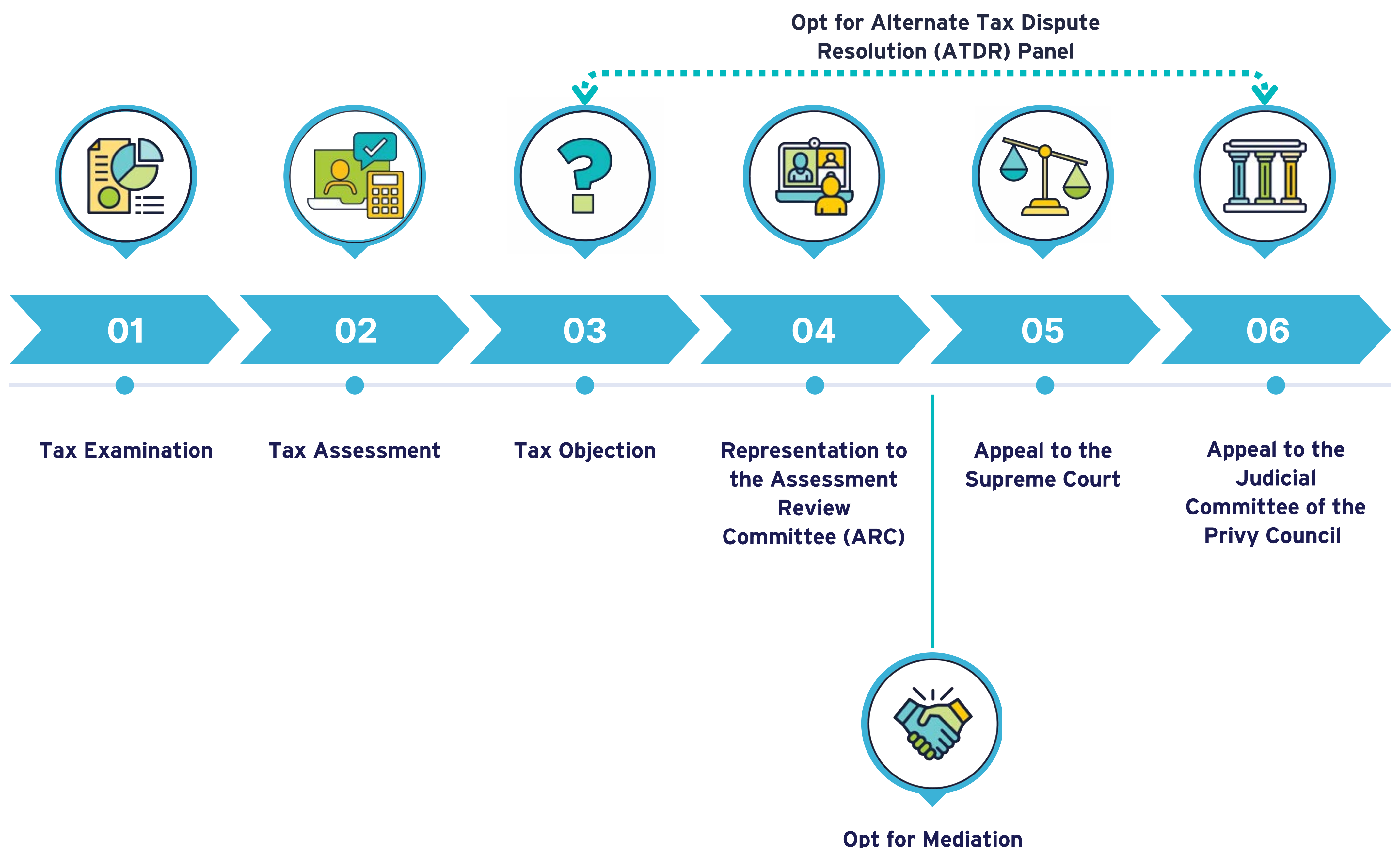
Guide to the different stages of Tax Litigation in Mauritius

Mauritius operates a self-assessment tax system, and taxpayers are required to submit their tax returns to the Mauritius Revenue Authority and pay any taxes in due time.

The Mauritius Revenue Authority (MRA) conducts tax audits frequently to examine the various declarations made by taxpayers.

By virtue of the tax legislation, returns are examined and assessed for the current and past three years. The Mauritius Revenue Authority is empowered to make assessments beyond the timeframe of 4 years in cases where a return of income in respect of a year of assessment has not been filed or in case of fraud.

We will walk you through the different stages of the Mauritius tax litigation system below, as provided under the relevant provisions of the Income Tax Act 1995 and the Mauritius Revenue Act 2004.



Step 1

Step 2

Step 3

Step 1

TAX EXAMINATION

- Filed tax returns are diligently examined by the MRA officers.
- Detailed breakdowns of reported information and underlying documentation are requested.
- Meetings are often facilitated by the MRA officers to allow the taxpayer to enlighten them on queries raised.
- Reasoning of certain tax treatments applied in the tax calculation is sought.
- Where the Director-General of the MRA is satisfied with the above information and documents, the audit is closed and is sometimes communicated by way of letter.

Step 2

TAX ASSESSMENT

- In case, following its tax audit, the MRA is not satisfied with any tax treatments as per the taxpayer's return, it will raise a contemplation letter to provide its contentions together with a revised tax computation based on those contentions.
- The taxpayer is usually invited by the MRA to provide comments on the contended issues or any rebuttal arguments.
- In case the MRA is still not satisfied with the taxpayer's arguments, it will issue its assessment letter accompanied by the notice of assessment which embeds the basis for the computation of the amount assessed, its justification and the reason for making the assessment.
- The taxpayer has normally 28 days within the date of the notice of assessment to settle the additional tax payable.
- Where the taxpayer is dissatisfied with the assessment he may, within 28 days of the notice of assessment, object to the assessment.

Step 3

TAX OBJECTION

- Where the taxpayer decides to object to the tax assessment, he shall lodge an objection notice with the Objection Directorate of the MRA (Objections, Appeals and Dispute Resolutions Department) within a timeframe of 28 days.
- The objection is facilitated electronically via the e-objection form.
- The detailed grounds of objections should be specified in the notice of objection.
- A payment of 10% of the tax claimed in the notice of assessment should be made to the MRA.
- A bank guarantee is also acceptable where the taxpayer is faced with financial constraints and the MRA has agreed to same.
- Late objections will not be entertained except in case of illness or for any reasonable cause acceptable to the MRA.
- The Objection Directorate of the MRA may request the taxpayer for additional information, documents and explanations, and arrange meetings with the taxpayer and his representative for further clarification.
- In the light of all information gathered, the Objection Directorate will review the assessment, disallow or allow it in whole or in part and, where appropriate amend the assessment to conform with its determination.
- The Objection Directorate will communicate its decision to the taxpayer by way of a notice of determination within 4 months of the date the objection has been made. If no determination is made by the MRA by that date, the objection is deemed to have been allowed.

Step 4

Representations
to the
Assessment
Review
Committee (ARC)

- A taxpayer who is aggrieved by a determination of the Objection Directorate of the MRA has the right to make representations to the ARC.
- The ARC comprises a Chairperson, three Vice Chairpersons and such other members with experience in accountancy, economics, taxation, law or business administration.
- The ARC sits in one or more panels, and each panel consists of the Chairperson or a Vice Chairperson and 2 other members of the Committee designated by the Chairperson. The decision of the panel(s) is deemed to be the decision of the Committee.
- The taxpayer may need to solicit the assistance of a legal counsel to represent him before the ARC.
- The proceedings of the ARC although akin to that of a court of law are somehow conducted in a less formalized manner.
- The grounds of representations will need to be filed with the ARC within 28 days of the date of the notice of determination.

- An additional payment of 5% of the amount assessed by the Objection Directorate will need to be settled.
- The case will be fixed for proforma meeting within one month from the date the representations are lodged.
- A statement of case detailing the grounds of grievances, in the prescribed format of the ARC, and any witness statements will need to be submitted to the ARC Panel within 21 days of the proforma meeting.
- The ARC Panel may otherwise set the date for submission of the statement of case, witness statements and underlying documents to expedite matters.
- The case is thereafter called for hearings, within 3 months from the date the representations have been lodged, where witnesses from both parties would also depone.
- Hearings can also be conducted via videoconferencing, in camera or as the case may be, in the interest of the public and having regard to the privacy of the concerned parties.
- A written submission or an oral submission is made to the ARC Panel by the legal counsels of both parties before the ARC reaches its conclusion and gives its decision on the representations within a period of 4 weeks after the final hearings and submissions.

MEDIATION



The possibility of having recourse to mediation has been introduced under the Finance Act 2022, with effect from 2 August 2022.

If the Chairperson or Vice-Chairperson of the ARC considers that a case can be resolved through mediation, same may be fixed accordingly with the consent of the parties involved, at the time of the proforma meeting. The following rules shall apply:

- The Chairperson or Vice-Chairperson of the ARC shall act as the mediator to facilitate the process and there shall be one mediation meeting;
- Where, following a mediation meeting, a settlement agreement is reached between the parties, that agreement shall cover all items in dispute ; be final and binding on both parties ; and include the terms and conditions for the settlement of the tax liability.

- Where a settlement agreement is signed (by both parties in the presence of the Chairperson or Vice-chairperson), the taxpayer shall withdraw his representations from the ARC;
- Where no settlement is reached, the Chairperson or Vice-Chairperson of the ARC shall proceed with the hearings.

Step 5 Appeal to the Supreme Court

- If the taxpayer is aggrieved with the ruling issued by the ARC, the case can be referred to the Supreme Court.
- The case can only be referred to the Supreme Court based on a point of law rather than facts, which is extremely important to note.
- The legal counsel of the taxpayer will lodge a request to the ARC and call upon the latter to sign and state a case for the opinion of the Supreme Court in light of its ruling, within 21 days of the issuance of the latter.
- The ARC has to state and sign a case for the taxpayer within 28 days of receipt of the request.
- Within 14 days of receipt of the case stated by the ARC, the legal counsel of the taxpayer is required to lodge the appeal to the Supreme Court.
- The case will be heard before the Supreme Court and the judgement will be pronounced.
- Regardless of the appeal made to the Supreme Court, the tax payable will be communicated by the MRA for settlement by the taxpayer within a time period of 28 days after the ruling of the ARC.

Step 6 Appeal to the Judicial Committee of the Privy Council

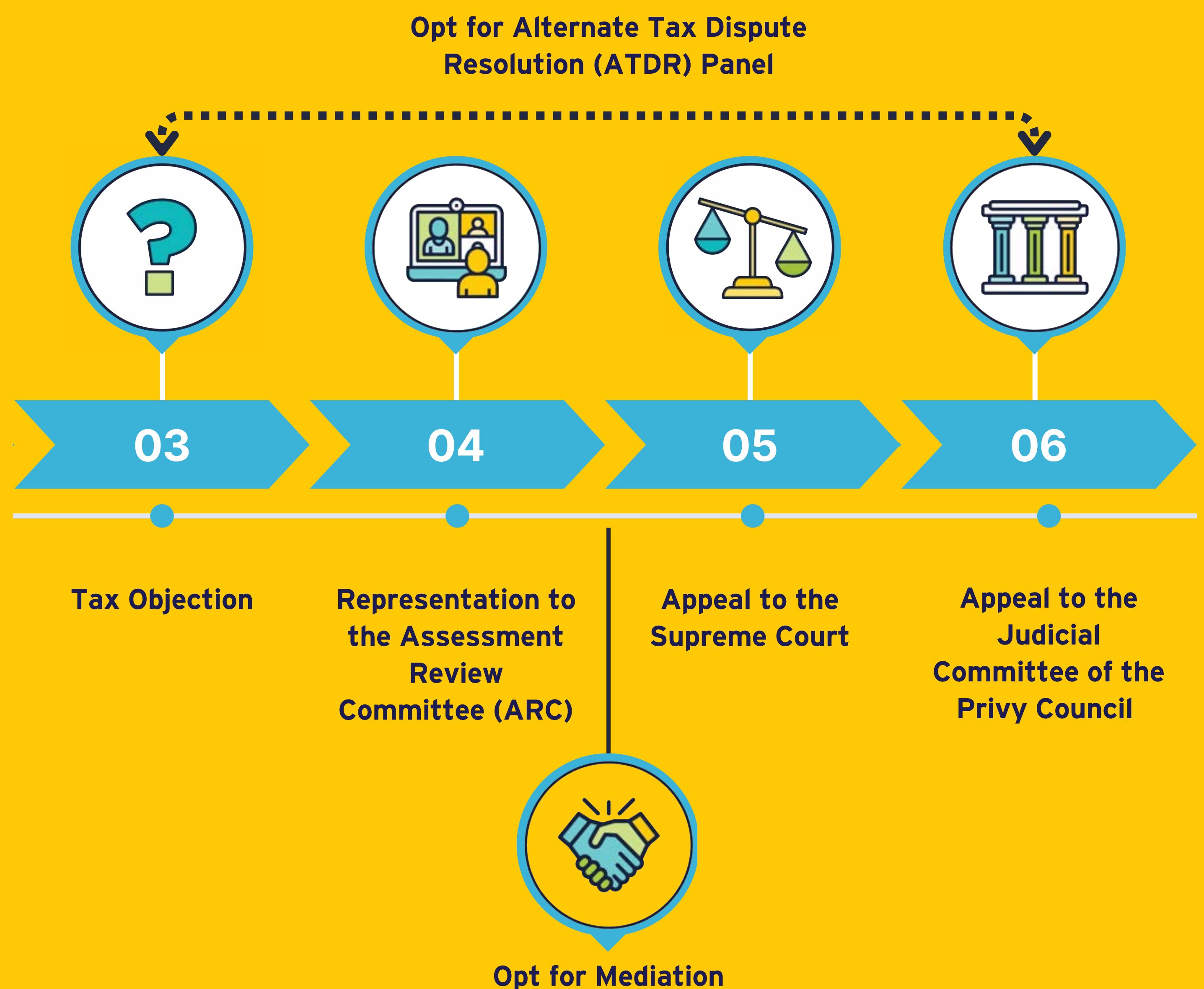
- The Judicial Committee of the Privy Council is the last court of appeal which deals with cases on points of law only.
- The taxpayer may appeal to the Privy Council for a review of the decision of the Supreme Court based strictly on a point of law.
- The proceedings will be dictated by the Judicial Committee of the Privy Council.
- The final judgement will rest with the House of Lords and will be binding on the taxpayer.

Rulings of the Assessment Review Committee are only influential. Judgements delivered by the Supreme Court and Privy Council are referred to as case law and act as judicial precedent for subsequent cases where the facts are of sufficient similarity.

Where a taxpayer wins a case during any of the above stages, any tax payments made are refunded back to him, inclusive of interests calculated at the prevailing bank rate.

Separate and Independent Committee of the MRA

During stages 3 to 6 of the tax litigation, a taxpayer may request the assessment to be reviewed by an independent committee which will be set up by the Director General of the MRA, known as the Alternative Tax Dispute Resolution Panel.



Alternate Tax Dispute Resolution (ATDR) Panel

- The MRA will refer the case to the ATDR Panel within one month of the application made by the taxpayer.
- The ATDR Panel consists of a director of the MRA as Chairperson, a senior officer of the MRA, both designated by the Director General, and a law practitioner appointed by the Minister.
- To ensure the independence of the ADTR Panel, its members must not have been involved in the case brought before them, and are replaceable as and when required.
- The ATDR Panel investigates tax disputes exceeding the amount of MUR 5 million.
- If the case is not eligible for review by the ATDR Panel, same will be communicated within one month of the date the case has been referred.
- The ATDR will adjudicate within 6 months of the date the matter has been referred.

- The taxpayer may either resolve the matter by way of an agreement with the MRA and withdraw the case before the ARC, Supreme Court or Judicial Committee of the Privy Council, as applicable.
- Alternatively, the taxpayer, if dissatisfied with the decision of the ATDR Panel, may request for the proceedings to continue before the Objections, Appeals and Dispute Resolutions Department, ARC, Supreme Court or Judicial Committee of the Privy Council, as relevant, within one month of the decision of the ATDR Panel.
- The taxpayer may also withdraw the case before the ATDR Panel at any point in time and pursue the case at the relevant stages of review.
- Where an objection by the taxpayer was not yet determined before he made an application for review by the ATDR panel, the Objections, Appeals and Dispute Resolutions Department will have 4 months from the date on which the taxpayer informs the ATDR panel that he does not agree with the latter's decision, or from the date he withdraws his application.



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