

THESIS
LLM
PHI
1975

603750

INVESTMENT INCENTIVE ASPECTS OF ZAMBIAN TAX LAWS

BY



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Thesis Submitted to the University of Zambia For
the LLM Degree, April 1975.

ABSTRACT

In the Zambian economy, Taxation holds a key role to economic development. This has been the case since the time of independence in 1964 when the use of five-year development plans was introduced. Since then, what has troubled the minds of economic planners has been to devise a system of taxation, which, while providing the government with sufficient revenues to finance its developmental and non-developmental expenditure, it does not create disincentives to local and external investment.

During the earlier days, the demands for reform made by prospective investors created the impression that the tax system was more revenue-oriented than to attract foreign investments. This impression was to a considerable degree confirmed by the fact that government has relied quite heavily on tax revenues. However at present, demands for tax reform have subsided, and two facts can account for this. The first obvious one is that there has been a considerable amount of reform already which has satisfied the minds of investors especially corporate foreign investors who made the most demands. The second one is the fact that, owing to government infiltration into the bulk of our private sector enterprises, e.g. the 51% takeover of the Mining Industry and the many

companies controlled by the Industrial Development Corporation (INDECO), the influence of officers who owe greater allegiance to the government has been to make less demands for tax reform which would reduce government tax revenue.

As at present, there is an urgent need to rationalise the tax system so that it should fall more in line with the economic circumstances of the country. In some cases, there is the need to create incentives for investment even if these would reduce revenue, because the long term benefits would be substantial. This is more so in the fields of farming and the creation of a rural economy which would both create additional employment facilities. In other cases, reform is needed in order to enable the flow of more revenue to the Government. This would offset the loss in revenue occasioned by the incentives granted as suggested above.

In this paper we have not made concrete suggestions for reform. However, the criticisms made of the system of taxation should form a good basis for formulating any future reform.

Finally, one should not forget to mention that the lack of suitable manpower has contributed to a large extent to the lack of reform and in some cases to undesirable reform. For as long as this constraint continues, no major changes in the Zambian tax system may be expected.

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ACKNOWLEDGEMENTS

I would like to sincerely thank Professor James T. Craig of the School of Law of the University of Zambia for reading the first draft of this work and for making many useful comments throughout its preparatory stages. I would also like to thank all those others who furnished their most valuable comments.

INTRODUCTION

This study is aimed at looking at Zambian Tax legislation with a view to evaluating its incentive value for both external and local investment. One basic assumption has been made; i.e. that investment (Private or Government) is a necessary pre-requisite to economic development. In short, an attempt is being made here to study the relationship between taxation and economic development in Zambia.

The study has been divided into Seven Chapters, each of them dealing with different aspects of taxation. These Seven chapters and the aspects of taxation they are concerned with should not be regarded by the reader as exhaustive of the taxes that are imposed by the Zambian tax System. There are a lot more taxes imposed which are not relevant to the present inquiry.

Chapter I deals with the History of taxation Since the first legislation; the Native Tax Proclamation (No 9 of 1914) was enacted by the British High Commissioner to South Africa, through the period of the Federation of Rhodesia and Nyasaland (1953-1963) to the time of Independence in 1964. The Significance of this Chapter is that it offers to the reader a sizeable amount of background which is

necessary for the understanding of the Post-independence System of taxation.

Chapter II deals with the theoretical aspects of taxation. However, it is only those aspects which were deemed necessary by the author which have been dealt with. The Virtues and defects of tax incentives and other implications have had brief but clear treatment. The portion on the objectives of taxation brings to the reader the clash between the incentive value of taxes and their value as revenue sources. The prominent feature of the whole inquiry has been to see which of the two aspects have had a significant influence on the Zambian tax planners in formulating tax policy.

Chapter III looks at the taxation of individuals. The State of the law before and after the 1969 budget has been looked at. The aim of this chapter has been to see how taxes have been employed to induce certain desirable behaviour on the part of individuals e.g. savings and investment. Tax considerations as to the entry into specific occupations or the availability of labour have also been looked at. This has been accomplished by looking at the rates of individual taxes and exemption levels.

In Chapter IV, we look at the taxation of Companies.

"Companies" here refers to Companies other than Mining Companies which have received separate treatment in Chapter V. The revenue importance of Company taxation to the Zambian Government has been considered. Along with this we have looked at the whole system of company taxation to see what provisions are of significant incentive value. These have included provisions as to relief from double taxation and all the deductions in respect of Capital expenditure. At the end of the Chapter, there has been a Critical appraisal of the System.

The taxation of the Mining Companies has been dealt with in Chapter V. Prior to 1964, all rights to minerals in Northern Rhodesia (Zambia) were vested in the British South Africa Company. This was a Company created by Charter by the British Crown. During that time the Company imposed a form of tax, the Royalty, on the Mining Companies. The Royalty was continued for some time after Independence by the Zambian Government. The effects of the System of Royalty and Export Tax on the development of the Industry have been considered. After 1970, a new tax, based on profits was introduced. This tax is still in force and it has been said to be more equitable than the Royalty which was based on production. The incentive value of this System has been assessed.

Chapter VI deals with indirect taxation, i.e. Import duties, Export duties and Excise taxation. A considerable amount of incentives is contained in these taxes especially in the Case of import duties where exemptions are offered in the case of Capital goods and **raw materials**. In addition, the revenue importance of Indirect taxation to the Zambian Government has been dealt with.

Lastly, Chapter VII deals with what have been termed as Miscellaneous taxes. A group of these taxes, which usually take the form of Licence fees has been selected and dealt with. Usually, it has been found out that these have no incentive potential; they are levied almost exclusively for raising additional Government revenue.

CHAPTER I

HISTORICAL BACKGROUND

Prior to 1911, present Zambia was divided into two parts, North-Western Rhodesia and North Eastern Rhodesia. The two areas were amalgamated by Order in-Council in 1911 to create Northern Rhodesia. At the time, the British High Commissioner in Capetown, South Africa legislated for the territory by way of proclamation.

The tax system at the time and continuing during the Colonial period in Northern Rhodesia was characterised by discrimination based on the race of the tax payer. Thus there existed a two-tier tax system i.e. the tax levied on Natives and that levied on Non-natives. The latter, which concerned tax payers other than of native race was later to become the income tax which also included the taxation of entities other than individuals.

NATIVE TAX

Before amalgamation the two Rhodesias had different rates for native taxes. In North-Western Rhodesia, the annual rate of tax on all male adults was 10 shillings. This was a poll tax. In addition,

there was levied 10 shillings tax for each wife or concubine after the first. In the Eastern Rhodesia, there was a hut tax of 3 shillings per annum in respect of any hut occupied by an adult male native and also on each hut occupied by his family or dependants.¹

The hut tax was later found to be unsuitable since it produced adverse social consequences. After amalgamation, it was abolished and a unified tax system was introduced based on the North-Western Rhodesia type. Until 1920 the rates of tax in North-Western Rhodesia and North-Eastern Rhodesia were 10 shillings and 5 shillings respectively. This difference was based on the wrong assumption that the Western side of the territory was richer than the Eastern districts. During the course of time several changes in tax rates in respect of particular areas were made in order to make the tax burden on natives more in conformity with their capacity to pay.²

The oldest legislation governing matters of tax in the territory was the 1914 Proclamation which was signed by the British High Commissioner to South Africa. This legislation, which was in the nature of a proclamation dealt only with the taxation of

Natives. The proclamation imposed tax, not exceeding one pound on every native. However, one pound was only the maximum amount of tax which could be charged. In fact, the proclamation itself empowered the Administrator of the territory to fix the actual amount of tax with the approval of the High Commissioner. Recognising the economic disparities between different districts the proclamation provided that different amounts of tax could be levied in different districts.³ In the beginning as noted above, tax was higher in the Western districts - this being so because the area was the first to be penetrated by the line of rail and it was in this area that Africans had their first contact with wage employment.

Section 4 (1) of the proclamation charged tax on every native in a district to which the proclamation applied. It appears that no discrimination was made between men and women; including married women.

Further, if a native had more than one wife, he was liable to pay, each year, tax not exceeding ten shillings in respect of each additional wife.⁴ This provision brought a very heavy tax burden upon african males who found themselves responsible for their wives' tax liability. The social implications were that the

provision discouraged polygamous marriages and left some old widows helpless who would otherwise have been inherited by others after the death of their husbands. As a result of the heavy tax burden, most native males left their areas in search for work in distant places.

Like most modern legislation, the proclamation contained provisions regarding exemptions from the requirement to pay tax. If a native proved that due to age, chronic disease, accident or other sufficient cause he was rendered unable to work he was exempted from the payment of all or part of the tax. The proclamation required such native to acquire an exemption certificate from the Native Commissioner.⁵ Disputes concerning decisions on matters of exemption were to be referred to a magistrate of the district in which the applicant was resident.⁶

For any native who wilfully neglected to pay tax, there was a penalty in the nature of a fine of five pounds or in default of such fine imprisonment with or without hard labour for a period not exceeding three months. The imposition of this fine or imprisonment did not however, relieve the particular native from the payment of the tax. The amount of tax due remained

a judgement debt in favour of the government and it was recovered as such.⁷

Tax was to be paid in sterling coin but at the discretion of the Native Commissioner, it could be paid in grain or stock.⁸ The value of this grain or stock was their current market value. To accept payment in stock or grain was a more realistic view since at that time the proportion of people in wage employment was negligible.

A lot can be said about this piece of legislation. However, three things ought to be mentioned. First, there was the absence of individual assessment for tax purposes. Tax was charged at a flat figure and commonly to all residents of the district. There was the notable absence of tax assessors who, as was the case in West African territories, were local men with an understanding of the economic standing of the native tax payers and could therefore judge their ability to pay.

Secondly, there was the absence of personal allowances. Tax was charged equally between single people, married and married with children. In fact, owing to the fact that the man was responsible for his wife's tax, married men were at very great disadvantages. The tax did not

also take account of differences in income. The combined effect of these factors was that the tax was greatly regressive.

The third observation is that the collection machinery was very weak where it existed and completely absent in other areas. The reasons for this are that:-

- (a) the country was very wide and sparsely populated with poor communication which made the work of tax collectors very difficult.
- (b) The **second** reason, and one which was more significant was that the machinery for tax collection did not include the use of the good offices of the chiefs who were at the time closer to the people and could command better obedience.

The Native Tax Proclamation of 1914 was repealed and replaced by the Native Tax Ordinance 1928.⁹ The provisions of the Ordinance did not differ dramatically from those of the Proclamation it repealed. However, recognising the fact that due to the exposure of the Africans to the cash economy, most of them migrated to neighbouring territories to look for work. The Ordinance therefore, broadened the tax scope and brought in those africans who had been left out by the

previous legislation. Section 4 of the Ordinance levied tax on:-

- (a) "Every Native domiciled in the territory whose village was situated in a district to which the Ordinance applied and
- (b) Every native domiciled in some country other than the territory who is resident in the district."

One important departure from the preceeding proclamation was the method of payment-enforcement introduced by the Ordinance. Any native who failed to pay tax when it fell due was liable to have his tax liability increased by one shilling.¹⁰ Further, the Ordinance provided that the amount of tax due from any native was recoverable, on conviction, by distress, and in default of sufficient distress, by imprisonment with or without hard labour for a period not exceeding two months.¹¹ Tax could be paid in grain or stock. This provision was put in to enable the vast majority of natives, who would otherwise have had no capacity to pay their tax in money, to be able to pay their tax in kind. The Ordinance tried to avoid double taxation by providing that if any native had paid tax in another territory, he was exempted from tax due in the same year in this territory.

An important amendment to the 1928 Native Tax Ordinance was made the following year. The Native Tax (Amendment) Ordinance (No.51 of 1929) had the effect of abolishing taxation of plural wives as it was found that it penalised Natives who accepted responsibility under tribal customs and that it brought an unnecessary number of divorces among natives. At the same time the rate of tax for the whole territory was increased by two shillings and six pence to bring it to Ten shillings for the Eastern districts, and Twelve shillings and six pence for the Western districts except for the Balovale district where the rate of tax had remained at Seven shillings and Six pence.

During the thirties, Native taxation became increasingly important as a source of revenue for the Northern Rhodesia Government. In 1936, receipts from Native Tax amounted to One Hundred and three thousand, four hundred and sixteen pounds, representing 13 per centum of total revenue for that year. During the early thirties, the natives of Northern Rhodesia began to find it increasingly difficult to pay their tax. This came about by reason of the fact that due to the collapse in the Copper price, employment was hard to get within the territory. At the same time markets for Northern

Rhodesia native labour outside the territory had rapidly decreased. The recruiting Organisations- One lead by Mr R.W. Yale and the other, the Northern Rhodesia Native Labour Bureau had managed to flood the labour markets of Southern Rhodesia so that it was no longer possible for Natives to find work through the organisations. In areas away from the line of rail, it was even more difficult for natives to pay tax. Wages in these parts were low and there is evidence that, at times, africans were paid nothing more than their food rations.

Due to these difficulties, which lead a considerable number of africans towards tax evasion, the collection of Native tax fell. During the financial year 1931-32 Native tax collected amounted to One Hundred and Forty Eight Thousand pounds; but by the financial year ending in 1933, the tax had fallen to One Hundred and Four thousand pounds despite the fact that mining operations had seen a considerable amount of expansion during 1933 and there were increased opportunities for employment. At the end of the same year, the amount of tax due and outstanding from natives for the preceeding four years was One Hundred and Fifty two thousand pounds and the number of Africans exempted from tax was estimated to be in excess of 78,000.

In 1932, a Finance Commission was set up. The commission, which was concerned with economies and methods of increasing revenue recommended that native tax should not be increased. This recommendation was against the then prevailing idea that an increase in the rate of native tax would both provide government with additional revenue and induce the native to sell his labour during times when it was scarce and necessary.

The following year, a Tax Committee was set up¹² "in order to make changes for such recommendations in the incidence of taxation as would not involve any immediate sacrifice of revenue. The Committee did not recommend reduction of the rate of native tax. Perhaps one of the most valuable contributions of the Committee is to be found in its observations as to the inequalities existing in the tax system at that time. The Committee called attention to the inequalities caused by the flat rates of the poll tax and in the arrangement where a person who might be in very remunerative employment outside his home district continued to pay tax at the rate fixed for that district. The Committee therefore, recommended that tax should be paid at the rate of the district in which it was collected.

The Committee reported:

"A reduction of any district rate has the consequential effect of reducing the tax paid by natives of that district employed in a settled area on conditions identical with those of their fellow workers from more highly taxed parts of the country. An urbanised native might continue indefinitely paying the tax rate of a village to which he has no intention of returning permanently during his working life."¹³

After the Tax Committee had reported in 1934, the whole question of Native Tax was reviewed by the government. In 1935, certain changes were introduced and the new tax system prevailed for a long time. The general rate of tax was reduced from twelve shillings and six pence to ten shillings and in the case of the Balovale district, it remained at seven shillings and six pence. A further change was that a graduated rate of tax was adopted for the centres of employment, the areas adjacent to them and the areas where there was adequate market for native produce.

At the time, the Copperbelt was the only centre of employment where a large number of Africans were in some kind of lucrative employment. The introduction of a graduated rate of tax therefore, affected the African

worker in the mining industry. On the Copperbelt generally, tax rose up to Fifteen shillings. In May 1935, there were disturbances at Nkana, Mufulira and Luanshya mines and the report of an inquiry published in 1938 found that tax had contributed to the causation of the disturbances.¹⁴ Among the direct and predisposing causes of the disturbances, the Commission included the following;

increase of tax to Fifteen shillings a year in the Mining areas; the time of the year i.e. May, instead of January at which the notice of the increase; the manner in which taxes were announced, alleged insufficient wages and rations etc.

At the same time, going by the recommendations of the tax committee, a radical change was made in the basis of native tax assessment. Instead of domicile being the basis of the assessment of the amount of tax, residence was now adopted as the criterion. One month's continuous stay in a district constituted residence for the purpose of native tax.

The effect of these changes, from the taxpayer's point of view, was that there was an attempt, though a small one, to approximate the amount of tax demanded to the native's capacity to pay. The tax in the outlying areas

was reduced while it was increased in the areas of employment (particularly the mining areas) and those areas where there existed a market for native crops.¹⁵ Another effect of the change in the basis of assessment might have been the reduction in the flow of labour from the outlying areas where tax was lower to areas where it was required. The changes also had some financial effects. The committee reported that

"the effect has been slightly to reduce the total assessment of tax, owing to the relatively small number of natives employed or residing in areas where the rate of tax has been increased. In the year 1934, 186,000 persons paid tax, the proceeds being One hundred and eight thousand, one hundred and forty one pounds."¹⁶

In effecting the general reduction in tax, it was government anticipation that there would be an increase in the number of persons to pay.

However, although the changes may represent an attempt at making native taxation more equitable, they also gave rise to certain inequalities. These inequalities became apparent particularly in the Copper Mining districts.

In the case of mining employees whose average wage per month was about twenty five shillings, fifteen shillings tax per annum was not difficult to pay although the one

month residence criterion may have caused hardship to those who were employed only for short times. But the employees of the mines were not the only inhabitants of the mining areas. There were other people looking for work, or working in other sectors. Very few of these were in a position to pay an annual tax of fifteen shillings. In the case of those who were not employed, the high tax in the mining districts was good as an administrative weapon in that it was fancied as a deterrent, although not a very effective one, against a prolonged stay in the mining districts.

On the mines, there were great obstacles to the collection of tax. Firstly, the committee found that no registers were in existence and secondly the administrative staff who were responsible for tax collection had a lot of other routine and other work so that it was difficult for them to bring pressure on persons who evaded tax payment. These difficulties were further aggravated in the case of other inhabitants of the mining areas and it was certain that there was extensive evasion among those inhabitants.

Primarily, administrative officers were responsible for the collection of Native Tax in the territory. The majority of the tax was paid at district Headquarters while some of it was collected by District Officers on tour.

Still smaller sums were collected by clerks and messengers of chiefs. Later on, fulltime native clerks were employed to tour districts and collect tax. Chiefs and native authorities were not involved in the collection of tax although they were of great assistance to the District Officers and Clerks while on tax collection tours.

Originally, non-payment of tax was a criminal offence and by the provisions of the 1914 Native Tax Proclamation natives who failed to pay tax within six months when they fell due were liable to a fine not exceeding five pounds or to imprisonment for a period not exceeding three months for each tax owed. This penalty did not however, operate to relieve the native of the tax debt. The 1928 Native Tax Ordinance changed the situation. The Ordinance converted the recovery of taxes which were due into mainly Civil rather than a criminal process, laying down that tax was to be recoverable by distress and imprisonment only after default of sufficient distress.

Later on, in 1935 the administration took the opportunity of the changes in tax rates to abolish the late payment penalty of One shilling for every tax that had fallen due and was unpaid. The result of these changes was that the law of tax collection was gradually made more lenient and consequently the difficulties of enforcement increased.

However, an additional contributing factor towards tax collection difficulties was the high rates of tax and the shortage of means in most of the areas. Several thousand people were imprisoned for tax default. At the same time, there was a strong feeling that tax was in many ways inequitable and so in 1934, a judicial circular was issued directing that persons convicted for tax default should be sent to prison only if it was proved that they had the means but deliberately failed to pay or get work.¹⁷ This led to a considerable decrease in the number of imprisonments for tax default. A further circular, laying down an elaborate procedure for conducting tax default cases was issued in 1936 and the main object of this circular was to ensure that the prosecution of tax defaulters should be carried out in accordance with the law as it stood, while the intentions of the first one was to provide that tax defaulters ought not to be imprisoned unless it was shown that they were not genuinely unable to pay.¹⁸

It can be contended therefore that the difficulties in native taxation during the thirties were mainly due to the system of taxation itself. Northern Rhodesia was a country of small cultivators, the population was sparse and the distances were great so that if the natives ceased to be willing to pay tax, collection was impossible. The

problem worsened when an elaborate procedure was laid down for the enforcement of tax. What the administration should have done was first to make sure that the rates of tax were reasonable and this having been done, to ensure that the tax was enforceable. The defect of the system was summarized as follows:-

"First the tax is based on no true relation between tax and means. Secondly it is impossible to collect thoroughly without either a degree of public spirit on the part of the tax payer impossible to expect in any part of the world, or the imposition of penalties and measures of compulsion such as offend against our own sense of justice and right. Thirdly this collection engrosses to excess the time and activity of the Provincial Administration and is a potential cause of most undesirable relationship between our district commissioners and the natives. For it is hard for the tax collector to assume the role of guardian and champion of the tax payer."¹⁹

All the problems connected with Native Tax received careful attention by both the Government and the elected members of the Northern Rhodesia Legislative Council. On a motion brought to the house in 1936 "that the native tax is too high and ought to be reduced," as amendment

was accepted by the Government to the effect that the native Taxation as it existed was far from equitable and something should be done to evolve a more equitable system of taxation.²⁰

Towards the late thirties a greater number of natives were exposed to wage employment, and this meant that the problem of taxation was worsening in that a larger number of people were involved. Several alternatives were suggested and by 1938 it was obvious that a better and a more graduated tax system was necessary, but there does not appear to have been any mention of individual assessments. Emphasis was still laid on area assessments and because of this the amount of tax bore no relationship to capacity nor did it help to distribute the tax burden among natives.

The most significant contribution of the 1938 Native Tax Ordinance was in the way of tax collection. With regard to Native taxpayers who were in government employment the Ordinance made it lawful, on the demand of the District Officer, for a head of a department to deduct from wages or salary of a native employed by such department any sum of money certified to be the tax due from such native.²¹ This Ordinance remained in force and governed the taxation of natives through the period of the

Federation until it was repealed in 1963.²²

INCOME TAX

Upto 1924, the British South Africa Company administered Northern Rhodesia. While it managed to tax natives from as early as 1912, it did not tax non-natives from as early a date as that. For sometime non-natives resisted the Chartered Company's attempt to impose tax on them. Feeling among the Settler Community at that time was that the imposition of tax by the B.S.A. Company was unfair in that they were not represented in the government. The only representative organ for the settlers was the Advisory Council, which was a non-statutory body and therefore had no power to make laws or in anyway to take part in the administration of the territory. However, as among the Settler Community, the Council was an elected body and because of this, it was felt very strongly that it ought to be the administering body. Settler sentiment against the imposition of tax grew so high that in 1921 a petition signed by 175 people was sent to the King of England.²³ This petition lead to the creation of the Buxton Committee. Protest against the imposition of tax is contained in article 6 of the petition:

"6. The Company and His Excellency the High Commissioner are proposing to levy an income tax

on the white people. This proposal was submitted to the Advisory Council, who advised:-

"That the imposition of the proposed income tax had better be deferred until agreement on the lines suggested can be come to between the British South Africa Company and the Advisory Council."

The agreement suggested was:-

1. The expenditure and collection of all monies from the public of Northern Rhodesia shall be subject to the approval of and be controlled by the Advisory Council.
2. No alteration shall be made to the law of Northern Rhodesia nor shall any Proclamation have any force or effect within the Territory of Northern Rhodesia after the.....day of June, 1920, unless such alteration or Proclamation shall have first received the approval of the Advisory Council.
7. There is no provision for any control of expenditure by the Advisory Council as representatives of the white people nor for satisfying them that the money collected is not being misapplied."

On this question the Buxton Committee recommended that the Company should be asked to make available "for the information of the Advisory Council, all details of administrative revenue and expenditure, and will submit to it draft Proclamations affecting Europeans. But that it would not be possible to invest in a non-statutory Body such as the Advisory Council with power to veto taxation or to make alterations in the law."²⁴

Income Tax was imposed in 1921²⁵ and at first it was chargeable

- i. On income derived from sources within the Territory and
- ii. on income derived from adjacent territories, other than banking and insurance business, if not chargeable with Income or any other similar tax in those territories.

A new Income Tax law was introduced in 1926 which widened the scope of the tax in that it charged tax on income received in the territory from sources outside the territory.²⁶

Section 8(1) of the Ordinance exempted from the payment of tax a native who was liable to pay tax under native tax law, or any such native who had been exempted from

payment of the whole or part of the Native tax.

Tax was charged on income derived from the following:-²⁷

- (a) gains and profits from any trade, business etc.
- (b) gains or profit from any employment
- (c) annual value of land
- (d) dividends, interest or discounts and
- (e) rents, royalties, premiums and other profits
arising from property.

In ascertaining the chargeable income of any person, the ordinance provided for a number of deductions and allowances.²⁸ These included such things as replacement of any plant or machinery, rent paid by the tenant for the purpose of acquiring the income, interest on loans taken by the payer, bad debts, repair to buildings and contributions to established superannuation, medical or pension fund for employees. The Ordinance also provided for a wear and tear allowance but no rates were specified. The Ordinance only provided that the wear and tear allowance should be a reasonable figure.²⁹ In the case of mining operations the ordinance provided for a redemption allowance.³⁰ There was a further deduction in respect of trade losses.³¹ The ordinance did not specify the kind of losses which could be allowed for tax purposes.

In the case of individuals the ordinance provided for a number of deductions. In the first place, there was a

personal allowance of a sum equal to One tenth ($1/10$) of the amount of his earned income provided that such sum did not exceed the maximum of two hundred pounds.³² If the individual was married and had children, he was given a further allowance of six hundred pounds in respect of a wife actually living with him and if his children were below eighteen years, ninety pounds in respect of the first child and sixty pounds for each subsequent child.³³ There was no limit as to the number of children for which the allowance could be claimed. There was a dependants allowance of fifty pounds per dependant and further there was a deduction in respect of sums paid for life insurance and contribution to widows' and orphans' funds. In the case of married women, their income was deemed to be the income of the husband.³⁴

In relation to the mining Companies the Ordinance provided for the redemption over the life of a mine of capital expenditure on Plant, Machinery, Shaft Sinking etc. The allowance for each year was calculated by dividing the total of unredeemed capital by the number of years estimated to be the life of the mine.

TAX RATES

The table below shows the rates of tax as provided for by the Ordinance of 1938. It will be observed that the

rates are progressive in the case of individuals and a flat rate in the case of Companies. A notable difference from the way tax is charged presently is that instead of being expressed as a percentage of income, it was charged per specified amount in a pound.

Table 1.1

Tax rates as provided by Section 22 of the Ordinance: individuals only.

For every pound of the first 100 pounds ...six pence

For every pound of the next 100 pounds...one shilling

For every pound of the next 100 pounds...one shilling
& six pence

For every pound of the next 100 pounds...Two shillings

For every pound of the next 100 pounds...Two shillings
& six pence

and for every pound in excess of 500 pounds...Three
shillings

In the case of companies a flat rate of Three Shillings in a pound was charged.³⁵ A further provision in respect of Companies was that a Company registered in the territory was entitled to deduct tax from dividends paid by it to its shareholders. The rate of the tax was to be the rate of tax paid or payable by the Company on the income out of which such dividends were paid.³⁶

Finally, the Ordinance provided for relief of double taxation where the same income was taxed in the United

Kingdom or Empire income tax.³⁷

The income tax ordinance remained substantially the same until it was repealed by the Federal Income tax Act.³⁸

Compared with the rates of tax later on, these rates of tax were very low considering that the allowances were very liberal particularly in the case of a married man who paid no tax unless his income exceeded Seven hundred and twenty pounds with an additional ninety pounds free for the first child and sixty pounds for any subsequent children. Even the rates in relation to higher incomes were not unduly high. Calculation shows that it was not until above the two thousand, five hundred pound mark in the case of unmarried tax payers and the Four thousand pound mark in the case of married ones that the tax really amounted to 10 percent of total income.

From 1924 to 1933 there was an upward trend in the collection of income tax the main sources being the railways and trade. But with the end of construction of the Copperbelt and the reduction of mining activity, the railways and trade faced a reduction in earnings. This also caused a reduction in tax collections.³⁹ The reduction in tax revenues caused serious financial difficulties for the government. In view of this the

Government and the Mines agreed that the latter should pay advance income tax in 1933 and 1934 to be liquidated until the whole debt was repaid later.

Towards the late thirties the collection of Income Tax from the Mining Companies increased and there was hope that revenue from this source would increase further owing to the fact that the Companies continued to increase their profits.

Income Tax receipts from mining companies alone were estimated to account for as much as 78 percent of total tax collections in 1938. Northern Rhodesia's economy was therefore, already relying very heavily on mineral revenue.

Apart from Income Tax there was the non-native personal tax on every non-native above the age of 21 which came into force in 1933. The first Non-native personal tax ordinance was enacted in 1932.⁴⁰ The Ordinance levied a tax of One pound on all non-natives during the assessment year. This tax was to be paid within the prescribed time to the District Officer who was empowered to issue a receipt in a prescribed form. If it was paid out of time, the ordinance provided that it was to be doubled.⁴¹ In the case of default of payment, a magistrate was empowered to order the person in default to show cause

why he should not pay the tax,⁴² and upon his findings, he could order the person in default to pay the tax and costs to court.⁴³ The sanction for non-payment of the tax was imprisonment but the ordinance provided that such imprisonment did not extinguish the liability to pay tax. The tax unpaid could therefore, be levied by attachment and sale of movable property. As an enforcement means, the Ordinance provided that the District Officer or any European Police Officer could demand production of the receipt for tax and that non-production of this receipt was prima facie evidence of non-payment of tax.

In 1933 a tax, referred to as an emergency tax was levied on every male non-native.⁴⁴ No evidence exists to guide us into finding out what emergency existed then in the country. One might speculate however, that since the early thirties experienced the great depression, the tax was meant to raise additional revenue for the territorial government. The Ordinance was spent but it was re-enacted in substantially the same form in the following year. The 1934 non-native personal tax ordinance was more permanent. It was repealed four years later. The ordinance levied a tax of One Pound to be paid annually by every non-native; to the District Officer who had to issue a receipt. Sanctions for non-payment of this tax were substantially the same as those

in the 1932 ordinance. Non-native personal tax came to an end in 1945 by the promulgation of the Non-native Personal tax-(repeal) Ordinance.⁴⁵

The non-natives of Northern Rhodesia bore their brunt of the expenses of the Second World war. In 1940 "an ordinance to make provision for raising additional revenue to meet war expenditure" was passed.⁴⁶ This tax was levied on every non-native in the year commencing on the first day of January 1941 - the tax was of One pound. It was provided that the provisions of the non-native personal tax regarding enforcement could apply for this tax. It is significant to note that the sums of money collected from this tax were to be donated to the government of the United Kingdom to meet war expenditure. It can be said, therefore, that after the war and until the federal period started in 1953, non-natives were subject only to one form of tax i.e. Income Tax.

In order to meet the financial crisis then existing the Government passed the Entertainments Tax Ordinance of 1932 which imposed tax on the price of admission to specified forms of entertainment. The tax was withdrawn in 1938, when the crisis was over and it was no longer necessary to keep it. There were also other forms of

taxation primary for revenue purposes like Stamps, Licences and Fees.

Taxation of Mining Companies

The Northern Rhodesia Government confined taxation of the Mining Industry to actual profits after allowance for the redemption of capital. In addition to the profits tax, the Mining Companies also paid Royalty to the British South Africa Company. In the case of Copper the Royalty was 2 percent on production when the cash price was less than Fifty Five pounds per long ton on the London market, and this rose on a graduated Scale with price increases above that level. For purposes of Income tax, the royalty was included as a cost of production.

During the early thirties the government considered the question of imposing an export tax on Copper. On the matter, the Finance Commission of 1932⁴⁷ were of the opinion that it would be uneconomic to impose it taking into account that the Mining Companies had incurred heavy losses during their long period of development and that the average rate of return on their capital of twenty four million pounds had been small. This remained the set up until in 1966 when the Zambian Government levied an Export tax on Copper.⁴⁸ The rate of the tax was

expressed as 40 percent of the amount by which the price per long ton of Copper at the London Metal Exchange exceeded Six hundred Kwacha.

Customs and Excise

In connection with Customs and Excise, there was a rather complicated arrangement by which income from these accrued. Customs and Excise were the main source of income for the Government producing 226,793, pounds or 32 percent of the total ordinary income.

The following were, in short, the principles on which the tariff was based as at 1938:-⁴⁹

1. there was preferential treatment for Empire goods, including the imposition of additional or alternative specific duties where differences failed to check the importation of foreign goods;
2. there was free entry of goods required by the agricultural and mining sectors if these originated from the Empire; if they were foreign, they were granted a small margin of preference;
3. free entry under Customs Agreements, for all Southern Rhodesia produce and the Union of South Africa.
4. Subject to the Customs Agreements, there was to

be protection for animal, agricultural and
pastrol products which could be produced in
Northern Rhodesia;

5. all other goods were dutiable unless they were
specifically said to be free of duty.

For purposes of Customs, Northern Rhodesia was divided
into two areas.

The Zambezi Basin area was the Southern part which
contained all important industries and accounted for a
vast bulk of the trade of the territory. The Congo Basin
area was more northerly and it was of negligible importance
from the Commercial point of view. In the Congo Basin
area, no preference was granted and customs duties were
charged at the Empire rate on all goods whatever their
origin.

Customs duties between Northern Rhodesia, Southern
Rhodesia and the Union of South Africa were regulated
by a series of Agreements between these countries. We
will not consider most of the provisions of the Agreements.
It suffices to say that the element of reciprocity as far
as preferences were concerned operated to the disadvantage
of Northern Rhodesia which had only a negligible manu-
facturing industrial sector and certainly had very little

to export to South Africa and Southern Rhodesia. The Agreements therefore worked to the detriment of the Commercial Community in that they made it difficult to develop secondary industries.

THE PERIOD OF THE FEDERATION 1953-1963

The Federation of Rhodesia and Nyasaland came into being on 3rd September, 1953.⁵⁰ Under its constitution legislative powers were divided between the Federal and Territorial Governments. Part I of the Second schedule to the Federal Constitution provided for "matters with respect to which the Federal Legislature may make Laws" and in these matters no legislature of any territory had power to make Laws. There was also provided for in Part II of the schedule "the concurrent legislative list i.e. in relation to any territory, matters with respect to which both the Federal Legislature and the Legislature of that territory have power to make Laws." One noticeable feature in this division is that there was considerable centralisation of economic power. A third category, i.e. those matters not referred to either in the exclusive list or concurrent list were left to be dealt with by the territorial legislatures. In particular most matters to do with the day to day life of the African were left to the exclusive jurisdiction of

territorial governments.

The background to Federation was characterised by arguments for and against it and as early as 1933, talk of amalgamating Northern and Southern Rhodesia was rife. African opinion was against any form of Union. For example the Ndola Native Welfare Association passed the following resolution:-

"While this Association would welcome amalgamation with Nyasaland where laws and conditions are similar to those in this country it humbly asks that the Government will not agree to the amalgamation of Northern and Southern Rhodesia. Such a step would be greatly to the detriment of the interests and legitimate aspirations of the native population of this country.⁵¹

More bitter protests came from nationalist parties particularly in Northern Rhodesia and Nyasaland who feared that the proposed Federation would be dominated by Southern Rhodesia. This sentiment against the federation continued throughout the life of the federation until it was dissolved in 1963.⁵²

Powers of Taxation and Fiscal arrangements

It was incumbent upon the governments involved in the formation of the Federation of Rhodesia and Nyasaland

to make arrangements, among other things, concerning powers of taxation between the federation and the territorial governments in order to avoid possible conflicts and subjecting the taxpayer to two sets of tax. A fiscal commission was appointed⁵³ and one of its terms of reference was to consider in particular what form of taxation on incomes would be best adapted to the needs of such a federal system, bearing in mind the desirability of ensuring, so far as circumstances would permit a uniform practice throughout the federal areas as regards reliefs and allowances.

In paragraph 22 of the Report the commission found that the three tax systems i.e. those of Southern Rhodesia, Northern Rhodesia and Nyasaland, were basically the same and therefore there was "no problem of creating a uniform practice." This was also recommended in particular in terms of reliefs and allowances. In making its recommendations the commission desired to forestall a conflict of jurisdictions between federal and territorial governments and to relieve the taxpayer of having to comply with two tax systems. In addition, they also wanted to make best use of present staff in the tax departments.

Referring to the distribution of revenue from taxes the commission observed that taxes accounted for more than

half of the total revenue of the area.⁵⁴ It recommended that 60 percent of this revenue should go to the Federal government while the remaining 40 percent was to be divided in this way:-

Southern Rhodesia	17 percent
Northern Rhodesia	17 percent
Nyasaland	6 percent

In considering these percentage divisions the Commission took account of both the source of the revenue and the needs of the recipient territory. An important recommendation made along side the above was that since this proposal was so vital, and when it was accepted, it should be included as part of the proposed federal constitution.

Further, the Commission recommended that in case of need for extra revenue by the territorial government there should be provision in the constitution enabling them to levy a surcharge over and above the federal tax.⁵⁵

In the division of jurisdictions, a prominent feature was that economic power was centralised in the Federal legislature. In order to entrench this position, matters relating to taxation had to be included in the

federal constitution since taxation is one of the strongest and effective economic tools at the disposal of governments.

In substance the recommendations of the Fiscal Commission were adopted but Southern Rhodesia got a lesser share.

Chapter VII of the Federal Constitution (relating to finance) contained special provisions as to taxation. Article 80(1) of the constitution provided

"where tax is charged on income under any law of the federal legislature not being a territorial surcharge levied under article 82 of the constitution, there shall be payable to the territories amounts equal to the following percentages respectively of the proceeds of that tax remaining after the deduction of the cost of its collection, that is to say:-

- | | |
|-----------------------|------------|
| (a) Southern Rhodesia | 13 percent |
| (b) Northern Rhodesia | 17 percent |
| (c) Nyasaland | 6 percent |

The highest percentage was allotted to Northern Rhodesia mainly because most of the federal tax revenue came from the taxation of Northern Rhodesia's Copper Mining Companies.

Article 82 provided that a territorial surcharge may be levied over and above the basic federal tax.

This tax was to be levied

- "(a) upon the income of, or, profits accruing to any person resident in the territory during that assessment year, not being a body corporate, including any income or as the case may be, profits which that person derives from participation in a partnership or
- (b) upon the income, or as the case may be, profits derived by anybody corporate from sources within the territory."

In case of a person other than a body corporate, the territorial surcharge was not to exceed 20 percent of the basic tax and in the case of a body corporate, the rate was not to exceed one fifth (20%) of the rate of the basic tax. Amounts collected from Export duties were payable to the territorial governments in the same proportions as in the case of taxes provided for by article 80(1) of the constitution,⁵⁶ however article 84 provided that amounts collected from sales taxes were payable to territorial governments in proportions to be fixed by the federal legislature by law.

THE FEDERAL INCOME TAX ACT (No. 16 OF 1954)

The Federal Income Tax Act came into force on the first April 1954. When it came into force it operated to repeal the following legislation. In the case of Southern Rhodesia: The Income Tax Consolidation Act (No. 15 of 1948); the Super Tax Act 1948 (No. 18 of 1948) and the Undistributed Profits Tax Act 1949 (Act No. 17 of 1949).⁵⁷ In the case of Northern Rhodesia, it repealed the Income Tax Ordinance (Chapter 73) and in the case of Nyasaland, the Income Tax Ordinance (Chapter 53).

The Act provided that tax would be charged, levied and collected annually throughout the Federation on any income received by or accrued to or in favour of any person during the year of assessment, and in each succeeding year thereafter.⁵⁸

As regards the rates of tax section 7 provided that the rates of tax in respect of each year "shall be fixed annually by the Federal legislature." It may be argued that because of this provision, there was introduced into the tax system a certain degree of instability in that the taxpayer was left to guess as to the rates of tax since they could be changed annually. However, the other method is not better. Although the Act may provide

for the rates of tax, these may be changed and are often changed annually by the Minister of Finance, in the case of Zambia, in his budget proposals presented to Parliament.

Exhaustive consideration of the Federal Income Tax Act is outside the scope of our inquiry. For our purpose, a simple outline of the tax system as at 1964 will suffice.

The Act imposed three forms of tax viz: Income tax, Super tax and Undistributed profits tax: Income tax was imposed upon all persons whether individuals or Companies or other taxable entities. Companies, except for certain foreign ones, were exempt from super tax while undistributed profits tax was imposed only upon certain domestic companies.

In relation to individuals and other taxable entities, income tax was charged at progressive rates but the rate of company taxation was flat. Super tax, being additional to income tax was imposed in respect of higher incomes only. The third tax undistributed profits tax, was no tax in real sense. It was aimed at discouraging avoidance of the payment of super tax.

The Act imposed tax only on income from sources within the federation with little exceptions. The taxpayer's residence was irrelevant.

Another feature of the tax system was that the Act did not tax capital gains and did not allow capital losses to be deducted. Capital expenditure was deducted in certain cases only, and then usually in the form of an amortization allowance.

The Act imposed tax on dividends in the hands of individuals ordinarily resident and carrying on business in the Federation. No direct tax was imposed in respect of dividends received by individuals neither ordinarily resident nor carrying on business in the Federation.

As pointed out above, each territory imposed a Territorial Surcharge with respect to taxable income of bodies corporate derived from sources within the territory. Southern Rhodesia and Nyasaland imposed surcharges upon persons other than bodies corporate resident within the territory.⁵⁹

Incentives to Investment in the Federal Tax System.

Taxable income was the basis of income tax in the Federal tax system. The method for determining this

taxable income was set out in section 8 of the Act and it involved three steps. The first was the determination of "gross income" which was the total of all receipts and accruals (other than those of a capital nature) from any source within or deemed to be within the Federation. The second step was the determination of "income" which was the balance remaining of the gross income after excluding all amounts exempted by section 12 of the Act. The third was the determination of "Taxable income" which was the balance remaining from the income after allowing all amounts to be deducted from the income.

The determination of taxable income is closely linked with the extent to which a tax system offers incentives to investment. If the tax system does not offer adequate deductions and allowances, it exposes greater income to tax liability thereby reducing the surplus that may have been invested. In consequence there is a reduction in the amount of money available to be ploughed back into expansion of business. As regards new investments, a prospective investor from outside will look at the tax system and from there see if in the end he will be able to realise a reasonable rate of return. In the case of individuals, high taxes

on their income diminishes their ability to save.

Section 12 of the Act provided for the exemption from tax of specified persons and certain forms of income. The Fiscal Commission appointed under Federal Government Notice No. 466 of 1954 recommended that the two groups of exemptions appearing in Section 12 of the Act should be separated. Of interest to us is paragraph (g) of Subsection 1 of Section 12 which exempted from income tax interest on any sums deposited in the Post Office Saving Bank of the Federation of Rhodesia and Nyasaland. During the fifties, the Post Office Savings Bank was the only banking institution that had extended its services to very remote areas with the intention of inducing greater individual saving. The exemption of interest earned from such saving was intended to operate as an incentive for individuals to save.

Relating to deductions, Section 13 is by far the most important. The Section enumerated a comprehensive list of expenditure and losses which were deductible from income. For any expenditure or loss to be deducted in terms of the deduction formula provided for in Section 13(2)(a) three conditions had to be complied with.

Firstly, the expenditure or loss must have been incurred during the year of assessment; Secondly, the expenditure or loss must not be of a capital nature and thirdly the expenditure or loss must be wholly and exclusively incurred by the taxpayer for the purposes of his trade or in the production of the income.

Paragraphs (b) to (s) of Section 13(2) set out a number of items which the Act expressly required to be deducted from the income of the taxpayer. In connection with this subsection 8 of Section 13 provided that where a taxpayer claimed to deduct an amount which might be regarded as deductible under two or more headings, he was not entitled to claim the allowance more than once but must elect under which heading he wished to claim the amount as a deduction. The Act provided for deductions in respect of the following:

Repairs, special initial allowance, wear and tear allowance, scrapping allowance, lease premiums, improvement by leasee on land or to buildings, pension fund contributions, bad debts allowance, doubtful debts allowance, Research and experiment; Technical

education and assessed losses.

In addition the Act provided for allowances in respect of Special categories of taxpayers. These included, farmers and persons engaged in mining operations.

Even after Independence in 1964, Zambia did not have its own Income tax Act. By virtue of the provisions of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council⁶⁰, 1963 as read with Section 4 of the Zambia Independence Order 1964⁶¹ certain laws of the Federation as amended by Zambian legislation continued to apply to Zambia. These were referred to as the "Applied Laws." Section 3 of the Interpretation and General Provisions Act⁶² defines an applied Act as "an enactment of the Legislature of the former Federation of Rhodesia and Nyasaland in force in the Republic by virtue of the provisions of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council, 1963." The Federal Income Tax Act was one of the applied Acts⁶³ but was repealed in 1966.

The result of more than twelve years (1954-1966) of the application of the Federal Income Tax to Northern

Rhodesia and subsequently to Zambia had the effect that it influenced the provisions which were included in the Zambian Income Tax Act of 1966. The pattern of deductions and allowances in the Act are similar to those of the Former Federal Act. This is not to say that Zambia did a wholesale importation of that Act's provisions for major differences do exist, e.g. the removal of Super tax, and the undistributed profits tax.

Customs and Excise during Federation

In the economic justification for the establishment of the Federation of Rhodesia and Nyasaland, it was argued that the formation of a Customs Union and thus a common market was an essential, and infact a major advantage of federation. The formation of the Customs Union and the form and characteristics that it would take, were some, among others, of the recommendations of the Fiscal Commission appointed to look into the proposed federal scheme. The following were the Commission's recommendations as to what characteristics the Customs Union should take:-

- i. Complete free trade for goods of federal origin, and for goods of non-federal origin on which duty at the general rate had been paid;

- ii. a unified tariff for goods of non-federal origin;
- iii. the maintenance of suitably aligned preferences in the territories not falling within the Congo-basin area with the necessary provisions to deal with re-exports from one area to the other.

To a considerable extent, the Customs and Excise arrangement during federation took the pattern as recommended by the fiscal commission. Prior to federation, each territory had its own Customs System. The tariff in Nyasaland and that for a portion of Northern Rhodesia did not contain commonwealth preferences because, there the provisions of the Congo Basin treaty⁶⁴ applied. On the other hand, the tariff in Southern Rhodesia was based on the South African one; in fact the two countries were close to a Customs Union.

For the federation, the fiscal commission had recommended the adoption of the Southern Rhodesia tariff and this was accepted. The system was greatly centralised.

All revenue from Customs and Excise was assigned to the federal government, with the one exception of duty on motor fuel which, though administered by the Federation, was subject to the jurisdiction of the territories so far as rates were concerned - and the revenue accrued to the territorial governments.

NOTES

1. The Native Tax Proclamation (No.9 of 1914)
2. Native Tax (Amendment) Proclamation (No.12 of 1918)
3. Section 4(1) of the Native Tax Proclamation (No.9 of 1914)
4. Section 4(2)
5. Section 6(1)
6. Section 6(3)
7. Section 7.
8. Section 9.
9. Native Tax Ordinance (No. 5 of 1958)
10. Section 4(4)
11. Section 7.
12. Report of The Tax Committee Appointed by The Government of Northern Rhodesia; Government Printer 1934.
13. Article 54; Page 13 of the Report.
14. Report of The Commission Appointed to Enquire into the Disturbances in the Copperbelt of Northern Rhodesia; October 1935 Cmd 5009
15. Native Tax (Amendment) Ordinance (No. 9 of 1935)
16. Page 11 of Cmd 5009 (See note 14 above).
17. Paragraph 234 Page 123 of Cmd 5009
18. Ibid Note 17.

19. Page 125 of Cmd 5009
20. Northern Rhodesia Legislative Council debates
(No. 27) October 1936 P.168.
21. Section 6 of the Ordinance
22. Native Tax (Repeal) Ordinance No. 72 of 1963.
23. Appendix to the Second Report of The Committee
appointed by the Secretary of State for The
Colonies to consider certain questions relating
to Rhodesia (Cmd 1273) April 1921; Popularly known
as the Buxton Report. The First Report of the
Committee considered Southern Rhodesia.
24. Item 8 of the Second Report.
25. Income Tax Proclamation (No. 24 of 1921)
26. Income Tax Ordinance (No 18 of 1926)
27. Section 5
28. Section 10
29. Section 11(1)
30. Section 11(2)
31. Section 13
32. Section 14(1)
33. Sections 16 and 17
34. Section 21
35. Section 23
36. Section 24

37. Section 47
38. Federal Income Tax Act (No 26 of 1954)
39. See Appendix XIX of the Report of the
Commission appointed to enquire into the
Financial and Economic Position of Northern
Rhodesia (Colonial No 145)
40. Non-Native personal Tax ordinance (No 28 of 1932)
41. Sections 3 and 4.
42. Section 9.
43. Section 10.
44. Emergency Tax ordinance (No 15 of 1933).
45. Non-Native Tax (Repeal) ordinance (No 37 of 1945)
46. War Tax ordinance (No 53 of 1940)
47. Northern Rhodesia; Report of The Finance
Commission: Government Printer, August 1932.
48. The Copper export Tax Act CAP 667
49. Customs and Excise Duties (Amendment) Ordinance
(No 9 of 1938)
50. This was enabled by the Rhodesia and Nyasaland
Federation Act 1953 (1 & 2 ELIZ 2, C.30)
51. Stuart Gore-Brown "note for the Monkton Commission"
(Shiwa-Ng'andu March 8, 1960).
52. Zambia Independence Act 1964 and Zambia Independence
Order appendix to the 1964 Zambian Constitution.

53. Report of the Fiscal Commission appointed by the Governments of the United Kingdom, Southern Rhodesia, Northern Rhodesia and Nyasaland in terms of the draft Federal Scheme; prepared by the Conference held in London in April and May 1952 (Cmd 8573).
54. Ibid para. 23
55. Ibid. para. 24
56. Article 83
57. Fifth Schedule (S.99 of the Federal Income Tax Act).
58. Section 6.
59. See The Territorial Surcharges (Authorisation) Act (No 33 of 1954)
60. Rhodesia and Nyasaland Act C.34. (Appendix 18 of the Laws of Zambia 1964 Ed. VOL. X.
61. Zambia Independence Act 1964 C. 65 (Appendix III of the Laws of Zambia 1964 Ed. Vol. X.
62. CAP 2 of The Laws of Zambia
63. It was referred to as CAP AL.31 of the Laws of Zambia.
64. Para. 202 Page 102 of Report of the Commission appointed to Enquire into the Financial and Economic position of Northern Rhodesia (Colonial No. 145).

CHAPTER II

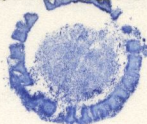
GENERAL THEORY

The pressing Problem for all developing countries is to facilitate accelerated economic development in order to improve the material condition of their populations. Suggestions are made constantly that many of the Pressing economic and social problems in these countries can be solved, or partially met, by the use of tax incentives. As a result of the desire for economic development there has come an awareness of the key role of tax legislation and tax administration in fashioning the pace and direction of economic development. Tax laws have been used as mechanisms for diverting the flow of investment or wealth away from activities that have little or no development merit into activities whose encouragment is important for economic development. As an example of this, taxation has been used in many developing countries as a means of Channeling Capital from luxury imports or Consumption into economically

desirable savings and investment.

to encourage investment into selected enterprises
For tax laws to be truly development-oriented they
which have special economic value e.g. the manu-
must reduce taxes for persons engaging in selected
factory of food stuffs, machine tools, import substi-
activities whose encouragement is considered to be
tutes or goods for export, and also to increase
of particular economic value. It can be said in
chances of employment and training. We will see later
this respect that for a developing country all
that the Zambia Income Tax Act provides for a tax
manufacturing mining and agricultural activities
reduction for sums expended on training, research and
qualify for reduced taxation since they can all be
other economically valuable activities.
said to be economically desirable. However, in this
case, the location of the particular activity would
form a more proper basis of discrimination; thus those
activities located in the rural areas should get better
tax treatment than those in urban areas. These tax
Virtues of Tax Incentives
subsidies take one of several forms viz complete
first, it is said that tax incentives encourage the
exemptions, for a limited period, from one or several
private sector to take part in social programs. When
taxes, and special allowances under the individual or
the government gives a tax incentive e.g. for training,
corporation income taxes; e.g. for accelerated depre-
it does so with the realisation that the problem to be
ciation or reinvestment.

met is great and that one way in which the government
It is worthwhile in a general discussion of tax
incentives to examine both the virtues and defects of
tax incentives. Generally, one most important virtue
is that tax incentives can be utilized as a means of
promoting objectives associated with manufacturing



activity. In this respect taxation can be employed to encourage investment into selected enterprises which have special economic value e.g. the manufacture of food stuffs, machine tools, import substitutes or goods for export, and also to increase chances of employment and training. We will see later that the Zambia Income Tax Act provides for a tax reduction for sums expended on training, research and other economically valuable activities.

Against this general background we must now consider some of the asserted virtues and defects of tax Incentives.

Virtues of Tax Incentives

First, it is said that tax incentives encourage the private Sector to take part in Social programs. When the government gives a tax incentive e.g. for training, it does so with the realisation that the problem to be met is great and that one way in which the government can help in its solution is by inducing the private sector to participate. In this manner, private business which is nearly always profit oriented is made to take part in the solution of social problems—a domain which has hitherto only been the monopoly of government

institutions. It should be noted however that since this kind of tax incentive is an expenditure on the part of government, it amounts to government assistance.

However, as this virtue involves the necessity of government assistance, it brings up the question as to whether tax incentive is the best way to offer the assistance as opposed to direct government expenditure.

The Second virtue acclaimed of tax Incentives is that they are simple and they involve for less government supervision and detail. This is of particular importance to developing countries whose tax departments are highly understaffed. When enacted, tax incentives can go straight into operation without negotiations with particular businessmen. The simplicity of tax incentives arises from the fact that usually the tax code gives simple schedules from which taxes can be calculated instead of individualised assessments based on dissimilar percentage rates.

Thirdly, it is asserted as a virtue of tax incentives that they do promote private decision making rather than government-centred decision making. This assertion must be examined in terms of the circumstances of a developing country where the investment intended to be induced will

originate largely from outside. If it is the effect of tax incentives that they promote private decision making it follows from the above fact that the private decision makers will largely be foreigners who will make decisions which conform to their interests and not necessarily in the interest of the State. Further, most developing countries have adopted the system of development plans for a specified length of time, and to do this they have almost always established a central planning institution which is charged with the responsibility to plan for the entire country. A certain degree of confusion and conflict should therefore be inevitable if private businessmen, and of foreign nationality, were allowed to make effective economic decisions. In this way promoting private decision making does not help to solve some of our many social and economic problems. This can be mitigated by the fact that the Government can devise tax incentives in a manner that will persuade foreign investors to make decisions that are in the national interests.

Defects of Tax Incentives

Opponents of tax incentive legislation argue that while the legislation brings the desired tax reform the incentives themselves are not, per se, desirable. They

doubt in support of the above contention whether tax incentives are capable of changing investment patterns to justify the huge revenue loss incurred by the government, the absence of tax fairness and the diversion of limited manpower in order to enact them.

The first defect of tax incentives is that instead of inducing investments they confer windfull benefits on tax payers who would have made similar investments without tax inducement. In this case tax incentives become wasteful in that they finance activities which should not be financed. The money lost in the form of tax incentives could conveniently be used to finance development in the form of direct expenditure.

Secondly, it can be asserted that tax incentives are inequitable: they benefit the high income group more than they do the low income group; further they do not benefit those who are outside the tax system because their incomes are low, they have losses, or they are exempt from tax. This criticism can be levied against all the tax incentives in the form of deductions provided for by our Income Tax Act (Cap 686 of the Laws of Zambia). For example the present

personal allowance system of the Zambia Income tax laws, while they confer some pecuniary advantage on those whose incomes are higher do not equally benefit those whose incomes fall below the taxable level and this benefit increases with income. When a tax incentive is granted, it assumes the form of a government financial assistance to the taxpayer and this is done to induce a desired action by the taxpayer in that his profits now become much higher. This assistance, which is itself a receipt of actual cash is not included in taxable income-it therefore provides both financial assistance and freedom from taxation. We have already stated that the higher income group benefit more from this assistance than the lower income group. The resultant effect is therefore upside-down from the way the tax system is intended to function i.e. to be progressive. Other defects of less significance can be said of tax incentives. We will not go in any detail about them. It will suffice to mention that tax incentives tend to keep tax rates high by Constricting the tax base and thereby reducing revenues.

Further, tax incentives do not affect non-tax payers i.e. those people whose incomes fall below the tax base. In a developing economy, therefore, tax incentives will be of no use to small businessmen who are not liable to taxation. In Zambia, there is a deliberate government policy to encourage the growth of small Zambian business. However, because tax incentives are of no use, other methods of encouragement have to be used, the most popular being the grant of loans.

Despite the defects that might be said of tax incentives for the promotion of investment there has been a wide spread adoption of tax incentives in the developing world. Where these incentives have existed for some time, the tendency has been to increase both their numbers and the benefits they confer upon the taxpayer. The reason for this trend can be explained by the fact that there exists an assumption that by conferring tax benefits both domestic and foreign Investors will initiate activities which they would not otherwise have done and to induce them to increase investments in enterprises already operated by them. In support of the above assumption, it is said as follows:

Firstly, that tax considerations are a primary consideration when a decision to invest has to be made, and that taxes frequently operate as an impediment to investments which would otherwise not have been made. Further, tax incentives make unattractive investments more attractive because they enable a more rapid recovery of capital and a higher rate of return.

Secondly, tax incentives are a useful inducement to investment in that they publicize and enhance the investment climate of the Country. They are a useful advertising tool especially because they show to foreign and local investors the attitude of government to investments. Capital is a scarce commodity and because most developing countries compete for it, investors tend to divert it to countries which offer the best advantages.

Certain observations can be made concerning the utility of tax incentives as an inducement for investment in a developing country. In this respect we shall proceed with the assumption that other impediments apart from the tax laws of the country in which the investment is being made do not exist which may

diminish the utility of tax incentives. First we must consider the non tax aspects of the investment climate. To a prospective investor taxation in these countries may be unimportant- what may be of importance are factors such as the underdeveloped state of the economy or a fundamental lack of natural resources or both. Thus climatic and other adverse natural conditions, lack of mineral resources might influence the pace of investment. Other factors are also important viz, the availability of local Capital and manpower, the size of the market, transportation, labour unrest, health, educational and other facilities do weigh quite heavily on the minds of investors when they have to make an investment decision. It is contended that this could be so even if taxes did not exist.

It is a common feature these days that even where investment opportunities do exist, because of political unrest or uncertainties, both domestic and foreign investors become reluctant to avail themselves of these opportunities. Further hostility towards foreign investment or existing investment

patterns may discourage foreign businessmen who want to employ local manpower and to have local partners. There are also fears of expropriation without prompt and adequate compensation.

The effects of taxes imposed by the foreign investors' home country must also be considered. Most Capital exporting countries claim jurisdiction to tax their nationals on their world wide income. If the investor has to pay tax both at home and abroad, he is subjected to double taxation which has been condemned as one of the greatest impediments to the flow of capital to the poorer nations. However with the proliferation of double taxation treaties the impact of double taxation has been mitigated. A more detailed examination of double taxation treaties has been carried out in a later chapter.

In addition to observations concerning the utility of tax incentives we should look at observations concerning the costs of tax incentives. There can be no doubt that tax incentives mean the yielding of revenues on the part of the government granting them and in addition, especially where selective statutes

are used, the diversion of personnel away from the more essential governmental services. In evaluating what is lost by tax incentives we should consider three things: Administrative, equity and Revenue Implications.

1. Administrative Implications

The implementation of a tax incentive statute requires a highly competent labour force of economists, lawyers, and accountants. In a developing country this sort of personnel is scarce and it has to be imported from elsewhere and for tasks which are more urgent than tax administration. To divert these men from these tasks is wasteful. In addition the cost of maintaining expatriate labour in most developing countries is very high. It would only add to these costs if the number of expatriates maintained has to be increased in order to administer tax incentive legislation.

Where the government concerned feels that the tax incentive is very necessary but at the same time it cannot afford to maintain foreign labour, as stated above, resort might be had to the use of inexpert or

inadequate personnel for the purpose of administering the tax incentive. In this situation, even more serious costs might be suffered. First, where administrative capabilities do not measure to the standard required for administering a tax incentive, the result will be taxpayer abuse and widespread evasion and further the administrators might act randomly so that instead of going by the letter of the tax incentive statute, they might adopt rules of their own which they feel they can more easily manage. Secondly, rather than showing to outside investors the cordial attitude of the government towards foreign investments, poor administration of a tax incentive might give to a potential investor the impression that the government is inefficient, incompetent and arbitrary. Instead, therefore, of achieving the desired end of enhancing the investors willingness to invest, it might strengthen his fears and confirm his reluctance.

2. Equity Implications

In taxation "equity" implies the notion of fairness; that similarly placed taxpayers in terms of income should carry the same tax burden and that the taxpayer with a higher income should bear a correspondingly

higher tax burden. However the same term is linked up with the notion, - One which is not inconsistent with the first, that differences in the income retained by taxpayers after the tax payers have paid tax should be reduced; this is the notion of wealth redistribution. In most developing countries the use of the tax system as an instrumentality to achieve either of the above objectives is nearly absent although there is some attempt to provide for graduation of the tax system. The result is that, people in the higher income group pay a higher percentage tax than those in the lower income group.

Tax incentives tend to discriminate as between tax payers so that in most cases their equity implications might be in conflict with their use for promoting economic development. This brings to light the policy matter as to whether their economic value should be given primacy over equity objectives. Where such a consideration has been seriously taken, the result has always been to subordinate equity objectives at least temporarily. Through this way the arbitrariness of tax incentive laws may find economic justification. In Zambia's tax laws, we find that equity objectives are not only subordinated to their economic value, but in

addition the revenue generating capacity of taxation seems to have been accorded a more prominent role.

3. Revenue Implications

No country would like to fashion its tax incentives in such a way that it sacrifices unduly in terms of revenue. Governments have increasingly taken interest in the economies of their countries and, to do this, in addition to running their social services, they require huge sums of money. Taxation is the surest way of finding this money. If the tax system carelessly exempts certain taxpayers from fulfilling their obligations, a new revenue source might have to be sought.

OBJECTIVES OF TAXATION.

There are several objectives of taxation in any fiscal system viz. growth, redistribution and stabilisation. That aspect of taxation which is designed for the encouragement of investment is often associated with the growth objective i.e. growth in both National income and per capita income. In developing countries, however, too much importance has been laid upon foreign aid so that it is not uncommon to find that the investment laws are intended primarily to attract foreign investment. Invariably it is believed that there can be no growth without foreign finance. This line of reasoning has lead to the fact that even if most developing countries usually intend to revise their tax codes,

they have done it in negligence of the importance of mobilization of local resources. Mobilisation of domestic resources for investment in both the public and private sectors is the key to planned growth independent of external assistance. To achieve this, tax policy may be used to mobilize local resources to generate capital and indirectly promote private savings and investments which can then be channelled for use according to properly selected priorities.

The significance of foreign assistance to growth in developing countries cannot be over emphasized. However no developing country has found a proper place for it. It is time it was realised that it is possible through fiscal measures to finance investment by domestic savings i.e. by the total of household savings, savings by private and public corporations, individuals and government savings. To the extent that the aggregate of the above falls short of the planned total, external finance may be used to offset the deficit. No statistics are available to illustrate the rate of domestic savings in relation to national income, however, it is one of the main objectives in the Second National Development Plan to see that this rate increases. In this instance the role of tax policy in promoting growth emerges as one of restraining growth

of public consumption; invariably increasing the savings: income ratio as national income increases. The resultant effect of this would be that internal finance for development could be provided by the household sector, companies and the banking system. Financing through the household sector is the most suitable because it is non-inflationary, but the size of this finance is very little. It has been said that the Zambian higher income group has a low propensity to save. In the case of Zambians, this arises because of the need to provide financial assistance to relatives and in the case of foreign nationals who work in Zambia there is a tendency to send abroad a large part of their earnings. As a result of ignorance about other forms of investment the household sector tends to keep its savings in the most simple form i.e. deposits in the banking system.¹

In the case of companies, both private and parastatal, it is usually the case that they are unable to buy Treasury bills or government stock since any gains or profits that may accrue to them will be ploughed back into their operations or distributed as dividends to shareholders most of whom are non-residents.

To sum up this section we must briefly consider the role of taxation in both the governmental and private sectors

in relation to the growth objective. In relation to the governmental sector, taxation is only of significance if the revenue generated by it finds its way into governmental investment, expenditure. However in an economy like Zambia's, where there is a critical shortage of manpower, the term governmental investment should be broader to include even recurrent expenditure on educational and other social services, which on first sight might not be considered as developmental expenditure. The division of developmental and non-developmental expenditure in the Zambian fiscal system does not exist although the terms "recurrent" and "capital" accounts are employed. However, this classification arises only as a matter of appropriation in the annual budgetary measures.

In relation to the non-governmental sector taxation should be designed to make available to the sector adequate sums of money which they would hopefully invest into new ventures or plough back into expansion of existing projects. However the tendency of private capital is that it is usually employed to finance only those investments that are both profitable and yield a higher rate of return. Usually these may not be used

to finance what the government might consider to be priority economic activity and maximize profits which will in turn be remitted to external shareholders.

The use of taxation to finance governmental investment expenditure has some merit. It must be borne in mind, however, that in contrast to private investment financing, this mode of financing requires that the government should model its tax laws in a manner to be able to raise the revenue it requires. One merit for this form of financing is that it is the government that has the interests of the people at heart and that unlike the private Sector, it is much better informed on questions of economic priorities. This statement is true but not without qualification. There is no guarantee that revenues generated by taxation will all of it find its way into governmental developmental projects. Apart from other functions, governments in developing countries these days run expensive and non-economic social services and some of the finance needed for this purpose invariably comes from taxation primarily, and other fiscal measures secondarily. Secondly new governments are well known for putting up prestige projects thereby diverting revenues from development to non-development activity. As a consolation, most developing economies employ the

device of developing plans for periods ranging from five to ten years so that some of the revenue from taxation will go towards the financing of carefully chosen projects as projected in the plan.

TAX FINANCING OF PLAN OUTLAYS-THE SECOND NATIONAL DEVELOPMENT PLAN

In this Section, we will concern ourselves with the extent to which revenues from taxation were envisaged to contribute to the total revenue requirements of the Second National Development Plan (SNDP). The mobilisation of revenues for use in a development plan has been one of the greatest uses made of taxation in Zambia. Apart from tax revenues the government envisaged the use of non-tax revenue to finance the SNDP. e.g. It was envisaged that in the event that tax revenue falls short of the required amount of money, the Government would borrow from local and external sources.

The Second Five-Year Development Plan was launched in 1972. Its predecessor the First National Development Plan was intended to establish, in the shortest time possible, a broad social and economic infra-structure. This, it was hoped, would form a firm and broader base for further economic development.

The contribution of taxation to plan expenditures in the SNDP cannot be examined precisely owing to the absence of figures. However an idea of tax contribution to plan expenditures can be created by the examination of figures of the relationship of tax revenue to other components.

We will then assume that the government employs some of this revenue for developmental expenditure. This assumption is a strong one when we have to consider the fact that all governmental revenue from local resources comes from fiscal measures through the budgetary system. So that if the rate of tax contribution to total government revenue is high, the rate of tax contribution to plan expenditure may be said to be equally substantial. An idea of the contribution of tax revenue in this regard can be made from the table compiled out of budgetary figures. Of the total government revenue during each year ranging from 1964 to 1971 tax revenue bears an average of slightly over 80 percent while non-tax revenue averages only about 10 percent. While the percentage of tax revenue to total revenue has had the tendency to rise over the period in question that of non-tax revenue to total revenue has fallen from 19 percent in 1964 to a bare 7 percent in 1971. This goes to show that there has been an increased emphasis on the use of taxation to finance

developmental expenditure while the use of non-tax measures has either remained stagnant or has actually been reducing over the period. This contention is strengthened further by an additional comparison made in the table. Over the period of observation the percentage of non-tax revenue to tax revenue averages only about 10 percent and during the same period it has fallen from 23 percent in 1964 to 8 percent in 1971. (Table 2.1)

Of the K2,161 Million total investment outlay envisaged in the SNDP the public sector contributes K1,476 while the rest represents private sector contribution. The public sector includes external finances, Public Sector enterprises contribution and Domestic resources. The contribution of tax to this outlay will therefore only feature in the item domestic resources"- this represents a figure of K680.7 million. Going by our earlier assumption we will say therefore that a large proportion of this figure represents the contribution of tax. Relating Domestic source finance to figures in the Plan we find that it forms about 50 percent of the total public sector contribution and about 33 percent of the total outlay. This illustrates that a substantial amount of plan expenditure was intended to arise from local sources, the most efficient of which is taxation. We will

TABLE 2.1

YEAR	1964	1965	1966	1967	1968	1969	1970	1971
TOTAL REVENUE	106.4m	190.0m	252m	240m	291	388	423	299
TOTAL TAX REVENUE	86m	166m	230m	219m	271m	364m	392m	273m
TOTAL NON-TAX REVENUE.	20m	24m	21m	21m	20m	24m	31m	21m
% of tax Revenue total Revenue	81	87	91	91	93	93	93	91
% of non-tax revenue to total Revenue	19	13	8	9	7	6	7	7
% of non-tax revenue to tax revenue	23	14	9	10	7	7	8	8

Source: Compiled by author from Financial Reports: Ministry of Finance, Lusaka

Note: Figures rounded up to nearest decimal Point for simplicity.

conclude therefore that taxation contributes quite substantially to developmental outlays in the SNDP.

The above discussion was based on the assumption that since taxation contributes so largely to total budgetary revenue, it does the same towards total investment outlays in the SNDP. However, investment outlays do not represent total government financial requirement for the plan because for instance, there are re-current expenses of a non capital nature. Forecast tax resources for the SNDP amount to K1658 million broken down as below:

(a) Mineral revenue

(i) Copper	650	
(ii) Other Minerals	20	670
(b) Income Tax		
(i) Company	274	
(ii) Personal	245	519
(c) Customs duties		207
(d) Excise duties		265
Total		1658

Of the total government resources for the SNDP amounting to K2456 the rate of tax contribution is at 67 percent based on the estimation that 1971 tax rates would continue and the average price of copper is K740 per metric ton.

In relation to the growth objective, therefore taxation should provide adequate incentives to private saving and investment. Concurrently with this function tax policy should be used for the purpose of financing development by increasing the amount of revenue from this source.

The Equity Objective

In taxation, equity is taken to mean that taxation should be related with the "ability to pay" i.e. tax should not be levied at units which are not able to pay it. In order to have a yardstick to measure the ability to pay one must have a comprehensive definition of income i.e. total wealth and consumption. Equity in taxation has two aspects to it: First that those taxpayers with equal ability to pay should pay the same amount of taxes and secondly that those with greater ability should contribute proportionately more than those with a lesser ability.

The first aspect stresses equal treatment of taxpayers in the same economic circumstances. However, this in itself is not an absolute ideal. It should be qualified by the

use of selective incentives to personal and corporate investment. This might bring in an inequality but where such inequality is a strategically beneficial economic tool, it should not be avoided.

Our concern mainly will be on the second aspect of equity i.e. the treatment of persons and groups in dissimilar economic circumstances. The justification of the desire for the redistribution of income and wealth is seen in the words of President Kaunda who was as early as 1968 aware of the dangers of creating a Zambian entrepreneurial class. He said:

"Let it be emphasized, however, that the more we interest our people in this particular field the more they will be exposed to dangers I have referred to already - those of becoming a money-centred society. Wealth like knowledge or other instrument of service to man we can think of, becomes an instrument of oppression and suppression if we do not handle it properly. Very often we discuss the problem of distributing wealth equally among our people.

There are many reasons why this is important. Major among these, however, are that we want each one of our four million people to live a fuller life and secondly, wealth that is concentrated in the hands of a few people is a danger to any society in that those in whose hands wealth

was centred would become exploiters of their fellow men in more than one way and this is no good both for those whom they exploit as well as for themselves."

Several devices have been used in Zambia to reduce inequalities of income and wealth. One of them has been that in order to prevent the creation of a disproportionately rich class of Zambians, Zambian businesses which would reach a certain size would be asked to sell a controlling interest to the state. As for example, Mwaiseni stores, which as at 1967 had a share Capital of K150,000 and a turnover of K1.5 million was asked to do this. However, this device is capable of arresting the problem in relation to trading and related enterprise. In relation to real property and land speculation, an area in which inequalities are progressively increasing no attempts at redistribution have been made. However it is possible that the effect of the Leadership Code, which is mainly an anti-corruption device, will be to bring about redistribution.² Apart from prohibiting specified individuals from receiving double incomes, it also restricts the same individuals to ownership of only a specified limit of land acreage. However, the definition of leader in the Code is narrow and presently it excludes a very substantial cross-section of the community.

Inequalities will therefore continue to exist.

Under Zambian circumstances, taxation can be employed very successfully in order to achieve the redistributive aspect of fiscal policy. This may be done by the introduction of progressive taxation which while charging very little or no tax on the lower and middle income groups, it charges progressively higher rates of tax with the increase of income until the marginal rate will be about Ninety percent. This would ensure non loss of government tax revenue in that what would be lost from the lower income group would be recouped from increased taxes from the higher income group. Indiscriminate use of this device will obviously make taxation onerous and confiscatory. One of the results, among several, would be that taxation, instead of being used as an effective fiscal tool for development, would operate as a disincentive to much needed activities like private saving and investment.

A more effective use of taxation would be to leave the redistributive aspect of fiscal policy largely to government expenditure in the form of direct transfers to lower income groups. This imports into our discussion the concept of the equality of opportunity - that government

should finance facilities for the lower income groups to become productive and therefore economically better and at par with others. For example, in the field of education, if government did not finance it, inequalities would continue and infact be aggravated. However, to be able to finance this facility, government should increasingly tap its revenues from the higher income groups. The same can be said about health and other services. In this manner, a considerable degree of redistribution could be achieved.

Relationship between equity and growth

It was pointed out in relation to the growth objective that one necessary function of taxation should be to facilitate increased individual and institutional saving and investment. Since the purpose of redistribution is to remove inequalities which characterize our society by taking more from the rich for the benefit of the poor taxation for this purpose may negative growth. The relationship between equity and growth is of central importance for tax planners. However, it is not in all cases in which this conflict occurs. Arguments can be made to illustrate that redistribution is complementary to the growth objective.

The first argument is that the mass of the Zambian people are poor and apathetic and this makes it very difficult to incorporate them into the productive process. Redistributive tax measures will therefore help to persuade these people to live more productively thereby enhancing growth. Secondly, and this may not presently be of significant importance, redistributive tax policy which removes or minimizes economic inequalities may contribute significantly to the political stability of Zambia. Thirdly, redistribution will place a large measure of the purchasing power in the hands of the majority of the people and in this way establish a broad domestic market which is conducive to growth.

In relation to conflict between equity and growth objectives, emphasis is put on the effect of redistributive (progressive) taxation on work and on private saving and investment. Private Sector Investment was envisaged to play a considerable role and constitute a sizeable percentage of total investment outlay in the SNDP. Tax planners should therefore strive to strike a balance between the objectives of reaching economic equality through tax manipulation and those of maintaining

unimpaired the flow of investment and savings necessary for growth. The same can be said of a tax policy which significantly reduces incentive to work particularly among the upper income groups which are usually more productive.

To sum up, in order for redistribution to be achieved a tax system must contain appropriate levels of exemption and proper progressivity. This should be combined with exemptions and allowances to maintain functional inequality i.e. for example inequalities created where two persons have the same income but one has better tax treatment because he invests his money in more productive projects than the other.

The Stabilisation Objective

The First National Development Plan FNDP 1967-1971 placed much emphasis on the maintenance of a reasonable degree of stability in prices. The early years of the plan, however, witnessed a considerable increase of inflationary pressures in the economy.

"The index number of wholesale prices after an initial dip during 1967, rose by 6 percent during 1968 and by a further 10 percent in the following year. The consumer

price index increased by 8 percent in 1966, 5 percent in 1967 and by as much as 10 percent in 1968. The emergence of inflationary pressures reflected in a large measure the steep rise in monetary demand in the economy relative to the increase in output..."³

The SNDP, realising the gravity of the situation calls for "increasing vigilance to prevent the re-emergence of inflationary situation during" its tenure. For several reasons the plan is optimistic that it has a better chance of containing inflation than the FNDP. However events and trends in the world economic situation have combined forces to increase inflation.

From the tone of a speech by the Minister of Finance, all hope to achieve what was envisaged in the SNDP in this regard is dampened. The Minister warned that Zambia would suffer the "ordeal of collapsing economies" if no urgent measures were taken to forestall the current worldwide recession and inflation."⁴

In discussing the role of tax policy to control inflation, we will proceed on the assumption that inflation is not conducive to growth--other people would advance contrary arguments."⁵ In order that tax policy be used to

control inflation it must be aimed at both the level and composition of aggregate demand, and other problems like scarcity of skilled labour and lack of resources or means to mobilize them and supply problems. As regards supply problems, tax policy should be geared to increasing agricultural productivity and the provision of incentives for labour to work and to enter particular occupations.

As regards the level of demand, fiscal policy controls inflation when it controls individual abilities to spend.

We have already discussed the costs of tax incentives.⁶

We will here ask ourselves whether if instead of tax incentives there were to be a programme of direct government expenditure in the form of low-interest loans, grants and subsidies, the revenue consequences to government would be the same. No easy answer can be found-it would depend upon the extent of the direct expenditure. However, the use of tax incentives has the merit that it is a very easy way of distributing funds instead of an actual cash flow from the treasury.

Our task here will be to examine Zambian tax laws and evaluate any provisions contained therein which purport to be of incentive value to investment. We will find

that usually, the need to give investment incentives may run against the need to raise revenue for the government. We will do this by looking at the taxation of individuals, Mining Companies and other companies. In all these the provisions that are purported to be incentives take the form of a tax reduction given at percentage rates. Our conclusion might be that the need for revenue should be complimentary with the need for economic development through investments attracted by the tax system. We will also examine the area of customs duties and the way they have been manipulated for the encouragement of desired industries and for squeezing out undesirable activities. We will confine ourselves, apart from the section on Customs duties, to taxation of income. This means therefore that we will not apply our minds to estate duty and capital gains the latter of which is anyway absent here.

Before we leave this section, it will be worthwhile to give a brief appraisal of the 1966 Income Tax Act which is the act presently in force regulating tax matters. Until 1966 the Federal Income Tax Act was in force in Zambia.⁷

The 1966 Act Introduced a Unitary tax System i.e. only one tax, the Income tax is presently chargeable and Super

tax and undistributed profits tax, which occurred in the Federal Act were abolished. Undistributed profits tax was not a tax at all - it was merely a device to prevent tax avoidance by tax payers who did not pay super tax. Undistributed profits tax is no longer necessary now since tax avoidance provisions in the Income tax Act will now prevent evasion of tax on undistributed profits.

Dividends paid by a Company resident in the Republic are chargeable to tax-a withholding tax. The Act imposes an obligation on the company paying the dividend to deduct tax from such dividend. However, the recipient has to include a gross amount of such dividends in his return of income, but is allowed a set off or refund of the deducted tax as the case may be. There is no distinction between ordinary and preference dividends as was the case in the preceeding Act. Foreign dividends are liable to income tax but double taxation relief is granted.

The Federal Income Tax Act gave an artificial meaning to income. The 1966 Zambian Act however charges tax on income as understood and ascertained in the business and commercial world.

Residents in Zambia are now taxed on their World-wide income wherever it accrued subject to any double taxation relief. Previously, only profits gained in Zambia were taxed. Trusts and deceased's estates are taxable or the commissioner may charge the beneficiary.

The Act has introduced a Pay-as-you earn System (PAYE). The advantage of this system is that tax is taken from the employee at the time he receives the income which is subject to tax so that he does not have to face a large bill in future and further he does not have to make his own estimate as to how much tax he has to pay. Another advantage is that the government receives an even flow of revenue throughout the year and has less trouble in collecting tax and therefore there is a reduced number of bad debts. The system is a cumulative one. Running totals are kept of an employee's emoluments and tax payments so that it is easy for an employer to ascertain from tax tables how much tax an employee should have paid to date. The system allows for fluctuations in emoluments automatically. Code numbers are used in order to keep a tax payer's abatements secret. This system helped to close the loophole by people who left the country without paying their tax.

NOTES

1. See Item 93 Second National Development Plan.

It was there recognised that there has been a deceleration of the rate of growth of deposits in recent years, from 28 per cent for 1968 to 14 percent in 1970. The plan proposes an increase in the interest rates and expansion of the banking System as measures to accelerate saving. It does not propose taxation and other related fiscal measures.

2. Part IV, articles 32-35 of the Constitution provide for the Leadership Code. The first Statutory Instrument was No. 288 of 1973 which was revoked by S.I. No. 47 of 1974 which was in turn revoked by S.I. No 108 of 1974.
3. See Page 8 SNDP, Monetary trends and Policy during the FNDP
4. Report in "Times of Zambia" Thursday, October 10 1974
5. D.H. Robertson, Money (Cambridge University Press, 1922) PP. 122-125
6. Supra Page 5
7. The Federal Income Tax Act (No 16 of 1954)

CHAPTER III

THE PERSONAL INCOME TAX

In the Zambian Income Tax Act Cap. 668 of the Laws of Zambia, "individual" is defined to mean a natural person and the word is used only when a distinction is necessary. For example for the computation of tax liability, it is only individuals who are entitled to a rebate in the form of personal allowances. In all other cases, the comprehensive term "person" is used generally when reference is being made to any taxpayer whether a body corporate, corporation sole, local or like authority, a deceased's estate, a bankrupt's estate, a trust and also includes an individual.

Zambian tax laws do not discriminate between different sources of income as is the case in other tax jurisdictions. Income derived from agricultural activities is included in the tax base when the activity is carried on for gain. There is, however no tax on capital gains. In general, all financial receipts are included in the term income but to avoid any confusion and doubt, the Act classifies income although this classification is said not to be exhaustive.¹

With the concept of income is interwoven the problem of the derivation of the tax base which in our Income Tax Act is referred to as chargeable income. This derivation starts with the determination of a taxpayer's gross income i.e. assessable income which is the sum total of a taxpayer's receipts. Deducted from gross income are personal allowances and these are deducted from the assessable income of an individual at the rates specified in the Act. Personal allowances cannot, however, be deducted from lump sum payments² and instead, tax at the rate of ten percentum is deducted therefrom.

Every income which has its source within Zambia is subject to Zambian tax. In addition, interest and dividends receivable by persons ordinarily resident in Zambia are taxed. The meaning of source has given rise to some problems but ordinarily, in the case of income like salary where the work is carried out; rent where the property is situated; and profits where the business is carried on in Zambia, no similar problems have arisen.³ Certain income is deemed to be from a source within the Republic. This includes, interest, Royalties, lease premiums, Transport receipts, businesses and partnerships carried on partly within and partly without Zambia annuities and pensions. Further, Part IV of the Second Schedule provides for certain exempt income. In the case of foreign businessmen, some income

may become exempt by virtue of Double Taxation relief.

A married woman, who has a separate income, either from employment or business is presently taxed separately. This was brought about by the 1969 Budget. Before the budget the wife's income was added to the husband's income and the joint sum was taxed as a unit. This arrangement exposed the wife's income to her husband's higher rates of tax. The present situation means that a wife's income will be taxed according to the graduated rates, with only personal allowances which cannot be set off against her husband's income. This means that the married woman has been given much better tax treatment than was the case before.

Further, the personal levy, which is a local authority tax levied on incomes above K120 per annum, without any family or other allowances was increased in 1969. Previously, this tax was very minor reaching a maximum of K5 on incomes of K400 per annum and over, "with graduation at the option of the local authority on incomes between K120 and K400." The new levy is much higher reaching a maximum of K20 on incomes of K1,000 per annum and over. There is a fixed graduated scale.

Other tax changes brought by the 1969 budget and other subsequent amendments of the Act will be considered in the following discussion in which the structure of individual taxation will be examined in relation to investment incentives.

To a prospective investor income tax levels of exemptions in a tax system are of significant importance in consideration as to whether such investment is to be made. Apart from assessing his own tax position, he will consider whether the level of taxation will not scare away the much needed skilled labour from outside the country. In relation to saving, high income tax may impair individual ability to save. Tax can therefore have adverse effects on investment. The combined effect of lowered exemption levels (personal allowances) and increased rates of tax may accentuate the deterrent effect of taxation on investment while reduced rates and increased exemption levels may be a useful attraction to investors with the attendant effect of loss of much needed finance for the government for use to finance both its developmental and non-developmental expenditure.

1. Personal Allowances.

(a) Purposes

It is a recognised principle that a person with dependants has a lower taxable capacity than one without dependants and that taxable capacity diminishes with the increase in the number of dependants. The amounts of allowance often vary with the nature of the dependency but they are not related to the actual costs of maintaining them although inflationary trends might cause the government to increase them from time to time - but only to the extent that

budgetary constraints may permit.

Personal allowances may be thought of as serving three basic purposes; viz

- (a) They exempt from taxation the minimum amount of money needed for consumption if the taxpayer is to be a healthy and productive member of society.
- (b) They make the effective tax rate smoothly progressive for all taxpayers with incomes above the exemption levels.
- (c) They differentiate between taxpayers with equal incomes but different numbers of dependants.

The most commonly cited justification for personal allowances is the exemption of a minimum level of subsistence under an income tax system. It has been argued that Income Tax should not be allowed to force members of society to cut their consumption expenditures to a point where their health suffers; this will result in their productive efficiency coming down. The result of taxing those who fall below the subsistence level, will be a reduction in their productivity so that society will suffer losses in output which they could otherwise have produced. It is however not easy to define the Content of a minimum Subsistence budget.

Questions may be asked whether, for example, we should include only the very basic kinds of food which are necessary

for health. But even the lowest paid worker does not restrict his consumption solely to those foods. His diet will from time to time include those items which can easily be done away with without causing injury to his health or reducing his productive capacity. The real problem lies in the fact that the subsistence level is a Subjective Variable. Each family might set their own and it would cause considerable hardship to try to generalise. What we come to as a conclusion therefore is that opinions differ as to what are the contents of a minimum subsistence budget. There is quite considerable agreement however that the present personal allowances are too low for single individuals and small families; they may become more realistic with the growth of the size of the family and are over-generous with large families. However, this disproportionate effect was contained effectively when the number of children who could qualify for this allowance was restricted to six.⁴

Any attempt to raise personal allowances to a level more in line with minimum subsistence budgets is met by one main difficulty i.e. the huge loss in tax revenue that would result from such a change. The effect of increasing personal allowances is that while it reduces the tax liability of most taxpayers, it does so mostly for the highest income group. It can be argued that it is not necessary in order to maintain the minimum subsistence levels of living, to grant exemptions

in the form of personal allowances to the middle and upper income groups. An arrangement can be made by which the minimum subsistence level can be maintained without having to incur substantial revenue losses. I suggest that a system by which tax payer's allowances were decreased until they finally disappeared at about the middle income level would achieve this purpose. If such system were to be adopted in Zambia, then it would not be necessary to limit the number of children for which a taxpayer could get some allowances to just six as is the case at present.

The other purpose of personal allowances is to make the effective tax rate smoothly progressive for all taxpayers with income above exemption levels since any flat - sum allowance granted to all taxpayers will convert a proportional tax system into a progressive one.

Thirdly, allowances can be used to differentiate between taxpayers with equal economic circumstances but with different numbers of dependants. This one is a very useful purpose and it ties in with the first one in that it also wants to maintain the level of taxation at a point in conformity with good living. When the number of children for which a taxpayer could claim allowance was raised from four to six, the principle was recognised that an individual's taxable

capacity falls with the increase in the number of children. By the increase in the number of children allowable, the government adjusted the levels of income in relation to inflationary trends without having to raise wages. In his budget speech announcing the increase, the minister said: "Having and taking into account His Excellency's concern for the cost of living, I propose to change the maximum number of children against which an allowance for tax purposes can be made from four to six."⁵

This increase in the number of children allowable, in combination with the effects of other personal allowances gave individuals a possible total maximum allowance of K2,680 per annum.

(b) Present Position

In this Section, it is intended to carry out an examination of the personal allowance levels both prior to and post the 1969 Budget changes, and the effects of income tax changes in 1969.

Table 3.1 Personal Tax Exemptions Prior to and Post 1969 Budget.

	PRE-BUDGET	POST-BUDGET	1971/72
Single Allowance	800	450	500
Family Allowance	600	450	-
Married Allowance	1,600	1,300	1,300
Child Allowance	240	180	180
Dependant Allowance	240	-	-
Insurance Allowance (Maximum)	400	300	300
Non-Resident Allowance	800	600	400

Source: Abstracted by author from the Income Tax Act 1966 and amendments subsequent to it.

NOTE: 1. The non-Resident allowance was abolished in the 1972 Budget.

2. A person who is not married, but is supporting a child can claim family allowance.

Table 3.1 shows that, of the changes brought about by the 1969 budget, there was a general and substantial reduction of individual personal allowances. Prior to the budget, the number of children for which an allowance could be claimed

was eight and the amount in respect of each child was K240. Both these figures were drastically reduced. In the 1969/70 charge year the number of children allowable was cut down to four while the figure in respect of each child was fixed at K180. The number was raised to six in 1970.

From Table 3.1, one sees that substantial reduction was made in all other forms of allowance. However a significant feature of the budget measures was the complete abolition of the dependant allowance. This move caused a considerable outcry among the taxpaying public especially the African among whom the extended family system operates. By this system, the idea of dependant is absent in that people who are closely related are said to belong to the same family and as such they have rights to be maintained by other members of the "family." It was argued that there seemed to have been a contradiction in government policy in that while the dependant allowance was abolished, there was an encouragement of the extended family system which was hailed to be in conformity with the national philosophy of humanism.

However, the Minister of Finance, then Mr. Kapwepwe, explained his action in his budget speech. He asserted that the rates of personal allowances at that time had been very

liberal by any standards; and as a consequence of that, a large portion of the working population as well as traders paid no tax at all. In order to broaden the scope of the tax system, he had to restrict personal allowances significantly. He said:

"I feel that the reduction of allowances together with a reduction of the maximum allowances would bring a substantial number of additional taxpayers. Broadening of coverage of tax would offer several advantages. First it would bring a sense of responsibility for the financing of government to a much larger portion of the population. Second, a larger coverage would provide additional revenue from a source that has a high degree of revenue elasticity relative to growth in national income."⁶

The general reduction of, and in some cases, the abolition of personal allowances calls for some analysis. The first effect of the lowering of exemption levels was that it increased the tax payable by existing taxpayers, and raised the number of taxpayers. The result of this inevitably was that it diminished the capacity of individuals to save. As to its effect on investments, a rise in tax liability through the lowering of exemption levels might be a deterrent to a prospective investor or to re-investment in the case of existing investors in that it might create

the picture that the government in question has a tendency to increase taxes. Most significantly the increase in taxes might be a deterrent if the rate to which tax has been brought imposes an unreasonable burden on taxpayers so that if, all other factors taken into account, a prospective investor had a choice he would choose to make his investment in another country where his tax liability will be less. Post-budget tax levels, however, cannot be said to impose an unreasonable tax burden on the taxpayer, and it has not been asserted that it has had a deterrent effect on investment **trends**.

The second effect of the lowering of exemption levels was that there was an increase in the number of taxpayers and that the increase came from the lower income bracket whose income had fallen below the taxable base before the reduction in exemption levels.⁷ It should be observed that the people affected were those whose earnings were so small that no noticeable investment could be expected to be made by them. However, taxing their income when previously it had not been taxed definitely reduced their capacity to save part of their earnings.

Statistics are not available to illustrate the fact that the reduction in the exemption levels had the effect of

achieving an increase in the total number of tax payers. That there has been an increase in the number of tax payers can be inferred from the table below. The inference drawn is that an increase in the number of employees both in government, parastatal and private sectors necessarily means an increase in actual tax assessments.

Table 3.2 Number of employees in Industry.

	YEAR	AFRICANS	OTHERS	TOTAL
ALL INDUSTRIES	1966	272,620	29,370	301,990
	1967	282,770	29,280	312,050
	1968	289,440	29,160	318,600
	1969	300,470	27,820	32,290
	1970	314,480	27,390	342,870
	1971	339,000	26,550	36,550
	1972	334,160	25,970	360,130

SOURCE: ECONOMIC Report Ministry of Planning and Finance to National Assembly 1973.

NOTE: 1. Statistics for 1972 are for 30th June
2. These statistics do not include domestic and other servants.
3. Table 3 figures relate to industry alone. It therefore does not truly represent the actual growth in employment. Government is the largest single employer and there has been a rather substantial increase in the number of persons employed by it during the period of observation

due mainly to the larger responsibilities presently assumed by government.

C. Personal Tax Revenue Productivity

The most significant observation made by the Minister of Finance in his 1969 Budget address was that the decrease in exemption levels was aimed at increasing government revenue from a source which had "a high degree of revenue elasticity". Revenue elasticity is concerned with the annual increase of tax revenue without any changes in the rates of tax or the tax base and is of considerable significance for economic development planning.

It has already been pointed out that a tax policy that is geared primarily to the purpose of revenue production is inconsistent with the idea of providing investment incentives. This inconsistency further negatives economic development if the revenue available to government from taxation is not employed to finance developmental expenditure.

However, we cannot ignore the significance of tax revenue and the need to increase it for economic development. The clash between the desire for increased tax revenue and the need to provide adequate investment incentives is mitigated if the increased revenue arises from the channelling of progressively larger percentages of increments in national

income into tax revenue - which is essential if taxation has to save the useful purpose of financing growth in Zambia.⁸

Table 3.3 below shows that there was a marked increase in total individual tax revenue, arising from the budget changes. However, the rate structure of taxation was also changed. This aspect of it will be dealt with in the section dealing with tax rates. It suffices to mention here that the net effect of the changes in the rate structure was to make small increases in tax revenue. It is also shown that since 1969 there has been a steady increase in government revenue from individual taxation while tax rates have remained relatively the same over the same period.

An idea of the significance of individual tax revenue and the rate at which it has been rising can be made from the fact that between 1966 and 1972, the ratio of individual tax revenue to total government revenue has doubled from 7 percent in 1966 to 15 percent in 1972. The rise has been gradual every year except for 1967 which had a peculiarly long financial year.⁹ This shows that there is a growing reliance on the part of government on revenue from individual taxation.

TABLE 3.3

ACTUAL REVENUE FROM INDIVIDUAL TAX ASSESSMENTS

(In Kwacha)

	1966	1967	1968	1969	1970	1971	1972
SELF EMPLOYED	11m	4m	4m	8m	6m	7m	7m
P.A.Y.E.	23m	23m	21m	24m	30m	34m	41m
OTHER ASSESSMENT	35m	24m	1m	0.9m	0.3m	0.3m	-
TOTAL	17m	51m	26m	33m	37m	41m	48m

SOURCE: Compiled by author from Financial Reports
published by Zambian Government.

NOTE: 1. The financial year Ending 31st December 1967 was a longer one (18 months). It was this time when the Government financial year was adjusted to Suit the Calendar year. Note that this factor accounts for the relatively high figures during the financial year.

2. The present Income Tax Act Cap. 668 Commenced in April 1966 but the figures for the 1966 financial year are for the year 1st July 1965 to 31st June 1966. This is not of much use for Comparative purposes because the tax System was different.

2. Other allowances

Zambian income tax laws provide for a number of other allowances in order to induce individual and other tax payers to take up or expand certain economic activity. We will consider some of these allowances which are meant to create incentive for investment especially among Zambian nationals.

(a) The treatment of Farmers

Section 33(c) of the Income Tax Act provides that capital allowances shall be deducted from the income of any business for farm improvements and works, according to the provisions of the sixth schedule. The allowances are intended to encourage farming, an activity which offers employment to rural peoples thereby increasing their income. The production of food also helps to preserve the country's foreign expenditure.

Prior to 1974, where a farmer had incurred some Capital expenditure on farm improvement, the deduction (called a farm improvement allowance) was allowed at the rate of 20 percentum of such expenditure in that year, and a like deduction was allowed in each of the following charge years. This provision was amended by the 1974 budget. At present, capital expenditure is allowed in full during the year in

which it is incurred. This measure was aimed at encouraging farmers to invest more money into their businesses in the way of improvements to their farms.

A further allowance referred to as the "farm works allowance" is provided for in Part II of the Sixth Schedule. This allowance is given to a farmer in respect of expenditure on farming land, for the purposes of farming, on stumping and clearing, works for the prevention of soil erosion, boreholes, wells, aerial and geophysical surveys and water conservation. Total expenditure incurred by a farmer is set off for purposes of ascertaining the profits and gains of a farmer.

In his budget speech in 1974, the Minister of Planning and Finance, recognising the importance of stud livestock in the country, introduced an incentive aimed at encouraging cattle ranching. Prior to 1974 the cost of acquiring stud livestock was allowed as a deduction in ascertaining the gains and profits of a farmer. However, stud livestock on hand at the end of the charge year had to be brought into the farmer's account as stock and valued at cost. Because of the importance attached by government to stud livestock, it was decided to treat the cost of purchasing such livestock as a capital expenditure allowance in the year in which it was incurred.¹⁰

Most farmers should be able to take advantage of the favourable treatment that they have received as regards the taxation of their incomes. However, the effect of these provisions on agricultural activity cannot presently be assessed. In the long run there will surely be an increase in farming activity arising from the favourable tax conditions.

(b) Saving Incentives

In this portion we will look at an attempt by the government to use its tax powers to encourage locally financed institutions. Prior to 1974, if any person saved with any of the local banking institutions, interest amounting to K200 was exempt from tax. This provision was meant to encourage savings. After the 1974 budget, the newly formed National Savings and Credit Bank was given some advantage. For any individual who saved with the Bank, the amount of tax exempt interest was doubled to K400.¹¹ This was a reasonable concession bearing in mind that the new Bank is the only one that is most widely distributed in both the rural and urban areas of the country and that for some remote areas, it is the first banking facility available to the people.

In relation to investment, it is not known at present to what extent individual investors hold stock in private industry. However, it can be said that the stake of individual local investors in this field is very low. Taxation affects the desire to invest when it affects the rate of return on investment. However, the overall desire to invest may be affected by non-tax considerations.

(c) Labour and Work.

Labours is one factor supply which is necessary for use in production and the availability of labour is an important consideration when an investment has to be made.

Taxes may have the effect of altering the total supply of labour-hours and the relative supply of different types of labour. Taxes may also affect the distribution of labour by treating priority occupations more favourably than others. Income taxes have two effects on work incentives; the substitution effect encourages people to work less and enjoy more leisure while the income effect encourages them to work harder because their incomes are reduced by taxes and they would like to restore income to the pre-tax level.¹²

Taxes can also be used to affect the relative flow of workers into various occupations if they alter the relative gains from these occupations. Where monetary motives are dominant,

taxes which are highly progressive relative to income may reduce the flow into occupations requiring extensive training. In case of married women, the tax treatment of their income may affect their willingness to enter the labour market.

The labour distributive effect of taxation can be used with significant results under Zambian circumstances where there is great emphasis on rural development but efforts in that field are rendered fruitless owing to the labour constraints. Most youngmen prefer to enter occupations which will keep them in urban centres and without monetary attraction, they refuse to join occupations which are directly in aid of rural development.

There has been attempts in Zambia to make use of taxation to produce the effects referred to above; but these attempts are piecemeal and probably very slightly effective. In his 1970 Budget speech, the Minister of Development and Finance referred to an attempt to use taxation in aid of the recruitment of foreign labour.¹³ The government had realised that other competitors for skilled manpower had offered high salaries and more attractive terms of service for professional and technical staff. Noting that the Zambianisation programme had been progressing well he said that there

was still need for professional labour from abroad in order that development projects should continue. In order to attract foreign labour, an educational allowance was introduced. The allowance took the form of an exemption from taxation of those amounts paid by employers to employees as educational allowances. The allowance is applicable to employees' children who are 18 years of age and below at the beginning of the charge year and who are attending school in a country other than Zambia in that year. The number of children for which this allowance could be claimed was restricted to three and the amount claimed was K300 per child attending boarding school or K100 in the case of a day pupil. In either case, the 1974 budget raised the allowance by K50.

RATES

Until 1965, Zambia, like Malawi and certain Regions of Nigeria still employed flat rates of income tax. For a long time during the colonial period, this system was preferred because it was relatively much easier to administer than the progressive rate system. Bearing in mind the inadequate manpower resources available in developing countries, the use of flat rates may still be of significance and more appropriate if the tax system has to be administered well. The complexity of administering a

progressive rate system is such that the limited skilled and unskilled manpower tend to become inefficient. In recent years, there has been a growing tendency to switch over to the use of progressive rate systems in most former British colonial territories. Where some degree of progressivity existed, there have been attempts to make the tax system even more progressive. Income tax rates for a set of selected charge years are set up in Table 3.4 below.

The reason for the switch to the progressive rate system is that there has been a realisation that income tax rates make the after-tax distribution of income less unequal than the before-tax distribution. All developing countries attach major importance to the attainment and maintenance of an acceptable pattern of distribution of the gains from development. The nature of these patterns may vary very widely. Some countries, such as Zambia and Tanzania strive to minimize income inequality and are willing to sacrifice some growth in national income in order to attain the desired pattern of distribution. Kenya, places a relatively high preference on growth at the expense of equal distribution.

In order that the tax system should achieve an equal after-tax income distribution, the rates must be truly progressive.

However true and absolute progression may not be achieved for fear that it harms the high income groups who are infact more productive than the low income group for which equality is being sought. If the tax system is inequitable to the high income group, it might create disincentives to work and invest thereby occasioning a reduction in economic growth. In terms of the redistributive object of taxation, however the use of progressive tax rates is very effective and appropriate.

Since we think that the progressivity of an income tax system should not rise to the level where it will produce a disincentive effect upon the more productive group of the community we must seek some other compromise. In a developing country, equalisation of after-tax income distribution should not be sought with as much vigour as is the case in developed country. The use of taxation as regards distribution should be limited to minimizing after-tax inequalities of income distribution. An opposite view would produce confiscatory taxation.

In Zambia, tax rates have varied frequently and to a considerable extent since 1966. The tendency has been to increase the progressivity of the system. In 1966, the marginal rate of tax for individuals whose incomes were above K30,000 was

52.5 per cent while the initial rate was 5 per cent. In the 1968/69 tax year the marginal rate rose to 60 per cent.

The 1969 budget considerably altered the whole structure of tax rates "to make it rather more logical."¹⁴ The initial rate was raised from 5 per cent to 7.5 per cent while the portion of income to which it was applied was reduced from K1040 to K500. The marginal rate remained 60 per cent and now applied to incomes above K10,500 (in addition to exemptions). The overall effect of rate changes was quite small and the consequent increase in tax liability was mainly as a result of the reduction of exemption levels.

No significant changes in the rates of tax took place between 1969 and 1974. Changes, resulting in tax reduction particularly in the lower income bracket were made in the 1974 budget. The budget, which has been said to be more equitable reduced the rate of tax on the initial K500 of taxable income to 5 per cent. In the lower income group this change brought a tax reduction of just under 50 per cent. For example table 3.4 shows that for the 1973/74 charge year, a tax payer at the K4000 income level was liable to K850 in income tax. During the following charge year, however, at the same income level, the taxpayer's liability was reduced to K575 representing a reduction of just less than 50 per

cent from the previous year. If flat rates had to be employed, this proportion would be maintained at all levels. However, a similar comparison carried out when income rises to K12000 shows different results. At that level the difference is much lower than at the lower income levels. This illustrates that the overall reduction in tax liability by reduction of tax rates also made the tax system more progressive.

Finally we shall discuss the reasons behind the Government's reduction of Income Tax at the time when, bearing in mind the general economic situation, one would have expected a rise in the incidence of tax to finance the expensive re-routing exercise.¹⁵ In reducing taxes, the government realised that because of the rise in the cost of living there would be wage increase demands during 1974 - this reduction was aimed at staving off these demands. It has been government's policy to freeze wages in order to prevent rapid inflationary trends. More wages paid to the workers means that the cost of production of goods goes up and ultimately, the high cost will be borne up by the consumer who will now pay more for goods and services. This phenomenon, known as cost-push inflation can have very serious economic effects.

Table 3.4 Graduated Tax Rates.

1969/70				1971/72			
Charge- able	Tax Rate	Cumulative Income	Cumulative Tax	Charge- able	Tax Rate	Cumulative Income	Cumulative Tax
Amount	%			Amount	%		
500 @	7.5	500	37.50	500 @	7.5	500	37.50
500 @	10	1000	87.50	500 @	10	1000	87.50
500 @	12.5	1500	150.00	500 @	12.5	1500	150.00
500 @	15	2000	225.00	500 @	15	2000	225.00
500 @	20	2500	325.00	500 @	20	2500	325.00
1500 @	30	4000	775.00	1500 @	30	4000	775.00
2000 @	35	6000	1475.00	2000 @	35	6000	1475.00
Balance after 20000 at 60%				Balance after 50000 at 75%			

Table 3.4 (Cont).

1973/74				1974/75			
Charge- able	Tax Rate	Cumulative Income	Cumulative Tax	Charge- able	Tax Rate	Cumulative Income	Cumulative Tax
Amount	%			Amount	%		
1000 @	10	1000	100	500 @	5	500	25
1500 @	20	2500	400	1500 @	10	2000	175
1500 @	30	4000	850	2000 @	20	4000	575
2000 @	40	6000	1650	2000 @	30	6000	1175
2000 @	50	8000	2650	2000 @	40	8000	1975
2000 @	60	10000	3850	2000 @	50	10000	2975
2000 @	65	12000	5150	2000 @	60	12000	4175
4000 @	70	16000	7950	-	-	-	-
Balance	75			Balance	70		

Other Deductions

The Zambian Income Tax Act provides for a significant range of deductions to be allowed against income tax. These deductions, mainly applicable to both individuals and companies engaged in business for profit are of great incentive value with regard to investment both local and foreign. More detailed treatment of these deductions will be dealt with in the chapter on the taxation of companies. It will suffice here to make casual reference to them. Section 33 provides for capital allowances for buildings, implements, machinery and plant and premiums; while section 34 provides for an investment allowance. By the provision of Section 35 a deduction for preliminary business expenses as defined by the section. Other provisions, like the deduction for losses and expenditure on research and training also exist in order to encourage businessmen to channell funds into those activities.

Double Taxation Relief.

The Act also provides for relief from double taxation, which is said to be one of the main impediments to the movement of capital and technology from developed to developing countries. Double taxation is also discussed in the Chapter on the taxation of companies.

CONCLUSION

The effectiveness of the Zambia personal tax like all income tax, is greatly diminished by a number of factors e.g. the relatively narrow definition of the concept of income, lower coverage and a considerable degree of avoidance. The lowering of exemption levels and the rise in tax rates has shown that primarily the policy of increased tax revenue dominates the investment aspect of taxation. The use of tax revenue to finance developmental expenditure was discussed in Chapter Two and that discussion showed that taxation is a revenue source to which government will turn for a long time to come. However, if this revenue arises primarily out of increasing tax rates or lowering exemption levels, it creates a disincentive effect on investment. The solution to this should be to raise the level of tax revenue without necessarily raising tax rates. Tax policy should take account of the fact that there can be increased tax revenue accruing from increased economic activity without an increase in tax rates or an increase of Gross Domestic Product taken in taxation. For example if we assume that tax revenue rises approximately in the same proportion as changes in G.D.P., an increase of 50 per cent in G.D.P. would give the same increase in tax revenue. Therefore, if tax is 20 per cent of G.D.P. then

an increase of G.D.P. from K100m to K1500m would increase tax revenue from K200m to K300m without increasing the overall rates of tax. Consequently a reduction in the rates of taxation which would be conducive to investment and would stimulate economic development would not necessarily reduce government revenue while at the same time it would have the desired effect of increasing the incidence of taxation by broadening income tax coverage.

NOTES

1. For classification of Income See Section 17 and the First Schedule to the Act.
2. Section 14(2) of the Income Tax Act. Cap 668 of the Laws of Zambia.
3. Section 14(1)(a) and (b) of the Act.
4. Income Tax (Amendment) Act (No. 26 of 1970)
5. E.H.K. Mudenda 1970 Minister of Development and Finance; Budget address 1970: Zambia National Assembly debates No. 21; 1970 Page 817.
6. National Assembly debates; January 1969 at page 179/180.
7. C.R.M. Harvey in "Observations on the 1969 Budget and the administrative constraint on Further Tax Reform" Zambia Law Journal Vol. 1 1969 No. 2, illustrates the effect of the change. He says that although after the changes a total of about 130,000 new taxpayers were acquired for assessment, only about 5,000 of them actually paid tax. This was because the abatements claimed by the majority of individuals lowered them below the taxable level.
8. W.A. Lewis, The Theory of Economic Growth (London: Unwin 1963) pp. 402 - 4. It is said that there is virtual unanimity on this aspect of taxation in developing countries.

9. See note 1 Table 3.1 above.
10. Income Tax (Amendment) Act (No 11 of 1974)
11. Section 16 of Act No 11 of 1974
12. R. Goode, The Income Tax and the supply of Labour
Journal of Political Economy, LVIII No. 5 (Oct.
1949) 428 - 37.
13. Zambia National Assembly Debates P. 817
14. C.R.M. Harvey. Observations on the 1969 Zambian
Budget and The Administrative Constraint on further
Tax Reform. Z.L.J. Vol. 1 1969 p. 37.
15. In 1973, Rhodesia closed her boarder with Zambia.
This meant that Zambia had to re-route her imports
and exports to alternative routes to and from the
Sea. This re-routing exercise cost Zambia a
considerable amount of money because the new routes
were not developed.

CHAPTER IV

TAXATION OF COMPANIES

Section 2 of the Income Tax Act (Cap 668 of the Laws of Zambia) defines a Company as "any Company incorporated or registered under any law in force in the Republic or elsewhere." The Income Tax Act takes a broader view of a Company than the Companies Act (Cap. 686) which defines a Company as "a company formed under the provision of that Act.

Company tax rates are provided for by Part III of the charging Schedule to the principal Act. Annexure "C" of the schedule provides for the tax rates for persons other than individuals, trusts, deceased's and bankrupt's estates. Section 46(b) of the Income Tax (Amendment) Act; No. 26 of 1970 fixed the rate percentum for Companies at 45.00. Before Act No. 26 of 1970, the rate percentum for Companies varied according to Chargeable profits of the Company. As from first April 1968 tax on such income as did not exceed K200,000 was levied at the rate of 37.5 percentum and 45.00 percentum on such income as did exceed K200,000. In the circumstances, marginal cases were

unfairly treated. For example there was no consideration as to what extent the K200,000 was exceeded. The effect of this was that it had some disincentive effect on business activity.

Revenue Importance of Company Taxation

The taxation of non-mining companies is one of the most significant revenue sources for the Zambian government. From 1966, to 1971 (the time for which figures are available), the contribution of corporate tax revenue to total government revenue has been on an increase. From a bare K9.2 million in 1966, it rose rapidly to K167.9 million in 1971. This rise can be attributed to the fact that there had been a proliferation of Companies during the period owing to an increase in economic activity.

As for the future, it appears that corporate taxation will remain to be a very significant revenue source. The possibility exists that more and more revenue can be obtained from this source. If this can not be done automatically through an increase in the size and number of Companies subject to tax, then a deliberate effort should be made by government to increase the revenue by raising the present rate of 45 percent to 50. No major disincentive effect to

investment can be created by such a move.

If the Zambian Corporate tax law were only revenue oriented, far more money would be available to government. The present level of revenue is a result of the fact that the government has attempted to give incentive to investment by granting favourable deductions to Companies, and also a considerable amount of tax evasion.

Like in most fiscal systems, an attempt has been made to strike a balance between the need for government revenue and the need to offer favourable incentive for investment and growth.

However, because of the operation of the annual budget system which Zambia inherited from the British fiscal system, there exists a very strong feeling that Zambian income tax law and corporate taxation in particular, is geared primarily for revenue purposes and to the encouragement of investment incentives only secondarily.

In the budget are contained all the economic policies upon which the government formulates fiscal proposals for the budget year. In the search for the basis of taxation law, therefore, annual budget speeches by the Minister of Finance are instructive. For example in his speech of 1970,

TABLE 4.1

ECONOMIC CLASSIFICATION OF CURRENT REVENUE: CENTRAL
GOVERNMENT. 1968-71 (Income Tax Only)
(K. MILLIONS).

	1968	1969	1970	1971
Income Tax Total	86.3	113.8	149.6	167.9
Mining Companies	42.2	49.5	79.6	86.9
*Other Companies	17.6	31.0	32.9	38.5
Individuals Self Employed	4.3	7.7	6.1	6.6
Individuals, P.A.Y.E.	21.0	24.6	30.6	34.3
Other	1.2	1.0	0.4	0.7

SOURCE: Ministry of Planning and Finance

Economic Report 1973; Presented to Parliament
January 1974.

- NOTE: 1. Prior to 1968, figures were not broken down to fit into the above classification.
2. Table 4.1 Shows that Company Taxation ranks second in its revenue production, to taxation of Mining Companies. If Mining Companies were not separately classified, Company Taxation would be by far the greatest and most significant revenue source. During the period under examination, Company taxation contributed an average of 30 percent of total tax revenue. Company tax revenue exceeded by a large margin Individual tax revenue and it was 50 percent of total mineral revenue.

the Minister said that the policy of the Ministry of Development and Finance was to achieve non-inflationary growth coupled with a balance on overseas payments and steadily rising employment. This represents real growth which the Minister is able to direct using the various tools at his disposal including taxation. The impression given in that pronouncement was that it is these policies which influence the Minister's fiscal proposals like the level of taxation for the budget year. However, on examination it does not appear to be the case. There is a strong case for saying that he is influenced to a larger extent by his revenue needs than any other policies.

The actual operation of the annual budget illustrates this point. By this method, government departments submit proposals of estimated amounts of money which they will require for the following year. These figures, usually referred to as estimates, when approved, form the basis of the budget. The Minister's budget speech to parliament under these circumstances contains proposals of ways in which those pre-determined figures will be found. The greatest revenue source is taxation. There is almost a standard form by which the Minister begins his announcement of revenue measures. An example, taken from his 1970 Speech reads as follows:

"I expect to raise K122m in Income Tax, of which K31m will be from P.A.Y.E. and Individual assessments. The balance of K91m will come from Company Income Tax. Customs and Excise revenue is estimated to yield K69.6m; Fines, Allowances and other Taxes K3.9m; Mineral Tax and Royalties and Copper Export Tax 114m.....etc"¹

It can be argued, therefore, that budgetary measures are tailored mainly to satisfy revenue needs. In the circumstances, it has not been easy for government to suit tax law to economic development. However, this is not to say that the revenue generating capacity of taxes is the exclusive determinant. Several measures have been taken, in the case of Company income taxes to encourage economic development-these have taken the form of deductions and allowances which are the usual incentives for investment. However, the contention still remains that these are piecemeal and inadequate. This fact has been recognized by government and proposals for a new Investment Code are underway.

INVESTMENT INCENTIVES

(a) Need For Foreign Capital

The highest proportion of the population in Underdeveloped countries live in extreme poverty and the only way to raise the standard of living of these people is by bringing about

rapid economic development. Many of these countries, although they possess vast amounts of natural wealth and are potentially richer than some of the industrialised countries, lack Capital, skilled manpower and technological inventions which are the basic instruments for the exploitation of their natural resources. Due to lack of these basic instruments of development, there is need for these to be supplied by the more industrialised countries of Europe and America. In 1951 it was estimated that about 19 billion American dollars of foreign origin was required per year in agriculture and industry in order to achieve a 2 per cent annual increase in the National income of underdeveloped countries of the world.²

Foreign investments can take one of many forms e.g. Grants or aid, short-term credits, state loans and private investments. Most metropolitan European countries have some kind of arrangement to make capital available to their former colonies. In this study, we will focus our attention on private foreign investments since, in most cases, inter-governmental arrangements are usually governed by treaty. Private Capital forms an important part of foreign investments. The government of the United Kingdom once indicated that:³

"It is through the Investment of privately owned funds that the U.K. has made its most valuable contribution to development in other Commonwealth Countries, and Her Majesty's Government Consider that this should continue.... Private enterprise is better adapted to undertake the risk investment which often produces the most valuable addition to economic progress."

One characteristic of private capital is the need to produce profit. The profit motive induces capital owners to part with their money and take business risks. It is this factor that distinguishes private capital from grants or aid. Private investors will therefore, always look for the most attractive and secure countries where they can earn a reasonable amount of profit. The role of the law under the circumstances should be to preserve the interests of the investors and those of the investee state.

(b) Effect of Company Taxation on Investment.

The most significant criticism of Company taxation is that this form of tax may have an adverse effect on Investment from the Private Sector by reducing the funds available for investment. Since Company tax is paid out of profits, the disincentive effect may influence the individual, because

his returns are diminished, against risk-bearing and expansion.

With regard to individual equity participation, the disincentive effect of taxing profits first and then dividends after they have been distributed may have a very serious effect on the ability of a larger section of the community to buy stock. In the case of Zambia where the majority of equity holders are resident outside, there is not only need to remove any tax positions which might produce the disincentive to equity participation, but also there is greater need to give such participation more favourable tax treatment for some time.

The most serious effect of Company taxation is on the ability to invest. This form of tax diminishes the funds available to business from both local and external sources. This effect is particularly serious in the case of new industries which, in Zambia have very little chance of getting funds from external sources. It is these firms that are most likely to enter into the production of new products and the tax may thus have a dampening effect on economic development.

In order to offset the serious effects this form of taxation might have on the incentive and ability to invest

on the part of Private Corporate investors, the tax code must provide for favourable exemptions and allowances (which tend to overlap), and also there must be extended loss offset provisions. The Zambian Income Tax Act provides for all the three. In addition, the Act provides for depreciation in the case of Capital goods but this allowance has one criticism i.e. it has diminished in its usefulness in that it does not take account of inflationary pressures.

Further incentive provisions can be found in the Income Tax Act e.g. provisions for double taxation relief.⁴ In addition, favourable exemptions and rebates of Customs duties occur in the tariff structure. These will be discussed in the Chapter on indirect taxation.

The portion that follows discusses the provisions in the Act which purport to offer incentives to investment.

(i) Double Taxation Relief

Double taxation occurs when the same income is taxed in two sovereign states. International double taxation is one of the factors hindering world trade. Having realised this the League of Nations instituted a number of expert studies which concluded that elimination of double taxation

could best be achieved by the conclusion of tax conventions. For the benefit of interested persons the League produced two model tax Conventions.⁵ Other international organisations had done valuable works on the same subject.⁶

The Zambian Income Tax Act Cap 668 Contains provisions aimed at providing for the elimination of double taxation. Section 74 of the Act empowers the president to "enter into agreements which may have retrospective effect, with the government of any other country to avoid tax being levied twice in respect of the same income and for reciprocal aid in tax administration, and every such agreement shall be published in the Gazette." Section 75 provides that the foreign tax should be allowed as a credit against Zambian tax. In the absence of bilateral agreement, Section 76(1) of the Act provides that double taxation relief may be granted unilaterally.

By offering relief from taxation, the government renounces one of the most important attributes of Sovereignty i.e. the right to tax income earned within its jurisdiction. In addition to such renunciation, the government loses a substantial amount of tax revenue in the same manner. It can be said, therefore that the only reason why any government may become party to double taxation relief

conventions is that it should consider the investment incentive aspect of the matter as overriding the desire for revenue Collection. This feature derogates from our Central thesis that our tax law is geared primarily to revenue collection and only secondarily to economic development. This is true however, only in relation to those Conventions which provide for taxation not at the source but in the country of origin of the investor. Most treaties to which Zambia is a party do not provide for taxation at source. All double taxation treaties which Zambia has concluded with other countries appear as an annexure to the Income Tax Act.

To reinforce our contention that in entering into double taxation agreements, government was motivated by the desire for economic development as against its desire to raise tax revenue, we must study in closer detail the nature and operation of these agreements.

INTERNATIONAL DOUBLE TAXATION AGREEMENTS AND DEVELOPING COUNTRIES.

As at 1966, Zambia had a large number of double Taxation Agreements with different countries. After 1966, when the present Income Tax Act was enacted, Zambia engaged in a process of negotiating new agreements with countries with

which she did not previously sign any agreement. In other cases, Zambia has had to re-negotiate terms of the existing agreements. The processes are still going on and at present several treaties are still being negotiated while others are only pending ratification.

A large amount of the treaties which appear annexed to the Income Tax Act were negotiated by the Government of the United Kingdom on behalf of the Federation of Rhodesia and Nyasaland of which Zambia, then Northern Rhodesia was an integral part. In other cases, e.g. the present U.S.-Zambia treaty British agreements with other countries were made to apply to Zambia. This was done in the form of dispatches from the Colonial office in London to the Government of Northern Rhodesia informing the Government of the proposal for the Continuation of an agreement. The Governor would then reply that the Government of Northern Rhodesia had accepted the proposal.⁷

The practical effect of the present network of double taxation agreements between developed and developing countries is to shift substantial amounts of income tax revenues to which developing countries have a strong legitimate and equitable claim from their treasuries to those of developed countries.⁸ This amounts to unrestricted

grants in aid from a developing to a developed country- thus creating the anomaly of aid in reverse from poor to rich countries. The reason for this anomalous situation is often given as the fact that most tax agreements at present in force give the tax payers' country of residence either exclusive or substantial right to tax income as against the country in which the income arose (the "source country"). It is true to say that at present in most Income generating transactions between developed and developing countries the former will be the country of residence while the latter will be the source country.⁹

The present System of double taxation treaties has a lot of merits in apportioning income between developed countries. Where two developed countries enter into a double taxation agreement, its effects and benefits are reciprocal because the nationals of each contracting party maintain business interests in the other contracting party. In this way both parties have a common interest. When, however, parties to a tax treaty are at varying degrees of development the income flow may tend to be in one direction i.e. the direction of the developed countries. As an example, payments of interest to private lenders (resident) in the United States, United Kingdom, West Germany, and Japan have been estimated to be

in excess of 20 million dollars a year, while interest payments from such countries to Zambian lenders does not exceed the proportionately minute figure of 10,000 dollars a year,¹⁰ but many Double Taxation Relief Agreements prohibit the source country from levying tax on those who receive the interest. However the position seems to be improving in that under certain double taxation agreements presently in force or awaiting ratification (between Zambia and for instance the United States, United Kingdom, Japan and West Germany) Zambia may impose tax up to 10 percent of the gross interest payments.¹¹ Under the double taxation agreement in force between Zambia and the United States, dividends are generally exempt from tax in the Source Country.¹² Apart from giving the Countries with which it has double taxation agreements the right to tax almost the entire amount of interest payments from Zambia, thereby losing vast sums of much needed revenue, Zambia has gone further to give another concession thereby further denying itself of the right to revenue from the taxation of foreign Companies. The Concession is that although under the existing agreements Zambia is entitled to 1.5 million dollars from remittances of interest payments, it has in almost all cases in which international lending institutions are the recipients of Zambian Source interest agreed to

unilaterally exempt such interest from all Zambian income tax.¹³ In contrast to Zambia the countries mentioned above have the residual right to tax the great proportion of such interest payments and probably derive in excess of 4 million dollars from these payments - this figure is based on the assumption that the rate of tax in the developed countries is 50 percent of net income with full credit for foreign taxes paid. In fact, there are other instances where the disproportions are even much greater in that while income may be completely exempt from tax in the source country, the effective rate in the resident country is often much higher as a percentage of gross income. For example under the Zambia - U.S. agreement dividends to individuals are subject only to a 15 percent withholding tax and the Source Country's right to portfolio dividends is limited to a figure not in excess of 15 percent.¹⁴ This means that with respect to both (portfolio) dividends and those remitted to individuals, the United States may be entitled to a greater sum of tax revenue than Zambia. Zambia's right to this tax revenue was reduced even further than it was entitled to under the double taxation agreements because of the fact that in the takeover agreement, Zambia had agreed to permit RCM and NCCM (the major remitters of portfolio dividends to the

U.S.) to remit their dividends free of Zambian taxes. This Condition, however, lapsed in September 1973 when the Condition for its applicability i.e. that the Zimco Bonds and Loan Stock remains unpaid, were satisfied by reason of the fact that the said bonds and Loans Stock were repaid by a Eurodollar loan raised by Zambia. In spite of this development the fact still remains that the United States, for as long as the double taxation agreement does not shift towards taxation at source, will still be entitled to larger tax revenue than Zambia.

We have at this stage established the fact that the present network of double taxation agreements between developed and developing countries with a bias against taxation at Source Confers greater advantage in terms of revenue receipts on the former than on the latter and that this situation breeds the anomalous situation of aid-in-reverse. However most developing countries have still remained parties and adhere to these treaties either in their original form or with little modifications. There ought to be some economic advantage therefore that the developing country hopes to get out of these agreements - an advantage which for some reason or other outweighs revenue considerations. To find out about this we will have

to look into the reasons for the Continued existence of unfavourable Double Taxation agreements between developed and developing countries.

There are many reasons for the continued existence of double taxation agreements with a bias for taxation at residence. One reason for the continued existence of Double Taxation agreements with a bias for taxation at residence is the historical fact that the agreements to which most developing countries are parties were concluded between their former colonial masters and other countries and they were simply made to apply to the new nations at the time of independence. As between the original parties, the agreements may have been suitable since they may have conferred reciprocal benefits. However there was no time and manpower at independence to re-negotiate these treaties. Apart from this general reason, there were the following:

A. Unawareness of the adverse nature of Double Taxation Agreements with a bias for Residence and Failure to recognise improvements that could be made is one of the major reasons. This is also the reason for continued acceptance of new agreements with a residence bias by some developing countries. One general feature in most developing countries is that at independence, they are faced with

shortages of suitable manpower. The Income Tax Departments of developing countries are so understaffed that they cannot even cope with domestic tax laws, let alone to cope with complex international tax issues. The result of this is that questions of double taxation agreements arouse no interest and are often ignored. When the country has to enter into an agreement therefore, the agreement, which is often already in draft form from the developed country, is accepted without question and with little or no negotiation or bargaining.

B. The Second reason for the proliferation of double taxation agreements with a bias for residence is that the developing country desires the removal of impediments to foreign Investments in internal tax laws of Developed countries. The desire to remove these may put extraordinary pressure on the developing country to accept a double taxation agreement which might eliminate such impediments. As an example foreign Source income in some European countries is subject to domestic tax at the full rate.¹⁵ Where in some countries there exist foreign tax credit provisions, these do not offset any substantial amount of the foreign tax. This also happens where the developing country has a different definition of "taxable income" from that of the developed

country.¹⁶ To remove these difficulties in order to facilitate a flow of capital, Services and technology, developing countries are impelled to accept any agreement which grants full credit against domestic taxes for foreign income taxes.

C. The third reason for the existence of these double taxation agreements is that they are fancied as providing assurances of stability. Investors are always on the look out for instability in the laws of the investee state which might have an adverse effect on their Investments. Usually investors regard tax Systems of developing countries as less stable than those of their own countries and before they can invest, they will usually insist that a double taxation agreement be entered between their home state and the state in which they will invest and one of the provisions which they will want to be included will be the maximum rate of tax to which they will be subjected.

This reason however, although it might compel a particular developing country to enter into a double taxation agreement, does not compel it to enter into one which might turn out to be disadvantageous to it unless the developed country insists on this and the developing countries intends to attract investors from the developing country.

D. Fourthly, there is a great desire on the part of a developing country to remove the disincentive effects of taxation at source. It has been said that withholding taxes at source have discouraged or inhibited international investments. Foreign lenders will often require that both principal and interest from a loan should be remitted free of local taxes. If such taxes are imposed the international lender will decide not to invest in that particular country.

There are a number of other reasons for the existence of Double Taxation agreements with a residence bias between developed and developing countries. For our purpose, we have managed to illustrate that the desire to attract Capital, Services and technology, which are essential prerequisites for economic development in poor countries has overridden the desire to raise revenue from the taxation of foreign investors.

We can conclude therefore that in as far as Zambia has entered into Double taxation agreements with a number of developed countries, which agreements confer revenue advantage on the developed countries, there has been an attempt to frame the tax law of this country to encourage economic development.

Having disposed of the question of double taxation Agreements, we will go into other provisions of the Zambian income tax

legislation to see the incentive provisions contained there in. Our minds will automatically think of what business allowances exist and it is these that we will now consider.

(ii) DEDUCTIONS

Part IV of the Income Tax Act deals with deductions. When tax is to be levied, it must be so done on profits of a business; therefore it is incumbent of the legislation imposing the tax to specify ways in which this profit can be calculated. The idea here is that, tax is not levied on the net profit but on a lesser sum to which we shall refer as chargeable income.

A. Capital allowances

Section 33 of the Act provides that "Capital allowances are deducted in ascertaining the gains and profits of a business... for each charge year -

- (a) for building, implements, machinery and plant, and premiums according to the provisions of the Fifth Schedule."

Sub-paragraphs (b) and (c) of Section 33 deal with Mining allowances and farm improvement allowances which are categories of Capital expenditure but outside the scope of

this chapter. Mining allowances will be dealt with in the chapter on the Taxation of Mining Companies.

(i) Industrial buildings

Paragraph 1 of the Fifth Schedule defines an industrial building. Substantially the building must be one that is used for the purposes of an industry. However, "Industrial building" does not include any dwelling house, hotel, housing for employees and any building in use for the welfare of employees. One observation can be made about this definition. In as far as it excludes housing for employees and any building used for employees' welfare it creates a disincentive for companies to construct housing for their labour force because these cannot be deducted against tax. Lack of housing causes grievances and may result in bad management-labour relations - a situation which is not conducive to labour stability and high productivity. It is common knowledge that a contented labour force yields higher returns for the employer and this in turn will result in actual economic development. A Reform is overdue in this area which might in the longrun help to solve the critical housing problem in the big cities.

Paragraph 3 provides that in ascertaining the profits of any person who has incurred capital expenditure for the purposes of his business on the Construction of a building

intended to be used as an industrial building, or an addition to or alteration to such building, a deduction, called an initial allowance shall be deducted in the same year in which the building was constructed or the addition or alteration was made. The rate of this allowance is five per centum;¹⁷ and in the case of low cost housing, it is ten per centum. In addition to the initial allowance, there is the wear and tear allowance for buildings at a given percentage rate of the original cost of the building.

(ii) Implements, Machinery and Plant.

Paragraph 9 of part II of the fifth schedule provides that where a person carrying on a business incurs capital expenditure in the provision of implements, machinery and plant for the purpose of that business a deduction called an initial allowance has to be made. The rate of this deduction was 20 per centum. However, section 15 of the Income Tax (Amendment) Act (No 26 of 1970) has amended this by the removal of the initial allowance in respect of implements, machinery and plant. Further the same Section of the same act has removed the balancing allowance. Instead, the act has provided for a wear and tear allowance at 30 percent on a pool basis for all implements, machinery and plant and not on individual items as used to be the case. This is a more equitable system in that it provides for a higher percentage allowance than the aggregate percentage

before the change; and the fact that it is done on a pool basis avoids unnecessary complications and delays. The amendment act has also provided for an increased rate of wear and tear where there is intensive use of the implements, machinery and plant. This is a very direct incentive for people to use their machinery to maximum Capacity.

(iii) Premium allowance.

Paragraph 14, Part III of the Fifth Schedule provides for a further allowances called a premium allowance in ascertaining the profits of a person's business. The allowance equals to the amount paid for the use of machinery or plant, or for the use of any patent, design, trade-mark or Copyright. Sub-paragraph (2) of the paragraph provides that the amount of the premium allowance shall not exceed the amount of the premium or like consideration divided by the number of years for which the right of use is granted. This deduction ceases when the person having it acquires an interest in the Copyright or like consideration.

B. Investment Allowance

Section 34 of the Act provides for an investment allowances for expenditure incurred on the construction of, addition to, or alteration of any industrial building to be used by

the person getting the allowance for the purposes of his business as a manufacturer. The rate of this deduction is 10 percentum of such expenditure. Where such expenditure is incurred on the purchase of new implements, machinery or plant, other than motor vehicles, the rate of the tax is 20 percentum of such expenditure.

C. Preliminary business expenses.

By the provisions of Section 35 of the Act, expenditure incurred within 18 months before the Commencement of a business is allowed as a deduction subject only to the fact that such expenditure could be allowed as capital expenditure after the commencement of the business. There is no rate specified and the wording of the Section implies that it is all such expenditure which is allowable. If this is the Case then, the Section confers a far reaching tax incentive for people to go into actual productive industries e.g. the manufacture of foodstuffs and machine tools. For example, if the person incurs expenditure to the tune of K10,000 within the 18 months before he commences his business; and after commencement of his business he realises profits not in excess of 2,000 per year, then the person would have to be entitled to a very long period of tax holiday before the K10,000 was recouped. Another way of looking at it is that

since there is a limitation that such expenditure should only be allowed if it could be allowed as Capital expenditure after the commencement of the business, then the rates applicable to Capital expenditure should apply to this also.

D. Technical education and Research.

The allowance for technical education, provided for in Section 38 of the act was inserted with a view to encouraging businessmen to contribute towards the training of technical manpower. One of the main bottlenecks in economic development is the lack of skilled manpower. The Section, however, does not say that the deduction should only be made if the person trained was a Zambian. As it is presently worded it could possibly happen that the Zambian government can be made to subsidize the training of foreign nationals. This allowance amounts to the full contribution by the taxpayer towards a bursary or scholarship.

E. Losses

Losses incurred by any person in any charge year are, as far as possible deducted from his income for that year. If the loss is not deducted in the charge year in which it was made, Section 30(2) enables it to be deducted from

the income of the following year and so on from year to year.

This provision is obviously incomplete and inadequate in that it does not specify what kind of loss can be treated in this manner for tax purposes. It does not say whether the loss must be related to the business or whether it can be any loss at all. Another situation which it does not take account of can be illustrated by the following hypothetical situation. A trader may buy his goods at K10,000 from a wholesaler. If these goods are not sold for a period of two years, then they are bound to show a considerable amount of depreciation-the seller then decides to reduce the price so that now, instead of making K2,000 profit, he only makes K1,000. Definitely this is a loss of K1,000 of profit but can this be treated as such for tax purposes? Many traders would call this a loss. The Act should have specified that the loss referred to here is the loss incurred by the failure to realise part of the K10,000 above. A reduction on profits should be treated as normal business risk and the state could be loosing a lot of revenue in Subsidizing traders.

CRITICISMS OF THE SYSTEM

Several observations can be made about the incentives to business as we have briefly outlined them above. First,

the present Act is a 1966 Act. It is therefore surprising that it is insensitive to the development needs of the country. The primary concern for government has been for Speedy rural development not only through agricultural activity but by the creation of rural industry. The tax incentives now existing do not cater for the special problems that exist in the rural development programme. AN Investor who wishes to set up a rural industry will know that he faces greater transport and other costs than if he had to invest in urban areas. These costs will diminish his profits and this coupled with tax considerations will deter an investor whose motive is profit from putting up rural industry. It is urged that in order to remove this disincentive effect, tax legislation should discriminate in favour of rural enterprise. Further the legislation should consider such operations as sinking boreholes and building dams as vital activity and therefore to be treated more favourably for purposes of tax.

Secondly, the present tax legislation does not offer tax holiday for the initial years of setting up an industry. The result of this is that a investor may not feel encouraged or may not have the money to invest into expansion since tax diminishes his profits. An attempt

was made to provide for tax holiday by the Pioneer industries Act.¹⁸ However, the Act imposed onerous conditions for an industry to qualify to pioneer status. The Act was therefore found unsuitable and was scrapped. It should be borne in mind that if a tax holiday as long as five years has to be given, a considerable amount of tax revenue is lost; this may be speculated as the overriding consideration and may account for the government's delay in introducing tax holidays.

Thirdly, the rate percent for all the deductions above are very low in comparison with other countries. In Ghana, the initial capital allowance for implements, machinery and plant is 25 percent followed by an annual allowance of 15 percent. For buildings and roads, the initial allowance is 20 percentum and the annual allowance is ten percentum. It is suggested that the government should consider a scheme for accelerated depreciation. A Scheme which provides for the rapid write-off of Capital assets for tax purposes, with a larger initial year write-off may be a very effective incentive to investors both local and foreign.

The fourth point to note about the present incentive system in the Zambian income tax Act is that it is geared

primarily in favour of capital-intensive investment. The effect of this is that companies have chosen the use of techniques which need very little labour. At present when there is no skilled local labour available and expensive imported labour, the use of capital intensive techniques may be justified. But later in time when there will be local labour available the use of capital-intensive techniques will be totally unsuitable. It is possible that at that stage, there might be a switch to labour-intensive techniques. However, the change from more intensive use of capital to the use of labour can be very expensive because it involves the disposition of capital goods. At present there is only one concession to labour costs in the tax system i.e. accelerated depreciation allowances for low - cost housing. This concession is good but the fact that it may take upto five years to write off half of the cost of this housing can be a considerable burden on a newly formed company. The result is that although this concession does exist, a great majority of new companies do not take advantage of it.

Conclusion

Except for the criticisms made of the system in the latter part of this chapter, the incentives to investment contained in the company tax system are very favourable. First the

fact that Zambia offers relief against double taxation is a very significant incentive to foreign investment; although the great majority of double taxation agreements operate against Zambia's revenue needs. Secondly the Income Tax Act very rapid write-off provisions especially in the early days of the industry are considerable incentives which should be able to attract both foreign and local investment. To be in line with the pressing problem of the development of the rural areas, the act should contain specialised incentives for industries set up in rural areas. At present, the Act is inadequate in this respect. In addition to the above incentive provisions, companies also enjoy considerable relief from import duties in respect of capital goods. This factor also creates a bias against labour.

As regards the criticism against the tax treatment of low-cost housing a reform can be suggested to remedy the situation. This is that the government should think about making direct subsidies to new companies. This would save the government the trouble of a quick revision of the tax system. Another aspect of the matter is that all housing, whether low-cost or high-cost should qualify under the allowance system. The present discrimination between the two has no justification.

NOTES

1. Mudenda, Minister of Finance: Address to Parliament January 1970 National Assembly debates No 21 1970 P. 816.
2. U.N. DOC E/1986 3rd May 1951 pp 77-8
3. Cmd 237-The United Kingdom's Role in Commonwealth Development (1957) para 3(IV)
4. Part VII Sections 74-76 of the Income Tax Act.
5. Report of the OECD Fiscal Committee 1963 Document 15343.
6. E.g. The International Chambers of Commerce.
7. E.g. Dispatch No 139 of 3rd March 1964.
8. Charles R. Irish (not Published), Legal adviser to the Zambian Ministry of Finance 1973.
9. Surrey "International Tax Conventions: How they operate and what they accomplish." 23 Journal of Taxation 364, 366 1965.
10. Charles R. Irish extrapolated the figure for interest payments remitted to the U.K., U.S.A., Japan, W. Germany from 1972 Annual Reports for NCCM and RCM; the two major mining Companies in Zambia and major remitters of interest abroad. The figure also takes account of the 40 million and 100 million eurodollar

loans obtained by Government of Zambia for the refinancing of Zimco Bonds. The inbalance indicated above is not peculiar only to interest payments. The same can be said of other types of income in Zambia e.g. dividends, and management and Consultant fees. This inbalance is prevalent in most relationships between developed and developing countries.

11. See Art. 12 of Zambia-U.K. double taxation agreement Art 10 of proposed Zambia-W. Germany double taxation agreement Art 9 of proposed Zambia-Japan agreement.
12. See Art. VII of the Zambia-U.S. Double Taxation treaty.
13. See Statutory Instrument No. 110 of 1973 "The Income Tax (Foreign organisations) (exemption approval) Order 1973.
14. See Art VI of the Zambia-U.S. Agreement.
15. Interaction between the French Tax System and those of developing countries (U.N. Publication sales No. E. 71 XVI(3)10 (1971)
16. Tax Treaties Between Developed & developing countries (U.N. Publication Sales No. E69 XVI(2) 5 1969 (FIRST Report).
17. See para V of Fifth Schedule.
18. Pioneer Industries (Relief From Income Tax) Act CAP 666.

CHAPTER V.

TAXATION OF MINING COMPANIES

The Pre - Independence Era.

A brief account of the activities of the British South Africa Company (B.S.A.); a company incorporated by Royal Charter by the British Crown, is necessary for an understanding of the Nature of Mining Taxation, which existed to a considerable extent, in the same form until the Royalty was scrapped by the Mineral Tax Act of 1970:¹

Before Independence, all rights to Search and mine for minerals in the territory of Northern Rhodesia (Zambia) were acquired by and vested in the Chartered Company. These rights were acquired by a series of agreements procured by agents of the Chartered Company on behalf of the company with African rulers and individuals. In 1890, Frank Lochner obtained what has been popularly known as the First Lewanika Concession. This agreement was to be "Considered in the light of a treaty" between the Lozi and Queen Victoria of England though in fact Lochner was an agent of the company. In return for protection and a small

subsidy, the company got "the sole absolute and exclusive and perpetual right and power... over the whole territory of the Barotse Nation, or any future extension thereof including all subject and dependent territories... to search for, dig, win and keep diamonds, Gold, Coal, Oil and all other precious stones. Sharpe and Joseph Thomson were sent by Rhodes to make similar treaties in North Eastern Rhodesia and the Katanga Province of the Congo (Zaire.) The Company's claim for mineral rights in Zambia were based on these agreements and in case of the Lewanika Concession, in its renegotiated form of October 17, 1900. These claims were accepted and approved by the British Government.

During the same period, the B.S.A. company was vested with the administrative and financial control of the territory although in theory these powers were vested in the British High Commissioner for South Africa. The period was therefore characterised by two features, viz, the desire on the part of the company to exploit the economic potential of the territory on the one hand, and a critical shortage of funds on the other so much so that Northern Rhodesia was a financial burden on the company.

The first statute regulating Mining activity in Zambia was the Mining Proclamation of 1912.² As the Company took part

in the framing of this piece of legislation, it made sure that it facilitated enjoyment of the Company's title to Mineral rights. In substantially the same form, this proclamation remained law until 1958. The main purpose of the legislation was that "it created institutions and provided for a system of acquiring, holding, registration and termination of Mining rights granted by the company.

As a result of its position, the company enjoyed very wide privileges in relation to land and Mineral revenue. This caused considerable agitation from Northern Rhodesia Settlers. Even before company rule was terminated in 1924, there was considerable agitation from the Settlers against the Chartered Company's claims to land and Mineral rights. It was then that there started what had to turn out as a long time struggle the main issue of which was the question as to who should have had the right to the vast amount of revenue accruing to the Chartered Company in the form of royalty.

The main reasons for the case against the Chartered Company's privileges were strong and convincing. However, that aspect of the matter is outside the scope of our enquiry.³ The main thread of the arguments runs thus:

Firstly, in negotiating with Lewanika, the Company misrepresented itself and made Lewanika to believe that the company was an agent of the crown. This is evidenced by the ambiguous reference to a "treaty between the Barotse Nation and Queen Victoria" in the text of the Concession. Further, there appears to have been a deliberate attempt to create confusion between Crown and Company both in the negotiations and the Concession text. All this Misrepresentation on Lochner's part - the man who negotiated on behalf of the company was, from the foregoing, deliberate. The same arguments were advanced in the case of the Thomson - Sharpe Concessions which applied to the Eastern Areas of the territory.

Another ground for disputing the privileges of the Chartered Company was that even assuming the validity of the original Concessions, their geographical extent did not apply to the Copperbelt - the area from which the greatest proportion of mineral revenue came from.

The first positive dispute of the company's rights and privileges came from the White Settlers of Northern Rhodesia in 1921 in a petition to the British Crown.⁴ Clause 9 of the petition observed that:

"The British South Africa Company claims to own all the land and minerals in the country as a private Commercial asset, and the people claim that both these belong to the crown and say that the country will be greatly impoverished if the greatest part of its wealth is thus taken from the Crown as Custodian for the people of this territory".

The Settlers ended up by suggesting that an inquiry be set up to look into the question of mineral rights in the country.

In April 1921 the Buxton Report was published.⁵ Among other things the Committee was asked to advise:

1. "Whether the question of the B.S.A. Company's claim to the land and minerals, and to the administrative deficits, should be referred to the Privy Council for settlement".
2. "Or alternatively, whether the claim should, if possible, be settled by agreement between the Crown and the Company".

The recommendation of the Committee was that for two reasons the matter should be referred to the Privy Council in order that settlement be reached which would bind all parties. The two reasons were (a) the number of interests involved, i.e. the Crown, the Company and the Settlers

(b) the obscurity and complexity of the matter. The committee noted that "It does not appear to us that questions so obscure and involving interests so diverse and considerable, can be settled satisfactorily except by a Court of Law".

This controversy was apparently solved in 1923 by an agreement between the Chartered Company and the British Government.⁶ Clause 3 of the agreement provided that: "The Company shall retain and the Crown shall recognise the company as the owners of the Mineral rights acquired by the company in virtue of the Concessions obtained from Lewanika in North-Western Rhodesia and Concessions in North-Eastern Rhodesia covered by the..... certificates of claim issued by Sir H.H. Johnston". Thus, therefore, the Buxton Committee recommendation to submit the question of Mineral rights to the Privy Council was rejected by the conservative Government then in power. It has been claimed that the Chartered Company had considerable influence over conservative Ministers which enabled it to strike this deal in its favour. A further reason for reaching this agreement on the part of the British Government was that as a Quid Pro Quo, the Chartered Company dropped its claim for re-imbursement of the administrative deficits incurred by it in Northern Rhodesia. The sums involved were quite

substantial at that time.

THE TERRITORIAL GOVERNMENT - AFTER 1923.

On April 1, 1924 the British South Africa Company ceased to be the administering authority in Northern Rhodesia and the territory was placed under Crown protection. Strictly the territorial Government had no right or title to the ownership of mineral rights or to any of the royalty in Northern Rhodesia. This position persisted until 1950 when the Company conceded 20 percent of post tax royalty to the Government.⁷ Thus in the 64 years ending in 1964 the Chartered Company had acquired £75 million after tax in royalty payments. By 1964 the company's after tax income was about £7 million per annum.

The territorial Government envied the position of the B.S.A. company and this was also the case among a good number of settlers who would have liked to see the revenue accruing to the company and being distributed to external Shareholders, being put to the development of the territory. The royalty was a form of tax. The main issue therefore was that a substantial power of taxation was vested in and was exercised by a private Commercial Company whose title to the land and mineral rights was highly questionable.

The change-over from Company rule to British rule did not affect the then existing mining legislation; so that as observed by Sir Herbert Stanley, the first governor of N. Rhodesia, regarding pressure upon the Government to encourage prospecting;

"The Conditions in N. Rhodesia with regard to Minerals differ from those obtaining in other East African territories. The revision of the local mining law... Involves numerous difficulties... The encouragement or discouragement of prospecting depends at present upon the policy of the B.S.A. Company rather than upon the policy of the Government".⁸

With a view to changing this situation, there began a struggle to change the then existing Mining legislation. This was not achieved until five years after Independence when the 1969 Mines and Minerals Act was enacted.⁹ In the negotiations which were nearly all the time initiated by the Northern Rhodesia Government, the B.S.A. Company successfully managed to persuade the British Government to side with it and employed all tactics to delay the matter. A little but significant change in the situation occurred in the late thirties. In 1937 the Pim/Milligan Commission was appointed to investigate the financial and

economic position of N. Rhodesia.¹⁰ The Commission found that money was urgently needed for the expansion of Government Services; and the way to make this money available was that the Government should receive a larger proportion of the finances from the Mining Industry. An important observation made by the Commission was that the Government's tax revenue was greatly reduced by a number of factors including double taxation relief and the fact that the tax revenue was shared between the British Government and the local Government. Further, the royalty paid to the B.S.A. was allowed as a production cost against tax liability. All these factors helped to reduce the taxable income of any Mining Company with the resultant effect that Government revenue from the mines remained very low.

In the 1930's notable figures like Roy Welensky who was latter to become Prime Minister of the Federation of Rhodesia and Nyasaland entered the scene. In 1949, as a member of the Legislative Council, he proposed a motion in the House for the imposition of a "Special Tax" on Royalties. In his motion, Welensky noted that the territory of Northern Rhodesia had a "Mono-economy." i.e. the copper economy. He therefore proposed that revenue was urgently required from this sector of the economy to develop

other Sectors. In the same speech, he vehemently criticised the B.S.A. Company's claims to Mineral rights in N. Rhodesia.¹¹ The battle was won through an agreement reached between the British Government, the Colonial Government and the Chartered Company in 1950. Under its terms, the agreement provided that the B.S.A. Company was to "Continue in undisturbed enjoyment, as now, of the mineral rights owned by the company in N. Rhodesia" until October 1, 1986. In return the N. Rhodesia Government was to be assigned 20 percent of the net revenue derived after October 1 1949.¹²

Political Developments were not on the side of the B.S.A. Company. With the coming of Independence, it was clear that the Zambian Government could not accept a situation where mineral rights vested in the Company until 1986. In 1964 therefore, an agreement was reached between the company and the Zambian Government by which all mineral rights reverted to the Government and the Chartered Company received £2 million (K4m). compensation.¹³

One element can be traced throughout the period of the struggle for mineral rights-this is the element of the need for economic development in the territory. The Chartered Company's claim to mineral rights and the royalty received

by it greatly hampered the flow of finance from the country's only substantial industry in that the government's power to tax was greatly reduced. Even if the Government could have raised the rate of tax on mineral income this could not have helped the situation because the taxable income was itself greatly reduced by the Royalty which was then regarded as a production cost.

It can be argued therefore that the struggle which ended up with the transfer of mineral rights to the Zambian Government was aimed at facilitating uninhibited rights by the Sovereign Government to tax in order to facilitate economic development. As will be seen, while the Royalty existed, the primary consideration was for revenue. When however, it was realised that there was a need for the development of the Mining industry which would then facilitate development of other sectors of the economy, the royalty was dropped and what is still said to be a more equitable tax system is presently in force.

In the next part, we will discuss the implications of the tax systems which existed before and after 1969 when the Mineral Tax Act which provided for a mineral tax to replace the royalty was passed. Before then, it will be appropriate to discuss in very brief terms the position of

copper in the Zambian economy.

COPPER IN THE ZAMBIAN ECONOMY:

The economy of Zambia has developed with the Mining, processing and export of Copper and the Country's development is still dependent on the industry which dominates the economy. The dependence of the Zambian economy on the Copper Industry is overwhelming. Table 5.1 shows that on the average the Copper Industry generates over half of the Zambian Government revenue, it forms about 95 percent of the country's exports and forms nearly 50 percent contribution towards the gross domestic product. The Industry is also the third largest employer accounting for 15 percent of paid employment. In the First and Second National Development Plans, it was reconised that "Copper Mining holds such a key position in the economy of Zambia that in any programme of economic development it has to be controlled by the Government". It is this dependence on the one industry that makes the Zambian economy extremely vulnerable to all sorts of forces like disasters affecting the operation of the mines, strikes and other industrial action, fluctuating world prices and world changes of supply and demand.

The fact that Copper has been the main generator of Government revenue, earner of foreign exchange and generator of local investment capital has had the effect that other Sectors of economic activity were for some time ignored and as a result they have relatively remained undeveloped until more recent times. This should partly account for the near abasence of primary industries in the country. In Comparison with other Copper producing countries who are members of the Intergovernmental Council of Copper Producing Countries, Zambia has the highest proportion of dependence on the Copper industry in all respects. (See Table 5.2 below)

Some aspects of the importance of Copper in the Industry should be pointed out. From the outset, it should be noted as it has been done over and over that Copper is a wasting asset i.e. the large quantities of ore presently underground are diminishing. Under the circumstances, it would be disastrous if no alternative economic activity were created to absorb the impact generated by the end of mining. The disastrous effect on the economy can be judged in terms of the fact that even the non-production of one mine, the Mufulira Mine for a brief period after the 1971 disaster forced major changes in economic

planning and ushered in the period of economic stringency by the Government.

A significant aspect of the importance of Copper has been its effects on income levels. Generally and this was much more so at Independence than now, wages in the mining industry are much higher than in any other industry. This can be attributed to both history and the fact that the unions of workers in the industry have been very powerful.

Another aspect of the great dependence on Copper a Commodity with a highly volatile price is the export instability arising from this. For example, in 1970 the average price of copper per month shot up as high as K1,250 per metric ton in March but by the end of the year, it had sank to below K750 per metric ton. This causes a very drastic alteration in export earnings. Further, in as much as our economy depends so much on copper, it becomes difficult of economic planning due to fluctuating Copper prices. It has been found out that the Second National Development Plan may have been based upon too optimistic an assumption of the Capital expenditure that would be available to Government.

Table 5.1

Contribution of the Copper Industry to Domestic
Product, Revenue and Exports.

YEAR	NET Domestic Product (KM)	% Contri- bution of Copper	Government Revenue (KM)	% Copper Contri- bution	% Contri- bution of Exports
1961	375	47	75	38	93
1962	369	46	75	34	92
1963	387	45	72	34	92
1964	457	47	108	53	92
1965	576	43	189	71	93
1966	725	47	255	64	95
1967	807	41	276	53	94
1968	872	42	306	60	96
1969	1171	54	401	59	97
1970	1088	42	416	52	97

Source: Derived from Zambia "Economic Facts and
Figures": Investment opportunities;
Published by Zambia Information Services
Lusaka.

Table 5.2 Copper production in members of the
Inter-governmental Council of Copper
exporting countries, 1965.

(Percentages)

	GDP	G N P	Exports	Revenue	Employment.
ZAMBIA	40	34*	93	68	15
ZAIRE	18*	23*	51	45*	2*
CHILE	4	3*	65	14	3
PERU	2	15*	18	12	1

* Estimated

Source: derived by Bostock & Harvey from A.M. de Swardt and H.R. Drysdall, "Mining and prospecting in Zambia, with particular references to the work of the Geological Department" (unpublished, paper read at 50th anniversary conference of the Geological Survey of Uganda, Entebe July 1969).

THE SYSTEM OF TAXATION

Until 1969 there were three main taxes on the Copper mining Companies; Viz the royalty, Export Tax and the Income Tax. Until 1964 the royalty was paid to the British South Africa Company which owned the land and Mining rights in the territory. These rights were transferred to the Zambian Government at Independence in 1964. After Independence the Zambian Government continued the system of the royalty because it had proved to be very profitable in terms of government revenue. It was not until 1969 that the royalty was abolished and replaced by another system of taxation. The royalty was a levy of 13.5 percent of the price of copper less K16.00 per long ton produced. Being a tax on production, it ignored costs and was unfair in a number of ways. The price used in calculating this tax was an average of eight prices on the London Metal Exchange at the time of production and it is often asserted that this price did not bear any relationship to the actual prices received by the Mining Companies. (But see my figures and conclusion on p.177 which tend to establish some relationship between the two)

In the case of the Export Tax Section 1(1) of the Copper (Export Tax) Act CAP 667 (now repealed by the Mineral Tax Act of 1970) provided as follows:-

"With effect from 1st November 1967 the rate of Export Tax Chargeable on every long ton of finished copper exported on and after that date shall be forty per centum of the amount, if any, by which the average London Metal Exchange price for the month concerned expressed as the equivalent amount in the currency of the Republic exceeds six hundred Kwacha."

Finally, there was the income tax. This tax was levied on profits remaining (if any) after the Royalty and Export Tax had been paid. The rate of the tax was $37\frac{1}{2}$ percent on the first K200,000 and 45 percent on the remainder.

Several criticisms of the system of taxation described above can be made. However, in relation to the Export Tax and the Royalty, there is one general criticism that for several reasons, it was inequitable. Before we go further to discuss the criticism it is worthy noting that once the revenue from the Royalty began to accrue to Government and not the B.S.A. Company, the Royalty became

less disadvantageous. Instead, it had become one of most efficient and stable revenue sources to the government. For the criticism of the Royalty to be objective therefore, regard must be had to the fact pointed out above. The significance of the Royalty for revenue is exemplified by the fact that the Government of Zambia did not think it fit to remove it until about five yeears after Independence.

The Pre - 1969 tax system Apart from the Income Tax Component was inequitable in that it took no account of differences in costs between the various mines; and further it was not sensitive to changes in production costs over a period of time. To illustrate this point we shall examine the figures in respect of two companies (here designated as company A and company B). The figures used here are realistic. If we take the extreme case where company A has a production cost of K300 per ton and company B has a cost of K600 per ton, then at the price level of say K1000.00 per ton the amount of Royalty in both cases is K119.00 since in calculating the Royalty the cost of production had to be ignored, and the Export Tax would be the same in both Cases. In our model, and still using the K1,000.00 price level, company A has an advantage of K300.00 over company B in that it suffers

less expenses in the production of its copper.

With the rise in the costs of heavy machinery and other inputs required in the production of copper the Royalty had the effect that over a period of time, those mines which were previously profitable after tax would become unprofitable and where, because of high Copper prices the mines still remained profitable, the Royalty would have the effect of reducing their profit margin.

The results of the tax system can be summed up as follows: First, Mines which would otherwise be profitable without the Royalty and Export Tax were rendered unprofitable and because it rendered some prospective mines unprofitable which were potentially profitable without the Royalty and Export Tax it was a disincentive to investment in low profit mines in that some grades of ore would be rendered unprofitable to extract which would otherwise be profitable without the tax. These ores, may, for technical reasons be impossible to extract at a latter date or, if they would be extractable, this would be done at a higher cost. This results in the waste of both the ore and money. Finally, the tax system worked in the way that low-profit mines paid a higher proportion of their profits in tax than high-profit mines.¹⁴

Another criticism of the old tax system is that it created a lot of uncertainty in the minds of producers and potential investors. This state of uncertainty on the part of potential investors in the system of taxation can significantly influence them against investing in a particular state. There is therefore no doubt that, the uncertainty was a disincentive to investment in the mining industry. Although the precise effects of this on investment are impossible of precise computation, there is a strong case for the contention that the slow rate of expansion and growth of the mining industry is accounted for partly by this factor. Further the system was so inflexible that it was insensitive to changes in circumstances, except to a limited extent, to price changes. Therefore, if the system continued during the early seventies when copper prices were at their lowest and at the same time there was an acceleration of inflation causing high production costs, it would have rendered the whole mining industry in Zambia unprofitable.

Since the system was so inflexible that it was not self adaptable to changing circumstances, it only needed

legislation to remove these qualities. The system was therefore not good for production and investment since it inhibited forward planning which is required by production and investment since it removes uncertainty.

However, it is not the case that a country which has a self adapting tax system may not legislate to change its tax laws. But if an investor is to make up his mind to invest either in the flexible or inflexible tax system, chances are that we will choose to invest in the flexible tax system. (See Table 5.3 below)

Another criticism of the Royalty and Export Tax system is concerned about the prices on which the tax was based. The tax was based on the monthly averages of eight prices on the London Metal Exchange at the time of production, and of export respectively. It is often argued that average prices were unrealistic in that they did not bear any relation to the actual price of copper realised by the mining companies. The result of this was that either the copper companies or the government could have gained in the most arbitrary way if the price of copper fluctuated very much. To illustrate this point one may look at the quarterly Reports of Bancroft Mines Limited and Nchanga Consolidated Copper Mines Limited, for the

quarter ending 30th September 1967.¹⁵ The results show that for substantially the same price received per ton of copper, over a period there were very different amounts of royalty and Export tax paid per ton. For the quarter ended 30th September 1967 copper sales (average per ton) amounted to £357.3 sterling while the average for the 1967 year was £381.3 sterling. This represents a difference of 7 percent. In the case of Royalty, the amounts paid were £48.6 and £51.3 average per long ton respectively; also representing a difference of 7 percent. This illustrates the fact that changes in average prices actually received by the Mining companies were not necessarily inconsistent with the amount of Royalty payable based on London Metal Exchange prices. The criticism of the tax system under review concerning the prices on which Royalty and Export tax were based, is better supported by examining the Export Tax. For a rise of 7 percent in average prices received per long ton by the mining company Export tax rose from £24 in the quarter ending in September to £47.4 average for the whole year. This represents a difference of roughly about 100 percent.

That the prices on which the Royalty and Export tax were based were not the actual prices received by the mining companies is true. But it is not true to say that these prices were wholly hypothetical and arbitrary because these prices were projected by experts watching market behaviour, taking into account supply and demand of copper along with other factors. These prices were based to some extent on reality.

Further, the argument against the system cannot properly be substantiated by the use of three months' periods. One could have to look at figures over a long period of time to see if any substantial discrepancies between the Royalty and Export tax paid and the actual prices received for copper per long ton existed.

The criticisms made of the Royalty and Export tax system suggest that the system was unsuitable for both the government and the Mining companies. Even before the presently in force legislation was enacted, there was sufficient agreement between both parties that a system of taxation based on profitability was more suitable. This system, accompanied by the appropriate deductions would have very little disincentive effect on production and investment; and would not adversely affect the raising of finance by government for developmental and non-developmental investment.

Table 5.3

Percentage of profit paid in tax at various prices and costs per ton.

Cost per ton				
Price per ton	K300	K400	K500	K600
K500	59.1	73.2	(1)	(1)
K600	56.9	61.9	80.8	(1)
K700	61.3	66.6	77.6	118.5
K800	64.0	68.7	76.6	92.3
K900	65.7	69.8	76.0	86.4
K1000	66.9	70.6	75.7	83.3

Source: Charles Elliot ed. Constraints on the Economic development of Zambia.

- Notes: 1. (i) Even before the payment of any tax, mining at these levels is unprofitable but some tax has to be paid.
2. Note that the table shows that the percentage of profit paid in tax decreases as the price of copper increases in the case of the high cost mines; this may occur in certain circumstances in the case of low cost mines. This arose because the tax system, which almost fixed the amount of tax payable failed to cream-off excess profits earned by low-cost mines or during times of high copper prices.
3. The reduced rate of $37\frac{1}{2}\%$ was ignored in these figures in that, owing to the size of the mining industry, it makes very little difference.

TAX REFORM AND INVESTMENT: The Post - 1969 period.

The Royalty and Export Tax system, which was based on production has proved to have had a detrimental disincentive effect on both investment in and production of the Mining Companies. Although the guarantee of constant revenue from Mining had weighed very heavily in the minds of the government in favour of continuing with the system it was thought that greater advantages lay with the encouragement of investment into the industry in order to achieve industrial diversification by the use of revenues accruing to government from an expanded Mining Industry.

Thus, in 1969 were announced the first steps towards tax Reform in the Industry. The first and most important reform was announced by President Kaunda at Matero. The President said "Instead of royalties and instead of the Export Tax I ask the Mining Companies to pay 51% of their profits in the form of a new mineral tax which I intend to introduce. The mineral tax which replaces the royalties and copper export tax is based on profit and in this I have met the demands of the Mining Companies 100 per cent."¹⁶

In addition to the Mineral Tax, the Mining Companies pay 45 per cent Ordinary Corporate tax bringing the aggregate level of taxation to the marginal rate of 73 per cent.

The statement of policy announced at Matero was implemented by the Mineral Tax Act of 1970.¹⁶ Section 3 of the Act provides as follows:

"Subject to the Provisions of this Act, there shall be charged in respect of each charge year a Mineral Tax at the rates referred to in the schedule on assessable income received after 31st March, 1970."

In relation to Copper the rate is 51 per cent.

Another significant provision of the Mineral Tax Act is Section 7. Subsection 2 of Section 7 provides that "a Company shall be entitled to a refund of Mineral Tax in respect of any prescribed period if its average income in the prescribed period is less than twelve per centum of its average equity in the prescribed period. The Mineral Tax refund is designed to protect a level of Profit which is 12 per cent of equity. It has been argued that this provision was included because the government recognizes that the average rate of tax i.e. 73 per cent is very high.

The mineral tax refund system should be of great incentive value to both potential and existing investors. However, the exact value of this concession cannot be generalised

since it depends largely on the debt/equity ratio of the initial investment. The higher the debt proportion the less the net profit on which the refund may be claimed. To date, there has not been occasion where the average income of any Mining Company has fallen below 12 per cent of its average equity. It appears therefore that the Mineral tax refund is there only to serve as an incentive in theory. In practice however, other concessions are employed e.g. drawback or complete exemption of customs duty as was the case in what has come to be known as the "Welz Kiln" concession of N.C.C.M.'s Kabwe Broken Hill Mine.

In addition to Mineral Tax, the Mining Companies also pay the Ordinary corporate tax at 45 per centum of their profits bringing the aggregate rate of tax on the copper mining companies to 73 per centum. In ascertaining the gains or profits of a mining business a deduction of the mineral tax payable in a charge year is made.

This new system corrected some of the problems of the Royalty and Export tax system. It has removed the anomalies referred to earlier in this discussion. At present all copper mines will pay the same percentage of profits in tax; tax will not be charged in excess

of profits and it cannot be levied where no profit is made at all.¹⁷

Another significant Matero tax reform was that all capital expenditure incurred by the mining companies was allowed to be set against profits in the year in which the expenditure was made. Further, capital expenditure is now a deduction against both mineral tax and income tax. In the past, capital expenditure was allowed only against income tax and not in respect of the Royalty and Export tax. The new system of capital allowances is very favourable to the mining companies. However, it may not be equally favourable to the government in that a large amount of revenue which could have accrued to it is lost.

In the portion that follows, it will be examined whether the new tax system has achieved its desired purpose of encouraging investment and production in the copper companies. Some weaknesses of the new system will also be highlighted.

APPRAISAL OF THE NEW SYSTEM:

We have noted above that President Kaunda had declared that by introducing a Tax system based on profits, he had

met the demands of the Mining companies 100 per cent.. It would be expected therefore that the removal of the old system of taxation which had proved onerous would have encouraged the mining companies to reinvest some of their money into development of the industry. It was claimed in a speech by the President that despite meeting their demands 100 per cent the mining companies took as much money out of the country as they could; so that it may be said that, in the absence of compulsion, favourable tax reliefs alone were not able to persuade the mining companies to reinvest. Instead, they declared even higher dividends which were in turn remitted to external shareholders. The position was well illustrated when President Kaunda said:

"Our experience in the last three and a half years has been that they have taken out of Zambia every Ngwee that was due to them. A major part of the capital for expansion programmes of both (Mining) companies has been obtained from external borrowing and not from retained profits. You may be interested to know that, right now, my government is being asked to approve external borrowing by the two companies of about K65 million."¹⁸

This behaviour on the part of the mining companies can be attributed to the fact that they are no longer interested in expansion and that they are only too eager to please their shareholders. However, it is not untrue to say that the new system of taxation has had its share in the Creation of disincentives to expansion. The new system has got its own weaknesses which have a discentive effect.

One obvious weakness of the new system is that, by any standards, the combined rate of 73 per cent is too high on profits. To attract investments, which are necessary for expansion, the prospective rate of return must be high. In Zambia however the high income tax rate and the fact that mining generally, and particularly in central Africa, is a high risk industry combined to cause prospective investors to look for alternative investing areas. They may be limited in this by the fact that there are very few areas with substantial copper deposits. At present, it should be government policy to encourage new mining development even where there is no immediate tax revenue accruing to it. An attempt was made to mitigate the harshness of the present tax system when government legislated that if

the return on equity falls below 12 per cent, tax will be rebated to restore a 12 per cent return.

Another weakness of the new system of mining taxation is that it does not discriminate between very high (or wind-fall) profits and "normal" profits. One would have to draw the margin between the two of course; but the point being made here is that the export tax, which tried to tax excess profits has not been replaced. If this was done tax rates would have to be sensitive to levels of profitability in different cost mines. This would eliminate the disincentive effects of the new mining taxation.

The third criticism of the present tax system is that its incentive to expansion is geared entirely to capital spending and ignores all other inputs. For example import duties tax Industrial inputs especially Capital equipment, very little, while duties on consumer goods are quite high. Since consumer prices affect the cost of living the overall effect is that labour will become more expensive than all other inputs.. However, to think that Government could legislate special tax provisions in order to make labour cheap on the mining industry is idle.

The question of tax legislation and the way it can be used to help the consumer to face the high cost of living has been dealt within the section dealing with individual taxation. It should be noted that the present high cost of labour is a general feature and it applies to all Industries and other employing institutions.

EFFECTIVE CONTROL Vis a Vis INVESTMENT.

The main criticism of the pre-1969 tax system was that it had a disincentive effect upon development of the mining industry due to the fact that it scared away investors. However, the underlying assumption in this contention has been that the much needed development capital must come from foreign sources. There can be no argument against the fact that the only way to raise the standard of living of the people in poor countries is by rapid economic development. It is not as true however to state that the only way to achieve this development is by accepting foreign aid. Countries which have taken this view have tended to focus their attention on the administration of foreign capital projects at the expense of encouraging local business activity and mobilising local resources. There is a case for arguing that Zambia can reduce her foreign capital requirements by mobilising

more effectively her local resources.

With reference to the mining industry in Zambia, the point made above becomes more true. The industry in Zambia is a large one-infact the largest and most important sector of the economy. As an example, the industry accounted for 21 per cent of total government revenue in 1972 and 15 per cent of total paid employment in the same year.²⁰ In addition, of the net domestic product of K1150 million for 1972 copper contributed K278 million which works out to be 24 per cent of net domestic product. By any standards, this is a very large contribution by a single Industry. How possible is it that such a large industry will still need foreign capital as a matter of necessity? One would hope that after so many years in operation, the mining companies would have turned into self-financing organisations.

The real problem in the industry was where effective control lay even after the government took over 51% interest in the mines. Apart from many other constraints on government power to control the industry, the takeover agreement gave management and consultancy contracts and sales and marketing contracts to the Anglo-American Group and RST International Incorporated.

The main provisions of these contracts were that the two companies which were formerly the owners of the mines should continue to provide the operating companies with all managerial financial, commercial technical and other services. At that time, this was to some extent a reasonable move by the government since a drastic change of management to new and unexperienced hands could have lead to a lessening of standards. Some of the services provided by these companies were planning of operations, of production capital expenditure etc.

The position therefore, was that although the government was the majority shareholder, it did not have the effective control of the industry. The position was illustrated amply by President Kaunda when he said:

"The minority shareholders have power of veto in respect of a wide range of actions and decisions. These include winding up of operating companies and disposing of assets or granting of any of its concessions, Mining or other, substantial rights to others, enlarging the companies activities, making any financial commitments, borrowing of money, appropriation in respect of capital expenditure, or expenditure for exploration or

prospecting ... etc.²¹ The lack of control of the industry by the government arising out of the vast powers of veto exercised by the minority shareholders meant that the government had no power to regulate matters of expansion and investment in the industry so that although the Mining industry generated enough revenue to be self-financing, the minority shareholders deliberately frustrated this. The discouragement of re-investment by the minority shareholders was done notwithstanding the fact that the tax system had been made more equitable in their favour. So in actual fact, they enjoyed a double advantage; first the favourable tax position maximised their profits and secondly, they had the power to determine the manner in which such profits should be dealt with.

During the same period, two views begun to emerge as to how expansion of the Mining Industry could be done through ploughing back some of the revenue generated by the industry Viz, the terminating of the management contracts and secondly force. Taking the second view first it was strongly felt that if the government could not persuade the mining companies to re-invest, it must coerce them into doing so through both legislation and

its position as a majority shareholder. One way in which this could be done was to increase the tax burden of the mining companies and to use the money collected to plough back into expansion prospects. This it should have been added, should be supplemented by increased taxation of dividends to shareholders the majority of whom are abroad.

There was however, a significant obstacle in the suggestion to increase taxation of the mining companies embodied in the provisions of the takeover agreement. First, the government had agreed that the overall rate of tax payable by the mining companies would not be increased so long as any part of the ZIMCO loan stock 1982 or ZIMCO Bonds 1978, remained unpaid.²² Secondly the government also agreed not to tax dividends to foreign shareholders for as long as the Bonds and loan stock remained outstanding.²³

However, these conditions remained valid only as long as the Bonds and loan stock remained outstanding. They lapsed, however, when the Bonds and loan stock were redeemed in September 1973. Despite the fact that the Bonds were redeemed, and that theoretically the Government has got the power to change the tax law, such power

cannot be exercised before legislation amending the 1970 Act in which the restrictions to change the tax law existed. The government is presently in the process of making the appropriate amendment. Once this will have been done, the mines will be taxed in accordance with the wish of the Government, and at present one can only express a wish that the form of tax will be in the best interests of the development of the industry.

With the difficulties upon the changing of the tax system, the view to coerce the mining companies into re-investing part of their profits was not taken. The other view i.e. the termination of the management contracts was taken. This was accompanied by appropriate changes in the articles of association.²⁴ The contracts with respect to N.C.C.M. were terminated on 15th November 1974. The Company is now responsible for its own management; it recruits its own staff although the arrangement at termination was for the secondment of former Anglo-American Staff to the Company. A new company, called the Metal Marketing Corporation has been formed to deal with the sales and marketing functions. It is wholly owned by the state.

In addition, the articles of association have been changed to the extent that presently the majority shareholders have the power to **nominate** the managing director and the minority shareholders power of veto in general meeting and the minority directors power of veto in Board Meetings have been removed. At present the normal requirements under the companies Act are applicable in this area.

The essence of all this is that the majority shareholders i.e. the government have gained effective control of the mining industry. They can now determine a wide range of matters in the best interests of the nation. In the area of Investment and expansion the minority owners can no longer take out all the money since they do not have complete control over the declaration of dividends. In addition to the control of re-investment, more funds will be available to the government for investment in other sectors of the economy.

MINING DEDUCTIONS

We have up to this stage surveyed the system of mining taxation before and after the 1970 change over from

the Royalty and Export tax system to the present tax system based on profit. We have seen that the change to the present system in itself has created favourable incentives to production and investment.

In this portion, we will look at the deductions that are enjoyed by the mining companies. Deductions can also create a favourable atmosphere for investment and this is the primary reason why tax systems will have them in one way or another. Prior to 1970 the following were the capital allowances deducted according to the provisions of section 33 of the Income Tax Act 1966:-
The Redemption allowance,²⁵ the prospecting allowance and the Depletion allowance.²⁶

REDEMPTION ALLOWANCE

In the case of the Redemption allowance the Act was very comprehensive in the definition of capital expenditure. It included "Expenditure in relation to mining operations;"

(a) On buildings, works or equipment, including any premium or consideration in the nature of a premium paid for the use of buildings works or equipment.

(b) On shaft sinking."²⁷

Paragraph 20 sub-paragraph 1 of the fifth schedule of the 1966 Act provided for the manner in which the redemption allowance was to be calculated. In the case where the company is the owner of the mine, to the balance of unredeemed capital at the beginning of the charge year was to be added the capital expenditure incurred during the current year. From the sum of the two items above were to be subtracted any recoveries from capital expenditure e.g. sale of equipment. The aggregate amount of the sums from the above calculation was to be divided by the number of years in the approved estimated life of the mine; and the resulting quotient was the amount of the deduction.

SPECIMEN COMPUTATION

A. Company Ltd.

Balance of unredeemed capital expenditure	K5000.00
Add Capital expenditure incurred	<u>K2000.00</u>
	K7000.00
Less Sales of equipment etc.	<u>K1000.00</u>
	K6000.00

If life of mine is 20 years

redemption allowance is $1/20$ K300.00

Balance of Unredeemed Capital

Expenditure 31/3/68 K5700.00

Source: Compiled by author

Note: Figures are unrealistically small but they
were convenient for simplicity.

Some observations can be made of the method of calculation of the redemption allowance which may lead us into saying that the method was absurd. In the first place, with much respect to the genius of modern engineering techniques, one cannot fail to doubt the accuracy of the estimates of ore in the mine for the purpose of estimating its life. We can say therefore that a lot of assumptions bordering on pure guess work were used. Even if a reasonable estimate of the amount of ore could be made this would not be conclusive in the determination of its life. Other factors like accelerated or delayed extraction could either of them affect the mine life drastically depending upon its degree. The result of these unforeseen circumstances might render the estimate so varied from the real life of the mine to make it quite unrealistic to rely on the estimates.

In the second place, the shorter the estimated life of the mine, the larger the amount of the redemption allowance. Since the calculation of the estimated life of the mines could not be challenged by anybody in the tax department owing to lack of the necessary knowledge, the mining companies might want to mention figures that suited them and in this case they might want to shorten mine lives. Since the method cannot be accurate enough, the companies had the right to be pessimistic about the life of the mines.

PROSPECTING ALLOWANCE

Expenditure incurred in prospecting and exploration operations was allowed if it did not exceed K200,000; and the operations were carried on as a business venture.

II POST-1970 SYSTEM OF ALLOWANCES.

The Income Tax (Amendment) Act of 1970²⁸ extended the meaning of capital expenditure in respect of Mining operations. By Section 42 of that Act, capital expenditure means expenditure:

"(a) On buildings, works, railway lines or equipment including any premium or consideration in the nature of a premium paid for the use of buildings, works,

railway lines, equipment or land;

(b) On shaft sinking

(c) On the purchase of a premium for the use of any patent, design, trademark, process or other expenditure of a similar nature;

(d) Incurred prior to the commencement of production or during any period of non-production on preliminary surveys, boreholes, development or management, including any interest payable on loans used for mining purposes."

The implications of this extension of the meaning of Capital expenditure are great. First, the intention of the legislature was to create an additional tax incentive in order to attract further investment and increase present production levels in the mining industry. To treat expenditure incurred prior to the commencement of production or during periods of Non-production as Capital expenditure allowable as a tax deduction should be a satisfactory attraction for investors. Secondly, the extension means that the chargeable profit of the Mining Companies was considerably reduced. The effect of this is that less

revenue accrues to government from mining taxation. Thirdly, the two types of allowance, the redemption allowance²⁹ and the exploration and prospecting allowance³⁰ were 100 per centum. While this reduced government tax revenue considerably, the government was made to underwrite all the expenditure including unprofitable expenditure. For example, since government had no control on what and where to buy from, there was a tendency on the part of the mining Companies to buy from particular markets and items which might not be as good as those from other markets.

The 1970 Income Tax (Amendment) Act brought other changes favourable to the Mining companies. Presently expenditure incurred on prospecting and exploration is given very favourable tax treatment. The person or company incurring expenditure on prospecting and exploration operations has the option to retain such expenditure as a deduction or to renounce such deduction in favour of shareholders.³¹ The prospecting and exploration deduction may also be renounced in favour of a subsequently formed mine.³² This provision is favourable for the expansion of the industry in that it encourages the creation of new and larger companies

in place of smaller ones which may not work at the scale of the larger companies.

Another favourable provision in the 1970 amendment Act is in relation with expenditure incurred in non-producing non-contiguous mines. Any person carrying on business in a producing mine and who also is the owner of a non-producing non-contiguous mine may elect to deduct the amount of capital expenditure incurred on the non-contiguous mine from income derived from mining operations for the charge year in which such capital expenditure was incurred. This provision is aimed at encouraging expansion projects in the industry. If this were not the tax position investors would be reluctant to spend money derived from their mining operations to develop other mines. The effect of this provision is to treat non-contiguous mines as though they were part of existing mining operations where there is actual production.

CONCLUSION

The essence of this chapter has been to plot the tax history of the mining companies. At each stage the advantages and weaknesses of the system have been

pointed out. However the new system has operated for only a period of four years to date. Although a tax based on profit is obviously better than one based on production, we still have to see over a period of time what the actual effects on production and investment will be of the new system. The period of four years since the system was enacted cannot be very useful in our judgement of the effects of the system in that other factors have intervened. e.g. the takeover of the copper mining industry by the government has had a significant effect on the trend of investment especially in the case of smaller investors.

NOTES

1. Mineral Tax Act (No 27 of 1970)
2. Mining Proclamation No 5 of 1912.
3. For a detailed account of the arguments against the Company's rights SEE THE BRITISH SOUTH AFRICA COMPANY'S CLAIMS TO MINERAL ROYALTIES IN NORTHERN RHODESIA: 1964 - A.N. Rhodesia Government White paper.
4. The Petition appears as appendix 1 to the Buxton Report.
5. Second Report of the Committee appointed by the Secretary of State for the Colonies to consider certain matters relating to Rhodesia. The first Report Referred to S. Rhodesia. (Cmd 1273).
6. The agreement is popularly known as the Devonshire Agreement 1923.
7. Agreement between the British Government and the N. Rhodesia Government of the one part and the B.S.A. Co of the other dated 14th September, 1950.
8. Bostock & Harvey quoted from letter by Governor Herbert Stanley to Secretary of state Ameray May 16, 1926. Pro. Co/533/350.
9. Mines and Minerals Act (No 46 of 1969)

10. Commission appointed to Enquire into the Financial and Economic Position of N.R. (Colonial No 145.)
11. Norther Rhodesia Legislative Council debates March 24, 1949.
12. Supra Note 7.
13. See the Mining Ordinance (Amendment) Act (No 5 of 1969)
14. For an illustration of these see Table 5.3.
15. Estimated operating and Financial Results for the two Mining Companies published by Anglo-American Corporation (Central Africa) Limited; September 1967.
16. Kaunda "Towards complete Independence" Speech at Matero; August 11, 1969. (published by Zambia Information Services) P. 35
17. Act No 27 of 1970.
18. Section 9 of the Mineral Tax Act inserted Section 42B in the Income Tax Act providing for mineral tax as a deduction.
19. Kaunda speech at press conference announcing the redemption of ZIMCO Bonds, September, 1, 1973.
20. MINDECO Mining Year Book of Zambia 1972; distributed by Copper Industry Service Bureau.
21. President Kaunda's speech announcing redemption of ZIMCO Bonds September, 1, 1973.

22. Section 7(a) of the Income Tax (special provisions) (No. 1) Act 1970 Act No. 31 of 1970.
23. Supra Section 17 (1)(b).
24. This has been done presently only in respect of N.C.C.M.
25. Part VI Para. 20 of the Fifth schedule.
26. Part VII Para. 26 of the Fifth schedule.
27. Paragraph 20 sub-paragraph 4 of the Fifth Schedule.
28. No. 26 of 1970.
29. 5. 20 of No. 26 of 1970.
30. Supra S. 19.
31. Supra S. 19(2).
32. Supra S. 19(4).

CHAPTER VI

INDIRECT TAXATION: Customs Duties, Excise Duties and Sales Taxes.

The Customs and Excise Act¹ imposes Customs duties, excise duties, Sales Tax and, in addition, a 10 per cent surtax on Commodities. The Customs Tariff, Excise tariff, Surtax Tariff and the Sales Tax rates are set out in the First, Second, Third and fifth Schedules respectively to the Customs and Excise Act.² Apart from these regulations there are various suspension Regulations which directly affect the rates of duty payable on goods i.e. the Customs and Excise (Suspension) Regulations and the Customs and Excise (Suspension) (Excise Duties) Regulations. For the Sake of Convenience all this legislation has been brought together in one book termed "The Customs and Excise Tariff."

Suspension Regulations are enacted and published in the form of statutory Instruments and as such they may

be amended at comparatively short notice. The effect of Suspension Regulations is to reduce the effective rate of duty to be charged and in cases where suspended rate is shown in the Tariff it is this rate that must be applied in calculating the duty.

There are also another type of statutory Instruments viz. Provisional Charging Orders. These are issued under the Taxation (Provisional Charging) Act, 1965. When duty rates on Customs, Excise and Surtax have to be increased, this is done quickly by statutory Instrument in order to avoid the delay of amending the Customs and Excise Act. In the statutory Instrument however, the minister must specify that a Bill effecting the amendment will subsequently be passed by Parliament.

Traditionally, Customs Duties (Import and Export duties) have constituted the major source of Income in developing countries. Although the Zambian Act has provision for Export duties, these have actually not been administered. Customs duties have been one of the most significant sources of Income to the govern-

ment owing to the fact that the economy has always had a high import content. Prior to Independence, the amount of revenue from this source was reduced to a certain extent by the fact that Zambia belonged to a kind of Customs Union during the Period of Federation. There were also Commonwealth preferential rates. In relation to other sources of income, the significance of import duties as a revenue source has, declined significantly. However, presently, the primary purpose of these duties is to raise revenue. In addition to their revenue function, customs duties have also a protective function. The protective function of customs duties has recently declined in significance because other import controls which are very effective have been employed. For example, other goods have been specifically prohibited from being imported into the country while foreign exchange allocations and import licence restrictions have also drastically reduced importation. The Act also provides for exemptions and rebates in an attempt to encourage desirable economic activity. The two aspects of this form of taxation i.e. the revenue productivity and the protective element will be considered in detail below.

IMPORTS DUTIES.

The First Schedule of the Zambian Customs and Excise Act provides for the rates of import duty and in addition there are statutory Instruments which modify these rates. Primarily, Import duties are administered as a source of government revenue. The Second function of customs duties is that of protection. By employing this function the government makes sure that Zambian Manufacturers are able to sell their products in the face of competition from foreign manufacturers. In relation to investment incentives, the function of customs duties lies in their protective function i.e. in addition to high protective duties imposed on foreign goods the customs tariff contains incentive rebates to manufacturing and exemptions for raw materials and capital goods.

A. Revenue Importance.

A government must raise revenue for a variety of public purposes, and for many years in many countries, foreign trade has been a subject of taxation. During the mid - 19th century, the United States of America (U.S.A.) 90-95 per cent of all federal revenues came

from the tariff. The less developed the country, the more likely that it will rely, for a substantial proportion of its revenues, on tariff duties. This is because of administrative convenience in that goods are easier to tax than the intellectual abstraction which is "income."

A quick glance of U.N. statistics illustrates the fact that for developing countries import duties contribute to a larger proportion to their finances than in the case of developed countries. For instance whereas Ghana and Ceylon raised 25 per cent and 30 per cent respectively from tariff duties, the percentage for many developed countries was much less (e.g. USA 1, and Australia 6.)³ As recently as 1961 Customs alone yielded 61 per cent of the revenues of Sierra Leone, while the average contribution of this source to four jurisdictions i.e. Sierra Leone, Ghana, Nigeria and Tanganyika totalled just over 60%. In the Federation of Rhodesia and Nyasaland, Customs and Excise in 1962 yielded about 28 per cent of total tax revenues.

In addition to the administrative argument, there is another justification for taxing the importation of goods; i.e. if the ratio of imports to National Income is large, as is the case in most developing economies

with a high import content, it is obviously reasonable to lay taxes on them. A tariff for the raising of revenue only is one in which the redistributive and protective effects are missing. Some economists have urged the necessity of increasing the finance to underdeveloped countries from this source. However the significance of protection and redistribution cannot be overlooked and an exclusively revenue-oriented tariff, even in the presence of quantitative or other controls would be economically undesirable.

A policy of increased revenue from tariff duties entails an increase in tariff rates. However, it is not always easy to extend import duties. The first difficulty is that there may be technical difficulties. Zambia like most developing countries is bound by the GATT which it applies de facto. We do not intend to go into the complications of the GATT; it suffices to say that it limits the freedom of a member territory to make adjustments in its tariff rates. A further complication is that for administrative simplicity many tariff structures have been arranged on a specific and not an ad

valorem basis and to keep in step with price changes may therefore require legislation. Another, and different sort of problem is that increased tariff duties increase the incidence of tax evasion by encouraging smuggling.

There are other economic objections to the increased reliance for revenue on import duties. First, it is that there is a clash between the need to tax commodities for which income elasticity of demand is high and the need to offer incentives to producers to enter the market economy. Further if there is great reliance on taxing consumer goods, there will be a proportionate reduction in revenue when incomes fall. Another point is that the resultant rise in retail prices from increased tariff duties generates demands for increased wages thereby generating inflation. In general, the use of import duties as a major source of revenue has a disincentive effect on production.

B. Revenue importance in the Zambian economy.

Although Zambian Tariff rates are by no standards low, the proportion to which import duties are relied upon as a revenue source is considerably lower than is the case in other developing countries. This is so because of the

availability of large sums of money accruing to government from the copper mining industry. However the significance of import duty finances in the economy cannot be ignored.

Projections of Central Government resources for the SNDP, assuming the price of copper to be constant at K740 per metric ton with 1971 tax rates, reveals the extent to which customs duties and excise duties are being relied upon as revenue sources. The total resource projection from fiscal measures for the SNDP amounted to K1943 million⁴ of this figure K207m. was to come from Customs duties while Excise duties contribution was estimated at K262m. In relation to other revenue sources the estimated contribution of Customs duties does not compete unfavourably. Customs duties contribution is about 33 per cent of total mineral revenue and about the same proportion in relation to Income tax revenue. It, however, ranks almost equal to company taxation and exceeds personal tax revenue by K17m.⁵ Customs duties revenue is therefore an important aspect of Zambia's development.

Table 6.1 Indirect taxes as a revenue source in relation to other sources

	1964	1965	1966	1967	1968	1969	1970	1971
DIRECTOR TAXES	59.4	64.7	84.4	82.4	86.4	113.8	149.6	167.0
INDIRECT TAXES	26.7	101.5	145.5	137	184.9	250	243.1	106.6
Customs & Excise	13.5	24.5	24	33.5	44.4	60.8	67.5	73.5
Customs	10.7	17.8	15.4	19.3	21.2	31.0	32.5	36.7
Excise-Cigarettes	0.4	1.2	2.9	5.3	8.3	9.2	9.4	8.5
Excise-Beer & Spirits	0.4	0.7	1.9	6.8	11.1	15.0	20.5	23.5
Excise-opaque beer.	2.0	4.8	3.8	2.1	3.8	5.6	5.1	4.8
OTHER	20.3	23.8	21.9	20.4	18.9	23.8	24.8	25.6
TOTAL	106.4	190.0	251.8	239.8	291.1	388.0	423.5	299.2

Source: Abstracted by author

Note 1. Total Indirect taxes includes Mineral Royalties,

Copper Export tax and other taxes e.g. licences etc.

2. The Head other includes interest receipts and current transfers.

Table 6¹ reveals several facts. First the figures show that over the period under examination there has been a continuous tendency for the revenue from Indirect taxes to increase. From the modest figure of K64.7m. revenue from indirect taxes reached a peak of K243.1m. in 1970 being almost double the revenue from direct taxes and roughly 50 per cent of total government revenue for that year. However, although the revenue from Customs duties ranks almost equal to that of excise duties during the early years of the period of examination, Excise duties become a more significant source of indirect tax revenue towards the end of the period of examination.

Although Customs duties revenue has been significant over the years, the overall rate of growth of customs revenue has been slow. This can be attributed to a number of factors. First, the imposition of prohibitively high import duties on a wide range of goods has dropped the rate of their importation, thereby reducing the rate of growth of revenue. Secondly the Contribution of many goods have become insignificant because of quantitative restrictions and prohibition designed to save on Zambia's

exchange reserves. Thirdly there has been a great loss in income arising from exemptions and rebates on Capital goods and raw materials designed to encourage economic development while consumer goods through excise taxation have failed to compensate this loss. Finally, Zambia's obligations under the GATT (which it applies only de facto) prohibit her from increasing tariff rates, while Commonwealth preferences also result in a substantial loss in revenue.

C. The Protective Effect of Customs Duties.

It is in the protective effect of customs duties that we find traces of investment incentives. On the face of it, there is an obvious clash between the revenue effect and the protective effect of customs duties. On the other hand, closer examination reveals that these can be complimentary. For example, if high revenue accrues to government through high tariff duties on goods that are deemed to be undesirable or offer unfair competition to local manufacturers, the two effects are accomplished in that protection is afforded without unreasonable loss of revenue. However, it is true to say that if the duty on the undesirable goods is too high, its importation

might be stopped and thereby resulting in loss of revenue.

In Zambia, the protective effect of import duties is not widely used and has since been reducing in Significance. Two reasons appear to account for this situation. Firstly our economy has a high import content i.e. most of the Capital and other essential goods needed for development have to be imported from abroad. At the same time, home industry is not sufficiently developed to substitute these imports. The imposition of prohibitive tariff rates would therefore work against economic development. The Second reason, and one which has increasingly become Significant, is that to suppliment tariff duties, there are other methods used to offer protection to industry. One method is through the introduction of import controls. In some Cases, the government has completely prohibited the importation of certain goods into the country, in other Cases quantitative restrictions have been imposed while in others foreign exchange quota allocations have been used through import licencing. The Second method is through the granting of rebates of duty on certain of the raw materials imported by local manufacturers and in this way, helping to reduce their costs of production e.g. the

free importation of cloth (piecegoods) by local clothing manufacturers when the normal rate of duty is about 20 per cent ad valorem; and the Corresponding high protective duty imposed on finished textile goods imported into the country.

D. Concessions to Industry.

It is probably in this area that selective incentives can be used in order to encourage desired economic activity e.g. manufacturing. Zambia, like most developing countries, makes provision for the granting of concessions on duty for various industries. These usually take the form of suspension, rebate or refund of all or part of the duty on specified raw materials, equipment and other supplies for periods thought fit by the economic planners. These concessions are relevant, of course, only in respect of those instances in which duty is normally payable.

During the Federal era, rebates were granted on an industry-wide basis, rather than, as is the case now in Zambia, by application and approval for particular firms only.

It should be noted that the Customs Tariff itself contains a wide range of items which on account of their essential, nature, either as foodstuffs or manufacturing imports, are duty free. We will not go into the examination of this range of goods. Our task will be to look at areas in which tariffs ordinarily apply but for rebates.

By Regulation 5(2) of the Customs and Excise (Industrial Drawbacks and Rebates) Regulations,⁶ a person who wishes to manufacture goods under rebate in an industry specified in the Third Schedule should apply for registration in that industry and the Regulation reserves the right to the controller to refuse registration of such person in such industry if he is of opinion that proper customs control of rebated materials cannot be exercised. Regulation 6 of the same Regulations provides that when a registered manufacturer imports or takes out of Bond the materials specified in the Third Schedule for:-

- "(a) the industry in which such manufacturer is registered
- (b) Use in the manufacture of goods within Zambia," the materials are subject to a rebate of the whole of the Customs duty which is normally payable on such materials.

The Third Schedule to the Regulations, which deals with

Manufacturer's Rebates" covers a wide range of manufacturing industry.⁷ This range includes all those areas of industry in which there are established industrial projects in the country an attempt is being made to encourage them. These include Textile industries, Explosives manufacturing industry, furniture, mattresses and related goods, motor vehicle manufacturing, Plastic articles and Radio and other electrical sound producing articles. The list goes on. The list also contains manufacturing areas in which no noticeable impact has been made but however, because there is need to encourage local manufacturing, the rebate is intended to be an incentive for investors to enter these fields.

Except where there has been granted rebate of duty, all other items are subject to duty according to the rates specified in the Tariff book. Of importance among these dutiable goods is the position of Capital goods. Prior to 1974 nearly all Capital goods were imported duty free. However, the imposition of duty on these, and the reasons for such imposition were announced by the Minister in his budget speech and were implemented by the Customs and Excise (Amendment) Act 1974.⁸

The Minister Said:

"..... the time has come for us to put some kind of tax on a selected list of capital goods. I am doing this for a number of reasons. Firstly, most of the Capital goods are presently duty free and those that have attracted duty have had it suspended to nil. This position does not reflect fully the true cost of the foreign exchange which they consume on a large scale. Secondly, the present position tends to put labour as a factor of production of a distinct disadvantage."

The exemption of Capital goods from import duty has the effect of creating Capital intensive industry as against labour intensive industry. In a Country where the rate of unemployment is high and rising every year, no better means to combat the situation than making labour as a factor of production to the preference of Capital can be employed.

The position of the mining Companies is unique.⁹ Mining techniques by their nature require, in addition to the large number of employees, a lot of heavy and expensive Capital goods. The imposition of duty means that the mining companies have to pay large sums of money to government as duty which they could otherwise use for developmental purposes.

At present, all capital goods on which duty was imposed by the 1974 Act are subject to 5 per cent duty. This rate, plus the import surcharge of 10 per cent brings the effective total of duty payable to 15 per cent.

In addition to the reasons given by the minister for the imposition of duty on Capital goods, one should note also that this was a measure to tap yet another source of revenue. In the past, the basis for import duty was whether it was a luxury or a semi-luxury. As observed in the budget Speech, the duty on these items was high enough and could not be increased further. There was therefore a need to look for alternative sources of custom revenue.

The customs and Excise (Industrial Drawbacks and Rebates) Regulations¹⁰ provides for yet another incentive to manufacturing industry in Zambia when the manufactured goods are for export.

Regulation 4(2) of the Regulations Reads:

"Subject to the provisions of this regulation, if the goods specified in Part I or II of the Second Schedule are manufactured within Zambia from the Materials specified in Part I or II of that Schedule in relation to those goods, those goods shall, when exported to any country, be subject to a

drawback of the Customs and Excise duty paid on such materials to the extent shown in Part I or II of that Schedule."

Regulation 3(1) of the Customs and Excise (Rebates, refunds and Remissions) (General) Regulations provides that a drawback or remission of the whole of the duty paid or payable shall be granted upon unused goods which are exported within two years from the date on which duty was paid thereon.¹¹ The Regulations also provide for a long range of exemptions which are not presently a Concern of our inquiry.

The effect of these regulations is that since the whole of the duty is refunded, production of the goods specified in the Second Schedule is made cheaper thereby encouraging expansion. Increased production, among other things, means an increase in manufactured exports which will be a good foreign exchange earner.

The protection of Manufacturing Industry in Zambia has not been the only object which the government has desired to achieve by the imposition of Customs duties. There has been another object complimentary to the protection of industry and of equal Significance. This is the object of discouraging "the Consumption of foreign luxury goods which

would run down our foreign reserves."¹² In the 1973 Budget duties which previously applied only to luxury goods were extended to Semi-luxury goods. The effect of these duties "in Combination with others (measures), produced a beneficial effect on our economy, particularly with regard to the restraining of imports."

APPRAISAL

We have noted earlier that the protective effect of customs duties has declined in significance owing to the fact that other forms of protection - prohibition and Rebates-have been employed. If other forms of protection are available and are equally effective, then there is a case for shifting the emphasis on revenue production more than protection. As resource mobilisation from this source connotes the imposition of high Customs duties, a double purpose will be achieved i.e. First customs revenue will rise, and Secondly high customs duties will operate to protect home industry. To the extent that high import duties discourage the importation of goods, they bring about a reduction in customs revenue. However, they aid development more significantly than such alternatives as prohibition. For example if customs duties stop the importation of luxury goods, and the same goods are not produced in the country, people may save

more of their incomes. Further, since customs duties are not applied within the domestic sector of the economy, they are not likely to create disincentives for domestic production as would be the case with domestic indirect taxes like Excise duties and sales tax. In addition the government can influence relative investment in different industries in conformity with development plans.

Finally, in developing countries customs taxes contribute to equity far more than they do in more developed countries. If a duty is placed on imported goods that are consumed solely by the high income groups (except for basic necessities which may be locally produced anyway), there would be a higher tax burden on the high income groups than on the lower income groups. In developing countries, where there are sharp differences in consumption patterns between low income and high income groups, customs duties can be used quite effectively as an instrument of distribution.

EXCISE DUTIES.

We have seen that the protective effect of customs duties is aimed at, primarily, import substitution. This entails the fact that as development occurs in a country, domestic production for the domestic market is boosted. As domestic production develops, the country stands to loose substantial

revenue unless the loss is offset by levying an equivalent tax on domestically produced goods. This is done, and normally as import substitution expands, excise duties are expanded to apply beyond the traditional commodities.

In Zambia, Excise duties are completely shifted forward and to that extent the tax is borne solely by the consumer - it is therefore highly incident on consumption.

Sumptuary Taxes: Liquor and Tobacco.

These are said to be the earliest taxes to be introduced by any developing country, and in terms of revenue production, they are the most important. Normally, and this is the case in Zambia, they are levied on alcoholic beverages i.e. beer, wine etc, and on tobacco products. Samptuary excises are based on the desire to curtail the Consumption of Commodities whose use results in costs to society and or alternatively to penalize consumers who persist buying them.¹³ These taxes should be contrasted from two other forms of excises. First benefit excises are aimed at allocating tax burden in relation to benefits received from government expenditure. An example is the excise duty on motor oil and the benefit gained by road users from government road construction expenditure.

Secondly, diversionary excises are intended to be used as allocatory or as a rationing device by curtailing the Consumption of essential commodities. These are not of wide spread use in Zambia.

Revenue Importance.

The primary argument for excises on alcoholic beverages and tobacco products in their revenue productivity. These will yield substantial sums of money without harm to economic development. The only, economic argument against these is that they may be paid out of funds that could be used to buy nutritious food. Another argument is that since they are levied on goods that are consumed mainly by the lower income group, they are inequitable since they impose a significant burden on the poor.

Table 6.1 illustrates the revenue contribution of excise taxes. Over the years there has been a gradual increase in the revenue contribution from this source due to a combination of factors viz, broadening of the coverage of the tax by extending the duty to goods which were previously non-dutiable; secondly by fiscal measures e.g. increase in the rates of duty; and thirdly, the considerable increase in the consumption of certain dutiable goods.

Like most developing countries, the revenue contribution of this source is limited owing to fact that domestic production of manufactured goods is limited.

The Zambian Excise Tariff is limited. However, the high contribution of Excise duties to revenue arises from the fact that rates are considerably high. The following Table will illustrate this.

Table 6.2

Rate of duty as percentage of Retail Prices on Selected Commodities.

(1)	Retail Cost (2)	Duty (3)	% of 3/2 (4)
Clear Beer/bottle	27n	15 ¹ / ₂ n	55.5
Opeque beer/litre	10n	4 ³ / ₄	50
Spirits/bottle	K4.34n	K2.34	53.9
Soft Drinks/bottle	8n	1 ¹ / ₂ n	25
Cigarettes	34n	22n	64.7
Petrol	21n	6n	28.5

Source: Abstracted by author.

Note: On soft drinks the highest rate of 1¹/₂ per bottle was taken and rounded up to 2 for simplicity of calculation.

In addition to the above levies, there is an excise tax on locally assembled motor vehicles. The duty ranges from 5 per cent to 40 per cent. This duty caused a considerable outcry from Livingstone Motor Assemblers who charged that the duty had reduced sales and as a consequence they would be forced to reduce production or close down all together.

Other Excises on Services are levied. The most popular are entertainments Tax¹⁴ and taxes on hotel services.

The rates of duty on the items in table 6.2 in the majority of cases, exceeds the retail selling price. The cost of their production should therefore be very low. This rate can be raised to this extent because the excise duty is primarily for revenue collection and it has no potential incentive value. In addition, except where it is obviously prohibitive, it has no disincentive effects.

Sales Taxes.

Sales Taxation was introduced in Zambia by the Customs and Excise (Amendment) (No. 2) Act of 1973¹⁵. Section 3 of the Act inserts Section 77 A into the rates specified in the fifth schedule. Goods subject to sales tax are those that are manufactured in Zambia. The rate of Tax is 10 per cent in respect of all goods. The Customs and Excise (Amendment)

Act¹⁶ repealed and replaced the Fifth Schedule. The effect of this was to increase the number of taxable items. Presently taxable goods include locally manufactured Biscuits, clothes fencing wire, footwear; Furniture; Motor Car batteries; Paints, Varnishes and lacquers; perfumery, cosmetics and toilet preparations; Radios; soaps and detergents; sugar; Tyres and tubes and services provided by hotels. Further Section 3 of the 1974 Customs and Excise (Amendment) Act¹⁷ exempts from the payment of Sales Tax by a manufacturer of goods or supplier of Hotel Services in respect of his sales, if the value of such sales for the year does not exceed five thousand kwacha.

Owing to the relative newness of sales taxation on the Zambian scene figures are not available to indicate its revenue importance. However, this tax is imposed solely as a revenue source and because it is levied on high consumption items it should create a steady flow of a substantial sum of money.

There are a lot of obstacles in the way of retail sales taxation in many countries. Zambian sales tax are imposed at the manufacturers level. The difficulties about retail taxes in Zambia, like in most countries is that there is an

enormous number of retailers with no book-keeping skills.

In Canada and elsewhere, sales taxation at the manufacturing level has met with other problems. First, the definition of manufacturing has presented difficulty. No attempt was made to define it in Canada. To clarify the position, only marginal cases were listed as covered by the term. In Zambia, manufacturing in relation to sales taxation will not present any problems because our Act has listed all the taxable goods in the Fifth Schedule. Secondly, and this is the most serious problem in the satisfactory operation of sales tax, there are problems of evaluation i.e. the specification of the taxable price. For ease of administration the prices of the goods on which sales tax is imposed in Zambia are controlled and it is on these controlled price levels that the tax is charged.

The move to impose sales tax was not popular from the point of view of the consumer. A greater number of the items subject to the tax includes those goods that are regarded as everyday necessities which most people either eat or aspire to acquire.. However, this criticism cannot be pressed too far in that the 10 per cent rate is very low.

NOTES

1. CAP 662 of the Laws of Zambia
2. After the 1975 Budget Proposals, a Seperate Sales Tax Act was introduced.
3. UN Statistical yearbook, 1959
4. This figure excludes, K165m and K348m from local and External borrowing
5. For these projections see SNDP item No. 23
6. Statutory Instrument No. 58 of 1966 see ante note 7..
7. Note that the Customs and Excise (Industrial Drawbacks and Rebates) (amendment) Regulations 1970 deleted and replaced the Second and Third Schedules of the 1966 Regulations.
8. No. 7 of 1974
9. Note that the Customs and Excise (Rebates, Refunds and Remissions) (General) Regulations [S.I. No. 12 of 1967] rebated duty for the Mining Industry on (a) Chemical Oils used in the extraction of gold and other metals (b) Chemicals for use in any process for the concentration or refining of or, for essay or research purposes.
10. Ibid note 6.
11. Ibid note 9.
12. J.M. Mwanakatwe, Minister of Finance : National Assembly debates No. 25, 1971 pp. 521 - 523.

13. In his Budget Speech, the Minister pointed out car accidents and other Social evils of drunkenness as costs of liquor on Society. He proposed Increased taxes on Liquor to combat the problem.
14. Entertainments Tax Act. CAP. 661 of the Laws of Zambia
15. No. 26 of 1973.
16. No. 7 of 1974.
17. Ibid note 16.

CHAPTER VII

Miscellaneous Taxes.

In this Chapter we will deal with a Selected number of taxes that are imposed in Zambia. It must be borne in mind from the beginning that these taxes do not appear in the Income Tax Act as infact they are not levied on income as defined by the Income Tax Act. Rather these taxes take the form, in a majority of cases, of licences and they are imposed by appropriate Licensing Acts. Like in the chapter on customs and Excise duties we have departed from the classification earlier adopted in our inquiry.

The discussion in this chapter will include a consideration of the following: Trading Licences, Radio and Television,¹ Entertainments tax, Stamp duty, Fire Arms and Winnings on state lottery.

Primarily, these taxes are for the collection of additional revenue, although infact the proportion to which they contribute to the total government revenue is very negligible. In terms of our inquiry about the effect of taxation on investment, these forms of taxation are largely of negligible effect in that they are in no case a consideration

that potential investors may take into account when they have to decide whether a particular investment has to be made. The exception to this general statement may be made only in the case of trading licences and Liquor licences. If the annual trading licence costs very much, it might be difficult for small traders to operate owing to the fact that the cost of the license takes away most of their profit. This is a real possibility in that some small traders in the rural areas have a turnover of not more than K100 per year. In the case of Liquor licences the position might be different in that probably, the cost of the licence may be used as a deterrent to a proliferation of drinking places. This is in line with the desire on the part of the government to discourage excessive drinking. However, this reason seems to be more of a Social than economic nature.

Since the forms of tax considered here are of no incentive value, there will be no more than the re-statement of the law governing them. Emphasis will also be laid on their value as revenue sources for the government. Before we consider them separately we will look at one general aspect i.e. the revenue importance of these several taxes.

Revenue Importance.

Table 7.1 Total Government Revenue from "Miscellaneous"
Taxes 1964 - 1971

	1964	1965	1966	1967	1968	1969	1970	1971
Motor Spirit Tax	0.9	1.1	1.4	3.1	3.2	-	-	-
Motor Vehicle Licences	0.7	1.7	2.2	2.0	2.2	2.6	2.5	3.2
Other Business Licences	0.2	0.3	0.3	0.2	0.4	0.3	0.2	0.3
Stamp Duty	0.3	0.2	0.4	0.4	0.3	0.3	0.3	0.4
Other	2.0	1.8	1.1	0.2	0.4	0.8	1.1	2.0
Total	4.1	5.1	5.4	5.9	6.5	4.0	4.1	5.9

Sources: Compiled by author from "Financial Statistics of Government Sector 1965-1967" published by the Central Statistical office, Lusaka and "Economic Report 1973" presented to the National Assembly 1974 and published by the Ministry of Planning and Finance, Lusaka.

- Notes.
1. Figures for the post-1971 period are not available at the time of writing.
 2. Breakdown in the figures available is not adequate: So the item "Other business Licences" includes Trading Liquor, Transport etc. License. The item "Other" includes those that do not fit into any prior classification.

The overall contribution of these taxes to total Government revenue is very small in comparison with the other forms of taxation considered in the earlier chapters. The reasons for this are that first, the rates per annum of the tax are very small, Secondly they apply only to a small section of the community i.e. those who own shops, cars, Radio and Television sets etc; and thirdly especially in the case of Radio and Television Licences and firearms Licences, there is wide spread evasion from the payment of the tax. Between 1964 and 1971 (the period for which figures are available) these taxes Contributed the least to government revenue. The highest percentage contribution of these taxes has been 2 per cent while the average contribution over the Same period is less than 1 per cent. Table 7.1 shows that the highest amount of money accruing from this source was K6.5 million in 1968. Since 1969 there has been a decline in this figure. The main reason for this decline has been that the motor spirit tax, which was previously classified in this category has now become an Excise tax under the Customs and Excise Act.²

BUSINESS LICENCES. Trading Liquor and other Licences. Throughout the period 1964 - 1971 the contribution to

government revenue of these licences has been less than $\frac{1}{2}$ million kwacha. Two reasons account for this level of contribution. First there is the reason which applies to most licences that the people who own businesses and are therefore subject to the tax are relatively small in number. Secondly there is the major reason regarding the administration of these Licencing Acts. This reason applies to Trading, Licences which we will consider below. The main reason why, in the case of Trading Licences, so little revenue accrues to government is that the Trades Licencing Act Cap 707 of the Laws of Zambia permits a kind of sharing of the revenue between the Central Government and Local authorities. If the Licencing authority is a local authority then the revenue goes into the general funds of that authority and where the Licencing authority is the Minister or the District Secretary the money goes into the general funds of the Republic.³ Section 9 of the Act designates Municipalities, township councils and Rural Councils as Licensing Authorities. The result of these provisions is that revenue from trading Licences in respect of the largest proportion of the country accrues to Local authorities. This is probably one way in which government subsidises Local authorities.

The Trades Licencing Act Contains a Schedule of the Scales of trading Licence fees. This schedule was amended to a great extent in 1973. In nearly all cases the Licence fees were doubled in order primarily to raise additional revenue from this source. A secondary purpose for raising these fees was spelt out by the Minister in his budget Speech: He said

"This is an area where the government has created deliberate opportunities for our people. It is only fair that those who benefit from those opportunities should contribute to the Cost of the services they enjoy.⁴

In consequence of this the following changes were made:

Trading (Wholesale) Licence	from K100 to K300:	300% rise
Trading (Retail) Licence	From K25 to K 50:	100% rise
Hawkers Licence	From K10 to K 15:	50% rise
Pedlar's Licence	From K 5 to K7.50	50% rise
Stall Licence	From K 5 to K7.50	50% rise
Restricted Licence	From K 5 to K7.50	50% rise
Duplicates	From K 1 to K2	100% rise

These Licence fees are of general application i.e. it does not matter whether the establishment is big with a turnover of Millions of Kwacha or it is a small village

shop. Because of this, there seems to be a certain amount of unfairness in that separately placed business enterprises are subject to the same tax burden. It might be argued that this is cared for by the Income tax payable by larger organisations while the village enterprise is free of tax. However, there is a strong case for introducing a graduated Scale of fees in this area. Some advantages can be perceived if this were done. First it would remove the disincentive to small business by reducing the Licence fees. Secondly it would introduce an element of fairness into the System by making bigger business pay proportionately bigger amounts for the Services enjoyed by them according to the Ministers Speech. The overall effect of such a graduated scale of fees, coupled with other incentives to small business would be to encourage small business run by rural indigenous Zambians. This would be in conformity with the government's long-standing desire to involve the Indigenous Zambian in some productive economic activity.

The proposal made above can be met with the argument that it would cause a considerable loss of revenue

to the Local Councils especially rural councils in whose jurisdictions the majority of small Scale traders operate. This would be the most undesirable effect at the time when, because of austerity measures, the central government has ceased to continue to subsidize local authorities.

Liquor Licences

Liquor licencing is provided for by the Liquor Licensing Act CAP 429 of the Laws of Zambia. The Act provides for a variety of matters regulating the Sale and Consumption of Liquor. These are non-tax matters which are outside the scope of our inquiry.

Section 4 of the Act provides for the different types of Licences that may be available and the fees in relation to each type of Licence are listed in a Schedule at the end of the Act.

No breakdown of the figures is available to enable us to see the actual contribution of Liquor Licencing fees to the category "other business Licences" in Table 7.1 above. It can be said however that the contribution is quite substantial. This is so for two reasons viz, there has been, since independence, a phenomenal

proliferation of bars and other drinking places in Zambia. The Second reason is that the fees are quite expensive.

Since 1973, the contribution of Liquor Licencing to the Category referred to above has increased because the budget for that year increase very substantially the fees in respect of all types of Licences. The reason for the increase of these fees was that the government wanted to tap more revenue from this source. Like in the case of Trading Licences, the minister intended those who are engaged in the lucrative liquor trade to join the other tax-payers in contributing to the cost of the various services rendered by the Government."

The Contribution of Liquor Licencing to revenue is likely to remain static for a long time for two reasons. First, as the present level of Licence fees is already substantially high, it is not likely that the government would raise it further in the near future. Secondly there is a deliberate policy of government to limit the consumption of Liquor and one way of doing so is to limit the number of drinking places. At present it has become very difficult to obtain Licences

especially in places where some facility is already present.

As regards the fact that the Licences are of general application to both big and small business, the argument regarding unfairness which we made in relation to trading Licences applies to Liquor Licencing. However, it is not likely that Liquor trading is the kind of business activity in which the government would like to offer incentive to Zambians or any other persons.

Non-Business Licences

i. Motor Vehicle Licences⁵

The Contribution of motor vehicle Licences to government revenue has been on the increase since 1964. Starting from a mere K0.7 million in 1964 it rose to K3.2 million in 1971 and about the same figure in 1972. This figure rose to approximately K4.0 million in 1973. Two reasons account for this increase. Firstly, there has been a very rapid increase in the number of motor vehicles during the period we are considering. Secondly there have been increases in the rates of licence fees deliberately to increase government revenue from this source. These changes were made in

1971 and 1973.

In his budget speech of 1971 the Minister of Finance announced a general increase in Motor vehicle Licence fees. The fees were almost doubled. This action was justified on the grounds that the government had since independence spent large sums of money on the construction of new roads and the maintenance of the existing ones. The increase was aimed at making road users contribute to the costs of building and maintaining roads through increased motor vehicle fees..

A second increase in Motor vehicle Licence fees was made in the 1973 Budget proposals. The reason for this increase was again the need for road user contribution to the building and maintenance of roads. Additional revenue estimated to come from this increase was K0.50 million.

This increase was done at a time when imports and Exports into and out of the country had to be re-routed following the closure of the Rhodesia/Zambia boarder. Road transport had therefore become vitally important to the economy of the country. Recognising this fact, no increases were made in the rates of fees in respect

of commercial vehicles. This was aimed at providing an incentive to individuals and companies engaged in the transport business.

However, when one looks at this concession, one finds that it is a typical case when the government has suffered a loss in revenue by providing an incentive to an economic activity where such incentive is not necessary. At the time when the incentive was made the transport business had reaped a lot of profits for transport contractors because the government paid them heavy fees. These payments alone could have been sufficient incentive to people to enter the transport industry.

ii. Firearms Licences

Firearms Licencing is provided for by the Firearms Act CAP III of the Laws of Zambia. Section 4 of the Act prohibits the purchase of any firearm or amunition unless such purchaser holds a firearm Licence. The rates of fees in respect of firearms are provided for by Section 31 of the Act. These are set out in the First Schedule to the Act to which Section 31 refers.

In terms of revenue, very little of it comes from this

source owing mainly to the fact that firearms are not in big circulation. However, Substantial amounts have been collected. This was more so after the fees were raised in the 1974 budget. In almost all cases, the fees in respect of different calibre firearms were more than doubled. This was done mainly to increase government revenue from this source. The prospects of any further increases of revenue from this source are small. This is mainly because the government would be reluctant to have large numbers of firearms sold to the public and also because the rates of fees are at present sufficiently high so that further increases are unlikely.

iii. Game Licences

Section 37(1) of the National Parks and Wildlife Act prohibits the hunting of game except if such person holds a valid Licence. There are seven types of Game Licences, and the fees in respect of each of them are fixed according to the size of game to which they refer or to the area to which the Licence applies. In addition the fees will vary according to whether their holder is a resident or non resident in the Country.

These Licences are imposed mainly as a source of revenue although it might be said that their secondary function is the protection of valuable wildlife by imposing prohibitively high fees.

The 1974 Budget also raised very substantially the fees for game Licences. In some cases they were double or trebled. For example when a resident hunts elephant today, the Licence Costs K100 for male elephants and K80 for female elephants. Prior to 1974 the fees were K30 and K20 respectively.

The prospects of this as a significant source of revenue are very small owing to the fact that it is government's deliberate policy to conserve game.

iv. Radio and Television Licences⁶

The Broadcasting Act, CAP 253 provided for these Licences. The Licences were aimed at making listners pay for the Service Provided to them by the government. The fees for domestic radio and Television were respectively K2.00 and K10.00.

Potentially, a considerable amount of revenue could come out of this Source. However, this has not been the

case. Although there are thousands of Radio sets in the Country, and a considerable number of Television sets, there has been wide-spread evasion of the tax by the public. This has been so inspite the fact that there exists an inspectorate to effect payment and the punishment for failure to pay the tax.

Entertainment Tax

The tax on entertainment is provided for by the Entertainment Tax Act CAP 661. The Act has been in force since 1945. For a long time, until 1973 the Act had remained dormant. In 1973 the Act was revived and since then those who go to specified entertainments have to pay a very moderate tax ranging from 2 to 10 ngwee. The tax is really moderate and it does not cause any hardship to the public. The tax was imposed only as a revenue source.

Stamp duty

Stamp duty is charged by the stamp Duty Act CAP 664 as amended by the Stamp Duty (amendment) Act (No. 3 of 1973). Section 11 of the Act provides that the several instruments listed in the First Schedule to

the Act shall be chargeable with the several duties specified in the same Schedule.. The 1973 amendment Act had the effect of raising the duty on a large number of these instruments.

Between 1964 and 1971 the contribution of stamp duty to government revenue has not risen above K0.3 million. This figure has remained constant for a long time. However some increase should come about because of the 1973 amendment.

Stamp Duty is not likely to be a significant source of government revenue because of the fact that it applies only to a small number of transactions affecting a minute proportion of the population.. However, it is a constant source of revenue and it should be maintained.

State Lottery Winnings

The State Lotteries (Amendment) Act 1973 imposes a 10 percentum charge on any prize money won by any person. The amount charged is that in excess of K1000 of the prize money.

This tax was introduced in 1973 and at present it is not easy to judge its revenue implications. However, it may be said that this source is not likely to be a steady one because it depends largely on whether any prize money is won at all. As the public become more interested in the State lottery, winnings might become more frequent thereby increasing revenue from this Tax.

CONCLUSION

The forms of tax we have discussed in this chapter are only a few out of a large number of taxes that government imposes. No useful purpose would be achieved by discussing all of them; some of which are very insignificant in terms of their revenue productivity. In other cases they are imposed as a means of making members of the public pay for a service that government provides. Although the revenue from these taxes is insignificant in comparison with the bigger sources of government revenue, they in any case, together, contribute quite substantially. They should therefore be maintained and probably ways must be found by which revenue from this source can be increased.

NOTES

1. Radio and Television Licences were abolished by the 1975 Budget mainly because there had been widespread evasion by the public and it had become uneconomical to maintain the staff in the inspectorate.
2. The Customs and Excise (Amendment) Act; No. 24 of 1973 introduced the Oil Excise after the Commissioning of the oil Refinery at Ndola.
3. Section 6(1) and (2) of Cap. 707.
4. J.M. Mwanakatwe, Minister of Finance 1973, National Assembly debates No. 32 p. 495.
5. The Roads and Road Traffic: Act CAP. 766 Provides for the imposition of these Licences.
6. Supra Note 1.

CONCLUSION.

Zambian Tax planners, like those of other developing Countries are faced with one big dilemma which has proved to be a very big task to resolve. On the one hand, there is the critical shortage of capital and manpower to enable accelerated economic development. There is therefore the urgent need to obtain these from external sources. Although foreign capital is available through intergovernmental arrangements for aid its significance is not as great as that of private foreign capital. In this situation, tax planners will be inclined to offer tax incentives in order to attract foreign investors into the country. Usually these incentives will take several forms but a general feature of them all is that they involve a reduction of the tax liability of the investor thereby also reducing the government's revenue from taxation. On the other hand, there is the need on the part of government to lay its hands on as much revenue as possible to finance its developmental and non-developmental expenditure. In the Zambian fiscal system, taxation offers the greatest source of this much needed revenue. Potentially also, taxation will continue to be the greatest,

source. The government's reliance on this source is overwhelming. The availability of funds for governmental expenditure, especially if that expenditure is developmental is a significant aspect of economic development. There is therefore a clash between the need to provide adequate tax incentives, which entails some loss of revenue, and the need to make available to government adequate sums of money to finance development. In Zambia, both aspects of the dilemma are held to be equally significant. The way to resolve it therefore has been to find the dividing line between the two-a line which could offer an equitable compromise. In some cases, one gets the impression that Zambia tax laws are only revenue oriented. This is the case where the rates of tax have been raised while at the same time exemption levels have been lowered. An example of this is the 1969 budget which lowered certain allowances for individual tax payers while at the same time raising the rates of tax. Other cases may be cited e.g. the aggregate rate of tax on the mining companies is about 70 percentum. By all standards, this rate is very high. Other outstanding examples have been cited in the text of our enquiry. The

policy of maximizing revenue from taxation will continue for as long as the Zambian Government relies so heavily on tax financing for its development plans. Both the First National Development plan and the second National development plan were financed to a great extent from tax revenue. With the move to mobilise more local resources to reduce foreign aid, taxation may hold the key role to the financing of any future development plans.

However, we have cited many instances where tax law has been geared primarily to attract foreign investors and in addition to enable local investors to enter into productive economic activities. In the case of foreign investors, in addition to the deductions which apply generally to them and local investors, the government has gone further to attract them by entering into agreements for the avoidance of double taxation. This is a substantial incentive and by offering it, the government loses a substantial amount of tax revenue. In addition to double taxation agreements, the government may make special arrangements with foreign nationals on matters relating to tax. Allowances for capital and provisions for accelerated depreciation

are also significant incentive provisions. In the case of the mining companies the move to taxation of profits as opposed to taxation on production as was the case during the Royalty/Export tax system, has made the system more equitable. Additional incentives have been provided for by the favourable mining allowances in the Income Tax Act.

In general the use of rebates on customs duty provided for by the customs and Excise Act, as amended, and the customs Duties (Drawbacks and Rebates) Regulations are significant incentive provisions. Presently, duty on capital goods, in many instances, has been removed so that importers of capital goods are only subject to a 10 percent surcharge if this also has not been removed by special arrangement. This incentive has also occasioned a considerable loss of revenue which would otherwise have accrued to the government.

One general feature of all the incentive provisions in the Zambian Tax System in that they are geared primarily for capital intensive industries. The system offers considerable tax deductions for capital inputs while it does not do the same in the case of labour.

At present this may be justified by the fact that there is a serious shortage of Skilled labour in

the country. However, this will not continue and there will be need at one time to switch to the use of labour unless adequate employment will be available.

One general feature of the Zambian tax incentive provisions is that they are not contained in one single document like it is the case in countries where there are investment codes. Although the Income Tax Act provides for the largest number of incentives, the frequency at which it is amended (at least once or more per year) complicates the administration of the incentives. The system is further complicated by the fact that other incentive provisions, e.g. those which deal with rebates and refunds of Import Duty are contained in either the customs and Excise Act or separate statutory instruments. Both these have been amended quite extensively. The few skilled and semi-skilled officers of the tax department have to contend with the administration of a myraid of Acts and statutory Instruments. The result is that they tend to ignore anything that they cannot comprehend. Finally, our enquiry does not pretend to be exhaustive of its title. For example no suggestions for reform have been made. However criticisms of the system have

been made. To suggest reform in order to remedy the defects revealed in the criticism would require separate extensive treatment. The criticisms should therefore be treated as an identification of the problems involved- they should therefore be important guidelines for future scholarship.

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