

INTERIM REPORT

AN INTERIM REPORT BY THE TASK FORCE INVESTIGATING ECONOMIC CRIMES BY CHARTERHOUSE BANK AND RELATED COMPANIES

(Updated from the 12th November 2004 interim report, it's latest findings)

INTRODUCTION

The task force met on 28th and 29th October 2004 to appraise themselves with the task and draw up an action plan.

OBJECTIVE

The team defined their objectives as:

- 1.1 To institute an economic crime investigation against the companies mentioned below with a view to identifying potential Tax evasion, illegal, money transfers or violation of Banking Act with the connivance of Charterhouse Bank Ltd. The companies are:
 - 1.1.1 Creative Financials Ltd.
 - 1.1.2 Sailsh Prajapati
 - 1.1.3 D. Shah
 - 1.1.4 Kariuki Muigua & Co. (Clients Accounts)
 - 1.1.5 W. E. Tilley (Muthaiga) Ltd
 - 1.1.6 Paolo Sattanino
 - 1.1.7 Tusker Mattresses Ltd
- 1.2 To establish whether the Bank aided the said companies in committing economic crimes
- 1.3 To identify the Directors of Charterhouse Bank and establish a link with the related companies in a possible network [or committing economic crimes with a view to breaking it

METHODOLOGY

The task force undertook the following steps to achieve its objective:

- f
- 1.4 Carried out a search at the Registrar of Companies offices for details of the companies referred above to obtain their registration details.
- f
- 1.5 Traced the physical addresses of the said companies to establish their locations.
- 1.6 Carried out a surprise visit to Chellierhouse Bank to obtain bank account details in respect of various accounts held by the above listed companies and individuals.
- 1.7 Carried out a surprise visit to the specified companies and obtained documents and records relating to their business activities for the period starting 1st January 1999 to 4th November 2004

The visits to the companies' premises and the bank were carried out simultaneously.

- 1.8 Wrote to the Kenya Revenue Authority and obtained tax records in respect of the companies listed above
- 1.9 Started sifting through the documents obtained from the companies and the bank to try and establish any incidence of YAT evasion

SJIORT TERJM SCOPE

The team set out a short-term objective, which was to try and establish any likelihood of YAT evasion by the said companies for the period beginning 2nd of May 2003 to September 2004

The reason for this short-term scope was to take into account the following factors:

1. To take advantage of the period Kenya Anti - Corruption Commission became operational and within which period it can legally investigate and prosecute
2. The team appreciated that the exercise is complex and will take longer to complete hence it was necessary to define a short term goal for immediate action while the long term objective will be pursued systematically as the investigation expands

INTERVIEW FINDINGS

CREATIVE INNOVATIONS LTD

From the documents collected from the company's premises and from Charterhouse Bank, the following was observed:

- r That the COMPANY operates four bank accounts with the Charterhouse Bank
- » Only two accounts are disclosed in the company's official records. These are:
 - o CA. 01 - 001000009
 - o CH 01 - 0001000275

r The other two accounts as shown below with deposits amounting to Kshs. 262,105,659 are not disclosed in the company's Balance Sheet for the period under review (ie from 2nd May 2003 to October 2004).

- o CA 01 - 01000074 Kshs.237,268,640
 - o CH 01 - 01000206 Kshs. 24,837,019
- 262,105,659

»- It is evident that these deposits are company income from sales and have not been assessed for VAT and Income Tax since they are not disclosed in the companies official records

»- The figure shown above is for the period under review starting from May 2003 to October 2004. It will certainly grow once the prior period is computed

r Computed VAT evasions plus penalties for the period amount to Kshs. 202,411,498 for that period.

»- The corresponding VAT and Additional Tax liability for the period May 2003 to October 2004 is Kshs. 44,839,492.

0111 observations

r The company mainly deals with imports most of which is supplied to Nakumatt Holdings Ltd. It was observed that the company in respect of these supplies to Nakumatt Holdings maintains no proper documentation

r It has also come to the Commissions knowledge that the company is a major supplier of certain oils/lubricants to the following corporations the income of which may not have been disclosed in their books

- o Kenya Ports Authority
- o Kenya Airports Authority
- o Kenya Power & Lighting Company

Next course of action

:- Compile a case file and recommend charges on the Directors of Creative Innovations for failure to pay VAT and Additional Tax in the tune of Kshs. 44,839,492 to the Kenya Revenue Authority in the period from March 2003 to October 2004

r The Kenya Revenue Authority to recover from Creative Innovations Ltd the amounts owed in VAT and Additional Tax.

Offence likely to be disclosed

Failure to pay taxes contrary to section 45 (1) (d) of the Anti-Corruption and Economics Act of 2003

V E TILLEY (MUTHAIGA) LTD

From documents obtained from the bank and the company's premises, the following has been observed:

:- The company is a fish processing firm with exports forming 95% of their sales and the remainder 5% being local sales

∴ from the above observations it follows that the bulk of their sales proceeds are in foreign currency i.e. US Dollars

r The company has three other related companies for which they allege to handle their export through Kenya. The directorships are the same for all the four companies. The three companies are:

- o Prime Catch Ltd Tanzania
- o Mara Fish Packers Ltd Tanzania
- o Victoria Fish Packers & Processors Ltd Uganda

r The company operates six bank accounts spread as shown below

- o Charterhouse Bank
 - CAOI-600178 US DOLLAR ACCOUNT
 - CA 01 - 01000630 KSHS. ACCOUNT
- o Imperial Commercial Bank
 - 100805 162 US DOLLAR ACCOUNT
 - 100805 00G KSHS. ACCOUNT
- o Fidelity Commercial Account
 - 11502443 US DOLLAR ACCOUNT
 - 11102442 KSHS. ACCOUNT

∴ The total credits for the period January to September 2004 into the six accounts amount to Kshs 5,893,464,798. This figure is not adjusted by opening and closing debtors although the deposits still appear to be on the higher side

r The total sales for the same period amount to Kshs 1,351,874,269

∴ There are numerous transfers from dollar accounts to shilling accounts in the same bank and across the other banks as well raising the possibility of double credits in computing the above figure

r There is also evidence of heavy trading in foreign currency between the company and several Forex Bureaus in the city

∴ The company claims to receive export proceeds for its related companies and banking it in its own accounts

r It was observed that the company banks a lot in Afro Forex Bureau bank account with Fidelity Commercial bank

∴ Huge payments are also made to persons who on the face of it do not seem to have any relationship with the nature of the company's business activities

Additional findings

r Total sales for the period May 2003 to October 2004 amounted to Kshs. 5,230,206,711.25 while the total deposits into their official bank accounts amount to Kshs. 5,630,611,476.00.

∴ Allowing for exchange rate gains (losses) it seems the deposits in their official bank accounts compensate for the sales proceeds of the three sister companies.

r But the company only declares the sales proceeds of the Kenyan operations to the Kenyan Tax Authority.

r No evidence however is seen of remittances to the Tanzanian companies to account for their exports.

» There is evidence that the company trades heavily in foreign currency with a number of Forex Bureaus.

Next course of action

r Contact the Tanzanian Revenue Authority to find out whether the Tanzanian sister companies declare their export earnings in Tanzania.

.. If the amounts are not brought to charge in Tanzania, then the relevant Kenyan tax will be assessed on the balance not declared in Kenya.

T Establish the implications of trading in foreign currency, assess the income earned, determine the tax implications and recommend appropriate action.

r Prepare a case file and recommend charges on the Directors for failing to declare income and pay taxes to the Kenya Revenue Authority.

Offence likely to be disclosed

1. Failure to pay taxes contrary to section 45 (1) (d) of the Anti-Corruption and Economics Act 0[2003
2. Money laundering activities

TUSKERI\IATTRESSES LTD

A scrutiny of the documents obtained from the company's premises and the Charterhouse Dank revealed the following:

r The company operates a current bank account No 301 which had a balance of Kshs. 4.3 billion from 2nd May 2003 to September 2004

r The bank account was opened in the year 2001 but was not disclosed in the official books of accounts for the years 2001 and 2002

r However Charterhouse bank is included in the final accounts for the years 2003 and 2004.

r We have also discovered that the company's Directors operate numerous other accounts with the Charterhouse Dank in the form of fixed deposit accounts,

savings accounts, and current accounts and call accounts. These accounts numbering about seventy-five reflect huge balances.

Additional findings

- :- Going by banked sales and VAT declared account, we observe that the supermarket has under declared their sales by Kshs. 911,(19)87 between July 1999 to June 2001 which would attract a VAT levy of approximately 160,998,230 in principal amount alone.
- r The corresponding figure for period under review i.e. July 2003 to June 2004 we find an under-declaration of Kshs. 59,397,968, which would attract a VAT levy of approximately Kshs. 9,503,674 in principal amount alone.
- r Between July 2002 and June 2004, the company also understated their purchases by Kshs. 437,679,937, which would attract Kshs. 75,808,414 in principal VAT levy.
- r The corresponding figure for July 2003 to June 2004 is Kshs. 148,698,662, which would attract the VAT levy of Kshs. 23,791,785 in principal sum.
- r The above figures can only be confirmed after:
 - o Crosschecking with the sales account in the computer.
 - o Cross check sales to other supermarkets in the chain
 - o Analyzing stock records
 - o Verifying the input tax

Next course of action

- :- Access the computer data and verify the figures quoted above.
- :- Establish the final taxable amount and assess tax.
- r Obtain Bank account records of the numerous fixed deposit, call deposits and current account deposits of the company and the Directors held at Charterhouse Bank and Barclays Bank and investigate if any of the supermarket sales proceeds are banked directly into those accounts
- r Prepare a case file and recommend charges on the Directors of Tusker Mattresses for failing to declare income and pay taxes due to the Kenya Revenue Authority.
- r Kenya Revenue Authority to commence recovery of the taxes due.

The second phase of the investigations will focus on the remaining four entities with the aim of unraveling the network of secret bank accounts with the attendant tax evasions, illegal money transfers and violation of banking rules by big businesses. This second phase should start as soon as the first phase is considerably concluded.



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30TH NOVEMBER 2001