

The Role of the Board in Managing Corporation Tax Risk

Presentation by:

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Introduction



Pharisees tested
Jesus...
Is it lawful to pay taxes
to Ceasar?



Definitions



Tax planning

- Logical analysis of a financial situation or plan from a tax perspective, to align financial goals with tax efficiency planning. The purpose of tax planning is to discover how to accomplish all of the other elements of a financial plan in the most tax-efficient manner possible. Tax planning thus allows the other elements of a financial plan to interact more effectively by minimizing tax liability

Tax risk management

- Tax risk is the risk of getting taxes wrong
- Tax risk management is the proactive management of ensuring that risks associated with getting your taxes wrong
- Managing outcome of uncertainties
- Decide how much risk you are willing and prepared to take

Tax Risk Management



Overriding Principle:

Prevent unnecessary
disputes:

Suggests an overly
prudent position not in
line with main objective
to enhance shareholder
value.

Strike a balance between
what is fair and what the
law provides



Types of tax risks



- Transactional risk
- Operational risk
- Compliance risk
- Financial accounting risk
- Reputational risk

Considering the Risk



What is the level of confidence on your stand?

Would KRA have a different view?

Would courts back your stand?

Potential downside if company loses litigation.

Is KRA likely to settle the dispute?

Would KRA pick up the issue in the first place?

Cost of getting it wrong



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

Definitions



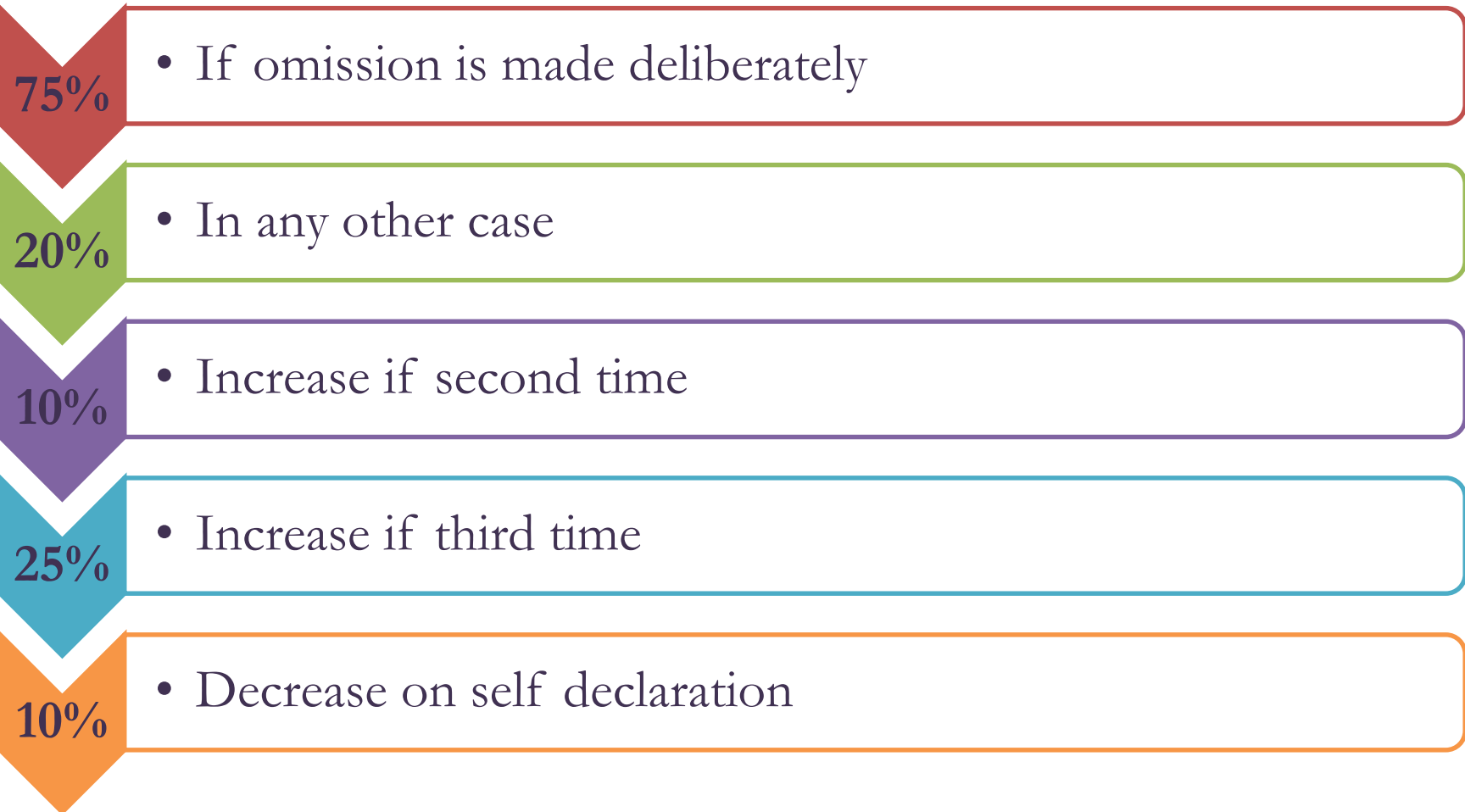
Tax evasion

- Intentionally failing to disclose taxable income to tax authorities

Tax avoidance

- **tax avoidance** is the **legal use** of **tax** laws to reduce one's **tax** burden.

Tax shortfall Penalty



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

What's in it for the Board?



Section 103 of the Tax Procedures Act

1. If a person acting as an employee commits offence...
2. If a company commits an offence...

The offence shall be treated as having been committed by the Chief executive, managing director, a director. Company secretary, treasurer or other similar officer of the company

The Board

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

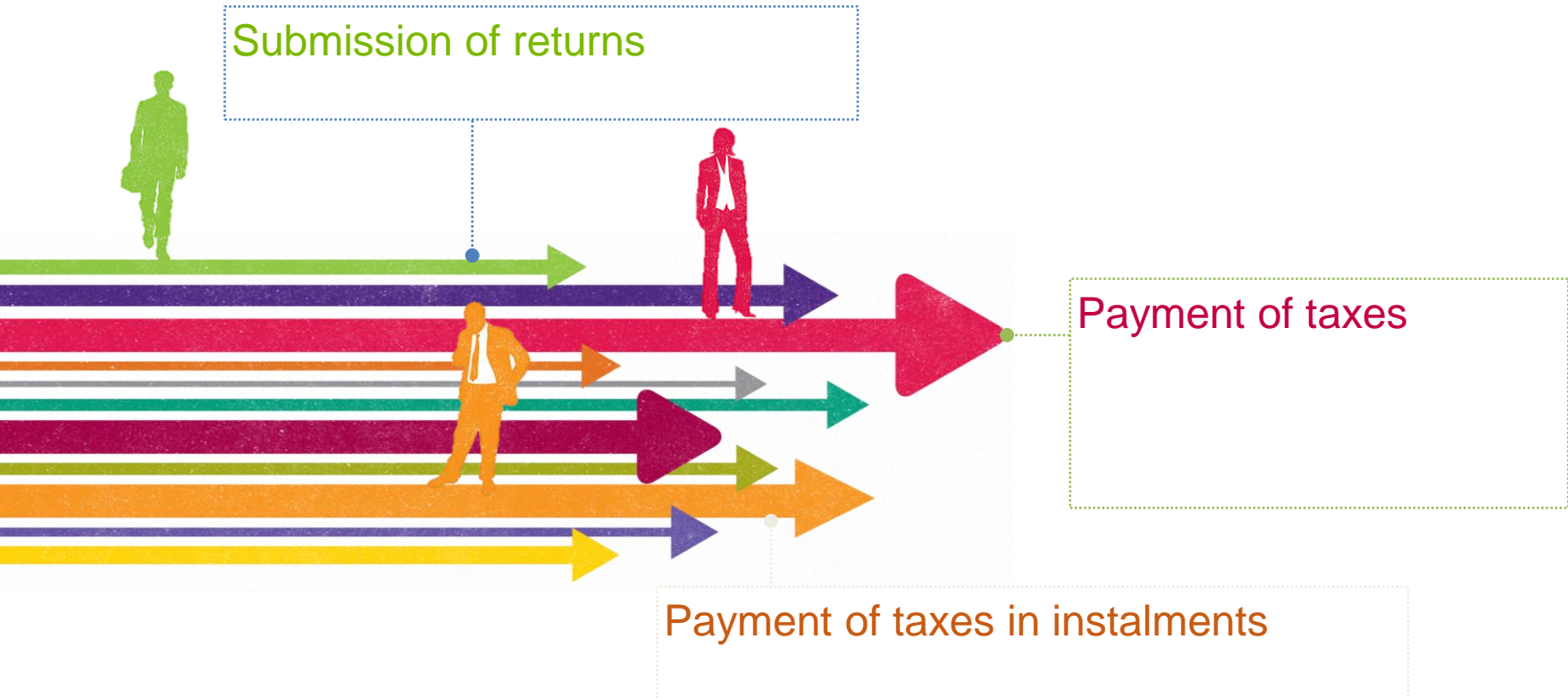
Tax Appeals Tribunal

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

Court of Appeal

After High Court TPA provides this as highest court

Extensions



Tax planning



– Some examples...

Personal tax

- Pension
- Insurance (Life, education health)
- Mortgage

Other non-tax

- Meal benefit KES 48,000pa
- Per diem KES 2,000 per day

Non-cash benefits

- School fees
- Study leave
- Club subscriptions

Low income earning employees

- School fees for children
- Bonus
- Overtime

Tax planning



– Some examples...

Investments

- Capital gains at NSE
- Interest from infrastructure bonds
- Mortgage

Withholding tax

- Qualifying interest
- Reimbursements vs disbursements

Tax Amnesty

- Rental income
- Foreign sourced income
- CRS

Thin capitalisation

- Charging nominal interest
- Balancing between debt and equity

Tax planning



Debt as a tool for tax planning

	Share Capital	Debt Capital
PBIT	150,000	150,000
Interest on shareholder's loan	-	100,000
Taxable profit	150,000	50,000
Tax @30%	45,000	15,000
Dividends	105,000	35,000
Interest	-	100,000
Total Shareholders return	105,000	135,000

Tax planning



	Managem ent fees	Dividends	Royalties	Interest
UK	12.5%	10%	15%	15%
Germany &Canada	15%	10%	15%	15%
Denmark Norway Sweden Zambia	20%	10%	20%	15%
India	17.5%	10%	20%	15%
France	nil	10%	10%	12%
Netherlands	nil	nil*	10%	10%
Mauritius^	nil	5%*	10%	10%
South Africa	nil	10%	10%	10%
Italy	nil	10%	20%	15%

Role of the Board



Tax risk assessment procedures for decision making

The tax function must be involved in the planning, implementation and documentation for:

- All business or share acquisitions and disposals
- All changes in corporate structure
- All cross- border financing arrangements
- All significant business transactions
- All cross- border trading arrangements
- All significant new processes affecting tax compliance.

Role of the Board



Proactive planning

- Beware of tax planning opportunities...
- Have a check-list of procedures
- Sharing of best practice
- Relationship with your station manager
- Whoever comes to equity must come with clean hands

Tax planning

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



Thank You....



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