



*cutting through complexity™*

## ICPAK Tax Training

# Topical Tax Issues and Corporate Tax Crimes

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# Topical Tax Matters



# Presentation Overview

**“ Topical tax matters**

**“ Tax crimes**

- Why do tax payers evade tax?**
- Corporate Tax Crimes - Examples**

**“ Conclusion**

# Topical Tax Matters

- “ Largely driven by changes in legislation
- “ Global trends:
  - Base Erosion and Profit Shifting
  - ATAF and collaboration
  - Increasing M&A and focus on emerging markets
- “ Judicial pronouncements - definition of %Paid+. **The Fintel case, 2014**
- “ DTA's - Mauritius, SA, UAE?

# Topical Tax Matters

- “ **Introduction of Dependent Agent PE concept**
- “ **Taxation of gains on farm out – business income:**
  - Tax stability clauses?
  - Tax paid PSAs?
  - Impact of global oil crash?
- “ **Taxation of PSSs?**
- “ **Thin cap for PSSs - 2:1**

# Topical Tax Matters

- “ **Sec 41 Limitation of Benefit clause**
- “ **Sec 54B change of particulars notification**
- “ **Tax loss carry forward**
- “ **Wholly and exclusively used test?**
- “ **CGT?**

# Topical Tax Matters

- “ Export of services**
- “ Accounting for RVAT**
- “ Exemptions - Para 29 and 30**
- “ 6% WHVAT?**
- “ Test of substance and dominant purpose**



# Introduction

**Stealthy taxation - Business tax raids can have unintended consequences** FT Oct 5

**Tax dodges cost poor countries billions**, The Herald, 12 September

**Businesses wary of avoidance 'spin'** FT Oct 5

**Taxman eyes up £300m in VAT from high street** Accountancy Age 8 September

**Managers under pressure to give tax its due - As rules and scandals proliferate, the issue of how to manage tax has become far more urgent** FT August 19

**The tax avoidance story as a morality tale** FT 22 Nov

**IFRS brings tax out of the back room - TAXING MATTERS - A company's tax policy, traditionally a mere technical issue, is increasingly viewed as a strategic matter** FT 14 July

**Why Tax is a task for the Boardroom** FT 3 March

**Tax law doubles in size under Brown's chancellorship 2005** The Times 2 September

**IRS praises early findings of international tax taskforce** FT 28 Feb



# Corporate tax crimes

**“A **crime** is an act committed or omitted for which punishment is imposed upon conviction**

**“Tax crimes are therefore acts or omissions that are in violation of tax laws and regulations**

# He who alleges...

Whether a tax crime charge will be filed is dependent upon the amount of **admissible evidence** against the taxpayer, **NOT** dependent upon the **amount** involved!

# Why do taxpayers evade tax?

- “ Lack of effective tax planning measures
- “ Inadequate knowledge of taxation
- “ Unrealistic tax regimes (perceived?)
- “ Inefficient tax authorities
- “ Lack of self-discipline
- “ Payback (perceived?)

# **Tax evasion schemes**

- “ Willful failure to file return**
- “ Willful failure to collect or pay over WHT**
- “ Preparing false tax returns**
- “ Making false statements to revenue bodies**
- “ Making false claims**

# **Tax evasion schemes**

- “ Deliberately underreporting /omitting income**
- “ Keeping two sets of books**
- “ Aiding and abetting in the preparation of false documents**
- “ Conspiracy to impede or defeat the collection of tax**

# **Tax evasion schemes**

- “ Inflated personal/ business expenses**
- “ Using business funds for personal expenses**
- “ Paying employees in cash and not remitting statutory deductions**

# **Tax evasion schemes**

- “ Creation of huge provisions of specific bad debts**
- “ Transferring unreported income to tax havens**
- “ Creation of tax losses and abuse of their roll over**



# What is KRA doing?

- “ **KRA is watching with eyes wide open**
- “ **Commissioner's discretionary powers gradually being taken away...**
- “ **Ministry of Finance involvement on tax matters strengthened**
- “ **Loopholes in tax laws being sealed-  
W/VAT, ETR, Upfront payment of duties**

# What is KRA doing? ...cont'd

- “ **Regular KRA audits**
- “ **Information Technology**
- “ **Personal Identification Number (PIN)**
- “ **Integrated Tax Management System (iTax)**

# Legislative provisions

## Anti tax avoidance legislation

### “Sec 23

Transactions designed to avoid tax liability

### “Sec 24

Shortfall distribution of dividends

### “ Sec 61

Dominant purpose

# Legislative provisions ...cont'd

## “ **Sec 18(5)**

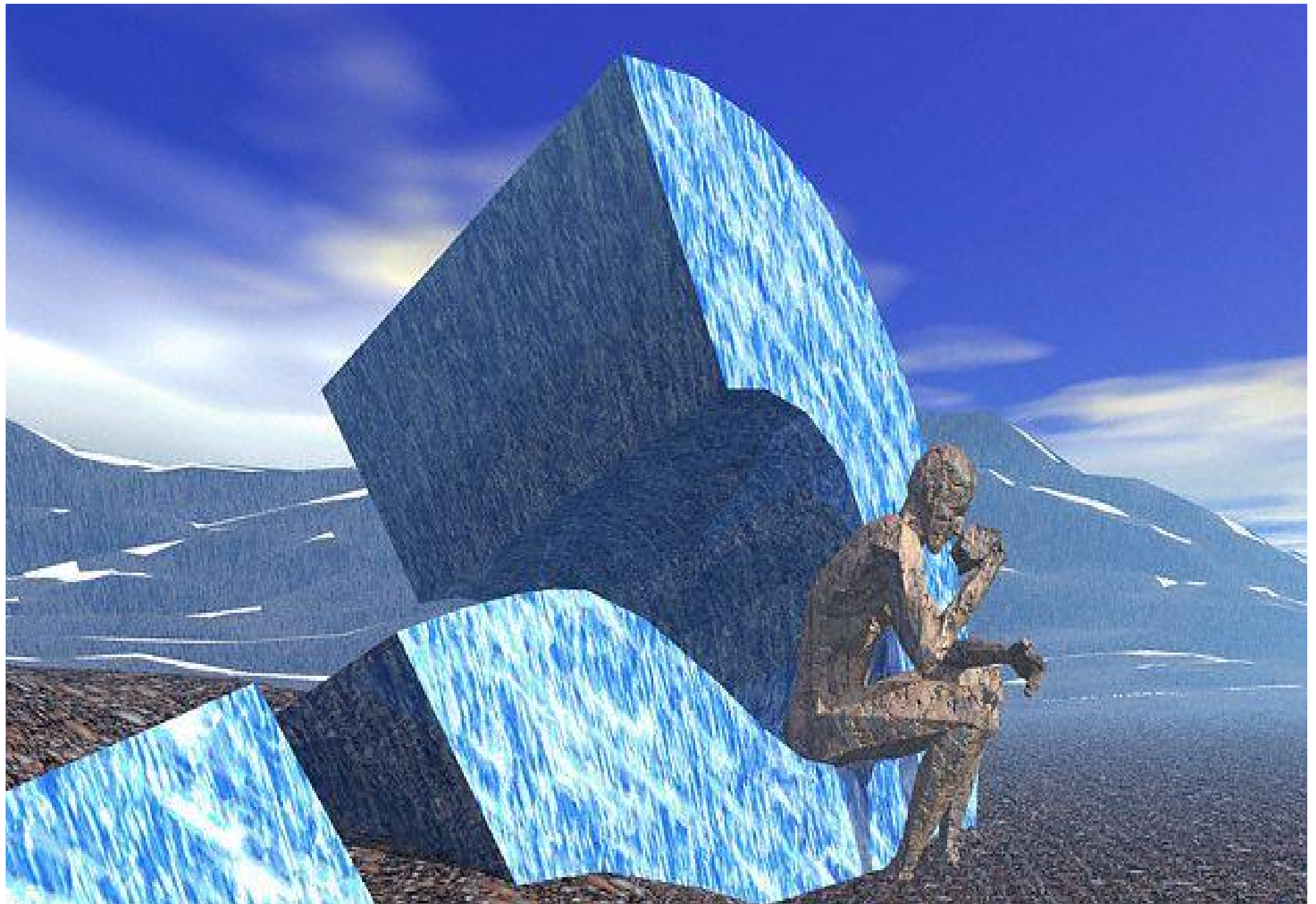
**Expenses of a branch paid to head office**

## “ **Transfer Pricing Rules**

**To regulate transfer prices**

## “ **Section 16(2) and Section 4(a)**

**Thin capitalization**



## Caveat

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