Corporate Tax Crimes

Martin Gitau

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Presentation Outline

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- ✓Tax Crimes and evasion schemes
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Introduction

- What is Tax Crime?
- A crime is an act commitment or omitted for which punishment is imposed
- Tax Crimes can therefore be defined as Acts or omissions that are in violation of tax laws and regulations

Tax evasion

- Application by the taxpayer of illegal or fraudulent means to defeat or lessen the payment of a tax

Why do Taxpayers evade tax

- Lack of effective planning measures
- Inadequate knowledge of taxation
- Perceived unrealistic tax regimes
- Lack of integrity
- Defraud the government

Tax Evasion Schemes

- Two sets of account – Imperial Bank Case
- Split Payroll – Expatriates paid partly in other Jurisdiction and partly in Kenya
- Treaty shopping – LOB
- Fictitious documents – To increase expenses and input VAT claimable
- Failure to declare all income – CMC saga (account in Jersey)

Tax Evasion Schemes

- False returns
- Forging of documents – Customs
- Under-declaration in customs
- Transfer mispricing
- Tax Inversion
- Cooking of books- Tiger industry

Tax Evasion Schemes

- Not remitting withheld tax, PAYE, NSSF, WHT etc
- Using business funds for personal use- Chase bank
- Creation of tax losses
- Creation of huge Specific provisions (bad debts)
- Transfer Mispricing
- Fraudulent claims

Government response

- LOB treaty, Finance Act, 2014 (Kenya – Qatar DTA) to curb Treaty shopping
- Tax Treaty on sharing of information
- Tax Beyond Borders Initiative – Kenyan appointed to head it
- Punitive Tax penalty (200% - TPA)

Government response

- Aggressive TP audits
- Building capacity KRA staff
- Digitalization of system – i-Tax, ETR etc
- Tax Amnesty
- Loopholes in tax laws being sealed – WVAT
- Regular KRA audits

Legal Provisions

- Tax Procedure Act 2015 imposes hefty penalties on tax avoidance (double the tax avoided- Section 85 of the TPA)

- Directors and Senior Management of companies to be liable for taxes of a company in the event of tax evasion

Legal Provisions

- ❖Tax Procedure Act 2015

- ❖Failure to submit a document attracts a penalty of KShs 1,000 for each day of default subject to a limit of KShs 50,000 (Section 82 of the TPA)

- ❖To prevent document forgery

Legal Provisions

- Section 24 of the Income Tax Act- Shortfall Distribution
- Section 42 Excise duty Act, 2015 prohibits any tax avoidance
- Section 23 of the Income Tax Act prohibits transactions designed to avoid tax liability
- Section 66 of the VAT Act, 2013 prohibits Tax avoidance schemes

Sham Transactions

Sham transactions now in KRA crosshairs

JOSEPH THOGO

TAXATION

A few weeks ago an article in the print media about the proposed Tax Procedure Bill 2014 sent a shiver down my spine. According to the article, the Bill provides that if the Kenya Revenue Authority (KRA) applies an anti-avoidance provision in assessing a taxpayer, then the taxpayer would be liable to a penalty equal to double the amount of tax ing the income to the correct tax rate and lastly, complying by the due date. Tax advisors did not invent these – they are all provided for in the various statutes that impose taxes. Tax advisors worth their salt assist their clients fulfil their tax obligations within the parameters that these five pillars allow.

I have been lucky enough to school and work in jurisdictions with diverse tax systems, evolving ones and others more mature, advanced and far more complex than what we have in Kenya and I am yet to come across an instance where shrewd taxpayers are punished for planning their compliance obligations to minimise the amount of tax that they pay.

However, that does not mean that

The first prong of the test is the objective economic substance test where the court evaluates whether the transaction or arrangement has any economic substance other than the creation of a tax benefit. This test questions whether the purported economic activity would have occurred in the absence of tax benefits claimed by the taxpayer. The second prong is the subjective business test, which considers whether the transaction was motivated by any business purpose other than obtaining a tax benefit and the inquiry is largely dependent on the taxpayer's intent.

The question whether or not a transaction is sham is primarily a factual one and the burden of justifying the transac-

International Tax Crimes

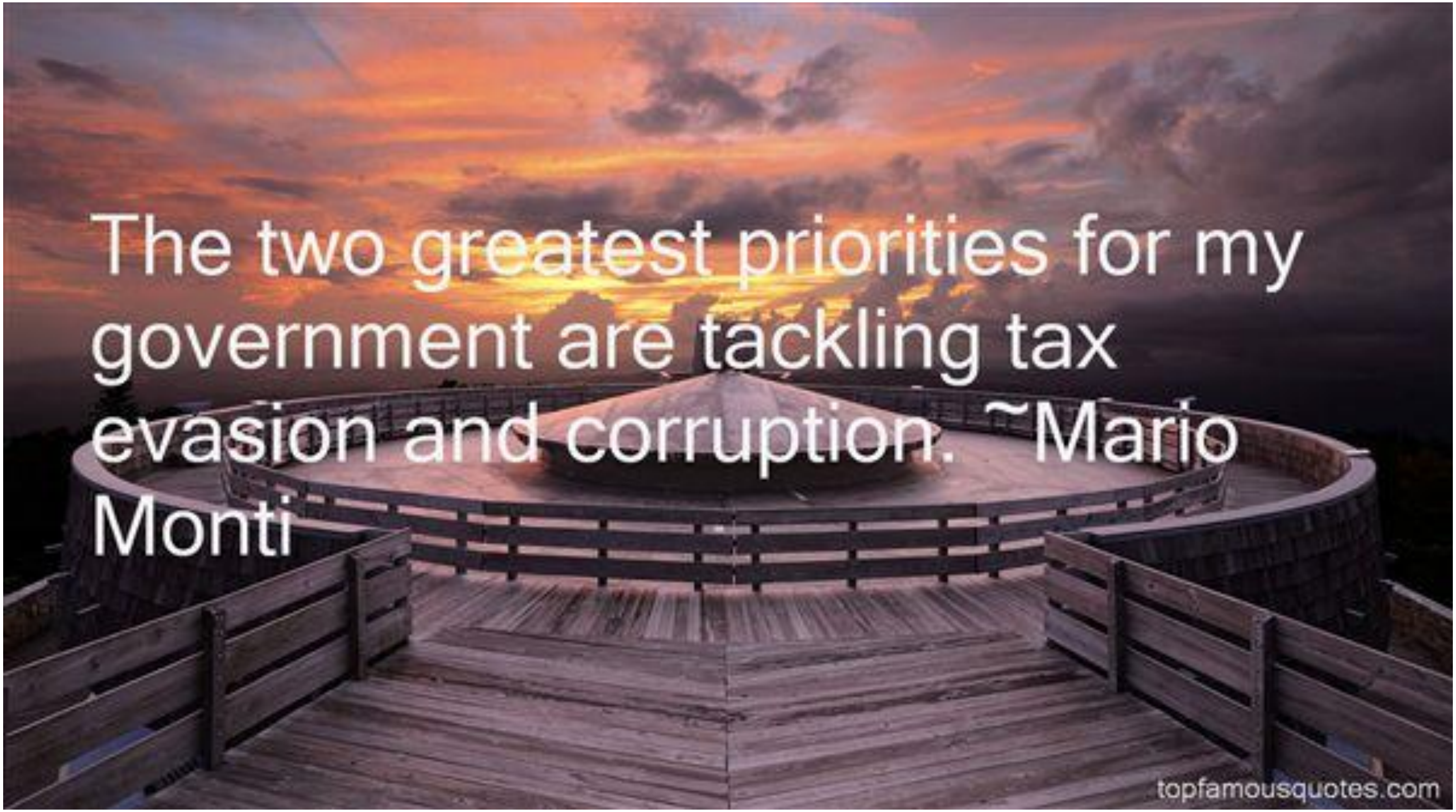
- Enron Saga in the US and Anderson
- The Maxwell Pension debacle in the UK
- Parmalat in Italy – CEO imprisoned
- Tax Inversion - Pfizer
- Maddoff Investment scandal
- Chickengate scandal – Smith and Ouzman company

Tax Evasion Case

- Republic vs Kenya Revenue Authority ex parte Iron Art Ltd (2015) eklr

- Republic vs Kenya Revenue Authority ex parte Bata Shoe Company Ltd (2014) eklr

Conclusion


The two greatest priorities for my government are tackling tax evasion and corruption. ~Mario Monti
topfamousquotes.com

Caveats

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity.

Although I endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.

No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Thank You !

Q & A Session