

REPORT OF THE COMMITTEE ON ECONOMIC AFFAIRS, ENERGY AND LABOUR ON THE TAX APPEALS TRIBUNAL BILL, N.A.B. NO. 1 OF 2015 FOR THE FOURTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON TUESDAY, 23RD SEPTEMBER, 2014

Consisting of:

Mr K K Hamudulu, MP (Chairperson); Ms C Ngimbu, MP; Mr G G Nkombo, MP; Dr S Musokotwane, MP; Mr V Lombanya, MP; Mr F Mutati, MP; Mr L C Bwalya, MP; and Mr G B Mwamba MP.

The composition changed following the appointment of Ms M Miti, MP; Mr W Simuusa, MP; and Mr N Chilangwa, MP, to the Committee. This followed the appointment of Ms C Ngimbu, MP; and Mr L C Bwalya, MP, to the positions of Cabinet Minister and Deputy Minister respectively; and the appointment of Mr G B Mwamba, MP to serve on another Sessional Committee.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee has the honour to present its Report on the Tax Appeals Tribunal Bill, N.A.B. No.1 of 2015 for the Fourth Session of the Eleventh National Assembly referred to it by the House on Friday, 6th March, 2015.

Functions of the Committee

2.0 In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bills that may be referred to it by the House.

Meetings of the Committee

3.0 Your Committee held four (4) meetings to consider the Tax Appeals Tribunal Bill, N.A.B. No.1 of 2015.

Procedure adopted by the Committee

4.0 In order to acquaint itself with the ramifications of the Bill, your Committee sought both written and oral submissions from stakeholders. The stakeholders who appeared before your Committee are listed at Appendix II.

Objectives and Background of the Tax Appeals Tribunal Bill, N.A.B. No.1 of 2015

5.0 The objects of the Bill are to continue the existence of the Revenue Appeals Tribunal and rename it as the Tax Appeals Tribunal; provide for the composition and functions of the Tax Appeals Tribunal and to repeal the *Revenue Appeals Tribunal Act of 1998*.

Background

The Revenue Appeals Tribunal was created by the *Revenue Appeals Tribunal Act No. 11 of 1998*. The Tax Appeals Tribunal Bill, No 1 of 2015 seeks to continue the existence of the Revenue Appeals Tribunal and rename it as the Tax Appeals Tribunal and to provide for its composition and functions. The Bill also repeals the *Revenue Appeals Tribunal Act, 1998*. This is because the mandate of the Revenue Appeals Tribunal is restricted to appeals arising out of matters in tax legislation or revenue of the Republic of Zambia from taxes only and the new name more accurately reflects the Tribunal's jurisdiction.

Salient Provisions of the Bill

6.0 The salient provisions of the Tax Appeals Tribunal Bill, N.A.B. No.1 of 2015 are set out hereunder.

Clause 2 – Interpretation

This clause provides for definitions of key words including the definition of the words "associate" and "relative". The purpose of these definitions is to enhance transparency, fairness and address possible conflicts of interest. A relative and an associate of a member of a Tribunal are expected to disclose any interest in any matter before the Tribunal.

Clause 3 - Continuation and renaming of Revenue Appeals Tribunal

This clause continues the existence of the Revenue Appeals Tribunal and renames it as the Tax Appeals Tribunal.

Clause 4 - Composition of the Tribunal

This clause seeks to provide for the appointment and composition of the Tribunal; provide for tenure and vacancy of office; and for the remuneration and allowances of members.

Clause 5 - Functions of the Tribunal

This clause stipulates the functions of the Tribunal which shall include the determination of appeals from decisions of the Commissioner-General under the *Customs and Excise Act, the Income Tax Act, the Property Transfer Tax Act*, the Value Added Tax and other tax legislation; and to hear any other matter prescribed by the Minister by statutory instrument. The functions of the Tribunal have been enhanced from the current position as its mandate has been expanded to hear all other matters that are tax related as shall be prescribed by the Minister.

Clause 6 - Registrar of the Tribunal

This clause seeks to provide for the appointment of the Registrar to the Tribunal. It also spells out the functions of the Registrar. In addition, the clause provides the mode of appeal in an event that a person is aggrieved by a decision of the Registrar.

Clause 7 - Appeal to Tribunal

This clause provides for appeal to the Tribunal for determination on any matter which falls within the jurisdiction of the Tribunal and that any documentation required for filing must be filed in the office of the Registrar.

Clause 8 - Proceedings of the Tribunal

This clause provides for detailed procedures of meetings of the Tribunal. The clause provides for who shall preside over meetings and for the place of meetings. It states that all hearings of the Tribunal shall be deemed to be judicial proceedings for purposes of Chapter XI of the Penal Code.

Clause 9 - Powers of Tribunal with respect to Proceedings

This clause seeks to provide for powers of the Tribunal in relation to the proceedings before it.

Clause 10 - Decision of the Tribunal

This clause provides for a time frame within which a decision of the Tribunal shall be delivered. The decision on any matter shall be rendered within sixty days after the conclusion of the matter.

Clause 11 – Costs

This clause provides that the Tribunal may make orders relating to costs and empowers the Registrar to tax bills of costs. It also provides that a person aggrieved with the decision of the Registrar with regard to taxing bills of costs is entitled to apply, within fourteen days of receipt of the decision to the person presiding over the Tribunal to review the taxation.

Clause 12 - Communication of Decisions of Tribunal

This clause requires the Registrar to ensure decisions of the Tribunal are communicated to the parties concerned within seven days of their being made.

Clause 13 - Frivolous or Vexatious Proceedings

This clause empowers the Tribunal to dismiss any appeal it considers frivolous and order the appellant to pay costs to the respondent.

Clause 14 - Immunity of Members and Staff of Tribunal

This clause grants immunity to members and staff of the Tribunal in respect of actions or things done in good faith in the performance of their functions.

Clause 15 - Appeal to Supreme Court

This clause provides that all appeals from the Tribunal shall lie to the Supreme Court and the Supreme Court may hear and determine any appeal and may refer the matter back to the Tribunal. Currently, appeals from the Tribunal lie to the High Court.

Clause 16 - Expenses of the Tribunal

This clause provides for how expenses and costs of the Tribunal shall be met. The expenses and costs shall be paid out of funds appropriated by Parliament for the performance of the Tribunal's functions under the Act.

Clause 17 - Offences

This clause provides for general offences and penalties. A person who has been summoned to give evidence and refuses to do so commits an offence and a person called to give evidence shall not give false evidence.

Clause 18 - Rules

This clause empowers the Chief Justice to make Rules by statutory instrument in relation to among other things, powers of the Registrar, and the procedure for summoning and compelling witnesses to appear before the Tribunal and procedure and rules of evidence in Tribunal proceedings.

Clause 19 - Regulations

This clause empowers the Minister, by statutory instrument, to issue regulations for the better carrying out of the Act.

Clause 20 - Repeal of Act No 11 of 1998

This clause provides for the repeal of the *Revenue Appeals Tribunal Act, No. 11 of 1998*. The repeal will not affect any appeal pending before the former Tribunal and any right or benefit accruing or liability incurred before the Revenue Appeals Tribunal shall not be lost or extinguished.

Clause 21 - Transitional Provisions

This clause provides for transitional provisions which are consequential to the renaming of the Revenue Appeals Tribunal as the Tax Appeals Tribunal.

Submissions from Stakeholders

7.0 A number of stakeholders submitted to the Bill and the main features of their submissions are discussed hereunder.

- i) The change in name was supported by most stakeholders as it was viewed as more specific and consistent with the jurisdiction of the Tribunal which only dealt with decisions in relation to tax and not any other type of revenue.
- ii) A major concern raised by stakeholders was the silence in the legislation in relation to interlocutory proceedings and grant of ancillary reliefs pending the determination of an appeal. Stakeholders submitted that the new law must be very clear and confer specific powers on the Tribunal to deal with interlocutory issues and grant interim relief to those whose tax assessments are on appeal.
- iii) Another concern raised by stakeholders was the composition of the circuit Tribunal which is biased towards the legal profession as opposed to a balance between legal and accounting expertise.

Committee's Observations and Recommendations

8.0 Your Committee observes that the Bill intends to aptly rename the Revenue Appeals Tribunal as the Tax Appeals Tribunal. Your Committee welcomes this, as renaming the Tribunal will more accurately describe its functions. The current name "Revenue Appeals Tribunal" could be construed to mean appeals arising out of assessments or matters relating to revenue of the Republic of Zambia in general, from any source whatsoever when, in actual fact, the Revenue Appeals Tribunal only deals with appeals on assessments and matters relating to taxes.

Your Committee also observes that when an assessment is made by the Zambia Revenue Authority, the tax has to be paid upon assessment, even if it is under dispute and is appealed to the Tribunal. Depending on the amount under dispute and the time taken to resolve the matter, tax assessments have the potential to financially cripple an individual or a business.

Your Committee further observes that the composition of the circuit Tribunal suggests it can sit to hear matters with only representation from the legal profession. Your Committee finds this situation anomalous because appeals to the Tribunal involve both legal and tax issues.

Arising out of the above, your Committee wishes to make the following specific recommendations outlined below.

- i) Under Clause 2, the definition of “associate” should include the employer of a member.
- ii) Under Clause 2, the definition of the term “circuit” should be included.
- iii) Under Clause 8 a new subsection should give powers to the Chairperson and the Vice-Chairperson to deal with interlocutory applications which may include application for stay of execution and enforcement of tax assessments pending the determination of the appeal before the Tribunal and subject to such terms and conditions that may be deemed to be appropriate.
- iv) Clause 8 (2) should be amended to include: *“A member elected from among themselves shall preside over the sitting of the Tribunal in the absence of the Chairperson or the Vice Chairperson.”*
- v) Clause 8 (5) should be amended to read: *“Three members of the Tribunal shall constitute a circuit Tribunal, which shall include either the Chairperson or the Vice-Chairperson and another member who is a legal practitioner.”*
- vi) Under Clause 8 (7) paragraphs (a) and (b) should be deleted because tax matter is interdisciplinary. All members add value and therefore, the final determination should be by the majority members of the Tribunal.
- vii) Clause 8 (9) uses the words “meeting” or “hearing” whereas the other clauses of the Bill use the word “sitting” or “proceedings”. These words seem to be used interchangeably. There is need for consistency and as such only one word should be used throughout.

In recommending that the House supports the Bill, your Committee wishes to point out that tax assessments must be done fairly and consistently and urges the Zambia Revenue Authority to ensure that in as much as it is collecting revenue for the Treasury, it must apply full impartiality.

Conclusion

9.0 Your Committee wishes to express its gratitude to all stakeholders who appeared before it and tendered both oral and written submissions; and to thank you, Mr Speaker, for affording it an opportunity to scrutinise the Bill. Your Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly and the permanent witnesses from the Ministry of Justice.

We have the Honour to be, Sir, your Committee on Economic Affairs, Energy and Labour mandated to consider the Tax Appeals Tribunal Bill, N.A.B. No.1 of 2015 for the Fourth Session of the Eleventh National Assembly.

Mr K K Hamudulu, MP
(Chairperson)

Ms M Miti MP
(Member)

Mr G G Nkombo, MP
(Member)

Dr S Musokotwane, MP
(Member)

Mr V Lombanya, MP
(Member)

Mr F Mutati, MP
(Member)

Mr N Chilangwa, MP
(Member)

Mr W Simuusa, MP
(Member)

March 2015
LUSAKA

K K Hamudulu, MP
CHAIRPERSON

APPENDIX I

List of National Assembly Officers

Mr S C Kawimbe, Principal Clerk of Committees
Ms M K Sampa, Deputy Principal Clerk of Committees
Mr F Nabulyato, Committee Clerk (SC)
Mr M F Kateshi, Committee Clerk (FC)
Mrs D Mukwanka, Assistant Committee Clerk
Mrs C T Kasonde, Assistant Committee Clerk
Mrs C K Mumba, Assistant Committee Clerk
Mr F J Banda, Intern
Ms F Hamakalu, Typist
Mr R Mumba, Committee Assistant
Mr C Bulaya, Committee Assistant

APPENDIX II

WITNESSES

Ministry of Justice (Permanent Witness)

Mr M Chola, Senior Parliamentary Counsel

Ms O L Sakala, Parliamentary Counsel

Zambia Revenue Authority (ZRA)

Mr B Msiska, Commissioner General

Mr D C Banda, Commissioner of Customs

Ms P C Banda, Commissioner of Domestic Taxes

Ms B N Muyenga, Commissioner of Finance

Ms N M Mudenda, Commissioner Corporate & Board Secretary

Mr E Phiri, Director Research

Ms D B Goramota, Legal Counsel

Mr C Nshitim, Executive Assistant to the Commissioner General

Zambia Institute of Chartered Accounts

Mr B Mwewa, Technician Manager

Mr D Banda, Vice Chairperson - Tax Committee

Mr M Phiri, Member - Tax Committee

Mulenga Mundashi and Company

Mr M M Mundashi, Partner

Ministry of Finance

Mrs P C Kabamba, Permanent Secretary (BEA)

Mr M Masiye, Director of Budget

Ms M Chikuba, Principal Budget Analyst

Finance-Revenue Appeals Tribunal

Mrs C S Mutambo, Registrar

Ms T M Mwale, Administrative Secretary