

Taxation considerations during the pandemic

Presentation by:

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- Managing KRA Audits
- Managing Tax Compliance
- Changes effective January 2022
- Q & A

*“In life, you do not
get what you
deserve, you get
what you negotiate”*

What is a Kenya Revenue Authority audit?

- ❑ A KRA Audit is an examination a taxpayers affairs to ascertain whether the taxpayer has **correctly self assessed**, reported their tax liability and fulfilled their tax obligations.
- ❑ The audits are a major tool for tackling **non-compliance** and constitute the largest deployment of resources by the KRA for administration of the various tax laws.

SKM KRA- Active engagement and negotiation



- ❑ Managing relationships with the KRA is key
- ❑ Failure could result in:
 - Substantial-costs (taxes)
 - Forced insolvency



KRA- Active engagement and negotiation



- ❑ Increased revenue targets –the KRA’s aggressive pursuit of overdue taxes
- ❑ Performance based contracts and evaluations
- ❑ Review of legislation for potential gaps:
 - PINs
 - Provisioning
 - Transfer Pricing

KRA- Active engagement and negotiation



What will relationships facilitate?



- Relationships will facilitate:
 - Rescheduled** tax payment models of outstanding tax liabilities
 - Speedier** processing of refunds
 - Waiver** of penalties and interest
 - Commissioner's **discretion**



KRA Audit Triggers

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- ❑ Inter-company transactions:
 - Royalty payments, license and trade marks
- ❑ Staff – moles, unhappy employees
- ❑ Non compliance detected during a normal Audit
- ❑ Third party information – Exchange of information, iTax
- ❑ Related company audits

- ❑ **Salary figure** : Accounts versus PAYE returns
- ❑ PAYE not paid on time
- ❑ Significant fluctuations in PAYE
- ❑ Directors fees vis a vis the standard of living
- ❑ Higher salaries: Employees Vs Directors



Corporation tax audit triggers



- Failure to **separate source**
- Perpetual losses**
- Variance** in income: VAT returns and Income per Accounts
- Expenses **without** matching income e.g. rental
- Application for Tax Exemption



Corporation tax audit triggers



- Reputation of auditors and tax advisors
- Gross profit margin versus the industrial average
- Publicity: Websites, launches
- Third party information. - WHT and iTax

Transfer pricing audit triggers

- Cessation of business or a large part of business
- Lack of TP documentation (or failure to submit docs to KRA when requested)
- Exchange of information
- Companies in perpetual losses
- Publicity: Websites, launches

- Consistently in a refund position
- Third party information. - WVAT and iTax
- Sales inconsistencies
- VAT refund claims
- Consistently filing VAT returns late
- Non-compliance with ETR regulations



Customs & excise duty audit triggers

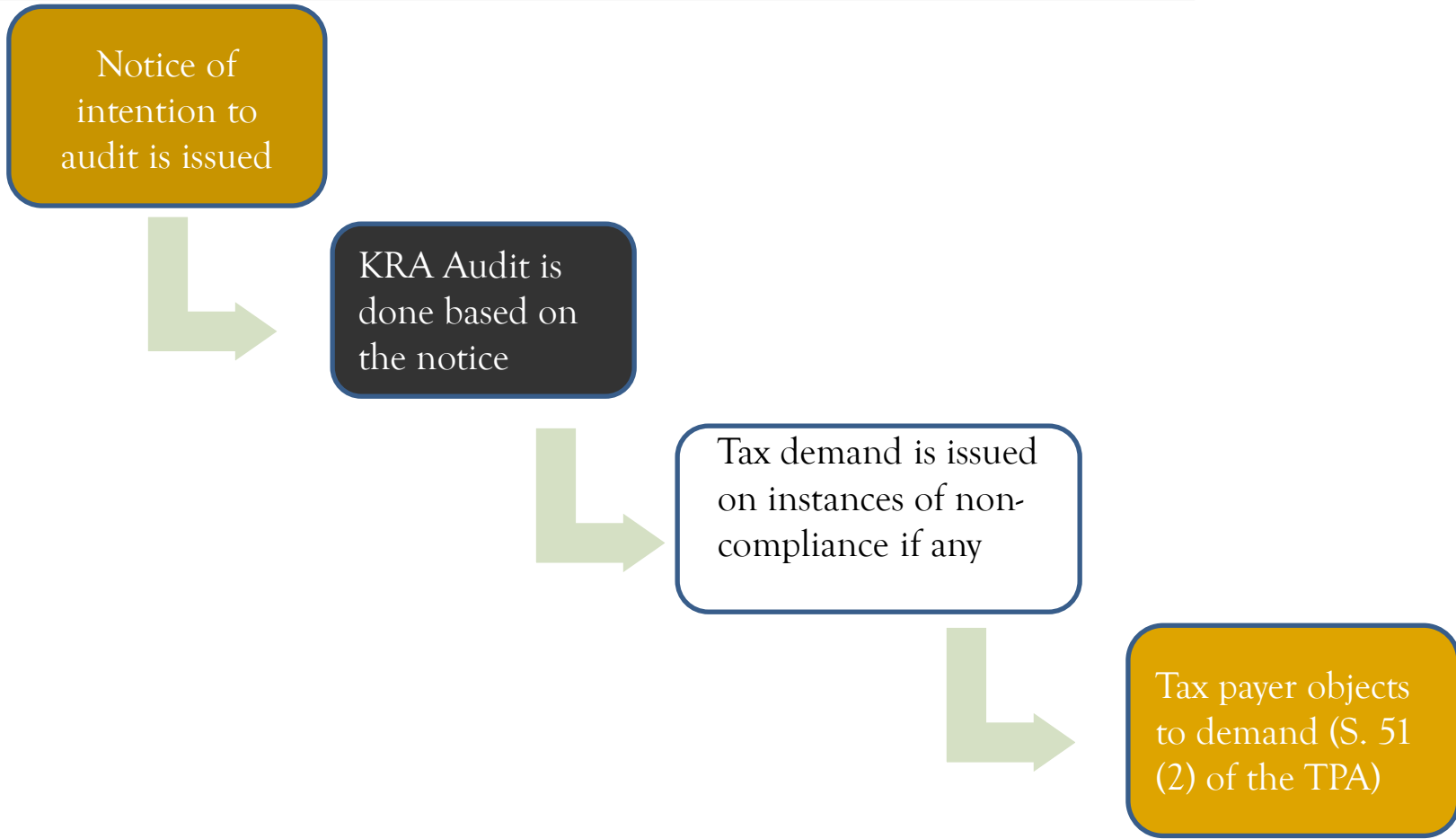


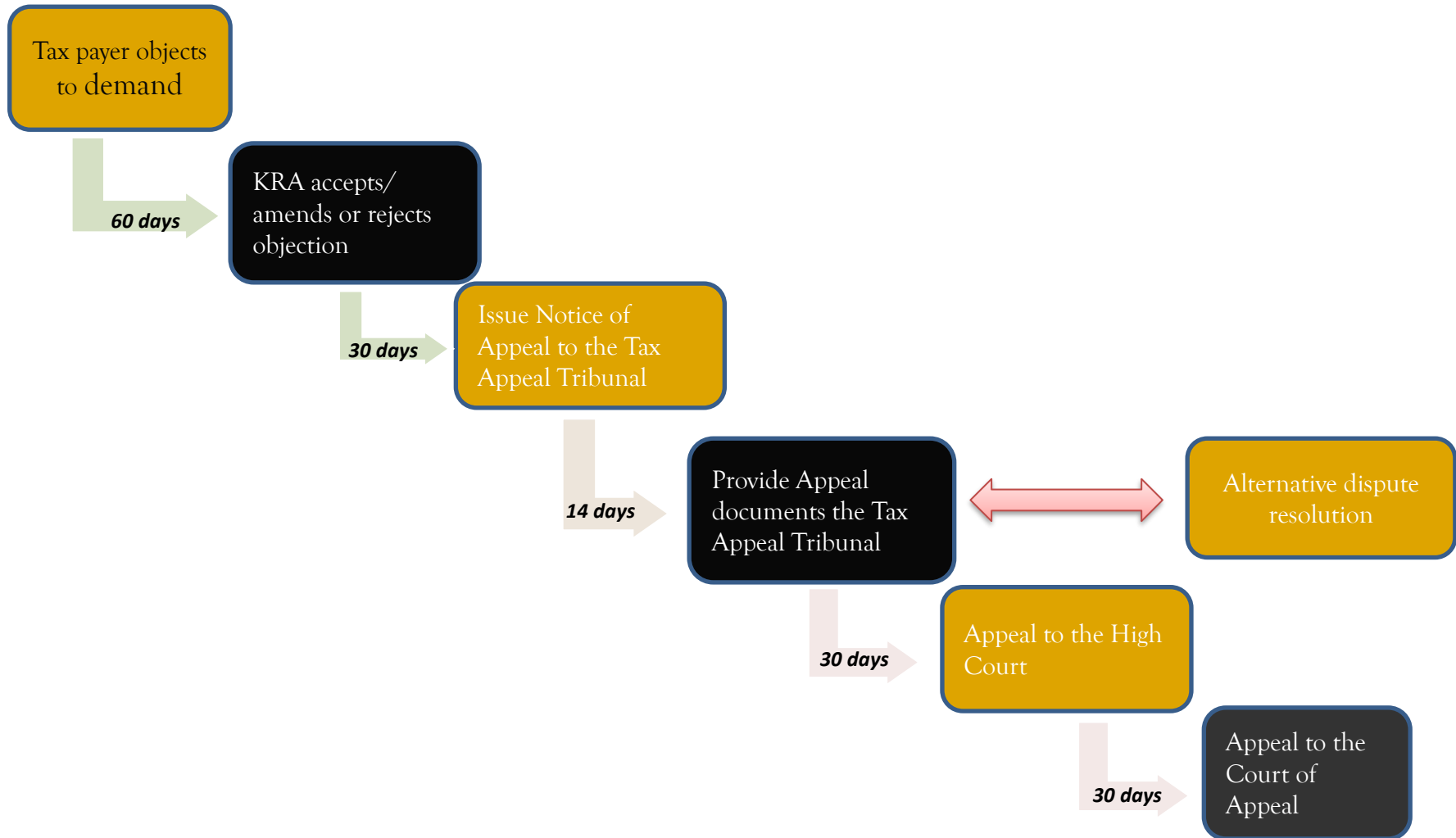
- Glaring differences on duty paid for similar goods
- Reputation of clearing agent
- Excise tax refund claims
- Failure to determine the correct ex-factory price
- Claiming remission or refund without complying with the provisions of the Act



KRA Audit Process

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Managing KRA Audits

Managing KRA Audits

- Before
- During
- After



Before the KRA Audit

- Involve a tax consultant before to analyze your systems
- Obtain official letter from KRA with the list of information required
- Prepare the relevant information
- Agree with the KRA on time frame
- Inform staff to avoid any surprises

During the KRA Audit

- Invite your tax advisors for the opening meeting
- Appoint one contact person to avoid many people dealing with KRA
- Senior most person to avoid dealing with KRA until last stages
- Document information provided to KRA, date provided and date returned
- Co-operate



During the KRA Audit



- Avoid off the cuff questions
- Consult your tax advisors on queries you are not sure of
- Invite your advisors for the exit meeting
- Resolve as many issues as possible before completion of audit

- Follow-up with KRA to issue their official letter confirming the position
- Involve your tax advisors from this stage
- Pay any tax not in dispute – *in duplum* rule is now in force!
- Respond to KRA's letters on timely basis



Managing Tax Compliance

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Managing Tax Compliance



- ❑ Tax compliance is more than computing tax accounting balances, it includes:
 - Reporting on tax compliance;
 - Managing tax planning outcomes; and
 - Maintaining tax audit obligations
- ❑ Tax is becoming a critical component of strategic approaches to achieving desired business goals

Managing Tax Compliance



- ❑ Given the increased regulation of tax, companies should consider how the tax function is:
 - Organized;
 - Staffed; and
 - Integrated into the broader business.

Managing Tax Compliance



- ❑ Reactive approaches to tax lead to:
 - Lost opportunities;
 - Reduced cash flows;
 - Operating inefficiencies;
 - Unwarranted risk; and
 - Higher tax liability.

Managing Tax Compliance



□ Key questions to ask:

- What is the most visible way to deal with your tax concerns;
- Is the tax function well positioned to meet company goals and objectives?
- What type of taxes does the tax function manage?



Tax and Strategy

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Incorporating Tax into Strategy



- ❑ Tax strategy helps prioritize activities and utilize resources and budgets efficiently
- ❑ Define a strategy for each obligation:
 - Tax accounting;
 - Tax reporting;
 - Tax planning;
 - Tax compliance; and
 - Tax audit

Incorporating Tax into Strategy

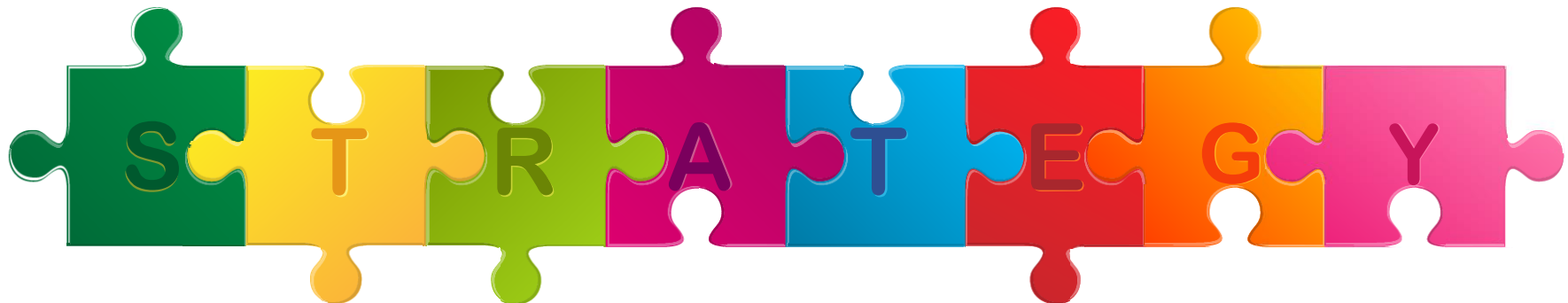


- The strategy should outline the objectives and daily activities to be carried out
- The specific person responsible for each function
- The tax control available and tax risk management strategies
- The organization's tax risk appetite? E.g. Conservative or low risk
- Align the structure of the tax function to resources, technology, process and controls accordingly

Incorporating Tax into Strategy



- ❑ All elements of tax should be considered to ensure they are best placed to:
 - Identify existing and potential tax risks;
 - Educate tax personnel and management to appreciate the importance of tax planning; and
 - Reduce tax exposure and limit legal liability





Strategic Tax Planning

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Strategic Tax Planning



- Traditionally view on tax - compliance function
- When tax forces its way onto the agenda of the CEO or Board it is often bad news
- Tax is capable of ensuring comprehensive accounting of the entire business
- Tax function gathers all necessary information for regulators – what kind of information does the company want out there?

Strategic Tax Planning



- ❑ What then should be done:
 - Use tax data as an integral part of the business decision making;
 - Integrate tax data with operations;
 - Engage the tax functions with external stakeholders; and
 - Elevate the tax function to the role of strategic contributor.



How to Increase Tax Compliance

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Tax Health Checks



- What are tax health checks?
- How often should they be carried out?
- To what extent can they unearth tax non compliance?
- Cost benefit analysis;
- Take aways from health checks;
- Implemenation of the recommendations



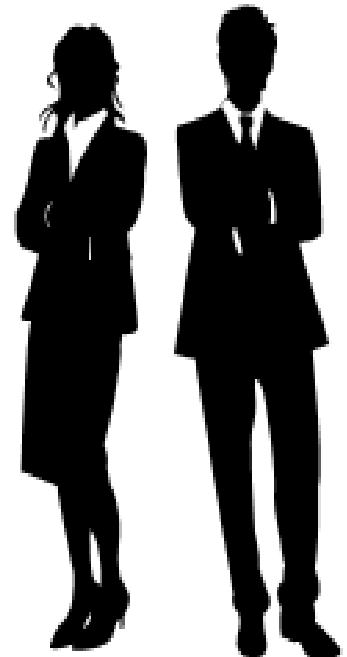
Internal Tax Controls

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Internal Tax Controls



- How are the tax functions split amongst the tax personnel?
- How many stages of review of tax data are in place?
- How well and how often is the tax team capacitated?
- What reporting lines exist and to what level?
- How often are the internal tax controls reviewed?





Changes effective January 2022

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Changes effective January 2022



- Tax rebate for apprenticeships expanded
- Eligible **companies** and individuals to benefit from Double Taxation Agreements
- Private Electricity Companies to claim ID
- Capital allowances to be claimed on straight line basis
- New thin capitalization provisions
- Insurance Relief - NHIF Contributions
- Additional reporting for multinational enterprises
- Offsetting tax liabilities against verified refunds



Q & A





Contact details



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