

**THE EFFECT OF LEGISLATIVE DRAFTING ON
IMPLEMENTATION OF A TAX STATUTE**

By

SPR
2013
PHI
2013
C-1

HENRY PHIRI

(90051149)

**A dissertation submitted to the University of Zambia in partial
fulfillment of the requirement of the Bachelor of Laws Degree**

THE UNIVERSITY OF ZAMBIA

**Lusaka
(2013)**

ABSTRACT

The case of *Celtel v Zambia Revenue Authority* clearly demonstrates that the style of legislative drafting used in the tax statutes may be problematic as it significantly impacts on the implementation of tax laws. The effect of this case is that it has not fully resolved or provided guidelines on how the institutions tasked with tax administration should implement poorly drafted tax statutes. More so, it has not given comprehensive guidance on how courts should resolve disputes that arise from the implementation of tax statutes that are poorly drafted. The overall aim of the research was to analyze the drafting styles of the tax laws using the Customs & Excise Act as an example and ascertain whether or not the Zambian adopted legislative style is serving its purpose with special focus on the aforementioned case.

The study primarily relies on desk research and was a qualitative one on the subject matter. Secondary data in the form of books, journals, scholarly articles, and pieces of legislation, legal commentaries, case law and other publications were referred to. In order to attain the most recent information on the subject matter the internet was resorted to. The secondary information includes analyzing cases, student obligatory essays and reports by mandated bodies. In very restricted cases unpublished literature was consulted.

It has been found that Zambia's adopted legislative drafting style alone will do little to improve the quality of legislation. It is the quality of those involved in the legislative process that plays a vital role. An analysis of the three Zambian taxing statutes namely the Income Tax Act, Value Added Tax Act and the Customs & Excise Act has actually revealed that to a greater extent they conform to the drafting style obtaining in both the England and the United States of American. However, enforceability is a key ingredient of effective legislation. A major element in the legislative process is to determine the effectiveness of legislation. Evaluation of the enforceability of legislation should be treated as an integral part of the law-making process. In order to be effective, the rule of law requires that any regulatory rules be workable. This was not case as revealed by the dispute in the *Celtel v Zambia Revenue Authority* in that the seventh schedule to the Customs & Excise Act was unworkable in that it lacked the inducing provision in the main body of the Act. This made enforceability of the seventh schedule of the Act difficult. Thus rules must be feasible in both practical and economic terms.

In order to avoid some of these disputes that arise from poor quality legislative drafting it is recommended that tax legislation must embody the following qualities: understandability - making the law easier to understand and follow, organization - both internally and its coordination with other tax laws, effectiveness - implementing the desired policy in an effective manner, enforceability - to ensure that the rules are achievable in practical and economic terms and integration - fully integrated with the rest of the legal system.

TABLE OF CASES

Celtel Zambia Limited (T/A Zain Zambia) v Zambia Revenue Authority 2010/HPC/668

Celtel Zambia Limited v Zambia Revenue Authority 1999/RAT/36

Chibuluma Mines PLC v Zambia Revenue Authority

Director of Public Prosecutions v Ngandu and Others (1975) ZR 253 (SC)

Galunia Holdings Limited v Zambia Revenue Authority 2000/RAT/06

Industrial Credit Company v Zambia Revenue Authority 1999/RAT/73

Inland Revenue Commissioner v Ayrshire Employers Mutual Association Limited [1946] 1 ALL
ER 637

Spectra Oil Corporation Limited v Zambia Revenue Authority 1999/RAT/33

Zambia Revenue Authority v Celtel Zambia Limited 2002/HP/A67

TABLE OF STATUTES

Customs and Excise Act, Chapter 322 of the laws of Zambia

Customs and Excise (Amendment) Act No. 2 of 2009

Income Tax Act, Chapter 323 of the Laws of Zambia

Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia

Value Added Tax Act, Chapter 331 of the Laws of Zambia


Zambia Revenue Authority Act, Chapter 321 of the Laws of Zambia

DECLARATION

I HENRY PHIRI, do hereby declare that this Essay represents my own authentic work and to the best of my knowledge, information and belief, no similar piece of work has previously been produced at the University of Zambia or any other Institution for the award of a Bachelor of Laws Degree. All works in this Essay have been duly acknowledged. I therefore bear the responsibility for the contents, errors, defects and any omissions therein. No part of this work may be reproduced or copied in any manner without the prior authorization of the author.

A handwritten signature in black ink, consisting of a large, stylized 'H' and 'P' with a horizontal line extending from the 'P'.

Henry Phiri

A handwritten date in black ink, reading '13.08.13'.

Date

Recommendation

I recommend that the Proposal for a Directed Research Essay under my supervision by:

✱

Henry Phiri

90051149

Entitled:

**THE EFFECT OF LEGISLATIVE DRAFTING ON IMPLEMENTATION OF A TAX
STATUTE**

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements pertaining to format as laid down in the regulations governing Directed Research Essays.

Signature:

Mrs. Chipso Mushota Nkhata
(Supervisor)

13.08.2013

Date

TABLE OF CONTENTS

Abstract	i
Table of Cases*	ii
Table of Statutes	iii
Declaration	iv
Recommendation	v
 CHAPTER ONE	
1.0 Introduction.....	1
1.1 Statement of the Problem.....	2
1.2 Objectives of the Study.....	3
1.3 Research Hypothesis.....	3
1.4 Significance of the Study.....	4
1.5 Methodology.....	5
1.6 Outline of Chapters.....	
 CHAPTER TWO	
2.0 Introduction.....	7

2.1 Practice and Principles of Legislative Drafting..... 8

2.2 Legislative Drafting Styles..... 13

2.3 Purpose and Justification of the Law of Legislative Drafting..... 15

CHAPTER THREE

3.0 Introduction..... 16

3.1 The United States Drafting Style..... 16

3.1.1 Organization above a Section..... 17

3.1.2 Sections and Subsection..... 18

3.1.3 Organization below Subsection..... 19

3.2 The British Drafting Style..... 19

3.2.1 Enacting Formula..... 20

3.2.2 Preamble..... 20

3.2.3 Main Body..... 20

3.2.4 Schedule..... 21

3.2.5 Explanatory Notes..... 21

3.3 The Zambian Drafting Style..... 22

3.3.1 Objective of the Statute and the Enactment..... 22

3.3.2 Preliminary and Interpretation..... 23

3.3.3 Main Body..... 23

3.3.4 Schedules..... 24

CHAPTER FOUR

4.0 Introduction..... 26

4.1 Effect of Legislative Drafting on the Implementation of Statutes..... 26

4.1.1 Writing Understandable Tax Laws..... 28

4.1.2 Anticipating Application and Interpretation..... 32

4.1.3 Effectiveness of Tax Laws..... 33

4.2 The Implication of the case of Celtel v Zambia Revenue Authority..... 34

CHAPTER FIVE

5.0 Conclusion..... 39

5.1 Recommendations..... 40

5.1.1 Understandability..... 41

5.1.2 Organization..... 41

5.1.3 Effectiveness..... 42

5.1.4 Enforceability..... 43

5.1.5 Integration..... 43

BIBLIOGRAPHY..... 44

CHAPTER I

1.0 INTRODUCTION



Zambia inherited most of its legal concepts and drafting styles from English Common law. Like Zambia, many British colonies such as Australia, Canada, United States of America, South Africa and Zimbabwe inherited these legal concepts and drafting styles albeit in different forms. However, Zambia like many other countries, have some instances where poor drafting styles are employed in enacting legislation. This varies from punctuations, capitalizations which have the potential to affect the meaning of the law; nonetheless some drafting errors are substantive which include omission of a word or section and ambiguity of sentence or words and may substantially affect the meaning of the law. Drafting errors can happen and affect any legislation; tax law is no exception. This essay focuses on the Zambian legislative drafting style in light of the case of *Celtel Zambia Limited (T/A Zain Zambia) v Zambia Revenue Authority*¹

The case of *Celtel Zambia Limited (T/A Zain Zambia) v Zambia Revenue Authority*² is the case that involved a legislative drafting style adopted under the Customs & Excise Act.³ This was an appeal by Celtel Zambia Limited, the Appellant, against the decision of the Revenue Appeals Tribunal dismissing the Appellant's appeal against the Respondent's decision to charge, levy and collect excise duty on talk-time. The Respondent's decision to charge, levy and collect excise duty on talk-time was based on a schedule to the Customs & Excise Act (herein referred to as the Act) which had an apparent drafting error. The Appellant had filed the following grounds of appeal, inter alia, that the Revenue Appeals Tribunal erred in law when it held that the seventh

¹ 2010/HPC/668

² 2010/HPC/668

³ Cap 322 of the Laws of Zambia

schedule of the Customs and Excise Act⁴ formed part of the Act even in the absence of an inducing section in the Act.. In the alternative, the Revenue Appeals Tribunal erred in law when it failed to pronounce itself on the effect of the Customs & Excise (Amendment) Act⁵.



This case creates the basis of discussion in later chapters. This study thus analyze the various legislative drafting styles in general and ascertain whether or not our legislative style is serving its purpose or not with special focus on the aforementioned case. Chapter Two discusses the practice and principles of legislative drafting. In this chapter legislative drafting styles has been examined and the latter part of this chapter briefly discusses the purpose and justification of the principles of legislative drafting. Chapter Three makes a comparative study of legislative drafting styles adopted by Britain, USA and Zambia. Chapter Four examines the effect of legislative drafting on implementation of tax statutes. This chapter also discusses the implication of the judgment in the case of Celtel Zambia Limited (T/A Zain Zambia) v Zambia Revenue Authority on future cases. Lastly in chapter Five, Conclusions and Recommendations have been made. In this chapter the findings of the research are highlighted and suggestions are made to improve the legislative drafting style adopted in Zambia.

1.1 STATEMENT OF THE PROBLEM

The case of Celtel v Zambia Revenue Authority clearly demonstrates that the style of legislative drafting used in the tax statutes is problematic as it significantly impacts on the implementation of tax laws. The effect of this case is that it has not fully resolved or provided guidelines on how the institutions tasked with tax administration should implement poorly drafted tax statutes.

⁴ Cap 322 of the Laws of Zambia
⁵ No. 2 of 2009

More so, it has not given comprehensive guidance on how courts should resolve disputes that arise from the implementation of tax statutes that are poorly drafted.

1.2 OBJECTIVES OF THE STUDY

The overall aim of the research is to analyze the drafting style of the tax laws using the Customs & Excise Act as an example and ascertain whether or not our adopted legislative style is serving its purpose with special focus on the aforementioned case. The specific objectives of this paper are:

- a) To consider the practice and principles of legislative drafting.
- b) To undertake a comparative study of the legislative drafting styles in Zambia with that of other jurisdictions, in particular Britain and the USA.⁶
- c) To examine the effect of legislative drafting on the implementation of a statute.
- d) State the implication of the judgment in the case of Celtel Zambia Limited (T/A Zain Zambia) v Zambia Revenue Authority⁷ on future cases.
- e) Following from the above, make recommendations for suitable legislative styles for tax laws (and laws).

1.3 RESEARCH HYPOTHESIS

The legislative drafting styles of a statute have contributed to the numerous legal disputes that have arisen during the implementation of statutes. It is hypothesized that some of the legal

⁶ These jurisdictions have been specifically selected due to the fact that the USA and Zambian legal systems have to a greater extent been influenced by the British legal system and these jurisdictions have made substantive progress in documenting and addressing various issues on legislative drafting.

⁷ 2010/HPC/668

disputes and other forms of grievances concerning the implementation of statutes are as a result of poor legislative drafting styles. The questions that this study will attempt to answer are:

- 1.4.1 What is the widely accepted legislative drafting style?
- 1.4.2 Is poor legislative drafting style one of the causes of disputes?
- 1.4.3 How has poor legislative drafting style impacted on the implementation of a statute?
- 1.4.4 Is there a need for Zambia to change its legislative drafting style?
- 1.4.5 What more must be done to reduce disputes arising from legislative drafting?

1.4 SIGNIFICANCE OF THE STUDY

This review is particularly important in view of our legislative style for tax laws. A poorly drafted taxing law may lead to numerous tax disputes between the tax administration and the taxpayer resulting in huge losses of the much needed government revenue or unclearly construed taxation of the various business sectors causing the affected businesses to either erroneously pay or over pay the taxes in question. This was evident in the case of *Celtel v Zambia Revenue Authority*. This study will be very useful as it will critically analyze the effect of legislative drafting style on the implementation of taxing statutes which are used for mobilizing government financial resources. It is important that the tax laws that are drafted effectively support tax policy intentions of the country. The justification of this paper is anchored on the basis that following the High Court decision in *Celtel Zambia limited (T/A Zain Zambia) v Zambia Revenue Authority*, it is has become necessary to consider the effect of legislative drafting style in more detail in order to understand the outcome of the case and considering the special nature of the facts of that case i.e. After the Appellant filed its appeal with the Tribunal raising the argument of the absence of an enabling section for the seventh schedule the Respondents in April 2009

proceeded to amend the Customs and Excise Act by the Customs and Excise (Amendment) Act No. 2 of 2009 as follows:

12. The principal Act is amended by the repeal of the Seventh Schedule and the substitution therefore of the Seventh Schedule set out in Appendix IV to this Act.

Further, the appellants have since appealed against the decision of the High Court. Also, it is an important case in that it presented the High Court the opportunity to clarify and restate the law as to the effect of legislative drafting on a statute.

1.5 METHODOLOGY

The study primarily relies on desk research and is a qualitative one on the subject matter. Secondary data in the form of books, journals, scholarly articles, and pieces of legislation, legal commentaries, case law and other publications were referred to. In order to attain the most recent information on the subject matter the internet will be resorted to. The secondary information includes analyzing cases, student obligatory essays and reports by mandated bodies. In very restricted cases unpublished literature was consulted. The objectives of this study were achieved with the foregoing methodology.

1.6 OUTLINE OF CHAPTERS

Chapter Two: Practice and Principles of Legislative Drafting. This chapter discusses the practice and principles of legislative drafting. In this chapter legislative drafting styles have been examined and the latter part of this chapter briefly discusses the purpose and justification of the principles of legislative drafting. Chapter Three: Legislative Drafting Styles, Britain, USA and Zambia Compared. This chapter discusses the comparative study of the legislative drafting style

in Zambia and the legislative drafting styles adopted in other jurisdictions, particularly Britain and the United States of America (USA). Chapter Four: The Effect of Legislative Drafting on Implementation of Statutes. This Chapter discusses the effect of legislative drafting on the implementation of a statute and on the implication of the judgment in the case of Celtel Zambia Limited (T/A Zain Zambia) v Zambia Revenue Authority on future cases. Lastly in Chapter Five: Conclusion and Recommendations. In this Chapter, some concluding remarks in which the findings of the research are highlighted and suggestions are proposed to improve the legislative drafting style adopted in Zambia.

CHAPTER II

2.0 INTRODUCTION

In the last twenty years⁸ the issue of domestic resource mobilization has attracted considerable attention in many developing countries. In the face of unabating debt difficulties, coupled with the domestic and external financial imbalances, it is not surprising that many developing nations have been forced to adopt stabilization and adjustment policies which demand better and more efficient methods of mobilizing domestic financial resources with the view to achieving financial stability and promoting economic growth. Tax laws have rightly been identified as a major tool in the strengthening of domestic resource mobilization and, consequently, the search for ways and means of expanding the tax base and also strengthening tax administration has been intensified. It is undisputable that taxation is the most important weapon available to governments for mobilizing financial resources. It is thus, in this respect to emphasize the need for well-drafted taxing laws that guarantee the success of the tax collection efforts.

Most laws including tax laws such as Customs & Excise Act⁸, Income Tax Act⁹ and Value Added Tax Act¹⁰ are as a result of legislative enactment. Legislation may be described as law made deliberately in a set form by an authority which the court have accepted as competent to exercise that function.¹¹ From sparse and scanty beginnings, its use steadily increased until now the output of statutes has assumed formidable proportion. There is universal agreement that deliberate law making of this kind is indispensable to the regulation of modern states.¹²

⁸ Cap 322 of the laws of Zambia

⁹ Cap 323 of the Laws of Zambia

¹⁰ Cap 331 of the Laws of Zambia

¹¹ Reginald Walter Michael Dias. *Jurisprudence*, (Butterworths, 1985), p.166

¹² Reginald Walter Michael Dias. *Jurisprudence*, (Butterworths, 1985), p.166

Statutes of the nineteenth century came to be drafted in meticulous details so as to provide for every conceivable contingency since judges could not be relied on to help out with omissions. This abundance of details only inspired a still more restrictive attitude, since Parliament was taken to have specified everything that needed to be covered and a *casus omissus*¹³ was assumed to have been intentionally left out¹⁴. Accordingly, so far as style is concerned no absolute judgment may be passed; no arbitrary line can be drawn between ‘good style’ and ‘bad style’. Style is a relative matter and the same criteria applicable to all prose writing are equally appropriate to the drafting of legislation. Good style must fit the purpose of the communication, and the degree to which the manner of expression achieves the purposes is the sole measure of the quality of the style.¹⁵ Therefore it is important to emphasize the need for well-drafted taxing laws that guarantee the success of the tax collection efforts. In this chapter a review has been undertaken on the writings by individual authors, international organizations and agencies about the practice and principles of legislative drafting and the related issues. The writings of these authors, organizations and agencies are now discussed in subsequent sections of this chapter.

2.1 PRACTICE AND PRINCIPLES OF LEGISLATIVE DRAFTING

The Massachusetts General Court in its Legislative Research and Drafting Manual whose purpose is to promote uniformity in drafting style, and to make the resulting statutes clear, simple and easy to understand states that drafting is an art, not a science.

¹³ When a statute or an instrument of writing undertakes to foresee and to provide for certain contingencies, and through mistake, or some other cause, a case remains to be provided for, it is said to be a *casus omissus*. The resolution of any legal dispute arising from such an issue or situation is governed by the case law or, if it is a case of first impression, by whatever guidance the court finds in the common law

¹⁴ Reginald Walter Michael Dias. *Jurisprudence*, (Butterworths, 1985), p.169

¹⁵ Thornton G.C. *Legislative Drafting* (London Dublin Edinburgh, Butterworths, 1996), p.47

“A well drafted Bill results not from slavish deference to numerous arbitrary rules, but rather from thorough knowledge of the subject, careful attention to detail and adherence to common sense principle of simplicity, clarity and good organization”¹⁶.



All laws are organized by chapters and sections of those chapters. The sections may be further broken down by subsections, clauses, paragraphs, subparagraphs, divisions, subdivisions and ultimately, sentences and words. Further, the European Commission in its Legislative Drafting Manual revealed that the European community sometimes faces fierce criticism for the lack of clarity or the poor quality of its legislation. Since the Edinburgh European Council in 1992, the need for better law-making – by clearer, simpler Acts complying with the basic principles of legislative drafting has been recognized at the highest political level¹⁷. If individuals and firms are to be able to ascertain their rights and obligations under community legislation, if the national courts are to be able to ensure that rights and obligations are respected, and if the Member States are, or where necessary, to transpose it into their national legal orders properly and in good time, Community legislation must be drafted in clear, unambiguous and coherent terms and uniform principles of drafting and layout must be applied¹⁸. The Council and the Commission have both taken steps to meet the aim of better law-making. On 8 June 1993 the Council adopted a Resolution on the quality of legislative drafting. On 16 January the Commission adopted general guidelines for legislation. In 1985 the Commission introduced drafting rules for use by the authors of proposals for legislation and other legal Acts. A second edition was issued in 1991

¹⁶ Massachusetts General Court, “Legislative Research and Drafting Manual” (PDF), downloaded from The 188th General Court of The Commonwealth of Massachusetts website, <http://www.malegislature.gov/legislation/DraftingManual>, Accessed 10 April 2013, 08:30hrs

¹⁷ Legislative Drafting, “A Commission Manual” (PDF), downloaded from European Commission website, <http://e.c.europa.eu>, Accessed 10 April 2013, 08:40hrs

¹⁸ Legislative Drafting, “A Commission Manual” (PDF), downloaded from European Commission website, <http://e.c.europa.eu>, Accessed 10 April 2013, 08:45hrs

taking into account of the Single European Act and the adoption by the Council of its Comitology Decision in 1987.

On 1 November 2007 the Government of Finland adopted Impact Assessment Guidelines upon presentation by the Ministry of Justice; The Impact Assessment Guidelines supplements the Bill Drafting Instructions (2004). It is a requirement that impact assessment is taken duly into consideration and that all Bills contain a brief description of the impact of the proposed provisions, that is, the consequences of the application of the provisions. The impact assessment covers the economic impact of the proposed regulation, its administrative impact, environmental impact and social impact. The importance of impact assessment as an element of the drafting process and its various stages is emphasized. The Impact Assessment Guidelines are applicable to legislative drafting and, in so far as appropriate, also in the drafting of subordinate regulations.¹⁹

Crabbe in his book entitled *Legislative Drafting*²⁰ states that:

Legislative drafting involves the attempted solution of a problem faced by governments, and society as a whole. An understanding of the problem will help in finding the solution.

This depends upon adequate knowledge of the conditions that give rise to the problems. Parliamentary counsel must thus have some basic knowledge of indeed almost every subject matter. Added to that will be sound knowledge and understanding of the issues that create the problem, the solution to which they attempt to find through the process of legislation.

¹⁹ Impact Assessment in Legislative Drafting, “Guidelines” (PDF), downloaded from Ministry of Justice Finland Publication website, http://oikeusministerio.fi/537EF10C-304C-45AC-8920-1D18006E193E/FinalDownload/DownloadId-AB285E8F6BF21843ABF2F4086410913C/537EF10C-304C-45AC-8920-1D18006E193E/material/attachments/om/julkaisut/6FiopyBT5/nettiversio_60_s.pdf, Accessed on 10 April 2013, 10:00hrs

²⁰ Victor C.R.A.C. Crabbe. *Legislative Drafting*, (London, Cavendish Publishing Ltd, 1993), p.16

Parliamentary counsel must know what they are looking for. Parliamentary counsel turns government policy into effective legislative language. The policy considerations come to them in form of drafting instructions. These instructions must state precisely what the problem is, at least to the administrator. They should further state what has given rise to the problem, what attempts have been made to solve the problem without the assistance of legislation? Unless ideas have crystallised, it is sheer waste of time to embark on drafting a piece of legislation.

After reading and digesting the drafting instructions, the next important step in the drafting process is the preparation of the legislative scheme. The quality of the Bill hangs upon the scheme. The legislative scheme represents the counsel's mental picture of how well the Act of parliament would look like in structure and quality, in substance and in form. Here parliamentary counsel deals with the logical sequence of the various matters that bear upon the Bill. Here the symmetrical arrangement of section is organized.²¹

Without the legislative scheme the resultant Act will look like a patchy sketchy work. It will give an ill-conceived, ill-prepared piece of work. This is an area where the policy of the law is put in an outline for the achievement of the objective of the proposed legislation. It is in this legislative scheme that parliamentary counsel perceives whether the Act will be a workable piece of legislation, whether the task of the court will be made easier in the construction of the Act as a whole.

Legislative drafting is an extremely onerous, exacting and highly skilled task. It is not often appreciated that it is difficult. It is not easy to express in word exactly what is clear in the mind. And even if it can easily be expressed, it is not easy to do so in such a way that there can be no

²¹ Victor C.R.A.C. Crabbe. *Legislative Drafting*, (London, Cavendish Publishing Ltd, 1993), p.16

misunderstanding.²² It is a highly technical discipline, the most vigorous form of writing outside mathematics.²³ Few lawyers have the special combination of skills, aptitudes and temperament necessary for a competent draftsman.



Counsel must remember at all times that what seems perfectly clear to them may not be equally clear to the person who reads a piece of legislation – be that person a judge, a lawyer or what is often described as a layman. We cannot rule out the infallibility of human foresight and indeed of language itself. Yet parliamentary counsel must do the best they can to reduce doubt and ambiguity, and to bring difficulties to a workable minimum by an intelligent application of knowledge to bear on their drafts.

Thornton in his book entitled *Legislative Drafting*²⁴ opined that the style which is appropriate to any particular enactment will to some extent depend on the identity of those people in group to whom the law will be communicated, particularly the persons who are concerned with or affected by the law. Most laws are of narrower application and regulate the conduct only of a segment of society. For example, such segment might comprise of those who are liable to pay a particular tax. It is unrealistic to believe that all laws should, or indeed could, be drafted in a language and in a style which is familiar and instantly intelligible to that mythical person who in days gone by used to be referred to as the man in the street. The drafter must in each case endeavor to draft in such a way that the law is successfully communicated to a person whose is either a lawmaker or persons who are concerned with or are affected by the law or a member of the judiciary. Legislation having a high technical content or even legislation necessarily using a few technical terms may not be fully understood by the lawmaker and the judiciary, at least

²² Victor C.R.A.C. Crabbe. *Legislative Drafting*, (London, Cavendish Publishing Ltd, 1993), p.16

²³ Victor C.R.A.C. Crabbe. *Legislative Drafting*, (London, Cavendish Publishing Ltd, 1993), p.16

²⁴ G.C. Thornton *Legislative Drafting* (London Dublin Edinburgh, Butterworths, 1996), p.48

without technical explanation. For example, a law to regulate mining may contain word such as ‘adit’ and ‘winze’ that conveys nothing to most of the people. What is vital is that the words chosen and a style adopted which those whose interest is affected should be able to comprehend without unnecessary difficulty. Technical purposes are likely to require technical words and technical law may still be good law, even if unintelligible to most people, so long as it achieves ready communication with those who matter so far as that law is concerned.²⁵ However, the drafter must achieve a sufficient understanding to be confident that the technical language is used accurately and is unambiguous²⁶. It is easy to forget that technical terms are also prone to ambiguity and vagueness.

2.2 LEGISLATIVE DRAFTING STYLES

Practice, has led to the adoption, in many jurisdictions, certain conventions in legislative drafting such as Headings and Parts, Chapters, Sections and Subsection, Paragraphs, Schedules, etc. The object of statutory drafting is to set forth ideas clearly, succinctly and consistently.²⁷ The organization of sections and paragraphs should enhance the intended meaning. For the sake of readability and for ease of finding information it is important to provide a logical structure that guides the reader²⁸. There is consensus that grouping together sections that deal with same subject matter facilitates the reader’s task. The way in which matter is grouped can help to reveal the relationship between the different aspects dealt with. Grouping can also help reduce the need to cross reference: If the same matters appear in the same chapter or part there is less need to

²⁵ G.C. Thornton. *Legislative Drafting* (London Dublin Edinburgh, Butterworths, 1996), p.48

²⁶ G.C. Thornton. *Legislative Drafting* (London Dublin Edinburgh, Butterworths, 1996), p49

²⁷ “Legislative Drafting Manual 2013” (PDF), downloaded from Department of Legislative Services, Office of Policy Analysis, Annapolis, Maryland. website, http://dls.state.md.us/data%5Clegandana%5Clegandana_bildra%5Clegandana_bildra_bildraman%5C2013-Drafting-Manual.pdf, accessed 12 April 2013

²⁸ Jeanne A. Viljoen “Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962” (MPhil diss., University of Pretoria, 2011), p.37

refer to other chapters and parts. The content of the Bill should be logically broken up into parts, chapters and sections that are clearly indicated in the table of contents. The use of clear headings as topics specifiers for these structural elements enables the reader to create a mental picture of all provisions and the way they relate to each other. This facilitates understanding of details contained in specific provisions. To illustrate, a schedule is a convenient device for dealing with matters of detail which will otherwise unnecessarily encumber the main body of an Act. Matters of administrative detail not desirable to the subject of regulation may be provided for in a Schedule. The Schedule also frees the main body of an Act from possible charge of untidiness. Care is needed in the drafting of Schedules. There should be no inconsistency as between an Act and its Schedules. For, if the enacting part of the statute cannot be made to correspond with the Schedule, the latter must yield to the former.²⁹ This aspect of the matter is now covered by the Interpretation Acts of most jurisdictions.

Graphics have been recommended to illustrate complex ideas and procedures. The Australian Plain English Manual cites the use of a picture, flowcharts and an outline in legislation. It also recommends the use of examples to illustrate the meaning of a provision³⁰. Purpose statements, headings in form of questions notes, boxed information and flowcharts were used in a draft of the Municipal Government Act of Alberta; however, many of these innovations were not used or implemented.

²⁹ Victor C.R.A.C. Crabbe. *Legislative Drafting*, (London, Cavendish Publishing Ltd, 1993), p.145

³⁰ Jeanne A. Viljoen "Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962" (MPhil diss., University of Pretoria, 2011), p.37

2.3 PURPOSE AND JUSTIFICATION OF THE LAW OF LEGISLATIVE DRAFTING

Legislation is the framework by which governments achieve their purposes. To politicians and administrators, legislation is a means to attain their economic, cultural, political and social policies. Whatever a person's aversion to law, a modern state has to legislate in order accomplish certain political objectives and certain public policies.³¹ In all commonwealth countries, as all other societies, legislation has become a necessity – particularly in those systems which share or have a common pedigree. We need legislation to effect changes in the law. We need the law to interfere with vested rights and interests. The purse string which governments all over the world hold is dependent on legislation to impose taxes and other duties, excise and imports.³²

An Act of parliament expresses legal relationships. It is also a form of communication. It lays down our rights and our obligations, our powers, our privileges and our duties. In this it tells us what to do and what not to do. It is a command to others. There should therefore, be no misunderstanding as to the message that it seeks to convey.

³¹ Victor C.R.A.C. Crabbe. Legislative Drafting, (London, Cavendish Publishing Ltd, 1993), p.1

³² Victor C.R.A.C. Crabbe. Legislative Drafting, (London, Cavendish Publishing Ltd, 1993), p.1

CHAPTER III

LEGISLATIVE DRAFTING STYLES, BRITAIN, USA AND ZAMBIA COMPARED

3.0 INTRODUCTION

This chapter focuses on the comparative study of the drafting styles in Zambia and other jurisdictions particularly with those of the British and United States of America (USA) jurisdictions. Before proceeding to discuss the Zambian drafting style, a brief look is provided of the drafting styles adopted in Britain and the USA. These jurisdictions have been specifically selected due to the fact that USA and Zambian legal systems have to a greater extent been influenced by the British legal system and these jurisdictions have made substantive progress in documenting and addressing various issues on legislative drafting. Although copying laws or models from other jurisdictions may not be helpful, lessons can be learnt from studying their processes and outcome.³³ Until now we have not really defined the term ‘style’. Most people have an implicit notion of what ‘style’ is, but for the purpose of this essay we must identify its principle aspect. In this essay discussion of legislative style looks at the way the legislation is drafted and therefore style refers to structure, i.e. its divisions, ways of referencing and presenting, the hierarchy between its components, etc.

3.1 THE UNITED STATE DRAFTING STYLE

A variety of drafting styles exist today, each with its own attributes. A good uniform style is one that gives clearly defined, steady and predictable guidance for the structure and expression of

³³ Jeanne A. Viljoen “Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962” (MPhil diss., University of Pretoria, 2011), p.44

legislation³⁴. According to the US House of Representatives – The Office of Legislative Counsel in its manual on drafting styles, it states that adoption of any good drafting style as a uniform style for legislation can benefit those who draft and those who have to work with or who are subject to the legislation. A uniform style can help communicate the message by enabling the reader to concentrate on the important part of the message without being distracted by mere stylistic difference.

The drafting convention of the US statutes can be considered in relation to the naming of the subdivisions of a statute. There are naming conventions about basic subdivisions of federal law that have been (mostly) observed consistently over the entire range of statutes.³⁵

3.1.1 ORGANIZATION ABOVE A SECTION

Most bills are divided into sections and their subdivision, but some bills are rather too big for that, including omnibus bills with relatively unrelated topics combined together. These are divided into “*Titles*,” “*Chapters*,” and “*Subchapter*,” all relatively clearly labeled. Not all of these subdivisions may be used in any given bill, but sometimes all are. Occasionally, several different “Acts” of Congress are combined, each Act being called something like a “division.” This is rare, and in most cases it is obvious from labeling. So it causes little confusion even if it is aesthetically questionable.³⁶ The title of the bill specifies the codification of the bill (if any) and contains a summary of the content and legal effect of the bill. The title must put a reader on

³⁴ The Office of the Legislative Counsel, “House Legislative Counsel’s Manual on Drafting Styles”, November 1995 (PDF) Downloaded from U.S. House of Representative, Website <http://www.house.gov/legcoun/pdf/draftstyle.pdf>, Accessed on 10 April 2013, 12:00hrs

³⁵ Douglas M. Bellis, “Statutory Structure and Legislative Drafting Conventions: A Primer for Judges” (PDF file), Downloaded from [www.fjc.gov/public/pdf.nsf/lookup/draftcon.pdf/\\$file/draftcon.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/draftcon.pdf/$file/draftcon.pdf), accessed 10 April 2013, 12:00hrs

³⁶ Douglas M. Bellis, “Statutory Structure and Legislative Drafting Conventions: A Primer for Judges” (PDF file), Downloaded from [www.fjc.gov/public/pdf.nsf/lookup/draftcon.pdf/\\$file/draftcon.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/draftcon.pdf/$file/draftcon.pdf), accessed 10 April 2013, 12:00hrs

notice as to the contents of the bill. This does not mean that the title must include all the details of the bill, but the title must provide a fair indication of the real nature and subject matter of the bill.³⁷ Titles that are misleading or deceptive must be avoided. As a general rule, the title of the bill is drafted after the body of the bill is completed. With a few exceptions, all titles have three parts: the short title, the purpose paragraph, and one or more function paragraphs.

3.1.2 SECTIONS AND SUBSECTION

Almost always, from the earliest days of the Republic, the text of a law, if divided at all, has been divided into sections. These sections either have the designation “section” or the designation “sec.” Typically there are numbered with Arabic numerals, but in some old statutes, this will not be so. Like every convention, these are sometimes violated. Still, the section is the most fundamental division of federal law, and almost all federal laws use it. A section is normally in turn divided into subsections. These are designated by lowercase letters: “(a),” “(b),” etc. Each subsection is a complete sentence and idea within itself. While this is fine for a statute that will never be changed, most laws are amended frequently. Amendments create problems for sequential numbering. To avoid the bizarre and confusing designation of sections, the US has adopted a non-sequential numbering of sections³⁸. The approach is to leave a gap in section numbering between each division of the statute. If new sections are added, they can be assigned the unused sections numbers. For example, the first group of sections might be 1 to 14, and the next group begins with section 20.

³⁷ Department of Legislative Services, “Legislative Drafting Manual 2013” (PDF file), Downloaded from dls.state.md.us/data%5Clegandana%5Clegandana_bildra%5Clegandana_bildra_bildraman%5C2013-Drafting-manual.pdf, accessed 14 May 2013, 08:00hrs

³⁸ Victor Thuronyi, *Tax Law Design and Drafting*, Volume 1 (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition, loc. 2120

3.1.3 ORGANIZATION BELOW SUBSECTION

Sometimes the section is one complete idea, with several subdivisions, none of which is itself a full sentence. The subdivisions are meant to separate out partial sentence elements. These subdivisions of a section are called paragraphs – not subsections – even though they generally are not technically paragraphs, but instead phrases or clauses. They are designated usually with Arabic numbers: “(1),” “(2),” etc. And yet, a paragraph can be a full, independent sentence or sentences when it is used as a subdivision of a subsection.³⁹

3.2 THE BRITISH DRAFTING STYLE

In Great Britain, most statutes were originally enacted to counteract some mischief created by the case law, and English courts did not like them. They regarded statutes “as an evil, a necessary evil no doubt, which disturbed the lovely harmony of Common Law”⁴⁰. The regular structure of UK legislation accounts for statutes being itemized and broken up where possible into numbered sections grouped in chapters, Parts, under subsections and paragraphs.⁴¹ These nomenclatures accounts for legislative drafting being accurate and precise in its substantive effect. This section highlights the key features of an English statute, using the Hunting Act 2004 as an example.

³⁹ Douglas M. Bellis, “Statutory Structure and Legislative Drafting Conventions: A Primer for Judges” (PDF file), Downloaded from [www.fjc.gov/public/pdf.nsf/lookup/draftcon.pdf/\\$file/draftcon.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/draftcon.pdf/$file/draftcon.pdf), accessed 10 April 2013, 12:00hrs

⁴⁰ Ole Lando Professor, Copenhagen Business School, “On Legislative Style and Structure” (PDF file), Downloaded from www.juridicainternational.eu/public/pdf/ji_2006_1_13.pdf, Accessed 15 May 2013, 16:00hrs

⁴¹ Girolamo Tessuto, “Drafting Laws in UK Setting: Implementing Plain Language and Discourse” (PDF), Downloaded from www.federalismi.it/federalismi/document/08012008030941.pdf Accessed on 15 May 2013, 18:00hrs

3.2.1 ENACTING FORMULA

The enacting formula introduces the main provisions of the Act⁴². Most statutes are passed by both Houses of Parliament, and therefore have the following enacting formula:

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows...

3.2.2 PREAMBLE

In older pieces of legislation, preambles⁴³ provided a description of the purpose of the Act, usually in a more comprehensive form than the long title. When evaluating a piece of legislation with a preamble, it may be useful to ascertain if the Courts have in fact given effect to Parliament’s intention by comparing the judgment delivered with the wording of the preamble⁴⁴.

3.2.3 MAIN BODY

The main body of the British statute is divided into sections, subsections, paragraphs and subparagraphs. Each section has a heading; for example section 2 of the Hunting Act 2001 has it’s heading as ‘Exempt hunting’. The section headings are meant to give a summary of what a section is about, although this is not always clear.

⁴²Slapper G. & Kelly D, “The English Legal System: Legal skills Guide”
www.cw.routledge.com/textbooks/9780415566957/legislation.asp, accessed 14 May 2013, 14:00hrs

⁴³ Neither the preamble nor explanatory notes are legally binding

⁴⁴Slapper G. & Kelly D, “The English Legal System: Legal skills Guide”
www.cw.routledge.com/textbooks/9780415566957/legislation.asp, accessed 14 May 2013, 14:00hrs

3.2.4 SCHEDULES

Some Acts include schedules, which come at the end. The schedules may comprise definitions, explanations, and detailed provisions, details of amendments and details of repeals. A schedule is a convenient device for dealing with matters of detail which will otherwise unnecessarily encumber the main body of an Act. Matters of administrative detail not desirable to the subject of regulation may be provided for in a Schedule. The Schedule also frees the main body of an Act from possible charge of untidiness. Care is needed in the drafting of Schedules. There should be no inconsistency as between an Act and its Schedules. For, if the enacting part of the statute cannot be made to correspond with the Schedule, the latter must yield to the former.⁴⁵ This aspect of the matter is now covered by the Interpretation Acts of most jurisdictions. While it may seem commendable to relegate detailed provisions to a schedule in order to make the statute easier to read, the result is simply bad organization. Detailed provisions should either be in appropriate places in the statute or if they are elaborations of general statutory rules, could be placed in regulations that are subordinate to those rules.⁴⁶ The failure to integrate schedules with the statute not only makes the statute more difficult to follow, but also tends to undermine its logical integrity.⁴⁷

3.2.5 EXPLANATORY NOTE

With effect from the first Public General Act of 1999 all new Public Acts which result from Bills introduced into either House of Parliament by a Government Minister (with the exception of Appropriation, Consolidated Fund, Finance and Consolidation Acts), are accompanied by

⁴⁵ Victor C.R.A.C. Crabbe. *Legislative Drafting*, (London, Cavendish Publishing Ltd, 1993), p.145

⁴⁶ Victor Thuronyi, *Tax Law Design and Drafting*, Volume 1 (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition, loc. 12992

⁴⁷ Victor Thuronyi, *Tax Law Design and Drafting*, Volume 1 (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition, loc. 2275

explanatory notes. Explanatory notes are produced by the government department responsible for the subject matter of the Act⁴⁸. They explain the Act without the need for legal or other specialized knowledge.



3.3 THE ZAMBIAN DRAFTING STYLE

The Zambian legal system has to a greater extent been influenced by the British legal system and most statutes were originally adopted from Britain. This section highlights the key features of Zambian statutes, using the Customs & Excise Act⁴⁹, Value Added Tax Act⁵⁰ and the Income Tax Act⁵¹ as examples.

3.3.1 OBJECTIVE OF THE STATUTE AND THE ENACTMENT

Most Zambian statutes make provisions for the main purpose of the statute. For example, the Customs & Excise Act indicates its purpose as an Act to provide for the imposition, collection and management of customs, excise and other duties, the licensing and control of warehouses and premises for the manufacture of certain goods, the regulating, controlling and prohibiting of imports and exports, the conclusion of customs and trade agreements with other countries, forfeitures and for other matters connected therewith or incidental thereto. Whilst the Value Added Tax Act indicates that the purpose of the Act is to impose a tax on the supply of goods and services and on importation of goods into Zambia; to repeal the Sales Tax Act and the Insurance Levies Act; and to provide for matters connected with or incidental to the foregoing. Similarly, the Income Tax Act states its objective as to provide for the taxation of incomes and

⁴⁸ Slapper G. & Kelly D, "The English Legal System: Legal skills Guide"
www.cw.routledge.com/textbooks/9780415566957/legislation.asp, accessed 14 May 201, 14:00hrs3

⁴⁹ Cap 322 of the Laws of Zambia

⁵⁰ Cap 331 of the Laws of Zambia

⁵¹ Cap 323 of the Laws of Zambia

matters connected therewith. Like in the United States’ case, the objective of the statute puts a reader on notice as to the contents of the statute. The objective does not include all the details of the statute, but it provides a fair indication of the real nature and subject matter of the concerned statute.

The enactment provision of the statutes simply states that the statute has been ENACTED by Parliament of Zambia. This gives the legal effect to the statute so enacted.

3.3.2 PRELIMINARY AND INTERPRETATION

Part I of most Zambian statutes consists of the preliminary issues such as the short title, commencement, interpretations and the administration and powers of the public officers. For example the short title for the Customs & Excise is indicated as this Act may be cited as the Customs and Excise Act. This also puts a reader on notice as to the contents of the statute. The interpretations section provides for the meaning of the terms used in the Act unless the context otherwise requires. Further, the Customs & Excise Act, Value Added Tax Act and Income Tax Act provides for the scope of application of the respective Acts and for the powers of the Commissioner – General. Some Act like the Value Added Tax Act⁵² also provides for the date in which the Act shall come into operation.

3.3.3 MAIN BODY

The main body of most Zambian Acts like, in the United States and Britain, are divided into parts, sections, subsections, paragraphs and subparagraphs. These are all relatively clearly labeled. Each section has a heading, for example section 4 of the Customs and Excise Act has its heading as “Powers of the Commissioner – General”. Similarly, section 7 of the Value Added

⁵² Cap 331 of the Laws of Zambia

Tax has its heading as “Taxable supplies.” These section headings are like in the British drafting style meant to give a summary of what a section is about.

3.2.4 SCHEDULES

Some Zambian Acts like the Income Tax Act, Value Added Tax Act and the Customs and Excise Act include schedules just like in the case of British Acts, which come at the end. These schedules may comprise definitions, explanations and detailed provisions, Like in most jurisdictions including Britain; a schedule is a convenient device for dealing with matters of detail which will otherwise unnecessarily encumber the main body of an Act. For example the seventh schedule of the Customs and Excise Act provides for the method of valuating services for the purpose of assessing excise duty payable on excisable services. Whilst the first schedule of the Income Tax Act provides for the classification of income and similarly, the second schedule of the Value Added Tax Act provides for the zero-rated supplies.

Matters of administrative detail not desirable to the subject of regulation may be provided for in a Schedule. Just like in the case of Britain, the Schedule also frees the main body of an Act from possible charge of untidiness. A careful look at the schedule in all the three taxing statutes shows that there is no inconsistency as between an Act and its Schedules. Each and every schedule has its inducing provision in the main body of the Act concerned. It is customary in legislative drafting for a schedule to have an inducing section as matter of drafting style. For, if the enacting part of the statute cannot be made to correspond with the Schedule, the latter might yield to the former. This aspect of the matter is now covered by the Interpretation Acts of most jurisdictions.

The *Zambian Interpretation and General Provisions Act*⁵³ reveals that the Act is very instructive on the interpretation. Section 3 provides that: “Part”, “regulation”, “rule”, “schedule”, and “section”, denote respectively a part, regulation, rule and section of, and schedule to the written law in which the words occur”. To authenticate this, Section 9 of the *Interpretation and General Provisions Act* provides that: “Every schedule to or table in any written law, together with notes thereto, shall be construed and have effect as part of such written law”.

⁵³ Cap 2 of the Laws of Zambia

CHAPTER IV

4.0 INTRODUCTION

This Chapter discusses the effect of legislative drafting on the implementation of a statute and the need for writing understandable tax legislation. The effect of legislative drafting manifests itself through the way statutes are interpreted by both the persons affected by it and the official enforcing it. This chapter also discusses the implication of the judgment in the case of *Celtel Zambia Limited (T/A Zain Zambia) v Zambia Revenue Authority* on future cases.

4.1 THE EFFECT OF LEGISLATIVE DRAFTING ON IMPLEMENTATION OF STATUTES

Until recently, matters of legislative style were not often given serious consideration in legal scholarship.⁵⁴ First, because legislative was not perceived as a matter of consequence; secondly, because style was seen as a question of taste and not very well suited as a subject of objective research; and thirdly because legislation itself has generally been studied by academics.⁵⁵ Yet the style of legislation does matter and is therefore worthwhile studying both from an academic point of view as well as for practical purposes.

Legislation has its purpose the establishment in written form of rule for the regulation and control of future social conduct⁵⁶. In essence, the principal purposes of legislation are (i) to establish and delimit the law and (ii) to communicate the law from the lawmaking authority to society and in particular to the persons affected by it. Legislation is communication of a very special kind. The framework of society depends in large measure on it and much that is dear to

⁵⁴ Wim Voermans, "Styles of Legislation and their Effects" (PDF), Downloaded from <https://openaccess.leidenunin.nl/bitstream/handle/1887/16566/styleoflegislation+-+final.pdf?sequence=5> Accessed on 17 May 2013

⁵⁵ Wim Voermans, "Styles of Legislation and their Effects" (PDF), Downloaded from <https://openaccess.leidenunin.nl/bitstream/handle/1887/16566/styleoflegislation+-+final.pdf?sequence=5> Accessed on 17 May 2013

⁵⁶ G.C. Thornton. *Legislative Drafting* (London Dublin Edinburgh, Butterworths, 1996), p.47

careful study to understand much legislation.⁵⁹ Nevertheless the drafter must in each case endeavor to draft in such a way that the law is successfully communicated to the person who make up the three groups. What is vital is the word used and the style adopted which those whose interest are affected (i.e. group ii) should be able to comprehend without unnecessary difficulty. Technical purposes are likely to require technical words and technical law may still be good law, even if unintelligible to most people, so long as it achieves ready communication with those who matter so far as that law is concerned.⁶⁰ Considerable importance is given to the advantages of certainty. Those affected by or otherwise concerned with a law want to know as soon as that law is in operation where they stand in relation to it. They do not want to endure the trouble, delay and expense of litigation. Citizens should not spend money going to court in order to determine their rights or obligations. Therefore, the structure of a statute acts as a road map for users who want to find the relevant provisions. A well-conceived structure leads the user to the place of interest and, therefore, is important for overall accessibility of the statute.⁶¹

4.1.1 WRITING UNDERSTANDABLE TAX LAWS

A realization of the need for intelligibility specifically in tax legislation has long been felt⁶². However, tax legislation drafted in a technological age reflects the complexity of real life. Tax legislation also has to provide certainty and is cited as one of the cases where precision may have to trump simplicity. One would have to ask the question: How can one write tax legislation providing certainty in such a way that it is understandable? In order to explore that question one

⁵⁹ G.C. Thornton Legislative Drafting (London Dublin Edinburgh, Butterworths, 1996), p.51

⁶⁰ G.C. Thornton Legislative Drafting (London Dublin Edinburgh, Butterworths, 1996), p.51

⁶¹ Wim Voermans, “Styles of Legislation and their Effects” (PDF), Downloaded from <https://openaccess.leidenunin.nl/bitstream/handle/1887/16566/styleoflegislation+-+final.pdf?sequence=5> Accessed on 17 May 2013, 08:00hrs

⁶² Brunton v Stamp Duties Comrs 1913 AC 747, 760 quoted in Jeanne A. Viljoen “Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962” (MPhil diss., University of Pretoria, 2011), p.31

has to look at who drafts tax legislation, who reads tax laws and how they are drafted. While Crabbe emphasizes the legal aspect of legislation he also refers to its communicative aspect⁶³. Pearce and Geddes are of the view that the "... inherent uncertainties associated with the use of language ..." imply that legislative drafters "... face real difficulties of communication."⁶⁴ They ascribe these difficulties partly to the size and the attitude of the audience of legislation. Unlike normal written communication, legislation dealing with complex matters is addressed at a large unknown audience, some of whom may not be reading in good faith. In addition, the drafter cannot be seen as the author of the legislation. Ultimate responsibility for the legislation (and therefore final decisions about its content) may lie with the legislature, the member of the executive responsible for its introduction, the instructing officers in the relevant department or lobby groups. The drafter forms the link between policy and implementation and must transform policy into law in such a way that it can be implemented. The quality of legislation therefore depends on the quality of the underlying policy and the quality of the drafting. A third element is how well it works in practice. In 1996 David Elliott advocated what was at the time a new approach to drafting legislation: if the drafter focused on the likely reader of the legislation and tried to answer his or her questions, the text would become user-friendly and more accessible. He also suggested a number of innovative tools to be used: flow diagrams, illustrations and examples. The use of algorithms would enable the drafter to compose the text in such a way that the reader would only be required to read the text applicable to his or her situation.⁶⁵ This focus on the likely reader led to the use of the second person in the rewritten Australian tax laws. The

⁶³ Crabbe VCRAC, "Legislative Drafting," Vol I Cavendish London 27 quoted in Jeanne A. Viljoen "Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962" (MPhil diss., University of Pretoria, 2011), 31

⁶⁴ Pearce DC and Geddes RS, "Statutory Interpretation in Australia 2001, Butterworth Australia, 2 quoted in Jeanne A. Viljoen "Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962" (MPhil diss., University of Pretoria, 2011), 31

⁶⁵ Elliot 1996 1-4, 8, 9-10. quoted in Jeanne A. Viljoen "Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962" (MPhil diss., University of Pretoria, 2011), 33

taxpayer as the intended reader is addressed directly: e.g. “You must pay income tax for each year ending on 30 June.”⁶⁶ However, determining the likely reader of legislation is not an easy task. Stephen Laws identifies the immediate readers of proposed legislation (Members of Parliament who deliberate on a Bill and individuals and organizations monitoring the parliamentary process) and the ultimate readers (the judges who have to construe the meaning when there is reason to dispute it, as in a court case, once the Bill has become an Act). In the middle ground there are members of the administration who have to implement the legislation, the members of the public who have to abide by it and lawyers (and, in the case of tax laws, tax advisers) who advise clients on compliance.⁶⁷ Addressing any of these groups directly is not appropriate as it could lead to confusion amongst members of the other groups.⁶⁸ The rules of legal interpretation provide a drafter of legislation with a number of guidelines for drafting and the drafter can attempt to write from the point of view of a judge as the end user. Butt and Castle do not favour this approach because judges only come into play if there is a conflict as to the meaning of the legislative text. They state that drafters do not draft defensively, with failure in mind.⁶⁹ Given the large number of potential readers from a variety of positions it would be extremely difficult to identify a likely reader of tax legislation. The importance of the mind shift advocated by Elliott lies more in its focus on readers than on targeting a particular reader. This is a move towards emphasizing the communicative aspect of legislation and not just expressing the

⁶⁶ Jeanne A. Viljoen “Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962” (MPhil diss., University of Pretoria, 2011), p.33

⁶⁷ Laws in Stefanou, 74. quoted in Jeanne A. Viljoen “Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962” (MPhil diss., University of Pretoria, 2011), p.33

⁶⁸ Greenberg in Stefanou 74 quoted in Jeanne A. Viljoen “Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962” (MPhil diss., University of Pretoria, 2011), p.33

⁶⁹ Butt 39 quoted in Jeanne A. Viljoen “Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962” (MPhil diss., University of Pretoria, 2011), p.34

legal relationships correctly.⁷⁰ What all readers (therefore also readers of tax legislation) have in common is that they read a text and that they use strategies to try to comprehend not only the words and sentences of the text but also their practical import. Understanding the component skills involved in the reading process should enable a drafter to write tax legislation in a way that maximizes the benefit a reader derives from the strategies employed during the reading process.⁷¹ The advantage of this approach, over that of writing for an unknown likely reader, is simply that all readers read. A reader of legislation is hardly ever a reader in the sense of someone who reads the text from the beginning to the end trying to follow the thread of the writer's intent. Most readers slot in at a certain point, expecting (predicting) to find the information they are looking for and only read as much as they think necessary. Elliott refers to what Richard Saul Wurman calls the black hole of "information anxiety" into which readers fall when they do not find the knowledge they are looking for in the information to hand. He therefore proposes to tailor the organization of the document to a reader's needs, amongst other things by using likely questions as headings to the parts or sections where the answers are to be found.⁷² Many of the people who read tax legislation do so for the sake of compliance (their own or their clients') or enforcement (tax authority officials). Tax legislation applies to a large number of people and transactions every day. Understanding of tax legislation lowers compliance and enforcement costs and thereby reduces the burden on the economy.

⁷⁰ Jeanne A. Viljoen "Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962" (MPhil diss., University of Pretoria, 2011), p.34

⁷¹ Jeanne A. Viljoen "Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962" (MPhil diss., University of Pretoria, 2011), p.34

⁷² Elliot 1996 3 quote in Jeanne A. Viljoen "Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962" (MPhil diss., University of Pretoria, 2011), p.31

4.1.2 ANTICIPATING APPLICATION AND INTERPRETATION

During the drafting process, consideration should be constantly given as to whether the statute is complete. To be effective, the statute should set forth all the rules needed to determine tax liability, or should provide authority for regulation that will contain these rules. To achieve this, the drafter must try to imagine all possible situations in which a statute will be applied. A choice must be made as to (1) whether rules go into the statute or into regulations and (2) what level of details is appropriate. Another aspect of thinking about how the law will be interpreted and applied is being on the lookout for ambiguity. It is appropriate to take a practical view here to eliminate ambiguity that would be of concern to a judge attempting to interpret the tax law.

More generally, in drafting it is important to anticipate the administrative or judicial resolution of dispute between taxpayers and the tax authorities. For example, suppose that it is decided to allow an income tax deduction for business entertainment expenses only if the expenses are reasonable in amount. If the statute is drafted in these terms, the drafter should consider who is going to decide whether an expense is reasonable. Will this be determined according to guidelines provided by regulations, will be left to the judgment of the individual auditors, or will be left to the courts? If the drafter focuses on these questions of procedure, alternatives for how to draft statutes might occur to them.⁷³ For example, instead of using a concept of reasonableness, the statute could deny deductions for entertainment in excess of specified limits, or could deny a fixed percentage of entertainment deductions or could deny this deduction altogether. Each of these alternatives is progressively simpler from the point of view of tax administration and progressively harsher for taxpayers.⁷⁴

⁷³ Victor Thuronyi, *Tax Law Design and Drafting*, Volume 1 (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition, loc. 2275

⁷⁴ Victor Thuronyi, *Tax Law Design and Drafting*, Volume 1 (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition, loc. 2275

Just as any piece of writing is modified to cater for its audience, the manner in which laws are drafted should take into account how courts are expected to interpret them. For example, the Renton Committee distinguished in general terms between the civil and common law systems. It was found that under the civil law system, legislation tend to be drafted in the form of broad statements of principle, with the application of these principles to particular cases being left to the judgment of the courts. In contrast, common law drafting tends to be much more detailed, trying to cover each possible case, with the court taking a correspondingly narrower reading of particular provisions of a statute.⁷⁵ In addition to the question of level of detail of a statute, in common law jurisdiction, it is important to be aware of judicial decisions on taxation as many important principles are governed by a “common law” of taxation.

The interpretation of law by courts can itself be governed by rules set forth in legislation. Commonwealth countries have developed a tradition of interpretations acts, which provides definitions of commonly used term and may contain other clauses relating to the interpretation of laws.

4.1.3 EFFECTIVENESS OF TAX LAWS

Poor drafting often leads to substantial problems in implementation of a tax law that could have been avoided. According to Thuronyi⁷⁶ the criteria for a well drafted law are (i) understandability, (ii) organization, (iii) effectiveness and; (iv) integration. Understandability refers to making the law easier to read and follow. Organization refers to both internal organization of the law and its coordination with other laws. Effectiveness relates to law’s ability

⁷⁵ Victor Thuronyi, *Tax Law Design and Drafting*, Volume 1 (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition, loc.

⁷⁶ Victor Thuronyi, *Tax Law Design and Drafting*, Volume 1 (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition

to enable the desired policy to be implemented.⁷⁷ Finally, integration refers to the consistency of the law with the legal system and drafting style of the country. These criteria are, of course, interrelated and somewhat overlapping. Organization is important for understandability, and all the criteria contribute to the effectiveness of the law. In the most general terms, tax laws should be drafted so as to best fulfill their role in the tax system, which is to specify such matters as how much each taxpayer is liable to pay and what the taxpayer's rights and obligations are. A well drafted tax law spells out with precision the matters that are within its scope. But precision is not enough. A law should not be precise at the expense of being complicated and impossible to understand. The easier a tax law is to understand, the lower will be the compliance costs, both for taxpayers and for tax administrators.⁷⁸ It is particularly important that a tax law be easy to apply because the tax law applies to nearly every physical and legal person in the country with respect to countless transactions every day. The fact that tax law must be applicable to so many transactions in an efficient manner has an important influence on how the law must be drafted. In particular, there is little room for sloppiness. Finally, a tax law must be effective in achieving the policy goals of the legislator, both in terms of the amount of revenue to be raised – with an eye of equity, efficiency, and simplicity-and the items and persons to be taxed.

4.2 THE IMPLICATIONS OF THE CASE OF CELTEL ZAMBIA v ZAMBIA REVENUE AUTHORITY

The background leading to this appeal was that at some point the Appellant came to the realization that it had been over-paying excise duty on its mobile telecommunication services due to an erroneous interpretation of the provisions of the Customs and Excise Act on the part of

⁷⁷ Victor Thuronyi, *Tax Law Design and Drafting*, Volume 1 (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition, loc. 2047

⁷⁸ Victor Thuronyi, *Tax Law Design and Drafting*, Volume 1 (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition, loc. 2047

the Respondent. According to Counsel for the Appellant the Tribunal erred in law in holding that a schedule to a statute can exist in a statute without an inducing section. This was even after the Respondent conceded to amending the Customs and Excise Act by the Customs and Excise (Amendment) Act No. 2 of 2009, to specifically provide for an inducing section to anchor the seventh schedule of the Customs and Excise Act. The position of the law is that in as much as a schedule forms part of the statute it is merely a device for clearer presentation and more efficient communication of the contents of the legislation. This position of the law seems clear looking at the nature of matter in all schedules to all the three principal Acts that are administered by the Zambia Revenue Authority namely, the Customs and Excise Act, Value Added Tax Act and the Income Tax Act provide. The principal purpose of this arrangement is to enable the presentation of the main sections of the enactment uncluttered by material of secondary or incidental importance. A schedule should have a description heading and should contain reference to the section of the Act to which it is attached⁷⁹. However, in the case of *Celtel v Zambia Revenue Authority* the seventh schedule of the Customs and Excise Act, on which the Respondent based its decision to charge, levy and collect excise duty on talk-time clearly lacked reference to the section in the Act. In a taxing Act one has to look merely at what is clearly said⁸⁰. There is no room for any intendment⁸¹. There is no equity about a tax⁸². There is no presumption as to a tax⁸³. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.⁸⁴ While the style of interpreting tax statutes is influenced by the general approach to statutory interpretation tax laws present some special considerations. In the case of *Celtel v*

⁷⁹ G.C.Thornton Legislative Drafting (London Dublin Edinburgh, Butterworths, 1996), p.400

⁸⁰ J Rowlatt, *Cape Brandy Syndicate v IRLComrs* 1921 1KB 64 71 12TC 358 quoted in Jeanne A. Viljoen

“Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962” (MPhil diss., University of Pretoria, 2011), 31

⁸¹ J Rowlatt, *Cape Brandy Syndicate v IRLComrs* 1921 1KB 64 71 12TC 358

⁸² J Rowlatt, *Cape Brandy Syndicate v IRLComrs* 1921 1KB 64 71 12TC 358

⁸³ J Rowlatt, *Cape Brandy Syndicate v IRLComrs* 1921 1KB 64 71 12TC 358

⁸⁴ J Rowlatt, *Cape Brandy Syndicate v IRLComrs* 1921 1KB 64 71 12TC 358

Zambia Revenue Authority clearly there was no enabling section in Customs and Excise Act. This was evidenced by the mere fact the Respondent through the Executive and Legislature found it imperative to amend the provision of the Customs and Excise Act mid-stream during the proceedings of the Appellant's internal appellate process. If indeed a schedule could exist without an inducing section, why would the Respondent hastily cause the amendment of the Act? This illustrates the point that the Appellant contention that the seventh schedule as it stood without an inducing section was illegal. However, the Court in this case decided to apply the principles of interpretation that favour the view that the court must give effect to the intention of parliament. But this was in conflict with the principles that in a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. This decision also goes against the principle that any doubt in the provision of law imposing tax shall be construed in favour of the taxpayer. This has been illustrated in some Zambian Courts and the Revenue Appeals Tribunal that have had occasions to discuss the subject matter of statutory interpretation. Thus, the Revenue Appeals Tribunal (RAT) and the High Court of the Judicature of Zambia ruling in *Celtel Zambia Limited v Zambia Revenue Authority*⁸⁵ and *Zambia Revenue Authority v Celtel Zambia Limited*⁸⁶ where the Tribunal held that "we wish to reinstate what we said in the case of *Galunia Holdings Limited v Zambia Revenue Authority*⁸⁷ that any doubt in the provision of law imposing tax shall be construed in favour of the taxpayer." This principle by the Tribunal is to be further found in the cases of *Chibuluma Mines PLC v Zambia Revenue*

⁸⁵ 1999/RAT/36

⁸⁶ 2002/HP/A67

⁸⁷ 2000/RAT/06

Authority, Industrial Credit Company v Zambia Revenue Authority⁸⁸ and Spectra Oil Corporation Limited v Zambia Revenue Authority⁸⁹

In sum, these cases restated the principle enunciated in the case of Inland Revenue Commissioner v Ayrshire Employers Mutual Association Limited⁹⁰ that a taxing statute must not leave room for doubt and controversy. To quote the learned Judge in that matter:

“Yet I can come to the conclusion than that the language of the section that fails to achieve its apparent purpose and I must decline to insert words or phrases which might succeed where the draftsman failed.”

The implication of the decision in this case is that it may encourage poorly drafted legislation to be implemented for as long as the court will give effect to the intention of parliament even in the face of a statute clearly failing to effectively perform its communicative role in society i.e. communicating the law to the people affected. The framework of society depends in large measure on it and much that is dear to the heart is frequently affected – liberty, perhaps even life, commercial and industrial relations between persons, property, marriages, taxes indeed all aspects of human conduct within society. Thus the decision may encourage the drafter and legislators of tax law to draft and pass law with drafting errors that may lead to numerous tax disputes between tax authorities and taxpayers. This will be despite a realization of the need for intelligibility specifically in tax legislation that has long been recognized. Tax legislation also has to provide certainty and is cited as one of the cases where precision may have to trump simplicity.

⁸⁸ 1999/RAT/73

⁸⁹ 1999/RAT/33

⁹⁰ [1946] 1 ALL ER 637

If the court in this case had ruled in favour of the Appellant it would have been a reminder at all times that what seems perfectly clear to drafters and legislators of tax laws or indeed any law may not be equally clear to the person who reads a piece of legislation. Drafters and legislators must do the best they can to reduce doubt and ambiguity, and to bring difficulties to a workable minimum. Completely missing out an enabling section to a schedule in the main body of a taxing statute cannot be said to be out of the imperfection of human foresight and indeed of language itself. This was demonstrated by the Supreme Court of Zambia in the case of *Director of Public Prosecutions v Ngandu and Others*⁹¹ it was held that the courts will be very slow to assume that the legislature has made a mistake; unless driven to it the courts will not alter a legislative provision by adding or omitting words. But the courts are driven to doing this where it is impossible to make sense of the provision as framed. However, in the *Celtel v Zambia Revenue Authority*, the enabling provision did not even exist in the Act in the first place. Therefore, it cannot be claimed that it was impossible to make sense of the provision which does not exist in the first place.

Overall the implication of the decision in this case is that it will encourage the drafting of uncertain and ambiguous tax laws and will give the tax administrators unfettered discretion to decide in any manner without due regard to the fact that the taxpayer may have genuinely not anticipated that a tax liability has arisen due to the failure in the relevant tax law to effectively communicate the taxpayer's tax obligation.

⁹¹ (1975) ZR 253 (SC)

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

5.0 CONCLUSION

Zambia's adopted legislative drafting style alone will do little to improve the quality of legislation. It is the quality of those involved in the legislative process that plays a vital role. The internal procedures within Ministries and parliament play a key role in the quality of legislation. In pursuit of quality in legislation, it must be emphasized that there are many players who must contribute to this achievement throughout the legislative process. There is no doubt that the drafter and the parliamentarians play the most significant role in the testing and scrutiny of the feasibility of laws and they are a key component in the quality control process. It is noteworthy that drafting of legislation in compliance with the adopted drafting styles impact on the role of the drafter and of parliament, to draft and pass laws that meet the expected quality of envisaged legislation.

For the sake of readability and for ease of finding information it is important to provide a logical structure that guides the reader. There is a consensus that grouping together sections that deal with the same subject matter facilitates the reader's task. The way in which the matter is grouped can help to reveal the relationships between the different aspects dealt with. Grouping can also help to reduce the need for cross references: if the same matters appear in the same chapter or part there is less need to refer to other chapters and parts. The content of an Act should be logically broken up into parts, chapters and sections that are clearly indicated in a table of contents. The use of clear headings as topic specifiers for these structural elements enables the reader to create a mental picture of all the provisions and the way that they relate to each other. This facilitates understanding of the details contained in specific provisions. An analysis of the three Zambian taxing Acts namely the Income Tax Act, Value Added Tax Act and the Customs

& Excise Act has actually revealed that to a greater extent they conform to the drafting style obtaining in both the England and the United States of American. However, enforceability is a key ingredient of effective legislation. A major element in the legislative process is to determine the effectiveness of legislation. Evaluation of the enforceability of legislation should be treated as an integral part of the law-making process. In order to be effective, the rule of law requires that any regulatory rules be workable. This was not case as revealed by the dispute in the *Celtel v Zambia Revenue Authority* in that the seventh schedule to the Customs & Excise Act was unworkable in that it lacked the inducing provision in the main body of the Act. This made enforceability of the seventh schedule of the Act difficult. Thus rules must be feasible in both practical and economic terms. A more comprehensive rule regarding the quality of rule-making should include quality checks at the conception stage, of whether the rules envisaged are fit to be adequately enforced. Rules must be capable of being applied by those whom they concern.

The responsibility of ensuring high quality legislation lies in the hands of the drafters themselves. They are the guardians of the statute books. They are experts. They have (or should have) the last word, when it comes to drafting the structure of a statute. Effectiveness can be viewed as the drafter's contribution to the efficacy of the drafted legislation. The common concept of quality in legislation, with effectiveness as its flagship, is promoted by drafters around the world. Drafters play a vital role as regards the drafting of legally effective and clearly expressed legislation that best meet the policy requirements.

5.1 RECOMMENDATIONS

Whilst the Zambian drafting style to a larger extent conforms to the English and American drafting styles, the effectiveness of these laws is enhanced if it is well organized and well structured. Tax laws can be impenetrable, as qualifications and exceptions have been heaped on

top of existing rules. Legislative drafting may lead to substantial problems in the implementation of the law that could have been avoided. Therefore in order to avoid some of these disputes that arise from poor quality legislative drafting it is recommended that tax legislation must embody the following qualities:

5.1.1 UNDERSTANDABILITY

Understandability refers to making the law easier to understand and follow. The shorter the statute, the less the effort will be required to understand it and the lower the compliance burden will be. *A shorter statute does not necessarily mean it is better than a longer statute. Therefore, clarity of expressions must be sought. Further, the statute must be transparent in that it must easily allow the reader to understand the rationale for the rules. One way of achieving this is to beginning by stating its purpose. Alternatively, instead of stating the purpose of the law, the law could begin with an exposition of its basic mechanics, that is, identification of the affected taxpayers, tax base and the location of provisions containing the tax rates. This would be more modest than attempting to state the purpose of the law, but it would at least allow the reader to see the basic structure of the law at the beginning.*

Furthermore, since most tax laws are frequently amended which creates a problem with sequential numbering of sections, it is recommended that a non-sequential numbers be adopted. This approach leaves a gap in section numbers between each division of the statute. If new sections are added, they can be assigned the unused section numbers.

5.1.2 ORGANISATION

Organization refers to both the internal organization of the law and its coordination with other tax laws. The statute should be well organized to make it easier for the taxpayers to determine where one need to look for answers to a particular question, and/or which portions of the statute

can be ignored by a particular taxpayer. Tax laws contain same key elements such as taxpayers, tax rates, tax base, procedure and administration. Therefore, it is recommended that in order to improve understanding all the tax laws follow the same order in respect of these elements.

An example of bad organization is the use of schedules. For instance there are eleven (11) schedules to the Income Tax Act Cap 323 of the Laws of Zambia. While it may seem commendable to relegate detailed provisions to a schedule in order to make the statute easier to read, the result is simply bad organization. It is recommended that detailed provisions should either be in appropriate places in the statute or if they are elaborations of general statutory rules, could be placed in regulations that are subordinate to those rules. The failure to integrate schedules with the statute not only makes the statute more difficult to follow, but also tends to undermine its logical integrity.

5.1.3 EFFECTIVENESS

The fundamental test of whether or not a tax law is drafted properly is if it implements the desired policy in an effective manner. In trying to make sure during the drafting process that the law will be effective, it is recommended to reflect on the policy and on the anticipated implementation of the law, including its interpretation by the courts, and how the taxpayers and tax administrators will act in applying the law. In order to properly manage the drafting of tax legislation, it is recommended that the drafters have a clear understanding of the policy behind the envisage tax law. The initial responsibility for producing a draft bill should lie with the Ministry of Finance and National Planning. Changes in policy may then be made at several stages, as a tax bill undergoes consideration by government and then the legislature.

It is further recommended that during drafting process activities should be undertaken to constantly check whether or not the tax statute is complete. To be complete the statute must set

forth all the rules needed to determine tax liability. A choice should be made as to whether rules go into the statute or into regulations and what level of detail is appropriate.

5.1.4 ENFORCEABILITY

It is recommended that before the implementation of tax statute an evaluation of the enforceability of legislation should be undertaken as an integral part of the tax law-making process. This is to ensure that the rules are achievable in practical and economic terms. It is advisable that quality checks are undertaken at conception stage of whether the rules envisaged are fit to be adequately enforced more so that rules must be capable of being applied by those whom they concern, taking into account existing administrative and social structures. It is therefore, crucial for the drafters to analyze rigorously the practical aspects of tax laws and be satisfied that the scheme will work, and that the machinery proposed is practicable and that the legislation will be capable of enforcement.

5.1.5 INTEGRATION

It is recommended that drafters must ensure that tax laws are fully integrated with the rest of the legal system. Not only does the drafter need to be aware of the obvious issues of possible unconstitutionality, but also more subtle question of conformity with drafting style and legal system in general. This will enhance the acceptability, understandability and effectiveness of the tax law. Tax statutes must be drafted in the context of the style of legislative drafting of the country. A country's tax laws must be consistent in appearance and style so as to facilitate understanding and interpretation of the law and maintain the dignity of the legislative process.

BIBLIOGRAPHY

Books:

Crabbe C.R.A.C. Victor* *Legislative Drafting*, London, Cavendish Publishing Ltd, 1993
Dias Reginald Walter Michael. *Jurisprudence*, Butterworths, 1985
Thornton G.C. *Legislative Drafting*, London Dublin Edinburgh, Butterworths, 1996

e-Books

Victor Thuronyi, *Tax Law Design and Drafting, Volume 1* (Washington D.C. , International Monetary Fund, Publication Services 1996), Kindle edition

Dissertations:

Jeanne A. Viljoen “Consistency as a desirable and achievable objective in the proposed rewrite of the South African Income Tax Act, 1962” MPhil diss., University of Pretoria, 2011

PDF Downloads:

Department of Legislative Services, “Legislative Drafting Manual 2013” (PDF file),
Downloaded from
dls.state.md.us/data%5Clegandana%5Clegandana_bildra%5Clegandana_bildra_bildraman%5C2013-Drafting-manual.pdf, Accessed 14 May 2013

Douglas M. Bellis, “Statutory Structure and Legislative Drafting Conventions: A Primer for Judges” (PDF file), Downloaded from
[www.fjc.gov/public/pdf.nsf/lookup/draftcon.pdf/\\$file/draftcon.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/draftcon.pdf/$file/draftcon.pdf), Accessed on 10 April 2013

G Slapper & D Kelly, “The English Legal System: Legal skills Guide”
www.cw.routledge.com/textbooks/9780415566957/legislation.asp, Accessed on 14 May 2013

Girolamo Tessuto, “Drafting Laws in UK Setting: Implementing Plain Language and Discourse” (PDF), Downloaded from www.federalismi.it/federalismi/document/08012008030941.pdf
Accessed on 15 May 2013

Impact Assessment in Legislative Drafting, “Guidelines” (PDF), downloaded from Ministry of Justice Finland Publication website, <http://oikeusministerio.fi/537EF10C-304C-45AC-8920-1D18006E193E/FinalDownload/DownloadId-AB285E8F6BF21843ABF2F4086410913C/537EF10C-304C-45AC-8920->

[1D18006E193E/material/attachments/om/julkaisut/6FiopyBT5/nettiversio_60_s.pdf](#), Accessed on 10 April 2013

Legislative Drafting Manual 2013” (PDF), downloaded from Department of Legislative Services, Office of Policy Analysis, Annapolis, Maryland. website, http://dls.state.md.us/data%5Clegandana%5Clegandana_bildra%5Clegandana_bildra_bildraman%5C2013-Drafting-Manual.pdf , Accessed on 12 April 2013

Legislative Drafting, “A Commission Manual” (PDF), downloaded from European Commission website, <http://e.c.europa.eu>, Accessed on 10 April 2013

Lesedi Poloko, “Drafting of legislation in compliance with model laws,” (LLM diss., University of London, 2013) (PDF) downloaded from http://sas-space.sas.ac.uk/4703/1/lesedi_Pokolo_LLM_ALS_Dissertation.pdf, Accessed on 10 July 2013

Massachusetts General Court, “Legislative Research and Drafting Manual ” (PDF), downloaded from The 188th General Court of The Commonwealth of Massachusetts website, <http://www.malegislature.gov/legislation /DraftingManual>, Accessed 10 April 2013

Ole Lando Professor, Copenhagen Business School, “On Legislative Style and Structure” (PDF file), Downloaded from www.juridicainternational.eu/public/pdf/ji_2006_1_13.pdf, Accessed on 15 May 2013

The Office of the Legislative Counsel, “House Legislative Counsel’s Manual on Drafting Styles”, November 1995 (PDF) Downloaded from U.S. House of Representative, Website <http://www.house.gov/legcoun/pdf/draftstyle.pdf> Accessed on 10 April 2013

Wim Voermans, “Styles of Legislation and their Effects” (PDF), Downloaded from <https://openaccess.leidenunin.nl/bitstream/handle/1887/16566/styleoflegislation+-+final.pd?sequence=5> Accessed on 17 May 2013