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SCHOOL OF LAW

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TAXATION LAW IN ZAMBIA
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TAXATION LAW IN ZAMBIA

By

RONALD JOHN. BANDA

An Obligatory Essay submitted to the University of Zambia in partial fulfilment for the award of the degree of LL.B.

The University of Zambia
P.O. Box 32379
LUSAKA.

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DEDICATION

To my late mother Mrs Leah Mwale
who paved way for my future and
my Uncle Sandford Banda.

To my dear wives Enid Mwanza Banda
and Annie Katenekwa Kayawe Banda
for their patience during my reading
nights.

ACKNOWLEDGEMENT

I would like to thank the following to whom I am greatly indebted; firstly to my Supervisor Mr. K. Hansungule, without whom this dissertation could not have been possible and whose close guidance is reflected on every page. Secondly I would like to thank Income Tax department and its officers who made my research possible: Mr. M.B. Mulusikwanda Commissioner of Taxes, K.L. Pulu Assistant Commissioner of Taxes. Mr. Hamil of Coopers & Lybrand who assisted me in research from time to time.

Lastly, but not least, Miss Jane Phiri who typed the script.

Any error or omission appearing in this essay are mine and should not be attributed to anybody. I take full responsibility for all such errors that may be present in this paper.

Ronald John Banda

INTRODUCTION

I am sure you will agree with me that of all the laws enacted in a country, Income Tax is the most difficult to administer. The administration of Income Tax law presents a continuing challenge as times goes on and as economic activity increases, not only this law is becoming more complex but also its application becoming difficult.

In this paper "Taxation law in Zambia", I have tried to give a historical background to the development of taxation laws in Zambia from the time when the country was known as Northern Rhodesia to date. Some structural features of taxation have also been outlined.

Talking about an appropriate tax system for Zambia I have emphasised in my analysis the need for simplyfying the present legislation in order to have an efficient tax system.

Lastly, in summation of the taxation law in Zambia I have also pointed out how taxation has been used as a tool, for fiscal policy. The last Chapter of this paper had dealt on measures for ensuring compliance if taxation laws are going to have an impact in Zambia. An impact or effectiveness of tax laws through compliance is necessary, so that policy makers in government are permitted a wider range of tax programs.

THE DEVELOPMENT OF INCOME TAX IN ZAMBIA

The history of Income Tax in Zambia goes back to the earlier days when the country was known as Northern Rhodesia. Prior to 1920 there was no Income Tax in the territory. Income Tax is a "tax on income" i.e. the amount of tax payable on all income received in the charge year by every person from a source within or deemed to be within the Republic and the types of income on which it is levied are laid down in Subsection (1) of Section 14 of the Income Tax Act, 1966. The word "Income" has therefore not been defined in the Statute.

The British South African Company which was responsible for administering Northern Rhodesia published a draft proclamation in the Northern Rhodesia Government Gazette a government Notice No. 91 of 1920 proposals for imposition of direct taxation on European inhabitants of the Territory. The draft proclamation provided for raising of revenue by imposition of a tax on incomes. The tax was to be levied on all income that was derived from a source within the Territory. All the income received by a person was taxable but for the purpose of determining the taxable amount of any person other than a company there were abatements to be deducted from the taxable amount. (an abatement was an allowance granted). In case of companies there was an allowance of £500 which was deducted from the taxable income. Tax substantially, in its present form has continously been in force since 1921 when it was first enacted as the Income Tax Ordinance.

With the establishment of the Federation of Rhodesia and Nyasaland, comprising of No thern Rhodesia, Southern Rhodesia and Nyasaland, created by the Federation of Rhodesia and Nyasaland (Constitution) Order-in-council 1953. "It became necessary to intergrate the taxation laws of Southern Rhodesia, Northern Rhodesia and Nyasaland".[1] The intergration of the three income tax statutes involved the repeal of the previous legislation. Section 98(1) of the Federal Income Tax Act of 1954 provided for transitional provisions which regulated the following matters;

> "(1) All legal proceedings which, under the previous law, had been commenced by or against any Commissioner of Tax could be continued and the Governor-General could make regulations that were incidental, necessary or expedient for the purpose of assessing, collecting or refunding taxes under any previous law, and for the transfer to the Commissioner of any powers, rights duties, liabilities, and obligations created by or under any such previous law".

Section 78(1) of the Constitution of the Federation provided for a consolidated Revenue fund which was responsible for keeping all revenues or other moneys raised or received of the Federation. The Federal Income Tax Act of 1954 imposed two kinds of taxes. Firstly there was tax on income and profits and secondly there was a Territorial Surcharge which was levied under Article eighty-two of the Federal Constitution. There was no territorial surcharge by the Northern Rhodesia government on individuals.

Section 6 of the Federal Tax Act levied and collected annually throughout the Federation for the benefit of the Consolidated Revenue fund an income tax in respect of the taxable income. The rates of income tax chargeable were fixed annually by the Federal Legislature. The individual governments were also required in addition to collecting Income Tax on incomes to levy under Section 82(1) of the Federal Constitution a Territorial Surcharge. In the case of a person other than a body corporate, the Territorial Surcharge was an amount equal to such percentage, but not exceeding twenty per cent, of the total amount payable by that person as basic tax in respect of the said year and in case of a body corporate the Territorial Surcharge was at one-fifth of the basic tax. The

Federal Income Tax Act 1954 was promulgated on 26th March, 1954. The Act Incorporated previous legislation, codifying and consolidating it by incorporating various Income Tax rules, proclamations etc of the three territories comprising the Federation. Its structure was based on South African Law and practice because the concept of taxing income in the federation was similar to that provided by the South African Income Tax Act. The criteria for taxing income was based on the source of the income and not on residence as it is in the United Kingdom.

After the dissolution of the Federation of Rhodesia and Nyasaland by the (Dissolution) order in council, 1963, Northern Rhodesia achieved Independence and became Zambia, the income tax law and practice was revised and an Income Tax Act 1966 was enacted by the Zambian Parliament.

Prior to the break up of the Federation a departmental committee [2] was set up in Salisbury to investigate methods whereby -

(a) Income Tax is deducted from salaries and Wages by employers and paid to the fiscus.

(b) Provisional Income Tax is paid in advance by certain classes of individuals and by bodies corporate.

(c) To examine, to such extent as may seem necessary, systems of collection of income tax commonly known as PAY AS YOU EARN in the United Kingdom and New Zealand. To prepare a scheme suitable to the Federation whereby the objects of sub-paragraphs (a),(b) and (c) could be achieved.

Preliminary work started in October 1959 and the final report was completed on 23rd March, 1960. As the report was completed towards the end of the break up of the federation just prior to 1963, it was adopted and modified to suit the requirements of each territory, at the time of attaining independence. The major reason for the Zambian authorities for adopting a PAY AS YOU EARN System was because in the former system i.e. taxation under the federal system; tax was paid in arrears. Under the Pay As You Earn Scheme the tax had to be deducted from one's earnings at source and arrears of tax, and consequently hardship , could not arise. It further enabled the government to have money at all times instead of waiting until the end of the tax year, as the tax was to be paid on current basis.

Tax legislation is generally intended to raise revenue necessary to keep the government running so that the government can be in a position to build roads, schools, provide social security services, health, justice etc.

In some instances Tax legislation is used for regulatory purposes such as Income Tax exemptions for specified periods along with other incentives are frequently used especially in developing countries like Zambia to attract foreign private investment and promote investment in desired fields by not taxing the profits of these concerns or firms.

The present legislation, the Income Tax, Act, forms Chapter 668, of the revised Laws of the Republic of Zambia.

On 14th December, 1965 the then Minister of Finance made a Ministerial Statement in Parliament [3] to announce that, subject to the approval of Parliament legislation was going to be introduced which was going to introduce on the 1st April, 1966 a system of Pay as As You Earn. He emphasised that this system would apply to Income from employment only. He further explained that the Pay As You Earn System was only a system for collection of tax from employment.

When introducing the Income Tax Bill 1966 the government explained that the purpose of the bill was to repea and replace the existing Income Tax Act which was taken over upon dissolution of the federation.[4]

The Income Tax bill of 1966 was drafted in such a way as to suit the particular needs of Zambia and not simply to make amendments to the former Federal Act. For example there are a number of features that differ from those taken over from the federation;

(a) Unitary system of taxation was introduced by the Income Tax Bill of 1966 in that only one tax namely Income tax took place of the three previous separate taxes namely Income tax; super tax and the undistributed profits tax.

(b) The Income tax bill of 1966 completely overhauled the Income tax structure and introduced new principles such as: the procedure that existed relating to objections and appeals when one is dissatisfied with the Commissioners decision was altered. Appeals from the refusal of the Commissioner to allow an objection did now lie with the Tax Review Board, which was not going to be a formal court, as was the existing Special Income Tax Court. A special court was preceded over by judges, while the Tax Review Board was a panel of Laymen and not lawyers. It consisted of three persons. The three persons chose one of them as Chairman. A tax official was the Secretary of the Tax Review Board and it was his duty to arrange for meetings of the Board. Each tax district had its own Tax Review Board.

The purpose of the Income Tax Bill 1966 was also to provide for personal tax rates and reduction in abatements. For example abatements for single individuals were reduced from £450 to £400 and for a married person from £960 to £800 and child £144 to £120. 'Abatements' were personal allowances.

The reason for the reduction was that the number of individual tax payers in Zambia was small in relation to the population, and it was decided as a step to broaden the taxation base a reduction in abatements (Personal allowances) was necessary. It was estimated at the time that the reduction of the single and marriage allowances would bring a further five to six thousand persons into the field of tax who otherwise would not have been liable. [5]

Super tax was replaced with higher rates of personal Income Tax. The highest rate of Income tax was put at 10 shillings and six pence in the £1. The opposition were much opposed against the high rates of personal Income Tax. They argued among other things that the "whole thing was concocted by an expert from the United Kingdom where tax rates were high",[6] revenues from Copper companies were so great that it was unnecessary to reduce allowances. Copper was selling over £600, during the Federation it was £240 and that the government was taking a fair amount through royalties.

They were detailed arrangements such , as: In February, 1966 every employee was sent a code by the Commissioner of Taxes based on the allowances to which he/she appeared to be entitled for the year ending 31st March, 1967. This gave each taxpayer an opportunity to object if he/she was not satisfied with the allowances allowed. Before 1st April, 1966 every employer received a booklet entitled "The Employer's Guide to PAYE" which contained these changes as well as Tax Tables.

Lastly there was a Tax Holiday in respect of 1965/66 tax year. Under the previous legislation tax was collected in arrears i.e. after the end of the tax year. This meant that if there was no tax holiday in respect of 1965/66 the taxpayers would have had two tax bills to pay. The 1965/66 tax bill which had to be paid during 1966/67 and the 1966/67 tax bill which was on current year basis being represented by the Pay As You Earn System.

Provision was made for remission, wholly or in part of tax due for the year ended 31st March, 1966. Tax for 1965/66 was not immediately collectable. Tax had to be remitted in instalments over a five-year period. For every period of six months that an employee continued to be resident in Zambia and remained liable to deduction of tax under Pay As You Earn after the 1st of April, 1966 one-tenth of his
his
tax bill for the year of assessment 1965/66 had to be remitted.

[illegible]

1. A.S. Silke, INCOME TAX IN THE CENTRAL AFRICAN FEDERATION Cape Town, 1954 (JUTA & CO. LTD).

2. Department of Taxes Report of the Departmental Committee on PAY-AS-YOU-EARN and provisional Tax under the Chairmenship of Mr. G.E. Pinder.

3. Parliamentary Debates: Hansard No. 5 of the 2nd Session of the First National Assembly.

4. Hansard No. 8 of the National Assembly Parliamentary Debates.

5. Ibid, p.6.

6. Parliamentary Debates: Hansard No. 6 of the 3rd session of the First National Assembly

CHAPTER TWO

The Income Tax Act [1] is the principal legislation regulating the manner and methods of taxing various forms of Incomes in Zambia. In order to accommodate new policy developments introduced in the course of time, the act has undergone several amendments over the years.

The Act is divided into twelve parts and has eight schedules plus a charging schedule. The salient features of these parts and schedules cover the interpretation of the Act, administration, method of levying Income tax, issuing of tax forms, raising of assessment, pay as you earn, matters relating to double taxation agreements, collection of Income tax, exemption from Income tax, Capital allowances that are granted on plant and Machinery and items that can be deducted from income.

The Commissioner of taxes [2] is responsible for the administration of the Income Tax Act. In administering the Act the Commissioner is assisted by two Deputy Commissioners, who in the absence of the Commissioner from office may, if designated by the Commissioner, per-form his functions.

Under Section 7(1) of the Income Tax Act the Commissioner has delegated power and functions to various officers in the Department with regard to the administration of the Income tax Act. The Department is currently organised in the following functional offices, branches, sections and units.[3]

The Head Office is in Lusaka, where the Commissioner and other several staff are based.[4] The Commissioner and his Senior Staff are responsible for policy and administration.

The Department is represented in all provinces with officers of the rank of inspector of Taxes Grade 1 and above. In Lusaka, the officer in charge is an Assistant Commissioner of Taxes while in Ndola similarly the Assistant Commissioner of Taxes is the officer in charge.

These offices are divided into the following branches:

(i) Inspection branch; this branch deals with income taxation of persons who are in business on their own account including corporate tax.

(ii) PAYE branch; this branch is responsible for income tax for people who are in employment.

(iii) Investigation branch; this branch is responsible for taxation of people who deliberately understate or ommit their income.

(iv) and lastly the collection branch is responsible for the physical collection of tax.

The Commissioner of taxes reports [5] state that the Department is at the moment experiencing a lot of operational problems. These being shortage of trained experienced staff. Increased work load because of two many taxes that are placed on the Commissioner of Taxes to administer in addition to the administration of income tax. These taxes are: Mineral Export Tax, selective employment Tax, Education levy, Estate duty tax, property transfer tax, and withholding tax on rents and services. In addition to these responsibilities the Commissioner has the duty of administering the Tax Clearance Act.

Another problem is that the legislation has become so complicated because of the piece meal amendments that have been made to it. In 1983 for example there were ten Statutory Instruments that were passed relating to Income Tax. The aspects covered by these statutory Instruments related to double taxation relief on income and exemptions from income tax.

It is becoming impossible to administer it in its present form. The Principal Act has been in existence since 1967. It is twenty-two years old and therefore out moded, complicated and difficult to use because the relevant provisions are scattered in various amendments to the Principal Act.

When it comes to staffing: the staff strength in terms of officers in post has remained on the same level as in previous years.[6] There is shortage of staff in the working grades (middle management).

The above deficiences are serious and this led to the Times of Zambia to comment on the income tax Department Structure:

> "If it could be overhauled, adequately staffed and cleansed of its bad eggs the tax department could become Zambia's major internal revenue spinner. It is not far-fetched that an expanded and efficient tax department would boost government coffers and relieve the burden of the over-taxed worker in wage employment.
>
> While self-employed people have the means to evade tax payment, those in wage employment have not since the employer is bound by law to deduct from their salaries what is due to government and remit it.

This is not to suggest that we are against tax payment! rather our interest is to ensure everyone in Zambia with means to make money pays correct tax to the authorities for the benefit of the whole nation. For a long time the tax Department has been bemoaning staff shortage and attributing it for its failure to track down tax evaders. Because of the same reason taxes are not paid promptly resulting in millions of Kwacha remaining uncollected over a number of years.

> But are the cries of shortage of staff in the Department justified when the number of unemployed Zambians continues to grow every year? With proper incentives and adequate staff, the tax Department would generate its own funds and contribute more positively to Zambia's economic development.
>
> The government should look at the Department with a view to making it effective and viable"[7]

The Zambian Income Tax Act to become more effective requires simplification and the elimination of superflous provisions in the Act which as Section 95 D(1) of the Income Tax Act such deals with loans to effective shareholders.

> "A tax system is like a three legged chair-----the legs being policy, law and administration. Unless the three legs are equal in length and equally strong, the chair will be unstable. If one is shorter, as administration has usually been, there is a structural weakness. When that leg becomes sufficiently weak, the whole tax system topples".[8]

Unfortunately the Zambian Income Tax System has become suffocated by administration complications and restrictions which are rooted in the law.

In order to correct the situation, the income tax Amendment Act of 1988 is a well come piece of legislation in so far as it relates to pay as you earn only. As for the other sections of the Amendment Act of 1988 are not easy to administer, for example Section

81A(1) of the Amendment Act which deals with payment to certain contractors and suppliers, and Section 81B which deals with Tax Clearance Certificates.

Pay as you earn is primarily a system of collecting tax from employment income (emoluments) as and when it is earned. It is governed by the employment regulations.

The system envisages an equitable distribution of the tax burden. Those in high income brackets are thus supposed to contribute more to the government coffers than those in the lower income brackets.

The problems that have been encountered are mainly administrative. These range from complaints from the general public over delays in granting personal allowances or issuing credit assessments were due. For example some members of the Public have been coming to the tax office for well over one month before they could be attended.[9]

Before the Income Tax Amendment Act of 1988 abatements (Personal allowances) differed according to whether one was married, single or bhad children, Insurance, or was handicapped. For example the personal allowances for the year ended 31st March, 1987 were as follows:-[10]

Personal Allowances:	Charge year to 31st March, 1987
	K
Single	900
Married	2100
Child-per Child (Maximum 6)	330
Handicapped Person	600
Life Assurance Premiums	400

The Income Tax Amendment Act of 1988 has minimised the Pay As You Earn administrative problems by the introduction of a primary allowance in 1989/90 tax year. The "primary allowance" has replaced the Married, single and child allowances. The primary allowance is K6000.00 per working individual under paragraph 2 of the charging schedule to the Principal Act.

If properly operated there will be no need for assessments. The number of forms that are used in the administration of Pay As You Earn will also have to be cut down. The legislation will go a long way in simplyfying the Pay As You Earn System of taxation for example the tax tables which are currently in use are very bulky. In 1986/87, tax tables had code numbers ranging from '0' to '999'. The change to "primary allowance" has meant the reduction in code numbers to be given to taxpayers. As from the 1st of April, 1989, whether a person is married, single or with a number of children will have the same code number.

There is also need to cut down the number of taxes. There are too many taxes which hamper the efficient administration of the Income Tax Act. These taxes require to either be abolished or reduced as they are inequitable in certain cases. For example education levy which is contained in the Education levy Act of 1977. The levy was first introduced through a budget speech by the then Minister of Finance. The aim of the levy was stated to be the increasing total government expenditure on education was alarming. The expenditure by the Ministry of Education was stated thus:-

	1964/65 Millions	1974 Millions	1976 Millions
Capital expenditure	4.3	18.0 18.0	20.5 20.5
Recurrent expenditure	14.1	69.6	94.5

The above figures are given to illustrate that government was spending heavily on education and training. The Manpower so trained did benefit not only government but also Parastatals and private companies. It was therefore necessary to ask all registered companies to contribute, hence the Education levy Act of 1977.[11] The rate of this tax was K120.00 on every company, effective from 1st April, 1987. This tax is now a burden to some companies. They might be forced to close down because the economic impact is such that the tax reduces the ability of companies to replace machinery. For example a car which cost K12,000.00 (twelve thousand Kwacha in 1981 is now costing K240,000.00 i.e. in 1989). This means that the company has to look for additional Kwacha in order to replace its old fleet of cars. This tax has become so heavy that a number of companies are bitterly complaining as the levy is not an allowable deduction in computing the income tax profits. The levy will reduce investments in New plant and Machinery as companies will have no surplus funds to replace old machinery. Even if a company made a loss the levy is still payable because it is based on the turnover of the Company. It is an inquietable tax indeed.

The 1988 Education levy (Amendment) Act increased the educational levy to be paid by companies. Education levy remains unchanged and according to the 1989 Budget proposals the levy is now as follows:-

		TURNOVER K	LEVY PAYABLE K
50,000	-	100,000	750
100,000	-	200,000	1,500
200,000	-	500,000	3,000
500,000	-	1,000,000	7,500

Excess over 1,000,001 at 1.5% of turnover to a maximum of K75,000.

All what is required is to raise the company tax rate from 45% to say 55% to include an element of education levy collecting income tax and education levy together, instead of issuing a number of tax receipts and assessments on the same file i.e. an assessment for corporate tax and an assessment for education levy. This results in a waste of stationery and its time consuming with unnecessary paper work.

* Another type of tax that requires to be abolished is the Equity levy tax. This tax was outlined in the Budget address to Parliament in 1982.[12] The then Minister of Finance stated that government investment in the Parastatal Sector was in excess of K1.5 billion of which about K750 million was in the form of Equity. He then proposed a levy of 1.5 per cent on this equity in the Parastatal Sector. The equity was government investment in each of the parastatals which the government had

invested money. The levy was aimed at exposing inefficient parastatal organisations by identifying the underlying contributing factors, such as poor management, structural or other organisational defects. It was further stated that the measure was not intended to penalise efficient and profitable organisations. Such organisations did not have to pay both company tax and equity levy. They had only to pay the greater of the two. This is what led to the Equity levy Act of 1982.[13] In practice this tax serves no purpose at all. For example in loss making Parastatals the levy becomes a burden in that it just makes the liquidity position of the parastatals concerned more precarious. And if these parastatals do not meet their obligations they run back to government for assistance in order to be bailed out. In effect the objective of being penalised is thereby defeated. Further more equity levy was not even supposed to be introduced as a form of tax. This is because of the nature of the price structure imposed on these parastatals makes it difficult for them to engage in business profitably. For example in some cases they can not increase the price of their products or services without first consulting the Price and Incomes Commission to obtain approval. This means that some of these Parastatals are in a loss situation not as a result of the alleged poor management and defective organisational structures but as a result of the pricing mechanism. The expenses keep going up with inflation, but the income or receipts remain static. The Zambia Federation of Employers in its Annual Report for 1988 has stated that many companies will not survive the present economic difficulties unless price controls are removed. The association feels that price controls are stiffling companies and therefore, it has become increasingly difficult for them to contribute to the national economic programme as they are not making profit.[14]

As for selective employment tax, although there are noble intentions behind the introduction of this tax. The tax has outlived its usefulness. Selective employment tax was introduced to encourage Zambianization. This tax has now become, irrelevant because of the introduction of inducement allowance. There are now very few companies that are willing to employ expatriate labour if a Zambian can be available. 'Inducement allowance' means the Overseas Allowance, including gratuity payable in foreign currency by an employer in Zambia to an expatriate employee, as introduced through the system of auctioning foreign exchange.[15] The auctioning of foreign exchange was introduced on 4th October, 1985.

The purpose was to conserve the use or utilization of scarce foreign currency. The inducement allowance paid to expatriates is exempt from Income tax when the allowance is received by expatriate employees. However, it is not allowed as a deduction to the employer, it is not regarded as a business expense for income tax purposes. i.e. the allowance is prohibited by the income tax act as a deduction by Section 44(k). In practice the effect has been for employers to do away with expatriate labour unless it is extremely necessary to retain such labour. In other words inducement allowance has had a very big impact in encouraging Zambianization rather than selective employment tax. Selective Employment Tax was introduced in 197[illegible]. The tax became effective as from the 1st of April, 1975. The amount of tax payable by employers is 20% of the gross emoluments of the selected employee. for example.

Employee	Gross Emoluments K	Set K
A	515	103
B	520-50	104
C	527-75	105-4[illegible]

However, the selective employment tax does not apply to incomes payable to the following employees

(a) A Citizen of Zambia

(b) an established resident of Zambia.
(see Appendix i) and

(c) an employee who is not resident in Zambia in terms of Section 4 of the Income Tax Act.
(see Appendix ii)

(d) emoluments not liable to income tax for example emoluments paid in the form of benefits such as passages in certain cases, some housing benefits etc.

(e) emoluments which are pensions or annuities.

(f) where the average gross emolument does not exceed K100 per month. There is also exemption given to the following employers not to deduct selective employment tax:

  (a) Government of the Republic of Zambia.

  (b) Municipal or township or rural council or any other council established under the local Government Act (Cap. 480).

  (c) University of Zambia.

  (d) National Council for Scientific Research and

  (e) Charitable Institutions.

The last but not least problem that has made the operation performance of the Income Tax administration inefficient is the performance of the collection branch. It needs a complete overhaul. Nonetheless it is arguably the most important part of the Department for unless tax is actually brought in efforts of the Inspectors and tax assessment officers are wasted. However, it has been frankly acknowledged by the Department's annual reports that set out figures for tax outstanding , that much of the tax due is not being collected and the loss of revenue is substantial.[16] The collectors simply act as tax receivers since there is no effective enforcement function in operation. The systems laid down for the collection of tax and the statutory powers on which they are based are adequate. For example there is Section 84(1) of the Income Tax Act which provides that any person or partnership may be declared by the Commission to be an agent for the payment of tax due by another person or partnership, were the Commissioner has reasonable grounds to believe that a person or partnership has property belonging to the defaulters. This provision is also assisted with the requirements of obtaining a tax clearance certificate before leaving the country or obtaining foreign exchange make formidable additions to the traditional harmony of levying distress. The greatest single area of weakness in the collection branch is that there is no effective enforcement policy. Very few physical calls are made. And it is rare to levy distress or make use of other statutory powers available to the Department. Every collection office has heavy work of arrears. All that the staff do is to keep up with payments received [17] from businesses and employers who are paying their dues and it is impossible to pursue those who did not. In order to operate efficiently all what is required is to convert the manual ledger card system that is in use now to a computer control system.

[illegible] A

IMMIGRATION AND DEPORTATION ACT
(Cap 122 Section 2)

Definition:

'Established Resident' means, in relation to any date, a person who is not a visitor or a prohibited immigrant and who has been ordinarily and lawfully resident in Zambia or the former Protectorate of Northern Rhodesia or both for the period of four years immediately preceding that date: provided that no period during which a person -

(i) has been confined in a prison consequent on a sentence of imprisonment imposed by a court, which sentence has not on appeal or review been quashed or varied to a fine.

(ii) has been an inmate of a mental institution or

(iii) has remained in Zambia or the former Protectorate of Northern Rhodesia or both as a visitor or in terms of a statutory permit allowing such person for a limited only so to remain;

shall be counted for the purpose of this definition.

APPENDIX II

INCOME TAX ACT

(CAP 668 Section 4)

Definition (Paraphrased)

'Non-Resident' - An individual shall not be resident in Zambia for income tax purposes if the individual is in Zambia for some temporary purpose only and not with any view or intent of establishing a residence in Zambia and also has not actually resident in Zambia at one time or several times for a period equal in the whole to one hundred and eighty-three days in any income tax year. (1st April, to 31st March)

FOOTNOTES

1. Cap. 668.

2. M. Knoetze, 1966-1970 L.C. Chibwe, 1970-1973 P.K.Chiwenda, 1973-1975, A.M. Amrie, 1975-1977 L.W. Bwalya, 1977-1988, Mulasikwanda 1988 current Commissioner.

3. Ministry of Finance/Department of Taxes: Report April, 1986 Co. 103/23/3 N.A. 101.

4. It is situated in Profund House,Kabwe Roundabout Lusaka.

5. Ministry of Finance Commissioner of Taxes Reports:
1976-1977 paragraph 39.
1979-1980 paragraph 39.
1984-1985 paragraph 53.

6. Ibid 5.

7. Sunday Times Comment 29th March, 1987.

8. Institute for Tax Administration, University of Southern California Fisc working paper p.5 presented in ECA sponsored Training cource, Addis Ababa, October 1973.

9. Discussion with Mr. Matutu at the tax office who had come from Chipata compound an ex- employee of Zambia Breweries.

10. The 1986 Budget Foreign Exchange News, Executive Alert produced by Coopers & Lybrand, Lusaka.

11. Education Levy Act No. 11 of 1977.

12. No. 59; Daily Parliamentary Debates Friday 29th January, 1982.

13. National Assembly Bill No. 13 of 1982.

14. Daily Mail - (Business Mail Suppliment) 12th April, 1989.

15. National Assembly Bill No. 9 of 19[illegible].

16. Ministry of Finance Commissioner of Taxes Report for 1975/76 Penalties and Tax unpaid as at 31st March.

	1973	1974	1975	1976
Companies	K5.6 m	K13.0 m	K15.9 m	26.3 m

17. Discussion with Mr. Kaonde, Chief Collector of Taxes, Lusaka 'B' Collection Office.

CHAPTER THREE

THE ROLE OF TAXATION IN ECONOMIC DEVELOPMENT IN ZAMBIA

Apart from serving as a Government revenue raising device, income taxation is also one of the important fiscal policy tools as well as a means of promoting the growth of a less vulnerable and diversified national economy.

The most obvious role and significance of income taxation is revenue contribution to government coffers. This is, of course not an over-simplification of the role of income taxation. To appreciate the significance of this role one must look at the reasons why government needs funds and raises them in various ways.

First of all, the standard of living and welfare of people in a given country depends on the economic activities taking place in that country. Business activities thrive in a country where there is peace law and order and people are able to go about freely and are sure that they will enjoy the fruits of their sweat. This atmosphere is assured where there is an effective and stable government. A government capable of maintaining law and order; capable of enforcing justice, contractual undertakings, protecting, not only all the people and their property, but also the country, from external adversaries and injustice; and capable of ensuring not only the prosperity of the economy but also a fair distribution of the economy's output in the society.

The government is, therefore, obliged to maintain law enforcement officers (i.e. Police, soldiers and court officers). It is obliged to have administrative and technical employees to discharge its functions in all fields of government programmes. Additionally certain services are so vital to the community that people expect government to provide them or play a leading role in providing them. For example, education, medical facilities, public transport particularly in areas shunned by private enterpremuors.

In a developing country like Zambia, the government is in fact obliged to go into direct production of certain products which private investors may not venture in. For example, the production of fertilizer by Kafue Nitrogen Chemicals (Zambia) Limited. It is also obliged to provide infrastructure .. so as to encourage faster expansion of private investments such as investing in hydro-electric schemes such as Kafue-Gorge Itezhi-Tezhi and roads etc.

To do all this the government must have the means with which to pay for the resources required. It cannot rely on donations. It cannot also rely entirely on borrowing as this entails debt settlements at some future dates. It cannot conscript resources as that implies using forced-labour and property consfication techniques, both of which are unacceptable to people who cherish democracy. The more preferable method is taxation, taxation built on the ability to pay principle. The role and significance of income taxation and hence of the Department of Taxes, becomes very important. Taxation therefore provides the means with which government finances its programmes.

On the other hand government uses taxation as a means of achieving economic growth. While applying the principle of ability to pay, the government nevertheless grants tax concessions to taxpayers engaging in certain activities or investing in certain business ventures. The tax incentives [18] have a variety of objectives some of them are meant to encourage foreign exchange earnings (exports), foreign exchange conservation (import substitution industries), food produc-tion and internal capital formation (banking). In the process of promoting the growth of a diversified and healthy economy, these taxes contribute to the improve-ment of productivity of the economy and help redistribute the economy's output. In this way taxation contributes to the improvement of the general quality of life for all in society.

In times of inflation, when inflation creates hardships for income earners and all consumers who have to buy their needs, it is painful for people to have lots of money which buys very little. Income taxation is used in curbing inflation. Taxation may be so manipulated in such a way that it reduces disposable income or effective demand and exert a downward pressure on the price system in order to reduce inflation. It may also be manipulated in such a way that it increases disposable income, that is, increasing purchasing power to buyers (effective demand), to make the profit earnings by sellers more rosy and in that way influence business expansion which promises more employment opportunities. It is at least clear that by operating a system of taxa-tion as a fiscal tool, taxation plays a great part in the life of our own national economy. For example in Zambia, taxation apart from adding contributions to the treasury has been used to achieve certain objectives. One of the most difficult problems facing Zambia relates to balance of payments and exchange control problems. Because of the balance of payments problems, Zambia has placed restrictions on foreign exchange in order to balance imports and exports. Thereby restricting private foreign enterprises from remitting profits.

However, in order to attract foreign investments Zambia has used a fiscal tool of taxation by providing tax incentives. The kind of incentives that a foreign investor can expect include a rentention of a certain percentage of foreign exchange in cases of exporters of non-traditional products or services, preferencial rate of tax as determined by Parliament from time to time.

Taxation has also been used as a fiscal device to promote agriculture in Zambia for example the Sixth Schedule of the Income Tax Act, 1966 provides a number of allowances through 'taxation' as a means of encouraging farming in Zambia. The main aim of using taxation as a fiscal policy tool has been the need to stimulate expanded production of food crops for domestic market as well as for export and in order to feed the increasing urban population. The allowances that people engaged in farming are entitled to include:-

(a) 15% as the maximum rate of tax on farming income while the rate of tax on other incomes varies. Other taxes which, as indicated vary according to income.

balance of such income that	Rate per centum
does not exceed K2000	5
exceeds K2000 but does not exceed K5500	15
exceeds K5500 but does not exceed K10,000	25
" K10,000 " " " exceed K15,000	35
" K15,000 " " " exceed K22,000	45
" K22,000 " " " exceed K30,000	55
" K30,000 " " " exceed K40,000	60
exceeds K40,000	65[19]

While the rate for companies was, manufacturing company on income from manufacturing 35%, other companies the rate was 45%. This encourages people to go into farming ventures because the rate of taxation is extremely low.

(b) the other incentive relates to allowances called 'farm improvement' and 'farm works allowances. Where in any charge year a farmer incurs capital expenditure on farm improvements such as the construction of

Farm sheds, burns, houses for farm workers and other structures on the farm. The expenditure so expended is deductable in ascertaining the profits of his farming business for that charge year in full. Similarly if a farmer spends money on his land on such things for the purposes of farming on stumping and clearing, works for the prevention of soil erosion, boreholes, wells, aerial and geographical surveys, and water conservation the expenditure so incurred is allowed as a deduction in ascertaining the profits of the farmers business. This is not the case with other business ventures.

The approach of the legislature as regards other business enterprises in respect of incentives has been different. Items of expenditure which are of a capital mature and therefore not deductable in respect of other businesses such as the sinking of a borehole, soil conservation works are not tax deductable in respect of other business ventures. Farming in addition to other incentives is given an acceralated rate of depreciation on assets acquired.

From the foregoing it is clear that income tax laws are not easy to administer, they have a tendency of following the economic activities in the country. The importance of income tax law can be judged from the fact that an ever increasing number of Accountants and Lawyers are devoting attention to the practising of tax law or helping their clients to understand and comply with their tax requirements. Because of its complexity and the lack of favourable "state of mind" of the taxpayers compliance has not been voluntary in Zambia. In addition to the simplification of the tax laws as earlier stated in my preceeding chapters, there is also an important element of "compliance" on the part of the tax paying public. There should be a general feeling that a person who does not pay a reasonable share of his country's taxes is a "thief" in as full a sense as anyone who steals from another individual.

In the case of Zambia the position of compliance has been difficult because the development of taxpayer compliance started under a severe handicap. It is only recently that Zambia[20] emerged from an era of colonialist which she had experienced for many generations. It was considered commendable to evade paying taxes to a government which was imposed by force and dominated by foreigners. The habit of evading taxes appears to have partly continued up to the time Zambia became independent. Nobody loves to pay taxes. Notwithstanding this attitude of not paying taxes, compliance must be maintained if effective government service is to be maintained.

In order to improve compliance in Zambia the Tax department has to construct a viable effective tax system which should comprise of a short-term plan such as the one which is to take place now.

The Department has sent aside K2 million to be used in enforcing compliance in respect of Sales Tax. It is expected that the Department will collect K75 million when the exercise is completed.[21]

In order to build up compliance, The Tax department needs to embark on a vigorous campaign in educating the tax paying public why taxes have to be paid. In trying to enforce compliance officers have been threatend with beatings and other various forms of violence. On 30th May, 1989 we received a letter from a tax defaulter, in which the tax defaulter stated:

> "Your letter dated 24th April, 1989 makes very sad reading especially that it is authorised by a person of your standing in the Department with the contents of my previous letter is basically unmarited and without any ito. of foundation. With that said above, it goes without saying that there is no point in completing the forms you enclosed in your letter and the same has been accordingly disregarded. Should you persist in your witch hunting actions for the future, I will not hesitate to refer the matter to my Solicitor for possible libel, slander and deceitful action against you personally.
>
> I am under no legal obligation to indicate to you the position of a house or property. I hope and trust that I am writing to you for the last time".[22]

The tax department has done nothing in the form of taxpayer education and publicity to convey to the public what income tax is all about. Nothing has been done in the Mass Media, Radio, and Television to inform the public about taxes, what taxes do for the country and how to prepare income tax returns. It is necessary that before there can be compliance with the law there needs to be an understanding for it.

Another method which the tax department in Zambia has never used to enforce compliance although the law provides for it. In every society there are those who are intent upon defrauding their fellow citizens. Income tax gives them a lucrative opportunity to achieve this purpose thereby enriching themselves considerably, unless they are caught. To cope with this problem, criminal sanctions against the evaders are necessary. The publicity generated by prosecution usually has a deterrent effect upon other tax payers contemplating evasion. In less serious offences, heavy fines could be substituted for jail sentences. All these measures are provided for in the income tax Act but the department has been passive in implementing the provisions of the Act. The system of taxation in Zambia does not seem to protect the honest taxpayer. The result has been that an honest taxpayer has been carrying a heavy tax burden paying on behalf of those who are not paying. As the government has desired more money and because of few honest taxpayers the result has been an increase in tax rates each year with a number of small nuisance taxes such as equity levy.

Unfortunately this can be self-defeating because it encourages evasion. This is because if a taxpayer was completely honest, he would almost pay close to 100 per cent of his income. This forces a taxpayer into dishonesty. Lowering tax rates to acceptable levels encourages compliance and it is good politics. Situations like the one which took place recently at Zambia State Insurance of workers going on strike because of high taxes can be avoided.

FOOTNOTES

18. Investment Act No. 5 of 1986.

19. Income Rates Income Tax Amendment Act (1987)

20. Independence 24th October, 1964.

21. Times of Zambia, Friday May 26, 1989 quotation from the Minister of Finance.

22. This was a threat on the person of the author from a tax defaulter.

CHAPTER FOUR

A SYNOPSIS OF HOW INCOME IS COMPUTED IN ZAMBIA FOR TAX PURPOSES

"An Income tax computation" is a detailed calculation of arriving at the tax payable by a taxpayer. Basically it brings all the income that is taxable together, deducting from the taxable income allowable expenditure, capital allowances and personal allowances, the balance is what is chargeable to income tax. The various income tax computations may be represented as follows:-

R.J. TAXPAYER - (IN EMPLOYMENT)

Income tax computation for the year ended

31st March, 1986

Income:

UNZA Salary and bonuses -

TOTAL K -

DEDUCTIONS:

Donations (to approved charities -

subscriptions (to professional associations -

Approved fund contributions (e.g. annuity
Assessable Income -

LESS; Personal allowance i.e.
Married allowance or single allowance -
Child allowance -
Life Insurance -
Handicapped Person -

Chargeable Income K -
Tax chargeable -
Less P.A.Y.E. Deductions -

TAX PAYABLE OR REFUNDABLE	K -

A.K. TAXPAYER - SELF EMPLOYED
INCOME TAX COMPUTATION FOR THE CHARGE YEAR ENDED 31st MARCH, 1986

INCOME:

Adjusted profits from business	-
Rents	-
Dividends	-
	K -
Less Exempt Income (e.g. Building Society Interest	-
	K-

Deductions:

Donations (to approved charities)	-
subscriptions (to a professional) association	-
Approved Fund contributions	-
Assessable Income	K -

Less Personal allowances:

Married/Single allowance	-
Child allowance	-
Life Insurance	-
Handicapped person	-
Chargeable Income	K -
Tax chargeable	K -

Less Tax on Dividends (Credit)	-
P.A.Y.E.	-
Witholding Tax on Rents	-
TAX PAYABLE OR REFUNDABLE	K -

Adjusted profits from business are arrived at by way of another computation as follows:

Net profit per Profit and Loss Account	-
ADD:	
Disallowable expenses	-
Depreciation	-
Adjusted profits from business	K -

E. Limited An Incorporated Company under CAP 686

Income:

Adjusted profits per Accounts (arrived at by a subsidiary computation)	K -
TAX at a FLAT RATE	K -
TAX payable	K -

PERSONAL TAXATION 1989/90

Personal allowances have been abolished with effect from 1st April, 1989 and have been substituted by 'primary allowance' of K6000 deductible for each individual claimant who is living at any time during the charge year. The measure was introduced as a means of simplying the tax system by reducing paper work involved in issuing code numbers. Basically, there is one code number applicable to all tax payers as opposed to the various code numbers that were being issued in the past, with the exception of those who have life insurance policies, mortgage interest, Annuities their code numbers will be some how different.

Housing allowance:

The beneficiaries of the housing allowances are people who own houses. The law is silent on the requirement of title deeds. A person who owns and occupies a house is entitled to housing allowance of up to K24000 per annum. However, if the pesonn claims a deduction for mortgage interest, that person will not be entitled to the exemption for the housing allowance. A person is free to choose either a deduction for the Mortgage interest or exemption for the housing allowance. (but subject to fifty per centum of taxable emoluments of that person for that year whichever is the less).

CAR ALLOWANCE:

A car allowance received by an employee in lieu of being provided with a car is exempt up to a maximum of K19000 - 00. There is no limit to the number of employees in a company who could be entitled to this allowance, as long as they qualify. Of course an office orderly or some Junior clerk would not qualify.

Pensions:

Pensions irrespective of age are exempt in full with effect from 1st April, 1989. Previously pensions were exempt if the recipient was over 60 years, otherwise it was taxable.

COMPENSATION FOR LOSS OF OFFICE:

Compensation for loss of office and long service bonuses are exempt from tax up to a maximum of K20,000 (bonuses are exempt only if they relate to a retirement scheme).

COMPANY TAX

Banks

For profits not exceeding K10 million the rate of tax remains at 45%. However, income tax (Amendment) Act No. 28 of 1988 has increased the rate of tax on profits exceeding K10 million made by banks to 52.5% with effect from 1st April, 1989.

MOTOR CAR ALLOWANCES

Where the cost exceeds K25,000.00 capital allowances will be calculated on K2,500Ø unless the vehicle is a commercial vehicle such as a van, a truck or a vehicle that is used in a transport or vehicle hire-business.

ARM'S LENGTH TRANSACTIONS:

Where certain financial dealings are between parties who are not absolutely independent e.g. a holding company and its subsidiary or a father and son, income tax legislation often requires a substitution of the amounts involved by market values such that one would expect if the dealings were between independent parties negotiating at arm's length.

AVOIDANCE

Is the legitimate arrangement of a taxpayer's affairs in such a way that he pays less tax or has an advantage. Certain tax avoidance schemes are legislated against Sections 94, 95, 96 and 97 of the Income Tax Act.

DECEASED ESTATE

Pays tax at the rate of thirty-five per centum on its income, after all allowable deductions have been made No Assessment can be raised against the Income of a deceased tax payer three years after the end of the charge year in which the tax payer died.

Other Companies

Manufacturing	40%	on profits
Farming	15%	on profits
Others	45%	on profits

Capital Allowances

Wear and Tear:

Plant and Machinery 30% on reducing balance

Plant and Machinery used in farming 50% on cost

Farm Works and Improvements: 100% on cost

Industrial Buildings 5% on cost

Commercial Buildings 2% on cost

INVESTMENT ALLOWANCE

On New Plant and Machinery used in manufacturing process other than Motor Vehicles 20% oncost

Initial allowance

On Industrial buildings 10% on cost

HOUSING

The value of housing supplied free of charge to an employee by an employer is tax free including furniture therein. Provided the employee is not an effective shareholder or director.