

Electronic Sale Suppression

CASE STUDY – JUMBO CASH AND CARRY and AFRICA CASH AND CARRY



JUMBO CASH AND CARRY - SHORT BACKGROUND TO CASE

SARS risk selection rules frequently flagged large cash based businesses with annual turnovers in excess of R1 Billion per annum (US \$ 100 Million) based on 3 main criteria :

- VAT Refunds being claimed monthly
- Income Tax returns outstanding for 3 years or more
- Negative Gross Profit Margins

Record of previous tax evasion : Jumbo Cash and Carry – ESS (2 types of Quotation functions)

- Primarily a cash business which generates significant amount of revenue
- SARS engaged Jumbo Cash and Carry for integrated tax audit after the company was already sold in 2001
- Due to the lack of co-operation and the lack of documentation a section 74C inquiry was instituted from 2006 - 2009 into the affairs of the various Jumbo Cash and Carry “group” of companies and its shareholders / members
- It was established during the tax inquiry that the company purchased **a stand-alone point of sales system** which contained an **optional software “quotation” feature** which **suppressed sales** but allowed stock to be reduced when removed.

How did the ESS functionality work in Jumbo Cash and Carry

1. The system provided for the issue of two types of quotations:-
 - 1.1. A legitimate quotation which had no effect on stock; or
 - 1.2. **A quotation where the underlying stock records were adjusted** for the outflow of stock **but the sale of such stock item was not recorded.**
2. The latter capability was **password protected** and activated for designated cashiers only. The **user profile** of a cashier was amended for the purpose of granting access to this functionality.
3. The relevant accounting entries for both the **disclosed and undisclosed operating activities** were processed to the **stock system** and thereby recording the **reduction in stock.**
4. **BUT** In respect of the issue of an **invalid quotation** the **sales leg of the accounting entry was however not recorded.**
5. On a **daily basis**, a printout of the **‘invalid quotations’** was produced by the system and the **figures were reconciled** to the **undisclosed daily cash takings.**
6. Customers that acquired goods and accepted a quotation in lieu of an invoice were **not charged VAT.**

Evidence tendered at the 74C inquiry confirmed that the capability of this functionality was used as a basis to market the POS system developed and distributed by React.



AFRICA CASH AND CARRY - SHORT BACKGROUND TO CASE

SARS then directed its subsequent focus to the customers of **REACT Software Solutions** which offered tailor made Point of Sales systems (POS) specifically designed and marketed to the Cash and Carry industry.

Africa Cash and Carry (ACC) : Electronic Sales Suppression

- Rainbow Cash and Carry name was changed to Africa Cash and Carry (ACC) in March 2003, transferring Rainbow Cash and Carry assets and liabilities to ACC
- The initial POS application used **DOS** as the operating system. REACT subsequently ceased providing support for the DOS application and introduced a **Windows version**.
- Due to the **change from the DOS version to the Windows** version of REACT POS. SARS requested the **backup data** for the periods during which the DOS application was in use. ACC first contended that the backup data was off-site, but when confronted, was unable to identify the person allegedly in possession of the backup data or the location thereof. Later it was alleged that the backup data was stolen during a burglary.
- ACC only presented SARS with **a file containing certain hard copy documentation** including **computer print-outs of reports** but refused access to React system.
- Except for **Stockstatdaily** which is a *statistical file*, the **remaining files are transactional files**. The Stockstatdaily file is a combined summary of the transactional files and effectively records the daily outflow and inflow per stock item. Three columns in this table impact on stock quantities i.e. quantity sold, quantity adjusted and quantity received.
- SARS compiled a variance report and the variances identified in the **variance report** arise due to the manipulation of sales in the **Windows version** in one of two ways:
 1. An **unrecorded sale** using the **stock adjustment account**.
 2. The **reversal of a recorded sale** by recognition of **a negative sale (invoice)** using the **stock adjustment account**.



AFRICA CASH AND CARRY - SHORT BACKGROUND TO CASE (CONTINUED)

Initial VAT audits (various) during 2006 : Ghost Exports & Input VAT focus

- Following 2009 Jumbo Inquiry and evidence to REACT POS utilised = **all tax audits centralised** and scope of audit extended **2003 - 2009**
- Request for Information issued sec.74A & sec.74B(IT Act) and sec. 54A (VAT Act) on 16 Feb 2009
 - Request access to REACT and PASTEL accounting systems
 - SARS was denied permission to image systems on **19 Mar 2009**
 - **Search and seizure on 20 and 21 Mar 2009** - SARS seized certain hard drives, storage devices and some documentation which were believed to contain backup data of the point of sales and accounting systems.
 - **Only 7 Month data available on REACT Windows version** (remainder has been deleted)
- SARS subsequently issued the Letter of audit findings and the **Letter of assessment on 15 June 2011**, based on the under declaration of income.
 - **Gross profit margin** - 7 months data, extrapolated to 2003-2009 (84 months)
 - **Estimated Assessment raised** - IT & VAT under-declared sales
 - **Prescription not applicable** - fraud, misrepresentation and non disclosure
 - **Additional tax - 200% imposed**, tax fraud and Ooplang practices



Divesting of assets during tax audit and Preservation order

Divesting of Assets of ACC to ACC Crown Mines October 2013 : SARS raised Income Tax and VAT assessment for the years of assessment 2003 - 2009 during 2011 in the amount of R1.2 Billion (US\$ 100Million)

Following extensive negotiations ACC agreed to hold minimum R300 Million in stock as security for taxes AND to be fully tax compliant from 2010

However ACC allegedly sold business as going concern to a new company ACC Crown Mines in October 2013

SARS Preservation Order - 10 July 2014, leave to appeal 1 Oct 2014 dismissed, SCA petition dismissed (25 June 2015)

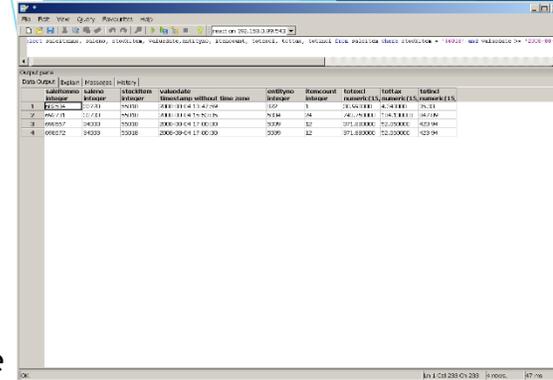
- Breach of suspension of payment of taxes pending Appeal
- Curator bonis appointed as director and required to preserve the assets in lieu of tax debts
- Information secured by SARS indicated the **increased use of Ooplang transactions from 2011 amounted to more than US\$ 5 Million per year** as well as the expatriation of **funds to foreign entities**.



SALES SUPPRESSION, ADDITIONAL SCHEMES AND TBML

The Point of Sales (POS) system and Accounting system

- In certain POS software versions a sales suppression functionality existed which could be activated by the taxpayer to omit sales from POS Reports.
- **These transactions will not appear** in the **POS system generated report** nor the **Accounting System report - see next slide**
- Separate “cash till/s” existed, operated by a trusted employee which is not linked (logged on) to the POS system daily and these sales are thus excluded from POS reports.
- Electronic POS and Pastel back up’s are not retained on site or for more than one tax year
- Software program called REACT (widely used in South Africa’s Cash and Carry industry) contains a “sales suppression” functionality **build into the DOS version** of the software.
- **The unrecorded sale was identified by matching** the **movement per item in stock** under the **column quantity sold** with the **movement in sales on a daily basis**.
- **The stock adjustment table records** three types of adjustments, **A, S and P**. The **A** type adjustment originate from pilferage and breakage. The **S** type adjustment originates from a stockcount adjustments.
- **P** = The matching exercise confirmed the existence of reduction of stock without the recording of a related sale.



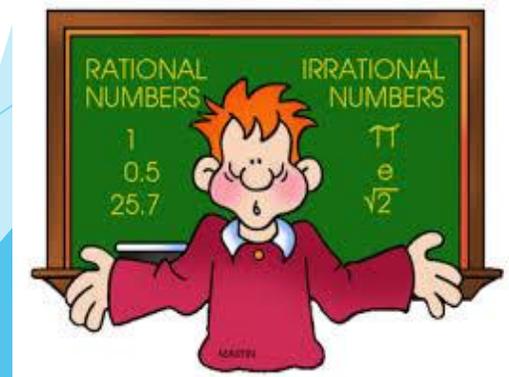
id	value	date	description	quantity	unit price	total value	tax	total tax	total
1	1000	2008-01-01	SALES	1000	1000	1000000	100000	1100000	1100000
2	1000	2008-01-01	SALES	1000	1000	1000000	100000	1100000	1100000
3	1000	2008-01-01	SALES	1000	1000	1000000	100000	1100000	1100000
4	1000	2008-01-01	SALES	1000	1000	1000000	100000	1100000	1100000

Unreliability of accounting records

- **Electronic interface between systems**
 - No electronic interface between POS and Pastel existed - manual exportation and capturing via Excel : **Journals**
- **Chart of accounts**
 - The deployment of ZZZZ or other accounts with **alphabetical pre-fix** which will **not be detected in event of the Chart of Accounts** is generated or printed from 001/001 to 999/999.
- **Reported Negative Gross Profit Margin** - Rebate and discount structures : volumes and special arrangements
- **Ooplang Schemes: (Retains 2 sets of financial accounts - Evade Tax)**
 - Quotation System
 - Fictitious Creditors
 - Cross invoicing and Profit Shifting via VAT
 - Negative invoicing
 - Cell phone airtime cards
 - “Banking facility” for illegal foreigners and traders

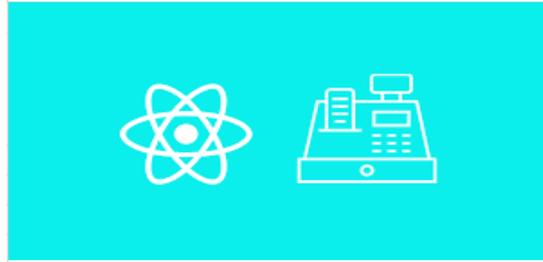
“Ooplang”

the practice of keeping a portion of vat, collected on behalf of the tax man, instead of declaring the full amount then hiding it from the government.



HOW WAS ACCOUNTING RECORDS COMPILED ?

REACT POINT OF SALES



SERVER



MANUAL REPORTS

EXTRACT REPORTS COPIED (NOT EXTRACTED) INTO EXCEL



- 1. Sales
- 2. Inventory and Stock movement (daily)



Pastel Accounts

SALES and Output Tax

Journalised into PASTEL :
TOTAL for DAY only

R 50,000,000

Inventory and Stock movement (daily)

Not accounted daily - only annually via single annual journal

-R 52,500,000

Gross Profit (Negative)

-R 2,500,000

Rebates

Rebate Agreements - Discounts

Journalised into PASTEL :
Separate Debtors Recon

R 3,000,000
R 500,000

Bank Statements

Expenses and Creditors and Input Tax - ONLY

Bank and Creditor's Module only

-R 16,000,000

Net Loss

-R 15,500,000

CORNERSTONES : INTRODUCING DATA AS EVIDENCE

Indicators of Sales Suppression software - Identify in evidence :

- ❖ The first indicator of Sale suppression : Creditors, Bank, Debtors and Stock was captured on a **stand alone, separate accounting software system** then exported into Excel whereafter (post further manipulation). ONLY “Total amounts” for the DAY are recorded in the accounting system
- ❖ A second very good indicator is that stock is brought in once a year as “closing stock” VIA JOURNAL only i.e. one single entry following year end auditors stock account potentially 364 days to manipulate - the **stock and accounting system is not integrated** - Inevitably the closing stock will reconcile with the stock take on that single day
- ❖ Third indicator being : low or **negative Gross Profit margins (below 6%)** after discounts and rebates and **consistent VAT refunds** claimed from the tax agency REASON : **All expenses being claimed but not All sales being recorded**

SARS process : What do we have ? What can we prove ?

- **Departure point use Annual Financial Statements and Tax returns** (CIT and VAT) filed - reflecting Negative Gross Profit Margins
- SARS then added difference between closing stock in Accounting records (Pastel) vs. Point of Sale Software (POS) called REACT which equaled R 17 Million - which could not be explained by taxpayer
- **Script to extract back data for 7 months** - all other data and reports were deleted by taxpayer
- **Rebates, settlement discounts** and advertising allowances, which related to specific stock purchases should, according to the accounting standards, have been **allocated to reducing the cost of sales**, and should have been accounted for as income
- ACC has also admitted that there was a variance in sales in an amount of approximately R28 million, brought about by “**P-type adjustments**”
- **Extrapolate 7 months to 7 years - initial GP margin used 6% however subsequently reduced to 3.6% and then to 2.04%**

EVIDENCE : DOCUMENT RECORD OF FORENSIC PROCESS

Essential cornerstones of introducing data as evidence :

1. A **proper documented seizure of back-end data** (raw data unaltered) – **“mirror image”** not a **“copy”**
2. Preserving and documenting the **chain of evidence** in a forensically sound manner (this is usually the first legal challenge)
3. Obtaining the **exact same version** of the POS software program used (with a sale suppression functionality, usually custom designed) stored on a stand-alone hard drive/computer in the forensic lab
4. All functional access and passwords – **especially user, manager and super user functionalities** must be present in uploaded SAME version as that of taxpayer
5. Deploy **internal CAAT Electronic forensic experts** to assist in seizure of data, managed the chain of evidence, upload data into software program and test (initially SARS were presented with two software versions by designer, the one incomplete and another one without passwords)
6. Early appointment of **external Cyber forensic and data experts** to assist in court and testify as **expert witnesses**
7. Ensure **numbering of data lines and file structure** from outset to ensure data version produced later by taxpayer is not manipulated
8. Obtaining background **Stock tables and data** : **ALL the Standard REACT reports** are written in a manner to **exclude the manipulated data** – which is not included in any of the existing reports, these manipulated reports needed to be proven in court i.e. the **POS system works exactly as designed** = with purpose to *suppress sales and remove stock*

Sales	1 518 847 563.00
Cost of sales	1 464 916 582.55
Opening Stock	219 461 109.19
Purchases	1 514 410 031.00
Closing Stock	-268 954 557.63
	53 930 980.45
GP%	3.6%

The screenshot shows a database query result with columns: id, date, amount, description, category, status, etc. The data is presented in a grid format with alternating row colors.



EVIDENCE : DOCUMENT RECORD OF FORENSIC PROCESS - CONTINUED

9. Recreate and **demonstrating the functionality live in court** – In this case SARS was able to obtain **7 months data only** (the rest was wiped) for 60 terminals, the adjustments were identified as **so called P-adjustments** (positive and negative,) it was then **isolated to two terminals numbers**.

❑ Note : Following loading of the back-end data and version of software SARS was able to **re-create the front-end function** i.e. the actual terminal point.

❑ Note : SARS experts then tested each transaction on the 58 terminals and compared results with 2 terminals with Sales Suppression functionality - It was found that the

- ✓ Stock table (not contained in any of reports) **codes** these transactions as “P” adjustments which is then removed from stock and at same time the SALE is reversed i.e.
- ✓ 1.) the SALE is reversed
- ✓ 2.) Stock is removed
- ✓ 3.) HOWEVER the initial purchased cost in cost of sales (100%) and VAT (14%) is **claimed as expenses** and for Input Tax purposes respectively

10. Employing external Legal counsel upfront to meet challenges from seizure to court applications

11. Include **admissions** of the **initial Tax Inquiry transcripts as evidence** – enablers and beneficiaries conceded to the use of sales suppression software and explained the working

12. SARS also required the **software designer** and distributor to testify in Tax Inquiry – he then provided much needed detail to how the system software is designed – SARS **however** then **still needed to prove such “functionality” was actually utilised by the taxpayer**

13. Then the most important step : **The actual tax prejudice needed to be determined**, it takes time but if steps above is followed this can be proven beyond a reasonable doubt (even if just for a period) – **it must be matched to a tax return** which **was misrepresented** (this proved challenging)

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		53 930 980.45
GP%		3.6%

stock item	date	value	quantity	unit cost	total cost	profit	margin	gross profit	gross profit %	gross profit / net sales	gross profit / net sales %
1	2008-08-01	114.000000	54.950000	0.000000	0.000000	0.000000	0.000000	54.950000	0.000000	0.000000	0.000000
2	100091	5.2008-08-01	12.000000	22.000000	0.000000	0.000000	0.000000	22.000000	0.000000	0.000000	0.000000
3	100093	5.2008-08-01	10.000000	13.000000	0.000000	0.000000	0.000000	13.000000	0.000000	0.000000	0.000000
4	5001	5.2008-08-01	1278.000000	21.250000	2.000000	42.250000	0.000000	21.250000	0.000000	0.000000	0.000000
5	10001	5.2008-08-01	40.000000	16.600000	0.000000	0.000000	0.000000	16.600000	0.000000	0.000000	0.000000
6	10002	5.2008-08-01	262.000000	22.770000	0.000000	0.000000	0.000000	22.770000	0.000000	0.000000	0.000000
7	10003	5.2008-08-01	30.000000	11.600000	0.000000	0.000000	0.000000	11.600000	0.000000	0.000000	0.000000
8	10004	5.2008-08-01	21.000000	11.600000	0.000000	0.000000	0.000000	11.600000	0.000000	0.000000	0.000000
9	10005	5.2008-08-01	9.000000	11.600000	0.000000	0.000000	0.000000	11.600000	0.000000	0.000000	0.000000
10	11000	5.2008-08-01	294.000000	14.750000	4.000000	77.900000	0.18900000	14.750000	0.000000	0.000000	0.000000
11	11001	5.2008-08-01	306.000000	15.000000	9.000000	176.900000	0.44900000	15.000000	0.000000	0.000000	0.000000
12	11002	5.2008-08-01	289.000000	14.000000	3.000000	59.850000	0.17850000	14.000000	0.000000	0.000000	0.000000
13	11003	5.2008-08-01	111.000000	91.200000	0.000000	0.000000	0.000000	91.200000	0.000000	0.000000	0.000000
14	11004	5.2008-08-01	227.000000	14.000000	0.000000	0.000000	0.000000	14.000000	0.000000	0.000000	0.000000
15	11006	5.2008-08-01	-2.000000	91.200000	0.000000	0.000000	0.000000	91.200000	0.000000	0.000000	0.000000
16	11008	5.2008-08-01	340.000000	14.000000	2.000000	39.800000	0.11800000	14.000000	0.000000	0.000000	0.000000
17	11009	5.2008-08-01	712.000000	58.440000	1.000000	59.990000	0.03500000	58.440000	0.000000	0.000000	0.000000
18	11010	5.2008-08-01	115.000000	20.944000	2.000000	39.900000	0.08900000	20.944000	0.000000	0.000000	0.000000
19	11011	5.2008-08-01	52.000000	19.500000	0.000000	0.000000	0.000000	19.500000	0.000000	0.000000	0.000000
20	11013	5.2008-08-01	156.000000	19.500000	4.000000	77.900000	0.05040000	19.500000	0.000000	0.000000	0.000000
21	11016	5.2008-08-01	182.000000	48.840000	0.000000	0.000000	0.000000	48.840000	0.000000	0.000000	0.000000
22	11020	5.2008-08-01	226.000000	14.000000	0.000000	0.000000	0.000000	14.000000	0.000000	0.000000	0.000000
23	11024	5.2008-08-01	27.000000	13.600000	0.000000	0.000000	0.000000	13.600000	0.000000	0.000000	0.000000
24	11025	5.2008-08-01	-17.000000	9.800000	0.000000	0.000000	0.000000	9.800000	0.000000	0.000000	0.000000
25	11026	5.2008-08-01	2065.000000	54.810000	5.000000	284.900000	0.13800000	54.810000	0.000000	0.000000	0.000000
26	11028	5.2008-08-01	568.000000	29.230000	2.000000	64.900000	0.16400000	29.230000	0.000000	0.000000	0.000000
27	11029	5.2008-08-01	404.000000	20.281000	0.000000	0.000000	0.000000	20.281000	0.000000	0.000000	0.000000
28	11030	5.2008-08-01	493.000000	20.169000	3.000000	59.700000	0.12100000	20.169000	0.000000	0.000000	0.000000
29	11031	5.2008-08-01	346.000000	20.179000	3.000000	59.700000	0.16800000	20.179000	0.000000	0.000000	0.000000



LIVE DEMONSTRATION IN COURT – ANNEXURE B

CSARS VS AFRICA CASH AND CARRY - ITC 13251 AND VAT 1077

TAXPAYER'S LEGAL DEFENCES RAISED IN TAX COURT

- **White collar argument** : The Incorrect assessments before court, 5 attempts to assessments, prescription applied and SARS materially “altered” the basis of its assessments and such therefore must be set aside
- **Blue collar argument** : **Unreasonable methodology** used by SARS to calculate remised turnover and tax 12/7 and then over 7 years
- **Grey collar argument** : **evidence by the former CFO, Cassim Aysen to fraud is not admissible** as he was the real architect of the tax fraud

- **ONLY Two expert witnesses on behalf of taxpayer** : focussed on reasonability and reliability of ACC's Annual Financial Statements and presented three potential alternative calculations of GP Margin and taxable income. Directors and/or employees did not testify
- SARS employees expertise and qualification were challenged

Initial main thrust of taxpayer defence :

1. Claims that SARS case was **only to sales suppression** and **not to manipulation of Gross profit or Cost of Sales** or general accounting records
2. There was an **alternative (reasonable) calculation** to take 7 months to 12 months and thereafter to 7 years
3. There is **availability of alternative information** in taxpayer records
4. The assessments before Tax Court was based on SARS original estimated of GP Margin of **3.6%** and have **not been revised to 2.04%** in Sept 2015

Triumph card - attempted by taxpayer to Restart Assessment and Dispute process afresh

- If SARS relies on sec.95 of the TAA then SARS **MUST FIRST adjust their assessments** from 3.6% and the assessments before court is the **incorrect assessments**.
- SARS then corrected ACC that the applicable **substantive legislation at time of assessment was the sec.78 of the Income tax act and VAT** act not sec.95 of TAA.
- Taxpayer will request the **Tax Court to confirm the lower assessments** in terms of **sec.129 (2)(b) read with sec. 107** of TAA. SARS further noted that the **assessments are not to be WITHDRAWN or REFFERED back for re-assessment** but SARS request the Tax Court to make an order on the amount should the Tax Court find SARS assessments to be reasonable

Tax Court Judgement : <https://www.sars.gov.za/lapd-drj-tc-2018-04-tcit-13251-and-vat-1077-jhb-16-may-2018>

Supreme Court of Appeals Judgment : <http://www.saflii.org/za/cases/ZASCA/2019/148.html>

TWO DEFENCES BY TAXPAYER EXPOSED AS UNTRUE :

The DOS version of the REACT Software contained a **processing error (Abandoned):**

➤ The taxpayer relied on a report by a formerly employed by KPMG Professor - This report and the conclusions expressed therein, alleged that there were **defects** in the React POS system used by the taxpayer, resulting in inconsistent outcome.

This point was subsequently abandoned by the taxpayer - SARS forensic experts demonstrated that :

- The POS data was consistently correctly processed by most terminals (58 of 60)
- That POS system can indeed be manipulated by at least 3 other methods : some as easy as deleting an item or changing the stock number

The taxpayer called no Computer Forensic Expert nor could rebuff the three SARS experts

SARS relied on the **incorrect data set :**

➤ Facts Consulting found that the REACT Data **“2017 data” set** provided to the **taxpayer’s own Expert witness MATERIALLY differed** from the **2009 data seized**. ACC did not only **delete** actual raw data but in **addition re-linked** certain fields to create **“new reports”** :

1. Approx. **3 million sales lines were missing** : “Sales in Period Listing” report displays a total quantity sold of **86 884 201**, whereas the “Sales Dissection” report displays a total quantity sold of **89 276 175**
2. The **structure of 2009 database differs** from the structure of 2017 database

3. the 2009 database contained **additional tables** - a comparison of 6 different tables in both databases revealed that the structure of these tables changed -

4. **New Columns were Added** :

4.1 **StockStatdaily table**: In the 2017 database, the column stocklocation was removed and the column opexid was added. The specific column called opexid was also used in the **“Sales Dissection” report which was not available in the React POS System, version 2.12.17;**

4.2 **Sale table**: In the 2017 database, the column location was removed and the columns opexid and giud were added;

4.3 **Saleitem table**: In the 2017 database, the column location was removed and the column opexid was added;

4.4 **Goodsdoc table**: In the 2017 database the columns location and transferedho were removed and the columns opexid and cancelbydate were added;

4.5 **Stockadjustitem table**: In the 2017 database, the columns locationfrom and locationto were removed and the column id was added.

5. Some of the **actual data** contained in the tables in the two databases differ, the most significant finding:

5.1 **Stockadjust table**: The table in **the 2009 database, had 1 079 records** that were **deleted or missing** from the table in **the 2017 database**, for the period 1 August 2008 to 28 February 2009.

5.2 FACTS extracted these records and they all relate to “P-type” adjustments.

In other words, the **2009 database, contained the “P-type” adjustments** and the **2017 database**, made available to taxpayer’s own expert, **excluded the “P-type” adjustments.**

FURTHER TRADE BASED MONEY-LAUNDERING SCHEMES

SCHEME 1 : CASH CHEQUE SYSTEM

Cash takings was removed on instruction (“Stickit” note, destroyed) and replaced by a “Cash” cheque issued by the Cash and Carry. Cash counted and removed - given to owners or family member. Round amounts (Cheque IN and OUT on bank statement)

SCHEME 2 : QUOTATION SYSTEM

The Cash and Carry generates “Quotations” to selected Ooplang (“OP) customers whereby VAT is charged at a discount of 7% (later 9%) however neither the full cash received amount nor VAT amount is declared or paid over to SARS.

Or

specific linked vendors/taxpayers, the net amount of “7% VAT discount” would be balanced by a cash Cheque which is cashed and OP is used for personal purposes.

“Selected customers” participating in this scheme are usually “trusted” business partners whom are family members, linked to family members or conduct operations in their personal name or via other registered entities outside the tax net.

SCHEME 3 : FICTITIOUS CREDITORS

Fictitious Creditors - creating fraudulent invoices from fictitious creditors which were processed for VAT (Input Tax) and Income Tax as a valid expense. Three step benefit : the creditors were “paid” by uncrossed cheques however : 1.) the cheque was cashed (show as paid on bank statement), 2.) stock also removed and then sold in cash (unrecorded) and 3.) expense and VAT was claimed for tax purposes. Second set of manual books

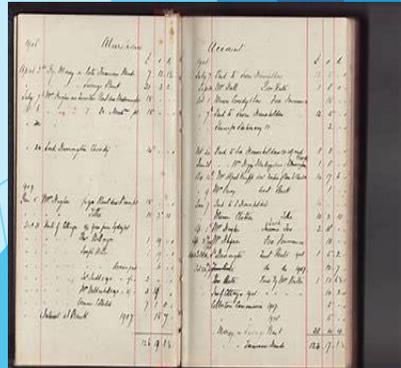
SCHEME 4 : DISCOUNT ON VAT (Profit shifting)

A scheme is in practice whereby on sale transaction “discounts” VAT at 7% (14%) on invoice generated to an ultimately linked company via an intermediary company. The Cash and Carry will invoice the intermediary company (B) at 114% for “stock”, same time B will issue an invoice to the Cash and Carry linked company at 107% with same stock items thus creating a 7% “profit” in B.

SCHEME 5 : BUYING ON ANOTHER VAT VENDOR'S ACCOUNT

This scheme relies on abuse foreigners located in South Africa without bank accounts

- ✓ Creating an creditor trade account in books of Cash and Carry where cash can be deposited in lieu of “future purchases” - indicated large **debit** creditors or
- ✓ facilities to purchase stock in cash via facilitation of a **registered VAT vendor** and client of the Cash and Carry. The foreigner pays for his purchase **in full however the invoice is in the name of the SA registered VAT vendor**. The SA vendor on production of Cash and Carry invoice charged at 14% pays the foreigner 7% back of the VAT amount reflected as a “commission”.



FURTHER TRADE BASED MONEY-LAUNDERING SCHEMES (CONTINUED)

SCHEME 6 : ZERO RATING OF NON-EXPORTS / GHOST EXPORTS/ CAROUSEL FRAUD

Due to the continued cash syphoning of the business cash flow was required to acquire stock, Cash and Carry claims per VAT201 returns that large totals of Sales represent “exports” which is submitted as zero-rated supplies in order to “generate” cash flow in its operations.

SCHEME 7 : NEGATIVE SALES INVOICES AND CREDIT NOTES

“Selected stock” was sold to “selected customers” in cash however **credit notes were subsequently passed to another debtors account** : “Hawkers” to which no debtor’s invoices or statements were issued. These sales of stock items were then deleted of REACT stock system. The credit note (credit) on this account was subsequently cleared by a cash Cheque. Once Cheque was cashed this cash received was used for personal purposes and expatriation.

SCHEME 8 : INPUT TAX CLAIMED ON ACCOUNTING ENTRIES

Input tax was claimed to transactions with no commercial substance **via journal between various loan accounts** in order to substantiate expense and subsequently Input Tax, but more importantly to limit the gross profit margin. (various methods are used, this requires scrutiny of each and every line item contained in the loan account)

SCHEME 9 : “REGULARISING” OOPLANG PURCHASES OF CELLPHONE AIRTIME

Although the purchase and sale of Cell phone airtime from Ooplang cash transactions in itself offers an convenient alternative source of laundering cash - profit of R1 per card sold

The sale of **Cell phone airtime** however was later regularised by use of **company loan accounts** thereby now allowing for **claiming of the full invoice (expense purposes Income Tax) and 14% Input Tax on airtime suppliers invoices** purchased with Ooplang cash.

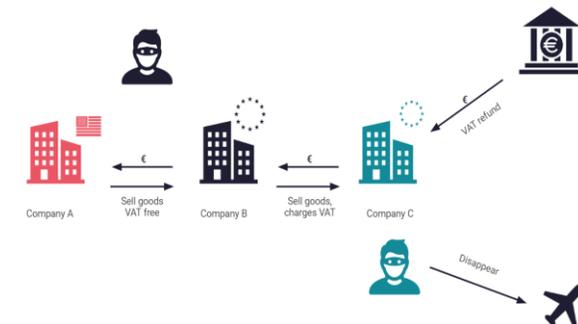
These schemes were all described by several witnesses during the Tax Court appeal - The judgement concludes :

*In all these respects, the **Taxpayer has remained silent** and failed to offer any explanation for the absence of documentation or the failure to cooperate with SARS or the use of the **P type** adjustment functionality or the **discrepancies between the REACT data and the AFS** or the **under declaration of sales when the REACT data** and the AFS are compared. It is **not only the absence of an explanation** which is so noticeable. It is also the **absence of any challenge to this evidence.***

*“What is clear is that **ooplang** was a **parallel system** to the supposedly open and above board one captured on REACT software. It was monitored on small pieces of paper which enabled the Taxpayer to track it’s undisclosed revenues and profits.”*



The carousel scheme for VAT fraud



SUCCESSSES AND LESSONS LEARNT

- ❑ Preservation order was obtained on 11 July 2014
- ❑ Only Sales Suppression Case ever proceeding to Tax Court in South Africa and first ever civil tax judgements in SA history
- ❑ Repeated tax evasion stopped dating back to 1982 – Assessment capital but more importantly 200% additional tax and interest was confirmed US\$ 100 Million (2003 – 2009) whilst US\$ 109.7 Million (2010 - 2014) was conceded
- ❑ Fraudulent VAT refunds stopped – US\$ 8 Million and further US\$ 2.9 Million and US\$ 1.5 Million in fraudulent refunds
- ❑ Linked Carousel fraud uncovered - US\$ 77.2 Million and arrest of internal employees
- ❑ Uncovered a further 2 x Carousel VAT fraud rings – collectively SARS managed to claw back US\$ 4.2 Million + US\$ 9.33 Million + US\$ 21.24 Million = US\$ 34.77 Million however US\$ 134.28 Million was paid out
- ❑ With regards to 23 taxpayers under audit : 65 Annual Financial Statements (2013 – 2020) were submitted, 53 Income tax returns and taxes paid
- ❑ Punitive Costs orders against taxpayer - Payment of SARS Legal Costs – US\$ 2.35 Million
- ❑ Uncovered and identified undisclosed offshore assets amounting to at least : US\$ 106 Million in Guernsey, Jersey, BVI registered companies, UK properties at least US\$ 90 Million, Dubai at least US\$ 20 Million, Switzerland US\$ 6 Million and India

fin24

SARS wins R1bn tax evasion case against Africa Cash & Carry

Nov 20 2019 19:22

The South African Revenue Service welcomed the judgement of the Supreme Court of Appeal that brought to an end a protracted dispute with Africa Cash & Carry, it said in a statement on Thursday.

The judgment – issued on November 21 – followed an investigation by SARS into the use of sale suppression systems and the manual manipulation of accounting books, the revenue agency said. The Tax Court altered its assessments to include some 200% additional tax, according to the statement.

Africa Cash & Carry disputed the results of the investigation and ultimately approached the Supreme Court of Appeal.

The Supreme Court, however, upheld the Tax Court order.

"SARS is committed to combat intentional tax evasion. SARS is concerned with the compliance levels within the Cash & Carry industry with a particular focus on 'Ooplang' schemes involving 'Ghost Exports', non-recording of the sale of cell-phone airtime, manipulation of loan accounts, claiming fraudulent invoices for VAT and Income Tax purposes, utilisation of intermediary shell companies to create invoices and sales suppression systems," SARS said.

Business Times

Bribe tycoon Hathurani hit with R1.2bn tax bill

by Leni Prinsloo, 13 July 2014, 08:27



THE SA Revenue Service (SARS) has swooped on Edrees Hathurani, the controversial cash-and-carry tycoon at the centre of a bribery scandal involving the regulator, the Financial Services Board (FSB).

On Friday morning, SARS officials served a court order on Hathurani's Africa Cash & Carry, a warehouse-style business in southern Johannesburg which sells 15 000 products from cosmetics to electronics, effectively freezing its assets. The court order confirms that SARS believes Hathurani and his companies owe a tax debt of R1.2-billion.

This comes weeks after the 63-year-old Hathurani claimed sensationally that he had paid R1.2-billion in bribes to former FSB finance boss Dawood Seedat to make his tax problems "vanish". Hathurani's admissions cast a cloud over both the FSB and SARS, suggesting officials at both state institutions could be bribed.

In affidavits submitted to the court, SARS investigators said it was necessary to freeze Africa Cash & Carry's assets to stop it "diverting its business and assets to a connected entity, Africa Cash & Carry Crown".

The SARS affidavits paint a damning picture of how Hathurani went out of his way over many years to cheat on tax, even going so far as to have a system designed to hide sales from the authorities.

For example, under one company he used to own called Jumbo Cash & Carry, SARS says Hathurani under-declared sales by "manipulating the point-of-sale system".

Jumbo did this by issuing a quote to a customer, rather than an invoice — which made it appear that no sale had taken place. It found similar accounting problems at Africa Cash & Carry. The court order was served on the company on Friday morning.

fin24

Hawks nab ex-SARS auditors for tax fraud worth over R320 million

Sibongile Khumalo

11 May 2021

The Hawks in Johannesburg have arrested two former SARS auditors for alleged tax crimes worth some R321 million, the unit announced on Tuesday.

- The Hawks said that SARS investigators had uncovered a syndicate of more than 20 individuals who were involved in "extensive VAT fraud" and operated over a three-year period. The accused worked in collaboration with small and medium enterprise owners who claimed undue VAT refunds from SARS for their entities.
- The Hawks said R44 million of the defrauded R277 million had already been recovered through an investigation process it conducted with SARS.
- According to the investigating unit, taxpayers, runners, current and former employees of SARS, as well as bank employees, were also caught up in this "web of deceit" which took place between 2013 and 2016.

The auditors, Corah Madlepolo Kooko and Noluthando Sipokazi Mbangi, as well as a third suspect, Mondolozzi Mncube - who has been described as a "turner" - have been charged with tax fraud that led to a loss of over R277 million to SARS.

The Hawks said that SARS investigators had uncovered a syndicate of more than 20 individuals who were involved in "extensive VAT fraud" and operated over a three-year period. The accused worked in collaboration with small and medium enterprise owners who claimed undue VAT refunds from SARS for their entities.

"Most of the fraudulent invoices were uploaded from the SARS branch in Randfontein, where some of the implicated suspects were based," the Hawks said in a statement.

City Press

How cash & carry roundtripped tax goods

MOYAGABO MAAKE@City_Press

13 July 2014 15:00

Twitter 1



Africa Cash and Carry in Crown Mines, Joburg.

Despite allegedly paying millions to former Financial Services Board finance boss Dawood Seedat to quash a tax audit, Edrees Ahmed Hathurani's assets have been provisionally placed under courtship by his debt to the taxman has been repaid.

At the North Gauteng High Court on Thursday, Judge Eberhard Betsenmann appointed Cloete Murray of Sechaba Trust as curator of the Africa Cash and Carry boss' companies, family trust, property and vehicles.

Hathurani was joined by two of his family members – who are also co-owners of Africa Cash and Carry – and a business partner.

Together, they owe the SA Revenue Service (Sars) just more than R1.2 billion in income tax and VAT, which the taxman says they evaded over the seven years to 2020.

The order was sought to prevent the possible dissipation of assets held by Africa Cash and Carry and 18 other respondents," said Marka Muller, the deputy spokesperson for the tax collector.

"It was served on all the respondents on Friday morning."

Muller said the respondents were disputing the R1.2 billion tax assessment before the tax court.

"Sars sought the order to preserve to prevent a dissipation of assets whilst the outstanding tax debt is in dispute. Importantly, under the authority of the curator, the business entities will be allowed to continue with commercial trade."

FOLLOW THE MONEY - CONTINUED TAX INVESTIGATIONS

England and Wales High Court (Chancery Division) Decisions Gangat & Anor v Jassat [2021] EWHC 2644 (Ch) (01 October 2021)

"SOMETHING OUT OF A MOVIE : an off-book business, money secreted offshore, a falling out between business partners, Swiss bank accounts"

£200m earned from an "off-book business", which ran alongside the legitimate dealings of the Jumbo group of companies for a decade

- ❑ The four SA businessmen expatriated **untaxed cash business profits** in breach of SA Exchange control regulations
- ❑ In his ruling, Rajah noted that *Hathurani* was the "dominant figure" among the four, organised the expatriated funds to be paid into Swiss bank accounts via use of **a number of middlemen in SA** and payment of **commission of between 2% and 5%** on the amounts transferred.
- ❑ **Names changed to Swiss bank accounts to disguise the true account holders** - Gangat and Bhawan's share was called "Camelot". Accounts names were changed regularly.
- ❑ Over the years, **many accounts were opened and closed at several banks** to hold the expatriated money.
- ❑ **Funds were repeatedly moved from one account to another, split between a number of accounts**, put into accounts that were later closed, put into a Family Trust of whose existence Gangat and Bhawan were unaware.
- ❑ **London-based Yusuf Jassat** used the funds from the **Swiss bank account to invest in UK real estate. Assets were then transferred into a Jassat family trust. This was a breach of fiduciary duty by Jassat, and if the assets have been lost, he will be personally liable for the consequences, the court said.**
- ❑ On 21 November 2011, HMRC Specialist Investigations Office in London. opened an investigation into Jassat, Jassat instructed Grant Thornton to **make a disclosure** to HMRC's it indicated : **Jassat acquired about 53 commercial and residential properties 1998 - 2005, the offshore structures were in operation**, offshore bank accounts and all the properties purchased by the offshore entities.
- ❑ The UK Court order
 - an account of the funds and
 - all necessary and consequential inquiries,
 - plus judgment for the sums found due when the account is taken.

Financial Mail

When friends fall out

A recent UK court case sounds like something out of a movie: an off-book business, money secreted offshore, a falling out between business partners, Swiss bank accounts — even the SA Revenue Service makes an appearance.

14 OCTOBER 2021 - 05:00



A new judgment from the UK's courts will put at rest the minds of two SA businesspeople, by finding that funds in several Swiss bank accounts belong to them and must be accounted for.

The funds were part of about £200m earned from an "off-book business", which ran alongside the legitimate dealings of the Jumbo group of companies for a decade. The court decision throws light on what happened to that money and the impact of a falling out between the four major shareholders of Jumbo. It also highlights the role of an "agent" in the UK who was supposed to use part of the funds for the benefit of the two SA businesspeople, but under whose watch the funds might have disappeared.

Anwar Gangat and Surendra Bhawan are both resident in SA. Together with Edrees Hathurani and Dinesh Sreeha, they were the major shareholders in what the UK court described as "that part of the Jumbo group of companies which carried on a legitimate cash and carry business in SA from the mid-1980s until the sale of the business in 1998".

England and Wales High Court (Chancery Division) Decisions

You are here: [BAILEY](#) >> [Databases](#) >> [England and Wales High Court \(Chancery Division\) Decisions](#) >> [Gangat & Anor v Jassat \[2021\] EWHC 2644 \(Ch\) \(01 October 2021\)](#)

URL: <http://www.bailii.org/eng/cases/EWHC/Ch/2021/2644.html>

Cite as: [2021] EWHC 2644 (Ch)

Neutral Citation Number: [2021] EWHC 2644 (Ch)
Case No: HC-2017-001058

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION
BUSINESS LIST (ChD)

Royal Courts of Justice
Rolin Building, Fetter Lane, London, EC4A 3DF,
01 7553001

Before:

EASON RAJAH QC
Sitting as a Judge of the Chancery Division

Between:

(1) ANWAR GANGAT
(2) SURENDRA BHAWAN
- and -
YUSUF JASSAT
Claimants
Defendant

Arfan Khan (instructed by Pandya Arbitration Global) for the Claimants
David Peters (instructed by Edwin Coe LLP) for the Defendant

Hearing dates: 16, 17, 18, 21, 22, 23 and 29 June 2021

HTML VERSION OF JUDGMENT APPROVED

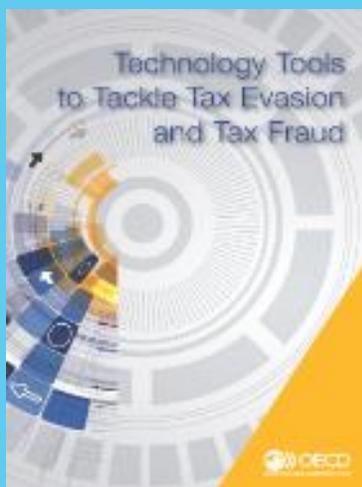


Electronic Sales Suppression: A threat to tax revenues

Published on 18 February 2013

Download the report (PDF):

- **English** This report describes the functions of point of sales systems and the specific areas of risk to tax administrations. It sets out in detail the electronic sales suppression techniques that have been uncovered, in particular “**Phantomware**” and “**Zappers**”, and **shows how such methods can be detected by tax auditors and investigators**. The report also considers a **number of strategies** adopted in different countries to tackle electronic sales suppression and highlights best practices. In particular, it makes a number of recommendations to countries for addressing this important area of risk.
- **French**
- **German**
- **Russian**
- **Spanish**



Technology Tools to Tackle Tax Evasion and Tax Fraud

Published on 31 March 2017

Download the report (PDF):

- **English** This report provides an overview of some of the **technology tools** that tax authorities have **implemented** to address tax evasion and tax fraud, **focusing on electronic sales suppression and false invoicing**. The report also includes a more **technical catalogue of these technology solutions**, with a view to encouraging other tax authorities that are facing the same types of risks to draw on that experience. The report also discusses complementary work that tax authorities are undertaking to address the cash economy and sharing economy, which, although not types of tax evasion and fraud themselves, can facilitate it.
- **German**