

The Tax Haven Industry of Vanuatu: The Costs and the Benefits of the Industry

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"ONE DAY IN THE NEXT FIVE TO TEN YEARS THE ENTIRE FINANCIAL SERVICES INDUSTRY SHOULD BE CONTROLLED EQUALLY OR IN PART BY BOTH NI-VANUATU AND EXPATRIATES" SO FAR IT IS JUST A DREAM

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ABSTRACT

The tax haven industry provides 15% of Vanuatu's GDP. The industry brings both costs and benefits to Vanuatu and its people. This paper is a study of the costs and benefits of the industry to Vanuatu. It's aim is to determine whether the industry brings more benefits or costs.

This paper is in four sections. The first is **introductory in nature**. It defines a tax haven and establishes Vanuatu's status as a tax haven. It also describes the history of Vanuatu as a tax haven and gives vital statistics of the industry today.

The second section of this paper is an **analysis of the legal framework** of the industry. The seven principal Acts governing the industry are examined. They are the, Companies Act, International Companies Act, Banking Act, Insurance Act, Trust Companies Act, Partnership Act and the Prevention of Fraud Act. This is to establish the legal structure of the tax haven industry.

The third section of this paper discusses the **costs and the benefits** of the tax haven industry in Vanuatu. It weighs the two, to come to the conclusion that the benefits of this industry are greater than the costs.

The fourth and final section of this paper discusses the issue of **reform**. The question of reform is looked at from the point of view of increasing the benefits of the industry and decreasing its costs.

At the end of this paper it becomes clear that the benefits of the tax haven industry in Vanuatu are greater than it's costs. This paper concludes with remarks on how to increase these benefits and decrease the costs of the industry to Vanuatu.

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1. INTRODUCTION

This section of this paper is divided into **four parts**. The **first** part establishes Vanuatu's status as a tax haven through definition. The **second** outlines the history of Vanuatu as a tax haven from its inception until today. The **third** part describes the tax haven industry as it stands today. This part of the paper is largely statistical data, to impress the importance of the industry to the economy of Vanuatu. The **fourth** part of this section provides the legal frame of the tax haven industry.

1.1 Definition of a tax haven

A **tax haven** ¹ is defined as:

[A] country with little or no direct taxes and enhanced privacy provisions (not necessarily available to all classes of persons) and used as a facility for international tax planning, international banking and insurance and the conduct on international dealings and investment under conditions of secrecy.

The **descriptive elements** of this definition are a country with:

- (i) Little or no direct taxation; and
- (ii) Enhanced privacy provisions.

The **functional elements** of this definition are the use of the country as a facility for:

- (i) International tax planning; and
- (ii) International banking and insurance; and
- (iii) International dealings and investment under conditions of secrecy.

1.2 Is Vanuatu a tax haven?

This definition indicates that a country needs to possess these five elements in order to be a tax haven. I will examine each requirement with respect to Vanuatu to determine whether it is a tax haven.

1.2.1 Little Or No Direct Taxation

Vanuatu has no taxes on income, capital gains, inheritance or other forms of direct taxation. This is stated in the *Guide for Investment in Vanuatu* ²:

... there are no income taxes, corporate taxes, estate duties, succession duties, gift duties, capital gains taxes, tax treaties or double tax agreements, withholding taxes or sales taxes (other than hotel and restaurant service charges and a landlord tax)

Therefore the first element has been fulfilled.

1.2.2 Enhanced Privacy Provisions

Vanuatu has provisions for enhanced privacy interests. This is achieved in three ways:

- (i) reporting requirements are more limited; ³
- (ii) persons having access to reports are subject to strict non-disclosure rules; ⁴
- (iii) relationships benefiting from confidentiality rules are less often subject to abridgement for special purposes. ⁵

Therefore the second element has been fulfilled.

1.2.3 International Tax Planning

Vanuatu can be used for international tax planning as it allows the creation of a separate

legal entity (corporation or trust) resident in Vanuatu with a view to: ⁶

- (i) The entity deriving income beyond the sourcing rules of any taxing jurisdiction. One way that this could occur is by the entity trading in financial instruments or currencies in Vanuatu's financial market; or
- (ii) The entity extracting income from a tax country and thereafter holding or reinvesting that income beyond the tax net of the taxpayer's home country. Money from a taxing jurisdiction can be extracted in any number of ways. The most common methods used are re-invoicing ⁷, contracting out ⁸, leasing and licensing ⁹ and captive insurance ¹⁰. The entity in Vanuatu could employ either of these methods with the end of reducing the tax payer's taxable income in the taxpayer's home country; or
- (iii) The entity being used as a turntable to convert property or income from one form to another¹¹.

Therefore the third element has been fulfilled.

1.2.4 International Banking and Insurance

Vanuatu is a facility for the conducting of international banking ¹² and insurance business ¹³, primarily because licensed banks and insurance companies are subject to less demanding regulation and looser supervision than licensees in non-tax haven countries. Banking and insurance operations in Vanuatu also can retain a competitive edge due to the stronger privacy rights offered to customers.

Vanuatu based banking and insurance operations are also free of income tax. Banking includes not only accepting deposits and granting loans but also currency trading, loan syndications, inter bank lending, standby facilities and so on¹⁴. Vanuatu's banking operations fall into two categories:

(i) booking centers ¹⁵ and

(ii) transaction or dealing centers. ¹⁶

This variation in services also attracts international customers who want to add an international dimension to their dealings and to take advantage of the concessions offered by a country like Vanuatu.

Therefore the fourth element has been fulfilled.

1.2.5 International Dealings and Investment Under Conditions of Secrecy

Vanuatu has provided an environment conducive to international dealings under an open economic system. There is no income, corporate, property or estate taxes. There are also no foreign exchange controls. ¹⁷ The legislation ¹⁸ also allows non-nationals to readily incorporate a company, establish a trust or partnership, and open bank accounts. This is all conducted under enhanced privacy provisions. ¹⁹

Therefore the fifth element has been fulfilled.

This clearly establishes that Vanuatu is a tax haven as it possesses the elements required by a tax haven.

1.3 History of Vanuatu as a tax haven

Vanuatu is described as a **natural** tax haven, because for reasons unrelated to international tax and financial concerns it has historically had no direct taxation. In 1970 ²⁰ this feature caught the attention of the financial world. Vanuatu then began to develop as a tax haven. 1971 saw the British administration with the support of the French, respond to the private sector initiative to create the tax haven. Legislation was introduced to firmly establish and regulate the industry. ²¹ The tax haven industry grew from its inception in the 1970's to the early 1980's. The industry then experienced some setbacks and periods of stagnation. The early 1980's saw the Santo rebellion against the central Government. This destroyed much confidence in the nation as a reliable tax haven. Subsequently there was the Libyan connection and a fishing deal with the Soviet Union. These raised further doubts as to the stability of the nation. ²² Vanuatu was also indirectly caught up in two other financial scandals in the 1980's. The Australian Nugan[sic] Hand Bank which had offices world-wide, including Vanuatu, collapsed, the Bank being linked to drug and arms trafficking. There was also the Axona International Credit & Commerce Ltd which defrauded depositors in Hong Kong using a privately owned Vanuatu bank. ²³ The 1990's has seen a resumption in the growth of the industry. Reserve Bank figures show that there has been an increase in the overall Gross Turnover of the tax haven institutions during the quarter ending December 1996. The turnover rose to 895.1 million Vatu which was higher than the level achieved in the previous quarter and the corresponding quarter of 1995 by 0.9% and 11.7% respectively. ²⁴ There is indication that the industry is back on a period of growth.

Unfortunately there have however been a number of recent events [sic] that could affect this growth. Firstly the constant changes in Government. Since the elections in November 1995 there have been five changes in Government. All these Governments have been short lived creating fears of instability in the economy. Secondly, the latter part of 1996 saw the economy of Vanuatu facing bankruptcy with the infamous "Bank Guarantee" scandal which thankfully has been averted. ²⁵ However the effect of these recent occurrences remain to be seen. They have the potential to affect the recovery and growth that is currently being experienced by the tax haven industry.

In 1990 the then Minister of Finance announced that the government intended to undertake a fundamental review of the entire tax haven legislative framework. ²⁶ Since then there has been the enactment of the International Companies Act, which has been described as a superior legislation to many other locations. ²⁷ There was, and still are plans to develop new offshore banking and insurance legislation. This is included as part of the comprehensive reform program of the Vanuatu economy that the government is

currently embarking on. In light of the Government's instability and inability to stay in power this could be a long time coming!

1.4 The tax haven industry today

The tax haven industry contributes to 15% of Vanuatu's GDP.²⁸ The industry is primarily made up of four types of institutions: **banks; trust companies; accounting firms and legal firms.**

1.4.1 Employment

The breakdown of employment per institution in 1996 was as follows: ²⁹

1.4.1 (i) EMPLOYMENT BY INSTITUTION IN TAX HAVEN INDUSTRY

| INSTITUTION | TOTAL EMPLOYMENT | EXPATRIATES | NI-VANUATU |
|-----------------------------|-----------------------------|--------------------|-------------------|
| BANKS | 252 | 21 | 231 |
| TRUST COMPANIES | 59 | 12 | 47 |
| ACCOUNTING FIRMS | 85 | 24 | 61 |
| LEGAL FIRMS | 28 | 7 | 21 |
| TOTAL | 424 | 64 | 360 |

(in thousands of vatu)

Table 1.4.1 (i) indicates that the tax haven industry employs 424 people, 60 of which are expatriates and 360 are Ni-Vanuatu. ³⁰ Expatriates therefore account for 15% of the total employment in the industry and the Ni-Vanuatu people account for 85%. The banking institutions employ 59% of the total number of people employed. The trust companies employ 14%, the accounting firms employ 20% and the legal firms employ 7%. The banking institutions employ 54% Ni-Vanuatu of the total number of people employed. The trust companies employ 11%, the accounting firms employ 14% and the legal firms employ 5%. The total number of people employed in Vanuatu is 17, 000. Therefore the tax haven industry accounts for 2.5% of the total employment in Vanuatu.³¹

1.4.2 Asset holdings of industry

In 1996, the tax haven industry held a total of VT 23,577,330 (thousands of vatu) in assets in Vanuatu. The breakdown per institution is as follows: ³²

1.4.2 (i) VALUE OF ASSETS HELD BY INSTITUTION IN TAX HAVEN INDUSTRY

| INSTITUTION | VALUE OF ASSETS HELD IN VANUATU (in thousands of vatu) |
|--|---|
| BANKS | 22,924,781 |
| TRUST COMPANIES | 281,362 |
| ACCOUNTING FIRMS | 266,679 |
| LEGAL FIRMS | 104,508 |
| TOTAL VALUE OF ASSETS IN VANUATU FOR THE INDUSTRY | 23,577,330 |

(in thousands of vatu)

The banking institutions held 97.2% of the total tax haven industry assets. The trust companies held 1.2%, the accounting firms held 1.1% and the legal firms held 0.4% of the total tax haven industry assets. The Reserve Bank of Vanuatu's value of assets in 1996 stood at VT 6104 (millions of vatu). In comparison the asset holdings of the tax haven industry stood at VT 23,577,330 (thousands of vatu). This comparison indicates the fairly substantial asset holdings of the tax haven industry.

1.4.3 Taxes and levies paid by the tax haven industry

In 1996 the tax haven industry paid a total of VT 287, 316 (thousands of vatu) in taxes and levies. ³³

1.4.3 (i) TAXES AND LEVIES PAID BY INSTITUTION IN TAX HAVEN INDUSTRY

| INSTITUTION | CENTRAL GOVT FEES | IMPORT DUTIES | LOCAL GOVT REVENUE | TOTAL |
|--------------------|------------------------------|--------------------------|-------------------------------|---------------|
| BANKS | 31,641 | 20,074 | 15,852 | 67,567 |

| | | | | |
|-------------------|-----------------|---------------|---------------|----------------|
| TRUST CO'S | 16,166 | 0 | 210 | 16,376 |
| ACCOUNTING | 13, 949 | 14 | 19 | 13,982 |
| LEGAL | 189, 391 | 0 | 0 | 189,391 |
| TOTAL | 251,147 | 20,088 | 16,081 | 287,316 |

in thousands of Vatu)

The Banking institutions account for 23.5% of the total taxes paid to the Government. The trust companies paid 5.7%, the accounting firms paid 4.7% and the legal firms paid 66% of the total tax haven industry taxes to the Government.

The total tax revenue of the Government for 1996 stood at 5,322.9 (millions of Vatu). The total tax paid by the tax haven amounted to 287,316 (thousands of vatu). Therefore the tax haven industry paid 5% of the total Government tax collected.

1.4.4 Total local expenditure of tax haven industry

In 1996, the total local expenditure of the tax haven industry stood at VT 2,102,196 (thousands of vatu). The total local expenditure figures is the sum total of total recurrent expenditure, total taxes and levies paid and capital expenditure.³⁴

1.4.4 (i) TOTAL LOCAL EXPENDITURE BY INSTITUTION

| INSTITUTION | TOTAL EXPENDITURE |
|-------------------------|--------------------------|
| BANKS | 1,055,302 |
| TRUST COMPANIES | 395,957 |
| ACCOUNTING FIRMS | 378,385 |
| LEGAL FIRMS | 305,552 |
| TOTAL | 2,102,196 |

(in thousands of Vatu)

The banking institutions accounted for 50.1% of the total local expenditure. The trust companies accounted for 19%, the accounting firms accounted for 18% and the legal firms accounted for 14% of the total tax haven industry's local expenditure.

1.4.5 Company registrations

As at 1 June 1997 there were 2903 active companies registered in the industry, with the Vanuatu Financial Services Commission. The breakdown of this figure is as follows: ³⁵

1.4.5 (i) COMPANY REGISTRATIONS IN THE TAX HAVEN INDUSTRY

| TYPE OF COMPANY REGISTERED | NUMBER REGISTERED |
|----------------------------|-------------------|
| INTERNATIONAL COMPANIES | 1,363 |
| LOCAL COMPANIES | 1,255 |
| EXEMPTED COMPANIES | 164 |
| EXEMPTED BANKS | 71 |
| LOCAL BANKS | 7 |
| INSURANCE COMPANIES | 29 |
| FINANCIAL INSTITUTIONS | 3 |
| TRUST COMPANIES | 11 |
| TOTAL REGISTRATIONS | 2,903 |

1.4.6 COSTS OF COMPANY INCORPORATION

| TYPE OF COMPANY | COST OF INCORPORATION |
|-------------------------|-----------------------------|
| INTERNATIONAL COMPANIES | US \$150 |
| LOCAL COMPANIES | VT 30,000 |
| EXEMPTED COMPANIES | VT 50,000 |
| EXEMPTED BANKS | VT 50,000 plus licence fees |
| LOCAL BANKS | VT 30,000 plus licence fees |
| INSURANCE COMPANIES | VT 30,000 plus licence fees |
| FINANCIAL INSTITUTIONS | VT 30,000 plus licence fees |
| TRUST COMPANIES | VT 30,000 plus licence fees |

1.5 Principal Acts governing the tax haven industry

There are seven principal Acts that establish the legislative framework tax haven business in Vanuatu. They are as follows:

(i) Companies Act (Cap 191) (Vanuatu);

(ii) Banking Act (Cap 63) (Vanuatu);

(iii) Insurance Act (Cap 82) (Vanuatu);

(iv) Trust Companies Act (Cap 69) (Vanuatu); ³⁶

(v) Prevention of Fraud (Investments) Act (Cap 70) (Vanuatu); ³⁷

(vi) Partnership Act (Cap 92) (Vanuatu); ³⁸

(vii) International Companies Act No. 32 of 1992.

The second section of this paper will provide an analysis of these Acts.

2. LEGISLATIVE FRAMEWORK ANALYSIS

Vanuatu's commercial law is based on English commercial law. Accordingly it recognizes three forms of organizational structure: the company; the partnership and the trust. This will form the basis of the examination of the legislative framework. The **first part** of the analysis will examine legislation that uses the company as a vehicle for utilizing the tax haven. They are the:

(i) Companies Act; and

(ii) International Companies Act; and

(iii) Banking Act; and

(vi) Insurance Act.

The review of the legislation is organised under the dichotomy of:

(i) Facilitative; and

(ii) Regulatory rules.

Facilitative rules provide the machinery for the creation of a company. Regulatory rules govern the actions of the company once it is created and the relationship among its various parts.³⁹ Regulatory rules will be reviewed under the following topics:

(i) Ease of incorporation; and

(ii) Ease of operation; and

(iii) Privacy provisions.

The **second part** of this section will examine legislation that uses the **partnership** and the **trust** as a means for using the tax haven. They are the:

(i) Partnership Act and

(ii) Trust Companies Act.

The review of these legislations will be brief as these Acts basically provide the industry with specific design choices for investors.

The **third part** of this section will address two issues. Firstly, the last Act that governs the legislative framework of the tax haven, the Prevention of Fraud (Investments) Act. This Act will be discussed to ascertain its purpose and use in the tax haven industry. Secondly the issue of **tax treaties**, although strictly speaking a treaty is not legislation, it is appropriate that the issue is addressed here. A tax treaty also contributes to the legal framework of a tax haven. This part of the paper will discuss the function of tax treaties and will also address Vanuatu's position on such treaties.

PART 1

2.1 Introduction

Essentially tax havens are a legal idea. Accordingly the principal legal components of a tax haven should be contained in its legislative scheme. Vanuatu is no exception. Vanuatu however has no formally separate legislative scheme establishing its tax haven facility.⁴⁰ One Banking Act governs both domestic and offshore banking, and one Insurance Act governs both the domestic and tax haven insurance companies. The Companies Act used to govern both the domestic and tax haven companies, but since the enactment of the International Companies Act this has largely been separated. Most tax haven companies are now governed by the International Companies Act, although there are some tax haven companies which still fall within the bounds of the Companies Act as an exempt company.⁴¹ But under the International Companies Act such companies can continue their operations as an international company.⁴² It is however envisaged that in time most tax haven companies will be governed by the International Companies Act.⁴³

2.2 Companies Act

Vanuatu's Companies Act is essentially based on the English Companies Act 1948.

2.2.1 Facilitative rules

The creation of a company⁴⁴ in Vanuatu is similar to that of British based companies legislations. The procedure allows the promoter to determine the type of company to be formed since this may make a difference as to the number of shareholders and types of documents required.⁴⁵ The Companies Act also makes an exempt company as a choice of business structure.⁴⁶ The exempt company being the basic vehicle for utilization of the tax haven facilities, under the Companies Act.⁴⁷

The promoters must next decide on a suitable name.⁴⁸ The next step is to prepare the memorandum and articles of association⁴⁹ The final step is to lodge certain documents at the Companies Registry. If the Registrar is satisfied that the requirements for registration are met and the purpose for which the promoters are associated is lawful he issues a certificate of incorporation signed by him or authenticated under his official seal.⁵⁰ Under the Companies Act the process for registration of an exempt company is the same as

registration of any other company, ie, a suitable name must be sought, the memorandum and articles of association need to be prepared and lodged with the Registrar of Companies. As with any other types of companies if the Registrar is satisfied that the requirements of registration have been met he will register the company as an exempt company. The basic requirement for registration as an exempt company is that the proposed business of the company is to be carried on, or the proposed objects of the company are to be carried out, outside Vanuatu."⁵¹

2.2.2 Regulatory rules

Vanuatu follows the English Companies Act and distinguishes between a public and a private company for regulatory purposes. Still similar to the English Act the regulatory procedures for a public company are more stringent as compared to a private company in Vanuatu. It is not my intention to discuss the regulatory procedures of the Companies Act in detail as it is beyond the scope of this paper. Suffice to say that the regulatory procedures are similar and comparable to that of English based Companies Acts.⁵²

The regulatory procedures of an exempt company are different from that of a company registered under the Companies Act. The regulatory framework of an exempt company provides:

(i) **Ease of company operations.** There are many examples in the Companies Act of this. An exempt company only needs one director.⁵³ Vanuatu also requires that at least one director be a resident⁵⁴ and that directors' meetings be held at least once a year in Vanuatu.⁵⁵ Exempt companies need not appoint a company auditor;⁵⁶ and

(ii) **Enhanced privacy rights.** Privacy rights are protected in Vanuatu. Reporting requirements are minimized and access to information is restricted. Exempt companies do not have to comply with the normal reporting requirements.⁵⁷ The public also have no right of access to reported information.⁵⁸ As an extension of this privacy provision if a person gains access to information in the performance of his duty or the exercise of his function, he is forbidden to disclose such information. Breaches of this provision will result in criminal prosecution.⁵⁹ Such a provision highlights the importance Vanuatu places on privacy.

The Companies Act differentiates between companies. A company which uses the tax haven is called an exempt company. The facilitative rules governing these companies are the same as local companies. This is a weakness of the Companies Act. Accordingly the procedure for incorporation is similar. However the regulatory rules for exempt companies differ. Exempt companies are subject to less stringent rules for operation. Such companies are also subject to enhanced privacy provisions. These characteristics make exempt companies a lucrative mechanism for utilizing the tax haven in Vanuatu.

2.3 International Companies Act

Dr. John Fallon⁶⁰ considers the International Companies Act⁶¹ as a superior legislation to similar ones in other locations. He justifies this by the marked increase in registrations since the legislation came into force in May 1993. The Act has continued with the regulatory themes of the Companies Act, of ease of operation and enhanced privacy provisions. It has however essentially added to the Companies Act in the regulatory area of company incorporation, eliminating the weakness of the Companies Act. The International Companies Act allows for easy incorporation of companies. This is done by abolishing the memorandum and articles of association⁶² but directors sign a solvency certificate. If a company makes a distribution and solvency is not satisfied, directors are held personally liable.⁶³ It also allows alternate indicia of limited liability in use in other jurisdictions to be used instead of the term "limited".⁶⁴ The International Companies Act also reduces the initial cost of registering a company.⁶⁵ The Act also improves the facilitative and regulatory rules governing an international company as compared to an exempt company.

2.3.1 Facilitative rules

The International Companies Act provides that the shares of an international company may be denoted in any currency and in more than one currency.⁶⁶ An international company, in the indication of the limited liability status of its members is not restricted to the use of the term "limited" for this purpose. Alternative indicia of limited liability in use in other jurisdictions, such as "Corp", "Inc", "Ltd", "Sdn Bhd", "SARL", "B.V." and "GmbH" can be used.⁶⁷

International companies may also issue a peculiar type of security known as First Schedule debentures.⁶⁸ These debentures have all the normal features of a debenture.⁶⁹ They however also have highly unusual attributes. When the debenture is issued all powers regularly exercised by the company's shareholders are suspended and become vested in the First Schedule debenture holders.⁷⁰ These debenture holders have all the powers of shareholders.⁷¹ This feature of international companies makes it an ideal for tax planning purposes. A company can be created with First Schedule debenture holders. While First Schedule debentures are outstanding a company need not have any shareholders to be members of the company. The debenture has the control element of a share without legally owning a share. This is useful where legislation gives different treatment to dividend and interest income or where adverse tax consequences flow from holding shares or controlling share positions in a company.⁷²

2.3.2 Regulatory rules

The International Companies Act relaxes the regulatory rules for an international company to allow for ease of operation. It allows for company buy backs and financial assistance to purchase shares in the company.⁷³ The **ease of operation** procedures are relaxed further. An international company only needs one director.⁷⁴ The directors meetings can take place whenever, and wherever in such a manner as may be necessary or desirable.⁷⁵ Shareholders meetings can also take place whenever and wherever as the directors consider necessary and desirable.⁷⁶ There are also no requirements as to the manner in which the books and the records of accounts are to be kept. They are to be kept as necessary to reflect the financial position of the company. There is also no requirement to appoint an auditor.⁷⁷ The International Companies Act exempts an international company and its shareholders from business licence fees, tax on income, profits, capital gains and stamp duty. International companies are also not subject to any exchange controls.⁷⁸

The **privacy provisions** are also strengthened. Under International Companies Act it is still an offence to disclose information relating to a company. However the Act widens the activities that can breach the privacy provisions. It includes, attempts, offers or threats to divulge or inducing or attempting to induce other persons to divulge any information concerning an international company. The Act also increases the penalty for a breach of the provision to US \$100,000 or imprisonment for a term, not exceeding 5 years or to both.

The International Companies strengthens provisions in the Companies Act in relation to exempt companies. The International Companies Act improves on the Companies Act's provisions for incorporation of an international company. International companies can be incorporated with greater ease, as compared to an exempt company. The international Companies Act also improves makes the operations of an international company easier than that of an exempt company. It also strengthens the privacy provisions for an international company. These differences in the international Companies Act make international companies a better mechanism for utilizing the tax haven than an exempt company.

2.4 Banking Act

A single Banking Act governs both domestic and offshore banking in Vanuatu. It differentiates between banks carrying on business within Vanuatu (local banks) and banks conducting business from outside Vanuatu (exempted banks). The Banks are supervised by the Reserve Bank and the Financial Services Commission.⁷⁹

2.4.1 Facilitative rules

Banking licences need to be obtained by both local banks and exempted banks. The ***Offshore Financial Annual***⁸⁰ states that banking licences are difficult to obtain in Vanuatu. The application requirements are stringent and all requests are closely screened by both the Reserve Bank and the Financial Services Commission. Licence applications must disclose the legal and beneficial owners of the application. The application must also produce evidence of good character, financial worth and experience in banking. Where an applicant has banking operations in another country enquiries are made with the parent country's supervisory body.⁸¹ Suffice to say that the procedure to obtain a banking licence is the same for both local and exempt banks.⁸² There are two classes of banking licences in Vanuatu:

(i) **Banking licence.** This permits the holder to engage in any banking business⁸³ including the acceptance of deposits of money withdrawable by cheque.

(ii) **Financial institution licence.** This permits the holder to carry on banking business,⁸⁴ thus it excludes chequing facilities.

2.4.2 Regulatory rules

It is the regulatory rules that differentiate between a local bank and an exempt bank. Banking activity regulating an exempt bank in Vanuatu are subject to tighter ongoing regulation after the initial issue of a banking licence, as compared to local banks. I will highlight the regulations for an exempt bank and an exempt financial institution.

Ease of operation is provided for by the less stringent reserve requirements⁸⁵ and liquidity ratios.⁸⁶ This also contributes to making banking activities more profitable.⁸⁷ Exempt banks and financial institutions are also subject to less restrictions in their activities as compared to local banks and financial institutions⁸⁸

The **privacy provisions** for exempt banks and financial institutions are also strengthened. This is not directly provided by the Banking Act but by virtue of the exempted company status under the Companies Act. The exempted companies banks and financial institutions receive the benefit of the privacy provisions of the Companies Act.⁸⁹ Since there is no comprehensive secrecy bill in Vanuatu, the customers are protected by common law rules regarding banker- customer confidentiality.

The Banking Act differentiates between local banks and financial institutions, and exempt banks and financial institutions. The facilitative procedures of incorporating a local bank and financial institution is similar to that of an exempt bank and financial institution. It is however quite difficult to obtain a banking licence in Vanuatu. This approach by the Reserve Bank and the Financial Services Commission has been adopted in order to eliminate fringe banks of doubtful stability and integrity.

However the regulatory rules for exempt banks and financial institutions differ. Exempt banks and financial institutions are subject to less stringent rules for operation. Such banks and financial institutions are also subject to enhanced privacy provisions. These characteristics make these banks and financial institutions attractive mechanisms for utilizing the tax haven facilities.

2.5 Insurance Act

A single Insurance Act governs both domestic and offshore insurance in Vanuatu. It differentiates between insurers carrying on business within Vanuatu (local insurers) and insurers conducting business from outside Vanuatu (exempted insurers).⁹⁰

2.5.1 Facilitative rules

The facilitative rules make it easier for an exempted insurer to become incorporated. This is achieved by not making exempted insurers subject to the financial requirements for registration. The Act provides that local insurers carrying on life assurance business must have a paid up capital of VT 30,000,000. For non life assurance company the assets of the company have to exceed all the liabilities by the amounts specified in the Act.⁹¹

2.5.2 Regulatory rules

The regulatory procedures of an exempted insurer are different from that of a local insurer under the Insurance Act. The regulatory framework of an exempted insurer provides:

(i) **Ease of incorporation.** This is basically provided by removing the financial requirements for the registration of an exempted insurer; and

(ii) **Ease of operation.** Many of the provisions of the Insurance Act do not apply to exempted insurers. Accordingly these exemptions allow for easier operation. For example, an exempted insurer has latitude in its conduct of business. The Minister cannot restrict or limit the new policies of the insurer.⁹² Neither can the Minister question the practices of an insurer as being sound and sufficient for the conduct of the insurance business.⁹³ An exempted insurer is also free of the strict reporting requirements in regard to accounts. There appears to be no requirements to keep accounts, either separate or group.⁹⁴ There is no requirement to appoint an auditor.⁹⁵ Directors are allowed to take loans from an exempted insurer.⁹⁶

The insurance Act differentiates between local and exempted insurers. The facilitative rules governing an exempted insurer allow for easier incorporation. The regulatory rules allow for ease of operation. Exempted insurers are subject to less stringent rules for operation. These features make exempted insurers a lucrative mechanism for utilizing the tax haven facility in Vanuatu.

This brings an end to the first part of this section.

PART II

2.6 Trust Companies Act

A trust is a relationship where the trustee is the legal owner of the trust property, but this is subject to an obligation to apply the property or the income from the trust property for the benefit of the beneficiary. This trust principal is a form of organization structure that is employed in the use of tax haven facilities. This Trust Act is based on the 1925 United Kingdom Act, and according to Tom Bayer there is very little difference in a good trust company in any jurisdiction if it is derived out of English law.⁹⁷ Accordingly there is nothing unusual or novel in this legislation. It simply provides a design choice for investors to use the trust as a means of utilizing the tax haven facilities.

2.7 Partnership Act

A partnership has no legal identity separate from its members. The income of the partnership is automatically the income of its partners in proportion to their agreed interest in the partnership, likewise the losses.⁹⁸ Like the trust, a partnership simply provides investors with a design choice for utilizing the tax haven. Also like the Trust Act, the Partnership Act does not have any unusual or novel provisions in it.

PART III

2.8 Prevention of Fraud (Investment) Act

This Act has two primary functions: it provides for the licensing of securities dealers; and it provides penalties for fraudulently inducing persons to invest money in securities.

The term securities has been defined in the Act as:⁹⁹

- (i) Shares or debenture, or rights or interests in any shares or debentures;
- (ii) Securities of the Government of Vanuatu or the Government of any other country or territory;
- (iii) Rights in respect of money lent to, or deposited with, and industrial and provident society or building society.

This definition of securities is wide enough to encompass a broad range of activities. This benefits the public and the Act serves its purpose to protect them, by creating penalties for fraudulently inducing people to invest money in securities.

2.8.1 Licensing of securities dealers

To deal in securities a person needs to obtain a licence, as specified under the Act. Any person who contravenes this provision can be fined up to VT 100, 000 and or imprisonment for a term not exceeding 2 years.¹⁰⁰ Before a Minister can grant a licence a deposit or guarantee of VT 200, 000 has to be deposited by the applicant with the Registrar of the Supreme Court of Port Vila.¹⁰¹ This deposit can only be withdrawn if the Minister approves or if the depositor becomes bankrupt. The deposit is then paid to the trustee in bankruptcy. If the corporation is being wound up by a court order then the deposit can be paid back to the corporation.¹⁰² However the Minister has the discretion to waive this depository requirement, if he is satisfied that in all circumstances of the case it would be unreasonable or would cause undue hardship to the applicant to make a deposit.¹⁰³ The Act also gives the Minister the discretion to declare dealers as exempt dealers for the purposes of the Act. The Minister then decides the rules to govern such dealers.¹⁰⁴ The rules for a refusal and revocation of a licence are quite strict. This can occur if the applicant, employee of the applicant or an associate is: convicted of an offence in Vanuatu which involved fraudulent or dishonest behavior; convicted of an offence under the Act (P in breach of any rules made by the Minister under this Act for the conduct of the business; and any other circumstances whatsoever.¹⁰⁵

2.8.2 Provisions for the prevention of fraud

The Act describes activities that amount to fraudulently inducing persons to invest. It includes¹⁰⁶ : statements; promises; and forecasts which he knows to be:

- (i) Misleading, false or deceptive; or

(ii) By any dishonest concealment of material facts; or

(iii) By reckless making, dishonestly or otherwise of any statement, promise or forecast which is misleading, false or deceptive;

which induces or attempts to induce another person to enter into or offer to enter into an agreement to trade ¹⁰⁷ in securities. If a person is found guilty of this offence, they can be liable on conviction to a fine not exceeding VT 1,000,000 and or a prison term not exceeding 7 years. ¹⁰⁸

The Prevention of Fraud Act does provide for the licensing of dealers in securities. It also provides penalties for fraudulently inducing a person to invest money in securities. The Act however has a weakness. It gives the Minister a very wide discretion to waive the depository and guarantee requirements for registration. The Act also gives the Minister the power to declare a person an exempt dealer. The Minister then has the discretion to determine the rules to govern such persons. Vanuatu is a country that experiences a high level of maladministration and corruption where Ministers and the politicians are often implicated. If such wide discretionary powers are given to the Minister then there is a likelihood that the discretion will be abused. Such actions would undermine the essence of the Prevention of Fraud Act. This in turn would ruin Vanuatu's reputation in the international arena.

2.9 Tax treaties

Taxing countries try to maximize their tax revenue. Consequently a single item of income can become subject to tax in two jurisdictions. In order to avoid this situation countries enter into tax treaties.

2.9.1 Function of tax treaties

Tax treaties have three basic functions: ¹⁰⁹

(i) They apportion taxing rights. Only certain types of income maybe taxed by one of the parties to the treaty. Basically the parties to the treaty agree on who will tax what, to avoid double taxation;

(ii) Limit taxing rights. Taxes imposed by one of the parties are limited to an agreed figure with the requirement that the other party gives credit for taxes paid in the first;

(iii) Provide for the exchange of information related to the enforcement of tax legislation.

Vanuatu is not party to any tax treaties. It has taken this approach to avoid the treaty information sharing obligations which are a crucial part of a tax treaty. Such an obligation would undermine Vanuatu's tax haven privacy rules. However in taking this approach Vanuatu has reduced its competitiveness in international tax planning. The availability of a treaty which reduces or abolishes tax that would otherwise be imposed by a tax country is an important consideration in international tax planning.

2.10 Legislative analysis summary

The tax haven in Vanuatu has the legal attributes common to most tax havens. It has no income tax, capital gains and wealth tax. There are no foreign exchange controls in Vanuatu. The legislative framework in Vanuatu is favourable. It provides investors with ease of incorporation, ease of company operation and enhanced privacy provisions. This is particularly evident in the International Companies Act.

However the other Acts ie, the Companies Act, the Banking Act, and the Insurance Act do not provide all three features, of ease of incorporation, ease of operation and enhanced Privacy provisions. The Banking Act provides ease of operation and enhanced privacy provisions. It however does not provide for ease of incorporation. This is a deliberate policy of the Vanuatu Government. It makes banking licences more difficult to obtain as it is trying to reduce the potential for fraud and the dangers of incompetence in banking. This is an attempt by the authorities to improve and maintain the image of Vanuatu's tax haven industry, especially its banking sector. Vanuatu's commitment can also be seen from its membership of the *Offshore Group of Banking Supervisors*.

The Insurance Act provides ease of incorporation and ease of operation. There are however no enhanced privacy provisions in the Act. The Partnership Act and the Trust Companies Act provide an investor with a variation in design choice for utilizing the tax haven facilities.

The Prevention of Fraud Act Provides some protection of the public from dealers in securities. It also provides penalties for fraudulently inducing a person to invest money in securities. The Act however has potential to fail its purpose as a result of the wide discretionary powers afforded to the Minister.

From the review of the legislative framework it is clear that Vanuatu is trying to create the best climate for investment. It provides clients with a choice of organizational structure and favorable legislation. Potential clients prefer operations that are easily created, easily operated with enhanced privacy. Vanuatu also provides competitive incorporation and maintenance costs.¹¹⁰

2.11 Non-legal attributes of the tax haven.

A legislative framework is not enough to provide for the effective functioning of a tax haven, no matter how good the framework. Apart from the legal framework, a tax haven must possess a number of other qualities to function effectively. Vanuatu is no exception. The non-legal attributes¹¹¹ of a tax haven are:

- (i) Political stability; and
- (ii) Good communications system and convenient access by air; and
- (iii) Good legal, accounting and banking services; and
- (iv) Simple visa requirements to import skilled expatriates to supplement banking, legal and accounting services if necessary.

The review of the non-legal attributes will be treated as follows:

- (i) Political stability; and
- (ii) Other non-legal attributes.

2.11.1 Political stability

Vanuatu gained independence in 1980 from France and England. From the earliest days of its independence to the present it has not been able to achieve political stability. For example since the November 1995 elections there have been five changes in Government.¹¹² These constant changes take up much of the Governments time. As a result most carry on in much the same way as their predecessors did, fighting for political survival. This leaves little time for any constructive work on the part of the Government. This political instability has wide ramifications for the country itself. For the tax haven industry, it reduces investor confidence. News reports describe the country as being politically unstable and are often pessimistic

of its problems.¹¹³ Potential clients are driven away. Current clients could get turned away, due to the Governments inability to efficiently respond to the investors needs.

2.11.2 Other non-legal attributes of tax haven

Good communications system

Vanuatu has a modern telecommunications system. It boasts a national microwave telephone network that connects all major islands, internationally. It provides all major telecommunications facilities such as: telephones; fax facilities; telex; internet. The one drawback with the telecommunications system in Vanuatu is its costs. Due to the low number of subscribers (approximately 5000), the costs are quite high in comparison to other countries such as Fiji, Australia and New Zealand.¹¹⁴

Convenient access by air

Air services connect through international routes such as New Caledonia, Fiji, Australia, New Zealand and Papua New Guinea. Air Vanuatu, Air Caledonie International, Solomon Airlines, Air Marshall and Air Pacific are the only international airlines that currently provide direct services to Vanuatu.

Good legal and accounting firms

There are a number of good legal and accounting firms. Vanuatu has 10 law and 9 accounting firms.¹¹⁵ Many of these accounting and legal firms are either accredited to, or partners of or branches of international firms. This improves the standard of accounting and legal services in Vanuatu.

Complete banking services

There are also complete banking facilities in Vanuatu. In addition to the normal banking facilities such as savings and cheque accounts major banks offer a range of services including: vatu and foreign current overdraft facilities; vatu loan facilities; foreign currency loan facilities; guarantees and performance bonds; credit card facilities; insurance; travellers cheques; letters of credit; and acceptance and discount of commercial bills.¹¹⁶

Ability to import skilled expatriates

If there is a shortage of skilled people for the legal, accounting and banking operations, expatriates can be brought in to supplement the local firms. The Labour (Work Permits) Act (Cap 187) (Vanuatu) (hereafter referred to as the Labour Act) states that the employer is to apply for a work permit of a non-citizen at a cost of VT 50,000. The permit will only be granted if **there is no local person available or qualified for the position**. The Labour Act provides the means to import skilled expatriates for the legal, accounting and banking operations to supplement the local legal, accounting and banking operations.

2.12 Legal attributes v Non-legal attributes

For Vanuatu to have an effective tax haven it needs to have both the legal and the non-legal attributes of a tax haven. It has favourable legal attributes, although some of the Acts could be amended or repealed. It also has most of the non-legal attributes of a tax haven, except political stability. For the industry to prosper further, it will require some concerted effort on the part of the politicians, for political stability. This along with some further legislative reforms, in the Banking Insurance and Prevention of Fraud Act could further contribute to growth in the industry.

3. COSTS AND BENEFITS OF TAX HAVEN IN VANUATU

This section of the paper is in three parts. The first part will discuss the benefits of the tax haven industry to Vanuatu. The second will consider the costs of the industry. The third section will compare the benefits of the tax haven industry with the costs of the industry.

3.1 Benefits of tax haven in Vanuatu

The benefits of the tax haven are as follows:

- (i) Revenue for the Government;
- (ii) Local employment in the tax haven industry;
- (iii) Transfer of skill to local population;
- (iv) Tourism;
- (v) Local employment in other sectors of the economy.

3.1.1 Revenue for the Government

The tax haven raised VT 287,316 (thousands of vatu) in revenue for the government from business licences and registration fees.¹¹⁷ This accounted for 15% of the GDP of the country. It must be clear from the outset that fee revenue depends on the number of users and not on the amount transacted. Accordingly the greater the registrations the greater the revenue raised. In 1996 there were 80 offshore banks and 2,000 registered companies.¹¹⁸

3.1.2 Local employment in the tax haven industry

In 1996, the industry provided employment for 424 people, 64 expatriates and 360 Ni-Vanuatu people. Expatriates made up 15% of the industry and Ni-Vanuatu accounted for 85% of the industry. This is an increase of 10% from 1995 for the industry, an increase of 4% for the expatriates and a 10% increase for the Ni-Vanuatu.¹¹⁹

The total amount of wages and salaries paid in the tax haven industry for 1996 was 752,669 (thousands of vatu). This was an increase of 6% from 1995.¹²⁰ Of the total wages and salaries paid, 345,138 (thousands of vatu) was paid to Ni-Vanuatu and 407,531 (thousands of vatu) was paid to expatriates. This means that 54% of the wages and salaries are paid to expatriates and 46% is paid to the Ni-Vanuatu people. Therefore 15% of the industry, ie the expatriates receive 54% of the wages and salaries, while 85% of the industry, ie the Ni-Vanuatu people receive 46% of the wages. On average an expatriate receives five times that of a Ni-Vanuatu, person.¹²¹

According to Julian Ala who is the Commissioner for the Financial Services Commission this wide discrepancy is attributed to the fact that there are no Ni-Vanuatu people in the management level of the industry institutions.¹²² Although the Ni-Vanuatu people account for 85% of the people employed in the industry, they have not been able to penetrate the upper management levels of the industry. There appears to be no one reason for this trend. According to Julian Ala a major factor is that there are not enough Ni-Vanuatu people who are qualified as bankers, lawyers and accountants. According to statistics approximately 70 Ni-Vanuatu graduates enter the market every year. Of this 20-25% are graduates with degrees in Economics and Business studies.¹²³ These graduates could be absorbed by the industry, but more often than not these people are usually absorbed by the Public Service. The primary reason being that most of these people are bonded to the Government as a result of scholarship arrangements. Accordingly of the total Ni-Vanuatu population employed only 1% are employed by the tax haven industry¹²⁴ a further contributing factor to this low rate of Ni-Vanuatu participation in the industry could be attributed to the attitude of the Ni-Vanuatu people themselves and those within the industry, the expatriates. It appears that a large number of Ni-Vanuatu people feel inaptly prepared to enter the industry. They see the industry as an "expatriate thing".

The expatriates on the other hand do not come out in the open and they say that they are discouraging the Ni-Vanuatu people from entering the industry. They are however happy with the status quo, as they have created a niche market for themselves. They diplomatically maintain that there are no restraints for the Ni-Vanuatu people to enter the industry. They also conveniently reiterate that it is simply impossible for a higher participation rate of the Ni-Vanuatu people at present, with their poor qualifications.¹²⁵

3.1.3 Transfer of skill to local population

The tax haven industry has brought into Vanuatu a substantial level of skilled expatriates, as a result of the need to provide the tax haven with good legal, accounting and banking support services. Statistics show that 28% of Accounting firms, 25% of Legal firms, 20% of Trust Companies and 8% of Banks in Vanuatu are staffed by expatriates.¹²⁶ These expatriates are given work permits to work in Vanuatu under the Labour Act. The Act provides such expatriates with work permits if there isn't a suitably qualified citizen to fill the position. As a condition of their work permit the employer has to provide the citizen workers with training programs that will allow for transfer of skills. Such conditions of employment allow for transfer of skill to the local people. This is also part of the Government's localization policy.

3.1.4 Tourism

The tax haven and tourism industry in Vanuatu began at approximately the same time, in early 1970's.¹²⁷ Tourism accounted for 17% of Vanuatu's GDP in 1995.¹²⁸ It is therefore an important industry in the Vanuatu economy. The tax haven and tourism industry are closely interlinked for their success. They are both products that are closely tied with Vanuatu and marketed in primarily the same way, through advertisements. When the tax haven is marketed, it always describes the physical beauty, the friendly population, cultural diversity, pleasant climate and easy access to Australia and New Zealand. These are the same features that are used to market Vanuatu's tourism industry.¹²⁹ Accordingly when the tax haven industry is marketed so is the tourism industry. This in turn leads to the development of the tourism industry.

The tax haven industry also brought in approximately 15% of the visitor arrivals to Vanuatu in 1995.¹³⁰ These visitors come to Vanuatu for the purpose of doing business in the tax haven. However as a direct result of this, such people contribute to the tourism industry by increasing hotel room occupancy. Also in the tourism industry, they contribute to the increase in business for restaurants, gift shops, taxi drivers, rental car companies etc.

3.1.5 Local employment in other sectors of the economy

The expatriate population in 1996 accounted for approximately 2% of the population in Vanuatu.¹³¹ This percentage of the population provides employment for other locals who are not in the tax haven industry or in the formal employment sector. For example to housegirls, gardeners and babysitters. This may not be a substantial increase in employment, but it would be interesting to see the percentage of housegirls and gardeners employed by the expatriate community. My guess is that a large percentage of such employment, for housegirls and gardeners would be provided by the expatriate population.

The expatriate population would also increase the demand for goods and services across the board. For example groceries, clothing, restaurants, doctors services etc., to name a few. This general increase in demand would warrant an increase in employment in these sectors. This would provide local people who are not directly linked to the tax haven industry with increased employment opportunities.

3.2 Costs of tax haven in Vanuatu

The costs of the tax haven are as follows:

- (i) Use of tax haven for illegitimate purposes;
- (ii) High rates of indirect taxes.

3.2.1 Use of tax haven for illegitimate purposes

Often inadequate supervision can result in a tax haven being used for illegitimate purposes such as financial fraud and money laundering. The North American Securities Administrators Association Report 1990¹³² stated that Vanuatu had lax supervision in its tax haven industry, resulting in banks incorporated and licensed being used for financial fraud. I find this Report to be quite incorrect as Vanuatu has been largely free of financial fraud and illegitimate activities. It has had only a few incidents of fraud and illegitimate activities. The Financial Services Commission, people within the industry and newspaper reports revealed as few as two financial frauds¹³³ in Vanuatu's tax haven history. The infamous "McCullen Suarez" case and the "Crayfish" case.

The "McCullen Suarez"¹³⁴ case involved a group of Canadians who were selling securities in the bogus "Mexigulf Sealand W" company. They had incorporated an international company, "Mc Cullen Suarez" in Vanuatu and had an office located in Pilioko House.¹³⁵ The scam involved placing advertisements in reputable Australian newspapers and magazines, offering shares in bogus companies such as "Mexigulf Sealand Inc". When an investment was made the unsuspecting investor was issued with worthless share certificates. The fraud in this case amounted to AU \$1 million, of which no money was ever recovered. Four of the six members of the scam were caught and prosecuted under the Prevention of Fraud (Investments) Act. The ring leaders however escaped via Santo on a chartered jet.

The "Crayfish" case began in 1992 involving a Mr. Allan Clarke who had defrauded AU \$91,000 from a Western Samoa partner on the pretext of setting up a fresh-water crayfish farm. He even convinced the Civil Aviation Minister of Western Samoa to issue him with a direct airline ticket to Switzerland to assist in obtaining financial support for the troubled Polynesian Airlines. He then disappeared. He then appeared in Vanuatu in 1994 on the pretence of setting up a bark. He approached a local Solicitor to proceed with the legal formalities.¹³⁶ As a matter of practice the application was referred to the Registrar of Companies.¹³⁷ It just so happened that the Registrar of Companies had recently received a copy of *Pacific Beat*¹³⁸ which contained a report on Mr. Allan Clark. This good luck and the vigilance of the solicitor and the Registrar of Companies averted a possible financial scam, as experienced in Western Samoa.

Vanuatu is serious about maintaining a good reputation. As a result it enacted the Serious Offences (Confiscation of Proceeds) Act No. 50 1989, (hereafter referred to as the Serious Offences Act) and the Mutual Assistance in Criminal Matters Act No. 52 of 1989 (hereafter referred to as the Mutual Assistance Act). The Serious Offences Act provides that the proceeds of criminal activities occurring outside Vanuatu may be confiscated where those same activities would be criminal if committed in Vanuatu. The Mutual Assistance Act implements a Commonwealth scheme for nations to provide assistance in criminal matters. This Act also makes provisions to nations to provide assistance in criminal matters.¹³⁹ These two Acts with the Prevention of Fraud Act, which regulates dealings in securities and provides penalties for fraudulently inducing people to invest in securities, helps control the possibility of Vanuatu's tax haven being used for fraud and illegitimate purposes. This is necessary to protect the reputation of Vanuatu as a legitimate tax haven, to prevent potential investors from being driven away.

3.2.2 High rates of indirect taxes

As earlier stated Vanuatu does not have any direct taxes. Nevertheless the Government still has to obtain its revenue from somewhere. Consequently Vanuatu employs a system of indirect taxation. These taxes include: import duties; export duties; and taxes on goods and services. The total tax revenue of Vanuatu accounted for 83% of the total recurrent revenue in 1996. This was composed as follows:¹⁴⁰

3.2.2 (i) TOTAL TAX REVENUE CLASSIFIED ACCORDING TO THE TYPE OF TAX

| | |
|----------------------------------|----------------|
| TOTAL RECURRENT REVENUE | 6,367.6 |
| TAX REVENUE | 5,322.9 |
| IMPORT DUTIES | 3,060.0 |
| EXPORT DUTIES | 83.9 |
| OTHER CUSTOMS RECEIPTS | 17.8 |
| TAX ON GOODS AND SERVICES | 1,675.8 |
| OTHER TAXES | 474.3 |

3.2.2 (ii) TYPES OF TAX AS A % OF TAX REVENUE AND % OF TOTAL RECURRENT REVENUE

| INDIRECT TAX | % OF TAX REVENUE | % OF TOTAL RECURRENT REVENUE |
|-------------------------------|-------------------------|-------------------------------------|
| IMPORT DUTY | 57.5 | 48 |
| EXPORT DUTY | 1.6 | 1.3 |
| OTHER CUSTOM REC | 0.3 | 0.5 |
| TAX ON GOODS & SER | 31.5 | 26.3 |
| OTHER TAXES | 9.0 | 7.4 |
| TOTAL | ~100 | 83.5 |

Import duties therefore accounted for 57.5% of the tax revenue of Vanuatu. This indicates the reliance Vanuatu has on import duties for tax revenues. However this is not the only tax that is levied on imported goods. Imported goods are also subject to service tax, which is imposed emulatively on imports CIF. In addition, a 2.5% Business Licence Fee is imposed on importers. As a result when these three taxes are combined, imported goods are heavily taxed in Vanuatu.¹⁴¹ Consequently the average effective rates on taxable imports CIF is approximately 42.6% in Vanuatu.¹⁴² Such high levels of import duty affect the entire population. It however affects the lower income workers the most as they have less money to spend. The low income earners in Vanuatu are the Ni-Vanuatu people. For example, (as earlier quoted) the expatriates in the tax haven industry earned five times as much as the Ni-Vanuatu people. Accordingly a larger proportion of a low income earners wages are paid in tax as compared to a high income earner. This does not comply with the requirement that taxes need to be fair.¹⁴³ As a result the Government, in 1991 undertook a review of the tariff structure and subsequently implemented a number of revenue-neutral reforms, effective as at January 1992. The main thrust of these reforms were to lower the rates on a range of food stuffs from 45-55% to 25-30% and increase the rates on luxury goods from 10% to 30%. The duty rate on rice was reduced in 1991 from 25% to 12%. The Government also extended the 5% service tax to include many items previously exempt to help finance the tariff reform.¹⁴⁴ This moved some of the burden of the tax to higher income earners with the ability to pay.

3.3 Benefits v Costs of tax haven industry

The benefits of the tax haven industry in Vanuatu outweigh the costs that the industry brings to the country. The benefits are as follows:

- (i) The increase in revenue for the Government. The tax haven industry makes a substantial contribution to the GDP of this country and this revenue is distributed by the Government to improve the standard of living in Vanuatu;
- (ii) Increases in local employment, either directly or indirectly through the tax haven industry;
- (iii) The transfer of skills to the local population; and
- (iv) Development of the tourism industry.

However the benefits are not without their problems. The benefits could be increased if the problems concerning them are rectified. (This issue will be addressed in Section IV of this paper on reforms.)

There are not many costs of Vanuatu being a tax haven. Basically there are two. The tax haven can and has been used for fraud and illegitimate activities, ruining Vanuatu's reputation. Vanuatu also has a system of very high indirect taxes. Although this historically had nothing to do with the tax haven, this feature has remained to sustain the revenue of the Government. However the point cannot be emphasised enough, that the tax haven industry of this country brings more benefits than costs for its people.

4. CONCLUSION ~ REFORM

4.1 CONCLUSION

The benefits that Vanuatu receives from the tax haven industry in Vanuatu, outweigh the costs. The increase in revenue for the Government; the local employment; the transfer of skill to the local population; the contribution to the tourism industry; and local employment to other sectors of the economy; provide the Government and the people of Vanuatu a means to improve their standards of living. This is achieved by the Government having an increase in income to redistribute not only from the tax haven industry but also from other sectors of the economy including the tourism sector; the people employed in the industry and in other sectors of the economy increasing their income- and the increase in the education, training and experience of the local people through the transfer of skills.

The industry does however have some costs for Vanuatu. The tax haven may be used for illegitimate purposes and the high rates of indirect taxes. However since the benefits of the industry in Vanuatu are substantial, efforts have to then be directed at either reducing or eliminating the costs that the industry brings to the country. This would result in an even greater effect of the industry to Vanuatu. The methods of reducing the costs of the industry will be discussed in 4.2 on reforms.

4.2 REFORMS

4.2.1 Legislative reforms of principal Acts

As early as 1990 the then Minister of Finance announced that the government intended to undertake a fundamental review of the entire tax haven legislative framework. Since then the International Companies Act in 1992 has come into force. This legislation was well received by the industry. The International Companies Act has been described as being superior to many other locations and as favourable legislation. Unfortunately since then, there has not been any other legislative reforms to the legislative framework of the tax haven industry. The general feeling in the industry is that the other principal Acts, the Companies

Act, the Banking Act and the Insurance Act should all be amended or repealed, to be brought in line with the International Companies Act. All the Acts should be drafted with the view to provide a potential investor with: ease of incorporation; ease of operation; and enhanced privacy provisions. These three broad objectives must be balanced against the cost of Vanuatu being used for fraud and illegitimate purposes.

The Prevention of Fraud Act is the principal Act that is used by Vanuatu to prevent fraud and the use of Vanuatu for illegitimate purposes. The Act does provide for the licensing of dealers in securities and penalties for fraudulently inducing persons to invest money in securities. However the Act also gives the Minister an extremely wide discretion in waiving the deposit and guarantee requirements.¹⁴⁵ He also has an extremely wide discretion to declare a person an exempted dealer. Further still the Minister, then determines the rules which to govern such a person.¹⁴⁶ This illustrates the wide discretionary powers of the Minister. In a country like Vanuatu where maladministration and corruption is rife, such powers can and often is abused. This would undermine the purpose of the Act and weaken its effect.¹⁴⁷

4.2.2 Other legislative reforms

Vanuatu at present does not have a comprehensive secrecy bill. As a result of this weakness in the legislation, users of the tax haven have to rely on the common law position of customer-banker confidentiality for privacy. This weakness should be remedied and a comprehensive Secrecy Act should be legislated, to reflect the importance of privacy provisions in a tax haven. Such an important feature of the tax haven industry should not be left to common law. A move in this direction will only add to the confidence of an investor as his privacy will be guarded by legislation.

4.2.3 Improving the benefits

Revenue distribution

A common complaint of the tax haven industry by local people in Vanuatu, both expatriates and Ni-Vanuatu is that they do not feel the benefit of the tax haven. There is the knowledge that the tax haven exists but there is this uncertainty as to what it does and how it benefits the people. However some people hold strong resentments against the industry, based on the high rates of import duty that are implemented as a result of no income tax. When I informed several people of the industry's financial contributions to the economy, many were shocked. From my conversations with a broad section of people¹⁴⁸ it was clear that most people felt that they received no benefit from Vanuatu being a tax haven.

I asked the Commissioner of the Financial Services Commission on his view on the matter. He stated that as far as he was concerned his office brought in 15% of the GDP of this country, and if the people were not feeling the effect of this contribution, then it was a matter for the politicians. He stated that all revenue received from the industry was directed to the Government, who were responsible for the policies that affected the expenditure of the revenue collected.

This problem is an extremely difficult one to address and there is no clear solution to it. At best people can be educated of the industry's contributions to the economy. Other than that it will be extremely difficult to physically show the benefit of the industry as long as the revenue is all directed towards the Government's general revenue account.

Local employment

The industry does provide employment to 363 Ni-Vanuatu. However there is a wide discrepancy in the wages earned by the expatriates and the Ni-Vanuatu. This is largely attributed to the lack of qualified Ni-Vanuatu lawyers, bankers and accountants. This discrepancy needs to be addressed.

This could be achieved by an educational drive, from both the Government sector and the tax haven industry. The Government could give scholarships that do not bond persons specifically to the Government, but give them the option to enter the private sector such as the tax haven industry. The Government together with the industry could embark on training programs for locals. They could begin with short term

ad hoc courses and could later offer structured courses as the resources become available.¹⁴⁹ The resources to operate such courses could be derived from the revenue raised from the industry. Such initiatives would ensure development in the industry, particularly for the Ni-Vanuatu people. This could eventually bring the dream of Julian Ala to fruition, that one day the financial services industry should be controlled equally or in part by both the Ni-Vanuatu and expatriates. The industry could be induced or even forced to participate in such an educational drive. The Government could offer incentives to participating firms such as reduced rates of taxes and levies.¹⁵⁰ The Government could also adopt an affirmative action approach in the industry. For example it could set minimum numbers of Ni-Vanuatu to be employed by each firm. Such stipulations could also include the positions that these Ni-Vanuatu are to hold. Such an approach may pose some problems as there are not enough Ni-Vanuatu graduates to fill the posts to date. Consequently this would have to be a long term plan and part of the localization plan that the Government has already embarked on.

The Government and the industry can employ the methods suggested. However these programmes will only be successful if the attitudes of the people change. The attitude of the Ni-Vanuatu with regard to the barriers of entering the industry, as being an "expatriate thing". The attitude of the expatriates will also have to be changed. They have to be willing to change the status quo, willing to share their skills, knowledge and expertise with the Ni-Vanuatu people. The expatriates have to stop thinking that the tax haven is their niche market. When there is a compromise of these divergent views, then and only then will there be a significant change in the power and management structure of the industry.

4.2.4 Reducing the costs

Use of tax haven for illegitimate purposes

Vanuatu has done extremely well in restraining and controlling the use of its tax haven facilities for fraud and illegal activities. The evidence of this lies in the fact that Vanuatu has largely been free of many financial scandals. This is the result of the stringent banking licensing rules and the enactment of Acts such as the Prevention of Fraud Act, the Serious Offences Act and the Mutual Assistance Act. The only other reform that could be implemented in this area is an Economic Crime Division to be the investigative arm of the Government in matters of financial fraud including such activities as money laundering. At present in Vanuatu there is no such body. Any investigations of a fraudulent nature are carried out by the Financial Services Commission and the Police. However the Police in particular are not specialized enough to carry out such investigations. The Financial Services Commission at present is responsible for the setting up and regulation of tax haven entities. If it was to also investigate suspected fraudulent activities, the Commission would be over taxed with its responsibilities and resources. It could also lead to concealment of fraud if an insider from the Financial Services Commission is part of the fraud.

High rates of indirect taxes

Vanuatu is in the process of reforming the taxation system of the country. High on the agenda of reform is the reduction of import duty and the subsequent introduction of an income tax. It is essential to appreciate that import duty accounts for 57% of the tax revenue of the country. It cannot be reduced overnight as a substitute revenue source has to be obtained, in order to reduce the import duty rates. If this procedure is not adopted then Vanuatu will fall into trouble in other areas of the economy, especially with its balance of payments.

Accordingly the Government is in the process of devising a system to reduce the rate of import duty gradually.¹⁵¹ In the short to medium term, there are strong indications that the Government plans on introducing a withholding tax to initially replace the scheduler system of tax. It also plans to introduce wages and salaries taxes at the same time. In the long term the Government plans to subsume the withholding tax into the wage and salaries tax. The Government also plans to introduce taxes on local companies.¹⁵² Once these taxes are in place the Government plans to have gradually reduced import duty rates substantially. In real everyday terms such a change in the tax system will see a staple commodity like rice having a zero rate of tax, as compared to the 12% tax that is currently levied on it. This should result in a reduction in the cost of living for all groups, particularly those in the low income and non-urban areas of the country.

Such moves by the Government to rationalize the tax system of Vanuatu will reduce the burden of the high rate of indirect taxes felt by the people of Vanuatu. This will remove the biggest cost of the tax haven industry to the people.

4.3 The future of the tax haven industry

The tax haven industry makes a significant contribution to Vanuatu. This paper has clearly established and proven, that the benefits of the tax haven industry in Vanuatu outweigh the costs. This paper has also shown how the benefits of the industry can be improved and the costs decreased. The industry has the potential to continue making significant contributions to Vanuatu. And if the proper measures are employed, one day the dream can become a reality, where the industry is controlled equally or in part by both Ni-Vanuatu and expatriates.

<big>STATUTES USED</big>

Banking Act (Cap 63) (Van)

Business Licence Act (173) (Van)

Companies Act (Cap 191) (Van)

Export Duties Act (Cap 3 1) (Van)

Insurance Act (Cap 82)

Import Duties (Consolidation) Act (Cap 91) (Van)

International Companies Act No 32 of 1992 (Van)

International Financial Institutions Act (cap 134) (Van)

Labour (Work Permits) Act (Cap 187) (Van)

Partnership Act No 8 of 1975 (Van)

Prevention of Fraud (Investments) Act (Cap 70) (Van)

Registration of Business Names (Cap 62) (Van)

The Serious Offences (Confiscation of Proceeds) Act No. 50 of 1989.

The Mutual Assistance in Criminal Matters Act No. 52 of 1989.

Trust Companies Act (Cap 69) (Van)

Vanuatu Financial Services Commission Act No 35 of 1993

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ENDNOTES:

1. This definition has been formulated by R Grynberg *et al*, *Taxation in the island nations of the South Pacific Volume 1*, (1994)

2. Financial Services Commission, *Guide for Investment in Vanuatu*, 1994.

3. Compare the reporting requirements of a company under ss 148- 168 of the Companies Act (Cap 191) (Vanuatu), (hereafter referred to as the Companies Act) and s 63 of the International Companies Act 1992 (Vanuatu), (hereafter referred to as International Companies Act). Companies governed by the Companies Act have extensive reporting requirements. In contrast an international company only has to keep such accounts and records as are necessary in order to reflect its financial position. Similarly exempted banks and financial institutions under ss 19, 20 and 14 of the Banking Act (Cap 63) (Vanuatu), (hereafter referred to as the Banking Act) do not have to comply with stringent reporting requirements of the Banking Act. A similar position is also adopted for exempted insurance companies under ss 16-18, 33 and 34 of the Insurance Act (Cap 82)(Vanuatu), (hereafter referred to as the Insurance Act).

4. For example in an international company, s 125 International Companies Act, prohibits the disclosure of information regarding the company except when required by a court. A similar provision is also found in s 12 Business Licence Act (Cap 173) (Vanuatu), (hereafter referred to as the Business Licence Act).

5. As exempted companies, banks receive the benefit of privacy provisions under the Companies Act. Pending a comprehensive secrecy bill customers are protected by common law rules regarding banker-customer confidentiality.

6. These principles are stated in n 1 at p 125.

7. The basic re-invoicing is a process where an exporter or export manufacturer, rather than selling directly to a foreign purchaser, sells first to a tax haven entity (such as that being discussed in the example) which then sells to a foreign purchaser. A portion of the final sale price is thus diverted to the tax haven jurisdiction where it is not subject to tax while the taxpayer's taxable income is reduced. For more discussion on this process, see n 1 at p 126.

8. Contracting-out basically involves the relocation of service income. For example a construction firm may tender for a project from a tax haven industry and then contract out the actual construction work in the tax country to its subsidiaries for sums considerably less than that paid to the tax haven entity. For more discussion see n 1 at p 126.

9. This is where a business may assign property or have property purchased by a tax haven entity and then lease this equipment from the entity gaining a deductible expense and removing the funds to the tax haven entity. For further discussion see n 1 at p 126.

10. This is where a business incorporates an insurance company in a tax haven. This has several advantages. Firstly the premiums remain tax deductible in the home country and secondly the premiums are approximately 25% cheaper. (Administrative costs in an insurance company are typically this amount) Thirdly in a tax haven such as Vanuatu the licensing rules are quite liberal, see the Insurance Act, therefore the funds can be invested free of restraints. The profit of the insurance company in Vanuatu would also be tax free. For further discussion see n 1 at p 127.

11. This is where a company based in a tax country wishes to invest in a foreign country which is providing generous tax incentives to equity investors including the repatriation of profits at concessionary rates. If the company invests directly the benefits of the concession may be lost when the profits are repatriated if the home country gives credit only for taxes actually paid. In order to prevent this the company may incorporate a tax haven subsidiary in Vanuatu which then invests in the foreign country. Benefits are not lost on repatriation to the tax haven entity in Vanuatu. The entity in Vanuatu may then repatriate funds to the parent but in a different tax efficient form, for example by redeeming the parent's shares in the entity. This explanation was taken from n 1 at p 127 and adapted.

12. This is governed by a single Banking Act that regulates both the domestic and offshore banking in Vanuatu. See section 2 for an in depth analysis of the Banking Act.

13. This is governed by a single Insurance Act that regulates both the domestic and offshore banking in Vanuatu. See

section 2 for an in depth analysis of the Insurance Act.

14. This is stated in n 1 at p 129 and was confirmed to me by the Reserve Bank.

15. A booking center has no direct representative of a bank's head office present in the center. An agent represents the bank but decisions are made elsewhere and merely booked through the center with nominal books maintained by the agent. This definition is from n 1 at p 129.

16. A transactional center is staffed by bank employees with authority to independently initiate and engage in banking operations. This definition is from n 1 at p 129.

17. This is outlined in National Planning and Statistics Office *Republic of Vanuatu : Third National Development Plan 1992-1996, 1992.*
18. The legislation basically includes the International Companies Act, Banking Act, Partnership Act and the Trust Companies Act (Cap 69) (Vanuatu), (hereafter referred to as Trust Companies Act).
19. See 1.2.2 for a discussion on enhanced privacy provisions.
20. Vanuatu at this stage was a condominium under the joint governance of Britain and France.
21. The original 1970/71 legislation has been replaced. This was initially done by the Companies Act which has since been supplemented by the International Companies Act. This International Companies Act has proved to be superior to many other similar legislations. Consequently there is now new trust legislation being developed to replace the legislation based on the 1925 United Kingdom Act. There are also plans to develop new offshore banking and insurance legislation. This is stated in J Fallon, *The Vanuatu Economy : Creating Conditions for Sustained and Broad Based Development, 1994.*
22. This is stated in n 1 at p 135 and in Bromby R, "What Future For Vanuatu's Finance Center", 1988.
23. See n 1 at p 136 and Islands Business, 'Haven Hits Headlines', 1983, p 47.
24. Reserve Bank of Vanuatu, *Quarterly Economic Review, December, 1996, 1996.*
25. See Ombudsman of the Republic of Vanuatu, *Public Report in The Provision of Bank Guarantees Given in the Sum of \$100,000,000.00, 1996.*
26. Ministry of Finance & Housing, *Republic of Vanuatu Press Release 16/10/90, 1990.*
27. See n 21.
28. See Statistics Office, *Statistical Indicators : First Quarter January-March 1996, 1996.*
29. The data for this table was obtained from n 24 at p 51.
30. See n 24 at p 51.
31. The Statistics Office of Vanuatu does not produce any employment figures. This figure was obtained from the Vanuatu National Provident Fund and the National Planning Office, from a survey that was conducted in 1995. This survey remains unpublished in English, although there is a French version.
32. See n 24 at p 51 for the data for this table.
33. See n 24 at p 51 for the data for this table.
34. See n 24 at p 51 for the data for this table.
35. These figures can be obtained on application from Timothy Womai Assistant Registration Officer.
36. Hereafter referred to as the Trust Act.
37. Hereafter referred to as the Prevention of Fraud Act
38. Hereafter referred to as the Partnership Act.

39. This dichotomy was created by Professor R Grynberg in n 1 at p 14 1.

40. For example the Cook Islands and Western Samoa have a formal and substantive separation of their tax haven industry and the domestic activity. The legal systems dual nature is formally reflected in separate legislative and administrative regimes. Regular company, banking, insurance and tax legislation governs domestic activity. Alongside this, separate dedicated legislation establishes the tax haven facility. This is discussed in n 1 at p 138.

41. An exempt company is defined in s 376 or 378 of the Companies Act. Section 376 states that an exempted company is one where the proposed business of the company is to be carried out outside Vanuatu. See s 378 for the restrictions on the business of exempted companies.

42. This is provided by s 111 of the International Companies Act on the payment of the appropriate fees.

43. This will however require the Insurance Act and the Banking Act to be amended or repealed, as they rely on exempt companies under the Companies Act, in order to comply with the structure of the International Companies Act.

44. I have restricted my analysis of the Companies Act to private companies as most companies in tax havens are private companies. However public companies can have a domicile in Vanuatu. They are also governed by the Companies Act.

45. Sections 2-4 Companies Act provide the usual requirements for applying to form a company. Section 2 states the minimum number of subscribers for a public (seven) and private company (two). Section 3 states the documents required to accompany the application. These include the usual, original memorandum of association, duly subscribed, and articles of association if any, duly signed, to be filed with the Registrar.

46. This is provided for by s 376 Companies Act.

47. The exempt company was the basic vehicle for tax haven activities because of its less restrictive regulatory procedures. This is discussed, in depth in 2.2.2.

48. Sections 26-29 of the Companies Act provide the normal restrictions as to the choice of names for a company. The all encompassing provision is also in existence in Vanuatu, that, "(n)o company shall be permitted to be registered by a name which in the opinion of the Minister is undesirable." No company can use a name that is identical with the name by which a company is registered under the Act or "pass off" a similar name to a company incorporated under the Act which could deceive or mislead. No company can use a name that suggests a connection with the government of any country or with any public international organization or with any public board or statutory board or any municipal or other local authority. No company can use the words "co-operative" or "building society".

49. Sections 5-15 of the Companies Act provide the usual requirements for the memorandum and articles of association. It provides for any limitation on the objects or range of business in which the company may engage, the limited nature of the company, the company's share structure, the number of directors and the rules of internal governance of the company.

50. Sections 16-21 of the Companies Act provide the usual procedure for filing and subsequent registration of a company in Vanuatu.

51. See s 376 of the Companies Act and s 378 of the Companies Act for restrictions on the business of exempted companies. Primarily if s 376 is fulfilled then the company can be registered as an exempt company. Section 378 then affects the business of the company, it restricts the type of activities that the company cannot engage in.

52. The regulatory procedures of a company deal with the, share capital and debentures, registration of charges and management and administration of a company This is contained in Parts III, IV and V of the Companies Act.

53. See s. 189(1) Companies Act.

54. See s. 189(2) Companies Act. This residency requirement is aimed at establishing the tax haven country as the place of residence under this criteria. Liability to income tax often falls on residence and the usual residency criteria for a corporation includes the place at which a company's directors meet to conduct meetings.

55. See s. 379 Companies Act.

56. See s. 163 (1) Companies Act which states that, "...every public company, every private local company..." An exempt company is not a local company.

57. See s. 377 Companies Act. The normal reporting requirements of a company are stated in s. 112-211 of the Companies Act These basically provide that a company is to maintain accounts and documentation of dealings, registers of members, directors and debenture holders, and minutes of directors and shareholders meetings. Regular filings are required giving information on directors and shareholders.

58. See s. 381 Companies Act

59. See s. 381(6) Companies Act where a breach could result in a fine not exceeding VT1,000,000 or to imprisonment for a term not exceeding 5 years or both!

60. See n 21.

61. The International Companies Act provides for the incorporation, registration and operations of an international company. An international company is not defined in the Act but s 10 of the Act describes the restrictions on the business of an international company. These are similar to the restrictions placed on an "exempt company", basically prohibiting an international company from carrying on business in Vanuatu.

62. See s 2-3 International Companies Act

63. See s 1(3) International Companies Act.

64. See s 4 (1) International Companies Act. The term include, "Corp", "Inc", "Ltd", "Sendirian Berhad", "Societe a Responsabilite Limitee", "Besloten Vennootschap" and "Gesellschaft mit beschränkter Haftung".

65. An international company can be registered for as little as US \$150. See Offshore Annual, South Pacific, 1996.

66. See s 16(1)(h) International Companies

67. See s 4 International Companies Act and n 54.

68. See s 79(1)(d) International Companies Act.

69. The regular features of a debenture include the debenture been expressed as redeemable on demand, bear interest, giving the holder usual priority on winding-up and is a debt for the purposes of the company's accounts.

70. See s 79(4) International Companies Act.

71. See s 79(4) International Companies Act.

72. See n 1 at p 143.

73. See s 31 and s 31(2) International Companies Act.

74. See s 38 International Companies Act.

75. See s 42 (1) International Companies Act.

76. See s 53 (1) International Companies Act.

77. See s 63 (1) International Companies Act

78. See s 118 International Companies Act.

79. The Financial Services Commission (hereafter referred to as FSC) was created in 1993. The aim of the FSC is to create an independent, well resourced statutory authority that can develop, maintain and enforce appropriate regulatory standards. This is to enhance the international reputation of the tax haven, so that it can continue to contribute to the economy, preferably at increased levels.

80. Offshore Finance Annual 1996, South Pacific, 1996.

81. See n 1 at p 154.

82. See s 2-5 Banking Act.

83. Section 1 (1) of the Banking Act defines banking business as the business of accepting deposits Which maybe withdrawn or repaid on demand or after a fixed period or after notice and the employment of those deposits in whole or m part by lending or any other means for the account and at the risk of the person accepting such deposits and shall be deemed to include merchant banking business.

84. See n 83 for the definition of banking business.

85. See s 19 of the Banking Act which states that s 6-7 of the Banking Act do not apply to exempt companies. These sections deal with the capital and reserves of a financial institution.

86. See s 19 and 13 of the Banking Act which states that exempt banks do not have to meet 25% liquidity ratio required by local banks.

87. A banks profit increases as it is not forced *to* hold a percentage of its assets as reserve, it can be invested to gain higher returns.

88. See s 11 and 12 Banking Act. For example a local bank or financial institution cannot give an advance, credit facility or financial guarantee for a person, firm, corporation or company etc. A sum more than 25% of its sum paid up capital.

89. Accordingly s 381 of *the Companies Act* on secrecy applies. See 2.2.2 for a discussion on the enhanced privacy provisions of the Companies Act.

90. See s 33-34 Insurance Act.

91. See s 4 (1) - (4) Insurance Act.

92. See s 8 Insurance Act.

93. See s 9 (1) (e) and (f) of the Insurance Act.

94. See ss 17-18 , 33-34 Insurance Act.

95. See ss 16. 33-34 Insurance Act

96. See s 48 Insurance Act.

97. Tom Bayer is the chairman of Pacific International Trust Company (PITCO). He has been involved in the Vanuatu tax haven industry for 21 years and is considered the authority in the commercial sector of the tax haven industry in Van

98. See n 56 at p 392-393. go See n 1 t p 124.

99. See s 1. Prevention of Fraud (Investments) Act.

100. See s 2 (1)-(2) Prevention of Fraud (Investments) Act.

101. See s 5(1) Prevention of Fraud (Investments) Act.

102. See s 5 (2) Prevention of Fraud (Investments) Act.

103. See s 5 (4) Prevention of Fraud (Investments) Act.

104. See s 2 (4)-(6) Prevention of Fraud (Investment) Act.

105. See s 6 (b) Prevention of Fraud (Investment) Act

106. See s 11 (1) Prevention of Fraud (Investment) Act.

107. The activities that include trade in securities are listed in s 11 (1)(a)-(c) Prevention of Fraud (Investment) Act.

108. See s 11 (1)(c) Prevention of Fraud (Investment) Act.

109. This is stated in n 1 at p 115.

110. See 1.4.6.

111. These have been suggested by Professor Roman Grynberg in n 1.

112. See "VP sets another Motion" Vanuatu Trading Post, Port Vila, Vanuatu 24th May 1997.

113. See Islands Business, 'We Say', 1995.

114. This information was obtained from Telecom Vanuatu.

115. This data was obtained from the rates and taxes office, which issues businesses with a business licence. Business licences we are required before a business can operate.

116. This information was collated after surveying the four major banks in Vanuatu: ANZ; Westpac; National Bank of Vanuatu; and Banque d'Hawaii.

117. See n 24 at p 51.

118. See n 65 at p 387. The FSC has set a target of 3,000 registrations for the future. A figure that Vanuatu has never achieved. Also see 1.4. 1 (i).

119. See n 24 at p 5 1.

120. For this period inflation was -0.8%. Thus the increases in wages and salaries were real increase. See n 95 at p 19.

121. The ratio is approximately, 5: 1. The raw figures for average expatriate wage and salary per head is 5393 (thousands of vatu) as compared to 1132 (thousands of vatu) for Ni-Vanuatu, people per head per annum.

122. This was revealed to me at an interview with Mr. Ala on Friday 7th March 1997 at the FSC.

123. See n 17 at p 164.

124. See n 17 at p 32.

125. I make this statement after speaking to several people in the industry, especially to Ana Spooner who is a Ni-Vanuatu woman, trying to break into the industry. She is a graduate m Business Studies from Australia and is the

President of International Investment Corporation.

126. Seen 24 at p 5 1.

127. See n 1 at p 111.

128. See n 21 at p 47.

129. See n 56 at p 396. 1

130. See n 28 at p 32.

131. See n 28 at p 2.

132. I have not been able to acquire this report but have obtained this information from n 1 at p 108.

133. This is excluding the Australian Nugan Hand Bank case and the Axona Credit & Commerce Ltd cases, which both had links with Vanuatu but were not directly m Vanuatu.

134. See new~ reports for April 1994, especially "Canadian defendants warned of dangers of absconding" The Vanuatu Weekly, 1994.

135. The office of "~& Cullen Suarez" was 1~ next to the office of Susan Bothman Barlow, Barrister Solicitor and Lecturer in Law at the University of the South Pacific. It was Susan Bothman Barlow who caught onto the scam, after she was contacted by a concerned shareholder m Mexigulf Sealand Inc, and when she felt things weren't quite right after noticing some irregularities m their office, such as no real work was apparently being done (and not to mention a woman in short shorts and a cowboy hat shutting about.)

136. Unfortunately for Mr. Clarke he chose Susan Bothman Barlow, who had discovered the Me Cullen Suarez scam.

137. At that stage there was no Financial Services Commission or Financial Services Commissioner.

138. Media and Publications Branch of the Australian Federal Police, *Pacific Beat*, October 1994.

139. Seen 1 at p 155.

140. The data for these tables came from n 24 p 37.

141. See N Warren, *Vanuatu : Taxation System Reform*, 1994.

142. See n 143, p 89.

143. The traditional criteria for an optimal tax system are: they need to be fair or equitable, they need to minimize disincentive effects; and they need to minimize administrative costs.

144. See n 135, p 93.

145. See s 5 Prevention of Fraud Act

146. See s 2(4) Prevention of Fraud Act

147. The level of corruption and the incidences of Ministerial abuse has been prevalent in Vanuatu. A quick peruse of the Ombudsman's Reports will highlight this point.

148. I spoke to people from all walks of life. Professionals, workers in the non-formal sector of the economy, bus drivers students etc. I basically tried to gauge the views and perceptions of people of the tax haven industry.149. This approach to develop &c MW participation in the tax haven of Mauritius has proven to be extremely successful. See Mauritius Offshore Business Activities Authority, 'The making of Mauritius' 1996.

150. The taxes and levies, are the Central Government Fee, Import Duty and Local Government Fees.

151. This is not a firm Government policy to date, the reform package has not being finalized. This suggestion was made to me by Mr. Julian Ala. Any reform on the tax system is being based on the recommendations of the Warren Report.

152. Any reforms in the tax system should theoretically not affect the tax haven industry, especially the international companies and the exempt companies. Investors would also not be subject to the wages and salaries taxes.