

**BENCHMARKING TAX PRACTITIONER REGULATION IN ZIMBABWE AND SOUTH  
AFRICA AGAINST GERMAN BEST PRACTICE**

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## ABSTRACT

The regulation of professionals who offer any type of service to the public is a critical intervention towards protecting the public from unscrupulous behaviour. The regulation of tax practitioners is no exception as it is a critical element in protecting the taxpaying public and the *fiscus* against improper conduct by tax practitioners, as well as preventing revenue leakages due to inaccurate or incorrect declarations made by taxpayers. A major contributor of regulation would be strengthening or improving compliance. This study analyses the frameworks that regulate tax practitioners in Zimbabwe and South Africa and evaluates them against best practice as is found in Germany. Germany has been regulating tax practitioners for 50 years and can rightly be recognised as best practice. This is achieved by reviewing and evaluating institutional and legislative mechanisms in the regulatory frameworks adopted in the three countries in order to identify possible areas of improvement in Zimbabwe and South Africa. The research is situated in the interpretative paradigm and the research methodology is qualitative in nature, involving the critical review of documentary data.

The study concludes that both South Africa and Zimbabwe have room to improve in certain areas and makes recommendations aimed at strengthening their respective regulatory frameworks. Both South Africa and Zimbabwe could promulgate a law that deals exclusively with the regulation of tax practitioners, and institute an independent body that deals exclusively with tax practitioner related issues. In Zimbabwe, the Public Accountants and Auditors' Board should be replaced with a body dedicated to serving tax practitioners. Informing the taxpaying public is important and, particularly in Zimbabwe, measures should be adopted to inform taxpayers about their rights and obligations, the role of tax practitioners, and the interface with the tax administration. The Zimbabwean regulatory model should also recognise other non-accounting and auditing-oriented professions, such as the law profession, as tax practitioners.

**Key words:** tax practitioner, tax compliance, revenue authority, regulation, taxation, South Africa, Zimbabwe, Germany

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## ABBREVIATIONS AND ACRONYMS

Reference in thesis	Description
<b>AAT(SA)</b>	Association of Accounting Technicians Southern Africa
<b>ACCA</b>	Association of Chartered Certified Accountants
<b>AFRODAD</b>	African Forum and Network on Debt and Development
<b>BStBK</b>	<i>Bundessteuerberaterkammer (Federal Chamber of Tax Advisers)</i>
<b>CGT</b>	Capital Gains Tax
<b>CIMA</b>	Chartered Institute of Management Accountants
<b>CIT</b>	Corporate Income Tax
<b>CPD</b>	Continuing Professional Development
<b>CPE</b>	Continuous Professional Education
<b>CSSA</b>	Chartered Secretaries Southern Africa
<b>ERAS</b>	Rhodes University Ethical Review Application System
<b>FPI</b>	Financial Planning Institute
<b>GDP</b>	Gross Domestic Product
<b>IAC</b>	Institute of Accounting and Commerce
<b>ICAZ</b>	Institute of Chartered Accountants of Zimbabwe
<b>ICPA</b>	Institute of Certified Public Accountants (Zimbabwe)
<b>ICPAZ</b>	Institute of Certified Public Accountants of Zimbabwe
<b>ICSAZ</b>	Institute of Chartered Secretaries and Administrators
<b>ICTA</b>	Institute of Certified Tax Accountants
<b>IESBA</b>	International Ethics Standard Board for Accountants
<b>IFAC</b>	International Federation of Accountants
<b>IRBA</b>	Independent Regulatory Board for Auditors
<i>Lohnsteuerhilfverein</i>	Tax clinics

<b>Reference in thesis</b>	<b>Description</b>
<b>PAA Act</b>	Public Accountants and Auditors Act
<b>PAAA Act</b>	Public Accountants and Auditors Amendment Act
<b>PAAB</b>	Public Accountants and Auditors Board
<b>PIT</b>	Personal Income Tax
<b>R.T.A (Z)</b>	Registered Tax Accountant (Zimbabwe)
<b>SAAA</b>	Southern Africa Association of Accountants
<b>SAIBA</b>	Southern African Institute for Business Accountants
<b>SAICA</b>	South African Institute of Chartered Accountants
<b>SAIPA</b>	South African Institute of Professional Accountants
<b>SAIT</b>	South African Institute of Taxation
<b>SARS</b>	South African Revenue Service
<b>StB</b>	<i>Steuerberater (Tax adviser)</i>
<b>UIF</b>	Unemployment Insurance Fund
<b>VAT</b>	Value-Added Tax
<b>ZIMRA</b>	Zimbabwe Revenue Authority

# CHAPTER 1: INTRODUCTION

## 1.1 RESEARCH CONTEXT

Taxation is regarded as one of the most significant mechanisms for governments and sovereign jurisdictions to accomplish strong economic growth and poverty alleviation (Munjeyi *et al.*, 2017). Tax practitioners play a major role in influencing the tax compliance culture of their clients by clarifying tax requirements and providing tax filing services (Tan, 2014). It therefore stands to reason that governments and tax administrative entities formulate effective regulations that govern tax practitioners to advance taxpayers' interests and fulfil national revenue authorities' mandates (Maseko, 2014).

In this study, regulation is defined as designing, legislating, and enforcing professional instructions and guidelines, to administer the competency, performance and conduct of tax practitioners, in order to satisfy public needs through ethical and professional means (Rafii *et al.*, 2016). The regulation of tax practitioners in general is usually in the areas of qualifications and conduct. Regulatory frameworks thus seek to manage tax practitioners' professional conduct so that they provide services to clients and the broader public ethically and competently (Darmayasaa & Aneswari, 2015).

This study explores the frameworks that regulate tax practitioners in Zimbabwe and South Africa and evaluates them against best practice as is found in Germany. Germany has been regulating tax practitioners for 50 years and can rightly be recognised as best practice. In Zimbabwe, the main body that regulates tax matters is the Zimbabwe Revenue Authority (ZIMRA). Some of the key legislative instruments in Zimbabwe that administer tax matters and the practitioners concerned include the Public Accountants and Auditors Act, 13 of 1995 (PAA Act), the Public Accountants and Auditors Amendment Act, 1 of 2015 (PAAA Act), the Income Tax Act, 5 of 1967, and the Revenue Authority Act, 10 of 2009. While the increasing number of tax consultancies may mean more service points, it also necessitates regulation frameworks to ensure adherence to legislation and quality standards. In a country such as

Zimbabwe, where tax compliance is reportedly low, an effective regulatory framework may address aspects such as pricing, integrity, tax awareness, and service quality (Maseko, 2014). According to Mashiri (2018), Zimbabwe does not have a strong or comprehensive regulation framework to regulate tax practitioners. There are no strong fiscal courts, an insufficient number of judges, and no clear frames of reference in tax law to enforce tax practitioner regulations. This is best captured in Ndamba and Matamande's (2016) observation that in Southern Africa, accountancy bodies play a dual role of being regulators and professional bodies, thereby acting as both player and referee. One would expect ZIMRA to be the chief statutory regulator of tax practitioners, but the institution exists largely as a fringe participant. ZIMRA is plagued by incompetency and has seemingly abdicated these responsibilities to accounting bodies (Wadesango, Denford & Wadesango, 2019). One such body is the Institute of Certified Tax Accountants (ICTA) (Sebele-Mpofu, 2020). ICTA is a professional body that conducts examinations and provides professional qualifications for tax accountants in Zimbabwe (Institute of Certified Tax Accountants, 2020). Even though it presumably carries out regulatory functions, the extent of its role in the formal regulation of tax practitioners is imprecise (Ndamba & Matamande, 2016).

Accounting professionals (including tax practitioners) in Zimbabwe are held to account by constituent bodies. Any *bona fide* member of a designated principal constituent body can also be deemed a tax practitioner. Principal constituent bodies include the Zimbabwean branch of the Association of Chartered Certified Accountants, the Chartered Institute of Management Accountants, the Institute of Chartered Accountants of Zimbabwe, the Institute of Chartered Secretaries and Administrators in Zimbabwe and the Institute of Certified Public Accountants of Zimbabwe. These bodies have different regulatory mechanisms (The Public Accountants and Auditors Amendment Act, 2015). What may apply to a tax practitioner who is a member of one body may not necessarily apply to a tax practitioner of another. While the Public Accountants and Auditors Board's (PAAB) mission is to ensure that practitioners adhere to high standards, enforcement systems may vary according to different bodies (Ndamba & Matamande, 2016).

In the South African context, the main body that regulates tax and revenue collection affairs is the South African Revenue Service (SARS). The quest to regulate tax practitioners in South Africa is captured in a 2003 discussion paper (South African Revenue Service, 2003) that laments a poor tax compliance culture – a culture partly deriving from an iniquitous socio-political past in which a large segment of the population was not only excluded from the economic mainstream, but consequently also from tax knowledge. The need for stringent tax practitioner regulation in South Africa came to the fore in recent times when a seemingly reputable accounting firm sold tax avoidance strategies to the Guptas (Cropley & Brock, 2017). The Guptas earned notoriety for financial improprieties and other issues. This tax case emphasized the importance of regulation, since it revealed even “big brand” tax consultancies could wilfully engage in unethical conduct that borders on criminality (Cropley & Brock, 2017). A key model explaining tax practitioner regulation was suggested in the South African Revenue Service Discussion Paper (2003). The model presented regulatory variations along a continuum. At one end is the “no-regulation” point in which market forces determine tax practitioner operations; at the other end is the “fully-regulated” point, while the mid-point is the “some regulation” point. The model envisages an improvement in the integrity of the tax system, ensuring that taxpayers could challenge unprofessional conduct among tax practitioners, and the determination of an optimum spectrum of regulating tax practitioners (South African Revenue Service, 2003).

SARS works with controlling bodies in enforcing the regulation of tax practitioners. Examples of these controlling bodies include the Chartered Institute of Management Accountants (CIMA), the Chartered Secretaries Southern Africa (CSSA), the South African Institute of Taxation (SAIT), the Financial Planning Institute (FPI), the Institute of Accounting and Commerce (IAC), the South African Institute of Chartered Accountants (SAICA), and the South African Institute of Professional Accountants (SAIPA) (South African Revenue Service, 2013b). The Law Society is also included in these regulatory bodies. The use of different regulatory bodies potentially presents problems comparable to Zimbabwe. Different bodies have dissimilar codes of professional conduct and varying expectations for tax practitioners (Ndamba & Matamande, 2016). SARS, however, seems to be more pro-active and its role in dealing with controlling bodies is more clearly defined, where a tax practitioner should have a

practitioner number and be registered with SARS (Tax Administration Act, 28 of 2011). Despite the fact that it appears that South Africa has a more pro-active approach to regulating tax practitioners than Zimbabwe, the emergence of the South African Institute of Taxation (SAIT) (previously known as the South African Institute of Tax Professionals), whose closest Zimbabwean equivalent is the Institute of Certified Tax Accountants (ICTA), indicates that in both countries tax practitioners desire a distinct regulatory body, and legislative frameworks that are not subordinate to professions such as accounting, auditing or law (South African Institute of Tax Professionals, 2015; Institute of Certified Tax Accountants, 2020).

It is proposed that a suitable benchmark reflecting a sound tax practitioner regulatory system is the German tax regulatory system, which has a statutory umbrella body (the Federal Chamber of Tax Advisers) that specifically superintends the affairs of tax advisers (Federal Chamber of Tax Advisers, 2017). Under the Federal Chamber of Tax Advisers are subsidiary Chambers of Tax Advisers who uphold the interests and public image of the tax advisers' profession. The German regulatory systems have been perfected over time since the adoption of tax consulting legislation, notably the Tax Consultancy Act, 1 of 1961 (Adigamova & Tufetulov, 2014). Alt (2016) avers that the majority of German tax consultants have high tax morality and proficiency standards. To be a tax practitioner in Germany, one must pass the rigorous tax advisers' examination of the Chambers of Tax Advisers (Federal Chamber of Tax Advisers, 2017). Auditors, lawyers, and accountants can undertake tax consultancy after passing a special examination of professional competence (Blaufus *et al.*, 2016). The German tax practitioner profession is the highest qualified and best organized tax profession in Europe and even worldwide (De Widt, Mulligan & Oats, 2016). German tax practitioners are governed by the Practice Guidelines of the Federal Chamber of Tax Advisers to uphold standards of discretion, conscientiousness, commitment to the public, and correct application of tax law (Blaufus *et al.*, 2016).

The research question is therefore: To what extent do the Zimbabwean and South African tax practitioner regulatory frameworks reflect the best practice observable in the German tax practitioner regulatory system? Based on the fact that the Zimbabwean regulatory system is relatively new, it has been selected as it is a developing nation that arguably stands to benefit

the most, as very little research has been done in this area. It is the country for which this research is primarily designed in an attempt to find the best regulatory elements from the more established jurisdictions, which could be assimilated. South Africa, on the other hand, is chosen for its historical commonalities with Zimbabwe and the bearing South Africa has on Zimbabwe's accounting profession in general. It is submitted that best practice from Germany (situated in Europe) could theoretically provide a better international regulatory template. South Africa also has the benefit of contextual proximity and similarity with Zimbabwe to provide further insight into and an opportunity to comment on the similarities and differences in respect of the model to adopt.

## **1.2 GOALS OF THE RESEARCH**

The primary goal of the study is to evaluate the regulation of tax practitioners in Zimbabwe and South Africa in terms of the best practice in the German tax practitioner regulatory system. To achieve this goal, the following sub-goals are addressed:

- analyse tax practitioner regulatory frameworks in Zimbabwe and South Africa;
- analyse the German tax practitioner regulatory framework;
- determine the extent to which the Zimbabwean and South African tax practitioner regulatory frameworks compare with best practice in the German tax practitioner regulatory system; and
- provide recommendations for appropriate tax regulatory models for tax practitioners in Zimbabwe and South Africa.

## **1.3 METHODS, PROCEDURES, AND TECHNIQUES**

The research is situated within the interpretative research paradigm. The interpretative paradigm is compatible with the qualitative research method (Plano-Clark & Creswell, 2008) and is resourceful in understanding and describing data (Babbie & Mouton, 2008). A document analysis method is applied, which by definition is the systematic review of literature to identify, collect, evaluate, and synthesize relevant issues on a given research topic (Bowen, 2009). This study is qualitative in nature and involves an in-depth analysis of texts and narratives (Flick,

2014). To enhance the accuracy and reliability of the inputs into the research, a comprehensive review of literature, including propositions from both critics and advocates, provides an opportunity for an unbiased discussion.

A general mapping of the review is done, to prepare a review plan and protocol for the systematic review, following which a comprehensive search is made for documents to obtain information that is relevant to the topic (Jesson, Matheson & Lacey, 2011). An assessment of the quality of the documents based on inclusion and exclusion criteria is made and followed by a thorough reading of the documents to familiarize with key texts (Creswell, 2014). Documents are closely analysed to provide a summarized overview of the main points and common meanings that recur throughout the texts (Bowen, 2009). A detailed discussion of various themes is presented through key quotations and multiple perspectives to provide a comprehensive and objective account of the findings in response to the research question. Key data bases for information are EbscoHost, Sabinet Online, SAEPublication, ScienceDirect, GoogleScholar, tax regulatory websites and the Rhodes University catalogue.

In Zimbabwe, the term “tax consultant” is used in the literature *in lieu* of tax practitioner (Ndamba & Matamande, 2016). In this thesis, the terms “tax practitioner”, “tax consultant” and “tax adviser” (or “tax advisor”) have the same meaning, and are used interchangeably in the contexts where relevant.

#### **1.4 ETHICAL CONSIDERATIONS**

No application for ethical clearance is submitted using the Rhodes University Ethical Review Application System (ERAS), as no human or animal subjects are participants in the study, and the documents used for the research are all publicly available.

#### **1.5 OVERVIEW OF THE CHAPTERS**

Chapter 2 discusses the key elements in the regulation of tax practitioners in general. It motivates the need for regulation and considers the three approaches to tax practitioner regulation. In chapter 3, the first sub-goal of the research is addressed by discussing South

Africa's regulatory framework. Chapter 4 also deals with the first sub-goal of the research by evaluating the regulatory framework in Zimbabwe. Chapter 5 discusses the benchmark, German regulatory practice, in achieving the second sub-goal of the research. In addressing the final sub-goal of the research, chapter 6 provides a comparison of regulatory approaches and models adopted in Germany, Zimbabwe and South Africa, and concludes by suggesting possible regulatory changes that could be introduced in Zimbabwe and South Africa. Chapter 7 concludes this research, by underscoring the research goals, summarising the key conclusions and identifying opportunities for further research.

# **CHAPTER 2: KEY ELEMENTS OF THE REGULATION OF TAX PRACTITIONERS**

## **2.1 INTRODUCTION**

This chapter explores in more detail some of the key concepts mentioned briefly in the general introductory overview of the regulation of tax professionals in chapter 1. These concepts are useful reference points in comparing the regulation of tax practitioners in Zimbabwe and South Africa to the German tax practitioner regulatory system. Further, the concept of tax regulation, and its specific application and relevance to the tax practitioner profession is discussed.

The International Federation of Accountants (2017) argues that the legitimacy of a profession is defined, distinguished, and determined by the knowledge and ethics of its practitioners. In the main, tax practitioners are a profession's ambassadors. In the tax profession, tax practitioners' influence on the tax system depends on the extent to which they abide by professional values and standards (Misra *et al.*, 2020). Hence, for the tax profession to be administered efficiently and effectively, there should be regulatory frameworks that prescribe best practices.

## **2.2 THE CASE FOR TAX PRACTITIONER REGULATION**

Taxation is one of the most noticeable, enduring, and vital aspects of the social contract between citizens and their governments (Dabner & Burton, 2015). The history of organised taxation is believed to have originated in ancient Egypt around 3000 BC, before it spread into the rest of the ancient kingdoms, and throughout the pre-medieval civilisations, as noted in religious writings such as the Christian Bible, where reference is made in the Book of Genesis (47, verse 33) to diligent tax collecting activities of Egyptian Commissioners sent by King Pharaoh to lawfully take one-fifth of all grain harvests as a tax (The Bible, Genesis. 47:33, in New Internationalist, 2008,). It is evident that revenue authorities have always strived for diligence in efficient tax collection activities by establishing formalised administrative structures. As taxation became complex, it was only a matter of time before the services of tax advisers became necessary.

Tax practitioners are a diverse group of individuals, business structures, and professional groups who provide a range of tax services for their clients. They consist of self-employed or in-house accountants, auditors, tax advisers, registered tax agents, tax agent franchises, and legal practitioners, each of which may be subject to regulation (Devos, 2012). Tax advice is also provided by business enterprises such as banks, insurance companies, brokerages, and real estate companies as a form of ancillary services to their main business. Their advice is typically narrow in scope, restricted to the tax treatment of the financial product being sold. Hence these entities cannot be regulated like the independent tax professionals, provided that their tax services remain truly subsidiary to other economic activities (Thuronyi & Vanistendael, 1996).

The importance of tax practitioners is best captured by Thuronyi and Vanistendael (1996:135) who suggest that:

It would be difficult to have a well-functioning tax system without tax advisors. Because most taxpayers are not familiar with the intricacies of the tax laws, tax advisors are needed so that taxpayers can fulfil their complicated tax obligations. By counselling taxpayers on how to comply with their legal obligations, tax advisors serve an important public interest; and the state has an interest in fostering and protecting this role.

In recent years, financial crises and corporate scandals have turned the spotlight on the role played by tax practitioners in conceiving tax minimisation schemes and machinations that border on or stray into territories of illegality and misconduct (Praulniš & Bratka, 2014). Much of the criticism levelled at tax practitioners is in relation to their advice to clients on tax avoidance (Frecknall-Hughes *et al.*, 2017). As observed by Goldswain (2001), taxpayers still find themselves in default despite the use of tax practitioners, as courts appear to be inconsistent in their attitude towards taxpayer pleas, raising the defence of the incompetence or negligence of tax practitioners. For example, in the case of *CIR v Da Costa* (47 SATC 87), the taxpayer made use of the services of a firm of accountants and discovered that his income was under-declared upon assessment by the Commissioner, who ruled that the taxpayer should be penalised for it. Goldswain (2001: 144) summarises the issues the taxpayer experienced during court rulings:

The Special Court found that the deceit of the accountants should be imputed to the taxpayer, but found that at the same time that the reliance by the taxpayer on the accountant was an “extenuating circumstance”... The Appellate Division was not convinced that the deceit of the accountant should be attributed to the taxpayer in the circumstances but found that it was not necessary to decide the point because the penalty imposed by the Special Court was reasonable.

The dilemma taxpayers face by unknowingly engaging incompetent or unethical tax practitioners is further illustrated by Income Tax Case 1540 (54 SATC 400), where the Special Court found that the taxpayer intentionally evaded tax by non-disclosure of certain hundreds of thousands of rands. Goldswain (2001) notes that while the taxpayer attempted to blame the incompetence and dishonesty of his previous accountant, the Court did not specifically mention this defence as an extenuating circumstance that contributed towards a lesser penalty that was imposed. Taxpayers can therefore still find themselves punished for the offences committed by those they entrust with handling their tax affairs.

With such cases of unethical conduct by trusted accounting professionals, it cannot be denied that there is inevitably a number of unscrupulous tax practitioners whose business activities thrive on tax advice to clients, which tax advice amounts to tax evasion. The dictates of professional ethics demand that tax advisers provide the best services they can for their clients through professional and ethical means and not let the “bottom line” on their own income statements and balance sheets be their primary and ultimate obsession (Cash *et al.*, 2007).

All tax practitioners face ethical dilemmas in discharging their professional responsibilities within the increasingly competitive environments of conflicting pressures from clients, revenue authorities, governments, and the wider community (Marshall *et al.*, 2006). It is therefore conceivable that tax practitioners face a dual agency problem of having a duty to act in their client’s interests on one hand, while upholding the provisions of tax legislation on the other. Practitioners resolve this dual agency tension in different ways (Killian & Doyle, 2004). As Thuronyi and Vanistendael (1996: 140) pertinently note, an important function of the regulation

of tax advisers is to help strike an appropriate balance between loyalty to the tax authority system and loyalty to the client, as highlighted in the following:

An underlying question is the extent to which, in different circumstances, the tax consultant must act in the interests of the state or the client if the interests of the two parties diverge. This question should be borne in mind in considering the various functions that a tax advisor can perform. The basic rule in most countries is that the private tax advisor must act in complete independence from the tax administration. The tax advisor must of course respect all legal obligations that flow from the tax law, but his or her primary loyalty lies with the client, the taxpayer. This independence results from the general attitude taken toward professional services, such as those of lawyers, physicians, and accountants. This independence may be very valuable, particularly in transition countries, which until recently had an experience of interference by public authorities in all areas of public and private life. The loyalty to the client is not, however, unqualified. A tax advisor is not generally permitted, for example, to participate in fraud or to lie to the government.

At times the tension is not only from the dual agency but is multiple faceted, as noted by Prauliņš and Bratka (2014), who express the view that tax practitioners must satisfy various parties such as clients, employers, professional associations, and society, whose interests can conflict, inevitably leading to numerous ethical conflicts. It is on that basis that regulation has the goal of protecting clients from unscrupulous or incompetent tax practitioners (Thuronyi & Vanistendael, 1996). Basic ethics dictate that, as a starting premise, tax practitioners should not assist clients with fraud or other illegal activity. They should discern the fraud lines and immediately know not to cross them (Bogenschneider, 2020). In practice, however, the influence of the “predatory” enterprise culture poses a key obstacle to responsible ethical conduct (Prauliņš & Bratka, 2014). The view below (Prauliņš & Bratka, 2014:159), aptly captures the conundrum:

In modern entrepreneurial culture, tax minimization schemes are often perceived as a logical way of cutting costs. As the borderline between such different types of tax minimization as tax avoidance, tax evasion and tax planning are fuzzy, their legality and

the ethical aspect of their application becomes a matter of judgment. This results in a conflict between professional and commercial logic.

The regulation of tax practitioners, therefore, gives taxpayers a level of comfort and confidence in knowing that their tax advisers possess the requisite qualifications, and competencies, are subject to stipulated procedures and ethical values, and adhere to disciplinary codes (Lewis, 2013). Regulation places a critical duty on tax advisers to commit to upgrading their skills, acquiring qualifications, and engaging in continuous professional development, which ultimately confers legitimacy on the tax profession. The implications that come with an unregulated profession are not to be contemplated, considering that the tax professional must be orientated towards public service (Klue, 2013). Smulders (2013) therefore argues that any reasonable prospective or practicing tax adviser should be amenable to regulation. In countries such as Japan and the United Kingdom, studies have shown significant enhancement of public trust in tax practitioners and improved tax compliance due to professional regulatory mechanisms (Smulders, 2013).

### **2.3 APPROACHES TO TAX PRACTITIONER REGULATION**

The National Audit Office (2021) in the United Kingdom states that good regulation maximises the benefits of regulation, while minimising compliance costs and unintended consequences. For example, it is not desirable for regulation to stifle the free exercise of the profession by creating undue bureaucratic control at the expense of protecting the economic interests of those permitted to act as tax practitioners (Thuronyi & Vanistendael, 1996).

To be effective, it is important for regulators to have sufficient capacity and skills to identify and respond to problems and challenges in the areas they regulate. According to Thuronyi and Vanistendael (1996), the preliminary step in regulating tax consultants is to identify the different types of consultants and consulting activities and to consider each separately in the context of alternative regulatory approaches. Most regulators have a range of regulatory tools they can use to intervene, ranging from softer approaches such as guidance, codes and warning notices, to harsher actions such as fines, prosecutions or revocation of licences (The National Audit Office, 2021).

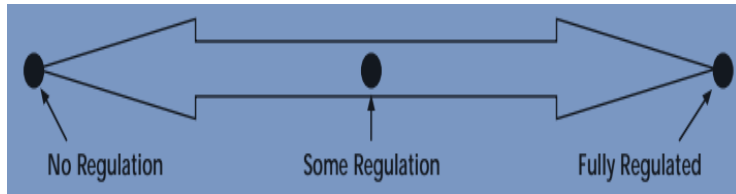
The extent of regulation of the tax profession differs substantially from country to country. The role of tax advisers cannot properly be viewed in isolation from a country's culture and its legal and economic system (Thuronyi & Vanistendael, 1996). While one regulatory approach may work for a particular country, it may not be appropriate for another country. Hence, whereas regulation of tax practitioners is essential, there is no blanket approach to its implementation (SARS, 2003). Tax advice itself covers a multitude of different activities that can be performed by professionals with different qualifications and may call for different regulatory approaches (Thuronyi & Vanistendael, 1996). The duty of diligent scholarship is to examine what informs a particular regulation in one jurisdictional setting over another in a different setting. Thuronyi and Vanistendael (1996: 136) provide a classical example of a scenario that may inform one approach to regulation:

In most transition countries [third world countries gravitating towards liberal democracy and macroeconomic reforms], there are very few tax advisors. This is due to the youth of the tax system as a whole and to the fact that there has not been time for professional education and experience. In part because of the paucity of tax advisors, taxes in these countries are often designed to minimize the number of taxpayers who must take positive action with respect to their tax affairs, for example, through the use of final withholding taxes and registration thresholds. Detailed regulation of tax advisors would not seem to be a top priority for transition countries, compared with other areas where the tax system needs development.

Regulating a profession is a specific response to the need for its members to meet certain standards. Good regulation should ideally maximise the benefits while minimising compliance costs and unintended consequences (National Audit Office, 2021). For example, a regulatory scheme that is too restrictive and leads to a scarcity of available advisers will create pressure for corporations to do their tax work internally rather than retain outside advisers. Or worse still, it might disrupt the availability of tax practitioners, particularly in countries without advanced tax knowledge and skills (Thuronyi & Vanistendael, 1996). Whatever approach that jurisdictions may employ, the end goal of regulation is to ensure high quality and consistency in the quality of professional services (International Federation of Accountants, 2017).

The following section explores the three main approaches to regulation, which are full, partial, and non-regulation. Figure 2.1 is a diagrammatic illustration of these approaches to the regulation of tax practitioners.

**Figure 2.1: Approaches to regulation**



Source: Adapted from SARS Discussion Paper (SARS: 2003: 4)

### **2.3.1 Full Regulation**

Full regulation establishes a regulated professional monopoly for tax practice that is shared in most cases with other regulated professions such as lawyers and accountants (Thuronyi & Vanistendael, 1996). Where there is a high degree of regulation, the regulatory body is often an independent government body separate from the tax administration, and the key example is one such as is found in Australia. The SARS Discussion Paper (SARS, 2003), however, notes that full regulation falls at one end of the spectrum and that such a categorisation is mainly for conceptual purposes, as there is hardly such a situation in practical terms.

### **2.3.2 Partial Regulation**

Partial regulation is exemplified by the United States, where there is some flexibility over categories of practitioners and their qualification requirements (SARS, 2003). It does not establish a monopoly for tax advice or return preparation but does restrict certain representational activity to licensed practitioners and members of other regulated professions, and involves a well-developed regulatory framework (Thuronyi & Vanistendael, 1996).

### **2.3.3 No Regulation**

No regulation involves an essentially unregulated tax profession that coexists with regulated professions such as lawyers and accountants. However, the regulations applicable to these

professions do not deal specifically with the provision of tax services (Thuronyi & Vanistendael, 1996). Thus, at this end of the spectrum, no taxing authority has full regulatory authority over tax practitioners. Towards the "no regulation" end of the spectrum, market forces are the only mechanism to ensure tax practitioner competence (SARS, 2003). This provides for a somewhat unstructured and haphazard approach to issues of compliance and accountability in so far as they relate to tax professional services. Tax professionals are, in essence, left with a professional discretionary capacity that can readily be abused and exploited in favour of the individualised tax goals of their respective clients and themselves, as a tax business.

#### **2.4 KEY PRINCIPLES OF EFFECTIVE REGULATION**

As the tax system becomes more complex, more taxpayers will opt for the assistance of tax practitioners (Musimenta, 2020). This is simply because not every member of society is adequately schooled in accounting and taxation principles to effectively manage his or her own tax affairs, without inviting professional assistance from those with the skills and capacity to assist. Where a profession provides an important public service, it is imperative that it serves and acts in the public interest. Tax practitioners provide a service to the public, are paid for it, and should be accountable through a system of principles (Klue, 2013). The sustainability of a profession depends on the quality of the services its members provide, and on the profession's capacity to respond effectively and efficiently to the demands of a jurisdiction's economy and society. The International Federation of Accountants (2017:8) proposes the following key principles for consistent, high-quality regulation.

**Table 2.1: Key principles for consistent and high-quality regulation**

<i>Clear objectives in the public interest</i>	The responsibilities of regulators, and objectives of regulations, should be clearly articulated and serve the public interest.
<i>Proportionate and balanced approach</i>	Regulation should be fit for purpose and appropriate to the size and composition of the profession within the jurisdiction, as well as to the individual entities impacted.
<i>Evidence-based assessments</i>	The benefits of new regulation to the economy and society should outweigh its costs, with a clear basis in evidence and research.
<i>Appropriate resourcing</i>	Regulators need to have an appropriate source of funding and possess the capacity to adequately carry out their duties and fulfil their mandate.
<i>Collaborative action</i>	Regulation should enable cooperation and collaboration with national, regional, and international stakeholders and counterparts.
<i>Consistent and coherent</i>	Regulators should strive for consistency in the execution of their duties and, to the extent possible, there should be regulatory coherence through coordination with government locally and internationally.
<i>Transparent and open consultation</i>	Since regulation involves multiple actors, broad consultation is needed during the development process, and subsequent ongoing transparency enables the public to know and understand how the profession is being regulated, and what the regulator is doing.
<i>Active oversight</i>	Regulatory bodies should have robust governance arrangements and publicly disclose details of their activities.
<i>Systematic review</i>	A regular review process should be in place to ensure that regulation continues to be fit for purpose and achieve its objectives.
<i>Deliberate enforcement</i>	Fair and visible enforcement is a crucial factor in ensuring confidence in, and credibility of, the profession and thereby financial information.

Source: The International Federation of Accountants (2017:8)

In addition to the above key principles for regulation, the National Audit Office (2021) contends that it is vital to design an effective regulatory framework that defines a clear overall purpose based on a good understanding of the issues that regulation is intended to address. When the decision is taken to use regulation, public clarity over the fundamental aim for regulation helps ensure a shared understanding of its purpose and intended outcomes. To be effective, it is important for regulators to have sufficient capacity and skills to identify and

respond to problems and challenges in the areas they regulate. Some of the key aspects worth consideration include the following (National Audit Office, 2021:11):

- a clear and consistent overall approach to rulemaking and intervention that is understood by regulated entities and stakeholders;
- where consistency and predictability are particularly important, a no surprises approach to provide a stable environment for investment and stakeholders that is reflected in regulatory plans and interventions; and
- where changes or rapid responses are required, the rationale for these changes is communicated with regulated entities and stakeholders as early as possible.

## **2.5 IMPLICATIONS FOR REGULATION: TAX CONSULTING AND THE LEGAL AND ACCOUNTING PROFESSIONS**

Functions performed by tax consultants overlap with the responsibilities ordinarily carried out by other professionals, chiefly lawyers and accountants. It is impossible to consider the regulation of tax consultants without considering how the legal and accounting professions are regulated. Of critical importance is the bearing the accounting profession has on tax consulting. Tax regulatory bodies appear to generally lean towards regulatory mechanisms found in the accounting and auditing professions prevailing in their respective tax jurisdictions. This is particularly understandable and logical as the accounting (auditing) profession is essentially the bedrock of derivative disciplines such as finance and taxation. The accounting profession, however, includes many accounting bodies that differ significantly in the strength and extent of the regulation of their members. This becomes evident in the way ethical standards are institutionalised in each respective regulatory body.

The International Federation of Accountants (Online) observes that a number of accountancy bodies are affiliated with the International Code of Ethics for Professional Accountants. They highlight that this body is the global advocacy organisation for mainly the financial accounting and auditing professions.

Boundaries between legal advice, accounting advice, and advice that is neither legal nor accounting, are inherently unclear in the tax arena. This is captured by Thuronyi and Vanistendael (1996:142) in the following quote:

In almost all jurisdictions, controls are placed on who is entitled to practice law or accountancy. The controls usually work in conjunction with measures that provide for the establishment and recognition of independent, self-governing professional bodies that are responsible, among other things, for establishing the prerequisites for admission to practice in the profession, the continuing education and other conditions for continuing qualification, and the disciplining of members of the profession with respect to breaches of their professional responsibilities. Legislation imposing criminal sanctions is often used to enforce the professional monopolies and restrict practice to persons who meet the requirements of the state and of the relevant professional body..

Because legal, accounting and tax services are so closely connected, it is desirable to approximate certain professional rules in the three professions in regulations. These include (Thuronyi & Vanistendael, 1996):

- the broad conceptual framework, [depicted in Figure 2.2, under paragraph 2.6.4] which includes issues of integrity, independence, professional behaviour, confidentiality, objectivity, and professional competence and due care;
- permissibility of advertising;
- rules for professional liability;
- the parallel activities that are compatible with the exercise of the profession;
- whether a person can become a member of more than one profession and which profession would then control professional and ethical standards;
- whether a legal person can become a member of the profession;
- fees;
- privileged information: and
- ethics, for example, conflicts of interest, limitations on holding financial interests in clients, and procedures for a client to consult another professional.

## **2.6 SYNOPSIS OF FACTORS ASSOCIATED WITH THE REGULATION OF TAX PRACTITIONERS**

This section explores the key considerations in the regulation tax practitioners. Scholarly perspectives by Thuronyi and Vanistendael (1996) provide insightful views on factors to be considered when regulating tax professionals across jurisdictions.

### **2.6.1 Balance of Supply and Demand**

Thuronyi and Vanistendael (1996) observe that regulating a profession by imposing conditions for admission inevitably reduces the supply of potential professionals. They recognise that whenever a service industry is regulated, a rough balance between supply and demand for professional services should be maintained. Furthermore, they state that standards of experience and education that are set in the regulation will to a large extent determine the supply of tax advisers.

### **2.6.2 Maintenance of Quality Standards**

In setting educational and professional standards, a country's educational and professional tradition should also be considered. Countries with a strong tradition of academic education in law or other relevant disciplines (e.g., accounting) can rely more on university degrees in setting standards for admission. Keeping in mind the basic requirement of a balance between supply and demand for tax advice, limitations on resources for training and education are likely to constitute the major bottleneck in the supply of tax advisers in developing and transition countries. Thuronyi and Vanistendael (1996) recommend that countries should avoid exclusive channels of access to the profession to avoid such bottlenecks.

### **2.6.3 Conflicting Loyalties of Tax Practitioners**

The development of appropriate regulation of tax advisers must recognise the dichotomy between the state's interest in raising revenue and in applying its taxation law in a consistent, efficient, and equitable manner, and the client's interest in minimizing tax (Thuronyi & Vanistendael, 1996). An underlying question is the extent to which, in different circumstances,

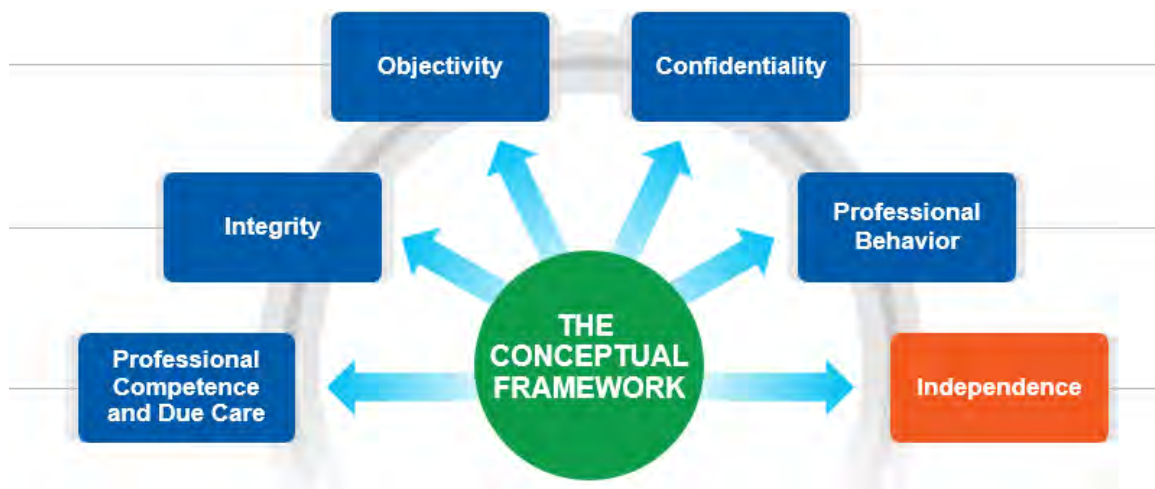
the tax adviser must act in the interests of the state or the client if the interests of the two parties diverge. This question should be borne in mind in considering the various functions that a tax adviser can perform.

Thuronyi and Vanistendael (1996) observe that the main challenge that tax practitioners face is striking a balance between upholding state regulation standards in executing their duties and being loyal to their clients. The regulation of tax practitioners must not overlook the role of professional ethics because this has a bearing on their professional performance (Darmayasaa & Aneswari, 2015).

#### 2.6.4 Key Ethical Principles for Tax Practitioners

Figure 2.2 presents an illustrative conceptual framework of the key ethical principles for tax practitioners.

**Figure 2.2: Fundamental principles of ethics for tax professionals**



Source: Adapted from International Federation of Accountants (2018)

Ngwenya (2019) states that tax practitioners apply tax legislation and judicial rulings to specific transactions to determine the tax consequences for the taxpayer, while ensuring tax equity and equality. It is vital that the work done by a tax practitioner can be trusted by clients, stakeholders, and society at large.

Nienaber (2010:33) submits that the role of responsible professionals in society is based on their expertise and skill in fields of particular significance. He notes that professional expertise is a form of power and should be governed by the highest ethical standards so that it does not lead to exploitation and abuse. He states that professional bodies should take measures to foster high ethical standards, typically by means of codes of conduct for their members. Nienaber (2010:42) further states that regulating tax practitioners is a tool for promoting core professional values, in the context of tax practitioners. Professional ethical behaviour is therefore the result of the interaction of personal morality, social responsibility, business ethics, and other general ethical standards of the individual tax professional.

Kamdar (2019, in IFAC, 2021:18) distils from the International Federation of Accountants some fundamental principles of ethics for professionals, as set out below.

#### ***2.6.4.1 Integrity***

A tax professional is expected to be straightforward and honest in all professional and business relationships. A professional shall not knowingly be associated with reports, returns, communications or other information where the professional believes that the information contains a materially false or misleading statement, or information provided recklessly. The professional should include the requirements of integrity in their letters of engagement with their clients.

#### ***2.6.4.2 Objectivity***

A tax professional shall comply with the principle of objectivity, which requires that they do not compromise professional or business judgment because of bias, conflicts of interest, or the undue influence of others. Tax professionals should seek to advance their clients' position to the extent that the tax position taken (advice given to clients) complies with applicable professional standards, laws and regulations.

#### ***2.6.4.3 Professional Competence and Due Care***

A tax professional must comply with the principle of professional competence and due care, which requires a professional to attain and maintain professional knowledge and skill at the level required to ensure that a client or the employing organisation receives competent professional service, based on current tax legislation. A tax professional must also act diligently commensurate with professional standards. A tax professional should not undertake professional work that he or she is not competent to perform unless the professional has the necessary assistance from an appropriately qualified specialist.

#### ***2.6.4.4 Confidentiality***

A tax professional must comply with the principle of confidentiality, which requires the confidentiality of information acquired as a result of a professional and business relationship to be respected. A tax professional shall continue to comply with the principle of confidentiality even after the end of the relationship between the tax professional and a client or employing organisation. When changing employment or acquiring a new client, the tax professional is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or business relationship.

#### ***2.6.4.5 Professional Behaviour***

A tax professional must comply with the principle of professional behaviour, which requires the tax professional to comply with the relevant laws and regulations and avoid any conduct that the tax professional knows or is reasonably expected to know might discredit the profession. A tax professional must not tolerate and aid or encourage tax evasion, which is illegal. The tax professional must advise the client not to enter into any arrangement that the tax professional reasonably believes could result in tax evasion. If the client elects to ignore the tax professional's advice, tax professional must withdraw the letter of engagement with the client.

## **2.7 CONCLUSION**

The main purpose of this research is to analyse regulatory frameworks of the Zimbabwean and South African tax regimes to compare these with the German regulatory framework, and to suggest areas for improvement in Zimbabwe and South Africa. This chapter considered the key principles of regulation to create a platform for further discussion in the following chapters. An analysis of the concept of tax regulation and its specific application and relevance to the tax practitioner profession was undertaken, based on various scholarly views, legislative instruments, and policy documents. The chapter highlights the conceptual framework of professional regulation as espoused by the International Federation of Accountants - an international body to which notable accounting professional bodies like the South African Institute of Chartered Accountants (SAICA) are affiliated. As will be discussed in the next chapters, these are accounting bodies that largely dominate the tax profession.

The following chapters will amplify the findings from the literature discussed in this chapter by applying this framework to provide a benchmark with which to compare the spectrum and quality of regulation in Zimbabwe, South Africa, and Germany.

## **CHAPTER 3: EVALUATION OF TAX PRACTITIONER REGULATION IN SOUTH AFRICA**

### **3.1 INTRODUCTION**

This chapter addresses the first sub-goal of the research, which is to analyse the existing tax practitioner regulatory model adopted in South Africa. This chapter analyses the concept of tax practitioner regulation, and its specific application and relevance to South Africa, based on various scholarly views, legislative instruments and policy documents, in order to address the main research goal, namely, determining the extent to which the Zimbabwean and South African tax practitioner regulatory frameworks compare with best practice in Germany.

In a contextual overview, the chapter provides an understanding a tax jurisdiction's broader context. The current state of the regulatory environment is then discussed, through the mechanisms and instruments enforced by the principal statute, namely the Tax Administration Act, 28 of 2011, as amended (the Tax Administration Act). The chapter also provides a summary of the entry requirements for controlling bodies, which are the interface between SARS and tax practitioners.

The analysis of tax practitioner regulation in South Africa, as discussed in this chapter, will be used in the comparative analyses of the South African, Zimbabwean and German tax regulation.

### **3.2 CONTEXTUAL OVERVIEW**

South Africa took the first steps towards regulating tax practitioners in 2002 when the then Finance Minister, Trevor Manuel, announced in his budget speech that SARS "would initiate discussions on the appropriate regulation of tax consultants and advisers in South Africa in order to promote compliance and ensure that taxpayers receive advice consistent with tax legislation" (SARS, 2003:2). Woodbridge (2006:1) notes that subsequent to this official pronouncement by the Finance Minister, an important amendment to the Income Tax Act, 58

of 1962, as amended, was made by inserting section 67A, through the Revenue Laws Amendment Act, 32 of 2004, which was promulgated on 24 January 2005:

Every natural person who (a) provides advice to any other person with respect to the application of the Act administered by the Commissioner; or (b) completes or assists in completing any document to be submitted to the Commissioner by any other person in terms of such Act, must register with the Commissioner as a tax practitioner in such form as the Commissioner may determine.

This amendment marked a defining moment in the manner in which tax consulting activities were conducted in South Africa. A tax practitioner's task in South Africa is to provide taxpayers with reliable advice, detailed preparation of returns, and assistance with SARS verification and audit processes (Hirst, 2020). It is estimated that between 60% and 80% of South African businesses use tax practitioners to help them with their tax compliance obligations (Smulders *et al.*, 2017), and at the time, tax practitioners represented around three million taxpayers countrywide (Kington & Tomasek, 2013). The regulation of tax practitioners can be achieved by understanding a tax jurisdiction's broader context (Thuronyi & Vanistendael, 1996). Hence a brief overview of South Africa's tax history is pertinent.

Taxation in South Africa began as a construct of the British colonial order. It was shaped by successive pro-apartheid administrations to finance government programmes that subjugated mainly Black Africans (Ndlovu, 2017). Thus, South Africa comes from a past where several historical factors created a poor tax-compliance culture, and which is still a concern today. These factors include (Klue, 2012a):

- the economic marginalisation and consequent lack of knowledge about tax of a large segment of the population;
- the mind-set and practices that took hold when circumventing the imposition of international sanctions during apartheid; and
- the historically limited capacity of the tax and customs administrations to challenge tax evasion, and the high prevalence of poor tax planning structures and techniques.

In these circumstances, occasioned by historical injustices, the role of tax practitioners is to enhance tax knowledge and cause attitudinal change in the broader sections of society. Historically, South Africa followed an unstructured approach to the regulation of tax practitioners and practitioners (Coetzee & Oberholzer, 2009). The historically unjust *status quo* resulted in the limited capacity of the tax and customs administrations to challenge tax evasion, and questionable tax-planning structures and techniques (Klue, 2012a). Additionally, from SARS' perspective, this meant a great deal of time and energy was spent unnecessarily and inefficiently correcting errors made by, or addressing the unprofessional conduct of a significant number of tax practitioners (Kington & Tomasek, 2013).

According to Ndlovu (2017:25-26):

Democratisation brought significant changes to the tax system and provided motivations for significant tax reforms. The democratic transition in the late 1980s and early 1990s allowed for the rethinking of numerous policies in a number of administrative areas as the tax system had become one of the several institutions targeted for righting past wrongs. South Africa democratised in an era of globalisation where the international economy provided incentives on global norms of tax policy and administration and increasing pressures for tax reform, especially simplification of complex tax systems.

Since the first democratic elections in South Africa in 1994, various pieces of legislation have been introduced in efforts to bring all domestic economic activity into the tax net. To achieve that goal, it is necessary for more taxpayers to take guidance from tax practitioners to improve their understanding of tax legislation and enhance tax compliance (Killian & Doyle, 2004). However, for tax guidance to be of a high quality and legally sound, the practitioners must operate within a sound regulatory framework (Thuronyi & Vanistendael, 1996). According to Klue (2012a:2), this in the South African context can be achieved by:

- tax practitioners retaking the moral high ground and becoming exemplary taxpayers;

- tax practitioners adopting an industry-wide code of conduct to regulate their service offerings to taxpayers;
- professional bodies that represent tax practitioners reclaiming their indispensable and internationally recognised role as intermediaries between SARS and tax practitioners;
- SARS embracing the tax practitioner profession as indispensable in ensuring tax compliance and educating unsophisticated taxpayers;
- SARS publicly committing to the development and support of the tax profession; and
- the establishment of a new regulatory model for the tax profession.

SARS is South Africa's tax collecting authority. Established under the South African Revenue Service Act, 34 of 1997, as an autonomous agency, SARS is responsible for administering the South African tax system and customs service. SARS's responsibilities include collecting and administering all national taxes, duties, and levies (SARS, 2021). These include personal income tax (PIT), capital gains tax (CGT), value-added tax (VAT), corporate income tax (CIT), customs/import duties, excise duties, transfer duty, estate duty, the skills development levy, unemployment insurance fund (UIF) contributions, the fuel levy, and environmental levies, among other taxes (Ndlovu, 2017).

Findings from a study among South African tax practitioners revealed that tax practitioners preferred to be trained by SARS in the knowledge of organisational skills, taxpayer rights and privileges, South African tax laws, computer skills for accounting, and knowledge of tax codes (Akinboade, Mokwena & Grobler, 2015). Thus, SARS would gain efficiency in the deployment of their resources through the time saved in dealing with suitably qualified tax practitioners (Hirst, 2020).

Taxation in South Africa is a critical enabler of domestic resource mobilisation. The contribution of tax revenue provides essential public funding for governments to meet economic and social objectives. Other key contributions to the economy include creating employment, investment in infrastructure, creating value through the supply chain, and corporate social responsibility initiatives (Ngwenya, 2019). In 2002, the then Finance Minister, Trevor Manuel, announced in his budget speech that SARS would initiate

discussions on the appropriate regulation of tax practitioners (Woodbridge, 2006:1). The ultimate goal of that proclamation was to institute measures that would promote compliance and ensure that taxpayers receive advice that is consistent with tax legislation (Klue, 2012a). According to Klue (2012a:13):

The minister made sweeping comments about the profession's poor compliance levels. A significant impact on the tax industry post-1994 was the exodus of tax officials from the former Department of Revenue seeking opportunities in private practice as tax practitioners. Many tax officials received high quality functional training within Revenue but lacked formal qualifications and affiliation with a professional body. In its five-year strategic plan for 2012 – 2016, SARS confirmed that tax practitioners who are not registered with a professional body have worse compliance levels in comparison to those who are members of a professional body.

According to Klue (2012a), the then Finance Minister, Pravin Gordhan, expressed his concern in 2012 about the actions of tax practitioners. He explained that tax practitioners owed R260 million in tax and had 18 000 income tax returns outstanding in their personal capacities (Klue, 2012a). Venter (2013:41) echoes the views of Manuel and Gordhan by highlighting that in South Africa:

The days are long gone where the tax practitioner can act as an accomplice in tax avoidance and evasion activities with absolutely no consequences, except for a huge bank account. With the aggressive audits observed in South Africa currently, a good tax practitioner is one that can assist the taxpayer in successfully demonstrating compliance to the revenue official. As tax practitioners become more regulated, avoidance advice can present a great risk to the tax practitioner who might be held responsible later on.

Forms of incompetent and disreputable conduct by tax practitioners include conduct subject to criminal conviction, corruption, tax evasion, provision of false or misleading information, provision of a false opinion, bribing, misappropriating client funds, and misleading clients about their qualifications or access to special treatments (Geldenhuys & De Kock, 2013). SARS (2021) reports that, as evidence of stern measures being taken against tax practitioners

for offending by, *inter alia*, withholding taxpayers' eFiling profiles, fabricating SARS letters, submitting fraudulent returns, and disrespect towards clients and SARS officials, in 2021, SARS reported a total number of 60 tax practitioners to their controlling bodies for unprofessional conduct and deregistered nearly eighty practitioners. This indicates the renewed interest and effort to improve compliance, increase tax revenue mobilization, and ensure that compliant taxpayers perceive the tax system to be fair (Jansen *et al.*, 2021).

### **3.3 THE STATE OF REGULATION OF TAX PRACTITIONERS IN SOUTH AFRICA**

Tax practitioners fulfil a vital role in the South African tax system assisting taxpayers to minimise their tax liabilities by advising them on the tax law, and ensuring compliance with tax obligations that are legally due (Mosupa, 2013). In practice, the use of registered tax practitioners saves time and ultimately money for taxpayers in the tax filing process and communications with SARS. By supplying the correct and complete information in the correct format through a registered tax practitioner, the taxpayer can ensure the maximum refund possible or the correct amount of tax to pay legally (Hirst, 2020). In addition, the average personal debt per case for a non-registered tax practitioner is four times higher than for those who are registered, which indicates poor compliance levels among non-registered tax practitioners, in comparison to those who are members of a professional body (Klue, 2012b).

Complying with legislation and the codes of conduct that apply to registered tax practitioners is imperative. This is something that cannot be ignored. Failing to comply with legislation can be recognised as a criminal offence (Naino, 2021). According to Thungo (2015), the tax practitioner profession was not regulated and there were a substantial number of individuals who were not qualified to offer tax services who were doing so, prior to the introduction of section 240 of the Tax Administration Act. He observes that these individuals abused the eFiling system, charged contingency fees ranging from 10% - 30% on refunds due and concocted fictitious expenses for claims in order to create refunds. Klue (2012b) emphasises that the tax profession should embrace the regulatory regime legislated on 22 December 2012. Tax practitioners provide a service to the public, are paid for it and hence should be

accountable. It is therefore essential that the tax profession not only be regulated, but be reformed as well (Klue, 2012b).

### **3.3.1 Legislative Framework**

With regard to the need for tax practitioner regulation, South Africa has experienced increasing fiscal pressure and low tax compliance, which are of great concern to tax authorities (Jansen *et al.*, 2021). Among many factors, the historical complexity of the South African tax system affects tax compliance in South Africa. Nyamapfeni (2021) observes that tax legislation in South Africa has historically been so complex that the ordinary person has had challenges in understanding it, thus making it cumbersome and difficult for people to honour their tax obligations.

#### ***The Tax Administration Act***

The Tax Administration Act is the primary and comprehensive piece of legislation that governs tax practitioners in South Africa (Naino, 2021). As early as 2002, SARS had issued a discussion document regarding the regulation of tax practitioners as a precursor to the Tax Administration Act (SARS, 2003). This was followed by the introduction of section 67A into the Income Tax Act in 2004, setting out who tax practitioners are and that they should register with SARS to be able to continue rendering their services (Kotze, 2013). From 2006 to 2008 SARS also issued various versions of the Regulation of Tax Practitioners Bill with called for comment, but the Bill never came into effect. Concerning the Regulation of Tax Practitioners Bill, Kotze (2013) further comments that:

For better or worse, this Bill was never passed into law and tax practitioners were regulated in a somewhat informal manner through registration with SARS, which entitled them to some privileges such as communication forums with SARS personnel, dedicated practitioner call centres and newsletters to name a few. However, there was no formal regulation by SARS or even various independent bodies to which tax practitioners may have belonged. In fact, many tax practitioners were not even required to belong to independent organisations to facilitate communication, training or even discipline. As

such, it may be said that while tax practitioners were registered, this was mainly in order for them to offer services to their clients rather than be properly regulated.

The first steps to changing this came with section 67A of the Income Tax Act being replaced with a very similarly worded section 240 of the Tax Administration Act. Section 240(1) and (2) of the Tax Administration Act provide guidance on eligibility for registration as a tax practitioner. This section essentially criminalises practising as a tax practitioner without registering with SARS.

### **3.3.2 Controlling Bodies**

Section 239 of the Tax Administration Act defines a controlling body as “a body established, whether voluntarily or under a law, with the power to take disciplinary action against a person who, in carrying on a profession, contravenes the applicable rules or code of conduct for the profession”. According to Kotze (2013), the main reason for tax practitioners to be registered is so that complaints may be laid with a controlling body if practitioners engage in misconduct. In terms of section 241 of the Tax Administration Act, complaints may broadly be made with regard to conduct that:

- intends to result in the taxpayer avoiding or postponing a valid tax liability;
- by reason of negligence results in the taxpayer avoiding or postponing a valid tax liability; and
- constitutes a contravention of the Rules of Conduct of that controlling body.

More specific actions by tax practitioners that may result in being reported include (SARS, 2003:20):

- not exercising due diligence in the preparation of any tax filing due by the taxpayer to SARS;
- unreasonably delaying any action by SARS;
- providing opinions and advice contrary to clear law and legal precedent;
- being grossly negligent in respect of any work performed for a taxpayer;
- knowingly providing false or misleading information in respect of the taxpayer; and

- attempting to unfairly influence a SARS official.

Section 240(1)(i) and (ii) of the Tax Administration Act requires tax practitioners to register with a recognised controlling body and with SARS. Naino (2021:33) explains that this is intended to provide a framework that will ensure that tax practitioners are properly qualified and that a mechanism is available, both to taxpayers and SARS, to address misconduct.

In order to qualify as a recognised controlling body an organisation must either be:

- listed in section 240A of the Tax Administration Act; or
- recognised by SARS.

Certain institutions are automatically recognised as controlling bodies. They derive this automatic recognition due to their status as creatures of statute. According to SARS (2013a), the following institutions do not need to apply for recognition:

- The Independent Regulatory Board for Auditors (IRBA);
- A Law Society established in terms of Chapter 3 of the Attorneys Act, 1979;
- The General Council of the Bar of SA, a Bar Council and a Society of Advocates referred to in Section 7 of the Admission of Advocates Act, 1964; and
- A statutory body that the Minister is satisfied is similar to the statutory bodies listed.

The second category of controlling bodies are those whose validation and recognition is through a formal application process, as they are not statutory bodies. SARS prescribes the eligibility criteria. Section 240 of the Tax Administration Act states that such bodies may be recognised if they enforce standards such as:

- minimum qualifications and experience requirements;
- continuing professional education requirements;
- codes of ethics and conduct; and
- disciplinary codes and procedures.

To date, several professional bodies have been awarded recognition as controlling bodies, and notable bodies include (SARS, 2022):

- The Chartered Institute of Management Accountants (CIMA);
- The Chartered Governance Institute of Southern Africa (formerly CSSA);
- The Financial Planning Institute (FPI);
- The Institute of Accounting and Commerce (IAC);
- The South African Institute of Chartered Accountants (SAICA);
- The South African Institute of Professional Accountants (SAIPA);
- The South African Institute of Taxation (SAIT);
- The Association of Chartered Certified Accountants (ACCA);
- The Association of Accounting Technicians Southern Africa (AAT(SA)); and
- The Southern African Institute for Business Accountants (SAIBA).

Care must be taken not to put a tax practice at risk by failing to adhere to due professional care and conduct (Kotze, 2013). Some of the key standards that controlling bodies oversee to ensure that tax practitioners are regulated include minimum qualifications and experience, continuous professional education (CPE), codes of ethics and conduct, membership, complaints against tax practitioners, as well as instituting measures to enhance awareness of the taxpaying public in relation to its rights (Hirst, 2020).

### ***3.3.2.1 Minimum Qualifications and Experience***

A requirement for minimum qualifications and experience ensures that competent individuals act as tax practitioners. A tax professional should not undertake professional work that he or she is not competent to perform, unless the professional has the necessary assistance from an appropriately qualified specialist (Kamdar, 2019). Thuronyi and Vanistendael (1996), however, caution that requirements should not be too restrictive such that they unduly limit entrance into the tax profession. When very few people are admitted into the profession, they may abnormally increase their fees, and for a country such as South Africa with a history of deprivation, few people may be able to access the services of tax practitioners. At the same

time, the bar for minimum qualifications should not be so low that it allows opportunistic and incompetent individuals into the profession. Nyamapfeni (2021) explains that this lowers standards as incompetent tax practitioners may not have a full understanding of tax legislation and taxpayers may receive advice that is incorrect or may even be defrauded by practitioners. Thus, regulation must ensure that the balance between the supply and demand of tax practitioners is maintained. One of the cardinal pillars for ensuring that tax practitioners have appropriate qualifications is training, and this is what controlling bodies in South Africa have set out to ensure (Yanuardi, Putra & Riyanto, 2020). SARS requires controlling bodies for tax practitioners to have cogent education and training programmes as there is a positive correlation between education and competence (Yanuardi *et al.*, 2020).

According to SARS (2013b:3), entry level experience and education for any registered tax practitioner includes a requirement that “controlling bodies make provision for tax practitioners who may not be able to or do not wish to acquire further education, for example, due to their age, by considering different tiers of membership so that basic practitioners can still register and be subject to their codes of conduct and disciplinary codes to protect the public interest”. SARS introduced a new requirement in 2022, which replaced earlier educational requirements. According to Visser (2022), NQF Level 4 plus 10 years of experience is now the main requirement. Furthermore, new entrants must now take a two-hour test, based on eight modules of the SARS Readiness Programme and obtain a pass mark of at least 90%. These minimum requirements prescribed by SARS indicate that the emphasis is not only on theoretical qualifications, but also on practical or experiential knowledge to accommodate tax practitioners who, despite having insufficient formal education, should be able to act as tax practitioners, based on to their experience (SARS, 2013a).

### ***3.3.2.2 Continuous Professional Education***

The need for continuous professional development or education is one of the key requirements for tax practitioners. Through a system of continuing professional development (CPD), a tax practitioner is obliged by their Recognised Controlling Body to keep up to date with changes to tax systems (Hirst, 2020). Since the tax industry is dynamic and knowledge is ever evolving,

continuous professional development ensures that tax practitioners' knowledge is relevant and attuned to current best practices and tax legislation. For example, on the importance of continuous professional development, Venter (2013:41) argues that:

Most tax practitioners with an accounting background are not specifically well versed in the administrative side of taxation. If this is the case, it means that clients will not get the benefit of solid tax administration advice or education on their constitutional rights and administrative obligations. With the recent rather aggressive Tax Administration Act that was promulgated, accountants can no longer ignore tax administration. Tax Practitioners must ensure that SARS officials follow due process and comply with the Tax Administration Act. (They must) obtain Tax Administration knowledge by attending seminars on the Tax Administration Act or attending on-line courses on tax procedural law.

SARS periodically releases pronouncements on policy, which tax practitioners must always keep up with. In relation to CPE, SARS requires professional bodies to have the following (SAIBA, 2020:6):

- A minimum of 15 tax-related CPE hours per year;
- 60% of tax-related CPE must be verifiable by the controlling body;
- 40% of tax-related CPE may be non-verifiable CPE, provided the controlling body requires its members to record their CPE and furnish details to the controlling body if required; and
- CPE records of individual tax practitioners must be retained for five years.

Continuous professional development ensures that professionals attain and maintain professional knowledge and skills at the level required to ensure that clients and organisations receive competent professional service, based on current tax legislation, and commensurate with professional standards (Kamdar, 2019).

### ***3.3.2.3 Codes of Ethics and Conduct***

Tax practitioners have the primary goal of serving the public interest in an ethical manner and within the parameters of conduct that is based on professional propriety. Kamdar (2019: 2) submits that the work performed by a tax practitioner must be trusted by clients, stakeholders, and society at large. He further states that the work done by these professionals does not only reflect on them individually but more importantly, on the profession they represent. The main challenge that tax practitioners face, is striking a balance between upholding the State regulatory standards in executing their duties and being loyal to their clients (Thuronyi & Vanistendael, 1996). With effect from 1 June 2022, SARS has adopted a sterner approach to ethical regulation by focusing on tax compliance and requiring criminal clearance certificates for newcomers to the profession (Visser, 2022). As a guideline, Kamdar (2019) states that the tax positions taken by tax professionals must meet certain standards with respect to the advice they give. The tax professional must take reasonable care or have reasonable and not reckless grounds for tax position taken. Tax positions taken should not result in a conflict of interest for the professional, compromise the credibility of the professional, or subordinate the judgement of the tax professional to that of their client.

### ***3.3.2.4 Disciplinary Code and Procedures***

The purpose of a disciplinary code and procedures is to support constructive practices, promote mutual respect between practitioners and taxpayers, promote acceptable conduct, as well as prevent and correct unacceptable conduct (Kamdar, 2019). SARS (2013b) developed a guide for reporting unprofessional conduct among tax practitioners. The guide spells out the actions that SARS would take upon receipt of reports against the tax practitioners. Members who breach the code of ethics and conduct must be held accountable and sanctioned by the controlling body. The main features of the disciplinary code must include the following criteria, at the bare minimum (SARS, 2013a:4):

- in addressing breaches of the codes of ethics and conduct, the disciplinary code must address the complaints that may be lodged in terms of section 241 of the Tax Administration Act;

- disciplinary processes and procedures must be in place;
- cases may be reported to the controlling body by SARS, clients, or other professional bodies;
- sanctions must fit the offence committed;
- there must be a range of sanctions that can address the severity and the effect of the non-compliant behaviour of a member; this could include warnings, recommendations for the tax practitioner to undertake educational courses to increase competency in their practice, financial sanctions, and removal as a member;
- the sanction must effectively change the behaviour of the practitioner;
- repeated non-compliant behaviour must receive a harsher sanction than was imposed previously;
- outcomes of all disciplinary hearings of tax practitioners that have been found guilty must be reported to SARS as well as the client concerned;
- when a disciplinary hearing results in the removal of a member, the identity and the sanctioning of the member must be published on the controlling body's website; and
- the controlling body must retain jurisdiction over its members, notwithstanding that they may have resigned, provided that the conduct under investigation took place at the time they were a member of the controlling body.

SARS, with effect from 1 June 2022, started tightening regulatory mechanisms around consequence management and now requires recognised controlling bodies to test all their members once a year for compliance with CPD policy, as opposed to allowing the recognised controlling bodies to decide on the sampling size of the members to be tested, as was previously allowable (Visser, 2022).

### **3.3.2.5 Membership**

Organisations that wish to apply for recognition as a recognised controlling body for tax practitioners must meet the following criteria (SARS, 2013a:4):

- 1000 or more full members – excluding trainees and students;
- the controlling body must require members to declare that they have not been removed from a controlling body for misconduct and that they do not have a criminal record, as set out in section 240(3) of the Tax Administration Act; the controlling body must

either agree procedures with SARS to verify a random selection of its members' criminal records or assist SARS with the verification of the criminal records of members randomly identified by SARS; selected members must provide the recognised controlling body with the necessary proof; and

- a tax practitioner removed by a recognised controlling body for misconduct cannot be accepted as a member of another recognised controlling body.

### ***3.3.2.6 Complaints Against Tax Practitioners***

In terms of section 241 of the Tax Administration Act, taxpayers have the right to report a tax practitioner when the tax practitioner's conduct is deemed to be unlawful, injudicious, or unprofessional. Aggrieved taxpayers who have been negatively affected by the unprofessional conduct of their tax practitioners may, through the provisions of section 234 of the Tax Administration Act, have recourse and may be able to make a claim for damages. Any persons wishing to report a registered tax practitioner completes a designated form (RUC00). The form is accessible on the SARS website under the "Forms" section. Alternatively, an aggrieved taxpayer can register a complaint or grievance with SARS at a SARS branch. It is common practice for taxpayers to seek SARS interventions on any tax matters by approaching a SARS branch or via the SARS Contact Centre. By opting to seek assistance in reporting unprofessional conduct by tax practitioners through this traditional route, SARS may still require a written complaint on the RUC00 form to initiate an investigation. The RUC00 is a formal incident report that captures pertinent details of the offence. According to SARS (2013b), the key procedural steps that SARS takes in handling complaints against tax practitioners include:

- SARS will investigate the complaint – during this process, the complainant may be contacted for additional information and proof of the allegation against a tax practitioner;
- SARS will issue a letter of intention to disclose the tax information of the taxpayer to the relevant controlling body (where applicable), and a letter to the tax practitioner informing him/her that SARS intends to complain to his/her recognised controlling body;
- the taxpayer and tax practitioner then have 21 business days to object;

- if no objection is received or SARS is not convinced by the grounds of the objection, SARS will log a complaint against the practitioner with the relevant controlling body;
- the controlling body will further investigate the matter in accordance with their processes, for example, arrange a hearing;
- the controlling body will inform SARS of its decision on the matter, for example, disciplinary action against the practitioner, deregister the practitioner, or no further action; and
- if SARS is not satisfied with the outcome, the case can be escalated to the Ministry of Finance.

The controlling body to which the practitioner belongs has the ultimate responsibility to deal directly with the offending member. A tax practitioner is thus sanctioned in accordance with the code of professional conduct of the respective controlling body. This is set out in section 243 of the Tax Administration Act, which states that the controlling body deals with any complaint in accordance with its own set of rules.

- The complaint is to be considered by the controlling body according to its rules.
- A hearing of the matter where details of a person's tax affairs will be disclosed, may be attended only by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.
- The controlling body and its members must preserve secrecy in regard to the information about the affairs of a person that may be conveyed to them by SARS, or as may otherwise come to their notice in the investigation of the complaint, and must not communicate the information to a person other than the person concerned or the person against whom the complaint is lodged, unless the disclosure of the information is ordered by a competent court of law.

### ***3.3.2.7 Measures to Enhance Awareness of the Taxpaying Public in Relation to Its Rights***

It is important for members of the public to be aware of available mechanisms at their disposal when they have complaints against tax practitioners. According to SARS (2021), it has made

strides in administrative tax education for the public. SARS reported an increase in complaints in the first half of the year of 74 complaints (57% of all complaints received in 2020), which were lodged against tax practitioners or unregistered practitioners who acted as impostors (SARS, 2021).

Hirst (2020:59) advises taxpayers to ask the following questions of tax practitioners:

- What is your tax practitioner number at SARS?
- What is the name of your recognised controlling body?
- What is your membership number at the recognised controlling body?
- What are your qualifications in tax?
- What experience do you have in the specific area where tax help is needed?

### **3.4 CONCLUSION**

The South African government has made significant strides in the regulation of tax practitioners. From the time the SARS discussion document was formulated up to the time the Tax Administration Act was promulgated, clarity has been provided on the role of, and parameters within which tax practitioners should operate. As opposed to following an unstructured approach to the operations and qualifications of tax practitioners, legislative interventions and consistent policy pronouncements by SARS continue to provide clarity on tax practitioner regulation. The discernible area of concern, however, is that tax practitioners belong to various controlling bodies with differing disciplinary procedures and standards. This lack of uniformity stems from the fact that the profession of a tax practitioner spans various disciplines such as accounting, auditing, and law. It was found that there are two categories of recognised controlling bodies, namely, those which derive automatic recognition due to their statutory identity and those which have to apply in order to be granted this recognition, provided they met the minimum requirements.

In this chapter it was explained that section 240 of the Tax Administration Act is the main statutory instrument that regulates tax practitioners. While tax practitioners belong to various controlling bodies, SARS has, through the provisions of the Tax Administration Act,

established some form of standardisation by demanding that controlling bodies enforce the following regulatory elements:

- minimum qualifications and experience requirements;
- continuing professional education requirements;
- codes of ethics and conduct; and
- disciplinary codes and procedures.

Chapter 4 discusses the Zimbabwean regulatory framework.

# **CHAPTER 4: EVALUATION OF TAX CONSULTANT REGULATION IN ZIMBABWE**

## **4.1 INTRODUCTION**

Like chapter 3, this chapter addresses the first sub-goal of the research – it describes and analyses the current tax consultant regulatory environment in Zimbabwe. The chapter explores scholarly views, legislative instruments, and policy documents relating to the regulatory environment in Zimbabwe, in preparation for addressing the third sub-goal of the research, which is to determine the extent to which the Zimbabwean and South African tax practitioner regulatory frameworks compare with best practice in the German tax consultant regulatory system.

The chapter provides a contextual overview, including the economic situation in Zimbabwe, the valuable role played by tax consultants and the functions of, and problems experienced by the ZIMRA. The regulation of tax consultants is then discussed in terms of the PAAA Act and the relevant constituent bodies. Membership of the PAAB is a requirement to practice as a tax consultant. Finally, the chapter provides a summary of the entry requirements of the constituent bodies, the requirement for continuing professional education, codes of ethics and conduct, and the disciplinary codes of constituent bodies.

The chapter lays the foundation from which recommendations will be drawn for an optimal appropriate tax regulatory model for tax consultants in both Zimbabwe and South Africa.

## **4.2 CONTEXTUAL OVERVIEW**

The regulation of professions that are based on trust is a critical legitimacy function of any jurisdiction (Ndamba & Matamande, 2016). In the case of tax consultants, regulation contributes to effective tax administration by ensuring the collection of the right amount of tax, at the right time and at minimal cost to the government, while imposing the least burden on taxpayers (Transparency International Zimbabwe, 2020). While tax consultants may play multiple critical roles in tax and financial planning systems, their functions may be influenced

by, and can be susceptible to the competing interests of clients, tax authorities, professional associations, governments, and professional bodies (Wurth & Braithwaite, 2016). In addition, the structure and state of a country's economy significantly influences matters of taxation and the consultants involved (Therkildsen, 2001).

Zimbabwe is an interesting country from the perspective of analysing determinants of tax advisory activities because of the volatile and unpredictable economic environment, which has attracted scholarly scrutiny and commentary from a range of disciplines. Zimbabwe is currently facing a number of economic challenges, with a liquidity problem as the main one (Nyamapfeni, 2021). For example, the hyper-inflationary environment, which is also characterized by multiple currencies, makes it complicated for taxpayers and tax consultants alike to determine the currency rate in preparing tax returns. It is, however, beyond the scope of this study to comprehensively discuss the Zimbabwean economic situation, but a summary of the Zimbabwean economic decline and dynamics that impact taxation and the *fiscus* is captured by Kwaramba and Mudzingiri (2016:4):

A series of counterproductive political decisions which precipitated the Zimbabwe economic crisis were taken from late 1997. These include large, unplanned payments to war veterans which undermined fiscal discipline, land appropriation, policy reversals on taxation, price controls, and a decision to send the Zimbabwean army to the Congo (at own expense). Corporatist controls over the exchange rate and regulation of many other prices were re-established, which destroyed the viability of many firms and reduced the incentive to invest and were succeeded by violent land expropriations. Symptoms that characterised the prevalence of an economic crisis in Zimbabwe are the hyper-inflation environment compounded by a huge black-market premium between the official foreign exchange rate and the parallel (black market) exchange rate. High inflation led to company closures, which led to reduced domestic production of goods and services – which, in turn, resulted in job losses and an increase in consumption of imported goods.

The aim of tax administration is to maximise compliance by taxpayers with their taxation obligations (Transparency International Zimbabwe, 2020). High taxation rates, coupled with

poor enforcement and corruption, encourage a high level of tax avoidance and evasion in Zimbabwe (Maradze, Nyoni & Nyoni, 2020). The way government spends tax revenues (especially the quality and quantity of public goods and services supplied to taxpayers) in exchange of their tax contributions undermines tax morale (Sebele-Mpofu, 2020). Many taxpayers consider that their taxes are just enriching corrupt government officials (AFRODAD, 2011). The situation in Zimbabwe is further compounded by wide-spread corruption in ZIMRA, the entity responsible for revenue collection (Sebele-Mpofu, 2020). The intermediary role, professional rectitude, and moral obligations of tax consultants who are sandwiched between disgruntled taxpayers and a corruption ridden tax authority within a declining economic context requires effective professional regulatory mechanisms (Bonga, Dhoro-Gwaendepi & Mawire-Van Strien, 2015).

Tax consultants have always been considered as important intermediaries of transactions between taxpayers and tax officials (Wurth & Braithwaite, 2016). A study by Maseko (2014) in Zimbabwe reveals that taxpayers sought the assistance of tax consultants as they did not have current or adequate knowledge of tax matters. The blameworthiness of tax consultants is significantly higher than taxpayers because of the special knowledge (perceived or otherwise) they hold in facilitating tax avoidance (Wurth & Braithwaite, 2016). Wurth and Braithwaite (2016:4) further describe this as follows:

Tax practitioners are highly networked actors in the tax system, holders of knowledge and resources, and importantly of contacts through whom tax avoidance contagion is triggered. In other words, tax practitioners are more likely to stay within the law when it is clear in its intent and purpose but are more likely to test the boundaries when loopholes and ambiguities permit.

In Zimbabwe taxes are a critical source of government revenue, and they contributed an average of 88.1% to government revenue between 1980-1989, 89% between 1990 and 1999 and peaking to 98% in 2005 (Ndedzu, Macheka, Mavesere & Zivengwa, 2013). More recently, according to the 2020 Mid-term Fiscal Review, taxes constituted 97,6% of government revenue (Transparency International Zimbabwe, 2020). In generating revenue through taxes,

Zimbabwe, like any other developing country, faces challenges such as insufficient staff with appropriate skills, lack of up-to-date equipment, complex tax laws, corruption, the growth of informal traders and paltry budgetary allocations (Nyamapfeni, 2021). In addition, citizens' lack of knowledge of the roles, functions and duties of public officials, including tax administration institutions, has resulted in increased corrupt behaviour among tax officials (Transparency International Zimbabwe, 2020). This emphasises the role of tax consultants in mediating tax transactions while maintaining moral and professional imperatives that, according to Wurth and Braithwaite (2016), are not always mutually compatible:

- attracting clients;
- meeting taxpayer expectations;
- meeting performance standards set by partners;
- building their reputation;
- abiding by professional obligations and any associated regulatory standards; and
- operating in accordance with the rules set down by the tax authority.

The statutory body responsible for revenue collection in Zimbabwe is ZIMRA (Zhou & Madhikeni, 2013). The statutory body was established in 2001 as a successor to the then Department of Customs and Excise to improve efficiency in tax administration and thereby enhance revenue collection (AFRODAD, 2011). Its responsibilities include assessing, levying and collecting revenue from various taxes that include income tax, capital gains, duty tax, resident shareholders' tax, Value-Added Tax, and stamp duty, among others (Zhou & Madhikeni, 2013). In terms of section 4 of the Revenue Authority Act, 10 of 2009 [Chapter 23:11], the functions of ZIMRA are:

- to act as an agent of the state in assessing, collecting and enforcing the payment of all revenues;
- to advise the Minister on matters relating to the raising and collection of revenues; and
- to perform any other function that may be conferred or imposed on the Authority in terms of legislation.

Despite statistics showing that taxes are the main source of revenue to finance expenditures by the government in Zimbabwe, tax administration in Zimbabwe is impaired by a lack of transparency and corruption (Transparency International Zimbabwe, 2020). A study by Dube (2014) shows that ZIMRA has challenges in executing its mandate and these challenges include:

- poor monitoring and evaluation;
- low manpower levels;
- a lack of commitment to enforce tax regulations; and
- high levels of corruption, which resulted in low levels of tax compliance.

ZIMRA hardly issues any periodic notes, guidelines or statements that provide guidelines for tax consultants. There is no clear interface between ZIMRA and tax consultants. Whether this is a deliberate approach that is linked to Zimbabwe's regulatory approach, ZIMRA's mandate, or mere oversight, is not clear. However, considering the importance and relevance of tax consultants in the functioning of tax administration systems, it can be argued that this confirms Chaterera's (2016) observation that Zimbabwe has a befuddled digital record keeping and information dissemination system that compromises transparency and effective service delivery. Wadesango, Denford and Wadesango (2019) advance the view that one would expect ZIMRA to be the key player in the regulation of tax consultants. However, the institution exists largely as a peripheral participant (Wadesango *et al.*, 2019), which explains why there is hardly any commentary by ZIMRA on the regulation of tax consultants in Zimbabwe.

#### **4.3 THE STATE OF REGULATION OF TAX CONSULTANTS IN ZIMBABWE**

The practical importance of tax consultants for the functioning of the tax system requires that the system of tax legislation should provide an underpinning for their role (Thuronyi & Vanistendael, 1996). Section 64 of the Zimbabwean Constitution (Amendment) Act, 20 of 2013, states that every person has the right to choose and carry on any profession, trade or occupation, but the practice of a profession, trade or occupation may be regulated by law. Regulations are the cornerstone for achieving the right quality and consistency in the profession. However, regulatory frameworks can only thrive in jurisdictions with efficient systems that

attend timeously to regulatory changes (Ndamba & Matamande, 2016). Ndamba and Matamande (2016) further observe that the tax profession in Zimbabwe is mainly regulated through a legislative approach using a state licencing authority called the Public Accountants and Auditors Board (PAAB).

#### **4.3.1 Legislative Framework**

The Constitution of Zimbabwe, in terms of section 101 as read with section 18(a) of the Public Finance Management Act, 11 of 2009, provides for the establishment of a consolidated revenue fund into which all revenues, including taxes, are paid. An effective tax culture can develop only when taxpayers and tax collectors discharge their obligations equally well. The relationship between taxpayers and the tax agencies needs to be mutual and respectful to promote a culture of paying tax (Nyamapfeni, 2021). The legislation plays a critical role in promoting a positive tax culture and practices.

##### ***4.3.1.1 The Public Accountants and Auditors Amendment Act, 1 of 2015***

The Public Accountants and Auditors Amendment Act (PAAA Act) provides a framework for tax consultants in Zimbabwe. The Act addresses aspects of registration, constituent bodies, qualifications, standards, and disciplinary procedures, through a board known as the Public Accountants and Auditors Board (PAAB) (Ndamba & Matamande, 2016).

Section 19 of the PAAA Act provides for the registration of tax consultants with the PAAB and directs that:

- 1) The Board shall establish the following registers -
  - a) the Register of Public Auditors; and
  - b) the Register of Public Accountants; and
  - c) the Register of Tax Accountants; and
  - d) the Register of General Accountants; and
  - e) a register, by whatever name the Board may designate it, in which shall be recorded the names, address and other prescribed particulars of every firm, partnership or other entity offering accountancy profession services for hire ...

Section 19(c) of the PAAA Act is the most relevant to the regulation of tax consultants. It clearly instructs all prospective tax consultants who wish to offer their services to the public for a fee, to be included in the register of tax accountants administered by the PAAB.

This supports the view that regulation of the accounting profession in Southern Africa tends to be characterised by frameworks where an accountancy body plays a dual role of regulator and professional accountancy body at the same time (Ndamba & Matamande, 2016, in Odendaal & de Jager, 2008). Questions arise regarding the feasibility of one accountancy-oriented body (the PAAB) assuming a dual role of player and referee, considering that so many accounting professional bodies exist and operate in Zimbabwe (Ndamba & Matamande, 2016).

According to the PAAB (2021), the PAAB is regarded as:

...the national standards setter in Zimbabwe responsible for endorsing and adopting international accounting standards, international standards on auditing and international public sector accounting standards when they meet certain criteria for prescription by statutory regulation by PAAB in accordance with section 44(2)(a) of the Act. PAAB is responsible for defining and enforcing ethical practice and discipline among registered public accountants and public auditors and setting Ethics standards and representing the views of the accountancy profession on national, regional and international issues. PAAB also plays a role in accountancy-specific education.

According to section 5 of the PAAA Act, the Board's regulatory duties include:

- considering and determining applications for registration;
- issuing practising certificates to registered persons and cancelling or suspending such certificates;
- defining and enforcing ethical practice and discipline among registered persons;
- evaluating and monitoring the standards of qualifying examinations, courses and training set or offered by the constituent bodies;

- evaluating examinations and training courses of foreign institutions with a view to making recommendations to the constituent bodies; and
- promoting the standardisation of qualifying examinations on common subjects.

Although the PAAA Act regulates the accounting profession, it incorporates tax consultants, as it is stated in section 2 that the accountancy profession denotes the occupation of those persons registered as accountants, tax accountants, public accountants or public auditors (The Public Accountants and Auditors Amendment Act, 2015).

In the previous version of the PAAA Act prior to its amendment (The Public Accountants and Auditors Act, 1996), a section that defines the accountancy profession as including tax accountants did not exist. According to Veritas (2014), its insertion in the amended version introduced vital implications for the regulation of the tax consultant profession, as it sought to:

- recognise persons engaged in certain occupations related to accounting as professionals in their own right with the right and obligation to be registered separately from public accountants and auditors, namely "general accountants" and "tax accountants";
- recognise certain bodies as "associate constituent bodies" of the PAAB (the Institute of Certified Tax Accountants of Zimbabwe, the Institute of Administration and Commerce of Zimbabwe, and the Southern Africa Association of Accountants), which represent the lower levels of the accountancy profession (general accountants and tax accountants); and
- make provisions that enable the PAAB to keep a register of public accountants, public auditors, general accountants, and tax accountants who are engaged in any accounting profession, otherwise than as independent contractors or partners in firms.

Section 2 of the PAAA Act defines a tax accountant as a qualified practitioner who offers tax services for a fee and is entitled to use the designation "Registered Tax Accountant (Zimbabwe)", or the initials "R.T.A. (Z)". Persons are qualified to register as a tax accountant if they are members in good standing of a constituent body.

#### **4.3.1.2 Registration**

In terms of registration, section 21(3) of the PAAA Act states that any person who wishes to be registered at a tax consultant shall submit an application on a prescribed application form with a registration fee to the constituent body. The secretary or registrar or other executive officer of the constituent body concerned shall certify in writing whether or not the applicant:

- is a member in good standing of the constituent body;
- is qualified for registration as a tax accountant; and
- has passed examinations that have been approved by the Public Accountants and Auditors Board (the Board).

The Board shall consider every application for registration and if satisfied, the Board shall direct the Secretary of the Board to register the applicant in the appropriate register. When the Secretary of the Board registers a person, he or she shall issue that person with a certificate. The appearance of a tax consultant's name in the Register constitutes *prima facie* proof that the person is registered. If the Board is not satisfied, the application is rejected.

Section 24 of the PAAA Act outlines provisions for cancellation of registration. The Board shall direct the cancellation of registration of any registered person who:

- has ceased to be a member of any constituent body by virtue of whose membership he or she was registered;
- has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country;
- has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country;
- has been convicted inside or outside Zimbabwe of a criminal offence which, in the opinion of the Board, is of a disgraceful or dishonourable nature; and

- is certified either inside or outside Zimbabwe to be mentally disordered or defective or of unsound mind in terms of the Mental Health Act, 15 of 1996 (Chapter 15:12) or an equivalent law in a foreign country.

According to the PAAA Act, if the Board is notified in writing by a constituent body that it has suspended the membership of a registered practitioner, the Board shall suspend that practitioner's registration for the same period as his or her membership has been suspended by the constituent body. Before reaching a decision as to whether or not a registered practitioner's registration should be cancelled or suspended, the Board informs the practitioner in writing of the grounds on which it might reach such a decision and affords the practitioner a reasonable opportunity to make representations in the matter in writing or in person.

#### ***4.3.1.3. Issuance of a practising certificate***

Section 28 of the PAAA Act stipulates that upon receipt of an application for a practising certificate, the Board shall issue a practising certificate to the applicant authorizing the practitioner to practice if the Board is satisfied that the applicant:

- is registered in the appropriate Register; and
- is a member in good standing of a constituent body; and

if the Board is not satisfied, it shall refuse to issue the practising certificate concerned and shall advise the applicant accordingly.

#### ***4.3.1.4 Basic standards and disciplinary penalties***

Section 34 of the PAAA Act states that practitioners suspected of contravening the by-laws or any other provisions of the PAAA Act are reported to the appropriate constituent bodies for disciplinary action. The relevant constituent body shall ensure that all necessary steps are taken to deal with the referral expeditiously and shall report the outcome to the Board within a reasonable time. If, following any disciplinary action against a tax consultant, conditions are imposed upon his or her entitlement to practise, the practitioner shall return any practising

certificate to the secretary of the Board, who shall endorse the conditions on the certificate. A registered tax accountant shall:

- hold himself or herself out to be a registered tax accountant; or
- use the designation or any other name, title, description or letters indicating that he or she is a registered practitioner, whether by advertisement or description or in any document.

Any person who contravenes these requirements shall:

- in the case of an individual be liable for a fine or to imprisonment for a period not exceeding one year, or to both fine and imprisonment; or
- in the case of a corporate body, partnership or other juristic entity, be liable for a fine.

A person who is employed by a tax consultant or entity does not automatically become a tax consultant even if he or she might be working under the direction of a practitioner. A company or partnership whose directors or partners are registered practitioners and hold practice certificates may practice.

#### ***4.3.1.5 Practice By-laws***

The PAAB may make by-laws prescribing anything which by law is required, necessary or convenient for carrying out or giving effect to the provisions of the PAAA Act. By-laws shall not have effect until they have been approved by the Minister of Finance and published in the *Gazette*.

By-laws may provide for:

- fees which shall be payable in connection with registration, the issue of certificates and the renewal of certificates;
- the issue of duplicate, corrected or amended certificates of registration; and
- applications for practising certificates, the renewal of such certificates and the form of such certificates.

#### **4.3.1.6 Basic Regulations Provided by the Public Accountants and Auditors Board**

Section 45 of the PAAA Act provides that the Board may make regulations prescribing key components that are intended to uphold and promote the profession. Such prescriptions include:

- the minimum qualifications, competency standards and requirements for registration of practitioners;
- the particular competencies, qualifications, rights and privileges of persons registered as practitioners in a manner not inconsistent with the statutory definition of tax consultants;
- the criteria upon which the Board will recognise or withdraw recognition of educational qualifications or training programmes offered or be offered in connection with the profession at any educational institutions or by any principal or associate constituent body or by any other body purporting to represent the profession;
- anything that may promote the integrity of the profession and the protection of consumers of services offered by practitioners; and
- penalties for breaches of the regulations of either a fine, imprisonment or both.

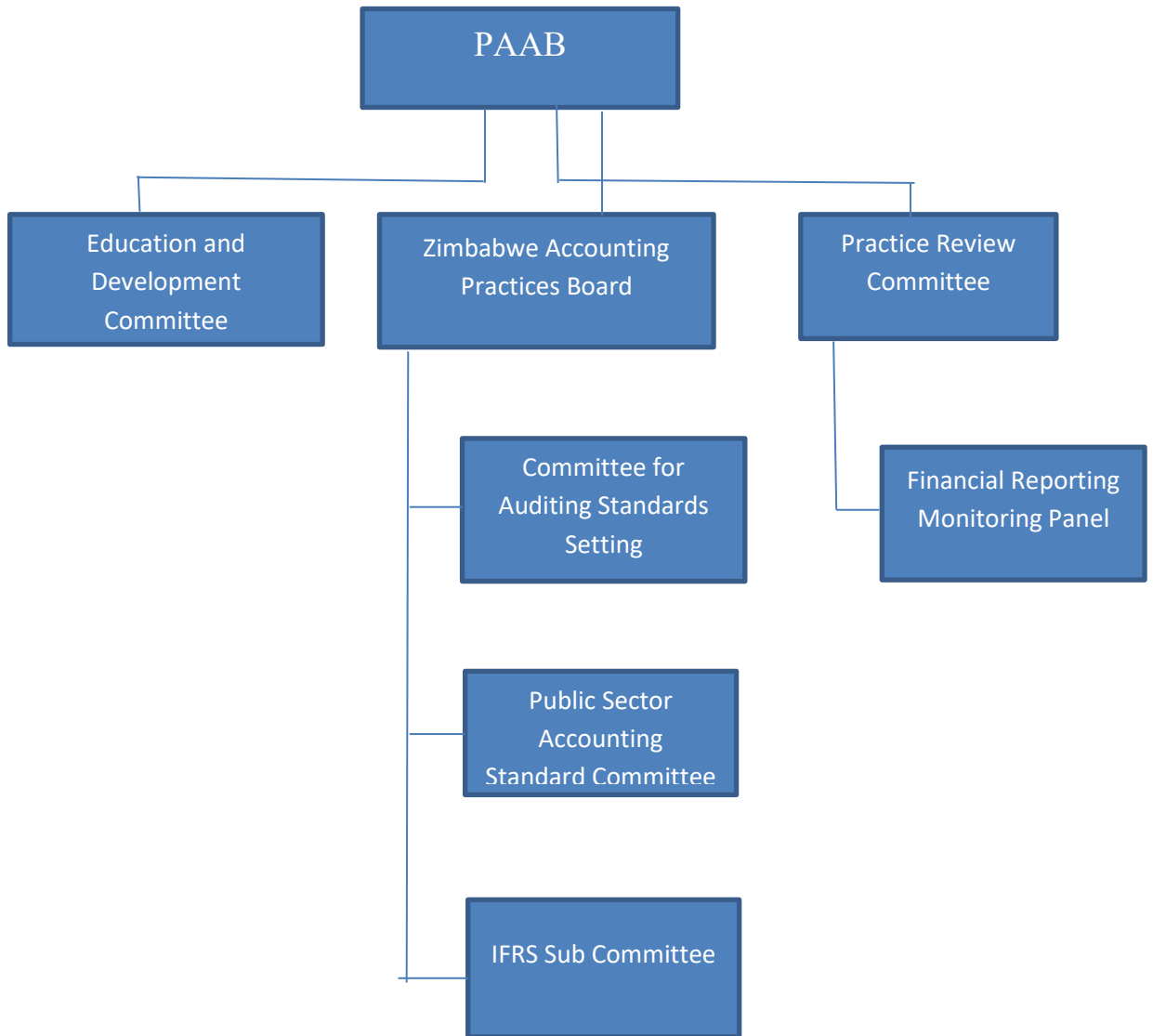
#### **4.3.2 Critical Commentary on the Public Accountants and Auditors Board**

Tax consultants in Zimbabwe largely fall under the accountancy profession as is clear from the PAAA Act. The accountancy profession in Zimbabwe has had a history of self-regulation as seen in the then Chartered Accountants Act, 4 of 1918 [Chapter 27:02]. However, rapid industry transformation involved goal-oriented regulatory reforms that brought about the establishment of a regulatory board under the auspices of the PAAB.

In Zimbabwe, the Institute of Chartered Accountants of Zimbabwe (ICAZ) is the pre-eminent body in the development and promotion of accountancy, assurance, advisory services, business, and good governance practices (ICAZ, Online). It is the longest established and largest Zimbabwean professional accountancy organisation body and was set up in 1918 in terms of Ordinance 14 of 1917, and now incorporated in terms of the Chartered Accountants Act [Chapter 27:02] (ICAZ, Online). The general expectation would be that it would be the apex regulator of the accounting profession in its entirety. A possible reason why the PAAB is the

chief regulator is because of its wider public service reach as an auditing organisation that regulates auditors who offer services to the general public. Figure 4.1 depicts the regulatory structure of the PAAB.

**Figure 4.1: PAAB Regulatory structure**



Source: Ndamba and Matamande (2016:113)

As depicted in the diagram, the PAAB places stronger emphasis on accounting and auditing regulation, as if to imply that tax consultants' responsibility should be under the purview of

some other entity such as ZIMRA. According to Ndamba and Matamande (2016:113) the above regulatory structure illustrates that:

Tax practitioners under the Institute for Chartered Tax Accountants (ICTA) are not covered in the structure whose focus appears at face value to be on accounting and auditing only. It does not cover consultants and internal auditors who interface with non-financial information such as consultants or advisers on financial information like IFRS Advisers and Internal auditors.

Despite the fact that the regulatory structure is a construct of the World Bank, Ndamba and Matamande (2016) observe that the absence of a monitoring and enforcement committee, which is crucial in enhancing the regulatory credibility of the PAAB, is an additional threat to the effectiveness of regulation by the PAAB.

#### **4.3.3 Synopsis of Regulation by Recognised Bodies in Zimbabwe**

Schedule 2 of the PAAA Act provides for the key bodies responsible for regulating the accountancy profession, which the tax consultant profession falls under. Constituent bodies fall into two categories, and these are principal constituent bodies and associate constituent bodies. Section 3 of the PAAB Act states that:

The Minister of Finance may, on the recommendation of the Board declare that:

- any body of persons established in Zimbabwe to advance the interests of public accountants or public auditors shall be a principal constituent body; or
- general accountants or tax accountants shall be an associate constituent body.

Principal constituent bodies consist of:

- the Zimbabwe branch of the Association of Chartered Certified Accountants (ACCA);
- the Zimbabwe branch of the Chartered Institute of Management Accountants (CIMA);
- the Institute of Chartered Accountants of Zimbabwe (ICAZ);

- the Institute of Chartered Secretaries and Administrators in Zimbabwe; and
- the Institute of Certified Public Accountants of Zimbabwe (ICPAZ).

Associate constituent bodies consist of:

- the Institute of Certified Tax Accountants of Zimbabwe;
- the Institute of Administration and Commerce of Zimbabwe; and
- the Southern Africa Association of Accountants (SAAA).

Ndamba and Matamande (2016) refer to the dichotomy between principal constituent bodies and associative constituent bodies as the two-tier system. Tier 1 (principal constituent bodies) is composed of members of the International Federation of Accountants (IFAC), while tier 2 is composed of non-IFAC registered members. The PAAB structure presents the tax consultant profession as a derivative of major accountancy professions such as auditing and accounting.

#### **4.3.4 An Assessment of Regulatory Elements per Constituent Body**

The regulatory elements of each constituent body vary to a certain extent. These are set out below.

##### ***4.3.4.1 Minimum Entry Requirements***

###### *The Institute of Certified Tax Accountants of Zimbabwe Requirements*

According to the PAAA Act, the Institute of Certified Tax Accountants of Zimbabwe (ICTA) is an associate constituent body. Its key minimum entry requirements for an aspiring tax professional are at the level of a Post-Graduate Student Member. The prospective tax consultant must satisfy the following:

- ICTA Tax Technician Diploma;

- a relevant undergraduate degree from a recognized university, or any other qualification at the level of an undergraduate degree offered by a recognized institution, for example, a relevant Higher National Diploma;
- a full qualification granted by any constituent member of the PAAB, for example, ICAZ, ACCA, CIMA, ICPAZ, ICSAZ (Institute of Chartered Secretaries and Administrator), SAAA, IAC, or a holder of a master's degree in taxation or accounting, or a ZIMRA employee or ex-ZIMRA employee with over 10 years work experience (professional conversion route); and
- if the aspirant is otherwise considered by the Council to be a fit person to be so enrolled (ICTA, 2018).

*Institute of Chartered Accountants of Zimbabwe (ICAZ) requirements*

The entry requirements to becoming a chartered accountant (Zimbabwe) are as follows (ICAZ, Online):

- an accounting degree not awarded more than three years prior;
- a holder of a degree that is more than 3 years old is compelled to do a one-year bridging course before proceeding to the Zimbabwe Certificate in the Theory of Accounting; and
- passing the Institute's qualifying examinations and successfully completing articles at an accredited training institution.

*Chartered Institute of Management Accountants (CIMA) requirements*

CIMA has categories of membership, with the entry level being an Associate. Its requirements include more than five years of work experience, which should be accompanied by proof of the five-year record (CIMA, 2016).

*Association of Chartered Certified Accountants (ACCA) requirements*

The ACCA programme requires 14 exams, seven of which can be waived if one has an existing ACCA compatible accounting degree. The ACCA route also requires three years of practical

experience working inside a Chartered firm or under the close supervision of a Chartered mentor. The ACCA route also offers diploma and degree pathways by doing extra work outside the exams. The practical experience and exams can be done concurrently (Changunda, 2019).

#### *Institute of Chartered Secretaries and Administrators (ICSAZ) requirements*

According to ICSAZ (2019), the ICSAZ requires the following qualifications:

- completing all the examinations successfully;
- attaining at least 21 years of age;
- having had qualifying service with an organisation; this requirement is one of practical experience and is as fundamental a requirement for membership as is the completion of the examinations; the normal period of service required is six years; and
- having provided evidence of employment details and evidence of personal good character in the form prescribed by the Institute.

#### *Institute of Certified Public Accountants (ICPA) requirements*

The ICPA has similar minimum entry requirements on its website, documented under “Membership Registration” (ICPA, Online):

Students must obtain 3 years relevant supervised training and complete all examinations (excluding any exemptions) to apply for membership of the CPA. Students can fulfil their training requirements working in practice, industry, commerce, the public sector or any combination of these categories. The supervised training should be monitored by a Registered Public Accountant in the case of those pursuing an accounting career only. Those wishing to pursue a career in auditing will be supervised by a Registered Public Auditor in an authorised audit firm. Students are required to obtain an in-depth level of training in at least two of the six areas identified in the Training Record. The six areas are: Financial Accounting, Auditing and Statutory Compliance, Taxation, Information and Financial Systems. Corporate Planning,

#### ***4.3.4.2 Additional Regulatory Elements***

In addition to these minimum requirements, Table 4.1 provides a condensed diagrammatic presentation of additional regulatory elements adopted by constituent bodies in Zimbabwe.

**Table 4.1: Regulatory elements adopted by constituent bodies in Zimbabwe**

<b>Regulatory Element</b>	<b>ICTA</b>	<b>ICAZ</b>	<b>CIMA</b>	<b>ACCA</b>	<b>ICSAZ</b>	<b>ICPA</b>
<i>Continuous Professional Education (CPE)</i>	<p>Currently ICTA requires 40 verifiable CPD hours per annum. The following are examples of verifiable CPD (ICTA, Online):</p> <ul style="list-style-type: none"> <li>• Conferences, seminars, workshops or similar structured discussion forums.</li> <li>• Research and lecture preparation.</li> </ul>	<p>ICAZ has a CPD policy that states the Institute’s CPD minimum requirements as follows (ICAZ, Online.):</p> <ul style="list-style-type: none"> <li>• Completion of a minimum of 20 verifiable hours per annum.</li> <li>• 120 hours over three years of which 60 hours should be verifiable.</li> </ul>	<p>All CIMA members and Chartered Global Management Accountant designation holders are required to undertake CPD and keep a record of their development activities. See regulations Part I, 13-18 of the Royal Charter, by-laws and regulations for more information (CIMA, Online).</p>	<p>ACCA has a flexible CPD policy with the following minimum requirements, depending on a chosen route (ACCA, Online).</p> <p><i>Unit Route</i> Completing a total of 40 relevant units of CPD each year, comprising at least 21 verifiable units, and up to 19 non-verifiable units.</p> <p><i>Unit Route: Part Time or Semi-retired</i> If members are employed for 770 hours or less during a CPD year, which works out at 17.5 hours per week, they may be eligible to follow ACCA’s part-time or semi-retired route.</p>	<p>ICSAZ, which is a division of the Institute of Chartered Secretaries and Administrators in the United Kingdom, currently requires the following as a minimum (Chartered Governance Institute UK &amp; Ireland, Online):</p> <ul style="list-style-type: none"> <li>• Mandatory completion of a minimum of 20 CPD hours, excluding exemptions.</li> <li>• Members in public practice need 35 CPD hours.</li> </ul>	<p>ICPA’s publicly available literature does not specify the minimum CPD requirements. The institute, however, does declare that it is a strong advocate of CPD and has implemented mandatory (CPD) programmes for all members.</p>

<b>Regulatory Element</b>	<b>ICTA</b>	<b>ICAZ</b>	<b>CIMA</b>	<b>ACCA</b>	<b>ICSAZ</b>	<b>ICPA</b>
<p><i>Continuous Professional Education (CPE)</i> [continued]</p>				<p>This also applies to members who are only active in the workplace at certain times of the year. This translates to 19 units of non-verifiable CPD, where one unit equals one hour of development. Members have the freedom to set their own level of verifiable CPD.</p> <p><i>ACCA Approved Employer Route</i> Employee development programme to complete the CPD.</p> <p><i>IFAC Body Route</i> If member is a full member of another professional accountancy body, which is a member of IFAC and has an IFAC Compliant CPD Policy.</p>		

<i>Regulatory Element</i>	<i>ICTA</i>	<i>ICAZ</i>	<i>CIMA</i>	<i>ACCA</i>	<i>ICSAZ</i>	<i>ICPA</i>
<i>Codes of Ethics and Conduct</i>	While all these Constituent Bodies may have their respective Codes of Professional Conduct, tax consultants are also bound by the PAAB's code, which was adopted through Statutory Instrument 41 of 2019 from the International Ethics Standard Board for Accountants (IESBA).					
<i>Disciplinary Code &amp; Procedures</i>	Section 34 of the PAAA Act lays the responsibility for disciplinary proceedings on constituent bodies: "each constituent body shall be responsible, in the first instance, for the professional conduct of its members who are registered persons and, for that purpose, each constituent body shall have power, in accordance with the enactment under which it is established or its constitution, as the case may be, to undertake disciplinary proceedings against such members and to punish them for breaches of the rules referred to in section thirty-three".					
	ICTA has a disciplinary code whose sanctions include suspension and termination of membership for those in breach of the code of professional conduct (ICTA, Online).	ICAZ has disciplinary rules in the institute's By-laws, Constitution and the Code of Professional Conduct (ICAZ, Online).	CIMA has a disciplinary Committee which deals with complaints referred by the Investigation Committee (CIMA, Online).	ACCA has a Panel that combines lay and accountant committee members, chairmen and legal advisers, as well as disciplinary assessors and regulatory assessors whose appointment is overseen by ACCA's Appointments Board (ACCA, Online).	ICSAZ has a Complaints and Disciplinary Process documented on its website.	ICPA's publicly available literature does not address the application of any disciplinary code or procedures.
<i>Membership</i>	The PAAA Act does not specify the minimum composition and membership for the purposes of the PAAB's recommendation to the Minister to declare any such body as a constituent body.					

<b>Regulatory Element</b>	<b>ICTA</b>	<b>ICAZ</b>	<b>CIMA</b>	<b>ACCA</b>	<b>ICSAZ</b>	<b>ICPA</b>
<i>Complaints Against Tax Consultants</i>	The PAAA Act is silent on the processes to be followed by taxpayers who are aggrieved by tax consultants' conduct. Section 35 of the PAAA Act only specifies actions that should be taken by the constituent body where it finds that a member has contravened any rules of professional conduct that may be enacted by the Board through its by-laws or by the constituent bodies themselves, provided those rules are not in conflict with the Board's rules.					
<i>Measures To Enhance Awareness of the Taxpaying Public in Relation to Its Rights</i>	A review of the available literature reveals that no active measures appear to be in place by either ZIMRA or the constituent bodies for taxpayer education. ZIMRA is totally divorced from the regulatory framework, however, such measures should be a priority of ZIMRA. Taxpayers, as ordinary citizens with limited tax administration knowledge, are unlikely to be aware of the regulatory framework adopted in Zimbabwe. They are unlikely to be conversant with constituent bodies and where to report any unethical conduct by tax consultants. Unlike SARS in South Africa, which took ownership of the regulatory framework, ZIMRA is peripheral participant in Zimbabwe.					

Source: Own Formulation

#### 4.4 CONCLUSION

The regulation of tax consultants in Zimbabwe is principally through the PAAA Act. The PAAB oversees the application of the Act, and its constituent bodies regulate the activities of practitioners who are members. Tax consultants register directly with the PAAB and are issued with practice certificates upon registration. While regulation of tax consultants is executed by the PAAB through constituent bodies designated by the Minister of Finance (on the recommendation of the Board), the constituent bodies' relevance in the regulatory matrix is, by and large, certifying the good standing status of the respective members, and instituting disciplinary action against practitioners suspected of contravening the by-laws or any other provisions of the PAAA Act.

Tax consultants belong to various constituent bodies with varying regulations. No explicitly legislated minimum entry standards for constituent bodies are prescribed by the PAAA Act. Each constituent body defines its own specific requirements. It appears, however, that the board uses its discretion in recommending constituent bodies for recognition by the Minister.

One key finding in the Zimbabwean regulatory framework is that ZIMRA does not play a role in the regulation of tax consultants, and is detached from the regulatory processes. In addition, the PAAB places greater emphasis on the accounting profession, as tax consultants are regarded as members of the accountancy and auditing professions. Professionals in the legal fraternity, such as tax attorneys, are unable to practise as tax consultants. Their exclusion from the system potentially deprives taxpayers of the multiplicity of professional tax skills at their disposal.

In the next chapter, the key elements of the acclaimed Germany regulatory framework for tax consultants, commonly known as the *Steuerberater (StB)*, will be established to create a benchmark for analysing the Zimbabwean and South African contexts.

# CHAPTER 5: TAX ADVISER REGULATION IN GERMANY

## 5.1 INTRODUCTION

In addressing one of the main sub-goals of this research, namely, the discussion of the German tax adviser regulatory framework, this chapter explores scholarly views, legislative instruments and policy documents to investigate the regulation of tax advisers in Germany, in order to develop a framework to determine the extent to which the Zimbabwean and South African tax practitioner regulatory frameworks compare with best practice in the German jurisdiction.

While the Zimbabwean and South African regulatory regimes are relatively new regulatory systems, the current German regulatory framework is a consolidated system perfected over time, after the Tax Consultancy Act, 1 of 1961 (referred to as the “Tax Consultancy Act”) was promulgated more than half a century ago. Notwithstanding, tax advisory services in Germany appear to have been legally recognised even before the Tax Consultancy Act, as evidenced by the use of the title *Steuerberater (StB)* [Tax Adviser], a term first used in law as far back as 1933. A system that has evolved over a long period of time deserves its recognition as one of the best.

In this chapter, the key features of the German tax adviser regulatory system – which according to De Widt *et al.* (2016) is widely regarded as the highest qualified tax advisory profession in Europe – will be discussed to provide the basis for comparison in the next chapter.

## 5.2 CONTEXTUAL OVERVIEW

Germany is a Federal Republic made up of 16 states known as *Länder*, each with its own constitution, government and independent tribunal (Dumiter, Turcas & Opret, 2015). Germany has the strongest European Union economy in terms of Gross Domestic Product (GDP) (European Parliament, 2017). Industry and related services are the heart of the German economy. The automotive industry, chemical industry and telecommunications are the most important (Dumiter *et al.*, 2015). Classification of taxes in Germany include income tax, church tax, customs and excise

duties, and value-added tax (VAT) (Federal Ministry of Finance, 2013). The tax system is the element that ensures the stability and development of German society, and has four important functions in the national economy (Dumiter *et al.*, 2015):

- revenue mobilisation;
- stimulating the economy;
- social protection; and
- controlling economic functions.

The European Parliament (2017) notes that due to its large economy and finance centre, strategic location in Europe, and its strong international linkages, Germany is susceptible to money laundering and terrorist financing, which are all associated not only with criminal enterprises, but also tax law infringement. The increasingly important role of auditors, tax advisers and lawyers is critical in combating tax-related transgressions (European Parliament, 2017). Dumiter *et al.* (2015) confirm that the German tax system is impressive through its organisation and complexity. Its main characteristic is stability. The authors noted that, in analysing the world economic crisis that affected many countries globally, the German fiscal system maintained and helped the German economy to recover in a relatively short time. Alt (2016) notes that if Germany keeps, or if it is to sustain its complex, comprehensive but effective taxation system, it needs to provide adequate checks and controls to guarantee justice through effectual regulation of tax advisers. For a tax system to fulfil its role effectively, such as is seen in Germany, six principles must be followed (Dumiter *et al.*, 2015):

- equity, through a non-discriminatory tax treatment and enforcement;
- efficiency, by maximising taxation at the lowest possible cost to taxpayers; higher taxation inhibits consumption and savings, affecting economic efficiency;
- clear, understandable legislation, which prevents evasion of the payment of taxes and contributions, and at the same time offers ease of administration at a low cost;

- flexibility, consisting of the ability to adapt to the economic situation, which is in constant change;
- stability, afforded by enduring tax legislation over a longer period of time, which receives confidence and acceptance from taxpayers; and
- transparency, through informing on the usage of revenues from taxes and contributions.

Germany establishes a comprehensive regulated professional monopoly for tax practice that is shared in most cases with other regulated professions such as lawyers and accountants (Thuronyi & Vanistendael, 1996). The German system of tax law is known for its complexity, and this complexity is justified. A simple law does not always do justice to different and distinct situations (*lebenslagen*) that are faced by individuals, professions and businesses. In order to be as “case-just” as possible, qualifications, differentiations, exemptions, etc. are needed. Tax rules and regulations in Germany are not only a result of legislation (laws) or statutory instruments/regulations issued by the federal or state government, but also Ministry of Finance Letters (*BMF-Schreiben*), which aim to secure a uniform application of the tax law (Alt, 2016).

The German tax authorities administering the tax system are organized into the following levels (Dumiter *et al.*, 2015):

- the Federal Ministry of Finance and member state authorities;
- the Alcohol Monopoly Authority and the Federal Central Tax Office;
- federal financial offices;
- regional offices; and
- offices and customs agencies, customs investigation offices, tax offices and special revenues of the *Länder*.

Tax advisers in Germany hold the title of *Steuerberater (StB)*, or tax adviser, a term first used in law in 1933 (Mulligan, Basse, De Widt, Gregg, Kiesewetter & Oats, 2022). The other professional title is tax consultant or tax representative (Tax Consultancy Act). Tax consulting has

been expanding in terms of quality and quantity for over 50 years (Adigamova & Tufetulov, 2014). The tax profession is strongly regulated in Germany, and members have to pass a rigorous and special state examination to be admitted, based on the Tax Consultancy Act (Weik, Eierle & Ojala, 2018). The appointment as a tax adviser becomes effective with the delivery of a certificate issued by the Chamber of Tax Advisers. With the appointment, the Tax Consultancy Act recognises the tax adviser as a member of the ordering Chamber of Tax Advisers.

The official German tax advisory qualification is highly regarded in status and standards. It is arguably the highest qualified tax advisory profession in Europe. So high are the standards that the pass rate is only approximately 40% to 60% (Blaufas, Bob & Trinks, 2013). De Widt *et al.* (2016) also confirm that in addition to the pass rate usually being as low as about 40%, the permitted number of re-sits is limited to only two. Hence the difficulties of gaining access to the German tax advisory profession are frequently criticised, especially the difficult examinations. According to De Widt *et al.* (2016), the German fiscal authorities and the German Chamber of Tax Advisers defend the practice by referring to the high quality standards of the German tax profession. Consequently, this elevates the German tax advisory profession to the status of the most recognisable and best organised interest group. This gives German tax advisers a strong position to operate as a powerful lobby group within Germany. Tax advisers in Germany perform the following basic tasks (Adigamova & Tufetulov, 2014):

- explanation of the tax legislation practice;
- work management of economic and juridical services in legal entities;
- tax planning and mitigation in legal entities; and
- prevention of tax law infringement.

The large majority of German tax advisers exhibit high tax morality, since the risk of losing a practice licence is too grave (Alt, 2016). In Germany, great emphasis is placed on the economic and legal higher educational establishments in terms of training advisers and elaboration of theoretical issues related to tax consulting (Adigamova & Tufetulov, 2014). According to the

Federal Ministry of Finance (2013), groups that are authorised to provide unrestricted assistance in tax matters primarily cover tax advisers, tax representatives, auditors and certified accountants, as well as the companies they form (partnerships, tax consulting companies, law firms, auditing firms and accounting firms). Other persons, businesses or entities, however, may also render limited assistance in tax matters, provided certain conditions are met (Ministry of Finance, 2013):

- trade organisations may establish service facilities to look after their members' tax affairs;
- administrators of buildings and other properties may handle tax matters connected with the aspects they administer;
- banks advising their customers on investments may inform them, *inter alia*, about the effects on income tax and state savings premiums;
- trade unions, associations of property and real estate owners, and other organisations of a professional nature may advise their members on tax matters connected with their professional interests;
- forwarding agents may provide assistance concerning import duties or the charging of excise goods;
- commercial operators may provide assistance concerning import duties in connection with customs procedures; and
- self-help organisations may assist members on wage tax matters (doing so within the scope of their legal powers).

In addition, taxpayers can get help from tax clinics (*Lohnsteuerhilfvereine*), which are permitted to give tax advice in limited fields relating to labour and pension income taxation (Mulligan et al., 2022).

### **5.3 THE STATE OF REGULATION OF TAX ADVISERS**

Tax legislation establishes the organisation and management of financial activities, the competences, and rights and obligations of specialized bodies and taxpayers (Dumiter *et al.*, 2015). In Germany, the tax consultancy law comprehensively regulates the provision of tax advice (Thuronyi & Vanistendael, 1996). Germany is one of the few countries where tax advising is a regulated profession that is statutorily required to follow the rules of conduct (European Parliament, 2017).

#### **5.3.1 The Tax Consultancy Act, 1 of 1961 (*Steuerberatungsgesetz*)**

According to section 86 of the Tax Consultancy Act, the regulation of tax advisers in Germany mainly revolves, *inter alia*, around the following key aspects:

- independent, responsible and conscientious professional practice;
- the duty of confidentiality;
- permissible and unprofessional advertising;
- professional behaviour towards clients, colleagues, courts, authorities and chambers of tax advisers, as well as towards persons, companies and institutions;
- compatible and incompatible activities;
- professional indemnity insurance and disclaimers and limitations of liability;
- the special obligations towards clients, in particular in connection with the handling of third-party assets;
- arranging, calculating, securing and collecting fees and expenses; and
- the special obligations in the establishment, structure and activity of professional training companies.

The Tax Consultancy Act is the main statutory framework that regulates tax advisers in Germany. The law ensures a monopoly for tax advice and prohibits unauthorised persons from providing tax services. It contains provisions for a full professional organisation, with conditions for admission,

quality of and educational requirements, admission of legal entities, control of legal entities by natural persons admitted to the profession, disciplinary proceedings, ethical rules, and obligations and rights and privileges of tax advisers (Thuronyi & Vanistendael, 1996).

### **5.3.2 Purpose of the Tax Consultancy Act, 1 of 1961**

The main purpose of the German Tax Consultancy Act, *inter alia*, as far as the regulation of tax advisers is concerned, applies to the provision of assistance:

- in criminal tax matters and in matters relating to fines due to a tax offence; and
- in matters relating to taxes regulated by state law or on the basis of an authorisation under state law.

### **5.3.3 Permissions Provided by the Act**

As has been confirmed by Thuronyi and Vanistendael (1996), Germany establishes a comprehensive regulated professional monopoly for tax practice. Tax advisers have the task of advising their clients on tax matters, representing them, and assisting them in processing their tax matters and in fulfilling their tax obligations. This includes assistance in criminal tax matters and in matters relating to fines due to a tax offence, in fulfilling bookkeeping obligations that exist on the basis of tax laws, and in the preparation of financial statements that are important for taxation and their tax assessment.

Section 3 of the Tax Consultancy Act affirms this by stipulating that:

- Assistance in tax matters may only be exercised commercially by persons and associations who are authorised to do so. This applies without distinction to full-time, part-time, paid or unpaid activities and serves to protect those seeking justice, legal transactions, and the legal system from unqualified assistance in tax matters.

Unlimited tax assistance may be provided by (Tax Consultancy Act 1961):

- tax advisers, lawyers, established European lawyers, auditors and chartered accountants;
- professional practice companies within the meaning of the Federal Lawyers Act; and
- companies whose shareholders or partners are exclusively auditors or chartered accountants, as well as auditing companies and accounting firms.

Individuals who are tax professionals and reside in the European Union member states are allowed to provide temporary and occasional assistance in tax matters. Persons, both natural and legal, who are authorized to provide assistance in tax matters, should be registered with the Chamber of Tax Advisers.

The Federal Ministry of Finance (2013) states that certain individuals may provide limited assistance in tax matters. Section 5 of the Tax Consultancy Act identifies the following persons as entities who may provide limited assistance in tax matters:

- notaries within the scope of their powers under the Federal Notarial Code;
- patent attorneys and patent law firms within the scope of their powers under the Patent Attorneys Act;
- authorities and corporations under public law, as well as the regional examination facilities for corporations and institutions under public law within the scope of their responsibility;
- custodians and administrators of third-party assets or assets transferred in trust or for security purposes, insofar as they provide assistance in tax matters with regard to these assets;
- entrepreneurs who run a trade, as far as they provide their customers with help in tax matters in direct connection with a business that belongs to their trade; and
- cooperative auditing and central associations and cooperative trusteeships, as far as they provide assistance in tax matters to the members of the auditing and central associations within the scope of their area of responsibility.

### **5.3.4 Prohibitions Stipulated by the Act**

As a testament to the strong and rigid regulatory framework that characterises the German system, persons and entities other than those authorised are not permitted to assist in tax matters. Section 5 of the Tax Consultancy Act states that:

- persons and associations other than those referred to in the Act may not provide commercial assistance in tax matters, and in particular may not give commercial advice in tax matters; and
- if there are any suspicions that individuals or entities provide tax assistance outside the law, financial authorities or chambers of tax advisers must inform the body responsible for sanctioning and meting out penalties for such infringements.

### **5.3.5 Examinations**

The tax practice qualification is highly rated. Section 35 of the Tax Consultancy Act states that:

- only those who have passed the examination as a tax adviser or have been exempted from this examination may be appointed as tax advisers;
- passing the test must be certified in writing by the supreme state authority responsible for financial management, and exemption from the test must be certified in writing by the competent Chamber of Tax Advisers;
- the examination can be repeated twice; and
- admission to the examination, exemption from the examination, and the organisational implementation of the examination are the tasks of the competent Chamber of Tax Advisers.

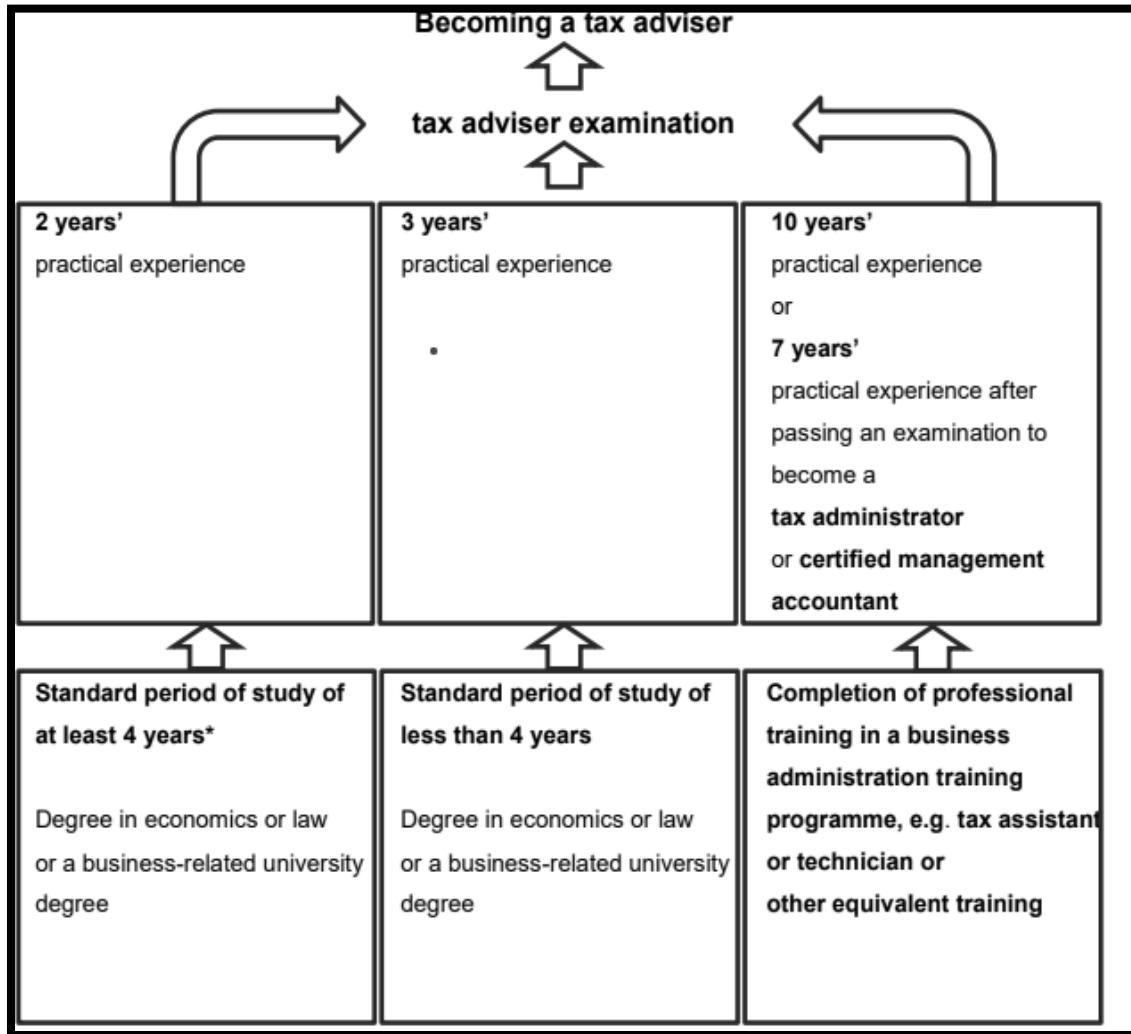
Section 36 of the Tax Consultancy Act requires that admission to the tax exam should be:

- by an individual who has completed a university degree in economics or law or another university degree with an economics subject; and

- then worked in practice.

Figure 5.1 illustrates the entry requirements to be a tax adviser in Germany.

**Figure 5.1: Entry requirements to be admitted as a tax adviser**



Source: European Parliament (2017:6)

The European Parliament (2017:6) explains that an applicant has to demonstrate that he or she is able to carry out the profession of a tax adviser competently by writing an examination whose focus areas include:

- tax procedural law as well as tax criminal and tax offense law, taxes on income and earnings;
- valuation law, inheritance tax and property tax;
- excise and transaction taxes, basic principles of customs law;
- commercial law and the basics of civil law, company law, insolvency law and European Union law;
- business administration and accounting;
- the national economy; and
- professional law.

Public accountants and chartered accountants take the tax adviser examination in a shortened form. According to section 38 of the Tax Consultancy Act, there are also exemptions from the examination. Exemptions are in the following categories:

- professors who have taught as a professor at a German university for at least ten years in the field of taxes administered by the federal or state tax authorities; and
- former tax judges who have worked for at least ten years in the field of taxes administered by federal or state tax authorities.

According to section 38 of the Tax Consultancy Act, admission to the exam or an exemption can be withdrawn if:

- it was obtained through dishonest means such as fraudulent deception, threats or bribery;
- the beneficiary obtained it through information that was incorrect or incomplete in essential respects; and

- the beneficiary was aware of their unlawfulness or was unaware of them due to gross negligence.

### **5.3.6 Conditions and Procedures for Appointment of Tax Advisers**

After passing the exam or after being exempted from the exam, the applicant is appointed as a tax adviser upon application to the responsible Chamber of Tax Advisers. Before the appointment, the Chamber of Tax Advisers has to check whether the applicant is personally suitable. Section 40 of the Tax Consultancy Act states that the appointment is to be denied if the applicant:

- does not live in a tenable economic situation;
- because of a criminal conviction, does not have the ability to hold public office;
- is not only temporarily unable to properly practice the profession of tax adviser for health reasons; and
- has behaved in such a way that the concern is justified that he will not fulfil his professional duties as a tax adviser.

### **5.3.7 Expiry of Tenure**

Section 45 of the Tax Consultancy Act states that the appointment as a tax adviser or tax representative expires:

- upon death;
- through legal exclusion from the profession; and
- by final withdrawal of the examination decision or the decision on exemption from the examination.

Withdrawal and revocation of appointment can occur if the adviser:

- obtained the appointment through fraudulent deception, threats or bribery, or through information that was incorrect or incomplete in essential respects;
- carries out a commercial activity or an activity as an employee that is incompatible with his/her profession;
- has lost the ability to hold public office as a result of a criminal conviction;
- does not maintain the prescribed liability insurance against liability risks from his or her professional activity (self-employed tax advisers and tax agents are obliged to insure themselves against the risks of liability for financial loss arising from their professional activity);
- has fallen into financial collapse, unless this does not endanger the interests of the customer; a financial collapse is suspected if insolvency proceedings are opened against the assets of the tax adviser or tax agent, or the tax adviser or tax agent is entered in the list of debtors;
- relocates his or her professional establishment abroad without an authorised recipient residing in Germany having been named. The name and address as well as any change in the person or the address of the person authorised to receive service must be communicated to the competent Chamber of Tax Advisers immediately. The tax adviser or tax representative remains a member of the Chamber of Tax Advisers to which he previously belonged;
- does not maintain a professional establishment; or
- is unable to exercise his profession properly for health reasons.

With the expiry, withdrawal or revocation of the appointment, the authority to use the professional title "tax consultant" or "tax representative" expires.

### **5.3.8 Professional Obligations of Tax Advisers**

Section 57 of the Tax Consultancy Act stipulates that tax advisers have to exercise their profession independently, responsibly, conscientiously, confidentially and without advertising that is contrary to their profession. Some of the key professional obligations include the following:

- tax advisers and tax agents may not act if there is a conflict with their own interests;
- if a tax adviser or tax agent advises or represents several clients in the same matter, he or she is obliged to expressly point out the conflicting interests of the clients in the event of conflicts of interest and may only act as an intermediary;
- tax advisers and tax agents have to refrain from any activity that is incompatible with their profession or with the reputation of the profession; they must also prove themselves worthy of the trust and respect that their profession requires outside of their professional activity;
- a tax adviser who does not want to accept the assignment must declare the refusal immediately, and must compensate for the damage resulting from any culpable delay in this declaration;
- tax advisers have to obligate the people they employ to secrecy in text form and instruct them about the criminal consequences of a breach of duty;
- for a period of three years after leaving the public service, former civil servants and employees of the tax authorities may not work for clients whose tax matters they were materially involved with within the last three years before leaving;
- advertising is only permitted if it provides factual information about the professional activity in terms of form and content and is not aimed at obtaining a contract in an individual case;
- tax advisers and tax agents are obliged to continue their education;
- part of professional duties is engaging in activities that are compatible with the profession; these include:
  - i) a freelance activity, the object of which is to protect the interests of others, including providing advice;
  - ii) an economic advisory, expert or fiduciary activity, as well as the issuance of certificates on compliance with tax regulations in asset overviews and income statements;
  - iii) the activity of a teacher or a scientific employee at universities and scientific institutes, provided that the scientific employee carries out the assigned tasks in research and teaching largely independently;

- iv) freelance writing and freelance lecturing and teaching; and
- v) the implementation of teaching and lecture events in preparation for the tax adviser examination and the examination as an auditor and sworn auditor, and for the further training of the members of the tax adviser chambers and their employees.

## **5.4 STATUTORY BODIES**

The key bodies that govern tax advisers in Germany are the Chambers of Tax Advisers and the Federal Chamber of Tax Advisers. The distinction between the two is that in the case of the former (Chambers of Tax Advisers), each Chamber governs tax advisers within a particular state jurisdiction (*Länder*) in Germany. The latter (Federal Chamber of Tax Advisers) is the apex body that regulates tax advisers at a national level.

### **5.4.1 The Chambers of Tax Advisers**

The Chambers of Tax Advisers are the regional professional administrative institutes for all tax advisers. As public bodies, they perform the tasks conferred upon them by law and represent the professional interests of their members. Their objective is to promote the tax adviser profession as a regulated profession and organ of the administration of tax law, and to further its development (Federal Chamber of Tax Advisers, 2017). According to section 73 of the Tax Consultancy Act, the Chambers of Tax Advisers have their seat in the chamber district. Chambers are corporations under public law. Section 76 of the Tax Consultancy Act comprehensively outlines the duties of the Chambers of Tax Advisers as far as regulation is concerned:

- to advise and instruct the members of the chamber in questions of professional duties;
- to mediate, on request, in disputes between the members of the chamber;
- to mediate, on request, in disputes between members of the Chamber and their clients;
- to monitor the fulfilment of the members' obligations and to handle the right of reprimand;

- to submit the nomination lists of honorary assessors in the professional courts to the state justice administrations;
- to create welfare institutions for tax advisers and tax agents and their survivors;
- to provide expert opinions requested by a court, a state tax authority or another administrative authority in the state;
- to perform the tasks assigned by law in the field of vocational training; and
- to propose the professional members of the examination boards for the tax advisory professions.

#### **5.4.2 The Federal Chamber of Tax Advisers**

The Federal Chamber of Tax Advisers is the statutory umbrella organisation for the Chambers of Tax Advisers and represents the interests of the profession as a whole. It co-ordinates opinion formation between the Chambers of Tax Advisers and leads decisions on professional law and matters relating to the profession, which it then passes on to legislators and other institutions. In its opinion statements on matters relating to tax law, the Federal Chamber of Tax Advisers is careful to strike a balance between intended impact and practical feasibility. Other core responsibilities include the enactment and further development and the promotion of continuing professional development and quality of professional practice (Federal Chamber of Tax Advisers, 2017).

Section 86 of the Tax Consultancy Act outlines the following as the duties of the Federal Chamber of Tax Advisers in so far as regulation is concerned:

- in questions that concern the entirety of the Chambers of Tax Advisers, to determine the opinion of the individual chambers and to determine the opinion of the majority by way of a joint debate;
- to enact and amend the professional regulations and statutes;
- to draw up guidelines for the welfare institutions of the Chambers of Tax Advisers;
- to assert the opinion of the Federal Chamber of Tax Advisers to the competent courts and authorities in all matters affecting the entirety of the Chambers of Tax Advisers;

- to represent the entirety of the Chambers of Tax Advisers to authorities and organisations;
- to provide expert opinions requested by a federal authority or body involved in legislation or a federal court;
- to promote professional training in the tax advisory professions, and issue non-binding further training recommendations to members of the profession; and
- to keep the registers.

#### 5.4 CONCLUSION

This chapter has explored the regulation of tax advisers in Germany and outlined the key features that support its reputation as one of the best in Europe. The German regulation is comprehensive and adopts a statutory approach to regulation.

The accommodation of European Union professionals in statutory regulations is a specific highlight in the regulatory framework. It has been shown from this review that Germany's robust ethical compliance requirements, and strict education and training entry requirements, are key factors in producing technically competent and ethically sound advisers who are industry-prepared to function in the complex financial hub of continental Europe. The regulatory approach by Germany validates Thuronyi and Vanistendael's (1996) assertion that regulation is a matter to be decided in light of the circumstances of the country concerned and the stage of development of the tax advisory profession in that country. Given that the evolution of the tax advisory legislation framework in Germany spans over fifty years, the regulation of tax advisers is of a rigorous standard that is worth aspiring to and is to be regarded as the full regulation model.

Based on the evaluation presented in this chapter, the German regulatory model consists, *inter alia*, of the following core aspects that will be used to assess the Zimbabwean and South African regulatory measures:

- key legislative provisions governing the functions of tax advisers;

- key bodies overseeing the functions of tax advisers, and their role in the supervision of the profession;
- the educational standards required for admission to the profession, including the level of education, its content and requirement for practical experience;
- the monopoly for the tax consultancy profession and the sanctions for violating the monopoly; and
- ethical standards.

The following chapter will provide a comparative assessment of the regulation of tax advisers between Germany, Zimbabwe and South Africa.

# **CHAPTER 6: COMPARATIVE ASSESSMENT OF REGULATION IN GERMANY, ZIMBABWE AND SOUTH AFRICA**

## **6.1 INTRODUCTION**

This chapter addresses the third sub-goal of the research, namely, to determine the extent to which the Zimbabwean and South African tax practitioner regulatory frameworks compare with best practice as in the German tax practitioner regulatory system.

This chapter discusses similarities and differences in the regulation of tax practitioners between the German jurisdiction and Zimbabwean and South Africa jurisdictions and proposes interventions that could be adopted to consolidate the regulation of tax practitioners in Zimbabwe and South Africa, based on the best practices observable in the German model. Key regulatory aspects and the extent to which they are implemented form the basis of comparison.

## **6.2 REGULATORY ASPECTS AND BASIS FOR COMPARISON**

Providing a rigorous comparative assessment of the regulation of tax practitioners between various countries presents challenges associated with factoring in the individual circumstances of each country, including their fiscal and socio-economic characteristics. There are factors that reasonably influence whatever regulatory model a country may choose to adopt. As a result, what may work for one country may not necessarily always work for another country. Differences in regulatory approaches between countries do not necessarily mean one country's regulatory system is better than the other. The particularity of each country and circumstantial factors cannot be overlooked.

Therefore, points of comparison across jurisdictions that are analysed in this study are selected elements of regulatory mechanisms, which include key elements generally adopted and espoused by Falkena *et al.* (2001) and adapted by Woodbridge (2006):

- key legislation provisions governing the functions of tax practitioners;
- governing bodies supervising the operations of tax practitioners;
- minimum entry requirements;
- ethical standards for practice and sanctions for violations (a disciplinary code and procedures);
- continuous professional development;
- membership;
- complaints against tax practitioners; and
- measures to enhance taxpayer awareness with respect to their rights.

### **6.2.1 Key Legislative Provisions Governing the Functions of Tax Practitioners**

Germany, Zimbabwe and South Africa all have forms of legislative provisions which, to varying degrees, provide for the regulation of tax practitioners. Germany has the Tax Consultancy Act of 1961; Zimbabwe has the Public Accountants and Auditors Amendment Act, 1 of 2015, and South Africa enacted the Tax Administration Act, 28 of 2011.

One obvious difference in the Acts of the three jurisdictions is the contextual reality and age of the Acts; this has implications for the regulation status of each country. Germany's legislation was enacted in 1961, which indicates that it has been in place for more than 60 years, while the Zimbabwean and South African legislative provisions are relatively new. This puts Germany at an advantage in terms of the maturity of tax practitioner regulation, at least in the legislative sense, and its tax practitioner profession is therefore one of the most developed and respected in the world.

Germany's Tax Consultancy Act focuses exclusively on the tax consultancy profession. On the other hand, South Africa's Tax Administration Act deals with a broader range of tax issues and is not exclusively dedicated to tax practitioners. The preamble to the Act itself stipulates that the Act is a consolidation and alignment of various tax Acts into one piece of legislation, to the extent possible, to administer tax matters. Specific reference to tax practitioners appears in sections 239 to 241 of the Tax Administration Act which, *inter alia*, prescribe the registration of tax practitioners, list the controlling bodies involved, and set out the general conduct expected of tax practitioners.

Zimbabwe's Public Accountants and Auditors Amendment Act does not focus exclusively on regulating tax practitioners. Its core focus is on the regulation of auditors. Tax practitioners are in fact regarded as tax accountants, thus in effect subordinating the tax practitioner profession to auditing and accounting. The Public Accountants and Auditors Act is silent on the role of other professions such as lawyers in a tax consultancy practice. It appropriates supreme regulatory oversight responsibilities to a professional body which, for all intents and purposes, should be viewed in the same light as the other professional bodies it superintends. The Public Accountants and Auditors Amendment Act should also address the role of other professions, such as lawyers, since ZIMRA, as the main revenue body, does not provide guidance regarding the roles of various professions that also engage in tax consulting. Based on this, it is contended that the Zimbabwean tax jurisdiction should provide a dedicated legislative Act that specifically addresses tax practitioners, without subordinating them to auditors and accountants.

For South Africa, the legislative framework governing tax practitioners should not only be confined to a chapter within the Tax Administration Act that deals with broader tax issues. Rather, this Act could be developed further to address the various and broad issues that are faced by tax practitioners and taxpayers. Better still, legislation solely dedicated to tax practitioners, as is the case in Germany, could be enacted to deal with the broad regulatory environment.

## 6.2.2 Regulatory Authorities

Regulatory authorities are the institutional bedrock for supervising the activities of tax practitioners, as articulated by (Thuronyi & Vanistendael, 1996:8):

In almost all jurisdictions, controls are placed on who is entitled to practice in certain professions. The controls usually work in conjunction with measures that provide for the establishment and recognition of independent, self-governing professional bodies that are responsible, among other things, for establishing the prerequisites for admission to practice in the profession, the continuing education and other conditions for continuing qualification, and the disciplining of members of the profession with respect to breaches of their professional responsibilities. Legislation imposing criminal sanctions is often used to enforce the professional monopolies and restrict practice to persons who meet the requirements of the relevant professional body.

All the tax jurisdictions in the current study have regulatory bodies with which tax practitioners must register and account to for their conduct.

Germany provides for bodies that are solely and exclusively focused on overseeing the activities of tax practitioners, who may perform the whole range of duties. These bodies are called Chambers of Tax Advisers (these bodies are at the state/provincial level) and the Federal Chamber of Tax Advisers (this is a single body at national level). The presence of such bodies is informed by the fact that there is a legally created monopoly for tax practitioners, lawyers and accountants in Germany. The situation is better captured by Thuronyi and Vanistendael (1996:8) who explain that:

In Germany, the situation is more complicated, because there is a legally created monopoly on both the practice of law and on the practice of tax advice, so that the lawyers' monopoly must make exceptions to take into account the competing monopoly of the tax advisers, and vice versa. Because legal, accounting, and tax services are so closely connected, it is

desirable to approximate certain professional rules in the three professions. The difficulty of segregating legal and accounting advice from tax advice and from business and financial planning advice does not arise with respect to other functions performed by tax consultants where the nature of the service is easy to identify, namely, the preparation of tax returns and the representation of a taxpayer in contracts with revenue authorities or before an appeals board or court..

In Zimbabwe, this recognition of professions other than accountants, auditors and tax consultants is absent. Thuronyi and Vanistendael (1996:8) argue that:

...it is impossible to consider the regulation of tax consultants without considering how the legal and accounting professions are regulated, the extent to which these professions are guaranteed monopolies in practicing in their respective areas, and the extent to which tax consulting activities are considered the practice of law or the practice of accounting. The boundaries between legal advice, accounting advice, and advice that is neither legal nor accounting are inherently unclear in the tax area.

Based on the above distinctions, South Africa and Zimbabwe may have to consider the need for an independent umbrella body for tax practitioners that focuses solely on tax practitioners. In view of the important role that tax practitioners fulfil in the economy, the tax practitioner profession needs to have its own distinct professional body that is comparable to that in Germany. This, however, requires a legislative system comparable to that of Germany, where a specific Act regulates the tax practitioner profession.

### **6.2.3 Minimum Entry Requirements**

The question of the professional qualifications required for admission into tax consultancy is a difficult one, because the tax profession is, in practice, exercised at very different quality and skills levels, ranging from quite simple to highly sophisticated, from legal orientation to accounting

orientation. In setting educational and professional standards, a country's educational and professional tradition should also be considered (Thuronyi & Vanistendael, 1996).

In Germany, this is possibly the shortcoming in the highly rated standard setting exam. Only those who have passed the very stringent examination or have been exempted from this examination may be appointed as tax advisers. Passing the standard setting exam must be certified in writing by the supreme state authority and exemption from the test must be certified in writing by the competent Chamber of Tax Advisers. The examination can only be repeated twice; and admission to the examination, exemption from the examination and the organisational implementation of the examination are the tasks of the competent Chamber of Tax Advisers. Admission to the tax exam is limited to:

- an individual who has completed a university degree in economics or law or another university degree with an economics subject; and
- has then worked in practice.

With the examination, the applicant has to demonstrate that he or she is able to carry out the profession of a tax consultant competently. Examinable areas include:

- tax procedural law as well as tax criminal and tax offense law, taxes on income and earnings;
- valuation law, inheritance tax and property tax;
- excise and transaction taxes, basic principles of customs law;
- commercial law and the basics of civil law, company law, insolvency law and European Union law;
- business administration and accounting;
- the national economy; and
- professional law.

Public accountants and chartered accountants take the tax consultant examination in a shortened form.

In South Africa, entry level experience and educational requirements for any registered tax practitioner are as follows (Visser, 2022):

- NQF Level 4 plus 10 years of experience, and
- passing a two-hour test, based on eight modules of the SARS Readiness Programme and obtaining a pass mark of at least 90%.

In Zimbabwe, there are no clearly documented standard setting entry stipulations for an aspiring tax professional. Different constituent bodies have varying entry requirements. Of the constituent bodies, it is not clear whether ICPA (2022), which only requires three years of relevant supervised training and completed examinations, or ICTA (2018), which simply requires a Tax Technician Diploma, has the lowest minimum entry requirements. Legislated minimum entry requirements such as those demanded of recognised controlling bodies in South Africa could improve standardisation across constituent bodies in Zimbabwe.

#### **6.2.4 Ethical Standards and Sanctions for Violating the Standards**

Regulations dealing with ethical standards and sanctions in South Africa and Zimbabwe, such as those in the German model, should include rules on ethical standards with regard to advertising, conflicts of interest (particularly when tax advisers collaborate with other professions in the framework of a legal person), and limitations on financial interests in potential clients (Thuronyi & Vanistendael, 1996).

Some of the requirements in Germany state that applicants may be denied registration as tax practitioners if:

- they do not live in a tenable economic situation;
- because of a criminal conviction, they do not have the ability to hold public office; or
- they have behaved in such a way that the concern is justified that they will not fulfil their professional duties as a tax adviser.

Some of the key professional obligations provided for in Germany include the following:

- if a tax practitioner advises or represents several clients in the same matter, he or she is obliged to expressly point out the conflicting interests and may only act as an intermediary;
- tax practitioners must refrain from any activity that is incompatible with their profession or with the reputation of the profession; they must also prove themselves worthy of the trust and respect that their profession requires outside of their professional activity; and
- a tax practitioner who does not want to accept the assignment must declare his or her refusal immediately, and must compensate for the damage resulting from any culpable delay in this declaration;
- for a period of three years after leaving the public service, former civil servants and employees of the tax authorities may not work for clients whose tax matters they were materially involved with within the last three years before leaving;
- advertising is only permitted if it provides factual information about the professional activity in terms of form and content and is not aimed at obtaining a contract in an individual case; and
- tax consultants and tax agents are obliged to continue their education.

In South Africa, legislation delegates the setting of standards and disciplinary processes to the controlling bodies, which have varying codes of ethics and conduct. SARS merely assesses the robustness of the codes for each professional body before admission as a recognised controlling body (SARS, 2013). The minimum criteria which the respective codes of ethics and conduct should possess were discussed in chapter 3.

In Zimbabwe, section 34 of the PAAA Act states that practitioners suspected of contravening the by-laws or any other provisions of the Public Accountants and Auditors Amendment Act are reported to the appropriate constituent bodies for disciplinary action. The relevant constituent body ensures that all necessary steps are taken to deal with the referral expeditiously and reports the outcome to PAAB within a reasonable time. If, following any disciplinary action against a tax practitioner, conditions are imposed upon his or her entitlement to practise, the practitioner shall return any practising certificate to the secretary of the Board, who shall endorse the conditions on the certificate. A registered tax accountant shall:

- hold himself or herself out to be a registered tax accountant; or
- use the designation or any other name, title, description or letters indicating that he or she is a registered practitioner, whether by advertisement or description or in any document.

Any person who contravenes any of the aforementioned shall:

- in the case of an individual, be liable to a fine or to imprisonment for a period not exceeding one year, or to both fine and imprisonment; or
- in the case of a corporate body, partnership or other juristic entity, be liable to a fine.

A person who is employed by a tax practitioner or entity does not automatically become a tax practitioner even if he or she might be working under the direction of a practitioner. A company or partnership whose directors or partners are registered practitioners and hold practice certificates may practise.

The main difference between Germany and the other two jurisdictions is that the tax legislation in Germany spells out in detail the obligations that are imposed on tax practitioners. However, in South Africa and Zimbabwe, most of these obligations are left to the controlling bodies and constituent bodies, respectively.

### **6.3 COMPARATIVE SUMMARY**

Table 6.1 below provides a summary of similarities and differences between the three jurisdictions.

**Table 6.1: Summary of similarities and differences between the jurisdictions**

<b>REGULATORY ELEMENT</b>	<b>GERMAN REGULATORY FRAMEWORK</b>	<b>SOUTH AFRICAN REGULATORY FRAMEWORK</b>	<b>ZIMBABWEAN REGULATORY FRAMEWORK</b>
<i>Minimum Entry Requirements</i>	<p>Specific tax adviser examination (Steuerberaterprüfung) to be passed before designation as tax adviser (StB) is conferred. Requirements for admission to the exam:</p> <ul style="list-style-type: none"> <li>• a regular university or university of applied sciences education in business, management, economics or jurisprudence, completed with a relevant degree;</li> <li>• followed by practical work in the field of taxes administered by German Federal Republic or the German state authorities.</li> </ul> <p>Alternatively, admission to the exam may be possible:</p> <ul style="list-style-type: none"> <li>• with a successfully completed apprenticeship with a member of the tax consulting or comparable profession, followed by 10 years of practical work in the field of taxes administered by German Federal Republic or the German state authorities. Additional degrees such as Steuerfachwirt or Bilanzbuchhalter (Tax or Accounting) decrease the required practical work to 7 years;</li> </ul> <p>For higher civil service employees, at least 7 years practical work in the field of taxes administered by German Federal Republic or the German state authorities.</p>	<p>NQF Level 4 plus 10 years of experience is now the main requirement. Furthermore, new entrants must now take a two-hour test, based on eight modules of the SARS Readiness Programme and obtain a pass mark of at least 90%.</p>	<p>There is no standardised minimum entry requirement. Different constituent bodies have different entry requirements.</p> <p>Of all the Constituent Bodies, it is not clear whether ICPA (2022), which only requires three years of relevant supervised training and completed examinations (excluding any exemptions), or ICTA (2022), which requires a Tax Technician Diploma, has the lowest qualification requirement.</p>

<b>REGULATORY ELEMENT</b>	<b>GERMAN REGULATORY FRAMEWORK</b>	<b>SOUTH AFRICAN REGULATORY FRAMEWORK</b>	<b>ZIMBABWEAN REGULATORY FRAMEWORK</b>
<i>Continuous Professional Development</i>	Continuous professional development is a requirement.	Continuous professional development is a requirement.	Continuous professional Development is a requirement.
<i>Code of Ethics and Conduct</i>	Code of Ethics and Conduct enforced by the Chambers of Tax Advisers.	Code of Ethics and Conduct through the tax practitioner's respective controlling body.	Code of Ethics and Conduct through the tax practitioner's respective constituent body. In addition, tax practitioners are also bound by the PAAB code.
<i>Disciplinary Code and Procedures</i>	Provides for disciplinary procedures through the Chambers of Tax Advisers.	Provides for disciplinary procedures through the Recognised Controlling Bodies.	Provides for disciplinary procedures through Constituent Bodies.
<i>Membership</i>	Membership is directly with the Federal Chamber of Tax Advisers, the apex body that regulates tax practitioners.	Organisations that wish to apply for recognition as Recognised Controlling Bodies for tax practitioners must meet criteria set out in the Tax Administration Act (refer to Chapter 3).	Membership is indirectly through the constituent bodies. Legislation does not specify the minimum composition and membership criteria for the purposes of the PAAB's recommendation to the Minister to declare any such body as a Constituent Body.

<b>REGULATORY ELEMENT</b>	<b>GERMAN REGULATORY FRAMEWORK</b>	<b>SOUTH AFRICAN REGULATORY FRAMEWORK</b>	<b>ZIMBABWEAN REGULATORY FRAMEWORK</b>
<i>Complaints Against Tax Practitioners</i>	The Chambers of Tax Advisers has as one of its core responsibilities, the duty to mediate, on request, in disputes between members of the Chamber and their clients.	Taxpayers have the right to report a tax practitioner to SARS when the tax practitioner's conduct is deemed to be unlawful, injudicious, or unprofessional. Any persons wishing to report a registered tax practitioner completes a designated form (RUC00).	The PAAA Act is silent on the processes to be followed by taxpayers who are aggrieved by tax practitioners' conduct. Section 35 of the PAAA Act only specifies actions that should be taken by the constituent body where it finds that a member has contravened any rules of professional conduct that may be enacted by the Board through its by-laws or by the constituent bodies themselves, provided those rules are not in conflict with the Board's rules.
<i>Measures to Enhance Awareness (Taxpayers Rights)</i>	From the available literature in the public domain, it is not clear how the German Federal Chamber of Tax Advisers (Bundessteuerberaterkammer - BStBK) strives to enhance public awareness of taxpayer rights.	A review of literature suggests that SARS appears to have made strides in administrative tax education for the public, as was suggested in the Tax Practitioner Connect Issue 23 of 2021. SARS (2021) reported an increase in complaints in the first half of the year of 74 complaints (57% of all complaints received in 2020), which were lodged against tax practitioners or unregistered advisers who acted as impostors.	A review of the literature suggests that no active measures are in place by either ZIMRA or the constituent bodies for taxpayer education. As ZIMRA is totally divorced from the regulatory framework, it is improbable that such measures could be a priority. Taxpayers who have limited tax administration knowledge are unlikely to be aware of the regulatory framework adopted in Zimbabwe, or conversant with constituent bodies and where to report any unethical conduct by tax practitioners.

Source: Own formulation

## 6.4 CONCLUSION

This chapter explored the similarities and differences between Germany and the two tax jurisdictions of Zimbabwe and South Africa in relation to:

- legislative provisions;
- regulatory bodies;
- Minimum entry requirements;
- Membership;
- Continuous professional development;
- Code of Ethics and Conduct;
- Measures to enhance awareness (taxpayers rights);
- Disciplinary Code and Procedures; and
- Complaints against tax practitioners.

Germany has a full regulatory model for tax practitioners with specific legislation that is focused only on controlling the operations of tax practitioners.

South Africa and Zimbabwe's legislation contains sections within broader Acts, which address the regulation of tax practitioners. This results in noticeable differences in the governing bodies, qualification standards and ethics which govern the various jurisdictions.

Although Germany has a more rigorous legislative approach to regulation, various considerations and contextual realities should be taken into account before South Africa and Zimbabwe could fully adopt the German model.

It appears that while each country may incorporate aspects of the best practices of the other, it is necessary to adopt a model that is relevant to the context of the country in terms of its legal, economic and social dynamics.

South Africa's regulatory framework appears to have all the basic elements which the German model has, except for the following differences:

- The minimum entry requirements are less stringent in South Africa. The German model appears to place more emphasis on technical competencies, hence the rigorous standard setting exams.
- There is no standard setting exam written in South Africa by prospective registered tax practitioners before admission (other than the competency test set by SARS). SARS relies on different entry points as set by each controlling body.
- There is no centralised regulatory body of equivalent professional status and authority as the German Federal Chamber of Tax Advisers.
- The regulator in South Africa is the revenue authority, SARS, which is directly involved in the regulation of tax practitioners – in contrast to the German model where the tax practitioner profession is not regulated by the revenue authority but is promoted as an independent body of the tax administration.

The Zimbabwean model appears to be the weakest. While it addresses certain regulatory elements, it also, like its South African counterpart, it does not deal with the following issues:

- The minimum entry requirements are less stringent than in Germany, but more demanding than certain levels of tax practitioner in South Africa. A diploma, three years of supervised training, or passing of professional exams is a higher standard than the requirements in South Africa, namely, a Grade 12 certificate (subject to a few conditions).
- Like the South African model, there is no standard setting exam written in Zimbabwe before admission. The PAAB relies on different entry points set by each constituent body.
- There is no centralised regulatory body of professional status and authority equivalent to the German Federal Chamber of Tax Advisers. The PAAB's role is substantively similar to the SARS role in administratively providing oversight on constituent bodies or controlling bodies, respectively.
- Unlike its South African neighbour, the revenue authority in Zimbabwe (ZIMRA) is not directly involved in the regulation of tax practitioners. This is one of the similarities with the German model where the tax practitioner profession is independent of the tax administration.

- In Zimbabwe, measures to enhance public awareness for taxpayers appears to be completely absent. There is no evidence that the PAAB is effectively performing this function either. This could be an inadvertent consequence of ZIMRA's peripheral role in tax practitioner regulation.

The following chapter will provide the summary, recommendations and conclusion for the study.

# **CHAPTER 7: CONCLUSION**

## **7.1 INTRODUCTION**

The primary purpose of this study was to evaluate the regulation of tax practitioners in Zimbabwe and South Africa in terms of best practice as reflected by the German tax practitioner regulatory system, in order to identify possible areas of improvement to be introduced in Zimbabwe and South Africa.

In achieving this goal, the thesis set out to achieve the following sub-goals:

- discuss tax practitioner regulatory frameworks in Zimbabwe and South Africa;
- discuss the German tax practitioner regulatory framework;
- determine the extent to which the Zimbabwean and South African tax practitioner regulatory frameworks compare with best practice in the German tax practitioner regulatory system;
- provide recommendations for appropriate tax regulatory models for tax practitioners in Zimbabwe and South Africa.

This final chapter summarises the findings and links them to the research goals.

## **7.2 SUMMARY OF FINDINGS**

Prior to specifically addressing the sub-goals, chapter 2 discussed the concept of the regulation of tax practitioners. Chapter 3 discussed the regulation of tax practitioners in South Africa, chapter 4 discussed the regulation of tax practitioners in Zimbabwe, and chapter 5 discussed the regulation of tax practitioners in Germany. Chapter 6 provided a comparative assessment of regulatory practices in Germany and the jurisdictions of Zimbabwe and South Africa.

### **7.2.1 Aspects of Regulation**

Chapter 2 provided an explanatory framework dealing with what constitutes regulation and its importance for tax practitioners. The fundamental principles of ethics for tax professionals were discussed, namely, integrity, objectivity, professional behaviour, professional competence and due care, confidentiality and independence. In addition, the chapter also

highlighted key principles for consistent and high quality regulation listed below (International Federation of Accountants, 2017:8):

- clear objectives in the public interest;
- proportionate and balanced approach towards regulation;
- evidence-based assessments;
- appropriate resourcing;
- collaborative action with other stakeholders;
- consistency and coherency in regulation;
- transparent and open consultation with other role players;
- active oversight;
- systematic review, and
- deliberate enforcement of regulation.

It is vital for tax practitioners to be regulated in order for them to maintain high ethical and quality standards in carrying out their professional responsibilities. Key expectations are that tax practitioners should exhibit objectivity, professional competence and due care, independence, confidentiality and integrity. The broad approaches adopted by various jurisdictions range from the no regulation to a full spectrum of regulation. Regulators adopt a range of regulatory tools to intervene, and these consist of softer approaches such as guidance, codes and warning notices, to harder actions such as fines, prosecutions, or revocation of licences.

### **7.2.2 Key Aspects of Regulation in South Africa, Zimbabwe and Germany**

Chapter 3 discussed the regulatory mechanisms that are adopted in South Africa. The main legislative framework that governs tax practitioners is the Tax Administration Act, 28 of 2011, as amended. The key requirement for tax practitioners in South Africa is that they should be registered with the South African Revenue Service (SARS), and the prospective practitioner should be a law-abiding citizen. There are professional bodies accredited by SARS to which tax practitioners must belong or be affiliated with. In South Africa, professional bodies eligible for recognition as controlling bodies are not only restricted to accounting bodies – professional bodies in the legal fraternity are also recognised.

In terms of the key regulatory aspects discussed in the thesis, it was found in this chapter that:

- Organisations that wish to apply for recognition as controlling bodies need to meet the set criteria for regulatory elements outlined below, including membership.
- The South African model encompasses a minimum entry requirement into the profession, requiring NQF Level 4 plus 10 years of experience, including taking a two-hour test, based on eight modules of the SARS Readiness Programme.
- Continuing professional development requirements are an intrinsic regulatory requirement for all tax practitioners.
- Taxpayers have the right to report a tax practitioner to SARS when the tax practitioner's conduct is found to be unlawful, injudicious, or unprofessional.
- SARS adopts a proactive approach to increasing the awareness of taxpayers with regard to their rights and the procedures to follow. This is a testament to SARS' proactive approach to regulation.
- Tax practitioners are bound by their respective controlling bodies' codes of ethics and conduct, which provide for disciplinary procedures.

It was also suggested that the absence of a centralised regulatory body deprived the regulatory model of standardisation, as far as entrance exams and codes of ethics are concerned. It was noted further that the minimum entry requirements in South Africa are the least stringent of the three countries discussed in this thesis. Further to these weaknesses, it was also found that SARS is directly involved in the regulation of tax practitioners, which invariably impacts on the autonomy and independence of tax practitioners.

Chapter 4 explores regulatory mechanisms for tax practitioners in Zimbabwe. The key findings are similar to those applying in South Africa. It is noted, however, that unlike in South Africa, members of the legal profession are excluded from practising as tax practitioners. The tax practitioner profession is still firmly limited to accounting professionals.

The main legislation that governs tax practitioners is the Public Accountants and Auditors Amendment Act, 1 of 2015 (PAAA Act). In Zimbabwe, however, the PAAA Act is silent on the processes to be followed by taxpayers who are aggrieved by tax practitioners' conduct. Section 35 of the PAAA Act only specifies actions that should be taken by the constituent body where it finds that a member has contravened any rules of professional conduct that may

be enacted by PAAB through its by-laws, or in terms of the rules of the constituent bodies themselves, provided those rules are not in conflict with the Board's rules.

Chapter 5 explains the regulation of tax practitioners in Germany. The German model is regarded as one of the most rigorous and efficacious in the world. The primary legislation that governs tax practitioners in Germany is the Tax Consultancy Act, 1 of 1961. In Germany there are Chambers of Tax Advisers that are the main bodies that govern tax practitioners. These are devolved from the central Federal Chamber of Tax Advisers, which is the umbrella regulatory body.

The tax adviser profession in Germany is shared with other regulated professions such as lawyers and accountants. The profession is strongly regulated, and members are subjected to difficult standard-setting examinations before certification by the Chamber of Tax Advisers and admission as members of the Chamber of Tax Advisers. Alt (2016) notes that German tax advisers have high tax morality as continuing membership of the profession requires compliance with strict ethical codes. The risk of losing a practising licence is very grave. Germany also has stringent requirements for continuing professional development for all tax advisers. The technical competencies for which tax advisers are renowned are a product of the tough training and educational requirements, including a continuous process of professional development.

Taxpayers in Germany are provided with the requisite protection against misconduct by tax advisers, as the Chambers of Tax Advisers have as one of their core responsibilities the duty to mediate, on request, in disputes between members of the Chamber and their clients. This is a pro-active approach designed to provide transparency and fairness to both advisers and the taxpaying public. What is not clear, however, is how the regulatory model creates public awareness of these regulatory mechanisms.

There are certain similarities and differences in terms of regulation that are observable in the three countries, and most importantly the legislative framework that governs tax practitioners. The main similarity is the presence of regulating bodies (even if their structures may be different) that govern tax practitioners. There are also differences that affect the type and efficacy of regulatory approaches. In Germany, an entire law (the Tax Consultancy Act) is wholly dedicated to the profession of tax advisers. It includes comprehensive and far-reaching

provisions regarding the operations of tax advisers. In South Africa, the regulation of tax practitioners is mainly provided for in the Tax Administration Act, which has a detailed section on tax practitioners. In Zimbabwe, however, the PAAA Act prioritises the accounting and auditing professions in its orientation and design.

### **7.3 ADOPTION OF REGULATORY FRAMEWORKS AND RECOMMENDED BEST PRACTICES**

Chapter 6 evaluates similarities and differences between German, Zimbabwean and South African regulatory frameworks, and recommends the best practices that could be adopted by Zimbabwe and South Africa.

#### **7.3.1 Key Factors to Consider when Adopting a Regulatory Framework from Another Jurisdiction**

Providing a comparative assessment of the regulation of tax practitioners in the three countries presents challenges associated with taking account of the individual circumstances of each country. Some of the factors to be considered include the following:

- There are differences in the stage of development of each country, which may have resource implications. Regulation comes with costs and what one country may afford to adopt in its regulatory framework may not be feasible in another. However, while regulation comes with costs, countries may need to consider that the lack of regulation may even be more costly.
- The length of time that the regulation of tax practitioners has been in place may affect the adoption of a regulation of one country into another country. For example, Germany's law on tax advisers was promulgated in 1961 and has been continually evolving over time. Zimbabwe and South Africa may not easily adopt this law in its entirety due to differences in developmental paths and the legal environment.
- The availability of tax practitioners in a country may affect the adoption of certain regulatory systems. In the present study, Germany's entry requirements are stringent. Applying the same stringent requirements in a country with few practitioners (Zimbabwe in particular has suffered a loss of qualified persons, as many practitioners leave for other

countries) will restrict entrance to the profession and create a tax practitioner shortage in the industry.

### **7.3.2 Possible Best Practices that Could be Introduced in Zimbabwe and South Africa**

Despite the differences in the countries forming part of the present research, there are certain best practices that South Africa and Zimbabwe may consider adopting or adapting from the German regulatory system.

- It is recommended that South Africa and Zimbabwe promulgate a law that deals exclusively with the regulation of tax practitioners. Germany has the Tax Consultancy Act which focuses exclusively on tax consultants. In South Africa, regulation of tax practitioners forms only a part of the Tax Administration Act and in Zimbabwe the Public Accountants and Auditors Act focuses mainly on auditors and accountants, with little attention being given to the tax practitioner profession. Having all matters relating to the regulation of tax practitioners consolidated in one Act would promote efficiency and lend status to the tax practitioner profession.

The legislation could be based on the German legislation, as a model. For South Africa, this may not be too difficult as the elements of such a statute are mostly already present in the Tax Administration Act and other regulations and documents. Zimbabwe could possibly model its legislation on South African legislation, as that would take relative country circumstances into account.

- Instituting an independent body that deals exclusively with tax practitioners and related issues is recommended. Germany has the Federal Chamber of Tax Advisers, a powerful regulatory body that exclusively addresses tax practitioner issues. Although South Africa and Zimbabwe have the South African Institute of Taxation and the Institute of Certified Tax Accountants respectively, these institutions are not regulatory bodies such as the Federal Chamber of Tax Advisers. In Zimbabwe, the PAAB is more an oversight body than a regulatory body.

The one concern with this recommendation is the potential cost, bearing in mind the functions the organisation would be required to fulfil. It could be government funded, but

in the present economic climate this may be difficult. Alternatively, the constituent member bodies could be required to pay an annual fee, but that is unlikely to suffice.

- It is recommended that the PAAA Act in Zimbabwe be amended in order to replace the PAAB with a body dedicated to regulating the tax advisory profession, to provide administrative oversight to constituent bodies. If the recommendation to establish an independent body is not a viable option, ZIMRA could make recommendations to the Minister of Finance in Zimbabwe to legislate a role for ZIMRA similar to the role carried out by SARS in South Africa. By so doing, ZIMRA, the party that is most adversely impacted by poor tax administration in the country, could cease to be a passive spectator. This will have the effect of ensuring that measures to enhance public awareness by taxpayers of their rights are given due attention.
- Zimbabwe specifically, should undertake deliberate strategies and measures to inform the taxpaying public about its rights and obligations in respect of the role of tax practitioners in particular and the interface with tax administration in general.
- SARS, through its reliance on controlling bodies, is administratively directly involved in the regulation of tax practitioners. If establishing an independent body is not feasible, it is recommended, alternatively, that controlling bodies be assigned all of SARS' regulatory administrative functions in order to provide some independence from the revenue authorities. As is the case in Germany, it is recommended that the tax practitioner profession is accorded professional autonomy to serve the interests of both the public and the fiscus.
- The absence of a standard setting exam is one of the main weaknesses in the Zimbabwean and South African regulatory frameworks. It is therefore recommended that standardisation through a single regulatory body exclusively dedicated to tax practitioners, with standard entry requirements, and commonly imposed ethical obligations for tax practitioners, is considered. Germany has the Federal Chamber of Tax Advisers that provides ethical guidelines and uniform entrance examinations. A standard-setting tax practitioner examination could be introduced. South Africa already has a "test" administered by SARS. Rigour in entry requirements is a best practice.

Germany places high value on the technical competencies of tax practitioners, hence the strict examination requirements. South Africa and Zimbabwe could therefore impose more rigorous exam requirements on the tax practitioner profession to ensure that only competent people are admitted. Engel (2022) notes that a vast number of tax practitioners take on specialised assignments, for purposes of business development, without the requisite competence. He highlights that about nine out of ten of them have limited tax expertise which lies predominantly in routine areas, namely, personal income tax, VAT, domestic corporate tax, and payroll tax. This translates to only approximately 10% of tax practitioners with expertise in specialised areas like international business tax, wealth succession planning, and customs and excise duties (Engel, 2022). In order to protect taxpayers from incompetent tax practitioners and cater for the varying needs of taxpayers, without interfering with the supply of and demand for tax practitioners, the proposed qualification can be designated into two competency categories, namely, foundational and strategic levels. The standard setting examinations should therefore be set for both levels to reflect the varying degrees of complexity that mirror practice areas allocated to each designated level. This will develop sector specialisation and mitigate incompetence.

- Finally, it is recommended that the Zimbabwean regulatory model should include other non-accounting and auditing-oriented professions, such as the law profession, in the recognition of potential constituent bodies.

### **7.3 LIMITATIONS OF SCOPE**

No human participants (tax practitioners) were involved in the study, which focused only on documentary evidence that included legislation, policy documents, and scholarly reviews on the regulation of tax practitioners in Germany, Zimbabwe and South Africa. The views of practitioners, officials at regulatory bodies, and SARS staff were not canvassed to obtain a broader spectrum of viewpoints and suggestions.

### **7.4 SUGGESTIONS FOR FUTURE RESEARCH**

Suggestions for future research include:

- a study designed to explore the views of tax practitioners, officials at regulatory bodies and SARS, through interviews or questionnaires; and

- expanding the present study to include other African countries and countries from other geopolitical spheres (for example, Asia or Australia) in order to obtain a more comprehensive view of the regulation of tax practitioners and more contextual factors.

## **7.5 FINAL COMMENTS**

The research has shown that the regulation of tax practitioners differs from country to country. Difference does not necessarily signify that one country's regulatory mechanism is better than another. There are practical considerations that inform a country's choice of regulatory mechanism. Nevertheless, countries can learn from other countries with established systems or best practices that they can adopt or adapt to improve their own systems. In this study, South Africa and Zimbabwe could take note of the German framework, which is considered to be one of the best in the world, to improve their own systems for regulating tax practitioners. As discussed in chapter 5, the six principles of an effective tax system as enunciated by Dumiter *et al.* (2015) will need to be borne in mind, namely; equity, efficiency, flexibility, stability, transparency, and understandable legislation.

Although South Africa's regulatory model is relatively stronger than the Zimbabwean model, it can be concluded that both South Africa and Zimbabwe need to improve their respective regulatory frameworks.

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### **South Africa**

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South African Revenue Service Act, 34 of 1997

Tax Administration Act, 28 of 2011

The Constitution of the Republic of South Africa, 1996

The Income Tax Act, 58 of 1962

### **Zimbabwe**

Chartered Accountants Act, 4 of 1918

The Income Tax Act, 5 of 1967.

The Mental Health Act, 15 of 1996

The Public Accountants and Auditors Act, 13 of 1995

The Public Finance Management Act, Act 11 of 2009

The Revenue Authority Act, 10 of 2009.

The Zimbabwean Constitution Act (Amendment) Act 20 of 2013

The Public Accountants and Auditors Amendment Act, 1 of 2015

### **CASE LAW (SOUTH AFRICA)**

CIR v Da Costa, (29 SATC 79)

Income Tax Case 1540, (54 SATC 400)