

**MINISTERIAL STATEMENT ON THE POINT OF ORDER RAISED
BY THE MEMBER OF PARLIAMENT FROM MONZE CENTRAL**

MR. SPEAKER,

Following the debate that ensued on the floor of this house on Wednesday, 30th October, 2013 soon after the Honourable Minister of Mines, Energy and Water Development had delivered his ministerial statement on the Strategic Petroleum Reserve Fund in response to a point of order raised by the Honourable Member for Monze Central, I was requested to issue a statement in order to clarify the issue of the legality of the fund.

Mr. Speaker,

Article 114(1) of the Constitution provides that:

“Subject to the provisions of this Article, taxation shall not be imposed or altered except by or under an Act of Parliament.”

The import of this provision is that no other body apart from Parliament can impose taxation and that such imposition shall be by or under an Act of Parliament. Notwithstanding this provision Mr. Speaker, the Constitution has authorized Parliament to delegate some of its powers of imposing or altering taxes, to other bodies.

Mr. Speaker,

What should be discerned here is that where Parliament has delegated its powers of taxation to another body, the tax so imposed is of limited application and is known by another term, usually as either a levy or user fee. These levies or user fees are for a specific purpose. A distinction therefore ought to be drawn between a tax in the strict sense of the word and a levy or user fee. Mr. Speaker, a user fee is a sum of money paid by the individual for particular services or facilities.

Mr. Speaker, residents pay rates or personal levy to a Council in order to enable the Council to provide services for residents. A tax in the strict sense of the word does not necessarily go toward a specific service or facility that an individual actually uses or benefits from. In Zambia taxes such as the income tax, value added tax, property transfer tax go to central Government and Government uses them for all kinds of expenditure including salaries for civil servants.

In the issue at hand Mr. Speaker, Section 20(2)(c) of the **Energy Regulation Act**, Chapter 436 of the Laws of Zambia provides that:

“The Board [i.e. Energy Regulation Board] may charge and collect fees in respect of programmes, seminars and other services provided by the Board.”

Further Section 21(1) reads:

“Amounts payable as fees under this Act shall be paid to the general revenues of the Republic.”

And sub-section (2) of Section 21 reads as follows:

“Moneys paid to the general revenues under this section shall be applied to the development of the energy sector in Zambia.”

It is with that legislative authority that the strategic Petroleum Reserve Fund was established.

If it is the wish of the House that Government comes up with a specific stand-alone piece of legislation for this fund we would be quite happy to bring such legislation to this house in due course.

Mr. Speaker,

I THANK YOU!