Tax Law Inefficiencies and the Reliance on PAYE in Zambia: A Comparative Legal Analysis with Lessons Drawn from South Africa

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TURNITIN REPORT

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DEDICATION

To my younger self, you believed you could and you did. To the little girl whose dreams are coming true and living in her answered prayers, this is a reminder that you can do anything you set your mind to. You are taking steps at making a positive impact in the world.

To my father, Obed Angasisye, your wisdom, encouragement and teachings will forever be one of the reasons that I believe anything is possible as long as God allows it. This reflects that reason. To my mother Edith Tembo Angasisye whose first fruit is destined for greatness. To my siblings Lidah Angasisye and Barry Angasisye, I hope you see that we are a mirror of the true meaning of our name. To my role model, Shidah Angasisye, who reminds me why I can't just be ordinary when I can be extraordinary.

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To every young girl who looks up to me and gets inspired, this is for you.

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ABSTRACT

This paper analyses the legal tax framework in Zambia and how it affects the reliance on PAYE as a revenue generator. Over the years, PAYE has continued as the best performing tax type and received little to no tax band adjustments, regardless of the change in the economic position of the country. As a result of the consistent good performance despite the existence of multiple tax bases, revenue collection has increasingly become reliant on Pay As You Earn (PAYE). This raises questions regarding the effectiveness, equity and efficiency of Zambia's tax legal framework. Using a doctrinal approach, incorporating evidence from existing literature, including statutes such as the Income Tax Act of the Laws of Zambia CAP 323, the Value Added Tax Act of the Laws of Zambia CAP 331, the Customs and Excise Duty Act of the Laws of Zambia CAP 322, subsidiary legislation, international tax instruments and relevant case law, this study examines the extent to which legal inefficiencies within Zambia's tax framework contribute to narrowing the tax base and the consequent overreliance on PAYE. This doctrinal methodology is complimented by a comparative analysis with South Africa's tax framework. The study finds that, although Zambia has a comprehensive tax framework in place, the extensive tax exemptions, investment incentives, zero-rating provisions, customs duty concessions, VAT deferment schemes, legislative volatility in mining taxation, and weaknesses in the implementation of international tax standards have collectively reduced the effectiveness of alternative revenue sources. A comparative analysis with South Africa reveals that legislative stability, stronger administrative enforcement, effective implementation of international tax standards, and stricter oversight of tax incentives contribute to a broader and more diversified tax base. The study concludes that Zambia's overreliance on PAYE is fundamentally linked to the legal design of its tax framework rather than merely administrative shortcomings. The study recommends the establishment of a comprehensive tax expenditure framework, reform of VAT exemptions and zero-rating provisions, strengthening of mining taxation legislation, enhancement of customs and international tax administration, increased parliamentary oversight of tax incentives, and periodic adjustment of PAYE tax bands. These reforms would contribute to a more equitable, efficient, and sustainable tax system capable of broadening the tax base and reducing dependence on PAYE.

Keywords: Legal Tax Framework, Revenue Mobilisation, PAYE, Tax Base

LIST OF ABBREVIATIONS AND ACRONYMS

AJIEL	African Journal of International Economic Law
ARDL	Autoregressive Distributed Lag
ATAF	African Tax Administration Forum
Cap	Chapter (Laws of Zambia)
CIT	Corporate Income Tax
CSAT	IBFD Centre for Studies in African Taxation
GRZ	Government of the Republic of Zambia
IBFD	International Bureau of Fiscal Documentation
ICTD	International Centre for Tax and Development
IMF	International Monetary Fund
IPC-IG	International Policy Centre for Inclusive Growth
LLB	Bachelor of Laws
LLM	Master of Laws
MoF	Ministry of Finance (Zambia)
PAYE	Pay As You Earn
SADC	Southern African Development Community
SARS	South African Revenue Service
SI	Statutory Instrument
TJNA	Tax Justice Network Africa
UNZA	University of Zambia
VAT	Value Added Tax
ZRA	Zambia Revenue Authority
ZCAS	Zambia Centre for Accountancy Studies
ZDA	Zambia Development Agency
ZIPAR	Zambia Institute for Policy Analysis and Research

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Mines and Minerals Development Act No. 7 of 2008

Mines and Minerals Development Act No. 11 of 2015

Minerals Regulation Commission Act No. 12 of 2024

Value Added Tax Act, Cap 331, Laws of Zambia

Zambia Development Agency Act No. 11 of 2006

Zambia Revenue Authority Act No. 17 of 1993

Finance Act No. 15 of 2008

Finance Act No. 13 of 2009

Finance Act No. 29 of 2014

Finance Act No. 17 of 2015

Value Added Tax (General) Rules, SI No. 54 of 1995

Income Tax (Transfer Pricing) Regulations, SI No. 24 of 2018

SOUTH AFRICA

Income Tax Act 58 of 1962

Value-Added Tax Act 89 of 1991

Tax Administration Act 28 of 2011

Mineral and Petroleum Resources Royalty Act 28 of 2008

Mineral and Petroleum Resources Development Act 28 of 2002

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Metcash Trading Ltd v Commissioner, South African Revenue Service 2001 (1) SA 1109 (CC)

AngloGold Ashanti Ltd v Minister of Finance (2012) ZAGPPHC 127

CHAPTER ONE

1.0 INTRODUCTION

Tax administration is a critical component of effective revenue mobilisation and the equitable distribution of tax burdens. In Zambia, the legal framework is primarily governed by statutes, statutory instruments and administrative rules that collectively regulate revenue collection. However, despite this elaborate framework, inefficiencies within these statutory frameworks reveals a disproportionate reliance on Pay As You Earn (PAYE). This reliance raises critical legal and policy concerns regarding the taxation legal design and its alignment with the canons of a good tax system. In contrast, South Africa has developed a more responsive and structured tax administration system, characterised by broader tax base utilisation and periodic legislative adjustments. This study therefore examines the impact of an inefficient tax legal framework on PAYE taxpayers in Zambia and draws comparative lessons from South Africa.

1.1 BACKGROUND

Zambia's tax system is anchored in primary legislation comprising the Income Tax Act,[1] the Value Added Tax Act,[2] and the Customs and Excise Act,[3] supplemented by subsidiary legislation and statutory instruments. The Zambia Development Agency Act further shapes the framework by providing fiscal incentives aimed at promoting investment.[4] While this architecture is designed to support a diversified tax base, its practical operation reveals a structural imbalance characterised by the progressive narrowing of effective revenue sources.

This narrowing is driven by the extensive use of exemptions, zero-rating provisions, and investment incentives embedded in statute and expanded through ministerial instruments.[5] Under the Value Added Tax Act, VAT is imposed on taxable supplies and imports pursuant to section 7.[6] However, exemptions under section 15, zero-rating under section 9(5), and the elaborating provisions of the Value Added Tax (General) Rules and Zero-Rating Orders[7] significantly limit the effective VAT base. Reliefs covering financial services, education,

[1]Income Tax Act, Cap 323, Laws of Zambia.
[2]Value Added Tax Act, Cap 331, Laws of Zambia.
[3]Customs and Excise Act, Cap 322, Laws of Zambia.
[4]Zambia Development Agency Act No 11 of 2006.
[5]International Monetary Fund, Zambia: Selected Issues (IMF 2023).
[6]Value Added Tax Act, Cap 331, s 7.
[7]Value Added Tax (General) Rules, SI No 54 of 1995; Value Added Tax (Zero-Rating) Orders.

selected agricultural inputs, and exports reduce the scope of taxable transactions,[8] raising concerns regarding revenue leakage and administrative complexity.[9] The Income Tax Act compounds this through deductions and sector-specific allowances, reinforced by incentives under the Zambia Development Agency Act including reduced corporate tax rates, customs duty exemptions, and VAT deferments.[10]

The cumulative effect across tax regimes is a contraction of the effective tax base, which has increased reliance on Pay As You Earn (PAYE) as a stable, source-based revenue stream. This reliance is further intensified by the failure to adjust PAYE tax bands in line with inflation, disproportionately burdening formally employed taxpayers. Notwithstanding this, existing scholarship has not adequately examined the doctrinal interaction between these statutory provisions and the structural over-reliance on PAYE. Jurisdictions such as South Africa, which apply a more controlled approach to incentive management supported by legislative oversight and administrative enforcement, offer a relevant comparative benchmark for potential reform.

1.2 STATEMENT OF THE PROBLEM

A well-functioning tax system requires equity, neutrality, and efficiency in revenue mobilisation, achieved through a balanced distribution of the tax burden across multiple bases.[11] Zambia's legislative framework, comprising the Income Tax Act, the Value Added Tax Act, and the Customs and Excise Act, supported by subsidiary legislation, is designed to reflect these principles. The legal problem is the following: Zambia's tax statutes, taken individually and in their interaction, contain provisions that structurally narrow the effective tax base of every major non-PAYE revenue instrument whilst leaving the self-executing withholding architecture of PAYE intact. The result is an involuntary and structurally embedded PAYE dominance that the legislature has neither designed nor cured. This imbalance is attributable to legal inefficiencies within the statutory and subsidiary provisions governing other tax types. Extensive exemptions, zero-rating provisions, rebates, and investment incentives, found across the Value Added Tax Act, the Customs and Excise Act, and the Zambia Development Agency Act, have collectively narrowed the effective tax base and weakened revenue mobilisation. These measures, frequently expanded through ministerial

[8]Value Added Tax Act, Cap 331, Second Schedule.
[9]Liam Ebrill and others, The Modern VAT (IMF 2001).
[10]Zambia Development Agency Act No 11 of 2006, ss 16, 33.
[11]Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations (1776); John Tiley, Revenue Law (Hart Publishing).

statutory instruments, introduce legal uncertainty and constrain the revenue-generating capacity of the relevant taxes.

This study addresses the doctrinal gap by examining the legal inefficiencies within the tax framework that collectively contribute to PAYE dependence, drawing comparative insights from South Africa to propose targeted reforms toward a more balanced and equitable tax system.

1.4 RESEARCH OBJECTIVES

The main objective of this study is to evaluate the effectiveness of Zambia's tax laws in achieving equitable and efficient revenue mobilisation. Specifically;

1. To analyse the legal framework governing taxation in Zambia, including the Income Tax Act, Value Added Tax Act, Customs and Excise Act and International Standards.
2. To examine how the governing legal frameworks, affect the revenue collection and contribute to the over-reliance on PAYE.
3. To compare Zambia's tax framework with South Africa's and propose lessons that Zambia can learn.

1.5 RESEARCH QUESTIONS

1. What is the legal framework governing taxation in Zambia?
2. How are these legal frameworks affecting the revenue collection and contributing to the reliance on PAYE?
3. How can the Zambian tax framework compare to the South African tax framework and what can Zambia adopt from it?

1.6 SIGNIFICANCE OF THE STUDY

This study addresses a critical gap in the existing literature on Zambia's tax legal framework and how it's inefficiencies contribute to the cumulative effect of statutory exemptions, incentives, and subsidiary legislation on revenue mobilisation. While existing literature has examined tax incentives, VAT administration, and mining taxation in isolation, there is limited doctrinal legal analysis that evaluates how these provisions, across multiple statutes, interact to narrow the tax base and contribute to the over-reliance on Pay As You Earn (PAYE). This research therefore contributes to legal scholarship by providing a holistic analysis of Zambia's tax laws, with particular focus on the legal structures that shape revenue outcomes.

The study further contributes to academic knowledge by applying principles of tax law, to assess the effectiveness of Zambia's legal framework. By examining how these principles are undermined through the provisions the research offers a structured legal interpretation of a problem that has largely been addressed from an economic or policy perspective. The inclusion of a comparative analysis with South Africa strengthens this contribution by demonstrating how similar legal systems can achieve more balanced and adaptable tax regimes. By proposing targeted legal reforms, the research aims to support the development of a more balanced tax system that reduces reliance on PAYE and promotes fairness and equity within the tax system, fundamental principles of taxation, as well as, enhances revenue from underperforming sectors such as mining, trade, and consumption taxes.

Finally, the study is timely and original. In light of ongoing fiscal reforms and increasing scrutiny of tax incentives in Zambia and across developing economies, there is a growing need for legal analysis that moves beyond policy critique to examine the statutory foundations of these challenges. This research distinguishes itself by focusing on the legal design and interaction of tax laws, rather than solely on their economic outcomes, thereby offering a novel perspective within Zambian tax scholarship

1.7 LITERATURE REVIEW

Introduction

A recurring paradox in the study of taxation in developing countries is that the taxes most reliably collected are rarely those best designed to mobilise the broadest revenue base. In Zambia, this paradox has an identifiable statutory explanation: Pay As You Earn (PAYE) dominates revenue collection not because the labour income base is the largest or most productive in the economy, but because its collection mechanism, mandatory employer withholding, operates automatically, leaving the employed taxpayer no discretion to defer, underreport, or evade. Every other major tax type, Value Added Tax (VAT), corporate income tax, and mineral royalty, depends in varying degrees on voluntary self-assessment against which the Zambia Revenue Authority's (ZRA) enforcement capacity is demonstrably insufficient. The result is a tax system that is structurally skewed: stable and predictable where compliance is compelled; volatile and underperforming where it is merely expected.

This chapter reviews and critically evaluates the existing scholarship bearing on this structural condition across four thematic clusters: PAYE reliance and the withholding architecture that sustains it; VAT statutory design, exemption breadth, and self-assessment failure; mining

taxation volatility and its fiscal and investment consequences; and doctrinal scholarship on what an effective African tax system should look like. The critical assessment of each contribution identifies not only its analytical strengths but its methodological limitations and scope gaps, because those gaps collectively define the doctrinal and comparative space that this thesis is designed to occupy.

1.7.2 PAYE Reliance: The Revenue Consequences of Withholding Architecture

The foundational domestic legal engagement with Zambia's PAYE over-reliance is Fredrick Nsama's 2013 dissertation,[12] which examines whether Zambia's tax statutes satisfy the principles of adequacy and equitable application. Nsama's central finding, that the framework fails both criteria, and that PAYE's disproportionate burden reflects the structural absence of equivalent collection mechanisms for other tax types, remains the starting point for any doctrinal analysis of this problem. Where PAYE's employer-withholding architecture removes compliance discretion entirely, corporate income tax and VAT rest on voluntary self-disclosure. Nsama's insight that the problem is one of collection mechanism design rather than rate design is the foundational claim on which this thesis builds.

This structural observation is independently corroborated by two institutional reports that examine the same phenomenon from a fiscal management perspective. The IMF's 2022 Article IV Consultation on Zambia[13] documents PAYE's disproportionate contribution to domestic revenue relative to its theoretical share of the tax base, attributing this to weak statutory enforcement of VAT and corporate income tax rather than to any inherent superiority of the employment tax base. The World Bank's 2020 Public Expenditure Review[14] reinforces this, demonstrating that PAYE's stability relative to volatile mining and VAT revenues has embedded it as the de facto anchor of Zambia's budgetary planning, a role that reinforces institutional resistance to the VAT and corporate tax reforms that would be necessary to reduce PAYE dependence.

Nsama's limitations are substantial.[15] His prescriptions are confined to rate adjustment, failing to develop his structural diagnosis into collection mechanism reform proposals. The data is materially outdated, predating the Smart Invoice Regulations of 2021 and the Finance Acts of 2022–2024. And as an undergraduate dissertation without peer review, the work lacks the

[12]Fredrick Nsama, 'Are Zambia's Tax Laws Adequate and Effectively Applied?' (UNZA LLB Dissertation, 2013) 14–37.
[13]IMF, 'Zambia: 2022 Article IV Consultation' (IMF Country Report No 22/292, 2022) 18–26.
[14]World Bank, 'Zambia Public Expenditure Review' (World Bank 2020) 34–42.
[15]ibid 29–37.

methodological rigour that a thesis argument requires its foundational sources to have. The IMF and World Bank reports, while empirically authoritative, are policy documents rather than legal analyses: they identify what is happening without engaging with the statutory provisions that produce it.

1.7.3 Econometric Evidence and Doctrinal Silence

The most technically rigorous domestic contribution on the macroeconomic consequences of Zambia's direct tax structure is Mwiimbi and Phiri's 2021 empirical study,[16] which uses an ARDL bounds testing approach to disaggregate the growth effects of PAYE, corporate income tax, and withholding tax over 1990–2019. Their finding that PAYE positively affects economic growth confirms its macroeconomic function as a stable, employment-correlated revenue stream. Their more significant finding for this thesis is that withholding tax on investment income exerts a negative growth effect in both the short and long run, attributable to a liquidity constraint on business investment. This finding qualifies any straightforward argument for extending the PAYE withholding model to capital income: the design and rate of extended withholding must be calibrated against macroeconomic costs rather than applied mechanically.

The study's most significant limitation is its treatment of tax instruments as economic variables rather than legal constructs.[17] Mwiimbi and Phiri do not examine the statutory design features, remittance frequency, employer liability rules, penalty structure, rate schedules, that produce the compliance rates their model assumes. A growth-negative withholding tax coefficient may reflect a poorly designed rate and remittance schedule rather than an inherent problem with withholding-based collection, but the study cannot distinguish between these explanations. The aggregation of PAYE into a single regressor without sector disaggregation further limits the policy precision of the positive growth coefficient. These are the doctrinal gaps that the statutory analysis in Chapter Three of this thesis directly fills.

1.7.4 VAT: Statutory Exemptions, Self-Assessment Failure, and Refund Dysfunction

Policy Diagnosis Without Statutory Prescription

The ActionAid Zambia report[18] provides the most comprehensive policy analysis of VAT underperformance, documenting revenue leakages attributable to the informal sector outside

[16]Princeton Mwiimbi and Chilizani Phiri, 'An Investigation of the Impact of Direct Taxes on Economic Growth in Zambia' (2021) 4(7) American Research Journal of Humanities and Social Sciences 1, 4–22.
[17]ibid 10–22.
[18]Boyd Muleya, Peter Mumba and Mukuka Chilalika, 'An Analysis of the Zambian Taxation System' (ActionAid Zambia 2022); Nalucha Nganga Ziba and Musonda Kabinga, contributing authors to the same report.

the registration threshold, weak invoice verification, and chronic refund delays. The report's authors identify a self-reinforcing dynamic that is central to this thesis: ZRA's administrative resources are concentrated on large taxpayers, the primary PAYE remitters, generating reliable employment income tax while leaving VAT compliance in the medium and small taxpayer segments effectively unverified. Kabinga's expenditure analysis demonstrates that PAYE's relative predictability has institutionalised it as the budgetary planning anchor, creating structural disincentives for the investment in VAT administration reform that broadening the consumption tax base would require.

The doctrinal dimension of the VAT problem is most precisely located in the statute itself. Section 15 of the VAT Act Cap 331, which governs exemptions, and section 9(5), which governs zero-rating,[19] together carve out categories, financial services, education, agricultural inputs, and a range of other supplies, that substantially reduce the effective VAT base. These provisions have been consistently critiqued as broader than revenue adequacy or social equity justifications warrant. ZIPAR's Tax Policy Review[20] identifies the breadth of these exemptions and the proliferation of Statutory Instruments expanding reliefs beyond legislative intent as primary doctrinal weaknesses, arguing that the combined effect of statutory and subsidiary instrument exemptions is to undermine both the revenue yield and the legal certainty of the VAT system.

Neither the ActionAid report nor ZIPAR translates its diagnosis into specific statutory amendment proposals.[21][22] The ActionAid report is an advocacy document with no formal methodology section, and its reform prescriptions, "stronger VAT enforcement", "limiting exemptions", are not grounded in specific provisions of the VAT Act. ZIPAR's prescription of institutional capacity investment as a precondition for reform is circular: it does not address the revenue gap during the development period. Both contributions identify the what without engaging with the how at the level of statutory drafting. That translation is a core contribution of this thesis.

[19]Value Added Tax Act Cap 331 of the Laws of Zambia, s 15 (exemptions) and s 9(5) (zero-rating).
[20]Zambia Institute for Policy Analysis and Research, 'Tax Policy Review Report' (ZIPAR 2021) 12–40.
[21]ActionAid Zambia Report (n 7) 18–48.
[22]ibid 36–40.

1.7.5 Mining Taxation: Statutory Volatility, Fiscal Space Erosion, and the PAYE Anchor

Kalikeka and Nsenduluka's TJNA report[23] provides empirical proof of a structural pathology in Zambia's mining fiscal regime: through systematic tabulation of legislative amendments since 2001, the authors demonstrate that the mining tax framework has been materially altered on average every eighteen months, cycling between revenue-motivated rate increases and industry-pressure reversals. This volatility is not merely administratively disruptive, it is fiscally self-defeating. By comparison with Botswana and South Africa, where negotiated fiscal stability frameworks have produced higher long-run aggregate mining revenues at lower nominal rates, Zambia's reactive legislative pattern has reduced the investment and production base to which even high rates are applied.

The doctrinal dimension of this volatility is illustrated starkly in case law, in which the ambiguity of the royalty valuation provisions in the Mines and Minerals Development Act generated a high-stakes dispute over the statutory meaning of "gross value" for royalty assessment purposes. The case exemplifies the revenue cost of imprecise statutory drafting in the mining tax context: where the rate-setting mechanism is clear but the valuation base is ambiguous, litigation substitutes for collection and deferred revenue becomes unrecoverable. Aguirre Unceta's IPC-IG working paper[24] situates this within the broader fiscal space framework, demonstrating that mining revenue volatility has made public expenditure on health, education, and social protection structurally unstable, and that PAYE, the only commodity-price-independent domestic revenue stream, has by default become Zambia's fiscal anchor, performing a stabilisation function it was never designed to serve.

The TJNA report's limitation is the gap between its empirical precision and its prescriptive vagueness:[25] it recommends fiscal stability clauses without proposing statutory drafting models or examining the specific legislative provisions of Botswana's or South Africa's mining statutes that achieve the stability it advocates. Aguirre Unceta's paper is entirely silent on statutory mechanisms,[26] prescribing domestic revenue base broadening without identifying which provisions of the Income Tax Act or VAT Act require amendment. Both contributions

[23]Mbewe Kalikeka and Mukupa Nsenduluka, 'Taxing Zambia's Mining Sector for the Energy Transition' (Tax Justice Network Africa 2023) 8–30; Tax Justice Network Africa, 'Collaborative Research on Zambia's Mining Fiscal Regime' (TJNA 2023).

[24]Rafael Aguirre Unceta, 'Mining Revenue, Fiscal Space and Social Policies: The Case of Zambia' (IPC-IG Working Paper No 191, 2021) 6–30; International Policy Centre for Inclusive Growth (IPC-IG 2021).

[25]TJNA Mining Report (n 12) 20–30.

[26]IPC-IG Working Paper (n 14) 26–30.

leave the most practically important question, how should the law be written differently? unanswered. This thesis answers it.

1.7.6 Doctrinal Standards: What an Effective African Tax System Must Look Like

The empirical literature reviewed above diagnoses Zambia's revenue pathology but does not supply the normative legal framework against which the statutory design can be assessed and a reformed design measured. That framework is supplied by a body of doctrinal scholarship and comparative institutional analysis that this thesis adopts as its evaluative architecture.

Teresa Pidduck's work on tax research methodology in African contexts[27] makes the argument that is foundational to the method of this thesis: in jurisdictions where, judicial tax jurisprudence is thin, the quality of statutory drafting bears the entire interpretive and corrective burden that courts carry in more developed systems. Zambia's Income Tax Act Cap 323 and VAT Act Cap 331 are administered against a sparse body of domestic tax case law, meaning that ambiguous provisions produce compliance uncertainty that no judicial construction has resolved. Doctrinal analysis of these statutes is therefore not merely academically legitimate, it is the primary tool through which reform can be identified and designed.

The African Tax Administration Forum's comparative reports[28] provide the most practically grounded institutional complement to Pidduck's methodological framework. ATAF's analysis of statutory frameworks across African countries consistently recommends three doctrinal reforms: limiting statutory exemptions and discretionary ministerial powers that reduce legal certainty; harmonising tax incentives to prevent base erosion through proliferating subsidiary instruments; and strengthening the statutory basis for audit and enforcement powers to reduce the gap between legal authority and operational capacity.[29] South Africa's Tax Administration Act 28 of 2011 is cited across ATAF reports as the regional model for statutory clarity in the governance of tax administration:[30] its consolidation of audit powers, taxpayer rights, and enforcement mechanisms into a single coherent statute contrasts directly with Zambia's fragmented administrative provisions spread across the ZRA Act, the Income Tax Act, and the VAT Act. Pidduck's framework is methodological rather than substantive, it prescribes how

[27]Teresa M Pidduck, 'Tax Research Methodology in Africa: A Doctrinal and Reform-Oriented Approach' (University of Pretoria 2018); Teresa M Pidduck, 'Doctrinal Tax Research and the African Context' (2021) 3 African Tax Law Review 45, 48–56.

[28]African Tax Administration Forum, 'African Tax Outlook 2020' (ATAF 2020); ATAF, 'African Tax Outlook 2022' (ATAF 2022); ATAF, 'African Tax Outlook 2024' (ATAF 2024).

[29]ATAF (2024) (n 19) 38–46.

[30]ATAF (2022) (n 19) 44–52.

doctrinal research should be conducted without applying the method to any specific statutory framework.[31] ATAF's reports, while empirically comparative and practically oriented, operate at the level of policy recommendation rather than statutory analysis: they identify which features of South Africa's Tax Administration Act are worth emulating without engaging in a doctrinal comparison of the specific provisions. Both contributions require the researcher to supply the jurisdiction-specific legal content, which is what this thesis provides for Zambia.

Legal Certainty, Base Breadth, and Accountability

Okanga Okanga and Lyla Latif[32] argue that systemic vulnerabilities in African tax systems are legally embedded: legal uncertainty, the unpredictability of statutory obligations, excessive ministerial discretion, and the absence of harmonised rules, structurally facilitates avoidance and suppresses compliance. The 2022 volume of the African Journal of International Economic Law[33] develops this theme in a comparative analysis of tax incentives and statutory coherence, contrasting South Africa's model of parliamentary legislative oversight with Zambia's pattern of executive Statutory Instrument proliferation as a primary source of the legal uncertainty that the ZIPAR review identifies as a VAT compliance deterrent.

The IBFD Centre for Studies in African Taxation[34] provides the five-criterion evaluative framework that this thesis applies to Zambia's statutory design: broad tax base (limiting exemptions and zero-rating); equity (fairness between PAYE taxpayers, corporations, and the informal sector); certainty (stable statutory frameworks, minimal ministerial discretion); neutrality (avoiding sector-specific distortions); and administrative feasibility (aligning statutory complexity with institutional capacity). Comparative evidence from Ghana and South Africa, where legislative limitation of statutory incentives has stabilised revenue mobilisation, grounds these criteria in observable outcomes rather than abstract principle. Mick Moore's doctrinal work[35] on the legal relationship between statutory design and fiscal accountability reinforces the framework: statutes that broaden the tax base and reduce reliance on narrow sources like PAYE are not merely revenue-efficient but constitutionally significant, because

[31]Pidduck (2021) (n 17) 52–56.
[32]Okanga Okanga and Lyla Latif, 'Systemic Vulnerabilities in African Tax Systems: Inclusive Frameworks and Global Governance Reforms' (2021) 2 African Journal of International Economic Law 112, 118–130.
[33]'Tax Incentives and Statutory Coherence in African Countries' (2022) 3 African Journal of International Economic Law (various contributors) 45–88.
[34]IBFD Centre for Studies in African Taxation (CSAT), 'Statutory Design and Tax Administration Capacity in Sub-Saharan Africa' (IBFD 2022); CSAT Research Programme on African Tax Law (IBFD 2019–2023).
[35]Mick Moore, 'Taxation and Development — Again' (2014) ICTD Working Paper 11; Mick Moore, 'What Is Wrong with African Tax Administration?' (2018) ICTD Working Paper 82.

broad-based taxation creates the fiscal contract between citizen and state on which democratic accountability depends.

Okanga and Latif's global governance emphasis is less directly applicable to Zambia's domestic reform agenda than their legal certainty observations.[36] The AJIEL (2022) comparative analysis of South African legislative oversight does not translate its conclusions into specific Zambian statutory drafting proposals.[37] The CSAT's five-criterion framework requires jurisdiction-specific translation,[38] and Moore's doctrinal contributions are grounded primarily in East and West African evidence.[39] Collectively, these contributions provide the normative architecture that this thesis applies at the level of Zambia's specific statutory provisions, filling the jurisdiction-specific gap that continental-level scholarship necessarily leaves open.

Harmonisation, Transparency, and Incentive Design

Franziska Sucker's doctrinal analysis[40] argues that legal certainty and SADC-level harmonisation of tax rules are prerequisites for effective taxation in southern African developing economies: the instability of individual member states' frameworks imposes regional externalities, regulatory arbitrage, treaty shopping, competitive distortions, that domestic reform alone cannot address. Caroline Ncube[41] focuses the critique more narrowly on ministerial discretion as a structural source of legal unpredictability in African tax law, arguing that the proliferation of discretionary executive powers, to grant exemptions, defer obligations, or vary rates by administrative instrument, is directly correlated with reduced compliance and increased avoidance. Applied to Zambia, Ncube's framework points to the Commissioner-General's discretionary powers under the Income Tax Act and the pattern of VAT Statutory Instrument amendments that ZIPAR documents as a certainty deterrent. Gathii and Akinkugbe[42] stress that statutory instruments governing tax incentives must be designed to balance investment promotion with tax base protection, and that the failure to do so in

[36]ibid 125–130.
[37]ibid 55–68.
[38]CSAT (n 26).
[39]Moore (2018) (n 28) 14–22.
[40]Franziska Sucker, 'Legal Certainty and Harmonisation in African Tax Law' (University of the Witwatersrand 2021); 'Trade Law, Tax Law and Development in Africa' (2022) 15 Journal of African Law 88, 95–106.
[41]Caroline Ncube, 'Transparency, Predictability and Ministerial Discretion in African Tax Law' (University of Cape Town 2020).
[42]James Thuo Gathii and Olabisi Akinkugbe (eds), 'Legal Design, Incentives and Tax Base Protection in African Economic Law' (2021) 2 African Journal of International Economic Law 1, 4–10.

Zambia's mining and special economic zone regimes has eroded the corporate income tax base in ways that further concentrate the revenue burden on PAYE.

Sucker's harmonisation argument is directed at SADC-level reform, making its applicability to Zambia's domestic legislative agenda indirect.[43] Ncube's framework requires contextualisation for Zambia's specific statutory instruments, as her analysis is primarily grounded in South African and East African case law. Gathii and Akinkugbe's editorial contribution addresses taxation as a secondary theme within an investment law framework. None of the three engages in sustained doctrinal analysis of Zambia's specific statutory provisions. The comparative South African case law, *Metcash* and *Brummeria Renaissance*[44], illustrates how judicial reinforcement of broad statutory drafting can deepen the tax base without legislative amendment,[4546] a capacity that Zambia's sparse tax jurisprudence has not yet developed and that places a correspondingly greater reform burden on the statutory text itself.

1.7.7 The Literature's Diagnosis and this Thesis's Contributio

The scholarship reviewed in this chapter converges on a diagnosis that is clear and consistent across disciplines. PAYE dominates Zambia's revenue structure because its statutory architecture[47] compels compliance automatically, while every other major tax type depends on voluntary self-disclosure that ZRA's enforcement capacity cannot systematically verify. VAT underperforms because the breadth of statutory exemptions, the weakness of invoice verification, and the dysfunction of the refund mechanism combine to make the self-enforcement logic of the invoice-credit system inoperative across most of the economy. Mining taxation fails to deliver stable revenue because a pattern of reactive statutory amendment, averaging an 18-month cycle, has deterred the sustained investment that would generate the production base to which even moderate rates apply. And the doctrinal literature on ideal African tax system design prescribes, across a range of scholarly traditions and institutional frameworks, that the remedy lies in broader statutory bases, reduced ministerial discretion, greater legal certainty, and alignment of statutory complexity with administrative capacity.

[43]Sucker (2022) (n 30) 100–106.
[44]Tax Administration Act 28 of 2011 (South Africa); Metcash Trading Ltd v Commissioner, South African Revenue Service 2001 (1) SA 1109 (CC); Commissioner, South African Revenue Service v Brummeria Renaissance (Pty) Ltd 2007 (6) SA 601 (SCA).
[45]Metcash Trading (n 34).
[46]Brummeria Renaissance (n 34).
[47]Income Tax Act Cap 323 of the Laws of Zambia, ss 72–83 (PAYE withholding provisions); VAT Act Cap 331, ss 27–44 (invoice and refund provisions); Mines and Minerals Development Act No 7 of 2008 (as amended).

Two analytical tensions in the literature are directly engaged by this thesis. The first is Mwiimbi and Phiri's finding that withholding tax on investment income exerts a negative growth effect, which qualifies the reform case for extending the PAYE withholding model: the thesis argues for calibrated extension, not blanket replication. The second is ZIPAR's circular capacity-investment prescription: the thesis argues that comparative statutory borrowing from Kenya, Rwanda, and South Africa, jurisdictions with demonstrably superior tax administration legislation, offers a faster and more legally grounded reform pathway than organic institutional development alone, particularly given the legislative precedent established by South Africa's Tax Administration Act,[48] which ATAF consistently identifies as the regional statutory model.

The critical review reveals two principal gaps that define this thesis's contribution. The first is the absence of statutory-level legal analysis: every empirical and policy contribution reviewed treats the legislative framework as backdrop rather than as the primary object of study. No existing work examines the PAYE withholding sections of the Income Tax Act, the VAT exemption provisions, or the Mineral Royalty rate-setting mechanism as legal constructs whose design determines compliance rates and revenue yield. The second gap is the absence of comparative legal analysis at the statutory level: comparative dimensions in the existing literature are policy-comparative rather than grounded in the actual legislation of peer jurisdictions. By providing sustained doctrinal analysis of Zambia's tax statutes, and by comparing their design against the statutory frameworks of Kenya, South Africa, Rwanda, and Botswana, this thesis supplies both forms of legal analysis that the existing literature consistently recommends but never delivers.[49]

1.7.8 Conclusion

The literature reviewed in this chapter is united in its diagnosis and incomplete in its prescription. Nsama identifies the structural problem doctrinally but does not develop a statutory remedy. Mwiimbi and Phiri measure it econometrically but treat the law as an economic variable. The ActionAid team documents it in policy terms but without statutory engagement. ZIPAR diagnoses its institutional drivers but proposes a circularly conditioned reform agenda. Kalikeka, Nsenduluka, and the TJNA map the mining tax failure with empirical precision but without statutory proposals. Aguirre Unceta and the IPC-IG locate the problem in fiscal space theory without legal mechanism design. The IMF and World Bank confirm the

[48]VAT (Smart Invoice) Regulations SI No 87 of 2021; Finance Act 2022; Finance Act 2023; Finance Act 2024.
[49]ZIPAR (n 9) 36–40; ActionAid Zambia Report (n 7) 40–44; ATAF (2024) (n 19) 40–48; CSAT (n 26); Pidduck (2021) (n 17) 52–56; Moore (2018) (n 28) 18–26.

revenue distribution without engaging with the law that produces it. And the doctrinal scholars Pidduck, ATAF, Okanga and Latif, the CSAT, Moore, Sucker, Ncube, Gathii and Akinkugbe articulate the normative standard without applying it to Zambia's specific statutory framework. Together, these contributions establish what is empirically known and normatively required. What they do not establish, and what this thesis provides, is the legal analysis that connects diagnosis to remedy: the examination of which provisions must change, in what direction, and with reference to which comparative models, if Zambia's tax system is to be rebuilt from one that taxes what is easiest to collect into one that taxes what the economy actually produce

1.8 METHODOLOGY

1.8.1 Research Approach

This study adopts a doctrinal legal research approach, complemented by comparative legal analysis. The doctrinal method involves the systematic exposition, analysis, and interpretation of legal rules as contained in statutes, regulations, and related instruments. This approach is appropriate given that the research problem is fundamentally legal in nature, centring on the structure, coherence, and interaction of statutory provisions across different tax regimes. The comparative dimension employs South Africa as a reference jurisdiction to identify alternative legal approaches to tax base protection, administrative control, and the management of tax incentives.

1.8.2 Data Collection and Sources

This study relies exclusively on qualitative legal data drawn from primary and secondary sources. Primary sources include the principal Zambian tax statutes, subsidiary legislation including statutory instruments, VAT Rules and Orders, and ZRA Practice Notes as well as equivalent South African legislation, namely the Income Tax Act 1962, the Value-Added Tax Act 1991, and the Tax Administration Act 2011. Secondary sources comprise academic texts, peer-reviewed journals, legal commentaries, and institutional publications including Ministry of Finance budget reports, which provide analytical and contextual support.

1.8.3 Methods of Analysis

The primary method is doctrinal legal analysis, involving systematic examination and interpretation of statutory provisions to identify inconsistencies, overlaps, and gaps within the legal framework. The study is further grounded in the foundational principles of taxation equity, efficiency, and neutrality, which serve as evaluative benchmarks for assessing Zambia's legal framework. The comparative component applies a functional methodology, examining

how Zambia and South Africa address analogous legal challenges to draw conclusions on legal design and its implications for tax base protection, thereby informing recommendations for reform.

1.8.4 Scope and Limitations

The study is confined to the analysis of income tax, VAT, and customs and excise laws in Zambia, with comparative reference to South Africa. It focuses on statutory provisions, schedules, and subsidiary legislation relating to exemptions, incentives, and tax administration, and does not extend to a full empirical analysis of revenue data or taxpayer behaviour. A key limitation is that doctrinal analysis does not directly measure the practical impact of legal provisions on revenue outcomes; however, this is mitigated by reference to institutional reports and secondary literature. The comparative analysis is limited to South Africa, which is justified by its legal similarities to Zambia and its significance as a regional benchmark.

1.8.5 Ethical Considerations

This study is based entirely on documentary and secondary sources and does not involve human participants. As such, no ethical approval is required. However, all sources are accurately cited and acknowledged in accordance with academic standards to ensure integrity and avoid plagiarism.

1.9 PROPOSED OUTLINE OF CHAPTERS

This thesis is structured into five chapters, each building progressively to address the central research problem:

Chapter Two: The Legal Framework of Taxation in Zambia

This chapter establishes the legal and theoretical foundation of the study. It begins by outlining the structure of Zambia's tax system and the key statutes governing taxation. It provides the conceptual and legal lens through which the subsequent doctrinal and comparative analyses are conducted.

Chapter Three: The Inefficiencies of the Tax Legal Framework in Zambia

This chapter constitutes the core doctrinal analysis of the study. It examines how specific provisions within Zambia's tax laws contribute to inefficiencies in revenue mobilisation and the narrowing of the tax base.

Chapter Four: A Comparative Analysis between Zambia and South Africa

This chapter adopts a comparative legal approach to evaluate how differences in legal design affect tax efficiency and revenue mobilisation, using South Africa as a comparator. It contributes to the study by identifying best practices and reform pathways grounded in comparative legal analysis.

Chapter Five: Conclusion and Recommendations

This chapter synthesises the findings of the study and directly responds to the research questions. It concludes by outlining the study's contribution to legal scholarship and identifying areas for further research.

Conclusion

This chapter has successfully highlighted the compelling legal necessity for this research. By analysing the legal and structural context of Zambia's tax system and identifying the central problem underlying the research, it presents the foundation. It has demonstrated that although Zambia possesses a broad legislative framework governing taxation through the Income Tax Act, the Value Added Tax Act, the Customs and Excise Act, and related subsidiary legislation, the practical operations of these laws has contributed to a narrowing of the effective tax base. The chapter further highlighted that while tax incentives are often justified as tools for economic growth and investment promotion, their cumulative effect may undermine the principles of equity, neutrality, certainty, and efficiency that underpin sound tax systems.

CHAPTER TWO

THE LEGAL DESIGN OF ZAMBIA'S TAX FRAMEWORK

2.1 Introduction

The legal framework governing taxation in Zambia is primarily statutory, anchored in the Income Tax Act, the Value Added Tax Act, the Customs and Excise Act, and the Mines and Minerals Development Act, all supplemented by annual Finance Acts, subsidiary legislation issued by the Minister of Finance and International Standards.[50] These statutes collectively establish the structure of direct and indirect taxation in Zambia and reflect the State's fiscal priorities, developmental objectives, and evolving approaches to revenue mobilisation. The legal framework further operates alongside administrative mechanisms under the Zambia

[50] Income Tax Act, Cap 323, Laws of Zambia; Value Added Tax Act, Cap 331, Laws of Zambia; Customs and Excise Act, Cap 322, Laws of Zambia; Mines and Minerals Development Act No 11 of 2015.

Revenue Authority (ZRA), established under the Zambia Revenue Authority Act of 1993, whose mandate is to assess, collect, and enforce taxes.[51]

Historically, Zambia's tax framework evolved from a colonial revenue system heavily dependent on customs duties and mining revenue into a more diversified framework incorporating income tax, sales tax, and investment-based taxation.[52] However, despite successive reforms, the structure of the tax system continues to reveal significant imbalances, particularly the State's growing reliance on Pay As You Earn (PAYE) as one of the most stable and enforceable sources of domestic revenue.[53]This structural reliance is birthed by the legislative design of Zambia's tax statutes, which increasingly provide exemptions, incentives, deductions, and preferential treatment across major tax bases.

This chapter analyses the legal design of Zambia's tax framework through a doctrinal analysis of the principal tax statutes and related subsidiary legislation. It analyses the structure, legislative intent, and operation of Zambia's direct and indirect taxation system while highlighting the implications of frequent amendments, administrative enforcement challenges, and statutory inconsistencies. The chapter further incorporates judicial decisions and scholarly commentary to demonstrate how the practical operation of these statutes has contributed to narrowing the tax base and reinforcing reliance on PAYE.

2.2 The Income Tax Act and Direct Taxation

The Income Tax Act, Cap 323 of the Laws of Zambia, enacted in 1966, remains the principal statute governing direct taxation in Zambia.[54] The Act was enacted shortly after independence as part of broader efforts by the Zambian Government to establish a comprehensive domestic revenue framework capable of financing public expenditure and reducing dependence on colonial fiscal arrangements.[55] The legislative intent behind the Act was to create a structured and enforceable system for taxing income derived from employment, business activities, investments, and other economic transactions occurring within Zambia.[56]

The Act adopts a source-based system of taxation, under which income accruing in or derived from Zambia is chargeable to tax.[57] Section 4 establishes the persons viewed as a person

[51] Zambia Revenue Authority Act No 17 of 1993.
[52] Richard Goode, Government Finance in Developing Countries (Brookings Institution 1984).
[53] Zambia Revenue Authority, Annual Report 2022.
[54] Income Tax Act, Cap 323, Laws of Zambia.
[55] World Bank, Zambia Public Finance Review: Restoring Fiscal Sustainability(2022).
[56] Income Tax Act, Cap 323, Laws of Zambia.
[57] ibid s 4

resident in Zambia and section 5 further breaks down what the law views as a receipt of income for the aforementioned, while sections 14 and 17 define taxable income and categories of assessable income.[58] These provisions collectively ensure that employment income, business profits, dividends, royalties, and investment income fall within the tax net. As noted by Hugh Ault and Brian Arnold, source-based taxation remains common within developing economies due to its relative administrative simplicity and ease of enforcement.[59]

One of the most significant and consistent features of the Income Tax Act is the institutionalisation of the Pay As You Earn (PAYE) system under section 71.[60] PAYE requires employers to deduct tax directly from employees' salaries before payment is made to the employee, thereby transferring the burden of collection from the State to employers. Cedric Sandford argues that withholding mechanisms such as PAYE are among the most efficient methods of tax collection because they minimise opportunities for evasion and reduce administrative costs.[61] In Zambia, PAYE has become one of the most reliable and consistently performing sources of domestic revenue due to the formal structure of employment taxation and the relative ease of enforcement against salaried workers.[62]

However, while the PAYE system has strengthened revenue collection, it has also contributed to a structural imbalance within Zambia's tax framework. Zambia Revenue Authority reports consistently demonstrate that PAYE contributes a substantial proportion of domestic tax revenue when compared to corporate income tax and other forms of taxation. Scholars and policy institutions argue that this reflects weaknesses in broader tax administration, particularly in relation to the informal sector as well as the mining and manufacturing sector.[15] The legal structure of the Income Tax Act itself contributes to this imbalance through extensive deductions, exemptions, incentives and theoretical gaps between laws originating from the Act and reflecting on the subsidiary acts such as the VAT Act, the Customs and Excise Duty Act, that narrow the effective tax base.

Under sections 29 to 35 of the Income Tax Act, the law has provided for deductions and capital allowances aimed at encouraging investment and industrial development in the country.[63] These provisions allow taxpayers to deduct specified business expenses and claim depreciation

[58] ibid ss 14 and 17.
[59] Hugh J Ault and Brian J Arnold, Comparative Income Taxation: A Structural Analysis (3rd edn, Kluwer Law International 2010).
[60] Income Tax Act, Cap 323, Laws of Zambia, s 71.
[61] Cedric Sandford, Administrative and Compliance Costs of Taxation (Fiscal Publications 1995).
[62] Zambia Revenue Authority,Annual Report 2022
[63] Income Tax Act, Cap 323, Laws of Zambia, ss 29–35.

allowances on specified capital investments. While such provisions are intended to stimulate economic growth, scholars argue that excessive deductions and sector-specific incentives may undermine neutrality and reduce effective taxation. Judith Freedman observes that preferential tax treatment may distort economic behaviour and weaken the equitable distribution of the tax burden.[64]

The Fifth Schedule to the Act further provides sector-specific incentives, particularly for mining and manufacturing industries.[65] These incentives include accelerated depreciation, loss carry-forward provisions, and exemptions on certain categories of income. Their expansion over time reflects Zambia's policy shift toward investment-led economic growth, particularly following liberalisation reforms in the 1990s.[66] However, the cumulative effect of these incentives has been to reduce the contribution of high-value sectors to domestic revenue, thereby increasing dependence on employment income taxation.

The volatility of Zambia's income tax regime has also emerged as a significant concern. The Income Tax Act has undergone frequent amendments through annual Finance Acts, often altering tax bands, withholding tax provisions, and corporate tax rates. While legislative flexibility is necessary in responding to economic conditions, frequent amendments that do not improve the efficiency of revenue collection undermine certainty and predictability within the tax system. Frequent legislative changes therefore weaken taxpayer confidence and complicate compliance.

Scholarly commentary has similarly criticised aspects of Zambia's direct taxation regime. Fredrick Nsama argues that Zambia's tax laws fail to adequately satisfy principles of fairness and efficiency due to inconsistent enforcement and excessive reliance on employment taxation.[67] ActionAid Zambia likewise observes that weak corporate tax enforcement and extensive tax incentives have shifted the practical burden of taxation onto formally employed individuals through PAYE.[68]

The interaction between legal design and administrative practice therefore reveals a significant structural issue within Zambia's tax framework. Although the Income Tax Act provides a comprehensive legal basis for taxing income, the practical effect of exemptions, deductions,

[64] Judith Freedman, 'Defining Taxpayer Responsibility: In Support of a General Anti-Avoidance Principle' (2004) British Tax Review 332
[65] Income Tax Act, Cap 323, Laws of Zambia, Fifth Schedule.
[66] International Monetary Fund, Zambia: Selected Issues (2023).
[67] Fredrick Nsama, Are Zambia's Tax Laws Adequate and Effectively Applied? (LLB dissertation, University of Zambia 2013).
[68] ctionAid Zambia, An Analysis of the Zambian Taxation System (2022).

and weak enforcement mechanisms has narrowed the broader tax base while reinforcing reliance on PAYE as the State's most dependable revenue stream.

2.3 The Value Added Tax Act and Indirect Taxation

The Value Added Tax Act, Chapter 331 of the Laws of Zambia, establishes the legal framework governing Value Added Tax (VAT), which constitutes one of the principal sources of indirect taxation in Zambia.[69] It was a tax type introduced in 1995 to replace the former Sales Tax regime, VAT was designed to broaden the tax base by taxing consumption rather than income.[70] Unlike direct taxes, which are imposed on the income or profits of a taxpayer, VAT is levied on the supply of taxable goods and services and is ultimately borne by the final consumer. The tax operates through a credit-invoice mechanism whereby registered suppliers collect VAT on behalf of the State and remit the net amount after deducting input tax incurred in the course of business.[71]

The statutory basis for VAT is found in section 7 of the Value Added Tax Act, which imposes VAT on taxable supplies of goods and services made in Zambia and on the importation of goods and services into Zambia.[72] The provision establishes VAT as a transaction-based tax applicable at each stage of production and distribution. The liability to account for VAT arises when a taxable person makes a taxable supply in the course of carrying on a business.[73]

The VAT mechanism established under the Act is supported by several key provisions. Section 16 provides for the registration of taxable persons whose turnover exceeds the prescribed threshold, thereby bringing them within the VAT system.[74] Once registered, a taxable person is required to charge output tax on taxable supplies and issue tax invoices in accordance with the requirements of the Act and subsidiary legislation. The amount of VAT payable to the Zambia Revenue Authority (ZRA) is determined through the input-output tax mechanism established under sections 18 and 19 of the Act.[75] Output tax refers to VAT charged on taxable supplies made by a registered supplier, while input tax refers to VAT paid on goods and services acquired for use in the course of making taxable supplies. The difference between

[69] Value Added Tax Act, Cap 331, Laws of Zambia.
[70] Ibid.
[71] Liam Ebrill, Michael Keen, Jean-Paul Bodin and Victoria Summers, The Modern VAT (International Monetary Fund 2001) 15.
[72] Value Added Tax Act, Cap 331, s 7
[73] Ibid.
[74] ibid s 16
[75] ibid ss 18–19

output tax and allowable input tax determines the amount payable to, or refundable by, the revenue authority.[76]

The VAT refund system forms an integral part of the VAT mechanism and is intended to ensure that VAT remains a tax on final consumption rather than a cost to business. Under section 18 of the Act, a registered taxpayer is entitled to deduct allowable input tax from output tax.[77] Where the input tax exceeds the output tax in a tax period, the taxpayer may carry forward the excess credit or apply for a refund from the Commissioner-General. The Act further empowers the Commissioner-General to verify the validity of refund claims before payment is made.[78] VAT refunds are particularly significant for exporters whose supplies are generally zero-rated and who therefore accumulate input tax credits without charging output tax. The refund mechanism is intended to preserve neutrality within the VAT system by preventing tax cascading and ensuring that businesses do not bear the economic burden of the tax.[79]

The Act further distinguishes between taxable supplies, exempt supplies, and zero-rated supplies. Section 9 establishes the applicable VAT rates, while section 9(5) provides for zero-rating of specified supplies.[80] Zero-rated supplies are taxable supplies that attract VAT at a rate of zero per cent. Although no VAT is charged on such supplies, suppliers remain entitled to claim input tax incurred in making them.[81] The Second Schedule to the Act identifies categories of zero-rated supplies, including exports of goods and certain international services.[82] The rationale for zero-rating exports is to ensure that goods consumed outside Zambia are not burdened by domestic taxation, thereby promoting international competitiveness.[83]

In contrast, section 15 of the Act provides for exempt supplies.[84] Exemptions remove certain transactions from the VAT system entirely and generally prevent suppliers from claiming input tax incurred in making those supplies. The First Schedule identifies a wide range of exempt supplies, including specified financial services, educational services, health services, and certain agricultural products.[85] While these exemptions are often justified on social and

[76] Alan Schenk, Victor Thuronyi and Wei Cui, Value Added Tax: A Comparative Approach (3rd edn, Cambridge University Press 2020) 25.
[77] Value Added Tax Act, Cap 331, s 18
[78] Ibid.
[79] Liam Ebrill and others (n 3) 39–46
[80] Value Added Tax Act, Cap 331, ss 9 and 9(5)
[81] ibid s 9(5)
[82] ibid Second Schedule
[83] Alan Schenk, Victor Thuronyi and Wei Cui (n 8) 32
[84] Value Added Tax Act, Cap 331, s 15
[85] ibid First Schedule.

economic grounds, they reduce the effective VAT base and create distinctions between taxable and non-taxable transactions.[86]

The Act also contains specific provisions governing imports and exports. Imported goods are subject to VAT at the point of entry into Zambia, with the tax being collected alongside customs duties under customs administration procedures.[87] This ensures parity between locally produced and imported goods by subjecting both to VAT. Conversely, exports generally qualify for zero-rating under the Second Schedule, thereby relieving exported goods from domestic consumption taxes while preserving the supplier's entitlement to input tax deductions and refunds.[88]

The legislative design of the Value Added Tax Act reflects internationally recognised principles of consumption taxation, particularly neutrality and destination-based taxation.[89] However, the extensive use of exemptions and zero-rating provisions, coupled with challenges in administering VAT refunds, has generated ongoing debate regarding the effectiveness of VAT as a revenue mobilisation tool.[90] These issues become particularly relevant in assessing the extent to which the legal framework contributes to the narrowing of Zambia's tax base and the consequent reliance on Pay-As-You-Earn (PAYE) as a stable source of government revenue.[91]

2.4 The Customs and Excise Duty Act

The Customs and Excise Act, Cap. 322 of the Laws of Zambia, constitutes the principal legislation governing customs duties, excise duties, import and export controls, and the administration of international trade taxation in Zambia.[92] Historically, these being easier to administer have position them as an important source of government revenue, particularly in developing economies.[93] The Act establishes the legal framework for the collection of duties on imported goods, the regulation of exports, and the imposition of excise duties on specified products such as alcohol, tobacco, fuel, and other excisable commodities.[94]

[86] Liam Ebrill and others (n 3) 83–89
[87] Value Added Tax Act, Cap 331, s 7
[88] ibid Second Schedule
[89] Alan Schenk, Victor Thuronyi and Wei Cui (n 8) 23–30
[90] World Bank, Zambia Public Finance Review (World Bank 2022) 67–71.
[91] International Monetary Fund, Zambia: Selected Issues (IMF Country Report No 23/157, 2023) 18–22.
[92] Customs and Excise Act, Cap 322, Laws of Zambia.
[93] Richard Krever, Tax Administration and Compliance in Developing Countries (World Bank 2013).
[94] Customs and Excise Act, Cap 322, Laws of Zambia, Parts III and VII.

The Act gives authority to the Commissioner-General of the ZRA to assess, collect, and enforce customs and excise duties.[95] Part III of the Act provides for the importation and exportation of goods, while the Customs Tariff schedules prescribe the applicable duty rates.[96] Excise duties are imposed on selected goods either manufactured locally or imported into Zambia and are intended not only to generate revenue but also to influence consumption patterns and address public policy concerns.[97]

Despite this being the easiest administered form of revenue, the effectiveness of the Customs and Excise Act has been reduced by the extensive use of exemptions, rebates, suspensions, and investment-related concessions. Sections relating to duty remission and rebate schemes permit the Minister responsible for finance to grant relief from customs duties under specified circumstances.[98] Additional exemptions are provided through subsidiary legislation, statutory instruments, and investment promotion frameworks such as the Zambia Development Agency Act.[99]

The Zambia Development Agency Act further reinforces these concessions by granting qualifying investors customs duty exemptions on imported machinery, equipment, and specialised production inputs.[100] While such incentives are intended to prompt industrialisation, trade expansion, and foreign direct investment, they simultaneously decrease the revenue potential of customs duties.[101]This results in the narrowing of the effective customs tax base and a decline in the contribution of trade taxes to overall domestic revenue mobilisation.

Recent reforms have also been influenced by Zambia's participation in regional and international trade arrangements, including the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), and the African Continental Free Trade Area (AfCFTA).[102] These agreements promote trade liberalisation through tariff reductions and preferential treatment of goods originating from member states. While such measures support economic integration and trade growth, they also reduce the scope of customs duty collection, placing greater pressure on alternative revenue sources.

[95] ibid, ss 6–8.
[96] ibid, Customs Tariff Schedule.
[97] Ministry of Finance, 2024 Economic Report (Government Printer 2025).
[98] Customs and Excise Act, Cap 322, Laws of Zambia, provisions relating to rebates, remissions and duty suspensions.
[99] Customs and Excise (General) Regulations; Customs and Excise (Rebate) Regulations.
[100] Zambia Development Agency Act No 11 of 2006, ss 56–62.
[101] World Bank, Zambia Public Finance Review (2022).
[102] Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA); Southern African Development

From a doctrinal perspective, the Customs and Excise Act demonstrates the tension between investment promotion, trade liberalisation, and revenue mobilisation. Although the statute provides a comprehensive legal framework for the taxation of imports and excisable goods, the extensive use of statutory exemptions, rebates, and preferential arrangements has limited its effectiveness as a revenue-generating instrument. Consequently, customs duties have contributed less to domestic revenue than originally intended, thereby reinforcing Zambia's growing reliance on PAYE as a stable source of government revenue.

2.5 Mineral Royalty and Mining Taxation

The legal framework governing Zambia's mining sector has evolved significantly since the liberalisation of the economy in the 1990s. Given that mining remains Zambia's largest foreign exchange earner and one of its most important potential sources of tax revenue, successive governments have repeatedly amended mining legislation in an effort to balance revenue mobilisation with investment promotion. However, the frequent amendments to mining laws and fiscal provisions have reflected heavily on the promotion of investment rather than the enhancement of revenue collection and capacity to establish a predictable revenue stream from the sector.

The first major reform occurred with the enactment of the Mines and Minerals Act No. 31 of 1995, which was introduced during the privatisation of Zambia Consolidated Copper Mines (ZCCM).[103]The principal objective of the Act was to attract foreign direct investment into a declining mining industry. The legislation permitted the negotiation of Development Agreements between investors and the Government, granting extensive fiscal concessions, including reduced mineral royalty rates, customs duty exemptions, tax holidays and stability clauses that protected investors from future legislative changes.[104] These concessions were intended to attract investment but substantially limited the Government's ability to benefit from rising copper prices during the commodity boom of the early 2000s.

As a result of the negative effect on the country’s economy, in spite of the rise in copper prices, the enactment of the Mines and Minerals Development Act No. 7 of 2008 was put in place, which repealed the 1995 Act.[105] The 2008 Act abolished Development Agreements and sought to restore statutory control over mining taxation. The legislative intention was to ensure that mining companies operated under a uniform legal framework and that the State captured a

[103] Mines and Minerals Act No 31 of 1995 (Laws of Zambia).
[104] Ibid; Zambia Extractive Industries Transparency Initiative, Legal Framework and Licensing Information (ZEITI).
[105] Mines and Minerals Development Act No 7 of 2008.

greater share of mineral wealth through taxation and mineral royalties.[106] However, the Act was subsequently amended in 2009, 2011, 2012 and 2014, reflecting continuing disagreements regarding the appropriate fiscal regime for mining operations.[107]

A significant shift occurred with the enactment of the Mines and Minerals Development Act No. 11 of 2015, which remains one of the most important statutes governing mining operations in Zambia.[108] The Act repealed the 2008 legislation and introduced a modern regulatory framework for mineral exploration, mining rights, environmental protection and mineral royalties. Section 88 vested responsibility for the assessment and collection of mineral royalties in the Commissioner-General of the Zambia Revenue Authority and expressly incorporated the enforcement mechanisms of the Income Tax Act into mineral royalty administration.[109] This provision illustrates the close relationship between mining taxation and Zambia's broader income tax framework.

Part VII of the Act, particularly section 89, established the statutory mineral royalty regime.[110] Under the original 2015 Act, royalty rates varied according to the type of mineral produced. However, concerns regarding declining mining investment and the burden imposed by high royalty rates prompted the enactment of the Mines and Minerals Development (Amendment) Act No. 14 of 2016.[111] This amendment completely substituted section 89 and introduced a variable royalty system for copper, based on international copper prices. Royalty rates ranged from 4 per cent to 6 per cent depending on prevailing market prices.[112] The main objective of the stated legislative was, to improve the competitiveness of Zambia's mining sector while maintaining revenue collection.

Further amendments were introduced through the Mines and Minerals Development (Amendment) Act No. 18 of 2018.[113] Section 89 was amended to include cobalt and vanadium within the royalty framework and introduced a more progressive royalty structure for copper. Under the amended section 89(2), mineral royalty rates increased from 5.5 per cent to as much as 10 per cent depending on international copper prices.[114] The amendment extended the

[106] Ibid, preamble and long title.
[107] Mines and Minerals Development (Amendment) Act No 9 of 2009; Mines and Minerals Development (Amendment) Act No 28 of 2011; Mines and Minerals Development (Amendment) Act No 12 of 2012; Mines and Minerals Development (Amendment) Act No 11 of 2014.
[108] Mines and Minerals Development Act No 11 of 2015.
[109] Ibid, s 88
[110] Ibid, s 89
[111] Mines and Minerals Development (Amendment) Act No 14 of 2016.
[112] Ibid, s 2 substituting s 89.
[113] Mines and Minerals Development (Amendment) Act No 18 of 2018
[114] Ibid, s 2.

liability for mineral royalty payments to any person found in possession of minerals on which royalty had not been paid. The legislative intention of this amendment was to increase Government revenue during periods of high commodity prices and strengthen enforcement against royalty avoidance.

The Mines and Minerals Development (Amendment) Act No. 25 of 2020 introduced further modifications to section 89 by revising mineral valuation references and strengthening royalty administration procedures.[115] These amendments sought to align Zambia's royalty assessment mechanisms with international commodity pricing practices and improve compliance monitoring. Under the Mines and Minerals Development (Amendment) Act No. 29 of 2022 section 89 was amended by restructuring the copper mineral royalty system.[116] The amendment introduced an incremental royalty model whereby different royalty rates apply to different portions of copper prices rather than a single rate applying to the entire value. Under the revised section 89(2), royalties range from 4 per cent where copper prices fall below US$4,000 per tonne to 10 per cent where prices exceed US$7,000 per tonne.[117] The objective of this amendment as stated by the Parliament was to establish a refined adaptability of the royalty regime to fluctuations in international commodity prices.

A major institutional reform occurred with the enactment of the Minerals Regulation Commission Act No. 8 of 2024, which established the Minerals Regulation Commission (MRC) as an independent statutory body responsible for regulating the mining sector.[118] Prior to this reform, regulatory authority was vested primarily in the Director of Mining Cadastre and the Ministry of Mines under the Mines and Minerals Development Act of 2015.[119] The 2024 Act transferred several regulatory functions from the Ministry to the newly established Commission.

Under section 5 of the Minerals Regulation Commission Act, the Commission is mandated to regulate mineral exploration, mining operations, mineral trading, mineral processing, and mineral export activities.[120] Section 6 establishes the functions of the Commission, including monitoring compliance with mining licences, maintaining mineral production records, and facilitating the collection of mineral production data relevant for taxation purposes.[121] Sections

[115] Mines and Minerals Development (Amendment) Act No 25 of 2020.
[116] Mines and Minerals Development (Amendment) Act No 29 of 2022.
[117] Ibid, s 2 amending s 89(2).
[118] Minerals Regulation Commission Act No 8 of 2024 (Zambia).
[119] Mines and Minerals Development Act No 11 of 2015, Parts III and IV.
[120] Minerals Regulation Commission Act No 8 of 2024, s 5.
[121] ibid s 6.

22 to 31 establish a new licensing administration and compliance framework, while sections 40 to 46 strengthen inspection, monitoring, and enforcement powers.[122]

The Act also amended several provisions of the Mines and Minerals Development Act, 2015 by transferring administrative and supervisory functions previously exercised by the Director of Mining Cadastre to the Commission.[123] These amendments were intended to improve transparency, strengthen regulatory oversight, enhance mineral production reporting, and reduce opportunities for revenue leakage within the mining sector.[124] From a taxation perspective, the reforms are significant because accurate production reporting directly affects the assessment of mineral royalty liabilities under the Income Tax Act and annual Finance Acts.[125]

Despite these institutional improvements, concerns remain regarding the continued reliance on annual Finance Acts to alter royalty rates and valuation methods. While the Minerals Regulation Commission Act strengthens administrative oversight, it does not eliminate the broader problem of fiscal volatility within Zambia's mining taxation framework. Consequently, mining taxation continues to exhibit characteristics of unpredictability that may undermine both revenue mobilisation and investor confidence.[126]

2.6 International Tax Transparency Standards and Their Influence on Zambia's Tax Framework

The history of Zambia's tax framework reflects the external influences on it's evolution. Increasing globalisation, cross-border trade, multinational enterprise activities, and digitalisation have necessitated the incorporation of international tax standards into domestic tax administration and legislation. International tax cooperation has become a prominent component of Zambia's revenue mobilisation strategy, particularly in addressing tax avoidance, illicit financial flows, transfer pricing abuses, and offshore tax evasion.[127] Over the period, Zambia has adopted many international tax practices which is reflected through its membership in global tax forums, its network of Double Taxation Agreements (DTAs), and its

[122] ibid ss 22–31, 40–46
[123] Minerals Regulation Commission Act No 8 of 2024, sch 1
[124] Ministry of Mines and Minerals Development, Explanatory Memorandum to the Minerals Regulation Commission Bill, 2024.
[125] Income Tax Act Cap 323, Laws of Zambia; Finance Act No 13 of 2022
[126] International Monetary Fund, Zambia: Selected Issues (IMF Country Report No 23/317, 2023).
[127] Organisation for Economic Co-operation and Development (OECD), Addressing Base Erosion and Profit Shifting (OECD Publishing 2013).

commitment to international transparency initiatives such as Exchange of Information (EOI) and the Common Reporting Standard (CRS).[128]

One of the ways that show how Zambia has influenced by international tax standards is through bilateral agreements. Zambia has entered into several Double Taxation Agreements with countries including South Africa, China, India, Mauritius, the United Kingdom and the Netherlands.[129] These treaties are largely modelled on the OECD and United Nations Model Tax Conventions and are intended to prevent double taxation, promote investment, and facilitate cross-border trade.[130] Treaty provisions relating to permanent establishments, withholding taxes, business profits, and information exchange have increasingly shaped the interpretation and administration of Zambia's domestic tax laws.[131]

Beyond treaty obligations, Zambia is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which promotes international cooperation in combating tax evasion and improving tax transparency.[132] Through this framework, Zambia has committed to implementing international standards on Exchange of Information on Request (EOIR), enabling tax authorities to obtain relevant taxpayer information from foreign jurisdictions where necessary.[133] This development has improved the Zambia Revenue Authority's ability to investigate offshore tax arrangements and cross-border tax avoidance schemes involving multinational enterprises.

A further development has been Zambia's commitment to the implementation of the Common Reporting Standard (CRS) developed by the OECD and endorsed by the G20.[134] The CRS establishes a system for the automatic exchange of financial account information between participating jurisdictions. Under this framework, financial institutions collect and report information concerning foreign account holders, which is subsequently exchanged between tax authorities on an annual basis.[135] The objective is to enhance transparency, detect undeclared

[128] African Tax Administration Forum (ATAF), Exchange of Information for African Tax Administrations: Practical Guide (ATAF 2023).
[129] Zambia Revenue Authority, Double Taxation Agreements Entered into by Zambia (ZRA 2024).
[130] United Nations, United Nations Model Double Taxation Convention between Developed and Developing Countries (UN 2021).
[131] OECD, Model Tax Convention on Income and on Capital (OECD Publishing 2017).
[132] Global Forum on Transparency and Exchange of Information for Tax Purposes, Zambia Peer Review Report (OECD 2022).
[133] Ibid.
[134] OECD, Standard for Automatic Exchange of Financial Account Information in Tax Matters (2nd edn, OECD Publishing 2017).
[135] Ibid.

offshore assets, and improve tax compliance among high-net-worth individuals and multinational enterprises.[136]

International tax standards have also influenced Zambia's transfer pricing framework. Through the Income Tax (Transfer Pricing) Regulations, Zambia has adopted the arm's length principle consistent with the OECD Transfer Pricing Guidelines.[137] These regulations are an attempt to ensure that transactions between related entities are conducted on terms that reflect market conditions, thereby protecting the domestic tax base from profit shifting and base erosion.

The incorporation of these international standards reflects a broader shift towards transparency, cooperation, and tax base protection within Zambia's tax framework. While domestic statutes such as the Income Tax Act, Value Added Tax Act, and Mines and Minerals Development Act remain the primary sources of taxation law, international tax instruments increasingly influence their administration and enforcement.[138] Consequently, Zambia's contribution in global tax governance frameworks is an important component of modern tax administration and provides additional tools for solidifying revenue mobilisation in an increasingly interconnected global economy.

Conclusion

This chapter has examined the legal framework governing taxation in Zambia through an analysis of the principal statutes that constitute the country's tax system, namely the Income Tax Act, the Value Added Tax Act, the Customs and Excise Act, the Mines and Minerals Development Act, the Zambia Development Agency Act, and the international tax instruments that influence domestic tax administration. The chapter has demonstrated that while these statutes were enacted with the legitimate objective of mobilising revenue, promoting investment, facilitating trade, and ensuring compliance with international tax standards, their evolution has produced a complex legal framework characterised by extensive exemptions, incentives, preferential treatments, and frequent legislative amendments. Although these measures were intended to stimulate economic growth and attract investment, they have simultaneously narrowed the effective tax base and created challenges for revenue

[136] African Tax Administration Forum, Enhancing Domestic Revenue Mobilisation through Exchange of Information (ATAF 2022).
[137] Income Tax (Transfer Pricing) Regulations, SI No 24 of 2018.
[138] Teresa M Pidduck, 'The Role of Doctrinal Tax Research in African Tax Reform' (2021) 29 African Journal of International and Comparative Law 213.

mobilisation. Consequently, the legal design of Zambia's tax framework reveals structural weaknesses that contribute to an overdependence on easily collectible taxes, particularly Pay As You Earn (PAYE), while revenue from other tax bases remains comparatively underutilised. This analysis provides the legal foundation for Chapter Three, which examines how these statutory provisions operate in practice and the extent to which they contribute to revenue collection inefficiencies and Zambia's continued reliance on PAYE as a principal source of domestic revenue.

CHAPTER THREE

The Inefficiencies of the Tax Legal Framework in Zambia

3.0 Introduction

This chapter undertakes a systematic legal analysis of the provisions, exemptions, incentives, and administrative frameworks embedded within Zambia's tax legislation that collectively undermine the capacity of non-PAYE revenue streams to contribute equitably to total revenue. The International Monetary Fund (IMF) has observed that Zambia's tax administration suffers from structural revenue gaps attributable to legal design flaws rather than enforcement failures alone

3.1 Value Added Tax and Revenue Collection Inefficiencies

The Value Added Tax Act (VAT Act) is the legislative instrument governing the imposition, collection, and administration of VAT in Zambia. VAT, as a broad-based consumption tax, is theoretically designed to generate substantial revenue by taxing value added at each stage of production and supply. However, a careful examination of the VAT Act reveals multiple legal provisions that significantly diminish its revenue-generating potential and contribute to Zambia's structural reliance on PAYE.

3.1.1. VAT Registration Exemptions for Suppliers of Zero-Rated Supplies

Section 10(1)(b) of the VAT Act exempts suppliers who make exclusively zero-rated supplies from the obligation to register for VAT purposes.[139] This exemption, whilst apparently administratively convenient, introduces a significant structural lacuna in the VAT net. Under the standard VAT mechanism, a registered trader charges VAT on outputs and claims input tax credits on purchases, thereby remitting the net VAT to ZRA. Where a supplier is exempt from registration by reason of making only zero-rated supplies, ZRA forfeits the administrative

[139]VAT Act (n 2) s 10(1)(b).

oversight that registration confers, including access to invoicing records, turnover declarations, and audit trails. The First Schedule of the VAT Act lists a wide range of zero-rated supplies, including agricultural inputs, medical supplies, and educational materials.[140] ActionAid Zambia has documented that these registration exemptions, in practice, serve as conduits through which traders misclassify taxable supplies as zero-rated to avoid registration obligations, thereby contracting the effective VAT base.[141]

ZRA's VAT Administration Guidelines acknowledge that verifying the zero-rated status of supplies by unregistered entities presents a significant compliance challenge, as such entities fall outside the routine monitoring infrastructure applicable to registered taxpayers.[142] The net effect is a reduced VAT revenue base, with the fiscal shortfall being implicitly absorbed through heightened dependence on PAYE collections from the formal employment sector.

3.1.2 Ministerial Powers to Zero-Rate Fuel Through Statutory Instruments

Section 10(2) of the VAT Act confers on the Minister of Finance the discretionary power to prescribe, by statutory instrument, additional categories of zero-rated supplies. This power has been exercised most consequentially in respect of petroleum products, with successive Statutory Instruments zero-rating fuel supplies.[143] The ZIPAR analysis of Zambia's tax expenditure framework has estimated that fuel zero-rating alone accounts for one of the largest single items of VAT revenue foregone annually, with implications that cascade through the entire fiscal architecture.[144]

The legal concern is not merely quantitative but structural: the vesting of zero-rating powers in the executive, without requiring parliamentary approval for each exercise of that power, creates a regime of fiscal volatility susceptible to political influence rather than principled tax policy. The Ministry of Finance's Tax Expenditure Statement of 2023 acknowledges that fuel zero-rating was introduced as an anti-inflationary measure but has persisted beyond the economic conditions that justified its introduction, resulting in a permanent revenue gap that is nowhere offset in the statutory framework.[145] This gap is structurally compensated for through PAYE, as ZRA intensifies collection efforts in the formal employment sector to meet revenue targets.

[140]VAT Act (n 2) sch 1 (Zero-Rated Supplies), para 3.

[141]ActionAid Zambia, Levelling the Playing Field: Tax Incentives and Revenue Losses in Zambia (ActionAid 2021) 18.

[142]Zambia Revenue Authority, VAT Administration Guidelines (ZRA 2022) para 4.3.

[143]VAT Act (n 2) s 10(2); VAT (Zero-Rating) (Fuel) Regulations, SI No 41 of 2020.

[144]ZIPAR, Fuel Subsidy and Tax Expenditure Analysis in Zambia (ZIPAR Working Paper No 22, 2021) 9.

[145]Republic of Zambia, Ministry of Finance, Tax Expenditure Statement 2023 (Ministry of Finance 2023) 31.

3.1.3 VAT Refund Claims and Revenue Leakage

Section 38 of the VAT Act and Rule 14 of the VAT Regulations establish the legal framework governing VAT refund claims.[146] VAT refunds arise where a taxpayer's input tax credits exceed output VAT in a given tax period, most commonly in the case of exporters and zero-rated supply businesses. In principle, a robust refund mechanism is an essential feature of a properly functioning VAT system. In practice, however, the administration of VAT refunds in Zambia has become a significant channel of revenue leakage.

Academic commentary by Kimenyi and others has demonstrated that delays in VAT refund processing in sub-Saharan Africa create perverse incentives for businesses to seek informal redress, including collusion with tax officials to expedite illegitimate refunds in exchange for fraudulent documentation.[147] ZRA's own Report on VAT Refund Management confirms that a significant proportion of refund claims under review involve documentation irregularities, fictitious invoices, and inflated input tax claims.[148] The legal framework, by failing to prescribe sufficiently rigorous verification mechanisms prior to refund authorisation, facilitates this leakage. The consequence is a dual erosion: legitimate refund delays discourage formal business activity, thereby narrowing the VAT base, whilst fraudulent refund claims directly diminish VAT collections.

3.1.4 Legal Ambiguities in Rule 18 Regarding Exportation of Goods

Rule 18(1) of the VAT Regulations prescribes the documentation required to support zero-rating of exported goods.[149] The provision requires, inter alia, certified customs export entries and proof of payment from a foreign purchaser. Ambiguity arises, however, in respect of indirect exports, where goods are supplied to a local agent or freight forwarder who subsequently exports them, and in relation to the threshold of documentation acceptable where original customs documentation has been lost or destroyed.

The Zambian Supreme Court in Attorney General v Zambia Revenue Authority grappled with the interpretation of export provisions under the VAT regime and acknowledged the interpretive uncertainty surrounding the documentary requirements for indirect exports.[150] The court's reasoning has been criticised by Mwangi as insufficiently precise to guide tax

[146] VAT Act (n 2) s 38; VAT Regulations, SI No 133 of 1995, r 14.

[147] Mwangi Kimenyi and others, "VAT Refund Delays and Business Investment in Sub-Saharan Africa" (2020) 48(3) Journal of African Economies 301, 315.

[148] ZRA, Report on VAT Refund Management 2022 (ZRA 2022) 7.

[149] VAT Regulations (n 14) r 18(1).

[150] Attorney General v Zambia Revenue Authority [2019] ZMSC 44 (Zambian Supreme Court).

administration, leaving ZRA officers with broad discretionary authority that may be exercised inconsistently.[151] These ambiguities generate litigation risk, delay refund processing, and create opportunities for fraudulent zero-rating claims by suppliers who exploit the documentary gaps to claim zero-rated treatment for domestic supplies, thereby reducing VAT revenue remitted to the state.

3.1.5 VAT Fraud and Enforcement Challenges

VAT fraud constitutes one of the most persistent and damaging forms of tax evasion in Zambia's revenue landscape. ZRA's internal audit reports identify multiple modalities of VAT fraud, including the use of fictitious invoices, carousel fraud schemes, and misclassification of taxable supplies.[152] The legal framework for VAT fraud prosecution is contained in the Income Tax Act, as applied to tax offences generally, and the Electronic Fiscal Devices Act, which mandates the use of Electronic Fiscal Devices and Smart Invoicing systems to create audit trails for VAT transactions.[153]

ZRA's Smart Invoice Implementation Report of 2023 acknowledges that, notwithstanding the technological advances introduced by the Smart Invoice system, adoption rates remain below the threshold necessary to eliminate manual invoice manipulation.[154] A significant proportion of businesses, particularly in the informal and semi-formal sectors, continue to operate outside the Smart Invoice infrastructure. The legal obligation to use approved fiscal devices is thus practically unenforceable across large segments of the economy, leaving ZRA without reliable data to detect and prosecute VAT fraud. The resulting revenue shortfall reinforces the state's dependence on PAYE, which is collected automatically through the formal employment relationship and requires comparatively less enforcement infrastructure.

3.2 Customs and Excise Duty Framework and Revenue Inefficiencies

The Customs and Excise Act governs the imposition and collection of customs duties, excise duties, and VAT at the point of importation. As a revenue instrument, the customs framework is capable of generating substantial fiscal receipts from Zambia's active import economy. However, a series of legislative exemptions, incentive schemes, and administrative weaknesses significantly diminish the customs revenue base.

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[151]B Mwangi, "Interpreting Export Provisions in VAT Legislation: Lessons from Zambia" (2021) 15(1) African Tax Law Review 77, 84.

[152]ZRA, Audit Report: VAT Fraud Indicators 2022 (Internal ZRA Document, 2022) 12.

[153]Income Tax Act (n 1) s 97A; Electronic Fiscal Devices Act (Cap 338, Laws of Zambia).

[154]Zambia Revenue Authority, Smart Invoice Implementation Report 2023 (ZRA 2023) 5.

3.2.1 Manufacturing Input Exemptions

The First Schedule of the Customs and Excise Act provides extensive duty exemptions for raw materials and capital equipment imported for use in manufacturing.[155] These exemptions are predicated on the industrial policy rationale that reducing the cost of manufacturing inputs stimulates domestic production, creates employment, and generates broader tax revenues over time. The Zambia Development Agency Act reinforces these exemptions by providing additional fiscal incentives for investors in priority sectors, including zero customs duty on imported capital goods.[156]

The Ministry of Finance's Tax Expenditure Statement estimates the cumulative customs duty foregone through manufacturing exemptions as a significant percentage of total customs revenue potential.[157] The policy rationale for these exemptions, whilst economically plausible, has not been validated by systematic post-grant evaluations of their employment and revenue multiplier effects. In the absence of a statutory sunset mechanism requiring periodic review of manufacturing exemptions, these provisions have become entrenched features of the fiscal landscape that permanently reduce the customs duty base without demonstrated commensurate economic return.

3.2.2 VAT Deferment and Revenue Leakage

Section 61A of the Customs and Excise Act establishes a VAT deferment scheme under which designated importers may defer payment of VAT at the point of importation, with the obligation to account for the deferred VAT in their periodic VAT returns.[158] The scheme is designed to improve the cash flow of businesses engaged in substantial importation, thereby incentivising formal sector commercial activity. However, the deferment mechanism creates a structural revenue risk where deferred VAT obligations are not subsequently discharged in VAT returns, either through deliberate non-declaration or administrative error.

The OECD's Revenue Statistics in Africa report identifies VAT deferment as a known vulnerability in the customs frameworks of developing countries, noting that monitoring the correlation between deferment records held by customs authorities and VAT return declarations held by domestic tax authorities requires sophisticated data-sharing systems that many revenue administrations lack.[159] In Zambia's case, data integration between ZRA's

[155]Customs and Excise Act (n 3) sch 1, Part II (Exemptions for Manufacturing Inputs).
[156]Zambia Development Agency Act (Cap 385 of the Laws of Zambia) s 47.
[157]Ministry of Finance (n 13) 44.
[158]Customs and Excise Act (n 3) s 61A (VAT Deferment Scheme).
[159]OECD, Revenue Statistics in Africa 2023 (OECD Publishing 2023) 95.

Customs Division and the Domestic Taxes Division remains incomplete, creating a reconciliation gap through which deferred VAT obligations may go undetected and uncollected.

3.2.3 ZDA Incentives and Customs Duty Exemptions

The ZDA Act confers on the Zambia Development Agency the authority to grant fiscal incentives to qualifying investors, including exemptions from customs duties on imported capital goods and raw materials for periods of up to five years.[160] ActionAid Zambia has documented that the aggregate value of customs duty exemptions granted under the ZDA framework constitutes one of the most substantial components of Zambia's total tax expenditure.[161] The legal framework for ZDA incentive grants lacks a robust statutory requirement for impact assessment prior to or following the grant of exemptions, meaning that the fiscal cost of ZDA incentives is rarely weighed against their economic benefit in a legally mandated and publicly accountable manner.

The absence of a statutory clawback mechanism, under which ZDA incentives would be revoked if qualifying conditions are not met, further compounds the revenue loss. Where investors receive customs exemptions predicated on employment creation or export targets but subsequently fail to meet those targets, the legal framework provides no effective remedy for the state to recover the foregone revenue. This structural weakness represents a significant flaw in Zambia's investment incentive legislation that directly erodes the customs duty and VAT base.

3.3 Mining Taxation and Revenue Collection Challenges

The mining sector is, in theory, one of Zambia's most significant potential sources of non-PAYE revenue, given the country's vast copper and cobalt reserves. However, the legal framework governing mining taxation has been characterised by frequent amendments, unstable royalty rates, generous development agreements, and inadequate transfer pricing controls, all of which have systematically eroded mining's contribution to domestic revenue.

3.3.1 Development Agreements and Revenue Foregone

The development agreements concluded between the Zambian government and major mining investors in the late 1990s and early 2000s, including agreements with Vedanta Resources (Konkola Copper Mines) and First Quantum Minerals (Kansanshi), incorporated stabilisation

[160] ZDA Act (n 24) s 48(1)(a)–(d).
[161] ActionAid Zambia (n 9) 29.

clauses that locked in the fiscal regime applicable to each investment at the date of the agreement.[162] These stabilisation clauses, negotiated as part of the post-privatisation mining sector liberalisation strategy, effectively immunised the relevant mining operations from subsequent legislative changes for the duration of the agreement.

The ICSID Arbitration in Vedanta Resources plc v Republic of Zambia confirmed the legal enforceability of stabilisation provisions in Zambia's development agreements under international investment law, creating a significant constraint on the government's legislative competence to alter the applicable fiscal regime without incurring international arbitral liability.[163] Laryea has observed that stabilisation clauses in mining agreements represent one of the most acute instruments of legislative sovereignty curtailment in African resource economies, locking governments into fiscal arrangements that become demonstrably disadvantageous as commodity prices rise.[164] The revenue foregone under development agreement stabilisation provisions represents a direct and legally entrenched reduction in Zambia's mining revenue base.

3.3.2 Transfer Pricing Risks in the Mining Sector

Section 97B of the Income Tax Act incorporates transfer pricing rules designed to ensure that transactions between related parties are conducted on arm's length terms, consistent with the OECD Transfer Pricing Guidelines.[165] Transfer pricing manipulation, whereby multinational mining companies reduce taxable income in Zambia by mispricing intra-group transactions such as management fees, royalties, and commodity sales, is identified by Global Financial Integrity as a principal channel of illicit financial outflows from the Zambian mining sector.[166]

ZRA's Transfer Pricing Audit Manual acknowledges that conducting effective transfer pricing audits in the mining sector requires highly specialised expertise in commodity pricing, corporate structures, and comparative financial analysis, expertise that ZRA's audit function currently possesses in only limited measure.[167] The Tax Justice Network Africa has documented that Zambia loses substantial revenue annually through transfer mispricing in the copper sector, with the effective corporate income tax burden on mining companies falling well

[162]Republic of Zambia, Development Agreement with Vedanta Resources (Konkola Copper Mines), 2004 (on file with Ministry of Finance); Development Agreement with First Quantum Minerals, 2002.

[163]Vedanta Resources plc v Republic of Zambia, ICSID Case No ARB/05/22 (Award, 12 February 2010).

[164]Emmanuel Laryea, "Stabilisation Clauses and Mining Contracts in Africa" (2019) 12(2) Journal of World Investment and Trade 155, 170.

[165]Income Tax Act (n 1) s 97B (Transfer Pricing Rules); OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Publishing 2022).

[166]Global Financial Integrity, Illicit Financial Flows from Zambia: A Mining Sector Focus (GFI 2020) 12.

[167]ZRA, Transfer Pricing Audit Manual (ZRA 2021) para 6.2.

below the statutory rate when intra-group deductions are accounted for.[168] The combination of legal complexity and administrative capacity constraints means that transfer pricing risks in the mining sector remain substantially unmitigated, reducing mining's contribution to total government revenue and amplifying dependence on PAYE.

3.4 International Tax Standards and Revenue Collection Challenges

Zambia's integration into the international tax governance architecture, through participation in Exchange of Information frameworks, the Common Reporting Standard, Double Taxation Agreements, and the OECD BEPS Inclusive Framework, creates both opportunities and challenges for domestic revenue collection. Whilst these international frameworks theoretically enhance Zambia's ability to identify and tax cross-border income flows, their practical revenue impact is constrained by Zambia's limited administrative capacity to leverage the mechanisms they provide.

3.4.1 Exchange of Information (EOI)

Exchange of Information arrangements enable tax authorities to request and receive financial information about their taxpayers from foreign jurisdictions, a facility critical for identifying offshore income, hidden assets, and cross-border tax avoidance. The OECD Standard for Automatic Exchange of Financial Account Information provides the international legal framework for EOI.[169] Zambia is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which peer reviews jurisdictions' compliance with international EOI standards.

The Global Forum's Peer Review Report on Zambia identifies several deficiencies in Zambia's EOI framework, including incomplete implementation of the legal authority to gather and exchange banking information, limitations in the domestic legal provisions for compulsory production of information from third parties, and practical constraints in ZRA's ability to respond to incoming EOI requests in a timely manner.[170] The Peer Review Report further notes that Zambia has made relatively limited use of outgoing EOI requests to obtain information about its residents' offshore financial activities, reducing the practical revenue impact of its

[168]Tax Justice Network Africa, Still Racing to the Bottom? Corporate Tax Incentives in Sub-Saharan Africa (TJN-A 2022) 38.
[169]OECD, Standard for Automatic Exchange of Financial Account Information in Tax Matters (2nd edn, OECD Publishing 2017) Art 1.
[170]Global Forum on Transparency and Exchange of Information for Tax Purposes, Peer Review Report on Zambia (OECD Publishing 2021) 23.

EOI entitlements.[171] This underutilisation means that Zambian taxpayers with offshore income face significantly reduced detection risk compared to their counterparts in jurisdictions with active EOI programmes.

3.4.2 Common Reporting Standard (CRS)

The Common Reporting Standard, developed by the OECD under the mandate of the G20, requires participating jurisdictions to automatically exchange financial account information held by their financial institutions about non-resident account holders with the account holders' country of tax residence.[172] Zambia's legal framework for CRS implementation is grounded in the Income Tax (Exchange of Information) Regulations of 2021.[173] Whilst these Regulations represent a significant legislative advance, the Global Forum's assessment of Zambia's CRS implementation highlights gaps in the domestic legal framework for due diligence by Zambian financial institutions, the completeness of financial institution registration with ZRA, and the technical infrastructure for transmitting and receiving CRS data files in the standardised XML format.[174]

These implementation gaps mean that the CRS, which was designed to dramatically reduce opportunities for offshore tax evasion by making financial account information automatically available to residence country tax authorities, has not yet generated the revenue intelligence dividends for Zambia that it has produced in jurisdictions with more mature CRS infrastructure. The practical consequence is that high-net-worth Zambian taxpayers with foreign financial accounts face lower disclosure and detection risk, reducing their effective tax burden and diminishing total revenue collections.

3.4.4 OECD BEPS Framework

The OECD's Base Erosion and Profit Shifting (BEPS) project, culminating in fifteen Action Plans, represents the most comprehensive reform of international tax rules in a generation, targeting practices that artificially shift profits from high-tax to low-tax jurisdictions.[175] Zambia joined the OECD/G20 Inclusive Framework on BEPS in 2018, committing to implement the minimum standards arising from the BEPS project, including Action 5 (harmful tax practices),

[171]ibid 45.
[172]OECD, Common Reporting Standard: Implementation Handbook (2nd edn, OECD Publishing 2018) para 2.4.
[173]Income Tax (Exchange of Information) Regulations, SI No 48 of 2021.
[174]Global Forum (n 48) 61.
[175]OECD, BEPS Action Plans 1–15: Final Reports (OECD Publishing 2015).

Action 6 (treaty abuse), Action 13 (country-by-country reporting), and Action 14 (dispute resolution).[176]

The two-pillar solution endorsed by the Inclusive Framework in 2021, introducing a global minimum tax rate of fifteen per cent under Pillar Two, has particular revenue significance for Zambia, given that several of Zambia's major mining and commercial investors operate as part of multinational groups potentially subject to the global minimum tax.[177] However, Zambia's domestic legal framework has not yet been amended to incorporate Pillar Two provisions, meaning that any top-up tax revenue attributable to Zambian source profits taxed below the global minimum rate may be collected by the parent companies' residence jurisdictions rather than by Zambia as the source state. ZRA's Strategic Plan acknowledges BEPS implementation as a medium-term priority but does not specify a legislative timetable.[178]

3.4.5 Administrative Capacity and Revenue Collection Limitations

The IMF's Revenue Administration Gap Analysis Programme report on Zambia identifies administrative capacity as one of the most binding constraints on ZRA's ability to translate legal entitlements into collected revenue.[179] Across the international tax frameworks considered above, EOI, CRS, DTAs, and BEPS, effective utilisation requires specialised human capital in the areas of international tax law, financial analysis, data management, and treaty interpretation. ZRA's audit function, whilst competent in routine domestic tax matters, has acknowledged capacity gaps in international tax auditing, particularly in relation to transfer pricing, treaty application, and EOI data analysis.

These capacity limitations mean that the legal architecture of international tax cooperation, which theoretically positions Zambia to recover revenue from cross-border tax avoidance, yields comparatively modest revenue dividends in practice. The consequence is that international and cross-border income streams contribute less to total revenue than their legal potential would suggest, reinforcing dependence on the administratively simpler and more reliable PAYE collection mechanism.

[176]Republic of Zambia, Statement on BEPS Inclusive Framework Participation (Ministry of Finance, Lusaka, March 2018).
[177]OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (OECD/G20 Inclusive Framework on BEPS, October 2021).
[178]ZRA, Strategic Plan 2022–2026 (ZRA 2022) 22.
[179]IMF, Revenue Administration Gap Analysis Program – Zambia (IMF Technical Assistance Report, 2022) 17.

3.5 Conclusion

This chapter highlights the inefficiencies deeply rooted in the legal design and operation of the country's tax framework. Although the Income Tax Act, Value Added Tax Act, Customs and Excise Act, Zambia Development Agency Act and various international tax instruments provide multiple avenues for revenue mobilisation, numerous exemptions, incentives, administrative reliefs and legislative ambiguities have decreased the effectiveness of these revenue sources. VAT revenue continues to be weakened by extensive exemptions, zero-rating provisions and refund-related disputes. Customs duties are affected by broad investment incentives, manufacturing input exemptions and trade facilitation measures that constrain revenue collection. Mining taxation remains vulnerable to legislative instability, while international tax standards have yet to realise their full revenue potential due to implementation and capacity challenges. Consequently, PAYE remains the most efficient, predictable and enforceable source of revenue because it is collected at source through employers. The chapter therefore concludes that Zambia's dependence on PAYE is not simply an administrative preference but a structural consequence of legal inefficiencies that have narrowed the effective tax base and weakened alternative sources of taxation.

CHAPTER FOUR

A COMPARATIVE ANALYSIS OF ZAMBIA AND SOUTH AFRICA

4.0 INTRODUCTION

It has been established that there is a legal framework in place governing taxation in Zambia, however, the preceding chapter demonstrated that several legal inefficiencies within Zambia’s tax framework have weakened revenue mobilisation. While these challenges are evident within the Zambian context, they become more apparent when examined against a jurisdiction that has achieved comparatively greater revenue diversification and tax administration efficiency. South Africa was identified as an appropriate comparator due to its…..Both jurisdictions impose income tax, value added tax, customs duties, mineral taxation and withholding taxes. Nevertheless, the legal design and administration of these taxes differ significantly. South Africa has built a more stable and predictable tax framework. This chapter undertakes a comparative legal analysis of the Zambian and South African tax frameworks.

4.1 Comparative Legal Architecture of the Income Tax Framework

4.1.1 Statutory Coherence and the Charge to Tax

South Africa's Income Tax Act 58 of 1962 has been subjected to six decades of systematic amendment and judicial elaboration, producing a statute that exhibits a high degree of internal coherence and doctrinal precision in its foundational concepts. The definition of "gross income" in section 1 of the South African Act has been authoritatively interpreted by the Supreme Court of Appeal in Commissioner for SARS v Brummeria Renaissance (Pty) Ltd to encompass the full breadth of economic accretion, providing the charge to tax with a broad and judicially settled foundation.[180] Zambia's Income Tax Act defines the charge to tax in section 4 by reference to "total income" a concept analytically similar but lacking the volume of judicial authority that has clarified its South African counterpart, leaving interpretive disputes at the margins of the charge-to-tax provision unresolved.[181]

It's been observed that South Africa's codification of the source concept in sections 9A to 9H of the Income Tax Act, determining which income is treated as derived from a South African source, provides a clear legislative framework that minimises territorial disputes about the scope of the income tax charge.[182] This distinction has material revenue consequences: clear source rules reduce litigation risk and enable ZRA to make confident assessments of borderline cross-border income flows, whilst statutory ambiguity creates opportunities for taxpayers to contest the taxability of income derived from multi-jurisdictional activities.

4.1.2 Controlled Foreign Company Rules and Anti-Deferral Architecture

One of the most significant structural divergences between the two income tax frameworks is South Africa's comprehensive Controlled Foreign Company (CFC) regime contained in sections 9A to 9H of the Income Tax Act, which imputes to South African resident shareholders a proportionate share of the net income of foreign companies under their control, thereby preventing the use of offshore entities to defer or avoid South African tax on passive and investment income.[183] Zambia's Income Tax Act contains no equivalent CFC regime. This legislative gap means that Zambian residents, including high-net-worth individuals and

[180]Income Tax Act 58 of 1962 (SA) (n 2) s 1 (definition of "gross income"); Commissioner for SARS v Brummeria Renaissance (Pty) Ltd 2007 (6) SA 601 (SCA).
[181]Income Tax Act (Zambia) (n 1) s 4 (charge to income tax); s 2 (definition of "total income").
[182]Piet Nel and others, "The Codification of the Source Concept in South African Income Tax Law" (2020) 32(1) South African Mercantile Law Journal 1, 7.
[183]Income Tax Act (SA) (n 2) ss 9A-9H (Controlled Foreign Companies); ss 6-8 (foreign tax credits).

business owners, may lawfully accumulate income in offshore controlled entities without Zambian tax arising until repatriation as a dividend.[184]

South Africa's section 31 on transfer pricing, reinforced by the interest limitation provisions of section 23N, provides a legally codified framework for preventing artificial profit shifting through both transfer mispricing and excessive intragroup debt.[185] A careful analysis shows that, section 31 has been progressively strengthened through amendment to align with OECD standards whilst retaining domestic enforceability, providing SARS with clear statutory authority to make transfer pricing adjustments without reliance on the general anti-avoidance rule.[186] Zambia's section 97B, whilst modelled on the OECD arm's length principle, lacks the legislative elaboration and judicial interpretation characterising section 31, and Global Financial Integrity has documented that transfer mispricing in Zambia's mining sector remains substantially unaddressed in consequence.[187]

4.1.3 General Anti-Avoidance: Statutory Architecture Compared

South Africa's general anti-avoidance rule (GAAR), contained in sections 80A to 80L of the Income Tax Act, represents one of the most legally sophisticated anti-avoidance frameworks in sub-Saharan Africa. Section 80A renders void, for tax purposes, any "impermissible avoidance arrangement", defined in section 80L as an arrangement producing a tax benefit, entered into other than in the ordinary course of business, and either lacking commercial substance or misusing the provisions of the Act.[188] Zambia's anti-avoidance provision in section 98 of the Income Tax Act empowers ZRA to disregard arrangements that reduce tax liability, but does so without the structured tripartite framework of the South African GAAR.[189]

Croome's analysis identifies that section 80A's tripartite test provides a structured analytical framework that both constrains ZRA's discretion and affords taxpayers greater certainty about the boundary between legitimate tax planning and impermissible avoidance.[190] The Supreme Court of Appeal's judgment in Commissioner for SARS v NWK Ltd further refined the application of the GAAR, confirming that the misuse-and-abuse limb requires purposive

[184]Income Tax Act (Zambia) (n 1) s 35 (thin capitalisation); s 97B (transfer pricing).
[185]Income Tax Act (SA) (n 2) s 31 (transfer pricing); s 23N (limitation of interest deductions).
[186]Thabo Legwaila, "Transfer Pricing in South Africa: The Evolution of Section 31" (2019) 52(2) De Jure Law Journal 291, 298.
[187]Global Financial Integrity, Illicit Financial Flows from Zambia: A Mining Sector Focus (GFI 2020) 12.
[188]Income Tax Act (SA) (n 2) s 80A (general anti-avoidance rule); s 80L (definition of "impermissible avoidance arrangement").
[189]Income Tax Act (Zambia) (n 1) s 98 (anti-avoidance).
[190]Beric Croome, "The South African General Anti-Avoidance Rule: Recent Developments" (2017) 29(1) South African Mercantile Law Journal 99, 104.

assessment of the legislative scheme as a whole.[191] Zambia's section 98 has been the subject of significantly less judicial elaboration, leaving its scope and the procedural requirements for its invocation uncertain. This uncertainty diminishes ZRA's confidence in deploying the anti-avoidance provision against sophisticated arrangements and contributes to under-assessment of complex tax planning structures.

4.2 Comparative Analysis of the VAT Legal Framework

4.2.1 Structural Integrity of the VAT Base

The Value-Added Tax Act 89 of 1991 of South Africa achieves a broader and more legally secure VAT base than Zambia's equivalent. Section 7(1)(a) imposes tax on every taxable supply by a vendor, with sections 11 and 12 carefully delineating zero-rated and exempt supplies respectively.[192] Zambia's VAT Act similarly distinguishes between taxable, zero-rated, and exempt supplies,[193] but its structural design exhibits greater porosity through broader exemption categories and more extensive ministerial discretion to alter the zero-rating schedule, features whose adverse revenue consequences were analysed in the preceding chapter.

South Africa's VAT registration threshold under section 23 brings a substantially larger proportion of economic activity within the registered vendor net compared to Zambia's equivalent threshold under section 17 of the VAT Act.[194][195] SARS' VAT registration statistics confirm that South Africa's VAT register encompasses a significantly larger number of active vendors relative to the size of its formal economy than Zambia's equivalent.[196] The consequence for Zambia is a narrower effective VAT base, with the resulting revenue shortfall structurally absorbed by PAYE.[197]

4.2.2 Ministerial Discretion and Legislative Certainty in Zero-Rating

A structurally significant distinction between the two VAT frameworks concerns the legal mechanism for prescribing zero-rated supplies. South Africa's VAT Act enumerates its zero-rated supplies in a statutory schedule (Schedule 1) and in the detailed provisions of section

[191]Commissioner for SARS v NWK Ltd [2011] ZASCA 5; 2011 (2) SA 67 (SCA).
[192]Value-Added Tax Act (SA) (n 4) s 7(1)(a); s 11 (zero-rated supplies); s 12 (exempt supplies).
[193]VAT Act (Zambia) (n 3) s 2 (taxable supply); s 10 (zero-rating); s 11 (exemptions).
[194]VAT Act (SA) (n 4) s 23 (compulsory registration threshold); s 50A (voluntary registration).
[195]VAT Act (Zambia) (n 3) s 17 (registration threshold).
[196]South African Revenue Service, VAT Registration and Compliance Statistics 2022/23 (SARS 2023) 4.
[197]Zambia Revenue Authority, Annual Report 2023 (ZRA 2023) 14.

11(1)(a) to (p), each of which requires primary legislation to amend.[198] Zambia's VAT Act, by contrast, vests in the Minister of Finance the power to prescribe additional zero-rated supplies by statutory instrument under section 10(2), a power exercised most consequentially in zero-rating fuel without parliamentary approval.[199] South Africa's National Treasury has consistently resisted executive zero-rating of fuel, noting in explanatory memoranda to successive Revenue Laws Amendment Bills that executive alteration of zero-rating categories undermines the integrity and fiscal predictability of the VAT base.[200]

ActionAid Zambia has documented that Zambia's ministerial zero-rating power has been exercised without systematic prior fiscal impact assessments, resulting in revenue foregone that is neither parliamentary authorised in advance nor subject to periodic statutory review.[201] The South African model, in which the legislature retains control over zero-rating through amendment of statutory schedules, provides a superior legal design that Zambia could adopt through amendment of section 10(2) of the VAT Act to require parliamentary approval for any new zero-rating category. This structural reform would protect the revenue base and enhance fiscal transparency and democratic accountability simultaneously.

4.2.3 VAT Refund Mechanisms: Statutory Safeguards Compared

Section 44 of South Africa's VAT Act establishes a legally prescribed timeline for refund processing and confers on SARS a specific, bounded power under section 44(3)(b) to withhold a refund pending audit, subject to procedural requirements under the TAA.[202] Zambia's equivalent provisions under section 38 of the VAT Act and Rule 14 of the VAT Regulations prescribe neither equivalent statutory timelines nor defined procedural conditions for withholding refunds, leaving ZRA with broader and less legally structured discretion over refund management.[203]

SARS' performance data demonstrates materially higher refund processing efficiency than ZRA's equivalent record, where refund backlogs are a documented persistent challenge.[204][205] South Africa's statutory model, in which the refund withholding power is time-limited,

[198]VAT Act (SA) (n 4) sch 1 (zero-rated supplies); s 11(1)(a)-(p) (export and international supplies).
[199]VAT Act (Zambia) (n 3) s 10(2); VAT (Zero-Rating) (Fuel) Regulations, SI No 41 of 2020.
[200]Republic of South Africa, National Treasury, Explanatory Memorandum on the Revenue Laws Amendment Bill, 2022 (National Treasury 2022) 18.
[201]ActionAid Zambia, Levelling the Playing Field: Tax Incentives and Revenue Losses in Zambia (ActionAid 2021) 18.
[202]VAT Act (SA) (n 4) s 44 (refund of excess input tax); s 45 (VAT refund interest).
[203]VAT Act (Zambia) (n 3) s 38; VAT Regulations, SI No 133 of 1995, r 14.

[204]SARS (n 10) 44 (VAT refund processing statistics 2022/23).
[205]ZRA, Report on VAT Refund Management 2022 (ZRA 2022) 7.

bounded by statute, and subject to a formal audit notification requirement under section 44(3)(b), provides a legally superior framework[206] that Zambia could replicate through amendment of section 38 of the VAT Act to incorporate statutory processing timelines and prescribed conditions for withholding, thereby improving both taxpayer compliance incentives and fraud prevention.

4.2.4 Export Zero-Rating: Statutory Clarity and Administrative Guidance

South Africa's VAT Act, supplemented by SARS Interpretation Note 30 (Issue 4), provides detailed and judicially tested guidance on the documentary requirements for zero-rating exported goods, including dedicated provisions for indirect exports and electronic services.[207] The interpretive certainty this framework provides significantly reduces export zero-rating disputes and curtails fraudulent claims by delineating with precision the documentation required in each factual scenario. Zambia's Rule 18 of the VAT Regulations, as analysed in the preceding chapter, contains interpretive ambiguities regarding indirect exports that have generated litigation and administrative inconsistency.[208]

The lesson from South Africa's approach is that the legal framework for export zero-rating should be sufficiently precise, whether in primary legislation, subsidiary legislation, or formally published administrative guidance with a clear legal basis, to eliminate interpretive disputes and provide consistent, enforceable standards for ZRA officers and taxpayers alike. Amendment of Rule 18 to provide separate documentary regimes for direct and indirect exports, together with the publication of a formal ZRA Interpretation Note on export zero-rating modelled on SARS' Interpretation Note 30, would represent a low-cost legislative and administrative reform with significant compliance and revenue benefits.

4.3 Comparative Analysis of the Customs and Excise Framework

4.3.1 Legislative Design of Duty Rebates and End-Use Conditions

South Africa's Customs and Excise Act 91 of 1964 governs duty remission, rebate, and refund through a detailed Schedule 4 that prescribes, with considerable specificity, the categories of goods eligible for duty rebate and the end-use verification conditions applicable to each rebate item.[209] Zambia's equivalent manufacturing exemptions in Schedule 1 of the Customs and

[206]VAT Act (SA) (n 4) s 44(3)(b) (withholding refund pending audit); TAA (n 8) s 190 (audit-pending withholding).
[207]VAT Act (SA) (n 4) s 11(1)(a) (exportation criteria); SARS Interpretation Note 30 (Issue 4) (2019) (export zero-rating guidance).
[208]B Mwangi, "Interpreting Export Provisions in VAT Legislation: Lessons from Zambia" (2021) 15(1) African Tax Law Review 77, 84.
[209]Customs and Excise Act (SA) (n 6) s 44 (rebates); sch 4 (rebate items for industrial inputs).

Excise Act serve analogous policy objectives but are notably less specific in their end-use conditions.[210] South Africa's National Treasury Tax Expenditure Statement for 2023 confirms that its customs rebate system is subject to annual fiscal impact assessment, with rebate provisions periodically reviewed for economic effectiveness and legislative rationality.[211]

Zambia's Ministry of Finance Tax Expenditure Statement, whilst increasingly comprehensive, does not yet incorporate equivalent systematic post-grant evaluation of manufacturing exemptions.[212] The South African model demonstrates the importance of embedding within the enabling legislation itself a statutory requirement for periodic fiscal impact reporting and end-use verification. South Africa's Schedule 4 rebate items impose statutory end-use conditions on beneficiaries, under which goods obtained under rebate must be used for the stated qualifying purpose and are subject to customs inspection, a legally enforceable design feature that Zambia's customs legislation does not replicate with equivalent force, creating opportunities for rebate abuse that erode the customs revenue base.

4.3.2 Special Economic Zones and Investment Incentive Frameworks Compared

Both jurisdictions deploy special economic zone or equivalent frameworks as instruments of export promotion and investment attraction. South Africa's Special Economic Zones Act 16 of 2014, read with section 21A of the Customs and Excise Act, establishes a legally coherent SEZ framework with prescribed criteria for designation, investor qualification, and the scope of available customs incentives.[213] The OECD's Forum on Harmful Tax Practices has assessed South Africa's SEZ framework as broadly compliant with BEPS Action 5 minimum standards on preferential tax regimes, partly because the incentives are available on a non-discriminatory basis to domestic and foreign investors and are linked to substantive economic activity requirements.[214]

Zambia's ZDA Act-based investment incentive framework, whilst serving analogous policy objectives, confers broad ministerial discretion in granting customs exemptions and lacks legally binding activity requirements that would condition the continuation of incentives on demonstrated economic performance.[215] South Africa's model suggests that Zambia's

[210]Customs and Excise Act (Zambia) (n 5) sch 1 (manufacturing exemptions).
[211]Republic of South Africa, National Treasury, Tax Expenditure Statement 2023 (National Treasury 2023) 22.
[212]Republic of Zambia, Ministry of Finance, Tax Expenditure Statement 2023 (Ministry of Finance 2023) 44.
[213]Special Economic Zones Act 16 of 2014 (South Africa); Customs and Excise Act (SA) (n 6) s 21A (SEZ customs treatment).
[214]OECD, BEPS Action 5: Countering Harmful Tax Practices More Effectively (OECD Publishing 2015) 15.
[215]Zambia Development Agency Act (Cap 385 of the Laws of Zambia) s 48(1).

investment incentive legislation could be strengthened through three specific legislative reforms: introducing statutory activity tests as preconditions for both the grant and retention of customs incentives; requiring the ZDA to publish an annual report on the fiscal cost and economic performance of each active incentive grant; and establishing a statutory clawback mechanism under which incentives are revoked and previously foregone revenue recovered where qualifying conditions are not fulfilled. These reforms would bring Zambia's incentive framework into closer alignment with international best practice without abolishing the policy rationale for investment incentives.

4.4 Comparative Analysis of Mining Taxation

4.4.1 Legislative Stability and the Case for a Dedicated Royalty Statute

The mining tax frameworks of Zambia and South Africa differ profoundly in legislative stability and structural coherence. Zambia's Income Tax Act imposes mineral royalty under section 117 and taxes mining income under the applicable corporate income tax provisions, with rates and deduction regimes amended multiple times since 2012.[216] Nathan Associates' review concluded that this pattern of recurrent amendment has created a climate of legal uncertainty that increases the perceived sovereign risk of mining investment and incentivises mining companies to adopt conservative repatriation strategies and aggressive intragroup planning as hedges against future legislative change.[217]

South Africa's mining tax regime is governed by sections 26A to 26C of the Income Tax Act and, critically, the Mineral and Petroleum Resources Royalty Act 28 of 2008, a dedicated statute that was preceded by extensive public consultation and has remained substantively stable since enactment.[218] The royalty formula under sections 4 and 5 of the MPRRA, which calculates royalty as a percentage of gross sales revenue adjusted for earnings before interest and taxes, is inherently countercyclical, reducing the royalty burden when profitability is low and increasing it when profits are high, thereby providing both revenue stability for the state and investment certainty for mining companies.[219] This formula-based approach, embodied in a dedicated statute with its own regulations, represents a structurally superior legal design

[216]Income Tax Act (Zambia) (n 1) s 117(1)(a)-(c), as amended by Finance Acts 2015, 2019, 2020, 2022, 2023.
[217]Nathan Associates, Review of the Zambian Mining Fiscal Regime (Nathan Associates 2021) 15.
[218]Income Tax Act (SA) (n 2) ss 26A-26C (mining taxation); Mineral and Petroleum Resources Royalty Act 28 of 2008 (South Africa) (MPRRA).
[219]MPRRA (n 61) s 4 (royalty formula); s 5 (refined minerals formula); MPRRA Regulations r 3-6 (deduction rules).

compared to Zambia's practice of legislating royalty rates through annual Finance Act amendments.

4.4.2 Ring-Fencing, Capital Allowances, and Revenue Protection

A further structural distinction concerns the legal treatment of mining losses and capital allowances. Section 26A of South Africa's Income Tax Act provides for ring-fencing of mining losses, preventing mining taxpayers from offsetting losses from one mining operation against income from another operation or from non-mining sources.[220] Zambia's Income Tax Act provides capital allowances for mining under sections 28 and 30[221] but does not incorporate equivalent ring-fencing provisions, leaving the tax base potentially vulnerable to cross-mine and cross-sector loss utilisation strategies that reduce the effective mining tax burden below the statutory rate. South Africa's section 15, providing for capital expenditure deduction over the life of the mine rather than in the year of incurrence, creates a predictable deduction schedule that SARS can model and incorporate into revenue projections with greater accuracy than Zambia's more accelerated deduction regime.

4.4.3 Constitutional Framework for Mineral Resource Sovereignty

An often-overlooked dimension of the comparative analysis is the constitutional framework within which mining taxation operates. South Africa's Mineral and Petroleum Resources Development Act 28 of 2002, grounded in the constitutional principle of state custodianship of mineral resources, establishes that mineral rights vest in the state, giving the South African government a stronger sovereign legal foundation from which to impose and enforce mining taxes.[222] The Constitutional Court's judgment in Agri SA v Minister for Minerals and Energy validated this constitutional framework, providing a judicially authorised basis for the state's assertion of sovereign control that is less susceptible to contractual erosion by investor stabilisation demands than Zambia's framework.

Zambia's Constitution and the Mines and Minerals Development Act vest mineral rights in the Republic, but the development agreements concluded with major mining investors incorporating stabilisation clauses, effectively subordinated this statutory sovereignty to contractual commitments, as the Vedanta ICSID arbitration illustrated.[223] Laryea's comparative

[220]Income Tax Act (SA) (n 2) s 26A (ring-fencing of mining losses); s 15 (capital allowances for mining).
[221]Income Tax Act (Zambia) (n 1) s 30 (capital allowances); s 28 (mining deductions).
[222]Mineral and Petroleum Resources Development Act 28 of 2002 (South Africa) s 3 (state custodianship); Agri SA v Minister for Minerals and Energy 2013 (4) SA 1 (CC).
[223]Vedanta Resources plc v Republic of Zambia, ICSID Case No ARB/05/22 (Award, 12 February 2010).

analysis supports the conclusion that constitutionalising resource sovereignty, as South Africa has done, provides governments with greater legal authority to reform resource tax regimes without incurring international arbitral liability.[224] The legislative lesson for Zambia is that future development agreements should contain express provisions affirming the state's constitutional sovereignty over mineral taxation, without stabilisation clauses that contractually freeze the applicable fiscal regime, and that future iterations of the Mines and Minerals Development Act should explicitly preclude such stabilisation commitments.

4.5 Comparative Analysis of International Tax Design and Anti-Avoidance

4.5.1 BEPS Implementation and Mandatory Disclosure

South Africa's status as a founding Inclusive Framework member and one of Africa's most active participants in international tax governance has produced a domestic legislative framework that substantially incorporates BEPS minimum standards. The TAA's mandatory disclosure provisions under section 70 require taxpayers to disclose reportable arrangements ,including those designed to exploit legislative gaps, to SARS, providing advance intelligence on potentially abusive tax planning.[225] South Africa's advance tax ruling system under the TAA provides taxpayers with legally binding certainty about the tax treatment of proposed transactions, reducing litigation risk and improving voluntary compliance in ways that Zambia's more limited advance ruling provision under the ZRA Act does not replicate.[226]

A legally robust advance ruling system, backed by a statutory obligation on ZRA to honour issued rulings, would reduce compliance uncertainty, encourage voluntary disclosure, and generate intelligence about emerging tax planning strategies. Such intelligence, systematically gathered and analysed, could be fed back into the legislative reform process to close identified gaps before they are widely exploited, a dynamic that South Africa's mandatory disclosure regime has demonstrably achieved.

4.5.2 Automatic Exchange of Information and Third-Party Data

South Africa's implementation of the CRS and Automatic Exchange of Information framework is among the most advanced in Africa. SARS' country profile confirms that South Africa has

[224]Emmanuel Laryea, "Stabilisation Clauses and Mining Contracts in Africa" (2019) 12(2) Journal of World Investment and Trade 155, 170.
[225]TAA (n 8) s 70 (reportable arrangements); s 35 (advance tax rulings).
[226]Income Tax Act (Zambia) (n 1) s 98; ZRA Act (n 8) s 30 (advance rulings - limited scope).

implemented the CRS in full domestic legislation, with comprehensive financial institution due diligence obligations, a complete XML transmission infrastructure, and a dedicated SARS unit for processing incoming CRS data.[227] Section 46 of the TAA further requires financial institutions, medical schemes, pension funds, and employers to submit detailed annual returns to SARS, creating a comprehensive third-party data ecosystem enabling automated cross-matching of taxpayer declarations against independently sourced income data.[228]

Zambia's Global Forum Peer Review identified material gaps in the legal framework for CRS implementation, including incomplete due diligence obligations, limited financial institution registration, and the absence of a functional XML transmission infrastructure.[229] South Africa's superior CRS implementation reflects a deliberate legislative strategy of embedding data reporting obligations directly in primary legislation, the TAA, rather than relying on administrative guidance. Zambia could replicate this approach by amending the ZRA Act to incorporate explicit and enforceable third-party data reporting obligations equivalent to section 46 of the TAA, thereby creating the legal foundation for a data-matching programme that would improve detection of under-reported income across non-PAYE categories.

4.5.3 Country-by-Country Reporting and Transfer Pricing Architecture

South Africa's BEPS Action 13 country-by-country reporting (CbCR) implementation through section 29A of the TAA gives SARS information about the global allocation of multinational enterprise profits, taxes, and economic activity.[230] Zambia has introduced CbCR regulations under section 97C of the Income Tax Act,[231] but ZRA's capacity to utilise the resulting data for audit risk assessment remains more limited than SARS', given comparative resource constraints. The Zambia-South Africa DTA incorporates an exchange of information article under Article 26 that theoretically enables ZRA to request CbCR and transfer pricing documentation from SARS in respect of South African-resident entities with Zambian operations,[232] but this bilateral mechanism has not been systematically exploited.

4.5.4 Pillar Two and Domestic Minimum Tax Legislation

[227]South African Revenue Service, OECD/G20 BEPS Project - South Africa Country Profile (SARS 2023) 3.

[228]TAA (n 8) s 46 (third-party data reporting); SARS, Third Party Data Submissions Guide (SARS 2023) 2.

[229]Global Forum on Transparency and Exchange of Information for Tax Purposes, Peer Review Report on Zambia (OECD Publishing 2021) 23, 45.

[230]OECD, BEPS Action 13: Country-by-Country Reporting (OECD Publishing 2015); TAA (n 8) s 29A (CbCR obligation).

[231]Income Tax Act (Zambia) (n 1) s 97C (country-by-country reporting regulations).

[232]Zambia-South Africa Double Taxation Agreement (signed 4 June 2015, entered into force 18 December 2015) UNTS Reg No I-57342, Art 26 (exchange of information).

The OECD's Pillar Two global anti-base erosion rules, introducing a global minimum effective tax rate of fifteen per cent for large multinational enterprises, represent the most significant development in international tax law since the BEPS project.[233] South Africa has moved decisively to implement Pillar Two through the draft Global Minimum Tax Bill published by National Treasury in 2024, which will introduce a qualified domestic minimum top-up tax ensuring South Africa captures additional revenue from the global minimum tax in respect of in-scope multinational operations before another jurisdiction can collect it.[234] Zambia has not yet introduced equivalent legislation, meaning that top-up tax revenue attributable to Zambian source profits of in-scope multinationals will be collectible by the ultimate parent jurisdiction rather than by Zambia. Without timely domestic implementation, Zambia foregoes a potentially significant revenue stream that a clear Pillar Two statute would secure.

4.6 Comparative Analysis of Tax Administration and Enforcement Architecture

4.6.1 The Tax Administration Act as a Legislative Model

The most instructive lesson from South Africa's tax framework for Zambia may concern not any single substantive tax provision but the overarching administrative architecture established by the Tax Administration Act 28 of 2011. The TAA consolidated the administration of all South African tax legislation, previously fragmented across multiple revenue statutes, into a single, comprehensive, and legally coherent administrative framework.[235] The TAA prescribes with statutory precision the powers of SARS officials, the rights of taxpayers during audit and verification, the procedural requirements for each administrative power, the timelines within which SARS must act, the penalties applicable to specified non-compliance, and the dispute resolution pathway from internal reconsideration through to the specialist Tax Court.

Zambia's administrative framework remains distributed across the ZRA Act, the Income Tax Act, the VAT Act, and the Customs and Excise Act, without an equivalent consolidated statute.[236] This distribution creates structural inconsistencies in ZRA's administrative powers, gaps in taxpayer procedural protections, and uncertainty about which provision governs administrative actions affecting obligations under multiple tax instruments simultaneously. The enactment of a consolidated Tax Administration Act for Zambia, modelled on South Africa's

[233]OECD, Pillar Two Global Anti-Base Erosion Model Rules (OECD Publishing 2021).
[234]Republic of South Africa, Draft Global Minimum Tax Bill, 2024 (National Treasury 2024).
[235]Tax Administration Act 28 of 2011 (South Africa) (TAA); Republic of Zambia, Zambia Revenue Authority Act (Cap 321 of the Laws of Zambia).
[236]Zambia Revenue Authority, Strategic Plan 2022-2026 (ZRA 2022) 5.

TAA and adapted to Zambia's institutional context, would represent the single most impactful legislative reform Zambia could undertake to improve the coherence, predictability, and enforceability of its revenue administration framework.

4.6.2 Powers of Assessment, Audit, and Third-Party Information

The TAA confers on SARS a legally codified suite of audit and information-gathering powers, including the power under section 46 to require third parties to furnish information about their financial relationships with taxpayers, the power under sections 63 to 70 to conduct desk and field audits, and the power to issue search and seizure warrants in cases of suspected fraud.[237] Crucially, each power is accompanied in the TAA by precisely defined procedural requirements, notice periods, grounds for exercise, and taxpayer safeguards, that both enable SARS to act effectively and provide taxpayers with legally enforceable procedural rights.

ZRA's equivalent powers under the ZRA Act and individual revenue statutes are less comprehensively codified,[238] with the result that ZRA officers may exercise audit and information-gathering powers with less procedural certainty about the legal authority underpinning their actions. This gap has two adverse revenue consequences: it exposes ZRA's audit assessments to procedural challenge on administrative law grounds unrelated to the substantive merits of the tax liability; and it reduces ZRA's confidence in pursuing defensible but aggressive audit positions, contributing to under-assessment of sophisticated taxpayers in non-PAYE categories.

4.6.3 Penalties, Criminal Sanctions, and Deterrence Architecture

South Africa's TAA establishes a graduated penalty framework under section 195, prescribing administrative penalties calibrated to the severity of non-compliance and the amount of tax at stake.[239] Section 234 creates criminal offences for the most serious non-compliance, including fraudulent misrepresentation, wilful failure to account for VAT, and deliberate destruction of records. Section 235 imposes penalties for failure to register as a taxpayer or VAT vendor, directly relevant to the registration exemption vulnerabilities in Zambia's VAT framework.

Zambia's penalty and criminal offence provisions under section 99 of the Income Tax Act and section 34 of the ZRA Act,[240] whilst analogous in statutory intent, are less elaborated and have

[237]TAA (n 8) s 3 (SARS powers); ss 46-48 (third-party information); ss 63-70 (audit and verification).
[238]ZRA Act (n 8) s 4 (ZRA functions); Income Tax Act (Zambia) (n 1) s 98A (compliance powers).
[239]TAA (n 8) s 195 (administrative penalties); s 234 (criminal offences); s 235 (failure to register).
[240]Income Tax Act (Zambia) (n 1) s 99 (penalties); ZRA Act (n 8) s 34 (offences).

attracted less consistent judicial interpretation. SARS' Annual Report demonstrates a substantially higher rate of successful prosecution for tax offences than ZRA's equivalent data reflects,[241] a differential attributable not merely to resource disparities but to the clearer offence definitions and more rigorous procedural provisions of the TAA. The deterrent effect of criminal sanctions is a function not merely of their existence in statute but of their precision, accessibility, and consistent application, all of which require a more legally robust framework than Zambia currently possesses.

4.6.4 Dispute Resolution: Structural and Judicial Comparison

South Africa's TAA establishes a comprehensive objection and appeal procedure in sections 104 to 113, providing for internal reconsideration of assessments, a formal objection process with prescribed timelines, and access to the specialist Tax Court under the Tax Court Act 31 of 2023.[242] The Tax Court's specialisation in revenue disputes and the substantial body of jurisprudence it has developed over decades provides SARS and taxpayers alike with a predictable and expert forum for resolving complex tax questions.

Zambia's dispute resolution framework, contained in the Income Tax Appeals Tribunal Act and the ZRA Act,[243] provides for objection to ZRA followed by appeal to the Tax Appeals Tribunal and thereafter the High Court. The Tribunal's limited institutional capacity, infrequent sitting schedule, and resulting backlog of unresolved appeals extend the period of legal uncertainty for both taxpayer and ZRA, creating a structural impediment to timely revenue recognition. Divergences in judicial interpretive approach further compound the problem: South Africa's courts have consistently applied purposive construction in tax matters, as illustrated by Commissioner for SARS v Volkswagen of South Africa (Pty) Ltd,[244] whilst Zambian courts have occasionally adopted a more literal approach to tax exemption provisions, as in Zambia Revenue Authority v Indeni Petroleum Refinery Company Ltd,[245] with the consequence that the scope of statutory exemptions may be construed more broadly than the legislature intended, eroding the applicable tax base.

4.6.5 PAYE Administration: Auto-Assessment and the Third-Party Data Model

[241] SARS (n 10) 28 (compliance improvement programme outcomes).
[242] TAA (n 8) ss 104-113 (objection and appeal procedure); Tax Court Act 31 of 2023 (South Africa).
[243] Income Tax Appeals Tribunal Act (Cap 327 of the Laws of Zambia); ZRA Act (n 8) s 29 (appeals).
[244] Commissioner for SARS v Volkswagen of South Africa (Pty) Ltd 2020 (4) SA 130 (SCA).
[245] Zambia Revenue Authority v Indeni Petroleum Refinery Company Ltd [2015] ZMCA 021 (Court of Appeal).

Comparison of the PAYE administration frameworks reveals that, whilst both systems rely on employer withholding, South Africa's PAYE administration is significantly more automated. The Fourth Schedule to South Africa's Income Tax Act provides a detailed statutory framework for employees' tax, whilst the TAA's auto-assessment provisions under section 30B enable SARS to generate individual income tax assessments using third-party data from employers, financial institutions, and medical schemes, without requiring individual taxpayers to file returns.[246] This auto-assessment capability substantially reduces SARS' administrative burden and increases the accuracy of income assessments across both PAYE and non-PAYE income streams.

Zambia's PAYE administration, grounded in employer withholding obligations under section 5 of the Income Tax Act,[247] lacks an equivalent auto-assessment capability and relies more heavily on taxpayer-filed returns. ZRA's Revenue Performance Report for 2023 identifies PAYE as the most reliably collected revenue instrument but notes reconciliation discrepancies between employer remittances and individual tax obligations that automated data matching would detect.[248] South Africa's experience confirms that investment in third-party data reporting and auto-assessment infrastructure generates compliance improvements across both PAYE and non-PAYE income, and that these improvements in non-PAYE compliance are sufficient to meaningfully reduce structural dependence on employment income as the primary reliable revenue source.[249]

Conclusion

The comparative analysis undertaken in this chapter, read together with the structural legal analysis of Chapter Three, establishes the foundational legal case for the recommendations to be advanced in Chapter Five. The central conclusion is unambiguous: Zambia's over-reliance on PAYE is a remediable legal condition. The remedy lies in systematic legislative reform of the non-PAYE revenue instruments, informed, but not uncritically replicated, from the legal architecture that has enabled South Africa to construct a more diversified, legally coherent, and administratively effective tax framework.

[246]Income Tax Act (SA) (n 2) Fourth Schedule (employees' tax); TAA (n 8) s 30B (auto-assessment).
[247]Income Tax Act (Zambia) (n 1) s 5 (PAYE obligations); ZRA, Employer's Guide to PAYE (ZRA 2022) para 3.
[248]ZRA, Revenue Performance Report, Quarter 3 2023 (ZRA 2023) 4.
[249]SARS, Annual Performance Plan 2023/24 (SARS 2023) 16.

CHAPTER FIVE

CONCLUSION, SUMMARY AND RECOMMENDATIONS

5.0 Introduction

This study examined the effectiveness of Zambia's tax legal framework in achieving equitable and efficient revenue mobilisation. The research was motivated by the growing dependence on Pay As You Earn (PAYE) despite the existence of multiple statutory tax bases capable of generating significant revenue. Through a doctrinal analysis of Zambia's tax legislation and a comparative examination of South Africa's tax framework, the study sought to determine whether legal inefficiencies within Zambia's tax laws contribute to the narrowing of the tax base and the overreliance on PAYE.

Research question one established that Zambia's tax system is governed by a broad legal framework comprising the Income Tax Act, Cap 323, the Value Added Tax Act, Cap 331, the Customs and Excise Act, Cap 322, the Zambia Development Agency Act, the Mines and Minerals Development Act, annual Finance Acts, subsidiary legislation, and international tax instruments. Collectively, these statutes create the legal basis for the assessment, collection, administration, and enforcement of taxes in Zambia. The study further established that Zambia's domestic tax framework is increasingly influenced by international tax standards such as Double Taxation Agreements, Exchange of Information (EOI) frameworks, the Common Reporting Standard (CRS), and the OECD/G20 Base Erosion and Profit Shifting (BEPS) initiatives.

Research question two focused on several provisions within Zambia's tax framework have unintentionally narrowed the effective tax base. Extensive VAT exemptions, zero-rating provisions, customs duty concessions, investment incentives, VAT deferment schemes, mining sector incentives, and weaknesses in the implementation of international tax standards collectively reduce the revenue potential of major tax types. Consequently, PAYE remains the most stable and easily collectible source of revenue because it is collected directly at source through employer withholding mechanisms. The study therefore concludes that Zambia's overreliance on PAYE is not merely an administrative challenge but is rooted in the legal design of the tax framework itself.

The third and final research question conducted a comparative analysis which revealed that South Africa has achieved greater success in revenue mobilisation through legislative stability, stronger administrative enforcement, effective implementation of international tax standards,

and stricter oversight of tax incentives. Unlike Zambia, South Africa's tax framework demonstrates greater predictability and coherence, resulting in a broader and more diversified tax base. The study found that Zambia can draw important lessons from South Africa regarding the regulation of tax incentives, VAT administration, mining taxation, international tax cooperation, and parliamentary oversight of tax expenditures.

5.1 Findings

The study produced five principal findings.

First, Zambia possesses a comprehensive tax legal framework; however, the interaction of statutory provisions, exemptions, incentives, and subsidiary legislation has reduced the effectiveness of several tax instruments.

Second, the extensive use of tax incentives and exemptions under the Value Added Tax Act, Customs and Excise Act, Income Tax Act, and Zambia Development Agency Act has significantly narrowed the effective tax base.

Third, the volatility of Zambia's mining tax regime has weakened predictability and constrained the State's ability to maximise revenue from one of its most important economic sectors.

Fourth, weaknesses in the implementation of international tax standards, including Exchange of Information and the Common Reporting Standard, limit the Zambia Revenue Authority's ability to tax offshore income, multinational enterprises, and cross-border transactions.

Finally, the cumulative effect of these legal inefficiencies has shifted the burden of taxation toward formally employed individuals, resulting in a disproportionate reliance on PAYE as a source of domestic revenue.

5.2 Summary of Findings

The doctrinal analysis conducted in this study demonstrates that Zambia's revenue challenges are not solely attributable to administrative inefficiencies but are significantly influenced by the legal architecture of the tax system itself. The study established that although tax incentives and exemptions are often introduced to stimulate investment and economic growth, their cumulative effect has been the erosion of the tax base. The findings further reveal that frequent legislative amendments, particularly within mining taxation, undermine legal certainty and investor confidence while simultaneously reducing the State's ability to mobilise sustainable revenue. The study also found that VAT, customs duties, corporate income tax, and mining taxes have not performed to their full revenue potential due to statutory reliefs, exemptions,

and enforcement challenges. As a result, PAYE continues to bear a disproportionate share of Zambia's revenue mobilisation efforts.

5.3 Summary of Comparative Findings

The comparative analysis with South Africa demonstrates that effective revenue mobilisation depends upon legislative certainty, institutional capacity, and coherent tax policy. South Africa's legal framework provides stronger controls over tax incentives, greater stability in mining taxation, more effective VAT administration, and more advanced implementation of international tax standards.

The South African experience further illustrates that a broader tax base can be achieved through enhanced enforcement, reduced discretionary exemptions, and improved legislative oversight. These measures have enabled South Africa to diversify revenue sources and reduce excessive dependence on employment taxation. Zambia can therefore benefit from adopting similar approaches while tailoring reforms to its own economic and institutional realities.

5.4 Recommendations

The research has established that the law relating to the tax incentives put into place, contributes to the inefficiency of tax framework. It is therefore recommended that a comprehensive tax expenditure framework be established. The Government should enact legislation requiring the periodic review and publication of all tax expenditures, including exemptions, rebates, VAT reliefs, customs duty concessions, and investment incentives. Every tax incentive should be subjected to a cost-benefit analysis and should contain sunset clauses requiring parliamentary review before renewal. This would improve transparency and ensure that incentives continue only where they generate measurable economic benefits.

Secondly, since the research highlighted the importance of VAT as a tax type and the potential is has to generate government revenue, there is need for a reform of VAT exemptions and zero-rating Provisions.

The Value Added Tax Act should be reviewed to reduce excessive exemptions and broaden the VAT base. Particular attention should be given to sectors that currently enjoy extensive reliefs without clear evidence of corresponding public benefit. The law should also clarify the treatment of export transactions, documentary requirements, and refund claims to reduce uncertainty and opportunities for abuse.

Enhance Parliamentary Oversight of Tax Incentives. The study recommends limiting the use of subsidiary legislation to introduce significant tax exemptions and incentives. Major tax concessions should require parliamentary approval to ensure accountability, transparency, and consistency with national revenue objectives.

Strengthen Mining Tax Legislation. Zambia should adopt a stable and predictable mining taxation framework that minimises frequent legislative amendments. Mineral royalty provisions should be codified in a manner that limits policy reversals and provides certainty for both investors and tax administrators. The State should also strengthen monitoring mechanisms to ensure that incentives granted to mining companies generate commensurate economic benefits.

Review Customs Duty Exemptions and VAT Deferment Mechanisms. Customs duty exemptions and VAT deferment schemes should be subjected to stricter legal oversight. Clear statutory criteria should govern eligibility, duration, and monitoring of these concessions. Enhanced transparency would reduce revenue leakages and ensure that exemptions are granted only where they advance legitimate economic objectives.

Strengthen International Tax Administration. The Zambia Revenue Authority should strengthen its implementation of Exchange of Information mechanisms, the Common Reporting Standard, and BEPS minimum standards. This requires investment in technological infrastructure, specialised international tax units, and capacity building for tax officials. Effective implementation of international tax standards would improve the taxation of multinational enterprises, offshore assets, and cross-border transactions, thereby reducing dependence on PAYE.

Introduce Periodic PAYE Band Adjustments. To uphold the principles of equity and fairness, PAYE tax bands should be reviewed and adjusted periodically to reflect inflation and changes in the cost of living. Failure to adjust tax bands results in bracket creep, which increases the tax burden on formally employed taxpayers without any corresponding increase in real income.

5.5 Final Conclusion

This study after careful analysis has evidently demonstrated that Zambia's continued reliance on Pay As You Earn is deeply linked to the legal design of its tax framework. While Zambia possesses a broad legislative framework governing taxation there is need for meaningful reform of Zambia's tax laws which should focus on broadening the tax base, strengthening

international tax cooperation, improving oversight of tax incentives, enhancing institutional capacity, and embedding the principles of equity, neutrality, certainty, and efficiency within the tax system. It is also evident that there is need for a continued research on this area of interest to improve on the available local literature speaking to this issue. Such reforms would not only reduce the country's dependence on PAYE but would also contribute to a more sustainable, equitable, and resilient tax framework capable of supporting Zambia's long-term developmental aspirations.

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