



# Assessing Prevailing Trends in the Intersection of Alternative Dispute Resolution and Taxation in Nigeria's Domestic and International Landscape

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**ABSTRACT:** *This paper assesses the current trends in the tax space with particular focus on the growing relevance of Alternative Dispute Resolution. The TaxADR roundtable and the law reforms of June 2025 are events which take the centre stage of the discourse in this paper. The paper considers taxation as a tool for economic development and undertakes a doctrinal study on taxation, ADR, tribunals and administrative recourse. It further analyses taxation and ADR on the international and domestic front concerning Nigeria. The domestic considerations highlight the tax law reforms, institutions established under the new laws and categories of domestic tax disputes while the international considerations include a discourse on types of international tax disputes and dispute resolution procedures such as Mutual Agreement Procedures and Arbitration. It further steps out of jurisdiction to consider the use of ADR in resolving tax disputes in selected jurisdictions, i.e. Australia, the United Kingdom and Kenya. The conclusion harbours a considered opinion regarding the call for further integration of ADR into tax dispute resolutions and recommendations.*

**KEYWORDS:** *Tax, Cross Boarder Issues, Alternative Dispute Resolution, Law Reforms, Nigeria.*

## INTRODUCTION

The intersection of taxation and alternative dispute resolution has increasingly gained prominence and interest within the professional community. For instance, from 25th to 26th of June 2025, major stakeholders in the tax sector converged at the 'TaxADR Roundtable, 2025' to discuss the interface between alternative dispute resolution and taxation.<sup>1</sup> The symposium saw public lectures, panel sessions and practical workshops bordering on the theme of 'Unlocking Revenue and Strengthening Dispute Resolution: A Roadmap to TaxADR in Nigeria.' Through this paper, we seek to track the momentous reforms in the tax space in Nigeria with emphasis on the continuing relevance of alternative dispute resolution to effective

<sup>1</sup> Officer NC, 'TaxADR Roundtable 2025 Set to Spotlight ADR in Tax Reforms' (NBA BLOG20 June 2025) <<https://blog.nigerianbar.org.ng/2025/06/20/taxadr-roundtable-2025-set-to-spotlight-adr-in-tax-reforms/>>accessed 14 Dec' 2025.

tax administration. We thus highlighted the mechanisms for tax disputes available to Nigeria at the international stratum and its domestic landscape with likely disputes arising from the law reforms. We will further employ a conceptual criticism regarding the interface on tax and ADR and execute a comparative review on other jurisdictions. Conclusions will highlight findings and an endorsement vel non on the rising integration of ADR in taxation disputes.

## **TAXATION AND ALTERNATIVE DISPUTE RESOLUTION AS DRIVERS OF ECONOMIC ADVANCEMENT**

The celebrated Australian decision of *Matthews v. Chicory Marketing Board*<sup>2</sup> defined tax as “a compulsory exaction of money by a public authority for public purposes enforceable by law, and is not a payment for services rendered.” In the same vein, the National Tax Policy, 2017 notes quite wholesomely that tax “is an enforced/compulsory contribution, exacted pursuant to legislative authority”.<sup>3</sup> Since time immemorial, society has employed various fiscal systems to meet different ends. Tax has been a constant primary source of revenue generation<sup>4</sup> and if exploited wisely, a tool for inducement of foreign investments<sup>5</sup>, as well as the improvement and diversification of domestic industries<sup>6</sup>.

The tax law consists of the body of legislations, pursuant to which the government or tax authority exacts taxation on the citizens.<sup>7</sup> The Court of Appeal in the decision of *FIRS v. Agromix Nig. Ltd.*<sup>8</sup> citing ‘Nigerian Revenue Law’ by M. T. Abdulrazaq SAN<sup>9</sup> aptly noted that the law of taxation is completely statutory, affording no grounds for traditional common law and equity. Thus, before a subject becomes liable to pay the financial charge, there must be an explicit and direct link between the charging statutory provision and the tax payer.<sup>10</sup>

It is not news that Alternative Dispute Resolution has over the years been accorded global recognition as an essential tool for efficient dispute resolution<sup>11</sup> and economic growth. The typical business acumen advocates for avoidance of entanglement in disputes and amicable settlements when they inevitably occur, ADR provides a medium for the crystallization of such a climate. In line with the purposes of this paper, it is tidy that we compose a point of reference on the characteristics of ADR. The features of ADR are often equivalent to its benefits. The learned authors, Stanley-Idum (Mrs.) and Agaba<sup>12</sup> noted that the attractiveness of ADR is owed

<sup>2</sup> ‘Legal Database - View: Cases: *Matthews v Chicory Marketing Board (Vic) - (9 August 1938)*’ (Ato.gov.au2025) <<https://www.ato.gov.au/law/view/print?DocID=JUD%2F60CLR263%2F00005&PiT=99991231235958#:~:text=The%20question%20of%20liability%20raised,such%20a%20levy%20is%20valid>> accessed 14 December 2025.

<sup>3</sup> Chapter 2, Para. 2.1 <https://admin.theiguides.org/Media/Documents/NATIONAL%20TAX%20POLICY.pdf>.

<sup>4</sup> ‘Tax Revenue Generation in Nigeria: A Leap beyond Corporate Taxes’ (Mondaq.com2024) <<https://www.mondaq.com/nigeria/tax-authorities/1501352/tax-revenue-generation-in-nigeria-a-leap-beyond-corporate-taxes>>accessed Sept’ 2025.

<sup>5</sup> ‘ORGANISATION for ECONOMIC CO-OPERATION and DEVELOPMENT Policy Brief Tax Effects on Foreign Direct Investment’ (2008) <[https://www.uscib.org/docs/PolicyBrief\\_TaxFDI\\_final.pdf](https://www.uscib.org/docs/PolicyBrief_TaxFDI_final.pdf)> last accessed on the 14th December,2025.

<sup>6</sup> Adegbie F. F. and others, ‘Diversification of the Economy, Tax Revenue and Sustainable Growth in Nigeria’ (2022) *International Journal of Innovative Research and Scientific Studies*.

<sup>7</sup> Baron Jean M. J. et al ‘Tax Law | Definition, Types, & Examples | Britannica Money’ (Encyclopedia Britannica2025) <<https://www.britannica.com/money/tax-law>> accessed 15 December 2025.

<sup>8</sup> (2024) LPELR-73335(CA) (pp. 12-13, para. A).

<sup>9</sup> (Malthouse Press, 2005), p. 11.

<sup>10</sup> Ibid at footnote.

<sup>11</sup> International Law Editorial, ‘Understanding Alternative Dispute Resolution Mechanisms in International Law - World Jurisprudence’ (The Insurance Universe 3 June 2024) <<https://worldjurisprudence.com/alternative-dispute-resolution-mechanisms/#:~:text=As%20disputes%20increasingly%20arise%20in%20an%20interconnected%20world%2C,often%20less%20adversarial%20means%20compared%20to%20traditional%20litigation>> accessed 21 September 2025.

<sup>12</sup> *Civil Litigation in Nigeria*, 3rd Edition, 2020, Renaissance Law Publishers Limited, Page 39-42.

to; Its Cost effectiveness; Its Speed; Its Flexibility; Its Private nature; Its ability to birth mutual satisfaction outcomes; Its ability to preserve relationships.<sup>13</sup>

The foregoing are the features of ADR that make it a true alluring alternative to the traditional court system which tends to be expensive, slow and technical, coupled with the fact that adversarial nature of litigation and the win-lose outcome tend to fracture relationships. The highlighted advantages of taxation and ADR in terms of economic development are such that the convergence of the two results in very attractive prospects. The potential revenue amongst other benefits of good fiscal policies coupled with the efficiency of ADR mechanisms where tax disputes arise, results in a proficient national tax administration and makes compliance more attractive to the taxpayers.

### **THE INTERSECTION OF TAX AND ADR; DOCTRINAL ISSUES**

From a conceptual standpoint, one may observe some friction regarding the susceptibility of tax disputes to alternative dispute resolution mechanisms. This stems from the substance and character of the two. There are disputes which generally are not ‘arbitrable’. The judicial mood was expressed in the case of *Kano State Govt & Anor v. A.S.J. Global Links (Nig) Ltd.*<sup>14</sup> where the court held that disputes that are illegal, fraudulent, contrary to public policy, or prohibited by law are not arbitrable. The fissure between tax and ADR primarily lies in the fact that taxation is a public concern or a matter of public policy. The apex court in *Okonkwo v. Okagbue & 2 Ors*<sup>15</sup> gave a liturgy on the meaning of ‘public policy’ and observed essentially that public policy consisted of the ever-dynamic rules and perspectives that protect and advance the interest of the public. With this in mind, taxation is a matter of public policy as it concerns the synergistic relationship between the taxpayer and the State, being a financial charge levied as a matter of civic responsibility and state coercion.<sup>16</sup> The private nature of ADR and its mascotting of compromise as the top means of resolving disputes tends to arouse discussion when taxation disputes are made susceptible to it. The tendency to assume that the compromising nature of ADR mechanisms will be utilized in full throttle tends to raise eyebrows on the matrimony of tax and ADR. On a jurisdictional front, the decision of *Esso Exploration & Production (Nig) Ltd & Anor v. FIRS & Anor.*<sup>17</sup> was to the effect that tax disputes are not arbitrable, being within the exclusive jurisdiction of the Federal High Court as conferred by the Constitution.<sup>18</sup>

### **AN EMERGING TAX REGIME AND THE PLACE OF ADR; THE NIGERIAN SITUATION. DOMESTIC CONSIDERATIONS**

On a domestic level, the regulatory framework for taxation and Alternative Dispute Resolution in Nigeria has undergone substantial reforms. A good starting point was the unveiling of the National Policy on Arbitration and Alternative Dispute Resolution on the 11th of February,

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<sup>13</sup> Siteaudit, ‘The Role of Alternative Dispute Resolution (ADR) in Nigeria’s Legal System - LegalDigitalNG’ (LegalDigitalNG3 January 2025) <<https://legaldigitalng.com/the-role-of-alternative-dispute-resolution-adr-in-nigerias-legal-system/#:text=ADR%20offers%20faster%2C%20less%20adversarial%2C%20and%20cost-effective%20means,%20and%20economic%20growth%20understanding%20ADR%3A%20What%20is%20it%3F>> accessed 21 September 2025.

<sup>14</sup> (2017) LPELR-46215(CA) (Pp. 43-45 paras. C)

<sup>15</sup> (1994) 9 NWLR (PART 368) 301 AT 335 G-H TO 336 A-C, see also, *Limak Yatirim, Enerji Uretim Isletme Hizmetleri Ve Insaat A.S. & Ors v. Sahelian Energy & Integrated Services Ltd* (2021) LPELR-58182(CA) (Pp. 60-64 paras. D-D).

<sup>16</sup> *ibid.*

<sup>17</sup> (2017) LPELR-51618(CA) (Pp. 62-66 paras. D).

<sup>18</sup> S. 251(1)(a)(b).

2025.<sup>19</sup> It is a policy aimed at the promotion of domestic and international arbitration as well as the advancement of other ADR mechanisms.<sup>20</sup> One could arguably propose that this policy bears considerable relevance to tax administration and dispute resolution in the Country. For instance, the provisions of Paragraph 5.0 of the Policy provides implicitly that the Ministries, Departments and Agencies (MDAs) of the federal and state governments are to adopt their preferred choice of Arbitration or ADR rules to govern their disputes or in the event that there is no pre-dispute clause to that effect, any other rules in municipal law.<sup>21</sup> Given that the Federal Inland Revenue Service (FIRS), Tax Appeal Tribunal and the respective state boards of internal revenue are government agencies, it is tenable to suggest that the provisions of the National Policy on Arbitration and ADR apply to them. Yet, we will subsequently demonstrate how these bodies and others to be highlighted are self-sufficient in terms of ADR presence.

The most conspicuous event on the domestic tax landscape is that on 26 June, 2025, the President signed 4 tax reform bills into law. These laws are: The Nigeria Tax Act, The Nigeria Tax Administration Act, The Nigeria Revenue Service Act and The Joint Revenue Board Act.<sup>22</sup> They were enacted in order to promote more efficient and equitable tax administration in the Country.<sup>23</sup> In light of the objectives of this article, it is important to highlight the presence of ADR mechanisms that have been made available in these enactments.

### **NIGERIA TAX ADMINISTRATION ACT.**

A good start is the NTAA, 2025. This Act governs the assessment and collection of revenue for all tiers of government and sets out the power and responsibilities of tax authorities. Its ends are to 'facilitate tax compliance' and 'optimise tax revenue'.<sup>24</sup> The closest graze on ADR in this Act begins with its provisions regarding tax assessment and compliance, particularly regarding the procedure in raising an objection to an assessment.<sup>25</sup> The NTAA does not radically change the pre-existing provisions of the Companies Income Tax Act<sup>26</sup> and the Personal Income Tax Act<sup>27</sup> on this procedure. It rather introduces some innovations relating to enforcement and statutory proscriptions such as payment of 20% security into the Court when appealing the decision of the Tax Appeal Tribunal<sup>28</sup> and a statute bar against the tax authority where they fail to respond to an objection within 90 days.<sup>29</sup> On a more precise front, section 41(5) of the NTAA

<sup>19</sup> Edokwe B, 'Federal Ministry of Justice Unveils the National Policy on Arbitration and Alternative Dispute Resolution (ADR) 2024–2028' (NBA BLOG11 February 2025) <<https://blog.nigerianbar.org.ng/2025/02/11/federal-ministry-of-justice-unveils-the-national-policy-on-arbitration-and-alternative-dispute-resolution-adr-2024-2028/#:text=Federal%20Ministry%20of%20Justice%20Unveils,Executive%20Council%20in%20July%202024>> accessed 15 December 2025.

<sup>20</sup> 'Nigeria's National Policy on Arbitration and ADR 2024: A Game-Changer for Dispute Resolution' <<https://strenandblan.com/wp-content/uploads/2025/02/NIGERIAS-NATIONAL-POLICY-ON-ARBITRATION-AND-ADR-2024.pdf>> accessed 15 Dec' 2025.

<sup>21</sup> See also, Paras. 10.1-11.0.

<sup>22</sup> 'The Nigerian Tax Reform Acts: Top 20 Changes to Know and Top 6 Things to Do' (2025) <<https://www.pwc.com/ng/en/assets/pdf/the-nigeria-tax-reform-acts-top-20-changes-to-know-and-top-6-things-to-do-pwc.pdf>> last accessed on accessed 15 December 2025.

<sup>23</sup> 'The Nigeria Tax Reform Act 2025 and How It Affects Businesses' (Sobowale, Medidem & Bello 3 September 2025) <<https://smlawpractice.com/the-nigeria-tax-reform-act-2025-and-how-it-affects-businesses/>> accessed 15 Dec' 2025.

<sup>24</sup> S. 1(a) and (b) NTAA, 2025.

<sup>25</sup> Ss. 41- 43 NTAA, 2025.

<sup>26</sup> Part X and XI.

<sup>27</sup> Part VII and VIII.

<sup>28</sup> S. 41(8) NTAA, 2025.

<sup>29</sup> S. 41(6) NTAA, 2025.

which is part of a larger structure<sup>30</sup> for revisions in the case of a tax payers objection to an assessment by the tax authority provides thus;

“(5) Where the taxable person and the relevant tax authority agree as to the amount of tax to be assessed, the disputed assessment shall be amended and a revised notice of the tax payable shall be served on the tax able person” (emphasis supplied).

Although the stipulations above hold similarities with a negotiation procedure in the sense of alternative dispute resolution, the provisions for assessment, objection and appeal highlighted above may not be successfully categorized as an ADR mechanism *stricto sensu*. This assertion is made in light of the characteristics of ADR earlier highlighted in the preliminary part of this paper. ADR mechanisms share the common feature of flexibility over formal or stringent procedures, and they emphasize outcomes that promote mutual satisfaction between disputant parties. The provisions of section 41 of the Act are more akin to administrative recourse than alternative dispute resolution. The various time bars,<sup>31</sup> strict insistence on form of the processes, and the general bureaucratic undertone of section 41 does not measure up to the features of ADR which include pliability and a party-driven procedure. Hence, although the procedure in section 41 affords the taxpayer and tax authority the opportunity to resolve a dispute without recourse to the conventional adjudication, it is an administrative procedure and every element within it is bound by rules.

Notably, the provisions of section 34-41 of the Act are a sequential description of the entire dispute resolution procedure from an objection to an assessment by the tax authority to the exercise of appellate jurisdiction by the Supreme Court. Yet, the provision of the NTAA which is most analogous to ADR is section 141. The intendment of this section is to authorise the tax authority and taxable person to explore options that promote amicable settlement of a dispute. This differs from the earlier identified provision of section 41(5) as it features its own distinct procedure.<sup>32</sup> The Act describe settings under which the tax authority may settle disputes in part or whole.<sup>33</sup> These circumstances are: where it is in the interest of public revenue or publicly policy; the cost of litigation outweighs the benefits; where the taxpayer agrees with the tax authority’s position in a dispute, the settlement can be negotiated to make any necessary changes to the tax arrangement or its outcomes; under a whistleblowing arrangement, the settlement will uncover hidden tax planning or tax evasion schemes which will facilitate recovery of revenue.

On a different front, the Act also provides situations where amicable settlement of the dispute will be prohibited and this is when the action of the taxable person constitutes tax evasion or it is in the interest of the public to have judicial clarification. It stands to reason that the consideration of the cost of litigation and revenue in subsection 2,<sup>34</sup> and the prohibitions in subsection 3 are in themselves illustrations of the tenets of ADR and arbitrability at work. This holds true because ADR is usually employed when the cost of litigation is weighed alongside the benefits of amicable settlement, and ADR is discouraged when the dispute touches on matters of public policy.<sup>35</sup>

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<sup>30</sup> S. 41(1-9) NTAA, 2025.

<sup>31</sup> S. 41(2)(a) on the part of the tax payer and s. 41(6) on the part of the tax authority.

<sup>32</sup> S. 141(4).

<sup>33</sup> S. 141(2)(a-d).

<sup>34</sup> Paragraphs (a) and (b).

<sup>35</sup> *Ibid* at footnote 43.

Still on section 141, our attention now turns to the provisions of subsection 2(c) paraphrased above. This provision demonstrates one of the several permitted circumstances where amicable settlement may occur. It encourages tax compliance through discourse as opposed to enforcement. It is noteworthy that this provision describes acceptance only on the part of the taxpayer and not the tax authority. In effect, subsection 2(c) envisages a situation where the taxpayer is required to initially agree with the assessment or interpretation of the tax authority<sup>36</sup> before settlement talks can begin. It is our view that this provision demands a non-adversarial setting but not necessarily an amicable one as both parties are not in a level-playing field.

It appears that the design of section 141(2)(c) reasonably captures the ideas earlier explored under the heading which discussed conceptual issues in this paper. This is because it premised on the recognition of issues of strict tax liability as matters of public policy which is not amenable to compromise. To drive this point home, it is necessary to consider said provision in detail. The Act defines an 'arrangement' to include<sup>37</sup> "any agreement, understanding, scheme, transaction or series of transactions whether or not legally enforceable." Thus, a 'tax arrangement' may be defined as any scheme, agreement, understanding or transaction that serves the purpose of organizing tax affairs of an individual or organization via schemes and transactions. The inclusion of the phrase 'whether or not legally enforceable' indicates that tax arrangement could be plain tax planning, tax avoidance or even tax evasion.

Hence, section 141(2)(c) of the Act providing as it does makes it so that it is the 'payment arrangement' that is the subject of negotiation and not tax liability. The 'position of the relevant tax authority' in dispute refers to the result of the review of the tax arrangement by the tax authority. Although, both parties may explore common grounds and arrive at an agreement on interpretation of the facts and law, there is no room for compromise; the tax authority either sees reason in the objection of the taxpayer in relation to the assessment or the taxpayer, as in this subsection, agrees with the assessment of the tax authority which may be limited to component parts of the scheme or transaction. The financial charge must be tied to a provision of statute which prescribes tax liability. Strict tax liability being a matter of public policy cannot therefore be subject to compromise, and this viewpoint is captured by the subsection in question. The 'negotiated' referred to in subsection 2(c) would include matters such as payment schedule, penalties, future commitments, settlement timing and other procedural matters.<sup>38</sup>

### **JOINT REVENUE BOARD OF NIGERIA (ESTABLISHMENT) ACT, 2025**

It would not be an overstatement to say that the stipulations of the Joint Revenue Board of Nigeria (Establishment) Act, 2025 or 'JRBA' for short constitutes the main bulk of the discourse on the domestic intersection of tax and ADR in Nigeria. It is intended to apply throughout the Federation<sup>39</sup> and it establishes the Joint Revenue Board, the Tax Appeal Tribunal and the office of the Tax ombud with the aim of harmonization, coordination and

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<sup>36</sup>In essence, the position of the tax authority on the dispute, see footnote 61.

<sup>37</sup>Section 47(3).

<sup>38</sup>Anyebe PA, 'Tax Disputes Resolution in Nigeria: Going Beyond the Traditional Court and Administrative Resolution System' (20 20) 6 *Advances in Social Sciences Research Journal* 236 <[https://www.researchgate.net/publication/338672833\\_Tax\\_Disputes\\_Resolution\\_In\\_Nigeria\\_Going\\_Beyond\\_The\\_Traditional\\_Court\\_And\\_Administrative\\_Resolution\\_System](https://www.researchgate.net/publication/338672833_Tax_Disputes_Resolution_In_Nigeria_Going_Beyond_The_Traditional_Court_And_Administrative_Resolution_System)> last accessed 15 December 2025.

<sup>39</sup>S. 2 JRBA, 2025.

settlement of disputes arising from revenue administration in Nigeria.<sup>40</sup> These organisations are heralded as hubs for applaudable conflict resolution structures in the tax space.<sup>41</sup>

### **THE JOINT REVENUE BOARD OF NIGERIA**

The Joint Revenue Board is the first of the three (3) organisations established by the JRBA. It has fifteen (15) duties expressly provided for which include tax data management,<sup>42</sup> policy development, harmonization of revenue administration, economic development and dispute resolution. In line with the mood in this paper, it is necessary to highlight its dispute resolution mandate. The Act empowers the Joint Revenue Board to resolve disputes between different tax authorities<sup>43</sup> which includes the issue of residency.<sup>44</sup> It is our view that the mandate to resolve disputes between various tax authorities under the Act encompasses disputes between Federal and State authorities on one hand and interstate disputes on the other hand. Disputes which tend to occur between tax authorities include; ascertainment of tax residency disputes; taxing Right disputes; tax law interpretational disputes. The execution of the functions of the Board relating to resolution of disputes between two tax authorities would be most effectively and practically achieved by adopting mediation. Where the board is envisioned to act as the neutral third party.

### **THE TAX APPEAL TRIBUNAL**

The Tax Appeal Tribunal (TAT) is retained and reconstituted under the JRBA.<sup>45</sup> Compared to the provisions of section 59 and the First Schedule of the FIRS Establishment Act, 2007<sup>46</sup>, which limited the competence of the TAT to adjudicating on federal tax disputes, its jurisdiction has been expanded to include entertaining disputes arising from both federal and state tax laws.<sup>47</sup> It is consequently empowered to apply the provisions of the federal or state tax laws as may be relevant to resolving the dispute before it. The procedure of the TAT is stipulated under the Second Schedule of the JRBA, paragraph 6(1-2), this provision introduces the option of amicable resolution of dispute at the preliminary stage of proceedings before the TAT. The parties are granted a period of not more than 30 days to explore amicable resolution of dispute under the NTAA, 2025.

As earlier discussed in this paper the footprints of ADR under the NTAA begin at the provisions of section 141 of said Act, which permits amicable settlement of disputes when it does not involve intentional tax evasion or it is desirable to the interest of the public to have judicial clarification on the issue.<sup>48</sup> This would in due course bring about the adoption of negotiation under the circumstances described in our discourse relating to the NTAA. While the revised TAT Procedure Rules are still awaited, they are expected to follow the implementation of the new tax law reforms in 2026. Operating on the premise that the forthcoming TAT rules will radically depart from its current procedure, the TAT procedure Rules, 2021 can be tabled for

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<sup>40</sup>See the Long Title of the JRBA, 2025. See also the provisions of s.1(a-c) which also includes the objective of promotion of taxpayer rights.

<sup>41</sup>'The Joint Revenue Board Establishment Act (JREA), 2025' (KPMG11 July 2025) <<https://kpmg.com/ng/en/home/insights/2025/07/the-joint-revenue-board-establishment-act-jrea-2025.html>> accessed 15 December 2025.

<sup>42</sup>S. 5(a-o).

<sup>43</sup>S. 5(d).

<sup>44</sup>S. 5(b).

<sup>45</sup>Part V, JRBA, 2025.

<sup>46</sup>See *Rectars (Ile-Ife) v. Osun State Board Internal Revenue (2021) LPELR-55942(CA)* (Pp. 16-18 paras. F-F).

<sup>47</sup>S. 29(1) JRBA, 2025.

<sup>48</sup>Ibid at footnote 63.

discussion. To start off, one of its stated objectives is to encourage settlement of disputes between the parties.<sup>49</sup> As a result, the tribunal possesses the power to schedule pre-trial conferences between the parties within which the option of amicable settlement of the dispute may be explored.<sup>50</sup> The procedure at this stage resembles that of the procedure in obtaining consent judgment under the traditional court system.<sup>51</sup> This procedure can be stated as follows; The tribunal adjourns the matter to enable the parties who have indicated interest in settling the matter to explore said option with directives as may be necessary; the parties are to report on the status of settlement on the next adjourned date; where there is a resolution, both parties will sign the terms of settlement and file same at the tribunal; upon application of the parties, the tribunal adopts the terms of settlement as its decision.

The above operation will be incomplete without reference to the second component of Order XXI Rule 9, which is that the tribunal may decline to enter the consent judgment as its decision if it considers that the terms of settlement are unsustainable with regard to existing tax laws and may give such directives as it deems fit. This is yet another piece contributing to our emphasized point that tax disputes which touch on strict tax liability are not susceptible to ADR mechanisms as it borders on public policy. The directives which the tribunal would give may be an order of adjournment for the parties to reconsider the terms of settlement which are in discordance with the tax law to secure complete adherence. The palpable ADR mechanisms available in this regard are negotiation or mediation. These mechanisms are more party centred and terminate with an agreement, which of course is most suitable for consent judgment.

### **THE OFFICE OF THE TAX OMBUD**

While structures such as the SERVICOM department of the FIRS<sup>52</sup> and the Public Complaints Commission<sup>53</sup> have performed functions allied to its current mandate, the Office of Tax Ombud is a novel entity within Nigeria's tax landscape. It is the final body established by the JRBA and is saddled with remarkable duties,<sup>54</sup> The most significant of these duties which majorly includes the Power to investigate complaints/fact-finding<sup>55</sup> and act as an Independent Arbitrator and Neutral party.<sup>56</sup> These duties are most closely aligned to advancing the implementation of ADR in tax disputes than the other bodies discussed. The JRBA bestows the Tax Ombud with powers bordering on investigation and dispute resolution but goes further to define the limits of these powers in section 43. These limitations create a clear parameter which brands the duties of the Tax Ombud as an administrative recourse.

### **THE INTERNATIONAL STRATUM**

Assessing the tax-ADR climate in Nigeria necessitates international inquiry. On the international stratum, the potential tax disputes that typically occur are: double taxation

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<sup>49</sup> Order I Rule 5(b) TAT Procedure Rules, 2021.

<sup>50</sup> Order XVII Rule 2.

<sup>51</sup> Order XXI Rule 9.

<sup>52</sup> 'Federal Inland Revenue Service on Instagram: (Instagram2017) <<https://www.instagram.com/p/CwUityKsbcz/>> accessed 15 December 2025.

<sup>53</sup> 'Public Complaints Commission - Nigeria' (Public Complaints Commission - Nigeria2025) <<https://pcc.gov.ng/>> accessed 15 December 2025.

<sup>54</sup> S. 41(1)(a-l).

<sup>55</sup> S. 41(1)(e).

<sup>56</sup> S. 41(1)(a).

disputes, transfer pricing disputes and ‘permanent establishment’ disputes inter alia.<sup>57</sup> The question that typically arises with the crystallization of tax disputes is not how they can be solved, but how they can be resolved efficiently and quickly, due to the entrapment of revenue and resources that traditionally takes place during these disputes. In response to that question, two procedures frequently emerge: mutual agreement procedures or arbitration.<sup>58</sup> These two procedures are often made available as alternatives and not cohesively and parties who intend to exploit both options usually begin with MAPs as a starting point before resorting to arbitration<sup>59</sup>. We bear the opinion that utilizing both procedures is the most salutary venture.

Mutual Agreement Procedure (MAP) is a dispute resolution mechanism that is vastly utilised to resolve international tax disputes.<sup>60</sup> A comprehensive study of Article 25 of the OECD Model Convention on Income and Capital suggests that MAP is a procedure that emanates when a person, taxpayer, considers that the actions of one or both Contracting States result or would result in taxation not in accordance with the provisions of the OECD model tax convention. Upon the presentation of the case, the competent authority shall endeavour to resolve any difficulties or doubts arising as to the interpretation or application of the convention by mutual agreement procedure. Thus, a MAP is a dispute resolution mechanism that enables tax authorities to efficiently execute the interpretation and application of the provisions of the convention with the aim of doing so co-ordinately.

In the international space, resolving tax disputes by MAPs is no walk in the park and said resolution is not usually guaranteed to put the dispute to rest as evidenced by the case of *Pierre v. Commissioner*.<sup>61</sup> The word "endeavour" is still short of mandating cooperation between tax authorities.<sup>62</sup> This has resulted in the introduction of a mandatory arbitration clause to enforce the settlement of international tax disputes in cases where MAPs do not work in resolving the issue.

Arbitration, in the context of Article 25 of the OECD Model Tax Convention, is the remedial final stage for the resolution of issues yet to be resolved by mutual agreement between the tax authorities of the jurisdictions involved in the dispute. Arbitration can come into play when the tax authorities are unable to agree on an issue or issues. Specifically, when the inability of the tax authorities of the involved jurisdictions persists for 2 (two) years from the date when all the information required by the competent authorities to address the case has been provided to both competent authorities, it is possible to request that the unresolved issues be resolved through arbitration.<sup>63</sup> It is essential to note that the arbitration process is designed to resolve only the unresolved issues and does not extend to the resolution of the entire dispute.<sup>64</sup> The option for arbitration in relation to MAP proceedings becomes non-exercisable if the issues have been resolved by a court or administrative tribunal of either state.<sup>65</sup> The resolution reached on the

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<sup>57</sup>Ahmed IO, ‘An examination of the dispute resolution mechanisms under double tax treaties for resolving international tax disputes’ (2021) 4 *Ajayi Crowther University Law Journal* <<https://aculj.acu.edu.ng/index.php/lj/article/view/8?utm>> accessed 15 December 2025.

<sup>58</sup> ‘An Examination of the Dispute Resolution Mechanisms Under Double Tax Treaties for Resolving International Tax Disputes’ <<https://Aculj.Acu.Edu.Ng/Index.Php/Lj/Article/Viewfile/48/46>> Accessed 15 December 2025.

<sup>59</sup>*Ibid.*

<sup>60</sup> Markham M, ‘The Timely Resolution of Mutual Agreement Procedure Disputes – Secrets of Success?’ (2023) 77 *Bulletin for International Taxation* <[https://www.ibfd.org/sites/default/files/2023-05/oecd\\_international-the-timely-resolution-of-mutual-agreement-procedure-disputes-secrets-of-success-ibfd.pdf](https://www.ibfd.org/sites/default/files/2023-05/oecd_international-the-timely-resolution-of-mutual-agreement-procedure-disputes-secrets-of-success-ibfd.pdf)> accessed 16 December 2025.

<sup>61</sup> (1983) 80 TC 1034.

<sup>62</sup> *Supra* 63.

<sup>63</sup> Article 25 of the OECD Model Tax Convention.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

issues through the arbitration process is binding on both Contracting States and shall be implemented without any time limit in the domestic laws of the state, unless a person directly affected by the case does not accept the mutual agreement that implements their arbitration decision.<sup>66</sup>

As already established, there is a relationship between MAPs and arbitration in the international tax dispute resolution ecosystem. However, upon appraising the provisions of article 25 of the OECD tax model convention and its adoption by several countries, including Nigeria,<sup>67</sup> there seems to be an allowance to resort to the domestic dispute resolution system if the persons directly affected by the MAPs action are dissatisfied. We believe that this allowance gives room for the entrapment of public revenue. This bears the implication that despite how mellifluous a union between arbitration and MAPs seems, it might further complicate the very problem they are to solve.

On another front, the union of MAPs and Mediation appears to be a beneficial venture. The premise of this assertion is based on a Mexican case study that proffers a successful integration of mediation in the tax dispute resolution system.<sup>68</sup> We particularly lean towards an integration of mediation and MAPs as explored in the UN manual on the avoidance and resolution of tax disputes<sup>69</sup> because of the balance of power manifestly evident by a Mediation process. A discussion on the resolution of international tax disputes would be incomplete without an analysis of Advance Pricing Agreements (APAs), an APA is an alternative to dispute resolution processes and regular transfer pricing processes.<sup>70</sup> It has emerged as a crucial tool for managing transfer pricing challenges and is critically structured to align with the arm's length principle.<sup>71</sup> The OECD TP guidelines, 2022, paragraph 4.134 defines an Advance Pricing Agreement as an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria for the determination of the TP for those transactions over a fixed period of time. The procedure for APAs in Nigeria involves 5 stages,<sup>72</sup> they include: Pre-filing meeting; Formal application; Analysis and Evaluation; Negotiation and agreement; Drafting, execution and monitoring, and it is regulated by the Income Tax (TP) Regulations of 2018 and the Guidelines on Advance Pricing Agreements.

APAs by their very nature are contractual and preventive. The processes involved in the materialization of APAs have similar traits with some of the ADR mechanisms, particularly negotiation however it is disavowed as a distant cousin of ADR mechanisms due to its 'before

<sup>66</sup> Ibid.

<sup>67</sup> 'First Issues Guidelines On Mutual Agreement Procedure in Nigeria' <<https://uubo.org/wp-content/uploads/2022/09/First-Issues-Guidelines-On-Mutual-Agreement-Procedure-In-Nigeria.pdf>> accessed 16 December 2025.

<sup>68</sup> Quiñones N and others, 'Dispute Resolution for International Tax: Reflections on Arbitration, the Mutual Agreement Procedure, and Mediation' <[https://www.ciat.org/Biblioteca/Estudios/2025\\_Dispute\\_Resolution.pdf](https://www.ciat.org/Biblioteca/Estudios/2025_Dispute_Resolution.pdf)> accessed 16 December 2025.

<sup>69</sup> 'United Nations Handbook on Dispute Avoidance and Resolution' (DESA Publications May 2021) <<https://desapublications.un.org/publications/united-nations-handbook-dispute-avoidance-and-resolution#text=The%20new%20UN%20Handbook%20on%20Avoidance%20and%20Resolutionof%20domestic%20income%20tax%20laws%20and%20tax%20treaties.>> accessed 16 December 2025.

<sup>70</sup> 'The Why and the How of Here and Now Advance Pricing Agreements' <<https://kpmg.com/kpmg-us/content/dam/kpmg/pdf/2022/advance-pricing-agreements.pdf>> accessed on 16 December, 2025.

<sup>71</sup> 'Implementation of Advance Pricing Agreements: The Case for Low- and Lower-Middle-Income Countries - ICTD' (ICTD26 September 2025) <<https://www.ictd.ac/publication/implementation-advance-pricing-agreements-lower-middle-income-countries/#:~:text=Advanced%20pricing%20agreements%20%28APAs%29%20aim%20to%20prevent%20transfer,for%20determining%20the%20arm%E2%80%99s%20length%20pricing%20of%20transactions.>> accessed 16 December 2025.

<sup>72</sup> 'Subject: Guidelines on Advance Pricing Agreements (Apas)' (2024) <[https://www.Firs.Gov.Ng/Nigeria\\_Apa\\_Guidelines-1.Pdf](https://www.Firs.Gov.Ng/Nigeria_Apa_Guidelines-1.Pdf)> Accessed 16 December 2025.

the fact nature.’ Paradoxically it is objectively deducible that despite the major reason for APAs being avoidance of transfer pricing disputes, APAs can still result in disputes because it is at its very core a contract. It is our considered opinion that arbitration or mediation is better suited for disputes emanating from APAs. The bindingness provided by arbitration for contractual disputes is particularly attractive for resolving APA disputes while mediation provides a relaxed setting to enable voluntary compliance and simultaneously sustain amicable relations between parties in the disputes.

A brief investigation as the instrumentation of ADR for tax disputes in other jurisdictions is beyond necessary for an adequate international inquiry. In the United Kingdom, mediation is the ADR mechanism employed for resolving tax disputes in allowable instances.<sup>73</sup> Practically, an HMRC mediator who has been trained in mediation skills and techniques will be appointed to have a sit down with the affected taxpayer and the HMRC officer dealing with the taxpayer’s case.<sup>74</sup> This mediation procedure in this jurisdiction can be requested for by the aggrieved taxpayer at any point during the inquiry or tribunal proceedings.<sup>75</sup> However, modifications apply, depending on the type of tax in contention, after a decision has been reached by the HMRC.<sup>76</sup> In Kenya, the incorporation of ADR mechanisms in its tax dispute resolution system is orchestrated by its 2010 constitution of Kenya which enjoins the usage of ADR mechanisms by established courts; this is extended to the frontiers of tax dispute resolution.

Subsequently, in June 2015, the Kenyan Revenue Service developed its pioneering Alternative Dispute Resolution (ADR) Framework to guide stakeholders on the deployment of ADR in tax dispute resolution in Kenya.<sup>77</sup> Thereafter, in June 2020, the National Treasury of Kenya enacted the Tax Procedures (Settlement of Disputes Out of Court or Tribunal) Regulations, 2020 to amplify the ADR Framework provided by the Kenyan Revenue Service and to guide the utilization of ADR in the settlement of tax disputes out of the Courts or Tax Appeals Tribunal in Kenya.<sup>78</sup> Infact, Dr. Kariuki posits that the court annexed arbitration system available in Kenya also extends to tax disputes.<sup>79</sup> The combinative effect of this provision of the Tax Procedures Act and Article 159 of the Kenyan Constitution 2010 is the creation of a legitimate underpinning for the use of ADR in the resolution of tax disputes in Kenya.

## CONCLUSION

This assessment evaluated the intersection of taxation and Alternative Dispute Resolution (ADR), prompted by the TaxADR Roundtable 2025 and the tax law reforms assented to in June 2025. It discussed the applicability of core ADR mechanisms arbitration, mediation, conciliation, and negotiation in resolving tax disputes, while distinguishing them from tribunals and administrative bodies which were not considered to be ADR due to their adjudicatory and utilitarian character. Internationally, tax dispute resolution mechanisms, such as the Mutual Agreement Procedure (MAP), mediation, and arbitration provide useful modules, with mediation often viewed as the most efficient and flexible option. Domestically, significant

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<sup>73</sup> HM Revenue & Customs, ‘Use Alternative Dispute Resolution to Settle a Tax Dispute’ (Gov. UK8 December 2014) <<https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr>> accessed 16 December 2025.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Muigua K, ‘The Alternative Dispute Resolution (ADR) Framework for Tax Dispute Resolution in Kenya’ <[https://kmco.co.ke/wp-content/uploads/2022/02/ADR-of-Tax-Disputes-in-Kenya-Article-by-Dr-Kariuki-Muigua-0000000\\_2.pdf](https://kmco.co.ke/wp-content/uploads/2022/02/ADR-of-Tax-Disputes-in-Kenya-Article-by-Dr-Kariuki-Muigua-0000000_2.pdf)> accessed 16 December 2025.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

developments toward integrating ADR into tax administration are represented in Nigeria's June 2025 reforms, particularly in principal legislation such as the Nigerian Tax Administration Act (NTAA) and the Joint Revenue Board (Establishment) Act. These statutes provide systematic pathways for the resolution of assessment disputes through both traditional adjudication and consensual processes, and establish institutional frameworks capable of addressing a wide range of tax disputes.

However, the long-term viability of arbitration in domestic tax disputes raises doubts. Given the quasi-judicial nature of the Tax Arbitration Tribunal (TAT), introducing full-scale arbitration could be viewed as duplicating existing processes that are readily in place, and creating an unnecessary additional layer dispute resolution hierarchy. In this regard, mediation and structured forms of facilitated settlement, by contrast, offer more balanced and policy-consistent measures, especially if made available at the various stages of the dispute process.

Overall, further integration of ADR into Nigeria's tax dispute system is desirable but must be carefully grounded in legislation, given the strictly statutory and public policy driven nature of taxation. Existing provisions on negotiation, mediation, and conciliation under the 2025 tax reforms are substantial and should be refined rather than radically expanded. Future reforms must prioritize clarity of scope, procedural efficiency, fiscal policy protection, and impact assessment to ensure ADR enhances rather than complicate the integrity and effectiveness of tax administration.



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