

2005

Efficacy of the Institutional and Regulatory Framework for the Administration of Tax Law in Zambia

Kenneth Kaoma Mwenda
World Bank

Follow this and additional works at: <http://scholarship.richmond.edu/global>

 Part of the [Banking and Finance Law Commons](#), [Comparative and Foreign Law Commons](#), and the [Tax Law Commons](#)

Recommended Citation

Kenneth K. Mwenda, *Efficacy of the Institutional and Regulatory Framework for the Administration of Tax Law in Zambia*, 5 Rich. J. Global L. & Bus. 37 (2005).

Available at: <http://scholarship.richmond.edu/global/vol5/iss1/4>

This Article is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in Richmond Journal of Global Law & Business by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

EFFICACY OF THE INSTITUTIONAL AND REGULATORY FRAMEWORK FOR THE ADMINISTRATION OF TAX LAW IN ZAMBIA

*Kenneth Kaoma Mwenda**

This paper examines the efficacy of the institutional and regulatory framework for administering tax law in Zambia, with a view to showing how tax law relates to the conduct of business and commerce in that country. In many countries, including Zambia, much of tax law is driven by legislation. This paper endeavours to flesh out the main principles of tax law and examine the institutional framework for the administration of tax law in Zambia. The paper does not pursue a pedantic discourse of riding horses and coaches through the terraces of the statutory provisions of every single statute on tax law. The devil is in the detail. Indeed, tax legislation changes very quickly, especially when new budgets are presented before parliament.¹ Matters that do not change much typically include principles of tax law upon which the new figures and facts are based.

This paper also looks at principles of both corporate and personal tax laws, and provides an exploratory study of the regulatory framework for the administration of tax law in Zambia. An evaluation

* LLB (Zambia), BCL/MPhil (Oxford), MBA (Hull), PhD (Warwick), FCI, FRSA, Advocate of the High Court for Zambia, Rhodes Scholar, formerly Lecturer in Law in the University of Warwick, UK, and presently, Senior Counsel, Legal Vice-Presidency, the World Bank, Washington DC, USA. The interpretations and conclusions expressed in this paper are entirely those of the author. They do not necessarily represent the views of the World Bank, its executive directors, or the countries they represent.

¹ For example, under § 27 of the Zambia Revenue Authority Act 1993, the Minister may make regulations that allow for better execution of the Act's provisions. These regulations can be repealed and replaced as other developments emerge in the economy. Although currently out of date, other works have been written regarding various aspects of Zambian tax law. These works serve as a good starting point on the discussion of tax law in Zambia. See generally E. NEWTON, ZAMBIAN INCOME TAX: LAW AND PRACTICE (Lusaka: National Educational Co. of Zambia, 1970); A.R. DRYSDALL & E.J. LANGEVAD, THE MINES AND MINERALS ACT 1969 AND THE MINERAL TAX ACT 1970 (Lusaka: Geological Survey Dept., 1970); ROBERT NGOSA SIMBYAKULA, TAXATION AND ECONOMIC DEVELOPMENT IN ZAMBIA (1990) (unpublished doctoral SJD dissertation, University of Wisconsin-Madison) (on file with Journal); DELOITTE, ET AL., TAXATION OF MINING COMPANIES IN ZAMBIA, (Lusaka: Deloitte, Haskins and Sells, 1983); M.D. KAMANGA, INCOME TAXATION IN ZAMBIA: (INCORPORATING 1994 INCOME TAX (AMENDMENT ACT)), (Lusaka: Zambia Centre for Accountancy Studies, 1994).

of the efficacy of the institutional framework for the administration of tax law is undertaken. Weaknesses in the institutional and regulatory frameworks, such as the power of the Republican President to appoint and dismiss the Commissioner-General at will, are highlighted throughout this paper. An argument is made that although principles of Zambian tax law generally appear well developed, the Zambian Government still needs to develop an efficient and effective regulatory framework to capture the taxation of earnings and profits from the informal sector of the national economy.

1.0 THE INSTITUTIONAL FRAMEWORK FOR THE ADMINISTRATION OF TAX LAW

(i) *The Competent Authority*

The competent authority for the administration of tax law in Zambia is the Zambia Revenue Authority (hereinafter "ZRA"). This institution was established on March 1, 1994 pursuant to provisions of the Zambia Revenue Authority Act 1993. ZRA is a statutory body that includes a seal of authority.² Section 9 of the Zambia Revenue Authority Act 1993 provides as follows:

There is hereby established the Zambia Revenue Authority which shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.

According to its web site, the purpose of ZRA, is "to redress the serious shortfall in revenues available to the Government and the increasing dependency on donor funding to support basic necessities."³

² Section 13 of the Zambia Revenue Authority Act 1993 provides that: "(1) The seal of the Authority [ZRA] shall be such device as may be determined by the Governing Board and shall be kept by the Secretary. Seal of Authority [sic], (2) The Governing Board may use a wafer or rubber stamp in lieu of the seal, (3) The affixing of the seal shall be authenticated by the Chairman or the Vice Chairman and the Secretary or some other person authorized in that behalf by a resolution of the Governing Board, (4) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal may be entered into or executed without seal on behalf of the Authority by the Secretary or any other person generally or specifically authorized by the Governing Board in that behalf, and (5) Any document purporting to be a document under the seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be deemed to be executed or issued, as the case may be, without further proof, unless the contrary is proved." Zambia Revenue Authority Act, vol. 18, ch. 321, § 10 (1993).

³ Zambia Revenue Authority, at www.zra.org.zm (last visited Mar. 4, 2002).

Hence, the goal of the Zambia Revenue Authority is to maximise tax compliance and increase domestic revenue yield in Zambia by instituting a fair, efficient and effective tax regime.

Clearly, however, the informal trading sector in Zambia has not been captured by the policy objective specified above. There are many traders and entrepreneurs in Zambia that continue to operate in the informal business sector of the economy. Most business peddlers in the informal sector are hardly taxed. This will become more clear when we examine the principles of tax law later on in the paper. Nevertheless, ZRA's Mission Statement further states that:

The mission of the Zambia Revenue Authority is to maximise and sustain revenue collection through integrated, efficient, cost effective and transparent systems, professionally managed to meet the expectations of all stakeholders. This mission statement underpins the main responsibilities of the Authority which are to:

- Properly assess and collect taxes and duties at the right time without causing undue burden to the public,
- Encourage the public to come forward and pay tax voluntarily,
- Ensure that all monies collected are properly accounted for and [timely] banked,
- Properly enforce all relevant statutory provisions,
- Give advice to Ministers on aspects of tax policy,
- Facilitate international trade.⁴

The ZRA pledges "impartial and equitable treatment" to the taxpayer in all dealings with regards to:

- Supply of forms (for VAT and Direct Taxes)
- Information that will assist in complying with the law
- Fairness
- Courtesy
- Prompt and efficient service
- Privacy and confidentiality of all personal and financial information.⁵

The ZRA's Governing Board consists of:

- (a) the Secretary to the Treasury in the Ministry responsible for finance;
- (b) the Permanent Secretary in the Ministry responsible for legal affairs;

⁴ Zambia Revenue Authority, Responsibilities, at www.zra.org.zm/responsibilities.htm (last visited Mar. 4, 2002).

⁵ Zambia Revenue Authority, Tax Payer Charter, at www.zra.org.zm/tp_charter.htm (last visited Mar. 4, 2002).

- (c) the Governor of the Bank of Zambia;
- (d) a representative of the Law Association of Zambia;
- (e) three persons, each representing the Zambia Confederation of Chambers of Commerce and Industry, the Zambia Institute of Certified Accountants and the Bankers' Association of Zambia; and
- (f) two other members appointed by the Minister.⁶

It is interesting to note that, by sequencing of paragraphs, paragraph (d) of the above statutory provision, in contrast to paragraph (e) of that same statutory provision, places the representative of the Law Association of Zambia before the representatives of organisations mentioned in paragraph (e). In fact, membership of the representative of the Law Association of Zambia, unlike membership of the other representatives mentioned in paragraph (e), is specifically provided for in a separate paragraph. That said, both categories of members cited in paragraphs (d) and (e) of the above statutory provision are nominated by their respective organizations.⁷ Thereafter, the Minister formally appoints the members.⁸

On a related, but critically more important note, public concern has it that it would beneficially serve the Zambian public if the Zambia Revenue Authority Act 1993 were amended so as to include statutory provisions on the professional and academic qualifications and the required nationality of the two individuals that are nominated and appointed to the Governing Board. Experience, so far, suggests that even foreigners of dubious professional and academic backgrounds can be appointed by the Minister to the Governing Board; that is, if they have not, in fact, by now (or in the recent past) already been appointed to the Board.

Whereas the Zambia Revenue Authority Act 1993 clearly stipulates that the Chairman and Vice-Chairman of the Governing Board are to be elected by Board members themselves,⁹ in practice, experience has shown hitherto that the Minister is the one who appoints the Chairman of the Governing Board.¹⁰ Only the Vice-Chairman is elected by members of the Governing Board.¹¹ It is not easy to comprehend why the Minister has amassed so much power. Indeed, although the Zambia Revenue Authority Act 1993 does not expressly provide for regulations to govern the election of the Chairman and Vice-Chairman

⁶ Zambia Revenue Authority Act, *supra* note 2, at § 10.

⁷ *Id.* at § 10(2).

⁸ *Id.*

⁹ *Id.* at § 10(3).

¹⁰ This evidence was obtained from a reliable source at ZRA. The source, however, elected to remain anonymous for purposes of this report.

¹¹ *Id.*

of the Governing Board, § 15(1) of the statute spells out the power of the Governing Board to regulate its own procedure.¹² Election procedures can, therefore, be prepared pursuant to § 15(1) of the Zambia Revenue Authority Act 1993.

Throughout ZRA's entire existence, the Governing Board has passed through the hands of more than one Chairman. Public perception, so far, is that the holder of the position of Chairman of the Governing Board can only remain in office if he or she does not dissent or disagree with "the powers that be." Thus, the Chairman of the Governing Board often ends up towing the political line and forgetting about professionalism. As a result, it is almost unimaginable to think of the Chairman of the Governing Board as one who is politically independent in the performance or discharge of his official duties.

Furthermore, the remuneration and allowances of members of the Governing Board are paid in accordance with dictates of the Minister.¹³ Here, the lack of a specific formula or criteria for determining the remuneration and allowances of members of the Governing Board provides room for potential abuse of power. The Minister can, if he wants, peg the salary structure and the attendant allowances of any Board member that is not towing the line on less favourable terms than those accorded to other Board members. To avert such a threat, there is need to amend the law or have some regulations which spell out the specific criteria for determining the remuneration and allowances of Board members.

(ii) *Functions of the Governing Board of ZRA*

Although the Governing Board of ZRA is vested with statutory powers to assess, charge, levy, and collect all revenue due to the Government (under such laws as the Minister may specify by statutory instrument),¹⁴ it is actually ZRA that has statutory powers to give effect to the laws specified by the Minister.¹⁵ The Governing Board has powers to ensure that all revenue is collected as soon as reasonably practicable and is credited to the Treasury.¹⁶ In pursuance of this objective and, with permission to make some necessary "modification" to the following statutory rule, the Governing Board is required to observe as follows:

¹² Similarly, § 16(3) of the Zambia Revenue Authority Act provides that "[s]ubject to any specific or general direction of the Governing Board, any committee established . . . may regulate its own procedure."

¹³ Zambia Revenue Authority Act, *supra* note 2, at § 14.

¹⁴ *Id.* at § 11(1).

¹⁵ *Id.* at § 11(2).

¹⁶ *See id.* at § 11(1).

- (1) The Governing Board shall cause to be kept proper books of account and other records relating to the Accounts of the Authority ("ZRA").
- (2) The accounts of the Authority shall be audited annually by independent auditors appointed by the Authority.
- (3) The Auditors' fees shall be paid by the Authority.¹⁷

The statute does not, however, spell out what constitutes the term "necessary modification," as contained in § 11(1)(b) of the Zambia Revenue Authority Act 1993. A further obligation on the Governing Board, with similar permission to make some "necessary modification," is that:

- (1) As soon as practicable, but not later than six months after the expiry of the financial year, the Governing Board shall submit to the Minister a report concerning its activities during that financial year.
- (2) The report referred to in subsection (1) shall include information on the affairs of the Authority ("ZRA") and there shall be appended to the report
 - (a) an audited balance sheet;
 - (b) an audited statement of income and expenditure; and
 - (c) such other information as the Minister may require.
- (3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred to in subsection (1), lay it before the National Assembly and publish it as soon as reasonably practicable thereafter.¹⁸

Again, no definitions of the phrases "necessary modification" and "as soon as practicable" are provided. Be that as it may, a third function of the Governing Board of ZRA is to perform such other functions as the Minister may determine in line with the Board's powers to assess, charge, levy, and collect all revenue due to the Government.¹⁹ On the one hand, while such discretionary powers in the Minister can provide helpful "constructive ambiguity" to strengthen the regulatory framework where there is a lacuna in the law, the same discretionary power, on the other hand, can be used for political ends to target individuals that are not in good books with the Government. A notorious fact in Zambia is that there has been public outcry that ZRA is sometimes

¹⁷ *Id.* at § 24.

¹⁸ *Id.* at § 25.

¹⁹ *Id.* at § 11(1)(c).

used by the Movement for Multi-Party Democracy Government to harass and victimise political opponents of the Government. To illustrate, shortly after the 1996 Presidential and Parliamentary Elections in Zambia, a local human rights body, that was part of the team of election observers, was subjected to political victimisation by ZRA. As the Human Rights Watch observes:

The Foundation for Democratic Process (FODEP), which also concluded that the elections were not free and fair, was also targeted by the government. FODEP had received tax-exempt status from the Zambia Revenue Authority (ZRA) because it was operating on a grant aimed at strengthening the democratic process, including election monitoring of parliamentary and local government elections. But on December 19, it received a tax demand for outstanding tax arrears for K27 million (approximately U.S.\$21,000): shortly afterwards, tax authorities confiscated all of the funds in FODEP's bank account.²⁰

Many commentators have indicated, time and again, that ZRA has been unleashed to finish off political opponents of the Government. Such political gimmicks and manoeuvres are often orchestrated through the use of excessive tax scrutiny, done on a prejudicial and selective basis, so as to finish off financially and politically those that are in disagreement with the Government or the "powers that be."

The Minister may, as he considers necessary or expedient, also give to the Governing Board general directives with respect to the carrying out of the Board's functions under the Zambia Revenue Authority Act 1993.²¹ The Board is required to give effect to such directives.²² The Board may also "delegate to the Commissioner or to any member or committee, the power and authority to carry out, on behalf of [ZRA], such functions of the Board as the Board may determine."²³ In addition, the Governing Board may "delegate to the Commissioner-General or to any member or committee, the power and authority to carry out, on behalf of [ZRA], such functions of [ZRA] as [ZRA] may determine."²⁴

(iii) Term of Office on the Governing Board

The following members of the Governing Board of ZRA are permitted to hold office for a period of three years from the date of ap-

²⁰ See Human Rights Watch, *Zambia: The Reality Amidst Contradictions – Human Rights Since the 1996 Elections*, vol. 9, no. 3(A) (July 1997), available at <http://www.hrw.org/reports/1997/zambia/Zambia.htm> (last visited Mar. 11, 2002).

²¹ See Zambia Revenue Authority Act, *supra* note 2, at § 11(2).

²² *Id.*

²³ *Id.* at § 11(3).

²⁴ *Id.* at § 12(5).

pointment and may be re-appointed for one further term: “(a) a representative of the Law Association of Zambia; (b) three persons, each representing the Zambia Confederation of Chambers of Commerce and Industry, the Zambia Institute of Certified Accountants and the Bankers’ Association of Zambia; and (c) two other members appointed by the Minister.”²⁵

Whereas by virtue of their office the Permanent Secretaries of the Ministries of Legal Affairs and Finance and the Governor of the Bank of Zambia are not permitted to resign membership of the Governing Board, the other members of the Board, including the two political appointees of the Minister, may resign upon giving one month’s notice in writing to the organization which nominated them and to the Minister.²⁶ However, in the case of the two political appointees, notice in writing to the Minister is sufficient since there is no organization which nominated either of them.²⁷

The office of a member of the Governing Board will become vacant “(a) upon his death; (b) if he is absent without reasonable excuse from three consecutive meetings of the Governing Board of which he has had notice; (c) on ceasing to be a representative of the organisation which nominated him; (d) if he is an undischarged bankrupt; or (e) if he contravenes section seventeen” of the Zambia Revenue Authority Act 1993, which deals with Disclosure of Interests.²⁸

The validity of proceedings, acts, or decisions of the Governing Board are not affected by any vacancy in the membership of ZRA or by any defect in the appointment of any member of the Governing Board or by reason that any person not entitled to do so took part in the proceedings.²⁹

(iv) Conduct of Administrative Business by the Governing Board

The Governing Board of ZRA is required to meet for the transaction of business at least once every month, at such places and at such times as the Chairman may determine.³⁰ A meeting of the Governing Board can be called by the Chairman upon giving notice of fourteen days or more.³¹ If the urgency of any particular matter does not permit the giving of such notice, special meetings can also be called upon giving a shorter notice if five or more members of the Governing

²⁵ *Id.* at § 12(1)(d)-(f).

²⁶ *Id.* at § 12(2).

²⁷ *Id.* at § 12(4).

²⁸ *Id.* at § 12(3). *See infra* p. 11 (discussing disclosure of interests by members of the Governing Board).

²⁹ *See* Zambia Revenue Authority Act, *supra* note 2, at § 15(8).

³⁰ *Id.* at § 15(2).

³¹ *Id.* at § 15(3).

Board request a meeting in writing.³² In either case, the notice of the meeting should be in writing, since verbal notice will not suffice.³³

Seven members of the Governing Board form the quorum at meetings of the Governing Board.³⁴ At such meetings, the following person presides:

- (a) the Chairman; or
- (b) in the absence of the Chairman, the Vice-Chairman;
or
- (c) in the absence of the Chairman and the Vice-Chairman, such member as the members present may elect for the purpose of that meeting.³⁵

Decisions of the Governing Board on any question are made by a majority of members present and voting at the meeting. In the event of a split vote, the person presiding at the meeting is permitted to make a casting vote in addition to his deliberative vote.³⁶ The law is not clear however as to whether a member of the Governing Board who is present at the meeting may vote through a proxy. Further, there are no statutory provisions in the Zambia Revenue Authority Act 1993 for appealing decisions of the Governing Board on tax related matters. Can a court of law, for example, over-turn decisions of the Governing Board or ZRA? If so, do the courts have the power to look into the merits of the arguments advanced by the Governing Board or ZRA in reaching its decision? Or, is the court confined merely to a determination as to whether the Governing Board or ZRA acted in good faith and complied with the procedural requirements under the law? The statute is silent on such matters. We are left only to look at provisions of the Revenue Appeals Tribunal Act of 1998, which sets up the Revenue Appeals Tribunal.³⁷ The jurisdiction of this tribunal relates mainly to appeals made pursuant to legislation on income tax, value added tax, and customs and excise levies.

Under the Zambia Revenue Authority Act 1993, the Governing Board has "power to invite any person whose presence is in its opinion

³² *Id.*

³³ The statute is very clear; it does not provide for a verbal notice. *See id.*

³⁴ *See id.* at § 15(4).

³⁵ *Id.* at § 15(5).

³⁶ *Id.* at § 15(6).

³⁷ One school of thought in Zambia postulates that the Revenue Appeals Tribunal is almost inept due to poor funding from the Treasury. Poor funding is seen by many as significantly affecting the Tribunal's capacity to function effectively and efficiently. It is suggested here that the Revenue Appeals Tribunal could benefit more, and perhaps perform much better, if it were funded directly from revenues collected by ZRA or if it were permitted to levy administrative fees on parties to disputes before it.

desirable to attend and participate in the deliberations of a meeting” of ZRA, but such a person has no right to vote at the meetings.³⁸ Minutes of the meetings are required to be kept properly.³⁹ This obligation applies also to minutes of committee meetings.⁴⁰ The Governing Board may, for purposes of performing its functions, establish committees of members of ZRA and delegate to such committees functions it sees fit.⁴¹ Also, ZRA, like any other organisation, has departments which carry out its functions.

Initially, when ZRA was set up, it was organised as a body corporate around operational departments such as the departments of Direct Taxes, Customs and Excise, and Value Added Tax (VAT).⁴² ZRA also has three corporate divisions: Finance, Human Resources and Support Services.⁴³ In addition, there are other departments that deal mainly with legal services, information technology, and internal audit.⁴⁴ Today, ZRA is organised institutionally along the following lines:

The Authority (“ZRA”) is a corporate autonomous body funded through the National Budget. Its structure comprises three operational divisions – Customs and Excise, Direct Taxes and Value Added Tax. The Treasury functions are incorporated in the Finance Division. There are several supporting directorates, namely, Administration, Human Resources, Legal, Information Technology, Internal Audit, Internal Affairs and the Executive Support Unit . . . The stakeholders in the operations of the Zambia Revenue Authority include:

- The Zambian people, as represented by the ZRA Governing Board and by the Government and its agencies
- Parliament
- The Zambian business community and those groups which represent their interests, together with their professional advisors
- Banks and other financial institutions
- Taxpayers in general

³⁸ See Zambia Revenue Authority Act, *supra* note 2, at § 15(7); see also *id.* at § 16(4) (providing that “[a] committee may invite any person whose presence is in its opinion desirable to attend and participate in the deliberations of a meeting of a committee, but such person shall have no vote”).

³⁹ See *id.* at § 15(9).

⁴⁰ *Id.*

⁴¹ *Id.* at § 16(1); see also *id.* at § 16(2) (allowing the Governing Board of ZRA to appoint the Commissioner-General as a member of any such committee).

⁴² See Zambia Revenue Authority, *supra* note 3, at “Corporate Profile.”

⁴³ See generally *id.*

⁴⁴ See generally *id.*

- Members of COMESA, SADC, WTO and other countries transacting business with Zambia, or transiting goods through Zambia
- Tourists, travelers and traders crossing Zambia's borders.
- The donor community and multilateral agencies, *e.g.* IMF, World Bank, DFID
- Staff and others within the ZRA
- The mass media in general
- NGO's and other interest groups⁴⁵

(v) *Disclosure of Interests by Members of the Governing Board*

As a general rule, any person present at a meeting of the Governing Board of ZRA or at any committee of ZRA during which a matter to be considered directly or indirectly interests that person or his spouse in a private capacity is required, "as soon as practicable after the commencement of the meeting, to disclose such interest."⁴⁶ It is not clear, however, what is meant by "as soon as practicable." When can it be said that a disclosure was or has been made at a reasonably practicable time and opportunity? There is indeed a lacuna in the law here. The law simply requires that such disclosure be recorded in the minutes of the meeting.⁴⁷ Further, the Zambia Revenue Authority Act 1993 does not stipulate any penalties for non-disclosure. The only threat of sanction that could arise in the event of non-disclosure is that found in § 3 of the Act, prohibiting a culpable person from retaining or holding office as member of the Governing Board. But is such a provision sufficient to provide incentives for interested parties to disclose their interests?

Section 17(1) of the Zambia Revenue Authority Act 1993 goes further to prohibit interested persons from taking part in any consideration or discussion of, or voting on, any questions touching on the subject matter in which they are interested. But, again, there are no sanctions in the event of non-disclosure. That said, a waiver to permit interested persons to take part in or vote on the discussion can only be granted by ZRA.⁴⁸ The Act, nonetheless, does not spell out the grounds upon which such a waiver can be made. It appears ZRA has unfettered powers to grant waivers.

⁴⁵ See generally *id.* However, at the time this report was written, the ZRA revealed that the information on this external web site was outdated. Hence, the information provided herein presents the current state of affairs.

⁴⁶ Zambia Revenue Authority Act, *supra* note 2, at § 17(1).

⁴⁷ *Id.* at § 17(2).

⁴⁸ *Id.* at § 17(1).

There are some general rules prohibiting the disclosure of information on matters pertaining to operations of ZRA. These rules can be found in §21 of the Zambia Revenue Authority Act 1993. Section 21 of that Act reads:

- (1) No person shall, without the consent in writing given by or on behalf of the Authority ("ZRA"), publish or disclose to any person, other than in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of his duties under this Act.
- (2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine . . . or to imprisonment for a term not exceeding five years or to both.
- (3) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding . . . or to imprisonment for a term not exceeding three years, or to both.⁴⁹

A notable shortcoming of the above statutory provision is that the word "knowledge" is not defined anywhere in the Act. As a result, it is difficult to appreciate what constitutes "knowingly" contravening the law. That said, § 21 of the Zambia Revenue Authority Act 1993 continues:

- (4) Nothing in this section, in section one hundred and seventy-five of the Customs and Excise Act (Cap 662) or in section eight of the Income Tax Act (Cap 668), shall prevent the passing of information between the Departments or between the Departments and the Governing Board or between the Departments and the Authority.⁵⁰

Sections 3 to 8 of the Zambia Revenue Authority Act 1993 provide for the disengagement of Departments of Taxes and of Customs and Excise and other incidental matters. Assets and liabilities of the Departments are transferred to ZRA. The registration of property transferred by the Departments to ZRA is also provided for by the Act. Further-

⁴⁹ *Id.* at § 21.

⁵⁰ *Id.*

more, the continuation of legal proceedings against either of the two Departments in the name of ZRA is legislated by the Act. Further, § 26 of the Zambia Revenue Authority Act 1993 then spells out as follows:

Subject to the provisions of this Act, any right of any person, including a right of appeal, subsisting against the Commissioner of Taxes, the Commissioner of Sales Tax or the Controller of Customs and Excise immediately before the commencement of this Act shall after commencement be treated as subsisting against the Commissioner-General in so far as that right relates to the duties of the Commissioner-General under this Act.⁵¹

Sadly, there is no legal obligation on ZRA to provide employment to all former employees of the now defunct Departments of Taxes and Customs and Excise. There is also no statutory provision in the Zambia Revenue Authority Act 1993 for the Government or ZRA to compensate former employees of the defunct Departments who are now unemployed as a result of the Departments' dissolution and the creation of ZRA.

(vi) Judicial Immunity of Members of the Governing Board

To promote the independence of members of the Governing Board and members of committees of ZRA in their performance of official duty, the Zambia Revenue Authority Act 1993 provides as follows:

No action or other proceedings shall lie or be instituted against any member [of the Governing Board] or member of a committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.⁵²

The omission or act must have been made in good faith and in the course of business to seek the protection of the law under § 18. Arguably, however, the statutory provision does not exempt an individual from liability where he or she engages in an act or omission that involves gross negligence since, by its very nature, gross negligence militates against the concept of "good faith." Indeed, a statutory provision, such as § 18 above, can help to boost the morale and confidence of both the staff of ZRA and members of the Governing Board or members of ZRA committees.

⁵¹ *Id.* at § 26.

⁵² *Id.* at § 18.

(vii) Office of the Commissioner-General and its Compromised Independence

It is not clear why the Commissioner-General of Taxes must be appointed by the Republican President.⁵³ Further, the President has the power to dismiss the Commissioner-General,⁵⁴ yet the Zambia Revenue Authority Act 1993 does not state the grounds upon which the Commissioner-General can be fired. It appears, most likely by design of the draftsman, and less likely by default, that the statute was drafted to remain mute on this matter. Such wide discretionary powers provide a nesting ground for uncontrolled and arbitrary despotic powers of the executive. Indeed, one would have thought that parliament was a more appropriate body to appoint the Commissioner-General so that the Commissioner-General could be independent in the discharge of his official duties. But, as it is, the man is at the beck and call of the President. Indeed, § 19 of the Zambia Revenue Authority Act 1993 provides as follows:

- (1) Subject to subsection (2), the President shall appoint a Commissioner-General, who shall be the chief executive officer of the Authority (“ZRA”), and who shall be responsible for the execution of the functions of the Governing Board and the implementation of the decisions of the Board. . .
- (3) The Commissioner-General shall be removed by the President.⁵⁵

There are no statutory provisions in the Zambia Revenue Authority Act 1993 to control the powers of the President here. Be that as it may, the Commissioner-General has statutory powers, subject to approval of the Governing Board, to establish organisational structures he considers necessary to discharge the functions of the Governing Board. Thus, suffice it to say that if the Republican President decides secretly to instruct the Commissioner-General to abolish a particular office in ZRA, because the office is held by an individual that the President does not like, then all hell breaks loose for that fellow. Of course, the Commissioner-General is less than likely to say “no” or to stand his ground since the President is the appointing and dismissing authority for his position. Further, because the President is not restrained by any statutory provisions in the Zambia Revenue Authority Act 1993 to hire and fire a Commissioner-General, the more likely that the Commissioner-General would end up acting “politically correct.” The Zambia Revenue Authority Act 1993 does not spell out the required

⁵³ *Id.* at § 19(1).

⁵⁴ *Id.* at § 19(3).

⁵⁵ *Id.* at § 19.

professional qualifications of a Commissioner-General. No doubt, all indications are that the infinite wisdom of making appointments to the office of Commissioner-General rests entirely in the bosom of the Republican President.

A secretary to ZRA, appointed by the Governing Board and on such terms and conditions as the Board may determine,⁵⁶ is responsible for the administration of the day-to-day affairs of the Governing Board under the general supervision of the Commissioner-General.⁵⁷ Similar to the situation with the Commissioner-General, it is easy for the Republican President to exert political pressure and influence on the Secretary to ZRA. All he has to do is issue instructions to the Commissioner-General and then all rank and file begin to run around.

The Governing Board has powers to appoint, on such terms and conditions as it determines, other staff members it considers necessary for the performance of its functions.⁵⁸ Such members of staff are required to exercise functions and perform duties conferred upon them by the laws specified by the Minister relating to functions of the Governing Board, or as delegated or assigned to them by the Commissioner-General.⁵⁹

(viii) The Financing of ZRA

Section 22(4) of the Zambia Revenue Authority Act 1993 provides that the Executive Board may invest non-revenue funds not immediately required for the performance of its functions in such manner

⁵⁶ *Id.* at § 20(1).

⁵⁷ *Id.* at § 20(2).

⁵⁸ *Id.* at § 20(3).

⁵⁹ *See d.* at § 20(4); *see also* The Value Added Tax Act, Laws of the Republic of Zambia, vol. 19, ch. 331, §§ 33-34 (1995) (vesting power in ZRA and the Commissioner-General to administer the law spelt out in those pieces of legislation.) For example, chapter thirty-three of the Act provides: "(1) The Authority [ZRA] shall be responsible for the administration of this Act and for the charging, levying and collection of tax. (2) The Minister may approve the establishment by the Authority of a reserve account with the Bank of Zambia for the payment therefrom of any credits under section nineteen, and from tax collected under this Act, the Authority shall from time to time appropriate sufficient funds to meet the requirements of the reserve account. (3) Except as provided by sub-section (2), tax collected under this Act shall be credited to the Treasury as soon as is reasonably practicable, and the provisions of sections twenty-four and twenty-five of the Zambia Revenue Authority Act, shall apply in respect of revenue derived from tax under this Act." Further, chapter thirty-four of the Act provides: "(1) The Commissioner-General shall have and may exercise and perform the powers and functions conferred on him by or under this Act. (2) The Commissioner-General may delegate any of his functions under this Act to the Commissioner of Value Added Tax or other officers of the Authority."

as it thinks fit. However, it is not clear whether or not the title “Executive Board” refers to the Governing Board. Apart from § 22(4) of the Act, the title “Executive Board” is nowhere in the statute. The failure to define “Executive Board” in the drafting of this legislation causes some illogical difficulties.

ZRA is financed from the following three major sources: (a) moneys appropriated by Parliament for ZRA; (b) grants or donations to ZRA; and (c) moneys that may vest in or accrue to ZRA.⁶⁰ ZRA is permitted by law to accept money by way of grants or donations from any source in Zambia.⁶¹ This statutory right for ZRA to receive financial donations is not qualified. There is no statutory obligation under the Zambia Revenue Authority Act 1993 for ZRA to take a cautious approach, such as the “know your customer” principle to curb money laundering activities. In short, ZRA can receive laundered money or financial bribes, as long as such receipts are dressed up as grants or donations. There is need to amend the law here.

ZRA also has the power to raise money by way of loans or otherwise from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia.⁶² Again, the law here should try and introduce some screening mechanism so that ZRA is never suspected of receiving ill-gotten wealth. Additionally, ZRA has the power to charge and collect fees for the programmes, publications, seminars, consultancy services and other services it offers.⁶³ From these funds, the following expenses and costs must be met:

- (a) the salaries, allowances and loans of the staff of ZRA;
- (b) such reasonable travelling, transport and subsistence allowance for members of any committee of the Governing Board when engaged on the business of the Board at such rates as the Board may determine; and
- (c) any other expenses incurred by ZRA in the performance of its duties.⁶⁴

Ideally, since ZRA is a public entity, and because much of its finances come from parliamentary allocations, ZRA should be required by law to publish quarterly as well as annual accounts. Presently, ZRA is only required to publish annual accounts, however a requirement to have ZRA publish both quarterly and annual accounts would ensure enhanced transparency and accountability. Additionally, this require-

⁶⁰ Zambia Revenue Authority Act, *supra* note 2, at § 22(1).

⁶¹ *Id.* at § 22(2)(a).

⁶² *Id.* at § 22(2)(b).

⁶³ *Id.* at § 22(2)(c).

⁶⁴ *Id.* at § 22(3).

ment would promote good corporate governance in ZRA. In the past, the Zambian public has been concerned that some senior members of the ruling MMD party have drawn funds directly from ZRA for their private and personal use.

The financial year of ZRA ends on December 31.⁶⁵ The Governing Board is required to keep proper books of account and other records relating to the accounts of ZRA.⁶⁶ The accounts are audited annually by independent auditors appointed by ZRA,⁶⁷ and the auditors' fees are paid by ZRA.⁶⁸

2.0 PRINCIPLES OF TAX LAW

The development of tax law in Zambia, like in many other common law jurisdictions, has been primarily influenced by public policy theory and the development of legislation and case law. International law also has had a bearing on the development of tax law in Zambia, as Zambia has double-taxation agreements with countries such as Canada, Denmark, Finland, Germany, the Netherlands, Kenya, Norway, Romania, India, Ireland, Italy, Japan, Sweden, Switzerland, Tanzania, Uganda, and the United Kingdom.⁶⁹ In general, double-taxation agreements generate norms of conventional international law which have a bearing on the development of municipal law. Additionally, Zambian legislation does provide several tax incentives to foreign investors.⁷⁰ A discussion of tax-related incentives falls outside the scope of this study. Suffice it to say, principles of Zambian tax law have evolved, and precepts based mainly on public policy and international law have been enjoined providing grounds for the advancement and development of tax law in Zambia. Following below is a discussion of some of the principles of tax law in Zambia.

The Direct Tax Division of ZRA administers three types of taxes.⁷¹ These taxes are income tax, mineral royalty tax and property transfer tax. In the words of ZRA:⁷²

⁶⁵ *Id.* at § 23.

⁶⁶ *Id.* at § 24(1).

⁶⁷ *Id.* at § 24(2).

⁶⁸ *Id.* at § 24(3).

⁶⁹ See generally Zambia Revenue Authority, Tax Treaties, at <http://www.zra.org.zm/dtax/treaties.htm> (last visited Mar. 5, 2002).

⁷⁰ See generally The Investment Act, Laws of the Republic of Zambia, vol. 21, ch. 385 (1993) (delineating tax incentives).

⁷¹ See generally Zambia Revenue Authority, Direct Taxes, at <http://www.zra.org.zm/dtax/dtintro.htm> (last visited Mar. 5, 2002).

⁷² See *id.* More recently, a revised note from ZRA's intra-net reads: "Direct Taxes Division of the Zambia Revenue Authority is charged with the responsibility of assessing and collecting the following tax types: (a) income Tax; (b) Property Transfer Tax; and (c) Mineral Royalty Tax. The taxes administered here are re-

Charge To Tax: Tax is charged to each person who receives income from a source within Zambia, while tax is collected by way of interest and dividends from each person who is ordinarily a resident within Zambia but receives income from a source outside Zambia.

Pay As You Earn (PAYE): PAYE is a method of collecting Income Tax from individuals in gainful employment. The employer will deduct a certain amount of tax from the employee's salary or wages on each payday then remit the tax to the Authority. This method enables the employee to avoid paying taxes at the end of the charge year and also shifts the burden of responsibility to the employers. Every resident individual who receives income is granted a tax credit or tax relief from the Authority. The total tax credit is spread evenly during the charge year. At the end of the year, an assessment will be made on the individual's total income received from various sources. Should the tax credit be less than the actual tax paid during the year, the balance of the tax due will be payable to the Authority. Effective April 1, 1998, the applicable tax rates and credit for individuals are as follows:

Chargeable income per annum

ferred to as "direct taxes" because the tax incidence is borne directly by the person receiving the income unlike indirect taxes which are imposed on goods and services. Under the Income Tax Act (Cap 323), tax is charged on income received by every person from a source within Zambia. Certain types of income from sources outside Zambia, e.g. interest and dividends, also attract tax on persons ordinarily resident in Zambia.

Personal Income Tax Rates: The following rates of tax are currently applicable on personal income taxes i.e. tax on self employed individuals and employed individuals: Chargeable Annual Income - Tax Rate: First K1, 600, 000 @ 10%; Next K600, 000 @ 20%; Balance @ 30%; Tax credit applicable is K144, 000

Company Tax Rates: On income from Lusaka Stock Exchange listed companies @ 30%. On income from other companies @ 35%. For banks registered under the Banking and financial Services Act - The first K250, 000, 000 @ 35%; the balance @ 45%. For farming income @ 15%. For income from non traditional exports @ 15%. For income of Trusts, Deceased or Bankrupt Estates @ 35%. On income from the chemical manufacture of fertilizers @ 15%. On income from rural enterprises: The tax chargeable is reduced by one seventh for a period of five years.

Withholding Tax Rates: (a) Individuals: Dividends (final tax) @ 15%; Interest (final tax) @ 25%; Royalties, Management and Consultancy Fees @ 15%; Rents @ 15%; Commissions @ 15%. (b) Persons other than individuals: Dividends (final tax) @ 15%; Interest (not final) @ 15%; Royalties, Management and Consultancy fees @ 15%; Commissions @ 15%. (c) Other payments: Non resident contractors @ 15%; Public entertainment fees (non residents only) @ 15%."

First K1, 200,000 10%

Next K600,000 20%

Balance 30%

Tax Credit K84,000

Company Tax: Company Tax is a form of income tax that is levied on companies with limited liability. The tax rate is currently at 35% of the profits, adjusted for tax purposes. Companies listed on the Lusaka Stock Exchange market pay tax at a reduced rate of 30%. The tax rates on income from banking activities are:

- Income up to K250,000,000 35%
- Income in excess of K250,000,000 45%
- Income earned from the chemical manufacture of fertilizer and farming by any person (including companies) suffers a tax rate of 15%.⁷³

ZRA further states that:

Provisional Tax: Provisional Tax is a quarterly advance payment of tax due based on estimated income for the current year. Any person in receipt of income, other than emoluments subject to PAYE, is required to pay provisional tax on the following dates:

- First Installment June 30
- Second Installment September 30
- Third Installment December 30
- Fourth Installment March 30⁷⁴

Withholding Tax (WHT) is deducted at the source from the following sources of income: rents, interest, dividends, royalties, management fees, and payments made to non-resident contractors who are engaged in construction and haulage.⁷⁵ In 2003, the rate of WHT on all types of income was 15%, except on interest and dividends paid by successor companies of Zambia Consolidated Copper Mines Plc., where the rate is pegged at 10%.⁷⁶ In Zambia, WHT is not the final tax, except in the case of dividends.⁷⁷ For example, in the case of rental income, the tenant is required to deduct WHT from the gross rental

⁷³ See Zambia Revenue Authority, Direct Taxes, Companies, at <http://zra.org.zm/dtax/companies/htm> (last visited Mar. 5, 2002).

⁷⁴ Zambia Revenue Authority, Direct Taxes, Provisional Tax, at http://zra.org.zm/dtax/corporate_tax.htm (last visited Mar. 5, 2002).

⁷⁵ Zambia Revenue Authority, Direct Taxes, Withholding Tax, at http://zra.org.zm/tax_credits.htm (last visited Mar. 5, 2002).

⁷⁶ *Id.*

⁷⁷ *Id.*

charge and remit the tax to ZRA on behalf of the landlord.⁷⁸ If this is not done, the tenant will be held accountable for failing to comply with the law and severe penalties will be enforced. The landlord will also be liable for the tax due on the gross rent (less allowable expenses), without being granted relief for withholding tax.

Base Tax, on the other hand, is a presumptive tax levied on small scale businesses that are unable to maintain adequate business records on which to base a correct tax assessment at the end of the charge year. By 2003, Base Tax was fixed at 266 penalty units which was then equivalent to K47,880 per annum.

Mineral Royalty Tax: Mineral Royalty Tax is a 2% tax levied on all holders of a large scale mining licenses on the net back value.⁷⁹ “Net back value” means the market value of minerals free on board at the point of export from Zambia, or in the case of consumption within Zambia, at the point of delivery within Zambia, less:

- the cost of transport from the mining area to the point of export or delivery, including insurance and handling charges; and
- the cost of smelting and refinery; and
- the cost of refining or other processing costs, except such processing costs as relate to processing normally carried out in the mining area of Zambia.

In this case, “market value” means the realized price for a sale free on board at the point of export from Zambia or at the point of delivery within Zambia.⁸⁰

Property Transfer Tax: There is no capital gains tax in Zambia. However, there is a Property Transfer Tax of 2.5% which is charged on the realizable value of the property being transferred.⁸¹ The tax is payable by the transferor. In this case, “property” includes:

- Any land (including any buildings, structures, or other improvements thereon); and
- Any share issued by a company in Zambia that is not listed on the Lusaka Stock Exchange.

Losses: A loss incurred in a charge year can only be deducted from income of the same source and of the same person. Until March 31, 1997, the loss could be carried forward indefinitely and set against future income of the same source. Effective April 1, 1997, losses can only

⁷⁸ *Id.*

⁷⁹ Zambia Revenue Authority, Direct Taxes, Mineral Royalty, at http://zra.org.zm/dtax/mineral_royalty.htm (last visited Mar. 5, 2002).

⁸⁰ *Id.*

⁸¹ Zambia Revenue Authority, Direct Taxes, Property Transfer Tax, at http://zra.org.zm/dtax/property_transfer.htm (last visited Mar. 5, 2002).

be carried forward for five charge years after the charge year in which they are incurred. Owing to these restrictions on carrying forward five years, losses brought forward March 31, 1997 are deemed to have been incurred in the charge year ending March 31, 1997. However, losses incurred by former Zambia Consolidated Copper Mining Companies, sold under the Privatization Act, can be carried forward ten years, effective April 1, 1998.

Penalties: All persons (including companies) are required by law to submit their tax returns, accompanied by the balance of tax payable, to the Authority on or before September 30.⁸² Failure to comply may result in statutory penalty charges, including fines and imprisonment.

From the above discussion, one can see that a number of traders and entrepreneurs in the informal sector of the national economy can avoid paying taxes such as the Mineral Royalty Tax. For the most part, activities of such traders are unregulated. For example, there are cases, such as the mining of precious stones (ex. emeralds) in Zambia's Copperbelt Province, which have not brought much revenue to the Government. Yet, precious stones such as emeralds fetch a high market price internationally. Wherein, then, lies the problem? It is a well known that some of the notorious West African precious stone dealers, who operated at most of these emerald mines, had strong political connections. A number of these individuals not only evaded the regulatory structure governing the exploration and exploitation of mineral resources, but they also evaded taxes relating to undertaking such activities.

Thus, one of the weaknesses of the principles of Zambian tax law is that the principles relate mainly to taxation of investors who deal through the formal sector of the national economy and those that transact across international borders. A counter-argument, however, is that efforts by tax administrators to pursue patrons of the informal sector could prove too costly. The benefits derived from collecting taxes in the informal sector could actually be outweighed by the costs of monitoring and policing persons and enforcing the law. But, that view by itself is not wholly persuasive. Incentives can be created, within the context of the legal and regulatory frameworks, to attract patrons of the informal sector to own up and submit to the tax regime. To develop such a culture, it would bode well to legislatively spell out stiff penalties for tax evasion and provide incentives, such as periodic and intermittent tax holidays to persons complying with the law. The legislative efforts here should be supported by efficient and effective tax administration and criminal justice systems.

⁸² Zambia Revenue Authority. Due Dates for Payment of Tax, at <http://zra.org.zm/payments.htm> (last visited Mar. 5, 2002).

In July 1995, the Zambian Government introduced a value added tax (VAT), to serve as a replacement for sales tax.⁸³ The preamble of the Value Added Tax Act of 1995 provides that the statute is an Act to impose tax on the supply of goods and services in Zambia and the importation of goods into Zambia. The preamble further adds that the VAT statute repeals the Sales Tax Act (Cap 663) and the Insurance Levies Act of 1990 and provides for matters connected with or incidental to the foregoing. In the words of ZRA:

[VAT] is a broad based, invoice driven and self-policing tax. It eliminates the double taxation factor associated with Sales Tax. VAT is a consumer expenditure tax levied on the supply of goods and services made in the course and furtherance of business taking place in Zambia.

Scope and Coverage: The current VAT standard rate is 17.5% and applies to most goods and a range of services.⁸⁴ The main zero ratings and exemptions are in the following areas:⁸⁵

<i>Zero-rating</i>	<i>Exemption</i>
• basic foods	• health and educational services
• agricultural supplies	• supply of water and sewerage services
• exports of goods	• books and newspapers
• foreign aid donations ⁸⁶	• most public transport services
• medical supplies and drugs	• sale of land and real estate
	• financial services

According to ZRA:

The VAT system in Zambia was designed to be as straightforward as possible with easy-to-understand definitions on e.g. the tax point and the tax value.⁸⁷ One

⁸³ Value Added Tax Act of 1995, at <http://www.unza.zm/acts/1995/value95.htm> (last visited Mar. 4 2002).

⁸⁴ Zambia Revenue Authority, VAT-Leaflets & Booklets, *The VAT Guide Leaflet No. 1*, at <http://zra.org.zm/vat/pubs/%20Guide.pdf> (last visited Mar. 5, 2002).

⁸⁵ Zambia Revenue Authority, VAT-Leaflets & Booklets, *The VAT Liability Guide Leaflet No. 2*, at <http://zra.org.zm/vat/pubs/Liability%20Guide.pdf> (last visited Mar. 5, 2002).

⁸⁶ Zambia Revenue Authority, VAT-Leaflets & Booklets, *Zero Rating of Goods Purchased by Donor Agencies*, at <http://zra.org.zm/vat/pubs/Zero-Rating-of-Goods-Purchased-By-Donor-Agencies%20Guide.pdf> (last visited Mar. 5, 2002).

⁸⁷ The VAT Guide Leaflet No. 1, *supra* note 95.

point to note, however, is that input tax cannot be reclaimed on:

- business entertainment;
- motor cars;
- petrol; and
- telephone services.

In addition, input tax is also disallowed on non-business expenditures, including staff housing, household furniture, etc.

VAT Registration: A registration form (VAT-1) can be obtained from the ZRA Advice Center or the nearest ZRA offices. The registration prerequisites and procedures are as follows:

Statutory Registration: Businesses are required by law to register as VAT traders if they supply taxable goods or services, and their taxable turnover exceeds one of the mandated threshold requirements stated below:

- (a) K30 million in any twelve consecutive months;
- (b) K7.5 million in any three consecutive months; or
- (c) Taxable turnover is expected to exceed either amounts stated in (a) and (b) above in the subsequent twelve months or three months respectively.⁸⁸

Voluntary Registration: Voluntary registration was introduced to accommodate traders whose taxable turnover did not meet the statutory requirement. Once registered, the trader has the obligation to abide by the same rules that apply to statutory registered traders. VAT has provisions that have been put in place to assist traders. Voluntary registration is one of the options and other options are as follows:⁸⁹

Cash Accounting: A trader with a taxable turnover not exceeding K200 million per annum and who provides information requested by the Commissioner can apply for the cash accounting or payment basis. The annual taxable turnover limit for cash accounting has been raised to K300 million, effective July 1, 1998. Payment basis requires a trader to account for the VAT charged on their sales on amounts actually received and claim VAT only on purchases that have been paid.⁹⁰

⁸⁸ Zambia Revenue Authority, VAT-Leaflets & Booklets, *VAT Registration Leaflet No. 8*, at <http://zra.org.zm/vat/pubs/VAT%20Registration.pdf> (last visited Mar. 5, 2002); Zambia Revenue Authority, VAT-Leaflets & Booklets, *The VAT Options Leaflet No. 9*, at <http://zra.org.zm/vat/pubs/The%20VAT%20Options.pdf> (last visited Mar. 5, 2002).

⁸⁹ *Id.*

⁹⁰ The VAT Options Leaflet No. 9, *supra* note 99.

Longer Tax Period: The standard tax period commences by the first day and ends the last day of each calendar month. Traders are expected to submit their returns by the twenty-first day of the following month. Provided they satisfy certain conditions, traders have been given the option to apply for accounting periods extending up to three months. Effective July 1, 1998, the maximum annual taxable turnover limit to qualify for the three month tax period has been raised from K100 million to K200 million in order to assist small scale businesses. Such businesses can now elect to submit only four returns per year instead of twelve.⁹¹

Import VAT Deferment Scheme: An Import VAT Deferment Scheme is available to registered tax compliant businesses. This facility permits allowable goods to be imported effectively "VAT free" and avoids the cash flow burden of paying the tax at importation and waiting a month or so before it can be reclaimed.⁹² If the import VAT deferment facility is sought, then a separate application should be made after VAT registration to the ZRA Advice Centre. The application should give details and estimated values of the goods intended to be imported by this facility. An approval number will be allocated to the successful applicant. The approval is restricted to capital goods, but does not include:

- motor vehicles (saloon cars, twin cabs, and station-wagons);
- domestic and household items and electrical appliances (TVs, refrigerators, furniture); and
- items of personal nature (musical instruments, watches, etc.).

The trader should specify the type and quantity of goods intending to be imported and certify in a letter that the goods imported will be used for producing taxable goods and services.

Tour Package: To promote the tourism industry, a zero rated tour package for tourists has been introduced. A tour package is "[s]upplied by a tour operator or travel agent, licensed as such by the Zambia National Tourist Board, to a tourist who is not resident of Zambia, subject

⁹¹ *Id.*

⁹² Zambia Revenue Authority, VAT-Leaflets & Booklets, *Import Deferment Scheme Leaflet No. 19*, at <http://zra.org.zm/vat/pubs/Import-VAT-Deferment-Scheme%20.pdf> (last visited Mar. 5, 2002).

to such conditions as the Commissioner General may by rule require." To qualify as a tour package, the tourists have to make bookings before arriving in Zambia, and the package should include accommodation and other tour services (ex. game drive, canoeing, rafting, etc.) for a period of at least twenty-four hours.⁹³

Refund Scheme for Tourists: The Tourist Refund Scheme is another incentive for tourists to visit Zambia. The purpose of this Scheme is to permit tourists to claim VAT paid on goods purchased from retailers approved to operate the scheme. VAT will be paid as usual on all purchases. A participating retailer issues an export tax invoice (VAT 263) to the tourist when purchasing goods. The VAT 263 is used to claim back VAT paid on purchases when the tourist is leaving Zambia. There are three designated points of exit where this scheme operates:

- Lusaka International Airport
- Ndola International Airport
- Victoria Falls Border Post

The officers at the exit point will certify and stamp the export tax invoice and ensure that the goods purchased are intended for export purposes. The tourists will not receive their refund at the point of exit, but rather have their refunds sent to their destination address within a period of eight weeks.⁹⁴

Commercial Exporters VAT Refund Scheme: "In addition to the existing VAT zero-rating, a new scheme permitting commercial exporters to obtain a refund of VAT paid on goods purchased from registered suppliers has been introduced."⁹⁵

Only foreign passport holders on a business visit to Zambia are allowed to use the scheme. An important point to note, however, is that the scheme applies only to commercial export consignments that do not qualify for the zero-rating currently in operation.

⁹³ Zambia Revenue Authority, VAT-Leaflets & Booklets, *VAT Zero Rating For Package Tours Leaflet No. 11*, at <http://zra.org.zm/vat/pubs/VAT%20Refund%20For%20Foreign%20Tourists.pdf> (last visited Mar. 5, 2002).

⁹⁴ Zambia Revenue Authority, VAT-Leaflets & Booklets, *VAT Refund Scheme For Goods Purchased by Foreign Tourists Leaflet No. 5*, at <http://zra.org.zm/vat/pubs/VAT%20Refund%20Scheme%20For%20Foreign%20Tourists.pdf> (last visited Mar. 5, 2002).

⁹⁵ Zambia Revenue Authority, VAT-Leaflets & Booklets, *Refunds for Commercial Exporters Leaflet No. 23*, at <http://zra.org.zm/vat/pubs/Refunds%20For%20Commercial%20Exporters.pdf> (last visited Mar. 5, 2002).

VAT Returns: VAT returns usually cover one calendar month (although smaller businesses can opt for three monthly tax periods). These returns must be submitted no later than the twenty-first day of the following month (i.e. the return for the month of January is due by February 21). Full details of these and other features of the tax period can be found in the VAT General Guide (VAT Leaflet No. 1) which can be obtained at the ZRA Advice Centre or your nearest ZRA Office.⁹⁶

Tax Compliance: A high standard of VAT tax compliance is demanded in Zambia. Automatic penalties are prescribed by law for late VAT returns. These are the greater of K180,000 or 0.5% of the tax due per day. The penalties imposed for false returns and evasion include heavy fines and, in serious cases, imprisonment. The tax compliant trader can however, expect a friendly and efficient service from the four VAT Offices at Lusaka, Ndola, Kitwe, and Livingstone, and from the ZRA Advice Centre.⁹⁷ Like taxes discussed earlier, it is difficult to appreciate how VAT can apply to an informal sector trader who is busy peddling his merchandise along the streets of Lusaka. It is in such areas of the law that the Government should move to redress these seemingly persistent lacunas.

The Customs and Excise Division of ZRA, handles the collection of customs duty, import VAT, excise duty, surtax, and Import Declaration Fee (until July 1, 1998). This department administers: (a) the collection and management duties, including customs and excise duties, (b) the licensing and control of warehouses and premises for the manufacturing of certain goods, (c) the regulation and control of imports and exports, (d) the facilitation of trade, travel, and the movement of goods, and (e) the providing of statistical data to the Zambian Government on imports and exports.⁹⁸ As ZRA notes:

Importation of Goods: It is a legal requirement that all goods imported be fully declared at the point of entry. Liability for the payment of customs duties and Import VAT arises at the point of importation; but, at the discretion of a Station Manager, certain consignments may be removed under bond to an inland Custom House where final clearance can be done. All imported goods must be cleared, and the relevant duties must be paid within thirty days after importation. A Bill of Entry, together with supporting documents, has to be submitted by the importer or agent in order to affect Customs clearance.

⁹⁶ The VAT Guide Leaflet No. 1, *supra* note 95.

⁹⁷ *Id.*

⁹⁸ Zambia Revenue Authority, Customs and Excise, *Functions*, at <http://zra.org.zm/customs/pubs/Leaflet4%20-%20Excise.pdf> (last visited Mar. 5, 2002).

Restrictions and Prohibitions: Stills and similar apparatus capable of being used for the production or refining of alcohol may be imported only with written permission from the Commissioner General.⁹⁹ The following are totally prohibited from importation:

- base or counterfeit coins,
- any goods which are indecent, obscene, or objectionable,
- any goods which may tend to deprave the morals of any inhabitants of Zambia,
- prison-made and penitentiary-made goods,
- qilika,
- spirituous beverages which contain preparations, extracts, essences, or chemical products which are noxious or injurious, and
- any goods that are prohibited from importation under the authority of any law.¹⁰⁰

Special permits are required for the importation of firearms, live plants, and animals. These permits are issued by the Ministry of Home Affairs and the Ministry of Agriculture, Food, and Fisheries respectively.

Customs Valuation System: Zambia is currently applying the Brussels Definition of Value (BDV) as a basis for determining the customs value of imported goods.¹⁰¹ BDV defines a customs value as the price obtainable in the open market when offered to a buyer by a seller independent of each other. This price must be freely available. Zambia intends to introduce the World Trade Organization (WTO) (formerly GATT) valuation system by the year 2000. The implementation strategy is being worked out by an appointed Customs Steering Committee. Currently, Zambia is employing a Pre-Shipment Inspection (PSI) program. All goods with Freight on Board value above US \$2,000.00 are subjected to PSI in the country of supply, except those goods that are exempted by Government.

⁹⁹ Zambia Revenue Authority, Customs and Excise - Publications, *Excise - A Brief Guide Leaflet No. 4*, at <http://zra.org.zm/customs/pubs/Leaflet4%20-%20Excise.pdf> (last visited Mar. 5, 2002).

¹⁰⁰ The VAT Guide Leaflet No. 1, *supra* note 95.

¹⁰¹ World Trade Organization, Trade Policy Reviews: Zambia: August 1996, at http://www.wto.org/english/tratop_e/tpr_e/tp37_e.htm (last visited Mar. 5, 2002).

ZRA explains the administration of Customs Duty, Import Value Added Tax, Excise Duty, Surtax, Import Declaration Fee, and many other related taxes in the following manner:

Customs Duty: Following the initiative set by the General Agreement on Tariffs and Trade (GATT), Zambia has consistently followed a policy of reducing tariff levels since 1991.¹⁰² For example, significant rate reductions were made in 1996. The current customs duty rates range between 0% and 25%, with 15% as the most common rate. In general, the 5% rate covers raw materials, the 15% rate applies to intermediate goods, and the 25% rate covers finished products.¹⁰³ In addition there is a limited list of “merit” goods which are duty free. Merit goods include, among other items, books, fertilizers, and primary forms of rubber and steel.¹⁰⁴ Imports originating from COMESA countries enjoy a 60% reduction below the normal prevailing rates, with the object of encouraging trade between Common Market for Eastern and Southern Africa (COMESA) member countries.¹⁰⁵

Import VAT: Import VAT is charged on imported goods at the point of importation. Import VAT rates are the same as those applicable to Domestic VAT. The standard rate is 17.5% of the Taxable Value (*i.e.* sum of Value for Duty Purposes and Customs Duty).

Excise Duty: Excise duty is charged on such goods as: alcoholic products, soft drinks, tobacco products, hydrocarbon oils, and tires (both imported and domestically manufactured). The current Excise Duty rates range from 10% for tires and tubes to 125% for wines and spirits. Duty rates for common products are listed in Excise – A Brief Guide (Leaflet No. 4).¹⁰⁶

Surtax: Surtax is a duty levied on opaque beer, in addition to imposed Excise Duty and VAT. The current rate is 15% ad valorem.

Import Declaration Fee (IDF): The payment of the Import Declaration Fee is done at the importer’s commer-

¹⁰² *Id.*

¹⁰³ Zambia Revenue Authority, Customs and Excise, *Taxes Administered*, at <http://zra.org.zm> (last visited Mar. 5, 2002).

¹⁰⁴ Industry Canada, Zambia Country Commercial Guide 2004, <http://strategies.ic.ca/epic/internet/inimr-ri.nsf/en/gr1200405e.html> (last visited Mar. 5, 2002).

¹⁰⁵ Zambia Revenue Authority, Customs and Excise - Publications, *Common Market for Eastern and South Africa (COMESA) Leaflet No. 10*, at <http://zra.org.zm/customs/pubs/Leaflet10%20-%20COMESA.pdf> (last visited Mar. 5, 2002).

¹⁰⁶ *A Brief Guide Leaflet No.4*, *supra* note 111.

cial bank when goods are ordered. The current rate of IDF is 5% on Cost, Insurance, and Freight (CIF). IDF is charged on imported goods whose value exceeds US \$500. If not paid through the bank, the rate is 10% payable directly to Customs. This includes 5% actual IDF fee and 5% penalty. The IDF was discontinued July 1, 1998.

Exportation of Goods: Before exportation, exporters are required to complete a Customs Form No. CE20 showing the nature, value, and quantity of the goods to be exported.¹⁰⁷ Exports by post are covered by a declaration made by the exporter on Customs Form No. CE13. If the exportation is of a commercial nature, this declaration should be supplementary to the CE20 Form. Articles meant for temporary export, which are to be returned to Zambia, should be registered on Customs Form No. E200, E201, or E202 before removal. Certain goods are subject to export control, including agricultural produce and some metals.

Bonded Warehouses: Customs and Excise allows the warehousing in bond of most goods. Thus, most major commercial centers have bonded warehouses.¹⁰⁸

Refunds, Remissions or Rebates of Duty: Any person entering Zambia must report to an officer of Customs and Excise and make a declaration of goods. Depending on the fulfillment of certain conditions attached to the prevailing rebate regulations, collection of customs duties or excise duty may be foregone. Wherever duty is rebated it is a general condition that the subject goods are not sold or disposed of without the consent of the Commissioner General. The following classes are details of specific rebates in force.

Diplomats: Diplomatic personnel are exempt from paying customs duties and excise duty if they are accredited by Zambia and enjoy full immunities and privileges as provided by the Diplomatic Immunities and Privileges Act and Orders made under the Act.

Tourists: Bonafide tourists are entitled to a rebate of duty on all goods (including a motor vehicle) temporarily imported into the country for their own use. However,

¹⁰⁷ Zambia Revenue Authority, Customs and Excise - Publications, *Excise - Exportation of Goods Leaflet No. 12*, at <http://zra.org.zm/customs/pubs/Leaflet12%20-%20Exportation%20of%20Goods.pdf> (last visited Mar. 5, 2002).

¹⁰⁸ Zambia Revenue Authority, Customs and Excise - Publications, *Bonded Warehouses Leaflet No. 3*, at <http://zra.org.zm/customs/pubs/Leaflet3%20-%20Bonded%20Warehouses.pdf> (last visited Mar. 5, 2002).

such goods must be exported within twelve months after their importation or full payment of duty becomes due. *New Residents (new arrivals and persons who have been residing outside Zambia for less than five years)*: Persons arriving in or returning to Zambia to take up or resume employment or residence are entitled to a rebate of duty on their household and personal effects (excluding motor vehicles). The rebate is subject to the following conditions:

- the person must have been a resident outside Zambia for at least five years before arrival in or return to Zambia,
- the effects must have been the property of the person before the date of departure for Zambia from the previous country of residence,
- such goods must be imported at the time of the person's arrival in Zambia or, if there is an unreasonable delay, that delay must have been due to circumstances beyond the control of the new resident, and
- the new resident must provide information or documentation showing the date of arrival in Zambia and dates of residence outside Zambia.

Travelers' Effects: A duty rebate is allowed with respect to reasonable quantities of used goods imported in the baggage or upon the person of a traveler and intended for his or her own use. There is also a concession for reasonable quantities of consumable articles, including:¹⁰⁹

- beer 2.5 liters,
- wine 2.5 liters,
- spirits 1.5 liters, and
- 400 cigarettes or 0.5 kilograms of cigars or pipe tobacco.

The allowances on alcohol and tobacco are not granted to persons under the age of eighteen years.¹¹⁰ In addition to the above concessions, a duty rebate may be granted on goods not exceeding US \$150 in value for each traveler (excluding merchandise and the goods referred to above), imported in accompanied baggage or upon the person of the traveler.

Generally speaking, although most of the tax law principles appear well developed in Zambia, the Zambian Government and ZRA

¹⁰⁹ Zambia Revenue Authority, Customs and Excise - Publications, *Passenger Clearance - A Brief Guide to Travelers Leaflet No.1*, at <http://zra.org.zm/customs/pubs/Leaflet1%20-%20Passenger%20Clearnace.pdf> (last visited Mar. 5, 2002).

¹¹⁰ *Id.*

need to develop an efficient and effective regulatory framework to capture the taxation of earnings and profits in the informal sector of the national economy as well. The Zambian informal sector has existed as an unregulated enclave of the national economy for some time. The lack of regulatory capture in this segment of the economy has resulted in the Zambian Government losing out on huge potential revenues.

3.0 CONCLUSION

This paper has examined the efficacy of the institutional and regulatory framework for the administration of tax law in Zambia, showing how tax law relates to the conduct of business and commerce in that country. The main principles of tax law were fleshed out and the institutional framework for the administration of tax law in Zambia was examined. The paper focused primarily on examining the institutional framework for tax law administration and analysed the main principles of tax law. An evaluation of the efficacy of the institutional framework for the administration of tax law was made, and areas of vulnerability in the institutional and regulatory frameworks, such as the power of the Republican President to appoint and dismiss the Commissioner-General at will, were highlighted.

Although the regulatory and institutional frameworks appear generally sound, there are many areas of vulnerability which could affect the efficiency and effectiveness of ZRA's performance. The Zambian Government should take pro-active measures to introduce amendments redressing flaws in the statutory provisions of the Zambia Revenue Authority Act 1993, addressing disclosure of interests matters, the excessive discretionary powers of the Minister of Finance to issue directives, and the definition of phrases such as "necessary modification" and "as soon as practicable."

An argument was also made that the Zambian Government needs to develop an efficient and effective regulatory framework that captures taxation on earnings and profits in the informal sector of the national economy.