



CENTRE FOR TRADE POLICY & DEVELOPMENT

A fool's paradise?

Zambia's mining tax regime

Savior Mwambwa
Aaron Griffiths
and Andreas Kahler

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This briefing paper represents the first in a series of briefing papers tackling issues around taxation, mining and the environment and other issues affecting Zambia's extractive sector.

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All errors or omissions are the responsibility of the authors alone.

About CTPD

The Centre for Trade Policy and Development is a non-profit making, membership-based trade policy think tank which aims to promote equitable, pro-poor trade policies and practices. CTPD provides analytical research, capacity building and facilitation services in trade and investment sectors to civil society, the local private sector, small-scale producer groups and government. CTPD's mandate is to influence pro-poor trade reform at national, regional and multilateral levels as well as facilitate for the participation of various stakeholders, including member organizations, in ensuring that trade is used as tool for poverty eradication.

Acronyms

EITI	Extractive Industries Transparency Initiative
GDP	Gross Domestic Product
IMF	International Monetary Fund
OECD	Organization for Economic Cooperation and Development
PAYE	Pay As You Earn
VAT	Value Added Tax
ZCCM	Zambia Consolidated Copper Mines
ZMK	Zambian Kwacha
ZRA	Zambia Revenue Authority

Summary

Zambia's large mineral reserves are its richest natural endowment. Copper mining is the main source of foreign exchange earnings and an essential part of the country's developmental plans. This paper, based on a series of public discussions held in 2010, highlights public concern over how much Zambia really benefits from its copper wealth, and calls for the mining tax regime to be reformed to collect more revenue.

- Zambia's mining tax regime is strongly focused on attracting foreign investment through low rates and an assortment of incentives. But this needs to be balanced with the urgent need to raise more revenue from mining in order to invest in infrastructure and the country's economic development. The optimal balance between these two objectives has not yet been struck. It is time for the Government to devise a strategy for all Zambians to participate in the benefits from their country's mineral reserves.
- The revenue-based windfall tax, repealed in 2009, is a simpler way to tax windfalls than the existing variable profit tax, which has not yet delivered any revenue. Had it remained in force, the windfall tax could have contributed many hundreds of billions of kwacha to government coffers. Given the

limited capacity of the Zambian authorities to assess mining companies' claims on profitability levels, the windfall tax should be re-introduced, at least until such a time that Zambia is able to administer a profits-based tax effectively.

- Mining companies should not be allowed to offset hedging transactions against income. Fixing this loophole would be a simple and effective measure to raise revenue and should be one of Government's first moves.
- It is crucial that those who bear the brunt of mining's social and environmental impacts see a fairer distribution of mineral royalties. Mining operations take a toll on the local infrastructure and fuel rapid urbanization, so the local administrations need specific support to address these challenges.
- Public discontent is fuelled by the secrecy of government relations with mining companies, dating back to the Development Agreements which have never been publicly disclosed. It is imperative that the Government and mining companies subscribe to international best practice in extractive industry transparency.

Mining and taxation

Taxation has several important functions, including: raising revenue for spending on agreed national and local development plans; influencing the economic behaviour of companies and individuals; and encouraging tax-paying citizens to hold their governments accountable. Combined with economic growth, taxation can help developing countries like Zambia deliver social and economic development and reduce aid dependency.

Mining is an important source of tax revenue for countries with mineral wealth. In fact, tax revenue is the major benefit mineral wealth brings because mining is an 'enclave' economic activity, meaning it tends to have very few forward or backward linkages, creates relatively few jobs, and requires most of the equipment and services it needs to be imported.

As several reports have shown, African countries have generally not benefitted from rising mineral prices. Mining companies are granted too many tax concessions and manage to avoid tax through their complicated corporate structures and accounting mechanisms. Coupled with inadequate institutional capacity to ensure tax compliance, these measures diminish the tax revenue due to African governments (OSISA et al, 2009).

All these problems have been felt in Zambia, and public debates held in 2010 in Lusaka, Kitwe and Solwezi show that many Zambians are highly concerned about their current mining tax regime. Some in the mining communities are calling for Zambia's copper to be left in the ground if its wealth cannot be harnessed for Zambia's development. Now, several years after privatization, with skyward copper prices far exceeding production costs, many feel it is time to raise more revenue from mining in order to invest in economic development.

How is mining taxed?

There are many ways to tax mining, but these are some of the main ones:

- Royalties – payable as a percentage of the market value of minerals. These are the principal way governments extract an economic rent for allowing a mineral to be dug out of the ground and removed from the country.
- Income taxes – employees in the mining sector, like other workers, pay a proportion of the salary in tax through Pay As You Earn (PAYE). When applied to companies, income tax is usually called company tax or corporate tax, and it takes a percentage of the taxable income (i.e. the profit) of the mining companies.
- Other corporate citizenship taxes will also apply to mining companies in the course of their work, such as customs duty on goods imported into the country, or VAT on goods bought locally. These are sometimes the subject of remissions (exemptions or deductions), as has been the case in Zambia. Companies are often charged withholding taxes on interest, management and consultancy fees, dividends, rent, commissions and payments to non-resident contractors, although these may be the subject of remissions.
- Export taxes – export taxes can be applied to exports of raw materials as an incentive for further in-country refining and processing
- Supplementary taxes – such as a windfall tax or a variable profit tax: a higher tax rate sometimes applied to the profits that ensue from a sudden windfall gain. In Zambia a windfall tax was applied to revenues rather than profits – see below. Many countries have imposed varieties of windfall tax, most commonly to oil, but in some cases to mining.

A brief history

In the colonial era the industry was owned and managed by two private firms. The first post-independence government nationalized them in 1970 and eventually brought them together under the parastatal Zambia Consolidated Copper Mines (ZCCM). However, declining world copper prices and long-term under-investment pushed the industry into crisis. By the late 1990s production had crashed to record lows.

The liberalizing MMD government passed a new Mining Act in 1995 that paved the way for the privatization of the mines, a process that was conducted rapidly between 1997 and 2000. ZCCM was split into seven smaller companies and the state remained a minority shareholder in the companies through ZCCM-Investment Holdings. Development agreements were signed with the companies granted large-scale mining licences that exempted them from many of ZCCM's liabilities, including many taxes. The provisions were binding on the Zambian Republic notwithstanding any subsequent legislation during

a 'stability period' of 15-20 years. The agreements were not made available to the public, but it emerged that most set a royalty rate of 0.6%, rather than the 2% in the 1995 Mining Act, while companies could avoid paying a good deal of corporate tax by carrying forward losses to be subtracted from profits in following years. In 2002, legislation effectively wrote many of these provisions into the tax regime itself, setting the royalty rate at 0.6% and corporate tax for mining companies at 25%.

In the years after privatization, investment levels began to grow, coinciding with a sustained increase in world copper prices between 2003 and 2006 (see Figure 1). Total investment since privatization now totals billions of dollars and new mines have opened, including Africa's largest copper mine at Lumwana. Production has increased to around 60,000 tonnes a month (see Figure 2). Total production for 2009 was 698,000 tonnes and it is projected to reach nearly a million tonnes by 2015.

Figure 1 Copper prices 2000-2010

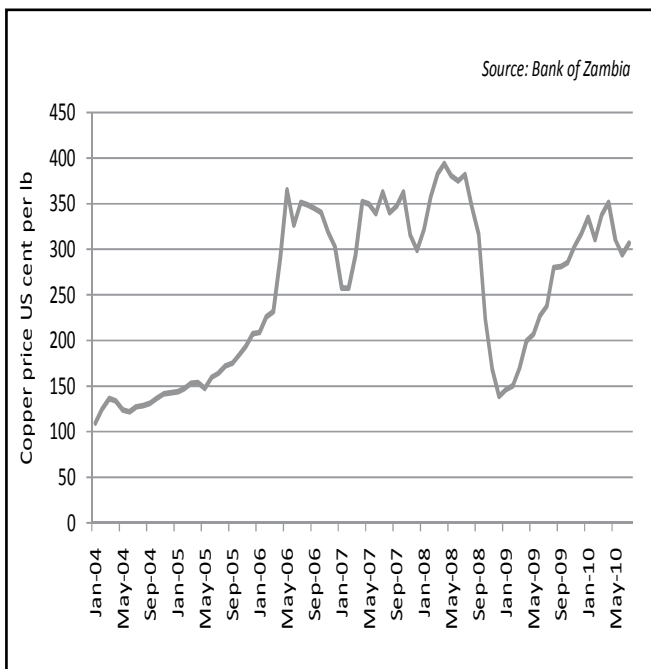
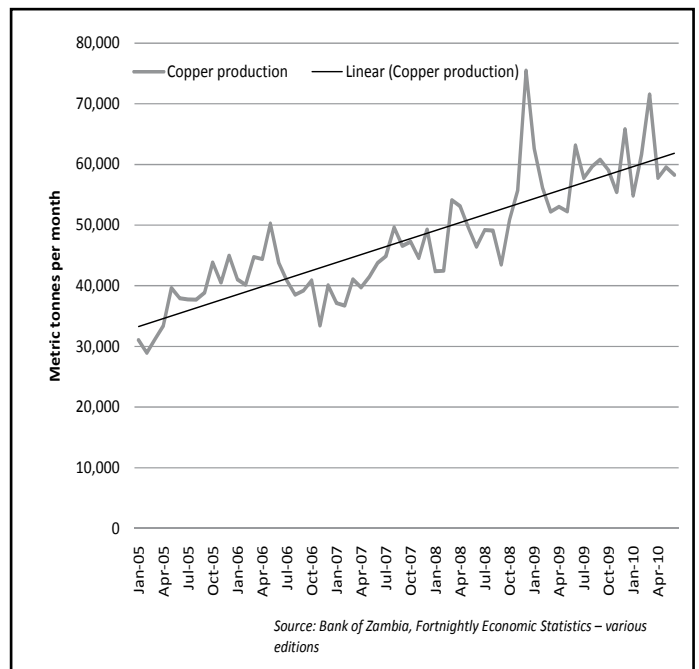
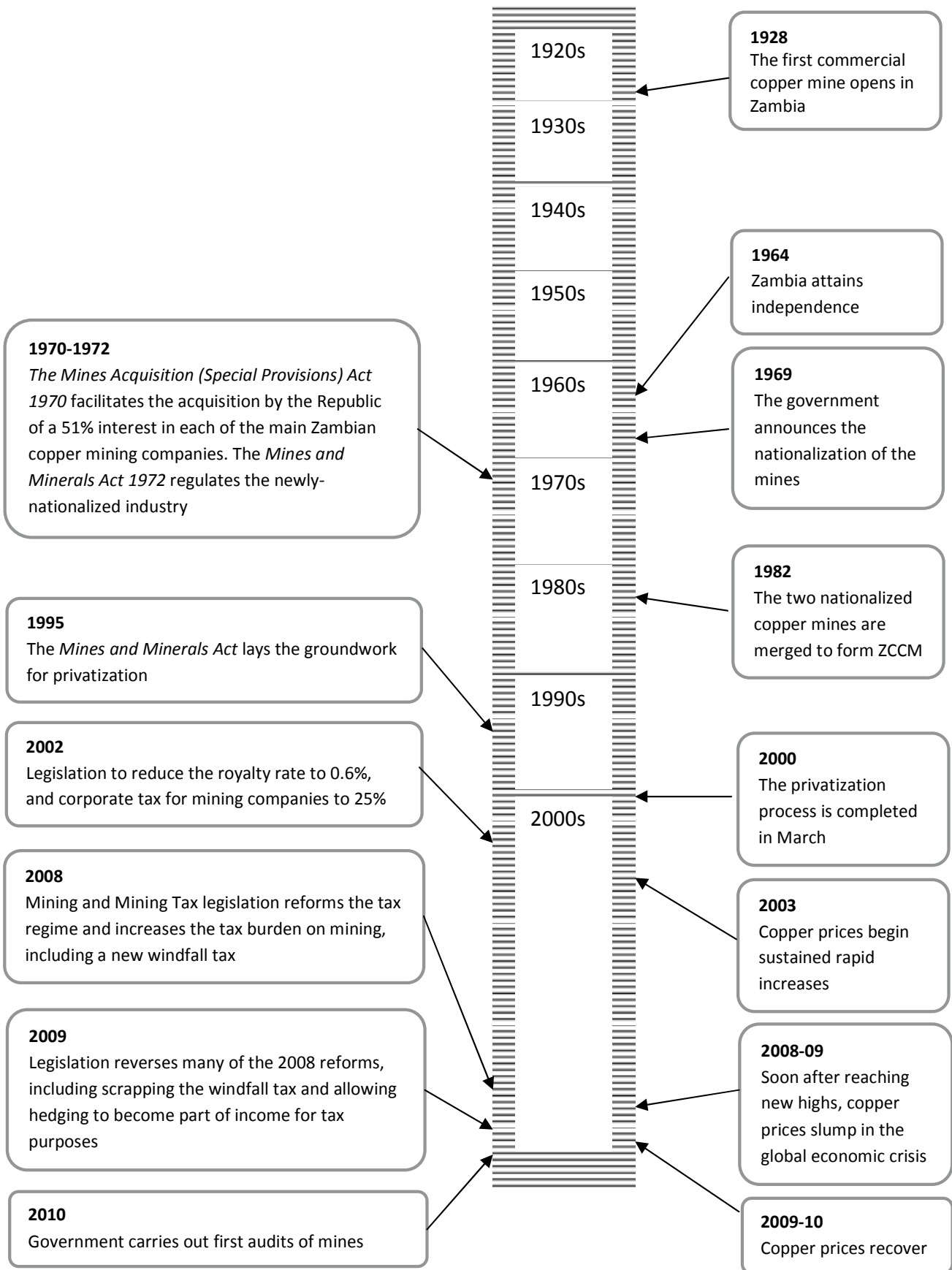


Figure 2 Monthly copper production levels, 2005-10





Reform and reversal

Set against the upward trends in investment, prices and production, privatization was accompanied by many problems. In the mining regions, these included casualization of the workforce, deepening pensioner poverty and a failure to protect the social infrastructure (Fraser & Lungu, 2007). Moreover, at the national level the Government faced the charge of being unable to regulate the mining companies' activities or obtain a share of the gains. This was particularly the case in the early years after privatization. In 2004 the World Bank found the marginal effective tax rate for the mining sector was 0%. As public concern about this situation grew, calls for the Government to extricate itself from Development Agreements were voiced, and the ruling party did very poorly in the Copperbelt in the 2006 elections.

In 2008, having failed to renegotiate the Development Agreements, the government chose the legislative path and passed a new Mining Act that effectively nullified (if not explicitly cancelled) the Development Agreements, introduced more transparency into the calculation of the price of sales, and increased the tax burden on mining. Royalties were increased to 3% and a windfall tax was introduced, triggering a tariff on revenues when copper reached given prices. [A full summary of the changes introduced is featured in the appendices.]

160. (1) A development agreement which is in existence before the commencement of this Act shall, notwithstanding any provision to the contrary contained in any law or in the developer agreement, cease to be binding on the Republic from the commencement of this Act.

The new regime met resistance from the mining companies, some of whom resisted paying the windfall tax on the grounds that the government had abrogated the Development Agreements. The mining companies also commissioned a study from PricewaterhouseCoopers in 2008 that highlighted flaws in its design that could have led to a marginal effective tax rate of 80% or more.

In 2009, citing the effects of the global financial crisis which caused copper prices to fall sharply for several months and led Zambian mines to warn

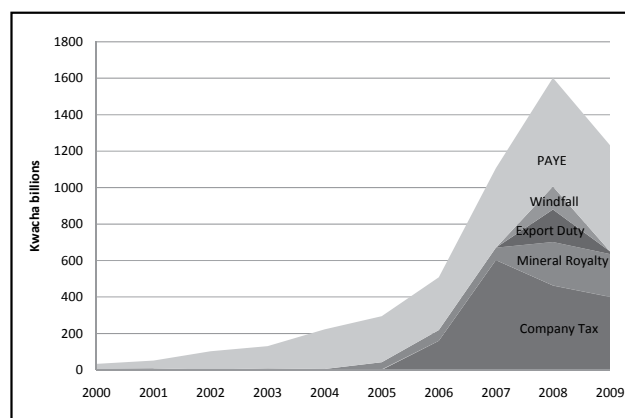
of major job losses, the Government announced several concessions to the mining sector. It scrapped the windfall tax and introduced several new measures favourable to the mining companies, including reversing the provision which prevented mining companies from offsetting hedging losses against mining income. Some have suggested these concessions represented a *quid pro quo* for the companies' acceptance of the nullification of the Development Agreements.

Many opposed these concessions and the debate has refused to go away as copper prices have recovered. In February 2010 the government announced plans to reform the Mines and Minerals Act. In March the IMF openly recommended Zambia increase tax collection to create more fiscal space, specifically calling for more tax revenue from the mining industry.

Tax revenue and Zambia's revenue needs

After a long period when it was at negligible levels, tax revenue from the mining sector has been rising in recent years. Until 2004, individual workers' PAYE was the only significant contributor to government coffers. Company tax began to make a contribution from around 2005 as profits started to be made (see Figure 3).

Figure 3 Mining sector revenues



Mineral royalties became more significant in 2008 and 2009, exceeding government targets in both years. Company tax increased rapidly in 2006 and 2007, although it tailed off somewhat the following

two years. The fall in copper prices 2008 may have contributed, but there may be other factors, including the reintroduction of the 100% capital allowance in the 2009 budget which is deductible from company tax.

Windfall tax was only collected in 2008. ZMK 126 billion was raised, although this should have been much higher except that some mining companies resisted paying. Using copper price and production figures, our model estimates that more than ZMK one trillion should have been collected in the tax year 2008/09, and ZMK 370 billion in the following crisis-hit financial year. Had the tax been deductible against corporate income tax, the net revenue impact for the two years would have been ZMK 711 billion and ZMK 259 billion respectively.

Of the sum that was actually collected in 2008/09, ZMK 109.5bn was collected from Kansanshi Mining Plc, ZMK 7.7bn from Chibuluma Mines Plc and ZMK 8.9bn NFC Africa Mining Plc. All the other mining companies paid nothing. No revenue from variable profit tax has yet been collected because the mining companies claim not to have hit the profitability threshold at which it comes applicable.

Export duty on unrefined copper made a contribution of ZMK 178bn in 2008, but the primary aim was not government revenue, but rather encouraging in-country processing. The sums have dwindled due to waivers granted as well as improvements to mines' refining capacity (CTPD, 2010).

Set within the context of Zambia's overall budget, these sums are relatively small. Figure 4 shows that in the government's 2010 budget, tax revenues (of all kinds) comprise 68% of the total revenue and financing. Figure 5 shows the budgeted composition of this tax revenue. Mineral royalties are expected to contribute 2.15% of tax revenue in 2010, or 1.46% of total revenue and financing. Company tax from all sectors (not just mining) is expected to contribute 12% of tax revenue.

Figure 4 Total Revenue and Financing for 2010 Budget

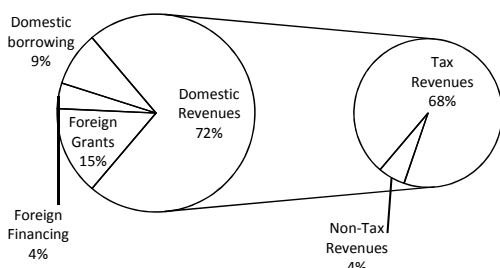
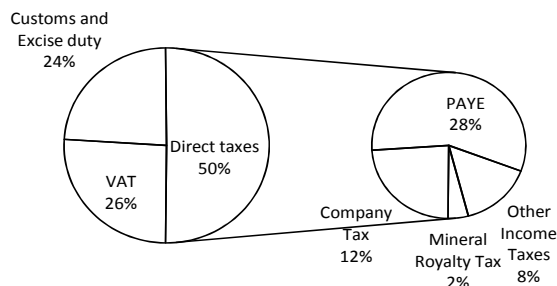


Figure 5 Tax revenues in the 2010 Budget



In its 2010 country report, the IMF stressed the need for enhanced revenue mobilization, especially from the mining sector. The IMF calculated that Zambia's revenues and grants total 19.7% of gross domestic product (GDP) in 2009 and its expenditure 22.4%, leaving a gap of 2.7% of GDP to be bridged by financing. Mining taxes total 1% of GDP (this is projected to rise to 2% by 2010, but the gap will still stand at 1.6%). Furthermore, Zambia's capital spending is low compared to neighbouring countries, and this should rise.

The key macroeconomic policy challenge going forward is to increase growth further and create fiscal space for spending that would enhance economic diversification and reduce Zambia's dependence on copper exports, in support of its aspiration to become a prosperous middle-income country by 2030.

IMF report, July 2010

How much tax is optimal?

It is clear that more revenue must be raised and that the mining sector is a key area where this can be achieved in a country where a narrow base of individual and household incomes already bear much of the direct tax burden. Mining companies oppose this and their representatives argue that mining operations can be credited with generating a lot of personal taxes from its employees, including the biggest contribution to PAYE from any sector.

'The mining sector contributes to the national economy in terms of tax revenues, which includes PAYE and VAT. It should not be viewed from just the point of corporate tax.'

Mr F. Bantubonse, Chamber of Mines, Solwezi public discussion, July 2010

However, putting the onus on ordinary workers, whose salaries are effectively a mining cost and not a profit, is misleading. Realistically any increase in revenues can only come from increasing corporate tax or mineral royalties. The debate over whether those profiting from mining should pay more tax is really about maximizing the gains to Zambia without harming the operations of mines and investment in mining.

The aim of a mining tax regime must be to maximize the present and future benefits from mining. Benefits include tax revenue, mining jobs, increased technology, linkages to other industries, and higher foreign exchange reserves. Some take the view that the non-tax benefits of attracting foreign investment outweigh the value of increased tax revenues, and that a greater tax burden on mining today would discourage investment and undermine benefits to be gained tomorrow.

However, in a country like Zambia, tax revenues are by far the largest benefit from mining: employment generation is quite small; the manufacturing base is not advanced enough to supply the mines with their inputs; the benefits of increased technology are limited by the low level of industrial activity; and even foreign exchange earnings are not as large as they seem since the mines use about 40% of these earnings to fund their own imports. Furthermore, tax revenue today is of more value than tax revenue tomorrow because it can be invested in its economic and social infrastructure, which will in time lead to increased revenue in the future.

The specific level of taxation that would deter investment is not at all clear. Where is the tipping point where investors will turn away from Zambia? The Government appears too reliant on the word of mining companies on this: there is no evidence it has ever tried to calculate the total value of all the incentives in the tax system or carefully assess these against other country's regimes and the investment behaviour of mining companies. Furthermore, tax levels are not the only factor in attracting investment: political and fiscal stability, labour availability, social issues, transport infrastructure, administrative efficiency and corruption, currency stability and external economic conditions are also important. Several studies have suggested that taxation levels are far from the most important factor in investment decisions.

It is also important to remember that developing the mining sector implies more than attracting foreign investment. The structural transformation of the production side of the economy, including diversification, requires government investment, which requires revenue. In the long-term view, mining copper is not an end in itself, but a means to becoming a more advanced economy.

'We believe that serious and genuine investors cannot be scared by a tax on future profits that may be utilized to finance key infrastructure of roads, railway lines, new hydropower and thermal stations, optic fibre communications infrastructure for improved and faster internet services, healthy, educational, trade and tertiary education institutions to mention but a few. This will in turn contribute greatly to the development of Zambia.'

Mineworker's Union of Zambia representative, Kitwe
Public Discussion, June 2010

Towards a better mining tax regime

On the basis of its public discussions series and the information and research available, CTPD calls for reform of the mining tax regime. Strong objections to further changes in the regime have been voiced on the grounds that all the changes in recent years is discouraging new investment. But it is clear that many Zambians do not have confidence in the current regime, and if people perceive the mining companies are not paying enough they are more likely to support marginal populist politicians who may bring further instability. It is in the interests of the government and mining companies that a stable position is found as stability breeds investment.

The tax regime should be reformed, but in order to minimize any sense of instability and unpredictability, a clear path of reform should be set out for the next few years. Another possibility is that companies be given a choice between the legislated system and a transparent package of higher taxes which would be guaranteed for a longer period, with 'crisis clauses' written into them in which both sides can agree to break their agreement temporarily if there is another economic crisis or similar.

The major change should be to establish an effective way of increasing revenue when prices are riding high by reintroducing for a fixed term the revenue-based windfall tax that operated in 2008/09. Its detractors have claimed that it is fairer to tax profits than revenues, particularly as a revenue-based windfall tax affects high and low cost mines very differently in that both are charged the same regardless of their costs. However the key argument in favour of the revenue-based windfall tax is that it is easier to administer than a variable profit tax because it does not rely on calculating profits, which is very difficult for governments to do when faced with the sophisticated accounting practices of mining companies.

The best option may be to reintroduce the windfall tax until a time when the ZRA is strong enough to administer a profit-based tax effectively. This could involve announcing that for the next three-to-five years the revenue-based windfall tax will be in operation, then after that there will be a variable profit tax (possibly with the top threshold of windfall tax still in place to capture very high price benefits). There would need to be major changes from the original version to make it less onerous, making it deductible from corporate tax calculations, reducing rates or increasing thresholds, and inflation-indexing the thresholds to avoid future problems.

The Government should also review the wide array of exemptions and incentives offered to mining companies; it should try to cost them and set clear criteria for continuing with them.

Improving tax administration means making the regime easier to administer and improving the capacity of the revenue collection authorities. Parliament's Committee on Estimates has repeatedly noted that tax audits are made very difficult by the complex nature of the mining tax regime, the sophisticated operational methods of the multinational mining companies (including hedging transactions or hiding costs through transfer pricing), and the limited monitoring capacity of the ZRA. The Committee openly wondered how the Government can effectively evaluate the genuineness of claims by the mining companies to the effect that the mines are unprofitable (National Assembly of Zambia, 2009). A first step to simplifying the administration of the regime and raising significant amounts of extra revenue would be to no longer allow hedging transactions to be treated as part of income.

In terms of improving the ZRA's capacity, recent improvements need to be sustained. The ZRA now has more mining accountants than before and a dedicated Mining Tax Unit supported by the Norwegians. Audits of some mining companies have taken place for the first time in 2010. The ZRA needs to receive continued support from the Government and donors, including earmarked funding to ensure that strategic improvements are made in the medium to long term. The Ministry of Mines also needs support – their engineering expertise is vital if Zambia is to audit and control mining policy effectively. There also needs to be a better relationship between the institutions involved – the ZRA and respective ministries for mines and finance – so that policy and resources are managed coherently.

Ultimately, building public faith in the mining tax regime requires an end to the culture of secrecy around mining taxation and more communication with civil society and mining companies. A more effective tax system requires more transparency and information. Development Agreements are apparently a thing of the past, but comments in the 2010 public discussion series revealed a lasting legacy of distrust over the lack of transparency of both the government and the mining companies:

'We ... want to know who is in charge of signing contracts or agreements with the mining companies. Before signing any contracts, the people must know how copper will be taken out and how much of it. All we are basically asking for is a fair share and as Zambians we do not want to start demonstrating.'

Participant, Solwezi public discussion, July 2010

'There should be honesty in the information availed by mining companies pertaining to the operations and revenues of mines so that the right decisions are made.'

Professor Lungu, Kitwe public discussion, June 2010

Mining companies and government should both be made more transparent. Internationally-concerted action should seek to make detailed country-level revenue and profit figures available. The Extractive Industries Transparency Initiative (EITI) process goes some way towards this. It requires, among other things, regular publication of all payments by companies to host governments to a wide

audience in a publicly accessible, comprehensive and comprehensible manner. Zambia is an EITI candidate country after passing certain criteria and it must now complete the agreed validation process by May 2011. The Publish What You Pay campaign goes further by aiming to get mining companies' home governments to require them to 'publish what they pay' wherever they operate.

Fairer distribution of mining tax revenue

As well as using increased tax revenue for capital spending, more of it needs to be directed towards the communities of the mining regions who feel most of the social and environmental impact of mining operations. They have to deal with rapid urbanization and intense strain on local infrastructure; consequently, discontent appears to be growing. Participants in public discussions held in 2010 reflected this, with some people saying it would be better for them to leave the copper in the ground. None seem convinced with the mining companies' corporate social responsibility programmes.

'It is better to leave the copper in the ground, if people want to steal it from our country and our people. For Solwezi, there is very little that we can attribute as having been developed as a result of the mining activities. The infrastructure is poor, heavy trucks are damaging our roads which are not being repaired. When copper goes out, the pits will become hazard to the environment. The wage difference between what is paid to Zambians and foreigners is huge. So if investors come, let them get copper and in return leave something for the local people.'

Participant, Solwezi Public Discussion, July 2010

'In Zambia the royalties don't trickle down to the grassroots and the only town that seems to be developing is Lusaka, which is unfair to the general Zambian as priority should be given to the province where the minerals are coming from.'

Mineworkers Union of Zambia representative, Kitwe Public Discussion, June 2010

The 2008 Mining Act provided for a 'mineral royalty sharing mechanism' to address revenue between the central government, local authorities and the local mining communities. The provision was designed to meet the expectation of local communities to benefit from the mineral royalty accruing to Government from their areas. However, no timeframe was given and as of late-2010 it is still not in place.

136. The Minister responsible for finance shall, in consultation with the Minister, establish a mineral royalty sharing mechanism for distributing royalty revenues.

Another mechanism that could be considered is an improved environmental fund. Mining can be hazardous and old mines leave behind serious environmental problems, leading some to suggest that a portion of mining taxes should go directly into an environmental fund:

'South Africans have a very good system for protecting the environment which Zambia can emulate. Ten percent of all revenue goes into an environmental fund specifically for cleaning up the environment in mining areas. It is important to ensure fairness for generations to come.'

Dr Mphande, Lusaka Public Discussion, June 2010

There is already an Environmental Protection Fund operated by the Ministry of Mines: the mines are meant to contribute funds will be kept until the mines close as a guarantee that no public funds will be used to cover the environmental liabilities of the mining companies. However, this does not address how the communities being affected by ongoing mining operations today are meant to be protected and compensated.

Recommendations

While attracting investment is important for developing the mining sector, the Government must invest in a more diverse economy, build economic infrastructure, and prevent the social and environmental degradation of the mining regions. This requires more effective taxation of profitable mining companies and more effective mechanisms for making sure the revenue is invested in the right places.

Other key stakeholders have responsibilities, duties and obligations that they must fulfil too, and the following recommendations are addressed to different sets of key actors.

The **Zambian Government** should:

- Re-introduce a revised revenue-based windfall tax at least until such a time that the Government is in a position to more effectively administer profit-based taxes, like the variable profit tax.
- Not allow hedging transactions to be treated as part of income.
- Implement the mineral revenue sharing mechanism as stipulated in the Mining and Minerals Act.
- Be more transparent about how mining tax regime is formulated, including full transparency and accountability on tax revenues and tax expenditures.
- Articulate a clear vision of what constitutes fair participation by the state in the fruits of the mining enterprise. This should entail a detailed and publicly-available assessment of the full mining tax regime including a detailed cost-benefit analysis of all tax exemptions and incentives for mining companies.
- Urgently resolve legacy issues related to the Development Agreements and adherence to the current tax regime.
- Suspend or revoke mining licences of non-tax-compliant mining companies.
- Continue to work towards becoming an EITI Compliant Country.
- Invest further in developing the ZRA's capacity to collect taxes and monitor and audit mining companies.
- Support better relationships between key governmental actors such as the ZRA, Ministry of Mines and Mineral Development and Ministry of Finance and National Planning.

Local and international civil society should:

- Commit to researching the impact of current tax regimes and campaigning for reforms at the international level to ensure that African countries' tax regimes are not undermined by international tax practices.
- Make tax a campaigning issue and increase efforts to hold the governments and mining companies accountable.
- Conduct research and advocacy on the impact of mining tax policies on Zambia.
- Build public awareness about the links between taxation, poverty and governance.

The international community should:

- [Aid donors] Continue support for improvements to ZRA capacity, including earmarked funding.
- [Aid donors] Assist in building the capacity of civil society to monitor the activities of mining companies.
- [The UN, IMF, World Bank and OECD] Include civil society in all processes to challenge tax leakages.
- [G20] Involve African countries in international processes with regard to tax cooperation.
- [International Accounting Standards Board] Adopt a country-by-country reporting mechanism of key financial information for all listed companies.
- [G20, UN and other international institutions] Move towards a multilateral agreement for the automatic exchange of tax information between jurisdictions, particularly developing countries.
- [African regional bodies] Initiate effective multilateral programmes for exchanging tax information to combat tax evasion.

CTPD signed up to a wider set of demands made in the **Lusaka Declaration on Mining Taxation** in September 2010 by the International Alliance on Natural Resources in Africa (see appendices).

Further reading

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Useful information on the web:

Bank of Zambia: <<http://www.boz.zm>>

Central Statistics Office:
<<http://www.zamstats.gov.zm>>

Mine Watch Zambia:
<<http://www.minewatchzambia.com/agreements.html>>

National Assembly of Zambia:
<<http://www.parliament.gov.zm>>

Zambia Revenue Authority:
<<http://www.zra.org.zm>>

Appendices

Mining tax regime recent changes

(Provisions listed for those holding a large-scale mining licence and carrying on the mining of base metals)

Mining legislation

	Mines and Minerals Act 1995	Mines and Minerals Development Act 2008
Royalties on base metals	2% (but 0.6% in the Development Agreements)	3%
Exemption from customs and excise	Exemption from any duties levied under the Customs and Excise Act in respect of all machinery and equipment required for any mining activities ¹	As before
Income tax deductions	Deductions allowed for prospecting expenditure, capital expenditure.	As before

Income tax legislation

	Chapter 323, Income Tax Act (as of 2002)	Income Tax (Amendment) Act 2008	Income Tax (Amendment) Act 2009
Corporate tax	25%	30%	As before
(on losses)	Losses carried forward for up to 10 years ² (but Development Agreements had stability periods of 15-20 years)	As before	As before
(on hedging income)		Hedging income no longer to be part of the mining income and subject to normal income tax with losses arising not being deductible ³	Hedging income allowed to be part of mining income for tax purposes (2 (a) iii)
Windfall tax	-	25% when the copper price is between \$2500 to \$3000 per tonne, 50% when the price is between \$3000 and \$3500 and 75 percent when the price exceeds \$3500	None

Variable profit tax	None	15% tax on profits when, after corporate tax, a company's profits are still higher than 8% of its overall income ⁴	As before
Capital allowance (deduction from income tax)	100% deduction on capital expenditure	25% deduction on original expenditure	100% deduction on capital expenditure
Tax on dividends	No restrictions in respect of the amount of profits, dividends, or royalties that may be externalized. Withholding tax of 0% on dividends or interest, royalties or management fees to paid to shareholders (as opposed to 15% for non-mining companies) ⁵	As before Withholding tax of 15% levied interest, royalties or management fees to paid to shareholders ⁶	As before As before

Customs and excise legislation

	Chapter 322, Customs and Excise Act (prior to amendments)	Customs and Excise (Amendment) Act 2009
Export tax	None	Unrefined copper: 15%
Customs duty	Heavy fuel oils: 30% Copper powder, flakes and blisters: 15% Rebate, refund or remission of the duty payable in respect of plant, machinery, or equipment as provided under section 97 of the Mines and Minerals Act ⁷	Heavy fuel oils: 15% Copper powder, flakes and blisters: 0% As before

Lusaka Declaration on Mining Tax

The Lusaka Declaration on Mining Taxation

Preamble

We, the representatives of civil society organisations from eight countries in Africa and the Netherlands; namely Angola, DRC, Kenya, Malawi, RSA, Zambia, Zimbabwe, Mozambique having met under the auspices of **The International Alliance on Natural Resources in Africa (IANRA)**¹ and Caritas Zambia, having shared experiences and knowledge pertaining to the detrimental effects of extant mining legislation and practice in our respective countries, hereby declare our unflinching solidarity with our civil society colleagues in Zambia in their demands for the review of mining legislation to mainstream cardinal values of social justice, environmental protection, sustainable development and equitable benefits emanating there from for all Zambians.

1) Proclamation

We hereby:

- a) **Recognise** the detrimental commonalities prevailing in mining operations in our respective countries impacting adversely on sustainable economic development and poverty eradication resulting from unacceptable domestic and international obstacles to effective taxation;
- b) **Affirm** that effective and equitable taxation is critical to the overall economic growth of our countries and, specifically to the socio-economic and political wellbeing of our communities leading to the strengthening of channels of political representation and government accountability;
- c) **Commit** to work together for reforms in the areas of mining and related taxation, resulting in enhanced revenues from natural resource extraction and processing for value addition;
- d) **Having** regard for the importance of tax compliance and accountability for tax revenues and expenditures, we:
 - i. **Call** on the Government of Zambia and all African governments to commit to full transparency and accountability on tax revenues and tax expenditures;
 - ii. **Demand** the implementation of a Windfall Tax mechanism that would enable our nation to benefit from inordinate profits generated by high prices for our commodities, inclusive of previous accruals;
 - iii. **Encourage** the Government of Zambia to implement already existing revenue sharing mechanism of proceeds from mining operations;
 - iv. **Call** on the Government of Zambia and all African governments to suspend or revoke mining licences of non tax compliant mining companies;
 - v. **Call** on the Government of Zambia and all African governments to remove all tax exemptions for multinational corporations;
- vi. **Urge** revenue authorities to simplify the tax code and reduce the compliance burden;
- vii. **Demand that** the Government of Zambia should not allow companies to use hedging for tax planning purposes;
- viii. **Commit** to ongoing research and advocacy with regard to the impacts of mining tax policies on men, women and vulnerable groups.

2) Revenues from mines and minerals

- a) Having regard for the importance of strong governance to ensure African governments benefit from natural resource extraction we:
 - i) **Note** the power and information asymmetry between African governments and multinational companies in negotiating fair contracts and the lack of capacity and political will to determine appropriate prices;
 - ii) **Question** the lack of transparency in mining contracts across the continent which increase potential for bribery and corruption and undermine accountability;
 - iii) **Call** upon African governments to enact and/or implement fair and equitable revenue sharing mechanisms of proceeds emanating from mining operations;
 - iv) **Call** on African governments to audit and publish natural resource bases before signing mining contracts;
 - v) **Call** on African governments to strengthen legal provisions relating to contracts, such that all mining contracts shall henceforth comply with a predetermined national legislative format; including measures to over-ride stability agreements that prevent future governments from re-negotiating contract provisions, possibly including limits to length of the contracts;
 - vi) **Call** on African regional bodies to explore regional coordination and harmonisation of fiscal regimes, and information exchange to challenge harmful tax competition in the mining sector;
 - vii) **Call** on African regional bodies to commit to South-South learning of successful tax practices in relation to mining;
 - viii) **Call** on African governments to adopt and enforce the Extractive Industry Transparency Initiative (EITI)

- regulations in existing mining legislation and to ratify the United Nations Convention Against Corruption;
- ix) **Call** on aid donors to build the capacity of civil society in monitoring the activities of mining companies;
 - x) **Affirm** that resources should be left in the ground for exploitation by future generations if current regulations are deemed too onerous by potential investors;
 - xi) **Urge** our governments to establish mechanisms to conserve adequate revenue gleaned from mining operations for future stability, growth and unforeseen downturns.

International taxation

- a) Acknowledging the tax leakages which undermine the tax base of African countries we:
 - i) **Note** that developing countries lose significantly more revenue than they receive in foreign aid as a result of international tax evasion and avoidance;
 - ii) **Note** the need for policy coherence among aid donors to take steps at the national and international level to challenge international tax dodging;
 - iii) **Affirm** the need for international and regional tax cooperation to challenge harmful tax competition and stop tax leakages;
 - iv) **Challenge** the widely held assumption that low tax rates attract FDI, leading to economic growth and development;
 - v) **Call** on the United Nations, International Monetary Fund, World Bank and the Organisation for Economic Cooperation and Development (OECD) to include civil society in all processes to challenge tax leakages;
 - vi) **Call** on the G20 to involve African countries in international processes with regard to tax cooperation;
 - vii) Having regard for the need for greater transparency among multinational companies, we **call** on the International Accounting Standards Board (IASB) to adopt a country by country (CbyC) reporting mechanism of key financial information for all listed companies;
 - viii) Having regard for the corrosive impact of financial secrecy in offshore financial centres we **call** on the G20 and the UN and other international Institutions to move towards a multilateral agreement for the automatic exchange of tax information between jurisdictions, particularly developing countries;
 - ix) **Call** on African regional and pan African bodies to initiate effective multilateral programmes for

- exchanging tax information to combat tax evasion;
- x) **Call** upon our governments to strengthen capacities to monitor and audit mining companies;
 - xi) **Call** on African governments to introduce legislation to make tax evasion a predicate offense under existing anti-money laundering provisions;
 - xii) **Call** on our governments to invest in strengthening the capacity for revenue authorities and to provide technical expertise in monitoring large taxpayers, in particular, transfer pricing issues;
 - xiii) **Commit** to research the impact of current tax regimes and campaign for reforms at the international level to ensure that the taxing rights of African countries are not undermined by abusive international tax practices;
 - xiv) **Call** on African parliamentarians to take an active role in enhancing revenue transparency in the extractive sectors and championing for good governance in the management of natural resources of Africa.
 - xv) **Call** on Supreme Audit Institutions (SAIs) in Africa to play an active role in enhancing transparency on tax revenues and tax expenditures as well as monitoring and applying pressure for the implementation of audit recommendations.

We hereby avow our commitment to above issues and pledge our ongoing support on the same at the IANRA Solidarity Meeting on Mining Taxation and Development held in Lusaka on 27th -29th September 2010.

For and on behalf of the International Alliance on Natural Resources in Africa.

(Footnotes to Appendix 1)

- 1 See Section 97, Paragraph 1
- 2 See section 30, paragraph 2. Applies to any mining company holding a large-scale, mining licence issued under section twenty-three of the Mines and Minerals Act and carrying on the mining of base metals. For other companies the loss shall not be carried forward beyond five years.
- 3 Under section 2 ('interpretation'), hedging is listed as one of the items defined as 'business'
- 4 See changes to Charging Schedule (f)
- 5 See Charging Schedule, Part 2, Paragraphs 6 and 7.
6. See deletion of Clause 4 of Paragraph 7 in Part 2 of the Charging Schedule.
7. See Section 89 The Customs and Excise (Rebates, Refunds And Remissions)(General) Regulations, Section 25 (1)



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