

Will Retailers Pay Back Plastic Levy? By Jonathan Hore

One question which the general public and accountants have been asking since the Minister of Finance & Economic Development announced that a law will be put in place to collect plastic levy is whether retailers and other traders will also pay the levies they collected before the law was in place. Well, that is a realistic question which needs a straight answer and I will discuss this with you today. In this article, words importing the masculine shall be deemed to include the feminine.

Enter plastic levy

The Plastic Levy, which we shall call 'levy' henceforth, is a tax that is charged by, mainly retailers to consumers whenever they purchase goods. The tax has traditionally been charged at P0.25 per plastic bag and is borne by the general public who require plastic bags to carry goods from shops. Before 1 February 2021 when Hon Dr Matsheka announced that a law will be implemented effective 1 April 2021 to enhance collection of the levy, it was commonly known that retailers were charging the levy but not remitting it to government as there was no law enforcing the collection. It was also eccentric that retailers were charging this tax without a law backing such practice. It appears that there is no publicly available information as to how the levy came into being.

From the Minister's budget speech, a law will be put in place to enhance the collection of the tax by BURS. Once the law is in place, it will mean that retailers and other traders who were charging the levy will not pocket it but pay it to government. The big question is whether the said traders will pay the levy from 1 April 2021 going forwards and of so, what will happen to the tax which they have collected before? Will they also pay it to BURS?

History

It is my view that the retailers will not pay the levy they have traditionally collected to BURS and this is based on the following reasons:

- **No law:** It is not possible for BURS or any other person to collect tax when there was no law enabling the collection of such tax. If the law was in force and the traders were not complying, then there would be a compelling reason to coerce the traders to pay the tax going backwards.
- **No retrospective effect:** Laws are crafted, in the majority of cases, to legislate going forwards and not backwards. As such, it is likely that the law which will be in place will require payment of the tax going forwards only and not retrospectively.
- **No records:** It is also not easy to implement retrospective collections when there was no requirement for the traders to keep records for purposes of accounting for the tax. Put simply, the revenue from the plastics could have been bundled into normal trading revenue making determination of taxes collected a mammoth task.

Unfair?

Well, I know you feel cheated and you probably are thinking that this is unfair to consumers but it is reality. The traders who collected this tax are not likely to pay the levy collected before 1 April 2021 due to the mentioned legal complications. But that will result in an act which goes against most constitutions and that is unjust enrichment. It is commonly accepted that no-one must be unjustly enriched by obtaining property which is not rightfully theirs. In the present case, the traders who collected the plastic levy certainly collected money from the public which they will not repay; believe you me they benefitted and that's it.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group or know about our 9 Tax ebooks, send me a text on the cell number below.