Investment Incentives and Legal Certainty: Discretion Under Sections 31 And 33(1), of the Investment, Trade and Business Development Act No. 18 of 2022

A Research submitted to ZCAS University in Candidacy for the Degree of

Master of Laws (LLM) Investment and Taxation

By

CHANDA MULENGA

Lusaka, Zambia

@June2026

INVESTMENT INCENTIVES AND LEGAL CERTAINTY: DISCRETION UNDER SECTIONS 31 AND 33(1), *OF THE INVESTMENT, TRADE AND BUSINESS DEVELOPMENT ACT NO. 18 OF 2022.*

By

CHANDA MULENGA

A RESEARCH SUBMITTED TO ZCAS UNIVERSITY IN FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE MASTER OF LAWS (LLM) INVESTMENT AND TAXATION.

@June2026

I **CHANDA MULENGA** a postgraduate student in the school of Law of ZCAS University HEREBY DECLARE that this Research or any part thereof has not been submitted for an LLM degree at this, or any other University. Where the work of another scholar has been used, it has been duly acknowledged.

Signed ………………………………… Date………………………………

Chanda Mulenga LLB(ZAOU) ASCZ.

ZCAS UNIVERSITY

SCHOOL OF LAW

I recommend that the Research prepared under my supervision by

Chanda Mulenga

Entitled:

INVESTMENT INCENTIVES AND LEGAL CERTAINTY: *DISCRETION UNDER SECTIONS 31 AND 33(1), OF THE INVESTMENT, TRADE AND BUSINESS DEVELOPMENT ACT NO. 18 OF 2022.*

Be accepted for examination. I have checked carefully and I am satisfied that it fulfils the requirements pertaining to the format as laid down in the regulations governing Research for Master of Laws (LLM).

……………………………………………………………………………

Dr Victor Mwape

Supervisor

ABSTRACT

Every legal system seeking for foreign investment must answer the same fundamental question: how much should the law guarantee up front and how much should be left up to the discretion of those in charge at any given time? A substantial and diverse body of research including administrative law theory, public finance, international investment law, and comparative regulatory design revolves around this subject. As a result, academic and policy literature frequently discuss foreign and domestic direct investment as a key driver of economic expansion in emerging nations. In addition to infrastructure and macroeconomic stability, governments fight for this capital through legal design, which refers to the laws, rules, and administrative procedures that dictate how an investor's relationship with the state will actually develop after capital has been invested. The most recent version of this design effort is Zambia's **Investment, Trade and Business Development Act No. 18 of 2022,** a consolidated statute meant to support, among other things, an effective, coordinated, and efficient private sector-led economic development strategy.

Exemptions from taxes and duties under Part VI of the Act, which are primarily governed by **sections 31 and 33**, are among the incentives offered by the **Investment, Trade and Business Development Act No. 18 of 2022**. **Section 33(1)** gives the Agency the authority to recommend investors to be granted tax incentives to the Minister in charge of finance if it concludes from an investor's commitment that the investor would engage in real skills transfer and employ citizens. Further, **Section 31** states that the Minister will grant any relief or exemption to which an investor qualifies under Part VI only after the Agency certifies that the investor has fully complied with the Act and any applicable conditions. In other words, rather than making the incentive automatically accrue to any investor who satisfies a fixed, published rule, both provisions make the delivery of a promised incentive dependent on a further administrative act. a recommendation in one case, a certification, and an act of ministerial effecting in the other. It is on this premise that this research seeks to interrogate these discretionary powers vis-via investment incentive and legal certainty in relation to the provisions of **section 31 and 33(1) of the Investment, Trade and Business Development Act No. 18 of 2022,**

ACKNOWLEDGEMENTS

Sincere gratitude goes to everyone who's input was invaluable to this research. I wish to give a special thanks to my Supervisor Dr. Victor Mwape for his unrelenting guidance during this work. His invaluable comments on the earlier drafts greatly helped to perfect the work. I would also like to acknowledge my Husband and children for been supportive and understanding throughout this process. I wish to also thank my Parents and siblings for their constant support and motivation throughout this work. I would also like to thank Musonda Nkole for her tremendous help in the editing of this work.

DEDICATION

I dedicate this Paper to my Husband Wisdom Phiri and our sons Taonga and Kabwe Phiri.

GLOSSARY OF ABBREVIATIONS

ITBD Act	The Investment, Trade and Business Development Act No. 18 of 2022
FDI	Foreign Direct Investment
ZDA	Zambia Development Agency
OECD	Organisation for Economic Co-operation and Development
UNCTAD	United Nations Conference on Trade and Development
IMF	International Monetary Fund
SARS	South African Revenue Service

TABLE OF CONTENTS

1.0 CHAPTER ONE: GENERAL INTRODUCTION

1.1 INTRODUCTION

The Foreign Direct Investment has become a cornerstone of Zambia's economic development strategy. To attract FDI, the government has implemented a range of tax incentives, including investment allowances and tax exemptions. While these measures aim to stimulate industrialization, employment creation, and economic growth, they raise concerns about the erosion of the domestic tax base. In an increasingly globalized society, the topic of tax incentives has gained widespread attention. Tax incentives have long been known to boost investment, particularly foreign direct investment (FDI), which promotes economic growth. As a result, part 6 of **the Investment, Trade and Business Development Act No. 18 of 2022**[1] (the Act) is dedicated to these incentives. However, **sections 31 and 33(1)** of this Act gives discretion to Agency to certify and recommend investors, other the other hand the Minister of Finance to grant these incentives. The said sections are couched as follows;

"31 A relief or exemption from any tax or duty to which an investor is eligible under this Part shall be effected by the Minister responsible for finance after the Agency certifies that the investor has complied fully with this Act and any condition prescribed.[2]
33(1) The Agency shall, where the Agency determines from the investor's pledge and skills transfer to citizens that the investor shall create employment for citizens as pledged, recommend to the Minister responsible for finance that tax incentives be granted to the investor under the Income Tax Act or the Customs and Excise Act."[3]

This research proposal seeks to evaluate the discretionary powers to effect tax incentives under the aforementioned sections of the Investment, Trade and Business Development Act No. 18 of 2022. The study will analyse the propriety of the law that makes the granting of tax incentives under this Act discretionary as opposed to being a matter of law.

[1] The Investment, Trade and Business Development Act No. 18 of 2022
[2] Section 31 of the Investment, Trade and Business Development Act No. 18 of 2022
[3] Section 33 of the Investment, Trade and Business Development Act No. 18 of 2022

1.1 BACKGROUND

Zambia, like many developing countries, relies heavily on tax revenue to finance public services and infrastructure. In its quest to attract FDI, the government has introduced generous tax incentives under the Investment, Trade and Business Development Act No 18 of, 2022. However, Section 31 of the Trade, Investment and Business Development Act No. 18 of 2022 grants the Agency discretion in the certification and recommendation for investors to be granted tax incentives. Further, Minister of Finance discretionary authority to effect such exemptions or reliefs. While this discretion can be a powerful tool for economic policy, it raises critical questions about how this provision of the law can be enforced in line with the fundamental principles of transparency, accountability, fiscal sustainability, and align with Zambia's broader tax policy framework.

1.2 STATEMENT OF THE PROBLEM

With the coming of the Investment, Trade and Business Development Act No 18 of, 2022 Zambia has implemented a range of tax incentives such as investment allowances and tax exemptions to attract FDI. However, Section 31 as read with section 33(1) stipulates that tax reliefs or incentives "shall be effected by the Minister responsible for finance" subject to ZDA certification/ recommendation. From a legal perspective, if the Minister retains absolute discretion to refuse a relief or incentive despite an investor meeting all statutory requirements (such as minimum capital thresholds), it creates uncertainty. This is because, while Section 31 empowers the Minister of Finance to grant tax reliefs or incentives to "certified" investors, the Act does not explicitly define the boundaries of this "discretion" once ZDA has issued a certification. Without clear secondary regulations, this creates potential for Administrative Ambiguity and Transparency Gaps. Further no explicit guidelines have been established for this certification and recommendation by the Agency As a result, there will be no criteria that investors or members of the public may look to for guidance on how the Minister "effects" these reliefs, which may lead to inconsistent application across different investment sectors. The lack of defined criteria in the Act may lead to over reach and arbitrariness by the Minister and the Agency in the exercise of this discretion. Further, and Investor's right to be heard can be violated if the tax relief is withheld despite ZDA certification.

This research seeks to interrogate whether the current legal framework adequately sets out guidelines for this discretion and whether the ministerial discretion is exercised within clear, transparent, and accountable limits.

1.3 OBJECTIVES OF THE STUDY

The main objective is to analyse the Discretional powers to grant tax reliefs or incentives under section 31 and 33(1) of the Investment, Trade and Business Development Act No. 18 of 2022. The specific objectives are to:

- To critically analyse the scope and limits of the discretion under Section 31 and 33(1) of the ITBD.
- To compare Zambia's framework on the tax incentives under sections 31 and 33(1) of the ITBD how they are affected by ministerial discretion to the South African scene.
- To propose reforms or safeguards that enhance transparency, accountability, and predictability in the granting of tax exemptions.

1.4 RESEARCH QUESTIONS

The following are the Research questions;

- What is the legal scope of the discretion under Sections 31 and 33(1) of the ITBD and are there statutory or constitutional limits?
- What are the potential risks of abuse, arbitrariness, or unequal treatment inherent in discretionary powers under Sections 31 and 33(1) of the ITBD?
- How do other jurisdictions regulate similar discretionary powers?
- What reforms can strengthen Zambia's framework in this regard?

1.5 SIGNIFICANCE OF THE STUDY

This Research will provide insights for policymakers on the effects of making the grant of incentives discretionary. Further it may potentially help in addressing the gaps created by making the granting discretionary.

This work is important because it gives policymakers theoretical and empirical understanding of the effects of using discretion to award tax incentives. In Zambia, the Trade, Investment and Business Development Act No. 19 of 2022's Sections 31 and 33(1) gives the Agency extensive authority to decide who qualifies for tax exemptions. Discretion raises questions about predictability, transparency, and the possibility of misuse, even as it can provide flexibility in responding to sector-specific investment demands.

Policymakers will receive vital evidence from this study regarding the consequences of using discretionary authority to offer tax incentives. The study illustrates the advantages and disadvantages of such a system by looking at how discretion affects investor confidence, budgetary stability, and openness. It will become more evident to policymakers if discretion promotes adaptability and response to investment demands or if it compromises predictability and creates opportunities for misuse, rent-seeking, and revenue leakage. By doing this, the report adds to the continuing discussions about striking a balance between promoting investment and preserving Zambia's tax base.

The study adds to the expanding body of knowledge on taxation and foreign direct investment in developing countries. Much of the existing literature focuses on the importance of tax incentives in luring investment, but little attention has been made to the legal and institutional features of discretionary powers in giving such incentives.

The study fills a vacuum in the literature by critically analyzing the relationship between discretion, legal certainty, and fiscal sustainability. Specifically, it examines how discretionary powers impact long-term investment outcomes and state capacity in resource-dependent economies.

Aside from its immediate policy and academic contributions, the study has larger developmental implications. Addressing the potential risks of discretionary tax incentives highlights the broader difficulty of governance in resource-constrained countries. Transparent and responsible fiscal policies are crucial for mobilizing domestic resources, providing public services, and attaining long-term development goals like Zambia's Vision 2030 and UN Sustainable Development Goals (SDGs).[4]

The research emphasizes the need for tax incentive regimes that are not only appealing to investors, but also equitable, sustainable, and aligned with Zambia's socio-economic objectives.

---

[4]Government of Zambia, *Vision 2030: A Prosperous Middle-Income Nation by 2030* (2006).

1.5 SCOPE OF STUDY

The scope of this research is purposely limited to the legal and institutional framework governing tax incentives in Zambia, with a focus on Sections 31 and 33(1) of the Investment, Trade, and Business Development Act No. 18 of 2022. This law gives discretionary authority in the award tax exemptions, making it essential to discussions about transparency, predictability, and fiscal sustainability in Zambia's investment climate.

The study will conduct a theoretical examination of Sections 31 and 33(1) by placing them within Zambia's larger statutory and constitutional framework. This includes an examination of the Income Tax Act, the Zambia Development Agency Act, and constitutional values such as equal treatment under the law and public financial accountability. The examination will center on how discretionary powers interact with established legal standards.

The research will analyse these provisions and will seek to evaluate how they interplay with ministerial discretion. The most apparent limitation to this study is that there is little to no jurisprudence in relation to the interpretation of these sections in Zambia.

1.6 RESEARCH METHODOLOGY

This research is qualitative, consequently, it was conducted primarily through the collection of data in the form of local and foreign legislation, law reports of both local and foreign jurisprudence, textbooks, newspaper articles, journals, the internet, and dissertations.

1.7 LITERATURE REVIEW

FDI is a kind of cross-border investment when a foreign investor has substantial control over a foreign business and a long-term ownership in it. There is a link when a foreign investor holds 10% or more of the voting power in a company in one economy. FDI is a crucial component of global economic integration because it forges robust and enduring connections between economies.[5] FDI promotes international trade by creating new markets, fostering technology transfer between nations, and facilitating knowledge transfer between nations, all of which contribute to economic development.

---

[5] OECD. Foreign Direct Investment for Development: *Maximizing Benefits, Minimizing Costs*. Organization for Economic Cooperation and Development, Paris. (2002).

Foreign Direct Investment (FDI) has long been recognized as a driver of economic growth, particularly in developing countries. Dunning argues that FDI contributes to industrialization, technology transfer, and employment creation.[6] In Zambia, FDI has been central to economic policy since the liberalization of the economy in the 1990s, with the mining sector being the largest recipient. In order to increase FDI the government has set out numerous tax incentives to entice investors into Zambia with the coming of the Investment, Trade and Business Development Act No 18 of, 2022.[7]

Like the majority of developing nations, Zambia has begun reforms in recent decades in an effort to draw in foreign investment and accelerate economic growth. FDI seems to have reacted to Zambia's liberalization policies and recent shifts in global commodity prices since the country's economy opened up in the 1990s. After that, FDI flows gradually increased, primarily as a result of the implementation of a privatization program that by 2002 had led to the privatization of numerous previously state-owned businesses.[8] In order to attract this FDI Zambia like many other Countries has introduced tax incentives.

A tax incentive is a deduction, exclusion, or exemption from a tax obligation that is provided as a attract someone to participate in a certain activity, like investing in capital goods for a predetermined amount of time. Bird notes that incentives such as tax holidays, investment allowances, and duty remissions are widely applied across developing economies. [9] The idea of legal certainty is a fundamental component of the rule of law. It requires that rules be clear, predictable, and consistently administered so that individuals and corporations can confidently organize their affairs.[10]

Legal certainty is crucial in tax incentives as investors rely on stability to make long-term investments. Administrative law study emphasizes that discretion must be exerted within established boundaries, governed by statutory standards, and subject to scrutiny.[11] **M. Sornarajah** discusses how governments often employ both fiscal and non-fiscal incentives to draw in foreign capital. He notes that when choosing where to invest, investors take into

---

6 John H Dunning, *Multinational Enterprises and the Global Economy* (Addison Wesley 1993).

7 Investment, Trade and Business Development Act No. 18 of 2022,

8 UNCTAD, *Investment Policy Study Zambia* (2006).

9 Richard M Bird, 'Tax Incentives in Developing Countries' (2008) 4 Bulletin for International Taxation

10 Joseph Raz (1979). *The Authority of Law* Oxford University Press

11 Craig, P. (2021). *Administrative law* (9th ed.). Sweet & Maxwell.

account elements like political stability, the rule of law, and the dependability of legal institutions, even though incentives may have an impact.[12] **Peter T. Muchlinski** observed that more comprehensive investment promotion plans include investment incentives. He contends that incentives function best when they are implemented inside an open legal framework that makes it possible for investors to comprehend the circumstances around the provision and maintenance of advantages.[13] The aforementioned opinions, suggest that incentives by themselves are insufficient to draw in long-term investment in areas with unclear legal frameworks.

The term "*administrative discretion"* describes the power that laws give public servants to make judgments within the bounds of the law. **H.W.R. Wade and C.F. Forsyth** explain that Because Parliament cannot enact laws for every factual circumstance, discretion is required. However, they contend that discretionary powers must be used within the bounds of the law and in accordance with the intent for which they were granted by Parliament. Courts may step in through judicial review when discretion is used arbitrarily or inconsistently.[14] In the same vein Similarly, **Paul Craig** stated that contends that discretionary powers should be used consistently, fairly, and in accordance with legal requirements. He clarifies that procedures that prohibit capricious administrative decision-making are necessary for the rule of law. [15]

When legislation gives ministers the authority to decide who is eligible for significant financial rewards, these principles are especially important. Contemporary investment law aims to strike a balance between the necessity to give investors legal security and the sovereign power of nations to control economic activity. Governments are still free to choose their investment policies, including whether or not to offer incentives, but they should be carried out within a framework that encourages predictability and consistency. Because of long-term investment, initiatives frequently entail large financial commitments that depend on predictable regulatory conditions, legal stability greatly boosts investor confidence.[16] Further, **Isayev, U.T** points out the importance of having comprehensive structural reforms and an active government policy

---

[12] Sornarajah, M. (2021). *The international law on foreign investment* (5th ed.). Cambridge University Press.

[13] Muchlinski, P. T. (2021). *Multinational enterprises and the law* (3rd ed.). Oxford University Press.

[14] Wade, H. W. R., & Forsyth, C. F. (2022). *Administrative law* (12thed.). Oxford University Press.

[15] Craig, P. (2021). *Administrative law* (9th ed.). Sweet & Maxwell.

[16] Dolzer, R., & Schreuer, C. (2022). *Principles of International Investment Law* (3rd ed.). Oxford University Press

on attracting foreign investment. He also makes mention of the encouragement and protection offered by some laws in various countries.[17] This research seeks to expound more on predictability and consistence in tax law.

Zhan. J, emphasizes on the importance of investment guarantees as the most important means of investment promotion and cautions on the need for countries to always endeavour to strike a balance between investment promotion and protection.[18] Further Joong, W.C. in his analysis of FDI's determinants, trends in flows and promotion policies discusses the desire by most countries to attract FDI at all costs and gives reasons for this strong desire as income generation and technology transfer. He also stated that the majority of nations want to attract foreign direct investment (FDI) at any costs, and this research of FDI's causes, trends in flows, and promotion strategies explains why this desire is so strong, citing factors including income generation and knowledge transfer.[19]

Tax incentives have long been utilized by governments worldwide as a strategic tool to boast economic activities and foster compliance among taxpayers. There are six distinct forms of tax breaks, as outlined by Syukur :

- Lower tax rates (reduce corporate income tax rates)
- Tax holiday
- Investment allowances and tax credits
- Accelerated depreciation
- Exemptions from indirect taxes
- Export processing zones[20]

Tax incentives are a form of provision offered to eligible investment projects that reflects Tax incentives are one of the most common tools used to attract FDI. It is because of the Importance of these incentives that this paper seeks to establish how best they can be administered.

[17] Isayev, U.T., 2005. Foreign Investment during the transition: How to attract it, and how to make the best use of it. Kyrgyz: Foreign Investment Agency Publications

[18] Zhan, J. (ed.), 2008. Investment Promotion Provisions in International Investment Agreements. New York: United Nations Secretariat.

[19] Joong, W.C., 2003. Foreign Direct Investment: Determinants, Trends in flows and Promotion Policies. Beijing: Pacific Publishers,

[20] Syukur, Muhammad, 2020, Tax Incentives for Covid-19 Donations from the Perspective of the Relationship between Indonesian Tax Law and Human Rights, Jurnal Suara Hukum, Volume 2,

THEORETICAL FRAMEWORK

There are many theoretical perspectives supporting the debate on FDI and tax incentives:

- **Public Finance Theory:** Musgrave emphasizes that governments must balance revenue mobilization with expenditure needs. [21]
- **Tax Competition Theory:** Explains how countries compete for FDI by lowering tax burdens, often leading to a "race to the bottom."[22]
- **Institutional Economics:** North stresses the importance of strong institutions and legal frameworks to ensure incentives do not erode governance. [23]

The following are some of tax incentives referred to under section33(1) of the ITBD Act; For the Customs and Excise Act, Cap 322 of the Laws of Zambia, tax incentives for investment are as provided for in the Customs and Excise (General) Regulations, 2000 (SI-54 of 2000) under Regulation 98A to 98D of the Customs and Excise (General) Regulations, 2000 while other incentives that the client may utilize are as provided for under Sections 32 and 55; and Regulation 100 of the Customs and Excise Act and Customs and Excise (General) Regulations respectively

Tax Incentives under Regulation 98A to 98D

Business enterprises that create employment

Regulation 98B (1*)* states that: a business enterprise that creates employment in accordance with an employment schedule submitted under section sixty –nine of the Zambia Development Agency Act 2006, shall be entitled to a rebate, refund or remission of customs duty paid or payable on goods under this part.

Under this Regulation, the said business enterprise is entitled to a customs duty rebate on machinery and equipment used for the business enterprise.

Incentives for Motor Vehicle and Trailer Assembly.

Regulation 98C (1) states that:

---

[21] Richard A Musgrave, *The Theory of Public Finance* (McGraw Hill 1959).

[22] Richard M Bird, 'Tax Incentives in Developing Countries' (2008) 4 Bulletin for International Taxation

[23] Douglass C North, *Institutions,*

The Minister may approve a rebate, refund or remission of the whole or any part of the customs duty paid or payable in respect of: Machinery, equipment and component parts required for the assembly of motor vehicles and trailers by a business enterprise registered by the Zambia Development Agency

Under this Regulation business enterprises registered under ZDA to assemble motor vehicles or trailers will be entitled to a customs duty rebate in respect to the machinery and equipment they use in the assembly, or for the component parts used for assembly.

Incentives for Manufacture of Roofing Sheets

Regulation 98C (1) states that: The Minister may approve a rebate, refund or remission of the whole or any part of the customs duty paid or payable in respect of i*nputs used in the manufacture of roofing sheets and roofing tiles*

Under this Regulation inputs used in the manufacture of roofing sheets and roofing tiles will be entitled to a rebate on customs duty paid or payable.

Incentives for Manufacturing activities in an MFEZ/Industrial Park/Rural Area

Regulation 98D (1) states that: The Minister may, on the recommendation of the Director General of the Zambia Development Agency approve a rebate, refund or remission of the whole or any part of the customs duty paid or payable in respect of machinery and equipment other than spares for the machinery or equipment, required for use in manufacturing activities located in a multi-facility economic zones, an industrial park or rural area;

Under this Regulation, a customs duty rebate will be granted to machinery and equipment used for manufacturing that is located in a Multi-Facility Economic Zone, or in an Industrial Park, or in a Rural area.

Incentives for Multi Sector Industries listed in the 2nd Schedule of the ZDA Act

Regulation 98D (1) states that: The Minister may, on the recommendation of the Director General of the Zambia Development Agency approve a rebate, refund or remission of the whole or any part of the customs duty paid or payable in respect of machinery and equipment other than spares for the machinery or equipment, required for use by a business enterprise eligible under the Second Schedule to the Zambia Development Agency Act, 2006;

Under this Regulation, a customs duty rebate will be granted to machinery and equipment used by different industries from multiple sectors as listed in the Second Schedule of the ZDA Act.

Incentives on Machinery, Equipment and specified goods for Development of MFEZs and Industrial Park.

Regulation 98D (1) states that: The Minister may, on the recommendation of the Director General of the Zambia Development Agency approve a rebate, refund or remission of the whole or any part of the customs duty paid or payable in respect of machinery and equipment and other goods specified in the bill of quantities submitted with an application for an approval required for the development of the multi-facility economic zone or an industrial park.

Under this Regulation, a customs duty rebate will be granted to machinery and Equipment and other goods specified in the bills of quantities submitted with an application for an approval, to be used for development of a Multi-Facility Economic Zones, or an Industrial Parks.

The other incentives under the Customs and Excise Act and Customs and Excise (General) Regulations include:

Duty Drawback Scheme

Duty drawback is a mechanism whereby duties paid on inputs that go into the production of exports are refunded so that the export is not rendered uncompetitive as a result of these duties. This incentive is provided for under **Regulation 100** of Customs and Excise (General) Regulations.

The purpose of the scheme is to promote exports by reducing the cost of production through refund of duties (local & import) incurred on inputs used in production of export products.

Bonded Warehouse Facility

Under Section 32 of the Customs and Excise Act, Cap 322 of the Laws of Zambia, an operator is able to remove dutiable goods from an entry port to an inland port without payment of duties and taxes.

At the inland port the goods may be final cleared or warehoused in a bonded warehouse for a period of up-to twelve (12) months.

This facility assists mainly clients that deal in slow moving goods that may include machinery and equipment, raw materials, and brand-new motor vehicles to import and account for revenue at the time of consumption.

Manufacturing Under Bond

Under Section 55 of the Customs and Excise Act, Cap 322 of the Laws of Zambia, an operator of a bonded warehouse is able to import dutiable goods into a licensed bonded warehouse and may carry out various activities pursuant to the nature of their business without payment of duties and taxes. For an operator to operate as explained in (2) and (3) above, the operator requires obtaining a guarantee from a recognized guarantor as prescribed in the law to secure revenue on the uncustomed goods.

Importation Under Preferential Treatment

Goods imported from within the Regional Economic Communities to which Zambia is party, are exempt from paying customs duty if such goods meet the origin criteria for the Regional Economic Communities[24]

Zambia's Legal Framework on Tax Incentives in sections 33 (1) and 31 of the ITBD Act.

Zambia's tax laws provide for wide range of investment incentives such as the following:

- **Income Tax Act (Cap 323)** allows investment allowances and accelerated depreciation.
- **Customs and Excise Act** provides duty remissions for certain sectors.
- **Zambia Development Agency Act (Cap 354)** is central to investment promotion, offering incentives in priority sectors such as agriculture and manufacturing.

These are important in helping us understand the incentives in the Income Tax Act and the Customs and Excise Act refered to in part VI of the ITBD Act.

1.7 ETHICAL ISSUES

The author does not anticipate any ethical issues to arise as the research is focused on public matters of the law and general economic factors. Nonetheless, if in any event, confidential information is collected, utmost confidentiality will be maintained to ensure that any

[24] Https://www.zra.org.zm

person, who may be affected by the disclosure of such information, is protected from any adverse consequences.

1.8 CHAPTER OUTLINE

The Proposed Chapter Outline is as follows: Chapter One introduced the study and has covered the background to the study, the statement of the problem, the objectives of the study, research questions as well as the literature review. Chapter Two examines the literature on tax incentives, ministerial discretion, and legal certainty, Chapter 3 examines Zambia's legal and institutional frameworks, Chapter Four conducts a comparative jurisdictional analysis and critically examines ministerial discretion under Section 31 the Trade Investment and Business development act, being the final chapter outlines the findings of this research paper, conclusions, and recommendations of the study.

1.9 CONCLUSION

This introductory chapter laid the groundwork for the study by explaining the background, problem statement, aims, research questions, significance, scope, and methods. It has been established that, while tax incentives remain an important tool for attracting foreign direct investment in Zambia, the Minister's discretionary powers under Section 31 of the Trade, Investment, and Business Development Act No. 19 of 2022 raise serious concerns about transparency, predictability, and fiscal viability.

This first chapter established the context for the study by providing the background, problem statement, objectives, research questions, significance, scope, and methodology. While tax incentives continue to be an important tool for attracting foreign direct investment in Zambia, the Minister's discretionary powers under Section 31 of the Trade, Investment, and Business Development Act No. 19 of 2022 raise serious concerns about transparency, predictability, and fiscal viability. By outlining the scope and methodology, the chapter clarifies that the study will concentrate on the legal and institutional features of discretionary powers, rather than their solely economic consequences. This guarantees the research remains doctrinally rigorous and policy-relevant. Finally, Chapter One framed the Research's primary question: can ministerial discretion in providing tax exemptions under Section 31 be reconciled with the objectives of legal certainty, good governance, and budgetary sustainability? The following chapters will expand on this basis, starting with a review of relevant literature in order to place the work within larger theoretical and scholarly disputes.

2.0 CHAPTER TWO: LITERATURE ON TAX INCENTIVES, MINISTERIAL DISCRETION, AND LEGAL CERTAINTY

2.1 INTRODUCTION

Tax incentives have become a central feature of financial policy in many and emerging economies. Governments use them to attract foreign direct investment, encourage industrial growth, promote exports, support priority sectors, and encourage employment creation. These incentives include tax holidays, reduced corporate tax rates, investment allowances, accelerated depreciation, exemptions from customs duties, and value-added tax relief. While their policy rationale is often framed in terms of competitiveness and economic transformation, the literature shows persistent disagreement over their actual effectiveness, efficiency, and governance implications.

The scope of ministerial discretion in granting, interpreting, renewing, or withdrawing tax incentives is a significant problem in their design and administration. Finance ministers, investment ministers, or other executive authorities have considerable authority to approve incentives outside of regular legislative procedures in many nations. It may be argued that this administrative flexibility is required to adapt to the needs of investors and shifting economic conditions. However, academics and policy organizations frequently caution that widespread discretionary power can erode transparency, promote arbitrariness, increase the danger of corruption, impair tax administration, and result in unfair treatment of taxpayers.

Tax law that provides for the tax incentive must clearly state the requirements that the taxpayer must meet in order to be eligible for the tax incentive without requiring the use of discretion during implementation in order to minimize discretion on the administration of the tax incentive. When this is done, it is crucial to make sure that the tax administration, not an outside agency, is in charge of handling the tax administration. The latter simply makes it more difficult to administer the tax incentive, which raises the cost of compliance for taxpayers. A sound tax structure reduces investment choice distortions, guarantees steady revenue for the government, and is stable. A fair, consistent tax rate on a large number of taxpayers is widely regarded as sensible policy. Ironically, all tax advantages are excluded by that method.[25]

A structured tax system is anchored on the principle of legal certainty. Legal certainty is a foundational concept in tax law and public administration, requiring that legal rules be clear, predictable, publicly accessible, and consistently applied. Investors and taxpayers need certainty to make long-term economic decisions, while governments require stable legal

[25] Sebastian James *Tax and Non-Tax Incentives and Investments*: Evidence and Policy Implications (2014).

frameworks to ensure accountability and revenue protection. Where tax incentives are governed by unclear laws or personalized administrative decisions, legal certainty is weakened. The literature therefore increasingly links the success or failure of tax incentive regimes not only to their economic outcomes but also to the institutional quality of the legal framework within which they operate.

2.2 TAX INCENTIVES

Tax incentives are generally understood as departures from a benchmark tax system intended to encourage specific economic behavior. **Surrey'**s tax expenditure theory remains influential in this regard, as it conceptualizes many incentives as government spending delivered through the tax system rather than through direct budgetary expenditure. Under this view, tax incentives are not neutral features of taxation but deliberate policy tools designed to favor selected activities, sectors, or investors.[26]

There are two types of tax reforms which are broad-based tax reforms and targeted tax incentives. There is a difference between broad-based tax reforms and targeted tax incentives. Broad-based reforms aim to enhance the overall investment climate by reducing general tax rates, streamlining tax administration, and expanding the tax base. On the other hand, targeted incentives provide special treatment to specific types of businesses, industries, regions, or investment initiatives. Targeted incentives are frequently less effective than broad-based reforms, according to academics like **Zee, Stotsky, and Ley**, since they induce distortions, encourage lobbying, and make administration more difficult.[27]

Tax incentives may be categorized in several ways. The following are the common classifications.

- **Profit-based incentives**, such as tax holidays and reduced corporate income tax rates, which reduce taxes on profits after income has been earned.

- **Cost-based incentives**, such as investment allowances, tax credits, and accelerated depreciation, which reduce the cost of making an investment.

[26] Stanely Survey *Pathways to Tax Reform*: The Concept of Tax Expenditures (Cambridge Mass: Havard University Press 1973)

[27] Zee, H.H., Stotsky, J.G. and Ley, E. *Tax Incentives for Business Investment*: A Primer for Policy Makers in Developing Countries. World Development (2002).

- **Trade-related incentives**, including customs exemptions and import duty waivers on capital goods or raw materials.

- **Location or sector-specific incentives**, designed to encourage investment in underdeveloped regions or strategic industries.

It is common cause that different incentives have different behavioral effects. Profit-based incentives are frequently criticized for rewarding firms only after profitability emerges and may benefit investments that would have occurred regardless. On the other hand, cost-based incentives are typically perceived as more directly linked to new investment expenditure and thus more effective in influencing investor behavior. This distinction is important because it influences how scholars assess the legal structure and economic logic of incentive regimes

The distinction between legal incentives and discretionary concessions is another crucial conceptual issue. In several nations, incentives are included into tax laws and become automatically accessible upon fulfillment of objective standards. In others, they are negotiated through administrative waivers, ministerial clearances, or investment contracts. Concerns of consistency, justice, and legal predictability are raised by the latter model, which also introduces individualized decision-making. This distinction is increasingly treated in the literature as essential to appreciating the governance quality of tax incentives. There should be minimal discretion. One of the primary causes of the escalation of political and economic issues is discretionary incentives. Investors may determine their eligibility for any incentive well in advance thanks to automatic eligibility for incentives based on clear criteria and the law, which also lessens the possibility of corruption.[28]

Incentives that can theoretically lead to two investors in the same industry or two similar businesses having completely distinct incentive packages should be avoided by policymakers. In addition to potentially encouraging corruption, such a system is incompatible with globally recognized principles and will probably undermine investors' trust in government officials to foster a favorable business environment.

[28] Sebastian James *Tax and Non-Tax Incentives and Investments*: Evidence and Policy Implications 2014 (updated - 2020)

2.3 THEORETICAL PERSPECTIVES ON TAX INCENTIVES

Different theoretical frameworks help explain why governments adopt tax incentives and why their use remains widespread despite observation of mixed results.

2.3.1 TAX COMPETITION THEORY

Tax competition theory explains how countries compete for mobile capital by lowering tax burdens relative to their neighbors, a dynamic that can produce a 'race to the bottom' in which successive rounds of competitive incentive-granting erode the tax base of every competing jurisdiction without producing a commensurate increase in aggregate investment.

2.3.2 NEOCLASSICAL ECONOMIC THEORY

According to a neoclassical viewpoint, expected after-tax profits have an impact on investment choices. Therefore, by reducing the effective tax burden on capital, tax incentives can, at least in theory, boost investment. Countries may employ incentives to boost their competitiveness and draw in foreign investment in areas where capital is globally mobile. This reasoning is particularly prevalent in small open economies trying to make up for political risk, market size constraints, or infrastructure deficiencies. Neoclassical theory does, however, also caution against distortions. Investment may be diverted from socially productive sectors to tax-favored ones by preferential tax treatment. Additionally, it can weaken the income basis required to fund public goods like security, infrastructure, and education, all of which are important factors that influence investment.

2.3.3 PUBLIC CHOICE THEORY

A more critical explanation is provided by public choice theory. It implies that political negotiation, rent-seeking, and pressure from organized interests may have a greater impact on tax incentives than solid economic policy.[29] Ministers and other public servants may use their discretionary incentive powers to engage in patronage, reward allies, or gain temporary political support. Businesses may advocate for special treatment, which could result in unfair outcomes that favor politically connected individuals rather than the economy as a whole. This viewpoint is especially pertinent in situations where institutional checks are inadequate. When parliamentary supervision is minimal, broad administrative

[29] Randell. G. Holcombe *Advanced introduction to Public Choice* Edward Elger Publishing Inc (2016)

discretion, and opaque decision-making, tax incentives turn into tools of political bargaining rather than sound development strategy.

2.3.4 INSTITUTIONAL AND GOVERNANCE THEORY

The rules, conventions, and administrative capabilities that influence policy outcomes are the main focus of institutional scholars. According to this viewpoint, the quality of governance surrounding tax incentives has a greater impact on their efficacy than their formal availability.[30] Predictable results are more likely to be achieved when incentives are delivered through transparent procedures, unambiguous rules, and reliable enforcement mechanisms. On the other hand, incentives administered by dispersed organizations and executive choices made on the spur of the moment are linked to misuse and unpredictability. Because it links legal and administrative framework to economic policy, this theoretical lens is essential to the current investigation. It explains why, depending on whether the legal structure protects clarity and restricts discretion, two nations may embrace similar incentives but see different results.

2.3.5 RULE OF LAW THEORY

Legality, equality before the law, transparency, and predictability are all highlighted by rule of law doctrine. This viewpoint maintains that legislation, not individual judgment, should serve as the foundation for both taxation and tax exemptions. The conditions under which incentives apply, the length of benefits, and the situations in which they may be changed or canceled must all be made known to taxpayers beforehand. Because it replaces solid and general legal rules with individualized judgment, excessive ministerial discretion is therefore seen as being incompatible with the rule of law.

2.4 EFFECTIVENESS OF TAX INCENTIVES

There is a substantial but conflicting body of research on tax incentives. Although some research indicates that incentives may affect investment choices in specific circumstances, the prevailing opinion is that their efficacy is frequently exaggerated and very context-dependent.

Tax incentives are rarely the main factor influencing investment location instead, Political stability, market size, infrastructure quality, macroeconomic conditions, labor skills, input

[30] B. Guy Peters *Institutional Theory in Political Science*: The New Institutionalism. (4th Ed) Edward Elgar Publishing (2019)

access, and regulatory predictability are usually ranked higher by investors than tax concerns. According to this perspective, incentives are frequently incidental elements that become significant only when more basic investment requirements are met. The following are some of the problems that reduce the effectiveness of tax incentives:

- Redundancy effects, in which investors who would have invested otherwise receive incentives.
- Loss of revenue, particularly in low-income nations with constrained fiscal resources.
- Administrative complexity raises the cost of enforcement and compliance.
- Possibilities for tax evasion and profit shifting, especially when profit-based incentives are involved.
- Lack of openness, which makes weighing costs and advantages challenging.

In developing nations incentives are mostly inadequately controlled and poorly targeted. In particular, tax holidays are often criticized because they can incentivize corporations to reincorporate in order to extend benefits, encourage short-term or careless investment, and fail to reward actual capital spending. Because they more closely match tax relief with actual investment expenses, investment tax credits and accelerated depreciation are typically seen positively. More importantly, governance plays a part in mediating effectiveness. Incentives are typically administered more openly and incorporated into larger fiscal planning in nations with stronger institutions. In contrast, fiscal leakage and unfairness are more likely to occur when incentives are negotiated outside of the tax system or given through opaque administrative channels. A particularly important strand of empirical work examines the competition among states to attract investment. Tax competition can create a "race to the bottom" in which countries offer increasingly generous incentives without securing commensurate developmental gains. This dynamic is especially problematic in regions where neighboring states compete for similar investments. The result may be collective revenue erosion and weakened policy autonomy.

2.5 MINISTERIAL DISCRETIONS IN THE GRANTING AND ADMINISTRATION OF TAX INCENTIVES

Ministerial discretion refers to the authority given to executive officials to make decisions within a legal framework, often based on judgment rather than automatic rules. In the context of tax incentives, such discretion may include the power to approve applications, determine eligibility, negotiate terms, issue exemptions, extend benefits, or revoke previously granted incentives.

The literature does not reject discretion altogether. Administrative discretion is often seen as unavoidable in complex governance systems. Some scholars argue that limited discretion allows governments to adapt policy to sector-specific realities, assess unusual investment proposals, and respond flexibly to national development priorities. In this sense, discretion may enhance administrative responsiveness.

The use of discretionary methods to offer tax benefits in every region is particularly noteworthy. Investors who meet certain general requirements could "apply" for a new tax incentive or duty exemption under such a scheme, usually to an organization outside the tax administration. The use of a tax incentive may also involve discretion. The tax incentive for which the investor may be eligible may be outlined in the investment code or tax law, although it is typically interpreted broadly and necessitates approval. Conversely, the "automatic" process occurs when tax benefits are specified in tax laws and there is no "apply" process. In this instance, taxpayers make direct claims for their tax incentives when they file their taxes.

The use of discretionary methods to offer tax benefits in every region is particularly noteworthy. Investors who meet certain general requirements could "apply" for a new tax incentive or duty exemption under such a scheme, usually to an organization outside the tax administration. The use of a tax incentive may also involve discretion. The tax incentive for which the investor may be eligible may be outlined in the investment code or tax law, although it is typically interpreted broadly and necessitates approval. Conversely, the "automatic" process occurs when tax benefits are specified in tax laws and there is no "apply" process. In this instance, taxpayers make direct claims for their tax incentives when they file their taxes.

Private actors are encouraged to use lobbying, patronage, or bribery to obtain privileged access when they have discretionary powers over lucrative tax benefits. Discretionary tax exemptions are high-risk areas in public financial management, particularly in places with inadequate oversight structures, according to several governance studies.

Institutional fragmentation is another problem. Ministries of finance, investment promotion organizations, revenue authorities, and sectoral ministries are among the organizations that share authority over tax incentives in various countries. Conflicting judgments and overlapping mandates may result from this fragmentation. Enforcement becomes more challenging and accountability is weakened when ministers use their authority without the tax administration's knowledge or control.

Off-budget budgetary decision-making is the other problem. Discretionary grants may go unnoticed since tax incentives sometimes do not show up in annual expenditure budgets in the same manner as direct spending. Therefore, academics contend that the executive branch's authority of tax incentives may serve as a covert type of public spending with no democratic oversight. Discretion is not necessarily illegitimate; rather, its legitimacy depends on whether it is governed by the law, subject to scrutiny, directed by objective standards, and used in an open manner. Therefore, the scope, boundaries, and accountability systems associated with discretion are more important than discretion in general.

2.6 LEGAL CERTAINTY

One of the fundamental tenets of the rule of law is legal certainty, which is particularly crucial when it comes to taxes. In general, it demands that laws be unambiguous, consistent, easily accessible, and predictable. Public officials should apply the law consistently, and taxpayers should be able to ascertain their rights and obligations beforehand.

Legal certainty is one of those terms that lawyers use frequently but seldom define. In its narrowest sense, it means that a person reading a statute today should be able to predict, with a reasonable degree of confidence, how it will be applied tomorrow. In its broadest sense, it shades into the concept of the rule of law itself, which holds that public power should be used in accordance with established rules rather than the preferences of whoever happens to hold office. The justifiable expectations theory, which has been extensively developed by arbitral tribunals interpreting fair and equitable treatment articles in bilateral investment treaties, is typically used to describe certainty in international investment law. A stable and predictable business environment is one of the things that investors are entitled to expect, according to tribunals applying this doctrine. They have also held that a state that induces investment through specific representations and then reverses course may be liable even if its actions were not otherwise illegal.[31]

Legal certainty has both formal and substantive aspects in tax law. Formally, tax laws should be created through the appropriate legal processes, made available to the public, and sufficiently clarified. In essence, the law should safeguard reasonable expectations and provide predictable results. Subject to legal requirements, an investor who meets the legal criteria for an incentive should be able to rely on the law's continuous application for the designated length of time. Another justification for the need for certainty in the law concerns the factor of reliance on the part of those who do try to conform their behavior to its mandates. When the law changes, unless such change itself has been predictable, those who have relied on its continuity may find themselves actually disadvantaged by their very faithfulness.[32]

The law must be comprehensible and predictable enough to be understood. In this way, the law is said to help generate a stable, ordered society, providing the only really viable environment for co-operation, initiative and progress.[33] It is crucial to keep in mind that investing choices are frequently capital-intensive and long-term. Investors need to know how a project will be treated tax-wise. Second, the state gains from certainty because well-defined regulations increase revenue projections, boost compliance, and lessen disputes. Third, by limiting the opportunity for discriminatory treatment, certainty advances equality.

Legality, legitimate expectation, non-retroactivity, and transparency are all intimately related to legal certainty. Both taxes and exclusions must be based on the law rather than Ministerial discretion in order to adhere to the legality concept. Those who arrange their affairs in accordance with public declarations or legal guarantees are protected by legitimate expectation. The imposition of burdens or the loss of rights with retroactive consequences are restricted by non-retroactivity. Rules and choices are made apparent and intelligible through transparency.

---

[31] *Técnicas Medioambientales Tecmed SA v Mexico*, ICSID Case No ARB(AF)/00/2, Award (29 May 2003),

[32] Church, William L. "The common law and Zambia." *Zambia Law Journal* 6.1 (1974).

[33] David M. Trubek "Max Weber on Law and the Rise of Capitalism", 1972

The literature also notes that legal certainty is not absolute. Governments may need to amend tax laws in response to fiscal pressures, treaty obligations, or changing development priorities. Yet even where reform is necessary, the manner of change matters. Abrupt, opaque, or retrospective alterations can damage investor confidence and raise rule-of-law concerns. Thus, legal certainty does not forbid change; it requires that change occur through lawful, foreseeable, and fair processes.

2.7 THE RELATIONSHIP BETWEEN DISCRETION AND LEGAL CERTAINTY

There seems to be tension between administrative flexibility and legal certainty. Tax incentive regimes often attempt to balance these values, but excessive emphasis on flexibility can undermine predictability. Where there is broad authority to grant incentives on a case-by-case basis as in under section 31 and 33(1) of the Trade, Investment and Business Development Act[34], the legal environment becomes less certain in several ways. First, because results rely on negotiation or subjective assessment, prospective investors might not be able to determine their eligibility beforehand. Second, if the continuance, renewal, or interpretation of incentives is dependent on ministerial preference, current beneficiaries may experience uncertainty. Third, if comparable cases are handled differently without a clear explanation, rivals can think the system is unjust.

This tension is especially acute in systems where the law uses open-ended standards such as "national interest," "strategic investment," or "economic benefit" without further definition. While such language provides room for policy judgment, it may also obscure the boundaries of lawful decision-making. The literature therefore recommends that discretionary standards be supplemented by regulations, guidelines, published criteria, and written reasons for decisions.

Some scholars argue that a properly designed framework can reconcile discretion and certainty. Under this approach, legislation sets the essential conditions, duration, and scope of incentives, while administrators retain limited discretion over technical verification or implementation details. Judicial review, internal appeals, parliamentary reporting, and publication requirements then operate as safeguards against abuse. In this model, discretion is not eliminated but domesticated by law. Automatic incentives anchored in legislation tend to

[34] The Investment, Trade and Business Development Act No. 18 of 2022

reduce opportunities for favoritism, though they may sacrifice some policy flexibility. By contrast, heavily negotiated regimes may attract certain investors in the short term but generate long-term governance costs.

Many low and middle-income countries use tax incentives aggressively to attract foreign investment, often under conditions of intense regional competition and constrained administrative capacity. Yet the same countries are least able to absorb the revenue losses and governance risks associated with poorly designed incentives. Tax incentives are frequently introduced without rigorous cost-benefit analysis. Governments may not know how much revenue is forgone, whether the investment was genuinely induced, or whether performance conditions were met. Where ministers can approve exemptions directly, recordkeeping may be incomplete and monitoring weak. This creates a significant accountability deficit. The use of discretionary methods to offer tax benefits in every region is particularly noteworthy.

Investors who meet certain general requirements could "apply" for a new tax incentive or duty exemption under such a scheme, usually to an organization outside the tax administration. The use of a tax incentive may also involve discretion. The tax incentive for which the investor may be eligible may be outlined in the investment code or tax law, although it is typically interpreted broadly and necessitates approval. Conversely, the "automatic" process occurs when tax benefits are specified in tax laws and there is no "apply" process. In this instance, taxpayers make direct claims for their tax incentives when they file their taxes.

Discretionary tax incentives are prone to corrupt practices as the 'approval' is valuable for investors and officials administering them have the ability to refuse it. The 'approval' in many cases by agencies outside the tax administration is not final because the latter have to comply with their own procedures to ensure that the tax incentive or duty exemption is correctly claimed.[35]

Another theme is the influence of donors and international institutions. Over time, policy advice has shifted from encouraging incentives as investment promotion tools to advocating more disciplined and transparent frameworks. Current reform literature often recommends consolidating incentives in a single law, limiting discretionary powers, publishing tax

[35] Sebastian James *Tax and Non-Tax Incentives and Investments*: Evidence and Policy Implications June 2014 (updated - 2020)

expenditure reports, strengthening revenue authority involvement, and subjecting incentives to sunset clauses and regular review.

The development literature also highlights distributional concerns. Tax incentives may favor large multinational firms over domestic enterprises, thereby distorting competition. Small and medium-sized local businesses, which often lack political access or legal sophistication, may be excluded from benefits or face unequal enforcement. This raises broader questions of economic justice and state capacity.

In fragile institutional environments, the interaction between ministerial discretion and legal uncertainty may also affect state legitimacy. When tax privileges appear to be allocated through personal influence rather than public rules, public trust in fiscal institutions may erode. The literature therefore frames the governance of tax incentives not only as a technical tax issue but as a broader constitutional and developmental concern.

2.8 CONCLUSION

The literature on tax incentives, ministerial discretion, and legal clarity has been reviewed in this chapter. It has demonstrated that although tax incentives are still frequently employed as tools of economic policy, their efficacy is still up for debate. Further that ministerial discretion is both essential and possibly problematic, necessitating the right legislative protections to avoid arbitrariness and encourage accountability. The chapter has also emphasized how crucial legal clarity is to investment governance and tax regimes. In addition to favorable tax treatment, investors value dependable and clear legal structures. Therefore, the effectiveness of tax incentives may depend on how well they are administered within a framework that supports justice, predictability, and the rule of law. The role of ministerial discretion is a major issue that has been discussed. Wide discretionary authority over tax incentives raises significant dangers of arbitrariness, corruption, unequal treatment, and fiscal opacity, even when some degree of administrative judgment may be required. In situations with inadequate oversight and disjointed administration, these dangers are increased. The next chapter examines Zambia's legal and institutional frameworks in relation to the discretion in granting of tax incentives under Sections 31 and 33(1) of the ITBD Act.

3.0 CHAPTER THREE: ZAMBIA'S LEGAL AND INSTITUTIONAL FRAMEWORKS

3.1 INTRODUCTION

This chapter focuses on Zambia's domestic legislative and institutional structure, paying special attention to the authority granted by the legislation to the Minister of Finance, to award tax incentives. It makes the case that Zambia's framework is best understood as a layered structure, a constitutional principle that mandates that all taxes be subject to parliamentary authority, beneath which Parliament has granted the Executive broad and mostly unstructured discretionary powers through a number of different statutes. Article 199 of the Zambian Constitution provides that A tax shall not be imposed, except as prescribed and where legislation confers power on a person or an authority to waive or vary a prescribed tax the power shall be exercised through a statutory instrument. [36]

After outlining this structure through the Constitution, the main revenue statutes and the investment-promotion statutes, the chapter identifies the institutional actors that actually use this discretion and evaluates the framework's documented flaws.

3.2 THE CONSTITUTION AND MINISTERIAL DISCRETION IN TAX INCENTIVE ADMINISTRATION

The constitutional provision limiting the authority to impose taxes to Parliament serves as the foundation for any examination of ministerial discretion in tax matters. No tax may be imposed, waived, or changed unless authorized by a parliamentary act, according to Article 199 of the Zambian Constitution.[37] This idea is not new, this is because it has been a part of Zambia's constitutional order since the 1991 Constitution and was kept, but improved, in the 2016 changes that reorganized Part VIII on Public Finance and the Budget.

The importance of Article 199 for the current paper is threefold. It first provides that a minister's authority to grant, waive, or modify a tax obligation cannot exist apart from a statute: The Minister's discretion is never an inherent executive prerogative; rather, it is always the result of granted legislative authority.

[36] Constitution of Zambia (Amendment) Act No 2 of 2016
[37] Constitution of Zambia (Amendment) Act No 2 of 2016

Secondly, it suggests that Parliament has an ongoing constitutional obligation to design such delegation. In theory, Parliament itself makes decisions on the scope, restrictions, and reviewability of any discretionary power when it passes the parent Act. Zambian statutes have often granted this authority in broad, liberal words ("the Minister may"), with relatively few statutory limitations governing its exercise, as this paper shall illustrate. As a result, the constitutional requirement of legality is satisfied on a formal level; the Minister's actions are always subject to a statutory limit, but substantive legislative supervision over the actual use of the power is still very weak.

3.3 STATUTORY DELEGATION OF DISCRETION TO THE MINISTER AND THE INCOME TAX ACT AND CUSTOMS AND EXCISE ACT

The two principal statutes governing revenue from which most of the ministerial discretion in relation to tax incentives is ultimately derived are the Income Tax Act[38], and the Customs and Excise Act.[39] as per section 33(1) of the ITBD. Substantial incentive provisions, such as lower company income tax rates for particular industries, capital allowances, and loss carry-forward periods, are included in the body of both Acts. However, more significantly for the purposes of this discussion, both Acts grant the Minister of Finance the authority to make regulations through statutory instruments. The majority of the particular, discretionary, case-by-case incentives covered here are the result of this delegated regulation-making authority rather than the Acts themselves.

Substantial incentive provisions, such as lower company income tax rates for particular industries, capital allowances, and loss carry-forward periods, are included in the body of both Acts. However, more significantly for the purposes of this discussion, both Acts grant the Minister the authority to make regulations through statutory instruments.

3.4 THE CUSTOMS AND EXCISE (GENERAL) REGULATIONS, 2000 (SI NO. 54 OF 2000)

The clearest statutory demonstration of ministerial discretion in the Zambian tax-incentive framework is found in regulations 98A to 98D of the Customs and Excise (General) Regulations, 2000, made under the Customs and Excise Act.[40] These regulations consistently

---

[38] Chapter 323 of the Laws of Zambia

[39] Chapter 322 of the Laws of Zambia.

[40] Customs and Excise (General) Regulations 2000, SI 54 of 2000, regs 98A–98D,

employ permissive rather than mandatory language. Regulation 98B(1) provides that a business enterprise that creates employment in accordance with an employment schedule submitted under section 69 of the Zambia Development Agency Act is 'entitled' to a rebate of customs duty on machinery and equipment a provision closer to a rules-based entitlement once the statutory condition is met.[41] By contrast, regulation 98D(1) provides that 'the Minister may, on the recommendation of the Director-General of the Zambia Development Agency, approve a rebate, refund or remission of the whole or any part of the customs duty' payable on machinery and equipment used in manufacturing activities located in a multi-facility economic zone, an industrial park or a rural area, or used by an enterprise falling within the priority sectors listed in the Second Schedule to the Zambia Development Agency Act.[42] The same discretionary formulation governs incentives for motor vehicle and trailer assembly and for inputs used in the manufacture of roofing sheets and tiles.[43] In each case, the regulation does not create an entitlement: it creates a power, the exercise of which depends on the Minister's approval, informed by the recommendation of the Director-General of the Zambia Development Agency.

3.5 ZAMBIA DEVELOPMENT AGENCY'S RECOMMENDATION POWER

Section 33(1) of the Act provides that the Agency shall, where it determines from the investor's pledge and skills transfer to citizens that the investor will create employment for citizens as pledged, recommend to the Minister responsible for finance that tax incentives be granted to the investor under the Income Tax Act or the Customs and Excise Act.[44] Subsection (2) then provides that the Minister shall only grant incentives to an investor on the recommendation of the Agency under subsection (1).[45] Read together, the two subsections create what is, on its face, a two-stage gatekeeping structure: the Agency screens, and the Minister approves only what has been screened.

The first thing to notice about this language is how little of it is defined elsewhere in the Act. The trigger for a recommendation is that the Agency "determines", from the investor's "pledge and skills transfer to citizens", that the investor "shall create employment for citizens as

[41]Customs and Excise (General) Regulations 2000, SI 54 of 2000, reg 98B(1)

[42]Customs and Excise (General) Regulations 2000, SI 54 of 2000, reg 98D(1)

[43]Customs and Excise (General) (Amendment) Regulations Si No. 96 of 2025, regs 98C(1).

[44]The Investment, Trade and Business Development Act No 18 of 2022.

[45]ibid, s 33(2).

pledged". None of "determines", "pledge" or the standard by which a pledge is to be assessed as credible receives any further elaboration in the section itself, and the Act's interpretation provision does not supply a definition either. An investor reading section 33(1) in isolation has no way of knowing, for example, what proportion of a workforce must be drawn from citizens for the employment pledge to count as satisfied, over what time horizon the pledge is to be measured, or what evidence the Agency will require before it is prepared to make a determination in the investor's favor.

The power is confined, in the loose sense that it is limited to a specific subject matter employment and skills-transfer-linked tax incentives under two named statutes but it is not structured by any criteria, procedure or timeline set out in the primary legislation itself. Whether subsidiary legislation or administrative guidelines fill this gap in practice is a question of regulatory practice rather than statutory text, but the statute, standing alone, gives the investor remarkably little to hold the Agency to.

3.6 THE RECOMMENDATION AS A PRECONDITION, NOT A RIGHT

A further aspect of section 33(1) is that it is framed as creating a power for the Agency to recommend, not a duty owed to the investor to do so once certain facts are established. The provision says the Agency "shall" recommend "where" it makes the requisite determination, grammatically mandatory once the condition is met, but the condition itself (the Agency's own determination) is a subjective threshold rather than an objective fact that a court could readily verify independently. This is a familiar drafting technique in administrative law, and it is not unique to Zambia, but its effect here is to make the entire incentive contingent on the Agency's satisfaction rather than on the investor's actual conduct.

The practical consequence is that an investor who has, in good faith, created the pledged employment and engaged in genuine skills transfer still depends on the Agency forming the requisite subjective view before any recommendation and therefore before any incentive can follow.

If the Agency simply declines to make a determination, or delays making one, the investor has, on the face of the section, no statutory entitlement to compel a particular outcome, only (at most) a general administrative law right to have the matter dealt with lawfully and within a reasonable time. For an investor who has already committed capital on the assumption that the pledged incentive would materialize. The uncertainty bites after the investment has been made, not before.

3.7 A CHECK WITHOUT MUCH TO CHECK AGAINST

A reading of section 33(2) of the ITBD Act can sometimes somewhat be said to act as a safeguard. This is because the Minister cannot act unilaterally but is bound by the Agency's recommendation. There is something to this. A Minister who wished to grant an incentive to an investor the Agency had not recommended would, on a straightforward reading of subsection (2), be acting outside the power the section confers. In that narrow sense, subsection (2) does confine ministerial action. But the safeguard cuts only one way. Subsection (2) prevents the Minister from granting incentives without a recommendation; it does nothing to compel the Minister to grant incentives once a recommendation has been made. The word used is that the Minister "shall only grant" incentives on the Agency's recommendation a ceiling on ministerial generosity, not a floor. Nothing in the text obliges the Minister to act on a favorable recommendation at all, still less within any stated period. The two-stage structure therefore screens out one kind of risk (arbitrary ministerial largesse unsupported by any institutional process) while leaving untouched the kind of risk most relevant to legal certainty: that an investor who clears the Agency's hurdle may still find the Minister simply not acting on it.

3.8 MINISTERIAL ACTION ACTIVATING RELIEF

Section 31 of the ITBD Act provides that a relief or exemption from any tax or duty to which an investor is eligible under Part VI of the Act shall be effected by the Minister responsible for finance after the Agency certifies that the investor has complied fully with the Act and any condition prescribed. Structurally, this provision performs a function for general Part VI relief comparable to what section 33(2) performs for employment-linked incentives specifically: it makes ministerial action conditional on a prior act of certification by the Agency.

The drafting choice in section 31 is, on close reading, even more consequential than it first appears, because of the word "effected". The section does not say that an eligible investor is entitled to relief, or that relief accrues automatically upon eligibility and certification; it says that eligible relief "shall be effected" by the Minister, after certification. Grammatically, this casts the Minister not merely as an approving authority standing above the Agency's certification, but as the operative actor without whose action the relief simply does not exist in any practical sense. Certification by the Agency is a necessary condition; it is not, on the words used, a sufficient one. An investor can be fully certified as compliant and still be without relief until the Minister performs the further, separate act of effecting it.

3.9 WHAT THE WORD "FULL COMPLIANCE" LEAVES OPEN

The certification requirement in section 31 is, in one respect, more demanding than the determination required under section 33(1). Here the Agency must certify that the investor "has complied fully with this Act and any condition prescribed". The reference to "any condition prescribed" at least gestures towards subsidiary legislation as the place where the detail of compliance is meant to live, which is a marginally better drafting outcome than section 33(1)'s silence on the matter. But "full" compliance is nonetheless a demanding standard on its face, since the Act is not a short or simple statute: full compliance could plausibly be read to require strict adherence to every applicable provision touching licensing, reporting, local ownership thresholds where relevant, and any other obligation the Act imposes on the category of investor in question, with no apparent allowance in the text itself for immaterial or technical breaches.

Whether the Agency in practice applies the certification standard with this degree of strictness, or instead exercises a more forgiving administrative discretion not visible on the face of the statute, is precisely the kind of question a textual reading cannot answer and that empirical or interview-based research outside the scope of this Research would be needed to resolve. What the text can however, tell us is that the statute gives the Agency considerable latitude to take either approach, since "full compliance" is nowhere defined with the precision that would foreclose one interpretation in favour of the other.

3.10 THE ABSENCE OF A STATUTORY TIMELINE

Perhaps the most striking gap in section 31and 33(1) of the ITBD Act, is the complete absence of any timeline. The section does not say how within how many days from the date of application recommendation or certification should be done. Further within how many days of certification the Minister must act, nor does it specify any consequence such as deemed approval, or a right to apply for a default order if the Minister simply does not act. When compared this with section 18 of the Act, which requires the Agency itself to approve or reject an application for a license, permit or certificate of registration within thirty days of receipt, and to give written reasons for any rejection within fourteen days of its decision; or with section 21, which fixes the validity period of a license, permit or certificate of registration at five years and requires a renewal application to be lodged not less than sixty days before expiry.[46]

Where the legislature wished to impose discipline through fixed periods elsewhere in the same Act, it evidently knew how to do so. Its failure to do the same for the ministerial act in section 31 is therefore difficult to read as an oversight, it reads, instead, as a considered choice to leave the timing of relief entirely within the Minister's hands.

The consequence for legal certainty is significant. An investor can satisfy every condition the Act imposes, obtain the Agency's certification of full compliance, and still have no statutory basis for predicting when or, in the bleakest reading, whether the promised relief will actually be effected. The investor's only recourse against inaction would lie in general administrative law principles requiring decisions to be made within a reasonable time, a standard that is notoriously difficult to enforce in practice and that, in any event, requires litigation rather than a statutory entitlement to determine what "reasonable" means in the circumstances.

3.11 AN ANALYSIS OF SECTIONS 31 AND 33(1) OF THE INVESTMENT, TRADE AND BUSINESS DEVELOPMENT ACT NO 18 OF 2022

It is worth being precise about how these two provisions inter relate to one another, since they are sometimes discussed as though they were alternative routes to the same destination which they are not. For an investor pursuing incentives tied to employment creation and skills transfer specifically, section 33(1) operates first. The Agency must determine that the employment pledge will be met and recommend accordingly, and the Minister may then grant the incentive under the Income Tax Act or Customs and Excise Act on the strength of that recommendation. Section 31 then governs the separate, subsequent act by which any relief or exemption an investor is eligible for under Part VI which may include, but is not limited to, incentives recommended under section 33(1) is actually effected. An investor relying on the employment and skills-transfer pathway can therefore face two sequential, and in principle independent, discretionary hurdles. These being firstly, the Agency's determination and recommendation under section 33(1) and secondly, the Minister's act of effecting relief under section 31, itself conditional on a further, more general certification of full compliance by the Agency.

[46]Investment, Trade and Business Development Act 18 of 2022

Each hurdle carries its own version of the structuring gap identified above, and there is no statutory mechanism compelling consistency between them nothing, for instance, preventing the unusual but not impossible scenario in which an investor secures a section 33(1) recommendation but is later found, at the section 31 stage, not to have achieved “full compliance” on some unrelated ground.

3.12 CONFINEMENT, STRUCTURING AND CHECKING APPLIED

Both provisions fare reasonably well on confinement of the Minister's power in each case is tied to a specific subject matter (relief from tax or duty in one case, incentives under two named statutes in the other) and cannot be exercised at large. Both fare poorly on structuring: neither provision sets out criteria for the underlying determination with any precision, neither sets a timeline for action, and neither specifies the form, content or evidentiary basis of the Agency's certification or recommendation. A further analysis shows that the picture is mixed. Section 33(2) does however provide a check of sorts on the Minister, in that a grant without an Agency recommendation would be ultra vires; but as noted above, this check operates only against excess, not against inaction, and a court asked to compel a reluctant Minister to act would have very little in the statutory text to anchor a remedy beyond the general, and notoriously uncertain, public law duty to decide within a reasonable time.

3.13 CONCLUSION

Sections 31 and 33(1) of the investment, trade and Business Development Act confine ministerial power to a defined subject matter. However, neither structures the exercise of that power with criteria, timelines or evidentiary standards capable of being checked against the statutory text alone; and the institutional check nominally provided by the Agency's certification and recommendation function is weakened by the Agency's proximity to the same political authority it is meant to constrain. None of this means the provisions are unlawful, or that they have necessarily been misused in practice. It instead means that an investor reading sections 31 and 33(1) before committing capital to Zambia is reading a promise whose timing, evidentiary content and ultimate delivery remain, on the words of the statute itself, substantially within the Minister and the Agency’s own hands. The next Chapter conducts a comparative jurisdictional analysis and critically examines the discretion under Sections 31 and 33(1) of the Investment, Trade and Business development act No 18 of 2022.

4.0 CHAPTER FOUR

4.1 INTRODUCTION

Chapter Three run through the Constitutional and statutory architecture of ministerial discretion over tax incentives in Zambia and zeroed in on sections 31 and 33(1) of the Investment, Trade and Business Development Act 18 of 2022.[47] This chapter undertakes a closer, examination of sections 31 and 33(1) of the ITBD Act vis a via Judicial Review, and tests the resulting analysis against four comparator jurisdictions namely Mauritius, Rwanda, South Africa and Kenya. The selection of these countries is based on the fact that each represents a materially different design choice in the allocation of discretion between Minister, agency, and written law.

4.2 JUDICIAL REVIEW AND THE LIMITS OF JUDICIAL CONTROL

Zambian Administrative law in principle rejects the idea of truly unfettered discretion. This section examines that principle more closely, because the strength of Zambia's judicial review doctrine bears directly on how much comfort an investor should take from the fact that sections 31 and 33(1), however loosely structured, remain in theory subject to the supervisory jurisdiction of the High Court. Zambian Administrative law recognises, in principle, that discretion conferred by statute is never wholly unfettered, regardless of how broadly the enabling words are framed.

In the case of **Attorney-General V Clarke**, the Supreme Court of Zambia approved and applied the House of Lords' reasoning in **Padfield v Minister of Agriculture, Fisheries and Food**[48] , to the effect that the use of an adjective such as 'unfettered' in a statute conferring ministerial discretion does not exclude the court's jurisdiction to determine whether that discretion has been exercised lawfully, having regard to the scope and object of the Act conferring it.[49] The Court further accepted, citing **Ridge v Baldwin**[50], that a decision adversely affecting an individual's rights may attract a duty to act fairly even where the enabling statute is silent on procedure. Zambian courts have, in administrative law generally, organised review around the now-familiar tripartite classification of illegality, irrationality (in the Wednesbury

---

[47]Investment, Trade and Business Development Act 18 of 2022, s 31.

[48]Padfield V Minister of Agriculture, Fisheries and Food (1968)
[49] Attorney General V Roy Clarke Appeal No. 96 of 2004
[50] Ridge V Baldwin (1964)AC 40

sense) and procedural impropriety, derived from the cases of **Associated Provincial Picture Houses Ltd. v Wednesbury Corporation**[51] and **Council of Civil Service Unions v Minister for the Civil Service**[52] and applied in domestic decisions such as **Chilufya v City Council of Kitwe**[53] and **Hon Justice Dennis Chirwa v Attorney-General**[54]. The High Court's jurisdiction to entertain such challenges is itself constitutionally secured by Article 134 which confers unlimited and original jurisdiction over civil and criminal proceedings[55].

Tax-specific applications of this framework exist, though they are sparse and have not, to date, directly tested the incentive-granting provisions examined in this chapter. In **MM Zambia Ltd v Zambia Revenue Authority**, the High Court entertained an urgent application for judicial review on grounds of illegality and unreasonableness, brought by a taxpayer challenging the Authority's refusal to permit the export of mining equipment pending payment of an assessed tax liability.[56] The case illustrates that Zambian courts are prepared to subject revenue-authority decision-making to conventional review grounds; it does not, however, concern the exercise of discretion to grant or withhold an incentive in the first place, and no reported Zambian decision has yet considered the lawfulness of a ministerial declaration under provisions of the in Investment, Trade and Business Development Act 18 of 2022. [57]

Two features of the Part VI scheme make it more, rather than less, difficult to subject to effective Judicial control than the deportation power considered in **Attorney-General v Clarke**. Firstly, they are framed as policy-setting powers ,the kind that courts have historically been reluctant to review on their merits, treating questions of economic and political judgment as falling outside the proper province of judicial review absent bad faith or manifest absurdity.[58] Secondly, the absence of any published criterion against which the Agency's section 33(1) recommendation's assessment can be measured makes an irrationality challenge difficult to mount in practice: a court applying the Wednesbury standard asks whether no

[51] Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223
[52]Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374 (HL)
[53] Chilufya V City Council of Kitwe (1967) ZR 115
[54] Hon Justice Dennis Chirwa v Attorney-General, High Court of Zambia HP/0534/2013
[55] The Zambian Constitution Act No. 2 of 2016
[56]MM Zambia Ltd v Zambia Revenue Authority, High Court of Zambia, 2014/HP/0100 (unreported),
[57]Investment, Trade and Business Development Act 18 of 2022, s 44.
[58]Nottinghamshire County Council v Secretary of State for the Environment [1986] AC 240 (HL),

reasonable decision-maker could have reached the impugned conclusion, a test that is hard to satisfy where the statute itself supplies no benchmark for reasonableness.[59]

None of this means that section 31 and 33(1) of the ITBD Act, or Part VI more generally, is immune from judicial review in principle. **Attorney-General v Clarke** confirms that it could not be, even if the Act purported to make it so. It means, rather, that the practical likelihood of a successful challenge is low, and that the statutory design mandatory ministerial action once an Agency recommendation is made, broad and criteria-based sectoral and exporter powers, and an appeal route that begins with the Minister rather than the courts has the cumulative effect of insulating the exercise of discretion from the kind of scrutiny that Zambian administrative law theoretically makes available.

There is also a more mundane, practical obstacle. Judicial review in Zambia, as in most common law systems, is a remedy of last resort that typically requires the exhaustion of other available avenues, the grant of leave to proceed, and standing on the part of the applicant, and the available remedies of certiorari, mandamus and similar orders which typically compel the decision-maker to decide again according to law, rather than substitute the court's own view of what the correct outcome should have been. An investor who successfully reviews an Agency's refusal to make a section 33(1) recommendation is likely to obtain an order requiring the Agency to reconsider the matter lawfully, not an order granting the incentive itself. Litigation of this kind takes time, and an investor whose capital is already committed and whose competitors elsewhere are not waiting on a tribunal's calendar bears the cost of that delay regardless of the eventual outcome.

4.3 WHY THE GAP MATTERS MORE THAN IT MIGHT FIRST APPEAR

The gap between the certainty the Act appears to promise and the discretion it actually creates is not a remote or theoretical risk confined to unusual cases. It is a risk built into the ordinary, good-faith operation of the statute, which any investor relying on sections 31 or 33(1) must price into its investment decision today, in the absence of either legislative amendment or a developed body of judicial interpretation neither of which yet exists.

---

[59] Investment, Trade and Business Development Act 18 of 2022, s 33(1), referring to the investor's 'pledge and skills transfer to citizens' without further statutory definition of the standard by which the Agency is to assess that pledge.

4.4 RETAINING DISCRETION: A FAIR HEARING FOR THE COUNTER-ARGUMENT

A critical evaluation that only ever points one-way risks becoming an advocacy piece rather than a balanced legal analysis. Before this Research moves to its recommendations, it is worth setting out, as fairly as possible, the arguments a defender of sections 31 and 33(1) of the ITBD Act as currently drafted might make, since several of them have genuine force and ought to discipline how far any reform proposal is pushed.

4.4.1 THE ARGUMENT FROM ADMINISTRATIVE FLEXIBILITY

The most obvious defence of the current drafting is that investment promotion is not a mechanical exercise. There is also a more specific version of this argument tied to the particular incentives sections 31 and 33(1) ITBD Act govern. Employment-and skills-transfer-linked incentives are, almost definitionally, the category of incentive least amenable to a purely objective threshold, because the thing being incentivized. The quality and durability of citizen employment and the genuineness of skills transfer is qualitative rather than quantitative in a way that, say, a minimum capital investment figure is not. An Agency tasked with administering this kind of incentive arguably needs room to exercise judgment about whether a pledge has truly been met, and a legislature that tried to specify every possible permutation of acceptable employment arrangements in the statute itself might simply produce a different, equally serious certainty problem: a rule so detailed and rigid that it fails to capture legitimate variation in how different industries structure their workforces, and that becomes outdated as employment practices evolve faster than the legislature can amend the schedule.

4.4.2 THE ARGUMENT FROM ADMINISTRATIVE CAPACITY

A second, defence concerns institutional capacity. Publishing detailed, binding evidentiary guidelines of the kind recommended in chapter 5 below requires drafting capacity, ongoing review as circumstances change, and a degree of regulatory sophistication that a relatively young investment promotion agency the Zambia Development Agency itself may not yet possess in full measure. There is a respectable argument that broad, flexible statutory language of the kind currently found in sections 31 and 33(1) of the ITBD Act is, at this early stage in the Agency's institutional life, more a reflection of administrative pragmatism than of any considered preference for ministerial discretion over investor certainty: a legislature drafting in 2022, establishing an entirely new agency to administer an entirely new Act, may reasonably have preferred to leave the granular detail to be worked out by guidelines, circulars and accumulated administrative practice rather than freeze it prematurely into primary legislation that would then require fresh parliamentary time to amend.

If this account is right, the appropriate response is not necessarily legislative amendment at all, but simply time allowing the Agency's administrative practice to mature, develop internal guidelines, and accumulate a track record, after which the case for codifying that practice into binding criteria (whether by statute or subsidiary legislation) becomes considerably stronger because there would, by then, be a body of actual practice to codify rather than criteria invented from first principles by a legislature with no operational experience to draw on.

4.4.3 THE ARGUMENT FROM SOVEREIGN POLICY SPACE

The third defence gets on a concern that excessive contractual or statutory rigidity in investment promotion can itself become a constraint on legitimate sovereign policy space. A government that binds itself too tightly to fixed, automatic incentive thresholds may find itself unable to respond to changed economic circumstances. Discretion, on this view, is not simply an oversight in the drafting of sections 31 and 33(1) of the ITBD Act but a deliberate reservation of policy space that a responsible legislature might rationally wish to preserve, particularly in a developing economy where economic conditions and government priorities can shift relatively quickly.

4.5 WHY THESE ARGUMENTS TEMPER, RATHER THAN DEFEAT, THE RESEARCH'S CRITIQUE

These three arguments are each, in my view are, genuine and not merely rhetorical. They explain why this Research's recommendations in Chapter Five stop well short of proposing that all discretion be eliminated from sections 31 and 33(1) of the ITBD Act, and instead focus on *structuring* discretion rather than abolishing it.

The flexibility argument justifies preserving some qualitative judgment but it does not by itself justify leaving the timeline for making that judgment entirely unspecified, since a decision can be qualitative in substance while still being bound by a procedural deadline. The administrative capacity argument justifies a degree of patience while the Agency's practice matures; it does not justify indefinite patience, nor does it explain why even a basic, low-cost step such as publishing the Agency's existing internal practice whatever that practice currently is should not occur now, since this requires no fresh policy invention, only transparency about decisions the Agency is presumably already making on some basis. The sovereign policy space argument justifies retaining a residual, prospective discretionary category but it does not justify exercising that discretion through case-specific, unpublished, retrospective recommendations addressed to individual investors who have already committed their capital, which is precisely the technique sections 31 and 33(1) of the ITBD Act currently use.

The fair conclusion, then, is that the counter-arguments narrow the scope of defensible reform without eliminating the case for it. They counsel against converting Zambia's regime wholesale into a fully rule-based model, and they counsel patience about how quickly any reform should be implemented. They however, do not, on close inspection, supply a reason why a statutory timeline, a published evidentiary standard, or a narrower definition of full compliance would undermine any of the legitimate interest's administrative flexibility, institutional capacity, sovereign policy space that a defender of the status quo would invoke

4.6 COMPARATIVE ANALYSIS WITH SOUTH AFRICA

To assess whether the design choices identified above are a necessary or merely contingent feature of investment-incentive legislation, this section compares the Zambian framework with South Africa's.

South Africa retains ministerial designation powers that are, in form, closer to the Zambian model but constrains their exercise far more tightly. South Africa is a useful country to compare to Zambia because it only disguises ministerial discretion. While Zambia's ITBD Act's sections 31 and 33(1) leave the Minister and the Agency to figure things out on their own, South Africa's two primary incentive instruments give a minister actual decision-making authority, but they do so through committees, point-scoring systems, published guidelines, and deadlines. There is still discretion. It has only been given a form.

The former section 12I tax break for manufacturing and the Special Economic Zones program, which essentially replaced it as South Africa's main economic incentive, serve as excellent examples of this.

Section 12I of South Africa's Income Tax Act 58 of 1962 offered companies an extra tax deduction over and above ordinary capital allowances for new manufacturing investment ('greenfield' projects) or for expanding existing plants ('brownfield' projects). It wasn't small money: a qualifying greenfield project with 'preferred status' could claim an allowance worth up to R900 million, and even an ordinary brownfield project could claim up to R350 million.[60] The hitch, was that a business could not just claim the allowance on its tax return in the same manner as it would claim regular depreciation. Before any contracts were signed or any assets were ordered, the Minister of Trade and Industry had to authorize the project.[61] Getting the sequencing wrong by firstly signing the contract first, then apply second and the incentive simply wasn't available, however good the project was on the merits.

What is however, really intriguing is how South Africa attempted to eliminate any uncertainty surrounding that permission. The program employed a published point-scoring system instead of letting the Minister decide whether a project "deserved" the incentive. To be classified as "preferred status," a project had to receive at least seven out of eight points, or four to six points for the lower "qualifying status" tier. Rather than being left up to the Minister's own opinion, the laws specify things like the project's direct economic value, the quantity and caliber of jobs produced, energy efficiency, and so forth.[62] That's a genuinely different design choice from what Zambia's sections 31 and 33(1) do. The Minister still has the final say and nothing about the scorecard is self-executing, but an investor preparing an application at least knows, in advance, exactly what they're being measured against. Compare that to section 33(1) of the ITBD Act, where the Agency simply has to be satisfied, on no published standard at all, that an investor's employment pledge is credible.

Section 12I also had something Zambia's incentive provisions notably lack: an actual expiry date. The window for new applications closed on 31 March 2020, after a couple of earlier extensions, and no applications have been accepted since.[63] Projects approved before that date keep their benefits, they're factored in but the scheme itself isn't indefinite.[64] Even though the

[60]South Africa Corporate Tax Credits and Incentives' (PwC Worldwide Tax Summaries, 2024)

[61]Zuva Financial Services, 'Tax Savings for the Manufacturing Sector in South Africa (Section 12I)' <https://www.zuvafs.co.za/tax-savings-for-the-manufacturing-sector-in-south-africa-section-12i/> accessed 30 June 2026.

[62]Section 12I Tax Allowance Incentive (12I TAI),

[63]12I Tax Allowance Incentive The Department of Trade Industry and Competition' (thedtic.gov.za) <https://www.thedtic.gov.za/financial-and-non-financial-support/incentives/12i-tax-allowance-incentive/> accessed 30 June 2026.

[64] PricewaterhouseCoopers, South Africa Corporate Tax Credits and Incentives' (*Worldwide Tax Summaries*, 2024) <https://taxsummaries.pwc.com/rwanda/corporate/tax-credits-and-incentives> accessed 1 July 2026

incentive has now expired, industrial-policy projects approved before 31 March 2020 continue to be entitled to the Section 12I benefits.

A sunset clause forces Parliament, or the relevant department, to actually revisit the policy rather than letting it run on autopilot forever which is exactly the kind of built-in check that sections 31 and 33(1) of the ITBD Act don't have. Once a Zambian incentive is in place, nothing in the Act requires anyone to come back and ask whether it's still doing its job.

4.6.1 SPECIAL ECONOMIC ZONES: DISCRETION FILTERED THROUGH A BOARD

If section 12I shows discretion narrowed by a scorecard, the Special Economic Zones Act 16 of 2014 shows discretion filtered through layers of institutional process before it ever reaches the Minister's desk.

This is how it really operates. A public-private partnership or a national, provincial, or local government may apply to have a region classified as a Special Economic Zone. That application doesn't go to the Minister first. It is sent to the SEZ Advisory Board, an organization created by the Act, which evaluates the application based on predetermined standards before recommending a course of action.[65] Only once that recommendation lands on the Minister's desk does the Minister actually decide whether to designate the zone and issue the licence..

On paper, that is structurally comparable to Zambia's section 33(1), where a minister makes a decision after an agency screens. However, South Africa's provisions go one step farther than Zambia's Act by adding a real clock to the procedure. After an application is complete, the Advisory Board has five months to provide a recommendation, and the Minister has two months to make a decision.[66] Nobody is left wondering, a year later, whether their application has simply been forgotten in someone's inbox which is precisely the situation sections 31 and 33(1) of the ITBD Act leave open, since neither provision sets any deadline for the Agency's determination or the Minister's decision at all.

[65] Special Economic Zones Act 16 of 2014 (South Africa), as summarised in 'Special Economic Zones – The Department of Trade Industry and Competition' <https://www.thedtic.gov.za/sectors-and-services-2/industrial-development/special-economic-zones/> accessed 30 June 2026,

[66] Department of Trade and Industry, 'Final Special Economic Zones Regulations: Department Briefing' (Parliamentary Monitoring Group, 2017) <https://pmg.org.za/committee-meeting/22121/> accessed 30 June 2026,

The pattern repeats once a business wants to actually move into an already-designated zone. The application goes to the SEZ Board, the Board considers the operator's recommendation, and only then is the application approved with or without conditions.[67] Even the money side of the program follows the same logic: an Adjudication Committee, chaired by the Director-General, considers funding applications and recommends them to the Minister, who is the one who ultimately signs off.[68]

It is clear that discretion is everywhere in this scheme, the Minister is the final word at almost every stage. What however differentiates it from Zambia is that the discretion is never naked. It always sits behind a board, a committee, or a published set of criteria, and it's always bounded by a deadline. That's not nothing. It means an investor knows roughly when to expect an answer, and knows that the people doing the first-pass screening aren't the same people with the final say.

The preferential tax regime for special economic zones under section 12R of the Income Tax Act, 1962 requires that a qualifying company derive at least ninety per cent of its income from trade within the designated zone, a quantifiable test fixed in the statute itself rather than left to ministerial satisfaction at large. The South African Revenue Service has, in addition, issued detailed public guidance on how that test and related exclusions are to be applied, reducing the scope for inconsistent or opaque case-by-case determination. The comparable section 121 industrial-policy allowance requires the Minister of Trade and Industry to approve a project only after taking into account the recommendation of a dedicated adjudication committee, and only where satisfied that statutory criteria investment value, job creation, energy efficiency, innovation are met, mirroring the committee-based structure rather than the single-agency model found in Zambia. Both regimes carry legislated sunset clauses: the sections 12R and 12S incentives were due to lapse but were extended to 31 December 2030 by a dedicated Taxation Laws Amendment Act, requiring Parliament to revisit and positively re-authorise the

[67] Special Economic Zones Act 16 of 2014 (South Africa) s 24(3), as set out in the consolidated text published at SAFLII <https://www.saflii.org/za/legis/consol_act/seza16o2014241/> accessed 30 June 2026:

[68] Department of Trade and Industry, 'Final Special Economic Zones Regulations: Department Briefing' (n 6)

incentive rather than allowing it to continue indefinitely on the strength of the original ministerial designation.[69] .

4.7 SYNTHESIS

Placed side by side, South Africa and Zambia describe a continuous spectrum rather than a binary choice between discretion and its absence.[70] South Africa retains a recognizably ministerial gatekeeping function, comparable in form to sections 31and 33(1) of the Zambian Act, but binds it to statutory quantitative criteria, an adjudication committee, and a legislated sunset clause requiring periodic parliamentary reauthorization.[71]

4.8 CONCLUSION

This chapter has shown that section 31 of the Investment, Trade and Business Development Act, 2022, properly construed, is a mandatory certifying provision rather than the discretionary power it is often assumed to be. The genuine discretion in Part VI of the Act lies elsewhere: in the Zambia Development Agency's unguided assessment of an investor's employment pledge under section 33(1), and in the Minister's open-ended powers to declare priority sectors under section 8 and to prescribe exporter incentives under section 13. Zambian administrative law possesses, in principle, the doctrinal tools to discipline the exercise of these powers Attorney-General v Clarke confirms that no statutory discretion in Zambia is truly unfettered, however broadly worded but the structural features of Part VI, including the absence of published criteria against which the Agency's assessment can be measured and a statutory appeal route that begins with the Minister rather than the courts, make the practical likelihood of judicial correction low.

---

[69] Rwanda Development Board, Investment Incentives (RDB, 2023); M Sanfilippo and others, Investors' Performance and Tax Incentives in Rwanda (International Growth Centre Working Paper, 2025), noting that the share of

[70] Tax Justice Network Africa and ActionAid International, Tax Incentives and Revenue Losses in Kenya (TJN-A, 2012) 4, 10–11.

[71] US Department of State, 2025 Investment Climate Statements: Kenya (Bureau of Economic and Business Affairs, 2025).

5.0 CHAPTER FIVE: FINDINGS AND RECOMMENDATIONS

5.1 INTRODUCTION

This Research set out to evaluate, critically, the use of ministerial discretion in sections 31 and 33(1) of the Investment, Trade and Business Development Act 18 of 2022 against the standard of legal certainty that the investment law literature treats as central to a credible investment promotion regime. Chapter Two built the theoretical apparatus needed for that evaluation; Chapter Three applied it directly to the text of the two provisions; Chapter Four tested the resulting findings against a realistic investor scenario, against comparative African experience, and against the practical strength of Zambian judicial review. This concluding chapter draws the threads together, states the Research's central findings in summary and because a critical evaluation of this kind is of limited value if it stops at diagnosis sets out specific, implementable recommendations addressed to three different audiences: the legislature, the Agency and the Ministry responsible for finance in their regulatory and administrative capacities, and future researchers.

5.2 SUMMARY OF FINDINGS

Four findings recur throughout the preceding chapters, and deserve to be stated plainly, without the qualifications and caveats that necessarily accompanied them the first time around. Sections 31 and 33(1) are confined in subject matter but not structured in exercise. Both provisions tie ministerial and Agency action to a specific, identifiable category of decision, the grant of relief from tax or duty under Part VI, and the recommendation of incentives linked to employment and skills transfer and neither provision allows the Minister or the Agency to act outside that category. Neither provision, however, sets out the criteria, evidentiary standards or timelines by which the underlying determination is to be made, leaving these matters to administrative practice that is not visible on the face of the statute.

The discretion in both provisions also operates largely ex post, after an investor has already committed its capital, which means its practical effect is more corrosive to reliance interests than discretion exercised at the time of initial market entry. An investor cannot just walk away from a sunk investment as it may have refused to enter a jurisdiction it found uncertain enough in the first place.

Beyond that, the two-stage institutional architecture, Agency screening followed by ministerial action provides less independent assurance than its design might suggest, both because the

Agency's proximity to the same governmental structure the Minister leads raises a reasonable question about how independently it actually screens, and because the statutory check operates asymmetrically: section 33(2) prevents the Minister from acting without a recommendation but does not compel the Minister to act once a recommendation exists.

And finally, the doctrinal safety net of Zambian judicial review, while real, offers an investor considerably less practical certainty than its existence might suggest, given the supervisory rather than substitutionary nature of the remedy, the procedural hurdles attached to bringing a claim, and the complete absence to date of reported case law construing either provision directly.

None of these findings amounts to a conclusion that sections 31 and 33(1) are unlawful, unconstitutional, or being administered in bad faith. The claim of this Research is narrower and, the author submits, more defensible. It is that the provisions as drafted leave considerably more of the timing, evidentiary content and ultimate delivery of incentives within unstructured administrative judgment than the comparative and theoretical literature would regard as best practice, and that this gap is large enough to constitute a genuine, foreseeable source of legal uncertainty for investors relying on Part VI of the Act.

5.3 RECOMMENDATIONS

- **LEGISLATIVE AMENDMENT: STRUCTURING THE DISCRETION, NOT ELIMINATING IT**

The most direct response lies with the legislature, and the recommendation here is deliberately modest: not to strip the Minister or the Agency of discretion altogether, since Chapter Two identified sound reasons why some administrative judgment is appropriate in assessing pledges that cannot be reduced entirely to objective thresholds, but to structure that discretion using techniques already available in comparative practice and, in places, in the Investment, Trade and Business Development Act No 18 of 2022 Act's own drafting elsewhere.

Specifically, Parliament should consider amending sections 31 and 33 to: (a) impose a defined statutory period such as sixty or ninety days, on the model already used for licence renewal under section 20 of the Act within which the Agency must make a determination under section 33(1) or a certification under section 31 once a complete application has been lodged, with a deeming provision treating an undetermined application as approved if the period lapses without a reasoned written decision; (b) require the Agency to publish, by statutory instrument or published guidelines having the force of subsidiary legislation, the evidentiary standards by which an employment or skills-transfer pledge will be assessed as met, including whether seasonal, contract or probationary hires qualify and over what retention period employment must be sustained; and (c) define "full compliance" in section 31 to exclude immaterial or purely technical lapses unconnected to the substance of the investor's eligibility for the relief in question, so that an unrelated administrative oversight cannot indefinitely delay an otherwise merited exemption.

These amendments would move sections 31 and 33(1) substantially closer to the structured-discretion end of the spectrum identified in Chapter Two, narrowing the range of lawful outcomes an investor must currently price into its planning.

- **INSTITUTIONAL REFORM: STRENGTHENING THE AGENCY'S INDEPENDENCE AND TRANSPARENCY**

Short of legislative amendment, several reforms lie within the existing powers of the Agency and the Ministry and could be implemented administratively. The Agency could publish, even in the absence of a statutory obligation to do so, indicative processing timelines and the documentary checklist it applies in practice to section 33(1) determinations and section 31 certifications. Publishing such guidance would not bind the Agency in the way a statutory amendment would, and could in principle be departed from, but it would at least give investors a documented baseline against which any departure could be measured and, if necessary, challenged.

A more structural reform would address the independence concern raised in Chapter Three by separating, within the Agency's own governance arrangements, the personnel and reporting lines responsible for investment promotion and aftercare from those responsible for compliance certification under section 31, so that the official certifying compliance is not the same official who courted the investment in the first place and has an institutional interest in the investment's apparent success. Comparable separations of promotional and regulatory functions exist in other jurisdictions' investment promotion agencies and are generally regarded as good practice for exactly the reason identified here: a single body that both markets a jurisdiction to investors and polices their compliance faces an inherent tension between those two roles.

- **STRENGTHENING THE PRACTICAL VALUE OF JUDICIAL REVIEW**

  Because Chapter Four found that judicial review, while doctrinally available, offers limited practical comfort given its cost, delay and supervisory rather than substitutionary character. Consideration might also be given to a statutory right of administrative appeal internal to the Agency or to the Ministry, rather than to the courts in the first instance against a refusal or undue delay in making a section 33(1) recommendation or a section 31 certification. An internal appeal of this kind, decided within a fixed period by an official or panel distinct from the original decision-maker, would be faster and cheaper than judicial review, would not require the investor to exhaust the various procedural prerequisites attached to a High Court application, and would generate, over time, a body of internal precedent that could itself begin to narrow the uncertainty Chapter Three identified. It would function, in effect, as a faster substitute for the case law that has not yet developed through the ordinary courts.

  The case of Attorney-General v Clarke confirms that even a power described in the broadest terms remains subject to judicial supervision having regard to the scope and object of the enabling Act. However, several structural features of the ITBD Act of 2022 Act make a successful challenge to the exercise of discretion under sections 31 and 33(1) unlikely in practice: the absence of any published criterion against which the Agency's or the Minister's judgment can be measured makes it difficult to satisfy the Wednesbury threshold for irrationality.[72] Parliamentary oversight is similarly diminished. This is because incentives granted at the Minister's or the Agency's discretion do not require parliamentary tabling or approval, and the National Assembly's general capacity to scrutinise tax expenditures has itself been assessed as limited by the constraints on the information available to Members of Parliament. The cumulative effect is a discretionary framework that is reviewable in theory but only weakly checked in practice, whether by the courts or by the legislature.

- **CONVERT SECTIONS 31AND 33(1) INTO CRITERIA-BOUND POWERS**

  The Minister's power should be amended to specify the objective considerations the Minister must take into account before exercising his power Requiring the Minister's response to state, on its face, how the prescribed criteria have been applied to the recommendation in question would not remove ministerial involvement, but would convert what is currently an unstructured discretion into a reviewable exercise of judgment, susceptible in principle to a more searching illegality or irrationality challenge than is currently practicable.

5.4 RECOMMENDATIONS FOR FUTURE RESEARCH

Because the empirical question of how the Agency and the Minister have actually exercised their powers under sections 31 and 33(1) of the ITBD Act, since the Act's commencement requires methods that fall outside the purview of a primarily legal study of this kind, such as interviews with investors and officials, analysis of the Agency's internal case records, and surveys of investors who have gone through the process, this research has purposefully limited itself to a doctrinal and comparative analysis. Future studies using mixed-methods or empirical approaches could explicitly assess if the dangers noted here as anticipated on the statute's face have actually come to pass in the Agency's actual administrative procedures.

Additionally, such research would be in a good position to determine whether the lack of reported litigation mentioned in Chapter Four indicates investor contentment with the current situation or merely the practical lack of appeal of litigation as a remedy a distinction that this research's qualitative approach is unable to resolve on its own.

5.5 CONCLUSION

Zambia's Investment, Trade and Business Development Act No. 18 of 2022 was enacted to promote, among other things, an efficient, effective and coordinated private sector led economic development strategy.[73] Sections 31 and 33(1) sit at the heart of how that strategy is meant to be delivered to individual investors, since they govern the mechanism by which the incentives the Act promises actually reach the people the Act is meant to attract. This Research has argued that as currently drafted those two provisions require investors to pay a substantial amount of unstructured administrative discretion for that delivery, discretion which is narrower in scope than it might have been but loose enough in its exercise to leave the timing and substance of relief substantially in the hands of the Agency and the Minister, checked only thinly by an institutional architecture of uncertain independence and a judicial review jurisdiction that is doctrinally sound but practically modest.

This is not to suggest the Act has failed, or that Zambia's investment climate is uniquely poor by regional standards; the comparative material in Chapter Four shows that even South Africa

[73] 'The Investment, Trade and Business Development Act, No 18 of 2022.

retains some discretionary element somewhere in its incentive architecture. Zambia's recent willingness to revisit and expand its incentive provisions suggests a legislature still actively engaged with the question. What this Research has tried to show is that the particular way sections 31 and 33(1) are drafted leaves more of that discretion unstructured than comparative best practice would suggest is necessary, and that modest, targeted reforms.

A statutory timeline, published evidentiary criteria, a narrower definition of full compliance, an internal appeal mechanism could close much of the gap between the certainty the Act promises on its face and the discretion it currently delivers in practice, without sacrificing the legitimate administrative judgment that screening investment pledges genuinely requires. Whether the legislature, the Agency or the Ministry take up that invitation is, naturally, a matter beyond this Research's reach to determine; what lies within its reach is to have shown, as precisely as a textual and comparative analysis allows, why the invitation is worth extending.

6.0 REFERENCES

TABLE OF CASES

Zambian Cases

1. Attorney-General v Clarke (Appeal No 96A/2004, Supreme Court of Zambia)
2. Chilufya v City Council of Kitwe (1967) ZR 115 (HC)
3. Hon Justice Dennis Chirwa v Attorney-General (HP/0534/2013, High Court of Zambia)
4. MM Zambia Ltd v Zambia Revenue Authority (2014/HP/0100, High Court of Zambia, unreported)

International and Foreign Cases

1. Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 (CA)
2. Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374 (HL)
3. Nottinghamshire County Council v Secretary of State for the Environment [1986] AC 240 (HL)
4. Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997 (HL)
5. Ridge v Baldwin [1964] AC 40 (HL)
6. *Técnicas Medioambientales Tecmed SA v Mexico*, ICSID Case No ARB(AF)/00/2, Award (29 May 2003)
7. Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223

TABLE OF LEGISLATION

Zambian Legislation

1. Constitution of Zambia (Amendment) Act No 2 of 2016 (Zambia)

2. Customs and Excise Act, Chapter 322 of the Laws of Zambia

3. Customs and Excise (General) (Amendment) Regulations, SI No 96 of 2025 (Zambia)

4. Customs and Excise (General) Regulations, SI No 54 of 2000 (Zambia)

5. Income Tax Act, Chapter 323 of the Laws of Zambia

6. Investment, Trade and Business Development Act No 18 of 2022 (Zambia)

7. Zambia Development Agency Act No 17 of 2022 (Zambia)

Foreign Legislation

1. Income Tax Act 58 of 1962 (South Africa)

2. Special Economic Zones Act 16 of 2014 (South Africa)

3. Taxation Laws Amendment Act 23 of 2020 (South Africa)

BOOKS AND OTHER MATERIALS

1. Bird RM, 'Tax Incentives in Developing Countries' (2008) 4 *Bulletin for International Taxation* 1

2. Church WL, 'The Common Law and Zambia' (1974) 6(1) *Zambia Law Journal*

3. Craig P, *Administrative Law* (9th edn, Sweet & Maxwell 2021)

4. Dolzer R, Kriebaum U and Schreuer C, *Principles of International Investment Law* (3rd edn, Oxford University Press 2022)

5. Dunning JH, *Multinational Enterprises and the Global Economy* (Addison-Wesley 1993)

6. Holcombe RG, *Advanced Introduction to Public Choice* (Edward Elgar Publishing 2016)

7. International Monetary Fund, Organisation for Economic Co-operation and Development, United Nations and World Bank, *'Options for Low Income Countries' Effective and Efficient*

Use of Tax Incentives for Investment' (Report to the G20 Development Working Group, 2015)

8. Isayev UT, *Foreign Investment during the Transition: How to Attract It, and How to Make the Best Use of It* (Foreign Investment Agency Publications, Kyrgyz 2005)
9. James S, *Effectiveness of Tax and Non-Tax Incentives and Investments: Evidence and Policy Implications* (World Bank Group / Investment Climate Advisory Services, 2013)
10. Joong WC, *Foreign Direct Investment: Determinants, Trends in Flows and Promotion Policies* (Pacific Publishers, Beijing 2003)
11. Muchlinski PT, *Multinational Enterprises and the Law* (3rd edn, Oxford University Press 2021)
12. Musgrave RA, *The Theory of Public Finance: A Study in Public Economy* (McGraw-Hill 1959)
13. North DC, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press 1990)
14. Organisation for Economic Co-operation and Development, *Foreign Direct Investment for Development: Maximising Benefits, Minimising Costs* (OECD, Paris 2002)
15. Peters BG, *Institutional Theory in Political Science: The New Institutionalism* (4th edn, Edward Elgar Publishing 2019)
16. Raz J, *The Authority of Law: Essays on Law and Morality* (Clarendon Press / Oxford University Press 1979)
17. Sornarajah M, *The International Law on Foreign Investment* (5th edn, Cambridge University Press 2021)
18. South African Revenue Service, *Draft Guide to Income Tax Benefits in Special Economic Zones* (SARS, 2024)

19. Surrey SS, *Pathways to Tax Reform: The Concept of Tax Expenditures* (Harvard University Press 1973)

20. Syukur M, 'Tax Incentives for Covid-19 Donations from the Perspective of the Relationship between Indonesian Tax Law and Human Rights' (2020) 2 *Jurnal Suara Hukum*

21. Trubek DM, 'Max Weber on Law and the Rise of Capitalism' [1972] *Wisconsin Law Review* 720

22. UNCTAD, *Investment Policy Study: Zambia* (UNCTAD, 2006)

23. United States Department of State, '2025 Investment Climate Statements: Zambia' (Bureau of Economic and Business Affairs, 2025) <https://www.state.gov/reports/2025-investment-climate-statements/zambia> accessed 1 July 2026

24. Republic of Zambia, *Vision 2030: A Prosperous Middle-Income Nation by 2030* (December 2006)

25. Wade HWR and Forsyth CF, *Administrative Law* (12th edn, Oxford University Press 2022)

26. Zee HH, Stotsky JG and Ley E, 'Tax Incentives for Business Investment: A Primer for Policy Makers in Developing Countries' (2002) 30 *World Development* 1497

27. Zhan J (ed), *Investment Promotion Provisions in International Investment Agreements* (United Nations Secretariat, New York 2008