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Zambia V: Tax laws and tax-like contributions

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Inhalt

List of Graphics 3

List of Tables 3

Introduction 3

1.1 Responsibilities and definitions 3

1.2 Tax formulation process 4

1.2.1 Discussion 5

1.3 Tax legislation process 6

1.3.1 Discussion 7

2 Main categories of national laws and law-like contributions 7

2.1 Income Tax Act 8

2.2 Customs and Excise Act 9

2.3 Value Added Tax (VAT) ACT 9

2.4 Cross-cutting: taxes relevant for businesses 10

2.5 Wealth relevant taxation 11

2.6 Social security contributions 12

3 Tax concessions: incentives, exemptions… 12

4 Mining sector and other TNCs 14

4.1 The special case of mining 14

4.2 Principles of mining taxation 15

4.3 Frequent Tax Changes 16

4.3.1 Discussion 17

4.4 Outside influence: Lobbyism 18

4.5 Counter measures 20

4.6 International issues 20

4.7 Conclusion 22

5 Taxes towards the informal economy 23

6 Local government levies, fees and rates 24

6.1 Process leading to formulation of levies, fees and rates 24

6.2 Fees applied on building structures 25

6.3 Fees applied on buses loading at bus stations 27

6.4 Business levy 27

6.5 Property valuation and rates 28
6.6 Discussion 29
7 “Green Taxes”.. 31
8 Mandatory Social Security Contributions (NAPSA).......................... 31
9 Conclusion... 33
10 Annex 1: Overview about taxes, definitions and rates.................. 33
11 Annex 2: Tax Concessions.. 41
12 Literaturverzeichnis 48

List of Graphics

Graphic 1 Revenue under residential development (2012-2014 Charges)25
Graphic 2 Revenue under Industrial development (2012-2014 Charges) 26
Graphic 3 Revenue under commercial development (2012-2014 Charges) 26

List of Tables

Table 1 PAYE Income Tax Regime 2017 8
Table 2 Sources of capital wealth in Zambia, per capita 14
Table 3 Categories of tax relevant to mineral extraction 15
Table 4 Comprehensive overall tax regime for “large scale license holder” (2014)... 16
Table 5Tax bands and presumptive amounts for Turnover Tax (2017) ... 24
Table 6 Bus loading (User) fees at the Intercity Bus Terminus Gate....... 27
Table 7 Business levies applicable in Lusaka, 2014............................ 28
Table 8 Carbon Emission Tax, based on Engine Capacity, 2017............ 31

Introduction

1.1 Responsibilities and definitions

The tax formulation process is the responsibility of the Ministry of Finance, while the tax legislation is the responsibility of Parliament. The Zambia Revenue Authority (ZRA) is the Agency in charge for tax collection. The tax system also comprises non-tax instruments, which includes royalties, levies, rates and fees. However, the non –tax instruments are charged and collected by other ***Government Agencies*** and ***Local Authorities***. Further, there are mandatory contributions to the National Pension Scheme Authority (NAPSA) contributions applicable to employees. On the whole, therefore, one has to bear in mind the following definitions:

- **Taxes**: generally understood as payments charged by the government on a product or income. Since taxes are for financing government expenditure, one has no say on how this money is spent (different from the two other categories)
- **Contributions**: charges levied for the (potential) entitlement of a (later) service, e.g. insurance against sickness or unemployment.
- **Levies and** (Excise) **Duties**: voluntary or involuntary payments for the reception of some service provided by a public authority, e.g. customs, issuing of passports or certificates.
- 'A **royalty** is a payment made by one party, the licensee or franchisee to another …. that owns a particular asset for the right to ongoing use of that asset. Royalties are typically agreed upon as a percentage of gross or net revenues derived from the use of an asset or a fixed price per unit sold of an item of such, but there are also other modes and metrics of compensation.'[1]

1.2 Tax formulation process

The Ministry of Finance (MoF) is responsible for the formulation of tax policy proposals. Ministry of Finance sets government objectives on resource mobilization and revenue policy as it relates to Tax and non-Tax revenue. There is a Tax Policy Review Committee (TPRC), which consists of experts on tax policy from the Ministry of Finance, experts on tax administration from the Zambia Revenue Authority (ZRA) and Technocrats from various Socio – Economic Government departments.

When formulating the National Budget, the Ministry of Finance (Tax/Revenue unit) invites Government and non-Government actors i.e. general public (individuals, NGOs, business associations and similar organizations) to submit tax proposals with their respective justifications. The TPRC then compiles these proposals from the general public, analyses and evaluates the proposals and tax system in terms of equity, efficiency and effectiveness.

The TPRC recommends tax policy changes to management within the Ministry of Finance, taking into consideration Government policy and overall fiscal objectives, as well as the specific revenue requirements/impacts of policy changes. The Minister of Finance then tables the recommended tax proposals before Cabinet for further consideration and approval. After cabinet approval, the budget and proposals are presented to the nation through Parliament. Parliament further debates the National Budget and tax proposals and is responsible for final adoption.

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[1] See https://en.wikipedia.org/wiki/Royalty_payment

The tax policy formulation process runs from June to September annually. However, the Ministry of Finance is open to receive proposals even before this period to allow for analysis. When required, the Ministry carries out studies as well as consultancy on specific areas of tax policy which are further used as inputs in tax policy formulation.

Outside the budgeting process, the tax policy formulation process is undertaken based on economic trends, National needs and recommendations from local stakeholders, regional and international bodies, studies and working groups.

Tax policy is reviewed throughout the year. In instances where there is need to change tax policy in the middle of a year, where the law and other relevant variables allow, the Minister of Finance can issue a statutory instrument(s) which is/are approved by Cabinet. It is also a requirement that explanatory memoranda regarding such statutory instruments be submitted to the Committee on Delegated Legislation of the National Assembly. The Ministry of Finance abides by this requirement. For more details on these issues see (Chileshe, Manley, & al., 2011).

1.2.1 Discussion

The process of tax formulation is the mandate of the Ministry of Finance. No doubt the Ministry of Finance has enough expertise to ensure that tax policy formulation is undertaken effectively. Perhaps the big question surrounding this process is public participation in this process. Although the Ministry calls for tax policy submissions from members of the public during the budgeting process, these submissions can either be considered or rejected. The ministry is not mandated by law to solicit for public input on matters of tax policy during the budgeting process. Chileshe and colleagues observe "although the process is in place there is no legal framework that exists to formalise and support the participation of non-state actors in the tax formulation process. As such, government still uses discretion and favour to consider their inputs" (Chileshe, Manley, & al., 2011, p. 20).

However: in 2014, government developed the National Planning and Budgeting Policy. The objectives of this policy include among others: facilitating more participatory/decentralized development planning and budgeting process. Integrate national planning and annual budgeting process with a greater results orientation.[2] This is a positive step towards participatory planning however government should go further and develop a planning and budgeting act.

[2] Ministry of Finance, (2014). *National Planning and Budgeting Policy*. Lusaka: Ministry of Finance. p.11

Accordingly, there is need to have legislation in place. Civil Society Organisations (CSOs) have been calling for the legal framework surrounding the budgeting and planning process. During the 2015 budget submission, CSOs argued that, "A Budget and Planning Act will enable the provincial and district levels the same opportunity and process of 'consultation' that happens at national level."[3]

1.3 Tax legislation process

Parliament has the mandate to enact tax policy proposals into law. According to Article 62 of the Constitution of Zambia, "Parliament" is a composite body consisting of the president and the National Assembly[4]. The Republican President, through the powers conferred by the Constitution, calls Parliament to meet, orders elections to take place and gives final approval to laws (the President Assent) but does not otherwise play an active role in parliamentary work. It is the National Assembly, which consist of elected and nominated Members of Parliament that carries out a wide range of important public responsibilities. These include making laws (Acts of Parliament), approving proposals for taxation and public expenditure and keeping the work of Government under Scrutiny and review.[5]

Parliament has established parliamentary committees that conduct surveillance on defined areas of government administration. The *Estimates Committee* is mandated to examine among others the estimates relating to revenue and expenditure in the Executive Budget Proposal.

Regarding revenues measures particularly tax proposals, the Committee studies the tax proposals presented by the Minister of Finance in the *Executive Budget Proposal*. The Executive Budget Proposal is presented in Parliament every second week of October annually. The Committee is at liberty to summon witnesses and collect views from different stakeholders regarding the proposed tax measures. Further, the proceedings of the Committee remain open to members of the public. Upon completion of their deliberations, the Estimates Committee compiles a *report* which is tabled in the house for consideration and subsequent adoption. Once the tax proposals in the budget are adopted by the house, the Republican President has to assent or give final approval to the tax laws.

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[3] Zambia Tax Platform, (2014). *Joint CSOs Tax and Non Tax Proposal Submissions for 2015 National Budget*. Lusaka: Jesuit Centre for Theological Reflection. p.9

[4]Constitution of the Republic of Zambia

[5] The Zambian Parliament. Retrieved February 15, 2015 from http://www.parliament.gov.zm/index.php?option=com_content&task=blogsection&id=8&Itemid=45

Any proposed tax changes within the financial year have to be examined by Parliament and if adopted, the Republican President will have to assent or give final approval to the bills in order to be legally binding or become law. For instance, if the ZRA want to make some tax changes under the Income Tax Act, they will prepare a *Layman's Bill* which will be submitted to the Attorney General (AG) for consideration. The AG will have to submit the bills for consideration to Cabinet. After Cabinet consideration, the bill will be presented to Parliament. Once the bill is considered and adopted by Parliament the Republican President will have to assent to the bill thus being law.

1.3.1 Discussion

Parliament is by law mandated to enact tax laws. Annually during the budgeting process, the Committee on Estimates examines the proposed tax revenue measures. The Committee is at liberty to invite various stakeholders and may consider their views/opinion regarding the proposed tax measures. However, Parliament's role over tax legislation during the budgeting process is weakened by a number of factors.

Firstly, Parliament has less time to study thoroughly the proposed tax measures before adoption. For instance, the national budget is presented in Parliament in the second week of October and before December 31st Parliament has to enact the budget. The period of 2 months to thoroughly consider the tax measures is inadequate given that Parliament has to solicit views of different stakeholders before adoption.

Secondly, Parliament in Zambia has no Parliamentary Budget Office which can provide Parliament and its Committees with objective and timely analysis required for economic and budget proposals. In Uganda for instance, there is a Parliamentary Budget Office within Parliamentary Service consisting of full time and part time budget and economic experts. The Parliamentary Budget Office identifies and recommend on bills that provide an increase or decrease in revenue and the budget.[6]

Thirdly, the Standing Order number 80, for example, restricts changes being made to the budgeted figures except by reduction. This provision has been a limiting factor to what changes Parliament can do to the budget.

2 Main categories of national laws and law-like contributions

There are different legislations that govern the main tax groups, namely Income taxes, Customs and Excise and Value Added taxes. Other relevant groups for this research are wealth-related taxes and mandatory social security contributions.

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[6] The Republic of Uganda, The Budget Act, 2001

2.1 Income Tax Act

Income taxes are administered under the *Income tax Act, Cap 323 of the Laws of Zambia.* Section 2 of the Income tax Act defines "assessable income as the amount of a person's income liable to tax which may be included in an assessment and which remains after allowing the deductions, to which that person is entitled under the provisions of the Act.[7] There are the following areas where income is taxed:

PAYE Income Tax: "PAYE is a method of deducting tax from employees' emoluments in proportion to what they earn. Emoluments are the total earnings from employment. These include salaries, overtime, leave pay, commissions, fees, bonuses, gratuities and any other payment from employment or office (Section 2 of the Income Tax Act). Under this system, the employer is empowered to calculate tax payable by every employee; deduct tax due from the emoluments; and remit the tax deducted to ZRA." (Nalishebo & Halwampa, 2014, p. 22).

Table 1 PAYE Income Tax Regime 2017

Current PAYE Regime (2015)	
Income Bands(Monthly)	Rates
0 – K3,300	0%
K3,301 – K4,100	25%
K4,101 – K6,200	30%
Above K6,200	37.5%

Source 1 (Mutati, 2016, p. 20)

Income arising from anything else beyond labour could/can be taxed via withholding taxes, e.g. income derived from business, rent, dividends and interest earnings among others. This income, however, is not automatically recorded as the PAYE income, which leaves a lot of leeway and responsibility to those receiving this income to assess its value correctly and to declare it towards ZRA.

Taxing businesses and to establish the Corporate Income Tax due is very complex. To start with, there are multiple income tax rates for different industries: 15 percent for agriculture, 30 percent for mining and 35 percent for all other businesses. The financial sector also has a higher company tax rate on profits above a certain threshold. The 2011 National Budget has proposed the same for the Telecommunications sector such that profits of K250 million or below will be taxed at 35 percent while any profits above K250 million will be taxed at 40 percent. (Chileshe, Manley, & al., 2011, p. 18+55).

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[7] Retrieved April 10, 2015 from Http://www.parliament.gov.zm/downloads/VOLUME%2019.pdf

Next there is the segment of self-employed people. They, too, have to expend some effort to accurately establish their income and to declare it towards ZRA. In this group, however, are not merely those groups one would expect to be in the informal economy such as small farmer or business people. Rather, there are also doctors, lawyers, consultants, house owners earning rent etc., who are no employed within PAYE structures. There are empirical problems in accurate getting a grip on the composition of this highly diverse group when comparing statements of household expenditure with declared household income. There may, for example, be the question of underreporting expenditures (e.g. when eating out) or overreporting (e.g. when buying a car which is then used both for private and business purposes). Finally, there are people with mixed income, who register their income from wage, but not income from (own) businesses. In a ZIPAR study, this group consisted of up to 20% of the sample under investigation (Nalishebo & Halwampa, 2014, p. 23f.).

Next there is the informal sector in the stricter sense which again has a number of "difficult-to-tax" areas, such as peasant agriculture, informal industry, household production. Economic activities in the informal sector can be taxed via turnover and there target the self-employed: Here, PAYE rates apply for turnover above ZMW 800,000, while a tax of 3% is paid for turnover less than ZMW 800,000 (see below, 5). However, the problem is once more that of documentation and knowledge on the part of the tax administration, whether somebody is taxable or not.

See Annex 1 for taxes administered under the Income Tax Act

2.2 Customs and Excise Act

Excise taxes are administered under *Customs and Excise Act Cap 322 of the Laws of Zambia* The Act provides for tax on particular goods or products whether imported or produced domestically, imposed at any stage of production or distribution, by reference to weight, strength or quantity of the goods or products, or by reference to their value[8].

See Annex 1 for taxes administered under Customs and Excise Act

2.3 Value Added Tax (VAT) ACT

VAT is administered under the *Value Added Tax Act, Cap 331 of the laws of Zambia*.[9] Generally, VAT may be defined as a consumption-based tax

[8] Zambia Legal Information Institute (Zambia Lii). Retrieved April 10, 2015 from Http://www.zambialii.org/zm/legislation/consolidated-act/332

[9] See http://www.parliament.gov.zm/sites/default/files/documents/acts/Value%20Added%20Tax%20Act.pdf

that is levied in the supply chain at each point were value is added to a good or service. The VAT Act stipulates that: any supply of goods and services made by a taxable supplier, which takes place in Zambia than an exempt supply is taxable. Taxable supply of goods and services shall be charged on their taxable value, at the prescribed rate of tax. Following Part II, Nr. 9, 3, 'the prescribed rate of tax shall be seventeen and a half per centum, unless the Minister, by statutory order, determines a lower rate.' On that background, taxable supplies are taxed at either 16% (standard rate) or 0% (zero-rated). Zero-rated supplies include Exports, Energy Saving appliances, Equipment and machinery, medical supplies and schoolbooks. Exempt supplies are items specifically excluded by law from liability to VAT, (i.e., no VAT is charged) even if supplied by a registered business. Examples of exempt supplies include, educational services from Nursery to secondary school are exempt, therefore, a primary school will not register for VAT and will not claim any input tax.

For more details see Annex 1 for taxes administered under Value Added Tax Act.

2.4 Cross-cutting: taxes relevant for businesses

A cross-cutting issue are trade taxes and its relevance for conducting business (see, e.g. (Nhekairo, 2014, p. 10) or (Chileshe, Manley, & al., 2011, p. viii).

Prominent here are customs, export, excise and import duty. In more detail:

- *Customs Duty* is a tax imposed on all goods imported into the country. Duties are based on the cost, insurance and freight of the product or service otherwise referred to as the CIF value of the product.
- *Excise duty* is a tax on a range of selected products whether produced locally or imported. It is generally determined by broader government policy. In Zambia excise duty is imposed on wines, beer and spirits, cigarettes, petroleum products, air credit on telecommunications etc.
- *Import duty* is a tax levied on goods that are in the import tax category. Taxed on imported goods that attracts VAT. Import VAT is charged on the Taxable Value of 16%.
- *Export Duty*, which is charged on exported goods. It is charged on customs value. This is a duty charged on specific exported goods and services. This duty is meant to promote domestic value addition on raw materials and primary goods. In Zambia, goods that attract export duty include Copper concentrates, Scrap Metal and Cottonseed.

Next: In Zambia, only registered businesses can charge and claim VAT. According to Nhekairo, "A registered business charges and collects VAT on its supply of goods and services to customers. VAT so charged is called **output tax.** On the other hand, registered businesses claim the VAT that they pay on purchases of taxable goods and services for their businesses. The tax so claimed is referred to as **input tax.** The net of output and input tax is paid to ZRA or refunded to the taxpayer as the case may be." (Nhekairo, 2014). Here it is noteworthy that especially the mining industry succeeds in getting tax refunds up to 90% (Chileshe, Manley, & al., 2011, p. ix)

There are two types of VAT registrations, namely: Statutory registration – annual taxable turnover in excess of ZMW 800,000 and voluntary registration – where the turnover of a business is below ZMW 800,000 per annum but the business has fulfilled all the requirements for VAT registration. It is important to note that business dealing in exempt supplies such as educational services from nursery (*Head start programmes for children*) to secondary school are VAT exempt, therefore, a primary school may not register for VAT and therefore may not claim any input tax.

2.5 Wealth relevant taxation

Zambia does not have genuine taxation on forms of private, corporate and criminal wealth. But already in 2011 JCTR stated that "increasing the tax from wealth transactions can increase the tax base and allow the government to reduce the highly unequal burden on the formally employed." (Chileshe, Manley, & al., 2011, p. vii). This refers primarily to the property transfer tax whose collection is within the responsibility of municipalities. This is paid by the owner of the estate in the form of a withholding tax. The following table describes property transfer tax and the applicable rate.

Property Transfer Tax	❖ Tax levied on transfer of land and buildings and is paid by the seller. It is also paid on transfer of shares.	• Tax rate is at 10% of the Realizable value. (Realizable value is price at the time of transfer, at which it could be reasonably sold on open market)

Next there is a recurrent property levy. The money raised from property rates is deployed in the provision of services of a public nature such as road maintenance. Property Rates are only applicable in Rateable areas as stipulated by the Rating Act. Peri-urban areas are exempted from paying rates. Instead, these are areas are subjected to ground rent. Ground rent payment is done quarterly.

To make things complete, there is further a fee applied to building plans of privately or commercially used structures. This fee is levied by the municipal authority. Besides usage (private or commercial) the amount of the fee also depends on the value of area, where the building is established. This could also be considered as a form of wealth taxation because those able to build are not many in Zambia.

Property transfer tax is also paid when transferring shares, but transfers within the family are totally exempted from this tax. Other exemptions include transactions as a result of a sale or other disposal of any stock or share listed on Lusaka Stock Exchange (see IV/2.2)

Regarding issues surrounding profit and sales based taxation of corporations see below, 4.2+4.3, or the FTT as a means to skim of at least some of criminal wealth see VII/6.2.5.

2.6 Social security contributions

In Zambia, mandatory Social Security Contributions exist for pensions. The National Pension Scheme Authority (NAPSA) is a governmental Parastatal obliged to collect mandatory social security contributions from the employers and employees.

There are also mandatory contributions to compensate workers for accident or sickness as a result of work. These are paid by both the employer and the employees. Since they are mandatory by law, they are exempt from the regular collective bargaining, in which federations of employers and workers' trade unions regularly negotiate future terms of employment.

3 Tax concessions: incentives, exemptions...

Given the dependence of developing countries from FDI, they attempt a lot to attract foreign investors. These policies more often than not operate with incentives impacting upon the ability and amount of states to collect tax revenue because they result either in spending taxpayers money, e.g. on subsidies or they result in less revenue.

Besides the multiple tax rates mentioned above (2.1), there are numerous concessions offered to foreign investors by the Zambian Development Agency, as can be checked in ZDAs website and in the 38-page "Investors Handbook".[10] Tax incentives can be domestic or based upon trade protocols.

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[10] See, for example, http://www.zda.org.zm/?q=content/investment-incentives and, regarding the Investors Guide, April 2016, edition http://www.zda.org.zm/?q=download/file/fid/205.

Beyond that there are exemptions which are offered to foreign investors, enabling him to lower the tax bill. The most common ways to adjust the tax base are Depreciation allowances, Loss carry forward provisions, Ring fencing and Tax holidays (Manley, 2013, p. 22ff). It is important to notice that those concessions can be applicable for many years.

At times there are even tax arrangements tailored to the needs of an individual investors, even if there will be an overall loss in revenue. In the case of Zambia, this is more often than not the case in the mining sector, which is the most important revenue generating sector: Manley explains these so-called "Fiscal stability contracts" between the Zambian government and foreign investors on page 25f. of his paper. Manley also mentions the very important fact that foreign investors often have a "substantial bargaining power", therefore being in a strong position when negotiating with government (Manley, 2013, p. 10).

As the Ferrostaal-Case of this study indicates (see GER/IX), however, there are occurrences where access to incentives and exemptions is granted without any positive developmental effect recognizable: In this case, local population in the Mpika province was expelled from their traditional area of residence and besides some watchmen guarding the perimeter no recognizable jobs have been created

There is, therefore, wide agreement among CSOs, NGOs and other experts, that tax concessions are a major entry gate for aggressive tax avoidance and tax evasion not only for international investors, but even domestic investment:

> "The incentives … eventually help (not only) MNCs … to avoid taxes, but give rise to illegal evasion activities for domestic companies, for instance by re-labelling domestic investment as Foreign Direct Investment (FDI, round tripping) or selling subsidiaries in the guise of new foreign investors (double dipping)." (Nalishebo & Halwampa, 2014, p. 4)

That way, tax concessions give rise to a variety of illicit and illegal practices, e.g. transfer pricing schemes and other strategies, which privilege MNEs over MSMEs who would not have such options to avoid tax payments. And indeed, there are numerous indications reported by tax inspectors that exactly this might be happening (see VI/5.4)

Multi-Facility Economic Zones should not be forgotten, e.g. the Kafue Iron and Steel Economic Facility Zone, the Kalumbila Multi Facility Economic Zone and the Lusaka South Multi Facility Economic Zone.[11] While the Minister of Finance reports that the Kalumbila Zone received pledges by the private Sector that investments of USD 100 million will be done there (Mutati, 2016, p. 5), a cost-benefit evaluation should be appropriate when

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[11] See http://www.zda.org.zm/?q=content/multi-facility-economic-zone-mfez

comparing the benefits in jobs vs. the losses in taxes or harm done to the environment, calling for revenue financed cleanup-operations.

Due to the importance of tax incentives there is a list of tax concessions applicable in Zambia domestically and due to trade regimes in Annex 2.

4 Mining sector and other TNCs

4.1 The special case of mining

Mining and extractive industries pose a number of unique challenges to a resource-rich country such as Zambia, which are very different from the taxation of other businesses and should be kept in mind when devising an adequate and appropriate tax regime which takes into account the interests of the investor, government and the local population. This chapter will be on mining, but many issues raised will apply to other MNCs as well, whose subsidiaries and shell companies are operative in many countries and/or tax havens.[12]

First and most important, it depletes a country irreversibly of its natural capital and wealth. This means: A country can only benefit from minerals if they are extracted AND their values is captures by government and transformed into other productive assets. The importance of natural capital wealth for Zambia is illustrated in the following table:

Table 2 Sources of capital wealth in Zambia, per capita

	USD per capita	Per cent
Natural capital	3,420	34
of which: sub-soil assets	*1,277*	*13*
Produced capital	1,482	15
Intangible capital	5,094	51
Total wealth	9,996	100

Source 2 (Manley, 2013, p. 8)

Second, while the costs of extraction are comparatively easy for any investor to calculate, there is more uncertainty about potential profits since commodity prices are highly volatile and up-cycles can be followed by lengthy down-cycles. This is a particular problem in the case of expensive sub-soil extractive industries.

From there comes the third problem: Commitment of investors. If a government is tempted to squeeze too many taxes upon a business, the normal business reaction is to relocate to areas with lower tax rates. In

[12] See, for example, Action Aids 2012 study into SAB Millers operations in Zambia, via subsidiaries in Mauritius (Action Aid, 2012)

the case of extractive industries with high "sunk costs" such relocation is difficult. Tax hikes will be noticed internationally, however, and deter future investors.

Mining has an enormous importance for Zambia (Manley, 2013, p. 11ff.):

First of all, because of employment. This should, however, not be overestimated since the mining industry transformed from a labour intensive industry towards a capital intensive industry where a lot of automation comes into play. And: Mining is considered to be an "enclave industry" which is normally not well integrated into the national economy, i.e. developments in the mining industry do not have a recognizable ripple effect.

There is profit for local communities via Corporate Social Responsibility. This, however, is seen to be less desirable by this project than the proper payment of adequate taxes. And here it is important to notice that here lies the major contributive potential of mining, benefitting all Zambians: For example, in 2016, copper alone contributed over 70% of Zambias total export earnings, and this even in a year where national earnings in copper fell from USD 4 billion to USD 3.2 billion (Mutati, 2016, p. 3+6).

4.2 Principles of mining taxation

Manley presents four guidelines regarding the taxation of mining that are relevant also for Zambia (2013, p.15). Taxation should

- Compensate the state for the loss of natural resources
- Be reasonably attractive with investors so that FDI continues to come to the country
- Be flexible to the ups and downs of global market prices and, accordingly, varying profits
- Be administrative feasible.

To bring those interests into a balance requires complex considerations, especially since Zambia has to compete with other states for foreign direct investment. For that reason, Zambia tries to establish an adequate and effective tax regime based upon the following pillars:

Table 3 Categories of tax relevant to mineral extraction

Direct taxes				Indirect taxes	
Profit-based		Revenue-based			
Company income tax	Excess or variable profit tax	Mineral royalties	Windfall tax	VAT	Customs and import duty

Source 3 (Manley, 2013, p. 18)

The composition of those categories and approaches has, however, shifted and varied over time since Zambia privatized state-owned mines in 1997 and 2000. Since then four different tax regimes have been installed.

4.3 Frequent Tax Changes

The following table provides an overview over changes in the taxation of MNCs since the "Development Agreements" (DA's) had been agreed at the time of privatization:

Table 4 Comprehensive overall tax regime for "large scale license holder" (2014)

Tax regime	DA	2008 Reforms	2009 Reforms	Existing Regime	Non Mining Regimes
		Income tax types			
Company Income Tax	25%	30% -	30%	30%	15% – 40%
Variable Profit Tax (Windfall Tax on Profit)	No	Yes	Yes	Yes	Yes
Windfall Tax on Revenue	No	Yes	No	No	No
Withholding Tax	No	Yes	Yes	Yes	Yes
Mineral Royalty	0.6%	3.0%	3.0%	6.0%	N/A
Mineral royalty based on official prices	No	Yes	Yes	yes	N/A
		Trade and domestic tax types			
Export duty on copper ore and concentrates					
Import duty, Excise duty on imports.	Yes	Yes	Yes	Yes	Yes
		Tax exemptions			
Loss carry forward (in years)	15 to 20	10	10	10	5 - 10
Capital Allowance (Depreciation)	100%	25%	100%	25%	25% – 100%

Source 4 (Nhekairo, 2014, p. 20)

The most interesting and debated approaches to the taxation of MNCs are the distinction between profit based and revenue based direct taxation:

Companies or businesses whose annual turnover exceeds K800, 000 are required to pay Company Income Tax (CIT). CIT is a tax based on profits. At the same time, it is difficult for governments to discern upon what exactly taxable profits are. This is due to the reduction of tax base, e.g. by declaring losses, or other tax concessions with the result that companies pay little or no Income Tax at all.

Mineral Royalties are sales based taxes at a fixed rate and have three advantages for government (Manley, 2013, p. 20):

- They are charged on the value of the mineral extracted and are therefore well suited as a charge for compensating the resource

owner (=Zambia and the Zambian people) for the loss of wealth as a result of extraction
- They are more useful and reliable to collect.
- They are easy to administer.

They also have an advantage for the investor insofar that they are often treated as a cost when calculating taxable profits and, therefore, are deductable.

A variation of the Mineral Royalty is the Windfall Tax (Manley), where the rate moves up and down parallel with the price of the minerals traded on global markets. Due to this variability, the Windfall Tax is also called "Variable Profit Tax" (Nhekairo).

4.3.1 Discussion

Though changes in the tax system are inevitable, frequent tax changes can harm investment growth among other negative effects.

Robert Liebenthal the former Vice President of the Economics Association of Zambia (EAZ) and International Growth centre (IGC) Senior Country Advisor observes in an communication to this research that

> the mining sector tax regime is unstable. There are excessively frequent changes in the mining sector tax regime. Recently, these changes have been driven more by political expediency than by a judgment of the best balance between revenue needs and sustainability of the industry." [13]

The frequent tax changes especially in the mining sector controvert the need for "*Certainty"* as one fundamental principle of taxation (see I/VI/3.5). Certainty in a tax system enables businesses to undertake long term planning such as payments of tax liabilities. Although tax changes are unavoidable due to changes in the political, social and economic environment, frequent tax changes can harm investment.

The government has taken progressive steps in adjusting some of the fiscal issues in the mining sector. For example, in the 2015 budget introduced new mineral royalty taxes. The move towards taxation of royalties– taxes on the *value* of copper mined rather than the profit rates of companies – will in theory be harder for companies to avoid. The Zambia Institute for Policy Analysis and Research (ZIPAR) observes that in 2013 the government expected to raise K2.7 billion from CIT, but only collected under half this amount – K1.1 billion. In contrast the Ministry of Finance raised 90% of what it had projected from royalties – K1.8 billion compared with a projected K1.9 billion10. With the recent move towards taxation of mineral royalties, it is expected that more tax revenue could be collected (Kabinga, 2015). Mineral Royalty thus makes up for losses in

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[13] Personal Communication, November 21, 2014.

the absence of profits since they are levied on sales revenue which exist even if the company fails to achieve profit (Chileshe, Manley, & al., 2011, p. 62). In January 2015, then, mineral royalty tax was pegged at 8% and 20% for underground and open casting mining, respectively. However, it should not remain there.

4.4 Outside influence: Lobbyism

It is commonly known that there are indeed efforts to influence tax policy and tax legislation by certain stakeholder groups and given the lack of transparency and/or legal backing to protect various submissions, different 'voices' succeed more often than not in their efforts to have their voice heard and consequently influence tax law in their own direction.

For Zambia, the case in point are controversies surrounding the mining tax regime as originally proposed in the 2015 budget. According to the proposal, the 2015 mineral tax regime was to be as follows: 8% and 20% mineral royalties for underground mining operations and open cast mining operations, respectively, as final taxation.[14]

After the budget was approved by parliament, two diametrically opposed views were discernible. On the one hand were those who applauded this move as not only just but also a necessary step in ensuring that more tax revenue is collected from the mines. This group included civil society organizations such as the JCTR and Action Aid-Zambia. On the other hand was the Zambia Chamber of mines which is an association representing interests of mining firms in Zambia. The Chamber of Mines opposed the new tax regime for mines.

What is of interest to this discussion is that when the new mining tax regime was approved by parliament, the law was eventually reversed after 'intervention' from the chamber of mines: Mineral royalties were adjusted downwards from the 8% and 20% to a flat 9% rate for all mining operations pending parliamentary approval.

Clearly, mining firms and the chamber of mines had 'won' the battle. Their voice, in this case, was stronger than other voices. That their voice was stronger is evidenced by the fact that there were a number of 'threats' issued to government regarding possible implications of the new mining regime on operations of the mines and the economy as a whole. These threats ranged from thousands of job losses to withholding/suspending planned investments in the mines as well as closure of some mines.[15] With respect to suspending investments, a classic example is Barrick Gold's Lumwana mine which threatened to halt its mining operations in Zambia if government did not suspend or abolish royalty taxes adopted in the 2015

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[14] http://eaz.org.zm/wp-content/uploads/2014/10/National-Budget-Speech-2015.pdf

[15] http://www.mining.com/its-official-zambia-scales-back-mining-royalties-to-9/

national budget.[16] Prior to the reversal of mining tax regime, the Chamber of Mines noted that the new mining operations had potential adverse consequences on Zambia's economy. For instance, Shula Shula, an economist working for the Chamber of Mines argued that the new mineral loyalty taxes needed to be reversed because it was inconsistent with promoting mining investment and generating more revenue from the mines on a sustained basis.[17]

But arguments that mining firms (and the Chamber of Mines) are a strong voice pushing for their interests only contrasts with their more positive self-presentation elsewhere: The chamber of mines sees itself as an association representing mining firms in the same way that other business organizations such as farmer's unions are. The association sees itself as representing mining interesting while bearing in mind interests of Zambia's economy as well. The theme for 2014 Zambia Chamber of Mines publication captures this notion very well: *Enhancing Mining Contribution to Zambian Economy and Society*. In this publication, the chamber of mines points a number of contributions that mining firms make to Zambia. For tax payment, the report states that the mining sector alone contributed a volume of K1,752 million in tax revenue in 2011.[18] The report also publishes various social investments done by mines in areas where they operate: education and public infrastructure.

The news of reversing the new mineral royalty taxes was not seen as progressive by the JCTR and Action Aid-Zambia. The JCTR, for instance, described the change of mining tax regime as disappointing. Its head, Leonard Chiti, noted that the reason the country's mining regime had been proposed in the 2015 budget was not only to get a fair share of its national wealth but to also address such challenges as transfer pricing, hedging and tax evasion which the nation was facing[19] Action Aid Zambia described the reversal of the decision as a lack of political will and inconsistency in tax policy. To stress that point, Pamela Chisanga of Action Aid noted that even in scrapping the royalties, government did not clearly articulate why the royalties were unattainable.[20]

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[16] Bloomberg. Retrieved April 15,2015 from http://www.bloomberg.com/news/articles/2014-10-16/barrick-says-zambia-royalty-increase-threatens-mine-s-viability

[17] http://www.lusakatimes.com/2015/01/19/low-copper-prices-new-tax-will-cripple-mines-chamber-mines/

[18] International council of mining and metals (ICCM) P. 47.

[19] http://www.qfmzambia.com/2015/03/28/jctr-disappointed-by-mineral-royalty-tax-change/

[20] http://zambianeye.com/archives/31769

As this one example illustrates, it seems clearly to be the case, that there are some voices which are stronger and therefore more influential than others in matters of tax formulation policy. In the case just articulated above, some voices are so strong that they can not only influence the passing of a particular law but can also cause a reversal of tax laws they deem undesirable to their interests.

4.5 Counter measures

Inspite of all lobbying efforts, Zambian law provides for counter-measures against aggressive tax avoidance and tax evasion mainly in the Income and VAT Act. The Income Act addresses in Part IX issues of transfer pricing and thin capitalization and in Part X it lays out penalties for default in payment, filing and registration. The VAT Act has enforcement regulations aimed at tax evasion. Experts agree that all that is not adequate to address the problem or leaves loopholes elsewhere impeding implementation, e.g. that checking of books by tax auditors at MNEs is only possible with a court warrant and not if a well-founded suspicion arises (Nalishebo & Halwampa, 2014, p. 4ff). A major

4.6 International issues

Revenue from Mineral Royalties and Variable Profit Tax are of importance for Zambia since they belong to the Zambian state without any further dispute. This is more complex with the Company Income Tax and it is here, where international tax laws come into the game.

Important international legal instruments are Double Tax Agreement (DTAs) which are of importance especially for the taxation of private and corporate wealth holder. Model conventions for bilateral DTAs exist either under OECD or UN law. The original ideal of DTAs was "to avoid or to mitigate the effect of double taxation." But, in practice, they more often than not "have resulted in many instances of double non-taxation, and many developing countries with weak tax collection capabilities have seen limits imposed on the use of a relatively effective tax collection mechanism (withholding taxes)." [21]

Action Aids researched some DTAs between developing and developed countries and rated them in accordance to the extent to which poor countries are deprived of their rights to tax, (a.) capital gains, (b.) corporate profits and in its options to collect (c.) withholding taxes. Among those 10 treaties, Action Aid also counts the one between

[21] P. 212 of UNCTAD. (2015). World Investment Report – Reforming International Investment Governance. Retrieved from http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf

Germany and Zambia. Applying its developed criteria[22] Action Aids research suggests that within the German-Zambian treaty Zambia has no rights to tax capital gains (Score 0) and only few rights to tax corporate profits (Score 18) or applying withholding taxes (Score 40). (Action Aid, 2016a, p. 15).

Due to Double Taxation Agreements, taxes paid in Zambia can be offset against tax obligations in the country where the MNE has its main headquarter. Chileshe and colleagues explain it as follows:

> Most developed countries apply the 'global income principle' for the calculation of corporate income taxes of multinational companies. This principle states that the equivalent tax payment in Zambia (i.e. company income tax) can be used as credit by the parent company to deduct from its own income tax payments. For instance, a Zambian mining subsidiary earns income and is taxed 30 percent. The remaining profit is transferred to the parent company where the tax rate might be 35 percent, but since tax has already been paid in Zambia, the remaining income is taxed only at 5 percent. This is useful to know since Zambia can increase its tax rate up to 35 percent without harming the multinational in any way – overall tax paid is the same. The only difference is that now all tax is paid in Zambia and none overseas. (Chileshe, Manley, & al., 2011, p. 62)

But there is more to it, for example, regarding capital income from dividends. Here, a Zambian economist writes in a mail dating from December 2015:

> The biggest challenge is that all the big TNCs that operate in Zambia are owned by foreigners who were given incentives to repatriate 100% of their profits out of Zambia. As you know the biggest earnings of any corporations or profits are what are shared as dividends among shareholders. So if these shareholders are all in Europe and Asia and Canada, there will be little left to cascade benefits even if we keep the profits and tax them.[i]

Another major loophole for MNEs and in particular mining companies occurs because of hedging, i.e. practices of insuring companies against volatile markets and potential losses with the help of derivatives such as options, futures and the like. By misusing this in principle useful instrument for the purpose of lowering company income and profits there

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[22] 'The Action Aid Treaties dataset looks at 26 key rules in each of the treaties and combines the content of each treaty into an overall estimate of its impact. Each treaty has been given a score of between 0 and 100, where a higher number indicates that the lower income country has kept more taxing rights in the settlement.' The score has been established by a specifically commissioned research. More detailed information is available under http://www.actionaid.org/2016/02/mistreated-how-shady-tax-treaties-are-fuelling-inequality-and-poverty

is yet another option for reducing tax bills which those working in the formal labour sector or small and medium enterprises do not have.

> The procedure is complex but relates to the idea of shifting income from a subsidiary in Zambia to a subsidiary in a low tax country like Switzerland, in the same manner as transfer pricing in other operations. The company deliberately makes a loss on derivative trading in Zambia and a profit in the Swiss subsidiary. The loss in Zambia reduces the taxable profits, while the extra profit in Switzerland is not taxed. For the multinational company as a whole, the amount of tax it has to pay has fallen. This practice only works if the losses from hedging or derivative trading are allowed to offset profit from the rest of the firm's operations. By making a law to separate the two incomes (income from hedging and income from the rest of the business), this tax loophole is closed. (Chileshe, Manley, & al., 2011, p. 66)

This law, separating hedging income from other mining income came into force in 2012. Besides closing loopholes it is, of course, important to check books and to discovers whether, and to what extent, such illicit practices are applied – which brings everything back to the need to have competent experts in the ZRA.

There is an ongoing conflict between developed countries and developing countries to what template is used to model DTAs upon. While developing countries prefer the one provided by the UN, developed countries insist on the OECD template. To illustrate this conflict: One important issue regarding the taxation of MNEs is that the UN template prefers taxation at source, i.e. where something is being made, whereas OECD prefers taxation at the place of residence, i.e. where the headquarter of a MNC is located.

Here some movement is seen in the context of the OECDs Base Erosion and Profit Shifting Initiative, but still and on the whole those arrangements tend to disadvantage the developing partner.[23]

4.7 Conclusion

There are a number of fiscal issues in the mining sector that contribute to the problem of illicit financial flows in Zambia. A Tax Justice Network Policy and Advocacy Manager argues that, "the design of Zambia's tax regime was so complicated that mining companies were able to manipulate transactions through inflating costs and underestimating revenue."[24] To this effect, there is need for the government to develop a

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[23] For more see GER/W/II/4 and (Nalishebo & Halwampa, 2014, p. 6)

[24]Southern Africa Resource Watch (2014, May 8th). *Illicit Financial Flows Impeding Zambia's Economy*. Retrieved 14 February, 2015 from http://www.sarwatch.org/zambia/illicit-financial-flows-impeding-zambias-economy

sustainable mining sector tax regime that is comprehensive and addresses some of the fiscal issues in the mining sector.

Zambia is far away from a satisfying system of mining taxation and the discussion, whether "gains" can best be taxed via sales (Windfall tax, Variable Profit Tax) or CIT and what practice discourages FDI more. This debate is far from over (Nhekairo, 2014, p. 20).

For the time being, the mining tax regime rests on three pillars: Mineral Royalty, Variable Profit Tax and mining Company Income Tax. Of this, the Variable Profit Tax tries to adjust both company needs (i.e. if there are losses that they are not able to pay taxes) but also government need to collect taxes (e.g. if there are high profits, high taxes can be collected). As was made clear in 4.4 and from a CSOs point of view, the present legal situation is not satisfying since in our view the principle of ability to pay is not adequately safeguarded and legislation rather serves business interest and its lobby groups.

Internationally, there is need for the ZRA to lobby for automatic exchange of tax information with other countries were the MNCs have their presence. Further, it seems the MNCs take advantage of the double taxation agreement between Zambia and other countries in order to deliberately dodge tax payments. For instance, in the case of Associated British Foods, Zambian Subsidiary "Zambia Sugar" it is alleged that Zambia Sugar engaged fellow subsidiary Illovo Sugar in Ireland to provide management and Consultancy services. Though the Zambian law provides for withholding tax on management or consultancy fee at 20%. By Zambia sugar paying management fees to or via an Irish Company, the withholding tax is avoided due to the old tax treaty between Zambia and Ireland. Therefore, it is necessary that Zambia reviews it double taxation agreement with other countries.

Until this has happened, the temptation is and remains that companies mask profits by artificially lowering them or misuse other legal loopholes to avoid and evade taxpaying obligation.

Therefore this complex regime and other issues related to the operations of internationally active corporations only works well if there are at least competent auditors – but whether this is the case will be examined in chapter VI.

5 Taxes towards the informal economy

Given the size of the informal sector (see #) and the known fact that the comparatively and relatively highest tax burden in Zambia is borne by those PAYE worker in the formal economy (see VII/1.2), an entire range of tax instruments was devised to capture "presumed income" generated in the informal economy – which is why these taxes are know under the name "presumptive tax" (Nhekairo, 2014, p. 25)

- Base Tax: A lump sum tax of K 150 per annum for traders in markets
- Presumptive motor vehicle tax: A standard assessment tax for public service vehicles based on sitting capacity
- Turnover Tax, based on turnover of below K 800,000.
- Advance Income Tax, levied on imports of unregistered or non-compliant taxpayers.

Regarding the Turnover Taxation, the Budget of 2017 introduces tax bands and presumptive amounts as follows:

Table 5Tax bands and presumptive amounts for Turnover Tax (2017)

Monthly Turnover Category	Proposed Regime
K1-K4,200.00	K100 per month+3% of monthly turnover above K3,000
K4,200.01-K8,300.00	K225 per month+3% of monthly turnover above K4,200
K8,300.01-K12,500.00	K400 per month+3% of monthly turnover above K8,300
K12,500.01-K16,500.00	K575 per month+3% of monthly turnover above K12,500
K16,500.01-K20,800.00	K800 per month+3% of monthly turnover above K16,500
Above K20,800.00	K1,025 per month+3% of monthly of turnover above K20,800

Source 5 (Mutati, 2016, p. 20)

This means that those beneath the turnover threshold of K800,000 per annum/ or K66,666 per month have to pay the top rate, for those beneath apply lower rates.

6 Local government levies, fees and rates

There are a number of taxes applied under local authorities in form of Levies, Fees and Rates. The *Levies* are associated largely with business transactions/dealings and are charged in form of Business Levy. *Rates* are associated with property and are charged in form of Property Rates. Further, local authorities also administer other charges inform of *Fees*.

6.1 Process leading to formulation of levies, fees and rates

Levies, Rates and Fees applied by the Councils in different jurisdictions differ mostly due to varying geographical, social and economic conditions in each locality. The discussion in this chapter will focus on levies, fees and rates applied by the Lusaka City Council (LCC).

However: As in the national context above (1.2+3) and before looking at the levies, fees and rates applied by the Lusaka City Council it is necessary to look at the process of formulating levies, fees and rates by all the local authorities in Zambia.

The Full Council is composed of elected Councillors, MPs in the District, and two chiefs' representatives selected by all chiefs in the district is the policy-making body of the local authority. It is responsible for all manner of policy making relating to the administration of the local authority, with due guidance from the parent Ministry – the Ministry of Local government and Housing (MLGH). This includes policy relating to the issue of levies, fees and rates. This is in line with what it stipulated in the Local Government Act (Cap 281) Chapter 39 Article 1 which states that "A Council shall cause to be prepared and shall adopt estimates (to be called annual estimates) of revenue and expenditure of the council shall at least sixty days before the commencement of a financial year submit annual estimates for the approval of the minister."[25]

Back to Lusaka, there are different kinds of fees charged by the Lusaka City Council for different services. This paper will focus on fees charged for construction permit, user fees charged on bus stations, business levies and property rates.

6.2 Fees applied on building structures

These fees apply when an individual has been granted permission to build a structure after the submission of building plans to Lusaka Planning Department. However, the fees applicable depend on the type of building categorized as Residential, Industrial and commercial. In addition,

- for residential development fees applicable are different based on locations which include; high, medium and low cost areas.
- For Industrial development the fees differ based on the type of industry which includes: heavy, general and light industries.
- Lastly, for commercial development the fees differ based on the location which includes: central business district, low cost and peri-urban areas and medium cost.

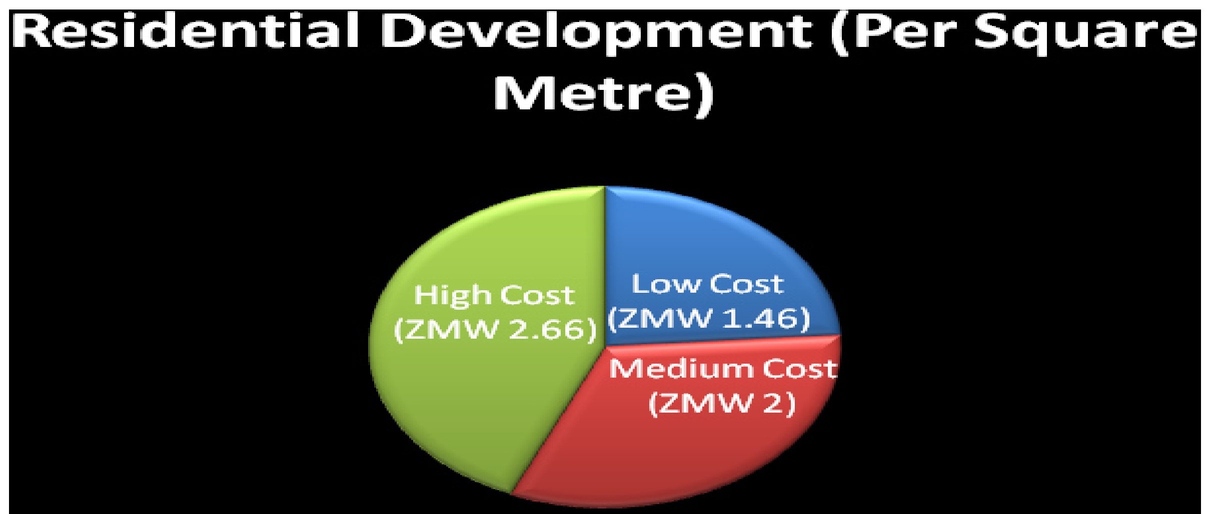
The following graphics illustrate the composition and development of those various categories:

Residential Developments;

Graphic 1 Revenue under residential development (2012-2014 Charges)

[25] Retrieved April 21, 2015 from http://www.zambialaws.com/Principal-Legislation/CHAPTER-281LOCAL-GOVERNMENT-ACT.html

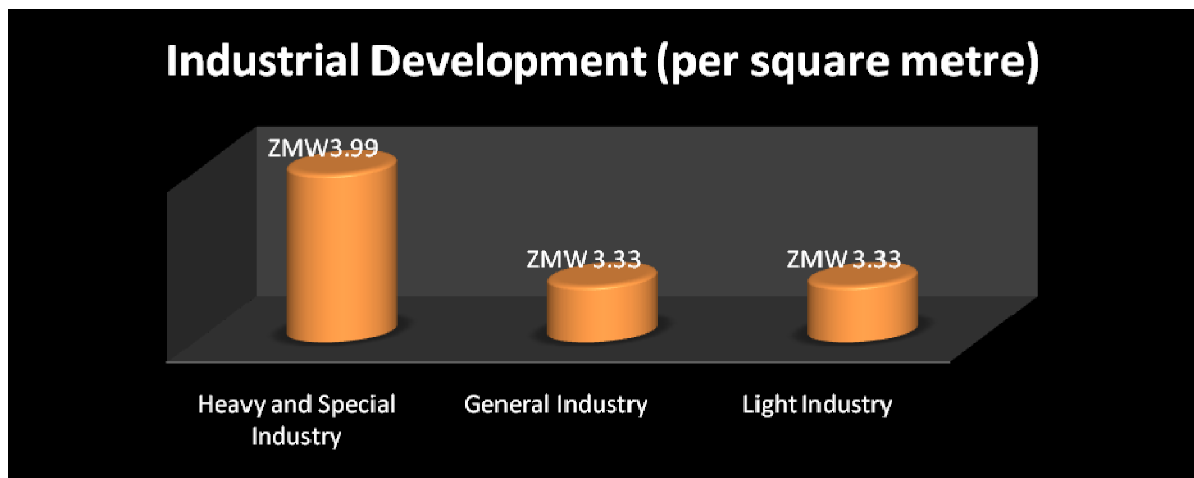
Draft version, not yet officially authorized for quoting.



Source 6 (Lusaka City Council, 2012)

Industrial Developments

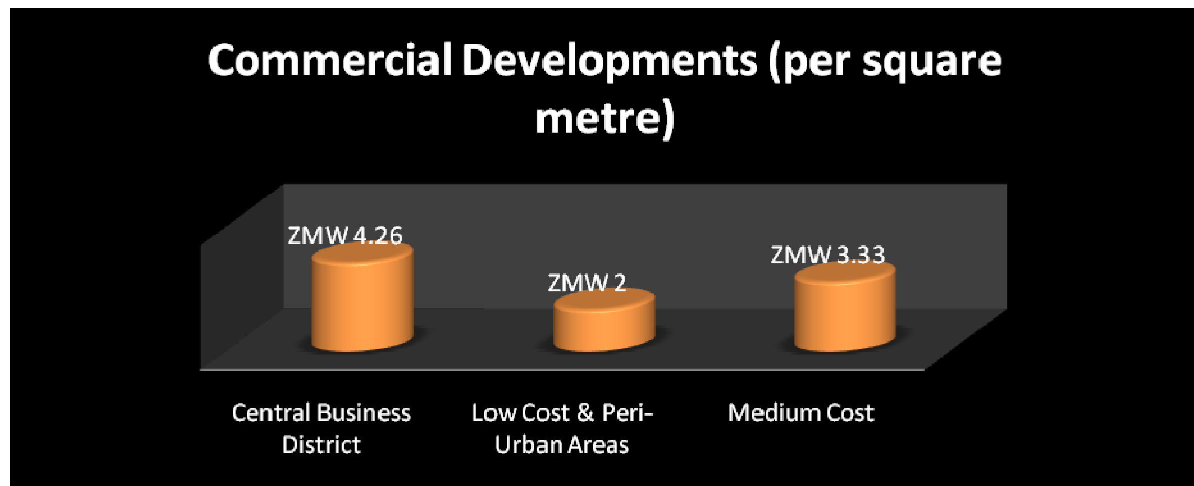
Graphic 2 Revenue under Industrial development (2012-2014 Charges)



Source 7 (Lusaka City Council, 2012)

Commercial Developments

Graphic 3 Revenue under commercial development (2012-2014 Charges)



Source 8 (Lusaka City Council, 2012)

6.3 Fees applied on buses loading at bus stations

Bus stations in the Central Business District or Town Centre are owned and operated by the local councils. Buses loading within these stations pay gate and user fees to the local authorities. These fees are paid per trip. For example:

Kulima Tower, City Market and Lumumba Bus Stations User Fees
The buses loading at these bus stations pay K25 user fees per **trip** upon leaving the bus station.

Intercity Bus Terminus Gate/User Fees
Buses loading at the bus terminus are supposed to pay gate/user fees per trip which differ according to the following categories:

Table 6 Bus loading (User) fees at the Intercity Bus Terminus Gate

Bus Loading Fees (per trip)	
Bus Loading Fees (per trip)	AMOUNT
International Buses (Zambian)	K300
International Buses (Foreign)	K500
Transit Buses (Zambian)	K220
Transit Buses (International)	K275

Source 9 (Lusaka City Council, 2012)

6.4 Business levy

In addition to taxation on income (see above, 2.1), business enterprises are required to pay business levies. To acquire a business levy, a client

should register the business requiring a business levy, fire certificate and other licences. Registration for a business levy does not require health and building reports as these are assessed independently by the relevant departments. However a health permit will require assessment of the premises before it is issued by the Lusaka City Council Health Inspectorate. For Micro or Small Business Enterprises the following rates are applicable under each trading regime.

Table 7 Business levies applicable in Lusaka, 2014

TRADING (WHOLESALE) BUSINESS	
Locality	**Amount (2014 Levies)**
Central Business District	K750.06
Medium (Class)	K600.12
Business Area	K450.00
TRADING (RETAIL) – CONSUMABLES/GROCERIES BUSINESS	
Locality	**Amount**
Central Business District	K300.06
Medium (Class)	K199.98
Business Area	K100.08
RETAIL – MERCHANTS NON CONSUMABLES BUSINESS	
Locality	**Amount**
Central Business District	K500.04
Medium (Class)	K400.14
Business Area	K300.06

Source 10 (Lusaka City Council, 2012)

6.5 Property valuation and rates

Given the importance of land for the wealth portfolio, this chapter is of particular importance because municipalities, in this case the Lusaka City Council, also administer Property Rates. Property Rates are governed by the Rating Act Chapter 192 of the Laws of Zambia. The money raised from property rates is deployed in the provision of services of a public nature meant for the good of the whole community as opposed to services meant to meet the demands of a particular individual or resident. Property Rates are only applicable in Rateable areas as stipulated by the Rating Act. On the other hand, peri-urban areas are not Rateable Areas as a result, these areas are excluded from paying property rates instead these are areas are subjected to pay Ground Rent. Ground rent payment is done quarterly.

The Rating process begins with the passing of a resolution by the Full Council to prepare the Valuation Roll and appoint a Valuation Surveyor. The Ministry of Local Government and Housing approves the appointment of the Valuation Surveyor. Council notifies the leaseholder/property owners of the intended inspection of all rateable properties within the

cities which are residential, commercial, industrial etc. Field inspections which entail measuring the building and taking note of other relevant details such as ownership; begin soon after the minister has ratified the appointment of the Surveyor but inspections cannot begin until the process is advertised in the public media. From field inspections values are processed and a Valuation Roll is compiled in form of ownership, Stand number, size of the plot, brief description, improvement value, and Land Value and Rateable value. Once the Valuation process is complete the Valuation Roll is prepared. Through an advertisement in the local media the property owners are notified of the Valuation Roll being open for property owners to inspect the market value of their property. Any objections by property owners on the value of the property can be passed to the Rating Valuation Tribunal for adjudication.

Property Rates applicable are based on Rateable Value. The Rateable Value is an equivalent of the market value of the property, i.e., the price the property would fetch on the market at the date of the valuation**.** The Valuation experts are responsible for ensuring that the taxation of these properties is efficiently carried out via the Rating Valuation Process. Rates payment are due for payment every half year period i.e. 1st January for the first half and 1st July for the second half.

According to section 6(2) of the Rating Act of 1997 (as amended) certain properties are exempted from paying rates such as:

- Property in occupation of the president in his capacity as head of state
- Premises of a mission which are the residence of the head of foreign mission and chancery of that mission
- Property used primarily for public worship and residence of ministers of a church and Nuns
- Property used wholly for the operational purposes of any public utility
- Public Cemeteries and Crematoria
- Military Aerodromes
- Agricultural land and buildings used for agriculture including dwelling houses
- Recreational facilities
- Public Libraries and Public Museums

6.6 Discussion

Although local authorities have a clear laid out system of formulating levies, rates and fees for each financial year, there is need to enhance transparency, information and direct participation of the public in the process also on this level of government.

While the public is represented indirectly through their Councillors, it is necessary that the public is directly engaged during this process through other channels such as public hearings. As observed by Dr Peter Lolojih, a renowned Zambia Open University Lecturer with vast experience in local government administration in an interview with this research,

> "at the moment there are no functioning sub-district structures through which the input of local communities can be formally and effectively solicited whether relating to levies, fees and rates or otherwise. In the absence of such structures, local councillors are the only linkage between local communities and the local authority. In other words for any proposed policy change/s affecting local authority operations, including the issue of levies, fees and rates to benefit from the public's input, it would require local councillors to play their representative role very effectively. This, however, is one area where local councillors have been found to be wanting."[26]

And this is the case even though, in the Local Government Act it is provided that, "The annual estimates of a council shall, at all reasonable times, be open to the inspection of any interested person."[27] This provision in the act is not comprehensive enough.

Dr. Peter Lolojih further argues in the interview that,

> "local authorities can be said to be operating in isolation devoid of effective local community participation and public oversight. One may argue that this lack of local community participation in such critical matters of local governance, coupled with the poor performance of the local authorities, may help to explain the observed local community resistance with regards to the payment of the various fees, rates and levies charged by the Local Council."

In order to improve local participation in the local community development the government has formulated the National Decentralization Policy. The National Decentralisation Policy (NDP) has provisions regarding the establishment of sub-district structures, a situation that would provide the necessary platform for effective local community participation in matters of local authority administration. In addition, the NDP talks about the revision of the relevant Local Government legislation in order to for it to live up to the spirit of decentralisation. It is important that the revision includes, in some way, deliberate measures that would compel local councillors to facilitate the participation of local communities, on regular basis, in matters of local authority administration.

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[26]Personal Communication, December 21st, 2015.

[27] Retrieved April 21, 2015 from http://www.zambialaws.com/Principal-Legislation/CHAPTER-281LOCAL-GOVERNMENT-ACT.html

Lastly, and perhaps most importantly, local communities should be made aware of their critical role in the operations of local authorities. They are the not only the key beneficiaries of local authority operations but they are the most important source of local revenue. Their participation in local authority affairs, therefore, should be a matter of course.

7 "Green Taxes"

"Green Taxes" are rare in Africa and therefore it is there is a Carbon Emission Tax in Zambia whose rate has been increased within the current 2017 budget.

Table 8 Carbon Emission Tax, based on Engine Capacity, 2017

Carbon Emission Surtax (CES)	This is a tax charged on motor vehicles based on the engine capacity.	Engine Capacity in CC (ZMW) 1500 and below: 70 1501 – 2000: 140 2001 – 3000: 200 3001 and above: 275

Source 11 (Mutati, 2016, p. 21)

But there is a second tax in Zambia which can count as „Green Tax", namely a Customs Duty on plastic shopping bags which has been increased from 25% to 40% (Mutati, 2016, p. 21).

It is the view of this research, however, that the potential of environmental taxation has not yet been given the attention it would deserve in African Countries.

8 Mandatory Social Security Contributions (NAPSA)

The National Pension Scheme Authority (NAPSA) is a governmental Parastatal obliged to collect mandatory social security contributions from the employers and employees. The NAPSA scheme is financed by both the employer and employee contributions at the rate of 5% each subject to the employee gross earning or ceiling determined annually using nation average earnings.

The NAPSA scheme is deducted as follows for employees whose gross earning is less than ceiling; 5% of employee's gross earnings for those who earn below the NAPSA set ceiling for each year. For instance, if an employee monthly earning is K5, 000. The NAPSA deduction will be as follows; *Employees Share*: 5/100 x K5000 = K250. *Employers Share*: 5/100 x K5000 = K250.Therefore, the total contribution to NAPSA will be K500.

For employees whose gross earning is above the NAPSA annual ceiling, the contribution will be 5% of the NAPSA annual ceiling. For example, the 2015 NAPSA ceiling is (ZMW15, 748). In this case an employee who earns above the ceiling will be required to pay 5% of the NAPSA ceiling. Example, if an employee gross earning is K17, 000. The NAPSA deduction will be as follow; *Employees Share*: 5/100 x K15, 748 = K792.05. *Employers Share*: 5/100 x K15, 748 = K792.05. Therefore, the total contribution to NAPSA will be K1, 584.1. The NAPSA ceiling is revised at the start of each year in January.

All workers whether in the public or private sector between the age of 16 and 55 engaged on the following terms are required to pay the NAPSA scheme; part time, probation or casual basis, contract, permanent, students on paid internship and non-Zambians employed by local institutions.

The following employees are exempted from NAPSA contributions; Non-Zambians employed by International Organizations with diplomatic status, Workers above age 55 and minors below age 16, Workers earning below K15.00 per month, Members of the armed forces. The NAPSA contributions are due by the 10th of every ensuing month and payments made after the due date attracts penalties. The contributions are payable through bank transfer, cheque payment and cash payment.

Subject to meeting all relevant conditions under the NAPSA scheme a member may qualify for either a standard retirement pension or the early retirement pension depending on his age, work record and choice.
A member who was below the age of 39 years on 1st February 2000 is eligible for a standard retirement pension if he has reached the age of 55 years and has made the minimum of 180 monthly contributions or if he is above 39 years, he had made the required number of contributions under the sliding scale. A member is eligible for an early retirement pension if he is within five years of reaching 55 years and has made the minimum 180 monthly contribution.

The NAPSA pension scheme is cardinal as workers contributions are paid back to the workers who qualify in form of a pension. Just like the tax system being administered by the Revenue Agency, the pension scheme is also administered by the Pension Scheme Authority. The NAPSA pension scheme enables the employees or contributors to check how much they are contributing. Every first and last Tuesday of the month contributors referred to as members are provided with statements on their contributions. This ensures that the workers keep track of how much they have contributed. Further, this also promotes transparency in the way the pension scheme is administered.

Since the introduction of such a Social Security instrument in African countries is relatively new and is a timely response to the changing

demographic composition and cultural values of African states (Andebo, 2014a), it is even more important that its savings are beyond destruction: The National Pension Scheme Authority (NAPSA) financial position is sound as the Authority has invested in real estate business thus members/contributors are assured of their pension payment upon qualifying. As of 2013, NAPSA director for Southern region Lloyd Chembe said the company's investment portfolio was around K6 billion.[28]

9 Conclusion

Taxes may be too complicated and tax rates may be too high (Nalishebo & Halwampa, 2014, p. 11ff.). The way to deal with that is via transparent involvement in civic dialogue and policy making, not via avoidance and evasion.

Regarding the complex legal regulations applying for the taxation of corporate wealth holder: Having clear definitions of crucial legal terminology and their scope of application would reduce opportunities for disputes between MNCs and tax auditors, tax planning and corruption (Manley, 2013, p. 41). The question, whether this is possible at all will be discussed in VII/5.4?

10 Annex 1: Overview about taxes, definitions and rates

Please note, that a number of the information provided below from (Nhekairo, 2014) are outdated. See, for example, changes suggested in the 2017 Budget Speech (Mutati, 2016, p. 19ff.).

1.0 Income taxes and applicable rates		
Tax Types	**Definition**	Applicable Rates
Company Tax	❖ This is tax on profits made by Limited Companies and businesses that have an annual turnover exceeding K800, 000	Category Rate • Companies generally 35% • Charitable organizations 15% • Farming 15% • Non – traditional exports 15% • Manufacture of fertilizer 15%

[28] Lusaka Times, (2013). *NAPSA Says That Most Employers Have Not Registered Their Workers*. Retrieved on 6th January, 2015. From: http://www.lusakatimes.com/2013/03/27/napsa-says-that-most-employers-have-not-registered-their-workers/email/

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Banks first ZMW250,00
Profit 5%
Banks above ZMW 250,000 Profit 40%

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<td>PAYE</td>
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PAYE is tax charged on income from employment.
Income from Employment includes: Salaries and wages; Overtime and bonuses, Gratuities and allowances, cash benefits and commissions.
All cash benefits paid in form of allowances are taxable under PAYE, such, as education, housing and utility.
However, the following Benefits are not subjected to PAYE: Labour day awards; Ex-Gratis Payments, Medical Expenses; and Funeral Expenses.
In Zambia, PAYE is paid to ZRA on a monthly basis by the employer on behalf of the employee.

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<table>
<tr><td colspan="2">Current PAYE Regime (2015)</td></tr>
<tr><td>Income Bands(Monthly)</td><td>Rates</td></tr>
<tr><td>0 – K3,000</td><td>0%</td></tr>
<tr><td>K3,001 - K3,800</td><td>25%</td></tr>
<tr><td>K3,801 - K5,900</td><td>30%</td></tr>
<tr><td>Above K5,900</td><td>35%</td></tr>
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<table>
<tr><td colspan="2">Previous PAYE Regime (2013)</td></tr>
<tr><td>Income Bands(Monthly)</td><td>Rates</td></tr>
<tr><td>0 – K2,200</td><td>0%</td></tr>
<tr><td>K2,201 - K3,000</td><td>25%</td></tr>
<tr><td>K3,001 - K5,900</td><td>30%</td></tr>
<tr><td>Above K5,900</td><td>35%</td></tr>
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<tr>
<td>Self Employed Individual (SEI) tax</td>
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Tax is paid for turnover over ZMW 800,000 and is

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PAYE rates apply for turnover over K 800,000.

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	charged under the PAYE rates. ❖ For turnover less than ZMW 800,000, tax paid is at 3% of turnover.	• Tax paid is at 3% of turnover for turnover less than K 800,000.
Withholding Tax	❖ This tax is deductible from a payment by the payer at the point in time the payee becomes legally entitled to the payment (date of accrual). The payer is required to pay the tax deductible to ZRA by reference to the date of accrual no matter how, when or where payment is made. It is charged on Interest, Management and Consultancy Fees, Royalties and Public Entertainment Fees, Dividends, Rent, Commissions and Payments to Non – Resident Contractors.	Category Rate Dividends for individuals and companies (final tax) 15% Interest (Companies) 15% Interest(Individual) final tax 25% Rent final tax 10% Commissions 15% Management & Consultancy fees 15% Management & Consultancy fees Non residents 20%%
Mineral Royalty	❖ Mineral royalty is the compensation to the government for extracting minerals from the earth. ❖ This is charged under the Mines and	• The mineral royalty rate tax is 9% for open pit mining and 6% for underground mining

	Minerals Act Chapter 213 of the Laws of Zambia on any holder of large-scale mining license, small-scale mining licence, gemstone licence, or artisan mining right for extracting the minerals from the earth. ❖ Mineral royalty on base metals and precious metals is based on norm value. ❖ Norm Value means the monthly average London Metal Exchange (LME) Cash price per metric ton multiplied by the quantity of the metal or recoverable metal sold. ❖ Mineral royalty rate of energy minerals, industrial minerals and gemstones is calculated on gross value. ❖ Gross value means the realised price for a sale free on board , at the point of export from Zambia or point of delivery within Zambia.	

Property Transfer Tax	❖ Tax levied on transfer of land and buildings and is paid by the seller. It is also paid on transfer of shares. ❖ Where a person transfers property to a member of his immediate family, the transfer will be treated as a gift and transfers will go at nil value. No property tax will be paid. Immediate family means a spouse, child adopted child or stepchild. ❖ Exempt Organizations from the tax include: The Government; Foreign Governments; Approved International organizations; Political Parties; Cooperative societies; Local authorities; Registered Trade Union Clubs or societies; and approved pension funds or Medical aid societies. Other exemptions include transactions	• Tax rate is at 10% of the Realizable value. Realizable value is price at the time of transfer, at which it could be reasonably sold on open market.

	as a result of a sale or other disposal of any stock or share listed on Lusaka Stock Exchange.	
Tax on Individual Minibus and Taxi Operators.	❖ A predetermined amount is paid by the individual public transport operators.	• Rates range from K 600 per annum for a less than 12-seater bus to K7,200 per annum for a 64-seater and above.
Turnover Tax	❖ Tax on businesses for both companies and individuals whose turnover is below ZMW 800,000 per annum	• Applicable tax rate is 3% of the turnover.
Advance Income Tax (AIT)	❖ This is the tax charged on importers that are either not registered with Zambia Revenue Authority or are registered but are not compliant.	• The tax is computed at 6% of Value for Duty Purposes (VDP) but is not a final tax.
Base Tax	❖ Base Tax is a tax on small businesses and marketers that are difficult to assess.	• The current amount of base tax is K150.00 per annum.
Fuel or Road Levy	❖ Levy charged on all imports of Petroleum products such as diesel and petrol. This Levy is meant for the maintenance and construction of roads in the country.	• The levy rate is up to a maximum of 15%.

2.0 Customs and Excise taxes and applicable rates		
Tax types	Main features	Rates

Customs Duty	❖ This is a tax levied on all goods imported into the country. Duties are based on the CIF (cost, insurance and freight) value.	Category Rate • Raw materials 0% • Capital goods 5% • Intermediate 15% • Finished goods 25%
Excise Duty	❖ Taxation on a range of selected products whether produced locally or imported, determined by government policy.	Product (some examples) Rate • Petroleum Products 7% - 36% • Wines and Spirits 125% • Motor Vehicles 5% - 30% • Perfumes and Body lotions 25% • Clear Beer 35% - 75% • Talk time and mineral water 10%
Import VAT	This a tax charged on imports.	Standard rate of 16%.
Export Duties	This is a duty charged on specific exported goods. This duty is meant to encourage further processing of locally produced goods and is charged on Copper concentrates, Scrap Metal and Cottonseed.	**Product Rate** • Copper concentrates at 15% • Scrap Metal at 15%-25% • Cotton seed at 15%
Carbon Emission Surtax (CES)	This is a tax charged on motor vehicles based on the engine capacity.	Engine Capacity in CC (ZMW) 1500 and below 50.00 1501 – 2000 100.00 2001 – 3000

		150.00
Motor Vehicle licensing Fee	❖ This fee is charged on imported motor vehicles and covers the registration costs.	The fee is ZMW 163.00

3.0 VAT and applicable rates.	
Tax types	Definition
Domestic VAT	❖ This is taxation on every value added to a taxable service or product. VAT is collected at each stage in the chain when value is added to goods or services. The tax is borne by the consumer. For VAT purposes, sale or disposal of goods or rendering of services is called **supplies**. ❖ **Taxable supplies** are taxed at either 16% (standard rate) or 0% (zero-rated). Zero-rated supplies include Exports, Energy Saving appliances, Equipment and machinery, medical supplies and schoolbooks. ❖ **Exempt supplies** are items specifically excluded by law from liability to VAT, (i.e., no VAT is charged) even if supplied by a registered business. Examples of exempt supplies include: ❖ Only registered businesses can charge and claim VAT. There are two types of VAT registrations: ❖ **Statutory registration** – annual taxable turnover in excess of K800, 000. ❖ **Voluntary registration** – where the turnover of a business is below K800, 000 per annum but the business has fulfilled all the requirements for VAT registration. ❖ A registered business charges and collects VAT on its supply of goods and services to customers. VAT so charged is called **output tax.** On the other hand, registered businesses claim the VAT that they pay on purchases of taxable goods and services for their businesses. The tax so claimed is

	referred to as **input tax.** The net of output and input tax is paid to ZRA or refunded to the taxpayer as the case may be. Therefore, a business dealing in taxable supplies can claim input tax, while a business dealing in exempt supplies will not be required to register for VAT and therefore cannot claim the input tax. For example, educational services from Nursery to secondary school are exempt, therefore, a primary school will not register for VAT and will not claim any input tax.

11 Annex 2: Tax Concessions

Groups 1 and 2 show some of the major domestic tax incentives that some economic sectors currently enjoy for income taxes and VAT respectively, group 3 shows tax incentives due to trade protocols and other concessions (Chileshe, Manley, & al., 2011).

Group 1: Income tax incentives by sector

Sector	Tax Incentives
Agriculture	• Income tax is at a reduced rate of 15%. • Farm improvement allowance is at 100% on fencing, brick or stonewall and an allowance of K10 million for farm dwelling occupied by farm workers. • Farm works allowance is at 100% for the full cost of stumping and clearing, works for prevention of soil erosion, boreholes, wells, aerial and geophysical surveys and water conservation. • Dividends paid out of farming profit are exempt from tax for the first five years the distributing company commences farming. • Development allowance is given for any person who incurs expenditure on the growing of tea, coffee, or banana plant or citrus trees or other similar plants or

trees. An allowance of 10% of such expenditure shall be deducted in ascertaining the gains or profits of that business.

Manufacturing

- Income from chemical manufacturing of fertilizers is taxed at a reduced rate of 15%.
- Capital allowances on industrial buildings used for the purposes of manufacturing shall be entitled to a deduction of 10% in case of low cost housing (low cost housing does not exceed K20 million) and 5% for other industrial buildings of the cost of the building.
- Persons who incur capital expenditure on an industrial building are entitled to claim a deduction called initial allowance at 10% of the cost incurred in the charge year in which the industrial building is first brought into use.
- Any person who incurs capital expenditure on an industrial building is entitled to an investment allowance at 10% of such expenditure in the first year used for manufacturing purposes.

Mining

- Any mining company holding a large-scale mining license carrying on the mining of base metals is taxed at 30%.
- Other mining companies are taxed at 35%.
- Dividend paid by a mining company holding a large-scale mining license and carrying on the mining of base metals is taxed at 0%.
- 100% mining deduction on capital expenditure on buildings, railway lines, equipment, shaft sinking or any similar works.
- The debt equity ratio has been

reduced from 2:1 to 3:1 to encourage further investment in the Mining sector.

Tourism

- Capital allowances at 50% of the cost of plant and machinery.
- Investment allowance at 10% of the cost of an extension to an hotel (being an industrial building).
- 5% wear and tear allowance to an extension to a hotel (being an industrial building).
- 10% initial allowance on an extension to a hotel (being an industrial building) in the year the building is first brought into use.

General Income Tax Incentives

- Income from non-traditional exports is taxed at a reduced rate of 15%.
- The income of a person operating an enterprise designated as micro or small enterprise under the Zambia Development Agency Act operating in:
  - o an urban area shall be exempt from tax for the first three (3) years
  - o a rural area shall be exempt from tax for the first five (5) years
- Dividends receivable from a company engaged in the assembly of motor vehicles, motor cycles and bicycles are exempt for the first five years from the date of first declaration.
- Withholding tax deductible from payment of any management fees, consultancy fee, interest or payment to a non-resident contractor by a person developing a multi-facility economic zone or an industrial park under the Zambia Development Agency Act shall be deductible at zero per cent for a period of five years from the

	first date the payment is due. • On the income of a business operating in priority sector declared under the Zambia Development Agency Act, tax shall be charged as follows: o At zero per cent for a period of five years from the first year profits are returned; o At fifty per cent from year sixth to eighth year after profits are returned; o At seventy-five per cent from ninth to tenth year; o At one hundred per cent after year ten after profits; and o At zero per cent on dividends declared by a company operating within a priority sector for a period of five years from the first declaration.

<u>Group 2: Value Added Tax (VAT) incentives by sector</u>

Sector	**Tax incentives**
Agriculture	• Guaranteed input tax claim for four years prior to commencement of production for taxable agricultural businesses. • Zero rating of taxable agricultural products and supplies when exported. • VAT deferment on importation of some agricultural equipment and machinery. • Zero-rating of the following agricultural equipment and accessories. • Windmills and maize dehullers; and two wheel tractor and accessories, tractors up to 90HP, ploughs, harrows, disc harrows, planters, seeders, rippers or sub-soilers, cultivators, pump sets, knapsack sprayers(agricultural sprayers).

Manufacturing

- Refund of Zambian VAT on export of Zambian products by non-resident businesses under the Commercial Exporters Scheme.
- Guaranteed input tax claim for two years prior to commencement of production.

Mining

- Import deferment on capital equipment and copper and cobalt ore.
- zero-rating of exports.
- Input tax claimable on expenses incurred prior to commencement of trading for a period of five years.

Tourism

- Zero rate of VAT on Tour Packages throughout Zambia.
- Refund of VAT for non-resident tourists and visitors on selected goods.
- No import VAT on all goods temporarily imported into the Country by foreign tourists.

Pharmaceutical and Veterinary

- Exemption of the following pharmaceutical and veterinary supplies -
  - o Medical supplies and drugs; and
  - o The supply to, or importations by, a registered medical practitioner, optician, dentist, hospital or clinic, or to a patient, of equipment designed solely for medical or prosthetic use.

Transportation – Airlink

- Exemption of transportation of persons by air; and
- Zero-rating of the supply of aviation fuel.

General VAT Incentives

- Import VAT relief for VAT registered businesses on imports of eligible capital goods (VAT Deferment).
- Zero rate of VAT on export of taxable products.
- Guarantee of VAT refund within thirty days of lodgement of adequately supported claims within 30 days of submission of the claim.
- Relief of VAT on transfer of business as a going concern.
- Equal treatment of services for VAT irrespective of domicile of supplier (Reverse VAT).
- Cash accounting for VAT for members of the Association of Building and Civil Engineering Contractors.
- Guaranteed VAT input tax claim for three months prior to VAT registration for businesses that have already commenced trading.
- Re-introduction of voluntary registration for compliant businesses whose turnover is below K200 million per annum.
- Registered businesses are allowed to re-claim 20 percent of input VAT paid on petrol.
- Exemption of interest component of finance Leases.
- Zero rating of VAT for investors in manufacturing, agriculture, etc operating in tax free zones.

Group 3: Incentives due to trade protocols

Type	**Description**
COMESA	The COMESA protocol on trade offers zero tariff on intra-COMESA trade. In 2009, the revenue foregone under this protocol stood at K136 billion.

SADC	Zambia is heavily dependent on intra-SADC trade, sourcing about 57 percent of its imports from other SADC members. The revenue foregone under the SADC protocol in 2009 was well over K365 billion with South Africa accounting for K337 billion.The SADC protocol on trade including the Southern African Customs Union (SACU) protocol is likely to worsen the revenue loss for Zambia as the tariff phase down is to be accelerated with the SADC Customs Union expected to be in place in 2012.
Multi-Facility Economic Zones	Zambia has embraced the concept of Multi-Facility Economic Zones (MFEZ) that proposes a package of incentives aimed at establishing a suitable environment for increased domestic industrial growth, export promotion, development of a market-oriented production and private sector development. The primary goals of MFEZs are to provide foreign exchange earnings by promoting non-traditional exports, to provide jobs, generate income, and to attract foreign direct investment and attendant technology transfer and knowledge spill over. Domestic, international, or joint venture firms operating in these zones are expected to typically benefit from reduced red tape, flexible labour laws, generous long-term tax holidays and concessions, above-average communication services and infrastructure as well as unlimited duty-free imports of raw and intermediate inputs and capital goods needed for production.
Duty Drawback Scheme	In order to make exports competitive, government put in a deliberate policy to refund a percentage of customs duty paid on imported inputs to eligible

	exporters. To qualify for relief under the duty drawback scheme the following conditions must be met: • The company or individual must be in the manufacturing business; • The company or individual must be an exporter or intends to start exporting; and • Must be in any sector other than mining. In 2009, the refunds under this scheme amounted to K27 billion.
Discretionary Exemptions	Almost all pieces of tax legislation in Zambia have provisions granting the Minister of Finance power to exempt, remit or suspend the whole or part of the tax payable by any person. For instance in 2009, the Minister remitted export duty payable by mining companies on exports of copper ore and concentrates to the tune of K300 billion. Similarly the suspension of excise duty on gas oil in the same year resulted in a revenue loss of about K190 billion.

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