

OPINION ON COINS AND TOKENS AS A FORM OF CHANGE IN WHOLESALE AND RETAIL SALES:

Background / Introduction

The use of multi currency in Zimbabwe since 2009 has witnessed a number of successes and challenges. Chief among the challenges is the difficulty to access and use coins. As a way of getting round this challenge retailers and wholesalers have resorted to a variety of measures. These include the issuing of credit vouchers which the purchaser can redeem in a few instances, from the same or similar outlet for value of change owed.

In other cases, petty goods like sweets, shoe polish, razor blades, matches etc have been offered in place of the change that a customer is owed. The few outlets which have managed to access coins, mainly in Rand form, have used these as change with some using that day's exchange rate and any other rate they chose.

The above quoted scenarios have seen customers making do with goods which they have no need for or being confined to conducting their shopping to those same outlets so that they are able to redeem the credit vouchers. In other instances people have to buy more than what they need so that the need for change does not arise.

Some cases have seen heated exchanges between the customers and the shopkeepers as they try to reach a compromise on the mode of change or to call off the sale outright for want of change. From a customer perspective, it is clear that multicurrency use has exposed them to an unfair trade practice where they no longer enjoy freedom to shop where they want and to receive the exact change due to them. In extreme cases, customers have abandoned the change due to them, thus unjustly enriching the retailers and wholesalers concerned. In view of these scenarios, this document is designed to explain why this is happening as well as suggest possible solutions.

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Multicurrency use in Zimbabwe

In terms of SI 5 of 2009 Finance Act No 2, the Reserve Bank Act Chapter 22: 15 was amended by the insertion of Section 44A which provides as follows:

44A

Legal tender of foreign currencies

The Minister may, in regulations made under section 64 prescribe that, subject to such conditions as may be specified in the regulations, a tender of payment in any currency other than the Zimbabwean currency shall be legal tender in all transactions or in such transactions as may be specified in the regulations

(2) The tender in Zimbabwe of the British pound, euro, United States dollar, South African rand and Botswana pula in any transaction shall be deemed to be legal tender as if -

(a) section 44A of the Reserve Bank Act Chapter 22:15 (No 5 of 1999) as inserted by this Act had come into force on the 1st February, 2009 and ;

(b) the Minister of Finance had, on 1st February 2009, prescribed in the regulations made for the purposes of the aforementioned section 44A, that the aforementioned currencies are legal tender in any transaction.

In terms of this provision, paper and coins of the listed currencies are acceptable for purchasing goods and accessing services. Consequently where the value of the tendered currency has an unused portion meant to be given back as change, such portion should be refunded to the purchaser as change. This is however proving to be difficult in practice. When asked to explain why it is proving difficult for the shops to give change, various versions have come up. Some are the following:

Bankers' perspective

A total of three banks were approached. They requested anonymity for professional reasons and also taking into account that we were approaching them not on any mandate from the Ministry of Finance, but from an interested person's perspective. They have coins in their stocks but, mainly in rand. When clients, including retailers, come to get the change, they issue this based on the exchange rate of a particular day. By the time the change gets to the customer the value at which the retailer sourced it would have dwindled or gone up depending on the rate applicable then. This change should be given based on that day's exchange rate. Retailers are therefore not keen to get change from the banks as they may end up sourcing it at one rate and then having to give it out at a lower rate.

The banks also indicated that even though there were a variety of press reports to the effect that United States coins were being imported in bulk by government, banks have not yet received any. If retailers ask for these, they have nothing to give them. One bank indicated that they are even importing the paper notes direct from the United States of America, which involves freight charges etc. that they have to meet. In the absence of a system where they can get coins and notes at concessionary or government subsidized rates, there is little that they can do to ensure the availability of coins.

Retailers / wholesalers' perspective

Four retail outlets who also spoke on condition of anonymity, said that as a sector they are anxious to give people change but they cannot get the coins for the same reasons as those expressed by the banks. They said they are more than willing to get the coins for change if there is a body which is prepared to meet the extra cost of sourcing these. Two of the outlets indicated that at times they give out coin change if they have some in their stocks. However in most cases, they are all in the same predicament as who will carry the additional costs that comes with the acquisition of the coins from the banks. The only way they can recover the extra cost is by passing it onto the customer who naturally would resist that and shun buying from their outlet. In the result, even though the coins are available, retailers are not keen to get them for the stated reason.

Contractual perspective

Contracts of sale fall under the Consumer Contracts Act Chapter 8:03 which states in section 5 that, the court may rule that a contract is unfair if the contracts results in unreasonably unequal exchange of values or benefit. In this situation, this provision may be taken to apply to cases where one tenders cash for the value of goods but fail to receive the change which is due. Even though the natural entitlement would be the physical coins as change, if it is impossible to be satisfied for the reasons proffered above, the court can still hold that tendering alternatives in place of coin change are consistent with engaging in an unfair trade practice. In determining whether the contract is unfair the court also takes into account the cost or expenses that need to be reasonably expended in the conclusion of the contract. This then brings to mind the question of whether the retailer and wholesaler are prepared to pay the extra cost to acquire coin change and pass that extra cost to the customer by raising the prices of the goods.

Taking into account the fact that a contract involves the meeting of minds of the parties involved, it is no surprise if customers who find themselves at the mercy of receiving change alternatives which they are not comfortable with then resort to the option of exercising their free will and abandon the sales in outlets which do not offer them coin change. This is prejudicial to those who are not close to the outlets.

Recourse may also be had to the provisions of the Contractual Penalties Act Chapter 8: 04. This Act empowers parties to a contract to approach the courts so that the courts can compel them to comply with the terms of that contract if, such compliance is practical. Since the retailer or wholesaler becomes indebted to the customer for the coin change due to him/her, the customer can

prove that failure to give such coin change is a breach of the contract of sale. The court can thus order the retailer / wholesaler to remedy that breach by giving the customer coin change due to him/her. Like the Consumer Contracts Act, the extent to which the law can come to the help of the parties is dependent upon the facts of each case and what each party manages to prove.

Legislative perspective

In the interests of public policy and society's welfare at large, Parliament can come up with a law which forces retailers and wholesalers to get coin change from the banks and give that to customers, failing which they risk losing their trading licenses. It is, however, worth noting that there is a limit to which Parliament can interfere in personal dealings. Contracts of sale also fall in the category of personal dealings, hence may receive restricted legislative interference.

Advocacy perspective

In view of the hardships suffered by customers who are forced to be content with cash equivalents in place of coin change, massive boycotts of outlets which do not issue coin change may need to be considered. However the issue of convenience also needs to be thought through when such boycotts are undertaken. It is imperative that the Ministry of Finance be reminded about the inconvenience that is being suffered by the public in relation to failure to access coin change in the shops. If press reports are anything to go by, it would also be well placed to remind the Minister of his pledge earlier on in the year that United States of America coins were going to be sourced to address the coin change problem. Alternatively, it may be worth considering the extent to which the government can manage to subsidize the sourcing of coin change from the banks. This will ensure that minimal costs are incurred by all parties to the contract of sale.

Conclusion

The coins/ tokens issue is a problem that is bedeviling most sale transactions. The challenge in tackling it is what form of intervention should be resorted to, if one looks at the various reasons accounting for the failure to let people have their coin change. In view of the fact that it is the mandate of the Ministry of Finance and the Reserve Bank to ensure availability of cash in its various forms, this document may be used as a base document for engaging these bodies, so that they seriously look into this area which falls under their mandate.

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