Comments on the 2019 Sales Tax Bill

ZICA

1. INTRODUCTION

1.1 About ZICA

The Zambia Institute of Chartered Accountants (ZICA) is a professional membership body whose function among others is to advise Government on matters of economic and national development.

1.2 The Sales Tax Bill 2019

The Institute received an invitation from the Clerk of the National Assembly to submit to the Budget Committee on the ramifications of the proposed tax legislation on the Sales Tax Bill.

The Sales Tax Bill of 2019 proposes to repeal and replace the Value Added Tax Act of 1995 ("the VAT Act"). Sales tax will be levied on the supply of any taxable goods or services made by a taxable supplier in the course or furtherance of the business that takes place in Zambia. It will also apply on the importation of goods and services as well as the export of goods that do not meet documentation requirements yet to be prescribed. Sales Tax will not apply on goods and services to be outlined in the Exemption List as issued by the Minister of Finance by way of Statutory Instrument. A draft of the list was released on 3 May 2019.

The Bill provides for the registration and de-registration of taxable suppliers; provide for the use of electronic devices, equipment or any other devices; provide for the collection of sales tax.

In this submission, we have commented on the possible advantages and disadvantages of Sales Tax. We have then commented in detail on the Sales Tax Bill of 2019 together with the exemption list that was made available on 3 May 2019. We have set our comments by making general observations about the sales tax regime. We have then made comments on individual Sections of the bill. Finally, we comment on the exemption schedule.

2. SUMMARY OF ADVANTANGES AND DISADVANTAGES OF SALES TAX

As indicated in our previous submission on the Ministers 2019 Budget address, we are of the view that given the challenges faced by the fiscus with respect to the VAT Act and the refunds arising thereof, consideration should have been given to amending the VAT Act rather than repealing it in its entirety. Options for amending the VAT Act would have included exempting key drivers of VAT refunds, including diesel and electricity.

In view of the above, we have set out the various advantages and disadvantages of Sales Tax as proposed in the Sales Tax Bill.

2.1 Advantages of Sales Tax

2.1.1 *Sales Tax may lead to increased local production*

Sales Tax as set out in the Bill will encourage sellers to procure goods and services locally. This is because the Bill sets out a lower rate of tax for locally manufactured goods and locally supplied services.

2.1.2 *Sales Tax may be lead to higher revenue for the fiscus*

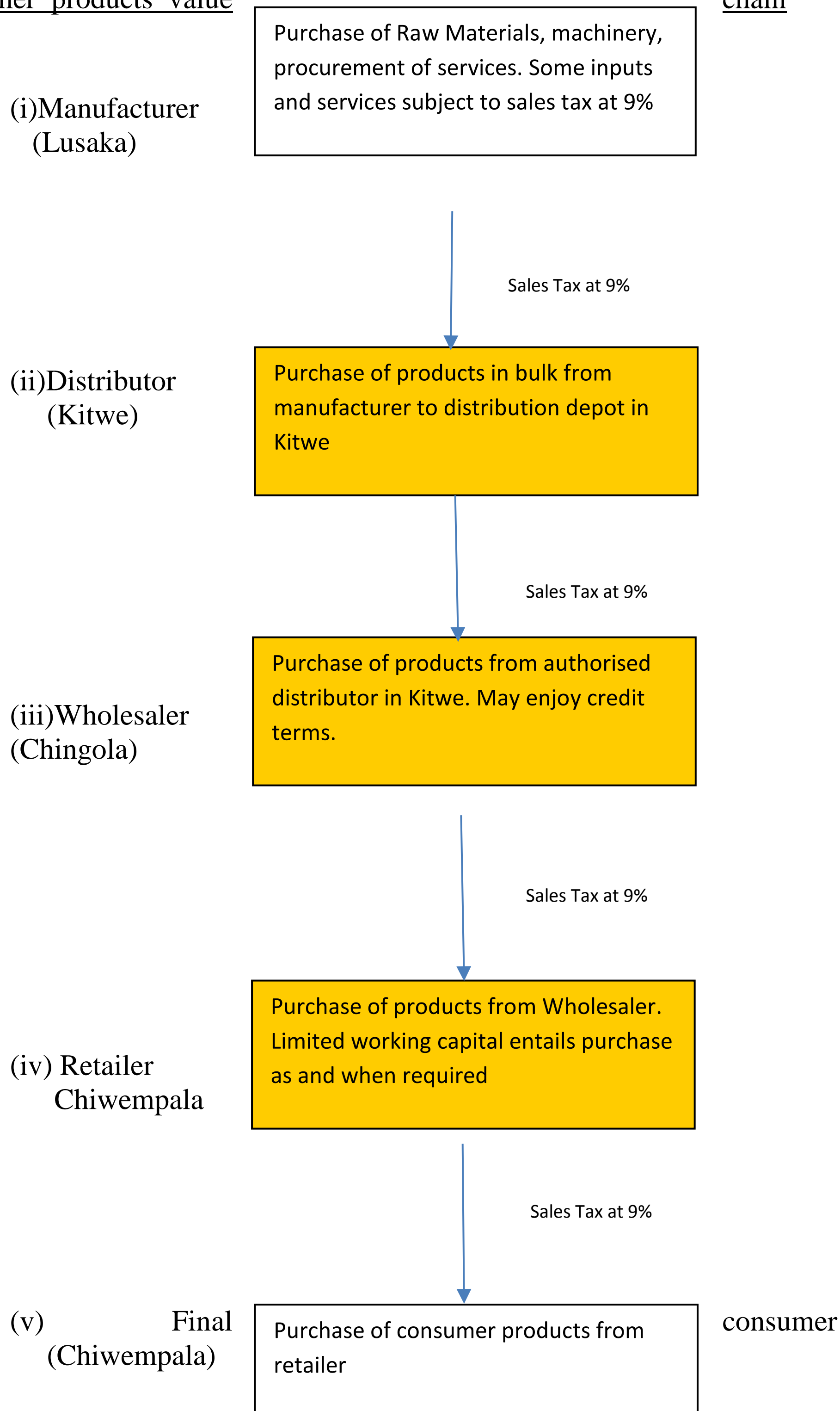
Assuming no change in business and consumer behaviour, by eliminating refunds, Sales tax will lead to higher revenue collection. Funds that would have gone back to business through refunds will now be available to the fiscus.

2.2 Disadvantages of Sales Tax

2.2.1 *Increase the price of goods and services*

Sales tax typically has what is called a cascading effect. The cascading effect is when the prices of goods and services increase due to the lack of a refund or tax credit mechanism in sales tax. A typical example would be a consumer products value chain (Scenario 1) and a mine supply value chain (Scenario 2) illustrated below:

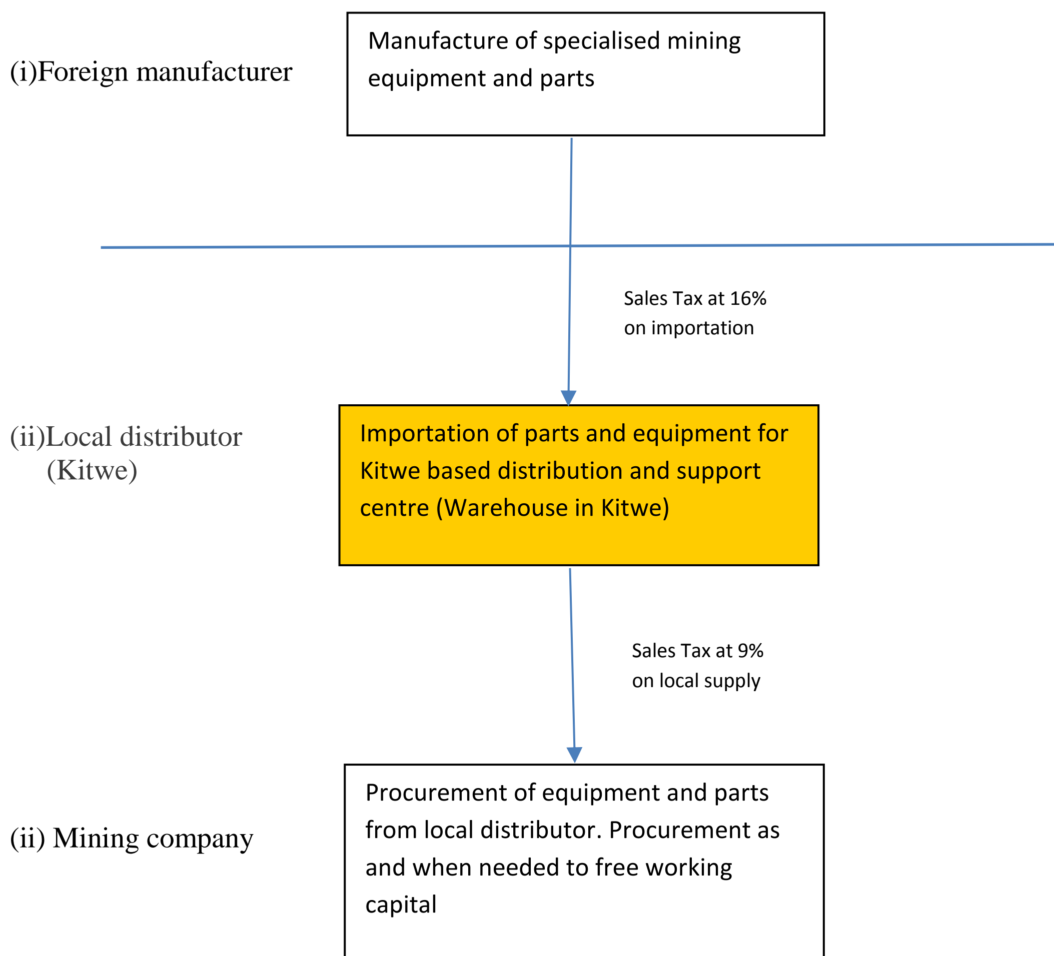
Scenario 1: Locally manufactured consumer products value chain



The scenario demonstrated above is not atypical given the significant transportation costs and limited working capital that retailers and wholesalers have at their disposal.

It follows therefore that even though the manufacturer only adds 9% sales tax on their products, the typical value chain may result in the tax cascading to 36%. At a minimum, even if one ignores the distributor and adopts a typical manufacturer to wholesaler to retailer value chain, the final consumer will be subject to tax of 27%, well in excess of the legislated 9%. This obviously depends on the exemptions available but our review of the exemption schedule indicates that very few products will qualify for exemption. As such, cascading will still have a significant impact on locally produced goods and may very well be inflationary.

Scenario 2: Imported products value chain



The scenario paints a very typical picture in the mining industry. The scenario illustrates the potential tax of 25% that may impact the mining industry.

The implications of both scenarios is the likely change in operating model that companies may adopt to mitigate against the cascading impact of sales tax. In the first scenario, it is likely that the retailers may be forced to buy directly from the manufacturers. This will particularly be the case with large multinational retailers that will have the financial and logistical capacity to import directly or buy from manufacturers. Such a change in operating model will be very detrimental to smaller retailers that will not be able to compete with these larger players. In many instances, distributors and retailers will be priced out of business.

Similarly, in scenario 2, the mining company will be forced to import directly from the manufacturer to avoid the additional 9% local sales tax. Such a change in the supply chain will impact the distributors negatively and would have a very adverse impact on the economy especially on the Copperbelt. We note that suppliers to the mines account for a key component of the economy. Should they be removed from the supply chain, it is likely that there will be job losses and, in the end, the fiscus will collect much reduced amounts. The effect therefore of the significant negative impact on the distributors will be as follows:

i) Large businesses will alter their supply chains and eliminate distributors. It is likely that rather than buying locally, they will import directly. In many instances, import replacement will not be possible as many of the distributors deal in specialised parts and products that cannot be manufactured locally. The result of such changes in supply chains may be loss of jobs in distributor dependent sectors of the economy such as the Copperbelt (mine suppliers).
ii) Ultimately, the loss of distributors will lead to reduced revenue collection. The projected incremental revenue should take this into account. There could possibly be a much higher loss to the fiscus as many distributors employ large numbers of people (PAYE) and in many instances pay income taxes and VAT.

2.2.1 *Possible breach of Zambia's World Trade Organisation (WTO) Obligations*

We note that the bill provides for two rates of tax, 16% for imported goods and 9% for locally manufactured goods. On the face of it, it appears to be a breach of Article

III (National Treatment on Internal Taxation and Regulation) of the General Agreement on Tariffs and Trade (GATT). Article II states that

> *"1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.**
>
> *2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1."*

We draw attention to the provisions of paragraph two and argue that as Sales Tax is an internal tax (as opposed to Customs Duty), the Government is obliged to apply it in a non-discriminatory manner. Therefore, application of a higher Sales Tax rate seems contrary to the principles of Article III, to which Zambia is a signatory.

3. OUR DETAILED COMMENTS ON THE BILL

In this section, we comment on the provisions of the bill individually.

3.1 Section 1 of STB 2019 - Commencement Date

3.1.1 *Observation*

The short title of the Act states that:

"This Act may be cited as Sales Tax Act, 2019 and shall come into operation on the date appointed by the Minster by Statutory Instrument."

3.1.2 Our comment

The Effect of this provision is to give power to the Minister to set the commencement date. However, the Minister has expressed intention to operationalize this Bill on 1 July 2019. The announced commencement date doesn't take into account:

- The Bill is yet to go through the Parliamentary enactment process which could give rise to material changes therein;
- The date of 1 July 2019 doesn't give the taxpayers (and possibly ZRA) sufficient time to prepare. Since this is a new tax system, taxpayers will require ample time to undertake system changes which would be difficult to achieve during the period between the Bill passing in Parliament and 1 July 2019.

3.1.3 Our proposal

We propose that this clause be worded as follows:

> *"This Act may be cited as Sales Tax Act, 2019 and shall come into operation on the date appointed by the Minster by Statutory Instrument provided that such date shall not be earlier than 180 days from the date of Accent."*

The objective of the above proposal is to ensure that the taxpayers are given at least 180 days from the date of accent to familiarise with the Act and prepare for adoption. Changes to systems take a long time and may be expensive to build. We have in mind the Exemption list for example that will require complex rules to be built into any ERP. This will require time. Further, the amendment ensures that there is no undue pressure on Parliament in the event that the enactment process was to delay for whatever reason(s).

3.2 Section 2 - Interpretations

3.2.1 *Observation*

Section 2 sets out various definitions. However, hereunder we focus on those we believe require amendment:

(i) *"Export" has the meaning assigned to the word in the Customs & Excise Act;"*

(ii) *"Supplier" includes:*

(a) A person; or

(b) Any Government ministry, department, spending agency or statutory body."

(iii) *"import" has the meaning assigned to the word in the Customs & Excise Act and includes importation of services;"*

(iv) *"taxable supply" means a supply of goods or services made by a taxable supplier in the course of furtherance of his business that takes place in the Republic, but excludes exempt supply;*

3.2.2 *Our comments*

(i) *Export* - The Customs & Excise Act defines the term "export" to mean *"to take goods or cause goods to be taken out of Zambia, and cognate expressions shall be construed accordingly;".*

- It's clear that this definition is restricted to goods and doesn't include services;
- Since Sales tax is intended to be applied to goods and services, this definition should be amended to include services. As a growing economy that aspires to achieve the ideals of the Fourth Industrial Revolution, services must be given the same prominence as manufacturing. The definition must therefore include services to ensure that any incentive provided to export of goods extends to export of services.

(ii) *Supplier*- this definition includes the term "person" but this has not been defined. For clarity, we suggest that the term "person" be defined as well or reference be provided to other legislation where the term is defined.

(iii) *Import* – Although "import of services" is included, no definition has been provided to ensure clarity. We suggest that this definition should be amended to provide the meaning of "import of services".

(iv) *Taxable Supply* – it appears that exports fall within the scope of taxable supply in the absence of the list of exempt supplies.

3.2.3 ***Our proposal***

To ensure upfront clarity, we would suggest that export of goods and services be exempted expressly and excluded from sales tax instead of leaving it to the discretion of the Minister to include them in the list of exempt supplies. Exports are fundamental to the economy and a matter of such magnitude should not be left to the discretion of the Minister. Even though the VAT Act has been repealed, as with any indirect tax system, the "destination principle" must still apply and non-residents consuming Zambian goods and services must not be subject to Sales tax that is meant to be a domestic tax. The application of the destination principle achieves neutrality in international trade. The total tax paid in relation to a supply is determined by the rules applicable in the jurisdiction of its consumption and therefore all revenue accrues to the jurisdiction where the supply to the final consumer occurs. As such, this should be enshrined in the principal legislation rather than being left to the Minister's discretion.

Accordingly, we propose that the definitions be revised as follows:

(i) "Export" has the following meaning:-

(a) In relation to goods, the meaning assigned to the word in the Customs & Excise Act;

(b) In relation to services means to take or cause to be taken from Zambia to a foreign country for use or consumption outside Zambia;"

(ii) "Supplier" includes:

(a) A person ; or

(b) Any Government ministry, department, spending agency or statutory body.

Provided that term "person" shall include an individual, company, partnership, association of persons, trust, estate, the Government, a foreign government, or a subdivision of the foreign government;"

(iii) "import" has the following meaning:-

(a) In relation to goods, the meaning assigned to the word in the Customs & Excise Act;

(b) In relation to services means a supply of services that is made by a supplier who is not resident in Zambia or carries on business outside Zambia to a recipient who is a resident of Zambia to the extent that such services are utilized or consumed in Zambia;"

(iv) "taxable supply" means a supply, <u>but excluding export</u>, of goods or services made by a taxable supplier in the course of furtherance of his business that takes place in the Republic, but excludes exempt supply;

3.3 **Section 10 – Rate of Tax**

3.3.1 **Observation**

The Bill sets two rates for sales tax as follows:

"10. (1) A tax on a taxable supply shall be charged on the taxable value at the rate of:-

(a)Nine percent in case of goods and services supplied within the Republic; and

(b)Sixteen percent in the case of imported goods and services.

(2) Despite subsection (1), the Minister may, by Statutory Instrument, prescribe a lower rate of tax in respect of a taxable supply. "

3.3.2 ***Our comments***

Setting a higher discriminatory rate on imports will have adverse ramifications given that majority of the taxable supplies made in Zambia rely on imported raw materials or inputs.

We note from our perusal of the exemption list that a number of inputs used in manufacturing have been omitted. Unless an exemption is provided to all importers of goods and services for making other taxable supplies, the effect of the dual rates is that the imported inputs will be taxed at 16% while the final product therefrom will be taxed at 9%. As the input sales tax of 16% is not claimable, this will result into increased cost to the taxable supplier. Further, we have noted the possible breach of Article II of GATT in 2.2.1.

We also note that rates being proposed are too high and will lead to increased prices and may be inflationary given the cascading effect. Further, the Bill empowers the Minister to lower the rates above by way of Statutory Instrument. We are of the view that the authority given to the Minister on Sales Tax should rather be exercised in general through an amendment of the Act. The rate of tax is too significant for Parliament to delegate to the Minister, even assuming the best of intentions.

3.3.3 ***Our proposal***

Our proposal is to have one rate applicable to all supplies. However, in the event the intention is to encourage domestic sourcing and procurement, then the provision should be amended to ensure clarity and eliminate unintended punitive effect. The higher rate should be applied to selected products. We propose that this clause be revised to the following:

"10. (1) A tax on a taxable supply shall be charged on the taxable value at the rate of:-

(a)Nine percent in case of goods and services supplied within the Republic or imported into the Republic but subject to the provisions of Section 10(1)(b);

(b)<u>The Minister may, by Statutory Instrument, designate certain imported goods and services as taxable at the rate of Sixteen percent.</u>

In the event that this is not accepted, we propose a reduced rate of tax to take into account the cascading effect. A rate higher than 5% will ultimately result in effective tax in excess of 20% depending on the value chain.

3.4 Section 11 – Computation of the taxable value of goods and services

3.4.1 ***Observation***

The provision sets the rules in respect of the value of a supply.

3.4.2 ***Our Comment***

However, Sections 11(a), (b) and (c) do not clearly differentiate between rules applicable to transactions by related and unrelated parties. Sections 11(a), (b), (c) and (d) do not make clear distinction between the value of a supply where the transaction is between related and unrelated parties. The proposal also does not address the value of services provided between related parties.

We also note that the rules set out in this section do not address the value of supplies for goods sold under hire purchase agreements.

3.4.3 ***Our proposal***

We propose that the above provisions be amended to set the general principles of valuation where the parties are related or unrelated. Further, a definition of related parties should be introduced since none is contained in Section 2.

We propose that this clause be revised to the following:

"11 (1) Subject to this Act, the taxable value of a supply, including a supply of imported services, shall be—

(a) the consideration for the supply; or

(b) if the supplier and recipient are related, the open market value of the supply.

(2) Subject to subsections (3) to (5), the consideration for a supply, including a supply of imported services, shall be the total of—

(a) the amount in money paid or payable, directly or indirectly, by any person, for the supply; or

(b) the open market value at the time of the supply of an amount in kind paid or payable, directly or indirectly, by any person, for the supply; and

(c) any taxes, duties, levies, fees, and charges (other than sales tax) paid or payable on, or by reason of the supply,

reduced by any discounts or rebates allowed and accounted for at the time of the supply.

(3) The consideration for a supply shall include the amount charged for—

(a) any wrapper, package, box, bottle, or other container in which goods are supplied;

(b) any other goods contained in or attached to the wrapper, package, box, bottle or other container referred to in paragraph (a); or

(c) any liability that the purchaser has to pay to the vendor by reason of or in respect of the supply in addition to the amount charged as price.

(4) In calculating the value of any services for the purposes of subsection (1), there shall be included any incidental costs incurred by the supplier of the services in the course of making the supply to the client:

Provided that, if the Commissioner is satisfied that the supplier has merely made a disbursement to a third party as an agent of his client, then such disbursement shall be excluded from the taxable value.

(5) The consideration for a supply shall not include—

(a) in the case of a supply of goods under a hire purchase agreement any financial charge payable in relation to a supply of credit under the agreement; or

(b) any interest incurred for the late payment of the consideration for the supply.

(6) For the purposes of this Act, a person is related to another person if—

(a) either person participates, directly or indirectly, in the management, control or the capital of the business of the other;

(b) a third person participates, directly or indirectly, in the management, control or capital of the business of both; or

(c) an individual who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to

an individual who participates in the management, control or capital of the business of the other. "

3.5 **Section 13(3) – Place of supply of services**

3.5.1 ***Observation***

This provision sets rules in respect of place of supply for services as follows:

"13.(3) The place of supply is the place where the service is performed, undertaken or utilised wholly or partly in the Republic if the supplier of the service:-

(a) Does not have a place of business in the Republic; or

(b) Has a place of business in the Republic and elsewhere but the place of business associated with the supply of the service in question is not in the Republic."

3.5.2 ***Our Comment***

The inclusion of the term "utilized" in this provision creates confusion as it triggers overlap with imported services. We note that where imported services are wholly performed outside Zambia but are used or consumed in Zambia, they may by virtue of this provision constitute locally supplied services under Section 13 merely because they are utilised in Zambia. The effect of this is that we may have situations where the both the suppliers of such services are being compelled to account for sales tax, as well as the importers, hence resulting into double taxation.

3.5.3 ***Our proposal***

We propose that this clause be revised to exclude the term "utilised" as follows: -

"13. (3) The place of supply is the place where the service is performed or undertaken wholly or partly in the Republic if the supplier of the service:-

(a) *Does not have a place of business in the Republic; or*

(b) *Has a place of business in the Republic and elsewhere but the place of business associated with the supply of the service in question is not in the Republic."*

3.6 Section 13(4) – Place of supply of services

3.6.1 ***Observation***

This provision sets rules in respect of place of supply for services of a digital and electronic nature as follows:

"13. (4) The place of supply of radio, television, telephone or other information and communication technology services, where the service or signal originates outside the Republic, shall be treated as being supplied at the place where the recipient receives the signal or service, except that a consideration is payable for receiving the signal or service."

3.6.2 ***Our Comment***

The object of this provision is to deem certain imported services to be locally supplied and effectively capture the suppliers into the sales tax net. This is understandable in view of the challenge posed by digital services where it is often difficult to determine the place of supply using normal rules. However, this provision doesn't expressly preclude these services from the scope of imported services, hence creating a potential for double taxation.

3.6.3 ***Our proposal***

We propose a new clause be introduced as follows: -

"13.(5) The services falling within the scope of Section 13(4) shall not constitute imported services for the purpose of Section 5(b) but shall instead be treated as taxable supplies specified in Section 5(a),"

3.7 Section 16 – Exemptions

3.7.1 Observation

Section 16 sets out the exemptions applicable for Sales as follows.

"16. The Minister, may by statutory instrument exempt from tax:-

(a) Capital goods;

(b) Inputs;

(c) Designated basic and essential goods and services;

(d) Designated supplies to privileged persons;

(e) Exports."

3.7.2 Our comment

While it is important to give the Minster the power to give exemptions from tax, the provision is broad, unclear and may create ambiguity because the terms referred to therein are not defined. It is also not clear whether the exemptions are automatic, or the taxpayer must petition the Minster to obtain the exemption.

The draft exemption schedule that was released by the ZRA does not indicate if there will be a form of verification required before taxpayers can consider their inputs or products exempt. It is not clear if taxpayers are merely required to self-assess and determine their own qualification for the exemptions. If not, it is not clear what process must be followed.

We have also perused the Exemption list and noted many omissions. It is clear that an exemption list is not an adequate mechanism to deal with the cascading effect of sales tax on inputs.

3.7.3 ***Our proposal***

To ensure clarity and certainty, our proposal is that the exemption with respect to capital goods, inputs and exports be expressly written into the law but the Minister granted power to make exclusions if necessary.

To this end, we propose that this clause be revised to the following -

"16. (1) For the purpose of Section 5, the following supplies shall be exempt from tax:-

(a) Inputs;

(b) Designated capital goods set out in Schedule I;

(c) Designated basic and essential goods and services set out in Schedule I;

(d) Designated supplies to privileged persons set out in Schedule I;

(e) Exports."

(2) Notwithstanding the provisions of Section 16(1) above, the Minister, may by statutory instrument exempt from tax any other supplies not referred to above or vary the list of supplies referred to above."

You will note that we also propose the introduction of Schedule I to set out the designated capital goods, qualifying privileged persons, basic & essential supplies

3.8 Section 20(4) – Assessment of tax

3.8.1 *Observation*

Section 20(4) deals with assessments that are voided or become moot by passage of time as states as follows:

"20 (4) Despite the provisions of this section, an assessment based on the incorrectness or inadequacy of a return is void if not made within two years after the Commissioner General first had reason to believe it was inadequate or incorrect

3.8.2 *Our Comment*

This provision is commendable as it is aimed at providing certainty to taxpayers in the face of assessments that could possibly be raised for an indeterminate period after the return is lodged. However, while we appreciate the effort to restrict the period of assessment to two years, this clause appears to be, narrow, ambiguous and open to misapplication. In practice, there are various reasons (including inaccuracy and inadequacy) why the Commissioner General issues assessments. However, this provision is restricted to only two reasons without stating what happens in all the other instances.

Further, it is not clear when the two year period should start running as it is not stated how the taxpayer would know when the Commissioner General "*first had reason to believe"* the return filed was inadequate or incorrect. Such a determination would be entirely subjective and the taxpayer would have no way of knowing when the Commissioner has reason to believe an error exists. Even relying on a reasonableness test, no two taxpayers will agree as to what a reasonable period is.

3.8.2 *Our proposal*

We propose that a general restriction be imposed on the time limit for raising assessments. This will bring certainty with respect to audits and assessments thereof. Accordingly, we propose that this clause be revised to the following -

"20(4) Despite the provisions of this section, the Commissioner General may issue an assessment—

(a) in the case of gross or wilful neglect, evasion, or fraud by, or on behalf of, the taxpayer, at any time; or

(b) in any other case, within six years from the date that the taxpayer submitted the return to which the assessment relates."

3.9 Section 21(2) – Accounts and records

3.9.1 *Observation*

This provision specifies the time for maintaining accounts and records as follows:

"21.(2) A record kept under this subsection shall be :-

(a) Maintained for a period of ten years from the latest date to which the record relates;."

3.9.2 *Our comment*

Whilst we acknowledge the recent changes to transfer pricing legislation (in the Income Tax Act) requiring maintenance of records for 10 years, it is not clear if this is necessary for sales Tax purposes. Whilst it may be argued that transfer pricing is highly specialized and may require lengthy audits, the same cannot be said about Sales Tax. A lengthy period such as 10 years brings challenges that include:

(a) Many companies will change systems and personnel over a period of 10 years. In the interest of the environment and efficiency, many companies have migrated to electronic records (this is acknowledged by the ZRA hence the introduction of fiscal devices). Further, many operating systems such as MS Windows versions cannot feasibly be supported up to 10 years. As such, many businesses may find themselves with records that they cannot access.

(b) The timeframe for maintain records must be reasonable to provide certainty to taxpayers. Certainty is a key feature of any good tax system. This includes providing certainty to companies that may have acquired other companies. No party wants to engage in a merger or acquisition and provide an indemnity for 10 years. The parties would never move on from that transaction.

3.9.3 *Our proposal*

To cure this issue, we propose that this clause be revised to the following: -

"21.(2) A record kept under this subsection shall be :-

Maintained for a period of six years from the latest date to which the record relates;."

3.10 Section 22 – Registration & de-registration of taxable supplier

3.10.1 ***Observation***

Section 22 sets out the criteria for registration [Section 22(1)-(3)] and deregistration [Section 22(6)-(7)].

3.10.2 ***Our Comments***

The key criteria for qualifying for registration appears to be "carrying on business" in the Republic. Given that the fundamental criteria for sales tax registration is "carrying on business in the Republic", it implies that the suppliers of taxable supplies falling within the scope of Section 13(3) or 13(4) in terms of which services are merely utilised in the Republic would not be required to register for sales tax since the said suppliers do not carry on business in Zambia. Instead, their supplies are deemed to be made in Zambia. Further, no other mechanism has been provided in the Bill through which the said suppliers can account for sales tax on their supplies deemed locally supplied.

In setting up a sales tax compliance mechanism for such suppliers, it is critical to take cognisance of the fact that these suppliers are all non-residents who would thus not be able to fully implement the sales tax compliance process as if they were operating locally. Therefore, our proposal is to establish a simplified sales tax regime specifically for the Section 13(3) and 13(4) suppliers.

3.10.3 ***Our proposal***

To address the issues highlighted here, we propose that:-

- reference to "*carrying on business in the Republic*" found in Section 22(1) be substituted with *"makes or is deemed to be making taxable supplies in the Republic"*
- A new Section 22(8) be introduced to provide the following:

  "22. (8) Notwithstanding the provisions of Section 22(1), with respect to the suppliers falling within the scope of Section 13(4), the Minister shall, by Administrative Rule, establish a simplified regime sales tax registration, compliance and de-registration regime."

3.11 SCHEDULE - Transitional Provisions

3.11.1 *Observation*

The Schedule to the Act sets out the various transitional rules as the VAT Act is repealed. We summarise below the transitional provisions included in the Sales Tax Bill:

- A supplier registered under the VAT Act and who meets the registration requirement under the Bill will be required to register for Sales Tax
- Accrued VAT credits will be refundable to taxpayers. However, prior to payment of the refunds the ZRA may offset any refundable amounts against any outstanding tax liabilities that the taxpayer may have.
- Records required to be kept under the VAT Act for a specified period shall continue to be kept as if prescribed by the Bill for the unexpired residue of the period.
- The ZRA can still conduct VAT audits and assessments following the repeal of the VAT Act for periods in which the VAT Act was applicable.
- The VAT Act is repealed.

3.11.2 *Our comment*

The Bill does not set out a time limit within which the ZRA must complete VAT audits and pay refunds.

We also note that it is not clear what will happen with taxpayers who may receive input tax invoices beyond the month in which VAT is repealed. Currently, taxpayers have a period of three months within which to claim their VAT invoices. This is necessary for various reasons, including common delays in receiving invoices.

We also note that a number of challenges that may arise with businesses are not provided for in the transitional rules. These include instances where the following transactions have to be accounted for after the submission of the final return:

- Treatment of refunds for items bought under the VAT Act and returned under the proposed Act
- Treatment of lay-bye agreements where the time of supply is the date the final payment is made and the final instalment is made after the repeal of the VAT Act.

- Treatment of bad debts for amounts invoiced under the VAT Act on which VAT would have been paid at 16% and written under the proposed Act

3.11.3 ***Our proposal***

A period within which VAT audits must be completed and refunds paid must be set out in the Act. An indefinitely open period will lead to refunds being unpaid for an inordinate period. This has been the case with many farmers who were moved to the exemption schedule and have never been refunded outstanding VAT amounts.

We also propose that a three month period be allowed in the proposed Bill for submission of final returns or amendment of such returns to allow the claim of delayed invoices.

We also propose that the proposed regulations deal with transactions such as the ones itemised above where there could be a mismatch as follows:

- Refunds for items bought under the VAT Act and returned under the proposed Act must be made at the retail price plus the applicable Sales Tax rate. Corresponding deduction to the seller for the credit note must be at the Sales Tax rate.
- Lay-bye agreements where the time of supply is the date the final payment is made must be concluded at the Sales Tax rate.
- Treatment of bad debts for amounts invoiced under the VAT Act on which VAT would have been paid at 16% and written under the proposed Act
- Credit for bad debts written off must be made at the VAT rate as the retailer would have made payment at the VAT rate.

4 CONCLUSION

The Institute is of the view that Government needs to re-engage the major stakeholders as the Sales Tax Bill has a number of deficiencies in its current form and a competent person will find it difficult to advise on its implementation. This is because certain key information is missing in the Bill as earlier alluded to.

It is our considered view that the proposed measures have the unintended consequence of being not only drastic but highly punitive and bound to hurt the economy. While the motive to increase tax collection from the mining sector is welcome, we strongly recommend a gradual and phased approach to changes to the tax regime to enable the affected parties to prepare and plan. We think that what appear to be a harsh tax regime, based upon our analysis, will negatively affect the much needed long-term investment, job creation and investor confidence in the country.