

SIGNIFICANCE OF MINING IN AFRICA AND EVALUATING AFRICAN COUNTRIES FOR INVESTMENT PURPOSES FROM A TAX PERSPECTIVE

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ABSTRACT

**SIGNIFICANCE OF MINING IN AFRICA AND
IDENTIFYING A SUITABLE COUNTRY FOR INVESTMENT FROM A TAX
PERSPECTIVE**

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Africa is well endowed with various mineral resources which are extracted from the soil and ultimately processed into products that are used in the everyday life of individuals across the globe.

There is however a perception that Africa is an uncertain destination for business investment, has poor governance, a prevalence of corruption, questionable or no legislature and unclear income tax and royalty regimes.

This study therefore provides insight into investment in Africa from a tax perspective with a particular interest in Angola, Nigeria, South Africa and Zambia. Aspects of each of the abovementioned countries are briefly discussed with a focus on what minerals can be found in these countries. The study also discusses the taxes applicable to mining companies that operate in each of the chosen countries as well as whether tax incentives are granted to facilitate investment in these countries.

This study ultimately concludes on the most suitable country for investment purposes based on the mineral resources found in the country, political stability and workforce, taxes applicable to the mining industry as well as tax incentives granted.

OPSOMMING

Suid-Afrika beskik oor 'n ryk verskeidenheid minerale bronne wat gedelf en verwerk word in produkte wat alledaags deur mense dwarsoor die wêreld gebruik word.

Daar bestaan egter 'n persepsie dat Afrika 'n onbestendige bestemming vir sakebelegging is, waar swak regeringsbestuur en korrupsie aan die orde van die dag is met 'n gebrek aan of swak wetgewing, asook onduidelike belasting- en vrugregstelsels.

Hierdie studie beoog dus om vanuit 'n belastingperspektief lig te werp op belegging in Afrika en in die besonder Angola, Nigerië, Suid-Afrika en Zambië. Aspekte van elk van die bogenoemde lande word kortliks bespreek met die klem op die minerale wat in elk van die lande aangetref word. Hierdie studie bespreek ook die belastings wat van toepassing op mynmaatskappye aldaar werksaam is, asook of belastingaansporings wat toegestaan word om belasting in hierdie lande te bevorder.

Die studie sluit af met die gevolgtrekkings oor watter land die mees geskikte vir belastingdoeleindes is, gebaseer op die minerale bronne van die land, politieke stabiliteit en mannekrag, belasting van toepassing op die mynboubedryf asook belastingtoegewings wat toegestaan word.

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SIGNIFICANCE OF MINING IN AFRICA AND EVALUATING AFRICAN COUNTRIES FOR INVESTMENT PURPOSES FROM A TAX PERSPECTIVE

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

Africa is well endowed with mineral resources. It harbours the world's largest mineral reserves of platinum, gold, diamonds, chromite, manganese and vanadium (Anon, nd).

The US Geological Survey (USGS) ranks Africa as the largest or second largest reserve worldwide for bauxite (a source of aluminium), cobalt (a substance used for the manufacture of alloys and batteries), industrial diamonds (used as a cutting tool or abrasive), manganese (primary element found in stainless steel), phosphate rock (a major resource mined to produce phosphate fertilizers for the agricultural sector), platinum group metals (a primary component used in automotive catalytic convertors), soda ash (an element used in glass production), vermiculite (a component in fireproof materials) and zirconium (used to manufacture heat-resistant ceramic materials) (KPMG, 2012a).

Most of the above minerals extracted from various parts of Africa are used in the everyday life of individuals across the globe. Examples of the application of the above mineral and metal produce include smartphones, modern sports equipment and beverage cans. It would not be an exaggeration to conclude that all of the above products except for fertilisers are found in the motor vehicles we use to commute from point A to B on a daily basis. Consequently, world citizens are either directly or indirectly linked to the fortunes of the African mining sector.

The opportunity for mining in Africa is vast with impressive resources. Accordingly, many companies may seek to maximise profits by investing in developing African countries.

Governments, in part of their pursuance to capitalise upon their mineral rich countries, realise the need for modern, open and transparent regulatory frameworks. In this regard, many countries in Africa are working on implementing new mining laws or alternatively have recently introduced mining laws that seek to encourage investment. These are the first and most important steps towards the formation of a world-class mining industry that would significantly contribute to economic growth in Africa (DLA Piper, 2012).

Although mining in Africa is a significant contributor to the world economy, legislation remains African mining's proverbial double-edged sword (Lexafrica.com, 2011).

Furthermore, whilst it may be important to regulate and control the mining industry with the wealth potential that mining may have, the delays, ambiguity, and misunderstanding that so often surround the design and implementation of mining legislation can have a serious undesirable effect on the mining industry and the economies to which it ultimately contributes (Lexafrica.com, 2011).

In addition, governments seek to introduce mining laws which include taxation laws which meet government's two primary objectives:

- to raise revenues, and
- to guide taxpayer behaviour.

Taxation of the mining industry is not a new phenomenon. Natural resources have been mined for thousands of years. Consequently governments and heads of states throughout history have taxed mines to share in the wealth generated from the mining industry (Otto, 2000).

In this regard, an increasing interest among investors, policy-makers and civil society groups has developed concerning Africa's mining sector.

1.2 PROBLEM STATEMENT

Governments throughout the world are looking to increase their share of mining profits as a means to bolster slow economies, drive socio-economic development and guide investor

and taxpayer behaviour. As stated in the background above, governments could facilitate this process by the introduction of taxes in the mining industry.

State interventions in the mining industry may vary from the introduction of new resource-based taxes to the transfer of mining rights to state-owned companies. This regulatory uncertainty poses a significant challenge to mining companies' long-term strategic planning. Furthermore, mining companies face regulatory uncertainty following a global trend of resource nationalism.

1.3 IMPORTANCE AND BENEFITS OF THE STUDY

Africa is a significant contributor to the world economy from a mining perspective. Therefore investors and academics would be keen to understand the uncertainties which arise when African governments are not able to meet the demand for key infrastructure which may include rail, ports and energy projects.

Therefore this study seeks to shed light on the perception that Africa is an uncertain destination for business, has poor governance, has a prevalence of corruption, and has questionable legislature and unclear royalty and income tax regimes.

This study also investigates the significance of mining in Africa and the effect that tax legislation has on investment in the African mining industry. The African continent in totality is made up of approximately 58 countries. For the purposes of this study, four countries, namely, Angola, Nigeria, South Africa and Zambia which are significant contributors to the mining industry have been chosen. The following can be noted about the importance of the four countries chosen for this study:

- Angola is the third largest diamond mining producer in Africa (PKF, 2013a);
- Nigeria is known for its natural resources which particularly include precious stones and metals. Nigeria used to be a major exporter of tin, columbite and coal (PKF, 2013b);

- South Africa is well known for its gold deposits and it is estimated that approximately 50% of the world's gold comes from South Africa (Mining Intelligence Database, 2014a); and
- Zambia's mining history spans more than 90 years. During 1960 Zambia was identified as the third largest copper producer in the world (Zambia Development Agency, 2013).

A comparative study would therefore provide information as to what minerals are mined in the African countries listed above. Although it is not the main focus of this study, the study would also provide some insight into whether the nationalisation of mines would be a positive or negative move from a country's economic perspective.

Since the study focuses on four African countries, a comparative study would provide clarification on similarities in tax legislation applicable in the African countries mentioned above and could possibly provide guidance on matters which may be useful to the rest of Africa.

The main purpose of this study would therefore be to investigate the mining tax laws applicable to the chosen African countries (i.e. Angola, Nigeria, South Africa and Zambia) and to conclude on which country would be most beneficial to invest in from a tax perspective.

The crux of this study could be summarised by stating the following:

“The first steps towards the formation of a world-class mining industry that has the potential to contribute significantly to economic growth and employment prospects in the region is to understand the challenges unique to those regions and what facilitates change” (DLA Piper, 2012).

1.4 RESEARCH OBJECTIVES

This study will be guided by the following research objectives:

- To investigate the significance of mining in Africa as well as to identify what minerals are mined in Angola, Nigeria, South Africa and Zambia;
- To investigate if the mining taxes applicable would vary according to the mineral mined; and
- To critically analyse the mining tax laws applicable in the countries mentioned above and to conclude whether the taxation laws would encourage or discourage investment in a particular country.

1.5 RESEARCH QUESTION

Are special incentives granted to mining companies in Angola, South Africa, Nigeria and Zambia and would these incentives encourage investment from a taxation perspective?

1.6 DELIMITATIONS AND ASSUMPTIONS

The African continent is made up of approximately 58 countries and it would not be feasible to investigate the taxation laws applicable in all the African countries. In this regard, this study will provide insight to the significance of mining in Africa in general to enable readers to understand Africa and the mining industry.

The study however only investigated the minerals mined in Angola, Nigeria, South Africa and Zambia and the taxes applicable in those countries. The study concluded on the most attractive investment destinations provided by the chosen four African countries. The information obtained during this study could provide investment information to stakeholders seeking to invest in the related countries. The study could also provide some insight to other African countries who anticipate implementing or amending their current tax legislation.

This study is based on the assumption that investors across the globe would consider investing or increasing investment in Africa, particularly in the four chosen countries, if the relevant material was available to provide an overview of tax implications of investing in Africa and the four chosen countries.

1.7 ABBREVIATIONS

This study includes certain abbreviations which are defined below for ease of reference:

Table 1: Abbreviations used in this document

Abbreviation	Meaning
APEC	Asia-Pacific Economic Cooperation
BITC	Business Income Tax Code
FIRS	Federal Inland Revenue Services
LTC	The LTC International Online Tuition Centre
MPRDA	Mineral and Petroleum Resources Development Act
MPRRA	Mineral and Petroleum Resources Royalty Act
NAFTA	North America Free Trade Agreement
NAPSA	National Pension Scheme Authority
SADC	Southern African Development Community
VAT	Value-Added Tax

1.8 RESEARCH METHODOLOGY

An empirical study involves a situation whereby new data is collected or alternatively where existing data is re-analysed (Babbie & Mouton, 2001:75).

A non-empirical study refers to a study whereby a researcher answers questions without collecting data or re-analysing data. A literature review is an example of a non-empirical study (Babbie & Mouton, 2001:75).

In this regard, a non-empirical study was conducted whereby data was collected in the form of journals, articles, guides and legislation.

As mentioned above in the delimitations and assumptions, due to the fact that Africa is large and comprises approximately 58 countries, this study was limited to mining in Africa with reference to the following countries:

- Angola;
- South Africa;
- Nigeria and
- Zambia

Data was collected and analysed to understand what is mined in each of the above-mentioned countries. Furthermore, research was conducted to determine the tax implications applicable to companies operating in the related countries and to investigate the incentives available to mining companies that operate in those countries.

1.9 SUMMARY OF CHAPTERS

Chapter 1

A brief introduction is provided on mining in Africa. The purpose of the study is also documented, detailing the research objectives, research methodology, research question and ultimately the importance of this study.

Chapter 2

The literature reviewed is deliberated upon. In particular a review is provided of the significance of mining in Africa, whereby the impact that nationalisation would have on mining industry in Africa is considered. The taxation of the mining industry in Africa in general is also considered, with a brief discussion on the methods adopted by governments to guide taxpayer behaviour.

Chapter 3

The chosen countries are introduced and a background on the history and location of the country is addressed. The taxes applicable to the mining industry are thereafter discussed in detail.

Chapter 4

A comparative analysis of the four chosen countries is done to determine which country has the lowest tax rates, finest incentive schemes and ultimately providing guidance on which the most suitable investment country out of the four chosen countries would be.

Chapter 5

This is the final chapter of this study in which the researcher concludes on whether the objectives of the study have been achieved. Furthermore, the researcher provides recommendations as well as future possible topics which could potentially enhance this study.

CHAPTER 2

MINING IN AFRICA

2.1 SIGNIFICANCE OF THE MINING SECTOR IN AFRICA

Africa is well endowed with mineral resources. It contains the world's most important mineral reserves of platinum, gold, diamonds, chromite, manganese and vanadium (Anon, nd.).

Table 2 illustrates Africa's mineral prospects and production in global terms. The report further states that the statistics may be underestimated due to limited geological mapping of the continent. Numerous quantities of the minerals are exported in the form of ores, concentrates or metals without any further downstream processing which provides additional value. Therefore, there is a persistent belief that the untapped mineral potential can act as a springboard for Africa's industrialisation (Anon, nd.).

Table 2: Leading African mineral resources, 2005

Mineral	African Percent of World Production	African percent of World Reserves
Platinum Group Metals	54 %	60 %
Phosphate	27 %	66 %
Gold	20 %	42 %
Chromium	40 %	44 %
Manganese	28 %	82 %
Vanadium	51 %	95 %
Cobalt	18 %	55 %
Diamonds	78 %	88 %
Aluminium	4 %	45 %

Source: Anon. nd

Although Table 2 was mainly intended for illustrating Africa's percentage of the world's production of minerals and Africa's percentage of the world's mineral reserves, it can further be deduced from it that the world is rather dependent on the minerals produced in Africa.

According to the findings as documented in the Africa review report on mining throughout the colonial era, the mining sector of Africa was used to develop the economies of the western nations without considering the sustainable development of the mining sector in Africa. Furthermore, in the post-colonial era, there have not been any significant changes to the sustainable development of the African mining sector. Currently the benefits of mining to national economies are made evident as they aim to attract foreign direct investment; however local costs (which include environmental and social impacts) associated with mining are not being adequately compensated for (Anon, nd.).

In this regard, it is important to find a balance whereby investors can tap into the riches of Africa and derive significant profits therefrom whilst the people of those continents benefit in the form of achieving economic growth and development of their countries.

To limit the impact of foreign investment whereby some African countries are stripped of their resources and the governments are of the opinion that very little or no economic benefit was received, governments may, as a means of maintaining control over their natural resources, endeavour to nationalise the mining sector. We consider below the impacts of nationalisation.

2.2 NATIONALISATION

2.2.1 WHAT IS NATIONALISATION?

Nationalisation is defined as the takeover of privately owned companies, businesses, and resources by a government with or without compensation (Businessdictionary.com, 2014a).

2.2.2 REASONS FOR NATIONALISATION

Many countries may endeavour to nationalise some of their industries. The LTC International Online Tuition Centre (LTC) (LTC, 2012), provides some reasons for nationalisation which are listed below:

a) Natural monopolies

Governments may want to curb natural monopolies which allow the private sector to restrict output and raise prices.

b) Commanding heights of the economy

Labour governments may suggest that it is important for governments to own key industries as the government may have a better idea of how to handle these key industries in the national interest of the country as opposed to operating for a pure profit motive. These key industries could potentially be natural monopolies as well.

c) Co-ordination

There is an argument that nationalisation would lead to improved co-ordination between industries (i.e. industries in the fuel sector and industries in the transportation sector).

d) Economies of scale

Some industries benefit from the nationalisation due to the scale of the economy. A good example is that of the demand for electricity. The nationalisation of electricity and the formation of the national grid would mean that there is not so much wastage of supply. In this regard, if a central source is utilised for electricity and a national grid used, all surplus electricity generated would be fed into the national grid and directed to areas of need.

e) Strategic reasons

Some industries are nationalised for strategic reasons (i.e. in some countries the railways were under government control during both world wars to speed up the distribution of resources necessary for the nation's security).

f) Rescue of "lame ducks"

Nationalisation is sometimes used to rescue important business enterprises which might not otherwise have survived.

g) Industrial relations

Nationalisation might be pursued in an effort to improve industrial relations.

2.2.3 PROS AND CONS OF THE NATIONALISATION OF MINES

Clay (2009) provided various advantages and disadvantages of nationalising mines in South Africa which the researcher adapted to African countries in general and listed below:

2.2.3.1 Advantages

The following general advantages exist for the nationalisation of mines in Africa:

- The private sector does not have to be cut out completely. Partnerships between mining companies and the government have seen very little decrease in foreign investment in countries such as Namibia and Botswana. The private sector ensures that the businesses are adequately funded with the operations being efficiently run whilst the government regulates manufacturing and retains control and ownership of the mineral resources.
- A country implementing nationalisation could benefit in the short term as the future profits and current assets of the mining industry could be used towards creating new jobs, and providing more state services for the advancement of the people.

- Nationalisation could potentially boost other industries. It is argued that investors and business individuals, previously involved in the private sector would be able to focus their efforts on other industries. The surplus attention to these industries would increase wealth and competitiveness on a domestic and global level in these industries.
- The shifted focus of the private sector towards other industries would make the particular African country more appealing to foreign investors as the foreign investors could diversify their investment portfolios.

2.2.3.2 Disadvantages

The following general disadvantages may exist for the nationalisation of mines in Africa:

- The nationalisation of mines could significantly decrease foreign investment. Investors may feel that their investments are at risk with government ownership of the mining industry. Jobs and growth in the mining industry could potentially decrease.
- It could make a particular country less competitive on the global platform due to the fact that nationalised industries are typically not run for profit. The overall profitability of the mining industry would decrease and the contribution to the economy as a whole would decrease as well.
- Insufficient, delayed or no compensation to previous investors could discourage them from investing in alternate African industries. Investments in other private sector industries not linked to the mining industry could also decrease.
- Other industries which support the mining industry could be affected as well. A relevant example would be transportation or creation of infrastructure in supporting mineral shipments. The question arises if the government would take over this function as well or would new agreements be put into place. This would be time consuming and costly and consequently the functionality of this process may not be as efficient as it was when independently run by the private sector.

The conclusion is that nationalisation could prove to be useful in some countries and in other countries nationalisation could impact foreign investment. There may be strong

arguments that nationalisation would not be positive in African countries as a result of the perception that corruption in African countries is high. Alternate methods of raising funds for the government may therefore be necessary and this could be in the form of taxation. Taxation also would assist government in achieving their objectives.

2.3 TAXATION OF MINES

The imposition of taxation on the mining industry is not a new phenomenon. Minerals have been extracted from the ground for thousands of years. Consequently, rulers and governments who wanted to benefit from the wealth created by the mining industry introduced taxation (Otto, 2000).

In a study of this phenomenon it is important to understand the following key principles with reference to the taxation in the mining industry:

- Objectives of mine taxation.
- The relationship between taxes on mining and those on other sectors.
- Mining taxation practices and how different types of taxes and tax incentives meet government objectives.
- Tax discrimination.

2.3.1 OBJECTIVES OF MINING TAXATION

2.3.1.1 Raising revenues

Every country would like to improve the living conditions of the general masses of the country. To do so a country would need to raise funds. These funds can either be gathered through taxes or by the government borrowing funds from the central bank. The central bank is also referred to as the reserve bank in some countries.

When governments choose to earn revenue from the mining industry by imposing taxes on mines, they are accordingly faced with an important question: How much of a tax burden

should be placed on the mine? A higher tax burden would mean lower investor profit. The government would therefore consider balancing its fiscal revenue requirements with the potential investor's willingness to invest. If the imposition of taxes is relatively high, investors may invest elsewhere; however if taxes are too low, governments would lose the potential to earn more revenue. Therefore most governments would seek to find the balance between investors and the governments. In this regard, a fair and equitable solution is often implemented (Otto, 2000).

2.3.1.2 Guiding taxpayer behaviour

A government can guide taxpayer behaviour of mining companies in different ways. A command and control approach is sometimes used, such as the obligation to act in a specific manner required by law to meet a particular standard or to refrain from a prescribed activity. Another method is to implement tax incentives for mining companies to conduct themselves in a manner required by government. An example of this approach would be the government's introduction of tax credits to companies who install pollution control devices in an effort to encourage investors to run environmentally friendly mines. . A higher tax could also be imposed on companies who emit harmful effluents through their production process. Another example of guiding taxpayer behaviour would be in the scenario whereby governments want to preserve their natural resources for the development of future generations. In this regard, a higher tax burden would be placed on taxpayers to discourage rapid growth (Otto, 2000).

2.3.1.3 Relationship between taxes in mining and in other sectors

Some countries chose to treat the mineral sector similar to other sectors of business with most countries adopting an approach whereby the mining industry is granted some sort of special treatment. A special tax, unique to the mining industry is that of mineral royalty tax. Special incentives may also be granted to the mining industry as it is argued that the mining industry is inherently quite risky, capital intensive and prone to wide commodity price fluctuations (Otto, 2000).

Otto (2000) lists some of the special tax incentives that may be granted to the mining industry and the reasons for these incentives. The special incentives granted include the following:

- *Exploration expenses:* Prior to the commencement of mining operations, usually long and costly exploration is undertaken. During the period of exploration, no taxable income is earned. In this regard, special provisions are granted for the expenditure incurred during the pre-production phase.
- *Mine development:* The development of a mine is capital intensive and in most instances requires the use of specialised equipment. Governments recognise the capital intensiveness of these projects and provide various methods of recovering these costs as quickly as possible once the production commences.
- *Equipment imports:* As the equipment used is mostly imported, governments allow this equipment to be imported free of duty (i.e. exempted, refundable, zero rated).
- *Export sales:* The minerals extracted are usually destined for highly competitive markets. In this regard, no VAT is levied on the export sales. In some instances a refund is received or a credit is granted.
- *Commodity price cycles:* Raw materials produced by mines are subject to substantial price changes on a periodic basis. As a means to relieve short term financial duress, certain types of taxes are waived.
- *Post production expenses:* Once the mining operations cease, mines usually incur significant costs relating to the closure and rehabilitation of the mining site. In this regard, the expenditure set aside for this process is usually deductible from the mine's taxable income which accordingly reduces the mine's income tax liability.

2.3.2 TYPES OF TAXES AND INCENTIVES APPLICABLE IN THE MINING INDUSTRY

Various types of taxes and tax incentives are applicable to the mining industry. A combination of tax types may be of prime importance as investors may have varied preferences. The government may also introduce these taxes to achieve a specific purpose. In this regard, examples of taxes and incentives imposed or granted to taxpayers in the mining industry are discussed and the objective of the government is also briefly mentioned below.

2.3.2.1 Tax types

According to Otto (2000), the following are examples of taxes imposed by governments on the mining industry:

2.3.2.1.1 *Income tax*

Income tax is a tax that governments impose on the financial income generated by all entities within their jurisdiction (Investopedia, 2014a).

Income taxes are aimed at financing government operations as well as distribution of wealth more evenly amongst individuals of a particular country. The two basic tax types include personal income tax which is levied on the income of individuals or corporate income tax which is levied on companies (Businessdictionary, 2014b).

It should be noted that mining companies are also subject to corporate income tax as they are regarded as entities operating within that jurisdiction. Some countries may however provide certain incentives to reduce the taxes due and payable to the relevant revenue authorities.

2.3.2.1.2 *Import and export duties*

An import or export duty is a tax used to increase the revenues of the national government. Import and export duties are usually based on the value of goods and / or the size of the item. Other common terms used for import duties are *customs duty*, *import tax* or *import tariffs* (Investopedia, 2014b).

2.3.2.1.3 *Royalty tax*

Royalties are fees paid for the use of natural resources (Businessdictionary.com, 2014c).

In the context of mining, a government usually imposes a royalty tax on mining companies for extracting minerals from the soil. In most instances the minerals of a country belong to the state. Accordingly the state may impose a royalty tax to ensure it receives some sort of compensation for lost minerals (Otto, 2000).

2.3.2.1.4 Application / issuing / registration fees

A registration fee is usually charged to officially record something (Collinsdictionary.com, 2014).

In developing countries, usually a nominal fee is imposed for the issue of documentation which is required for mining and exploration. The fees are not exorbitant and are a method of generating revenue for the administrative agency. In some instances the fees are increased to discourage speculation (Otto, 2000).

2.3.2.1.5 Surface rentals

A surface rental is levied by some governments for the use of the land of the particular country for a particular business activity. The fee is accordingly based on the land area multiplied by a standard rate applicable for that particular business activity (Otto, 2000).

In this regard, a nominal fee based on a particular mining activity would be levied by state. One of the main reasons for imposing additional surface rental fees would be to dissuade speculators from entering the market and blocking out legitimate exploration and mining companies. Furthermore, it would encourage taxpayers to cancel inactive mining and exploration licences (Otto, 2000).

2.3.2.1.6 Value-added tax / Sales tax

Value added tax (VAT) can be defined as an indirect tax on the consumption of goods and services by a particular government. VAT is usually charged during each stage of the manufacturing and circulation process. VAT is an alternate method for governments around the globe to increase their revenue base. In this regard, businesses would be required to register for VAT purposes. Subsequent to registration, businesses would be

required to charge VAT to their clients. The VAT collected would accordingly be paid over to the revenue authorities. Consequently businesses act as agents in collecting additional revenue for the related authority (SARS, nd).

Sales taxes as opposed to VAT are levied in certain countries. Sales taxes are usually paid to the government for the sale of goods and services (Investopedia, 2014c). It can arguably be concluded that by definition sales tax and VAT are one and the same with different terms.

2.3.2.1.7 Stamp duties

A stamp duty is the imposition of tax on the transfer of property. Most countries levy transfer duty on the transfer of securities, patents, copyrights, buildings and land. In the mining industry a nominal fee is charged for the transfer of surface rights or buildings (Investopedia, 2014d).

2.3.2.2 Incentives

Tax incentives are made available by governments to achieve different objectives. One of the objectives could potentially be to encourage investment in the mining industry.

2.3.2.2.1 Accelerated depreciation

In most countries mines are placed in a favourable position whereby allowances are granted on capital assets purchased. The intention of this type of policy is to allow taxpayers to claim a tax deduction in order to purchase additional capital items in the future. Most governments recognise that the mining industry is capital intensive. In this regard a greater tax deduction is allowed in the first year of acquisition. An example of this type of allowance is that of the South African tax regime whereby 100% of the capital purchases is allowed as a deduction in year one, provided that the related mining company has sufficient taxable income (Otto, 2000).

2.3.2.2.2 Depletion allowance

The use of natural resources by quarrying, mining, cutting timber, quarrying stone or drilling is known as depletion. A depletion allowance is awarded to an owner or operator as a result of the reduction in the product's reserves.

In most countries, there are two methods of determining the depletion allowance, namely cost depletion and percentage depletion. The revenue authorities usually allow a company to determine which method provides the taxpayer with a greater deduction (IRS, nd).

2.3.2.2.3 Ringfencing

The term ringfencing is often used when various projects of a company are required to be separated when calculating the tax liability. An example of ringfencing is when a company operates two mines in a particular country and the tax legislation of that country requires that the costs and income not be combined when determining the tax liability (Otto, 2000).

As an incentive in developing countries, ringfencing restrictions are not imposed to ensure that mining companies are adequately developed and stable prior to the imposition of more stringent tax legislation (Otto, 2000).

2.3.2.2.4 Exploration expense – carry-forward

The commencement of mining operations is usually a costly exercise due to numerous exploration expenses mainly incurred prior to the mining operations earning taxable income. In this regard, to ensure growth of a mine and to incentivise companies to conduct mining operations, governments usually provide special provisions for the treatment of pre-production (exploration) expenses. In most instances, governments allow mining companies the opportunity to deduct the mining expenditure once mining income is earned (Otto, 2001).

2.3.2.2.5 *Deductible environmental, reclamation and closure costs*

At the end of a mine's life span, the minerals from a particular mining area would be depleted. Mining companies are customarily required to rehabilitate the land subsequent to the ceasing of mining operations. At this stage mining companies will not have any income to facilitate the rehabilitation process. Therefore there is a familiar trend by governments across the globe to ensure funds are set aside by the relevant mining companies to facilitate the rehabilitation process. In order to facilitate this process, governments may allow a deduction for the amounts set aside for the rehabilitation process (Otto, 2000).

2.3.2.2.6 *Tax holidays*

A tax holiday is usually a system whereby governments allow companies not to pay taxes for a specific period of time. In order to encourage growth in specific sectors of the economy, governments of developing countries provide mining companies with a special tax holiday to ensure one or more forms of taxation is not payable (Otto, 2001).

2.3.2.2.7 *Losses carried forward*

A carry-forward loss incentive allows mining companies the opportunity to use losses incurred in the past against profits earned in future years until the loss is fully made up (Biztaxlaw.about.com, 2014).

2.3.2.2.8 *Losses carried back*

A loss carry back provision is similar to the loss carried forward provision; however this incentive allows a taxpayer to offset losses incurred during the current year against profits earned in prior years (Biztaxlaw.about.com, 2014).

2.3.3 TAX DISCRIMINATION

Tax discrimination is an important aspect of tax policies in the mining industry, being, in the broader sense, the manner in which a particular mining industry would be taxed. There

are many forms of tax discrimination; however, these can be linked to the following three concepts:

2.3.3.1 The type of mineral being mined

Developing countries may mine different types of minerals. In this regard, each mineral type will be taxed at a different rate. Alternatively the minerals would be grouped and the group of minerals would be taxed collectively (Otto, 2000).

2.3.3.2 The scale of the operation

Governments may seek to tax larger and smaller mining operations differently as larger mining companies could have access to more funds and better equipment. The volumes of minerals extracted may also vary (Otto, 2000).

2.3.3.3 The “nationality” of the mine

International mining companies may be taxed differently when compared to national mining companies. Special tax terms may be provided in a double tax agreement, whereby taxes are reduced under the bilateral double tax agreements. Furthermore, companies from a specific regional trading area such as Asia-Pacific Economic Corporation (APEC), North American Free Trade Agreement (NAFTA) or South African Development Community (SADC) may enjoy lower tariff rates or accelerated customs treatment (Otto, 2000).

2.4 CONCLUSION

Countries in Africa are well endowed with mineral resources and these mineral resources allow countries and investors to progress and earn profits. Governments of countries in Africa would therefore want to use the mining resources available to generate income to develop the infrastructure of the country as well as to improve the living conditions of the general citizens. Furthermore, investors would be concerned about the most suitable

country to invest in bearing in mind the economic stability of the country as a whole. In the discussion above, taxes applicable to most countries are described without specifically focussing on any specific country. Hence the focus of this paper will be directed to the four countries chosen to identify which country would be the most attractive investment choice.

CHAPTER 3

AN INTERNATIONAL COMPARISON WITH A SPECIFIC FOCUS ON MINING AND TAXATION

An investment decision is important and hence numerous factors need to be considered which could include the following:

- What is the country's location?
- Is the population of the country healthy as they could potentially form part of the workforce?
- What currency is used in that country? An investor may want to measure the currency against the US dollar.
- What is the climate in the country? Some members of management may need to be relocated there.
- Is the country politically stable? Many of the countries were under British rule previously and independence was granted at a later stage. Has the country stabilised subsequent to the granting of its independence?
- What is the main language spoken in that country?
- Are there any specific mining tax regulations applicable?
- What tax incentives are granted to countries that establish mining companies?

For this study the focus for investment decisions will be on specific tax regulations and tax incentives. The chosen countries for this study are Angola, Nigeria, South Africa and Zambia. It is of vital importance to understand the particular country, the mining tax laws applicable and finally whether tax incentives are granted. Each country will therefore be discussed individually and finally a conclusion will be reached on the most suitable country for mining investment from a tax perspective.

3.1 ANGOLA

Angola is situated on the south-western coast of Africa which borders the Atlantic Ocean. Angola is one of the largest countries on the African continent, and its surface area is greater than that of the United Kingdom, Germany and France combined. The population

of Angola is however relatively small when compared to the surface area of the country (Brooks, 2008).

Angola consists of a vast plateau of which the highest point is at Bié in the central region. The northern region is covered with tropical rain forest. Angola also borders the great Kalahari Desert at its southern border. The climate in Angola varies according to location and elevation. The southern and coastal areas are generally dry and hot whilst the plateau region is much cooler and receives higher rainfall (Brooks, 2008).

Mining and agriculture are the primary sources of the Angolan economy. The Angolan people are mostly subsistence farmers who grow food for their own use. Crops such as cassava, corn bananas and sweet potato are grown in Angola. Commercial crops such as sugarcane, sisal and cotton are also cultivated in Angola (Brooks, 2008).

Angola is rich in minerals, in particular petroleum which forms the bulk of its export income. Large deposits of iron ore, diamonds and others minerals can also be found in Angola (Brooks, 2008).

During the period when Angola gained its independence, many European skilled workers left the county. The civil war which followed the independence resulted in the government spending large amounts of funds on the war as opposed to reconstruction (Brooks, 2008).

The official language of Angola is Portuguese; however other common local languages spoken are Kimbundo, Umbundo and Kikongo. Furthermore, the currency used in Angola is the kwanza (Kz) (KPMG, 2013).

3.1.1 Mining in Angola

The mining industry in Angola has great potential since the country has the largest and most diversified mining resources in Africa. Angola is known as the third largest diamond mining producer in Africa. This could increase considerably in future as only 40% of the country's diamond-rich territory has been explored. In addition to mining diamonds, Angola is also rich in other mineral resources such as, gold, copper, phosphates, granite, marble,

uranium, quartz, lead, zinc, wolfram, tin, fluorite, sulfur, feldspar, kaolin, mica, asphalt, gypsum and talc. Although Angola is richly endowed with mineral resources, the country has difficulty in attracting foreign investment as a result of corruption, human rights violations and diamond smuggling (PKF, 2013a).

3.1.2 Taxation in Angola

A company which intends operating in Angola needs to understand the taxes applicable in Angola to ascertain whether they would have a financial impact on investment in that country. In this regard, it is imperative to understand both the mining taxes as well as the general taxes applicable in Angola as these taxes may have an indirect impact on the company. Furthermore, as an operational unit, a company would not only be subject to income tax but also other taxes.

Ferreira (2014) documents the following in relation to taxation in Angola:

- The rights and obligations related to taxpayers that provide for the general tax rules in Angola are covered in the General Tax Code – (Código General Tributário [CGT]).
- Taxes in Angola are made up of direct taxes on income, basic indirect taxes as well as capital taxes. The taxes on income include the following:
 - business income tax (imposto industrial);
 - urban real estate income tax (imposto predial urbano); and
 - Investment income tax (imposto sobre a aplicação de capitais).
- Mining companies are subject to additional taxes such as production royalty and surface charges apart from the normal business income tax.
- Oil companies are subject to taxes on petroleum turnover and petroleum production and are not subject to business income tax.
- Taxes on capital transfers include a real estate transfer tax (sisa sobre as transmissões de imobiliários por título oneroso) and a gift and inheritance tax (imposto sobre as sucessões e doações).
- Transaction taxes in Angola comprise of import and export duties, a consumption tax (imposto do consumo) as well as stamp duty.

- Both employers and employees are also required to pay social security contributions.

The focus of this study is directed at mining; hence the following discussion would be focusing on the taxes that would apply to mining companies.

3.1.3 Taxation of the mining industry in Angola

Mining companies in Angola are subject to a specific tax regime as contained in the *Mining Code* which was approved by *Law 31/11* on 23 September 2011.

Ferreira (2014) documents that Article 239 of the Mining Code reflects that Angolan-based permanent establishments of non-residents and resident companies who are engaged in mining operations are subject to the following taxes:

- business income tax under special rules;
- a mineral output royalty; and
- a surface charge.

3.1.3.1 *Corporate tax / Business income tax*

Angola does not specifically have a corporate income tax; however its business income tax (imposto industrial) in practice functions as a corporate income tax. The Business Income Tax Code – BITC (Código do Imposto Industrial) was established by *Law 35/72 of 24 April 1972* and is applicable as from 1 January 1973. This Code was subsequently amended by *Law 18/11*, published in the Republic Gazette of 26 April 2011 (Ferreira, 2014).

Industrial and commercial activities carried out in Angola are subject to business income tax which is assessed on the profits of the company (Ferreira, 2014).

Angola uses a classical corporate tax system whereby dividends are included in the tax base and are subsequently modified by participation exemption rules.

- As per Article 3 of the BITC, resident companies carrying on commercial or industrial activities in Angola are subject to business income tax on their worldwide

profits. This includes both Angolan companies as well as foreign owned companies (Ferreira, 2014).

- As per Article 4 of the BITC, agencies, branches or any form of permanent establishment of non-residents in Angola would also be included as taxpayers and subject to business income tax (Ferreira, 2014).
- As per Article 3 of the BITC, a company is regarded as tax resident in Angola if it has a legal seat in Angola, its domicile is in Angola or its place of effective management is in Angola (Ferreira, 2014).

The standard business income tax rates for resident companies in Angola or permanent establishments of non-resident companies are 35%. As per Article 245 of the mining code, mining companies are subject to business income tax at a rate of 25% (Ferreira, 2014).

3.1.3.2 Mining surface fee

Companies engaged in prospecting operations are required to pay an annual surface charge to maintain their licence entitlement. The mining surface taxation is covered in articles 260 and 261 of the mining code and is known as *taxa de superfície*. The mining surface fee is calculated at flat rates in US dollars and is levied per square kilometre of the licensed area. The following table provides the rates that are applicable per year (Ferreira, 2014):

Table 3: Mining Surface Fee, 2014

<u>Mineral goods</u>	<u>Licensed period (years)</u>	<u>Flat rate per sq. km (respectively) (USD)</u>
Diamonds	1, 2, 3, 4, 5	7, 12, 20, 30, 40
Other strategic types	1, 2, 3, 4, 5	5, 10, 15, 25, 35
Precious stones/metals	1, 2, 3, 4, 5	5, 10, 15, 25, 35
Semi-precious stones	1, 2, 3, 4, 5	4, 7, 10, 15, 20

Non-precious metallic minerals	1, 2, 3, 4, 5	3, 5, 7, 12, 18
Building materials	1, 2, 3, 4, 5	2, 4, 6, 10, 15

Source: Article 261 of the mining code of Angola (Ferreira, 2014)

3.1.3.3 Mining royalty

As per Article 254 of the mining code (Ferreira, 2014), companies involved in mining activities are subject to a mining output royalty, known as *imposto sobre o valor dos recursos minerais* which is based on the market value of the mineral ore extracted or, if processing is involved, then the mineral royalty output would be based on the market value of the concentrate.

Furthermore, as per Article 258(1) of the mining code, the royalty tax is levied ad valorem on the annual output of the mineral extracted which is dependent on the type of mineral. The royalty tax is deductible as an operating cost in terms of Article 255 of the mining tax code. The following table illustrates the rates applicable to the minerals extracted (Ferreira, 2014):

Table 4: Royalty rates: 2014

Type of mineral	Rate (%)
Strategic minerals	5
Precious metals and stones	5
Semi-precious stones	4
Metallic minerals	3
Building materials and other mineral products	2

Source: Article 257 of the mining code of Angola (Ferreira, 2014)

3.1.4 Tax incentives granted to the mining industry in Angola

Mining activities in Angola are subject to the general rules as contained in the BITC which are applicable to ordinary companies. There are, however, specific rules applicable to mining companies whereby all expenditure incurred which is essential to earning gross income would be regarded as deductible business expenses (Ferreira, 2014).

Ferreira (2014) has documented in the Angola country survey that mining companies are allowed the following specific deductions in terms of Article 248 of the mining code:

- Administrative cost;
- Financial cost;
- Costs incurred during the prospecting and exploration phase which would be an ancillary and complementary activity of the mining production phase;
- Cost incurred as a result of developing technical staff;
- Customs costs;
- Provisions relating to environmental recovery;
- Safety and regulatory cost related to the mining activity;
- Taxes applicable to mineral resources;
- Mandatory contributions to the environment fund; and
- Depreciation and amortisation of fixed assets, subject to the Mining Code and Articles 30 to 35 of the BITC.

3.1.5 Brief conclusion on Angola

The surface area of Angola is quite large and greater than that of many countries. The mining industry in Angola has great potential as only 40% of the country's diamond rich territory has been explored. Mining companies in Angola are subject to business income tax, a mining surface fee as well as mining royalties. A limiting factor in Angola could be skilled workers. As a tax incentive to mine in Angola, mining companies are allowed to deduct certain business expenses which are otherwise not deductible.

3.2 NIGERIA

Nigeria is situated in West Africa and obtained its name from the Niger River which flows through the heart of the country. Nigeria is often called Africa's giant as it is twice the size of the state of California. There are few other African countries which are larger than Nigeria and they are not as rich in natural resources as Nigeria (Herskovits, 2008).

One third of Nigeria is covered with tropical forest. The Niger River and other coastal regions are dotted with creeks and swamps. The only highlands are Jos Plateau and the low mountain regions in the east (Herskovits, 2008).

Nigeria's climate is tropical in nature with the rainy season extending from May to October. The northern areas of the country are hotter than the southern areas and are also less humid (Herskovits, 2008).

The country's greatest resource is the huge reserves of high quality oil in the Niger Delta. A significant amount of tin and columbite can be found in the central part of the country whilst iron ore deposits can be found in the area where the Benue and Niger Rivers meet. Other minerals found in Nigeria include zinc, lead and coal (Herskovits, 2008).

The Nigerian economy is dominated by the oil industry which makes up 95% of the export revenues. The agricultural sector employs approximately half of the population of Nigeria (Herskovits, 2008).

After World War II, the Nigerians demanded to govern their own country. Nigeria is another war-torn African country which gained its independence in 1960. Although the country is well endowed with natural resources, it faces significant challenges in its government elections, as elections are poorly monitored. Examples of poor elections include the stuffing of ballot boxes with fake votes, vote buying and underage voting can be noted (Herskovits, 2008).

The official language of Nigeria is English; however most Nigerians speak their own ethnic languages. The currency used in Nigeria is the naira (1 Naira = 100 kobo) (Herskovits, 2008).

3.2.1 Mining in Nigeria

Nigeria is known for its natural resources of solid minerals which include but is not limited to, precious metals, stones and industrial minerals. In earlier years (approximately 1970), Nigeria used to be a major exporter of tin, columbite and coal; however these mining activities considerably decreased as the production of crude oil contributed to the increase of foreign exchange within the country. Subsequent to the return of democracy in the country in 1999, the government enacted the *Nigerian Minerals and Mining Act* in the year 2007 as a method of revitalising the Nigerian mining industry. There are over 40 different types of minerals spread across Nigeria which includes gold, barite, bentonite, limestone, coal, bitumen, iron ore, columbite, lead, barites, gemstones, granite, marble, gypsum, talc, iron ore, lead, lithium and silver (PKF, 2013b).

3.2.2 Taxation in Nigeria

A company who intends to operate within Nigeria needs to understand the taxes applicable in Nigeria to ascertain the financial impact on investment in that country. In this regard, it is imperative to understand both the mining taxes as well as the general taxes applicable in Nigeria as these taxes may have an indirect impact on the company. Furthermore, as an operational unit, a company would not only be subject to income tax but also other taxes.

Munyadi (2014a) documents the following in relation to taxation in Nigeria:

- In terms of the *Companies Income Tax Act*, companies which operate in Nigeria are subject to corporate tax. The *Companies Income Tax Act* is administered by the Federal Inland Revenue Service (FIRS).
- Non-resident companies are taxed on a source basis whilst companies resident in Nigeria or controlled in Nigeria are subject to tax on their worldwide income.
- The *Petroleum Profits Tax Act of 1958*, as amended governs the taxation of companies operating in the oil sector.

- The supply of taxable goods and services in Nigeria as well the importation of goods into Nigeria is subject to VAT.
- Social security contributions are payable in respect of a company's employees which are governed by the *Pensions Reform Act 2004*. In this regard, a prescribed percentage of an employee's salary is contributed to a retirement savings account administered by pension fund administrators (Munyadi, 2014a).

3.2.3 Taxation of the mining industry in Nigeria

The taxation laws of Nigeria comprise areas which are in general applicable to the entire business industry. There are specific laws as well which are mainly directed at the mining industry. As this study is directed at mining, it would be imperative to at least gain a general understanding of whether a particular tax would affect the mining industry or not.

3.2.3.1 Corporate income tax (CIT)

A company which operates in Nigeria would be subject to corporate income tax under the *Companies Income Tax Act*. Nigerian companies are subject to taxation on their worldwide income. Therefore any income earned by a Nigerian company, regardless of where it arose would be deemed to accrue in Nigeria (Munyadi, 2014a).

The *Companies Act* does not define residence in Nigeria; however a distinction is drawn between the residents and non-residents. A company incorporated in Nigeria under domestic law is regarded as a Nigerian company whilst a company established under the law of the foreign company is regarded as a foreign company (Munyadi, 2014a).

The profits of mining companies engaged in mining activities in Nigeria are subject to corporate income tax at a rate of 30%. The taxes are calculated subsequent to adjusting the profits of the company by any amounts not deductible for income tax purposes, taking into account capital allowances as well as the use of any unused assessed losses brought forward from prior years (KPMG, 2012b).

Companies engaged in mining activities with a turnover below 500 000 naira in the first five years of operations will be liable for tax at a rate of 20%. Furthermore companies who

wholly engage in export are subject to tax at a rate of 20% in the first five years of operation if their turnover does not exceed 1 million naira (Munyadi, 2014a).

3.2.3.2 Personal income tax

Partnerships and individuals who engage in mining activities will be liable for personal income tax in line with the *Personal Income Tax Act*. The applicable effective tax rate is approximately 19% (KPMG, 2012b).

3.2.3.3 Valued-added tax (VAT)

VAT is levied on the taxable supply of goods and services in Nigeria. Taxable persons are defined as persons who independently carry out a trade or business in any place of economic activity as a producer or supplier of services, which includes mining, or as wholesale trader (Munyadi, 2014a).

There is no specific revenue threshold that a company needs to reach in order to register for VAT purposes. Residents are required to register for VAT within six months after the commencement of a business. VAT is levied at a rate of 5% and has been effective since the introduction of VAT in 1993 (Munyadi, 2014a).

Title holders of minerals who dispose of any minerals locally are expected to charge VAT at a rate of 5%. Any minerals exported from Nigeria would be zero rated based on the provisions of the VAT Act (KPMG, 2012b).

3.2.3.4 Royalty

Companies engaged in mining activities are required to pay a royalty fee of between 3% and 5% depending on the type of mineral mined. The royalty is calculated on an ad-valorem basis. A concession may be granted to title holders to defer the payment of royalties if approval is obtained from the Federal Executive Council (KPMG, 2012b).

3.2.4 Tax incentives granted to mining companies in Nigeria

An investment company operating in Nigeria would not only be concerned about the tax implications as a result of the operations, they would also be concerned about any benefits that would be received as a result of their investment decisions. In this regard, it would be necessary to understand which incentives are granted.

In terms of the *Industrial Development Decree 1971*, profits of a pioneer company would be exempt from company tax for a period of three years from the date of commencement of the business. An extension may be granted for a further period of two years. To the extent that losses are made during the exemption period, they can be carried forward if approved by the FIRS. If both profits and losses were incurred during the exemption period, aggregate losses which exceed aggregate profits may be set off against profits that accrue after the exemption period. Mining companies are included as pioneer companies and are accordingly allowed the exemption (Munyadi, 2014a).

In order to further encourage mining operations in Nigeria the following incentives are granted to new mining operations:

- An investment allowance of 35% of the cost of the assets may also be claimed as an alternative to the initial tax-free period mentioned above. It is important to note that companies choosing this allowance would not be allowed the 15% additional investment allowance which is granted in the post-tax-free period;
- Accelerated capital allowances after the tax-free period which is made up of an annual allowance of 90% with a 10% retention for investment in plant and machinery;
- An additional 15% allowance after the tax-free period if the investment allowance of 35% was not chosen during the tax-free period;
- Tax-free dividends during the tax-free period, where
 - the investment for the business was in foreign currency;
 - the introduction of imported plant and machinery during the period was not less than 30% of the equity share capital of the company;

- Mineral product exporters are allowed to retain a portion of their foreign exchange earnings in a domiciliary account to enable them to purchase additional mining spare parts and mining consumables;
- Companies and individuals importing plant, equipment and accessories to be utilised exclusively in mining operations are exempt from customs and import duties initially. The customs and import duties would subsequently be payable upon the local disposal of the plant and machinery;
- Foreign currency would also be freely transferable through the Central Bank of Nigeria in relation to the following:
 - Settlement of foreign certified loans;
 - Remitting of foreign capital when the business is liquidated or sold;
- Expatriate personnel are allowed the transfer external currencies out of Nigeria without any additional taxes being imposed as a result of remittance quotas;
- Subject to the approval from the Federal Executive Council, a concession may be granted to defer any royalty fees payable for a number of years; and
- Reclamation, mine closure costs, environmental protection cost and mine rehabilitation cost actually incurred is tax deductible to the extent that the cost is certified by an independent qualified person (KPMG, 2012b).

3.2.5 Brief conclusion on Nigeria

Nigeria is well endowed with natural resources. Nigeria is renowned for its oil exports, and hence the mining industry is not fully exploited. In earlier years Nigeria was a major exporter of tin, columbite and coal until crude oil contributed to foreign exchange flowing into the country. In order to encourage mining operations and stimulate growth numerous incentives are granted to mining companies. Although incentives are which would encourage investment are recognised, the corruption present in government may hinder investment decisions.

3.3 SOUTH AFRICA

South Africa is located at the place where the Atlantic and Indian oceans meet at the southern tip of Africa. South Africa's neighbouring countries are Namibia, Botswana, Swaziland and Mozambique. Lesotho is a land-locked country within South Africa. The surface area of South Africa is as large as Sweden, France and Britain combined (Morna, 2008a).

South Africa elected their first black president in 1994. Following the apartheid regime, the newly elected government guided the country through a peaceful transition to democracy. Although South Africa is the most developed country in Africa, it is still struggling to overcome its legacy of apartheid (Morna, 2008a).

The landscape of South Africa is beautiful with vineyards, fruit orchards, factories and gardens situated in Cape Town. The Great Karoo is a plateau area which is used to pasture sheep. The land also rises into giant rocky steps to the Highveld which is an excellent farmland area, also rich in gold and other minerals. Further north the land changes to wooded savannah. South Africa's climate is fairly mild with a few extremes of hot or cold in the semi-desert Karoo (Morna, 2008a).

South Africa has a well-developed economy, particularly in the communication, transportation and energy sectors. It is also has a world-class stock exchange. Due to the legacy of apartheid, the country's wealth remains unequally distributed amongst the white population. Approximately 50% of the South African population lives in poverty whereby they earn less than they need to meet the minimum levels of shelter, nutrition, healthcare and other necessities (Morna, 2008a).

South Africa has 11 official languages of which the most common languages are isiZulu, isiXhosa, Afrikaans, Sotho, Sepedi, Setswana and English. The currency used in South Africa is the rand (1 rand = 100 cents) (Morna, 2008a).

3.3.1 Mining in South Africa

The history of mining in South Africa dates back to before the electronic age which enabled advanced technology such as mobile phones and internet. Mining in South Africa began as early as 1867 when the first diamonds were found in Kimberly in the Northern Cape Province. Gold was subsequently discovered in areas such as Pilgrim's Rest and Barberton which is in the Mpumalanga province. An even bigger discovery was made during 1886 in the rocky hills of the Witwatersrand in Gauteng where rich gold deposits were found. It is estimated that 50% of the gold found in the world comes from South Africa (Mining Intelligence Database, 2014a).

Other precious metals and minerals found in South Africa include platinum, chrome, manganese, palladium, vanadium, zirconium, manganese, ilmenite, rutile and coal. South Africa is currently the fifth largest exporter of coal in the world (Mbendi Information Services, 2014).

The South African mining industry currently:

- Contributes to the South African GDP an average of 20% of which 50% is contributed directly;
- Generates annual income which exceeds R330 billion; and
- Employs more than one million people and is consequently one of the country's largest employers (Mining Intelligence database, 2014).

3.3.2 Taxation in South Africa

A company which intends operating within South Africa needs to understand the taxes applicable to ascertain whether there would be any financial impact as a result of investment in that country. In this regard, it is imperative to understand both the mining taxes applicable as well as the general taxes applicable in South Africa as these taxes may have an impact on the company. Furthermore, as an operational unit, a company would be subject not only to income tax but also other taxes.

Companies that are resident in South Africa would be taxed on their worldwide income whilst non-resident companies would be subject to tax on income which is South African-sourced based. South Africa's tax legislation is governed by the *Income Tax Act 58 of*

1962 (hereafter referred to as the *Income tax Act*) and administered by the South African revenue services.

A company would be resident in South Africa if it was established, incorporated or formed in South Africa or alternatively if it has its place of effective management in South Africa (Hattingh, 2014).

Resident or non-resident companies operating in South Africa would be liable to pay income tax at a rate of 28% which would be applied against the company's taxable income. Long-term insurance businesses, gold-mining operations, the mining of natural oil, small business corporations, personal service providers, very small business corporations and personal service providers are subject to different tax provisions (Hattingh, 2014).

Gold mining operations are subject to a formula which is applied to taxable income from the gold-mining operations which would consequently reduce or increase the normal tax rate. The trustee principle is applied to insurance companies and accordingly a rate of 30% is applied to the taxable income derived from business conducted with individual policyholders and a rate of 28% is applied to the taxable income derived from business conducted with company policyholders. The untaxed policyholders' fund, which is mainly annuities and pensions, is exempt from income tax. Taxable income not attributable to the policyholders' funds is taxed at the rate of 28% (Hattingh, 2014).

Capital gains tax is levied at 28% (applicable corporate tax rate) by including 66.6% of the net capital gain into taxable income of a company. Capital gains tax is not a separate tax, but forms part of normal tax payable (Hattingh, 2014).

Other taxes levied in South Africa include indirect taxes such as VAT and customs and excise duties as well as capital transfer taxes which include property transfer duty, securities transfer tax and donations tax (Hattingh, 2014).

Companies operating in South Africa as employers are also required to withhold and pay over employees' tax to the South African Revenue Services which include social

contributions such as contributions to the Unemployment Insurance Fund (UIF) (Hattingh, 2014).

3.3.3 Taxation of the mining industry in South Africa

Although the mining industry may have specific tax implications or benefits with reference to tax incentives, a mining company generally would still be subject to the normal taxes as a result of their operations.

The taxation of mining operations in South Africa is determined in accordance with the normal provisions of the *Income Tax Act*; however, the taxable income derived from mining operations must be determined in accordance with special provisions as contained in sections 1, 15, 22, 36, 37 and 37A of the *Income Tax Act*. The special provisions cover the following areas:

- Recoupments of capital expenditure not deductible under section 15(a) of the *Income Tax Act* – Section 1;
- The tax treatment of trading stock in regard to what constitutes mining stock and the value to be utilised in relation to mining operations – Section 22;
- The deductibility of contributions to a qualifying institution carrying out environment rehabilitation – Section 37;
- The deductibility of expenditure incurred on prospecting operations – Section 15(b);
- Mining property disposal – Section 37;
- Deductibility of capital expenditure incurred in mining operations – Section 37.

Special rates of taxation have been laid down for companies who mine for gold, whilst companies mining for natural oil are subject to additional taxes. Companies mining for other minerals would be subject to the same normal tax rates (i.e. 28% which are applicable to ordinary companies) (LexisNexis, 2014).

In terms of section 38(2) (g) of the *Income Tax Act*, companies whose sole or principal business in South is to mine for gold or diamonds are recognised as public companies. In

this regard, it would be exempt from donations tax under section 56(1) (n) of the *Income Tax Act* (LexisNexis, 2014).

3.3.3.1 *Income tax in respect of mining companies in South Africa*

Companies engaged in diamond-mining operations as well as other mining operations such as coal, palladium and platinum mining are taxed at a rate of 28% on their taxable income.

With reference to companies operating in the gold industry, the following formula should be applied to determine the tax rate applicable:

$$y = 34 - (170 \div x) \%$$

It should be noted that x in the above formula represents the ratio, expressed as a percentage, that the taxable income from gold-mining (after the excluding excess recoupment and prior to setting off any assessed loss or deduction that is not attributable to the mining for gold from the mine concerned) bears to the income obtained from the gold mining operations (LexisNexis, 2014).

3.3.3.2 *Royalty tax in South Africa*

The Department of Minerals and Energy promulgated the *Mineral and Petroleum Resources Development Act* (MPRDA), to bring South Africa in line with international norms. In terms of the MPRDA the resources are regarded as belonging to the nation and the state acts as custodian (SARS, 2014).

With reference to section 3(2)(b) of the MPRDA, levies and fees payable to the state in respect of these resources may be prescribed by the Minister of Minerals and Energy in consultation with the Minister of Finance (SARS, 2014).

The amounts payable to state are in the form of royalties and are determined in accordance with section 4 of the *Mineral and Petroleum Resources Royalty Act 28 of 2008*

(MPRRA). The rates applicable to the mineral and petroleum resources are calculated in accordance with the formula.

A differentiation is made between refined and unrefined mineral resources and the rates applicable are as follows:

- A minimum of 0.5% and a maximum of 5% in respect of refined mineral resources; and
- A minimum of 0.5% to a maximum of 7% in respect of unrefined mineral resources (SARS, 2014).

3.3.4 Tax incentives granted to the mining industry in South Africa

An investment company operating in South Africa would not only be concerned about the tax implications as a result of the operations, they would also be concerned about any benefits that would be received as a result of their investment decisions. In this regard, it would be necessary to understand what incentives are granted.

- In terms of Section 36 of the *Income Tax Act*, mining companies are allowed to deduct 100% of any capital expenditure incurred in respect of plant and machinery purchased to be used for mining operations to the extent that the mining entity has sufficient taxable income;
- In terms of Section 15(b) of the *Income Tax Act*, expenditure incurred in respect of exploration and prospecting expenditure would also be deductible once the mining entity commences with mining operations and earns mining income;
- Mining companies operating in the diamond and gold mining industry are regarded as public companies. Accordingly, such a company would be exempt from donations tax in terms of Section 56(1)(n);
- Contributions to a mining rehabilitation fund in terms of section 37A of the *Income Tax Act* are regarded as deductible;
- Mining companies can carry forward tax losses for an indefinite period which is the same as other industries; and
- There are no restrictions on the repatriation of profits (LexisNexis, 2014).

3.3.4.1 *Ringfencing*

A special provision is contained in Section 36(7F) of the *Income Tax Act*, whereby the deduction of capital expenditure incurred in respect of a particular mine is restricted to the taxable income of that mine and cannot be offset against the taxable income of other mines owned by that company (LexisNexis, 2014).

Provision 36(7G)(a) of the *Income Tax Act* does however allow for a transfer of up to 25 % of the capital expenditure incurred from non-profitable mines to profitable mines to the extent approval is obtained from the Commissioner (LexisNexis, 2014).

3.3.5 **Brief conclusion on South Africa**

South Africa has a well-developed economy as well as a world-class stock exchange. Furthermore, mining in South Africa dates back to as early as 1867 and it is estimated that 50% of the world's gold comes from South Africa. The normal provisions of the *Income Tax Act* are applicable to mining companies operating in South Africa; however there are lucrative incentives granted from a tax perspective. The economy in South Africa is fairly stable and the country could potentially be a suitable investment opportunity.

3.4 ZAMBIA

Zambia is located in south-central Africa. It is a landlocked country which is bordered by eight other nations. Zambia was formerly known as Northern Rhodesia which was a British colony. Zambia won its independence in 1964 from Britain. The country's name Zambia originates from the Zambezi River which flows through the south-western part of the country (Morna, 2008b).

Zambia's population consists of more than 10 million people which belong to 70 different ethnic groups. Zambia's population consists of Bantu people, and there is a small population of Europeans in the country who are mainly of British origin. There are also Asians who are mainly of Indian ancestry (Morna, 2008b).

The official language of Zambia is English although there are more than 70 different African languages which are spoken in Zambia (Morna, 2008b).

The surface area of Zambia consists of a high plateau which averages 3000 to 5000 feet above sea level. The Zambezi River flows due south through Zambia near the western border. One of Zambia's main attractions is the Victoria Falls which is named after Queen Victoria of Great Britain. Lake Kariba is on the Zimbabwe border which is one of the largest artificial lakes in the world. The Kariba dam is linked to Lake Kariba, which is a source of electric power for the Zambian mining industry (Morna, 2008b).

Zambia's climate is moderate as a result of its high elevation. The three seasons found in Zambia include the following: wet and warm, cool and dry, hot and dry. The temperatures range from 16°C in the cool season to 32 °C in the warm season (Morna, 2008b).

Zambia is rich in natural resources; yet most of the people are very poor. In this regard, most Zambian people are unemployed and many of them earn or consume less than what is required to achieve adequate levels of nutrition, health care and shelter. The average lifespan of people living in Zambia is 35 years compared to the average lifespan of people living in rich countries which is 75 years (Morna, 2008b).

Most Zambian people are farmers; hence their main food source is crops in the form of corn, sorghum and cassava. Items such as tobacco, sugarcane, cotton, peanuts and corn are grown for commercial reasons. Copper is Zambia's main source of export income. In this regard, when copper prices fall, the Zambian economy suffers significantly. Other items exported from Zambia are cobalt, tobacco and electricity (Morna, 2008b).

Zambia is one of the few African countries which have elected a president whose popularity is due to his personal integrity and his fight against corruption in government (Morna, 2008b).

The currency used in Zambia is the kwacha (1 kwacha = 100 ngwee). It should be noted that the Zambian kwacha was rebased with effect from 1 January 2013, by dividing the

currency by one thousand (1,000), effectively dropping the last three zero's (Munyadi, 2014b).

3.4.1 Mining in Zambia

Zambia is internationally recognized as a major producer of copper and cobalt. Zambia is ranked as the world's seventh largest producer of copper, generating 3.3% of the western world's production, and world's second largest producer of cobalt (19.7%) (Zambianmining.com, 2014a).

It also has significant quantities of selenium (+-16.7t) and silver (+- 8t) together with minor gold and platinum group elements which are produced as important by-products of the copper mining and processing (Zambianmining.com, 2014a).

Zambia is predominantly a copper mining country, and is currently the seventh largest copper producer in the world. The copper production of Zambia reached its peak in the 1970s with an estimated 700 000 tons of copper exported during that year. The fall of the copper prices resulted in the annual production decreasing to 200 000 tons per year in the late 1990s. Subsequent to the privatisation of the mining sector in 2000, the Zambian mining industry started recovering sharply (Zambia Development Agency, 2013).

3.4.2 Taxation in Zambia

A company that intends operating within Zambia needs to understand the financial impact of the relevant tax regulations. In this regard, it is imperative to understand both the mining taxes applicable as well as the general taxes as they may have an indirect impact on the company. Furthermore, as an operational unit, a company would not only be subject to income tax but other taxes as well.

Companies operating in Zambia are subject to corporate income tax on their business profits. In this regard, tax is charged on income received by any person in a specific year whose source is in Zambia or the source is deemed to be that of Zambia. Zambian tax residents who earn interest and dividends are taxed on a worldwide income basis. The definition of a person includes a body of persons, a corporation sole, local authority,

corporate or otherwise, a bankrupt estate, deceased estate as well as a trust. A partnership is however excluded from the definition of a person (Munyadi, 2014b).

Munyadi (2014b) documented that income derived from the following entities is exempt from taxation in Zambia:

- mining societies, agricultural societies, commercial societies and other similar societies which do not operate for commercial gain;
- societies and associations as well as sports clubs which are operated for social welfare, pleasure, civil improvement, recreation or like purposes. It is important to note that the income should also not accrue to any particular member or shareholder;
- approved medical aid societies, approved share option schemes and approved funds; and
- The Commonwealth Development Corporation.

Companies operating in Zambia are regarded as tax resident if the company was incorporated or formed under the laws of Zambia. Furthermore, to the extent in which a company's control and central management or corporate affairs are exercised in Zambia for that tax year, the company would be deemed to be tax resident in Zambia (Munyadi, 2014b).

The administration of the tax laws in Zambia is contained in the *Income Tax Act* and is governed by the Commissioner General. The standard corporate income tax rate is currently 35%; however there are other tax rates applicable to other industries which can be summarised as follows:

Table 5: Income tax rates applicable to businesses operating in Zambia

Income derived from	Rate (%)
Business – general	35
Mining operations [*]	30
Public Benefit Organisations [**]	15

Farming and agro-processing	10
Non-traditional exports [***]	15
Chemical manufacturing of fertilizers	15
Electronic communication	35 and 40 [****]

Source: IFBD, Corporate Tax Survey, 2014 (Munyadi, 2014b)

- * A rate of 30% would only be applicable if the income from the mining operations does not exceed 8% of gross sales.
- ** These organisations should be established with a sole purpose of being a charitable organisation with charitable courses.
- *** Non-traditional products are regard as any product manufactured or produced in Zambia. These items exclude electricity, minerals, cotton lint and other services.
- **** To the extent income in this industry exceeds ZMW 250 000, the corporate income tax rate increases to 40%.

A company operating in Zambia is also subject to value-added tax (VAT) at a rate of 16% on the taxable supply of goods and services. The *VAT Act of 1995* governs these provisions.

Additional taxes charged in Zambia include property transfer tax which is charged as a result of the change in ownership of immovable property. No capital gains taxes are levied in Zambia.

Employers are legally bound to make social security contributions to the National Pension Scheme Authority (NAPSA) for the benefit of their employees.

3.4.3 Taxation of the mining industry in Zambia

The tax treatment of Zambian mining activities differs from that of other economic activities. The mining operations are subject to their own tax treatment which is presented at each annual budget speech by the Minister of Finance. Mining companies are currently subject to a general tax rate of 30%. Royalty tax is split between three main categories namely base metals, precious metals and gemstones. Capital expenditure, which includes

mining equipment and pre-production expenses as well as environmental restoration costs, is 100% deductible from the profit before tax in determining the taxable income of the mine (Munyadi, 2014b).

3.4.3.1 Corporate tax

Mining companies in Zambia are taxed at a rate of 30% if the income from the mining operations does not exceed 8% of gross sales. In scenarios where the income of mining operations exceeds 8% of gross sales the applicable tax rate would be as follows (where y is the applicable tax rate):

$$y = 30\% + [15\% - (ab/c)]$$

$$a = 15\%$$

$$b = 8\%, \text{ and}$$

$$c = \text{the percentage ratio of the assessable income to gross sales.}$$

However the general tax rate for companies listed on the Lusaka Stock Exchange distinguishes between first tier mining and second tier mining. In summary, first tier mining includes mining of gemstones, precious metals and base metals whilst second tier mining includes quarrying (KPMG, 2014).

Mining Companies in Zambia exporting copper and cobalt are subject to taxation at a rate of 35% of taxable income in comparison to the exportation of non-traditional and other mineral commodities which is taxed at a rate of 15% (Zambiamining.com, 2014).

3.4.3.2 Mineral royalty tax

A mineral royalty tax is levied under the *Mines and Mineral Development Act 2008* and is collected by the Zambian revenue authority.

Holders of larger-scale gemstone licences, large scale mining licences, small scale gemstone licences and small scale mining licenses or artisan mining rights pay mineral royalty tax as follows:

- 6% of the gross value of industrial minerals;
- 6% of the gross value of gemstones;
- 6% of the gross value of energy minerals;
- 6% of the norm value of precious metals; and
- 6% of the norm value of base metals.

Energy minerals are defined as naturally occurring substances in the earth's crust which are used as a source of energy. These include uranium, coal and other minerals. Petroleum is however specifically excluded.

Industrial minerals are rocks and minerals other than gemstones which are used in their natural state or after chemical or physical transformation. These include, but are not limited to, barites, dolomite, feldspar, fluorspar, graphite, gypsum and ironstone.

Minerals are defined as any substance which occurs naturally on the earth or under water, which was formed as a result of a geological process.

The mineral royalty as noted above is deductible for income tax purposes (Munyadi, 2014b).

3.4.3.3 *Mining rights and interest in the mining right*

With effect from 1 January 2013, the transfer of mining rights under *the Mines and Mineral Development Act* is included in properties transfer tax. In this regard, a rate of 10% is applicable to the transfer of mining rights. A tax clearance certificate would be required prior to the transfer of a mining right (Munyadi, 2014b).

3.4.5 Tax incentives granted to the mining industry in Zambia

An investment company operating in Zambia would not only be concerned about the tax implications as a result of the operations, they would also be concerned about any benefits that would be received as a result of their investment decisions. In this regard, it would be necessary to understand what incentives are granted to these companies.

- Companies who carry out mining operations or mineral prospecting operations would be entitled to claim a capital allowance in respect of capital expenditure incurred on buildings, equipment, interest on loans, works, railway lines premiums and royalties relating to buildings used. The capital allowance granted in respect of prospecting expenditure is 25%. Prior to 1 January 2013, the allowance rate was 100%.
- Capital expenditure incurred in by a mining company which conducts mining operations on a regular basis is deductible in full. The requirement is that a mine should be a producing mine and regular income should be earned. It is important to note that the capital expenditure incurred on mining activities which are not contiguous and are regarded as separate and distinct should be calculated separately for each respective mine. The requirement is not applicable to existing mines that operations commenced prior to 1 April 2008.
- Companies who are engaged in mining operations are allowed to carry forward their losses for up to 10 years.
- Furthermore, companies engaged in mining operations are allowed to index their trading losses in US dollars in order to maintain the real value of the losses.
- Dividends distributed by companies engaged in mining operations are exempt from withholding tax.
- An allowance of 20% is granted on non-commercial vehicles, 5% on industrial buildings and 25% on plant machinery and commercial vehicles.
- Expenditure incurred on irregular production is deductible close to the end of the mine's useful life (Zambianmining.com, 2014b).

3.4.4.1 Relief from other surcharges

Mining right holders are exempt from excise, customs duties as well as VAT as a result of any machinery or equipment imported for the purposes mining or exploration activities in Zambia (Zambianmining.com, 2014b).

3.4.5 Brief conclusion on Zambia

Zambia is a country which is rich in natural resources with copper and cobalt being significant drivers of the economy. Zambia is one of the few African countries which elected a president who is dedicated to a corruption-free society. The tax treatment of mining companies in Zambia differs from the tax treatment of other industries. Incentives are granted to facilitate investment in mining which includes the carry forward of losses and relief of surcharges. Zambia could potentially be a suitable investment opportunity as corruption is low and there is a significant amount of mining resources available for mining purposes.

3.5 CHAPTER CONCLUSION

In the section above, the countries Angola, Nigeria, South Africa and Zambia were discussed in significant detail. A brief synopsis was provided on the country as a whole introducing the country and thereafter taxes applicable to that country in general were discussed. Taxes specific to the mining industry in that country was also commented upon and finally the tax incentives granted in that particular country was addressed. An important question remains as to which country is the best alternative as an investment proposition. A comprehensive approach would therefore be to consider the income tax rates and other specific taxes applicable to the mining industry and finally to consider the incentives granted to mining businesses which operate in the chosen countries before considering which the best alternative is.

CHAPTER 4

A BRIEF COMPARISON OF THE FOUR CHOSEN COUNTRIES NAMELY ANGOLA, NIGERIA, SOUTH AFRICA AND ZAMBIA

This chapter will focus on the similarities and differences between the four countries chosen.

4.1 WHAT MINERALS ARE MINED IN THE FOUR CHOSEN AFRICAN COUNTRIES?

Table 6: Minerals mined

Angola	Nigeria	South Africa	Zambia
Angola is the third largest diamond producer in Africa. Other minerals mined in Angola include gold, copper, phosphate, granite, marble, lead, zinc, tin, gypsum and talc.	Nigeria used to be a major exporter of tin, columbite and coal. There are 40 other types of minerals spread across Nigeria which include gold, bentonite, limestone, coal, bitumen, iron ore, marble, lithium and silver.	South Africa is mainly known for the gold deposits with an estimated 50% of the world's gold located in South Africa. Other precious metals found in South Africa, include platinum, chrome, manganese, palladium, zirconium and coal.	Zambia is a predominantly copper mining country and is currently the seventh largest copper producer in the world. It also produces cobalt, selenium and silver.

From the comparison in Table 6 it can be noted that all of the countries have a particular primarily mined mineral resource for which that country is well-known. Furthermore, all the countries have other minerals which can be mined. In this regard, conducting mining activities in each of the abovementioned countries would be viable as there is a significant amount of minerals found in each country.

4.2 POLITICAL STABILITY AND WORKFORCE IN THE COUNTRY

Political stability is important from an investment decision perspective as an investor would not want to enter into a market with excessive risk and accordingly lose all investment capital. Furthermore, an investor would also be concerned about the potential workforce within the country. The political stability and workforce is therefore compared in Table 7.

Table 7: Political stability

Angola	Nigeria	South Africa	Zambia
Angola is a war-torn country. Subsequent to its independence from British rule, the government spent large amounts of money on civil war as opposed to reconstruction. The population of Angola is also relatively small when compared to the surface area of the country. Furthermore, many European skilled workers left the country when Angola gained its independence.	Nigeria is also a war-torn country which gained its independence in 1960. Government elections are poorly monitored and fake ballots, vote buying and underage voting can be noted. This is an indication of significant corruption within the country. The majority of the population of Nigeria works in the agricultural sector.	South Africans democratically elected their first black president in 1994. The government guided the country through a peaceful transition to democracy subsequent to the apartheid era. South Africa has a well-developed economy and a world-class stock exchange. The population in South Africa is very poor with approximately 50% of the population unable to cover their basic needs with the salary they earn.	Zambia won its independence from Britain in 1964. Zambia elected a president due to his personal integrity and fight against corruption in government. The population of Zambia is very poor as most of the Zambian people are unemployed. The average lifespan of the Zambian population is 35 years.

Table 7 shows that the four countries at some stage in earlier years struggled to gain their independence. It also shows that corruption may be prevalent in some of the countries. From the four chosen countries, South Africa is the most economically stable and developed. Angola and Nigeria however have some political instability as corruption is prevalent. Zambia is the only country, out of the four African countries, which has elected a president whose popularity is due to his personal integrity and his fight against corruption in government.

Table 7 indicates that there would be a workforce issue in all of the countries due to the population being mostly unskilled labourers. The poverty of and low nutritional levels of the workforce could also affect productivity. However, if the investment decision was based solely on the political stability of the country, South Africa and Zambia would be the most viable options.

4.3 TAXES APPLICABLE TO MINING COMPANIES IN THE CHOSEN COUNTRIES

Mining companies are usually subject to a specific regime whereby different taxes would be applicable to mining companies in addition to income tax, import and export duties, VAT / consumption / sales tax. The summary in Table 8 therefore only focuses on the additional taxes applicable and specific taxes under special rules.

Table 8: Additional taxes

Angola	Nigeria	South Africa	Zambia
Mining companies in Angola are subject to a specific mining tax regime and the following taxes are applicable to mining companies: <ul style="list-style-type: none"> • Business income tax under special rules; • Production royalty; • Surface charges. 	Mining companies in Nigeria are also subject to a specific mining tax regime and the following taxes are applicable to mining companies: <ul style="list-style-type: none"> • Corporate income tax under special rules; • Royalty. 	Mining companies in South Africa are subject to the normal provisions of the <i>Income Tax Act</i> ; however special provisions would be applicable. The following taxes are applicable to mining companies: <ul style="list-style-type: none"> • Income tax under special rules; • Royalty tax. 	Mining companies in Zambia are also subject to different forms of tax treatment which are presented in an annual budget. The following taxes are currently applicable to Zambia: <ul style="list-style-type: none"> • Corporate tax under special rules; • Mineral royalty tax

Table 8 provides an indication of taxes applicable in each of the chosen countries. A similarity can be noted that income tax and royalties are charged on mining companies in all of the countries. Furthermore, income tax is subject to special rules which indicate that certain incentives would be granted. In this regard, a comparison of the corporate taxation rates, royalty taxes applicable as well as the incentives granted will follow.

4.3.1 Comparison of income tax rates

In Table 9 the income tax rates of mining companies operating the four chosen countries are compared

Table 9: Income Tax rates

Angola	Nigeria	South Africa	Zambia
25%	30%	28%	35% Reduced to 30% if gross sales of mining operations do not exceed 8%.

The most beneficial tax rate is in Angola and then South Africa.

4.3.2 Comparison of royalty taxes applicable

A royalty is usually levied based on the mineral resource extracted from the ground as well as the quality and quantity of the mineral resource extracted.

Table 10 provides a comparison of the royalty tax rates applicable to the four chosen countries.

Table 10: Royalty tax rates

Angola	Nigeria	South Africa	Zambia
Royalty tax between 2% and 5% which is dependent on the mineral extracted.	Royalty tax between 3% and 5% which is dependent on the mineral extracted.	Royalty tax between 0.5% and 7% which is dependent on the mineral extracted and whether the mineral is refined or unrefined.	A mineral royalty tax is payable which is based on the scale of the mining operations and the mineral mined at a rate of 6%.

The royalty tax rate is primarily based on the mineral mined. South Africa could have the lowest rate which is 0.5% as well as the highest royalty tax rate which is 7%. Therefore depending on the type of mineral mined South Africa may be a suitable investment as a lower royalty tax may be charged.

4.3.3 Additional mining taxes

Table 11: Additional taxes

Angola	Nigeria	South Africa	Zambia
Mining surface fee of between \$2 and \$40 which is dependent on the mining surface area	None	None	Property transfer tax at a rate of 10% is applicable to the transfer of mining rights.

According to Table 11, South Africa and Nigeria do not impose any additional mining taxes apart from corporate tax under special rules and royalty taxation. Angola has an additional tax which is applicable to the mining surface area which could be significant whilst Zambia has a property transfer tax which is based on the mining rights to be transferred. Zambia may have introduced this type of tax to restrict the transfer of mining rights from one country to another.

4.3.4 Comparison of tax incentives available

The four chosen countries have similar taxes applicable to the mining industry; however there is a significant difference in the incentives granted which could impact an investment decision. A comparison of the incentives granted is therefore noted in Table 12.

Table 12: Tax incentives

Angola	Nigeria	South Africa	Zambia
<p>Mining activities in Angola are subject to general rules; however the following expenses are deductible from taxable income:</p> <ul style="list-style-type: none"> ● Administrative cost; ● Financial cost; ● Costs incurred during the prospecting and exploration phase which would be an ancillary and complementary activity of the mining production phase; ● Cost incurred as a result of developing technical staff; ● Customs costs; ● Provisions relating to environmental recovery; ● Safety and regulatory cost related to the mining activity; ● Taxes applicable to mineral resources; ● Mandatory contributions to the environment fund; and ● Special depreciation and amortisation rates on fixed assets which are subject to the Mining Code. 	<p>In order to encourage mining operations in Nigeria, the following incentives are available:</p> <ul style="list-style-type: none"> ● Initial tax free period of 3 years from the date of commencement and an extension for a further 2 years; ● An investment allowance of 35% of the cost of the assets may also be claimed if the tax-free period is not chosen; ● Accelerated capital allowances after the tax-free period which are made up of an annual allowance of 90% with a 10% retention for investment in plant and machinery; ● An additional 15% allowance after the tax-free period if the investment allowance of 35% was not chosen during the tax free period; ● Tax-free dividends during the tax-free period, where the investment for the business was in foreign currency; ● Mineral product exporters are allowed to retain a portion of their foreign exchange earnings in a 	<p>Mining companies in South Africa are subject to the normal income tax rules; however the following incentives are granted:</p> <ul style="list-style-type: none"> ● Mining companies are allowed to deduct 100% of any capital expenditure incurred in respect of plant and machinery purchased to be used for mining operations; ● Expenditure incurred in respect of exploration and prospecting is also deductible once the mining entity commences with mining operations and earns mining income; ● Mining companies operating in the diamond and gold mining industry are regarded as public companies. Such companies would be exempt from donations tax in terms of Section 56(1)(n); ● Contributions to mining rehabilitation are regarded as deductible; ● Mining companies can carry forward tax losses for an indefinite period 	<p>Mining companies in Zambia are subject to the general tax rules; however the following incentives are granted:</p> <ul style="list-style-type: none"> ● Mining companies engaged in mining or prospecting operations are allowed to deduct 25% of any capital expenditure incurred in respect of plant and machinery purchased to be used for mining operations; ● Capital expenditure incurred in by a mining company which conducts mining operations on a regular basis is deductible in full. ● Companies who are engaged in mining operations are allowed to carry forward their losses for up to 10 years. ● Companies engaged in mining operations are allowed to index their trading losses in US dollars in order to maintain the real value of the losses. ● Dividends distributed by companies engaged in mining operations are exempt from withholding

	<p>domiciliary account;</p> <ul style="list-style-type: none"> • Companies importing plant, equipment and accessories to be utilised exclusively in mining operations are exempt from customs and import duties initially; • Foreign currency would be freely transferable through the Central Bank of Nigeria in relation to the following: <ul style="list-style-type: none"> • Settlement of foreign certified loans; • Remitting of foreign capital to the extent the business is liquidated or sold; • Expatriate personnel are allowed to transfer external currencies out of Nigeria without any additional taxes imposed as a result of remittance quotas; • Subject to the approval from the Federal Executive Council, a concession may be granted to defer any royalty fees payable for a number of years; and • Reclamation, mine closure costs, environmental protection cost and mine rehabilitation cost actually incurred is tax deductible to the extent the cost is certified by an independent qualified person. 	<p>which is the same as for other industries; and</p> <ul style="list-style-type: none"> • There are no restrictions on the repatriation of profits. 	<p>tax.</p> <ul style="list-style-type: none"> • An allowance of 20% is granted on non-commercial vehicles, 5% on industrial buildings and 25% on plant machinery and commercial vehicles. • Expenditure incurred on irregular production is deductible close to the end of the mine's useful life; • Mining right holders are exempt from excise, customs duties as well as VAT as a result of any machinery or equipment imported for the purposes mining or exploration activities in Zambia.
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From Table 12 it can be deduced that Nigeria has the most favourable incentives, with Zambia following thereafter. Angola has the least favourable incentives with South Africa having a fair number of incentives granted to businesses within the mining sector.

4.4 CHAPTER CONCLUSION

Prudent investors would not base their investment decision on the tax incentives available in a particular country, but would consider various other factors that were discussed. As per the tax incentives noted above, Nigeria would seem to be the most suitable investment opportunity; however due to the corruption, this may deter an investor. Zambia may seem to be the next best opportunity from an investment perspective, but there is a limitation to the minerals that are available for mining. The most informed decision would be to elect South Africa as an investment alternative due to the availability of minerals for mining. Furthermore, there are numerous tax incentives available which are beneficial to a business. In addition the economy of South Africa is the most stable.

CHAPTER 5

CONCLUSION OF THE STUDY

This chapter concludes the study and explains how answers to the research problem and objectives were achieved.

5.1 ADDRESSING THE RESEARCH OBJECTIVES

The first research objective was to investigate the significance of mining in Africa as well as to identify what minerals are mined in Angola, Nigeria, South Africa and Zambia. To achieve this purpose literature to investigate the significance of mining in Africa was reviewed. This area was fully discussed in Chapter 2 of this study. This provided the researcher with background and knowledge about the significance of mining in. The research performed also summarised the types of mining taxes as well as tax incentives which would be available within the African continent. Subsequent to determining the significance of mining in Africa as a whole, the research focused on each of the four chosen African countries. A literature review was performed on country surveys that were available as well various other kinds of documentation reflecting the history of mining in those countries. The comparative study in Chapter 4 as well as the detailed literature review in Chapter 3 reflected that mining was significant in each of the four chosen countries. The literature review also provided an indication of which mineral was mainly mined in each of the four countries as well as what other minerals were also mined there.

The second research objective was to investigate if the mining taxes applicable would vary according to the mineral mined. During the study, a literature review was performed on detailed country tax surveys prepared by tax practitioners who operate and have sound knowledge of the tax affairs of the four chosen countries. The literature review revealed that all mining companies would be subject to corporate income tax irrespective of the mineral mined; however royalty taxes were based on the mineral extracted from the soil and the tax rates varied according to the mineral mined.

The third research objective was to critically analyse the mining tax laws applicable in the four chosen African countries and to conclude on whether the taxation laws would encourage or discourage investment. This objective was achieved during the detailed literature review of the country tax surveys available. It was concluded that although normal taxes would be applicable to mining companies operating in African countries, specific tax incentives would also be granted to mining companies operating in those countries. It was concluded by the researcher during the study that some countries grant more favourable incentives to encourage mining investment. In this regard there was no indication that investment in the mining industry would be discouraged.

5.2 FINAL CONCLUSION

The researcher was able to answer the main research question which was: “Are special incentives granted to mining companies in Angola, South Africa, Nigeria and Zambia and would these incentives encourage investment from a taxation perspective?”

The literature reviewed in relation to each of the countries reflected that incentives are granted to encourage mining in those particular countries. During the review it was identified that Nigeria and Zambia had the most favourable incentives to encourage investment in the mining industry; however the political stability and other taxes applicable as well the mineral mined would have an impact on whether an investor would invest in that particular country. Nigeria has a significant amount of mineral resources besides the main mineral mined which is diamonds. Furthermore, there are numerous tax benefits granted to encourage investment. On the other hand the country is politically unstable due to unfair elections as a result of underage voting, vote rigging and corruption in government. Zambia is politically stable as it is one of the few African countries who have elected a president because of his integrity and fight against corruption in government. Although Zambia encourages mining, the main mineral to be mined in Zambia is copper. The conclusion is that the most balanced approach for investors seeking stability within a country as well as incentives to encourage mining would be an investment in South Africa. South Africa is one of the few African countries that are economically stable. Furthermore, South Africa has a world-class stock exchange as identified during the review. Numerous incentives are available to mining companies operating in South Africa.

5.3 RECOMMENDATIONS

A case study should be prepared and adapted for a start-up mining company that would operate in each of the four countries for a period of five years. This would provide a researcher or investor with insight on the practicality of choosing a particular country as an investment opportunity. Furthermore, the researcher suggests that a particular mineral be chosen to determine the royalty tax implications as well. The area of the mine should also be considered as a surface fee was additionally levied on mining companies operating in Angola.

5.4 FUTURE RESEARCH

The researcher has identified possible future topics linked to this study:

- Additional research can be performed on other minerals that could be found in Zambia;
- A study could be conducted to determine whether South Africa could potentially adopt some of the tax incentives available to mining companies operating in Nigeria and Zambia;
- A detailed study could be performed on the impact that nationalisation would have on the mining industry. Countries that previously adopted this vision could accordingly be selected.

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