

- ✓ Obtain details and information on Directors bank accounts held in the same bank and in other banks and establish whether any company proceeds are banked in them
 - ✓ Obtain an explanation on the surplus amount from the Directors of the company
 - ✓ If no satisfactory explanation is obtained, assess VAT and Income Tax on the surplus
 - ✓ Charge the company and the Directors with the offence of committing an economic crime contrary to section 45 (1) (d) of the Anti-Corruption and Economics Crimes Act of 2003
 - ✓ Compute income into the same accounts for the period starting from January 1999 to April 2003 and levy the appropriate taxes and pursue the necessary legal action
 - ✓ Obtain the details of vehicles sold to one of their companies for which details of the transactions have not been properly disclosed
 - ✓ Obtain from the company documents relating to vehicles sold to Prime Catch Ltd one their related companies
 - ✓ Establish the nature and purpose of huge payments made to certain persons
 - ✓ Get an explanation on huge withdrawals and deposits from the some of the accounts held in their banks
 - ✓ Obtain an explanation in regard to transactions with certain Bureaus in town especially the Afro Forex Bureau.
 - ✓ Pursue other leads that will emerge
- 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. Money laundering activities

TUSKER MATTRESSES LTD

A scrutiny of the documents obtained from the company's premises and the Charterhouse

Bank revealed the following:

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

- We have also discovered that the company's Directors operate numerous other accounts with the Charterhouse Bank in the form of fixed deposit accounts, savings accounts, and current accounts and call accounts. These accounts numbering about seventy-five reflect huge balances

Steps remaining to be undertaken

- Establish when the account 301 at Charterhouse Bank was incorporated in the official books of accounts
- Obtain from Charterhouse Bank and Barclays Bank details of other accounts held by the company's directors and assess whether proceeds from the company are deposited in those accounts
- Determine whether any of the period under review was excluded
- Assess tax on undeclared income for the period under review
- Charge the directors and the company with the offense of tax evasion
- Pursue source of imported goods sold by the company. There were no import documents found in the company's premises
- Cover the period starting from 1999 to April 2003
- Pursue any other leads

OTHER ENTITIES

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

KARIUKI MUGUA & 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. 386,548,898 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 Muga, 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.

Steps to be undertaken

Since the court order barring access to any of Kariuki Mugas accounts does not cite the Kenya Anti – Corruption Commission or its agents, then the warrant to investigate issued to Henry Mwilithia should be enforced.

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. 601,968,171.33 in deposits for the period starting from 5th 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.

Steps to be undertaken

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

- 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

Offences likely to be disclosed

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

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

Steps to be undertaken

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

- 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.

PAOLO SATTANINO ACCOUNTS

Mr. Paolo Sattaino 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 form and two letters signed by Paolo Sattaino, one as himself and the other as the Managing Director of Capricorn SRL. The letters authorize the bank to act on E – 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

- Establish the purpose of the funds transferred into his account
- Establish the tax implications on the activities of this account
- Assess appropriate tax
- Charge those responsible for tax evasion with the offence of committing an economic crime
- Pursue the destination of the funds transferred out of the account by teleglyph 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

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

3. ACCOUNT NO. CA 01 – 700154 A BRITISH POUND ACCOUNT

Between 1st April 2004 and 22nd October 2004, the above account received a total of 4,748,20 British Pounds (the equivalent of Kshs. 712,200) in deposits mainly from D Shah.

Steps to be undertaken

- Establish the purpose of the funds transferred into his account
- Establish the tax implications on the activities of this account.
- Assess appropriate tax
- Charge those responsible for tax evasion with the offence of committing an economic crime

➤ 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 M MWITHIA
12TH NOVEMBER 2004

SECRET

As a consequence, a Joint Action Team was set up under the leadership of KACC. Dr John Mutonyi, Assistant Director, KACC was Chairman, other KACC members were Henry Mwithia, Gideon Lukalia, Davis Farah, Antony Kahiga and Vincent Kiptoon, all KACC investigators and Ms Fatuma Sichale, Legal Officer, KACC. The Central Bank was represented by Gerald Nyaoma, Director of Financial Institutions Supervision Department and Titus Mwirigi (nominated) Auditor. Governance and Ethics was

Using the information received from the Minister for Finance, the Due Diligence Team examined these accounts more closely and it was found that almost all of them were linked to Nakumatt Holdings. The CBK through the Governor informed the Minister for Finance of the outcome of these investigations and got his approval to convoke a meeting with the Director, Kenya Anti Corruption Authority (Justice A Ringera), the Permanent Secretary, Governance and Ethics (John Githongo), and the Director, Public Prosecutions (Phillip Murgor) to discuss the way forward.

As a background of these investigations, the Central Bank had set up a Due Diligence Team in 2003 to examine more carefully than was generally done by Bank Supervision, the activities of banks that appeared to have some problems. On the basis of information received from the Minister for Finance, the Due Diligence Team inspected Charterhouse Bank activities. Charterhouse ostensibly looked satisfactory but detailed examination found that a number of account holders actually had multiple bank accounts which is a standard way of detecting potential tax evasion. The corporations and individuals that were identified are shown in the Results section below.

Further to my previous briefings to the Minister for Finance on September 23, 2004 and October 29, 2004, I would like to provide an update on the status of investigations relating to Charterhouse Bank activities.

STATUS OF CHARTERHOUSE BANK LIMITED INVESTIGATIONS

Dear

Hon Minister

Nairobi

The Treasury

Minister for Finance

Hon. Amos Kimunya, EGH, MP

March 20, 2006

Halle Selassie Avenue
P.O. Box 60000 Nairobi Kenya
Telephone 226431 Telex 22324

MINISTER FOR FINANCE
RECEIVED
21 MAR 2006
P.O. Box 30007
NAIROBI

Governor

BANKI
KUYA
KENYA



CENTRAL
BANK OF
KENYA

SECRET (3)

539

1/1/06

SECRET

- No account opening forms
- No records of account were available (it was claimed that these were destroyed by fire)
- Turnover Ksh.2.186 billion from Nakumatt

2. Salesh Pratapati

Discovered VAT evasion of Ksh.247 million

1. Creative Innovations Ltd

Results from the Second Interim Joint Task Force Report

There is an extensive group of allied accounts that were identified but not fully examined. These are mentioned generically here below. These undoubtedly involved significant tax evasion if not other economic crimes.

Nevertheless, with the information available in the second interim report, one can conclude that these organizations (including Nakumatt) would appear to have evaded tax with the collusion of Charterhouse Bank to the extent of between Ksh.2 and 3 billion in any one year. If penalties were levied on top of this it would be much more than twice this amount. Furthermore, the partial accounts that have been examined only cover one year and there is every reason to believe, in view of the fact that these accounts all had opening balances, that the operation has been continuous for 5 to 6 years.

This Action Team, in view of its membership, was able to do more detailed investigation since information from alternative sources was made available which would not have been possible under the Banking Act. This investigation fully endorsed the suspicion that there was significant tax evasion. Up to the 30th November 2004 there were two interim reports prepared. Thereafter the CBK was not informed nor was it requested to provide further support. The second interim report of the Joint Action Team, dated 30th November 2004, is the basis of the data presented in this letter.

Since KRA has the capacity to work on retroactive information, it was to pursue taxes while KACC would pursue economic crimes that were identified after 2nd May 2003, the effective date of the Economic Crimes Act. More detailed work would undoubtedly have yielded more significant results.

represented by Mr Mel Smith, Forensic Auditor and KRA by Mr J G Nduati, Senior Deputy Commissioner (Investigations). The Public Prosecutor's office was invited to attend but was not regular in attendance.

MINISTER FOR FINANCE
 RECEIVED
 21 MAR 2006
 P O Box 30007
 NAIROBI

340

SECRET

3. D Shah

Money transferred to Sundry Creditors and from there transferred overseas.

4. Kariuki Maigua & Co (Client Account)

Not available due to court order - but are as follows:

Ksh. million	
A/c 1 - turnover	1,355
A/c 2 - turnover	26
A/c 2 - turnover	328
Total turnover	1,709 billion

5. W E Tilley (Muthaiga) Ltd

- Suspected money laundering as
- Sales were Ksh. 1.35 billion; and
- Receipts were Ksh. 5.89 billion

6. Paolo Sattaino

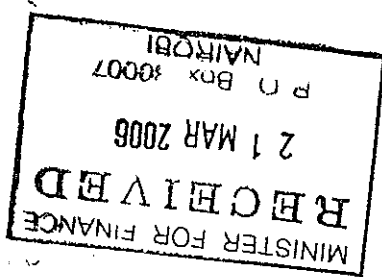
- No account opening forms
- Deposits to \$ and Euro accounts (1/4 - 3/11/04) in 7 months Ksh. 52 million and Ksh. 40 million respectively.

7. Tusker Mattresses Ltd

Discovered VAT evasion Ksh. 270 million

The CBK's Due Diligence personnel including Mr G Nyaoma, Director of Financial Institutions Supervision, and Mr M Smith, the Forensic Auditor, suggested that the information available to date from the Joint Task Force showed that client accounts in Charterhouse Bank when linked with information from KRA would yield significantly more tax but it would need more detailed analysis than was available. In particular, Nakumatt Holdings and Kingsway Tyres accounts raised serious questions relating to collusion with Charterhouse Bank.

For instance, it should be noted that Nakumatt has never shown a profit to date, always losses. Its VAT payments are between Ksh. 33 and Ksh. 85 million per annum. Uchumi pays Ksh. 500 to Ksh. 600 million per annum. As Nakumatt's turnover is much larger than Uchumi, you would expect corporation tax and VAT to be in the range of Ksh. 1.8 to Ksh. 2.5 billion per annum.



34