THE PURSE OF ZAMBIA: AN INSIGHT INTO THE OPERATIONS OF ZAMBIA REVENUE AUTHORITY. IS THE ESTABLISHMENT OF THIS INSTITUTION THE MMD GOVERNMENT'S SUCCESS STORY?

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THE PURSE OF ZAMBIA: AN INSIGHT INTO THE OPERATIONS OF ZAMBIA REVENUE AUTHORITY. IS THE ESTABLISHMENT OF THIS INSTITUTION THE MMD GOVERNMENT'S SUCCESS STORY?

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SUBMITTED TO THE UNIVERSITY OF ZAMBIA IN PARTIAL FUFILMENT OF THE REQUIREMENTS OF THE BACHEOR OF LAWS (LLB) DEGREE PROGRAMME.

UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
LUSAKA
JANUARY 2007

DECLARATION

I, CHALI TRESFORD, DO HEREBY DECLARE THAT THIS DISSERTATION IS MY AUTHENTIC WORK AND THAT TO THE BESTS OF MY KNOWLEDGE, INFORMATION AND BELIEF, NO SIMILAR PIECE OF WORK HAS BEEN PRODUCED AT THE UNIVERSITY OF ZAMBIA OR INDEED ANY OTHER INSTITUTION FOR THE AWARD OF A BACHELOR OF LAWS DEGREE.

ALL OTHER WORKS REFERED TO INTHIS DISERTATION HAVE BEEN DULY ACKNOWLDGED.

I THEREFORE TAKE FULL RESPONSIBILITY FOR THE CONTENTS, ERRORS, DEFECTS AND OMMISIONS THEREIN.

MADE THIS 31ST DAY OF JANUARY 2007 BY THE SAID CHALI TRESFORD AT LUSAKA.

....

SIGNATURE

DEDICATION

THIS WORK IS DEDICATED TO MY LATE DAD MR TYSON CHALI. THANK YOU FOR BRINGING ME UP AND TAKING ME TO SCHOOL. IT WAS NOT EASY, I KNOW HOW YOU STRUGGLED JUST TO ENABLE ME GO TO SCHOOL . I LOVE YOU DADDY. REST IN PEACE.

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ABSTRACT

Zambia, like most countries in the world, has to generate revenue. With the privatisation of State Owned Enterprises (SOE), especially the Copper Mines, Zambia's revenue is mostly generated locally. This local revenue is mainly generated from taxation. This includes direct and indirect taxation. Direct taxes are levies on the income and gains of both individuals and corporations. Indirect taxes are levied on goods and services by increasing their cost.

This revenue is important to finance education, health, transport and communication. It is also used to redistribute wealth between the rich and the poor, to allocate resources in the economy and to maintain and achieve goals of economic policy like employment and economic growth.

As stated earlier, most SOE have been privatised. Whether wrongly or rightly or for profit or for a song, is not the subject of this dissertation. But privatisation has made government lose a lot of revenue especially in form of direct taxes through job loses. Therefore, government saw a greater need to recover this loss and generate more revenue.

To do this, government had to consider the set up, the operations, investment, management, autonomy and how robust one major government department was: The **Department of Taxes and of Customs and Excise** in the Ministry of Finance. This

Department was disengaged and the **Zambia Revenue Authority** (ZRA) was set up on 1st April 1994 by the Zambia Revenue Authority Act Cap 321 of the Laws of Zambia.

From inception, ZRA has established its authority by being robust, efficient, effective, by meeting its revenue targets and by prosecuting the tax evaders. This has led to this institution being on e of the most admired, feared and respected in the country and outside.

This dissertation considers the insight of the operations of ZRA. What has made it be the way it is and where it is today. What laws it administers, taxes it collects and how it is managed. At a time when the Movement for Multi –Party Democracy (MMD) government has been accused of corruption and economic plunder, could the creation of ZRA be said to be the MMD Government's success story? Can it acquit the plunderers?

There is need therefore to understand this institution in the way it operates. An insight into its operations is essential if it is to be said that it is the purse of Zambia. To put it loosely, ZRA is 'feeding' Zambia. Further, there is need to understand the extent to which government is involved in the operations of ZRA.

This research is important to the Zambian jurisprudence regarding taxation and revenue collection. The research is firstly intended to contribute to, and provoke thought regarding the operations of ZRA in particular and revenue collection in general.

Chapter one traces the history of taxation. The chapter reveals that Africans in particular had been paying tax even before colonialism though not in the context it is understood today. Further, the chapter discusses the measures taken by the settlers to force indigenous people to pay tax. Finally, it attempts to define tax, state its purpose, effects, types, principles and attributes.

Chapter two discusses the establishment of Zambia Revenue Authority (ZRA), the logo and its meaning and the various laws enforced by ZRA. It begins by presenting the arguments of the then Minister of Finance Emmanuel Kasonde, in Parliament in support of establishing ZRA. The chapter demonstrates that the logo of ZRA has a deep meaning suitable to its work. Lastly, it is discussed that Zambia Revenue Authority enforces three principal Acts of Parliament; namely the Customs and Excise Act, the Value Added Tax Act and the Income Tax Act.

Chapter three argues that Zambia Revenue Authority (ZRA) works on revenue targets. Each year Parliament and the International Monetary Fund (IMF) give them a target to meet. In order to do this work, ZRA is divided into operating divisions. Under these divisions, various duties and taxes are collected. Being such a robust institution, ZRA is not an island. It administers a number of Trade Treaties and protocols. These are also discussed in this chapter.

Chapter four considers the political interference in ZRA. It states that the ZRA Act makes it very easy for government to control ZRA. The chapter also considers whether the establishment of ZRA can be said to be MMD Government's success story bearing in mind accusations of economic plunder and corruption generally leveled against it.

Chapter five is the summary of the dissertation., It also makes suggestion ob how ZRA should be made more effective to further enhance revenue collection in Zambia.

TABLE OF CONTENTS

CHAPTER ONE

BACKGROUND, TYPES AND PURPOSE OF TAXATION

INTRODUCTION

This chapter traces the history of taxation. The chapter reveals that Africans in particular had been paying tax even before colonialism though not in the context it is understood today. Further, the chapter discusses the measures taken by the settlers to force indigenous people to pay tax. Finally, it attempts to define tax, state its purpose, effects, types, principles and attributes.

1.1 HISTORY OF TAXATION

The first account of taxation is from the Bible. In Genesis, chapter 47, verse 24, the Good News Bible says:

"But when the crop comes in, give a fifth of it to Pharaoh. The other four-fifths you may keep as seed for the fields and as food for yourselves and your households and your children."[1]

This statement is attributed to Joseph when he was telling the people of Egypt what to do on how to purchase their food during the famine. The tax was in the form of crops and not money. However, it is the same idea. One of the earliest taxes mentioned in the Bible of a half-shekel per annum from each adult Jew, was a form of poll tax.[2]

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[1] **Good News Bible** The United Bible Societies London 1982 Genesis 47:24 p54.

[2] Ibid Exodus 30:11-16.

Tax has been in Africa before colonialism. Egypt, mentioned in the Bible above, is in Africa. What might be different is the manner in which it is collected and enforced today. In traditional Africa, it was out of moral compulsion that the inhabitants paid tribute in kind in form of a portion of their harvest to their rulers according to one's ability.

The ruler kept it in some form of a cess-pool. The surplus was used to distribute in times of famine, war, festivities and to people in need.[3]

Zambia first came under colonial rule in 1890 when the British South African Company (BSA Company) came to administer this territory on behalf of the British Government. The BSA Company administered the territory until 1924. Northern Rhodesia was created in 1911 after the amalgamation of North Western and North Eastern Rhodesia. Even before the amalgamation, the settlers had started collecting tax by 1901 in form of poll tax. The idea was to force the indigenous people into paid employment or work provided by the settlers.

"In the Rhodesias," wrote L. Ghann," *obligation to pay or suffer criminal penalty compelled villagers to sell their produce or their labour. Taxation was closely linked to the labour question for the need to earn tax money was one of the most important incentive to induce Africans to take up paid employment.*"[4]

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[3] Simbyakula N. **Taxation for Economic Development in Zambia** SJD Thesis (1990) University of Wisconsin-Madison p 60

[4] L.Ghann H(1958) **The Birth of A Plural Society** Manchetser University Press Manchester p 77 quoted by Simbyakula in **Taxation for Economic Development in Zambia** SJD Thesis (1990) University of Wisconsin-Madison p 62

After being saddled with a lot of stock or grain, payments in kind were abolished. Only cash payments of tax were allowed except for those who were very far from their areas of employment. This was in 1905. In 1914, a tax on plural wives was introduced. This meant that in addition to the poll tax, a man was required to pay the same amount on each one of his wives, except the first wife. This led to a number of divorces. It was abolished in 1929 to the relief of most women.

A number of tax reforms were implemented after the Report of the Taxation Committee. This committee was appointed in 1933 to make recommendations for the changes in the incidence on taxation. One of the changes was on the basis of assessment.

A month's continuous stay in an area constituted residence for the purpose of determining the rate to be paid. Any taxable inhabitant who proved to the satisfaction of the District Commissioner to have resided for one month or more in a locality in which the tax is higher than the rate prevailing in his home District was liable to pay at a higher rate.

These changes did not establish a closer relationship between the rate of tax and the means to pay. It gave rise to inequalities inherent in any system of graded taxation. This was in large units such as Northern Rhodesia or as varied as the population of the big industrial centre. These inequalities were apparent on the copper mines. Since the employees of the mines were in the habit of paying tax for their relatives left at home, an increase in their own rate of tax made them stop sending money to their relatives at home.

A large number of people employed by contractors or engaged in casual labour or in domestic labour could not afford to pay tax at that increased rate with their low wages. Also, the unemployed in the mining Districts were not in a position to pay tax at an increased rate. Administratively, this worked as a way of preventing their prolonged stay in the mining districts.

Under the Native Tax Ordinance of 1929, a native satisfying the District Officer that he was prevented from work by reason of age, chronic disease, accident or other sufficient cause was exempted from the payment of the whole or part of his tax.

In Northern Rhodesia, the basis of taxation differed between the indigenous people and the settlers. While the former paid poll tax, the latter paid income tax. The income tax for the settlers was first imposed in 1921 and was chargeable on:

i. income derived from sources within the territory
ii. income derived from sources in adjacent territories, other than banking and insurance businesses, if not chargeable with income or any other similar tax in those territories.

The Income Tax Law introduced in 1926 widened the scope of the tax by bringing into charge income received within the territory from whatever source outside the territory.

1.2 TAX DEFINED

Tax (also known as a "duty") is a financial charge or other levy imposed on an individual or a legal entity by a state or a functional equivalent of a state (for example tribes or revolutionary movements). It is a contribution imposed by the state upon individuals for the use and services of the state.Tax can aso be considered to be a payment laid upon individuals and property to support the governmnet and there is normally a law passed by the legislative authorities to this effect.

Taxes consist of *direct tax* and *indirect tax*. It may be paid in money especially in modern, capitalist taxation systems. Taxes that are levied in-kind are characteristic of traditional or pre-capitalist forms of taxation.

1.3 TYPES OF TAXES

Taxes are sometimes referred to as direct tax or indirect tax. The meaning of these terms can vary in different contexts, which can sometimes lead to confusion. In economics, direct taxes refer to those taxes that are collected from the people or organisations on whom they are ostensibly imposed. For example, income taxes are collected from the person who earns the income. The individual is conscious about the obligation to pay. By contrast, indirect taxes are collected from someone other than the person ostensibly responsible for paying the taxes. They are mostly included in the price of goods and services and everyone, whether in the formal or informal sectors cannot avoid it.

The following are the known categories of taxes in the world.[5]

Income Tax

Income tax is a tax on earnings – money that individuals, corporations, trusts or other legal entities receive in different ways and from different sources.

Retirement Tax

Some countries with social security systems, which provide income to retired workers, fund those systems with specific dedicated taxes. These often differ from comprehensive income taxes in that they are levied only on specific sources of income, generally wages and salary (in which case they are called payroll taxes). Examples of retirement taxes include the FICA tax, a payroll tax that is collected from employers and employees in the United States to fund the country's Social Security system; and the National Insurance Contributions (NICs) collected from employers and employees in the United Kingdom to fund the country's national insurance system.

Capital Gains Tax

A capital gains tax is tax on the profit realised upon the sale of a capital asset.

Corporation Tax

Corporate tax refers to a direct tax levied by various jurisdictions on the profits made by companies or associations and often includes capital gains of a company.

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[5] Organisation for Economic Co-operation and Development (OECD) Report 2006 Elsevier p17

Poll Tax

A poll tax, also called a per capita tax, or capitation tax, is a tax that levies a set amount per individual. Poll taxes are administratively cheap because they are easy to compute and collect and difficult to cheat. Economists have considered poll taxes economically efficient because people are presumed to be in fixed supply. However, poll taxes are very unpopular because they are strongly regressive because low-income people pay a higher proportion of their income than higher income people do. In addition, the supply of

people is in fact not fixed over time. On average, couples will choose to have fewer children if a poll tax is imposed. The introduction of a poll tax in medieval England was the primary cause of the 1381 Peasants' Revolt. In 1990 the change from a progressive local taxation based on property values to a single-rate form of taxation regardless of ability to pay (the Community Charge, but more popularly referred to as the Poll Tax) was instrumental in the demise of the then Prime Minister Margaret Thatcher.

Excises

Unlike an ad valorem, an excise is not a function of the value of the product being taxed. Excise taxes are based on the quantity, not the value, of product purchased.

Sales Tax

Sales taxes are a form of excise levied when a commodity is sold to its final consumer.

Tariff

An import or export tariff (also called customs duty or impost) is a charge for the movement of goods through a political border. Tariffs discourage trade, and they may be used by governments to protect domestic industries. The classic ways of cheating a tariff are smuggling or declaring a false value of goods.

Toll Tax

A Toll Tax has been often used historically on roads and bridges to pay for state bridge and road projects.

User Taxes

Gas taxes are a form of User Tax that is collected for a particular need and to maintain roads.

Value Added Tax

A Value Added Tax (VAT), also known as 'Goods and Services Tax' (G.S.T), or 'Impuesto Indirecto sobre la Prestacion de Servicios' (I.S.I.), Sales Tax, Business Tax, or Turnover Tax in some countries, applies the equivalent of a sales tax to every operation that creates value. To give an example, a company like Shoprite registered for VAT with Zambia Revenue Authority (ZRA) pays import VAT which they claim back from ZRA. Since every item in Shoprite has VAT in its price, the customer who buys from Shoprite is the one who pays VAT as he cannot claim from ZRA.

Property Taxes

A property tax is usually levied on the value of property owned, sold or inherited. Property may take the form of real property such as land or personalty such as shares.

Inheritance Tax

Inheritance tax is the tax that is paid on one's estate. It is everything one owns at the time of their death less what they owe. Some believe that inheritance taxes do not have any harmful effect on the economy and may even be beneficial as they encourage consumer spending by the elderly. However, some also believe them to discourage productivity and to disrupt the continuity of family-owned businesses.

Wealth (net worth) Tax

Some countries' governments will require declaration of the tax payers' balance sheet (assets and liabilities), and from that exact a tax on net worth (assets minus liabilities), as a percentage of the net worth, or a percentage of the net worth exceeding a certain level. The tax is in place for both "natural" and in some cases legal "persons".

1.4 PURPOSE AND EFFECTS OF TAXATION

Most modern governments also use taxes to fund welfare and public services, such as:

i. education

ii. health care

iii. pensions for the elderly,

iv. unemployment benefits

v. energy, water and waste management systems,

vi. public transportation

Funds provided by taxation have been used by states and their functional equivalents throughout history to carry out the functions such as:

i. enforcement of law and public order,

ii. protection of property,

iii. economic infrastructure — roads, bridges,

iv. public works,

v. social engineering,

vi. the operation of government itself.

Colonial states and modern states have also used cash taxes to draw or force reluctant subsistence producers into cash economies.

Governments use different kinds of taxes and vary the tax rates for various purposes including the following:

i. to distribute the tax burden between individuals or

classes of the population involved in taxable activities, such as business,

ii. to redistribute resources between individuals or classes in the population. Historically, the nobility were supported by taxes on the poor; modern social security systems are intended to support the poor, the disabled or the retired by taxes on those who are still working, or

iii. to fund foreign aid and military aid, or

iv. to influence the macroeconomic performance of the economy (the government's strategy for doing this is called its fiscal policy) or

v. to modify patterns of consumption or employment within an economy, by making some classes of transaction more or less attractive.

The resource taken from the public through taxation is always somewhat greater than the amount which can be used by the government. The difference is called compliance cost, and includes for example the labour cost and other expenses incurred in complying with tax laws and rules.

The collection of a tax in order to spend it on a specified purpose, for example collecting a tax on alcohol to pay directly for alcoholism rehabilitation centres, is called hypothecation. This practice is often disliked by finance ministers, since it reduces their freedom of action. Some economic theorists consider the concept to be intellectually dishonest since in reality money is fungible. Furthermore, it often happens that taxes or excises initially levied to fund some specific government programs are then later diverted to the government general fund. In some cases, such taxes are collected in fundamentally inefficient ways, for example highway tolls.

1.5 PRINCIPLES OF TAXATION

Firstly, tax is a creature of statute. The law establishes from whom a tax is collected. In ***Oriental Bank v Wright***[6] the judicial commite of the Privy Council said the rule is that the intention to impose a charge upon a subject must be shown by clear and unambiguous langauage. Secondly, people must be taxed according to their means and tax should be certain. It should not be left to the arbitrary discretion of the revenue authority.Things like time of payment, manner and sum should be clearly stated in the law that imposes tax.[7] Thirdly, the more one earns an income, the more they should pay. This is the Principle of ability to pay, also referred to as vertical equity.

1.6 BASIC ATTRIBUTES OF TAXATION

The following attributes of taxation must be found in every sound tax system.[8]

i. the distribution of the tax burden must be equal. That is, every one must pay their fair share of tax;

ii. tax should be chosen in a way as to minimise interference with economic decisions in otherwise efficient markets. That is ,excess burdens should be minimized;

iii. taxes should be used to correct the inefficiencies in the private sector as long as they are suitable instruments for doing so;

iv. tax structures should facilitate the use of fiscal policy for the stabilisation and growth objectives;

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6 (1980) S APP Cas 842 p 856

7 Toby R A (1978) **The Theory and Practice of Income Tax** Sweet and Maxwell London p151

8 ibid p71

v. administration and compliance costs should be as low as is compatible with other objectives.

CHAPTER 2

THE ZAMBIA REVENUE AUTHORITY

INTRODUCTION

This chapter discusses the establishment of Zambia Revenue Authority (ZRA), the logo and its meaning and the various laws enforced by ZRA. It begins by presenting the arguments of the then Minister of Finance, in Parliament in support of establishing ZRA. The chapter demonstrates that the logo of ZRA has a deep meaning suitable to its work. Lastly, it is discussed that Zambia Revenue Authority enforces three principal Acts of Parliament; namely the Customs and Excise Act, the Value Added Tax Act and the Income Tax Act.

2.1 ESTABLISHMENT OF ZAMBIA REVENUE AUTHORITY

Zambia Revenue Authority was established on 1st April 1994. This was after disengaging the Department of Taxes and of Customs and Excise from the Ministry of Finance. It was as a result of government's realisation for a need to have a revenue collection institution modeled on integrity, excellence and professionalism. The then Minister of Finance Mr. Emmanuel G. Kasonde, elaborated the objectives of establishing ZRA when he laid the motion on the table in Parliament. He said:

"Mr. Speaker, I am proposing the establishment of the Zambia Revenue Authority in order to enhance revenue collection and to improve administration. Mr. Speaker, sir, I

would be less than frank to this House if I was to say that I am satisfied with the current performance of the two revenue departments. It has been obvious to me for some time that our economic development plan can only succeed if we have fair and efficient tax collection. The truth, at the moment Mr. Speaker, sir, is that the revenue departments are not functioning well at all.

Mr. Speaker, sir, the main problem in the Department of Taxes and the Department of Customs and Excise stem from manpower inadequacies. By this, Mr. Speaker, I do not mean that there are numerical shortages of tax inspectors or customs officers but, rather, that many of those in the posts are not performing adequately. There is a general lack of motivation. Training has been given low priority; the department lacks the modern technological skills to cope with the normal demands of efficient revenue collection, let alone the extra demands thrust upon the comprehensive tax reform program, which we are attempting to put in place.

Sir, I see the establishment of ZRA as the best way forward. The de-linking of revenue collection responsibility from civil service will create a climate of improved staff morale and discipline; it will allow the governing board of ZRA flexibility in hiring and retaining competent staff; good performance will be rewarded and poor performance will not be tolerated...the initial cost of establishing ZRA will be high, but the medium and long term effects will far outweigh this consideration"[9].

[9]Official Verbatim Reports of the Parliamentary Debates of the Second Session of the 7th National Assembly No. 93. 15th –18th March 1993. Pp1930-1933)

The establishment of ZRA did not go without opposition in Parliament. Honourable Chindoloma (then Chipili Member of Parliament) submitted as follows:

"Mr. Speaker I notice that there is a Bill here to abolish the Zambia Iron and Steel Authority. We are also busy trying to abolish parastatals organisations but today were creating another authority. I do not know whether to call this inconsistency or trickery"[10].

Honourable Chuulu (then Moomba Member of Parliament) said: *"...Now we are creating an authority which is similar to a statutory board and also practically similar to a parastatal. We are aware how 80% of parastatals have plundered the public assets. People have no recourse"*[11].

Honourable Muyovwe (then Pemba Member of Parliament) submitted that there was going to be created a governing board with the Permanent Secretary Ministry of Finance, the Bank of Zambia Governor and so on. That it was becoming an illicit government. Honourable Muyovwe further submitted that he wanted to presume that the Bank of Zambia Governor had enough work to attend to and the Permanent Secretary of Finance was inundated with a lot of work too[12].

However, the Bill received a lot of support especially from the Government or front bench. Honourable Ronald Penza, then Minister of Commerce Trade and Industry said:

[10] ibid p1940
[11] ibid p1934
[12] ibid p1940

"I would like to plead with those of my colleagues who seem not to understand what this is intended to achieve. This is simply a tool of government to ensure that efficiency becomes the hallmark of economic management. That's all it's intended to achieve"[13].

Honourable Edith Nawakwi, then Deputy Minister of Energy and Water Development, said:

"Sir with the establishment of ZRA I can foresee that traders in Kamwala, Freedom Way and so on will now be obliged to pay tax"[14]

Honourable Micheal Sata, then Minister of Local Government and Housing, summed up the benefits of establishing ZRA:

"Sir, there are no billions which are going to be spent, but billions will be saved"[15].

The government bureaucracy and inefficiency affected the Departments of Taxes and of Customs and Excise. As a result, the core functions of a revenue authority were not being performed. These include facilitation of trade, protection of industry and society and collection of due revenue. This led to failure to provide trade statistics to Central Statistics Office (CSO) for use in national development.

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[13] ibid p1945
[14] ibid p1936
[15] ibid p1951

The Department failed to simplify Customs and Excise procedures and neither did it enhance information technology. With most countries having implemented the Automated System for Customs Data Management (ASYCUDA) in the region, Zambia was lagging behind. The Department was not highly computerised as required in modern day revenue collection. Clearing goods at the boarder was a nightmare. There was massive revenue evasion, commercial fraud and smuggling. The Department could not sustain anti-smuggling patrols as ZRA does today. Of cardinal importance was the lack of streamlining tax and Customs and Excise legislation and procedures.

Being part of the larger Ministry of Finance, the Department of Taxes and of Customs and Excise failed to provide a service beyond and above that of collecting duties and taxes and regulating and facilitating the movement within and through Zambia. There was failure to provide a prompt service in all areas of operation mainly due to lack of technology. As civil servants, the Department employees despite collecting a lot of money had poor conditions of service. This led to corruption and theft. The working environment was not conducive for one to realize their full potential or feel good about their work. The tax collectors were not properly trained and some were not able to grow professionally and personally.

The Department of Customs and Excise was not able to conduct operations based on international provisions implemented by the community of East and Southern African States, the World Customs Organisation, World Trade Organisation and other trade communities. The customs system was not in conformity with international standards.

The following shortcomings in the Department of Taxes were noticed and remedy measures suggested by Dr. Simbyakula[16].

i. Lack of enforcement makes many people capable of paying escape paying tax.

ii. "Employers's Guide" and "Practising Notes" should be continuously updated and written in simpler language.

iii. The Tax Office should take it upon themselves to mail these publications free of charge to all employers instead of expecting a tax payer to go and collect from the tax office.

iv. Computerisation of operations at the tax office should be considered as the current process was laborious and slow.

There was therefore need to create an institution to redress the serious shortfalls in revenues available to the government and increasing dependency on donor funding to support basic necessities. This institution is the Zambia Revenue Authority, created to sustain and maximize revenue collection through integrated, efficient, and cost effective and transplant systems professionally managed to meet expectation of all stakeholders.

2.2 THE STRUCTURE AND OPERATIONAL DIVISIONS IN ZAMBIA REVENUE AUTHORITY

The Zambia Revenue Authority is made up of operating divisions. These divisions collect different types of taxes. Prior to 1st December, 2006 the divisions included Customs and

[16] Simbyakula N. (1990) **Taxation for Economic Development in Zambia** SJD Thesis University of Wisconsin-Madison pp 99-100

Excise, Value Added Tax (VAT) and Direct Tax. The structure, prior to the restructuring, composed of the Commissioner-General at the top. Below him were the Commissioner of Customs and Excise, Commissioner of Value Added Tax and Commissioner of Direct Taxes. The Commissioner-General, appointed by the President, is the chief executive officer of the Authority, and is responsible for the execution of the functions of the Governing Board and the implementation of the decisions of the Board.[17] The Commissioner-General may, subject to the approval of the Governing Board, establish such organisational structures as he may consider necessary for the discharge of the functions of the Board.[18]

The administration of the Acts of Parliament administered by the Zambia Revenue Authority is the responsibility of the Commissioner General. The Acts include the Customs and Excise Act, the Value Added Tax Act and the Income Tax Act. He has the charge of all the divisions in ZRA and the officers employed therein. The commissioners are appointed by the Board to do the day-to-day management and operation of the Divisions under the general supervision of the Commissioner-General.

The functions of the office of the Commissioner of Customs has not changed much with the restructuring. The office is still responsible for the overall management and direction of the Customs Division of the Zambia Revenue Authority. The office works through two major offices of Deputy Commissioners Head Quarters and Support. The two arms are responsible for operations and policy respectively. The other office that is responsible to

[17] Zambia Revenue Authority Act Cap 321 of the Laws of Zambia s19(1)
[18] Ibid s19(2)

the Commissioner is the Data Management and Intelligence, which is responsible for implementation of ASYCUDA++ and management of data.

The Commissioner of Customs co-ordinates all policy issues on Customs with the Government, the IMF, World Bank and other institutions with whom border control is managed. International liaison with intergovernmental organisations such as European Union, Southern African Development Community(SADC), Common Market for East and Southern Africa(COMESA),Economic Community for West African
States (ECOWAS) and many more.

The Commissioner of VAT, based at the Zambia Revenue Authority Headquarters in Lusaka, was responsible for the administration of the VAT Act through the powers conferred on the office by the Commissioner -General of the Authority. This position no longer exists. The VAT Division had two departments headed by Deputy Commissioners. The Deputy Commissioner - VAT Operations oversees the implementation of the VAT Control compliance strategy whilst the Deputy Commissioner -VAT Policy manages the information processing and legal frame work functions.

As earlier stated, the Governing Board of ZRA in its meeting held on 1st December, 2006, approved a new structure based on a report on the review of the administration[19]. The operating divisions have now been reduced to two. That is, Customs Services Division and Domestic Taxes Division. The latter Division is a fusion of both VAT and Direct

[19] Office Memorandum by the Zambia Revenue Authority Commissioner -General 6th December,2006

Taxes Divisions. Also, the collection of local excise tax initially a responsibility of the Customs and excise Division has been included in the Domestic Taxes Division.

The Commissioner-General remains as the Chief Executive Officer of ZRA and he retains all his functions and powers highlighted above. The Commissioner of Customs equally retains his powers with the exception controlling local excise tax. The functions of the VAT Commissioner and those of the Commissioner Direct taxes have now been taken up by the Commissioner of Domestic Taxes Division

The legality of this restructuring is questionable. Section 3 (3) of the Customs and Excise Act says as follows:

The Board shall appoint a Commissioner of Customs and Excise Division who shall be responsible for the day to day operation and management of the Customs and Excise Division under the general supervision of the Commissioner General.[20]

Section 33 of the Value Added Tax Act has a similar provision

The Acts of Parliament envisage that there shall exist in ZRA a Customs and Excise Division and the Value Added Tax Division to be headed by commissioners. Was the ZRA Board in order to remove/rename these divisions expressly stated in the Act? The view of the author is that the new divisions should have come after statutory amendments and not before, as the Board has done.

[20] Customs And excise Act Cap 322 s.3(3)

2.2.1 Custom Services Division

The Customs Services Division is a division under the Zambia Revenue Authority. It is the former Customs and Excise division and has its Head Quarters at Revenue House in Lusaka. The Division has several offices throughout the country both inland and at the borders with neighboring countries. Considering Zambia's position as a landlocked country, there is a network of Customs offices along its borders. The division manages over 30 offices throughout the country.

The Customs Services Division of the Zambia Revenue Authority is responsible for administering and enforcement of the provisions of the Customs and Excise Act, Cap.322 of the Laws of Zambia by doing the following:

i. Collection of customs duties and other taxes;
ii. Licensing and control of bonded warehouses;
iii. Regulation and control of imports and exports;
iv. Facilitation of trade, travel and movement of goods;
v. Carry out controls on behalf of other government ministries and departments;
vi. Provision of statistical data to government on imports and exports;
vii. Protection of Society.

The Customs Services Division has operating departments. The most notable ones include the Data Management Unit (DMI), Audit and Business Risk (ABR), International and Policy, Controls and the Flexible Anti Smuggling Team.

Data Management and Intelligence Unit (DMI)

The DMI unit Computerise critical operations of the Customs division especially entry processing and manage the data. It provides data to the Central Statistical Office (CSO) for compilation of Foreign Trade Statistics and Policy formulation. It also streamlines and document procedures to ease trade, develop intelligence to assist in the running of Customs on a risk based approach, coordinate the Zambia Office of the Regional Intelligence Liaison Office (RILO) and conduct research for the division to facilitate innovation, measures of effectiveness, changes in objective, fore-casting and future planning.

Audit and Business Risk Department (ABR)

The Audit and]Business Risk (ABR) department was controlling the Excise part of the former division. The ABR's objective is to ensure that importers and manufacturers pay correct duties at the right time. Audit and Business Risk provides quality assurance services meant to ensure that importers and manufacturers comply with the provisions of the law. Audit and Business Risk is, therefore, pivotal as it interfaces with all the ZRA Divisions and the business community at large.

Post Clearance Audits are conducted by ABR. This is a new approach to Customs intervention and whose main aim is to foster and facilitate compliance with clearance procedures. This defines the critical role that the division plays in the global economy, and enhances Zambia's participation in international trade agreements such as COMESA, SADC, EU-ACP (European Union - African, Caribbean and Pacific Countries) and other bilateral agreements. Post audit clearance allows for the speedy clearance of goods and services at entry points through risk based targeting. The objective of post-audit clearance is to verify the accuracy of the information provided at the time of clearance and whether they were cleared within the framework of the laws, regulations and division's operating procedures.

Audit and Business Risk is further tasked with debt management. The Business Analysis of the division is done by ABR .It conducts analysis of import and export trends to establish the sources and effects of external factors in this ever-changing business environment. The studies include, inter-alia, analysis of the impact of fiscal and trade policies including bilateral and multilateral trade agreements. On the basis of the established factors and trends, revenues are projected giving Senior Management the picture of the future and basis for timely decisions and planning for pro-active action.

Flexible Anti –Smuggling Team

The elite unit of Customs, the Flexible Anti-Smuggling Team (FAST) is the national enforcement road patrol for Customs in particular and ZRA in general. Based at Head Office, the team conducts random patrols and inspections on imports and exports countrywide. They intercept goods before they reach their final destination or conducts destination inspections to countercheck whether what was declared and paid for at the entry point is what has been imported. The same is extended to goods from the airport. The team checks on smuggling in general especially of liquor from Zambia's southern neighbors and most recently Tanzania.

International and Policy

International and policy is a section located on the ground floor of the Revenue House. The section is divided into two smaller units:

i. Valuation and policy co-ordination

ii. International, liaison and tariff classification

The valuation unit is responsible for managing policy development and constant review of divisional procedures including the National Budget process and dealings with government ministries and departments. It also maintains the division's external relations and activities on issues relating to international trade and customs liaison for conformity and legislative clarity based on international laid down rules and procedures on customs trade.

The International liaison unit is responsible for maintaining multilateral, regional and bilateral contacts and sourcing technical assistance from World Customs Organisation (WCO), World Trade Organisation (WTO), Southern African Development Committee (SADC), Common Market for Eastern and Southern Africa (COMESA) and other bodies. It is at the forefront of coordinating negotiations and trade concessions in SADC and COMESA and provides guidance to the business community on all matters related to origin and other implications of trade protocols.

2.2.2 Domestic Taxes Division

The Domestic Taxes Division comprises the former Value Added Tax and the Direct Taxes Divisions.

Value Added Tax Department

Value Added Tax is administered using the Value Added Tax Act, Cap 331 of the Laws of Zambia. Value Added Tax was introduced in Zambia in July 1995 to replace the Sales Tax. The VAT is invoiced based and operates on the destination principle, where goods and services are taxed in the country of consumption and not of origin

The VAT Department is represented by the Policy Department on the National Tax Policy Review Committee whose function is to consider submissions from various economic sectors for possible inclusion in the National Budget. The Department consolidates measures aimed at tidying up and sealing loopholes, if any, in the VAT legislation. It is also available to offer correct interpretation of the VAT law to both staff and outsiders

Direct Taxes Department

The taxes in this department include those that were administered by the former Direct Taxes Division. The functions include assessing and collecting revenue under the following tax types:

i. Income Tax

ii. Property Transfer tax

iii. Mineral Royalty

The Excise Department

Excise Duty is a tax on particular goods or products whether imported or produced. domestically, imposed at any stage of production or distribution, by reference to weight, strength or quantity of the goods or products, or by reference to their value. The major excisable goods and services in Zambia are the traditional excise goods such as alcohol, tobacco, hydrocarbons, non-alcoholic drinks like coca-cola and water while the excisable services include electricity and telephones. The department is responsible for the licensing and management of registered excise manufacturers. The main excise manufacturers include Zambia National Oil Company, Zambia/Northern Breweries, Zambia Electricity Supply Corporation (ZESCO), National Breweries, Zambia Bottlers.

2.3 THE ZAMBIA REVENUE AUTHORITY LOGO

The ZRA logo constitutes of an eagle with a mace, tobacco leaves and copper ingots.[21]

The eagle, head to the sinister or rising in saltire proper, as found on the National Flag, the President's Standard and the Armorial Ensigns, represent the State. It also represents the freedom of Zambia and the ability of the country to rise above its problems.

This is a national bird. Even in the National Anthem, it is mentioned thus:

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[21] REACH News, views and what's happening at the Zambia Revenue Authority, December 2005 Issue No. 8

...One land and one nation is our cry,

Dignity and peace 'neath Zambia's sky,

Like our noble eagle in its flight....

The leaves of tobacco were once used as a form of currency. One would wonder what money is then, if tobacco leaves were once used as a form of money. *Money is anything that is widely used for making payments and accounting for debts and credits*[22].

In England's American colonies a chronic shortage of official coins led to various substitutes, being used as money, including, in Viriginia, tobacco, leading to the development of paper money by a different route. Tobacco leaves had drawbacks as currency and consequently certificates attesting to the quality and quantity of tobacco deposited in public warehouses came to be used as money and in 1727 were made legal tender. This is why ZRA has tobacco leaves in its logo since they were used as a form of money in the past. It is difficult to imagine how tobacco leaves can be used as money. But in history, not only tobacco leaves have been used as a form of money. Other forms of money used in history include *Amber, beads, cowries, drums, eggs, feathers, gongs, hoes, ivory, jade, kettles, leather, mats, nails, oxen, pigs, quartz, rice, salt, thimbles, umiacs, vodka, wampum, yarns, and zappozats (decorated axes)*[23].

The box with a cross-copper ingots represents commerce. Government in general through Zambia Revenue Authority in particular has a duty to protect local industries. This is

[22] *Davies, Glyn. A* **History of Money from AncientTimes to the Present Day**, *3rd ed. Cardiff: University of Wales Press, 2002 p 27*
[23] *Ibid p28*

done through reduced tariffs of products imported by local industries, reduction in the payment of local excise and entering into Time to Pay Agreements (TPAs) for companies with a huge bill like Zambia Electricity and Supply Corporation (ZESCO)and Zambia Telecommunication Company(ZAMTEL).

Government through ZRA also have a duty to facilitate trade. This is done by ensuiring that customs procedures are simplified, inspections are based on risk profiles to be quick, allowing pre-payments, Removing Goods in Bond (RIB), special deliveries for the client to pay within a specified time especially fuel and sending goods from border posts for destination inspections inland.

2.4 THE ZAMBIA REVENUE AUTHORITY MOTTO

A motto is a slogan highlighting particular attributes of the operational focus of an organisation. At inception in 1994, the ZRA motto was ***Get the Benefit of Paying Tax***. This implied that when taxpayers paid their taxes through ZRA, they would get the benefit of paying tax. The Zambia Revenue Authority carried advertisements depicting roads being mended, school being built, to mention but a few, from taxes. The motto ***Get the Benefit of Paying Tax*** connoted that ZRA as an organisation was also responsible for government expenditure projects. It meant that taxpayers had a right to hold ZRA accountable for government expenditure and failures.[24]

The Zambia Revenue Authority felt that the motto did not reflect its operational focus, that of collecting revenue. At the time, ZRA's focus was to improve infrastructure to

[24] The reasons why this motto should have been maintained are discussed in Chapter five

enable taxpayers meet their obligations on time with minimum administrative burden. Consequently, in order to draw attention of the taxpayer in its quest to improve service, the motto ***Working to Serve You Better*** was mooted[25]. This is the motto of ZRA today.

2.5 LAWS ENFORCED BY ZAMBIA REVENUE AUTHORITY

The Zambia Revenue Authority enforces three principal Acts of Parliament and subsidiary legislation. These are: The Customs and Excise Act, Chapter 322; The Value Added Tax Act Chapter 331, The Income Tax Act Chapter 323; The subsidiary legislation include the Customs and Excise (General) Regulations 2000; Value Added Tax (general) Rules 2002. However, this research will focus on the principal Acts only.

2.5.1 The Customs and Excise Act Chapter 322

The Customs and Excise Act provides for the imposition, collection and management of customs, excise and other duties, the licensing and control of warehouses and premises for the manufacture of certain goods, the regulating, controlling and prohibiting of imports and exports, the conclusion of customs and trade agreements with other countries, forfeitures and for other matters connected therewith or incidental thereto[26].

Under section 3, the Commissioner–General of ZRA is responsible for the administration of the Act and any other law relating to Customs and Excise. However, section 3(3) empowers the ZRA governing board to appoint a Commissioner of Customs and Excise

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[25] 'Meaning of ZRA Motto' REACH Magazine:News Views and What's happening at ZRA April 2005 Issue No: 6 p 2

[26] Customs and Excise Act Chapter 322 Preamble

for the day-to-day management and operation of the Customs and Excise Division under the general supervision of the Commissioner-General

Customs Officers have a wide range of powers as contained in Part II (sections 5-12) of the Act. When on duty they can board a ship or train free of charge. Officers can also enter an aircraft arriving in or about to depart from Zambia suspected to be carrying unaccustomed goods. Officers have powers to open any package in any manner in their powers if the keys thereto or other means of opening it are not produced on demand. An officer can stop and detain any vehicle, ship or aircraft suspected to have dutiable goods. It is interesting to note that a person can only be searched by an officer of the same sex.

Without any previous notice, an officer can enter any store, shop structure or enclosed area for the reception of goods for the purpose of examination and enquiry in order to protect revenue. Officers also have powers to take samples for the examination or ascertaining the duties payable

According to Part III (sections 13-42) of the Act, the time for importation of goods by ship is when the ship enters the territorial waters of Zambia. In case of goods on an aircraft, when the aircraft enters the sovereign airspace of Zambia and in the case of a train when it cross the borders of Zambia and in the case of goods imported by pipeline, when the contents have been discharged from the pipeline in Zambia. This means that crude oil from Tanzania imported through the TAZAMA pipeline is only deemed imported when discharged at Ndola despite the fact that the pipeline enters Zambia at Nakonde, some 800 km from Ndola.

The goods prohibited from importation according to section 40(1) of the Act include counterfeit coin or banknotes, obscene, indecent or objectionable material, goods produced by prison labour except for a bonafide gift by a prisoner to a private individual, pirated or counterfeit goods, qilika. Subsection (2) authorizes officers to forfeit such goods but subsection (3) empowers the Minister to authorize the importation of any of such goods for the purpose of study, scientific investigation or use as evidence in any proceeding.

The importation of stills and all apparatus for use in the production of alcohol is restricted and written permission must be sought from the Commissioner-General before importation. Similarly, the importation into Zambia of any currency exceeding in value the equivalent of five thousand United States Dollars (US $5000) should be declared in a prescribed form.

Part XII (ranging from sections 175-202) makes it an offence for any person to make a false statement, invoice, and representation or to forge any document or posses a blank invoice. Obstructing an officer, removing or breaking a seal, failure to make a full declaration, bribery, importation of prohibited goods and smuggling are all offences under the Act. Section 162 gives officer powers to seize goods imported in contravention of the Customs and Excise Act.

2.5.2 Value Added Tax Chapter 331

The Value Added Tax Act, Cap 331 of the Laws of Zambia was introduced in Zambia in July 1995 to replace the Sales Tax. In its preamble, the Value Added Act states that it is an Act to impose a tax on the supply of goods and services in Zambia and the importation of goods into Zambia; to repeal the Sales Tax Act and the Insurance Levies Act. The Value Added Act applies to government agencies in the supply of goods and services for the performance of its official functions as though such a supply were for the purposes of the business carried on by it.

Value Added Tax is levied on every taxable supply of goods and services in Zambia other than zero-rated supply and every taxable importation into Zambia.[27] Every taxable supplier is required to submit a tax return and there is a penalty for late submission in fee units or one per centum of tax payable in respect of prescribed accounting period covered by the return, whichever amount is greater, for each day the return is late[28]. Section 27 (1) requires all taxable suppliers and their businesses to be registered. Section 29 makes it an offence not to.[29] Authorised officers may enter any premises used for the carrying on of business and shall have full and free access to open any package, take stock of any goods. Obstruction of authorised officers is an offence.[30]

[27] Value Added Tax Act s8 (1)
[28] Ibid ss16-17
[29] Ibid ss 38-39
[30] Ibid ss37-43

2.5.3 Income Tax Act Chapter 323

The Income Tax Act provides for the taxation of incomes earned from a source within or deemed to be within the Republic and from every person ordinarily resident within the Republic by way of interest and dividends from a source outside the Republic.[31] Section 17 defines income to include gains or profits from any business, dividends, emoluments, annuities, interests, charges and discounts, royalties, premium income from letting of property. As any other principal Act administered by ZRA, the administration of this Act is the responsibility of the Commissioner General.

Powers of Officers

Under section104 of the Income Tax Act, the Commissioner-General or his officers with a warrant signed by a magistrate, has powers to search and seize any documents which might be necessary for the assessment or any criminal proceedings. This is done on reasonable suspicion that a person has committed an offence under the Act.

Deductions

The Commissioner-General is empowered under the Act to make deductions in respect of income from emoluments of an employee for any amount paid by him during a charge year to a approved fund, technical education, subscription paid in respect of trade, technical and professional association related to his business. Further, any amount paid to a charitable organization, research relating to business, and a business that has employed handicapped persons are deducted[32].

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[31] Income Tax Act s 14(1) (a) (b)
[32] Ibid ss37-43

Disputes

The Income Tax Act makes provision in section 107 for dealing with disputes arising from assessments and determinations by appealing to the Revenue Appeals Tribunal. Under section 108 of the Income Tax Act, a taxpayer may within 30 days of issue of an assessment, notify the Commissioner - General of his objection in writing. Beyond this period, the objection will be considered late. The Commissioner - General may make a determination either allowing or disallowing a late objection. The Commissioner General is required to inform the taxpayer of his decision regarding the objection.

If the Commissioner-General declines, the taxpayer in accordance with section 109 may appeal to the Revenue Appeals Tribunal on the grounds that the Commissioner General's determination was unreasonable. .

The Revenue Appeals Tribunal was established to hear appeals under the Customs and Excise Act, the Value Added Tax Act and the Income Tax Act.[33] The philosophy behind the creation of the Tribunal is to provide a special and speedy forum to resolve disputes between taxpayers and ZRA. The Appeal may be on a point of law or fact or both. The taxpayer may not appeal to the High Court against the ruling of the Revenue Appeals Tribunal on a point of fact, but only on a point of law. Where either party to the dispute is not satisfied with the decision of the High Court, they may appeal to the Supreme Court which is the highest court in Zambia.

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

The 2006 Budgetary Changes on Income Tax

In last year's (2006) budget, many changes were made relating to Income Tax as follows:

i. Pay As You Earn (PAYE): Exempt all income up to K3, 840,000 per annum and adjust the income bands by the projected average rate of inflation;

ii. Exempt dividend income earned by individuals on shares listed on the Lusaka Stock Exchange (LUSE) from tax;

iii. Allow Environmental restoration costs made by mining companies during the economic life of the mine to be deductible for tax purposes;

iv. Extend the provision of tax incentives to all mining companies involved in mining of base metals other than copper and cobalt;

v. Provide for indexation of carry forward of losses and capital allowances for mining companies holding large-scale mining licences;

vi. Reduce the upper corporate tax rate for banks from 45 percent to 40 percent;

vii. Exempt dividends from tax for a period of 5 years from the date of first declaration for companies engaged in the assembly of motor vehicles and bicycles;

viii. Provide incentives for companies that will operate in the priority sectors under the proposed Zambia Development Agency Act;

ix. Compute corporation tax at current rates on 50 percent of the profits earned for a period of 5 years starting from the first year profits are returned;

x. Exempt dividends from tax for a period of 5 years from date of first declaration;

xi. Allow capital expenditure on improvement or for the upgrading of infrastructure to qualify for improvement allowance of 100 percent of such expenditure for tax purposes.

Compensating Measures in the 2006 Budget

i. Introduce a withholding tax at the rate of 45 percent on payment to suppliers of goods and services who do not have a tax clearance certificate;

ii. Exempt suppliers of goods and services from providing a tax clearance certificate if a transaction is K200,000 or less; and

iii. Introduce regulations that will empower the Minister of Finance and National Planning to review the threshold per transaction.

CHAPTER 3

THE BUSINESS OF ZAMBIA REVENUE AUTHORITY

INTRODUCTION

In this chapter, it shall be discussed that Zambia Revenue Authority (ZRA) works on revenue targets. Each year Parliament and the International Monetary Fund (IMF) give them a target to meet. In order to do this work, ZRA is divided into operating divisions. Under these divisions, various duties and taxes are collected. Being such a robust institution, ZRA is not an island. It administers a number of Trade Treaties and protocols. These are also discussed in this chapter.

3.1 REVENUE TARGETS

The Zambia Revenue Authority implements a comprehensive revenue administration system, which has progressively and consistently delivered tax revenue to support government operations. The authority's performance, as measured by its ability to meet tax revenue targets set by government, has been impressive from inception. It has consistently met its parliamentary target, even under very difficult economic and administrative conditions

Table 1 below shows the revenue performance against targets since the year 2000. Parliament and International Monetary Fund (IMF) targets are given in columns two and three and actual tax revenue outturn in the fourth column.

The Authority has consistently delivered revenue to government in excess of the parliament target but rarely meets the IMF target. It is also important to note that the amount by which revenue outturn exceeds the parliament target has been falling, from K139.5 billion in 2000 to K10.3 billion in 2005.

Table 1: ZRA Revenue Performance against targets (2000-2005 K'billions)

YEAR	PARLIAMENT REVENUE TARGET	IMF REVE NUE TARGET	ZRA ACTUAL REVENUE OUTURN
2006	6627.2	6348.4	
2005	5511.5	5582.8	5521.8
2004	4536.6	4498.2	4554.3
2003	3522.0	3468.2	3549.5
2002	2818.0	2774.7	2848.8
2001	2325.4	2288.4	2448.6
2000	1600.0	1841.6	1739.5

Source: ZRA Management Report 2006 p2

This fall in revenue performance above target, appear to coincide with declining trend in government funding to ZRA. As stated above, ZRA in 2006 has received the same funding of K127billion as last year. The Authority has continued to apply its dwindling financial support to cover its operational costs. Staff related costs constitute the largest of the budget and almost 90% of total operational expenses. The most affected activity by recent funding shortfalls is inspection and enforcement, which has declined from a peak of 13.3% of total funding to ZRA in 2004 to a meager 9.8% in 2005 and 2006.[34] As expected, such a decline in inspection and enforcement effort should lead to a fall in voluntary compliance and revenue collection.

With dilapidated physical infrastructure, frequently malfunctioning of the Information and Communications Technology (ICT) systems and reduced inspections and enforcement effort, tax evasion and revenue leakages are expected to increase and revenue performance to fall. In other words, while the demand for inspections and enforcement activities have been rising, funding of enforcement and compliance work has been declining thereby constraining the responsiveness of the revenue system to adequately respond to economic growth. The impact of under funding inspections and enforcement activities were exacerbated by an increase in the number of tax concessions.

It is important to demonstrate that revenue performance does not only depend on the ability of the Authority to collect taxes but on tax policy and budgetary measures as well as changes in the economic fundamentals that affect the tax base. To demonstrate this point, tax foregone as a result of tax concessions offered through the budgetary process is estimated and how government's attempt to effect revenue compensating measures to mitigate the anticipated revenue shortfall.

[34] Zambia Revenue Authority Management Report 2006 p 4

Table 2 shows the Projected Revenue Impacts of Budgetary Measures (2002-2006 K'billions)

YEAR	COMPESATING MEASURES	TAX CONCESSIONS
2006	71.4	(63.2)
2005	33.5	(68.5)
2004	196.6	(31.6)
2003	33.1	(22.6)
2002	22.8	(53.6)
TOTAL	357.4	(239.5)

Source: ZRA Management Report 2006 p15

The table above shows the compensating measures, new tax concessions and net impact of these measures on tax revenue. The revenue loss from tax concessions offered and announced in annual budgets is estimated at K239.5 billion between 2002 and 2006. These losses are experienced immediately the policy measures are effected. The counter argument in favour of tax concessions is that investment incentives attract and raise productivity thereby generating powerful dynamic effects in the economy. These may have a positive effect on tax revenue for instance through its impact on consumption and income taxes (Pay As You Earn-PAYE)

The difficult is to determine whether or not such an incentive would not have been undertaken if such tax concessions were not offered. Most evidence in the literature shows that tax concessions are not the most cost effective way of attracting investment and that tax holidays tend to be discriminatory, distortionary and redundant in most cases. Reasonably, no significant dynamic (indirect) effects of tax concessions on tax base and tax revenue are assumed. It can safely be said that tax concessions erode the tax base and should be provided only in special cases where direct and indirect benefits from such an undertaking outweighs the expected revenue loses.

When providing tax concessions, the treasury often institute additional revenue measures to compensate anticipated revenue losses. These measures are often referred to as compensating measures and provided in the second column of the table above. Except in 2002 and 2005, compensating measures have more than compensated for losses in revenue due to tax concessions.

For example, in last year's (2006) budget, there was a tax concession to suspend customs duty to zero percent for a period of 5 years on all machinery, fixtures and equipment, tools, motor vehicle parts, motorcycle parts and bicycle parts used in the assembly of motor vehicles, motorcycles and bicycles. This measure was seen as favouring TATA Zambia.

Further the reduction of excise duty on Liquefied Petroleum Gas (LPG) from 30percent to 15 percent and the accompanying tax holidays extended to Lumwana Mine in last year's budget, have been viewed as discriminatory by the general public. Other compensating measures in the 2006 budget included:

i. Introduction of a Carbon Tax on motor vehicles as follows:

a) K50,000 per annum for engines of a cylinder capacity of 1500cc or less;

b) K100,000 per annum for engines for engines of a cylinder capacity exceeding 1500cc but not exceeding 2000cc;

c) K150,000 per annum for engines of a cylinder capacity exceeding 2000cc but not exceeding 3000cc; and

d) K200 000 per annum for engines of a cylinder capacity exceeding 3000cc.

Carbon Tax is imposed on all motorists in Zambia whether visiting, transiting through or residents. For newly imported vehicles, Carbon Tax is paid at the entry point. For other vehicles already in the country before the tax was imposed, they will pay in the same manner Road Tax is paid. As already discussed, carbon Tax is an annual tax.

This proposal to introduce Carbon Tax is one of the initiatives by the Zambian Government to respond to the global effort in keeping a safe environment. It's envisaged that the revenue raised through this tax will help in financing environmental protection projects. It will also provide government with a source of revenue for financing other economic activities in the country. So far, collecting Carbon Tax has worked well but only in relation to newly imported vehicles. This is because the tax is configured on the

ZRA ASYCUDA ++ system for tax computations. The computer automatically adds this tax together with other taxes that go with importing a motor vehicle.[35]

ii. Introduction of cigarette tax stamps on all cigarettes sold in Zambia.

This measure will combat illicit cigarette trade and reduce smuggling. Excise tax stamps on all cigarettes sold in Zambia would make it easy for non-duty paid products to be identified. Implementation of excise tax stamps and minimum specific excise proposals will bring Zambia in line with tobacco excise structures in place or under consideration in some surrounding markets. In addition, the minimum excise tax due from a manufacturer or importer can be verified by reference to excise stamps consumed and the minimum specific excise duty payable

This measure has not yet been implemented due to logistical problems. The British American Tobacco Company relocated the making of cigarettes Kenya. What it means is that ZRA will is required to have the cigarette stamps made, then affixed on the cigarettes in Kenya before they are imported into Zambia for sale. British American Tobacco is only using Zambia as a market but the cigarettes are being made in Kenya. This measure therefore, is meant to protect British American Tobacco from cheap smuggled cigarettes especially from Zimbabwe.

iii. Increase of excise duty on selected motor vehicles from 20 to 25 percent and from 10 percent to 15 percent.

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[35] A research conducted at Nakonde , Victoria falls and Chirundu Border Posts revealed that vehicles on Customs Importation Permit (visiting Zambia) normally escape this tax. This is because the permit is done manually. A Customs Officer has to remember to charge or the visitor evades carbon tax

This is a revenue enhancing measure for Government to support the 2006 Budget given the concessions given in the Agricultural, Textile and Manufacturing Sectors. This increase affects all vehicles except ambulances, tractors and specialised vehicles such as cranes, drilling decks, prison vans and hearse. It is sad that a developing country like Zambia, would want to increase tax on vehicles and view them as a source of income. One would think that vehicles especially utility ones would be zero-rated.

3.2 TAXES ADMINISTERD BY EACH DIVISION

Customs Services Division

Customs Duty

Levy/tax charged on imported goods at the following rates:

0-5% Capital Equipment and Raw Materials

15% Intermediate Goods

25% Finished Goods

Customs Duty is charged on the Customs Value (CIF).

Import Excise Duty

Import excise duty is imposed on goods that attract excise duty. It is charged on the Excisable Value, that is, Customs Value + Customs Duty.

Import VAT

Import Vat is imposed on imported goods that attract VAT. Value Added Tax is charged on the Taxable Value, that is, Customs Value + Customs Duty (+Excise Duty, where applicable) at the rate of 17.5%

Dometsic Taxes Division

Income Tax

Income includes gains or profits from any business, dividends, emoluments, annuities, interests, charges and discounts, royalties, premium income from letting of property[36]. Income tax is a tax on earnings – money that individuals, corporations, trusts or other legal entities receive in different ways and from a source within or deemed to be within the Republic and from every person ordinarily resident within the Republic by way of interest and dividends from a source outside the Republic.

Tax is charged by reference to the income received in a "charge year". The "charge year" is the year ended 31st March. A charge year may be referred to by either the calendar years in which it falls or that in which it ends, for example:

2000/2001 or 2001 charge year (That is, Year ended 31st March 2001)

Whether or not income is liable to tax in Zambia depends on three factors:

i. The source of the income;

ii. The residence position of the person receiving the income; and

iii. whether or not the income of the person receiving it has been exempted.

[36] Income Tax Act s 17

If the income is from a Zambian source, that is, if it arises in Zambia or it is from a deemed Zambian source and it or the person receiving it has not been exempted, it is liable to tax. If the income is from a foreign source and;

i. is dividends or interest; and

ii. the person receiving it is ordinarily resident in the case of;

iii. an individual or resident for a legal person; and

iv. the income or the person receiving it is not exempted. It is liable to tax.

However, in certain circumstances, income from both a Zambian source and foreign source may not be liable to tax in Zambia under the terms of a Double Taxation Agreement.[37]

The Income Tax Act does not define residence or ordinary residence of an individual. What it does in section 4 of the Act is to set out rules under which it will be decided that an individual is not resident for a charge year. Where an individual is in Zambia for a temporary purpose;

i. and not with the intention of establishing a residence here; and

ii. or not more than 183 days in the charge year (excluding days of arrival and departure); he will not be resident.

[37] Double Taxation Agreements are discussed at the end of the chapter.

A legal person (that is, companies, corporations, trusts) is resident in Zambia for tax purposes if:

i. that person is incorporated or formed in Zambia; or

ii. the central management and control of the person's business or affairs are exercised in Zambia.

Pay As You Earn (PAYE)

All employers are required under Section 71 of the Income Tax Act and PAYE regulations, to deduct tax from payments of emoluments made to their employees, whether or not they have been directed to do so by the Zambia Revenue Authority.
The PAYE tax deducted must be remitted by employers to Zambia Revenue Authority by the 14th of the month following the month in which the deduction was made.

Income of Deceased Persons

An individual ceases to be a person for tax purposes on the date of his death. The last assessment to be made on him, therefore, will be on the income which accrued to him from the beginning of the charge year to the date of death. [38]

An amount of income may be received by an individual who has died although he was entitled to it or it was due and payable to him before he died. The money in these circumstances will be paid into the estate, but Section 27(2) of the Income Tax Act shows that for tax purposes, such income must be included in the assessment on the deceased individual for the period before his death. It will be paid by the deceased person's

[38] Income Tax Act s 27(2)

executor or administrator as his taxpaying agent. Section 66(1) (e) of the Income Tax Act states that an executor or administrator is the taxpaying agent of a person who has died.

Trust

A "trust" arises when a person, called a trustee, has control over property for the benefit of another person (or persons) called the beneficiary. For tax purposes, trusts are included in the definition of the term "person" in Section 2 of the Income Tax Act. They are charged to tax at same tax rate as Deceased and Bankrupt Estates.

In practice, the beneficiary and not the trust is to be assessed on:

i. income in which the beneficiary has a vested interest where this is paid to him or accumulated;

ii. sums applied for the benefit of the beneficiary under the terms of the trust; and

iii. sums paid to or applied for the benefit of the beneficiary in exercise of a discretion.

Section 66 of the Income Tax Act, makes a trustee the taxpaying agent of a trust.

Withholding Tax

Withholding tax is not a tax but a means of collecting that tax. Withholding tax is deductible from a payment by the person who is liable to make the payment (the payer) at the point in time the person to whom it is due to be made (the payee) becomes legally entitled to it (date of accrual). The payer is required to pay the tax deductible to the

Zambia Revenue Authority by reference to the date of accrual no matter how, when or where payment is made.

Withholding tax is deductible under the Income Tax Act from the following payments:

i. Dividends -15%
ii. Interest-25%
iii. Royalties, Management and Consultancy fees-15%
iv. Rents-15%
v. Commission (other than that paid by the employer to his employees) -15%
vi. Public entertainment fees (non- resident entertainers and sportsmen only)-15%.

Taxation of Partnerships

A partnership is a legal relationship between two or more persons, who carry on a business or undertaking, to which each contributes either money or labour or anything else with the object of making a profit and of sharing it between them.

The Income Tax Act does not recognise a partnership as a distinct taxable person. For this reason, a partnership is not chargeable to tax as such, but each partner is assessed separately. Nevertheless, the Income Tax Act provides that persons carrying on any business in partnership be required to make a joint return as partners in respect of such business.[39]

Property Transfer Tax

[39] Ibid ss 61and 62

The Property Transfer Tax Act Chapter 340 of the Laws of Zambia provides that whenever property is transferred, property transfer tax is charged upon and collected from, the person transferring the property.

The term "property" means:

i. any land in Zambia (including any building structure or other improvements there on

ii. any share issued by a company in Zambia

Mineral Royalty

Any holder of a large scale mining license will pay mineral royalty tax on the gross value of minerals produced at the rate of 2%. In the case of former Zambia Consolidated Copper Mines Limited (ZCCM), or any other company involved in copper and cobalt production, the applicable rate will be 0.6%. Any holder of a gemstone license, small-scale mining license or artisan's mining right will pay mineral royalty tax on the gross value of the minerals or metals produced at the rate of 5%.

Provisional Tax

All taxpayers in receipt of income, other than emoluments from employment or office, are required to make advance payments in the course of the tax year, on account of their estimated tax liability. This estimated liability is referred to as Provisional Tax.

3.3 TRADE PROTOCOLS ADMINISTERD BY ZAMBIA REVENUE AUTHORITY

International Trade Facilitation

Zambian exporters under Trade Agreements listed below will have recipient markets enjoy a waiver or reduction of duty rates in the respective countries.

i. African Growth Opportunity Act (AGOA) ;

ii. General System of Preference (GSP);

iii. Common Market for Eastern and Southern African Free Trade Area (COMESA - FTA) ;

iv. Southern African Development Community (SADC) Trade Protocol ;

v. Southern African Development Community – Mozambique, Malawi, Tanzania and Zambia (SADC - MMTZ) Agreement.

The trade protocols come with positive or negative effects on revenue collection. With regard to COMESA and SADC protocols, the effect on revenue from importations is that goods originating from these countries are duty free thereby reducing the revenue. For example, goods originating from Zimbabwe are duty free but only pay import VAT if they are not VAT free or it is not deferred. Therefore, certain goods like fruits which are VAT deferred, come into Zambia free of charge from COMEASA countries. Interestingly, Egypt which is neither in Southern nor East Africa is a member of COMESA. As a result, a lot of fridges, air conditioners, carpets and various household goods are flooding Zambia from Egypt.

Tax Treaties

Zambia has treaties with several countries. The treaties, or agreements, eliminate double taxation. Double taxation is the taxation of the same earnings at two levels. For example, taxation of earnings at corporate level and then again at shareholder dividend level. Another example is the taxation of Foreign Investments in the country of origin and then again upon repatriation. Many countries have signed agreements to prevent this latter type of double taxation. These treaties require that tax be paid in the country of residence and be exempt in the country in which it is arises.

The following countries have tax treaties with Zambia

Country	Effective Date
Canada	28/12/89
Denmark	18/10/70
Finland	17/05/85
Germany	13/05/74
Holland (Netherlands)	01/04/84
India	15/11/83
Ireland	22/07/73
Italy	08/04/74
Japan	09/06/72
Kenya	23/02/70
Mauritius	*
Norway	22/07/73
Romania	21/07/85

South Africa	* (old agreement still in force)
Sweden	28/08/75
Tanzania	16/03/70
Uganda	16/04/70
United Kingdom	29/03/73
Zimbabwe	*

* Not yet ratified

CHAPTER 4

POLITICAL INTERFERENCE IN ZAMBIA REVENUE AUTHORITY

INTRODUCTION

This chapter considers the political interference in ZRA. It states that the ZRA Act makes it very easy for government to control ZRA. The chapter also considers whether the establishment of ZRA can be said to be MMD Government's success story bearing in mind accusations of economic plunder and corruption generally leveled against it.

4.1 GOVERNMENT AND ZAMBIA REVENUE AUTHORITY

As stated in section 11 of the ZRA Act, the functions of ZRA are to collect revenue due to Government. This therefore means that the revenue does not belong to ZRA but to government. The Zambia Revenue Authority is just an agent or a conduit through which government collects revenue.

If Zambia Revenue Authority is an agent, then government is the principal. Therefore, the rules of principle –agent relationship apply. The rules include, inter alia, the principle having power to terminate the contract, the agent doing only what the principle has delegated him to and the agent not making a secret profit without disclosing. This is exemplified by the ZRA Act which gives the President and the Minister wide powers of control.

Firstly, the Commissioner-General who is the Chief Executive Officer of ZRA is appointed and removed by the President according to section 19(1)and (3).This appointment is not ratified by parliament nor is the President required to set up a Tribunal before the Commissioner -General is removed. He can be removed at will.

Therefore, the Commissioner-General has no security of tenure. He remains in office at the pleasure of the President. This makes it difficult for him to question the powers that be or develop an independent mind contrary to government policy. If the President tells him to jump he has to ask 'How high, sir?'

All governments in the world raise their money through various forms of taxes. This is the money used to pay civil servants salaries, pensioners, build roads, schools, and hospitals and provide all kinds of social services. In fact, a government's performance especially in Africa is judged by how many jobs it has created, schools and hospitals ithas built, roads constructed and how its citizens are looked after. A government is a father.

Fully aware of this scenario, the Zambian Government ensures it controls not only revenue but also who collects it. Zambia Revenue Authority is controlled by a Governing Board. It is the composition of this Governing Board that ensures government control of ZRA.

Section 10(1) outlines the composition of the Board which include the Secretary to the Treasury, the Permanent Secretary in the Ministry of Justice, the Governor of the Bank of Zambia, a representative of the Law Association of Zambia (LAZ), three persons each representing the Zambia Confederation of Chambers of Commerce and Industry (ZACCI), the Zambia Institute of Certified Accountants (ZICA) and the Bankers Association of Zambia and two members appointed by the Minister in his own discretion.

It can be observed from the Board composition above that of the nine members of the Board (including the Commissioner-General) six are appointed by Government. The Secretary to the Treasury, the Permanent Secretary and the Bank of Zambia Governor are appointed by the President in their substantive positions. The Minister who appoints other two Board members is himself appointed by the President. As stated above, the Commissioner-General is appointed by the President. It is doubtful that such a board will be free from government control. It is likely to be a rubber stamp.

The major thrust as to why there is an insistence of ZRA being free from political control is that tax payers must be treated equally. Ministers, like ordinary citizens, are taxpayers. A Minister importing a personal vehicle must not pay less than an ordinary citizen importing a similar vehicle.

Only the President is exempt from paying any duty according to section 91 of the Customs and Excise Act. A lot of Ministers and senior government officials are in business or in partnership with others or their spouses. If they control ZRA they are likely to be assisted in evading tax by ZRA officials. It is common to under declare goods at the border, or misclassify them so they do not attract either tax or attract less or just completely smuggle goods as long as ZRA is assisting in the vice.

An organisation can employ the most educated people but as long as it does not have money of its own, it cannot have the independence it might desire. Zambia Revenue Authority depends on money appropriated to it by Parliament. It is worth taking judicial notice that Parliament appropriates money to any body after Government has presented an estimate of income and expenditure popularly known as the budget. With Parliament dominated by the ruling Party since Independence, it is used to rubber stamp the budget. Therefore, the money ZRA gets is the money government allocates to it in the budget.

For example, in 2005, Parliament appropriated K127 billion to ZRA according to the budget and the same money was appropriated in 2006 in line with the budget. If ZRA wants to raise money outside Zambia, the Minister must approve.

From inception if there are any differences of opinion between government and ZRA, there have been kept top secret. One does not read in the papers everyday of government interference into the operations of ZRA neither does one read everyday about Ministers refusing to pay tax. From inception in 1994, the Chief Executive of ZRA has been an expatriate until the year 2001. This is because the creation of revenue authorities in Africa has been a brainchild of the IMF. This is why the revenue authorities in the Great Lakes Region are named in the same way. Thus: Malawi Revenue Authority; Tanzania Revenue Authority; Uganda Revenue Authority; Zimbabwe Revenue Authority.

Even the restructuring of ZRA mentioned earlier has been recommended by the IMF. It was mentioned earlier that the IMF gives ZRA a target to meet just as Parliament does. The ASYCUDA Programme is an international one found in almost all countries. It is expensive to run but the IMF has provided the necessary funding. Therefore, government leaders know that there are major forces behind the existence of ZRA and would better stay away. After all, it is giving them the much-needed money.

However, in 1997, there was one incident at the Lusaka International Airport when a Customs Officer, opened a parcel for the then Republican President, Fredrick Chiluba.

A State House Official arrived at the Airport with a parcel containing neckties for President Chiluba. He mentioned this fact to the Customs Officer but the officer asked him to produce his identity card. The State House official refused. He insisted that the Customs Officer must just believe his story that the parcel contained neckties for President Chiluba. The Customs Officer inquired as to why procedure for clearing Diplomatic Parcels was not followed but the State House official was not cooperative. Consequently, the Customs Officer exercising her powers under the Customs and Excise Act opened the parcel. It contained neckties.

That same day, President Chiluba summoned the officer to State House and shouted at her. He threatened to blacklist her. However, the then Commissioner of Customs and Excise Kevin Donovan who rushed to State House upon hearing of the incidence, reminded the President that he should have summoned him instead or the Commissioner General and not the officer. Later in the day, Donovan wrote first to the officer's supervisor and later to the officer herself:

"Neither you nor Mrs. Kapili(Customs Officer)," Donovan wrote to Mrs. Kapili's supervisor, "have nothing to be ashamed of. You both acted correctly and I stand behind you."[40]

[40] 'FTJ Threatens Customs Clerk over his imported Neckties' **The Post** 19th April ,1997

Writing to the Customs Officer, Donovan said:

"I have written to the Commissioner General Jim Scott and he has agreed to pay you K100 000. Please use this to have a well earned Dinner with your family and put the incidence behind you."[41]

Government knows how to go round without being seen to interfere with the operations of ZRA. The work of ZRA is to implement and not to question the law. Their job is to collect tax at the rate set or approved by Parliament. Whether it is too high or low, ZRA has to implement. Government leaders with interests in certain organisations or companies grant them rebate. For example, the Ministry of Finance and National Planning is responsible for granting vouchers and the Investment Center for granting rebates and tax incentives.

4.2 ZAMBIA REVENUE AUTHORITY: IS IT MMD GOVERNMNET'S SUCCESS STORY

The late 1980s saw the end of the cold war. In 1989, the Berlin Wall which divided the Communist East Germany and the Capitalist West Germany was brought down. During this period, countries in Western Europe like Poland started revolutions to end communist rule. This came to be known as the wind of change.

The wind of change spread to Africa by the 1990s. It reached Zambia at almost the same time. A group of academicians, Trade Unionists and politicians teamed up to form a movement to pressure the One Party led government of President Kenneth Kaunda to re-

[41] ibid

introduce multi-partism. This movement came to be known as the Movement for Multi Party Democracy (MMD), which later registered as a political party under the same name.

Prior to this, the socialist policies of the United National Independence Party (UNIP) government proved unpopular with the people. There were shortages of essential commodities like sugar, mealie meal, soap, salt and many more. This led to riots firstly in 1986 on the Copperbelt and in 1990 in Lusaka. The 1990 riots led by students of the University of Zambia forced President Kaunda to call in soldiers to quell it. However, also realising that the people had a legitimate cause to demonstrate, the soldiers staged a coup d'etat instead. The 1990 attempted coup led by Lieutenant Mwamba Luchembe was precipitated by this. This gave more momentum for civil society to press for multi party politics.

President Kaunda listened to the people's wish. He went on to appoint the Patrick Mvunga led Constitution Review Commission to come up with a constitution to suit multi-party politics. On 17th December, 1990, President Kaunda assented to a constitutional amendment repealing Article 4 which provided for UNIP to be the sole political party. The 1991 Constitution reintroduced Multi Party politics in Zambia. President Kaunda then called for early elections in October 1991. The MMD won by a landslide. They formed government on 2nd November 1991 with Fredrick Chiluba as the second Republican President of Zambia.

The MMD campaigned on the platform of a free market economy. That government was a bad businessman and so the parastatal companies must be privatised to improve efficiency. True to their word, they privatised over 200 companies by the end of President Chiluba's ten years in office. The government worked very closely with the World Bank and IMF. It implemented the (in) famous Structural Adjustment Programmed (SAP) from the Bretton Woods institutions. This programme included, inter alia, opening up the economy to the private sector.

The Structural Adjustment Programme which involved privatisation of State Owned Enterprises (SOE) was largely a failure. People became more impoverished, there were massive job losses as a result of privatisation and liquidations. The country was stripped of assets by bogus investors like RAMCOZ under Binani in Luanshya. The government continued asking people to tighten their belts as it was 'darkest before dawn'. Despite calls from all sectors of society for government to abandon SAP, the calls fell on deaf ears. Experts advised government to learn a lesson from other countries were this programme failed like in Ghana, but government did not listen. Here was the IMF giving the same dosage to all countries regardless of whether that country was dependant on copper, fishing, tourism or farming.

However, the government was not privatising blindly. For example companies that are sensitive to the security of the country, they resisted calls to privatise them. A case in point is the Zambia Electricity and Supply Corporation (ZESCO) and the Zambia

Telecommunication Company (ZAMTEL).Government only agreed to commercialise ZESCO and allow for competition in the telecommunication industry.

Another area in which the IMF wanted restructuring is the revenue collection. Government was asked to form a revenue authority. They agreed and pushed the idea wholeheartedly. Was the MMD government wrong to form Zambia Revenue Authority? Is it another of their economic failures highlighted above? Or is it a success story.

The fifteen (15) years in office of the MMD government has been characterised by slow if not stagnant economic growth. They have not built a University, a hospital, roads or institutional houses. They spent the first ten years condemning the Kaunda government. The last five years have been spent on trying to prosecute one of their own Fredrick Chiluba, first MMD President, for what has been termed economic plunder.

Today, with the creation of ZRA, almost all the problems that the Departments of Taxes and of Customs and Excise faced are no longer there. The vision of the Minister when he introduced the ZRA Bill in Parliament in 1993[42] has been achieved. The concerns raised by Dr. Simbyakula[43] have been taken care of. There is motivation among employees, training has been given a priority and there is abundant technological skill to meet the modern demands of efficient revenue collection. The employers guide and the practicing

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[42] Official Verbatim Reports of the Parliamentary Debates of the Second Session of the 7th National Assembly No. 93. 15th –18th March 1993. Pp1930-19933

[43] Simbyakula N . (1990) Taxation and Economic Development in Zambia SJD Thesis University of Wisconsin-Madison pp 99-100

notes are now continuously updated and posted on the ZRA website. Many students of accounts in the country find them useful. The operations are highly computerised. As discussed above, ZRA has been meeting its revenue targets from inception. It is a model in the region and was the first in African to implement the ASYCUDA++ project on a wider network. Many revenue authorities in the region come to learn from ZRA. In May this year, ZRA hosted a team from Malawi Revenue Authority who came to learn on how ZRA was doing its valuation issues after phasing out the pre-shipping Inspections with SGS.[44]

"...the team chose Zambia as a point to learn from because of ZRA's well established taxpayer education strategies and taxpayer assistance programmes."[45]

Of the many IMF policies the MMD government has implemented, academic and economic commentators will continue to review as whether this particular IMF imposed policy of creating ZRA was correct and for the good of the Zambian people.

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[44] 'Malawi and Tanzania Revenue Authorities visit ZRA' REACH Magazine August 2006 issue No.10 p 3

[45] Ibid p3

CHAPTER FIVE

CONCLUSION AND RECCOMMENDATIONS

The research has established that taxation is as old as biblical times. In the times of Pharaoh in Egypt, some form of taxation existed. In other parts of Africa as well, taxation existed long before colonialism. Inhabitants paid to their ruler part of their harvest to be kept in a cess-pool. This was to be used in times of war, famine and to give to the needy in society. It was out of moral compulsion that inhabitants paid this tax to their ruler.

Zambia came under colonialism in 1890.The BSA Company on behalf of the British Government administered the territory up to 1924. In 1911, Northern Rhodesia was created. However, by 1901, the settlers had started collecting tax in form of poll tax. The whole idea of taxing the indigenous people was to force them to work for the settlers.

After Independence in 1964, the new African government continued with taxation through legislation. The Department of Taxes and of Customs and Excise in the Ministry of Finance was responsible for this mammoth task. It was, however, compounded with problems of inefficiency, bureaucracy associated with civil service.

After change of government in 1991, there was a shift to promote free market economy. Revenue collection was identified as priority if government was to collect every ngwe/penny it needed to develop this country. Due to the many operational problems faced by the Departments of Taxes and of Customs and Excise, many people evaded tax.

Realising this problem and with the help of the International Monetary Fund (IMF),the Movement for Multi-Party Democracy (MMD) government established Zambia Revenue Authority (ZRA) on 1st April 1994. It stamped its authority on the Zambian scene and set to collect revenue through integrated, efficient, and cost effective and transplant systems professionally managed to meet expectation of all stakeholders. It has met its revenue targets from inception to date.

Zambia Revenue Authority administers three principle Acts of Parliament namely; the Customs and Excise Act Cap 322; the Income Tax Act Cap 323 and the Value Added Tax Act Cap 331 of the Laws of Zambia.

With three operating divisions from inception, ZRA was restructured on 1st December, 2006 and reduced to two operating divisions. These are Domestic Taxes Division (formerly Direct Taxes and VAT Divisions) and Customs Services Division (formerly Customs and Excise Division).

The types of taxes collected by ZRA include, inter alia, Excise Tax; Customs Duty; Value Added Tax; Income Tax; Property Transfer Tax. Zambia Revenue Authority implements trade agreements. They include African Growth Opportunity Act (AGOA); Common Market for Eastern and Southern Africa Free Trade Area (COMESA –FTA); General System of Preference and the Southern African Development Community

Agreement. It also implements Tax Treaties with several countries to eliminate double taxation.

The relation between ZRA and government has been one of respect for each other. Government is very happy with the performance of ZRA. It collects all the money government tells it to. How government uses the money is not ZRA's business and they have no mandate to question. Government is very comfortable with that and does not see the need to meddle or disturb the operations of ZRA.

Of course there was an isolated incidence in 1997 when a customs Officer opened a parcel for the then President Chiluba at the Lusaka International Airport. The President used the opportunity to lecture the officer in particular and ZRA in general as to who was in charge. However, government's involvement in ZRA can be found in the ZRA Act. Six of the nine Board members of ZRA are appointed by government. The Commissioner General himself is appointed by the President. As Honourable Muyovwe observed during a parliamentary debate on the establishment of ZRA, the Bank of Zambia Governor and the Ministry of Finance Permanent Secretary are too busy with their work to be Board members of ZRA.[46]

There is a greater need to amend the ZRA Act. The Governing Board must appoint the Commissioner General. More people from the private sector must be included on the Board. Further the Secretary to the Treasury and the Permanent Secretary from the

[46] Official Verbatim Reports of the Parliamentary Debates of the Second Session of the 7th National Assembly No. 93. 15th –18th March 1993 p1940

Ministry of justice must be removed. The powers of the Minister to appoint people to sit on the Board must be also be curtailed.

The Commissioner General and his Commissioners must have security of tenure. This will allow them to make decisions without fear or favour. For example, the First Lady is not exempt from paying tax but only the President, under section 91 of the Customs and Excise Act. However, her luggage when she is coming from a trip abroad does not pass through customs checkpoint. A Customs Officer with security of tenure can easily call back such luggage, inspect it, value and ask her to pay tax. In fact most of the luggage is not hers but for some Ministers and ordinary members of her entourage who want to evade tax using the First Lady.

The Mungomba Draft Constitution states in Article 333(1), (2), (3), (4):

"The Minister responsible for Finance shall within six months after the end of each financial year prepares and submit to the Auditor General the Financial report of the Government in respect of the preceding financial year.

The Financial Report referred to under clause (1), shall include information on (a) revenue and other money received by the Government during a financial year ;(b)the expenditure of the Government during that financial year.

The Auditor General shall examine the Financial Report submitted by the Minister responsible for Finance under clause (1) and express an opinion on the Report

The Minister responsible for Finance shall within nine months after the end of a financial year lay the Financial Report of the Government with the Auditor General's opinion before the National Assembly."[47]

This is a progressive move. However, the Financial Report must be submitted to the ZRA Chief Executive for comments as well. Such an Article must be in the next Zambian Constitution. It is not in order. This will avoid the use of ZRA as a conduit pipe. The motto ***Get the Benefit of Paying Tax*** ZRA had at inception was the best. In fact, with such a motto, it would be easier for ZRA to pursued people to pay tax by pointing to many developments that could have come as a result of paying tax. As the situation stands today, many Zambians do not see the benefit of paying tax. This explains the high non-compliance levels.

The Zambia Revenue Authority Act in section 22 (1) states:

"The funds of the authority shall consist such moneys as may be appropriated by (a) Parliament for the purpose of the Authority"[48]

Section 24(2) of the ZRA Act states:

"The accounts of the Authority shall be audited annually by independent auditors appointed by the Authority"[49]

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[47] Draft Constitution of the Republic of Zambia , 2005 Article 333(1)(2)(3)(4)
[48] Zambia Revenue Authority Act Cap 321 s 22(1)(a)
[49] Ibid s 24(2)

During debate in Parliament on the ZRA Bill, Honourable Eric Silwamba then Ndola Member of Parliament observed:

"...this is a statutory board where you expel the Auditor General...what kind of quasi-government is that? This is totally misleading"[50]

The Mingomba Draft Constitution states:

"The Auditor General shall audit all offices financed wholly or partly from public funds...."[51]

The observations of Honourable Silwamba and the provisions of the Draft Constitution are cardinal. If ZRA operates using public funds, then the Auditor General should not be 'expelled' from auditing its books. Of course, the Auditor General inspects some ZRA books at random, but it should be expressly stated in the ZRA Act that the accounts of the authority shall be audited by the Auditor General.

Zambia Revenue Authority must be audited by the Auditor General on how it uses public funds. Of course, Parliament discusses the ZRA Financial Report but this country does not take seriously the observations made by parliamentarians especially if they are from the opposition or are backbenchers like Honourable Silwamba's observation.

The MMD government has been blamed for the economic malaise this country is in. The privatisation process has largely been a failure. It has not yielded the promised results.

[50] Official Verbatim Reports of the Parliamentary Debates of the Second Session of the 7th National Assembly No. 93. 15th –18th March 1993. p1966

[51] Draft Constitution of the Republic of Zambia 2005 Article 337(1)(a)(ii)

Former top Party and government leaders including the former President, Chiluba, have been indicted for corruption or economic plunder. The fight against corruption by the New Deal Governments of MMD has been described as selective. The government is fighting corruption using corruption.

When the history of the UNIP government is written, a long chapter will be on run down parastatals, shortages of essential commodities and largely, dictatorship. However, there will be some outstanding achievements like construction of the University of Zambia, a hospital in each District, trunk roads, schools, TAZAMA Pipeline, TAZARA rail line, INDENI Oil Refinery, and many more.

If the same is written about MMD today, will the failures outweigh the achievements? What can MMD point at to acquit itself? Is it ZRA? Have the modern and long term effects of establishing ZRA as foreseen by Emmanuel Kasonde, far outweighed the initial cost of establishing it? Academicians, social, economic and political commentators will continue to ponder for a long time on the question: *Is the establishment of ZRA MMD Government's success story?*

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