



Grant Thornton

An instinct for growth™

# Tax Healtchecks



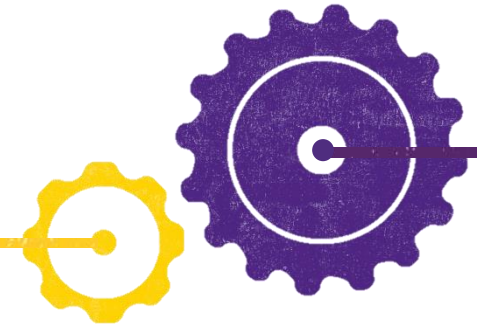
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# Preamble

***Then the Pharisees went and plotted how  
they might entangle Him in His talk.....  
“.....Is it lawful to pay taxes to Caesar or  
not?.....”  
(Matthew, 22:15-22)***



# Preamble

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> The idea - similar to a regular medical check-up with your doctor now a health check of your organization's tax affairs.

> A review of your business's records and accounting systems with a view to:

Identify any areas of risk in relation to tax

Mitigate any tax risk

Giving confidence in the level of risk the business has in relation to taxation

Identify tax planning opportunities that have not been taken advantage of

Prepare for a KRA audit





## Offences and Penalties

Offense	Penalty
<ul style="list-style-type: none"><li>• Person liable to tax failing to register for taxes</li></ul>	<ul style="list-style-type: none"><li>• KES 100,000 per month subject to a maximum of KES 1 million</li></ul>
<ul style="list-style-type: none"><li>• Failure to keep documents</li></ul>	<ul style="list-style-type: none"><li>• KES 100,000 or 10% of the amount of tax payable to which the document relates to</li></ul>
<ul style="list-style-type: none"><li>• Late submission of tax return on account of employment income</li></ul>	<ul style="list-style-type: none"><li>• The higher of 25% of the tax due or KES 10,000</li></ul>
<ul style="list-style-type: none"><li>• Late submission of tax return (individuals and corporates)</li></ul>	<ul style="list-style-type: none"><li>• The higher of 5% of the tax due or KES 20,000</li></ul>
<ul style="list-style-type: none"><li>• Late submission of tax return on account of Turnover tax</li></ul>	<ul style="list-style-type: none"><li>• KES 5,000</li></ul>
<ul style="list-style-type: none"><li>• Failure to comply with electronic tax systems</li></ul>	<ul style="list-style-type: none"><li>• KES 100,000</li></ul>
<ul style="list-style-type: none"><li>• Tax Avoidance</li></ul>	<ul style="list-style-type: none"><li>• Double the amount of tax</li></ul>
<ul style="list-style-type: none"><li>• Tax refund fraud</li></ul>	<ul style="list-style-type: none"><li>• Two times the amount of the claim</li></ul>

# Tax Shortfall Penalty

75%

- If omission is made deliberately

20%

- In any other case

10%

- Increase if second time

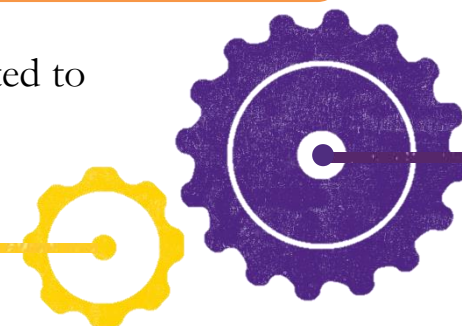
25%

- Increase if third time

10%

- Decrease on self declaration

- Not payable when one can prove that could not reasonably be expected to know that the statement was false;
- Commissioner must notify in writing of imposed penalty
- Taxpayer may apply for waiver of penalties



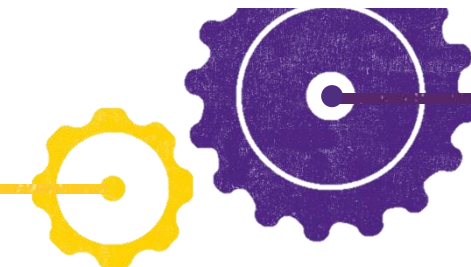


# Registration

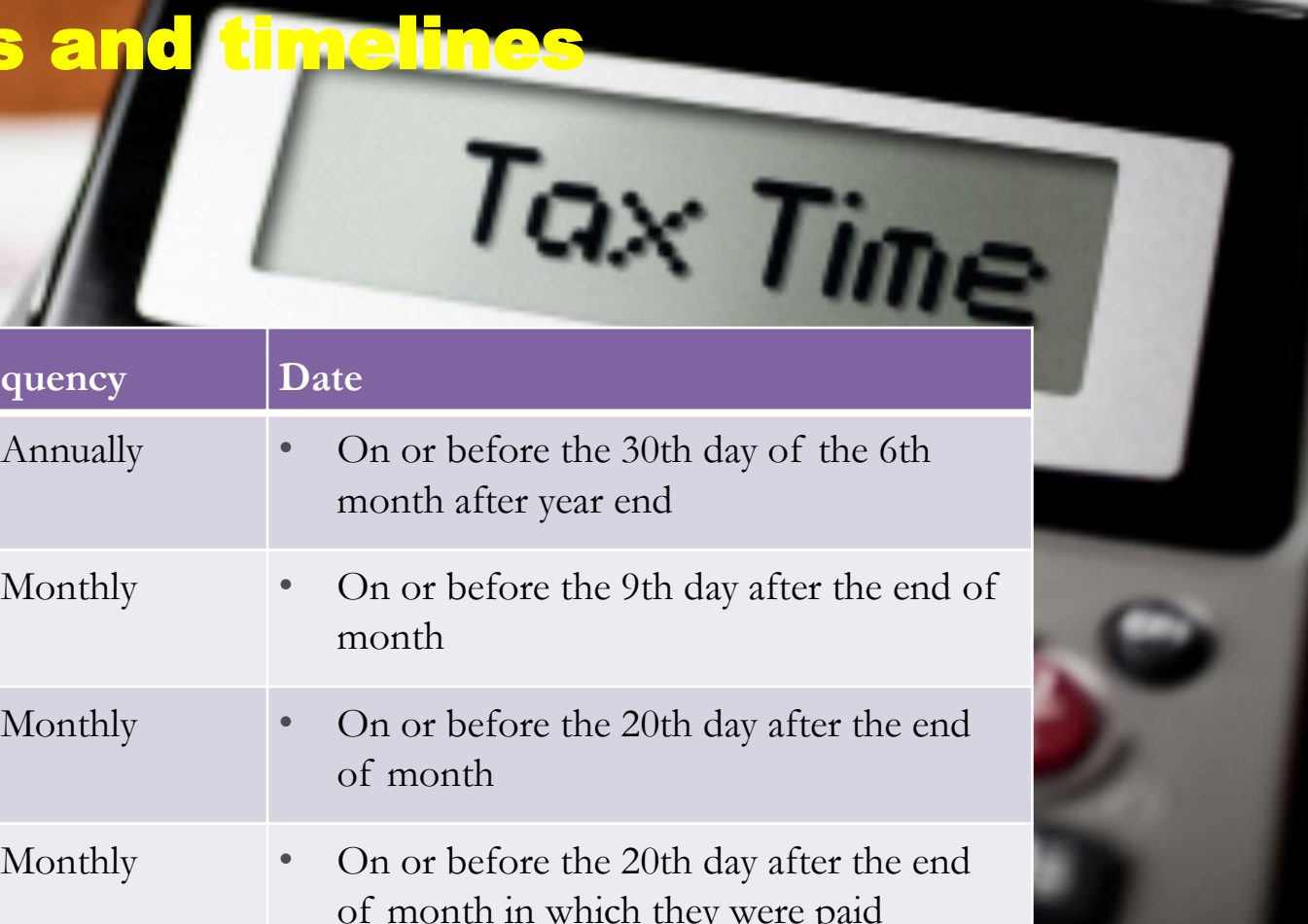
Commissioner may register  
taxpayers for various tax  
obligations

Application - 30 days  
after the person has  
accrued or expects to  
accrue tax liability


Application of  
deregistration- 30 days  
once the person ceases  
to meet the registration  
requirements



# Key deadlines and timelines



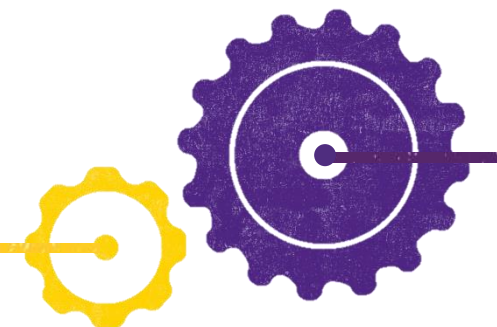
Issue	Frequency	Date
• Self-assessment return	• Annually	• On or before the 30th day of the 6th month after year end
• PAYE	• Monthly	• On or before the 9th day after the end of month
• VAT	• Monthly	• On or before the 20th day after the end of month
• Withholding tax	• Monthly	• On or before the 20th day after the end of month in which they were paid
• Annual company self assessment return	• Annually	• First one is due 18 months after incorporation and then 12 months after year end thereafter.
• Capital gains tax	• Monthly	• On or before the 20th day after the end of month in which transfer was made



# Timelines cont'



Duty	Under the TPA	Previous
• Amendment of a tax return in the case of a mistake	• 5 years	• 7 years
• Maintenance of records	• 5 years	• 7 years
• Objection decision to be made by the Commissioner	• 30 days	• Open
• Application for deregistration as a taxpayer	• 30 days	• None
• Issuance of private ruling	• 45 days	• None





# Conducting a Tax Health Check

**Before conducting a Tax Health Check, one must first ascertain...**

**The purpose of the health check (is it for noting the tax risk or for self declaration);**

**The period to be covered**

**The tax heads to be analyzed**

**The Person to conduct the health check (Outsourced or self)**



# Process

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- > Select sample of ledgers to review
- > The ledgers should be those that have **likely tax exposure** depending on the tax head chosen

From the ledgers select **entries** to review **based on materiality**

Confirm that withholding tax, VAT, Excise duty was **accounted correctly**

From the ledgers, check whether:

- Tax was paid
- The rates used
- Date of payment



# Process (continued)

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- > When the returns were made
- > Tie the tax **payments** to the tax **returns**
- > Reconcile sales as per **TB** with sales as per the **VAT 3 returns**;
- > **Payroll** and the staff cost in the **audited accounts**
- > Quantify the **exposure** noted



# After the health check

- > Improve on areas where a gap has been noted
- > Seek professional opinion on where there is some doubts
- > Seek KRA Private Rulings on areas not clear
- > Self-disclose tax liabilities to KRA
- > Pay the principal tax
- > Apply for waiver of penalties and interest
- > Proper maintenance of records



# Challenges facing PBOs

Get ahead of the regulations:



Exemptions



Withholding tax



VAT



Excise and customs duties



# Examples of cases



# 1

## Kenya Muslim Charitable Society vs KRA:

- KES 98mil, KES12mil
- Rice gone bad at the port
- Habo-defaulting clearance agency
- Childcare International



# 2

## Kengen vs CDT :

KES 289mil

Official Aid Funded project

Thought were exempt from tax

Payment made by financiers

# Resolving challenges with KRA

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- > Knowing your Station manager
- > Seeking KRA Private and Public ruling
- > Dealing with KRA Audit
- > Objecting to KRA assessment
- > Alternative Dispute Resolution
- > Appeal process
- > Instalment payment



# Proactive tax planning

## 1

### – Private ruling:

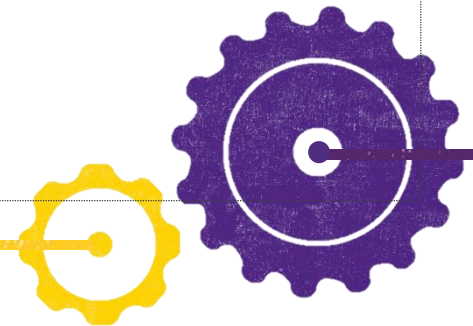
- Written application
- Response in 45 days
- Binding on Commissioner
- Not binding on taxpayer



## 2

### – Public ruling:

- Binding on the Commissioner
- Not binding on taxpayer



# Objection process

## Procedure:



### Objection to Commissioner

Within 30 days having paid tax not in dispute  
Commissioner to respond within 60 days



### High Court

If still aggrieved by decision by TAT one may appeal to High Court



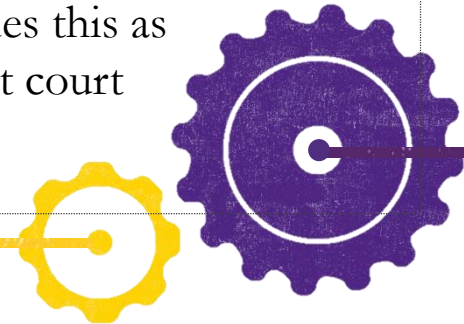
### Tax Appeals Tribunal

If still aggrieved by Commissioner's decision may appeal to TAT



### Court of Appeal

After High Court TPA provides this as highest court



# Extensions

Submission of returns

Payment of taxes

Payment of taxes in instalments



# Refund of tax

## The Commissioner has authority to refund tax where one has overpaid taxes

1

Taxpayer to lodge claim for refund of tax

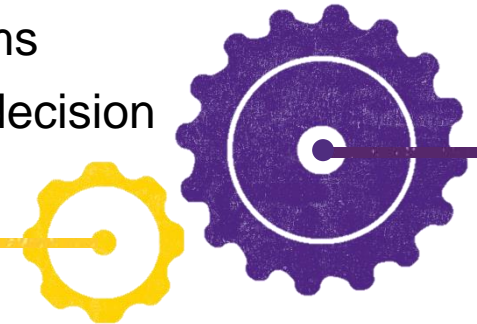
2

Commissioner carries out audit to ascertain claim

3

Set-off against other taxes before refunding

- Limited to taxes overpaid within one year
- No specified period to carry out audit to verify validity of claims
- No period within which the Commissioner must notify of his decision





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