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WHERE IS THE MONEY?

Taxation and the state of Africa Mining Vision implementation:

A case study of Zambia and Southern Africa

Acknowledgements

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The Tax Justice Network-Africa (TJN-A) is a Pan-African organisation and a member of the Global Alliance for Tax Justice (GATJ).

Our vision is ***'A new Africa where tax justice prevails to contribute to an equitable, inclusive and sustainable development.'***

In line with our mandate, TJN-A's mission is ***'To spearhead tax justice in Africa's development by enabling citizens and institutions to promote equitable tax systems through research, capacity building, and policy Influencing.'***

TJN-A presently has 29 members in 16 countries across Africa. The members act as focal points for tax justice work in their countries and often lead national tax platforms that bring together several organisations interested or active in the tax justice campaign.

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List of Acronyms

AG	Auditor General
AMV	Africa Mining Vision
AU	African Union
BITs	Bilateral Investment Treaties
EITI	Extractive Industries Transparency Initiative
GDP	Gross Domestic Product
KPMG	Klynveld Peat Marwick Goerdeler
OECD	Organisation for Economic Cooperation and Development
REC	Regional Economic Community
R-SNDP	Revised Sixth National Development Plan
SADC	Southern African Development Community
SWF	Sovereign Wealth Fund
ZDA	Zambia Development Agency
ZEITI	Zambia Extractive Industries Transparency Initiative
ZRA	Zambia Revenue Authority

Executive Summary

This study assesses the extent to which Zambia and the SADC region in general, have domesticated the key provisions of the Africa Mining Vision (AMV) on fiscal regime and revenue management. It also sought to identify existing gaps insofar as the implementation of the key AMV strategies is concerned. The study also aimed to develop a scorecard measuring the implementation of AMV fiscal regime and revenue management strategies by the SADC and Zambia. The 2011 Action Plan for the implementation of AMV was used as a yardstick in assessing the extent and gaps in AMV implementation by the SADC and Zambia. The data used in the assessment was gathered through a literature review of policy documents, legislation and statistics on revenue management and fiscal regime.

The study revealed that Zambia has made some significant steps towards domesticating the AMV based on the 2011 AMV Action Plan. The positive developments that the study noted, with respect to domestication of Zambia's mining fiscal regime, include the following:

1. In line with the AMV Action Plan, Zambia has a system in place to ensure that it improves the national capacity to physically audit mineral production and exports, which is manned and implemented by trained inspectors. Zambia has also put in place several programmes intended to build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws;
2. Over the years Zambia has reviewed its mineral regimes with the objective of increasing fiscal revenue collected, resulting in a significant increase of revenues from 0.7% in 2005 to 12.4% in 2014, and averaging about 11.4% between 2005 and 2014. This is consistent with the AMV Action Plan of reviewing mineral regimes with the intention of optimising revenues;
3. Zambia has signed double taxation agreements with about 22 countries from around the world, including those where the parent companies of mining sector companies in Zambia are registered. To ensure that such double treaty agreements do not prejudice the country on revenue, Zambia has been renegotiating some of the agreements.

On the downside, the study also established the following:

i. Due to the nature of some of the double taxation agreements, the country has lost some freedom to decide how much tax it levies on income generated in Zambia. The re-negotiation stance on such agreements is commendable;

ii. Zambia is yet to develop serious systems to evaluate components of tax regimes to manage leakages, losses and tax avoidance & evasion;

iii. Zambia is also still characterised by bureaucratic red tape in the issuance of mining rights, and falls short as far as having clearly stipulated appeal procedures for disputes to do with mining licences and rights.

The study also assessed Zambia's mapping of the AMV with respect to revenue use and management. While there are a lot of positives from the way the country has committed itself to transparency in the sector on mining revenue use and management, the study noted the following as areas calling for improvement:

1. Zambia is yet to put in place strategies for investing windfall earnings and mineral rent into sovereign wealth funds, including stabilization funds and infrastructure funds;
2. Zambia has not implemented mineral revenue sharing mechanisms, which would ensure that communities impacted by mining activities benefit from mineral resource in their community, despite the existence of a legislation providing for it;
3. The Zambia mining sector regime has limitations in developing the capacity of the local communities to negotiate partnership agreements, as per the AMV.

At the SADC level, the study generally revealed that there has been limited domestication of the AMV. The Mining Protocol and the 2004 Regional Harmonisation Framework were both done before the AMV and there have not been any strategies at the SADC level that were done after the AMV. The review of the fiscal environment to come up with guidelines for optimising mining sector revenue has not yet been done within the SADC. Mineral taxation guidelines for implementation at the REC levels have not been developed. In addition, typical financial models for mineral projects for member states are yet to be developed. However, efforts to implement the Mining Protocol have seen some guidelines being developed at the SADC level, which are also in line with the AMV although not done in response to the AMV. Thus some of the AMV objectives can still be met at the regional level if SADC countries were to follow the SADC Mining Protocol.

At the national level, the study makes the following recommendations:

(i) There is need to enhance the capacity among government officials to monitor, audit and verify mining sector production data, which still needs to be enhanced;

(ii) Double taxation agreements need to be revisited to ensure that some of the agreements which actually prevent the country from collecting mining sector revenue due to it are renegotiated. The country should realise its full potential in getting revenue as per the AMV objectives;

(iii) Zambia needs to tighten its systems in order to curb illicit financial flows from the mining sector as per the AMV Action Plan;

(iv) As a way of improving its mining fiscal regime and attracting investors, Zambia needs to minimise bureaucracy in the issuance of mining rights, and ensure that there are clearly stipulated appeal procedures for issues to do with mining licences and rights;

(v) Zambia should put in place strategies for establishing sovereign wealth funds to ensure that future generations are catered for from the finite mining resources which are exploited by mostly foreign investors; and

(vi) Zambia should tighten its policy and legislations to ensure that the rent distribution system allocates part of mineral revenue to communities near mining areas.

At the SADC level, the study also makes the following recommendations:

(i) There is need for a review of the fiscal environment so as to come up with guidelines for optimising mining sector revenue;

(ii) The SADC Secretariat should also develop mineral taxation guidelines for implementation at the national level;

(iii) Typical financial models for mineral projects for member states also need to be developed together with guidelines on mineral revenue management for implementation at the regional and national levels, as per the AMV recommendations.

1. Introduction

1.1 Background

The Africa Mining Vision (AMV) was adopted in February 2009 by the African Union (AU) Assembly of Heads of State and Government. The AMV serves as the key continental framework to promote mineral resource based development and structural transformation. In particular, the AMV seeks to foster a transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.

The overall logic of the AMV is to ensure that there is a new paradigm in Africa, focusing on the transformation of minerals as a strategy for overall development. Thus, the AMV seeks to ensure that linkages between the mining industry and other sectors of the economy are strengthened, so that the sector becomes more beneficial to all citizens. This would also call for measures to ensure that there allocation of revenue from the mining sector is done in an appropriate manner.

Given that the AMV was designed to determine the course of the future actions of the AU member states as far as the mining sector is concerned, it is important to assess the extent to which the AU countries have gone to ensure that they put in place the strategies that were identified under the AMV. It is important to identify the existing gaps as far as domesticating the AMV provisions is concerned. The need to identify such gaps serves as the purpose of this study.

Although the AMV has seven focus areas, this study focuses only on fiscal regime and revenue management**.** Within this area of focus, the study involves conducting an assessment of Zambia as well as at Southern Africa Development Community (SADC) level, focusing on the extent to which the AMV's Mining Fiscal Regime and Revenue Management area has been domesticated at these two levels. Thus the study makes an evaluation of the measures that both Zambia and SADC as a body have undertaken in the mining fiscal regime and revenue management areas and whether there are any gaps or deviations from the provisions on the AMV.

1.2 Objectives of the study

The main objectives for this study were:

i. Measure progress of Zambia and the SADC in domestication of the AMV's Fiscal Regime and Revenue Management initiative;

ii. Develop a scorecard to measure the implementation of the AMV in Zambia and with the SADC, with respect to mining fiscal regime and revenue management.

1.3 Methodology for the Study

This report is based on a review of existing literature on the AMV, which is mostly published, on the Zambia mining sector, Zambia mining sector revenue policy and legislation as well as mining sector revenue regimes in general. Reports reviewed in this study generally were written over the period 2004 to 2015. The study also utilised current and historical statistics on Zambia mining sector production and revenue from official sources. The study also involved looking at the key provisions of the AMV, especially those pertaining to mining sector fiscal regime and revenue management and noting some of the key provisions which the AU countries would be expected to comply with. In order to assess the extent to which both Zambia and the SADC have gone in mapping the AMV, the study followed closely the 'Action Plan for Implementing the AMV' of December 2011, by picking out the activities, time frame and monitoring indicators that countries are expected to follow. An assessment was then done at country and regional level to check the extent to which the country and SADC have put in place the measures that form the aspirations of the AMV. Thus, the assessment simply involves checking whether what the AMV Action Plan specifies as a desirable attribute is there or not.

There are two points to note on how this comparison was done. Firstly, the Action Plan was used as a yardstick in assessing the extent to which the AMV strategies had been mapped with respect to mining sector fiscal regime and revenue management. The study just checks whether measures provided for in the AMV Action Plan exist at country and regional level. Existence of such measures is regarded as compliance with the AMV, even if the measure was not necessarily done in response to the AMV. This means that if Zambia introduced a measure due to other reasons but the measure ended up being in line with the AMV, the study deems this as compliance to the AMV. Thus, AMV mapping success does not necessarily imply that it is the AMV that pushed Zambia to adopt the measure.

Secondly, the study is strictly restricted to the AMV Action Plan when it comes to comparison. This means that comparing the ideological orientation of the AMV with that of the country or region has not been factored in as these are generally subjective measures. Thus, even though there are political economy issues behind the introduction of the AMV, the study is restricted to the final measurable indicators as specified by the AMV Action Plan. Political economy issues such as whether market liberalisation and foreign capital is good or not for the country are not part of the study focus, even though these could be the reason why some measures are not introduced.

The study has also produced a scorecard, which is generally an attempt to measure, on a scale ranging from zero to five, the extent to which the regime in Zambia is in line with the AMV provision. Zero implies total absence of the indicator while five shows total compliance with the AMV. The authors have produced the scorecard and we acknowledge that there might be some subjectivity in this measurement. However, the scoring is actually based on how each measure is assessed in the study, thus the authors consider this as objective.

2. AMV Key Provisions on Mining Sector Fiscal Regime and Revenue Management

In order to be able to determine the gap between the Zambia mining sector fiscal regime and the AMV, a brief description of the key issues outlined by the AMV that pertain to the mining sector fiscal regime would be helpful. The AMV groups aspirations into three; those that pertain to the short term (within 5 years), the medium term (5-20 years) and the long term (over 20 years). The provisions which pertain to mining sector fiscal regime and revenue management include the following:

a. Short Term Issues

The short term aspiration of the AMV includes promoting natural resources governance. This includes managing stakeholders' engagement[1] throughout the mine life cycle[2] and improving the management of transfer payments associated with the mining activities. Within the context of the mining industry, such transfer payments mainly focus on returns to shareholders and service providers during all stages of the mine life cycle. In order to achieve this, the AMV recommends the following activities:

i. Mainstreaming the Extractive Industries Transparency Initiative (EITI) principles and the Kimberly Process Certification Scheme in national policies, laws, and regulations;

ii. Encouraging the establishment of national oversight bodies and incorporating parliamentarians and independent committees in the monitoring of mining projects;

iii. Considering decentralization of mineral revenue distribution; and

iv. Building capacity to manage mineral revenue of national and sub-national institutions.

The AMV also considers the fostering of inter-generational equity in the sharing of resources generated from the minerals sector as one of its short term aspirations. To achieve this, the AMV recommends that countries should consider the use of 'Future Generation Funds'' and Stabilization Funds' as strategies to build resources that would be enjoyed by future generations. The AMV also recommends the integration of mining in national development plans and poverty reduction strategies as a strategy to ensure inter-generational equity. The objective could also be met by considering initiatives to decentralize revenue distribution and allocation as well as ensuring broad-based, active and visible involvement of affected communities in the approval, planning, implementation, and monitoring of mining projects.

[1] There are different stakeholders that can be identified across the mining life cycle stages. These include the communities affected by the mining, extraction companies, artisanal and small scale miners, mining sector advisers, lawyers, financiers, explorers, analysers, installation and drilling companies, transportation companies, government and government agencies as well as other specialists focusing on decommissioning and environmental clean-up activities.

[2] The mine life cycle has five main stages: (1) contract negotiation and signature; (2) exploration activities and evaluation; (3) development of the infrastructure; (4) extraction, production and export; as well as (5) abandonment and decommissioning.

Another short term aspiration of the AMV is for countries to ensure capital mobilization into the mining sector. This includes harnessing the potential offered by public-private sector partnerships as well as instituting innovative approaches to improve domestic savings and channelling them to finance national projects/ programmes.

b. Medium Term Issues

In the medium term, the AMV recommends countries to strengthen the enforcement of standards, legislations or codes governing the mining industry. This involves improving the legal and regulatory framework governing the mining industry and increasing public awareness and participation in formulating the regulatory framework. This also involves developing enforcement strategies with credible and strong criminal sanctions and licence revocation in case of illegal conduct involving mineral resources. Legislations governing the mining industry also need to ensure consistency and predictability by developing explicit and clearly defined rules and guidelines to reduce the scope for conflicting interpretations.

The AMV also recommends the need to improve the value chain and maximize diversification of economies as one of its medium term aspiration. This would include mining resource diversification, which would include the creation of a conducive environment for development of backward and forward linkages, value addition (especially semi processing and cluster development), with technology sharing among countries. This would also include investment of rent/ capital generated through resources into other sectors of the economy.

c. Long Term Issues

With respect to the mining industry, the long term aspiration of the AMV is to maximize the local economic multipliers and spill-overs. This would be achieved by diversification away from mineral resources, based on linkages to ensure that rent or capital generated through mining sector resources is invested into other sectors of the economy. Thus the long term is mostly concerned with consolidating the gains from the mining industry to ensure that mining contributed meaningfully to gross domestic product as well as poverty alleviation and society well-being.

AMV Action Plan, 2011

In February 2009, the African Union Heads of State and government requested the AU Ministers in charge of mineral resources development to develop a concrete action plan for the realization of the AMV. This culminated in the development of the 'Action Plan for Implementing the AMV' dated December 2011, composed of nine programme clusters of activities, namely mineral rents and management; geological and mining formation systems; building human and institutional capacities; artisanal and small scale mining; mineral sector governance; research and development; environment and social issues; linkages and diversification; and mobilising mining and infrastructure investment.

The Action Plan thus can be used as a yardstick in assessing the extent to which countries have mapped the AMV strategies in their mining sector policies. With respect to mining sector fiscal regime and revenue management, the following are the concrete plans that were agreed upon in the short term (ST), medium term (MT) and long term (LT) at the national level (Table 1).

Table 1: Mining sector fiscal regime and revenue management strategies under the AMV at National Level

Expected outcome	Activities	Time frame	Monitoring indicators
Enhanced share of mineral revenue accruing to African mining countries	Improve national capacity to physically audit mineral production and exports.	ST	Physical audit system in place and implemented with trained inspectors.
	Review mineral regimes in terms of optimising revenues.	ST	Reviews of mineral regimes undertaken and Level of improvement in fiscal revenue collected by African mining countries.
	Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws.	ST-MT-LT	Increase in numbers of policy makers and other stakeholders participating in capacity building initiatives.
	Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls.	ST-MT	Degree of improvement in the design of fiscal terms.
	Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing).	ST-MT	Extent to which tax leakages are reduced by evaluation systems as determined by independent audits of tax compliance.
	Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction.	ST-MT	Number of double taxation agreements signed and implemented by member States.

Expected outcome	Activities	Time frame	Monitoring indicators
	Build capacity & systems to auction mineral rights where applicable.	ST	Extent to which competitive and transparent mineral concession systems are implemented.
Improved management and use of mineral revenue	Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds.	ST	Number of SWFs established by African mining countries
	Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.	ST	Degree to which local authorities and communities benefit from mining projects.
	Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	ST-MT	Degree to which local authorities and communities benefit from mining projects.
	Develop the capacity of local communities to negotiate partnership agreements.	MT	Degree to which local authorities and communities improve their management of mineral revenues
	Develop systems for strengthening capacities for national and sub-national bodies for revenue management.	MT	Extent to which guidelines are used by RECs and member States.

Sources: AMV Action Plan, 2011

The Action Plan also identifies strategies and monitoring indicators at the regional level (Table 2) which also have clearly defined time frames.

Table 2: Mining sector fiscal regime and revenue management strategies under the AMV at Regional Level

Expected outcome	Activities	Time frame	Monitoring indicators
Enhanced share of mineral revenue accruing to African mining countries	Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (e.g. Tax & dividends) packages in a manner that does not discourage mining investment.	ST	Guidelines, standards and toolkits completed and distributed to RECs & member states.
	Develop mineral taxation guidelines for implementation at the REC & national levels.	ST	Guidelines, standards and toolkits completed and distributed to RECs and member states..
	Develop typical financial models for mineral projects for member states and run training workshops at REC level.	ST	Number of financing models that are developed and used by member States.
Improved management and use of mineral revenue	Compile best practise guidelines on mineral revenue management and deployment for implementation at the REC & national levels.		Best practise guidelines on mineral revenue management compiled.

Sources: AMV Action Plan, 2011

The AMV main provisions as well as the Action Plan generally form the context through which the extent to which the mining sector fiscal and revenue management regimes in Zambia and the SADC would be assessed.

3. Importance of the Mining Sector in Zambia

Zambia is endowed with substantial mineral resources, with the major mineral commodities mined in Zambia being copper and cobalt. Most mining activities occur in the Copperbelt and North-Western provinces, which have the highest-grade copper and cobalt deposits. The Copperbelt is Zambia's industrial base.

The major mining companies operating in Zambia are mostly foreign owned. These include China Non-ferrous Mining Corp Ltd, Glencore International Plc, Caledonia Mining (Zambia) Limited. The Government retains a minority interest in most of the large copper projects through its holding company, the Zambia Consolidated Copper Mines Investments Holdings.

Zambia is ranked 7th in the world in copper production (the Zambia Development Agency, 2015). Besides base metals, the country also produces about 20% of the world's emeralds, being ranked among the world's top three emerald producers, along with Colombia and Brazil (KPMG, 2013). The mining industry in Zambia is a major contributor to the country's Gross Domestic Product (GDP) and foreign exchange earner. In 2014, copper exports averaged 66% of Zambia's total exports (a trend which was maintained for four consecutive years) while mining contributes about 11% of GDP (Hampwaye, Kaleng'a and Siame, 2015).

The mining industry in Zambia continues to attract foreign direct investment. It is estimated that the mining sector attracted investment in excess of USD 8 billion between 2000 and 2014, creating more than 53,000 jobs new jobs, which are expected to increase following the commissioning of new mining projects on the Copperbelt Province and North Western Zambia (Zambia Development Agency, 2015).

The mining sector procures the majority of goods from local Zambian firms. However most of these goods are imported by local agents who then supply the mining companies. Thus, few of the goods procured are manufactured in Zambia. In contrast, most of the services needed by mining companies are procured from Zambian businesses and provided by Zambian nationals leading to most of the value addition remains in Zambia.

Through various social and corporate responsibilities, mining companies in Zambia contribute to local community development. The mining companies also offer training programs which create direct benefits to the mining companies and the country as a whole. Many of these skills developed are transferable and can be passed on to others and applied in other sectors, thereby promoting diversification away from the mining industries. As almost all employees at the participating mining companies are Zambian nationals, most of the training provided contributes directly to human capital development in Zambia. The sector has been providing scholarships in a variety of disciplines ranging from diplomas in specific technical areas to graduate and post-graduate qualifications. The mining companies have also been supporting local trade schools in Zambia, in partnership with the Government of Zambia.

Although copper is the dominant mineral mined, other critical minerals, as profiled by the Zambia development Agency (ZDA) include the following:

Gold

The majority of the deposits are lode-type bodies associated with the Mwembeshi Shear Zone. Significant gold mineralisation also occurs, variously with copper and uranium, in major thrust zones near the base of the Katanga succession.

Zinc and Lead

This has been mined from the Kabwe deposit in Central Zambia, as well as Kapiri Mposhi, also in Central Zambia. Other areas include South-eastern Zambia, Copperbelt and Western Zambia.

Iron Ore

Substantial resources of iron ore have been identified, occurring primarily as sedimentary ironstones in the lower-Katanga Mine Series successions of Central and Western Zambia.

Manganese

Occurrences are numerous but mostly on a small scale. Currently small scale mining is being done in the Luapula Province in the north of Zambia, around a town called Mansa.

Nickel and Platinum Group Elements

Nickel is known to exist in the South and East of Lusaka, while some parts of north-western Zambia have also shown evidence of nickel. Minor platinum group elements are produced as a by-product of copper refining on the major Copperbelt mines and from the Munali deposit, south of Lusaka.

Diamonds

Alluvial diamonds have been reported throughout much of North-eastern and Western Zambia.

Emeralds

Zambia produces about 20% of the world's emeralds, which are highly sought after due to their deep green colour. The gemstones are recovered exclusively from the Ndola Rural area of the southern Copperbelt

Other gemstones

Aquamarine and tourmaline are mined in the Lundazi and Nyimba areas of Eastern Zambia. Amethyst is currently being mined in the Mwakambiko Hills near Lake Kariba.

4. Overview of the Mining Sector Fiscal Regime in Zambia

The Zambian Government imposes a number of taxes and levies on the mining sector compared to other sectors, arguing that mineral resources are finite. The majority of the taxes are collected by the Zambia Revenue Authority (ZRA), which is mandated by law to collect taxes from corporates and individuals. Taxes are levied on the mining sector in Zambia in accordance with the Income Tax Act (Chapter 323) and the Mines and Minerals Development Act (No 7 of 2008).

What distinguishes the mining sector taxation regime from the rest of the economy are royalties, which only apply to the mining sector. The ZRA gives detailed information on royalties, which can be downloaded for free from their website[3]. All holders of licences, which include large-scale and small-scale mining licences, gemstone licences and artisanal mining rights, are required by law to submit a monthly mineral royalty return within fourteen days after the end of the month in which the sale of the minerals is done. Failure to submit the returns attracts penalties, which include one thousand penalty units (or ZMW 180.00) per month or part thereof for individuals and two thousand penalty units (or ZMW360.00) per month or part thereof for companies. Royalties fall due within fourteen days after the end of the month in which the sale of minerals is done.

The royalty charges also extend beyond the miners. A person without a mining right but in possession of minerals on which mineral royalty has not been paid by the supplier of the minerals is also liable to pay royalties. People carrying out quarrying of industrial minerals are also liable to mineral royalty. Also included in this schedule is the quarrying of gravel, clay and sand. In addition, mining of minerals for use as inputs or raw material in manufacturing process is also liable to mineral royalty.

For the purpose of calculating royalties, minerals are classified into five categories (see Table 3). For industrial, energy and gemstones, mineral royalty is calculated based on the Gross Value of minerals produced. Gross value is defined as "the realizable price for sale Free on Board at the point of export in Zambia or point of delivery within Zambia" (ZRA, 2015). For base metals and precious metals, the 'Norm Value' method is used to calculate mineral royalty. Under this method, mineral royalty is calculated based on:

a) The monthly average London Metal Exchange cash price per metric ton multiplied by the quantity of the metal or recoverable metal sold;

b) The monthly average Metal bulletin cash price per metric ton multiplied by the quantity of the metal or recoverable metal sold to the extent

[3] https://www.zra.org.zm/commonHomePage.htm?viewName=MineralRoyalty. Accessed 04 December 2015

that the metal price is not quoted on the London Metal Exchange;

c) The monthly average of the cash price per metric ton of any other exchange market approved by the Commissioner General of the Zambia revenue Authority multiplied by the quantity of the metal or recoverable metal sold to the extent that the metal price is not quoted on the London Metal Exchange or Metal Bulletin.

In all the three cases, the Kwacha / US dollar exchange rate used to convert the US dollar norm value into Kwacha norm value is the monthly Bank of Zambia Mid-rate[4] (ZRA, 2015).

Table 3: Classification of minerals in Zambia for royalty purposes

Category	Description
Base Metals	This means a non - precious metal that is either common or more chemically active, or both common and chemically active and includes iron, copper, nickel, aluminium, lead, zinc, tin, magnesium, cobalt, manganese, titanium, scandium, vanadium and chromium
Energy Minerals	This means a naturally occurring substance in the earth's crust used as a source of energy and includes coal, uranium and any other minerals used to generate energy but does not include petroleum.
Gemstones	means amethyst, aquamarine beryl, corundum, diamond, emerald, garnet, ruby, sapphire, topaz, tourmaline and any other non - metallic substance, being a substance used in the manufacture of jewellery that the Minister by statutory instrument declares to be a gemstone
Industrial Minerals	means a rock or mineral other than gemstones, base metals, energy minerals or precious metals used in their natural state or after physical or chemical transformation and includes but is not limited to barites, dolomite, feldspar, fluorspar, graphite, gypsum, ironstone, when used as a fluxing agent kyanite, limestone, phyllite, magnesite, mica, nitrate, phosphate, pyrophyllite, salt, sands, clay, talc, laterite, gravel and any other mineral classified as an industrial mineral by statutory order
Precious Metals	These are not defined in the Act but are high value metals and include gold, platinum, silver, palladium and selenium

Sources: ZRA, 2015.

[4] Every month the Bank of Zambia, which is the Central Bank, comes up with a rate, which is mostly an average of the buying and selling Kwacha exchange rates based on monthly trends. This rate is known as the Bank of Zambia Mid-rate and is used widely in transactions and dispute settlements to convert balances into Kwacha or vice versa.

The rates are prescribed by the Government Minister responsible for mining while the collection of the royalties is carried out by the ZRA. As of 2015, the rates prescribed by the Mines and Minerals Development (Amendment) Act No. 11of 2014, Income Tax (Amendment) Act (Pay As You Earn Regulations), Statutory Instrument No. 50 of 2014and the Income Tax Act (Turnover Tax) (Amendment) Regulations, Statutory InstrumentNo.70 of 2014, are as follows (Table 4):

Table 4: Taxes and levies on the Mining Sector

Revenue Head	Tax rate
Corporate Income Tax	30%
Value added Tax	16%
Pay As You Earn	0-35%
Customs Duty	0-60%
Export tax on Copper, cobalt concentrates and other semi and unprocessed mineral ores	10-15%
Withholding tax on mining companies dividends	0%
Transfer tax on mining rights/interest in mining right	10%
Mineral Royalties	
Open cast Mining	20% of the norm or gross value
Underground Mining	8% of norm or gross value
Industrial Minerals	6% of gross value
A person who is not a holder of a mining right or licence who extracts minerals or is in possession of minerals extracted in Zambia is liable to pay mineral royalty	6% of the gross value for industrial minerals; and 9% of the norm or gross value for other minerals

Sources: Zambia Revenue Authority tax information at its website www.zra.org.zm[7].

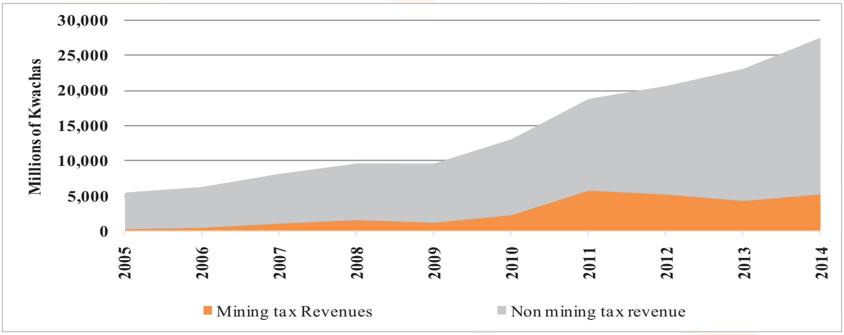
However the mining firms are also allowed capital deductions on mining equipment and related capital expenditure. Pre-production capital expenditure and environmental restoration costs are all 100% deductible from profit before tax. The mining companies are also allowed to carry forward losses arising from prospecting and exploration in prior periods to knock off against future periods, to a maximum of 5 years.

[7] Accessed 13 July 2015

Mining sector revenue contribution

Between the period 2005 and 2014, the mining sector contribution to government tax revenue rose from 0.7% in 2005 to 27% in 2011 before declining to 12.4% in 2014 (see Figure1).The rapid increase in 2011 was however also due to payment of tax arrears, which had accumulated following some earlier resistance by the mining companies to the introduced measures between 2009 and 2010.On average, the mining sector contribution averaged 11.4% between 2005 and 2014.

Figure 1: Mining sector tax revenue and Non-mining tax revenue

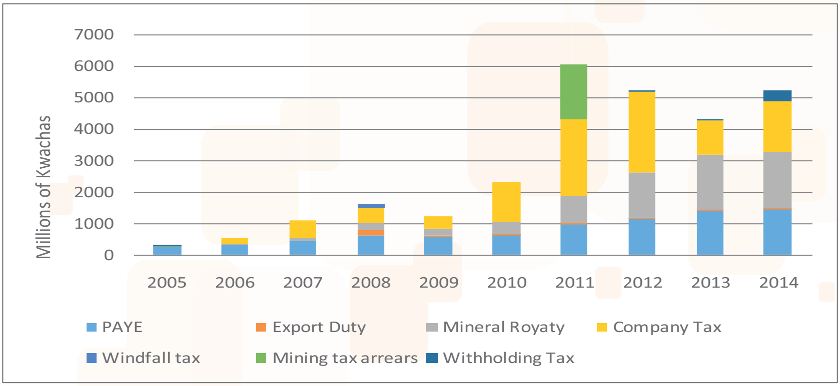


Sources: The Zambia Revenue Authority, on request, 2015.

In 2005, the Pay As You Earn tax accounted for 85.5% of the mining sector tax revenue, whilst mineral royalties accounted for 13.2%. However due to a raft of changes in the mining sector fiscal regime, by 2014 PAYE contribution declined to 28% of the mining sector tax revenue, whilst contribution through mineral royalties and company taxes rose to 33.6% and 31.1% respectively. There was a significant jump in tax revenue in 2011, as there was a huge payment of arrears that had accumulated while the players unsuccessfully challenged the taxation regime in court. In nominal terms, mining sector tax revenue contribution amounted to ZMW294.75 million (about US$84 million) in 2005, which figure rose to ZMW5.27 billion (about US$824.2 million) in 2014[6] (see Figure 2). It would have been interesting to see whether this increase in taxes was due to the Government's tax reform efforts or due to an increase in profitability by the firms. However, the authors could not establish the firm profitability data. What is apparent is that as the government introduced more tax reforms, tax revenue also increased, generally demonstrating the influence that tax reforms had in increasing tax revenue.

[6] Based on the end of year exchange rates (30 December) for 2005 and 2014

Figure 2: Mining Sector tax revenue composition



Sources: The Zambia Revenue Authority, on request, 2015.

An analysis of individual tax heads contribution by the mining sector shows that in 2005 the PAYE from the mining sector accounted for 15% of the total PAYE payments made. This figure rose to 23% in 2014. In terms of corporate taxes, the mining sector accounted for 23% of the revenue collected in 2006, rising to 47% in 2014. The mining sector's contribution to withholding taxes rose from 1.1% in 2005 to 23.6% in 2014 (see Table 5). This was mainly due to the mining tax reforms, which were all intended to earn more revenue from the mining sector.

Table 5: Mining sector revenue contribution to different revenue heads

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Pay As You Earn	15%	15%	20%	23%	20%	17%	22%	24%	25%	23%
Export Tax	0%	0%	0%	98%	90%	51%	42%	97%	66%	99%
Mineral Royalties	99%	100%	100%	92%	100%	100%	100%	100%	100%	100%
Company Tax	-	23%	49%	32%	29%	51%	68%	59%	38%	47%
Withholding Tax	1.1%	0%	0%	0%	0%	0%	0%	1.5%	2.6%	23.6%
Overall Contribution to tax revenue	0.7%	3.5%	8.2%	10.4%	6.7%	12.6%	27.0%	19.7%	12.3%	12.4%

Sources: Obtained from Zambia Revenue Authority on request, 2015.

All the statistics point to a rise in the contribution from the mining sector revenue to the total revenue between 2005 and 2014. Thus the government is increasingly turning to the mining sector for revenue, which could also have implications for the operations of the mining sector in future, unless the resources are adequately used.

5. Zambia Mining Sector Revenue use and Management

As already mentioned, tax revenues in Zambia are collected by the ZRA on behalf of the Ministry of Finance and are deposited in the general accounts (Control 99) at the Bank of Zambia. The Control 99 Account contains revenues from all the sectors of the economy. The Ministry of Finance allocates the revenue from Control 99 in the budget to all sectors of the economy, including districts and provinces. Since the revenue from the extractive industry is just consolidated with other revenue sources, it is impossible to attribute specific budget allocations to extractive sector revenue performance. In addition to direct payments, the mining sector also contributes indirectly to the general accounts through payments to various Government departments and agents. Such payments include property rates and business annual fees, directly paid by mining companies to government agencies and councils in their areas of operation. Non-tax revenue paid by mining companies to government agencies such as the Ministries of Mines and Lands is in turn sent to the Ministry of Finance and deposited in Control 99 (Zambia Extractive Industry Transparency Initiative (ZEITI), 2015).

Mining companies in Zambia are not obliged by law to make social payments but do so at their discretion (ZEITI, 2015). Most of the social payments are in kind and paid mostly in mining areas. The social payments are decided individually by mining companies without Government interference. Thus, the mining sector revenue is generally not earmarked and is used to finance all activities through the national budget.

The taxes and royalties collected by the ZRA are reported by Treasury to the legislature. The ZRA conducts regular audits, at least three times a year, of all mining companies on taxes such as VAT and PAYE. The ZRA also assesses the corporate tax and mining royalties they have collected from mining companies. The assessments are, in turn, scrutinized by the Office of the Auditor General, which reviews the revenues received and collected by the ZRA. After the Office of the Auditor General review, the revenues received and collected are then scrutinized by the Parliamentary Public Accounts Committee. The Committee on Economic Affairs and Labour is also directly responsible for the mining industry and reviews the mining revenue and mineral production (Revenue Watch Institute, 2012).

The Office of the Auditor General (AG) reviews the financial accounts of all mining companies. The AG's audit reports are supposed to be submitted to parliament within twelve months after the end of the fiscal year. However, in practice they do not come out within this period and the findings are not followed up with action that is effective to deter financial malpractices by the institutions covered by the AG. The ZRA and the Ministry of Mines and Mining Development just receive tax information without necessarily investing in verifying its authenticity. Thus, self-reporting, which is vulnerable to incomplete information from mining companies, is the main avenue of collecting data on the companies' activities.

Zambia's public expenditure track record is poor due to non-transparency in how division of roles and responsibility is done between the mining companies and government, weak capacity at all levels of government, and incomplete and unenforced decentralisation reforms (Chamber of Mines Zambia, 2014). The challenges of expenditure management are pronounced at the sub-national level where funding for local authorities is centralized, unpredictable and largely non-transparent. The National Decentralization Policy of 2002 has been ineffectively implemented because service delivery at the district and sub-district levels is still primarily provided through the various structures of central line ministries. Direct funding to local authorities in Zambia (which is less than 2% of the total budget) is low compared to local requirements. Most councils are underfunded and have little fiscal empowerment at this level to work collaboratively with the mining companies. Local administrations have been unable to ramp up public service provision in the aftermath of privatization to deal with fast-growing populations in the North-western Province (Chamber of Mines Zambia, 2014).

The legal framework has generally been put in place in Zambia to govern revenue use and management, which also applies to the mining sector. Articles 114 -121 of the Constitution of Zambia defines the financial management roles of the President, Minister responsible for finance and the Auditor General (AG)[7] (Nchite and Nsana, 2004). The Public Audit Act of 1980 defines the roles, responsibilities, and reporting obligations of the AG and gives the AG authority to audit books, records and reports of institutions in which government has an interest. The Finance (Control and Management) Act gives the AG authority to scrutinize the financial affairs of government departments and statutory corporations for audit purposes.

The Public Audit Act also empowers the AG to follow up records of institutions beyond those prescribed in the Finance (Control and Management) Act to include every private institution that receives a government grant, subsidy or subvention in any financial year. Under the Public Audit Act, the AG has authority to request from independent auditors of parastatals any document, reports, or information relating to the accounts of parastatal companies. The AG is further empowered to have access, for the purposes of audit scrutiny, to all contracts involving government or its agencies and enterprises (Nchite and Nsana, 2004). Thus, despite the implementation challenges already discussed, Zambia has tried to ensure that revenue use and management is adequately legally backed. The country has a fairly good legal framework, which forms a strong foundation for the assessment, collection and administration of mineral revenues. This in turn has the potential to promote discipline and efficiency in the management of mineral revenues.

[7] The financial management role of the President is given as the head of the executive wing of government. The articles further provide for annual appropriation Acts, supplementary and excess estimates and excess expenditure Acts.

The Ministry of Finance, through the national budget, allocates and transfers funds to districts and provinces. However these transfers are from Control 99 and not directly linked to revenues from mining companies. Thus there are no resource specific sub-national transfers from the central government. However, the civil society successfully lobbied for transfers in 2008, which saw provisions for the establishment of a Mineral Royalty Sharing Mechanism under Section 136 being incorporated into the Mines and Minerals Development Act of 2008 (Revenue Watch Institute, 2012). The implementation of the provisions has remained a challenge.

There are Constituency Development Funds designed to give local governments more control over funding but they all receive the same amount despite the presence of mining operations or lack of it in a constituency. Local governments collect operating fees paid to the local councils in which the extractive companies operate. They also collect property taxes payable to local authorities by all extractive companies who own properties. However, apart from the Constituency Development Funds from the central government's Control 99 Account, local governments do not receive additional revenue transferred to them by the central government on the basis of the presence of a mine in their region. Therefore, local communities do not fully benefit from the presence of a mineral resource in their area. Thus, there is need for Central Government allocations for mining sector development, especially designed to improve infrastructure in the mining communities, to be structured differently for those provinces and districts that do not have mines compared to those with mines. The implementation of the mineral royalty sharing mechanism provisions is thus needed.

In the 'Country Mining Vision Guidebook', which guides African countries in domesticating the AMV, one of the options of dealing with the risk of the Dutch Disease[8] is the use of long-term national development plans to guide national spending. Zambia, as a resource dependent country, is at risk of the Dutch Disease and has for many years been guiding its expenditures using the national development plans. The current national development plan is the Revised Sixth National Development Plan (R-SNDP), meant to run from 2013 to 2016. Its aim is to achieve the objectives set out in the Zambia Vision 2030 economic plan of becoming a ***"prosperous middle-income country by 2030"***. Primarily, the R-SNDP is an investment plan with quantifiable programmes to guide sector planning and budgeting processes. These programmes are expected to respond to the strategic focus of the Plan, especially on the theme, "***People Centred Economic Growth and Development"***. The programmes are elaborated in the implementation plan of the R-SNDP. The Plan focuses on public capital investments that have a bias to rural development and job creation so as to achieve inclusive growth (Government of Zambia, 2014).

[8] The Dutch Disease refers to the appreciation of the real exchange rate leading to inequitable inter-sectoral development. It may arise due to the discovery of a large natural resource, a rise in international price of an exportable commodity, or the presence of sustained aid or capital flows.

In line with the R-SNDP, the Medium Term Expenditure Framework (2013-2015) was formulated with the aim of ensuring that a stable macroeconomic environment and economic growth are inclusive and pro-poor so that the standard of living is improved, by focusing expenditure on education and skills development, health care, agricultural support, citizen empowerment, employment creation, provision of public infrastructure and social amenities. In the Medium Term Expenditure Framework, the government of Zambia envisages a fiscal strategy that will include the creation of additional fiscal space, primarily by strengthening domestic resource mobilization efforts, effective streamlining of tax and non-tax policy and administration, and continuing to control non-priority spending during this period. Given that a significant amount of such resources is expected to come from the mining sector, the R-SNDP also has a bearing on the mining sector revenue use and management.

In a number of resource-rich countries, sovereign wealth funds (SWF) have been created to manage resource revenues to achieve specific objectives. Some countries have created fiscal stabilization funds to insulate the budget and economy from volatile commodity prices (e.g. Botswana Pula Fund). Some have established fiscal saving funds to share wealth across generations. Development funds have been created to allocate resources for funding priority socioeconomic projects such as infrastructure development (Jourdan *et al.*, 2012).

In the 2007/8 financial year, Zambia created a separate Mining Resource Account at the Bank of Zambia for saving the revenue windfalls expected from the mining sector following the 2008 tax regime changes. The intention was that starting in 2009, the net inflows to the Mining Resource Account would be based on the medium-term expenditure framework, although the mineral price slump reduced tax payments in that year (World Bank, 2009).

Zambia, like other African countries, has signed up to the Extractive Industry Transparency Initiative (EITI), meant to improve transparency and accountability in the extractive sector. In May 2009 Zambia became an EITI candidate country and underwent its first validation by the EITI Board in 2011. The board declared that considerable progress had been made but not all the requirements had been met. For example, there was dialogue between the government, firms in the extractive sector and the civil society. However, there were considerable delays in the release of funding, which slowed implementation. There were also considerable delays in producing required reports and information, which also affected compliance with the EITI principles. However, in September 2012, following a review by the EITI International Secretariat, Zambia was declared an EITI-compliant country. It has produced six EITI reports covering the period 2008-2013 (ZEITI, 2015). The EITI is gaining international recognition as a valuable mechanism through which revenue collection arrangements can be subjected to scrutiny and assurances given to the public that revenues are being properly accounted for (World Bank, 2009).

There are about 23 African countries that are EITI candidates, and only 5 countries are non-compliant, including Central African Republic which is suspended. The challenge is that EITI initiative is voluntary and dependent on the country's will to assimilate and enforce specified rules and standards. In some cases it depends on external forces, for instance, the International Financial Corporation prefers investing in countries that are implementing EITI principles. Among the African countries that are EITI compliant, Liberia and Nigeria have advanced to the stage of developing legislation to require the adoption of EITI principles (Economic Commission for Africa, 2009).

The Chamber of Mines Zambia (2014), while focusing on the mining sectors' social and economic contribution shows that:

i. Primary school net attendance rates in the non-mining districts have converged towards the higher levels previously seen in the mining districts;
ii. Secondary school net attendance remains higher in the mining districts;
iii. Levels and trends in access to improved water sources are similar across the mining and non-mining districts in North-western Province;
iv. Levels of access to water and electricity services continues to be much higher in the Copperbelt mining districts compared to non-mining districts;
v. Infrastructure development (as measured by proximity to schools, hospitals and also financial institutions) continues to be slightly better in mining districts compared to non-mining districts in the Copperbelt;
vi. In the North-western Province, the mining and non-mining districts have similar levels and trends.

These findings show that where there is mining activities in Zambia, the level of socio-economic development is generally higher or at least equal to the levels in the non-mining areas. Thus mining activities seem to have contributed in improving development. Most of the development has been a result of corporate social responsibility of mining houses (Mayondi, 2014).

6. SADC Guidelines on the Mining Sector Fiscal Regime

Recognizing the fact that a thriving mining sector can contribute to economic development, alleviate poverty and improve the standard and quality of life in the region, the SADC member states established the SADC Protocol on Mining on 8 September 1997 which came into force in 2000. The Protocol seeks to promote interdependence and integration of mining policies to accelerate development and growth of the mining sector in the region by avoiding the "race to the bottom" whereby countries compete by lowering tax rates and offering undue fiscal incentives. The protocol specifies the following areas of cooperation:

i. Harmonizing national and regional policies, strategies and programmes;
ii. Developing human and technological capacities;
iii. Promoting private sector exploitation of mineral resources;
iv. Improving availability of information to the private sector;
v. Promoting small-scale mining;
vi. Developing and observing internationally accepted standards of health, mining safety and environmental protection;
vii. Promoting economic empowerment of the historically disadvantaged in the sector.

Although the Protocol does not expressly spell out mining sector fiscal regime guidelines, the thematic area on harmonising national and regional policies, strategies and programmes also includes fiscal regime issues. Under this thematic area, SADC seeks to harmonize the fiscal environment to prevent the situation where countries compete in attracting investors by offering fiscal incentives that eventually result in low government take in extractive sector revenues.

Pursuant to the need for harmonisation of mineral policies and regulatory frameworks to reduce differences in the operating environment between the SADC member countries, the organization started the process of harmonization in 2004 by developing a regional harmonization framework based on international best practice. Nine areas of harmonization were identified as follows:

a) Mineral policies;
b) Political, economic and social environment;
c) General investment environment;
d) Mining fiscal environment;
   - International tax issues
   - National tax issues
   - Local government/regional tax issues
e) Minerals administration and development systems;
   - Beneficiation, minerals marketing, cluster development, environmental management and participation in management of mining enterprises
f) Artisanal and small scale mining;
g) Research and development;

h) Human resources and skills development;

i) Gender.

The regional harmonisation framework outlined the benchmarks/milestones that member states should set within the international context towards developing a common approach to the minerals sector and the timelines of achieving the benchmarks. Insofar as harmonisation of mining fiscal environment is concerned, the framework recommended the following should be achieved in the short-term (2-5 years).

Harmonization of international taxation approaches

a) Host States may consider entering into tax treaties with the resident country of international investors in order to minimize the likelihood of double taxation;

b) Member States should limit withholding tax rates to internationally competitive rates;

c) Member States should provide relief for import and export duties on mining sector items;

d) To protect the domestic tax base, member States need to introduce transfer-pricing rules based on the OECD (arm's length) principles.

Nevertheless, in implementing the first three approaches listed above, it is important to note that implementation should be done where there is justification to do so. For example, double taxation agreements are entered into if the risk of double taxation is real, not assumed. If not carefully done, the harmonisation of international taxation approaches could run counter to the thrust of the AMV in using minerals endowment in Africa.

Harmonization of national taxation issues

a) Member States may offer tax stability agreements to investments above a minimum threshold. Tax stability agreements should be used judiciously and only as a temporary measure;

b) Member States should ensure that the minimum tax rate is kept at an internationally competitive level;

c) Member States must introduce mineral specific royalties as compensation for mineral depletion in line with international norms. Consideration could be given over time to reform the mineral royalty regime by implementing a sliding scale mechanism to target a portion of the mineral rents generated by highly profitable ventures;

d) Member States should all introduce additional profit taxes and ensure that rates are kept at internationally competitive levels;

e) Member States should avoid tax holidays. However, consideration could be given to the limited use thereof for investment projects that meet specific national policy and development objectives, for example value-addition;

f) Member States should allow for accelerated amortization and depreciation schedules for the treatment of exploration and mine development expenditures;

g) Member States should introduce countrywide tax ring fences for the treatment of exploration costs. Further research would be required for the extension of ring fencing to include the entire region;

h) There should be a limit on either the period of loss carry forward or the cost amount as determined in the income tax calculation. Member States must introduce measures to avoid dishonest practices by companies in calculating losses to be carried forward;

i) Member States should consider depreciation schedules for capital equipment based on the item's useful life;

j) Member States may consider including realized capital gains (or a portion thereof) in the annual income tax calculation. This ensures the rate does not exceed the corporate rate of taxation.

Harmonization of local tax issues

Member States must ensure that regional/ local tax rates are competitive because of the potentially damaging impact on the attractiveness of a region to investors. Relatively higher tax rates may sterilize the resource sector because investors would see it commercially unviable to mine. However, it is also critical to ensure that the need to attract foreign capital should not be considered a priority over other development objectives intended to ensure that tax revenue that benefits all Zambian citizens is maximised.

The status of mining fiscal regime harmonisation as of 2011 compared to 2004 shows mixed results. In some cases progress has been made to reduce differences among the SADC countries and differences between the SADC and international best practice (Table 6). The data in Table 6 also includes Competitive Investment Framework (CIF)[9] calculated for 1999, 2004, and 2010 so as to show the global best practices trends.

[9] The CIF was developed by the Minerals and Energy Policy Centre (MEPC) in South Africa for reference in guiding mineral policy development in Malawi and was used in coming up with the preferred harmonized framework for the SADC region. The CIF provides international best practices against which the investment climate of SADC is benchmarked. The creation of a CIF involved a review of the mineral legislation and policies of carefully selected comparator countries that had recently attracted a significant share of international investment as a direct result of changes in policy that reduced risk to investors - Chile, Mexico, Argentina, Brazil and China.

Table 6: SADC Fiscal Regime, 2004 and 2011

Mining fiscal regime parameters	2004 SADC Range	2011 SADC Range	2004 SADC Average	2011 SADC Average	1999 CIF* Average	2004 CIF Average	2010 CIF Average
Tax stability agreements	Yes/No	Yes/No	No	No	15	Yes	Yes
Corporate tax rate (national)	15%–60%	25%–40%	33%	32%	33.1	31.8%	23
Branch office tax	20%–60%	25%–40%	36%	33%	NA	31.8%	25
Income tax credits for foreigners	Yes/No	Yes/No	No	Yes	NA	Yes	Yes
Corporate tax on oil and gas	42%–58%	35%–65.75%	Not specified	Not specified	53.3	38.8%	37%
Minimum corporate tax	0%–15%	0%–15%	4%	4%	0.4	0.7%	1%
Additional profits tax	0%–25%	0%–25%	5%	5%	5.8	1.3	3%
Tax holidays (years)	0–10	0–10	3	5	0	0	0
Tax treaties	Yes/No	Yes/No	Yes	Yes	Yes	Yes	Yes
Deduct exploration/development costs (years)	1–5	1–5	2	100% deductible in year incurred	NA	Yes	NA
Ring fencing	Yes/No	Yes/No	Yes	Yes	No	No	No
Forward carry of losses (years)	2 –indefinitely	3 –indefinitely	18	Indefinitely 16 years (calculation)	15	Yes	Yes
Backward carry of losses	No	Not allowed	No	No	No	No	No
Maximum cost deduction	Unlimited	25%–Unlimited	Unlimited	Unlimited	NA	NA	Yes

Mining fiscal regime parameters	2004 SADC Range	2011 SADC Range	2004 SADC Average	2011 SADC Average	1999 CIF* Average	2004 CIF Average	2010 CIF Average
Depreciation (years)	1–25 (LOM)	1–25	9	20% SLD method over 5 years	≥3	Straight line	Straight line
Capital gains tax	0%–40%	0%–40%	14%	24.9%	14.6	25.4%	24
Tax on assets	Yes/No	Yes/No	No	No	NA	Yes	Yes
Value added/sales tax	0%–20%	0%–30%	14%	15.6%	0	17%	17%
Fuel tax	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Repatriation/dividend/ withholding tax	0%–25%	10%–20%	14%	14%	1.25%	1.3%	3%
Import duties	0%–15%	0%–90%/ mining exempt	3%	Discretionary exemption for mining	0	0	0
Export duties	0%–10%	0%–10%/ mining exempt	1%	Discretionary exemption for mining	1.4	0	0
Pasyroll tax	Yes	Yes/No	Yes	Yes	Yes	Yes	Yes
Land tax	Yes/No	Yes/No	Yes	Yes	Yes/No	Yes	Yes
Provincial (State) taxes	No	Yes/No	No	No	0	No	Yes
Municipal taxes	Property/ Services	Property/ Services	Services	Services	0	Services	Yes

Sources: UNECA (2004) and Cawood (1999).

Table 6 reveals a lot as far as harmonisation is concerned. The status of tax stability agreements for the SADC has not changed over the period and on average many countries do not have these agreements. However, corporate tax (national) range narrowed in 2011 and the SADC average declined from 33% to 32%, although the average remained higher than the CIF average for 2010. The SADC range of branch office tax has declined (from 20-60% to 25-40%) and the average also declined (from 36% to 25%), although the SADC average branch office tax remained higher than the best practice of 25%.[10] In 2004, many SADC countries had no income tax credits to foreigners but in 2011 most had introduced the credits in line with best practice. Minimum corporate tax rate did not change at 4% over the period despite a best practice of 1% as of 2010. Similarly, additional profits tax did not change at 5% despite a best practice of 3% as of 2010. The SADC average number of years of tax holiday increased from an average of three to five years despite a best practice of zero years. On average many countries have tax treaties in the SADC region, consistent with the best practice. However, many SADC countries practice ring-fencing despite that it is not a best practice. Average capital gains tax in the SADC region increased phenomenally from 14% to 24.9% over the period to match the best practice 24% as of 2010.

With respect to mining sector revenue use and management, the SADC Protocol on Mining recognises that the management of mineral revenues to achieve socio-economic objectives is important in the governance of the mining sector. The use of tax revenue is guided by the SADC Protocol on Finance and Investment of 2006 in which the region seeks to achieve Macroeconomic Convergence by member countries.

In terms of revenue management only a few countries in the SADC region ring fence revenue from the mining sector accruing to them and these are Mozambique, Namibia, South Africa and Botswana. Thus most SADC member states have a fiscal regime that allows governments to share revenues arising from the mining with communities affected by mining activities.

10 The best practice is derived from the competitive investment framework (CIF). The creation of the CIF involves a review ofthe mineral legislation and policies of carefully selected comparator countries that have recently attracted a significant share of international investment as a direct result of changes in policy that reduced risk to investors. Countries such as Chile, Mexico, Argentina, Brazil and China are included as comparator countries.

7. Assessment: Mapping the AMV at the National Level

7.1 Zambia Mining Fiscal Regime Mapping

One of the main aims of the AMV is to ensure that the mining sector regime delivers value for the country over the long term. This includes improving the management of transfer payments associated with the mining activities. Under the AMV Action Plan, efforts to achieve this are generally captured by strategies that are intended to ensure that there is enhanced share of mineral revenue accruing to African mining countries. A look at the identified monitoring indicators would help show the Zambia situation as far as meeting the AMV objectives is concerned:

a. Improve national capacity to physically audit mineral production and exports

As already described, there are legislative and operation framework to ensure that mineral production and exports are audited in Zambia. These include Articles 114 -121 of the Constitution of Zambia, the Public Audit Act and the Finance (Control and Management) Act. In line with these legislations, institutions that have the mandate to audit include the President, the Minister responsible for finance and the Auditor General. These legislations empower these agencies to audit all contracts involving government or its agencies and enterprises; to audit books, records and reports of institutions in which government has an interest; to scrutinize the financial affairs of government departments and statutory corporations and every private institution that receives a government grant, subsidy or subvention in any financial year.

The audit capacity is also extended to the mining sector companies that are 100% privately owned as the ZRA, the Office of the Auditor General, the Parliamentary Public Accounts Committee and the Committee on Economic Affairs and Labour also review the mining companies' production statistics and revenues. However, some concerns have been raised about the delays by the AG's office in producing the audit reports, a lax attitude towards follow up action to deter financial malpractices and less pro-activeness on the part of the ZRA and Ministry of Mines to ensure that mining companies strictly adhere to timeframes for reporting information (Revenue Watch Institute, 2012; Stephens, 2014)). However, given that a physical audit system is in place, which is implemented by generally trained inspectors, Zambia can be considered to have complied with the AMV strategy in this respect.

b. Review mineral regimes in terms of optimising revenues

The Zambia mineral regime is reviewed every year through the annual National Budget Statement (fiscal policy). For example, in January 2015, there were sweeping reforms introduced for royalty payments to ensure that revenues from the mining sector are optimized. Several regulations, issued in terms of section 161 of the Mines and Minerals Development Act, 2008 have also been issued to adjust revenue systems, especially licensing procedures and costs, all aimed at enhancing revenue[11].

In addition, these measures have also ensured that there is an increase in government revenues with rising profitability of the mining activities. Mineral royalties, especially for base metals, precious minerals, industrial minerals and gemstones, is calculated based on the realisable price from sale of the minerals (gross value and norm value) which ensures that government also benefits from rising profitability in mineral production.

Fees schedules for mining firms in Zambia are also designed to guarantee minimum government revenue in production periods and price cycles, which is important for planning purposes on the part of the Government. Under Statutory Instrument 17 of 2013, the following are the annual payments that mining sector firms have to pay for renewing various licences:

Table 7: Fees Schedules for mines already operational in Zambia

Type of licence	Charge in fee units[12]
Renewal of prospecting licence	10,000
Renewal of large-scale mining licence	160,000
Renewal of large-scale gemstone licence	160,000
Renewal of small-scale mining licence	15,000
Renewal of large-scale gemstone licence	15,000
Renewal of mineral processing licence	160,000
Annual operating permit (large scale)	5,000
Annual operating permit (small scale)	1,500
Mineral export permit	750

Sources: Statutory Instrument 17 of 2013, Zambia.

In addition, the Statutory Instrument also imposes various area charges, depending on the size of the ground that the mine occupies. These charges range from 4 to 200 fee units per hectare per year. As already described, through these various amendments, Zambia was able to ensure that the contribution of mining sector tax revenue to total tax revenue increased from 0.7% in 2005 to 12.4% in 2014, having peaked at 27% in 2011. Thus the reviews of mineral regimes undertaken and this level of improvement in fiscal revenue collected by Zambia can be seen as being in line with the AMV provisions.

11 Examples of such regulations that were issued through Statutory Instruments include The Mines and Mineral Development (General) Regulations, 2008 and the Mines and Minerals Development (General) (Amendment) Regulations, 2013

12 Under Statutory Instrument No. 8 of 2014, a fee unit is equivalent to 20 ngwee, or ZMW0.20.

c. Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws

Capacity building programmes have been put in place under a comprehensive reform programme, Public Expenditure Management and Financial Accountability Reform Programme, (PEMFA), which was in effect between 2005 and 2012. However, this program left a lot of issues unresolved. For example, Zambia still faced challenges in public financial management which could also be attributed to capacity shortcomings in fundamental elements of Public Financial Management. In mining, the Ministry of Mines, Energy and Water Development had limited capacity to monitor, audit, verify and supply production data[13]. Such capacity is still lacking to date, although there is currently an ongoing World Bank supported programme, 'Public Financial Management Reform Program Phase 1 (P147343)' which commenced on 11 April 2014 and is expected to end on 31 December 2017. This has some capacity building elements that are expected to close this gap, although the authors could not establish the number of officials who will deal with mining sector revenue among those being trained. However, the increase in numbers of policy makers and other stakeholders participating in capacity building initiatives is in line with what the AMV Action Plan aspires.

d. Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing)

Zambia is still struggling to ensure that leakages and losses through illicit financial flows are curbed. It is estimated that about US$8.8 billion left Zambia in illicit financial flows between 2001 and 2010, of which $4.9 billion can be attributed to trade mis-invoicing (Kar and Freitas, 2012). In 2013, it was also reported that the Zambia Government estimated that it was losing about US$2bn annually as a result of tax avoidance and transfer pricing by foreign companies[14] . This generally demonstrates that there is still a lot that needs to be done to develop systems to unearth and stop illicit financial flows.

Efforts have been made, however, to put in place such systems. This includes Section 97A of the Income Tax Act (Chapter 323 of the laws of Zambia) and the Income Tax (Transfer Pricing) Regulation, 2000 which deal with transfer pricing. The ZRA has embraced the OECD Transfer Pricing international standards – the Arm's Length Principle. Fines for transfer pricing include imprisonment term not exceeding twelve months; and or a fine. The financial penalties are prescribed by the Commissioner General, and these range from 17.5% to 35% for incorrect return on understated income amount. Furthermore, late payment of tax (on mineral as well) is penalized by a fine of 5% per month of the amount due, plus an interest assessed on the outstanding tax payable at the Bank of Zambia discount rate plus 2% surcharge. Fraudulent

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[13] Action fiche: Support Programme to Public Finance Management, Accountability and Statistics. CRIS: ZM/FED/022–712:Republic of Zambia, online copy, not dated.

[14] Financial Times, April 30 2013 at website http://www.ft.com/cms/s/0/93b47d9a-b196-11e2-b324-00144feabdc0.html#axzz3fnuacLZb accessed 13 July 2015.

filing of tax returns is fined at a rate of 52.5% of the amount (TPA Global, 2014). However, given the estimated amount of tax leakages, the extent to which tax leakages can be argued to have been reduced by these systems appears to be very minimal; hence they are not very effective.

e. Review terms of double taxation agreements and BITs with host countries of the mining companies including the principle that minerals should be taxed at the point of extraction

Zambia has signed double taxation agreements with about 22 countries[15] from around the world (KPMG, 2014), including those where the parent companies of the mining sector companies in Zambia are registered. However, in its quest to ensure that such double treaty agreements do not prejudice the nation on revenue, Zambia has been renegotiating some of the agreements. On 4 February 2014, Zambia and the United Kingdom signed a new double taxation agreement, replacing the old one. This was intended to correct some of the observed loopholes, which have led to the country losing significant revenue (Centre for Trade Policy and Development, 2014). Zambia also has a problematic double taxation agreement with Ireland. The Zambia-Ireland tax treaty sets limits for how much a given piece of income can be taxed by the 'source country' of the income (usually Zambia), and by the 'residence country' of the income's recipient(usually Ireland). While Zambia generally levies a 20% withholding tax on interest payments made to non-residents, the Ireland-Zambia tax treaty limits 'source country' tax on cross-border interest payments to zero. Thus, Zambia has lost some freedom to always decide how much tax it levies on income generated in Zambia, due to DTTs signed with various countries (Centre for Trade Policy and Development, 2014). Thus, while the double tax agreements are intended to make investment lucrative, the loss in potential revenues might see the country being prejudiced.

Bilateral Investment Treaties (BITs) have also emerged over the years as an alternative mechanism for investment protection and set actionable standards of conduct that apply to governments in their treatment of investors. The legal framework for the signing of Investment Promotion and Protection Agreements in Zambia is section 17(j) of the Zambia Development Agency (ZDA) Act of 2006. Zambia has signed twelve BITs with other countries since 1966, with five having been ratified (Table 8).

[15] These include Canada, Denmark, Finland, France, Germany, Holland, India, Ireland, Italy, Japan, Kenya, Mauritius, Norway, Romania, South Africa, Sweden, Tanzania, Uganda, United Kingdom, Yugoslavia and Zimbabwe.

Table 8: List of countries with which Zambia has signed and ratified BITs

	Country	Date of Signing	Date of Ratification
1	Germany	1966	1972
2	Switzerland	1994	1995
3	China	1996	Pending
4	Croatia	2000	Pending
5	Egypt	2000	Pending
6	Cuba	2000	Pending
7	Belgo-Luxemburg Economic Union	2001	Pending
8	France	2002	2014
9	Netherlands	2003	2014
10	Italy	2003	2014
11	Finland	2003	Pending
12	UK & Northern Ireland	2009	Pending

Sources: MCTI 2015.

Some of the BITs were signed as far back as the 90s but they have not yet been ratified, which can be reflecting the various challenges associated with the process.

Despite the double taxation agreements and the BITs, the taxation regime in Zambia is intended to ensure that minerals continue to be taxed in Zambia at the point of extraction rather than in these markets. As already indicated in Table 1, the number of double taxation agreements signed is one of the monitoring indicators to ensure progress towards AMV aspirations. Thus, based on the number of BITs and double taxation agreements signed and implemented, Zambia has made strides in complying with what the AMV Action Plan calls for. However, the country still needs to do more to ensure that double taxation agreements attract investment without compromising the country's revenue potential. The AMV Action Plan does not provide a benchmark, as the monitoring indicator is the number of double taxation agreements signed.

f. General challenges and opportunities for mining fiscal regime mapping with the AMV

Although Zambia is endowed with numerous mineral commodities, it still lacks capacity to enjoy maximum benefits from them due to limited value addition of the minerals, which is among the key aspirations of the AMV. Most of the minerals including copper (the main mineral) are exported as ores, without significant value-addition. Thus the fiscal regime in Zambia does not effectively facilitate and encourage linkages between the mining industry and the manufacturing sector. However, the Government has already taken note and is in the process of addressing the issue. The Government indicated that it is working on legislation aimed at enhancing value addition to the country's mineral resources. Thus the Mines and Minerals Act is being revised to make it easier for Zambians to participate in the mining value chain[16]. However in designing the fiscal policy measures of the mining sector, governments need to balance its objectives as the owners of the mineral resources with the needs of investors as providers of capital and technology of extraction, which is also a challenge.

Zambia is also characterized by bureaucratic red tape in the issuance of mining rights, which make it difficult for investors to participate in the mining industry. There is also lack of clearly stipulated appeal procedures for issues to do with dispute over mining licences and rights, which also make the regime less predictable[17]. The absence of an appropriate governance mechanism have resulted in failure to impose a mining fiscal regime that ensures equitable distribution of resource rents between the government and the mining companies, particularly windfall rents.

In order to enhance the fiscal regime within the mining sector there are a number of opportunities that can be exploited. These involve the use of resource rents, resource differential and windfall rents to improve the basic physical and knowledge infrastructure of the nation. The mining sector can be leveraged as collateral security through using high-rent resource infrastructure to open up resources for other potential economic areas such as agriculture, forestry and tourism or any other economic areas with lower returns (that cannot afford their own requisite infrastructure.

Zambia also has an opportunity of using competitive auctioning of prospective resource blocks. The current set up where there is an automatic conversion from an exploration license to a mining license, entails that once the exploration license has been issued, the state has little control over the mining tax regime, no matter how profitable/rich the deposit. However in most cases investors tend to have more information on the value of a prospective block than the state and competitive auctioning would, be an effective method of achieving fair value for a country's minerals.

7.2 Zambia Revenue use and Management mapping

Based on the AMV Action Plan, the following are some of the key indicators of success as far as mapping the AMV is concerned:

[16] Minister of Mines, Energy and Water Development, Mr. Christopher Yaluma during the International Infrastructure and Invest Convention in Johannesburg, September 2014 at website http://www.zambiapretoria.net/new-mining-act-to-enhance-value-addition-employment/ accessed 13 July 2015.

[17] The Times of Zambia, 17 September 2014, based on a Press Statement by Mines, Energy and Water Development Minister Christopher Yaluma , article found at http://www.times.co.zm/?p=35550 accessed 13 July 2015.

a. Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds

Given that mining resources are finite, there is need to ensure that once they become exhausted, the future generation can also benefit from the resources through some funds that are set aside for this purpose. The AMV recommends the setting up of sovereign wealth or stabilization funds for this purpose. Although Zambia has been benefiting from minerals resources for decades, the country has not yet put up such stabilization funds in place. However, based on the 2015 national Budget Statement, the Government has now realized the need for this, as currently the Government is working on putting in place mechanism for a sovereign wealth fund.

In announcing the 2015 National Budget Statement, the Minister for Finance indicated that the Government had a duty and responsibility to secure the future of the next generations. Thus, about ZMW100 million[18] was allocated for the establishment of a sovereign wealth fund[19]. In addition, it was also indicated that a significant proportion of the dividends from state-owned enterprises that will fall under the Industrial Development Corporation would also form part of the fund. However, there has not been much information released since then concerning the progress in implementing the measure. As already mentioned, a 'Mining Resource Account' which was purportedly kept at the Bank of Zambia, was established in 2008 under the former government of President Levy Mwanawasa. However, after the change of government, nothing much was heard about this account, which would have served as some form of a stabilization fund. This account thus does not exist, although it is not clear as to the challenges that prevented it from being fully operational besides the change of Government. Thus although there is movement, the number of SWFs established by the country was identified by the AMV Action Plan as a short term strategy, implying that this cannot be classified as a success.

b. Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities

One of the major concerns about the mineral resource management regime in Zambia is that there are no policy mechanisms to ensure that mining companies invest in communities in which the mining companies are located. One example that has been given is that of Kankoyo in Mufulira which hosts one of the biggest mining companies (Mopani Copper Mines) but has deplorable infrastructure[20]. There are no legal requirements to force the Constitutional aspiration to have mining communities directly affected by the impact of mining see tangible benefits from mining activities in terms of infrastructure development and environmental mitigation. In Zimbabwe, for example, mining companies

[18] Equivalent to about US$19 million at the time.

[19] See the full Statement at website http://www.parliament.gov.zm/node/525, accessed 13 July 2015.

[20] Savior Mwamba, Tax Justice Network Africa policy and advocacy manager at website http://www.sarwatch.org/pt-pt/node/356 accessed 14 July 2015.

are required to contribute in a community ownership trust fund, with the local leadership as the key decision makers on how proceeds from the fund can be used. Such a similar scheme can also be pursed in Zambia.

As already explained, the mining revenue is transferred into a consolidated fund with other revenue sources and is not ring-fenced for any developmental projects in the mining areas. Thus, the rent distribution systems at both national and local authority level is generally not designed in such a way that part of mineral revenue is allocated to communities near mining areas. The government, with its decentralized agencies and other local institutions, should lead the development of communities by ensuring that economic surpluses generated by resources and economic activities from the minerals sector and not mining companies. Thus, Zambia lags behind as far as meeting this AMV aspiration is concerned.

c. Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation

Through corporate social responsibility, communities in the mining areas have benefited from some mining sector projects in Zambia. One direct benefit is through employment in the mines, even though the mining companies can also introduce other projects with health and infrastructure implications. For example, in Solwezi, where two of Zambia's largest mines, Lumwana and Kansanshi mines are located, a lot of projects that are considered beneficial to local communities have been executed. The projects include women's savings, education, health and agriculture, for which most projects involve infrastructure development (Mayondi, 2014). In March 2014, it was estimated that the various companies in the private sector had invested over US$220 million in various communities where they operate and contributed about US$99 million in various social responsibilities[21].

Given that it is the government, rather than the mining sector, which would be expected to play the role of facilitating local communities' access to jobs and education under the AMV, the mining regime has generally failed in this regard. There is currently very little to link the corporate social responsibility that the mining companies have been performing to any government policy, as this appears not to be enforceable. In addition, as already described, there are no mechanisms to ensure that some of the proceeds from the Control 99 Account are ring-fenced towards developing the communities on which mining activity takes place. As a result, public spending towards education, health, water and sanitation as well as infrastructure for local communities with mining areas is only indirectly related to the mining fiscal revenue regime in the sense that mining sector contribution to total revenue is substantial. Another limitation is that the mining sector regime has limitations in developing the capacity of the local communities to negotiate partnership agreements, as aspired by the AMV.

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[21] Zambian Mining Magazine of March 4 2014, at website http://www.miningnewszambia.com/improve-on-social-responsibility-mining-companies-in-zambia-challenged/ accessed 14 July 2015.

d. Other challenges on revenue use and management in Zambia

Zambia is an EITI-compliant candidate since 2012. Zambia has committed itself to the implementation of the EITI by including the principles of the EITI of promoting transparency and accountability in the Mineral Resource Development Policy which was passed in 2013. The country produces EITI Reports that disclose revenues from the extraction of its natural resources. Companies disclose what they have paid in taxes and other payments and the government discloses what it has received. In 2013 the Government established a mineral value chain monitoring system to make it possible to address the problem of mineral production figures and the ZEITI will obtain information from the data collected. The Zambian EITI is undertaking a project to explore the potential for more real-time reporting of payments and revenues. In 2013 the Government established a committee that designed a reporting template that will be used by all government agencies to harmonise the reporting of production figures from the extractive companies. These two sets of figures are compared and reconciled. However, there are some challenges with the EITI process which include the following.

i. A lack of legislative provisions that oblige companies to comply with the EITI process and there are no sanctions for non-compliance and non-reporting. However, efforts are underway to formalize the EITI process through a legal instrument requiring timely cooperation and reporting by companies and Government agencies. The ZEITI Secretariat has been coordinating the development of a legal audit report, the draft Bill text and an explanatory report for the EITI Bill. The ZEITI is also engaging government to develop the Zambia EITI Policy before enactment of the EITI Bill.

ii. The production of EITI Reports has not been meeting stipulated deadlines mainly due to long procurement procedures. However, the ZEITI has resolved to engage only one consultant to produce the 2012/2013 reports to reduce the time lag. The ZEITI has also resolved to start data collection process early to avoid delays in the production of its reports.

iii. The templates provided by extractives companies for the EITI process are not certified by independent external auditors. External auditors of government agencies have certified the templates. However, the challenge is on external auditors of mining companies demanding additional payments to certify the templates. As a result some external auditors of mining companies have not certified templates of some mining companies.

iv. The civil society organisations fragmented, making it difficult for them to monitor the implementation of the EITI.

v. Lack real time data reporting still poses a challenge when producing the EITI reports.

vi. Information on Beneficial ownership has not been collected in accordance with the new EITI Standard.

From the literature available, there seem to be lack and/or weakness of reporting guidelines for institutions responsible for assessing, collecting and use of revenues. The following has been noted.

i. The ZRA which is responsible for collecting all mining royalties and taxes does not publish any data on royalties or other taxes paid on its website. In practice, ZRA does make aggregated data on mining revenue available upon request, but does not disaggregate by type of revenue or mine/ mining company (Revenue Watch Institute, 2012);

ii. The Ministry of Finance and National Planning produces an annual and mid-year economic report which includes data on production volumes for copper, cobalt and gold, but most of the reports are not published online;

iii. The Ministry of Mines does not publish any information on a regular basis. Under Minerals Development Agreements (MDAs) terms, mining companies are supposed to produce and present comprehensive financial reports on a quarterly basis to the ministry of Mines, but in practice this does not happen on a regular basis and if it does they are not released to the public. This is essentially an informal/ voluntary reporting system, the Ministry passively receives information it does not actively request it (Revenue Watch Institute, 2012).

8. Assessment: Mapping the AMV at the SADC Level

As already described, there has not been much movement at the SADC level to ensure that there is movement towards the aspirations of the AMV. As provided under the AMV Action Plan, it is expected that at the regional level, a review of the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (e.g. Tax & dividends) packages in a manner that does not discourage mining investment should be done. It is important to note that Mining Protocol and the 2004 regional harmonisation framework were both done before the AMV and there have not been any strategies at the SADC level that can be considered to be a response to the AMV. Currently, the review of the fiscal environment to come up with guidelines for optimising mining sector revenue has not yet been done at the SADC level.

The AMV Action Plan also aspires that at the SADC level, mineral taxation guidelines for implementation at the REC & national levels should be developed. In addition, typical financial models for mineral projects for member states also need to be developed together with best practise guidelines on mineral revenue management and deployment for implementation at the regional and national levels. This has not yet been done at the SADC level. Thus in general, there have been no deliberate attempts at the SADC level to ensure that the AMV provisions are mapped.

It is important, however, to note that there are a lot of complementarities between the measures done at the SADC level and the AMV provisions. The regional harmonization framework that was developed seeks to align fiscal regimes to best performing countries so as to attract investment and avoid sterilisation of the resource sector and at the same time aligning the fiscal regime at regional level to avoid the "race to the bottom". The harmonisation framework encourages member states to minimise the likelihood of double taxation when entering into tax treaties with international investors, which is also in line with the AMV Action Plan. The framework also recommends that member states need to introduce transfer-pricing rules based on the OECD (arm's length) principles, which is also in line with the AMV objectives. The harmonisation framework also allows the SADC countries to introduce mineral specific royalties as compensation for mineral depletion while implementing a sliding scale mechanism to target a portion of the mineral rents generated by highly profitable ventures. This is also in line with the AMV. In addition, the SADC harmonisation framework also recommends that countries should avoid tax holidays but only give these for investment projects that meet specific national policy and development objectives, such as value-addition. This is also within the same spirit as the AMV.

Thus, there is some level of harmony between the SADC Mining Protocol and the AMV. There are number of issues in the SADC protocol that resonate with the vision of the AMV. However, since these were not necessarily done in response to the AMV, unlike the AMV, they do not follow a particular logic-structural shift in the mining regime. Given the differences in time frames, most of the action at the SADC level appears outdated and more still needs to be done to ensure that programmes that are specifically designed as a response to the AMV are instituted. The authors could not identify these, although it is possible that there are some few unpublicised programmes taking place in response to the AMV.

9. Conclusion

As far as the mining sector fiscal regime is concerned, Zambia has generally made some strides in the right direction in domesticating the AMV, although there are still some areas that call for improvement. The assessment has generally revealed the following:

i. The country has a system in place to ensure that it improves national capacity to physically audit mineral production and exports, which is implemented by generally trained inspectors. This is in line with the AMV;

ii. Royalties and the general taxation system in Zambia are based on amount earned from the mining revenue. Thus the fiscal regime can be argued to be structured in such a way that the government receives a rising share of the revenues with rising profitability of mining activities. However, since the regime is based on production, a decline in mineral prices or a slowdown in production would also see revenue collection falling, as there is no guaranteed minimum government revenue to cushion the government from price cycles;

iii. Over the years, the country has also reviewed its mineral regimes with the objective of increasing the fiscal revenue collected. This has also significantly increased revenue from 0.7% in 2005 to 27% in 2011 and 12.4% in 2014. While the increase in tax collected could also be due other factors, the fact that this coincided with the period when more tax reforms in the mining sector were introduced shows the impact of the tax measures. This is as per the AMV Action Plan of reviewing mineral regimes in terms of optimising revenues;

iv. Zambia has also put in place several programmes intended to build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws. The capacity to monitor, audit, verify and supply production data, however, still needs to be enhanced. Based on the increase in numbers of policy makers and other stakeholders participating in capacity building initiatives, this can be seen as in line with the AMV Action Plan;

v. Based on the number of BITs and double taxation agreements that Zambia has signed with other countries while ensuring that minerals are taxed at the point of extraction, the country can also be regarded as being compliant with the AMV Action Plan, which is based on the number of Bilateral Investment Treaties (BITs) and double taxation agreements signed. However, the double taxation agreements have a number of loopholes which need to be revisited to ensure that the country realises its full potential in getting revenue as per the AMV objectives;

vi. Zambia is yet to make serious efforts at developing systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion. This is mostly based on the rampant leakages and losses through illicit financial flows which still continue. Thus the AMV recommendations on systems to curb illicit financial flows are yet to be fully adopted. The country should continue to explore strategies to put such systems in place. Reviewing the double tax agreements can also be done as a strategy to dealing with illicit financial flows;

vii. Zambia is still has challenges in its mining fiscal regime, as the country suffers from bureaucratic red tape in the issuance of mining rights. There is also a lack of clearly stipulated appeal procedures for issues to do with mining licences and rights.

With respect to revenue use and management, the assessment generally revealed the following:

i. Zambia is yet to put in place strategies for investing windfall earnings and mineral rent into sovereign wealth funds, including stabilization funds and infrastructure funds. Given that this was identified as a short term strategy under the AMV, the developments on the ground have been too slow for this to be met within the set time frames.

ii. Zambia has failed to ensure, through policy and legislation, that ensure that rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities are developed. There is little movement on the ground towards putting in place such mechanisms, which implies that the AMV objectives are not likely to be met.

iii. Although the mining sector companies have, through corporate social responsibility programmes, helped local communities through access to jobs, education, transport infrastructure, health services, water and sanitation, this has generally been on a lower scale than normally expected. Although this can be regarded as in line with the AMV provisions, the mining sector regime has limitations in developing the capacity of the local communities to negotiate partnership agreements, as per the AMV.

iv. The country can however adopt some mechanisms to ensure that it enhances its mining sector revenue management capacity. There is a need to speed up the process of ensuring that the EITI process is made mandatory through a legal instrument requiring timely cooperation and reporting by companies and Government agencies. There is need to improve reporting guidelines for institutions responsible for assessing, collecting and use of revenues.

The assessment has generally revealed that there have not been many achievements as far as AMV domestication at the SADC level is concerned. The Mining Protocol and the

2004 regional harmonisation framework were both done before the AMV and there have not been any strategies at the SADC level that were done after the AMV that the authors could identify. The review of the fiscal environment, to come up with guidelines for optimising mining sector revenue, has not yet been done at the SADC level. Mineral taxation guidelines for implementation at the REC & national levels have also not been developed. In addition, typical financial models for mineral projects for member states also need to be developed together with guidelines on mineral revenue management for implementation at the regional and national levels, as per the AMV recommendations.

Even though AMV domestication has not generally been done at the SADC level, effort to implement the Mining Protocol has seen some guidelines being developed which are also in line with the AMV. Thus some AMV objectives can still be met at the regional level if the SADC countries were to follow the SADC guidelines, even if they were not put in place as a way of domesticating the AMV.

10. Recommendations

Recommendations that can be suggested to ensure that there is compliance with the AMV provisions at the national level include the following:

i. There is a need to enhance the capacity among Government officials to monitor, audit and verify mining sector production data and revenues. Capacity building should be structured in a way that factors in the structural shift in the mining regime envisaged by the AMV, where resources need to benefit the country more than the investor;

ii. Double taxation agreements that have been signed need to be revisited to ensure that the country realises its full potential in getting revenue as per the AMV objectives. On the other hand, any new double taxation agreement signed should be designed to ensure that tax liability in Zambia is not unnecessarily eliminated as the mining resources are being mined;

iii. Zambia needs to develop systems to curb illicit financial flows from the mining sector as per the AMV recommendations;

iv. As a way of improving its mining fiscal regime and attracting investors, Zambia needs to minimise bureaucracy in the issuance of mining rights and ensure that there are clearly stipulated appeal procedures for issues to do with mining licences and rights;

v. Zambia should put in place strategies for establishing sovereign wealth funds to ensure that future generations are catered for from the finite mining resources which are exploited by mostly foreign investors;

vi. Zambia should tighten its policy and legislations to ensure that the rent distribution system allocates part of mineral revenue to communities near mining areas.

At the SADC level, serious efforts need to be made towards ensuring that the AMV provisions are taken heed of. There is need for a strategy to be mapped out on domesticating the mining sector regime provisions of the AMV, which appears not a priority at the moment.

At the SADC level, the study also makes the following recommendations:

(i) There is need for a review of the fiscal environment to come up with guidelines for optimising mining sector revenue;

(ii) The SADC Secretariat should also develop mineral taxation guidelines for implementation at the national level;

(iii) Typical financial models for mineral projects for member states also need to be developed, together with guidelines on mineral revenue management for implementation at the regional and national levels, as per the AMV recommendations.

Annexes

Annex 1: Explanation of how the AMV mapping for Zambia was done

Expected outcome	Activities	Time frame	Zambia status
Enhanced share of mineral revenue accruing to African mining countries	Improve national capacity to physically audit mineral production and exports.	ST	Systems are in place as required by the AMV, although there are still challenges being experienced.
	Review mineral regimes in terms of optimising revenues.	ST	Done and revenue increased over the years.
	Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws.	ST-MT-LT	Policy makers have been attending capacity building programmes. However, some needed capacity is still lacking. Since this is expected over the short, medium and long term, Zambia has complied with the AMV as this is work in progress.
	Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls.	ST-MT	This has been limited as far as re-negotiating contracts with existing mining companies is concerned. However, new mining companies continue to experience revised conditions depending oin the new fiscal thrusts. Thus, since this is also to be achieved within the medium term, Zambia is on course.
	Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing).	ST-MT	This is still an area where Zambia is facing some challenges. However, some measures to deal with transfer pricing are in place and since this is also a medium term achievement, this could be achievable by 2021.
	Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction	ST-MT	Based on the number of double taxation agreements signed and implemented by Zambia, this has been achieved and outstanding issues are expected to be dealt with in the medium term.

Expected outcome	Activities	Time frame	Zambia status
	Build capacity & systems to auction mineral rights where applicable.	ST	The issue of transparency in mineral concession is not likely to be achieved by 2016, which is the short term target under the AMV. Thus Zambia is likely to miss this target
Improved management and use of mineral revenue	Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds.	ST	A SWF is not likely to be in place by 2016 in Zambia given the manner in which this has dragged on with little movement. Thus the AMV target is likely to be missed.
	Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.	ST	There are no legal frameworks which force mining firms to ensure that the communities they operate in benefit. This is also not likely to be in place by 2016 as per the AMV target.
	Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	ST-MT	Local authorities and communities benefit from mining projects, but this is not to a large scale. This could be achievable by 2021 however, as this is also a medium term target.
	Develop the capacity of local communities to negotiate partnership agreements.	MT	Currently there are no systems in place to ensure that local communities participate as partners in the mining processes. There is no indication that this could even be achieved by 2021.
	Develop systems for strengthening capacities for national and sub-national bodies for revenue management.	MT	Capacity building at the national level are already in place and this could be achieved by 2021.

Annex 2: Zambia score-card on the level of implementation of the AMV

Expected outcome	Activities	Score for Zambia (5 is maximum score and zero is the minimum). 5 shows total alignment with AMV while zero shows total absence of alignment
Enhanced share of mineral revenue accruing to African mining countries	Improve national capacity to physically audit mineral production and exports	3.5
	Review mineral regimes in terms of optimising revenues	4
	Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws	3
	Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls	3
	Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing)	2
	Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction	3.5
	Build capacity & systems to auction mineral rights where applicable	2

Expected outcome	Activities	Score for Zambia (5 is maximum score and zero is the minimum). 5 shows total alignment with AMV while zero shows total absence of alignment
Improved management and use of mineral revenue	Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds	2
	Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.	2
	Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	3
	Develop the capacity of local communities to negotiate partnership agreements	1
	Develop systems for strengthening capacities for national and sub-national bodies for revenue management	3

References

Centre for Trade Policy and Development. (2014). 'Policy Brief on Double Taxation Agreements', prepared with financial support from Action Aid International Zambia, The Joint Country Programme (Christian Aid, Dan Church Aid and Norwegian Church Aid) and NORAD.

Chamber of Mines of Zambia. (2014). *Enhancing mining's contribution to the Zambian economy and society.* Lusaka: Chamber of Mines Zambia and ICCM.

Economic Commission for Africa. (2009). *A Report on Africa – Summary.* Addis Ababa: ECA.

Government of Zambia. (2014). 'Medium-Term Expenditure Framework 2015-2017', Ministry of Finance, Lusaka, Zambia.

Government of Zambia. (2014). 'Revised Sixth National Development Plan', Ministry of Finance, National Planning Department, Lusaka, Zambia.

Hampwaye, G, Kaleng'a, W. C and Siame, G. (2015). 'Regional mineral value chains: implications for Zambia's copper sector industrialization-oriented beneficiation', Paper presented at the "Regional Industrialization, Regional integration" TIPS Annual Forum 14-15 July 2015in Johannesburg, South Africa.

Paul Jourdan P, Gibson Chigumira G, Isaac Kwesu I, and Erina Chipumho. (2012). 'Mining Sector Policy Study', Zimbabwe Economic Policy Analysis and Research Unit, Harare, Zimbabwe.

Kar, D and Freitas, S. (2012). Illicit Financial Flows from Developing Countries: 2001-2010. *Global Financial Integrity.*

KPMG. (2013). 'Zambia Country Mining Guide', KPMG International, 2013, Switzerland.

KPMG. (2014). *Zambia Fiscal Guide 2013/2014.* Lusaka: KPMG.

Mayondi, W. (2014). 'Mining and Corporate Social Responsibility in Zambia: A Case Study of Barrick Gold Mine'. Master's Thesis, Victoria University of Wellington.

Mtegha, H. D and Oshokoya, O. (2011). Mining fiscal environment in the SADC: Status after harmonization attempts', *The Southern African Institute of Mining and Metallurgy 111: 456.*

Nchite, R and Nsana, S (2004), 'Strategies and Tools for Civil Society Monitoring of Public Finance Management in Zambia', Transparency International Zambia, Public Finance Management and Utilisation Project, Lusaka, Zambia, November 2004.

Revenue Watch Institute. (2012). *RWI Index Questionnaire: Zambia 2012.* Lusaka: Revenue Watch Institute.

Stephens, M. (2014). ZEITI Reconciliation Report for the Year 2012 (draft version). Lusaka: Zambia Extractive Industries Transparency Initiative.

TPA Global. (2014), 'Transfer Pricing Country Summary: Zambia,' *TPA Global, Netherlands.*

UNECA (2004), 'Harmonisation of Mining Policies, Standards, Legislative and Regulatory Frameworks in Southern Africa,' United Nations Economic Commission for Africa Southern Africa Office, ECA/SA/TPub/Mining/2004/03.

World Bank. (2009). Malawi Mineral Sector Review, Source of Economic Growth and Development. *Report No. 50160-MW,* The World Bank.

ZEITI. (2015). *ZEITI 2013 Annual Report.* Lusaka: Zambia Extractive Industries Transparency Initiative.

ZRA. (2015). 'Mineral Royalty,' Zambia Revenue Authority Domestic Taxes. Lusaka: The Zambia Revenue Authority.

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