

THE INFLUENCE OF TAXATION ON MINING ACTIVITIES IN DEVELOPING COUNTRIES – AN AFRICAN PERSPECTIVE

Mini dissertation by

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submitted in partial fulfilment of the requirements for the degree MAGISTER COMMERCII
(TAXATION)

in the

FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

at the

UNIVERSITY OF PRETORIA



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September 2009

ACKNOWLEDGEMENTS

I would like to dedicate this dissertation to my family, friends and colleagues. First of all I thank my parents for affording me the opportunity to be the best I could be. Thanks to my husband, Ian, and son, Hancko, for their support and understanding. My fellow students Karen Koch and Wim Fourie were always available at the end of the telephone line with words of encouragement. I thank you both. I also thank my colleagues Marcel Malengo in the Democratic Republic of Congo and Lex Geraghty, as well as Andiswa Silinga, for their valuable input.

SUMMARY

THE INFLUENCE OF TAXATION ON MINING ACTIVITIES IN DEVELOPING COUNTRIES – AN AFRICAN PERSPECTIVE

by

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The economy in Africa is dependent largely on the mining industry and related foreign investment in Africa. The purpose of this study is to determine whether a balance has been achieved between the distribution of wealth to the government of a country and the company investing in that country by means of analysing the tax regime of the mining company. The current tax regimes of mining companies in South Africa as a primary field of study, and Zambia and the Democratic Republic of Congo as secondary fields, were evaluated in order to determine whether this balance has been achieved.

A literature review was conducted to identify the components of tax on mines, factors influencing investor decision-making and the impact of tax revenues on the economy of African countries.

Evaluation research was selected as the macro-level research design and secondary data in the form of tax legislation and related publications were studied and analysed in order to critically evaluate the tax regimes of South Africa, Zambia and the Democratic Republic of Congo.

The World Bank, in conjunction with PricewaterhouseCoopers, prepares an annual report on the ease of paying taxes. This study analyses the number of tax payments per year, the hours spent in complying with a tax regime and the total tax rate as a percentage of taxable profit for 181 economies across the world. The data collected for the selected

countries in this report were compared. The results painted a clear picture as to how these countries compared with each other and the rest of the world. The analysis of hours spent and the number of payments are indicative of the complexity and administration of each country's tax regime, where the total tax rate has a direct impact on investor profitability.

The study concludes that a multitude of factors contribute to the willingness of investors to invest in a country, the mining tax regime being one of them. An optimal mining tax regime can only be defined on a macro-level and not by simply selecting favourable attributes from the components of mining tax.

OPSOMMING

DIE INVLOED VAN BELASTING OP MYNBOU AKTIWITEITE IN ONTWIKKELENDE LANDE – 'N AFRIKA PERSPEKTIEF

deur

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Die ekonomie in Afrika is grootliks afhanklik van mynwese en die gepaardgaande buitelandse beleggings. Die doel van die studie is om vas te stel of daar 'n balans bereik word in die verdeling van rykdom tussen die regering van 'n land en buitelandse beleggers deur die belastingstelsel van toepassing op myne te ontleed. Die huidige belastingstelsel van toepassing op myne in Suid-Afrika as die primêre studieveld en die van Zambia en die Demokratiese Republiek van die Kongo as sekondêre studieveld is ontleed om vas te stel of die balans bereik is.

Die komponente van belasting op myne, die faktore wat beleggersbesluite beïnvloed en die impak van belastinginkomste op die ekonomie van Afrika lande is ontleed met behulp van n literatuuoroorsig.ak.

Ontledingsnavorsing is as makro navorsingontwerp gekies en sekondêre data in die vorm van belastingwetgewing en verwante publikasies is studeer en ontleed om sodoende die belastingstelsels van Suid-Afrika, Zambia en die Demokratiese Republiek van die Kongo te evalueer.

Die Wêreldbank tesame met PricewaterhouseCoopers publiseer jaarliks 'n verslag oor die gemak van die betaling van belasting in verskillende ekonomieë. . Die studie analiseer die aantal belastingbetalings per jaar, die aantal ure wat dit neem om te voldoen aan die vereistes van 'n land se belastingstelsel en die totale belastingkoers as 'n persentasie van

belasbare wins vir 181 ekonomiese regoor die wêreld. Die ontleding van die aantal ure en aantal betalings dui op die kompleksiteit en administrasie van die land se belastingstelsel, waar die totale koers 'n direkte impak het op beleggers winsgewendheid.

Die studie bevind dat daar 'n magdom faktore is wat beleggersbesluite om in 'n land te belê beïnvloed, waarvan die mynbelastingstelsel een is. 'n Optimale mynbelastingstelsel kan egter net op 'n makro vlak gedefinieer word en nie deur bloot die gunstige eienskappe van die komponente van mynbelasting saam te voeg nie.



DEFINITION OF KEY TERMS

| | |
|----------------------|--|
| Tax on mines | Refers to the various taxes imposed on companies as a consequence of mining. |
| Developing countries | African countries, in particular South Africa, Zambia and the Democratic Republic of Congo, that are still developing in terms of their economies. |
| Foreign investment | Contribution of international investors to the growth of a country through investment in mining projects in that country. |

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LIST OF ABBREVIATIONS USED

| Abbreviation | Meaning |
|---------------------|----------------------------------|
| CGT | Capital gains tax |
| DRC | The Democratic Republic of Congo |
| m ² | Square metre |
| STC | Secondary tax on companies |
| US\$ | United States of America Dollar |
| VAT | Value-added tax |

CHAPTER 1

BACKGROUND AND DEFINITION OF PROBLEM

1.1 BACKGROUND

Africa has some of the world's richest metal and mineral deposits, but is, ironically, a continent crippled by poverty. A mechanism to balance the richness of the metals and mineral deposits against the poverty of the people is the implementation of a fair tax regime.

Economies in Africa are dependent largely on the mining industry and foreign investment, both of which have a major impact on the economic growth of the continent as a whole. The development of a theoretically favourable tax regime could assist investors in analysing future investment opportunities while also assisting government policy-makers in developing tax policies applicable to mining companies. Little research has been conducted on an optimal tax policy for mines in developing countries (i.e. South Africa, Zambia and the DRC).

Taxation is an important mechanism for the development of a country whereby more revenues are raised to enable the country to develop basic services (Fjeldstad & Rakner, 2003:5). Arguments often used for the increase of taxes on mining include the following:

- The wealth of the mineral deposits belongs to the people, so the state must ensure that it captures fair returns for its citizens;
- Mineral resources are valuable and non-renewable in nature, hence an opportunity cost should be paid by mining companies;
- There is an imbalance between the wealth distributed to mining companies and the state. The state should ensure that it receives sufficient wealth to promote economic growth and development while allowing appropriate risk rewards (Tilton, 2004:144).

Governments, however, should balance their fiscal burden against the willingness of investors to invest. All things being equal, countries with a lower tax regime generally

attract more investment. In order to assess the tax regime applicable to a country's mines from an investor's perspective, it is important to take into consideration all the different types of taxes imposed by the government of that country (Otto, 2000:2).

To ensure a sustainable and viable economy, it is clear that there has to be a balance between promoting tax revenues and attracting foreign investment. The creation of wealth in a country should be for the benefit of both the investor and the people of that country.

1.2 PROBLEM STATEMENT

The main purpose of this study is to evaluate various African taxation regimes to determine whether there is an appropriate balance between the distribution of wealth to the government of a country and the mining company investing in it. In particular, the primary field of study will be to critically evaluate the current tax regime applicable to mining companies used by South Africa, while the tax regimes of Zambia and the Democratic Republic of Congo ("DRC") will be used as secondary fields. All three tax regimes will be evaluated in order to determine the extent to which this balance has been achieved.

1.3 RESEARCH OBJECTIVES

The study will be guided by the following specific research objectives:

- To identify the various components of tax on mines;
- To highlight the key factors that influence foreign investor decisions;
- To assess the impact of tax revenues from mining activities on the economy of developing countries;
- To research the current key components of tax applicable to mining companies in South Africa, Zambia and the DRC;
- To critically evaluate the tax regimes of these countries; and
- To determine which attributes of these tax regimes best help to achieve the balance between tax revenues and foreign investment.

1.4 IMPORTANCE AND BENEFITS OF THE PROPOSED STUDY

Africa faces a plethora of political, social and economic challenges. On the face of it, tax on mines might be associated only with the economic challenges to Africa. However, if viewed in the context of the vast metal and mineral deposits of the continent, it also has a direct impact on job creation, the environment, basic services, infrastructure and the overall wealth of the people. Developing countries are often dependent on foreign investment to ensure that mineral deposits are mined and wealth benefits distributed to their people. It is crucial to adopt a tax regime that will both attract foreign investment and ensure that the people of Africa share proportionately in the benefits of mining. There are discussions in literature dealing with various components of tax on mines, but commentary on the formulation and attributes of an optimal tax regime for mining companies in developing countries is limited.

1.5 DELIMITATIONS

This study will not be a comprehensive mining tax study but will focus on the tax regimes (including indirect taxes such as CGT, STC, Royalties and Dividend Taxes) applicable to mining companies in the countries selected. It will focus on the foreign investment in these countries with specific reference to the impact of taxes on foreign investment and will only deal with other factors like politics when this supports the findings related to the impact of taxation. Precious metal mining tax in particular is excluded from this study because of its extraordinary status in legislation.

1.6 ASSUMPTIONS

The major assumption underlying the proposed study is that the three countries selected, namely South Africa, Zambia and the DRC, are representative of the African milieu as a whole. This assumption applies particularly to tax regimes relating to mining companies and the impact these have on foreign investment and the economy of these countries.

1.7 RESEARCH METHOD

Evaluation research: experimental outcome study (Mouton, 2001:160-161) was selected as the macro-level research design. This was chosen because it aims to answer the question of whether the taxation regime adopted by each of the selected countries was successful in establishing a balance between generating tax revenue and attracting foreign investment. The following descriptors best reflect the core characteristics of this study:

- *Empirical*: re-analyses existing data in order to determine whether the balance between tax revenue and foreign investment has been attained. This is achieved by studying the tax regime of each of the selected countries and establishing the benefits offered to both government and investors;
- *Basic research*: the study focuses on modelling an optimal tax regime based on the findings obtained and does not address a specific “real-life” scenario;
- *Evaluative*: the study evaluates the different taxation regimes in order to determine whether they are successful in creating a balance between tax revenue and attracting foreign investment;
- *Cross-sectional*: the study covers the taxation regime of each of the selected countries at a particular point in time;
- *Experimental research*: the cause and effect of the tax regimes applicable to mining companies in these countries is documented. The countries selected are similar, all being developing African countries with vast metal and mineral deposits;
- *Secondary data*: existing data, mainly the tax legislation in the selected countries, is analysed in order to achieve the research objectives; and
- *Textual data*: relevant tax law and published articles comprise the basis of the study.

The study was conducted on three mining-intensive countries in Africa, with South Africa as the primary focus of the study and Zambia and the DRC as the secondary fields. Zambia and the DRC were selected on account of the mining activities currently being conducted in these countries, coupled with the results of the research on the tax regimes applicable to mining companies in these countries.

Zambia is known for its vast copper reserves, and in 1995 a new Mining Act, the Mines and Minerals Act of 1995, was promulgated to address the issue of depressed copper prices in the international arena and the under-capitalisation of the country's copper mines, which had resulted in constraints on its economy (Ministry of Mines and Minerals Development, not dated). The main aim of this act was the disinvestment of the government from mining by privatisation of mines, the liberalisation of fiscal policy and the provision of tax concessions to mining companies (Ministry of Mines and Minerals Development, not dated). Documenting the outcome of this legislation is of value to this study, so Zambia was considered a suitable secondary field of study.

The DRC is one of the most mineral-rich countries in the world. Katanga Province contains a large part of the Central African Copperbelt, which runs from Angola through the DRC and into Zambia. This Copperbelt contains 34% of the world's cobalt reserves and more than 10% of the world's copper reserves (Projects IQ, 2009). The introduction of a new Mining Code, Law 007/2002 of 11 July 2002 in 2003, under the guidance of the World Bank, has coincided with a degree of political stability in the DRC, which consistently attracts foreign investment. It is from the perspective of renewed investment interest in the DRC that it was selected as a suitable field of study.

Secondary data, in the form of the tax legislation of these countries and any related publications, was used in conducting the study. The data was collected through web-based research or by obtaining the relevant legislation and publications from the government institutions responsible for their publication and implementation.

The secondary data, in the form of various tax legislation and related publications, was studied and analysed. The legislation was divided into the various tax compartments in order to identify interrelated factors able to influence the country's economy or the investors' decisions to supply risk capital.

Legislation is always open to interpretation owing to the long lead times between cause and effect, independent variables and perspective. Differences of opinion will inevitably exist according to the factual grounds of the research. If the same study were to be conducted at a different point in time or on a different sub-set of countries, a different outcome would be inevitable.

The possibility of error and bias could be reduced by ensuring that the fact set underlying the research did not vary.

The validity and accuracy of the research are underpinned by legislation, and an “auditing” approach has been adopted to verify the credibility. The research results are confirmed against the secondary data sources.

1.8 STRUCTURE OF THE STUDY

The study was structured according to the specific research objectives. In Chapter 2, the first three research objectives are addressed by means of a literature review, which includes :

- identifying the various components of tax on mines;
- recognising the factors that influence foreign investor decisions; and
- assessing the impact of tax revenues from mining activities on the economy of developing countries.

Chapters 3 - 5 analyse the tax legislation applicable to mining companies in South Africa, Zambia and the DRC respectively. The analysis identifies the different components of tax on mines levied by these countries and critically evaluates each of these. This analysis includes an in-depth study of the measures taken by these mining-intensive countries to achieve the balance between levying taxes and optimising foreign investment. The study also considers the past and current criticism raised against these countries’ tax and mining regimes. Chapter 6 compares the tax regimes of the selected countries by analysing the number of tax payments per year, the total number of hours spent in complying with the country’s tax regime and the total tax rate as a percentage of taxable profit.

The conclusion in Chapter 7 assesses which attributes of the tax regimes in South Africa, Zambia and DRC respectively contribute to achieving the balance between tax revenues

and foreign investment. This study is for the benefit of potential investors in Africa as well as policy-makers.

CHAPTER 2

TAX ON MINES AND FOREIGN INVESTOR DECISIONS

2.1 OVERVIEW

This chapter studies the first three research objectives by means of a literature review:

- identifying the various components of tax on mines;
- factors that influence foreign investor decisions; and
- the impact of tax revenues from mining activities on the economy of each of these developing countries.

These research objectives assist in establishing a benchmark against which the tax regimes of the selected countries can be evaluated and drawing conclusions on the attributes that achieve the balance between tax revenues and foreign investment.

2.2 THE VARIOUS COMPONENTS OF TAX ON MINES

The first research objective is to obtain a detailed understanding of the various components of the tax on mining. The objective of mining tax needs to be understood in order to put the different taxes into perspective. The objective of mining tax is twofold (Otto, 2000:1-2), namely to:

- raise revenues; and
- guide taxpayer behaviour.

In order to raise revenues, government places a tax burden on mines. This tax burden is dependent on the investors' willingness to invest. If the taxes are too high and the rewards are too low, investors may seek to invest elsewhere. There ought to be a balance between attracting investment and generating tax revenues. A key issue that arises out of this objective is whether certain mines should be taxed differently from others and whether commodity-specific taxes are appropriate. This often depends on whether the metal or mineral being mined is destined for a local or an international market (Otto, 2000:1-2).

Tax regimes are not intended only to raise state funds but should also assist in guiding taxpayer behaviour to conform to government objectives. For example, a tax credit may be obtained if a mine adheres to certain environmental guidelines, such as installing pollution-control devices. Here the intention is to encourage fair benefit without excessive cost to the environment (Otto, 2000:1-2).

Mining tax and tax incentives consist of a variety of different components to achieve these set objectives. Generic components are tabled below with a brief indication of what each type of tax or tax incentive entails (Otto, 2000:5-16):

Table 1: List of mining tax and mining tax incentives

| Tax type | Description |
|------------------------|---|
| Income tax | <p>Income tax is a profit-based tax where the key factors are the tax rate at which income tax is levied and the tax base to which the rate is applied.</p> <p>Income tax is often a preferred mechanism to attract investment, as it is profit -driven and no taxes are due in loss situations.</p> |
| Royalty | <p>Royalty taxes are usually levied when the state owns the minerals. Effectively the state receives rewards in return for its minerals, irrespective of whether or not the company is generating profits.</p> |
| Import and export duty | <p>Import duties are levied on goods imported for use in the mining operation. In the mining industry, this often entails expensive specialised equipment and has a major impact on the company, as mines are usually capital-intensive.</p> <p>Export duties, on the other hand, are levied on the goods and materials produced that are exported.</p> |
| Registration fee | <p>Registration fees levied for the administration of applications for</p> |

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|-----------------|---|
| | exploration or mining. These administration costs are usually minimal. |
| Surface rental | These rentals are calculated according to the land usage, whether for mining or exploration activities. Rates per unit area are often prescribed, depending on specific land usage. |
| Withholding tax | <p>Different types of withholding taxes are imposed. They are:</p> <ul style="list-style-type: none"> • Withholding tax on remitted dividends; <p>Withholding taxes on dividends are often introduced to promote reinvestment.</p> <ul style="list-style-type: none"> • Withholding tax on foreign loan interest; <p>Tax is levied on interest payments made by mines to foreign lenders. This is often done to encourage local lending.</p> <ul style="list-style-type: none"> • Withholding tax on foreign services; <p>In order to promote the use of local service providers, a tax is levied on the use of foreign specialists.</p> |
| Value-added tax | A consumer tax is levied on most purchases and revenues. There is a trend world-wide to zero rate exports, but the capital-intensive mining industry carries the burden of large input taxes on capital expenditures. |
| Local tax | This comprises a variety of taxes, property tax on assessed mine value and provincial royalty taxes being common items. |
| Accelerated | Tax deductions claimed based on capital asset depreciation, which |

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|--------------|--|
| depreciation | is accelerated in the early years of production. Accelerated depreciation often leads to the perception that mining companies benefit more than the community, as mining houses use these allowances to “avoid” paying taxes in the first few years of production (Tilton, 2004:147). |
| Tax holiday | A period of time during which certain taxes need not be paid. |
| Ring fencing | Various projects/operations, losses and profits (within the same company) are not allowed to be offset against other operations for tax purposes and are therefore considered ring-fenced. |

It is clear from the variety of tax applicable to mining companies and incentives available that it is possible to implement any permutation of the above in order to determine the optimal tax regime applicable to mining companies for a specific country and its needs. The ideal balance is one in which sufficient tax revenue is secured for the benefit of the people of the country but is still competitive enough to attract foreign investment.

In developing a tax regime for mining companies, the following public policy aspects should be considered (Otto *et al.*, 2006:7-15):

- Optimal level of taxation on mining

Higher taxes on mining lead to greater wealth flowing to the government. Excessive taxation may lead to mining companies cutting back on long-term development, rendering them unable to carry out further exploration or maintain development and future expansion. If the taxes are significantly excessive, it may even alter the production levels of a mine. High grading occurs and mine life is adversely affected. An optimum balance should be attained which maximises the benefit to the state while also ensuring acceptable profitability to the mining operation.

Given the complexity of mining, it is difficult in practice to determine this optimum level of taxation. One needs to understand the cause and effect relationship of changing taxation and the influence of this on the mining company. Estimates of future revenues are required, which in turn depend on metal price trends and future production costs.

Government can obtain its share from mining wealth indirectly in forms other than direct taxation. For instance, government policy could determine that mining houses should contribute towards building schools or infrastructure, in this way relieving the state of the cost.

Increasing tax rates on mining may, in the short term, create a sense of profit or benefit to the government. In fact it may halt spending on research and development, exploration, expansion and mine life planning by mining houses. In the long term, both state and mine operators could suffer diminished returns on investment.

- Optimal mix of taxes

Many different taxes are imposed on mining. For example, a royalty may be introduced based on the amount of tonnage produced. This may lead to a mining company altering its production decisions. At higher taxation levels, low grade ore may no longer be economically viable and life of mine would decrease. In this instance, a tax on profits in the form of income tax may be more efficient by ensuring extended life of mine. However, profit-based taxes influence operator behaviour in that they directly affect the internal rate of return, making the risk-reward ratio unattractive to investors.

Mining is technically risky in nature. It requires vast capital expenditure and long-term commitment and is very sensitive to price shifts in the market. An effective tax regimen distributes the risk associated with mining between the government and mining houses. Profit-based taxes distribute the risk between the government and the mining company, as they are sensitive to market conditions. Flat-rate royalties,

on the other hand, tend to place a greater burden on the mining company, as the percentage tax paid is determined by the tonnage / grade mined.

Mining projects typically require extensive up-front capital expenditure with an extended repayment period. Cash-flow modelling of mining reveals that mine feasibility is potentially sensitive to timing. Through their timing, tax regimes can therefore impact significantly on the feasibility of a mining project. In this instance, the effect of import duty taxes during the development stages is crucial.

In determining the optimal tax regime, consideration should be given to the ease of administering the taxes and the possibility of tax evasion.

- Specificity or uniformity

For tax purposes, the mining sector is considered exceptional in many countries on account of the magnitude of its investment earnings. Typically, the mining sector is taxed differently in these countries, while in other countries it is taxed the same way as any other sector. This has some benefits, in that it avoids special, often complex legislation and reduces the ability of companies to obtain preferential treatment. The table below details some unique attributes of the mining industry and the tax implications of these (Otto *et al.*, 2006:17):

Table 2: Unique attributes of mining and tax policy response

| Reason for special treatment | Tax policy response |
|---|---|
| The start-up of a mine is preceded by a lengthy and expensive exploration, feasibility and development phase, during which no income is generated. | Pre-production expenses are carried forward to offset future income. |
| Mine development is extremely expensive and capital intensive. In the start-up phase of a mine, the operation has to import expensive equipment and | Introduce accelerated rates to recover capital costs. Carry forward service costs and amortize once production starts. |



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| obtain expert suppliers. | <p>Reduce import duty rate or exempt from import duty.</p> <p>Reduce/Refund/Exempt value-added tax on imported equipment and services.</p> |
| Mined products are generally for export markets. | <p>Exempt from export duties or reduce rates.</p> <p>Exempt from value-added tax or reduce export rate to zero.</p> |
| Different minerals have different intrinsic value, costs, labour, profit margins, environmental and socio-economic attributes. | <p>Vary royalty rate for different minerals.</p> |
| The scale of operations may differ. | <p>Vary royalty rate based on absolute production.</p> <p>Exempt small-scale operations from certain taxes.</p> |
| Prices of raw materials produced in mining are volatile owing to the business cycle. | <p>Allow carry forward of losses.</p> <p>Provide for relief from certain taxes during times of financial difficulty.</p> |
| Once reserves are depleted, mines incur material costs for closure, reclamation and environmental rehabilitation. | <p>Require the creation of a closure cost fund and provide a tax incentive in the form of a deduction against the current</p> |

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|---|--|
| | income tax liability for contributing to such fund. |
| Mining projects are long-term in nature and mining houses fear the risk of fiscal policy shifts that may influence profitability. | Stabilise taxes for some or all of the life of mine. This can be achieved in the form of an agreement or by statute. |
| If the investment required is extremely large, feasibility may only be possible under a modified tax regime. | The state enters into a negotiated agreement with the mining house. Specific tax legislation that supplements the general tax legislation is often employed. |
| Companies may have a special tax treatment for one operation in production, but may be involved in exploration for further operations separate from the current operations. | Introduce ring-fencing. |

- Tax regime stability and the challenges raised by the obsolescing bargain and populism

Companies in a position to invest are particularly influenced by after-tax returns so an important factor is the perceived stability of a country's long-term tax regime. In direct contrast, political campaigning may lead to higher tax rates being imposed on "rich" foreign investors. This may tip the scale of the tax regime and cause reduced investment, as the tax regime would be viewed as unstable by foreign investors.

The tax regime can be utilised to ensure that government and the people receive their dues, whilst the mining company is guaranteed stability. This could be

established by introducing, for example, a small royalty on output which would ensure that government received cash flow from its exploited minerals, regardless of profitability, while at the same time introducing some profit scale-based tax ensuring that taxes were incurred if the mining company was highly lucrative.

- Distribution and use of tax revenues

The distribution and use of tax revenues is a topic of debate. The mining industry is highly volatile. To compensate, it is often recommended that funds generated during an upswing in the market be invested in a stabilisation fund used during compressed mining conditions.

Another topic of debate is whether these revenues flow back to the communities and local governments from where they are sourced.

It will be necessary to establish the components and objectives of the tax regimes applicable to mining in South Africa and the selected countries. Based on this analysis of tax on mines, the aim is to ultimately calculate the effective taxation rate used by these countries.

2.3 FACTORS THAT INFLUENCE FOREIGN INVESTOR DECISIONS

A combination of factors influences the willingness of a foreign investor to provide risk capital in a specific country. Ultimately there are two major considerations:

- the rate of return that the project offers investors; and
- the risk associated with investing in that project in a given country.

These two major considerations are surrounded by various peripheral factors, such as the country's political stability, corruption, tax regime and government regulations (Otto *et al.*, 2006:183). In the proposed study of South Africa and selected countries, attention is given to these contributing factors as they have a material impact on the ultimate decision taken by investors. Some factors in a specific country may be so significant as to outweigh the

impact of any other considerations that play a role in investor decision-making under normal circumstances.

In the comprehensive text book on mining royalties compiled for the World Bank (Otto *et al.*, 2006:214-219), it is noted that various surveys and studies conducted over the years to determine crucial investment factors consistently list certain topics. In the 1980 survey of international mining companies, six crucial investment factors are identified:

- tax stability;
- geology;
- security of tenure;
- the right to repatriate profits;
- management control; and
- equity control.

In a subsequent survey of 40 major and junior mining companies conducted on investment factors by the United Nations, four factors relating to taxation made the top 20 list:

- measure of profitability;
- ability to predetermine tax liability;
- stability of fiscal regime; and
- method and level of tax levies.

In the Otto-Bakkar Ranking model of 1992, three of the top five investment factors are influenced by tax-related issues:

- project profitability;
- stability of mining terms; and
- ability to predetermine the tax liability.

It further states that a good investment environment is one in which taxation liabilities and policy uncertainty are minimised.

It is clear that stability in the fiscal regime, predictability in taxation liabilities and profitability are themes common to the various surveys conducted.

In order to understand the fiscal regimes in the African context, it is necessary to break the tax authority down into its various components, namely, central and local government taxation and tax administration. For a better understanding of the dynamics of these parts, *Taxation and tax reforms in developing countries: Illustrations from sub-Saharan Africa* (Fjeldstad & Rakner, 2003:2-20) was consulted.

Over the past few years, the following trends have been noted in respect of the central tax regimes of developing countries:

- the use of value-added tax;
- low personal and corporate income tax;
- broadening of the personal and corporate tax base and simplification of the tax bands;
- reduction in import duty;
- simplification of excise duty; and
- abolition of export taxes.

Unfortunately, despite these trends, the tax systems of many African countries are still characterised by a myriad different taxes which are difficult to understand and administer. The administration of tax revenues is open to corruption, as it is non-transparent, complex and poorly monitored.

Local taxes are another stumbling block influencing investor decision, as these are all too often not aligned with central government taxation and are sometimes set at unrealistically high rates. The complexity of these taxes makes them both difficult to interpret and open to corruption, as they are often not transparent.

In the structured debate conducted by *The Banker* (Newport *et al.*, 2008:3), Mr Ruxton makes the following comment, stressing the need for a stable and structured fiscal environment:

We need a stable fiscal environment...Countries need to bring in checks and balance to political power. They also need to build a business infrastructure and the business community that provides the key checks and balance that will eventually squeeze out issues such as major corruption.

In this same document (Newport *et al.*, 2008:6-7), the question is raised as to whether the fiscal environment in Africa is conducive to investment. It is noted that Africa is characterised by ever-changing environments, where a change in government or the perception of too much profit could result in the end of a business. It suggests that recent changes to statutes and regulations give some hope to investors, as many of the resource-rich countries have passed mining acts and regulations to assist in this process. The introduction of the Extractive Industries Transparency Initiative also assists in making investment in Africa more attractive.

Certainty of the political risks of a country will further encourage investment. Companies do not want to make enormous investments only to have them axed because of political instability. Caution is exercised when governments adjust their fiscal regimes to attract investments, but subsequently change that regime once profits are generated. Far too often governments feel that they are entitled to a greater share of the pie, which results in a see-saw situation, as investors reduce investment on account of government intervention but the government subsequently adjusts the fiscal policy to the original position.

When analysing the tax regimes of South Africa and selected countries, it is crucial to keep the fiscal regime in mind, as hidden costs in the form of local government taxes can adversely affect foreign investment. It is necessary to have a clear understanding of the revenues generated by the central and local government. Further, it is crucial to determine how this flows back to the community to help establish infrastructure and curb poverty.

2.4 THE IMPACT OF TAX REVENUES FROM MINING ACTIVITIES ON THE ECONOMY OF DEVELOPING COUNTRIES

Revenue distribution and the beneficiaries of the mining sector vary widely throughout Africa. The administration for this revenue is mostly centralised at the national level. Some

countries have a mineral development fund which demarcates mineral revenues rather than losing the identity of these specific revenue streams to the government revenue pool, which is the case for general funds (Otto *et al.*, 2006:201-208).

Mineral development funds are often used as a mechanism for ensuring the return of these taxes to the specific community affected by the mineral development. Other countries use the funds for a broader purpose, such as promoting and developing the mining industry as a whole.

South Africa introduced an alternative to the above scheme by giving the local community an option of a “preferential right”. Effectively the community has the same bargaining power as the owners of the mineral rights. This preferential right permits the holder to either mine for the benefit of the whole community or to lease such rights to a mining company for a fixed consideration.

Government should assist in the flow of revenues to the community, as direct payments from mining houses to communities are fraught with difficulty and could easily lead to political instability. Government could help by:

- establishing appropriate structures for the community to communicate with mining houses;
- providing legitimacy by formalising the process; and
- receiving and managing revenues on behalf of the community.

In a journal article entitled *Determining the optimal tax on mining* (Tilton, 2004:144 -147), the author addresses the following argument raised for increased tax on mining:

Many mining companies are not paying enough taxes. Too much of the wealth created by mining goes to mining companies, and too little to the State to promote economic growth and development.

One should determine what the objective of a country is as far as its mineral resources are concerned. It is assumed that countries with rich mineral deposits would want to use their mineral wealth for the benefit of its citizens. It is not only tax revenues from mining activities that form part of government’s goal but also secondary benefits originating from

the mining industry, such as job creation and regional development. Government should pursue optimal tax structures in order to reach these set goals. This could be achieved by charging the optimal tax rate. The revenues so generated would then be applied for the benefit of the community by way of, for example, subsidising education, housing, health services or infrastructure.

As a direct result of mining houses investing in developing countries in Africa, the opportunity arises to enter into negotiations with the mining houses on infrastructural development. Mining houses need infrastructure in order to import goods, extract ore and ultimately export their products. By developing the infrastructure as part of the mining project, the community as a whole would benefit. Government has another mechanism to ensure that the wealth of the minerals is distributed to the local communities (Newport *et al.*, 2008:3-4). If infrastructure is maintained, the benefit created may well outlast the mining project.

2.5 CONCLUSION

It is evident from the above literature review that a great many factors impact the efficiency of a tax regime. Some are directly related to taxation and some appear more political, while others speak to the social conscience.

While investigating the impact of taxes on these countries, it is very important to have a firm grasp of the prevailing tax regime and the tax authorities that administer these taxes. Most developing countries are low-income socio-economic areas, so there is a need for a better understanding of the impact of tax on poverty, income distribution and economic growth. There is a need to understand the relationship between the state, the donor and the citizens. Citizens are only likely to trust a state that is perceived to be acting in their best interest (Fjeldstad & Rakner, 2003:29). Developing countries undergoing tax reforms should strive towards simplicity in their tax design and ease of administration. These countries generally do not have the capacity or expertise to administer complex tax regimes.

In assessing the impact of tax on mines in particular, the optimal mix of tax regulations applicable to mining companies should be selected in order to ensure that the return is

distributed fairly to all role players while still attracting foreign investment. Foreign investment not only ensures that wealth flows into the country but also provides access to knowledge of the trade, creates job opportunities and builds infrastructure for the benefit of society.

In the detailed study of the tax regimes of South Africa, Zambia and the DRC, the above factors are taken into account in order to determine which attributes most effectively contribute towards achieving the balance between profit, foreign investment and social responsibility.

Not only is a detailed review of the tax legislation applicable to mining companies and codes necessary but the tax administration and economy within the socio-political environmental context must be appreciated. No one factor can be analysed in isolation. A developing country's economy is complex and particularly prone to external factors that have significant influence.

CHAPTER 3

MINING IN SOUTH AFRICA

3.1 BACKGROUND

South Africa is globally renowned as a treasure trove that produces and owns a significant portion of the world's mineral resources. The country's wealth is as a consequence of the vast natural resources which comprise nearly 90% of the world's platinum group metals, 80% of manganese, 73% of chrome, 45% of vanadium and 41% of global gold reserves (MBendi Information Services, 2008).

The mining industry in South Africa has undergone a metamorphosis since the late 1990s, when the industry was dominated by mining houses. Black economic empowerment is now emphasised, with individuals such as Patrice Motsepe and Tokyo Sexwale entering the mining arena. The introduction of new foreign investment has been slow since the country's first democratic election in 1994, largely due to uncertainty over the economy and the high crime statistics (MBendi Information Services, 2008).

The first early successes were Canadian Southern Era, with the opening of Klipspringer, and Australian Aquarius Platinum, with the Kroondal mine (MBendi Information Services, 2008). Placer Dome made one of the largest foreign investments in South Africa when it purchased 50% of the Western Areas Gold Mine. With large international corporations entering the South African market, the industry has developed significantly, and the government has adapted to the ever-changing world of mining (MBendi Information Services, 2008).

Figure 1 illustrates the location of some significant mineral deposits in South Africa. The second map highlights the location of the platinum group metals in South Africa, which make up 90% of the world's available resources, as stated above. It is evident from these maps that South Africa is one of the world's most mineral-rich countries, so the tax regime applicable to its mining industry plays a pivotal role in the wealth of the country.

Figure 1: Mineral deposits in South Africa

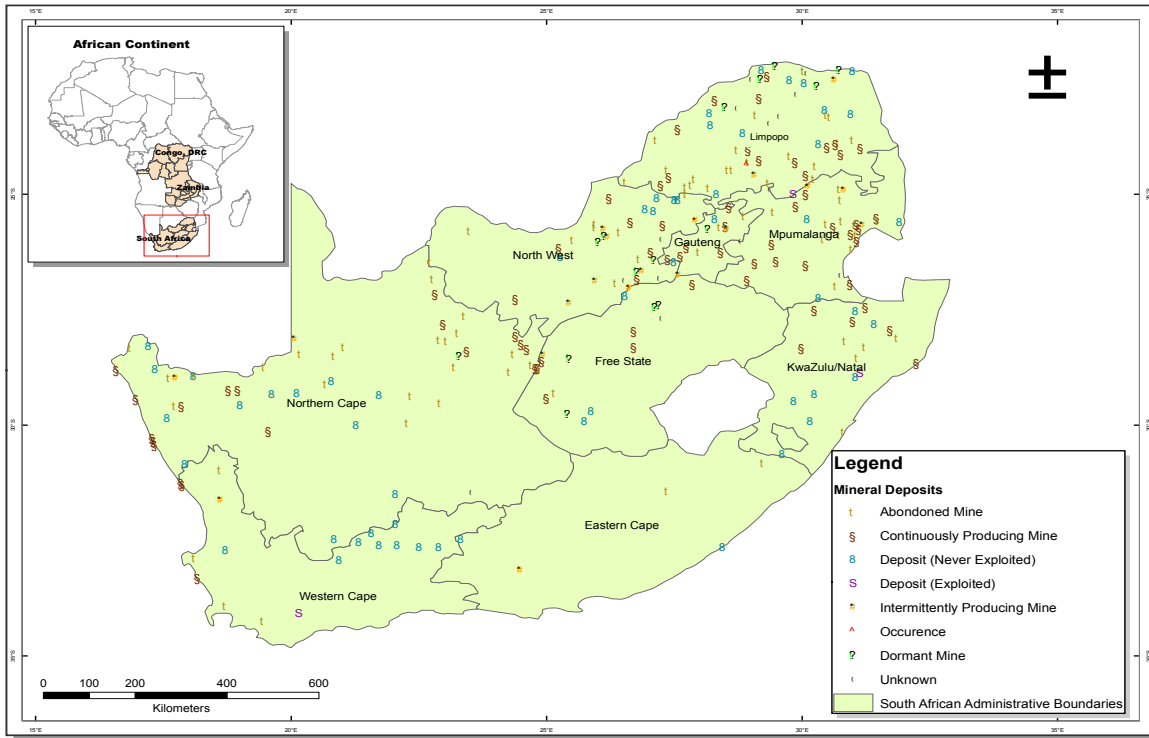
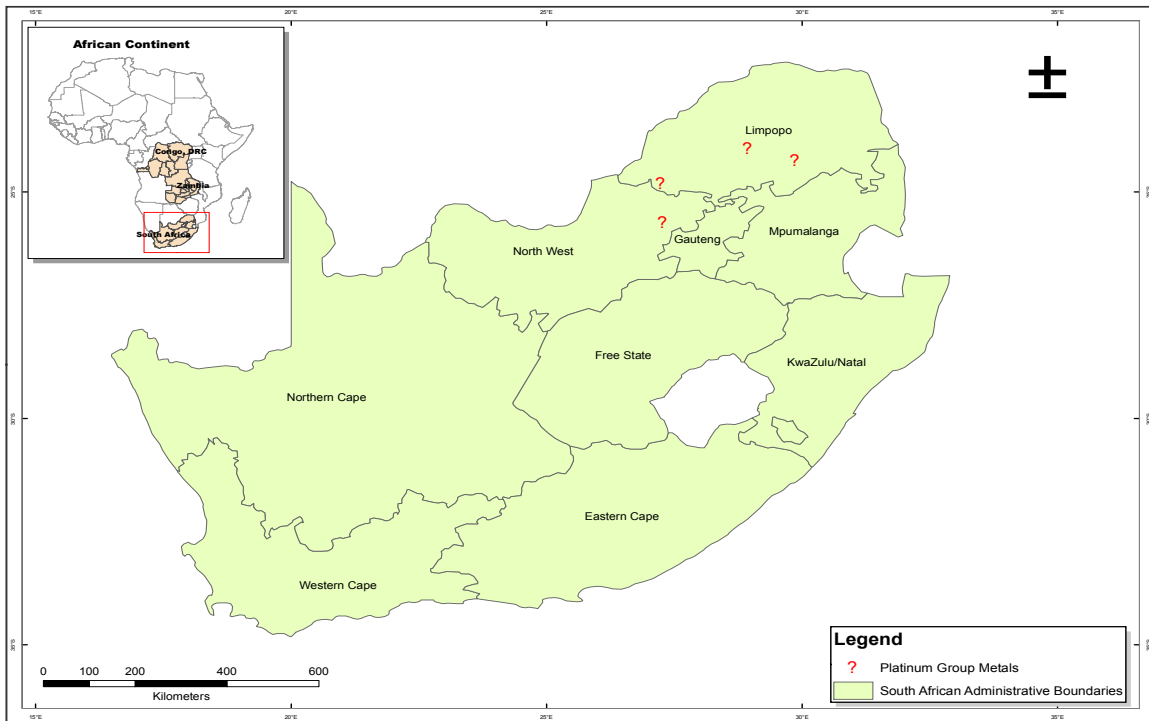


Figure 2: Platinum group metals in South Africa



3.2 TAXES ON MINES

Since 1 January 2001, South African residents have been taxed on their worldwide income. For the purposes of this study, a resident is defined as a company or trust that is incorporated, established or formed, or which has its place of effective management in South Africa.

The South African Income Tax Act 58 of 1962 (the Act) contains specific provisions for taxpayers engaged in mining activities in South Africa. These provisions relate mainly to the treatment of capital expenditure and the varying rates of tax applicable to the taxpayers earning income from certain minerals.

Mining companies are allowed to deduct from taxable mining income all capital expenditure as defined incurred during that year. This is limited to taxable income derived from mining. Capital expenditure incurred in relation to a mine may, as a general rule, only be set off against taxable income derived from mining. For tax purposes, mining companies have to account for their income from mining operations and non-mining income separately. In order to determine whether income will be regarded as mining income, it is important to understand what constitutes a mining operation. This is defined in section 1 of the Act, and reads:

...“mining operations” and “mining” include every method or process by which any mineral is won from the soil or from any substance or constituent thereof...

In order for income to be regarded as mining income, there must be a direct connection between the income and the mining source. Once it has been determined that a taxpayer is engaged in mining or mining operations during that year of assessment, the taxpayer is required to submit Schedules A, B and C, together with their annual tax return, to the South African Receiver of Revenue (See appendices A, B and C). These schedules detail the information needed for tax purposes when a company is engaged in mining operations. It is evident from the information requested that mining operations have to be reported on separately and that capital expenditure is redeemable only if profits are made and once prior assessed losses have been utilised. If the company is in a loss situation, capital expenditure should be carried forward for offset against future profits.

Recent mining legislation had all mineral rights expropriated to the State and mining royalties are set to change as per the Mineral and Petroleum Resources Royalty Act 28 of 2008 (the Royalty Act).

Below is a summary of taxes applicable to mining companies in South Africa.

Table 3: Taxes and fees applicable to mining companies in South Africa

| Tax type | Discussion / Explanation |
|--------------------------|--|
| Corporate tax | <p>The corporate tax rate in South Africa is currently 28%.</p> <p>Gold mining companies can elect whether or not to pay STC. If they elect to pay STC, then, in terms of the formula set out in Part 1 of the Act, which is based on the ratio of taxable income from gold mining to income from gold mining, tax is payable at the standard formula rate. Should the gold mining company elect not to pay STC, tax would be payable at a higher formula rate. However this study excludes an analysis of gold mining tax, owing to the latter's unique nature.</p> |
| Royalties | <p>South Africa delayed the imposition of mining royalties scheduled to be implemented in May 2009 to March 2010. This was done in order to prevent further job losses in the mining industry as a result of the global economic meltdown. The extension is expected to result in a R1.8 billion saving for the mining industry in South Africa.</p> <p>Royalty payments are based on a company's earnings before interest and tax, and will rise with profitability.</p> |
| Import and export duties | <p>Mining equipment is mostly duty free. However some equipment attracts duties from between 0 and 25%. Import restrictions may be imposed, based on the purpose of importation as well as the</p> |

| | |
|----------------------------|--|
| | volume (bulk or not), as these are in prescribed quantities. |
| Carry forward of losses | Where deductible expenditure and/or capital allowances exceed taxable income, an assessed loss arises. These losses may be carried forward to the following year and set off against future taxable income on condition that the company carries on a trade. Mining income earned must first be set off against carried-forward losses before unredeemed capital expenditure can be deducted. |
| Secondary tax on companies | <p>The STC currently imposed on companies declaring a dividend will be replaced by a withholding tax from dividends to be deducted when paid to shareholders. The date of this change has yet to be announced. The definition of dividend is to be simplified to include any amount transferred to a shareholder that does not constitute contributed tax capital, comprising share capital and premium.</p> <p>The tax rate will remain at 10% unless the dividend qualifies for a reduced rate under a double tax agreement with another jurisdiction.</p> |
| Withholding taxes | The withholding tax on royalties is currently 12% for countries with no tax treaty. For countries with tax treaties this rate varies from 0 to 12%. |
| Value-added tax | VAT is charged at 14% on all taxable supplies, although some supplies are exempt or zero-rated (such as exports). |
| Capital allowances | Mines may deduct certain capital expenditure as legislated in section 15(a) and section 36 of the Act. In terms of section 36(11) the aggregate capital expenditure incurred by a mining operation in respect of any year of assessment may be set off against the income derived from that mining operation. The capital expenditure should be reduced by the proceeds from the disposal of mining |

| | |
|--------------------|--|
| | <p>assets. Taxpayers are required to first offset mining income against the mining assessed loss carried forward from previous years, after which capital expenditure can be utilised.</p> <p>The following expenditure constitutes capital expenditure (section 36(11) of the Act):</p> <ul style="list-style-type: none"> • plant and machinery used in the mine, mine housing and infrastructure; • shaft sinking; • development, general administration and management expenditure incurred prior to production; • interest and other charges payable on loan financing obtained to acquire fixed assets that will be utilised in the mine; and • amounts related to land, mining claims and mineral rights are excluded from capital expenditure. <p>The amount of capital expenditure that is deductible against income is limited to the amount of taxable income for that year. The balance can be carried forward for set-off in the next year of assessment.</p> <p>If these assets are sold, the full proceeds received should be included in gross income as stated in paragraph j of the gross income definition of the Act. If the proceeds from such disposals are in excess of the current year's capital expenditure, such excess should be included in taxable income as a recoupment.</p> <p>Capital expenditure that falls outside the scope of the mining tax provisions is generally deducted over the useful life of the asset and recouped once sold.</p> |
| Mineral and mining | Mineral and mining rights payments are not deductible for income |

| | |
|-------------------|---|
| rights | tax purposes. |
| Capital gains tax | <p>CGT was introduced with effect from 1 October 2001. South African residents are taxed on their worldwide assets while non-residents are taxed only on any direct or indirect interest in immovable property situated in South Africa or assets of a permanent establishment in South Africa.</p> <p>CGT is triggered when a disposal or deemed disposal of such asset takes place. Capital gains are taxed at an effective 14% (that is, 50% of capital gains are subject to normal income tax at 28%). A capital gain arises when the asset is disposed of for more than its base cost.</p> |
| Fuel tax | Fuel tax is charged at 0 - 127cents per litre and is subject to change on an annual basis. |

South African residents are subject to exchange controls, although non-residents are excluded.

3.3 CONCLUSION

The government has been drafting the new Royalty Act for the past five years. The initial intention was to levy royalties on the sales value of minerals. After various comments from mining houses and revised drafts, this royalty calculation was based on profitability. The royalty rates decreased significantly from the first draft, with government revenue expected to decrease with an estimated US\$499 million as a result (Christian Aid, 2009).

This once again highlights the importance of interaction between the legislature and the investor, as this symbiotic relationship is interdependent. Ultimately it is of the utmost importance that a workable solution be reached to the satisfaction of both parties. Not only would fiscal stability attract foreign investment but the willingness of government to interact

with investors to facilitate their comments and views into newly-drafted legislation is critical. Most big mining houses interacted with the South African government on the drafting of the Royalty Act, although some smaller players may feel that they were excluded.

The South African tax regime has undergone a great deal of advancement and streamlining over the past few years. The system is evolving and constantly striving towards a tax system that is readily understandable and easily administered, but still effective in collecting taxes.

CHAPTER 4

MINING IN ZAMBIA

4.1 BACKGROUND

Zambia is well-known for its copper production sourced from the Copperbelt. This copper mining area extends around the towns of Ndola, Kitwe, Chingola, Luanshya and Mufulira and extends into the Katangan Copperbelt of the DRC. Since the establishment of the Zambian copper industry it has been the single largest contributor to the Zambian economy (Ministry of Mines and Minerals Development, not dated).

In 1995, a new Mining Act, the Mines and Minerals Act of 1995, was promulgated with the aim of privatising mines through the divestiture of government, liberalising the fiscal policy and providing several tax concessions to mining companies (Ministry of Mines and Minerals Development, not dated).

In 2008, after a period of high copper prices and increased commodity demand, the Minister of Finance and National Planning introduced a new tax regime applicable to mines which became effective on the 1st of April 2008. This new mining tax regime not only resulted in increased tax rates and reduced allowances but also introduced a variable profit tax and a windfall tax. After the worldwide economic crisis in the latter part of 2008, this new regime was immediately in dire need of revision (PricewaterhouseCoopers, 2009).

Figure 3 illustrates the location of mineral deposit occurrences in Zambia. The second map highlights the location of copper in Zambia. The Zambian economy is dependent largely on the location of these mineral deposits. Figure 3 illustrates that throughout Zambia there are various mineral deposits and highlights the importance of tax revenues generated by exploiting these minerals.

Figure 3: Mineral deposits in Zambia

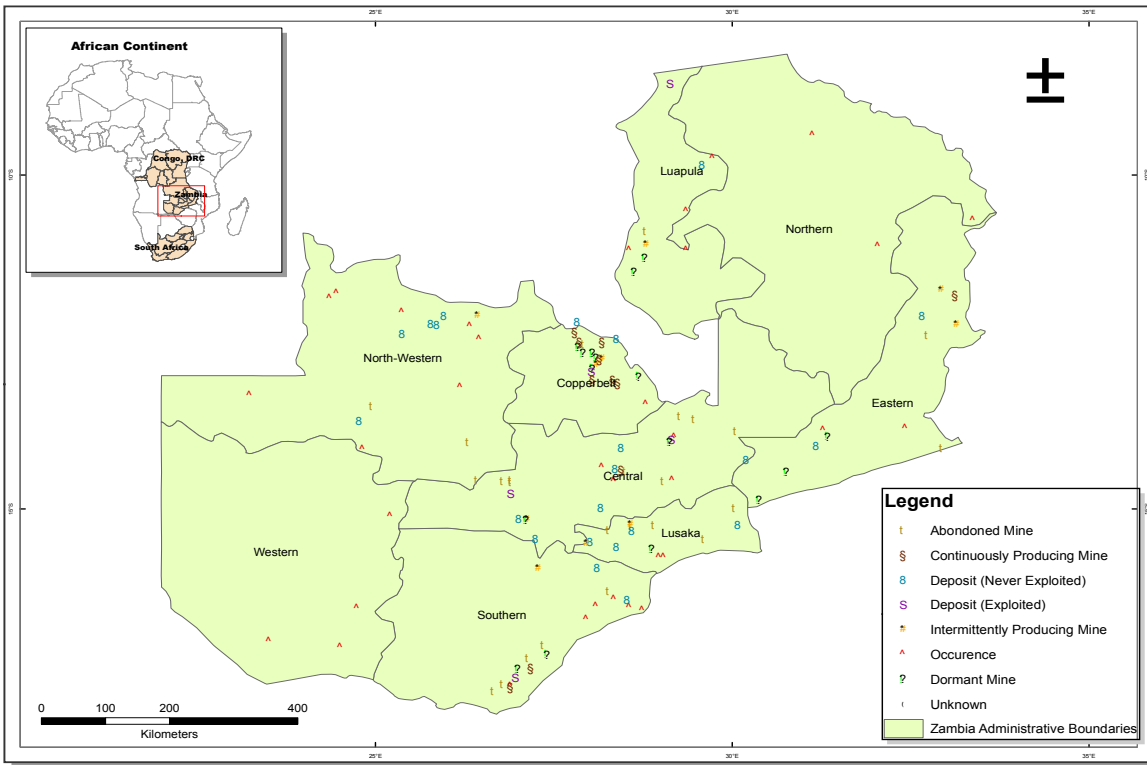
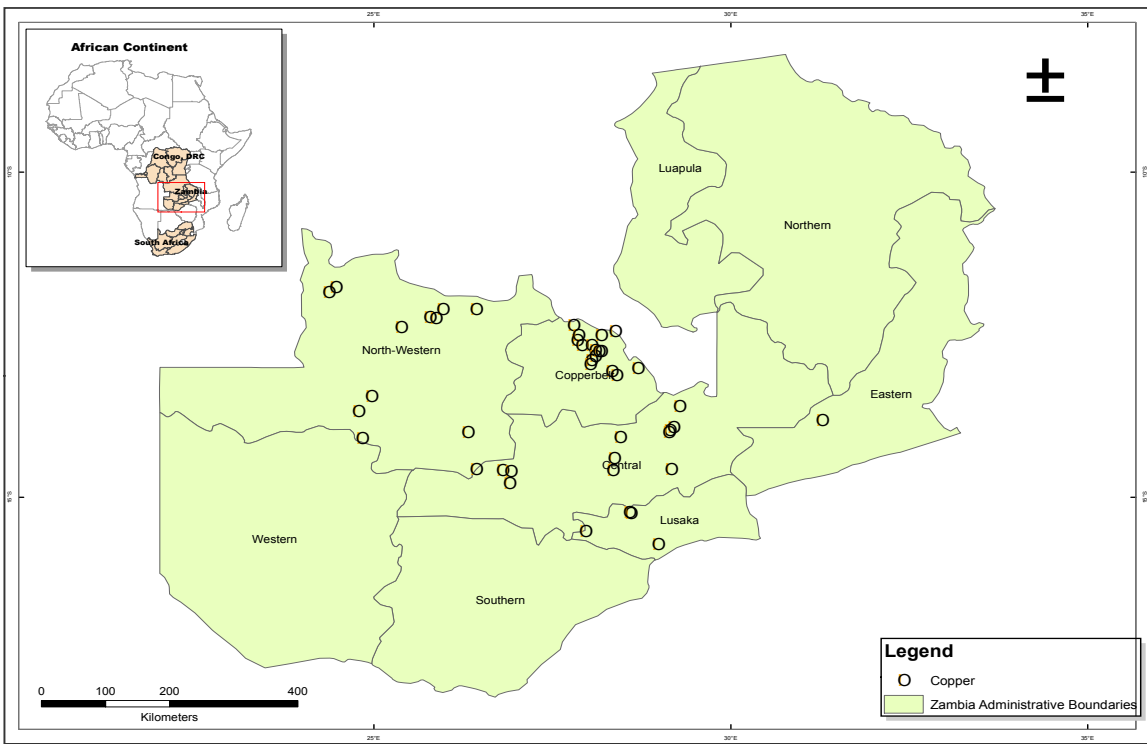


Figure 4: Copper in Zambia



4.2 TAX ON MINES

A company or similar entity is considered a Zambian tax resident if it is incorporated into Zambia or if the control or management of the company is vested in Zambia. Residents are taxed on income from an actual or deemed Zambian source. Non-residents are subject to tax on Zambian-sourced income and the withholding taxes deducted are final. In 2008, the new mining tax regime in Zambia resulted in the following changes (PricewaterhouseCoopers, 2009):

- mineral royalty increase from 0.6% to 3%;
- corporate tax rate increase from 25% to 30%;
- introduction of a 15% variable profit tax;
- introduction of a windfall tax triggered at different price levels; and
- a reduction in capital allowances on capital expenditure from 100% to 25%. to be phased down over a period of two years.

As a result of the global economic meltdown, the 2009 budget proposed the following changes to this new tax regime (PricewaterhouseCoopers, 2009):

- windfall tax to be repealed;
- the ring-fencing of hedging transactions to be repealed. This will result in hedging losses being available for offset against mining income and vice versa. Further, the higher tax rate of hedging transactions of 35% will fall away and hedging will be integral to mining activities and will be axed as such;
- the 100% capital allowance deduction is to be reinstated;
- customs and duty on the import of copper powder, copper flakes and copper blisters should fall away. This was taxed at 15%;
- a reduction of excise duty on heavy oil fuels from 30% to 15%; and
- copper and cobalt to be included in the import VAT deferment scheme.

The following is a list of taxes applicable to companies with mining operations in Zambia:

Table 4: Taxes and fees applicable to mining companies in Zambia

| Tax type | Discussion / Explanation |
|--------------------------|--|
| Corporate tax | <p>Income tax on mining companies is levied at 30%. When taxable income from mining operations exceeds 8% of gross sales an additional variable profit tax of up to 15% is payable.</p> <p>The windfall tax that was introduced in 2008 was repealed in 2009. This tax was triggered at different price levels. However, current copper prices are well below the first trigger price.</p> |
| Royalties | <p>The value of sales is determined according to international commodity exchange markets in order to ensure transparency in companies' profit calculations.</p> <p>The royalty payable on the value of ore produced is calculated at 3%.</p> |
| Import and export duties | <p>No customs duty is payable on the importing of copper powder, copper flakes and copper blisters (previously taxed at 15%). This is aimed at encouraging the importing of ore in order to utilise processing and smelting facilities locally.</p> <p>Customs duty of the following capital items was removed in order to reduce mining costs:</p> <ul style="list-style-type: none"> • survey and geophysical instruments; • earth-working and levelling equipment; • refrigerating or freezing equipment for cold rooms; • track-laying bulldozers and angle dozers; • graders, levellers and scrapers; • tamping machines; • mechanical front-ended shovel loaders; • pile drivers and extractors; • coal and rock cutters; |

| | | | | | | | | | | | | | |
|---------------------------------------|---|--------------------------|----------|-------------------------|----------|---------------------------------------|---------|----------------------------|-----|------------|-----|-----------|-----|
| | <ul style="list-style-type: none"> • tunnelling machinery; • mechanical horses; • fork-lift trucks; and • special-purpose motor vehicles. <p>Excise duty on heavy oil was reduced from 30% to 15% to reduce mining costs. Heavy duty oils are a large component of processing costs in mines.</p> | | | | | | | | | | | | |
| Carry forward of losses | <p>The number of year's tax losses may be carried forward for set off against future profits:</p> <table data-bbox="505 808 1234 947"> <tr> <td>Konkola Copper Mines plc</td> <td>20 years</td> </tr> <tr> <td>Other base metal miners</td> <td>10 years</td> </tr> <tr> <td>Prospecting and exploration companies</td> <td>5 years</td> </tr> </table> | Konkola Copper Mines plc | 20 years | Other base metal miners | 10 years | Prospecting and exploration companies | 5 years | | | | | | |
| Konkola Copper Mines plc | 20 years | | | | | | | | | | | | |
| Other base metal miners | 10 years | | | | | | | | | | | | |
| Prospecting and exploration companies | 5 years | | | | | | | | | | | | |
| National pension fund (NAPSA) | <p>Both employers and employees must contribute 5% towards the Zambian National Pension Fund with a maximum limit of K391,481.80 per month.</p> | | | | | | | | | | | | |
| Withholding taxes | <p>The rates of withholding taxes are:</p> <table border="1" data-bbox="509 1327 1344 1646"> <tr> <td>Dividend</td> <td>0%</td> </tr> <tr> <td>Interest to any lender</td> <td>15%</td> </tr> <tr> <td>Management of consulting fee</td> <td>15%</td> </tr> <tr> <td>Rent from a Zambian source</td> <td>15%</td> </tr> <tr> <td>Commission</td> <td>15%</td> </tr> <tr> <td>Royalties</td> <td>15%</td> </tr> </table> | Dividend | 0% | Interest to any lender | 15% | Management of consulting fee | 15% | Rent from a Zambian source | 15% | Commission | 15% | Royalties | 15% |
| Dividend | 0% | | | | | | | | | | | | |
| Interest to any lender | 15% | | | | | | | | | | | | |
| Management of consulting fee | 15% | | | | | | | | | | | | |
| Rent from a Zambian source | 15% | | | | | | | | | | | | |
| Commission | 15% | | | | | | | | | | | | |
| Royalties | 15% | | | | | | | | | | | | |
| Value-added tax | <p>VAT is levied on:</p> <ul style="list-style-type: none"> • the supply of goods and services in Zambia – 16%; | | | | | | | | | | | | |

| | |
|--------------------|--|
| | <ul style="list-style-type: none"> • import of goods and services into Zambia – 16%; and • export of goods and services from Zambia – 0% <p>Since 2009, the import VAT deferment scheme has been extended to copper and cobalt concentrates. This scheme aims to provide cash flow relief, as VAT is not payable upon importation. It further encourages the utilisation of local smelting facilities.</p> |
| Capital allowances | <p>Prior to 2008, there was a 100% capital allowance. This was reduced to 25%, phased in over 2 years. In the 2009 budget, it was proposed that this 100% allowance be reinstated in order to encourage continued capital investment in Zambia.</p> |
| Ring fencing | <p>Mining companies in Zambia are not allowed to deduct capital expenditure of one mining site against the taxable profit of another mining site.</p> <p>Under the 2008 budget, hedging transactions are ring-fenced from other mining activities. This resulted in hedging losses not being available to set off against mining profits and vice versa. Hedging profits were also taxed at 35%, as opposed to the 30% of mining activities. Under the 2009 budget, hedging transactions are treated as part of mining activities and are taxed together with mining profits at 30%.</p> |

4.3 CONCLUSION

Zambia's tax legislation has been the subject of much controversy, particularly since the introduction of higher taxes in 2008. Mining companies threatened to take legal action against the government, which disregarded development agreements with these companies to maintain a low tax regime. Some of the main companies operating in Zambia include Canada's First Quantum Minerals, Australia's Equinox Minerals Ltd, the

Swiss firm Glencore International AG, and the country's largest copper producer, London Listed Vedanta Resources Plc. Mining companies are facing serious operational difficulties due to low commodity prices, and high fuel and electricity charges. Coupled with the higher taxes the profit margins are shrinking and future foreign investment is under threat (Schacinda, 2009).

The re-adjustments proposed in the 2009 budget definitely somewhat alleviate the burden for the mining companies caught between an economic downturn and low commodity prices. Mining companies were hoping for a corporate tax rate reduction from 30% to 25%, variable profit taxes to be zero rated and a suspension of the 25% excise duty on diesel, as well as a waiver of the road levy on imported diesel for consumption in the mine.

Despite all the controversy, including Luanshya Copper Mine halting operations, the Zambian Government is confident that Zambia will attract foreign investment and that the global economic downturn and low commodity prices are temporary.

CHAPTER 5

MINING IN THE DEMOCRATIC REPUBLIC OF CONGO

5.1 BACKGROUND

The DRC is potentially the richest mining country in Africa, but has been crippled by a coup, civil war, ethnic strife and resource plundering. Following the death of Laurent Kabila in 2001, his son, Joseph Kabila, assumed power. After being democratically elected in 2006, Joseph Kabila started a process to radically reform the mining sector in the DRC and to eradicate corruption. The new Mining Code, Law 007/2002 of 11 July 2002, which was introduced in 2003 under the guidance of the World Bank, will serve as an aid in these objectives (VOA News, 2006).

It is estimated that since the start of the war in 1998 more than 5 million people have died and, although the conflict officially ended in 2003, fighting continues in the Eastern provinces. A ceasefire agreement was drawn up in January 2008, but has not yet been implemented. With 17,000 troops, the United Nations has the largest peacekeeping force in the world stationed in the DRC. Additional problems in conducting business in the DRC include illegal artisanal mining and the need to develop human resources and infrastructure (UN News Centre, 2008).

Obtaining information on the tax regime in DRC proved difficult, with most documents available locally in French only, and limited resources listed electronically.

Figure 5 illustrates the location of mineral deposits in the DRC. The second map highlights the location of copper in the DRC. Despite the abundance of minerals in the DRC, as illustrated below, this country has a long way to go in generating wealth from its riches. The implementation of an efficient tax regime is only one area for improvement.

Figure 5: Mineral deposits in DRC

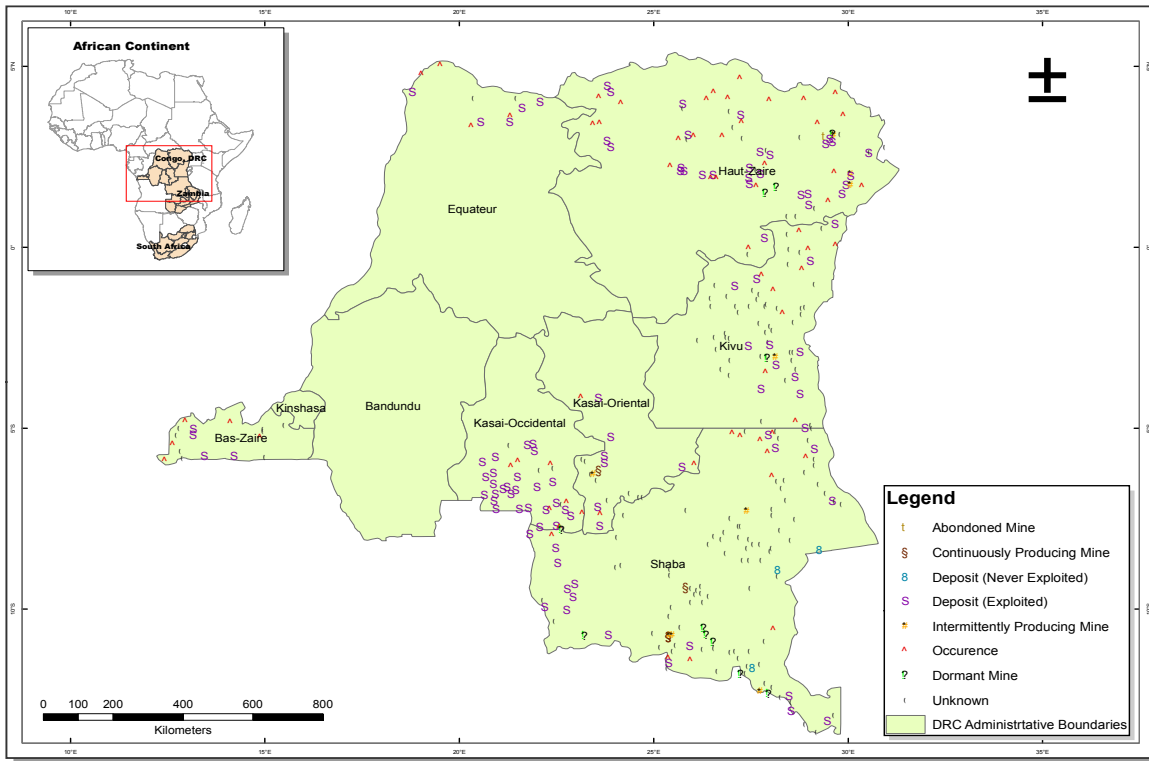
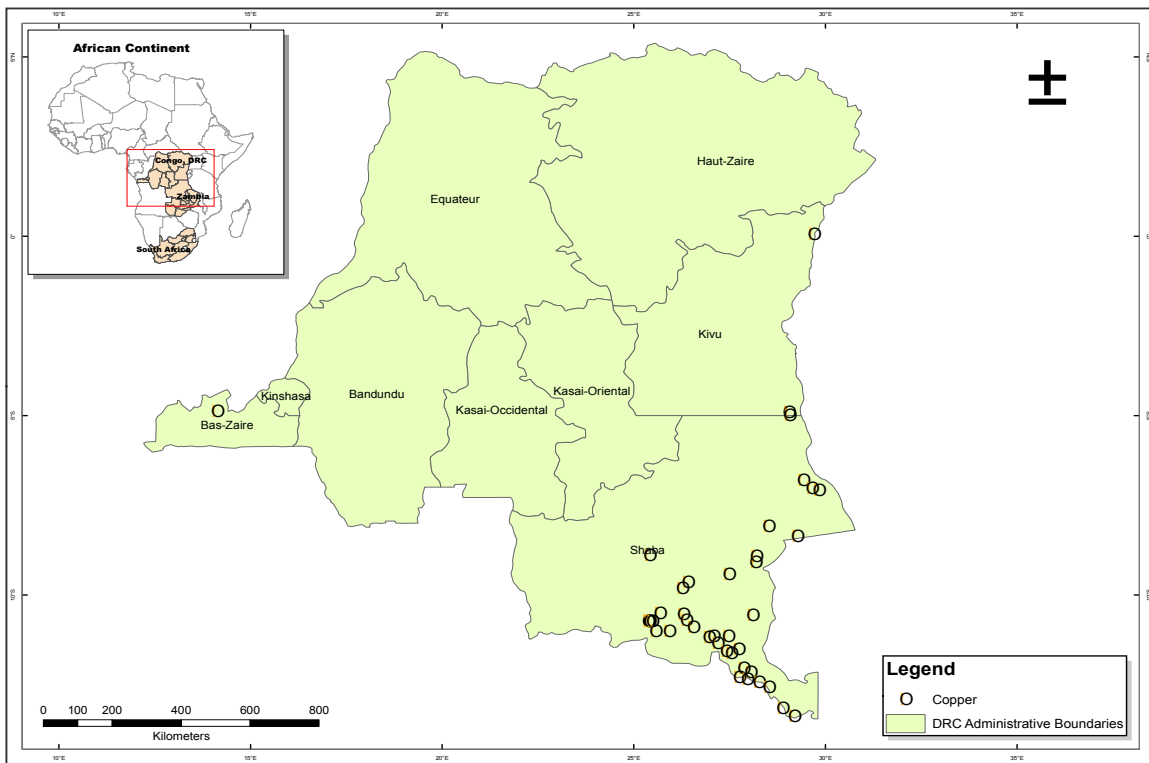


Figure 6: Copper in DRC



5.2 TAX ON MINES

Companies operating in the DRC, irrespective of where they are incorporated or from where they are controlled, are taxed on a source basis. Profits arising from activities conducted in the DRC are taxed in the DRC. Mining companies are subject to a tax and customs regime as defined in the following legislation:

- Law n°007/2002 dated July 11, 2002 (Mining Code); and
- Decree n°038/2003 dated March 26, 2003 (Mining Rules).

In addition, mining companies are also subject to a particular exchange control regime as prescribed by the Mining Code.

Once a company has converted a research (exploration) permit to an exploitation (mining) permit and commenced exploitation, the following tax consequences occur:

- import duty rates increase from 2% to 5%;
- the holder of an exploitation permit is subject to a mining royalty on all commercial products;
- the mining surface tax rate changes (difference in rate between research and exploitation);
- the price of the surface area fee per unit area changes (difference in price between research and exploitation); and
- once mining has commenced and the company is generating income, it is subject to corporate tax.

Another factor that influences the perceived viability of a project in the DRC is the requirement that the state has a 5% stake in any mining projects.

The following table is a list of the taxes and fees payable by a mining company conducting business in the DRC. All tax rates in foreign currency quoted in the mining law are adjusted annually by a Decision Act from the Mining Land Register after consultation with the Central Bank of Congo (Article 325 Mining Code and Article 573 Mining Regulations):

Table 5: Taxes and fees applicable to mining companies in the DRC

| Tax | Reference | Discussion / Explanation |
|-----------------|--|--|
| Land tax | <p>Article 236 Mining Code</p> <p>Article 521 Mining Regulations</p> | <p>Land tax is determined in relation to the type of property and its value as well as the area in which it is situated.</p> <p>Real estate and buildings located in the mining complex are exempt.</p> <p>The tax is levied at a predetermined rate in US\$ per m² per floor or per apartment and varies from 0.30US\$/ m² to 75US\$/ m² depending on the type of property and the district.</p> <p>The rate is determined by each Province and the tax is payable to the local tax authority.</p> |
| Tax on vehicles | Article 237 Mining Code | <p>Vehicles transporting people, material or inventory are subject to an annual tax charge.</p> <p>Vehicles which transport people, material or inventory used exclusively in the mining complex are exempt.</p> <p>Motorcycles less than 50cc, tow trucks, ambulances, fire engines and machine tools are also exempt.</p> <p>This tax is levied as follows:</p> <ul style="list-style-type: none"> • motorcycles: 5US\$; • commercial motor vehicles, buses etc.: between 9US\$ and 17US\$, depending on |



| | | |
|-----------------------|--|--|
| | | <p>weight;</p> <ul style="list-style-type: none">tractors: between 9US\$ and 44US\$; andothers belonging to a company: between 4US\$ and 17US\$, depending on the power of the vehicle. <p>The definition of vehicle includes boats and watercraft.</p> |
| Special road tax | <p>Article 239 Mining Code</p> <p>Article 522 Mining Regulations</p> | <p>For all other vehicles an annual tax is payable.</p> <p>All vehicles used exclusively in the mining complex are exempt.</p> <p>This tax is levied as follows:</p> <ul style="list-style-type: none">motorcycles: 6US\$; andcommercial motor vehicles, buses etc.: between 20US\$ and 45US\$, depending on weight. <p>This tax is payable to the local tax authority.</p> |
| Tax on mining surface | Article 238 Mining Code | <p>The tax is calculated according to the area covered by the permit (research and exploitation) and is payable to the local tax authorities.</p> <p>The rate is fixed per hectare and differs for research and exploitation permits.</p> <p>The rate increases for the first 3 years and is fixed thereafter.</p> <p>Currently these rates are:</p> |



| | | |
|---|--|---|
| | | <ul style="list-style-type: none"> • 0.02US\$ (research) and 0.04US\$ (exploitation) per hectare in the first year; • 0.03US\$ (research) and 0.06US\$ (exploitation) per hectare in the second year; • 0.035US\$ (research) and 0.07US\$ (exploitation) per hectare in the third year; and • 0.04US\$ (research) and 0.08US\$ (exploitation) per hectare for each subsequent year. |
| Annual surface area fees per quadrangle | Articles 198 – 201 Mining Code Article 394 – 403 Mining Regulations | <p>These fees are levied by and for the benefit of the Mining Registry at a rate of 424.78US\$ per quadrangle for exploitation licenses.</p> <p>These fees are paid to cover the costs of services rendered by the Mining Registry in connection with the administration of mining rights.</p> |
| Mining royalty | Mining Code | <p>2% royalty on net smelter return. This royalty is due upon the sale of the product and is payable within 30 days.</p> <p>40% of money received offshore for products sold abroad must be repatriated to the DRC within 15 days.</p> <p>Mining royalties paid are deductible for corporate tax purposes.</p> |
| Tax on rental | Article 245 Mining | If the holder of a mining title owns properties and |



| | | |
|----------------------|---|---|
| income (IRL) | Code | rents these properties out, the rental income is taxable at 22%. |
| Tax on movables (IM) | Article 246 Mining Code | <p>Tax on interest paid on loans, allowances to directors and on royalties and license fees.</p> <p>The rate is fixed at 20% and is payable by the entity paying the interest, dividends, directors' fees or royalties.</p> <p>Royalties are subject to 20% withholding tax applied to a 70% base.</p> <p>The following exceptions are applicable:</p> <ul style="list-style-type: none">• interest on a loan in foreign currency abroad is exempt (loans from affiliates must be based on market conditions); and• dividends paid by the holder to a shareholder that are subject to a 10% tax on movables. |
| Corporate tax (IBP) | Article 247 par 1 and Article 248 and further Mining Code Article 529 and further Mining Regulations | <p>30% of profits with a minimum of 1/1000 of the annual turnover, without being less than 2,500US\$.</p> <p>The following specific provisions are made in the Mining Code:</p> <ul style="list-style-type: none">• accelerated depreciation – 60% of the purchase price of an asset may be written down in the first year, thereafter on a declining basis according to general law; |



| | | |
|----------------|--|---|
| | | <p>and</p> <ul style="list-style-type: none">• tax losses may be carried forward for 5 years. Research and development costs (i.e. exploration) may be amortised over 2 years following the grant of the exploitation permit. Capital gains and losses for the transfer of mining title are included in the corporate tax base. |
| Sale tax (ICA) | <p>Article 259 Mining Code</p> <p>Article 534 and further Mining Regulations</p> | <p>The holder of a mining title is subject to a specific ICA regime under the Mining Code.</p> <p>For services and sales rendered by the holder of a mining title:</p> <ul style="list-style-type: none">• the sale of products to a transformation plant in the DRC is exempted;• the sale of products excluding the above within the DRC is taxed at 10%;• sales outside the DRC are not subject to ICA; and• services are taxed according to common law at 18%. <p>For services and sales rendered to the holder of a mining title:</p> <ul style="list-style-type: none">• 5% sales tax is payable by the holder of the mining title for corporate services received; and• goods manufactured in the DRC purchased for mining activities are taxed at 3%. |



| | | |
|--|-------------------------|---|
| | | <p>The supply of other goods and services (not related to the mining activities or the corporate purpose of the entity) are submitted to the common law rate, which is:</p> <ul style="list-style-type: none">• 3% or 13% for the purchase of goods manufactured in the DRC;• 6% or 15% for transportation services (local or international);• 18% for services rendered by a local supplier;• 30% for services rendered by a foreign and non-resident supplier; and• 18% on three quarters of the invoice for construction services. |
| Exceptional tax on expatriate wages (IERE) | Article 260 Mining Code | Tax is 10% and is not deductible for corporate tax. This tax is payable by the employer. |
| Withholding of the instalments of corporate tax of certain suppliers | Article 247 Mining Code | <p>The holder of the mining title must withhold at source 1% on the invoice of the following suppliers:</p> <ul style="list-style-type: none">• suppliers not under the supervision of the DGE and CDI; and• on provision of services (including construction). |
| Charges and compensatory duties which | Article 220 Mining Code | Application of common law except for preferential treatment on import and export per the Mining Code. |



| | | |
|--|---|--|
| contribute to the costs of the functioning of the public administrations or the customised public services | | |
| Personal income tax (IPR) | Article 244 Mining Code | Employer must withhold at source – determined per common law. The rate is progressive. However, it may never exceed 30%. |
| Exchange control duty | Article 269 Mining Code Article 549 Mining Regulations | The holder must pay Central Bank of Congo an exchange control duty of 2/1000 on the following transactions: <ul style="list-style-type: none">• any payments abroad made by approved banks from the holder's account in banks in the DRC. This is applicable to revenue and expenditure but excludes repatriations of receipts originating from the main bank account;• Any debit and credit transactions made from the holder's main bank account, with the exception of transfers for servicing foreign debt. |

5.3 CONCLUSION

At first glance the table of taxes referred to above does not appear unreasonable. In fact, a corporate tax rate of 30% and 5% required state ownership may seem attractive compared with that in South Africa with a similar corporate tax rate but a required 26% black ownership. Within the context of the current unrest, bad infrastructure, corruption and political instability, the factors cited above cannot be considered in isolation. Stability plays a major role in attracting investment, and potential investors need assurance that the rules of the game are clearly defined and not likely to change. In Chapter 6 the tax regime of the DRC will be compared with those of South Africa and Zambia in order to draw a conclusion as to their efficacy in attracting foreign investment.

CHAPTER 6

COMPARISON OF TAXES

6.1 INTRODUCTION

In 2009 the World Bank, in conjunction with PricewaterhouseCoopers, published *Paying taxes 2009: The global picture*. This publication measures the ease of paying taxes for 181 economies around the world. In this chapter the following criteria will be analysed:

- the total number of tax payments per year;
- the total number of hours spent in complying with the tax regime; and
- the total tax rate as a percentage of taxable profit.

Investors will consider these attributes when evaluating the tax regime of a potential target country. The number of payments and hours needed are directly linked to the complexity and administration efficiency of the country's tax regime. In turn, the total tax rate will directly impact on profitability. In summary the following information pertaining to South Africa, Zambia and DRC was extracted. A comparison was drawn between these countries and the best and worst-ranked countries in the world in order to see how they ranked.

6.2 THE TOTAL NUMBER OF TAX PAYMENTS PER YEAR

The total number of tax payments per year is calculated according to the total number of taxes or contributions paid, the method of payment, the frequency of payment and the number of agencies involved in the second year of operation for a company. Consumption taxes, such as sales tax and value-added tax, are included. These taxes do not impact on the company balance sheet but do add to the administrative burden of complying with the tax system.

Electronic filing systems are accounted for once, even though the filings may be more frequent. The same applies to taxes that are withheld at source. Where two or more

taxes form part of the same filing, this is accounted for only once, for example, when health insurance and pension contributions are filed and paid together.

The results per country were as follows:

Table 6: Number of tax payments per year – South Africa

| Tax or mandatory contribution | Payments (number) | Notes on Payments |
|--|--------------------------|--------------------------|
| Corporate income tax | 1 | Online filing |
| Capital gains tax | 0 | Paid jointly |
| Secondary tax on companies (dividend tax) | 1 | Online filing |
| Property tax | 1 | Online filing |
| Skills development level contribution | 1 | Online filing |
| Vehicles tax | 1 | |
| Occupational injuries insurance contribution | 1 | Online filing |
| Fuel tax | 1 | |
| Unemployment insurance contributions (UIC) | 1 | Online filing |
| Value-added tax (VAT) | 1 | Online filing |
| Totals: | 9 | |

Table 7: Number of tax payments per year – Zambia

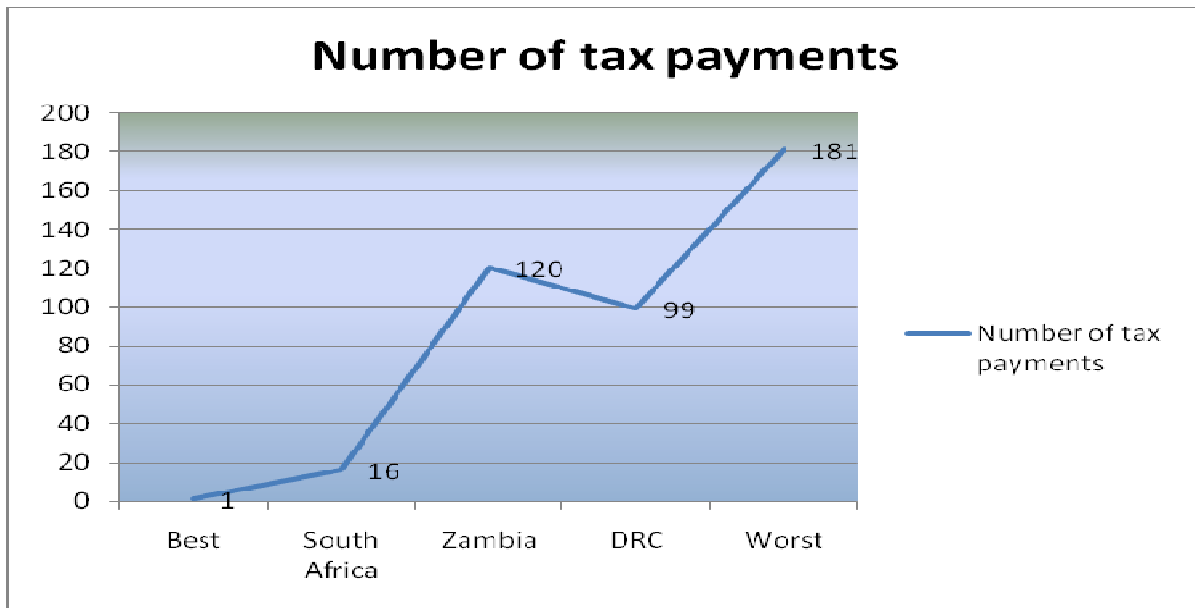
| Tax or mandatory contribution | Payments (number) | Notes on Payments |
|--------------------------------------|--------------------------|-------------------------------|
| Pension contribution | 12 | |
| Workmen's compensation contribution | 1 | |
| Fuel tax | 1 | |
| Property transfer tax | 1 | |
| Corporate income tax | 5 | |
| Tax on interest | 0 | Paid jointly with another tax |
| Road traffic commission | 4 | |
| Medical levy | 1 | |
| Value-added tax (VAT) | 12 | |
| Totals: | 37 | |

Table 8: Number of tax payments per year – DRC

| Tax or mandatory contribution | Payments (number) | Notes on Payments |
|--------------------------------------|--------------------------|--------------------------|
| Sales tax (ICA) | 12 | |
| Corporate income tax | 1 | |
| Social security contributions | 12 | |
| Land and building tax | 1 | |
| Payroll tax/employment fund | 4 | |
| Vehicle tax | 1 | |
| Fuel tax | 1 | |
| Totals: | 32 | |

The rankings for South Africa, Zambia and the DRC in comparison with the best and worst economies relating to the number of tax payments per annum are:

Figure 7: Comparative – number of tax payments



6.3 THE TOTAL NUMBER OF HOURS SPENT COMPLYING WITH TAX REGIME

The cumulative time (hours per year) is calculated according to the amount of time spent in preparing, filing and paying (or withholding) the following tax types:

- corporate income tax;
- value-added or sales tax; and

- labour taxes, including payroll contributions and social security.

The time includes the number of hours taken to collate information in order to compute taxes. Where it is required to keep a separate set of books for tax purposes, the time associated with that process is included. Payment time is also included and, when payments are required to be made in person, waiting periods are also included. The time spent on taxes excludes tax audits and queries by the tax authorities.

The total number of hours spent in complying with the tax regime of the selected countries is:

Table 9: Time to comply (hours per year) – South Africa

| Tax or mandatory contribution | Time (hours per financial year) |
|--|--|
| Corporate income tax | 100 |
| Unemployment insurance contributions (UIC) | 50 |
| Value-added tax (VAT) | 50 |
| Totals: | 200 |

Table 10: Time to comply (hours per year) – Zambia

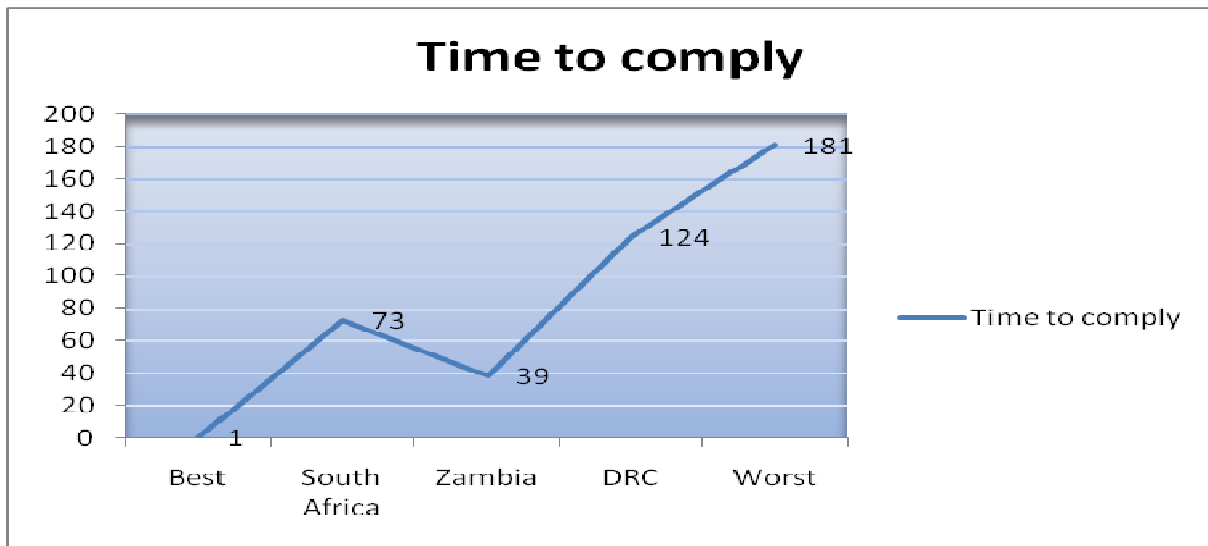
| Tax or mandatory contribution | Time (hours per financial year) |
|--------------------------------------|--|
| Pension contribution | 24 |
| Corporate income tax | 48 |
| Value-added tax (VAT) | 60 |
| Totals: | 132 |

Table 11: Time to comply (hours per year) – DRC

| Tax or mandatory contribution | Time (hours per financial year) |
|--------------------------------------|--|
| Sales tax (ICA) | 96 |
| Corporate income tax | 116 |
| Social security contributions | 96 |
| Totals: | 308 |

The rankings for South Africa, Zambia and the DRC in relation to the best and worst economies regarding the time taken to comply with the requirements of the tax regime per annum are:

Figure 8: Comparative – time to comply



6.4 THE TOTAL TAX RATE AS A PERCENTAGE OF TAXABLE PROFIT

The total tax rate is all taxes and mandatory contributions borne by the company in the second year of operation expressed as a percentage of commercial profits. The total amount of taxes and mandatory contributions is calculated after taking into consideration all deductions and exemptions. Withholding taxes or taxes collected on behalf of third parties are not included. The taxes and mandatory contributions can be divided into five categories:

- profit or corporate income tax;
- social contributions and labour taxes paid by the employer;
- property taxes;
- turnover taxes; and
- other taxes.

The commercial profit is calculated by adding back any taxes already deducted in the calculation of the profit before tax number. The definition of commercial tax is sales minus cost of goods sold, minus gross salaries, minus administrative expenses, minus other expenses, minus provisions, plus capital gains, minus interest expense, plus interest income and minus commercial depreciation.

The total tax rate as a percentage of profit was calculated as follows:

Table 12: Total tax rate as a % of commercial profit – South Africa

| Tax or mandatory contribution | Statutory tax rate | Tax base | Total tax rate (% profit) | Notes on TTR |
|--|---------------------------|-------------------------|--------------------------------------|-------------------------|
| Corporate income tax | 28.00% | Taxable income | 21.8 | |
| Capital gains tax | 14.50% | Capital gains | 5.1 | Included in other taxes |
| Secondary tax on companies (dividend tax) | 10.00% | Distributed profits | 2.7 | |
| Property tax | 0.00% | Property value | 1.8 | |
| Skills development level contribution | 1.00% | Gross salaries | 1.1 | |
| Vehicles tax | Specific tariff | Weight of empty vehicle | 0.9 | |
| Occupational injuries insurance contribution | 1.62% | Gross salaries | 0.9 | |
| Fuel tax | - | 1.4051 per liter | 0.6 | |
| Unemployment insurance contributions (UIC) | 1.00% | Gross salaries | 0.4 | |
| Value-added tax (VAT) | 14.00% | Value-added | | Not included |
| Totals: | | | 30.2 | |

Table 13: Total tax rate as a % of commercial profit – Zambia

| Tax or mandatory contribution | Statutory tax rate | Tax base | Total tax rate (% profit) | Notes on TTR |
|--------------------------------------|---------------------------|-----------------|--------------------------------------|-------------------------|
| Pension contribution | 5% | Gross salaries | 5.6 | |
| Workmen's compensation contribution | 4% | Gross salaries | 4.8 | |
| Fuel tax | 15%+45% | Fuel cost | 2.0 | |
| Property transfer tax | 3% | Sale price | 1.8 | |
| Corporate income tax | 35% | Taxable income | 1.7 | |
| Tax on interest | 15% | Interest income | 0.4 | Included in other taxes |
| Road traffic commission | K61,000 per quarter | | 0.2 | |
| Medical levy | 1% | Interest income | 0.0 | |
| Value-added tax (VAT) | 18% | Value-added | | Not included |
| Totals: | | | 16.1 | |

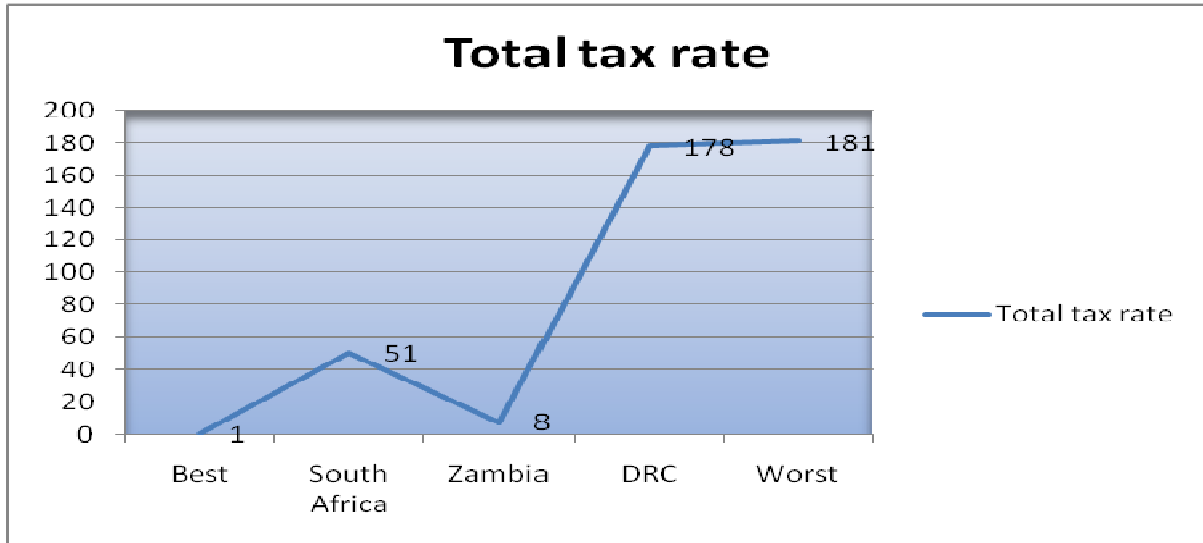
Table 14: Total tax rate as a % of commercial profit – DRC

| Tax or mandatory contribution | Statutory tax rate | Tax base | Total tax rate (% profit) | Notes on TTR |
|--------------------------------------|---------------------------|-------------------------------|--------------------------------------|---------------------|
| Sales Tax (ICA) | 0.15 | Purchases | 249.7 | |
| Corporate income tax | 0.4 | Taxable profits | 58.9 | |
| Social security contributions | 0.05 | Gross salaries | 5.6 | |
| Land and building tax | tax scale | | 3.9 | |
| Payroll tax/employment fund | 0.02 | Gross salaries | 2.3 | |
| Vehicle tax | fixed fee | Type of vehicle | 1.0 | |
| Fuel tax | | Included in the price of fuel | 0.6 | |
| Totals: | | | 322 | |



The rankings for South Africa, Zambia and the DRC relation to the best and worst economies regarding the total tax rate as a percentage of commercial profits per annum are:

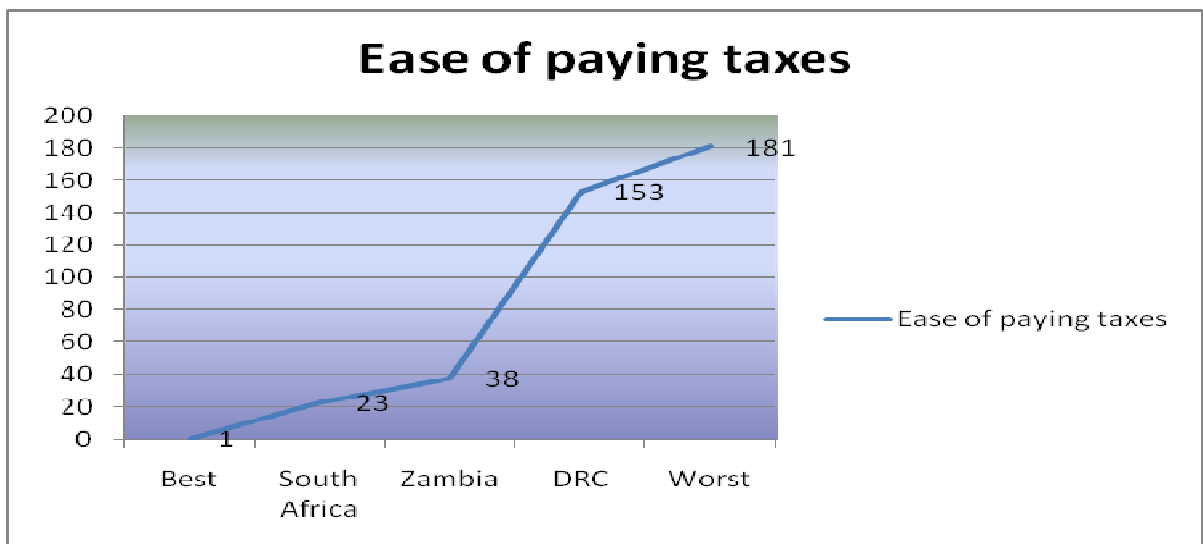
Figure 9: Comparative – total tax rate



6.5 CONCLUSION

The statistical rankings for South Africa, Zambia and the DRC based on three factors discussed were as follows:

Figure 10: Comparative – ease of paying taxes





These results indicate that South Africa (38) have developed tax regimes that compete with the best-ranked countries in the world. The DRC, however, approaches the level of the worst-ranked in the world. This is mainly as a result of high tax rates, where the DRC is ranked 178 and the time it takes to be tax compliant in the DRC, which is ranked at 124.

CHAPTER 7

CONCLUSION

The purpose of the study, to evaluate various African taxation regimes in order to determine whether an appropriate balance is achieved between the distribution of wealth to the government of a country and the mining company investing in that country, was guided by specific research objectives.

The study outcome of the first objective, to identify the various components of tax on mines in the countries selected, identified certain material taxes that are common to mining tax regimes across the world. These were:

- corporate tax;
- royalties; and
- capital allowances.

The corporate tax rate of South Africa is the most favourable to the taxpayer at 28%, compared with that of the DRC and Zambia, with a rate of 30%. However this cannot be viewed in isolation, as all other additional taxes may add to an increase in the rate. This can be illustrated by Zambia, which also levies an additional variable profit tax of up to 15% when income from mining operations exceeds 8% of gross sales. The DRC also has many other taxes that add to the overall tax rate charged to investors, such as vehicle and special road taxes.

Royalty charges in Zambia are currently 3% payable on the value of ore produced, and in DRC these are 2% on net smelter revenue. South African royalty payments will be based on company earnings before interest and tax and will rise with profitability. It is therefore difficult to draw a direct comparison between the royalty regimes, as calculation methods and percentages differ from country to country. Be that as it may, these taxes are consistently charged by all countries and should be taken into account when assessing whether or not to operate in a specific country.



Accelerated capital expenditure c under the tax regimes of all three countries. In South Africa, this is limited to the income derived from mining in that year. Zambia has a 100% capital allowance to encourage capital investment. The DRC has accelerated depreciation, where 60% of the purchase price of assets may be written down in the first year and thereafter on a declining basis. In this instance the Zambian regime proves most favourable to an investor, as capital expenditure can be deducted in full.

The study outcome of the second objective, to highlight the key factors that influence foreign investor decisions, resulted in the following findings:

- projects need to provide sufficient return on investment; and
- risks associated with a country and project will play a pivotal role when determining whether or not to invest.

South Africa is often portrayed as the success story of Africa. However, uncertainty relating to crime, poverty and political changes, such as the recent appointment of President Zuma, all influence potential investors. Zambia went through a period of harsh criticism when the rules of the game changed unilaterally with the announcement of the 2008 budget, which imposed harsh taxes on mining companies. The DRC is still dealing with the results of decades of war. A cost benefit analysis would determine whether all these factors outweighed the potential profitability of a project and would ultimately guide investor decision-making.

The study outcome of the third objective, to assess the impact of tax revenues from mining activities on the economy of developing countries, indicated that these revenues are used to develop infrastructure, subsidise housing and improve health services. Secondary benefits include subsidised infrastructure, as mines need roads and rails, and the creation of job opportunities for the local communities.

The fourth objective, to research the current key components of the tax regimes of South Africa, Zambia and the DRC, was dealt with in detail in Chapters 3, 4 and 5. These tax regimes were compared with one another in Chapter 6, which addresses the fifth objective, to critically evaluate the tax regimes of these countries. South Africa ranked best at 23 compared with Zambia at 38 and the DRC at 153, out of 181 economies across the world.

The sixth objective, to determine the attributes of these tax regimes that best achieve this balance between tax revenue and foreign investment, proved to be the most difficult. It is clear that the tax regimes of South Africa, Zambia and the DRC offer various attributes that either attract or deter foreign investment. Critical factors like fiscal stability and transparency are often valued more highly than low tax rates, as illustrated by the harsh criticism of Zambia from the business world when the country announced its 2008 budget. Bribery and corruption, together with political instability, are aspects of a reputation that goes ahead of the country when doing business in the DRC. These are all disadvantages that impact negatively on investor decision-making rather than the structuring or components of the tax regime.

This begs the question of whether an optimal mix of taxes is possible. The answer may be no.

Investors are more likely to pay a higher tax rate if they know that the taxes levied will remain stable over a period of time and material changes will not be implemented without consultation with the industry leaders who will be affected. This is illustrated by the consultation process in South Africa with the introduction of the Royalty Act.

An investor is more likely to support a tax regime administered by a competent authority, where monies allocated in the fiscal budget are applied against plans and reported on, where bribery and corruption are discouraged and social responsibility encouraged.

An investor is more likely to support a fair tax regime when the government remains true to its word when negotiating terms with potential investors and remains true once the investor has established a presence in that country.

An investor is more likely to support a tax regime that is equally beneficial to the country and the investor, instead of a tax regime implemented to ensure maximum benefit to the government, even at the expense of the industry.

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MINING SCHEDULE

PART 1

Indicate / state whether you were engaged in mining or mining operations as defined in Section 1 of the Income Tax Act.

If yes, please provide the following information / documentation:

- Detailed description of the mining or mining operations being conducted making reference of the type of operations conducted;
- A detailed description indicating the mineral areas currently being explored by the company, the mineral areas being mined and / or previously mined, as well as mineral areas being considered as one mine for purposes of section 36 of the Income Tax Act, making reference to business rationale, contiguity of ore bodies, etc.;
- A detailed description of the downstream operations with reference to, inter alia, new or partially completed infrastructure such as smelters, refiners, concentrators, etc., the role thereof in the downstream operations as well as the consequential treatment (allocation) of the capital expenditure incurred; and
- A detailed explanation in respect of each exploration undertaking with regards to activities and future exploitation.

PART 2

Indicate whether –

- a) The mining or mining operations are conducted on behalf of a mineral right holder;
or
- b) Whether the mining or mining operations are conducted on a property by another party to which you are the registered mineral right holder?



If yes, Provide the following information:

- A copy of the signed agreement(s) entered into during the year and / or in existence at year end;
- A copy of the Mining Authorization issued by the Director of the Department of Minerals and Energy in respect of the mining rights referred to in the contract(s) entered into, and / or
- Where no formal agreement was entered into, furnish a detailed description of the sub-contract mining activities being conducted.

PART 3

a) Were any contributions made to a rehabilitation trust or provisions raised for future rehabilitation obligations?

If "yes" please provide the following information / documentation:

- List the name and income tax reference numbers of the trust or any other approved vehicle;

b) If you answered "no" to question 3(a) above indicate whether any other arrangements are in place to provide for rehabilitation costs (in respect of early and final closure costs).

The following information and documents should be furnished:

- A detailed description of the arrangement(s) in place as well as amount claimed as a deduction for Income Tax Purposes;
- A copy of any signed agreement(s) entered into; and
- Where SARS has given approval of the arrangement prior to implementation, a copy of the approval document.



Did you dispose of, acquire, transfer, lease or cede mining property and / or capital assets as contemplated in sections 36 and 37 of the Income Tax Act?

The following information and documents should be furnished:

- A copy of the signed agreement(s) entered into; and
- A copy of the effective value determination issued by the Director General for Minerals and Energy in relation to the mining property and capital assets, as defined, acquired and / or disposed of.



APPENDIX C: Schedule C – Mining Capital Expenditure

| NAME: | | [ABC (Pty) Ltd] | | | | | | | Schedule C |
|--|--------------------------------|-----------------|--------|--------|--------|--------|-------|---|------------|
| REFERENCE NUMBER: | | [0000/000/00/0] | | | | | | | |
| YEAR ENDED: | | [00 Aaaaa 2005] | | | | | | | |
| MINING CAPITAL EXPENDITURE | | | | | | | | | |
| | | | Mine 1 | Mine 2 | Mine 3 | Mine 4 | Total | | |
| Unredeemed expenditure b/f from prior year | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Current year expenditure incurred | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Capital expenditure acquired (Per effective valuation workings) | * + [Valuation to be attached] | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Assets purchases and capital expenditure incurred - | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Shaft sinking and mine equipment | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Vehicles (Excluding assets subject to S36(11)(d)) | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Vehicles subject to S36(11)(d) | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Plant, machinery & equipment | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Office equipment, etc | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Buildings acquired / erected (Excluding assets subject to S36(11)(d)) | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Buildings acquired / erected subject to S36(11)(d) | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Capital and standby stores | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Overheads capitalised | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Section 36(11)(c) allowance | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Section 36(11)(d) allowance (Vehicles) | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Section 36(11)(d) allowance (Housing) | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Other capital expenditure (Inclusive of capitalised exploration expenditure) | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Reductions in capital expenditure | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Vehicles subject to S36(11)(d) | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Buildings acquired / erected subject to S36(11)(d) | * | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Proceeds on disposal of mining capital assets | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Other | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Redeemed in this year | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Section 36(7G) utilisation | | | 0 | 0 | 0 | 0 | 0 | 0 | |
| Unredeemed expenditure c/f to next year | | | 0 | 0 | 0 | 0 | 0 | 0 | |