



# ICPAK South Rift Branch Tax Workshop

29<sup>th</sup> Nov 2017. Taidy's Hotel, Kericho.  
2:00 pm – 3:00 pm

# Tax Planning, Tax Compliance Checklist and iTax updates 2017

Facilitator: John C. Okore

# Scope



## 1. Tax Planning

- i. Debates on Tax planning
- ii. Legal Provisions on Tax Planning
- iii. Examples of Tax Planning

## 2. Tax Compliance checklist

## 3. iTax updates 2017

# Tax Planning

# Debates on Tax Planning



- Tax planning would normally not miss in a debate about tax avoidance and tax evasion.
- Both tax avoidance and tax evasion are the results of tax planning in some way, though tax evasion takes it to the extreme.
- Tax avoidance would normally be associated with morality and debates on ethics while tax evasion is used for the outright criminal actions to reduce or eliminate tax liability altogether.
- The term “tax planning” is a sanitized reference to tax avoidance. In this presentation we shall enhance that sanitization.
- The difference between the two terms is mainly in the intent.
- You can’t do sufficient tax planning without proper knowledge of the law. Genuine innocent ignorance of the law may however be interpreted as tax evasion, especially when the amounts are large. Ignorance of the law is however no defense (Penal Code S.7)



# Legal Provisions on Tax Planning

- IT Act S.23: *Transactions designed to avoid liability to tax.* The effect of the arrangement need not be in the year it was transacted. It is allowed up to 3 years subsequent.
- IT Act S.24: Avoidance of tax liability by non-distribution of dividends. Dividends should be distributed within 12 months of the end of the accounting period. If dividends not paid, they may be deemed distributed 12 months after the end of the accounting period.
- IT Act S.7A: Dividend tax account
- Where there is aggressive tax planning, there is likely to be a difference in opinion between you and KRA. Equivocalities in law will normally be settled in the favour of the taxpayer. The challenge is however getting to a mutual agreement with KRA that there exists an equivocality. Aggressive tax planning stretches the limits of what is allowed in law.
- Tax **avoidance** penalty – Double the tax avoided – TPA S.85

# Examples

## **Pensions: Registered and unregistered**

- Contributions to a registered pension/provident fund are deductible. Withdrawals from a non-registered fund are not taxable.
- Retire at 65 and enjoy all your pensions tax free!

## **Airtime allowance for employees**

Send Ksh 3,000 as airtime and whatever is on top pay as cash with salary. This leaves only the cash part taxed. This however only applies for allowances below Ksh 4,500. For Allowances above this amount, the employee will pay less tax if you tax a third of the whole allowance.

*How? (Assuming the employee's salary is already in the upper slice of income and above the 30% bracket)*

$$(3,000 + X) * 30\% * (1/3) = 30\% * X \Rightarrow X = 1,500$$

# Examples



## **Holding companies**

- These may be set up in Tax havens and low tax jurisdiction territories e.g. Mauritius, Seychelles etc. It is however advisable to submit a transfer pricing policy to KRA for review to avoid future conflict. These are referred to as Advance Pricing Agreements and are not very common in Kenya.

## **ID- Setting up a factory**

- Where a huge factory worth more than Ksh 200M is to be built, avoid Mombasa, Nairobi and Kisumu cities and your ID will be 150% the investment. Land here is cheaper too

## **Meal allowance**

- Where food is available to everyone and is given as food rather than money for food.

## **Transport costs**

- Pool the drivers and vehicles

Employ persons with disability – Additional deductions provided (PWD Act S.16)



# Examples

## **Lease vs purchase?/Operating lease vs Finance Lease?**

- The answer should be advised majorly by the tax implication. This is because profit is abstract and no necessarily cash inflow. Tax however is a direct negative cash outflow when it accrues.

A serious plan begins with an understanding of The business (PESTEL), The law (Penal Code S.7), The Value Chain and channel strategy for your product (How does your product reach your customers?) and Your cash conversion cycle - The tax implication at each point must be known.

After some time, business processes become cyclic. Each decision on expenditure should be subjected to “what-if” analyses, especially fixed capital expenditure

## **Challenges to a solid plan**

- The tax legal environment is quite dynamic in Kenya (As per the theme for this conference). A strategy that gives you a benefit this year may have the opposite effect the next year

# Discussion Point



Would you be more willing to pay tax if the corporate tax rate was reduced to say 20%?



# Tax Compliance Checklist

Uphold public interest

# Tax Compliance Checklist



- KRA has adopted the TADAT (Tax Administration Diagnostic Assessment Tool) assessment tool for standardization of service assessment. This is a standard IMF tool for assessing the performance of Tax Administrations.
- TADAT has four pillars of taxpayer compliance:
  - ✓ **Registration** – Are all taxpayers supposed to register registered?
    - Is the information accurate?
  - ✓ **Filing** – Are all taxpayers who are supposed to file filing and doing so on time?
  - ✓ **Payment** – Are all due payments received on time?
  - ✓ **Accuracy of declarations** – Are the returns filed factual and fully reporting all transactions?

# Tax Compliance Checklist



- All your efforts to comply must therefore be gravitate around these four areas.
- **Registration** – Are you duly registered for all obligations you qualify for? Is the information you have supplied KRA on your registration accurate?
- **Filing** – Are you up to date with all your returns as per the tax obligations you are registered for?
- **Payment** – Do you make all your payments in full and on time?
- **Accuracy of declarations** – Are the returns you file factual and fully reporting all transactions? Are there any discrepancies between say your VAT and Income Tax turnover etc?
- All lists one may come up with are hinged on the aforementioned pillars of compliance.

# Discussion Point



Who is a taxpayer? Who is an active taxpayer?  
Would you stop paying taxes if you realized your  
neighbour wasn't?



# iTax Updates 2017

Uphold public interest

# iTax Updates 2017



- PAYE return has been enhanced to reflect the new rates of personal taxes as per the Finance Act 2016. The same is being developed for a combined statutory deductions return.
- You now do not have to upload the CSV files for credits received e.g. withholding tax credits, advance tax credits etc. The system gives you the total for the period specified.
- Payment of Stamp Duty was twinned with declaration and payment of CGT (This has been challenged in court though).
- An individual registered as a resident may file a non-resident return and vice versa.
- Introduction of the “Suspended” status of a PIN.



# Discussion Point



Has the iTax system made things easier or harder for tax agents and auditors? How?

# *The End*

## Change Missing!