

INTERIM REPORT

AN INTERIM REPORT OF THE TASK FORCE INVESTIGATING ECONOMIC CRIMES IN CHARITABLE TRUSTS AND RELATED COMPANIES

The Kenya Anti-Corruption Commission backed by officers from the Kenya Revenue Authority and the Banking Fraud Investigation Department made a surprise raid to the following four establishments.

- 1) Charterhouse Bank
- 2) Tusker Mattresses
- 3) Creative Innovations Limited
- 4) WE Tilley (Muthaiga) Ltd

From the Charterhouse Bank, account records for the following companies and persons were collected:

- 1) Tusker Mattresses
- 2) Creative Innovations
- 3) WE Tilley (Muthaiga) Ltd
- 4) Sailesh Prajapati
- 5) D Shah
- 6) Paolo Sattanino

For the convenience of operating within the period within which the Kenya Anti-Corruption Commission can legally investigate, the Task Force decided to initially scrutinize the records of the first three companies starting from 2nd May 2003 to date with a view to establishing any incidence of VAT and Income Tax evasion.

The following findings have been made following the scrutiny of the company's records vis-à-vis (the bank records,

1. CREATIVE INNOVATIONS LTD

- r We have discovered two undisclosed Bank accounts of Creative Innovations with deposits totaling to Kshs. 262,105,659 within the period January 1999 to October 2004.
- r- Computed VAT evasions plus penalties for the period amount to Kshs. 202,491,498 for that period.
- ∴ The corresponding VAT and Additional Tax liability for the period May 2003 to October 2004 is Kshs. 44,839,492.

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.

2. W E TILLEY (MUTHAIGA) LTD

- r W E Tilley Muthaiga Ltd is a fish processing and export company with sister companies Tanzania.
- r The Kenyan company handles all the exports on behalf of the Tanzanian companies and receives payments on their behalf.
- r Total sales for the period May 2003 to October 2004 amounted to Kshs. 5,230,206,791.25 while the total deposits into their official bank accounts amount to Kshs. 5,030,611,476.00.
- ∴ 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.

- ∴ But the company only declares the sales proceeds of the Kenyan operations to the Kenyan Tax Authority.
- ∴ No evidence however is seen of remittances to the Tanzanian companies to account for their exports.
- r 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.
- r: 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.
- r: 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.

3. TUSKI-R MATTRESSES LTD

- r Going by banked sales and VAT declared account, we observe that the supermarket has under declared their sales by Kshs. 9) 1,619,287 between July 1999 to June 2004 which would attract a VAT levy of approximately 160,998,230 in principal amount alone.
- ∴ 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.
- ∴ Between July 2002 and June 2004, the company also understated their purchases by Kshs. 437,679,937, which would attract Kshs. 75,508,414 in principal VAT lev):

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.
- Y Establish the final taxable amount and assess tax.
-)- 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 Bare lays 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.
- > Kenya Revenue Authority to commence recovery of the taxes due.

4. (ARIUKI MUIGUA & CO. (CLIENTS ACCOUNT)

-)- Charterhouse Bank declined to provide any documents on this account citing a high court order barring anybody from investigating it.
- r: Later the bank forwarded a copy of another high Caliri order baring the Kenya Anti-Corruption Commission from investigating the account.
- r: This latter High Court order has not been served on the Commission as at the time of making this report.
-)- It is believed that the account is operated by big businesses in town that deposit sales proceeds into the account and hope to hide them using the cloak of client's confidentiality under the advice act.

Next course of action

- > Await service of the order to determine the next course of action.

5. D SHAI ACCOUNT

- > Between 5th May 2003 and 31st November 2004, the account received a total of Kshs. 601,8171.33 in deposits.
-):- Some of the deposits have been established as cash transfers from sundry creditors.
-):- The equivalent is then taken out as Idd issued by order of Mr. D Shah

Next course of action

-):- Trace the fdds and try to establish the beneficiaries of the transfers.
- 7th Establish the real source of funds and determine whether it is a parallel account to hide sales proceeds for companies.
- r Assess the information and recommend appropriate action.

G. SAILESH PRAJAPATI ACCOUNT

- :- No account opening documents available. They were allegedly burnt in a godown fire.
- r: Kshs. 555,618,102.25 deposited between 2nd May 2003 and 2nd August 2004
- r: Most deposits from Nakurnatt holdings and transfers from sundry creditors.
- r In one instance an equivalent of the amount transferred from Sundry Creditors is taken out through Idil's by order of various persons

Next course of action

- r Trace the Idds' to establish their beneficiaries
- r Trace the source of funds and establish whether is a scheme to hide sales proceeds to evade tax.
- r Determine the extent of liability and recommend appropriate action.

7. PAOLO SATTANIO\O ACCOUI\TS

- a) CA 01-60006 Approx Kshs. 52 Million in deposits.
- b) CA 01 - 800145 Approx 40,808,298 in deposits.
- c) CA 01-700154 Approx 712,200 in deposits.

- r No account opening documents.
- ∴ Accounts held in foreign currency.
- ∴ Withdrawals mostly by Telegraphic transfers.

Next course of action

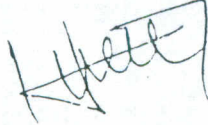
- r Establish the purpose of the funds transferred into his accounts
- ∴ Establish the tax implications on the activities of these accounts.
- r Assess appropriate tax
- ∴ Charge those responsible [or tax evasion with the offence of committing an economic crime
- ∴ Pursue the destination of tile funds transferred out of tile account by telegraph and establish whether any laws have been contravened.

CONCLUSION

The first phase of this exercise focused on the first three companies with the aim of investigating allegations of VAT and Income Tax evasions. The three are:

- i) Creative Innovations
- ji) W E Tilley (Muthiga) Ltd
- iii) Tusker Mattresses

The second phJSC 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.

A handwritten signature in black ink, appearing to be 'H. Hall', enclosed in a rectangular box.

Prepared by: **HE:RY;NMYITIII**
30TH NOVEMBER 200-t

OTHER ENTITIES

Bank account details were sought for the following entities and below are the observations from the information obtained from Charterhouse Bank

KARIUKI MUIGUA & CO. (CLIENTS ACCOUNTS)

Charterhouse Managing Director declined to divulge any information or documents with regard to this account citing a High Court order, which he claimed, barred him from disclosing any information with regard to the above named accounts. He could only produce a court order barring certain respondents from accessing the information with regard to that bank account of which the Kenya Anti-Corruption Commission or its agent was not among them.

However, according to documents availed from other sources within the task force, one of the accounts, CA 01 - 000563 received deposits amounting to Kshs. 380,548,898 starting from 8th March 2004 to 1st September 2004. Information from the same source also indicated that the bank acts on unsigned instructions supposedly from Kariuki Muigua, raising the possibility that the instructions are prepared within the bank. It is also believed that the account is actually operated by some of the big businesses in town but shielded by the cloak of clients' confidentiality.

Latest developments

- r: The bank forwarded a copy of another high court order barring the Kenya Anti-Corruption Commission from investigating the account.
- > This later High Court order has not been served on the Commission as at the time of making this report.
- r It is believed that the account is operated by big businesses in town that deposit sales proceeds into the account and hope to hide them using the cloak of client's confidentiality under the advocates act.

Next course of action

- r Await service of the order to determine the next course of action.

Offence likely to be disclosed

Failure to pay taxes by the companies using this account as parallel accounts contrary to section 45 (1) (d) of the Anti-Corruption and Economics Act of 2003

D SHAH ACCOUNT

This account has received a total of Kshs. 8,171,330.00 in deposits for the period starting from 15th May 2003 to 3rd November 2004 mostly in huge cash deposits. It is also reflects huge cash withdrawals. It is believed that the related companies use this account as a secret parallel account through which to hide sales proceeds. The account opening documents could not reveal the owner.

Additional findings

- r Some of the deposits have been established as cash transfers from sundry creditors.
- ∴ The equivalent is then taken out as fdd issued by order of Mr. D Shah

Next course of action

- ∴ Collect debit and credit vouchers effecting entries into this account and establish the source of the funds
- r Interview Charterhouse bank officials and try to trace the owner of the account
- ∴ If a case is established of VAT and Income Tax evasion, then charge the companies their directors with committing an economic crime
- ∴ Trace the fdd's and try to establish the beneficiaries of the transfers.
- r Establish the real source of funds and determine whether it is a parallel account to hide sales proceeds for companies.
- ∴ Assess the information and recommend appropriate action.

Offences likely to be disclosed

Tax evasion contrary to section 45 (I) (d) of the Anti-Corruption and Economics Crimes Act 0[2003

SAILESII - PRAJAPATI ACCOUNT CA 01 - 000148

The bank claimed that account-opening documents in respect to this account were burnt down in a fire,

However, between 2nd July 2003 and 2nd August 2004 the account received Kshs. 551,518,102.25 in the form of huge cash deposits, and cheques from Nakummatt Holdings. The account also reflects cash withdrawals in an usually huge amounts. It is believed that this account is also used by big business in town like to hide sales proceeds.

Additional findings

- r. Most deposits from Nakumatt holdings and transfers from sundry creditors.
- r. In one instance an equivalent of the amount transferred from Sundry Creditors is taken out through FJJ's by order of various persons

Next course of action

- r. Collect debit and credit vouchers effecting entries into this account and establish the source of the funds
- r. Trace the Idcl's to establish their beneficiaries
- r. Interview Charterhouse bank officials and try to trace the Owner of the account
- r. If a case is established of VAT and Income Tax evasion, then charge the companies their directors with committing an economic crime.

PAOLO SATLANINO ACCOUNTS

Mr. Paolo Satlanino operates three foreign accounts with Charterhouse Bank. However, the bank opening documents contains the name of Capricorn SRL. The bank officials claimed that those are the documents for the account. The bank opening documents are an account opening JJJ and two letters signed by Paolo Sattunino, one as

himself and the other as the Managing Director of Capricorn SRL. The letters authorize the bank to act on 12 - Mail instructions from the writer.

The three accounts are: -

1. ACCOUNT NO. CA 01 - 60006 A US DOLLAR ACCOUNT

A scrutiny of the bank statement revealed that the above account received USD 657,651.2. (the equivalent of Kshs. 52 million) between 1st April 2004 and 3rd November 2004 by way of transfer mostly from Creative Innovations and Kingsway. Telegraphic transfer of foreign exchange takes out an equivalent amount to recipients like several recipients like Tradex.

Steps to be undertaken

1. Establish the purpose of the funds transferred into his account

2. Establish the tax implications on the activities of this account.

3. Assess appropriate tax

4. Charge those responsible for tax evasion with the offence of committing an economic crime

5. Pursue the destination of the funds transferred out of the account by telegraph and establish whether any laws have been contravened.

2. ACCOUNT NO. CA 01 - 800145 EURO ACCOUNT

This account received a total of Euros 392,387.49 (the equivalent of Kshs, 40,808,298) in the short period between 1st April 2004 and 22nd October 2004. Similarly, the deposits were by way of transfers from Creative Innovations and D Shah accounts. Debits in the account a by way of telegraphic transfers to foreign destinations.

Steps to be undertaken

1. Establish the purpose of the funds transferred into his account

2. Establish the tax implications on the activities of this account.

3. Assess appropriate tax

4. Charge those responsible for tax evasion with the offence of committing an economic crime

Offences likely to be disclosed

Tax evasion contrary to section 45 (1) (d) of the Anti-Corruption and Economic Crimes Act of 2003

SAILESII PRAJAPATI ACCOUNT CA 01 - 000148

The bank claimed that account-opening documents in respect to this account were burnt down in a fire.

However, between 21st April 2003 and 2nd August 2004 the account received Kshs. 551,518,102.25 in the form of huge cash deposits, and cheques from Nakumau Holdings. The account also reflects cash withdrawals in an usually huge amounts. It is believed that this account is also used by big business in town like to hide sales proceeds.

Additional findings

r Most deposits from Nakumau Holdings and transfers from sundry creditors.

r In one instance an equivalent of the amount transferred from Sundry Creditors is taken out through fdds by order of various persons

Next course of action

> Collect debit and credit vouchers effecting entries into this account and establish the source of the funds

r Trace the fdds to establish their beneficiaries

r Interview Charterhouse bank officials and try to trace the owner of the account

r If a case is established of VAT and Income Tax evasion, then charge the companies their directors with committing an economic crime.

PAOLO SATTANINO ACCOUNTS

Mr. Paolo Sattanino operates three foreign accounts with Charterhouse Bank. However, the bank opening documents contains the name of Capricorn SRL. The bank officials claimed that those are the documents for the account. The bank opening documents include an account opening form and two letters signed by Paolo Sattanino, one as

Pursue the destination of the funds transferred out of the account by telegraph and establish whether any laws have been contravened

Offence likely to be disclosed

- 1: Failure to pay taxes contrary to section 45 (1) (d) of the Anti-Corruption and Economics Act of 2003.
2. funds transfer to secret destination.



Prepared by: **HENRY MITHIA**
12¹¹ NOVEMBER 2004