

# **ICPAK Tax Seminar**

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### **Tax Planning & Crimes**

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# Tax Planning versus tax crimes



## How thin is the thin line...?

### Tax Planning

- ☐ **Paying the right amount of tax at the right time in the right way.**
- ☐ **Tax avoidance (planning) is the legal utilisation of the tax regime to one's own advantage, by means that are within the law.**
- ☐ **Why?**
  - ☐ To reduce the tax burden;
  - ☐ To defer tax payment;
  - ☐ To avoid penalties;
  - ☐ To manage tax risks;

### • Tax Crimes

- **Tax evasion (tax crime) is the general term for efforts to reduce taxes or pay no taxes by illegal means.**
- **Tax crimes are therefore acts or omissions that are a violation of tax laws and regulations.**
- **Its dependent upon the amount of admissible evidence against the taxpayer, not the amount involved.**

# Payment of taxes is certain!

**“There are only two things that are  
certain in life, tax & death!”**

**Benjamin Franklin - Scientist, Author and  
former American President**

# Tax planning...



**When does a  
Consultant  
become an  
employee?**

## **Why?**

- ☐ Tax computation
- ☐ Timing of payment
- ☐ Rate of tax

## **Key factors**

- ☐ Control
- ☐ Resources
- ☐ Administration

***Is there any tax advantage for being a consultant  
as opposed to being an employee?***

# Tax planning...



**Per diems**

***The law versus policy***

# Tax planning...



## □ Personal tax...

- Medical
- Pensions
- Mortgage
- Staff training

- School fees
- Staff party exp
- Study leave
- Home leave passages

***Move away from Cash benefits – Non cash benefits is the way to go!***

# Tax planning...



## □ Personal tax...

- Loans to employees – the car
- Benefits in kind
- Home Ownership Savings Plan
- Telephone benefit
- Meals

***Move away from Cash benefits – Non cash benefits is the way to go!***

# Tax planning...



## □ The structures...

- Company versus sole proprietorship
- Exempt...
  - Trusts for children
  - Clubs and Trade Associations
  - Cooperative Societies
  - Provident/Pension Funds

- Is your NGO/NPO really exempt?
  - Tax exempt certificate
    - Which “business?”
  - MOU or Gazetted?
  - 1<sup>st</sup> Schedule

***Think of which SPV to use***



# Tax planning...



## □ The structures...

- Export Processing Zones (EPZs)
- NSE quoted companies

***Think of which SPV to use***

# Tax planning...



## □ Corporation tax...

- Capital budgets versus losses
- Financing options
  - Capital structure
  - Deemed interest
- Group operation re-organisation
- Application for relief for errors and mistakes made

***Think of your strategic decisions***

# Tax planning...



## □ The investments...

- Shares – No capital gains tax in Kenya
- Real Estate Investment Trusts (REITs)
- Employee Share Option Schemes (ESOPs)
- House ownership – occupying versus letting

***Plan your investments!***

# Tax planning...



## □ The investments...

- Exempt dividends - shareholding
- Exempt interest - POSB
- WHT final – Banks, Housing bonds...

***Plan your investments!***

# Tax planning...



## □ The Tax Treaties...

Nature of payment	UK	Germany & Canada	Denmark Norway Sweden Zambia	India	EAC
	%	%	%	%	%
Management or professional fees	12 ½	15	20	17 ½	20
Royalties	15	15	20	20	20
Consultancy fees	12 ½	15	20	17 ½	15

***You can do Treaty Shopping! – May be abit political though***

# Tax planning...



## □ VAT...

- Reverse charge VAT
- VAT Remissions
- VAT requirements on “other businesses”

***Very Annoying Tax is indeed annoying***

# Tax Risks



Kenya Revenue Authority

**Do you know your  
Portfolio Tax  
Risk?**

- ☐ **Compliance**
- ☐ **Accounting**
- ☐ **Planning**
- ☐ **Transactional**
- ☐ **Operational**
- ☐ **Management**
- ☐ **Reputation**

# Types of Tax Risks...



## Compliance

- Submission of tax returns
- Payment of taxes in time
- Compliance – 25% to 30% of total tax risk

## Accounting

- Miscoding of expenditure
- Incorrect recognition of tax liability
- The accounting treatment does not prescribe the tax treatment

## Planning

- Technical imperfections in planning
- Excessive aggression
- Failure to implement tax planning correctly

## Transactional

- One – off transactions like mergers...
- What is the Company's tax risk profile – Conservative, neutral or aggressive?



# Types of Tax Risks...



## Operational

- **Intra – group operations over multiple jurisdictions**
- **Any transfer pricing issues?**

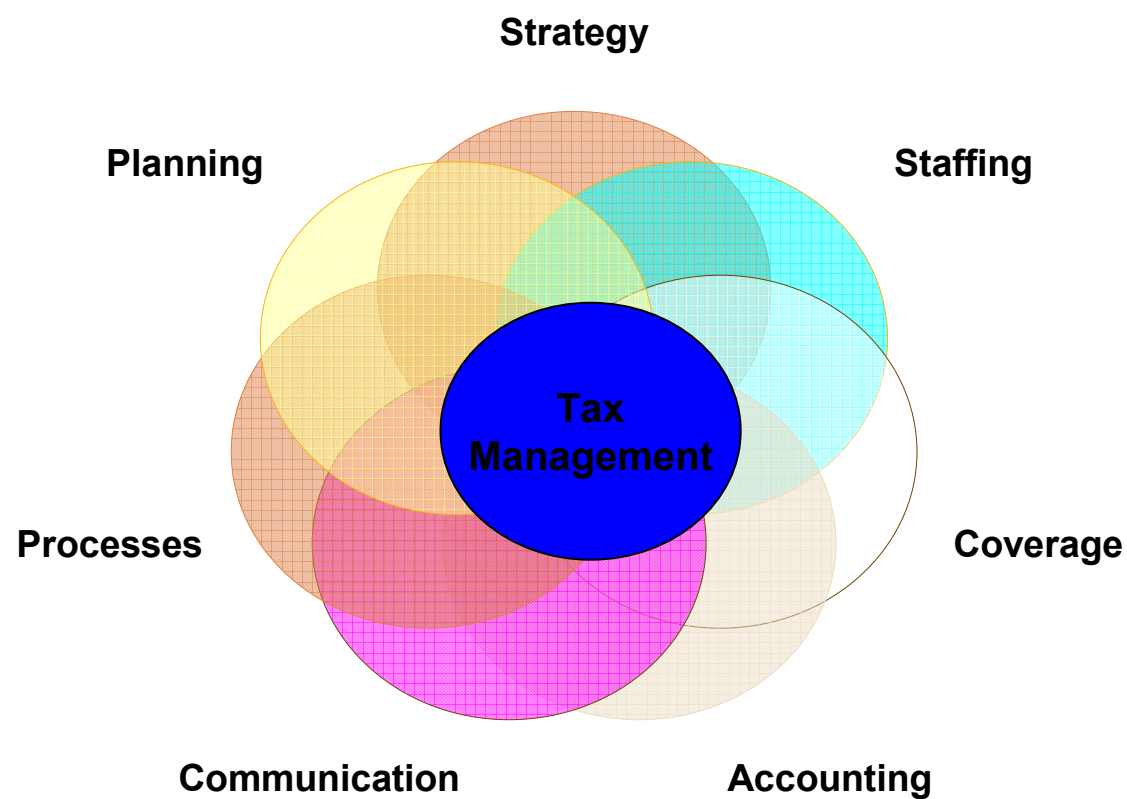
## Management

- **Any tax policy?**
- **Resource allocation – Time, skills, etc.**

## Reputation

- **Relationship with KRA – Losing LC cases**
- **Publicity – Do you want to be associated with clients known for tax evasion?**

# Tax Risk Management...



# Tax crimes...



# Tax crimes...



## □ Why?...

- Ineffective tax planning measures
- Inadequate knowledge of taxation
- Unrealistic tax regimes
- Inefficient tax authorities
- Self – discipline
- Payback (perceived?)

## Examples

- Wilful failure to file returns
- Preparing false returns
- Split payroll
- Aiding in preparation of false documents
- Keeping two sets of books

***Why do we commit tax crimes??***

# Tax crimes...



## □ Who?...

- Transfer pricing
- The “repackaging” strategy
- “Power” remissions

***The bigger tax criminals ?***

# Tax in the Boardroom



**Is tax ever a boardroom  
agenda?**



# Why the Board?



# Why the Board?



## □ Governments' response

- Governments getting keen on approach to international tax
- Governments are now seeking to get tax information from foreign tax authorities
- More emphasis on tax issues on foreign controlled companies



## Why the Board?

- **More interest by shareholders on tax status**
  - ▣ Shareholders are now concerned at how tax is being managed
  - ▣ Tax minimizes shareholder value!

# Why the Board?



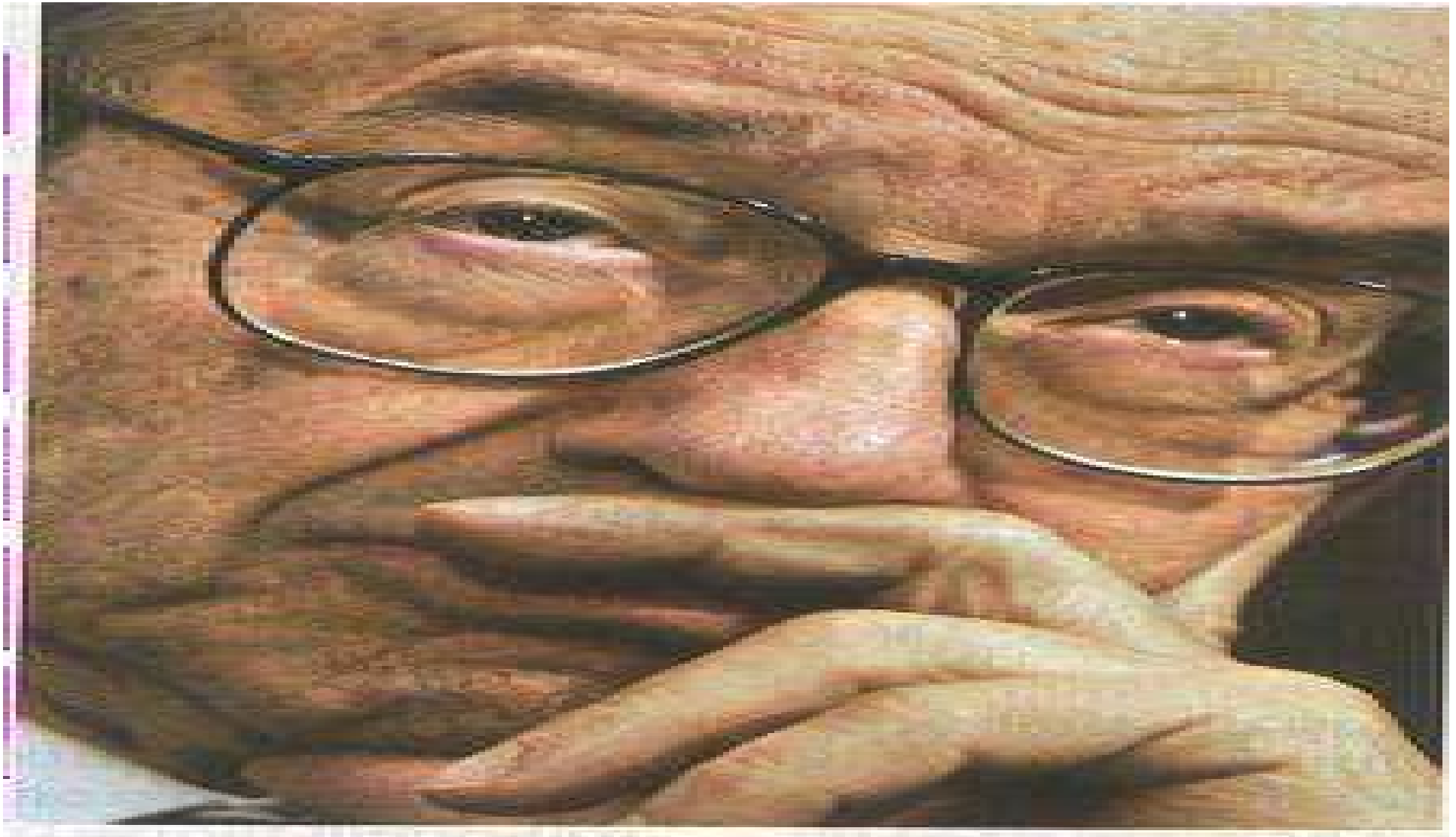
- Tax is now a reputational issue
  - ▣ the Maxwell pension debacle in the UK  
(Early 1990s, Pensioners lost their pension)
  - ▣ the collapse of Enron in the US, and,
  - ▣ the implosion of Parmalat in Italy  
(Financial fraud, CEO was imprisoned)

# Why the Board?



- **Tax is now a corporate governance issue**
  - ▣ It needs to be squarely at the top of the Boardroom agenda
  
- **Tax governance is a corporate responsibility**
  - ▣ Tax strategy consistent with business strategy
  - ▣ Ethical tax systems
  - ▣ Compliance

# The strategic thinking...



# The board and your strategy...



# THE BOARD

...where the buck stops...





*THE END*

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