

566

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

SCHOOL OF LAW
OBLIGATORY ESSAY
1994/95

**I RECOMMEND THAT THE OBLIGATORY ESSAY PREPARED UNDER MY
SUPERVISION**

BY

MUGENI SIWALE

ENTITLED

**THE LAW OF TAXATION IN RELATION TO THE
EXPLOITATION OF INCOME TAX PAYERS : A LOOK
AT ALTERNATIVES FOR GOVERNMENT**

**BE ACCEPTED FOR EXAMINATION. I HAVE CHECKED IT CAREFULLY
AND I AM SATISFIED THAT IT FULFILS THE REQUIREMENTS RELATING
TO THE FORMAT AS LAID DOWN IN THE REGULATIONS GOVERNING
OBLIGATORY ESSAYS.**

20/12/94
.....
DATE


.....
SUPERVISOR

UNIVERSITY OF ZAMBIA

**THE LAW OF TAXATION IN RELATION TO THE EXPLOITATION OF
INCOME TAX PAYERS : A LOOK AT ALTERNATIVES FOR
GOVERNMENT**

BY

MUGENI SIWALE

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE
UNIVERSITY OF ZAMBIA IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF
LAWS (LLB).**

**FACULTY OF LAW
UNIVERSITY OF ZAMBIA
P.O. BOX 32379
LUSAKA**

**NOVEMBER, 1994
DATE**

DEDICATION

To my parents for my up bringing and education.

And to my brothers and sisters for the love, support and encouragement in my spiritual, academic and social life.

ACKNOWLEDGEMENTS

I thank the Almighty God through His Son Jesus for having helped me in all areas of my life and in the writing of this paper. A numerous number of people have also helped in giving me assistance and encouragement.

But I feel obliged to particularly thank my supervisor Dr. R.N. Simbyakula for the help rendered at the beginning and during the course of this work.

I would also like to thank Mr. Michael Mwape (Z.R.A.) for the materials that have been of great help, the Director at the Law Development Commission and all the other people that were kind enough to spare me some time for interviews and other types of assistance.

I am also indebted to my spiritual father, Pastor Amoni of Deeper Life Bible Church for the advice, counselling and encouragement to take up Law. Special thanks to my whole family especially my sisters, brothers and brothers-in-law for the financial support and my brothers and sisters in Christ at the D.L.C.F. for the encouragement, support and prayers. Sincere thanks and gratitude to my friends and course-mates, Josephine Bulwilo, Weka Namposya, Chola Shapi, Priscilla Chikuni, Jill Samakai, Susan Mkandawire, Petronella, Helen Jere, Mrs. Maureen Mwanawasa, Carol Bwembya, Chituwamembe and Simon Sakala. Special thanks to Mrs. Winfridah M. Mwenge for typing this obliq.

MAY GOD BLESS YOU ALL.

ABSTRACT

Taxation though an old phenomenon is still not void of problems today. Income tax being one of the major basis of taxation is no exception. Where the canons of income tax are not properly understood by government and thus not given effect in the law governing the tax, overburdening of tax payers is inevitable.

Overburdening is an undesirable problem because it can eventually bring grave consequences on government and the nation as a whole. That is why it needs to concern the government and cause it to redress the situation as quickly as possible because exploitation of people is a grave mistake.

TABLE OF CONTENTS

	Page
Dedication	i
Acknowledgements	ii
Abstract	iii
Table of Contents	iv
Introduction	v
<u>CHAPTER ONE</u>	1
1.1 Historical background to income tax in Zambia	1
1.2 Uses of taxation	3
1.3 Principles relating to tax	5
1.4 Types of taxes	6
1.5 Basic attributes of an ideal Tax System	7
References	8
<u>CHAPTER TWO</u>	9
2.1 Historical background to Income Tax in Zambia	9
2.2 Definition of Income Tax	10
2.3 Incidents and basis of Income Tax	11
2.4 The tax burden on PAYE payers	12
2.5 The current tax rates and reliefs viz-a-viz the burden	17
2.6 Developing future policies of income tax	21
References	24
<u>CHAPTER THREE</u>	25
3.1 Definition and principle behind company tax	25
3.2 The importance of company tax	26
3.3 The current company tax system	27
3.4 Imputation of company tax and the burden	28

CONTENTS

3.5	Effects of the burden	...	...	...	...	...	29
3.5.a	Reduction of tax base	...	...	...	...	...	29
3.5.b	Tax evasion	...	...	...	...	...	30
3.5.c	Tax avoidance and planning	...	...	...	...	...	31
	References	...	...	...	...	...	34
	<u>CHAPTER FOUR</u>						35
4.1	Property tax	...	...	...	...	...	35
4.1.a	Estate duty	...	...	...	...	...	36
4.2	Withholding tax	...	...	...	...	...	37
4.3	Indirect taxes	...	...	...	...	...	38
4.4	The base tax	...	...	...	...	...	39
4.5	Recommendations and Conclusion	...	...	...	...	...	41
	References	...	...	...	...	...	48
	Bibliography						

INTRODUCTION

The Law of taxation is a very important tool for development and this is why no country can ignore it. Governments need revenue to provide services and infrastructure and the easiest and cheapest way they can get this is through taxation. But this needs to be handled in the right manner for it to produce results. The proper principles need to be articulated and rules followed.

SCOPE OF THE STUDY

Taxation is a very wide subject but this paper will mainly concentrate on income tax. Income tax is divided into individual and company tax and these are self explanatory. But this does mean that the other types of taxes are not important because it is a well known fact that the bulk of government revenue comes from indirect taxes.

STATING THE PROBLEM

There is the problem of a heavy tax burden on income tax payers. This has majorly been brought about by government policy and has continued to exist because the tax payers themselves have shown little or no desire to have the law reformed but recently there has been a silent cry for relief from the income tax payers. They also seem not to know much about the whole concept of income tax. There is another problem in relation to the statutes on this area. These are rather confusing and difficult to get hold of because they are scattered in numerous Amendment Acts.

OBJECTIVES

This paper will look at the current income tax structure and see if there are any problems. It will also examine the tax burden and seek to identify its root cause.

There will be focus on other taxes as to see how these can be used to relieve the burden and finally, it will bring out recommendations and solutions to the problem.

CURRENT LITERATURE

There have been some scholars that have written on various aspects of taxation but none has yet specifically looked at income tax in relation to the burden and sought to suggest solutions to it. Although this essay will look at taxation and its objectives in general, it will make a detailed inquiry into income tax and the burden. This will assist in finally coming up with viable, practical and meaningful recommendations for the reform of income tax law.

NATURE

The study is descriptive and analytical so that it can be able to look at the problem clearly and soberly to enable it have a balanced view. Reliance has been placed on existing literature, statutes, documents and data collected from the Zambia Revenue Authority (ZRA) and personal interviews with various income tax payers and ZRA officials.

ARRANGEMENTS

The essay has four chapters which are as follows:-

Chapter one - **THE GENERAL LAW OF TAXATION** - This chapter looks at the law of taxation in general because income tax which is a component of it, cannot be understood fully without first understanding the concepts and principles relating to taxation.

Chapter two - **INDIVIDUAL INCOME TAX AND THE TAX BURDEN** - This basically looks at the historical back-ground of income tax, the rates, reliefs

Chapter three - **COMPANY INCOME TAX AND THE BURDEN** - Looks at Company tax and the burden it has. It also looks at the other problems, namely, evasion and avoidance that have come up as a result of the burden and how these can be minimised or brought under control.

Chapter four - **INCOME TAX BURDEN REDUCTION VIZ-A-VIZ ALTERNATIVE TAXES** - This will look at how other taxes like property tax, indirect taxes, withholding taxes and the newly introduced base tax and see how these can be effectively developed to realise more revenue so that the burden can be reduced on income tax payers. This will ensure a fair distribution of the tax burden. The chapter will end with recommendations and conclusion.

CHAPTER ONE

THE GENERAL LAW OF TAXATION

Since the law of taxation is crucial to every country, principles that are supposed to govern it should be taken seriously. And before we look at one aspect of it, namely, income tax, there is need to properly understand the general law of taxation because this is actually the basis. The chapter will look at the historical background of this tax, uses of taxation, principles relating to tax and end by outlining the basic attributes essential to an ideal tax system.

1.1. HISTORICAL BACKGROUND OF TAXATION IN ZAMBIA

Governments generally aim at improving the standards of living of the people in their countries and make their social life consistent with what is entailed by the concept of freedom. They attempt to maintain economic and political stability and reduce or remove inequalities in society. Thus they are concerned with development. To achieve this, the government can raise capital or revenue through getting loans, grants, attracting foreign investment and taxation.

Taxation is a world-wide phenomenon. But inspire of being common tax laws most countries including Zambia are complicated, difficult to understand create problems of interpretation.

For most countries this may be due to the historical background especially for former British Colonies of which Zambia is one. In 1922 the British Government appointed a commission to submit draft legislation to be used for introducing tax on incomes in all colonies. The draft model ordinance omitted the complicated provisions in the British legislation because the sophisticated approach to tax by the people and modern legislation were not in existence and more importantly, the officials who were expected to administer the tax were inexperienced and untrained in the principles and practices of taxation to be able to comprehend provisions based on complicated legislation.¹

Thus in the desire to provide a very simplified pattern of legislation, they produced the Draft ordinance which contained disjointed provisions from the British Legislation. This created difficulties and problems of interpretation and practice and several of these ordinance provisions are still in existence in most former colonies notwithstanding the social, economic and political changes.

But this might give a false impression that before colonisation, countries including Zambia did not have taxation. In Zambia a form of taxation existed before colonialism. It was in form of tribute paid in kind and according to one's ability to the ruler by each individual. The ruler or chief could use the surplus accruing to him to distribute among his subjects in times of shortages, war efforts, festivals or to cater for special needs of particular individuals. There were no enforcement procedures apart from moral and perhaps social pressure.²

During colonialism, poll tax took the place of tribute and this was mainly due from males above 18 years old. And it was the need to earn tax money that induced Africans to take up formal employment.³ This was a fixed sum and so did not take into account individual persons abilities and thus it was unfair and exploitative.

1.2. USES OF TAXATION

The word tax has not been defined by many text book writers but the dictionary definition say that tax is "a charge on a persons' income or property, direct tax or on the price of goods sold, indirect tax which is made by a government to collect revenue."⁴ Taxation and tax legislation can play a key role in fashioning the pace and direction of economic development. For this to be done, the tax laws should be designed to control economic activity as appropriately as possible. They usually take the form of tariff barriers, licenses and other possible measures intended to achieve national objectives.

The purposes of taxation are many, the most prominent being provision of state revenue. Besides this, taxes provide the most appropriate instrument for increasing savings for capital formation out of domestic sources. The Zambian Government provides grants and subsidies to governmental organs and parastatals for which it needs revenue to continue doing so. Things like education and health are subsidised.

Taxes are also imposed to discourage the consumption of certain goods and services and also certain activities. For example, high taxes are placed on luxuries and commodities like cigarettes and alcohol to both discourage consumption and maximise revenue.⁵

The current interest and effort in modernising the tax administration, increasing tax payer compliance, minimising the more unfair features of the tax system and extending the tax base to untapped revenue sources are closely related to the desire for accelerated economic development which is lacking in the country. Thus tax laws are used as a mechanism for diverting the flow of investment from activities which have little or no developmental merit to those important for development. Consequently, tax system and the tax structure will of necessity reflect the country's social goals and its economic aims including its income distribution and pattern of productivity. Developing countries must therefore maintain flexibility in their tax policies, reserving to themselves the right, as is done in so many of the more developed countries, to make annual changes in the tax structure or in the tax system as circumstances demand although it has been argued that fixed rates of tax for an indefinite period are necessary to ensure stability and to inspire confidence in the investor.⁶ Following this advice makes tax policies to lag behind and not to be able to effectively deal with the changing circumstances inherent in every society. This will only make the investors and their countries of origin to benefit at the expense of the host country.

Their countries will be used as tax havens but local tax payers will still have a heavy burden to bear which will disadvantage their business and bring down their standard of living.

There are dangers in taxation, particularly so in an economy with a very limited margin over subsistence and a high percentage of the population still primarily engaged in the subsistence sector as the case is in Zambia. The type of tax that most successfully rewards the government may be the one likely to be detrimental and the general tax environment of an under-developed country may be unsuitable to any high degree of perfection of the tax structure.⁷ The government should be able to seriously take the dangers into consideration when developing tax policies or adopt modern ones from western countries without seriously thinking about the impact it would have on local economy. What has to be borne in mind is that we are at different stages of development.

1.3. **PRINCIPLES RELATING TO TAX**

Tax is a creature of statute. There is no presumption to tax. It is settled law that if tax is to become payable at all, the imposition of it must be found in the statute itself. In Oriental Bank V wright,⁸ the judicial committee of the privy council said that the rule is that the intention to impose a charge upon a subject must be shown by clear and unambiguous language. Adam Smith also laid down two important canons of taxation; a citizen should be taxed in accordance with his means and tax should be certain.

It must not be left to the arbitrary discretion of the revenue. The time of payment, the manner of payment and the sum to be paid should all be set out in plain and unambiguous language in the law which imposes the tax.⁹ Another principal relating to tax is that the more income one earns, the higher the tax he has to pay.

1.4. TYPES OF TAXES

Taxes generally fall into two major categories; direct taxes and indirect taxes. Direct taxes are those that are charged on an individual who has to pay and that individual is conscious about the obligation and honours it although he can evade or avoid it when he has a chance. Indirect taxes on the other hand are difficult to see because they are mostly included in the price of the goods or services in question and everyone whether in the formal sector or not cannot avoid them.

Governments basically impose three major tax bases: income, expenditure (consumption) and property. The income tax base that the government imposes deals with income basically as can be seen from the word itself. And since this is the major concern of this paper, it will be dealt with in detail in the following chapters. In Zambia, expenditure (indirect taxation) comprises import duties, exercise and sales tax which are also a major source of revenue. Thus these are easier to collect especially from non - wage earners because most people buy goods and consequently, it affects the consumption pattern of the country by the way it is imposed.¹⁰

Property tax is based on the possession of wealth manifested in the form or property itself or upon its transfer either as a sale, gift or bequest. It is levied on both real and personal property. It's taxation is justified on the grounds of ability to pay in that, wealth is found to be more unequally distributed than income.¹¹

1.5. BASIC ATTRIBUTES OF AN IDEAL TAX SYSTEM

All the above taxes and tax structures cannot be very effective without the basic attributes that must be found in every tax system. The first attribute is that distribution of the burden should be equitable, that is, everyone must pay his fair share of tax. Secondly, the tax should be chosen in such a way as to minimise interference with the economic decisions in otherwise efficient markets, thus excess burdens should be minimised. Thirdly, taxes should be used to correct the inefficiencies in the private sector as long as they are a suitable instrument for doing so. Fourthly, the tax structures should facilitate the use of fiscal policy for the stabilisation and growth objectives and lastly, the administration and compliance costs should be as low as is compatible with other objectives.¹²

END NOTES

1. Toby R.A. The theory and practice of income tax
(1978) p. 18
2. Simbyakula R.N. Taxation and economic development in Zambia
(1990) JSD Thesis p. 60
3. Gann L.H. The Birth of Plural Society
(1958) p. 77
As quoted by Simbyakula R.N. on p.62 1 - 10
4. Watson O. Longman Modern English Dictionary
(1976) p. 1134
5. Seidman A. Money, Banking and Public Finance in Africa
(1986) p. 135
6. OP.Cit Toby R.A. p. 21
7. Okello M. Some features in the Law of taxation. Policy and Planning and the problem of under-development in Zambia (1978/79) oblig. p. 36
8. (1980 S APP Cas 842 at 856
9. O.P.Cit Tory R.A. p.151
10. O.P.Cit Seidman A. p. 134
11. Lewis S.R. Taxation for development principals and application (1984) p. 147
as quoted by Simbyakula on page 169 IBID.

CHAPTER TWO

INDIVIDUAL INCOME TAX AND THE TAX BURDEN

Having looked at the general law of taxation, its importance and how it can be successfully implemented, we now look at a specific aspect, that is, income tax. It is divided into two parts, individual and company tax. We will start with individual income tax and look at what has brought about the burden and how it can be reduced. The whole problem of over burdening individual tax payer was brought about by the oversight and failure to develop and implement proper tax policies by government. Until recently, government had failed to develop an efficient tax administration and this resulted in some aspects of taxation such as property tax being watered down and not efficiently collected. And since government still needed a lot of revenue, it compensated for this loss in revenue by overtaxing income tax payers especially those in the formal sector because they are easy to tax and cannot evade it. The government has continued to get away with this because there has been little outcry or protest from the tax paying public due to ignorance on their part. We shall end by looking at how this situation can be reversed.

2.1. HISTORICAL BACKGROUND TO INCOME TAX IN ZAMBIA

Income tax is an old tax and much of its basic structure was established in the nineteenth (19th) century. It is one of the most widely accepted means of obtaining revenue and in many respects this tax is adjustable progressively.

A large portion is obtained from civil servants, employees, professionals and business executives. Most of it however, comes from big companies such as mining concerns. Income tax brings about a redistribution of income. This tax has some effects on incentives, for example, a person on the margin between subsistence and the market economy may be driven back into subsistence economy entirely if his market economy is taxed, or sometimes the effect may be quite opposite as the tax payer may seek to work harder in the market sector in order to maintain his given income from the sector¹.

2.2. DEFINITION OF INCOME TAX

The *Zambian Income Tax Act* like that of many countries does not define income, but only classifies income to avoid doubt and this classification is not exhaustive. Lord MacNaughter in **Attorney General London Country Council**² said, "Income tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. The standard assessment varies according to the nature of the income from which the taxable income is derived. That is all." In *Van den Berghs Limited V Clark*,³ Lord Macmillan said almost the same thing and added that one must go to decided cases in search of light. But even in decided cases no comprehensive definition can be found. They only show that most types of income can be broadly classified into four (4) basic categories, namely, business or trade income, income from real property, income from performance of services and from employment, and income that may in some countries be governed by its own rules and may suffer taxation differently.

Thus the courts' decisions have gradually turned an imprecise but simple statutory phrase into a more complicated but more predictable definition. This is because the word income has different meanings to different people according to its context thus any definition of income for tax purposes would be extremely difficult to frame. As a result, tax Acts do not attempt to provide one.⁴ But income has been defined as the money or other gain periodically received by an individual or corporation for labour, services or from property, investment or operations.⁵

2.3. INCIDENTS AND BASIS OF INCOME TAX

After defining income, the problem is who is entitled to the income and what are his taxable circumstances? This is very important because for income to be taxable, it must first of all accrue to the individual and this happens when an individual becomes entitled to a right to claim payment.⁶ Individuals, trustees and corporate bodies are all taxed differently and within each group there are categories and tax liability depends on the categories. According to the *Zambian Income Tax Act* which came into operation on 1st April, 1966, the source and residence principles form the Jurisdictional basis for taxation.

Income Tax is assessed annually and this applies to resident expatriates who are also considered residents and from everyone receiving income from a source within.⁷ The only foreign source income subject to tax in Zambia are dividends and interest when received by a resident.⁸

One general rule is that income for tax purposes must be money or something capable of being turned into money. Even this rule is subject to a statutory exception in the case of benefits in kind received by directors and certain employees. It is an action of taxation that earned income should be more lightly taxed. Earned income includes remuneration from any office or employment, pension and bonuses. Unearned income includes income derived from investment, interest receivable on loans and profits of a sleeping partner.⁹ But this is not the case in Zambia since unearned income is more lightly taxed by providing for the withholding tax of only ten (10) percent.¹⁰

There are a number of incomes that are exempt from tax for various reasons; for example, charitable organisations because of their special characteristics and payment of compensation to a person injured in war. Bursaries and grants are also exempt because the fund out of which the income is payable had already been subject to tax. Before the 1990 amendment to the Act, inducement allowances for expatriate personnel, retirement benefits and a alimony under a Judicial order were exempt.

2.4. THE TAX BURDEN ON PAYE PAYERS

The Pay-As-You-Earn (PAYE) system of deduction of tax is an important feature of taxation. The employer is supplied with elaborate tables and a code number for each employee, by combining these, he can ascertain the tax to be deducted from every payment made to each employee and he is bound to such tax and account for it to the Revenue Authority.

An employer frequently has to expend considerable sums on office machinery and staff for the purpose of collecting tax for government. This is a factor which should be always borne in mind when considering the true cost of collection of the income taxes. There are very few tax payers who enjoy paying taxes although many regard it as a public duty to pay their share of the money required by government, much of which come back to them in the form of social services. Although at present not much is being seen to be done in this area, with people complaining about the state of public institutions like clinics and the poor state of roads which have been in a deplorable state for a long time now despite taxes and the newly introduced contribution that every person buying petrol or diesel has to pay towards the improvement of the roads. This is one of the reasons why people feel they are just being exploited when they pay tax because they cannot see how their money is expended. This brings in the aspect of accountability which should be carefully implemented on the part of government.

Due to the nature of collection of this tax, the taxpayer under PAYE is literary at the mercy of the authority which, while not intentionally wishing to make an unfair advantage of the position, may by force or circumstances or other causes defer corrections for some considerable time. Thus he is deprived of the weapon of the debtor to hold back payment while the dispute is being settled."¹¹ A good number of taxpayers complain that though their salaries had not changed in a long time, the amount of tax deducted from them differ from month to month.

Despite this, one learns after inquiry that few, if at all any, have bothered to go to the Revenue Authority to seek clarification. But if things are to improve in their favour, tax payers will need to be interested about tax in general because most of them have been quite ignorant about the whole issue.

In the early 1970's Zambians used to pay very low income tax compared to many neighbouring countries as can be seen from Table I below which shows the taxes for 1971:¹²

TABLE I

ANNUAL INCOME	ZAMBIA	MALAWI	KENYA	UGANDA
K 400	K5	12	4	42
K1,200	25	85	130	210
K2,000	93	230	256	356

(A Comparison of annual tax payable by a single man in Zambia with that payable elsewhere)

Source: Monthly Digest of statistics, Lusaka Vol. IX No. 4 1973, April. This was mainly due to generous exemptions or allowances and low tax rates but this is not the case now. Currently, 'the structure of direct taxes in Zambia show that income from wages and salaries is bearing the blunt of taxation while non-wage income such as gifts, inheritance and interest are either lightly taxed or not taxed at all as earlier stated.¹³

Tax rates, threshold levels, personal exemptions or allowances and fringe benefits are unavoidable issues when it comes to dealing with individual income tax because of the important role they play in increasing or reducing the tax burden.

Before April 1989 when a number of personal allowances were done away with, individuals used to get a lot of them. On 1st April, 1989, the single, married and child allowances were abolished so as to achieve marriage neutrality and abolish the tax penalty for being single. These are replaced by what is known as a Primary allowance which was the same for every individual regardless of marital status and number of children or dependants. This means that the tax status of a person does not change by virtue of change in marital status anymore. But before this, the tax system was such that the female tax payers suffered greater liability upon marriage while the men benefited. The primary allowance was K300,000 per annum for every individual.

Apart from these allowances, there are allowable deductions which include charitable contributions, mortgage interest and medical expenses. A tax payer becomes entitled only when he incurs expenditure relating to them.

Personal allowances and reliefs should reflect the social and economic atmosphere within the society, the objective of which should be to lend support to a more satisfying and meaningful way of life; the paramount consideration being the social and economic progress within the society.¹⁴

If this is so then the Zambian system does not achieve that because of low allowances despite the low standard of living that is rampant among the majority of the people who are income taxpayers. One example that easily comes to mind is that of teachers, who despite their very low salaries which can barely sustain a person living alone, are also liable to tax.

Fringe benefits were introduced by the colonial regime partly as inducements basically aimed at attracting expatriates to take up employment in the colony. The main beneficiaries were the colonial civil servants and mining company employees. These benefits included company cars, utilities and educational allowances. The level of generosity of benefit increased as one rose higher on the promotion ladder.¹⁵

This continued after independence and since they were high, they resulted in erosion of the tax base in that the people in high income groups would seek remuneration in kind instead of increase in monetary salary. This has led government to start taxing fringe benefits. But the only ones that invite tax so far are personal-to-holder cars where the amount of tax payable depends on whether the car is classified as a luxury one or not.¹⁶ These still make those who receive them to be relatively better off than the taxpayers who do not. Thus instead of taxing people in low income groups, the government should tax employers for the fringe benefits they give to their employees, especially those in high levels of income in order to discourage these benefits. The idea is to shift from payment in kind to monetary which is easier to tax.

That is, the benefits can still remain but should be given out in form of money so that they can be taxed. But this tax should be reasonable and not very high.

2.5. THE CURRENT TAX RATES AND RELIEFS VIZ-A-VIZ THE BURDEN

Tax rates are at the very core of the tax system because they determine one's tax liability. They vary depending on the tax system being used. There are three types of systems, namely, global, scheduler and mixed systems. In the global system all income of a person from all sources is aggregated and after allowing for permitted deductions and allowances, it is subjected to a single progressive tax rate. Where as in the scheduler system, the principle income flows are taxed separately under different tax rates. For example, salaries are taxed at a different rate and dividends at another rate. In the mixed system as the name suggests, there is a combination of the global and scheduler systems. And this is the system that is used in Zambia. The tax rates for an individuals income taxpayer are as follows:-¹⁷

first	K600,000	(K50,000)	at 15%
next	K300,000	(K25,000)	at 25%
excess			at 35%

Note: the monthly figures in brackets

Due to the high rate of inflation in the country, the threshold level, that is, the amount at which tax applies (over K300,000) though very low, gives people the false impression of being high. The K300,000 if calculated in monthly terms is actually K25,000 per month and every person in Zambia knows that this is a very small amount of money which though given tax free, does not really help people much whether they are in the high income levels or not. And considering the low standard of living among the majority of the people, it is not proper that they should be given a heavy tax burden thus adding salt to injury.

At the same time, this also means that those earning higher incomes are heavily taxed because the bulk of their income is taxed at the high rate of 35% due to the threshold level being low and negligible. As a result, the government is urged to raise the threshold level to double the present amount.

The fact that the threshold level is low also means that the graduated rates or the tax brackets above are also low, that is why most people earning very low incomes in relation to the prevalent inflation in the country, find themselves paying tax and thus become poorer. This is clear from the example of teachers that has been given above although it has been argued that the rates are low compared to those of neighbouring countries.¹⁸ Because of the inflation, there is what is known as "bracket creep" and this has been explained in the illustrations above. Bracket creep is the tendency or situation where people in low income levels who are not supposed to be taxed get into the tax net and the others move quickly from one bracket into the other or even jump some brackets.

The newly introduced tax credit which is K45,000.00 per annum or K3,750.00 per month is in view of an abatement to income by the primary allowance.¹⁹ The tax credit is one and the same thing as the primary allowance of K300,00 which was previously in place. The only difference is in the modalities of calculating and implementing them.

The primary allowance was previously being deducted before the application of the tax rate to the taxable amount. But using the tax credit system, the tax rates are straight away applied to the income and then the tax credit is deducted from the tax found after calculation. This has the effect making a person pay exactly the same tax after deducting the tax credit as he would have done had the primary allowance method been used. The tax credit came into effect on 1st April, 1992 and is quite insignificant taking into account the inflation rate and the amount of relief it is supposed to give to the tax payer.

In all this, it is the tax payer who is in the formal sector who suffers most because there is no way he can avoid or evade tax since it is deducted at source. Other individual income tax payers includes those in sole proprietorships, small scale businesses and partnerships both registered and unregistered. These are taxed as individuals even though they may be many in one firm. For them, tax is not deducted at source and so they have to fill in return slips which they can get from the Revenue Authority offices or the Government Printers at a fee.

2.6. DEVELOPING FUTURE POLICIES OF INCOME TAX

One of the reasons why people evade or avoid tax is because the people do not understand much about tax. It was proposed in 1938 by a Committee that future taxation should be guided by the following; tax should be readily understood and accepted by the people liable to it, it should be such amount as can be found without undue hardship and it should be simple and economical to collect and capable of effective enforcement.²¹

These proposals should be seriously taken into consideration by the government when developing future policies with regard to taxation in general. In Zambia, it is the high rates coupled with misunderstanding that makes most people to avoid or evade tax. In order to put in place a very successful tax system, the government should make sure that the following pre-requisites are there:-²²

- a. Existence of a predominantly money economy thus it is restricted to urban areas since the subsistence farmer cannot be satisfactorily reached by income tax, not because he has no money to pay but because the greater part of his real income cannot be assessed.
- b. A relatively high standard of living among tax payers (high literacy levels).
- c. Prevalence of accounting records honestly and reliably maintained.
- d. High degree of voluntary compliance on the part of tax payers. .

Administrative organisations cannot adequately collect income taxes from the self-employed when evasion is generally attempted and accepted and incurs little or no moral disapproval from the public.

e. favourable political climate. In many under-developed countries, wealthy groups have enough political power to block tax measures which they consider a threat to their position. Honest and efficient tax administrators.²²

In Zambia at the moment, most tax payers have a low standard of living and as for voluntary compliance, the Minister of Finance identified it as a very big problem which needs urgent attention.²³ This is mostly the case among those in the informal sector where many people do not feel guilty about evading tax because they claim that they cannot see the "benefit of paying tax"

In view of all that has been discussed and the suggestions for improvement or reform that have been brought out in the course of the chapter, the following should be done. People should be educated about tax and its importance, especially those in the informal sector so that they can voluntarily pay their fair share of tax instead of government overburdening the already burdened formal sector so that they can voluntarily pay their fair share of tax instead of government overburdening the already burdened formal income tax payers.

But for this education to be effective, the government should be more diligent in informing people as to how their moneys are being expended. This means that it should be accountable to the people.

There has usually been a tendency by government officials to misuse taxpayers' money to the extent that people feel that those officials are getting rich at their expense.

The pre-requisites of a successful tax system which have been outlined above should be taken into consideration and implemented. The most important being that everyone regardless of position should all be seen to bear their fair share of the tax burden. And for this to be successfully implemented, an honest and efficient tax administration is needed. This task can now be ably done by Zambia Revenue Authority. The tax laws also need to be revised so as to reflect the interests of the majority of the population, for instance either the tax credit or the tax rates or both should be adjusted to give people a reasonable standard of living most especially in view of the hardships and inflation brought about by the on-going Structural Adjustment Programme. But for all this to be done, the tax paying public needs to display a more direct and dynamic concern for return and improvements. Accountants, Economists, Lawyers and other persons in related professions should display a greater degree of initiative in a desire to bring about reforms as those in developed countries do.²⁴

END NOTES

1. OKELLO M. Some features in the Law of Taxation : Policy and Planning; and the problem of under development in Zambia (1978/79 oblig P. 36
2. (1901) A.C 26 at 35
3. (1935) A.C 431 at 438
4. WHEATCROFT, G.S.A. The Law of Income Tax, Surfix and Profits Tax 1962 P. 1004
5. Websters' New World Dictionary of the American language (1979) p. 737
6. Lategan V C.I.R (1927) 2 SATC 16 at 20
7. Section 4 Income Tax Act
8. Van Der Westhuiizen V Commissioner of Taxes (1963-64) Z.R 76
9. TOBY, R.A. The Theory and Practice of Income Tax 91978) P 56
10. Section 10 Income Tax (Amendment) Act 1994 or Sec 81c Cap 686
11. Burton J.H How to Appeal against Tax Assessments (1950) p. 76
12. O.P. Cit. Okello M. p. 57
13. SIMBYAKULA, R.N. Taxation and Economic Development in Zambia (1990) J50 Thesis p. 95
14. OP. Cit. TOBY R.A. p.30
15. SIMBYAKULA R.N. Op. Cit. p.71
16. Section 17 (1) Income Tax (Amendment) Act 1994
17. Section 18 (1) (C) 1994 Amendment Act
18. Mr. Michael Mwape - Public Relations Officer at ZRA (Interview)
19. Section 9 (4) of part 2 of the I.T (Amendment) Act 1993
20. Budget Speech Paragraph 97
21. 1938 Report on Native Tax

22. Goode R. Reconstruction of Foreign Tax system, Readings on Taxation in Developing Countries. (1964) p. 170
as quoted by Simbyakula R.N. p.139 IBID.
23. Hon. R.D.S. Penza Budget Speech paragraph 140.
24. Toby R.A. *Supra* p. 30

CHAPTER THREE

COMPANY INCOME TAX AND THE BURDEN

In the foregoing chapter, we looked at the burden that is on individual income tax payers; how it came about, how it is being perpetuated and finally looked at recommendations on how it can be reduced. In this chapter we will deal with another aspect of income tax, that is, company taxation. Companies also have a tax burden. The burden can be seen from the rates applicable but unlike the individual income tax payers, companies had previously protested that the tax rate of 40% was too high. The current rate of 35% is still high but because of no further protests, the government thinks that everything is alright and that the people have accepted the tax. But companies have room to manoeuvre and reduce their burden unlike individual tax payers in formal employment. Thus we shall look at the incidence and imputation of this tax and see how the burden has come about. We shall also consider the reaction of companies to this burden which has brought in another problem of evasion and avoidance and how this can be dealt with or contained.

3.1 DEFINITION AND PRINCIPLE BEHIND COMPANY TAX

The most difficult problem of Income tax is the taxation of the income of companies and dividends therefrom. Statutes do not define company but instead provide a list incorporated or registered associations that carry on business in a number of situations and that is why the word 'include' is crucial in the definitions given showing that the list is not conclusive. The term

'registered company' is taken to mean a company incorporated or formed by registration under the companies Act.¹

In Zambia, income tax was first imposed on 1st April, 1920 to obtain tax from companies which were already liable to tax in the United Kingdom and not to obtain it from the settler community. The principle underlying company tax is that corporate status conveys a number of privileges and these should be paid for.² A company may either be private, public or parastatal. Taxation of companies deals with incorporated companies as opposed to un-incorporated ones like partnerships and sole-proprietorships which are taxed in the same manner as individual income tax payers. The tax is assessed against profits accruing for the benefit of a company under any trust or those arising from its own winding up. This is possible because a company is considered as a legal **persona** In Ochberg V C.I.R.³ this nature of legal personality was extensively discussed. It was also said that a company being a juristic person is distinct and must be treated as such, from the person forming and running it even though he may be the sole share-holder.

3.2. THE IMPORTANCE OF COMPANY TAX

Due to a relatively large number of businesses and industries carried on through the medium of companies, company tax becomes very important to the country. If properly handled, it can be a good source of the much needed revenue for government. But there is a problem that is brought about by the presence of parastatals and subsidiaries of multi-national corporations and other foreign owned companies. In the case of Zambian parastatals, most of them are perpetual loss makers. This means that they cannot pay tax

because this is calculated on profit made. They also consume the much needed revenue from other sources because government still has to support and subsidise them. In an effort to bring them into the tax net, equity levy was introduced.

This levy is 1.5% of the shares held directly or beneficially by the government in the companies. This will no longer play a significant role because of the on-going privatisation exercise in which the government is selling off its shares in these parastatals.

The Investment Act of 1993 gives a lot of incentives to foreign owned companies and one of these is in form of special tax concessions. These entail that government is not able to get as much revenue as it would if these were not granted. They tend to water down the importance of this tax and reduce the revenue due therefrom as can be seen in Table 2.⁴

3.3 THE CURRENT COMPANY TAX SYSTEM

There are four commonly used tax systems in the area of company tax, namely, the classical, imputation, split rate and integrated systems. The classical system embodies the principle that tax liability for the company should be completely independent from that of its share-holders, while the imputation system is designed to mitigate the tax due on individuals paid out by taking into account the fact that profits out of which they have been paid have already borne tax. The integrated system is essentially a variation of either imputation or the split rate systems. and there is total alleviation of double taxation. Under the split rate system which is used in Zambia, distributed profits are taxed at a lower rate than retained profits.⁵ Retained

profits are subjected to a higher tax because they are not subject to another tax unlike distributed ones which are also subject to the withholding tax of 10%.

This tax is withheld by the company that declares a dividend and so makes administration very easy and inexpensive. This brings in double taxation on profits because it is first subjected to tax at corporate level and later when the dividend is being paid out.

3.4 IMPUTATION OF COMPANY TAX AND THE BURDEN

The taxable income or income subject to corporate tax is determined in accordance with the ordinary rules applicable to individuals. The net profit is computed by subtracting the expenses and allowable deductions from the gross profit. The gross profits comprise the return before deducting any other costs for earning income. Two types of deductions are usually allowed, namely, a deduction for the interest charges made on loans and a deduction for the imputed cost of 'using up' the asset through use (that is, depreciation).⁶

No country can afford to refrain from taxing the profits of companies until such income is distributed among the shareholders by way of dividends. All modern systems impose a tax directly upon profits of a company. From experience, it has been learnt that the rate of tax upon company or corporate profits must be a flat rate otherwise the system can readily be exploited for the benefit of the avoider.⁷ In Zambia, there is a flat rate of 35% for all companies except registered Banks whose rates are:-

up-to K100 million - 35%

over K100 million - 45%

The other exception is in relation to large scale mining enterprises which are not defined in the Act, whose rate is:-

35% or $60 - 480/x$ whichever is greater.

where x is the ratio of the chargeable income to gross revenue multiplied by one hundred.⁸ Dividends distributed by companies are subject to a withholding tax of 10%.

From the rates, it can be clearly seen that there is a heavy tax burden on companies. It shows that over one third of the profits are paid as tax. There are also no fixed reliefs like in the case of individual income tax payers who are given a fixed tax credit. If a company has to get deductions, it must be specifically entitled to them, for example, depreciation. The government should consider reducing the flat rate from 35% to 25% but leave the withholding tax at 10% for distributed profits. This will reasonably reduce the burden but there is nothing to stop the government from reducing it further.

3.5 EFFECTS OF THE BURDEN

There are many undesirable effects that are brought about by the burden. The major ones are reduction of the tax base, tax-evasion and avoidance.

3.5.a REDUCTION OF TAX BASE

Caution is needed in the use of this tax because heavy taxes interfere with incentives to expand and re-invest when the tax is reduced, companies will be encouraged to re-invest and others will be formed because they will

know that they will get a better deal in terms of tax. In the end, government will stand to benefit because there will be a larger tax base in this area. And this is what is really needed in the country for there to be increased revenue from this quota. The burden makes companies seek ways of reducing their tax.

One commonly used way is through allowable deductions like depreciation, interest payment on loans and losses which may also be carried forward indefinitely and set against the trading income of the trade in which the loss was sustained.

It can also be reduced by awarding high managerial rates. The courts have held that the commissioner may challenge the remuneration awarded to directors and other workers if in his opinion it is unreasonable.⁹ But various factors are to be taken into account like the value and nature of services rendered, the nature of the business, relationship between employer and employee, amount of remuneration in relation to the net profit earned by the employer and the dependence of the remuneration on the profits earned.¹⁰

3.5.b TAX EVASION

Taxation and evasion are infact inseparable concomitants and a resistance to taxation is endemic in the tax payer and has had a long and not always dishonourable history. Those who wish to evade tax either found the means of doing so or entangled themselves and the government in the most expensive proceedings.¹¹ Tax evasion is the wilful and deliberate violation of the law in order to escape payment of tax which is unquestionably imposed by

the law of the taxing jurisdiction. It not only includes cheating and frauds of various kinds but also failure to comply with the law resulting from negligence, ignorance and error.¹² Faulty drafting and other inadequate procedures served to intensify the urge towards evasion and avoidance. While some provisions do exist for combating evasion of one kind or the other, these provisions are in general not enforce either because of political reasons or the absence of the necessary procedures for their enforcement or other pressures.¹³

Evasion was reported to be rampant in Zambia by the Minister of Finance in the "Budget Speech of 1st April, 1994." It was also stated that urgent attention was needed for the problem to be put under control. But if evasion is to be effectively controlled or minimised, the reasons for its existence should be carefully examined and understood by the administrators and advisors who are responsible for providing the cure. In Zambia, evasion is as a result of a number of factors, namely, high rate of taxation, proliferation of taxes and charges, ignorance of the tax laws on the part of the general public due to poor public relations by the tax department.¹⁴ A very efficient mechanism for combating evasion used in many countries and also introduced in Zambia is the legal requirement for the production of the tax clearance certificate as a pre-requisite to various economic and other purposes.¹⁵

3.5.c TAX AVOIDANCE AND PLANNING

Tax avoidance affects tax saving by making use of loop-holes in the law. A citizen is perfectly entitled to exercise his ingenuity so as to arrange his affairs as may make it possible for him legally and lawful not to pay tax and it

his ingenuity succeeds, however reluctant the court may be to acknowledge the cleverness of the assessee. Avoidance opportunities result from the difficulty of legal definitions such as the definition of income.¹⁶ In seeking to distinguish tax avoidance from evasion motive is an important element. Avoidance is intended for avoiding tax by some artificial or unusual form, and is carried out lawfully, though in a way not intended or foreseen by the statute.¹⁷ In Aruance group of estates v state of madras,¹⁸

it was stated that avoidance carries no ignominy for its sound law and constantly not bad morality for anybody to arrange his affairs with a view to reduce the brunt of to a minimum. Nevertheless without this ingenuity, tax legislation would not be as resourceful and progressive. In Zambia, not many people know how to avoid tax, all they usually do is evasion. In view of the heavy-burden on income tax payers, its certainly not bad morality to avoid tax.

Whereas tax avoidance conjures up manipulating, however legally applied, tax planning suggests a more subtle although acceptable approach and consists in arranging ones' affairs in such a manner as to minimise to such an extent as possible of the tax benefits offered by the statute in form of various exemplary abatements, incentives and reliefs. This has also not really developed in Zambia. This may be largely due to ignorance on the part of the public that they can be able to reduce their tax through tax planning.

After having looked at the various aspects of company tax and suggesting areas that need reform or improvement, it is imperative that we briefly mention some of them again. The government should reduce the tax rate that is currently applicable so as to reduce the burden and act as an incentive for companies to expand and re-invest. Some of the tax incentives given to

investors should be revised and reduced so that much money should not leave in form of dividends and thus rid the country of the much needed foreign exchange. Tax evasion and avoidance should be seriously addressed so that further loss of revenue might be minimised. The Minister of Finance noted in his Budget Speech,¹⁹ that these are quite rampant among companies and other forms of business that are not incorporated.

This shows that the government has huge tasks ahead of not only providing mechanisms that can curb these vices but also of making sure that the root cause, tax burden, is dealt with seriously.

END NOTES

1. Morse, G Charlesworth's Company Law 13th edition (1987) p.1
2. Simbyakula R.N. Taxation and Economic Development in Zambia
(1990) JSD Thesis p.105
3. (1931) A.D. 215
4. Table 2 of the previous chapter.
5. OP. Cit Simbyakula pp. 131-133
6. IBID p.112
7. SILICE, A.S Tax-Avoidance and Tax Reduction
(1958) p. 43
8. Charging Annexure F - 1.Tax (Amendment) Act 1993
9. Commissioner of Taxes v Basil Stores Ltd
(1973) ZR 107
10. Verrinder Limited v C.I.R. 16 SATC 48
11. TOBY, R.A. The Theory and Practice of Income Tax
(1978) p. 102
12. IBID p. 106
13. IBID p. 107
14. IBID p.108
15. IBID p.121
16. Sumbwe, M.R. Income Tax as a source of Public Revenue
(1986/87) obliq. p.32
17. O.P. Cit. TOBY p.137
18. (1965) SS I.T.R. 642
19. Budget Speech (1994) paragraph 140

CHAPTER FOUR

INCOME TAX BURDEN REDUCTION VIZ-A-VIZ ALTERNATIVE TAXES

Having looked at the burden on individual and company income tax payers and how this can be alleviated, we now come to the crucial part where we have to look at alternatives for government. we will specifically look at other taxes and see how government can improve collection of revenue from these sources so that it will then have no excuse for not reducing the burden on income tax payers. Although the taxes are many, this chapter will briefly look at property, indirect, withholding and base taxes. It will look at how these can be improved and then finally end up with recommendations and conclusion.

4.1 PROPERTY TAX

Property transfer tax is the tax levied on property when it is transferred and it is charged on the person transferring the property. The term property under the Act refers to land, including any building, structure or other improvements on that land and to any shares issued by a company incorporated in Zambia. It is calculated on the reasonable value of the property or the sale price.

It has been said that since space is immobile, land therefore, is one item that a government can heavily tax without fear that it will take flight to lower tax jurisdictions.¹ But this is not a very good suggestion because heavy taxes in this area can bring about undesirable results in other areas like industries, investment and result in high rents for business premises and accommodation facilities. All these would cause untold hardships to the

Zambia if the deceased was ordinarily resident in Zambia at the time of death. No duty is payable if the estates' value does not exceed K5 million. It is 5% if it is more but less than K10 million and 10% if the value is above K10 million.⁴ It is the duty of the Executor or the Administrator of the estate to pay this duty. Government should put in measures to ensure that collection of this tax is taken seriously. At present this is not taken seriously and its virtually non-existent.

4.2 WITHHOLDING TAX

Withholding taxes are taxes that are deducted at source before payments are made. This is deducted from payments made to contractors or suppliers who provide services like construction work, haulage operations, supply of goods, merchandise and services. It also applies to dividends, interests and royalties, public entertainment fees, rents from Zambian property, management and consultancy fees and Treasury Bills. The current rate for withholding taxes is 10% which applies to all payments except dividends to non-Zambian. Shareholders whose country is covered by a treaty with Zambia, in such cases the rate applicable is the one agreed upon in the treaty.

The 1994 Amendment Act⁵ introduces withholding tax on Treasury bills and any other similar instrument that is sold at a discount from the face value. Interest on the Bills of Exchange drawn for 180 days or less is exempt from tax and the payment of any amount in excess of the original price for any Treasury Bill or any other similar financial instrument shall be deemed for the purpose of the Act to be payment of interest when any such Treasury Bill or Financial instrument is presented to the Bank of Zambia for redemption or re-discount. The amendment of the 2nd schedule concerning exempt income

already tax burdened citizens and may result in strikes and other social disorders. The property tax needs only to be reasonable and not very low like the rate of 2.5% which is now provided for by the Income Tax (Amendment) Act of 1994.

The low rates can be due to the fact that a big portion of state land as opposed to customary land is owned by important government officials and their families and this is the land that is subjected to tax. What is lacking is a substantial portion of middle class housing. These are owned basically by the government itself through the local council authorities and parastatals like the National Housing Authority. Thus the tax base is divided between the "politically non-taxable mansions and luxury apartments in high rise structures, on the one hand and, the shanties of the poor on the other, that are not worth trying to tax."²

There have been some other criticisms³ that the tax has been deliberately reduced so that people who have money, and mostly the present leadership should acquire more property. The 7.5% that was previously being levied before the 1994 Amendment was not high but very reasonably low and should have reasonably generated much income taking into account the fact that the tax administration (Revenue Authority) has been improved in the area of collection of taxes. There is a requirement that you have to show a tax clearance certificate before your transaction or transfer of property is registered at the Lands and Deeds Registry.

4.1.a ESTATE DUTY

Estate duty is levied upon the estate of a deceased person as comprises his property situated in Zambia and all his personal property situated outside

gives an exemption from tax of the first K60,000.00 per annum of any income earned from Treasury Bills or other similar financial instrument. This puts it on the line with the treatment of other interest income for individuals.

4.3 INDIRECT TAXES

Sales tax was introduced by way of an amendment to the customs and excise Act in 1973 and it was a measure aimed at expanding the revenue base and reducing dependency on copper. It was a single stage tax levied on the manufacturers level on locally manufactured goods and initially imposed as surtax introduced in 1972. The only services included in the tax were hotels and restaurants. In the fiscal year of 1970, it contributed K34.34 million compared to K36.83 million from import duties and K104.11 million in excises. Since 1986 sales tax has become the largest single source of tax revenue in Zambia. Sales tax in Zambia is selective and not general.⁶ All taxable goods and services are specified in schedule 307 the Sales Tax Act and addition of new commodities is done by way of an amendment to the Act.⁷ Only registered dealers are required to issue invoices quoting the sales price and the tax paid.⁸

The tax burden is usually shifted to the final consumer. In respect of services rendered by architects, surveyors, lawyers and accountants, the burden is similarly shifted to the consumer.⁹ For locally manufactured goods, the taxable price is either the factory price up-lifted by 25% or the selling price, whichever is greater. For imported goods, sales tax is linked to the payment of customs duties. The exception to sales tax are unprocessed goods and previously, essential commodities. This tax is doing quite well. All that needs to be done is to improve its administration and compliance from the local sector.

4.3.a EXCISE DUTIES

Excise duties are imported on certain locally produced goods.¹⁰ It is confined to traditional items which consist of alcoholic beverages, tobacco products, petroleum products, soft drinks, motor vehicles and some entertainment. Fruit and vegetable juices are the only food items that are liable to excise taxation.¹¹ This has been the major source of government revenue but the ratios have declined due to reduction in levels of production especially with the new trend of bringing in manufactured goods or products from South Africa at low ~~tariff~~ rates instead of giving better incentives to developing and promoting our local manufactured goods.

4.4 THE BASE TAX

The newly introduced Base tax is quite an interesting tax. It is basically aimed at taxing people who are in the informal sector. In Zambia, as has been earlier on mentioned, there is only a relatively small percentage of the population that is engaged in formal employment showing that there is definitely a large percentage of the people operating in the informal sector. Otherwise, they would have no means of livelihood. These include people like peasant farmers, marketeers and self-employed 'briefcase businessmen'. These have not been paying direct tax because of the difficulties involved in collecting such taxes and the then level of efficiency of the Revenue Authority. The best government could do was to tax them indirectly using such mechanisms as sales tax.

The Amendment Act¹² provides that ^{if} the Commissioner does not have sufficient information on which to estimate an assessment, the Commissioner

may assess a Base tax of K10,000 in any charge year and a credit shall be allowed for the amount of any Base tax which has been paid in a charge year when establishing the amount of tax which is due and payable resulting from any subsequent assessment which the commissioner may determine for any charge year. This means that the commissioner does not only have the power to estimate a minimum of K10,000 on selected tax-payers, but also to raise further higher assessments for the same charge year. And should this happen, the K10,000 paid as 'Base tax' will be deducted from the amount of tax due. This tax will be very difficult to implement because the tax payers will first have to be identified and it cannot be everybody because most people cannot and will not be able to meet the demands.

For this tax to be effective, the government must identify a specific target group and not a general one as the definition provides by saying everyone in the informal sector. There are also no modalities put in place to guide the commissioner in circumstances where he can charge more tax and how much that should be in proportion to the income of a person. By September, 1994, the tax department had not been given the formalities and modalities of assessing and collecting this tax and yet it was introduced in April.¹³ That just goes to show that it is not as easy as it seemed when it was introduced. Thus the government should not just rush into this but must conduct a research to see how best to implement this tax because it is a very good idea. It will if utilised properly, provide a lot of revenue to the government in the long run. Thus before it is put into place, all the necessary ground work should be done to make sure that it will work smoothly. It will also make people of all walks of life responsible citizens.

4.5 RECOMMENDATIONS AND CONCLUSION

Law is an instrument consciously created to organise, regulate and direct the behaviour of what it is intended to apply to. To a considerable extent, the business of economic development is dependant upon the policy objectives and the nature of the law and legal framework within which it is undertaken. That is why the Law of taxation is very crucial to a country's development. The British experience has shown that the tax as an instrument of economic and social policy can be most effective and it is mainly in this respect that the tax laws of many developing have not kept pace with the modern economic and social trends in the more developed societies.¹⁴

The legislation relating to the Law of taxation in Zambia, like that of many developing countries, leaves much to be desired. The laws are difficult to understand and are made more complicated by the fact that we use the Income Tax act Cap 668 of 1966. From 1966 to-date, 1994, there have been numerous amendments every year to the extent that the original Act has ceased to have any proper meaning and significance. In fact it is a useless collection of archaic provisions which do not reflect the true position of the law. What the government has to do, first of all, it to enact a new Act consolidating the current position of the Law instead of leaving it in numerous scattered Amendment Acts and thus making it very difficult for people to know the exact position of the law concerning various aspects of income tax.

People need to be educated so that they can be aware of their rights with regard to tax because in most instances the ignorance of their right to appeal against certain tax assessments has led the Revenue Authority, though' not deliberately, to exploit them without being taken to task or having a case to answer.

The personal allowance or relief in form of tax credit that is given under the income Tax Act does not reflect the social and economic atmosphere in the society. This should be designed to give a reasonable standard of living to tax payers which has not been achieved as can be seen from the low standard of living that is rampant among the majority of tax payers. Government should reduce the burden on income tax payers. Government should reduce the burden on income tax payers by either increasing the tax credit or reducing the graduated rates. This is to enable it remove people in low income groups from the tax bracket. The tax credit should be increased to double the amount currently being offered. This would go a long way in ensuring that the tax payers atleast have a reasonable standard of living that is expected and that has been denied them for a very long time.

Taxation and tax legislation can play a key role in fashioning the pace and direction of economic development. What needs to be done is to encourage people or certain industries to develop by giving them proper incentives. The government should reduce the high import duties on raw materials so as to encourage industries. It must instead discourage the recent trend of importing finished products (some of whose quality leaves much to be desired) at low tariff rates thus making their prices low and consequently killing local industries. Corporate tax must be reasonably low. The government should encourage business to develop and others to be started so that there can be a wider base for tax which would result in more taxpayers and more revenue. The investors and Transnational corporations should also be reasonably taxed so that a huge sum of money does not leave the country in form of foreign exchange ~~which goes to~~ further develop the developed countries.

It is an action of taxation that earned income should be lightly taxed than unearned income but the case in Zambia is that unearned income is more lightly taxed. The Act provides for the withholding tax of only 10%. The rates for incomes that are suspected to withholding taxes such as Treasury bills should otherwise be increased from the 10% to 20% or be subjected to graduated rates like those applicable to individual income tax payers so that more revenue can be realised from this source. At the same time the burden should be reduced on income tax payers who have to work hard in order to earn that income so that they also can have a reasonable standard of living and enjoy the fruit of their labour.

Non-wage income like gifts, inheritance and interest are either lightly taxed or not taxed at all but this situation should not be allowed to continue. Though it is not being suggested that the tax on these should be heavy, it must at least be a reasonable one.

Other taxes like the Property Transfer tax, Estate duty and indirect taxes should be properly utilised by improving the administration system in the area of collection. The Property Transfer tax, for example, should be taxed at the previous rate of 7.5% instead of a mere 2.5% that has been put in place by the 1994 Amendment Act. The bureaucracy and the number of government departments which need to be involved in the collection of some of these taxes are the ones that have contributed to their poor performance. The government must revise the whole set up and make the collection of these taxes easier by allowing the departments concerned to collect the taxes and by providing efficient filing and information systems.

According to the canons of taxation laid down by Adam Smith, tax should be certain and must not be left to the arbitrary discretion of the Revenue

Authority. But this has not been followed in relation to the newly introduced Base tax. The Act¹⁵ states that assessment of the tax due from an individual is entirely at the discretion of the Commissioner. He is the one to decide who is to pay the amount provided for in the Act of K10,000 per annum and who is to pay more. It does not give guidelines as to how this excess amount is to be calculated and arrived at nor the maximum amount that can be imposed. There are no limits as to the categories of people or the level of standard of living of the people who are liable.

This is very unrealistic and an oversight on the part of the government because there are many people who are living in dire poverty made worse by the capitalist economy we are now in. And though they might be involved in the informal sector like marketeering, they will surely be overburdened and put in a worse condition by the imposition of this tax. And so the government will waste a lot of money, effort and labour in trying to collect this tax from nay people who are very unlikely to meet such obligations.

The government is advised to remove marketeers from being subject to Base tax but instead use the licence system to tax them a reasonable fee which can be divided into monthly instalments. People like small scale farmers should be have the tax levied and collected when they are selling their produce to people like government agents or it can also be withheld by the person buying from the farmer and taken to the Revenue Authority as in the case of rent. The other small scale traders are the ones who can be subjected to Base tax but a criteria needs to be put in place to be able to identify who actually should be able to pay and rates should be provided on the basis of the profits to see who can be liable to pay more and how much instead of leaving it to the discretion of the Commissioner of Taxes.

The problems of evasion and avoidance need to be urgently looked into and corrected so that the vast amounts that are now being lost to government could be collected and used profitably so that the burden can be reduced on the few faithful corporate income tax payers. Evasion and avoidance have been shown to be as a result of a number of factors including high rates of taxation, proliferation of taxes and charges, ignorance of tax laws on the part of the general public due to poor public relations by the Tax Department and absence of tax-consciousness on the part of the population.¹⁶ This means that for the problem to be redressed, all the above problems should be attended to. The government should work at improving the poor relations between the public and the Revenue Authority and at reducing the rates of tax especially for individual tax payers. There should also be an educational campaign to educate the masses instead of wasting money bringing adverts of the Revenue Authority which do not provide any useful or educative information to the public.

One of the collection mechanisms to avoid evasion is with-holding tax through PAYE, advance payment made periodically by the corporations and self-employed persons. Withholding tax covers all forms of deducting tax at source. This minimises evasion. From the point of view of the state, the most practical way of dealing with the problem of tax avoidance and tax planning is not to create laws which are ambiguous and which raise difficulties for the tax payer as well as the Revenue Authority, but rather to ensure that legislation is simple, just and reasonable.

This is notwithstanding, it is hardly possible to expect attempts at tax avoidance to cease. Tax payers will continue to defend themselves against the hard bites of direct taxation.¹⁷ It is most desirable therefore that the Revenue Authority should be constantly on its guard so as to be prepared to

introduce measures which become necessary to counteract these devices and thereby bring about a higher degree of equity on taxation in the community as well as greater effectiveness on such measures from the stand-point of the safe-guarding the tax.

Having seen the importance of taxation, it cannot be over emphasised that government should be more serious in this area by making sure that it implements some of the recommendations that have been brought forward and those from various quotas. The most important being the re-drafting and enacting of a new Income Tax Act as it has done concerning the Companies Act. But in all this, it should be recognised that, " No tax system can be more effective as its administration is efficient."¹⁸

END NOTES

1. Goode, R Government finance in Developing Countries
The Bookings Institution, Washington DC
(1984) p. 135 as quoted by Simbyakula on page 171 IBID
2. BAHL, R.W. The Taxation of Urban Property in less Developed Countries
(1979) Madison p. 273
as quoted by Simbyakula on page 173 IBID
3. Interviews with various Income tax payers at ZANACO, small scale business men,
other tax payers and personnel at Revenue Authority
4. Zambia Income tax at a glance by Department of Taxes
(1993) p. 7
5. Section 82 A of the Income Tax (Amendment) Act 1994
6. SIMBYAKULA R.N. Taxation and Economic Development in Zambia
(1990) JSD Thesis pp. 313 - 315
7. IBID p. 316
8. Section 9 (1) - Sales Tax Act
9. Op. cit SIMBYAKULA p. 321
10. Section 7 - Customs and Excise Act
11. Op. Cit SIMBYAKULA p. 285
12. Section 64 (C) - 1994 Amendment Act (Income Tax)
13. MR. LUNGU - Chief Tax Collector - Revenue Authority (Interview)
14. TOBY, RA The Theory and Practice of Income Tax
1978 p. 23
15. Income Tax (Amendment) Act 1994
16. Sumbwe, MR Income tax as a source of public Revenue
(1986/87) Obliq. p. 38
17. Op. Cit TOBY p. 151
18. IBID p. 36

BIBLIOGRAPHY

1. BURTON J.H. How to Appeal against tax assessments
(1950) Jordan and Sons Ltd. London
2. MAYSON S.W. A practical approach to revenue law
3rd Edition (1980) Livesey Ltd. Shrewsbury
3. MUSGROVE R.A. Public Finance in Theory and Practice
Second edition
4. SEIDEMAN, A Money, banking and public finance in africa
(1986) ZED Books Ltd London
5. SILKE, A.S Tax avoidance and tax reduction
(1958) Juta and Co. Ltd Cape Town
6. TILEY, J Butterworths UK Tax guide 1992 - 1993
11th Edition
7. TOBY, R.A. The Theory and Practice of Income Tax
(1978) sweet and maxwel, London
8. WATSON, O Longman Modern English dictionary
(1976) London
9. WHEATCROFT, G.S.A The Law of Income Tax, Surtax and Profits Tax
(1962) Sweet and Maxwell, London

DOCUMENTS

- EZEOKOFOR, G.O. The role of taxation in the industrial development of Zambia 1978/79 obliq
- OKELLO, M Some features in the Law of Taxation : Policy and Planning. 1978/79 obliq
- SIMBYAKULA R.N. Taxation and Economic development in Zambia. 1990 JSD Thesis
- SUMBWE Income tax as a source of revenue 1986/89 obliq
- Income Tax at a Glance - Z.R.A. Practice notes.

STATUTES

Income Tax Act

Income Tax Ammendment Acts

Property Tax Act

Sales Tax Act

Customs and Excise Act