

IMPROVEMENT OF DISPUTE RESOLUTION MECHANISMS BETWEEN THE BUSINESS AND THE PUBLIC ADMINISTRATION

INVESTMENT COUNCIL MEETING

Tirana, March 2nd, 2016

CONTENT

- I. Background, Methodology
- II. An Overview on the Administrative Appeal Process in Public Institutions
- III. Main Findings & Recommendations

Business in front of the State Institutions is not in Equal Position

General



- ☐ Business confronts simultaneously in Court several institutions (e.g. TAD, RTD and State Advocacy Office).
- ☐ The Administration does not respond in time to the business appeals – does not respect the legal deadlines for acts issuance.
- ☐ The Institutions follow all the Judicial Appellate levels (up to the High Court) when the decision is in favour of the business.
- ☐ The Administration Bodies feel “obligated” to fulfil the recommendations of Supreme State Audit with an impact on the business even when convinced on the opposite.

Banking Sector



- ☐ Practices of Immovable Properties Registration Office are abusive.
- ☐ Decisions by the Tax Directorates for freezing bank accounts are uncoordinated and create a conflict with the clients.
- ☐ Decisions of the Administrative Courts are obvious in favour of the state institutions (Tax, Customs).

Hydrocarbon Sector



- ☐ Lack of institutional coordination is a cost for the business (such as in the hydrocarbon sector for the execution of procedures for the acknowledgement of exempted expenditures for VAT purposes).

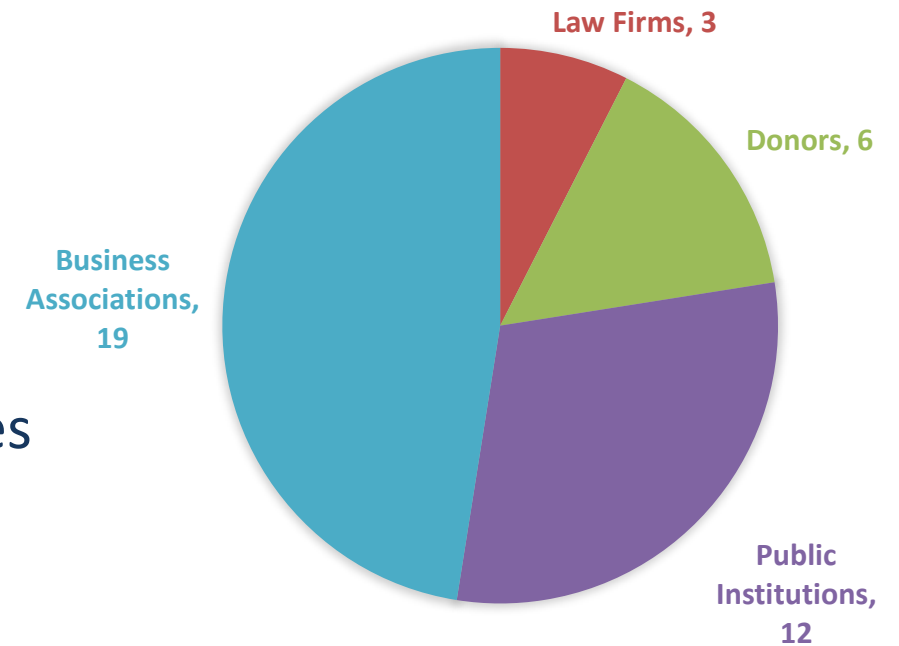
THE OBJECTIVE

To identify the profile of “most frequent” disputes between business and public administration in the framework of Administrative Appeal, as well as the mechanisms available to the parties – a necessary element in facilitating the investment climate.

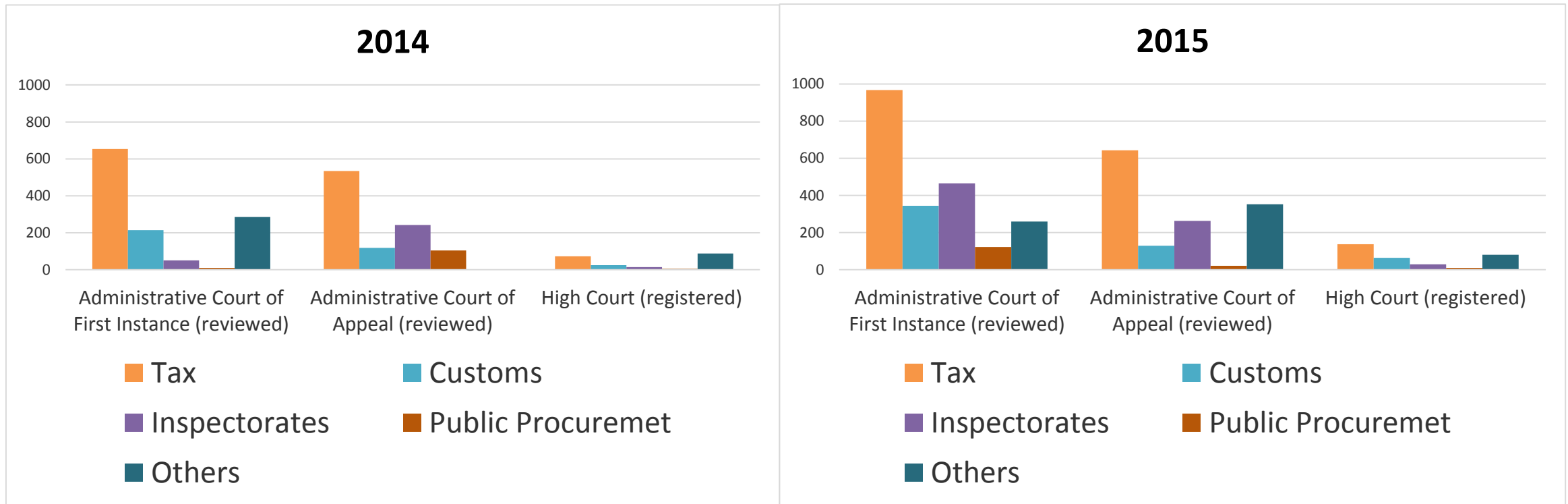
Methodology

- Legislation desk research
- Meetings with experts in the area
- Meetings with business associations
- Pre-drafted questions on Administrative Appeal issues
- Official data processing

MEETINGS WITH STAKEHOLDERS



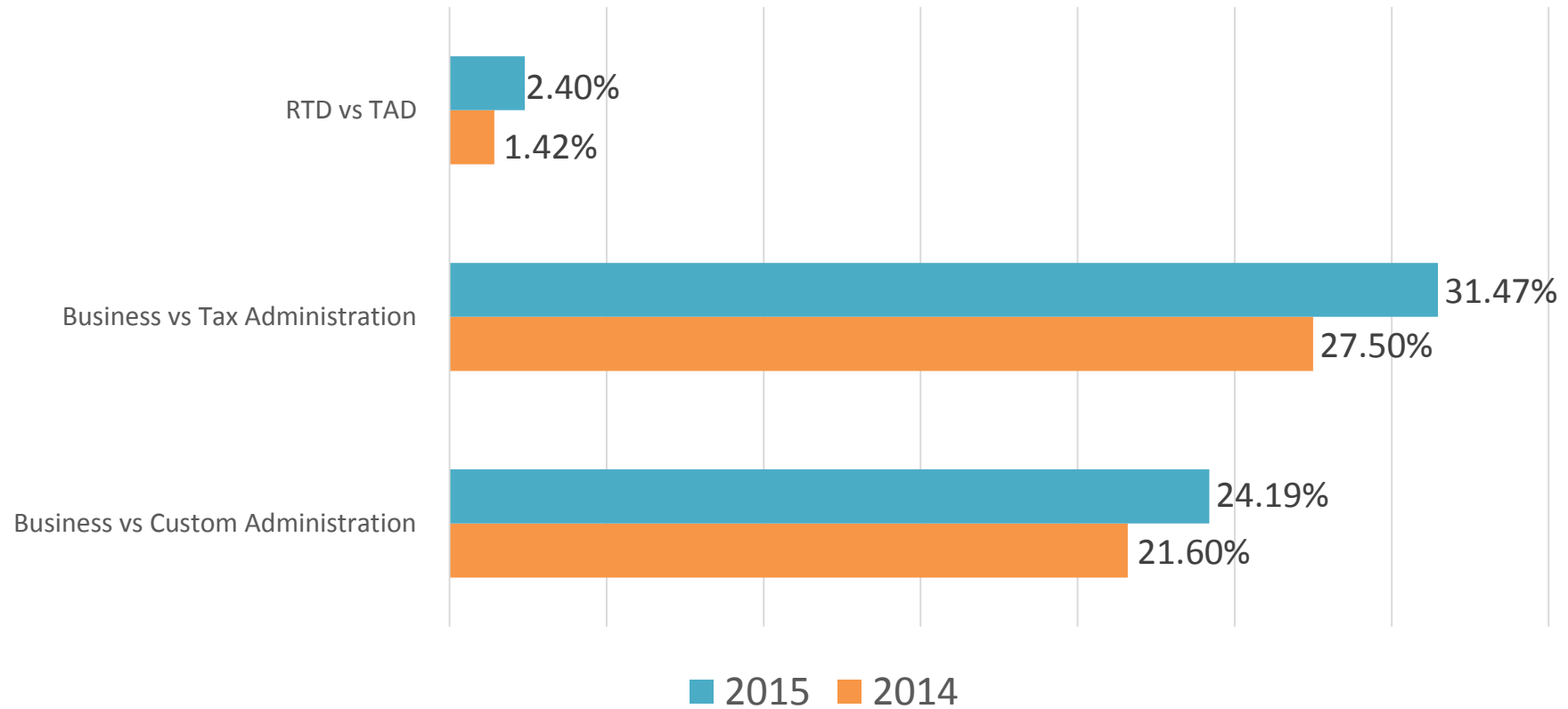
INSTITUTIONS IN ADMINISTRATIVE COURTS



Source: Ministry of Justice and Administrative Court of Tirana and Appeal

Administrative Appeal Court – 12,000 cases until December 2015 – only 7 judges

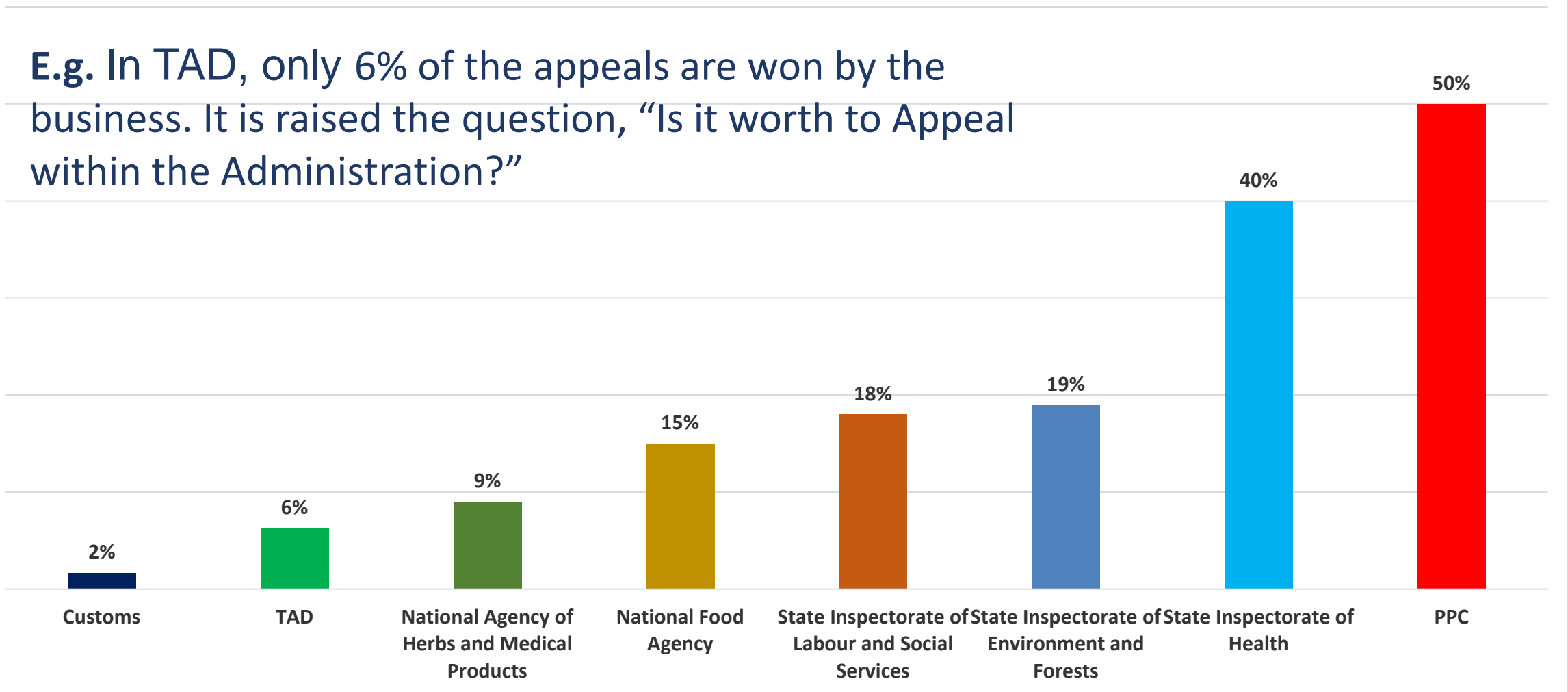
COURT'S DECISIONS FOR ACCEPTING LAWSUITS IN FAVOUR OF THE BUSINESS



Source: Administrative Court of First Instance of Tirana

APPEAL IN INSTITUTIONS – DECISIONS IN FAVOUR OF THE BUSINESS (2015)

E.g. In TAD, only 6% of the appeals are won by the business. It is raised the question, “Is it worth to Appeal within the Administration?”



Source: Data processing by the Secretariat based on the official data from Institutions

CONCRETE CASE – Recognise operational expenditures in the hydrocarbon sector (exempt from VAT)



1. Lack of institutional coordination NANR/Tax:
 - *Authorisations issued by NANR beyond 30 days*
 - *Tax accepted Authorisations only within 30 days*
 - *Execution of different rules*
2. Practices carried over the years at NANR without giving any statement on the “companies requests.”
3. Instruction from the MF & MEI in contradiction with the principles of the administrative rights. ***Non-issuance of an act – makes the company unable to make an effective appeal to Court.***
4. Recommendations of SSA for revocation of authorisations.

Consequences to the business as the most vulnerable.

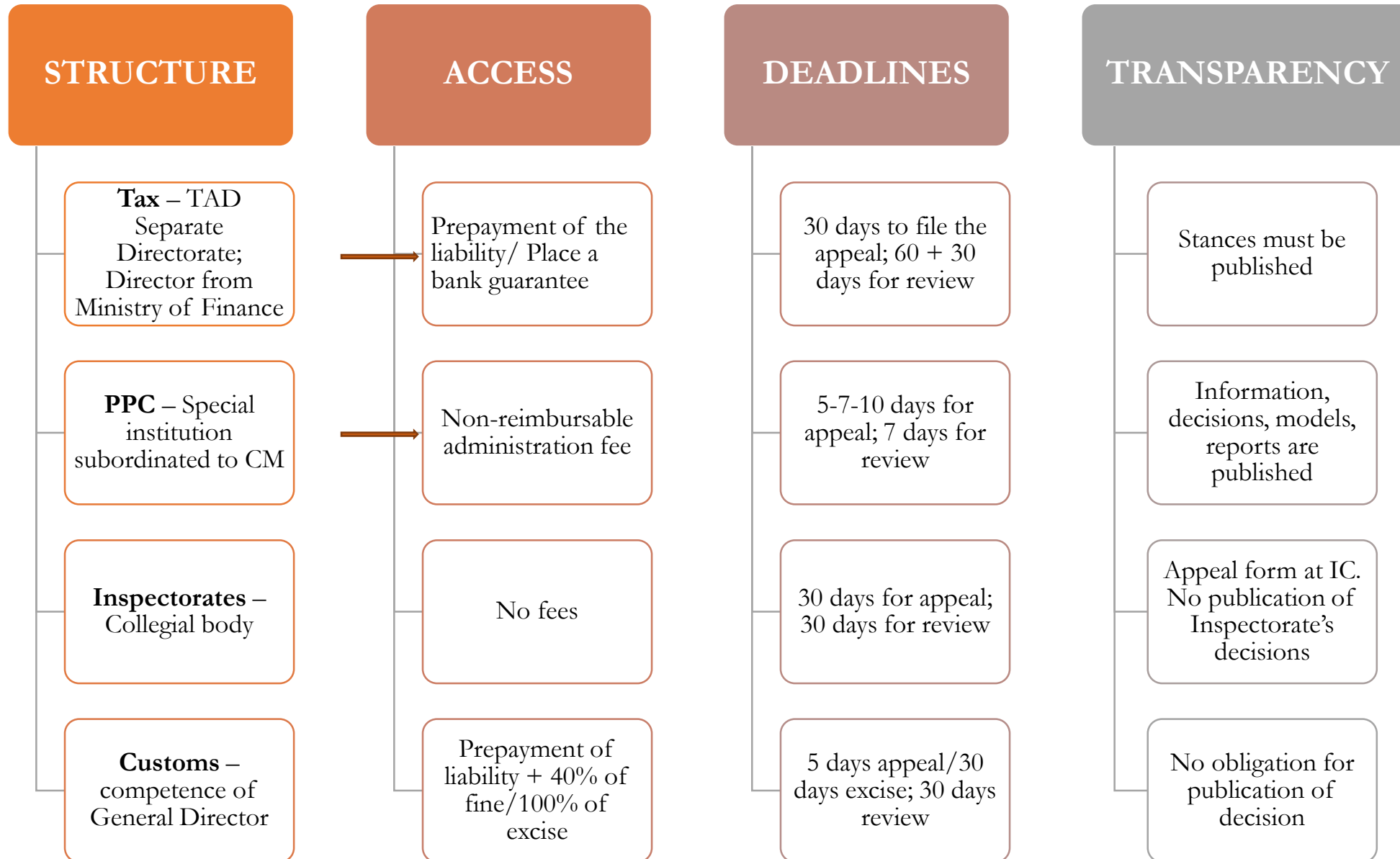
REVIEW WITHIN INSTITUTIONS – ADVANTAGES

- ❑ Business have “the right” to appeal against administration to a superior body;
- ❑ Internal audit – reconsideration of the act legitimacy (revocation, repeal, act amendment) – an opportunity for the administration;
- ❑ Faster, dispute resolution from “*specialized structures*”;
- ❑ A test for the performance of the judicial case;
- ❑ An opportunity for the parties for final resolution;
- ❑ An alleviation of Courts’ caseload;
- ❑ No cost.

III. FINDINGS & RECOMMENDATIONS

1. Limited access to administrative appeal procedures
2. Ineffective admin.appeal procedure in institutions
3. Lack of Transparency in Decision-making

ANALYSIS – EFFECTIVE APPEAL IN INSTITUTIONS



3.1 LIMITED ACCESS IN ADMINISTRATIV APPEAL

FINDING

Access to administrative appeal procedures is limited

RECOMMENDATIONS

Facilitate Access of the Business

1. Partial pre-payment of the tax/customs liability amount, *or*
2. Non-reimbursable administration fee
3. Tax and customs legislation should leave open the appeal possibility to *de facto* bankrupt companies

3.2 INEFECTIVE PROCESS OF ADMINISTRATIVE APPEAL

FINDINGS	RECOMMENDATIONS
Appeal structures non independent (TAD, Inspectorates, Customs)	<ul style="list-style-type: none"> - The decisions of TAD automatically binding for RTDs - Establishment of a collegial appeal body independent for tax and customs - Unification and centralization of the Inspectorates' appeal in the Central Inspectorate
Non-respecting of base principles of administrative appeal	<ul style="list-style-type: none"> - Effective mechanisms of prior consultation of the business - Unification of the deadlines for exercising the appeal right
Lack of capacities of the appeal structures	<ul style="list-style-type: none"> - To recognize the role/function of State Advocacy Office - To receive judicial consultancy from the State Advocacy Office - Staff sustainability of the appeal structures. Capacity building.
Lack of the consolidated and unified practices from the administration	<ul style="list-style-type: none"> - Unification of practices and preparation of commentaries with a sectoral point of view, especially in tax

3.3 LACK OF TRANSPARENCY IN DECISION-MAKING

GJETJE	RECOMMENDATIONS
<p>Lack of transparency in the appeal procedures & publication of decision-making</p>	<ol style="list-style-type: none"> 1. Publication of Appeal Structures' Decisions (TAD/GCD/Inspectorates) 2. Publication of appeal procedures from the Inspectorates 3. Publication of annual reports of the Institutions and inclusion of administrative appeal data.

MAIN MESSAGES FOR A SERVICE ADMINISTRATION

SECURITY
IN INVESTMENT



BENEFITS
FINANCIAL, HUMAN
TIME

TRUST
IN INSTITUTIONS

- ✓ Institutional and staff sustainability
- ✓ Trainings & Education
- ✓ Continuous professional advancement
- ✓ Ethics in the services to the business
- ✓ Unification of practices
- ✓ Publication & transparency
- ✓ More budget support
- ✓ Auditing of procedures implementation with a focus on the services to the business (respect of deadlines)
- ✓ Implementation of Public Consultation Law

THANK YOU!

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