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EDITORIAL

THE LAWS OF THE CONSTITUTION

Freedom and independence are the perennial pursuits of the human being. Throughout the long history of human society people have ceaselessly struggled to free themselves from the fetters of nature and society. All the struggles that constitute the great epics of the history of mankind have been struggles to defend and to realise freedom. The history of the Zimbabwean people until recently had been one intense struggle to realise independence and freedom from foreign domination and racist subjugation. Our recent struggles have not only increased in real terms our personal freedom and the freedoms available to the masses of the people, but they have also enriched our spiritual and cultural love for the dignity and freedom of men. It is against this, our historical inheritance of love for the dignity and freedom of man, that this issue of the *Zimbabwe Law Review* and the scientific researches behind it have been put together. In other words, this special issue of the *Zimbabwe Law Review* yet again evokes and stimulates our desire as a nation to build a truly free and democratic society.

Lawyers are not and should not be mere technicians of the law. The Constitution is the fundamental thesis expressing the principles upon which our nation, or any nation, is built. The Constitution expresses all our values and therefore constitutes a measure of the level of our freedom and humanity. Its criticism is the criticism of the standards of its values. Lawyers play their part in making and advising on legal aspects of both the substance and the technical standards of constitutions. In order to do a better job of this or to express the democratic yearnings of the people, our lawyers must possess a high level of critical values to assist society as a whole to create more and better freedoms for the well-being and property of the people. These freedoms to be enshrined in the Constitution of the land.

We hope that in this issue, as Zimbabwe prepares to make its own new Constitution after 1990, that the researches and critical visions on constitutionalism made here by the various authors from various scientific and ideological vantage points will assist our people and our leaders in charting and further broadening the road of freedom and independence in the drafting of our own new and sovereign Zimbabwe Constitution as we march forward towards the year 2000.

Issue Editors

UNDERSTANDING THE BUDGET PROCESS & SHOCKING INSIGHTS INTO THE "NO-SHOCKS" BUDGET, 1986*

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INTRODUCTION

My contribution to this tax seminar will be on : "Understanding the Budget Process and Shocking Insights Into the "Non-Shock." Budget, 1986" — a subject which many of you think should be the preserve of economists, and into which lawyers like myself should fear to tread. However, I am extremely comfortable with the subject in relation to my training as a lawyer, because my understanding of law is that legal rules and norms are expressions of social and economic relations which the law expresses. Just as a good medical doctor can only be one who understands well the functions of the human body and not only the use of scalpels and prescriptions that operate on it, so the lawyer must understand the economic and social functions of the body politic for which laws are prescribed.

The Budget Process

The State budget can be defined as "a balanced estimate, drawn up annually, of incomes and expenditures controlled by the organs of state authority." *Where* the state draws the income form, *how* it spends it and what goals it seeks to achieve through the budget — in other words, *the sources and composition* of income, the *expenditures* and the role of the state budget — all depend on the socio-economic and political organisation of the state in question.

If one examines budget statements one realises that their greater part consists of an examination of the economy, i.e the production of material wealth. It is this material wealth, or national income which becomes the object of budgetary appropriations. But *before* this takes place the national income would have been *divided*, under capitalism, between the owners of capital and the producers, the wage-labourers. Budgetary appropriations therefore become a *redivision* of the national income drawing different proportions from the capitalists' income (profits, interests, dividends), from wage income and from the incomes of other classes e.g. peasants. On the *expenditure* side the budget determines how much has to be spent supporting the capitalists, alleviating the lot of the poor condemned to starvation by capitalist relations in order to facilitate further capitalist exploitation, etc.

The budget process therefore covers all the stages from the initial division of the national income, its redivision and the expenditure of state revenues and this

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process goes on year after year. If in the initial division the owners of capital succeed to get away with paying very low wages, they will make bigger profits and, *ceteris paribus*, will have bigger after-tax profits after the redivision. If the same trend continues they would have even greater state revenues committed to supporting them, e.g. by subsidising their exports, granting them tax exemptions, capital allowances, etc. The budget is therefore a fertile field for perennial class war. In the 1986 Budget we find that the owners of capital were happy about the meagre wage increases (initial division of the national income announced earlier in the year (10 percent to low-paid and tapering off to 3 percent for highly-paid employees) and happy about the budgetary redivision and expenditures.

On the other side the workers, through their national organisation, the Z.C.T.U. (Zimbabwe Congress of Trade Unions) complained bitterly that the wage increases were too low, were not clear about the full implications of the budget statement but made strong representations that subsidies on basic commodities be re-introduced and price increases generally be checked. This is how class was fought, lost and won so far this year.

Before every budget we read in the papers that the Minister of finance is looking for "ways and means" of raising revenue, sometimes that "there is no room for manouvre". The Minister in actual fact would be trying to balance the burden of taxation among the various classes. Historically, it is a fact that every ruling class, and, under capitalism, the bourgeoisie, has loaded the greater part of the burden of taxation onto the oppressed classes. Under capitalism the bourgeoisie pushes the burden of taxation onto the working people until, in relation to the working class, the minimum wage-level is reached after which any further tax on the workers becomes a tax on profits. At that point the capitalists themselves have to bear the burden of taxation.

However, the capitalists do not bear this burden equally as capitalists — an *intra* — capitalists shifting of the burden of taxation takes place based on the relative strengths of various forms of capital operative in a given capitalist environment: international finance capital, national capital, industrial, commercial and bank capital. In the budget process, owners of these various forms of capital may seek favourable tax treatment for themselves and capitalists with similar sizes of capital irrespective of its nature may also find that their tax interests coincide. This is extremely important because taxplanning and tax — advise should not consist merely of looking for loopholes in fiscal laws. That old breed of tax advisors is a dying species. It has no future in the modern capitalist taxation environment. In the United States for example it is the lobbying and the extraction of tax concessions that provides the bread and butter of tax lawyers and experts. Having won concessions in the fiscal Act, what remains is to realise those concessions in the organization of one's financial affairs — thus organizing them secure in the knowledge that the tax benefits will indeed accrue.

In order to be an effective tax lawyer or expert, one needs to understand the budget process clearly as outlined above. For those whose profession is to advise the propertied class on tax issues, which most tax lawyers and experts are under

capitalism, the important thing to understand is that the interests of various capitalists are not homogeneous and then identify the common interests of various capitalists the common interests of given groups of capitalists and to seek to have them reflected in the budget and fiscal law. In order to succeed in doing this the expert must be able to make a strong case to Government, the interest group he/she represents must be in a position to offer real gains to Government or as Prime Minister R. G. Mugabe put it in a speech to leading bankers and industrialists in New York (October 11, 1984):

“My Government has always expressed its preparedness to enter into special agreements and guarantees with relevant parties on this side of the world *as long as gains are mutually significant*” (my emphasis)

Not only would gains be mutually significant between Government and the group of capitalists concerned, but *vis a vis* other capitalists, this group's position would be that much stronger. This is the logic of capitalist competition which any tax lawyer or expert worth his salt ought to understand and utilize. I will discuss below various forms of capital and the tax interests they can pursue:

1. *International Capital*:

International capital is prepared to identify and operate in line with host Government policy and which therefore can on that basis and in exchange for greater commitment to that policy seek favourable tax treatment. The clearest example in the 1986 Budget statement is the tax-free interest concession that was obtained by building societies. In this regard the Financial Gazette of June 20, 1986 Commented:

“This is the first time in the history of the building society movement in this country that any rate has been recognised by Government as qualifying for interest-free status.” p. 1.

As you can see the negotiations and lobbying was done way before the Budget statement of July 31, 1986. The building societies promised in exchange to commit 25% of the new money thus created to low cost housing schemes. On the other hand the appeal for a reduction in excise duty by African Distillers was not so successful (The Sunday Mail, July 6, 1986 p. 10) Further afield an example of successful co-operation between international capital and a host Government is Gulf oil which is working well with the Government of the People's Republic of Angola.

2. *National Capital vs. International Capital*

In most cases the interests of national capital do not coincide with those of international finance capital especially that branch of the latter which does not want to co-operate with the host Government. In such and other cases, owners of national capital can make a strong case for favourable tax treatment *vis à vis* international finance capital especially given that the latter may already have a

tax advantage in the form of foreign Investment incentives. Much can be made of the very fact of the former's being wholly locally owned and favourably disposed towards Government policy e.g. co-operative in areas of import substitution, etc. At any rate there is hardly ever any love lost between national and foreign capital. The relationship is that of domination and subordination, and currently in Zimbabwe foreign capital dominates and fiercely resists any intrusion by national capital into its pride of place. The recent case of Power Implements and Trailers (Pvt) Ltd, which is being sued by a combination of mostly foreign companies on allegations of patents infringements illustrates the point (See. Financial Gazette Sept. 5, 1986 p. 2). National capital needs support from Government and this support can take the form of tax concessions provided of course the trade-off between national capital and Government is "mutually significant."

3. *Commercial, Industrial, Bank Capital:*

These forms of capital, where they exist separately and in the short-run may be affected differently by various tax strategies. A high level of sales tax excise duty, etc immediately affects commercial capital adversely, and those industries that sell directly to consumers [e.g. African Distillers case quoted above; clothing industries]. But industries that manufacture products that are utilized by other industries to produce goods are usually not so directly affected immediately. Similarly a high tax on wages where the wages are already at their minimum and thus no further can be borne by workers would affect more adversely those industries that are labour intensive than those that are capital intensive.

4. Emergent Businessmen/women can seek tax concessions as such in exchange with more commitment and a greater input into Government policy and projects needing their participation.

The 1986 Budget

Firstly like all the previous budgets, and budgets under capitalism in general, the "manouvring" that took place before the Budget Statement, was an attempt to find ways and means of shifting further the burden of taxation to the working people. This is why the favourite areas for the imposition of extra taxes are in the sphere of indirect taxation; sales tax, excise duty. These affect the working people most. The poorest of them are hardest hit, but all working people are affected, the workers, the peasants and even the petty-bourgeoisie.

The 1986 budget was a great shock to the workers and peasants in Zimbabwe. While the Minister of Finance pointed out that there is now a near total exemption of all basic foodstuffs from sales tax, he omitted to mention in the same vein that all subsidies on basic foodstuffs have been totally removed.

The petty-bourgeoisie, although their position is much better than that of the workers and peasants, are hit very hard by taxation, so that however much they

may aspire to join the capitalist class, heavy taxation ensures that they are reproduced as bribed workers; spokesmen/women, tax advisors and small businessmen/women in the capitalist system. The only real concession which the petty-bourgeoisie got in the 1986 Budget was that it can now buy fresh, frozen and dehydrated vegetables without paying sales tax! The Financial Gazette (August 8, 1986) commented: "Elimination of sales tax on fresh, frozen and dehydrated vegetables will be of more benefit to higher paid Zimbabweans, for lower paid workers tend to buy from markets or street sellers, where sales tax is not levied." p. 4.

While on the face of it the petty-bourgeoisie may imagine that it would be able to invest in the tax-free building societies' class "c" permanent shares, it is clear that it is only the really established petty-bourgeoisie who can invest \$75 000 for two years before it starts earning a 9% tax-free interest thereafter. That group of the petty-bourgeoisie which is bobbing between petit-bourgeoisification and proletarianisation may well forget about this 9 percent tax-free interest. It is, however, the capitalists, especially those who use their capital for speculative reasons who would be able to make a killing out of this provision. They will be in a position to buy the \$75 000 worth of shares as individuals and also form several companies and/or utilize their existing companies to purchase their \$35 000 worth of shares.

The other shocking aspect of the 1986 budget is its whole lack of foresight, direction and imagination. Especially disappointing and shocking was the undermining of the Five-Year National Development Plan, the country's economic blue-print, lack of provision and forward-planning for "the economic effects of the confrontation with [racist] South Africa that has already begun and the effects of sanctions and counter sanctions on the country's ability to trade" [financial Gazette, Comment, August 8, 1986 p. 4]

The budget deficit of a record \$1 billion plus is shocking, to put it mildly. This mammoth deficit has already necessitated anti-inflationary measures including tightening of consumer credit which will result in the wiping out of whatever benefits had inured to commerce due to the 21/2 percent reduction in general sales tax. Although some forms of capital, especially speculative capital, do benefit from financing the budget deficit, industrial and commercial capital suffer from these run-away deficits. In the present conditions of Zimbabwe where debt-servicing is the third greatest budget guzzler [another shock in the 1986 budget] after defence and education, the best way out of this deficit is for the Government to increase its participation in the productive sectors of the economy, and thus be able to finance the budget increasingly from these sources.

Running through the rest of the Budget Statement, 1986, one finds that the threshold for the lower level Employee Tax was raised from \$100 a month or more to \$120 a month or more. If the threshold had not been raised, the retention of the tax would have imposed a tax burden on those industries employing such workers as their wages would have had to be raised since it is very difficult to tax workers below the minimum survival wage.

The blanket concessions to industry contained in the budget at best will not work and at worst will benefit the wrong people altogether. The least that should be done is to carry out a budget expenditure analysis to determine how much the fiscus is giving away in concessions and with each budget a review should be made to see whether the sacrifice was justified.

The last items I would like to address are the question of separate taxation for married people and the rates of taxation.

The blanket separate taxation for married people that was endorsed in the Budget Statement, 1986 was ill-advised and would open up loopholes for tax avoidance. One would have thought that since the issue was considered for such a long time a more well-thought-out system would have been adopted. Separate taxation should have been adopted for earned income only and unearned income should have been taxed in the hands of the higher-earner in the marriage and thus avoid problems of lower-earners being used as tax-shelters.

The rates of taxation should have been reviewed. In the "manouvres", the Minister of Finance should have addressed himself to some tax bases which have too low a rate of taxation e.g. estate duty tax (only up to 20%), capital gains tax (30%), sales taxation of luxuries (20%) with a view to increasing some of these rates.

The income tax rates should have got the Minister of Finance's greatest attention. There is no justification for taxing a person earning \$17 000 at 45% and someone making one million dollars a year at the same rate. Even in developed capitalist countries the rates of taxation rise to 60 — 70%. The present rates that escalate (surcharges aside) up to 45% and thereafter the rate becomes flat hit the petty-bourgeoisie hard, ensuring that they are perennially reproduced as such or join the ranks of the proletariat. [And by the way in the 1986 Budget sales tax on wine, spirits, cider and perry (to which the petty-bourgeoisie are addicted) were incorporated into excise duty, thus placing them on the cutting block as fertile ground for budget "manouvres" like cigarettes, liquor products, etc.

In conclusion I would like to point out that since the decision in *C.O.T. v Ferera* (1976) 38 SATC 66, fresh ideas on tax planning and tax advice have been long in coming from tax lawyers and experts. I hope this address will generate fresh ideas on the question of taxes and taxation that make a marked departure from the narrow traditional obsession with individual tax breaks, and begin to appreciate the individual's tax benefits from that individual's class or social group position and doing all this within the context of the national economy.



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