

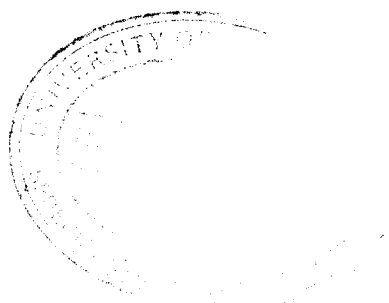
**THE IMPACT OF THE CUSTOMS AND EXCISE REMISSION
REGULATIONS (TAX INCENTIVES) ON INVESTMENT IN ZAMBIA.**

BY

MIRRIAM MAINESS MUKUMBWA

SFR
LIB
MUK
2012
-1

A dissertation submitted to the University of Zambia in partial fulfillment of the requirements for the degree of Bachelor of Laws (LLB) in the School of Law of the University of Zambia.

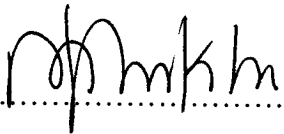


DECLARATION

I, **Mirriam Mainess Mukumbwa** computer number 26064987, do hereby declare that this directed research is the result of my own investigation and research, except to the extent indicated in the acknowledgements and references and by comments indicated in the body of the essay.

I bear absolute responsibility for all errors, defects or any omissions therein.

DATE: 11.05.2012

SIGNED: 

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

Recommendation

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

Miriam Mainess Mukumbwa,

26064987

Entitled:

The Impact of the Customs and Excise Remission Regulations (Tax Incentives) on Investment in Zambia

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.

Mr. Malvuto Sakala
(Supervisor)

16/05/2012

Date

ABSTRACT

The subject of tax incentives has become wide spread in a world that is more and more globalised. Tax incentives exist in various forms and these include tax holidays, remission of customs duty, location based incentives, to mention but a few. It has been recognized world over that tax incentives increase investment, especially foreign direct investment (FDI), which in turn fosters economic development. It is for this reason that the impact of tax incentives on investment has been extensively debated on both in the international and regional sphere.

This paper looks at the law regulating tax incentives in Zambia and highlights its shortcomings by analysing among others, the legal framework within which tax incentives such as the remission of duty operate and to what extent it has successfully enforced these tax incentives in Zambia. Further whether the application of the law relating to the tax incentives achieves the required end result and if not the flaws in the laws regulating tax incentives and enforcement mechanisms.

To answer these research questions a study was done on Zambia and other regions, namely SADC (Southern African Development Community) and MENA (Middle East and North Africa). From the study it was observed that there are laws regulating tax incentives and enforcement mechanisms that have been designed to ensure that tax incentives are implemented in Zambia. However these laws and enforcement mechanisms were found to be characterised by the following flaws: The loss of revenue by the government; Neutrality of costs instead of correcting market failure; Enforcement and compliance costs; The lack of transparency; and complexity of tax systems.

Inorder to achieve the positive impact on investment in Zambia, that is to achieve the required the end results the following are the recommendations made: Improvement of the administration; Amendments to the legislation; Improving publicity and access to information; Adoption and implementation of policies; Increase of transparency levels; and Addressing the complexity of tax systems.

ACKNOWLEDGEMENTS

I would like to acknowledge the support of many people whose support was inimical to the production of this work. Special thanks go to Mr Mabvuto Sakala my supervisor who spared his precious time to read my paper. I also wish to commend him for his ever prompt feedback and his unrelenting guidance rendered during this work.

I would also like to thank my husband and children whose support is too obvious to be stated. Thanks also go to my colleges at Zambia Revenue Authority (ZRA), Mr P. Chandalala from Revenue Appeals Tribunal (RAT) and my friend Mwelwa Chingoma Kaluwe for their unending help.

Finally, I wish to say thanks to my parents making who I am today and of course all this would not have been possible without my God, who deserves all the Glory.

DEDICATION

This work is dedicated to my sons Choolwe and Fundi Choongo who I love so much. You have been so supportive and understanding.

TABLE OF CASES

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

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

Inland Revenue Commissioners v Ayrshire Employers Mutual Association Limited 1946
ALLER 637

R v Inland Revenue Commissioners, Ex Parte Camaco Corp and Another (1990) 1 All ER 192

TABLE OF INTERNATIONAL INSTRUMENTS

SADC Protocol on Finance and Investment, (SADC,2006)

The United Nations Conference Trade and Development

World Trade Organisation (WTO) Agreement

TABLE OF REPORTS

The World Bank’s Global Economic Prospects Report 2002

TABLE OF STATUTES

Statutory Instrument No. 54 of 2000 (The Customs and Excise (General) Regulations 2000)

The Customs and Excise Act Chapter 322 of the Laws of Zambia

The Income Tax Act Chapter 323 of the Laws of Zambia

The Mine and Minerals Development Act Chapter 213 of the Laws of Zambia

The Revenue Appeals Tribunal Act 1998 [No. 11 of 1998]

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

The Zambia Development Agency Act 2006 [No. 11 of 2006]

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

GLOSSARY OF ABBREVIATIONS

ASCM	Agreement on Subsidies and Countervailing Measures
CITR	Corporate Income Tax Rate
FDI	Foreign Direct Investment
IMF	International Monetary Fund
ITC	Investment Tax Credit
MENA	Middle East and North Africa
MFEZ	Muti-Facility Economic Zones
MOFNP	Ministry of Finance and National Planning
RAT	Revenue Appeals Tribunal
SADC	Southern African Development Community
SI	Statutory Instrument
SME	Small and Meduim Enterprises
WTO	World Trade Organisation
ZDA	Zambia Development Agency
ZRA	Zambia Revenue Authority

TABLE OF CONTENTS

	Page
Research Topic	i
Declaration	ii
Supervisor’s Approval	iii
Abstract.....	iv
Acknowledgements.....	v
Dedication.....	vi
Table of Cases.....	vii
Table of International Instruments.....	viii
Table of Reports.....	ix
Table of Statutes.....	x
Glossary of Abbreviations.....	xi
Table of Contents.....	xii

Chapter 1

General Introduction and Definition of Concepts

1.1	General Introduction	1
1.2	Background of the Study.....	2
1.3	Statement of the Problem.....	3
1.4	Objectives of the Study	3

1.5	Research Questions.....	4
1.6	Significance of the Study	4
1.7	Description of Key Concepts	5
1.7.1	Types of General Incentives.....	5
1.7.1.1	Tax Holidays.....	5
1.7.1.2	Investment Allowances and Tax Credits.....	5
1.7.1.3	Timing Differences.....	6
1.7.1.4	Tax Rate Reductions.....	6
1.7.2	Types of Tax Incentives in Zambia.....	6
1.8	Methodology.....	8
1.9	Conclusion.....	8

Chapter 2

The Framework Governing Tax Incentives

2.1	Introduction	9
2.2	The Creation and Enactment of Tax Incentives.....	9
2.2.1	Policy Formulation National through the national Budget.....	10
2.2.1.1	Submission of Tax Proposals.....	10
2.2.2.2	Review of Submissions.....	10
2.2.2	The ZDA Act Process.....	11
2.2.2.1	Priority Sectors.....	11

2.2.2.2	Investment Protection Agreements (IPAs).....	11
2.2.2.3	Issuing Investment Licences.....	11
2.2.3	Statutory Instruments (SI).....	11
2.3	Qualification Rules and Administrative Procedures.....	12
2.3.1	Priority Sector.....	12
2.3.2	Investment Approval.....	14
2.3.3	Other Procedures.....	15
2.4	The Role Of ZDA and ZRA.....	16
2.5	Tax Incentives Under International Law.....	17
2.6	Conclusion.....	17

Chapter 3

The Enforcement of Tax Incentives

3.1	Introduction	19
3.2	Law Enforcement Agencies.....	19
3.2.1	The Zambia Revenue Authority (ZRA).....	19
3.2.2	The Ministry of Finance and National Planning.....	20
3.2.3	The Zambia Development Agency (ZDA).....	20
3.2.4	The Revenue Appeals Tribunal (RAT).....	21
3.2.4.1	Jurisdiction of the Revenue Appeals Tribunal.....	21
3.3	The Role of the Courts.....	25
3.4	Constraints in the Implementation of Tax Incentives.....	26

3.4.1	Tax Implication of renewed investment licence.....	26
3.4.2	Tax consequences of a suspended investment licence.....	27
3.4.3	Audit of tax incentives.....	27
3.4.4	Negotiated Incentives for Major Investments.....	28
3.5	General Disadvantages of Tax Incentives.....	29
3.5.1	Forgone Revenues.....	29
3.5.2	Resource Allocation (neutrality) Costs.....	29
3.5.3	Enforcement and Compliance Costs.....	30
3.5.4	The Lack of Transparency.....	30
3.6	Conclusion.....	30

Chapter 4

An Overview of Tax Incentive Laws: Implementation and Impact on Investment

4.1	Introduction.....	31
4.2	The Concept of Development and Investment.....	31
4.3	The Effectiveness of Tax Incentives.....	32
4.3.1	Determinants of Investment.....	33
	4.3.1.1 Non Fiscal Protection.....	33
	4.3.1.2 Fiscal Protection.....	33
4.4	Relationship Between Taxation and Investment.....	34
4.5	The Impact of Tax Incentives in Zambia.....	35
4.6	The Implementation of Tax Incentives in Zambia.....	36

4.7	The Implementation of Tax Incentives in the SADC Region.....	37
4.8	The Implementation of Tax Incentives in other regions.....	39
4.9	Conclusion.....	40

Chapter 5

Conclusions and Recommendations

5.1	General Conclusion.....	41
5.2	Recommendations	42
5.2.1	Improvement of the Administration.....	43
5.2.2	Amendments to the Legislation.....	43
5.2.3	Improving Publicity and Access of Information.....	43
5.2.4	Adoption and Implementation of Policies.....	44
5.2.5	Increase of Transparency Levels.....	44
5.3	Conclusion.....	45

BIBLIOGRAPHY	47
---------------------------	-----------

Chapter 1

General Introduction and Definition of Concepts

1.1 General Introduction

A country's international financial situation as reflected in its balance of payments and its level on monetary reserves depends not only on its current balance (its commodity trade) but also its capital account (its net inflow or outflow of private and public financial resources).¹ The international flow of financial resources takes three forms, which are:

- i.) private foreign and portfolio investment, which is an important component of this study;
- ii.) remittances of earnings by international immigrants; and
- iii.) Public and private development assistance (foreign aid).

Trade can be a powerful source of growth and development.² In the last fifteen years or so, the issue of resource mobilization has attracted considerable attention in many developing countries. Taxation has rightly been identified as a major tool in the strengthening of resource mobilization and the fact that it is the most important weapon available to governments for marshalling financial resources is indisputable. However like almost all economies, Zambia uses a range of tax incentives to attract investment into the country. Remission of duty is one such incentive administered and provided for in Zambia. Remission of duty means the act of remitting duty.³ To remit is to relax, to refrain from exacting or inflicting, to pardon; to give up.⁴ United Nations Conference on Trade Development (UNCTAD) (2003) defines incentives as 'any measurable advantage accorded to specific enterprises or category of enterprises by (or at the direction of) government'. The Government may allow goods, which would otherwise be dutiable to be imported or bought locally, free of duty in certain circumstances.

¹ Micheal P. Todaro and Stephen.C. Smith, *Economic Development* (India: Pearson Education Ltd. 2008), 714.

² <http://www.unescao.org/tid/projects/dda-s2a.pdf> visited on 14 September 2011

³ http://www.ezv.admin.ch/zollinfo_firmen/verzollung visited on 14 September 2011

⁴ <http://www.websters-online-dictionary.org/definition/remission+of+duty> visited on 14 September 2011

Provision of investment incentives is in the form of either relief of tax or cash grants. Firms make investment decisions based on many factors including projections of future demand, certainty about future government policy, prevailing interest rates and moves by competitors. Generally speaking, they see incentives as ‘nice to have’ but not deal breaking. There is an economic rationale for tax incentives in specific sectors or locations which is based on market failure, which incentives seek to correct. However it is important to mention that, governments often introduce tax incentives in response to political lobbying or to compensate for other policies that deter investment.

The Customs Services Division one of the operational divisions under Zambia Revenue Authority shall effect such rebate, refund or remission of duty subject to such conditions as may be laid down in the relevant regulations, Statutory Instrument No. 54 of 2000⁵.

1.2 Background of the Study

In order to achieve the required development by the country, through foreign direct investment (FDI), laws have been put in place in the country, laws that are in line with the objectives of the World Trade Organization (WTO). These are the laws found in the Customs and Excise Act⁶, a number of Statutory Instruments for example Statutory Instrument No. 40 of 2010 and Statutory Instrument No. 54 of 2000⁷ and the Zambia Development Agency Act⁸.

The granting of tax incentives is relatively a new policy practiced in Zambia. The practice was popularised around 1991 following the establishment of a new Government that focused on the private sector investment through a comprehensive privatisation of public enterprises. It is noteworthy that remission of duty laws have not been fully explored and studied in Zambia. However, there is noticeable development in the area of buildings and construction done by foreign and local investors as well as the mining industries that have made use and are still making use of these tax incentives. Despite them being new in Zambia, they have been greatly used, in the same way that other countries have continued to use them despite the lack of

⁵ The Customs and Excise (General) Regulations 2000)

⁶ Cap 322 of the Laws of Zambia

⁷ Supra Note 5

⁸ No. 11 of 2006

evidence to support their efficacy or efficiency of fiscal incentives. One reason could be so is that be tax incentives are seen as an easy way to compensate for other government created obstacles. In other words, fiscal incentives are said to respond to government failure as much as market failure.

1.3 Statement of the Problem

Zambia being one of the least developed countries is unable of produce a number of products for it to enhance development. Along the years it has improved international relations, which in turn has brought about an increase in trade with other nations. It is notable that to improve on the development in the country, in other words in order for a country to build modern structures and improve the face of the country entrepreneurs cannot avoid tapping into other foreign countries for the supply of the much needed resources. It is only fair that such institutions or corporations are given some sort of relief in term of tax incentives, which in this case is at importation through the remission customs duty and excise duty. Tax incentive laws aim at safeguarding the interest of entrepreneurs by offering them the much needed tax relief as an incentive and encouragement.

This research aims at discovering laws which have been put in place to effect tax incentives through the remission of customs and excise duty and how these laws have been administered and applied and whether their application has an impact on investment in Zambia.

1.4 Objectives of the Study

The ultimate objective of this research is to assess the impact of tax the Customs and Excise (Remission) Regulations, tax incentives, on investment in Zambia. Zambia is known to be a developing country with most of its population surviving on less than a dollar a day.⁹ The study looks at how the Zambian investment sector can benefit from the remission of duty laws. Ultimately, this research points out the effect on the economic development of Zambia through the implementation of the Customs and Excise (Remission) Regulations.

⁹ Todaro, *Economic Development* ,347.

In order to achieve the purpose of this research, the following objectives were set as benchmarks to guide the research:

- i.) To determine the legal framework within which tax incentives such as the remission of duty operates in Zambia;
- ii.) To establish the extent to which the current legal framework has successfully enforced tax incentives in Zambia;
- iii.) To determine the flaws in the tax incentive laws and enforcement mechanisms; and
- iv.) To ascertain how the enforcement of tax incentive laws can be used to promote economic development in Zambia.

1.5 Research Questions

The following research questions assisted in achieving the objectives of this study:

- i.) What is the legal framework within which tax incentives such as the remission of duty operate in Zambia?
- ii.) To what extent has the current legal framework successfully enforced tax incentives in Zambia?
- iii.) Does the application of the law relating to tax incentives to achieve the required end result?
- iv.) What are the flaws in the tax incentive laws and enforcement mechanisms?

1.6 Significance of the Study

The study is important and comes timely when the issues of economic development through investment both foreign and local have been highlighted in the country. This paper seeks to identify the impact of the remission of duty laws, by critically analysing the effect of the challenges in the enforcement of tax incentives as opposed to collection of taxes, which are also a very important component of economic development. The current legal framework provides for the remission of duties. However, there is need to take a step further to establish as to whether the laws put in place are easily enforced and do achieve their intended goal, that is economic development. The enforcement of these laws is not an end in itself but a means to an

end. It is critical that remission of duty laws are enforced and applied in a manner that will generate the much needed development for the nation.

The study is important as it shows what domestic laws have been put in place to allow for remission of duties or to offer tax incentives to investors in the country. This study is beneficial to policy makers in government as it offers suggestions of the viable policies that can be adopted in relation to remission of taxes which can generate economic development. The information in this study will also be useful for legislators because it will highlight the various areas of the law that need revision. Various institutions will also benefit from this research as it indicates how they can better enforce the tax remission laws if development is to be achieved. The research is also a contribution to a progressive legal framework in the enforcement of tax remission laws in Zambia.

1.7 Description of the Key Concepts

Incentives can either be fiscal or non-fiscal, direct or indirect. Examples of fiscal incentives include direct ‘cash’ grants or tax breaks. Non-fiscal incentives can include fast-track approval processes or exemptions from certain regulations.

1.7.1 Types of General Tax Incentives

1.7.1.1 Tax Holidays

The tax holiday has been often used by developing and transition countries. It is directed to new firms and is not available to existing operations. With a tax holiday, new firms are allowed a period of time when they are exempt from the burden of income taxation. Sometimes, this grace period is extended to a subsequent period of taxation at a reduced rate.

1.7.1.2 Investment Allowances and Tax Credits

Investment allowances and tax credits are forms of tax relief that are based on the value of expenditures on qualifying investments. They provide tax benefits over and above the depreciation allowed for the asset. A tax allowance is used to reduce the taxable income of the firm. A tax credit is used to directly reduce the amount of taxes to be paid.

1.7.1.3 Timing Differences

Timing differences can arise through either the acceleration of deductions or the deferral of the recognition of income. The most common form of accelerated deduction is accelerated depreciation, where the cost of an asset may be written off at a rate that is faster than the economic rate of depreciation. It can take the form of either a shorter period of depreciation or a special deduction in the first year. The latter has a similar impact to an investment allowance in the first year, but differs in that the amount written off reduces the depreciation base for future years, and so the total amount written off does not exceed the actual cost of the investment.

1.7.1.4 Tax Rate Reductions

General tax rate reductions can be provided for income from certain sources or to firms satisfying certain criteria, for example, to small firms in manufacturing or agriculture. These reductions differ from tax holidays because the tax liability of firms is not entirely eliminated, the benefit is extended beyond new enterprises to include income from existing operations, and the benefit is not time limited.

1.7.2 Types of Tax incentives in Zambia

In Zambia there are ten types of tax incentives that are currently being offered, these are as follows:

- i.) Reduced corporate income tax rate (CITR)
- ii.) Tax Holidays
- iii.) Tax privileged zones – Multi-facility Economic Zones (MFEZ)
- iv.) Investment/Development allowances
- v.) Enhanced depreciation rates
- vi.) Extended loss carry-forward period
- vii.) Reduced withholding tax rates

viii.) Negotiated incentives

ix.) Special deductions

x.) Customs Duty

For this research the, emphasis is placed on Customs duty incentives, referred to above which are significant to the remission of duty laws. Customs duty incentives are defined under the Zambia Development (ZDA) Act¹⁰ to include the duty exemption, for a period of 5 years or for such period as may be prescribed by the Minister of Finance, on machinery and equipment acquired by the following entities:

- i.) a developer of Multi-Facility Economic Zone (MFEZ) or an industrial park
- ii.) a business enterprise conducting operations in a priority sector or in respect to a priority product in an MFEZ
- iii.) a business enterprise conducting operations in an industrial park; or
- iv.) a rural business enterprise

Other features of customs duty incentives are:

- i.) Zero to five per cent most capital equipment;
- ii.) Duty free importation of most capital equipment for the mining and agriculture sectors; and
- iii.) Relief granted under the Duty Draw Back scheme. This is a scheme under which manufacturing firms are enabled to claim duty paid on imported raw materials. A firm qualifies under this scheme provided that it meets conditions among these conditions are: the company or individual must be in the manufacturing business; the company or individual must be an exporter or intends to start exporting; and the company must be in any sector other than the mining sector.

¹⁰ Act No. 11 Of 2006

1.8 Methodology

The researcher employed two methods in conducting the research. Firstly, field work was carried out in order to elicit data from various organizations and persons concerned with or affected by the enforcement of the remission of duty law. The following are some of the organizations and associations from where information has been collected: Zambia Revenue Authority (ZRA), Zambia Development Agency (ZDA), The Ministry of Finance and National Planning (MOFNP) and specific firms that have benefited from the remission of duty law.

Secondly, the study was also conducted by desk research through which various pieces of legislation, legal commentaries as well as case law and other publications that have been written on this topic have been consulted.

1.9 Conclusion

The aim of this chapter has been to introduce this work and give the foundation of the research. It has dealt with the fundamental facets of the study which include the background of study, the statement of the problem, the purpose of the research, the significance of the study and the methodology. It has also defined and briefly discussed the key concepts that will be encountered throughout this paper which need to be grasped from the very beginning. More importantly, it has brought out the issues that are to be discussed in the succeeding chapters.

Remissions of duty laws are one area of the laws that gives rise to tax incentives. The next chapter outlines what laws are currently in place for the governing of the remission of duties. It is important that this is done before going into a discussion wholly centered on the impact of the enforcement of duty laws.

CHAPTER 2

The Legal Framework Governing Tax Incentives

2.1 Introduction

Tax incentives can be used for three main purposes. These are:

- i.) encouraging investment;
- ii.) pursuing social policies; and
- iii.) political economic considerations.

Like almost all economies, Zambia uses tax incentives to attract investment, both foreign and local. This chapter focuses on the legal framework governing tax incentives. The enforcement of tax incentives as a tool for the promotion of economic development cannot be considered in isolation. Therefore, it is imperative that the laws conferring tax incentives are discussed at length. Accordingly, this chapter begins by discussing how tax incentives become law. It then proceeds to look at the how laws governing tax incentives are formulated. It also goes further to describe negotiated incentives for major investment, as well as the qualification of rules and administrative procedures. It highlights the roles of the Zambia Development Agency (ZDA) and the Zambia Revenue Authority (ZRA) in administering tax incentives. The chapter then concludes by highlighting the international law provisions with regards to tax incentives.

2.2 The Creation and Enactment of Tax Incentives

It is important to understand the legislative and political process and how the tax incentives are created in Zambia. Tax incentives can be enacted through three possible legislative paths which are;

- i.) Policy formulation through the national budget
- ii.) Through the powers vested by the Minister of Commerce and Minister of Finance by their respective acts, the ZDA Act and the Income Tax

iii.) Through Statutory Instrument

2.2.1 Policy Formulation through the National budget

The policy on tax incentives goes through a number of stages which this paper describes below.

2.2.1.1 Submission of tax proposals

The Ministry of Finance and National Planning (MOFNP) issues a media call-out requesting stakeholders to submit tax proposals, including investment related tax incentives, for an upcoming fiscal year. Upon receipt, the MOFNP then compiles the submissions. The compilation document usually classifies the tax proposals in the three tax types which are; income tax, value added tax and customs and excise.

2.2.1.2 Review of Submissions

After the compilation of the submissions is done, the MOFNP then sets up a Tax Policy Review Committee (TPRC) whose function is to deliberate on the respective submissions. Members of this committee are normally drawn from key 'economic ministries' of the Government, these are Ministry of Finance, Ministry of Commerce, Ministry of Mines and Mineral development, Ministry of Tourism, Environment and Natural Resources, Ministry of Agriculture, Livestock and Fisheries together with ZDA and ZRA.

At the end of its deliberations the TPRC then submits their report to the MOFNP, in which recommendations are made with regards to which proposals the TPRC has considered favourable for adoption and proposals which are not favourable for the fiscal year under consideration.

After the review of the report by the MOFNP, cabinet then makes review of the various proposals. A technical committee placed under advisory capacity is usually set to consider tax proposals.

It is important to mention that cabinet has the power to approve, reject or make changes to the proposals. After the cabinet review, a 'conveyance report' is prepared. This is the document that forms the basis for the formulation of the budget speech and for drafting of the necessary budget legislation, including the legislation on revenue measures. The draft legislation is then

reviewed by a Budget Legislative Committee of cabinet before it is presented to parliament for parliamentary enactment and finally presidential assent.

2.2.2 The ZDA Act Process

2.2.2.1 Priority Sectors

Under the Zambia Development Agency Act¹¹, firms under stated priority sectors can apply for tax incentives. These priority sectors can apply for tax. These priority sectors are established within the Act. However, the Minister of Finance does have the powers to add more sectors to this priority list without approval of Parliament or going through the budget process.

2.2.2.2 Investment Protection and Promotion Agreements (IPPAs)

An IPPA has to be signed by the Minister of Finance¹² and usually relates to companies who are not in a priority sector but who want to access the same tax incentives. The fact that the Minister of Commerce has the ability to merely increase the scope of priority sectors, IPPAs appear to be legal confirmation for the investor who may see the priority sector scheme as not being stable enough in the long term for the investment project.

2.2.2.3 Issuing Investment Licences

The ZDA board approves companies on a case by case basis for the issuance of investment licences. Once ZDA has approved a company for tax incentives a copy of the approval letter is sent to the Commissioner General at ZRA. However in some instances copies do not arrive and often individual applicants write to request formalisation of approval from ZRA.

2.2.3 Statutory Instruments (SIs)

SIs is able to change tax legislation up to a point at which the corresponding Act has to be amended. For example, SIs may exempt individual firms, sectors or goods or services for a particular tax on a discretionary basis, but cannot change the statutory tax rate itself. For example The Customs and Excise SI No. 40 of 2010 changes the statutory tax rate as stated in the under

¹¹ Act No. 11 of 2006 of the Laws of Zambia

¹² Act No. 11 of 2006 of the Laws of Zambia

the Customs and Excise Act¹³ of materials imported for the construction of Manda Hill Shopping Mall. All Statutory Instruments must be signed by the Minister of Finance.

2.3 Qualification Rules and Administrative Procedures

2.3.1 Priority Sector

For a firm to qualify for tax incentives they must fulfill the following requirements:

Have an investment licence, permit or certificate of registration issued under the ZDA Act¹⁴ have invested:

- i.) in priority sector or product; or
- ii.) in a priority sector or product located in an MFEZ¹⁵ and
- iii.) have made a minimum capital investment of USD 500,000.¹⁶

The Section 82 of the ZDA Act¹⁷ gives the Minister of Commerce, Trade and Industry power to amend the schedules to the ZDA Act, which schedules include a list of priority sectors. This section states that:

The Minister may, after consultation with the Agency, by statutory instrument, make regulations for the purposes of this Act.

make different provisions in respect of different types of business enterprises and sectors of trade and industry;

The following are the ZDA investment license priority sectors:

¹³ Cap 322 of the Laws of Zambia

¹⁴ Section 59 Act No. 11 of 2006 of the Laws of Zambia

¹⁵ Section 56 Act No. 11 of 2006 of the Laws of Zambia

¹⁶ Act No. 11 of the Laws of Zambia

¹⁷ Act No. 11 of the Laws of Zambia

- i.) Floriculture: Fresh flowers and dried flowers
- ii.) Horticulture: Fresh and dried vegetables
- iii.) Processed foods: Wheat flour and other processed foods
- iv.) Beverages and stimulants: Tea and tea products and Coffee and coffee products
- v.) Production and the processing of the following products in the textile sector: Cotton; Cotton yarn; Fabric and garments
- vi.) Manufacturing of the following engineering products: Copper products; Iron ore and steel;
- vii.) Cobalt; and Other engineering products
- viii.) Beneficiation of rock materials into cement
- ix.) Beneficiation of rock materials
- x.) Production and processing of raw timber into wood products
- xi.) Production and processing of the following products in the leather sector: Cattle hides; Crust leather; and Leather products
- xii.) Building of Mini-hydro power stations
- xiii.) Education and skills training
- xiv.) The following are the MFEZ priority sectors:
- xv.) Information and Communication Technology (ICT)
- xvi.) Health: Manufacture of pharmaceuticals; Repair & maintenance of medical equipment; Ambulance services; Medical laboratory services; Diagnostic services and Other medical services
- xvii.) Education& Skills training

- xviii.) Manufacture of: Machinery & machinery components; Iron and steel products; Electrical and electronic products and components; Chemicals and petrochemicals; Wood and wood products; Palm oil and their derivatives; Pulp, paper and paper board; Textile and textile products; Transport equipment, components and accessories; Clay-based, sand-based and other non-metallic mineral products; Plastic products; Professional medical, scientific and measuring devices or parts; Rubber products; Leather and leather products; Packaging and printing materials;
- xix.) Fertilizer and Cement
- xx.) Tourism
- xxi.) Processing of: Agricultural products, forest products, non-ferrous metals and their products, and gemstones

2.3.2 Investment Approval

The approval of investments that qualify for tax incentives is a responsibility of the ZDA board. Operationally this responsibility has been delegated to the management team. A committee of senior managers approves all the applications for investment licences, permits and certificates. The factors to be considered before approval are as follows:¹⁸

- i. the need to promote economic development and growth;
- ii. the extent to which the proposed investment will lead to the creation of employment opportunities and the development of human resources
- iii. the degree to which the project is export oriented;
- iv. the impact the proposed investment is likely to have on the environment;
- v. the possibility of the transfer of technology; and
- vi. the other considerations that the Board considers appropriate.

¹⁸ Act No. 11 of 2006

According to ZDA ‘other considerations’ that are taken into account are:

- i.) *comparable industrial statistics for similar levels of investment;*
- ii.) *information declared in the application form;*
- iii.) *financial statements;*
- iv.) *bank reference letter; and*
- v.) *the business plan.*

2.3.3 Other Procedures

After Investment Approval, other administrative procedures worth mentioning are:

- i.) Verification of an investment, which is done by ZDA. During this process the investor is required to submit a return which monitors the performance for over a 3 year period.
- ii.) Investment valuation which ZDA does not undertake, instead asset values declared by the investor are accepted. In case of imported assets, sometimes import duty forms are requested and used to confirm the values declared by the investor.
- iii.) The appeals and dispute resolution process, is laid down in section 78(1) of the ZDA Act¹⁹, which provides as follows;

An Investor who is aggrieved by the decision of the Board, may within fourteen days of receiving the decision, appeal to the Minister against the decision.

(2) The appeal, referred to in subsection (1), shall-

- (a) be in writing
- (b) specify in detail the grounds on which the appeal is being made; and
- (c) be accompanied by any information which the investor wishes to tender in

¹⁹ Act No. 11 of 2006 of the Laws of Zambia

support of the appeal.

(3) The Minister shall within thirty days of receiving the appeal confirm, set aside or vary the decision of the board.

(4) Any person dissatisfied with the decision of the Minister may, within thirty days appeal to the High Court against the decision.

Just like in any other case, the decisions of the High Court can further be appealed to the Supreme Court of Zambia.

2.4 The Role of ZDA and ZRA

ZDA grants most of the investment related tax incentives under the ZDA Act 2006. All tax incentives, granted through ZDA, budgetary changes and SIs are effected by the Commissioner General (of ZRA) under the various tax laws administered by the ZRA.

The relationship between ZDA and ZRA is provided for under Sections 60, 62 and 63 of the ZDA Act. The said sections provide as follows:

60. The relief or exemption from any tax or duty to which an investor is eligible under this Part shall be effected by the Minister responsible for finance upon the Board certifying that the investor has complied fully with this Act and any condition prescribed...

62. An investor may apply to be appointed and licenced by the Commissioner – General to establish and operate a bonded factory under section fifty-five of the Customs and Excise Act.

63. The Commissioner-General shall, after consultation with the Agency, licence a bonded warehouse under section fifty-five of the Customs and Excise Act.

The administrative procedure is that, when ZDA licences an investor, a copy of the licence is sent to the Commissioner - General. Based on the licence, the Commissioner General is required to grant the investor with the tax relief provided for in the taxation laws.

2.5 Tax Incentives Under International Law

Many international organizations have a number of provisions put in place for the creation and implementation of tax incentives. Examples include the following:

- i.) The Southern African Development Community (SADC) Finance and Investment Protocol provides for Co-operation in Taxation and Related Matters. Under this Finance and Investment Protocol, Member States commit, among things, “*to endeavour to avoid harmful tax competition as may be evidenced by ...lack transparency*”²⁰.

The aim of co-operation in tax related matters is to co-ordinate the tax regimes of Member States. With regards to tax incentives, the co-operation aims at reaching a harmonised tax incentives regime in the region.

- ii.) Under the World Trade Organisation’s (WTO’s) Agreement on Subsidies and Countervailing Measures (ASCM) certain types of tax incentives may qualify to be classified as “specific subsidies”. Zambia being a member of the WTO, is expected to abide by the transparency requirements of the ASCM.
- iii.) The International Monetary Fund (IMF) also recognises the importance of tax incentives and the need for transparency and good practice in the creation and implementation of tax incentives. This recognition is evidenced by the development of a Code of Good Practices, in 1998. This code is based on four principles which are: clarity of roles and responsibilities; open budget process; public availability of information; and assurances of integrity. The IMF encourages states to voluntarily adopt the good practices proposed in the Code.

2.6 Conclusion

This chapter has analysed the legal framework governing tax incentives in Zambia. It has discussed how tax incentives become law and how laws governing tax incentives are formulated. The chapter has also described the negotiated incentives for major investment, as well as the

²⁰ Article 4(3) of Annex 3 to the SADC Protocol on Finance and Investment, (SADC,2006)

qualification rules and administrative procedures. It has been highlighted that ZDA and ZRA have specific roles in administering tax incentives. The chapter has concluded by highlighting international law provisions with regards to tax incentives.

The following chapter focuses on the enforcement of tax incentive laws at national level by the Courts and various enforcement agencies. It also looks at how these laws are enforced and what the possible remedies are there for both parties, that is the investor and the nation, in this case Zambia.

CHAPTER 3

The Enforcement of Tax Incentives

3.1 Introduction

The previous chapter dealt with the law governing tax incentives in Zambia. This chapter deals with the implementation of tax incentives in Zambia. The laws governing the creation and dispensation of tax incentives have not been around for a long time in Zambia. As already stated the topic of tax incentives in Zambia only come into existence after the introduction of a liberalised economy after 1991. Therefore the courts and law enforcement agencies have not had occasion to fully interpret or enforce compliance with the laws governing tax incentives, since this is a new topic in Zambia. The main focus of this chapter is to look at the law enforcement agencies that play a role in the dispensation of tax incentives. It also focuses on how the courts have applied the law surrounding the introduction and implementation of tax incentives. It also highlights the constraints encountered in the implementation of tax incentives as well the general disadvantages of tax incentives.

3.2 Law Enforcement Agencies

3.2.1 The Zambia Revenue Authority (ZRA)

This is a body corporate formed under the Zambia Revenue Authority Act No. 23 of 1993. ZRA is charged with the responsibility of collecting revenue of behalf of the Zambian Government. The reason for the creation of ZRA was to mitigate the serious shortfalls in revenue available to the Government and the increasing dependency on donor funding to support basic necessities. For ZRA to achieve its mandate, it promotes voluntary tax compliance, trade, border legislation and regulations through communication, quality service and enforcement. ZRA also does provide efficient tax registration, efficient methods of tax refunds and trade facilitation in line with international organisations such as World Trade Organisation (WTO).

ZRA is composed of two operational divisions which are, Domestic Taxes Division and Customs Services Division which handle the different tax types. The first division handles matters related to Value Added Tax (VAT) and direct taxes and the second one handles matters related to

customs duty and import excise duty. The customs services division effects the following tax incentives, general refunds, duty drawback and rebates.

3.2.2 The Ministry of Finance and National Planning (MOFNP)

The mission statement for the Ministry of Finance and National Planning is:

“To effectively and efficiently coordinate National Planning and Economic Management, mobilise and manage public financial and economic resources in a transparent and accountable manner for sustainable National Development and the well being of the people of Zambia.”²¹

The target of this mission statement is to achieve sustainable performance levels in resource mobilization and management of public financial and economic resources for the benefit of the people of Zambia. The ministry also has a goal statement which is support of the mission and to give MOFNP a specific focus and direction, the ministry aims at meeting the following:

“Facilitating and ensuring the transformation of the national economy into an efficient and wealth creating economy in order to improve the quality of life of the people of Zambia.”²²

Through this goal, MOFNP will transform the economy and create wealth in order to reduce the high levels of poverty among the people of Zambia.²³

3.2.3 The Zambia Development Agency (ZDA)

The Zambia Development agency is a body corporate which is established under the Zambia Development Agency Act.²⁴ Section 5(1) of this Act provides for the functions of the agency. The said section provides that:

²¹ <http://www.mofnp.gov.zm/visited> on 18.03.2012

²² <http://www.mofnp.gov.zm/visited> on 18.03.2012

²³ <http://www.mofnp.gov.zm/visited> on 18.03.2012

²⁴ Number 11 of 2006

The functions of the agency shall be to further the economic development of Zambia by promoting efficiency, investment and competitiveness in business and promoting exports from Zambia.

Further, Subsection 2 of section 5 in paragraph (a) to (z) provides for the other detailed functions of the agency. Some of these include developing entrepreneurship skills and a business culture of Zambian citizens, to promote and facilitate the development of micro and small business enterprises, to formulate investment promotion strategies, to undertake research generally on matters relating to industry, industry development and productivity as well as to promote public understanding of matters relating to industry development and productivity. Despite the fact that the agency is responsible for the promotion of economic development in general, the agency largely concentrates on attracting foreign investment.

3.2.4 The Revenue Appeals Tribunal (RAT)

The Revenue Appeals Tribunal (RAT) is a very recent establishment which came into existence in 1998. It was created by the Revenue Appeals Tribunal Act.²⁵ Prior to its establishment, the tax process was made up of 3 distinct and separate tribunals. Each of these tribunals was created under separate pieces of legislation.

The Tax Appeals Court was established by the Income Tax Act, the Value Added Tax Appeals Court was established by the Value Added Tax Act, while the Tariff Court established the Customs and Excise Act.

It was the reform of tax administration in Zambia which resulted in the formation of the Zambia Revenue Authority which also necessitated a reform of the tax appeal procedure. The Revenue appeals tribunal was born out of the effort to improve efficiency of tax appeals by consolidated all the tax tribunals.

²⁵ Act No. 11 of 1998

3.2.4.1 Jurisdiction of the Revenue Appeals Tribunal

RAT was established in order for it to hear appeals under the Value Added Tax Act²⁶, Customs and Excise Act²⁷, Property Transfer Act²⁸, Income Tax Act²⁹ and the Mines and Minerals Development Act.³⁰

The functions of the Revenue Appeals Tribunal are;

- i.) To hear and determine appeals under the Value Added Tax Act, Chapter 331 of the Laws of Zambia;
- ii.) To hear and determine appeals under the Customs and Excise Act, Chapter 322 of the Laws of Zambia;
- iii.) To hear and determine appeals under the Income Tax Act, Chapter 323 of the Laws of Zambia;
- iv.) To hear and determine appeals under the Property Transfer Tax Act, Chapter 340 of the Laws of Zambia;
- v.) To hear and determine appeals under the Mineral Royalty Tax Act, Chapter 215 of the Laws of Zambia;
- vi.) To hear and determine appeals under the Mines and Minerals Act, Number 7 of 2008 the Laws of Zambia.³¹

The goal of the Revenue Appeals Tribunal is to carry out its statutory functions as mandated under the provisions of Section 3 of the Revenue Appeals Tribunal Act.³² It states as follows;

“ (1) Any person who is aggrieved by the decision or determination made by the Commissioner – General under this Act or under any regulation or rules made under this

²⁶ Chapter 331 of the Laws of Zambia

²⁷ Chapter 322 of the Laws of Zambia

²⁸ Chapter 340 of the Laws of Zambia

²⁹ Chapter 323 of the Law of Zambia

³⁰ No 7 of 2008 of the Laws of Zambia

³¹ Act No. 11 of 1998 of the Laws of Zambia

³² Act No. 11 of 1998 of the Laws of Zambia

Act, may in respect of matters set out in subsection (2) appeal to the Tribunal in such manner and within such time as the Minister may by regulation prescribe.

(2) The Tribunal shall hear and determine appeals under this Act in respect any of the following matters:

- a) in the circumstances set out in paragraph (a) of section three of the Revenue Appeals Tribunal Act;
- b) the refusal to grant, renew or the cancellation of a licence for the manufacture of excisable goods;
- c) the refusal to grant, renew or the cancellation of a licence for the bonded warehouse;
- d) the refusal to grant, renew or the decision to suspend or cancel a Customs Agent's licence;
- e) the application of any administrative decision on a matter arising from a seizure under this Act; or
- f) any other matter against which an appeal shall lie under this Act.

Section 10 of Property Transfer Act also goes on to provide as follows;

“Any determination or assessment made under this Act may be objected to or appealed against by the person affected thereby; and without prejudice to other provisions of this Act, the provisions of Part XI of the Income Tax Act relating to objections and appeals shall apply, mutatis mutandis, in relation to objections and appeals under this Act as they apply in relation to objections and appeals under this Act as they apply in relation to objections and appeals under the Income Tax Act.”

RAT had an occasion to deal with an appeal against a decision by ZRA to disallow a claim for a rebate on a Dump Truck Toro 40 for Customs & Duty in the case of *Chibuluma Mines Plc v*

Zambia Revenue Authority.³³ In that case, the appellant, one of the mining companies entitled to customs duty rebate (remission of customs duty) on importation of items specified under Regulation 96 (1) of the Customs and Excise (General) Regulation of 2000, by virtue of having been enlisted under the fifth schedule. Regulation 96 (1) of the Customs and Excise (General) Regulation of 2000 states as follows:

A holder of a mining right issued pursuant to the Mines and Minerals Act may apply to the Minister for a rebate, refund or remission of the whole or any part of the duty paid or payable in respect of plant, machinery or equipment including special purpose motor vehicles other than spare parts therefor as provided under section ninety-seven of the Mines and Minerals Act furnishing details of the-

- (a) mining right;
- (b) activities carried out pursuant to the mining right; and
- (c) nature and quantity, substantive tariff description and classification in the customs tariff, and customs value of the goods in respect of which the rebate, refund or remission is sought.

(2) Any rebate, refund or remission approved pursuant to this regulation shall be listed in the Fifth Schedule and shall be-

- (a) on condition that the goods concerned will not be sold or otherwise disposed of except with the prior consent of the Commissioner-General and upon payment of duty, if any, at the rate leviable at the date of sale or disposal; and

on such other conditions as the Minister may determine.

The appellant made an importation of a Toro 40D truck and applied for customs duty rebate on the same in accordance with provisions of used to grant the rebate stating that the truck does not fall under the category of Regulation 96 of the Customs and Excise (General) Regulation of 2000. The respondent refers to the goods specified under Regulation 96 and does not therefore

³³ 2009/RAT/03/C&E

qualify for duty rebate. The appellant's application for a rebate was unsuccessful and so appealed to RAT. The question for the tribunal was to decide whether the respondent was correct in classifying the Toro 40D truck ordered by the appellant, as merely a transport vehicle which does not qualify for the rebate applicable for mining equipment and special purpose vehicle under Regulation 96 of the Customs and Excise (General) Regulation of 2000. In answering this question, the tribunal concluded that since there is no restrictive definition of special purpose motor vehicle and mining plant, mining machinery or mining equipment. This ambiguity is determined in favour of the appellant in line with the general principal of law, which states that,

“any doubt in the provisions of the law imposing tax shall be construed in favour of the tax payer.”³⁴

This general principle of law was discussed in the Revenue Appeals Tribunal and High Court of Zambia rulings in *Celtel Zambia Limited v Zambia Revenue Authority*³⁵ and *Zambia Revenue Authority v Celtel Zambia Limited*.³⁶ Furthermore the respondent created a legitimate expectation for the appellant having granted the tax rebates on previous importation of the Toro 40D truck which the appellant expected to enjoy going forward as was held in the case of *R v Inland Revenue Commissioners, Ex Parte Camaco Corp and Another*.³⁷

3.3 The Role of the Courts in the Enforcement of Tax Incentive Laws

The Courts also have a role to play in the enforcement of tax incentives. As already mentioned above the RAT is mandated with role of hearing and determining appeals under the Value Added Tax Act, the Customs and Excise Act, the Income Tax Act, the Property Transfer Tax Act, the Mineral Royalty Tax Act and the Mines and Minerals Act.

An evaluation of the case cited above reveals how RAT has enforced tax incentive disputes. As already mentioned above, it is notable that there are very few decided cases on tax incentives in Zambia. Nevertheless, in the few decided cases such as *Zambia Revenue Authority v Celtel*

³⁴ *Inland Revenue Commissioners v Ayrshire Employers Mutual Association Limited* 1946 ALLER 637

³⁵ 1999/RAT/36

³⁶ (2002) HP/A67

³⁷ (1990) 1 All ER 192

Zambia Limited,³⁸ the Courts have the jurisdiction to adjudicate disputes with regard to tax incentive laws.

However, having considered the reported decisions of the Revenue Appeals Tribunal, it is important to note mention that there are no other cases directly related to disputes of tax incentives relating to remission of customs duty. This could be attributed to a number of reasons among which the following were highlighted³⁹:

- i.) The absence proper of monitoring mechanisms within the Zambia Revenue Authority. Even where some mechanisms have been put in place, ZRA officials are not able to fully implement these mechanisms due to some logistical constraints such as lack of man power and the necessary resources.
- ii.) The absence of the recommended regular periodic audits by ZRA of firms benefiting from tax incentives. As a result it has been difficult to detect lack of compliance.
- iii.) The requirements for qualification to tax incentives is slightly on the porous side, that is to say, they are not well designed to ensure that only qualified firms are awarded incentives.

3.4 Constraints in the Implementation of Tax incentives

There are some notable provisions in the ZDA Act, the Customs and Excise Act⁴⁰, the Direct Taxes Act and the Value Added Tax Act, whose treatment and interpretation does not seem clear to both ZRA and ZDA. Some of which are discussed below:

3.4.1 Tax Implication of Renewed Investment Licence

An investment licence can be renewed by ZDA. Section 74⁴¹ provides that:

³⁸ (2002) HP/A67

³⁹ Oral Interview; Mr Ngosa Mulenga of ZRA on 12th March 2012

⁴⁰ Cap 322 of the Laws of Zambia

⁴¹ ZDA Act

(1) A holder of a licence, permit or certificate of registration may apply for the renewal of the licence, permit or certificate of registration, in the manner and form, upon payment of the prescribed fee.

(2) The board shall, where an applicant is not in breach of any provisions of this Act or condition of a licence, permit or certificate of registration, renew the licence, permit or certificate of registration.

However, even though it is clear under the ZDA Act that a licence holder can apply for a renewal of that licence, none of the Acts under ZRA indicate what the implications of the renewal of a licence are. It is not clearly stated whether the licence holders begin to benefit from the tax incentives afresh or they continue where they ended before the renewal of the licence.

3.4.2 Tax Consequences of a Suspended Investment Licence

An investment licence may be suspended or revoked by ZDA for a number of reasons. These reasons are outlined under subsection 1 of Section 75 of the ZDA Act.

If a licence is suspended or revoked, incentives cease to apply. Subsection 5 of Section 75, provides that:

Where a licence, permit or certificate of registration is suspended or revoked, the holder of the licence, permit or certificate of registration shall cease to be entitled to the rights or benefits conferred under this Act with effect from the date of the suspension or revocation and __

- a) in the case of a suspension, for the period of the suspension; and
- b) in the case of a revocation, shall surrender the licence, permit or certificate of registration to the Agency forthwith.

The Income Tax Act and the Customs and Excise Act, on the other hand, have no provision dealing with an investor whose investment licence has been suspended or revoked.

3.4.3 Audit of Tax Incentives

It is also important to mention that both ZRA and ZDA are obliged to audit the respective companies that have access to tax incentives. Whereas ZDA is not up to date with its audit process, ZRA does not yet have a monitoring and review system in place.⁴² As a result, ZRA has no knowledge of the revenue forgone under such tax incentive schemes.

According to the records at ZRA, so far there are no reports of individuals that have been found to be abusing the current tax incentive system, under ZRA, however it could be most likely a result of the lack of auditing by ZDA and ZRA. In theory, if an individual was found to be abusing their tax incentives, ZRA would recommend that the respective tax incentives be withdrawn. There are no provisions under the Income Tax Act, the VAT Act or the Customs and Excise Act for such an action which may explain why ZRA would not pursue the tax lost under the Investment Licence's application before the abuse of tax incentives were discovered.

3.4.4 Negotiated Incentives for Major Investments

The ZDA Act gives the Minister of Finance discretionary powers to grant additional incentives for 'major investments'. Section 58 of the ZDA Act provides as follows:

The Minister responsible for finance may, for the purpose of promoting major investment in an identified sector or product, by statutory instrument, and in consultation with the Minister, specify additional incentives for investment in an identified sector or product of not less than ten million United States Dollars or the equivalent in convertible currency, in new assets that qualify for those incentives.

Some of the Statutory Instruments providing for additional incentives that the Minister of Finance has issued using this provision are Statutory Instruments numbers 39 and 40 of 2010.

Section 58 of the ZDA Act is similar to subsection 3 of section 82 of the ZDA Act which provides that:

The Minister may by SI amend the Schedules of the Act.

⁴² Oral interview with Mr R. Kaonga of ZRA conducted on 15th February 2012

Both provisions can be said to undermine the role of Parliament as a tax law legislative body. Loosely speaking, in a way, Parliament through the ZDA Act, has literally given the Minister of Finance and Minister of Commerce blank cheques. This is evident from the ever growing list of priority sectors qualifying for tax incentives and business enterprises coming on board qualifying as major investment as evidenced by the number priority sectors which stand at 18.

It is worth mentioning that Section 58 of the ZDA Act does not give guidelines to the Minister of Finance. Apart from stating the minimum amount for the capital investment, 10 million US Dollars, there is lack of clarity what other factors the Minister of Finance has to take into account (and what should form the basis of the consultations with Minister of Commerce). This lack of clearly defined selection criterion gives the Minister considerable discretion, at the risk of transparency and abuse. The “major investment” threshold of 10 million USD appears to be extremely low, this is exhibited by the result that almost all Investments may qualify. Further Section 58 does not provide for checks and balances save the minimum requirement for the two Ministers to consult each other.

3.5 General Disadvantages of Tax Incentives

3.5.1 Forgone revenues

The loss in revenue by the government is one inevitable consequence of tax incentives. This loss in tax revenue mainly comes from three sources which are:

- i.) the forgone revenue would have otherwise have been collected from activities undertaken;
- ii.) the forgone revenue from projects that would have been undertaken even if the investor did not receive any tax incentive; and
- iii.) lost revenue from investors and activities that improperly claim incentives (taxpayers abuse) or shift the income for related taxable firms or those firms qualifying for favourable tax treatments (tax planning).

3.5.2 Resource Allocation (neutrality) Costs

This is originated when tax incentives create some kind of distortions on investment choices among sectors or activities instead of correcting market failure.

3.5.3 Enforcement and Compliance Costs

These costs are bound to increase with the complexity of the tax system and the system of fiscal incentives. (There are different qualifying and reporting requirements, for the different tax incentives). Additionally, there is a problem when it comes to the perception of fairness when targeted incentives are used, this as a result reduces compliance and, therefore enforcement efforts.

3.5.4 The Lack of Transparency

Where the rationale for granting tax incentives is based more on discretionary and subjective qualification requirements, instead of automatic and objective requirements, the likelihood of the presence of corrupt type of behavior and this will encourage abuse of the process. When it comes to developing countries, it is very important that they move away from discretionary incentives towards greater reliance on rules based means of offering incentives. That is the law and policies must be formulated in such a way as to maintain or strengthen environmental and labour standards and create stability, predictability, and transparency for policy makers and investors alike.

3.6 Conclusion

This chapter has discussed the enforcement of tax incentive laws in Zambia by the Courts and various law enforcement agencies. It has been noted that since the law governing tax incentives in Zambia relatively new, they are very few cases that have been brought before the Courts. Lastly, the chapter has looked the notable constraints in the provisions of the law providing for tax incentives and their application and implementation.

The subsequent chapter is devoted to discussing the impact of the application and implementation on economic development. It is intended to show whether Zambia does benefit from tax incentives or not, that is to say how Zambia can make use of tax incentives in promoting development.

CHAPTER 4

An Overview of Tax Incentive Laws: Implementation and Impact on Investment

4.1 Introduction

It has already discussed in the preceding chapters that Zambia offers a number of tax incentives one form or another, an example being the remission of custom and excise duties. The preceding chapter was looking at the implementation of tax incentives in Zambia. This chapter looks at how the implementation of tax incentives can be used to promote economic development. It begins by discussing investment and economic development. This chapter also explains the relationship between taxation and investment. The chapter then highlights the impact of tax incentives in Zambia. It concludes by analysing the implementation of tax incentives in the Southern Africa Development Region (SADC) region countries.

4.2 The Concept of Development and Investment

The use of tax incentives in developing countries has been very popular for a number of decades, so as to enhance development. Development is a broad and multifaceted concept which defies concrete definition. It cuts across different dimensions which include among others political, economic, social, cultural and human development. Development is defined as the process by which major in social, structures, acceleration of economic growth, reduction in inequality and eradication of poverty are brought about.⁴³ Basically the whole process of development involves the improvement of the quality of all human lives and helps people in society reach their maximum potential.

Although, the notion of development is versatile, the main focus in this paper is economic development. Economic development has been as a steady progress by which, the productive capacity of the economy is increased over time to bring about rising levels of income.⁴⁴ There are various means by which the capacity of the nation can be increased in order to achieve economic development. The area of increasing investment through tax incentives is seen as one

⁴³ Todaro, *Economic Development*, 53

⁴⁴ Todaro, *Economics for a Developing World London*, 416

of the mediums through which a nation can expand the prolific capacity of the economy so as to increase the levels of income for society.

Investment has different meanings in finance and economics. Finance investment is putting money into something with the expectation of gain, that thorough analysis, has a high degree of security for the principal amount, as security return, within an expected period of time.⁴⁵ Investment is related to saving or deferring consumption. Investment is involved in many areas, such as business management and finance whether for households, firms or government. There is need for a country to utilize all the available ways of achieving economic development because development is very valuable to society. Economic development leads to an improvement of the livelihood of people in society in that the economic capacity of a nation is able to sustain the needs of people in society.

It is important that a distinction is made between the impact of the investment project and the impact of the tax incentives. In some cases, a tax incentive may not have changed the decision to invest. For instance, if the investment project was viable even under normal fiscal conditions, then the investment would have occurred even with the tax incentive. In this case, the economy may benefit from this investment but these benefits should not be credited to the tax incentive. In addition, the tax incentive foregoes tax revenue that would have been collected anyway

The effectiveness of a tax incentives in determining the decision to invest can best be assessed by setting out some of the different cases that should be considered, particularly how the costs and benefits are apportioned.

4.3 The Effectiveness of Tax Incentives

Ideally, to calculate the effectiveness of the tax incentives it would be prudent to calculate the rate of return of the investment project with and without the tax incentive and compare it with the hurdle rate of return that the investment project needs to clear to become viable. For instance, say that the investor will only go ahead with the project if the rate of return is above the hurdle rate of ten per cent. If the rate of return is eight per cent without the incentive and ten per cent

⁴⁵ <http://www.dmoz.org/investement> visited of 10.04.2012

with the incentive then we can say that the tax incentive is effective. If the rate of return without the incentive was already above ten per cent, then we would say that the incentive was ineffective or redundant.

4.3.1 Determinants of Investment Decision

There is a growing amount of evidence to suggest that the burden of taxation is a relatively small determinant of investment, and that other factors are equally or more important than tax. For instance before embarking on a large investment project, investors require a number of guarantees from governments. In developed countries, institutions are strong enough such that these guarantees are not made explicit. In Zambia, however, separate agreements between the government and the investors can be made. The ZDA Act allows for such contracts called Investment Protection and Promotion Agreements. In essence, they afford similar protections to the investor as development agreements have done. These guarantees take the form of non-fiscal and fiscal protection.

4.3.1.1 Non-fiscal protection

The typical guarantees that IPPAs provide to investors from contracting countries are free repatriation of investment capital and returns; guarantee against expropriation; most favored nation rule with respect to treatment of investment, compensation for losses in case of war, armed conflict or riot and other examples; and arrangement for settlement of disputes between investors and the contracting states. IPPAs in Zambia are also fashioned along similar guarantees.

4.3.1.2 Fiscal protection

Firms that invest at least USD 10 Million in a 'priority sector' are entitled to negotiation, through an IPPA, with the Government for additional fiscal incentives other than what they might already qualify for under the ZDA Act. This measure is aimed at promoting and facilitating large and impactful investments. These additional fiscal incentives are treated on a case-by-case basis; there does not seem to find any framework which is followed. Firms that invest at least USD 10 Million in a 'priority sector' are entitled to negotiation, through an IPPA, with the Government

for additional fiscal incentives other than what they might already qualify for under the ZDA Act. This measure is aimed at promoting and facilitating large and impactful investments. These additional fiscal incentives are treated on a case-by-case basis; there does not seem to find any framework which is followed.

4.4 The Relationship Between Taxation and Investment

Investors often emphasize the relative unimportance of the tax system in investment decisions compared with other considerations.⁴⁶ Firms first examine a country's basic economic and institutional situation. While they are attracted to the potential markets in developing and transition countries and the relatively low-cost labor, other considerations inhibit large-scale investment, such as uncertainty in the policy stance of governments, political instability, and, in transition economies, the rudimentary state of the legal framework for a market economy. Tax incentives on their own cannot overcome these negative factors.

To prospective investors, the general features of the tax system (among them tax base and tax rates) are more important than tax incentives. In transition countries, many tax laws contain provisions that are held over from the regime that was used under the former socialist economy. These provisions served purposes different from those of a market economy tax regime, for example, controlling the enterprise's budget rather than determining an appropriate tax base. From the point of view of potential foreign investors, these provisions are unfamiliar and anomalous. They can cause the tax base to diverge from market economy norms (especially in relation to depreciation, business expenses, and loss carryovers) and impose taxation that is not consistent with reality from the point of view of business investors. Furthermore, taxpayers expect to be able to predict the tax consequences of their actions, which requires clear laws that are stable over time. In many developing and transition countries, the tax laws are not clearly written and may be subject to frequent revision, which makes long-term planning difficult for businesses and adds to the perceived risk of undertaking major capital-intensive projects. The administration of the law is as important as the law itself, and it is clear that tax administrations in developing and transition countries often have difficulty coping with sophisticated investors,

⁴⁶ OECD, Taxation and Foreign Direct Investment <http://www.oecd.org> visited on 25 April 2012

whether in providing timely and consistent interpretations of the law or in enforcing the law appropriately.

4.5 The Impact of Tax Incentives in Zambia

As already highlighted, Zambia uses a range of tax incentives to attract investment into the country in the hope that the economy benefits from higher profits, employment, future tax revenues and so thereby leading to enhanced economic development. This is so despite the known fact that research done as well as experience has shown that a high occurrence of tax incentives can be dangerous⁴⁷, in that sense that tax incentives have proven to be costly. This cost can be measured in terms of the immediate tax revenue foregone plus a possible increase in tax avoidance or evasion and other associated costs and distortions to the economy.⁴⁸ An example of distortion to the economy is that tax incentives, by making capital expenditure relatively cheaper, can encourage companies to become more capital intensive and so hire less labour.

The above disadvantages of tax incentives notwithstanding, there has been an evident increase in the number of foreign countries investing in Zambia. It is undisputed that foreign investment has advantages such as infrastructure development, job creation, technological or scientific development. Although foreign investment is a good source of revenue for the government, there are certain evils that follow from leaving almost the entire economy in private hands. There is need to always take in account the fact that foreign investors have the sole goal of making profits and are not under any obligation to undertake their investment for the benefit of the host state in this case Zambia. There is also the ever present danger that foreign investment will result in loss of sovereignty, externalisation of profits, poor labour standards and environmental degradation.⁴⁹

The effects of this danger are present in Zambia as evidenced by the rampant work stoppages in foreign owned companies, for example the recent strike action at Kansenshi Copper Mines Ltd

⁴⁷ Mario Keen and Micheal Mansour, (2010), *Revenue Mobilisation in Sub-Saharan Africa: Challenges from globalisation and Trade reform*.

⁴⁸ H. Zee, J. Stotsky and E. Ley, *Tax Incentives for Business Investment: A primer for Policy Makers in Developing Countries*, World Development, 30, 1497.

⁴⁹ United Nations Convention on Trade and Development , *World Investment Report*, 2007

and Luanshya Copper Ltd mines. The pollution of water by the mines on the copperbelt is also one of the many examples of the environmental degradation, a danger associated of foreign investment.

Whereas there has been an increase in the number of foreign investors, this has not been the case for local investors. One notable reason for this situation has been observed to be that local investors have not made use of or benefited from these tax incentives for number of reasons. One of the main reasons was said to be the capacity to qualify for certain incentives, for example under the ZDA Act the investors must have a minimum of 500, 000 US dollars⁵⁰ worth of investment and another could be the awareness of these tax incentives by the relevant companies.

The fundamental purpose of taxation is to raise revenue effectively, through the appropriate measures that suit the country's circumstances and administrative capacity. ZRA are therefore required to perform tax audits to inspect these businesses. Auditors must ensure that incentives are only applied to income arising from the new investment and are expected to pay taxes on other investments. In light of this, individuals are requested to submit accounts, but abuses are difficult to identify.

4.6 The Implementation of Tax Incentives in Zambia

Both ZRA and ZDA have the obligation to audit the companies benefiting from tax incentives. According to the information given, ZDA have a lag in their auditing process and are unable to monitor if these companies are fulfilling the commitments they made in obtaining tax incentives. As for ZRA, a monitoring review system has not been put in place as yet. As a result ZRA have no knowledge of the revenue forgone under such activities. However ZRA have indicated the possibility of abuses of the tax incentives at the tax policy review committee at the Ministry of Finance. So far no individuals have been found abusing the current system, however, this is most likely to be a result of the lack of auditing by ZRA and ZDA.

It has also been observed that during the formulation of tax incentives described above, the no expenditure estimates made available. The effect of this is that the policy makers and the

⁵⁰ Supra Note 8

legislators make their decisions without proper estimates of the costs and benefits of tax incentives. Further, the lack of any form of evaluation of the effectiveness of tax incentives compromises the ability of the legislators to adequately and comprehensively assess whether the tax incentive laws they pass achieve the intended purpose.

4.7 The Implementation of Tax Incentives in the Southern African Development Community (SADC) Region

Zambia being one of the member states of SADC, it is also important to look at the impact of tax incentives in this region. According to SADC Memorandum of Understanding of Taxation (2002) tax incentives are “fiscal measures that are used to attract local or foreign investment capital to certain economic activities or particular areas in a country.”⁵¹ There are two fundamental premises underpin the case for tax incentive programs in developing countries.⁵² These are, first that additional investment is needed to foster more rapid economic growth and second that the tax breaks can be effective in stimulating investment.

There are a number of tax incentives designs that countries can make use of. The most common incentives include low overall tax rates, preferential tax rates for certain investments, tax holidays, capital recovery allowances, investment tax credits, the treatment of dividends, excess deductions for designated expenses, special export incentives, reduced imports duties on capital and raw materials, and protective tariffs.⁵³

There are a number of reasons as to why tax incentives are used in developing countries. Amongst them is the fact that tax incentives clearly enhance returns on investment, they may also be justified by positive external factors stemming from investments. They are also relatively easy to target and fine tune and they signal openness to private investment, this is evidently visible in the increase in the number of private investors in the last twenty years in Zambia.

⁵¹ Effectiveness and Economic Impact of Tax Incentives in the SADC Region <http://www.nathanic.com> visited on 04.04.2012

⁵² Effectiveness and Economic Impact of Tax Incentives in the SADC Region <http://www.nathanic.com> visited on 04.04.2012

⁵³ Effectiveness and Economic Impact of Tax Incentives in the SADC Region <http://www.nathanic.com> visited on 04.04.2012

Tax incentives are also made use of when it comes to capital mobility, they also become necessary for responding to tax competition from other jurisdictions and they also compensate for other deficiencies in the investment climate. One other common advantage is that tax incentives can actually enhance revenue by stimulating investments that generate other taxable income via employment and linkage effects.

Tax incentives are also said to offer political advantages over direct expenditure programs to stimulate investments, an illustration of this advantage in Zambia is the granting of tax rebates on mining equipment in order to increase investment in the mining sector. Finally, some proponents have pointed out that tax incentives have been successfully used in well known cases like Malaysia, Ireland and Mauritius.⁵⁴

Every SADC country offers special investment tax incentives in one form or another.⁵⁵ Lesotho has the most streamlined program, while Mauritius has the most extensive and complicated set of programs.⁵⁶ The most widely used instruments in the region, appearing in at least 10 of the member states, are initial capital allowances, full or partial tax holidays, preferential tax rates, and special export incentives, these go beyond the norm or relieving duty and tax used in the production of exported duties. It is notable that the least used common instrument is the investment tax credit (ITC). This is peculiar because the ITC is regarded by experts as the most cost-effective, transparent, and simple form of incentive. Since 2002, Mozambique has been the only country where ITC has been a centerpiece of the tax incentive program.

South Africa has one notable tax incentive program, Strategic Industrial Projects (SIP), which was introduced in 2001 to encourage selected industrial investments. This program has attractive features such as: coherent links between policy goals and screening criteria; benefits in the form of an initial capital allowance that is valuable to investors while still generating revenue; explicit

⁵⁴ Effectiveness and Economic Impact of Tax Incentives in the SADC Region <http://www.nathanic.com> visited on 04.04.2012

⁵⁵ Effectiveness and Economic Impact of Tax Incentives in the SADC Region <http://www.nathanic.com> visited on 04.04.2012

⁵⁶ Effectiveness and Economic Impact of Tax Incentives in the SADC Region <http://www.nathanic.com> visited on 04.04.2012

limits on budgetary cost; transparent procedures; and “clawback” provisions penalising beneficiaries who do not perform upto the expectations.

One common factor that impacts on the implementation of tax incentives in the region, is the weakness of the institutional framework of tax incentive programs, which are policy objectives, procedures, and systems for enhancing transparency. In addition the respective countries face critical fiscal constraints, which has meant that they have to exercise great caution about the revenue risks associated with generous incentives.

4.8 Implementation of Tax Incentives in Other Regions

Countries in the Middle East and North Africa (MENA) region also offer tax incentives. All MENA countries offer direct and/or indirect investment incentives to boost employment, encourage the development of the private sector and improve their competitive position in today,s global economy.⁵⁷ During the past 20 years, incentives in many aspects have become an important policy tool of many MENA governments to increase their share of investment on order to gain the attention of potential investors and stay competitive with other countries offering incentives.

In the past they have also been some efforts to harmonize tax systems have been launched in both the industrial and the developing world. In the European Union, for example, member countries are discussing more stable, predictable, and transparent tax rules. As a first step, in December 1997, member states adopted a code of conduct for business taxation, agreeing not to introduce “harmful” tax measures and to roll back existing harmful measures. Similarly, several West African countries have been working to harmonize their tax incentives for foreign direct investment in one unified investment code within the Monetary Union of West African States. These efforts have been slow, and the political and economic challenges remain great. And as capital and companies become increasingly mobile, and investment environments increasingly similar, the temptation to use tax incentives to attract foreign direct investment will certainly increase.

⁵⁷ <http://www.oecd.org/mena/investment> visited on 13th April 2012

4.9 Conclusion

Notable effects of the implementation of tax incentives in Zambia stem from the general cost of tax incentives which are; the reduction of revenue and tax abuse. Zambia like many other governments in the region is under pressure to sweeten tax incentive programs, in order for it to compete with tax breaks offered elsewhere. What is clear in this chapter is that there is a need to understand the conditions and the policy design features that determine whether tax incentives are likely to deliver substantial and sustainable net benefits in a particular context. This challenge must be met by tax officials, policy makers and other stakeholders.

This chapter has looked at how the implementation of tax incentives can be used to promote economic development. It has also discussed investment and economic development. It has also looked at the effects of tax incentives in Zambia. The chapter has analysed the implementation of tax incentives in the SADC region.

The next chapter, summarises the findings of this research paper, concludes on the findings and offers recommendations to the problems identified.

CHAPTER 5

Conclusions and Recommendations

5.1 General Conclusion

Governments pursue tax incentives as a means to an end. It is common for policy makers to attribute poor economic performance to a lack of investment. Tax incentives are used as a tool to boost investment and growth. Even though the casual links between each of these stages is far from proven.

It has been studied that incentives work by changing the parameters of an investment project. By the reduction of the tax burden or through the provision of cash incentives, there is an expectation of increased profitability. Where companies have good access to finance, the introduction of special incentives in certain areas or regions should in theory, definitely lead to an overall increase investment. However this may not be the case as highlighted in this paper.

The focus of this dissertation has been to evaluate the impact of tax incentives, the Customs and Excise (Remission) Regulations on Investment in Zambia. Ultimately it focuses on the effect that the implementation of tax incentives on the economic development of Zambia. Having been acknowledged that this type of tax incentives must be implemented in order to improve economic development, it is crucial to ensure that there are laws and implementation mechanisms in place designed to attain this development. The second chapter was centered on looking at the national laws put in place for the implementation of tax incentives. The legal frame work for the administration of tax incentives in Zambia revolves around the ZRA Act, the Customs and Excise Act, the Income Tax Act, the General Regulations that constitute subsidiary legislation and the number of Statutory Instruments that have been put place. It has been identified that the laws used in implementing tax incentives are not adequate and their formulation also has some elements of flaws.

The existence of these implementation laws in place is not enough; there is also need for the various enforcement agencies to put them in effect in an adequate way. The various enforcement agencies namely RAT, ZDA, MOFNP and ZRA must be commended for the significant role they

play in the implementation of tax incentives. However, these agencies and institutions are facing a number of challenges which must therefore be looked into. When it comes to administrative procedures, a number of weaknesses have been identified in the implementation of tax incentives.

It has been emphasised that the implementation of tax incentives is not an end in itself but a means to realize economic development. Experiences of how other countries in SADC region such as South Africa have implemented tax incentives have been elucidated in the fourth chapter. This country and together with other countries such as Malaysia, Ireland and Mauritius that have recorded success in the area of tax incentives, should be emulated if economic development is to be attained in Zambia.

Generally speaking investors do not see tax incentives as a key factor to attract inbound investment. What then should persuade governments to use tax incentives attract investment in general and FDI in general? There are three simple answers to this question of particular relevance to developing countries, such as Zambia:

- i.) Tax incentives are much easier to provide than to correct deficiencies, for example, improve infrastructure or increase skilled labour;
- ii.) Tax incentives do not require an actual expenditure of funds or cash subsidies to investors; and
- iii.) Tax incentives are in a way politically easier to provide for and implement than funds

5.2 Recommendations

In summary and to answer the research questions, implementation of tax incentives does have an impact on investment and economic development which either be positive or negative, seeing that tax is the major financial component of the country's budget.

It has been stressed throughout this paper that the implementation of tax incentives can be used to increase investment and in turn attain economic development. The low rate of economic development in Zambia as compared to other Southern region countries like South Africa and

Namibia, can be negated by the implementation of tax incentives. However it is difficult to do so as there are some shortfalls in the tax incentive laws and in the implementation and enforcement mechanisms of tax incentives. There is need to offer solutions to the problems identified during the study.

5.2.1 Improvement of the Administration

Implementation of tax incentives cannot be separated from tax administration. As the tax laws are implemented, the administration must be designed in such a way as to monitor and ensure that the intended purpose is achieved, through consistent and thorough audits by the respective institutions. The interpretation and practice guidelines should also be made available. The administrative procedures must be made elaborative so that they provide for administrative oversight and minimum use of discretionary powers.

The agencies responsible for administering a tax incentives regime should enjoy sufficient levels of legislative and administrative independence, especially from political influence.

5.2.2 Amendments to the Legislation

The Acts and other pieces of legislation must be in conformity with the intentions of the Government and they must clear to both the implementing institutions and the beneficiaries. Eligibility requirements for tax incentives, stating who or what qualifies, should be clearly stated in the law with no room for discretion. The legislator must therefore revise the requirements, with the aim of making them consistent, predictable, clear, and concise to all stakeholders.

5.2.3 Improving Publicity and Access of Information

It was noted in the course of the research that generally local Zambian companies are not fully aware of the existence of tax incentives and do not have adequate information about the kinds of companies that qualify to benefit from the respective tax incentives. It is quite clear that a number of the local companies have little or no idea of what these tax incentives are to them. The implementation of tax incentives can be better if all companies local and foreign are oriented in such a way that they are enlightened about the existence and importance of tax incentives. A tax incentive regime should provide for public access to information on investments enjoying tax

incentives. The information made available should be sufficient to enable the public know the costs and benefits of tax incentives. This would not only ensure government accountability, but also that investors remain transparent to the taxpaying public by whom they are subsidized.

5.2.4 Adoption and Implementation of Policies

It is also recommended that government must actively engage in the adoption and implementation of specific tax incentives for the local industries. In implementing these policies the government in the consideration of the budget could appropriate funds specifically intended to encourage the development of local firms to make use of tax incentives. The government can also work with Small and Medium Enterprises (SMEs) to encourage the involvement of domestic enterprises in benefiting in tax incentives. Ultimately there will be an increase in the productive capacity of the economy.

5.2.5 Increase of Transparency Levels

As already discussed, it has been observed that where tax incentives are used, it is important that the rules and take up be transparent. Some of the changes that need to be made include the following:

- i.) The need to start preparing tax expenditure reports and linking them to the budget process
- ii.) The need to improve inter agency co-ordination especially between ZDA and ZRA
- iii.) The need to put in place proper procedures for approval, verification and valuation of investments

It has been recommended by policy makers that in the decision of whether or not to introduce special tax relief mechanisms, firms must first address impediments inhibiting investment and question whether these should be tackled through the tax, or through structural policy changes in other areas, or both. Four particular issues must be considered in this decision process:

- i.) Transparency, simplicity, stability and certainty in the application of the respective tax laws and the tax administration are often ranked by investors ahead of special tax incentives.

- ii.) Tax relief may enhance the attractiveness of a potential host country, but when it comes to experience, in many cases the relief provided may not even be sufficient to offset the additional business costs incurred when investing there and, therefore, it does not realistically address the actual need, which is the relevance of tax incentives
- iii.) Where a particular firm is able to generate profits in the host country, tax incentives may be successful in increasing investment, and may be viewed as necessary where similar tax relief is being offered by another (for example a neighbouring country) jurisdiction also competing for foreign capital. This does raise questions concerning the appropriate designing of tax relief (that is whether the benefits are given to unintended activities and or are not given in full to target activities) as well as whether the investors would invest in the region in the absence of special tax incentives
- iv.) Where additional foreign direct investment resulting from tax relief can be expected, policy makers should be encouraged to undertake analysis of the social benefits and the costs of tax incentives use (issues of efficiency and effectiveness)

In summary when considering the introduction of tax incentives, governments should take into account the following issues, with regards to use and design of tax incentives, into consideration:

Governments should critically assess in advance tax incentives targeted to boost investment; if introduced, the tax incentives should be evaluated (using cost-benefit tests) on a periodic basis to gauge their effectiveness; to enable proper evaluation and assessment, the specific goals of a given tax incentive need to be explicit at the outset; and 'sunset clauses' calling for the expiry of the incentive must be included to provide the opportunity to assess whether the availability of the incentive should be extended or not.

5.3 Conclusion

The implementation of tax incentives can only yield a positive impact on investment if there is an effective and proficient tax incentives regime. However the current tax incentives regime in Zambia is not upto to the required standard as already pointed out. It is necessary that these challenges are addressed so as to ensure effectiveness. The Zambian tax incentives regime will

impact positively on investment if the above recommendations are carried through. The government and all the respective stakeholders must participate in ensuring that tax incentives yield their intended purpose.

BIBLIOGRAPHY

Books

Keenan, D. *Business Law* 8th Edition, London: Pearson Longman, 2007.

Langmead, Peter, Baker Gillian, Harding Alan and Mumbwatasai Morgan, *Tax Policy Issues in Zambia*: Selected Papers: Langmead & Baker Ltd, 2006.

Thuronyi Victor, *Tax Law Design and Drafting*, Volume 2; International Monetary Fund, Ed 1998.

Todaro P, Micheal, *Economic Development* 8th edition, Delhi: Pearson Education Ltd, 2003.

Todaro P. Micheal and Smith C. Stephen *Economics for a Developing World*, London: Longman Group Limited, 1977.

Websites

Effectiveness and Economic Impact of Tax Incentives in the SADC Region
<http://www.nathanic.com> visited on 04.04.2012 visited on 4th April 2012

[http://www: ministry of finance and National Planning/](http://www.ministryoffinanceandnationalplanning.gov.zm/) visited on 28 February 2012

<http://www.oecd.org/mena/investment> visited on 13th April 2012

OECD, Taxation and Foreign Direct Investment <http://www.oecd.org> visited on 25 April 2012

UNESCAO REPORT <http://www.unescao.org/tid/projects/dda-s2a.pdf> visited on 14 September 2011

Websters Dictionary <http://www.websters-online-dictionary.org/definition/remission+of+duty->
 visited-on-14 September 2011

www.ezv.admin.ch/zollinfo_firmen/verzollung visited on 14 September 2011

Obligatory Essays

Kambiala Davison, An Evaluation of the Effectiveness of the Duty Drawback Scheme on Export Promotion in Zambia, Analytical paper for the award of Certificate in International Trade and Development, 2010

Mwauluka Sitwala, The Study of the Redress of Tax Grievances in Zambia: The Case of VAT, (LLB), UNZA, 2009

Other Writings

Simbyakula Robert Ngosa, Taxation and Economic Development in Zambia, Thesis (PhD), 1990