

KENYA CASE STUDY TAX EVASION

Introduction

- The Government of Kenya contracted a foreign company (Tripple C Ltd) to build a toll road on a public-private partnership (PPP) basis at cost of 80million USD.
- KRA initiated an audit exercise on the project to establish taxes payable.
- One of the audit exercise was to verify VAT inputs claimed by Tripple C Ltd. The company had claimed a tax refund from the Government. During the verification process, we narrowed down on 13 companies that had made supplies to Tripple C. The supply value was approximately 10 million usd. These 13 companies had claimed fictitious invoices from known missing traders therefore there were doubts as to whether Tripple C Ltd inputs claims from these companies were genuine.
- An investigation commenced on the 13 companies with aim to determine whether there was an actual supply to Tripple C.
- To determine supply, we took two approaches, namely:
 - System Analysis of VAT inputs from the bottom of the supply chain to the main beneficiary Tripple C
 - Followed the money movement, payments from Tripple C to the 13 companies and onward transactions thereafter.

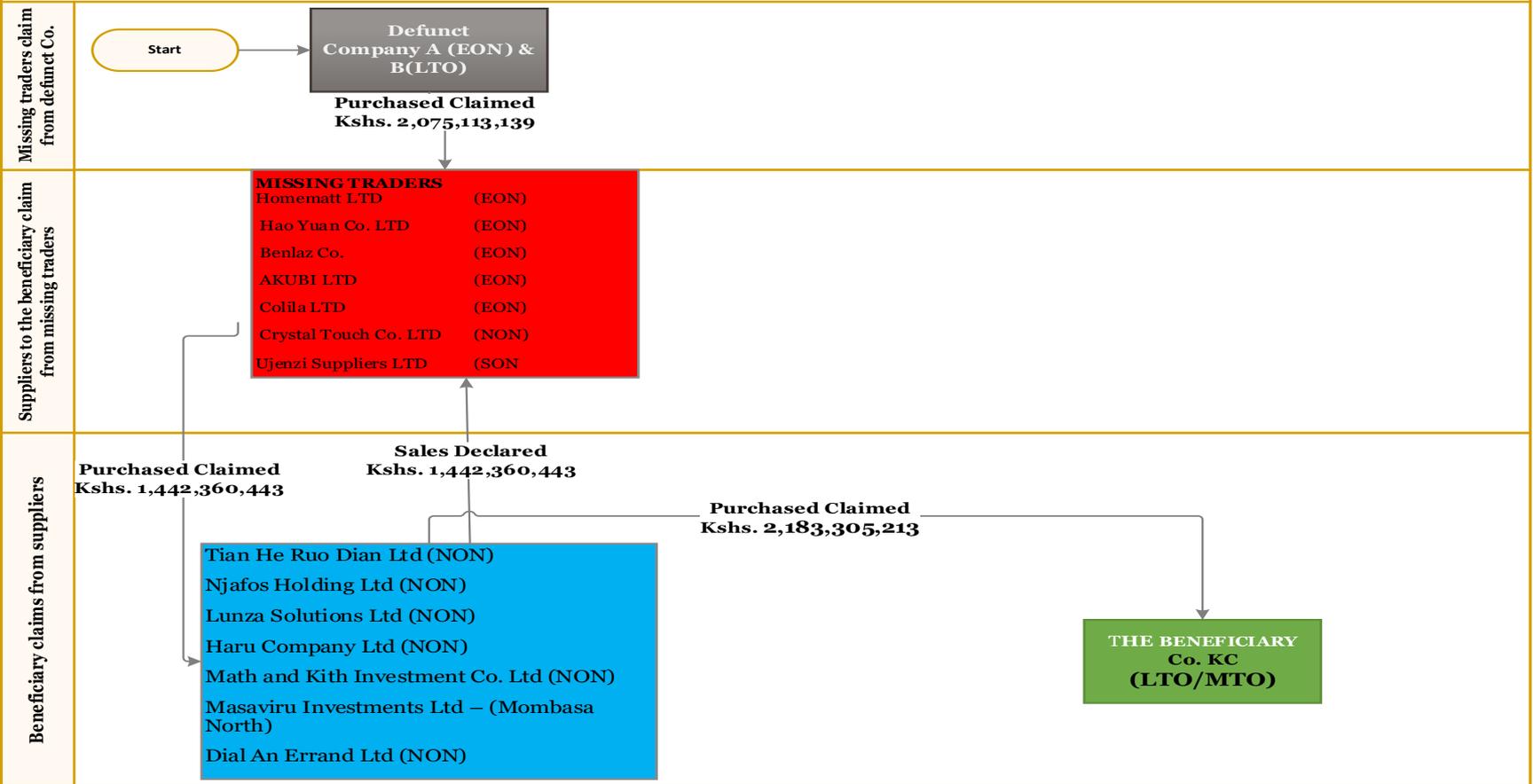
1. SYSTEM ANALYSIS OF VAT INPUTS CLAIMED

An analysis of VAT inputs of the 13 companies from the bottom of the supply chain to the main beneficiary Tripple C established a tax evasion scheme as discussed below:

- The first level involved first facilitators (Facilitator A) being issued fictitious invoices from companies that were either non-operational or had shut down.
- The second level of the scheme involved another group of facilitators referred to as the second facilitators (Facilitator B). They issued fictitious invoices to the intermediaries to minimize their VAT payable and match the output VAT declared as sold to the main beneficiary.
- The third level being intermediaries (Facilitator C) who directly issued invoices to the main beneficiary (Tripple C Ltd) for input purchases claims. Subsequently, both the intermediaries and the main beneficiary declare matching output and input VAT respectively. The net effect being that the main beneficiary and the two facilitators' match their input and output VAT thus paying very little or no VAT. The scheme is illustrated in the next slide;

SYSTEM ANALYSIS OF VAT INPUTS CLAIMED

Multi-Invoicing Approach Illustration



Investigations on Facilitators A and B established the following:

- The companies were defunct/been wound up/non operational
- Directors of the defunct companies denied having knowledge of transacting with the 13 companies
- Change of user system email address hence denying access to the real directors, in turn allowing the fraudsters to file VAT returns and access the iTax accounts.
- Use of falsified Documentation/Identity theft to Register companies.
- The companies neither imported nor manufactured goods.
- **The above findings led to the conclusion that there was no supply to the 13 companies who in turn did not supply Triple C Ltd.**

2. Follow the Money Approach

- Analysis of bank deposits for the 13 companies showed deposits mainly from Triple C Limited.
- Further analysis showed immediate outward transfer of the money to other business names.
- The money was immediately transferred to USD accounts and wired outside the country to various destinations.
- Customs data obtained showed no evidence of importation of goods therefore discrediting the argument that the out of country payments were for importation of goods
- There was no evidence of payment to local purchases or local withdrawals which could give an indication of payments to local suppliers.

TAX EVASION SCHEME-13 COMPANIES

- Analysis of bank documents of the 13 companies established two similar account signatories across the 13 companies.
- The company directors details of the 13 companies were changed the same day the bank accounts were opened.
- A recorded confession was obtained from one of the accounts signatories confessing to the 13 companies supplying air and how the fictitious invoices generated were used to siphon money from the project.
- Whilst the bank transfers from Triple C Ltd to the 13 companies indicated payment for supply of construction material, subsequent recipients of the monies also immediately transferred the funds to USD, account and monies sent to China. Therefore, there was no evidence of payments to local suppliers. Neither did the business names that transferred monies to China, had imported anything into Kenya as per KRA systems.

- In conclusion the 13 companies were shell companies with no “meat” or substance. The companies were used by Triple C Ltd to transfer funds to unknown individuals and there was no supply to Triple C Ltd.
- The fictitious invoices generated in the whole scheme were used to legitimize the transfers and to reduce tax liability on the significant income received by Triple C Ltd.
- Triple C officials went ahead to raise VAT inputs arising from the same fictitious purchases
- The fictitious VAT claims from the 13 companies were disallowed and taxes demanded from Triple C Ltd.
- Prosecution file charging Triple C Ltd directors was forwarded to Director of Public Prosecutions awaiting approval.
- Additional taxes were demanded, the matter is now at the Tax Appeals Tribunal where Triple C Ltd has objected to the tax demand.

Challenges

- In the civil case, on the face value, Triple C Ltd complied with all the domestic laws in relation to claiming input VAT. The company had all the requisite documents pertaining claiming input VAT. They are therefore relying on the law to justify their position.
- Witness intimidation: the case is highly dependent on the witness confirming that indeed there was no supply to Triple C Ltd. That this was a scheme to siphon money out of the company. The witness has several occasions gone into hiding following threats or opted to withdraw their witness statements.

Thank
you

