

Property Transfer Tax Exemptions in Corporate Reorganisations and Equity Contributions in Zambia: A Comparative Analysis with South Africa and Kenya

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DEDICATION

This paper is dedicated to my fiancé Nancy Katongo Besa whose unwavering love, patience, and encouragement have been the foundation of my academic journey. Your belief in me, even during moments of doubt and exhaustion, gave me the strength to persevere and complete this work. This achievement is as much yours as it is mine.

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ABSTRACT

This thesis analyses Zambia's Property Transfer Tax (PTT) exemption framework, focusing on exemptions for internal corporate reorganisations and non-cash equity contributions. It assesses whether the current legal and administrative structure provides adequate certainty, predictability, and protection against abuse. Using a doctrinal approach, the study examines the Property Transfer Tax Act, Zambia Revenue Authority guidance, tax principles, and comparative practices from South Africa and Kenya, supported by academic and policy literature. The study finds that Zambia's PTT regime is characterised by significant legal and administrative gaps. Core concepts such as "group of companies", "internal reorganisation", and valuation rules for non-cash equity contributions are not clearly defined, resulting in heavy reliance on administrative discretion by the Commissioner-General. The absence of formal interpretive mechanisms, including advance rulings and detailed published guidance, contributes to inconsistent application and legal uncertainty. In addition, the framework lacks robust anti-avoidance measures capable of clearly distinguishing legitimate restructurings from tax avoidance schemes. The thesis concludes that the current regime does not sufficiently balance tax neutrality, legal certainty, and revenue protection. It recommends statutory clarification of key concepts, introduction of advance ruling mechanisms, enhanced administrative guidance, and targeted anti-avoidance provisions, drawing on comparative lessons from South Africa and Kenya, to improve predictability, consistency, and investment confidence.

Keywords: Property Transfer Tax, Zambia, internal reorganisation, group of companies, advance ruling mechanism, anti-avoidance.

TABLE OF STATUTES

1. *Property Transfer Tax Act, Cap. 340 of the Laws of Zambia.*
2. *Property Transfer Tax Bill, 2025, National Assembly of Zambia*
3. *Transfer Duty Act 40 of 1949 (South Africa)*
4. *Income Tax Act 58 of 1962 (South Africa)*
5. *Income Tax Act (Cap 470) (Kenya)*
6. *Tax Procedures Code Act, 2014 (Uganda*)

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1. *Cape Brandy Syndicate v Inland Revenue Commissioners ([1921] 1 KB 64)*
2. *Unilever Kenya Ltd v Commissioner General [2005] KEHC 3176 (KLR)*

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

Property transfer taxation has long occupied a distinctive place in Zambia's fiscal architecture. Unlike income-based or consumption-based taxes, the Property Transfer Tax (PTT) functions as a transactional levy imposed upon the transfer of certain classes of property, including land, shares, and mining rights[1]. Its purpose, historically, has been twofold: first, to safeguard the tax base by imposing a charge when wealth shifts hands; and second, to generate a relatively stable stream of revenue for the government from high-value transactions. Over the years, PTT has grown into an important element of Zambia's broader tax system, contributing meaningfully to domestic revenue mobilisation. While its fiscal rationale is clear, the practical operation of PTT especially in the domain of corporate structuring has frequently attracted criticism for creating friction in legitimate commercial transactions[2]. This is particularly evident where companies undertake internal reorganisations or restructure their equity holdings in ways that do not involve the extraction of value but nonetheless trigger PTT liability.[3]

As Zambia's corporate sector has evolved, and as multinational groups increasingly operate through complex holding structures, the inadequacy of traditional tax concepts to capture modern business movements has become more evident. Corporate reorganisations often occur not to transfer value externally but to streamline operational efficiency, comply with regulatory requirements, facilitate financing, or align local subsidiaries with global structures[4]. Similarly, equity contributions are frequently undertaken to capitalise a company rather than to dispose of property or realise a gain. If such transactions are taxed in the same manner as value-realising transfers to third parties, the tax system risks impeding restructuring efforts that may be necessary for competitiveness and investment[5]. Recognising these realities, Zambian law has gradually

[1] Property Transfer Tax Act, Chapter 340 of the Laws of Zambia.
[2] Zambia Revenue Authority, 'Tax Information: Property Transfer Tax' (ZRA) https://www.zra.org.zm/tax-information/ accessed 12 December 2025.
[3] OECD, *Corporate Restructuring and Tax Neutrality* (OECD Publishing 2019) 9–11
[4] ibid
[5] MP Devereux, 'Taxation of Corporate Reorganisations' (2012) 65 *Tax Law Review* 87, 92–94.

incorporated a number of exemptions within the PTT regime to relieve certain transfers associated with internal reorganisations or equity contributions[6].

1.2 Background of the Study

Despite these statutory provisions, persistent uncertainty continues to surround the scope, interpretation, and practical application of these exemptions. The central ambiguity often stems from the statutory definitions themselves. For instance, the notion of an "internal reorganisation" is not comprehensively set out in the Property Transfer Tax Act, leaving room for administrative discretion that may vary from case to case[7]. The Commissioner-General's power to treat certain transfers within a group of companies as having no realised value is framed broadly, giving administrative authorities significant latitude in determining whether a reorganisation qualifies for exemption. While such discretion may be intended to prevent abuse, it also creates unpredictability for corporations seeking certainty when planning transactions. In a commercial environment where restructuring decisions often involve significant financial commitments and strict timelines, the lack of clarity can produce delays, increase transaction costs, and discourage strategic reforms[8].

Questions also arise in relation to equity contributions. The legislation allows for exemptions where a shareholder transfers property to a company as a contribution to equity. At a conceptual level, such transfers do not produce realised gains for the transferor, and therefore taxing them appears inconsistent with the logic of PTT[9]. However, practical issues emerge where such contributions are made through intermediate holding structures or where a company is capitalised using property other than cash. The absence of detailed statutory guidance leaves considerable room for divergent interpretations, both by taxpayers and the tax administration. In some cases, corporations have reported extended engagements with the Zambia Revenue Authority (ZRA) in order to clarify whether a proposed capitalisation would qualify for exemption[10].

The potential consequences of this uncertainty extend beyond transactional inconvenience. Zambia has, in recent years, made significant public commitments to improving ease of doing business

[6] Section 5 Property Transfer Tax Act (Cap 340)
[7] Ibid section 3
[8] OECD, *Tax Administration and Certainty* (OECD Publishing 2017) 21–24
[9] Devereux (n 6) p95
[10] Zambia Revenue Authority, 'Tax Information: Property Transfer Tax' (n 3)

and attracting foreign investment.[11] Corporate restructuring flexibility is a major factor in the investment decisions of multinational enterprises.[12] If the tax system appears uncertain or inconsistent, corporations may adopt costly alternative structures or avoid restructuring altogether. In the long term, this undermines the competitiveness of Zambia's corporate environment and may reduce the country's attractiveness as a destination for foreign direct investment. It also creates the risk of unequal treatment, where taxpayers with similar transaction profiles receive different outcomes depending on how administrative discretion is exercised.

Another concern relates to the role of anti-avoidance considerations. PTT exemptions, particularly in group reorganisations, may be susceptible to manipulation if not carefully designed. Corporate groups can, in theory, restructure transactions in ways that appear to fall within internal reorganisation exemptions but are in substance aimed at avoiding PTT on what would otherwise be taxable transfers.[13] The challenge for policymakers is therefore to strike a balance between facilitating legitimate corporate movements and safeguarding against artificial arrangements. Several jurisdictions have responded to this tension by introducing detailed statutory conditions, safe harbours, or minimum shareholding periods for group reorganisation exemptions. Others rely on general anti-avoidance rules to prevent misuse. Zambia's framework, by contrast, largely relies on administrative discretion, which may be efficient in some cases but insufficiently transparent for consistent application.[14]

In light of these issues, a systematic academic inquiry into the efficacy and application of PTT exemptions in Zambia is both timely and necessary. The Property Transfer Tax (Amendment) Bill 2025, which proposes reforms to aspects of the exemption regime, underscores the importance of examining whether the current law aligns with global best practice and whether administrative procedures facilitate or hinder compliance.[15] This study therefore aims to evaluate the statutory language, administrative interpretation, and practical operation of PTT exemptions in two key areas: internal reorganisations and equity contributions. These two categories are particularly

[11] Ministry of Finance, *Medium-Term Debt and Tax Policy Strategy* (Government of Zambia) accessed at https://www.mofnp.gov.zm/?page_id=4677 12th December 2025
[12] OECD, *Addressing Tax Challenges of Corporate Restructuring* (n 4) 27.
[13] OECD, *Corporate Restructuring and Tax Neutrality* (n 6) 33
[14] Chanda (n 2) p52
[15] Property Transfer Tax (Amendment) Bill 2025 (National Assembly of Zambia)

significant because they represent a large proportion of modern corporate transactions and because their treatment under the PTT regime has substantial implications for corporate flexibility and tax certainty.

Beyond its doctrinal value, this study also seeks to contribute to broader policy discussions around tax reform. As Zambia continues to pursue economic diversification and to strengthen its tax system, the effectiveness of transaction-based taxes will remain a critical issue. A clearer framework for PTT exemptions may reduce administrative burdens, minimise litigation, and support investment-friendly restructuring. Conversely, inadequate regulation may invite tax planning schemes that erode the tax base or create loopholes that are difficult to close. By analysing the legal framework alongside comparative jurisdictions such as South Africa, Kenya, and Mauritius, this research will highlight potential legislative models that may enhance both clarity and integrity in Zambia's exemption regime.

Ultimately, this introduction sets out the need for a balanced and well-reasoned analysis of Zambia's PTT exemption structure. The study will combine doctrinal research with comparative analysis to assess whether the statutory provisions, as interpreted and applied, serve the underlying goals of the tax system. The aim is not merely to identify shortcomings but to propose reforms that enhance certainty without compromising revenue safeguards. By grounding the analysis in a detailed understanding of the legislation, administrative practice, and commercial realities of corporate restructuring, this research intends to contribute to a more coherent and predictable exemption framework one that supports legitimate business activities while maintaining the integrity of Zambia's tax base.

1.3 Statement of the Problem

The Property Transfer Tax Act Chapter 340 of the Laws of Zambia under section 6 provides exemptions for certain transactions such as corporate reorganisations and equity contributions. However, the Act does not define key concepts such as "group of companies", "internal reorganisation", and the valuation principles applicable to intra-group transfers. The absence statutory criteria lead one to question whether the application of these exemptions is largely dependent on administrative interpretation by the Zambia Revenue Authority, creating uncertainty

for taxpayers and increasing the risk of inconsistent decision-making. This uncertainty undermines the objectives of tax neutrality, predictability, and efficient corporate restructuring, while simultaneously creating opportunities for tax avoidance and disputes. The legal problem addressed by this study is therefore whether the current Zambian PTT exemption framework provides a sufficiently clear and predictable legal basis for corporate reorganisations and equity contributions, and what reforms are required to align it with international best practice.

1.4 Objectives of the Study

The general objective of this study is to assess the legal and administrative effectiveness of Property Transfer Tax exemptions in Zambia and to propose a clearer framework for their application in corporate restructuring and equity contributions.

1.4.1 Specific Objectives:

a) To examine the statutory and administrative framework governing Property Transfer Tax (PTT) exemptions for corporate reorganisations and non-cash equity contributions in Zambia.
b) To assess the legal framework on property transfer tax and non-cash equity contributions in South Africa and Kenya.
c) To analyse the legal challenges affecting the application of Property Transfer Tax exemptions in Zambia in comparison the South African and Kenya legal framework.

1.4.2 Research Questions

These research questions will guide the study in assessing the effectiveness of Zambia's Property Transfer Tax exemptions and in proposing a clearer legal and administrative framework.

a) What statutory and administrative conditions govern the application of Property Transfer Tax exemptions to corporate reorganisations and non-cash equity contributions in Zambia?
b) How does the current PTT exemption regime provide certainty and consistency in its interpretation and application, compared with South Africa and Kenya?

c) What are the legal challenges affecting the application of Property Transfer Tax exemptions in Zambia in comparison the South African and Kenya legal framework and their policy implications?

1.5 Significance of the study

The study on the efficacy and application of Property Transfer Tax (PTT) exemptions in Zambia carries significant value across multiple dimensions, spanning academic scholarship, professional practice, and policy formulation. From a legal scholarship perspective, the research addresses a relatively underexplored area of Zambian tax law. While existing literature provides general overviews of PTT, there is a notable gap concerning the specific application of exemptions in internal corporate reorganisations and equity contributions. By systematically analysing statutory provisions, administrative guidance, and case law, this research contributes to a nuanced understanding of how exemptions are operationalised in practice, thereby filling a critical gap in the Zambian legal literature. The doctrinal insights generated will enhance the theoretical and practical comprehension of PTT within both academic and professional circles, serving as a foundation for further scholarship in corporate and tax law.

For corporate lawyers, tax advisors, and other legal practitioners, the study offers direct practical utility. The ambiguities surrounding internal reorganisation and equity contribution exemptions often pose challenges for professionals advising clients on corporate structuring and capitalisation strategies. By providing an in-depth analysis of the statutory framework and administrative interpretations, the research equips legal practitioners with a clearer understanding of the conditions under which exemptions may apply. This, in turn, enables more accurate planning, reduces the risk of disputes with the Zambia Revenue Authority (ZRA), and supports the design of tax-efficient yet compliant corporate transactions. Furthermore, the findings may assist practitioners in anticipating and navigating areas where administrative discretion could affect transaction outcomes, thus improving advisory quality and client confidence.

The research also bears implications for Zambia's investment climate. Clear and predictable taxation rules are a cornerstone of a business-friendly environment. When exemptions are ambiguous or inconsistently applied, businesses may incur unnecessary costs or hesitate to

undertake restructuring initiatives that could enhance operational efficiency and competitiveness. By analysing the efficacy and limitations of PTT exemptions, the study provides insights that could reduce uncertainty for both domestic and foreign investors. A well-understood exemption regime fosters confidence in Zambia's corporate tax framework, thereby encouraging investment, supporting economic growth, and facilitating more dynamic corporate operations across sectors.

Finally, the study is highly relevant to ongoing and future tax reform efforts in Zambia. The introduction of the Property Transfer Tax (Amendment) Bill 2025 and other proposed reforms highlight the government's interest in refining the PTT regime to align with international best practices and to enhance administrative clarity. By evaluating the current legal framework against its intended policy objectives, the research generates evidence-based recommendations for reform, contributing to a more coherent, transparent, and equitable taxation system. Policymakers and tax authorities can utilise these insights to calibrate exemptions effectively, balancing revenue protection with the facilitation of legitimate corporate restructuring.

In summary, this study's significance lies in its potential to advance legal scholarship, support professional practice, strengthen the investment environment, and inform tax policy reform. By addressing gaps in understanding and clarifying the practical application of PTT exemptions, it aims to produce outcomes that are academically robust, professionally useful, and policy-relevant.

1.6 Scope of Study/ Limitations

The scope of this study is carefully delineated to ensure focused and meaningful analysis of Property Transfer Tax (PTT) exemptions in Zambia, particularly as they relate to internal corporate reorganisations and equity contributions. Geographically, the study is confined to the Republic of Zambia, with specific attention to the national statutory framework, regulatory guidance, and administrative practice administered by the Zambia Revenue Authority (ZRA). While PTT exemptions exist in other jurisdictions, the research will primarily analyse the Zambian legal and administrative environment, using comparative insights from selected countries such as South Africa, Kenya, and Mauritius only to provide contextual understanding and potential best practices.

Temporally, the study focuses on the period from 2012 to 2025. This timeframe is selected because it encompasses significant developments in the application and interpretation of PTT exemptions, including the enactment of key statutory instruments and the drafting of the Property Transfer Tax (Amendment) Bill 2025. By focusing on this period, the research captures both the historical evolution and the contemporary reform trajectory of the Zambian PTT framework.

Conceptually, the research is limited to the examination of exemptions applicable to internal reorganisations and equity contributions. “Internal reorganisations” are defined as transactions where property is transferred between entities within a corporate group without the intention of realising value for external parties, whereas “equity contributions” refer to transfers made by a shareholder to a company to increase its share capital or contribute to its equity. Other categories of PTT exemptions, such as transfers involving charitable organisations or government entities, are acknowledged but fall outside the primary focus of this study. Similarly, the research will not provide a detailed analysis of general corporate tax law or income tax provisions, except where they intersect directly with PTT exemptions for internal restructurings.

Methodologically, the study adopts a doctrinal legal research approach, relying on primary sources such as statutes, statutory instruments, Bills, and ZRA guidance, supplemented by secondary sources including journal articles, books, and comparative legal analyses. The research will examine the effectiveness of PTT exemptions from both a statutory and administrative perspective, assessing clarity, consistency, and practical implications for taxpayers and the ZRA. Empirical data, such as transaction volumes or revenue figures, may be referenced where publicly available to illustrate practical impact, but detailed quantitative analysis is not the primary focus.

Finally, the study recognises certain limitations inherent in its scope. Access to unpublished ZRA rulings or confidential corporate transaction data is beyond the reach of the research, and some administrative practices may only be inferred from public documents and case commentary. Additionally, while comparative analysis is included, it is illustrative rather than exhaustive, aimed at identifying potential reforms rather than providing an in-depth foreign legal study.

In summary, the study is scoped to provide a focused, rigorous, and policy-relevant analysis of Zambia's PTT exemptions for internal reorganisations and equity contributions, balancing doctrinal rigor with practical relevance.

1.7 Research Methodology

The methodology adopted to answer the underlying research questions are doctrinal in nature and will include a review of relevant literature, including but not limited to the Act, Explanatory Memoranda, other relevant legislative acts, and authoritative scholars in the field of taxation, law reports of both local and foreign jurisprudence, textbooks, newspaper articles, journals, the internet, and dissertations.

1.8 Literature Review

1.8.1 Conceptual and Theoretical Perspectives on Property Transfer Taxation

Property transfer taxes occupy a distinctive position within national tax systems, functioning primarily as transactional levies rather than taxes on income or consumption. The academic literature generally characterises such taxes as instruments designed to capture value at the point of legal or beneficial ownership change, particularly where such change signals an accretion of wealth or economic benefit to the transferor.[16] Therefore, some scholars such as **Musgrave and Musgrave** argue that, in principle, property transfer taxes should be neutral in their application so as not to distort legitimate economic activity, especially where no realisation of economic gain occurs.[17] While Musgrave and Musgrave provide the theoretical basis for tax neutrality, they do not examine how neutrality should be implemented through specific exemptions for corporate reorganisations and equity contributions under transaction-based taxes such as Zambia's Property Transfer Tax.

[16] OECD, *Tax Policy Reform and Economic Growth* (OECD Publishing 2019) accessed At http://dx.doi.org/10.1787/9789264091085-en (8/12/25).
[17] Richard A Musgrave and Peggy B Musgrave, *Public Finance in Theory and Practice* (5th edn, McGraw-Hill 1989).

Thuronyi within this framework, exemptions play a critical role. Tax exemptions are commonly justified where the imposition of tax would undermine efficiency, impede restructuring, or result in inequitable outcomes[18].

This research agrees with Musgrave, Musgrave and Thuronyi to the extent that internal corporate reorganisations and equity contributions do not ordinarily generate new wealth and therefore should not attract Property Transfer Tax. However, these authors address the issue primarily at a theoretical level and do not examine the practical implementation of exemption frameworks within specific jurisdictions. In particular, there is limited scholarship assessing whether Zambia's Property Transfer Tax regime provides sufficient legal certainty, clear qualifying criteria, and consistent administrative application in relation to corporate reorganisations and equity contributions. This study seeks to address that gap by evaluating the statutory and administrative framework governing these exemptions and assessing their effectiveness in achieving the objectives of tax neutrality, certainty, and revenue protection.

Pikria Tatarashvili examines the scope of discretionary powers exercised by tax authorities and argues that discretion is often necessary where legislation contains broad or ambiguous provisions.[19] However, the author cautions that excessive reliance on administrative discretion may undermine legal certainty and create inconsistent outcomes for taxpayers. Tatarashvili further notes that vague statutory provisions require consistent interpretation and application by tax authorities and courts in order to maintain predictability within the tax system.[20] These observations are particularly relevant to Zambia's Property Transfer Tax exemption regime, where concepts such as internal reorganisations and qualifying group transactions are not comprehensively defined and are therefore heavily dependent on administrative interpretation.

The relationship between taxation and corporate activity has also attracted recent scholarly attention. **Siman and Avi-Yonah** argue that taxation plays a significant role in influencing corporate governance and organisational decision-making.[21] Their analysis suggests that tax rules affect the manner in which corporations structure their affairs and undertake transactions. The

[18] Thuronyi Victor, *Comparative Tax Law* (Kluwer Law International 2003) p39
[19] Pikria Tatarashvili, 'The Scope of Discretionary Powers of Tax Authorities' (2023) 1(1) *Orbeliani Law Review* 105.
[20] ibid 112–113.
[21] Ariel Siman and Reuven Avi-Yonah, 'Taxation and Corporate Governance' (2024) 16(1) *Columbia Journal of Tax Law* 51.

authors further contend that a well-designed tax system should facilitate legitimate corporate activity while maintaining adequate safeguards against abuse.[22] This perspective is particularly relevant to corporate reorganisations and equity contributions, where tax provisions should promote economically efficient restructuring without creating opportunities for tax avoidance.

Despite the value of these contributions, the existing literature does not directly address the specific operation of Zambia's Property Transfer Tax exemption framework in the context of corporate reorganisations and non-cash equity contributions. In particular, there is limited scholarly analysis of whether the current statutory and administrative approach provides sufficient clarity on the scope of exempt transactions, the criteria for qualifying group reorganisations, and the treatment of property transferred as capital contributions. There is also little discussion of whether the framework adequately balances tax certainty with anti-avoidance concerns. This research gap is significant because uncertainty in the exemption regime may affect corporate restructuring decisions, create inconsistent administrative outcomes, and undermine investor confidence. This study therefore seeks to fill that gap by examining the statutory and administrative framework governing Property Transfer Tax exemptions for corporate reorganisations and non-cash equity contributions in Zambia and by assessing whether the framework achieves legal certainty, consistency, and effective protection against abuse.

The Organization for Economic Co-operation and Development[23] has produced extensive guidance advocating for tax neutrality in corporate restructurings, particularly where transactions occur within a single economic group. It emphasises that internal reorganisations should not be impeded by transfer taxes, provided that continuity of ownership is preserved and the transactions lack avoidance intent.

This study concurs with the OECD's normative position that tax systems should facilitate, rather than penalise, legitimate reorganisations. However, the OECD framework presumes the existence of clear statutory tests and predictable administrative procedures. The present research departs from the OECD's implicit assumption of institutional capacity by demonstrating that, in Zambia, the absence of precise legislative definitions and published administrative criteria has resulted in discretionary decision-making by the ZRA. Consequently, while the OECD provides a useful

[22] ibid 52–55
[23] OECD, *Corporate Restructuring and Tax Neutrality* (OECD Publishing 2019). P 49

benchmark, this research highlights the limitations of applying such standards without corresponding domestic legal clarity.

In corporate contexts, internal reorganisations and equity contributions are frequently identified in the literature as paradigmatic examples of transactions that warrant exemption from transfer-based taxation. Devereux argues that such transactions are fundamentally different from market disposals because they do not involve a transfer of property to an external party nor the extraction of economic value from the corporate group. Instead, they merely reallocate assets within a continuing economic unit, leaving the underlying ownership and risk profile unchanged.[24] On this basis, **Devereux** contends that imposing transaction taxes on internal reorganisations undermines the principle of tax neutrality and distorts commercial decision-making by penalising changes in legal form that are not accompanied by real economic gain.

This research agrees with Devereux's central proposition that internal reorganisations and non-cash equity contributions should, as a matter of principle, fall outside the charge to property transfer taxation. The emphasis on economic substance rather than formal legal change is particularly persuasive in corporate groups where asset movements are often driven by regulatory compliance, financing arrangements, or operational efficiency rather than value realisation. In this respect, Devereux's analysis provides a strong theoretical justification for the exemption framework adopted in the Zambian Property Transfer Tax Act.

However, while Devereux's work offers a compelling standardized foundation, it is largely situated within jurisdictions that possess well-developed statutory definitions and predictable administrative practices. This study departs from Devereux's analysis by examining the assumption that the recognition of exemption principles automatically ensures their effective application. In the Zambian context, the difficulty does not lie in the absence of exemption provisions, but in the uncertainty surrounding their interpretation particularly in relation to what constitutes "realised value" and the evidentiary thresholds required to demonstrate continuity of ownership.

Furthermore, Devereux treats internal reorganisations and equity contributions as conceptually settled categories, whereas this research demonstrates that, in practice, these classifications are

[24] Devereux Micheal P, 'Taxation of Corporate Reorganisations' (2012) 65 Tax Law Review 87.

frequently contested by tax authorities. The study therefore extends Devereux's contribution by shifting the inquiry from theoretical justification to administrative execution. It examines how discretionary valuation practices and case-by-case determinations by the Zambia Revenue Authority have, at times, blurred the distinction between genuine internal restructuring and taxable disposals, thereby reintroducing the very distortions that exemption regimes are intended to avoid.

Accordingly, while this research endorses Devereux's normative position on tax neutrality, it challenges the sufficiency of theory alone in safeguarding corporate certainty. It argues that without clear statutory criteria and consistent administrative guidance, the theoretical justification for exempting internal reorganisations and equity contributions risks being undermined in practice. The Zambian experience thus provides a useful counterpoint to Devereux's analysis by illustrating how uncertainty at the implementation stage can erode the effectiveness of otherwise sound tax policy.

Furthermore, by incorporating comparative statutory models, this research moves beyond critique and proposes a framework for reform, thereby responding to the problem Mwila identifies but does not resolve.

Fuller's conception of legal certainty emphasises that laws must be clear, predictable, and consistently applied to guide conduct effectively.[25]

This research agrees with these foundational principles but contextualises them within Zambia's PTT regime by demonstrating how excessive reliance on discretion, absent published criteria or binding rulings, undermines certainty. Unlike Fuller and the OECD, who address certainty at a conceptual level, this study provides a concrete illustration of how uncertainty manifests in exemption applications and corporate structuring decisions in Zambia.

1.9 Ethical Issues

This research acknowledges the importance of adhering to rigorous ethical standards throughout the study, particularly given its focus on statutory interpretation and administrative practice in the

[25] Lon L. Fuller, *The Morality of Law* (Yale University Press 1964) p76.

Zambian tax environment. Two primary ethical considerations are emphasised: the accurate representation of statutory provisions and objectivity in evaluating administrative conduct.

First, the study will ensure that all statutory provisions, statutory instruments, and legislative texts are presented accurately and without distortion. Misrepresentation or selective citation of legal provisions can compromise the integrity of the research and potentially mislead readers or policymakers. To mitigate this risk, primary sources such as the Property Transfer Tax Act, relevant statutory instruments, and the Property Transfer Tax (Amendment) Bill 2025 will be consulted directly from official publications. Quotations and interpretations will be cross-checked to ensure fidelity to the law, and any commentary or analysis will clearly distinguish between the researcher's interpretation and the text of the statute itself.

Second, the research will maintain objectivity in evaluating the administrative conduct of the Zambia Revenue Authority. While the study examines the practical application of PTT exemptions, it will avoid subjective criticism or unverified assertions about administrative actions. Any discussion of ZRA practices will be grounded in verifiable sources, including publicly available guidance, case law, and documented rulings. The study will also clearly separate normative recommendations from descriptive analysis, ensuring that suggestions for reform or improvement are based on evidence rather than personal opinion.

Overall, adherence to these ethical principles is critical to producing a credible and academically sound study. By maintaining accuracy in statutory representation and objectivity in the evaluation of administrative practice, the research will uphold standards of integrity, reliability, and professional responsibility, which are essential in legal scholarship and policy analysis.

1.10 Chapter Outline

The dissertation will be structured into six main chapters, each designed to address specific research objectives while providing a coherent flow from background to conclusion.

Chapter 1: Introduction and Research Framework

This chapter introduces the study by providing the background to Property Transfer Tax (PTT) in Zambia and the rationale for exemptions relating to corporate reorganisations and non-cash equity

contributions. It outlines the statement of the problem, research objectives, research questions, significance, scope and limitations of the study, methodology, and chapter organisation. The chapter establishes the context within which the study is conducted and highlights the need for examining the effectiveness of the current exemption framework.

Chapter 2: Statutory and Administrative Framework Governing PTT Exemptions in Zambia

This chapter examines the legal and administrative framework governing Property Transfer Tax exemptions in Zambia. It analyses the relevant provisions of the Property Transfer Tax Act and related legislation applicable to corporate reorganisations and non-cash equity contributions. The chapter also considers the role of the Zambia Revenue Authority (ZRA) in administering the exemptions, the extent of administrative discretion, and the legal principles underpinning the exemption regime. This chapter addresses the first research objective by establishing the doctrinal foundation of the study.

Chapter 3: Assessment of the PTT Exemption Regime in South Africa and Kenya and Comparative Analysis

This chapter evaluates the extent to which the current PTT exemption regime provides certainty and consistency in its interpretation and application. It critically analyses the treatment of corporate reorganisations and non-cash equity contributions under Zambian law and identifies areas of ambiguity and uncertainty. The chapter further compares Zambia's framework with the approaches adopted in South Africa and Kenya, highlighting similarities, differences, and best practices that may enhance legal certainty and administrative consistency. This chapter primarily addresses the second research objective.

Chapter 4: Legal Challenges and Policy Implications based on Lessons drawn from South Africa and Kenya

This chapter analyses the principal legal and administrative challenges affecting the application of PTT exemptions in Zambia. It examines issues arising from statutory ambiguity, administrative discretion, valuation concerns, compliance burdens, and the potential for abuse of exemptions. The chapter further considers the broader policy implications of these challenges for tax administration,

corporate restructuring, investment promotion, and revenue protection. This chapter addresses the third research objective and synthesises the key findings of the study.

Chapter 5: Conclusion and Recommendations

This chapter presents the study's conclusions based on the findings from the preceding chapters. It evaluates the effectiveness of the current PTT exemption framework in achieving the objectives of legal certainty, consistency, and sound tax administration. The chapter also provides recommendations aimed at improving the statutory and administrative framework governing PTT exemptions in Zambia. Finally, it highlights the contribution of the study to legal scholarship and tax policy and identifies areas for future research.

1.11 Conclusion

In summary, Chapter 1 has outlined the context and rationale for examining PTT exemptions in Zambia, focusing on internal reorganisations and equity contributions. It has identified the core problem of legal and administrative uncertainty, which affects corporate planning, compliance, and investment decisions. The chapter has also set out the research objectives, questions, and scope, situating the study within broader debates on tax neutrality, legal certainty, and investment facilitation.

The discussion has highlighted that while Zambia's PTT regime provides statutory exemptions, the lack of detailed guidance and reliance on administrative discretion creates ambiguity for businesses. This uncertainty can hinder corporate restructuring, delay transactions, and reduce investment efficiency. The chapter has thus established the need for a systematic study that examines both the legal framework and practical application of PTT exemptions.

By laying this foundation, the chapter prepares the way for subsequent analysis of statutory provisions, administrative practice, and comparative approaches. The research ultimately aims to provide recommendations for a clearer, more predictable exemption framework, enhancing both legal certainty and Zambia's corporate investment environment.

CHAPTER 2

THE STATUTORY AND ADMINISTRATIVE ARCHITECTURE OF PTT IN ZAMBIA

2.1. Introduction

This chapter examines the statutory and institutional architecture governing Property Transfer Tax (PTT) in Zambia, with particular focus on the exemption framework applicable to internal corporate reorganisations and non-cash equity contributions. It situates the PTT regime within broader principles of transactional taxation, administrative discretion, and tax neutrality in corporate structuring.

The analysis proceeds from the premise that the coherence of any tax exemption regime depends not only on its textual formulation but also on the clarity of its definitional structure, the predictability of its administrative enforcement, and the extent to which it is aligned with recognised principles of tax neutrality and legal certainty.[26] In this respect, the Zambian PTT framework presents a system in which statutory intent and administrative implementation are frequently mediated through broad discretionary authority, with limited codified interpretive constraints.

The chapter establishes the doctrinal baseline for subsequent comparative and reform-oriented analysis by examining: (i) the statutory basis of PTT; (ii) the exemption regime for group reorganisations; (iii) the non-cash equity contribution exemption; and (iv) the administrative architecture underpinning enforcement and interpretive discretion.

2.2 Statutory Basis of Property Transfer Tax

The Property Transfer Tax Act, Chapter 340 of the Laws of Zambia, is the principal legislative instrument imposing tax on the transfer of land, shares, and mining rights.[27] It operates as a transactional levy triggered by a change in legal or beneficial ownership, irrespective of whether the transaction gives rise to realised economic gain in an income tax sense.

[26] OECD, Corporate Restructuring and Tax Neutrality (2019) accessed at www.oecd.org .
[27] Property Transfer Tax Act, Cap 340

Unlike income tax, which is premised on accrual or realisation of income, PTT is structurally closer to stamp duties and other transactional imposts that tax the legal form of transfer rather than its underlying economic substance.[28] The taxable event is thus the juridical act of transfer rather than the economic enrichment of a taxpayer.

2.2.1 Conceptual Character of PTT

The conceptual foundation of PTT lies in its role as a capture tax on changes in legal ownership. It is not designed to measure ability to pay in a classical fiscal sense but rather to tax the formal reallocation of high-value assets. This distinction is important, as it explains both the rigidity of the charge and the limited role of subjective intention or economic equivalence in its application.

From a fiscal policy perspective, PTT performs two interrelated functions. First, it secures revenue from episodic but high-value transactions, thereby contributing to fiscal stability in jurisdictions where income tax bases may be narrow or volatile. Second, it functions as a quasi-regulatory instrument that indirectly influences structuring behaviour in property and corporate transactions.

However, as the World Bank has observed in relation to transactional taxation systems in developing economies, such instruments often face tension between revenue efficiency and economic neutrality.[29] Where exemptions are poorly defined, transactional taxes risk distorting restructuring decisions, particularly in corporate groups.

2.2.2 Administrative Context and Enforcement Constraints

Empirical literature on Zambia's tax administration highlights structural constraints that affect enforcement consistency, including limited administrative capacity and interpretive fragmentation across tax instruments. These constraints are not unique to PTT but are particularly significant in a regime that relies heavily on administrative classification of exemption eligibility.

[28] IBFD, *Principles of Taxation of Capital Transfers* (various eds).
[29] World Bank, *World Development Report 1989* (1989).

Mwape et al. further note that enforcement weaknesses in Zambia's broader tax architecture are exacerbated by legislative ambiguity and institutional limitations.[30] Although their analysis focuses on transfer pricing, the underlying governance concerns are directly relevant to PTT: where statutory language is open-textured, administrative discretion becomes the primary mechanism of legal operationalisation.

2.3 The Group-of-Companies Exemption

2.3.1 Statutory Framework

Section 5 of the Property Transfer Tax Act provides an exemption for transfers occurring within a "group of companies" in the context of internal reorganisations. The exemption is conceptually grounded in the principle of tax neutrality: intra-group transfers should not trigger tax where there is no change in ultimate economic ownership.

The exemption applies where two cumulative conditions are satisfied firstly: the transferor and transferee are members of the same "group of companies"; and secondly: the transaction constitutes an "internal reorganisation." Where these conditions are met, no PTT liability arises.[31]

This approach aligns broadly with OECD guidance on corporate restructuring, which advocates that tax systems should avoid imposing frictional costs on reorganisations that do not alter ultimate beneficial ownership.[32]

2.3.2 Definitional Indeterminacy

Despite its conceptual alignment with international norms, the Zambian framework suffers from a critical structural deficiency: the absence of statutory definitions for "group of companies" and "internal reorganisation."

[30] Victor Mwape, Austin Mwange and Munyonzwe Hamalengwa, "Reconciling Global Norms and Local Realities: An Assessment of Zambia's Legislative and Institutional Framework on Transfer Pricing Regulation" (2025) 6 African Journal of Commercial Studies 204 <https://doi.org/10.59413/ajocs/v6.i2.20> accessed November 2025.
[31] Zambia Revenue Authority, 'Property Transfer Tax Guidance' (2025)
[32] OECD (n 25).

This definitional silence introduces interpretive uncertainty into the application of the exemption. In practice, three core uncertainties arise:

i. the threshold of ownership or control required to establish group membership;
ii. the criteria for determining whether a transaction qualifies as an internal reorganisation; and
iii. the treatment of multi-tiered or cross-border corporate structures.

Mwila identifies this as the central doctrinal weakness of Zambia's restructuring tax regime, arguing that the absence of objective thresholds effectively delegates legislative precision to administrative discretion.[33]

By contrast, comparative jurisdictions such as South Africa adopt detailed statutory thresholds. The South African Income Tax Act, for example, defines group membership through a 70 per cent equity control requirement, thereby reducing interpretive elasticity and enhancing certainty.[34]

The significance of such thresholds lies not merely in technical precision but in the allocation of interpretive authority. Where statutory law is precise, legal certainty is maximised; where it is indeterminate, administrative discretion expands. The statutory gaps identified in section 2.3.1 above cannot be dismissed as academic. They reproduce, in modern Zambian fiscal legislation, the precise interpretive vacuum that gave rise to the historical strict-literal Cape Brandy Syndicate v Inland Revenue Commissioners[35] doctrine that *"in a taxing Act one has to look merely at what is clearly said. There is no equity about a tax"*

2.3.3 Administrative Discretion and Legal Uncertainty

In the Zambian context, the absence of statutory definition effectively shifts the locus of decision-making to the Commissioner-General. While administrative discretion is a necessary feature of tax systems, its breadth must be balanced by constraining principles to avoid arbitrariness.

[33] Mwila J, 'Group Reorganisations and Transfer Taxes in Zambia'
[34] Income Tax Act 58 of 1962 (South Africa)
[35] [1921] 1 KB 64

From an administrative law perspective, excessive discretion without structured criteria risks undermining the rule of law principle of predictability.[36] In tax law specifically, predictability is essential to commercial planning, particularly in corporate restructuring contexts where tax consequences are material to transaction viability.

2.3.4 Anti-Avoidance Considerations

A legitimate concern underpinning the narrow construction of exemptions is the potential for tax avoidance through artificial intra-group transfers. OECD guidance acknowledges this risk and recommends that exemption regimes incorporate safeguards against abuse while preserving genuine reorganisations.[37]

However, the appropriate legal response is not unrestricted discretion but structured anti-avoidance rules. Generalised discretion may inadvertently capture legitimate restructurings alongside abusive arrangements, thereby undermining investment efficiency.

Mwaba and Kayizzi-Mugerwa emphasise that poorly calibrated tax systems may unintentionally discourage investment by increasing uncertainty in the treatment of legitimate transactions.[38]

2.4 The Non-Cash Equity Contribution Exemption

2.4.1 Conceptual Basis

A second exemption arises where property is transferred to a company in exchange for the issuance of shares or an increase in share capital. The underlying rationale is that such transactions do not constitute a realisation of value external to the corporate structure; instead, they represent a transformation of asset form rather than economic withdrawal.

The exemption is premised on the concept of "realised value," with tax liability arising only where value is extracted from the economic unit rather than reinvested within it.[39]

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[36] Wade & Forsyth, *Administrative Law* (Oxford University Press).
[37] OECD (n 25).
[38] Mwaba A and Kayizzi-Mugerwa S "Boosting Mineral Revenues in Zambia: Policy Options for a Sustainable Fiscal Regime" (2021) <https://doi.org/10.35188/unu-wider/2021/118-1> accessed November 2025 (2021).
[39] Zambia Revenue Authority (n 32).

2.4.2 Structural Ambiguities

Despite its conceptual clarity, the exemption presents significant interpretive challenges in practice. Two issues are particularly salient.

First, where property contributions occur through multi-layered holding structures, it is unclear whether exemption applies per transaction or across the integrated chain. The statute does not specify whether each transfer is to be assessed independently or as part of a composite restructuring.

Second, valuation disputes arise where non-arm's-length consideration is used. In such cases, it is unclear whether partial exemption applies or whether the transaction is disqualified entirely. Chanda identifies these as recurring practical issues in Zambian corporate taxation, noting that administrative interpretation often fills statutory gaps in the absence of legislative precision.[40]

2.4.3 Comparative Perspective

South African law provides a more structured approach through its asset-for-share regime, which imposes specific qualifying interest requirements and timing rules. This reduces uncertainty by linking exemption eligibility to measurable post-transaction ownership outcomes rather than subjective administrative satisfaction.

The importance of such structuring lies in reducing retrospective tax risk, which is a significant deterrent in corporate restructuring decisions.

2.5 Administrative Architecture

2.5.1 Commissioner-General's Powers

The Commissioner-General is vested with broad interpretive authority under the PTT framework. While such authority is common in Commonwealth tax systems, its exercise in Zambia is not accompanied by a robust system of binding interpretive rulings or published guidance.

[40]Mwape Victor Et. al (n 30).

From a governance perspective, this creates a dual-layer uncertainty: uncertainty as to the law and uncertainty as to its application.

Marais observes that tax consequences of restructuring are often addressed too late in transactional practice, resulting in inefficiencies and unintended tax exposure.[41] This observation is particularly relevant in jurisdictions where advance ruling systems are absent.

2.5.2 Absence of Advance Ruling Mechanisms

The IMF has consistently emphasised the importance of advance tax ruling systems in enhancing legal certainty and reducing disputes.[42] Such systems provide ex ante clarity, enabling taxpayers to structure transactions with confidence.

However, the IMF also warns of the risk of "secret law" where rulings are not published or systematically disclosed.[43] This risk is particularly acute in systems with weak transparency frameworks.

2.5.3 Regional Comparative Insight: Uganda

Uganda's private rulings regime provides a relevant comparative model. While it enhances certainty, it suffers from transparency deficits and institutional capacity constraints.[44] These weaknesses illustrate that procedural mechanisms alone are insufficient unless accompanied by transparency, staffing adequacy, and publication requirements.

2.6 Policy Tension: Certainty Versus Anti-Avoidance

The Zambian PTT exemption regime reflects a structural tension between facilitating corporate flexibility and preventing tax avoidance. On one hand, exemptions are necessary to avoid frictional taxation of genuine restructurings. On the other hand, broad exemptions without definitional safeguards create opportunities for tax base erosion.

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[41] Marais AJ, 'Running through the Maze of Tax Consequences for Corporate Restructuring' (2015) *De Rebus*.

[42] Waerzeggers C and Hillier C, Introducing an Advance Tax Ruling (ATR) Regime" (2016) 1 Tax Law Technical Note <https://doi.org/10.5089/9781513511610.008> accessed November 2025.IMF Technical Note (2016).

[43] Ibid

[44] Samuel Kahima, Solomon Rukundo and Victor Phillip Makmot, "Tax Certainty? The Private Rulings Regime in Uganda in Comparative Perspective" (2021) <https://doi.org/10.19088/ictd.2021.001> accessed November 2025.

OECD guidance suggests that this tension is best resolved through precise statutory design rather than discretionary enforcement.[45] Safe harbours, holding period rules, and explicit thresholds are commonly used to balance these competing objectives.

In Zambia, however, the balance is currently tilted toward administrative discretion rather than legislative precision. This creates uncertainty for taxpayers and enforcement inconsistency for the revenue authority.

2.7 Conclusion

The Property Transfer Tax Act establishes a framework that, in principle, accommodates internal corporate reorganisations and non-cash equity contributions through targeted exemptions. However, the effectiveness of these exemptions is undermined by definitional ambiguity, broad administrative discretion, and the absence of structured interpretive safeguards.

While the system aligns conceptually with international principles of tax neutrality, its operationalisation is constrained by limited statutory precision and underdeveloped procedural mechanisms. The resulting regime is characterised by uncertainty, interpretive variability, and reliance on administrative judgment.

This doctrinal baseline provides the foundation for Chapter 3, which examines comparative approaches in South Africa and Kenya, with a view to identifying structural reforms capable of enhancing certainty without undermining anti-avoidance integrity.

[45] OECD (n25)

CHAPTER 3

COMPARATIVE ANALYSIS OF CORPORATE REORGANISATION AND TRANSFER TAX REGIMES IN SOUTH AFRICA AND KENYA

3.1 Introduction

This chapter undertakes a detailed comparative examination of South Africa and Kenya in relation to the tax treatment of corporate reorganisations, intra-group transfers, and equity-based contributions. The objective is not merely descriptive but structural: to identify how different legal systems resolve the same underlying tension that also characterises Zambia's Property Transfer Tax (PTT) regime—namely, the reconciliation of tax neutrality in internal reorganisations with the imperative of protecting the tax base against avoidance.

As established in Chapter 2, Zambia's PTT framework is characterised by broad exemption language, limited definitional precision, and extensive administrative discretion. The consequence is an exemption regime that is formally aligned with OECD principles of neutrality but operationally unstable due to indeterminate statutory thresholds.

The comparative analysis in this chapter therefore tests three hypotheses:

1. Whether legal certainty in restructuring taxation correlates with statutory codification of thresholds;
2. Whether administrative discretion can substitute for legislative precision without compromising predictability; and
3. Whether transitional reform experience (Kenya) or mature codified systems (South Africa) offer more relevant guidance for Zambia.

The OECD principle of tax neutrality in corporate restructuring remains the baseline comparator: intra-group reorganisations should not trigger taxation where beneficial ownership remains unchanged and where transactions are not designed to extract value from the tax base.[46] However, the OECD also recognises that neutrality must be balanced with enforceable anti-avoidance

[46] OECD, *Corporate Restructuring and Tax Neutrality* (2019).

safeguards, typically achieved through clear statutory conditions rather than open-ended discretion.

3.2 South Africa: A Codified but Layered Regrouping Relief System

3.2.1 Structural Overview of the South African Model

South Africa presents one of the most developed statutory frameworks for corporate restructuring relief in Africa. The system operates through a combination of the Transfer Duty Act 40 of 1949 and the Income Tax Act 58 of 1962 (ITA), which together establish a dual-layered exemption architecture.

The key doctrinal feature is that exemptions are not generalised discretionary concessions but statutorily defined relief mechanisms, each linked to specific qualifying conditions.

The underlying principle is tax neutrality in intra-group or continuity-based transactions, but this neutrality is operationalised through detailed legislative thresholds rather than broad evaluative standards.

3.2.2 Transfer Duty Exemptions and Continuity Logic

The Transfer Duty Act provides exemptions for specific categories of property transfers, particularly those occurring in the context of deceased estates and intra-group reorganisations.

Van Wyk demonstrates that legislative reforms in South Africa have progressively embedded the principle that redistribution within a closed ownership system does not constitute a taxable transfer.[47] The significance of this approach is that exemption is not justified on administrative discretion but on the absence of a substantive change in beneficial ownership.

South Africa's corporate reorganisation regime is widely regarded as one of the most comprehensive statutory frameworks for facilitating tax-neutral corporate restructurings in Africa. The Income Tax Act 58 of 1962 provides for a series of roll-over relief provisions contained in sections 41 to 47, which collectively regulate asset-for-share transactions, amalgamations, intra-

[47] Susandra J van Wyk, 'Innovative Approaches to the Division of an Inheritance in a Deceased Estate' (2023) 26 PER/PELJ.

group transactions, liquidation distributions, unbundling transactions, and transactions involving controlled foreign companies. The legislative objective of these provisions is to facilitate genuine corporate reorganisations without imposing immediate tax consequences where no substantive economic gain has been realised.

Rudnicki provides a detailed doctrinal examination of amalgamation transactions under section 44 of the South African Income Tax Act and explains the statutory elements required for a transaction to qualify for roll-over relief. According to Rudnicki, an amalgamation transaction requires a resultant company to acquire all the assets and liabilities of an amalgamated company in exchange primarily for the issue of equity shares, although limited debt consideration may also be permissible.[48] His analysis demonstrates that the South African legislature has adopted detailed statutory definitions that minimise uncertainty regarding qualifying transactions. Rather than relying primarily on administrative discretion, the legislation specifies the legal requirements that taxpayers must satisfy before relief is granted. Consequently, taxpayers are afforded greater certainty when planning corporate restructurings.

Similarly, Seligson analyses the deductibility of interest incurred on debt financing used to acquire shares during corporate reorganisations and illustrates the sophisticated interaction between sections 24J, 23N and 24O of the Income Tax Act.[49] He demonstrates that although South Africa provides generous roll-over relief for qualifying reorganisations, the legislation simultaneously incorporates carefully designed anti-avoidance safeguards. Section 23N restricts excessive interest deductions arising from acquisition funding, while section 24O regulates interest incurred in financing share acquisitions that result in control of a company. These targeted provisions operate alongside South Africa's General Anti-Avoidance Rules (GAAR), contained in sections 80A to 80L of the Income Tax Act, thereby creating a layered anti-avoidance framework that addresses both financing structures and artificial transactions.

[48] Michael Rudnicki, 'Amalgamation Transactions Unpacked' (2014) 5 *Business Tax and Company Law Quarterly* 31 http://journals.co.za/content/btclq/5/3/EJC173379?crawler=true accessed 15 November 2025.

[49] Milton Seligson, 'The Deductibility of Interest Incurred on Loan Funding Used to Acquire Shares in Corporate Reorganisations: The Interaction of Sections 24J(2), 23N and 24O of the Income Tax Act' (2015) 6 *Business Tax and Company Law Quarterly* 21 https://journals.co.za/content/btclq/6/3/EJC177652 accessed 15 November 2025

The significance of Seligson's analysis lies in demonstrating that South Africa's corporate reorganisation regime achieves a balance between facilitating commercially necessary restructuring and protecting the tax base against abusive arrangements. Rather than relying exclusively on administrative judgement, the South African framework codifies both the qualifying criteria for exemptions and the anti-avoidance mechanisms governing their application. This legislative certainty enhances predictability, reduces interpretative disputes, and promotes voluntary compliance.

The comparative significance of South Africa's approach extends beyond the wording of individual statutory provisions. It illustrates that an effective exemption regime requires both clearly articulated qualifying rules and equally well-developed anti-avoidance provisions. A roll-over system cannot achieve legal certainty merely by providing exemptions; it must also establish clear statutory mechanisms that distinguish legitimate corporate restructuring from tax avoidance. Where qualifying criteria are imprecise and anti-avoidance safeguards are inadequately developed, uncertainty is merely transferred from one stage of the transaction to another rather than eliminated[50].

This observation has direct implications for Zambia's Property Transfer Tax exemption framework. Unlike the South African model, Zambia's Property Transfer Tax Act provides exemptions for internal corporate reorganisations and equity contributions without comprehensively defining the qualifying criteria or establishing detailed statutory anti-avoidance mechanisms. Consequently, the determination of whether a transaction qualifies for exemption depends largely on administrative interpretation by the Commissioner-General. While administrative discretion may provide flexibility, excessive reliance on discretion may undermine legal certainty, produce inconsistent outcomes, and increase the potential for disputes between taxpayers and the Zambia Revenue Authority.

The South African framework therefore demonstrates that certainty is best achieved through detailed legislative drafting complemented by targeted anti-avoidance provisions rather than through broad administrative discretion. These comparative lessons support this study's conclusion that Zambia's Property Transfer Tax regime would benefit from clearer statutory definitions,

[50] ibid

formal administrative guidance, and specifically tailored anti-avoidance rules capable of distinguishing legitimate corporate reorganisations from abusive tax-planning arrangements.

3.2.3 Section 42 ITA: Asset-for-Share Transactions as Structured Neutrality

Section 42 of the ITA is the central restructuring provision relevant for comparative analysis. It allows asset transfers to a company in exchange for shares without immediate tax liability, provided that specific statutory conditions are met.

The most important condition is the qualifying interest requirement, which mandates that the transferor must hold a qualifying shareholding in the transferee at the end of the day of disposal.[51] This introduces a precise temporal and quantitative threshold into the exemption mechanism.

Stronkhorst's analysis of section 42 highlights that this requirement is deliberately formalistic and creates compliance complexity where corporate law timing rules interact with tax law definitions of disposal.[52] However, the formalism is intentional: it reduces interpretive discretion and enhances ex ante certainty.

From a doctrinal perspective, section 42 represents a shift from substantive tax adjudication (is this economically neutral?) to rule-based qualification (does this satisfy statutory conditions?).

This distinction is fundamental. Zambia currently operates closer to the former model without the benefit of precise statutory conditions, leading to discretionary substitution for legislative rule-making.

3.2.4 Definition of "Group of Companies": Threshold Engineering

South Africa's definition of a "group of companies" under section 1 of the ITA is anchored in a 70% equity ownership threshold, establishing a bright-line rule for group classification.[53]

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[51] Income Tax Act 58 of 1962 (South Africa) s 42.

[52] Stronkhorst Angelique, "Is It Practically Possible to Comply with the Qualifying Interest Requirement When Entering into a Section 42 Asset-for-Share Transaction Concerning Immovable Property, given the Applicable Time of Disposal Rules and the Application of the Companies Act?" <http://hdl.handle.net/11427/41910> accessed March 2026.' (University of Cape Town, 2026)

[53] Income Tax Act 58 of 1962 (South Africa) s 1

Thiart and Nel confirm that this definition is consistently applied across tax provisions, ensuring uniformity in determining related-party relationships.[54] Sengwane further elaborates that variations in connected-person definitions may lower thresholds in specific contexts, but the structural logic remains anchored in majority ownership control.

This threshold design performs three key functions:

i. It eliminates ambiguity in determining group membership;
ii. It reduces administrative discretion; and
iii. It facilitates compliance planning for corporate taxpayers.

In contrast, Zambia's PTT framework contains no equivalent threshold definition, resulting in what may be described as structural indeterminacy at the entry point of exemption eligibility.

3.2.5 Edge Cases and Jurisprudential Adaptation

Despite codification, South African law still encounters interpretive difficulties. Stronkhorst identifies that section 42 transactions generate complexity where corporate law timing rules affect tax qualification requirements.[55]

However, South African courts and the South African Revenue Service (SARS) address these issues through purposive interpretation, rather than ad hoc administrative discretion. This creates a controlled interpretive environment where ambiguity is resolved within established legal methodology.

The key distinction is not the absence of ambiguity but the presence of structured ambiguity resolution mechanisms. Zambia lacks comparable jurisprudential density in PTT matters, meaning that ambiguity is more likely to be resolved administratively rather than judicially.

[54] Cara Thiart and George Nel, "An Exploratory Study of the Effect of Country-by-Country Reporting Ambiguities on Johannesburg Stock Exchange-Listed Companies" (2018) 21 South African Journal of Economic and Management Sciences <https://doi.org/10.4102/sajems.v21i1.2129> accessed November 2025. (2018) 21 SAJEMS.
[55] Khodani Sengwane (2023) 26 PELJ.

3.2.6 Group Taxation Absence and Its Consequences

Wilcocks and Middelmann argue that South Africa's refusal to adopt full group taxation creates inefficiencies in intra-group transactions, necessitating detailed relief provisions to avoid cascading tax liabilities.[56]

This reinforces a broader doctrinal insight: where group taxation is absent, transactional relief regimes must be highly detailed to preserve neutrality.

South Africa responds to this structural constraint by layering exemptions across multiple statutory instruments, rather than relying on general administrative discretion.

3.2.7 Institutional Strength and Enforcement Infrastructure

South Africa's regime is underpinned by relatively strong institutional capacity within SARS, including interpretive practice notes, advance rulings, and formal dispute resolution mechanisms.

Thiart and Nel highlight that related-party definitions are reinforced through reporting obligations and compliance frameworks, ensuring that statutory thresholds are not merely theoretical but enforceable in practice.[57]

This institutional depth is critical: codification alone is insufficient without enforcement infrastructure capable of operationalising statutory clarity.

3.2.8 South African Model: Doctrinal Synthesis

The South African model demonstrates a structured equilibrium between:

i. Codified thresholds (legal certainty);
ii. Limited but controlled interpretive discretion (judicial purposivism); and
iii. Institutional enforcement capacity (administrative execution).

[56] Stronkhorst (n 46)

[57] Jolani S Wilcocks and SN Middelmann, "Evaluation of the Need to Introduce a System of Group Taxation in South Africa : Research Article" (2004) 8 Southern African Business Review 38 <https://journals.co.za/content/sabr/8/3/EJC91270> accessed October 2025.

However, it also demonstrates that codification does not eliminate complexity; rather, it relocates complexity from definitional uncertainty to transactional edge cases.

3.3 Kenya: Reform-Driven Tax Architecture and Transitional Complexity

3.3.1 Historical Suspension and Policy Rationale

Kenya's capital gains tax regime provides a unique comparative context due to its prolonged suspension from 1985 until reintroduction in 2015.

Karinga documents that the suspension was motivated by policy objectives aimed at stimulating investment in real estate and capital markets.[58] This created a long-standing expectation of non-taxation of capital gains, which was abruptly reversed with the 2014 reintroduction announcement.

The structural implication is that Kenya's tax system operated for decades without transactional capital gains taxation, creating a significant adjustment shock upon reintroduction.

3.3.2 Reintroduction of CGT and Market Adjustment

Nduruchi and Kaire report that the reintroduction of CGT broadened the tax base and improved revenue mobilisation, particularly in the real estate sector and securities markets.[59] However, this was accompanied by behavioural adjustment in market actors.

The key doctrinal insight is that tax reintroduction does not merely generate revenue effects; it also produces anticipatory restructuring behaviour, as taxpayers adjust to expected liability regimes.

3.3.3 Announcement Effects and Legal Uncertainty

Karinga's event-study methodology demonstrates statistically significant abnormal returns following the CGT announcement, indicating market uncertainty regarding valuation and tax incidence.[60] This illustrates a core principle of transitional tax theory: uncertainty is most acute at the point of legal change, not necessarily at full implementation.

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[58] Thiart and Nel (n 47).

[59] Esther Njeri Karinga, "The Announcement Effect of Capital Gains Tax on Stock Performance at Nairobi Securities Exchange" (2015) <http://erepository.uonbi.ac.ke/handle/11295/93092> accessed November 2025.

[60] George M Nduruchi and K' Odongo Kaire (2020) 8 International Journal of Business & Management.

For Zambia, this is particularly relevant given ongoing reform discussions under the Property Transfer Tax (Amendment) Bill 2025. Transitional uncertainty must therefore be treated as a structural feature of reform, not an incidental outcome.

3.3.4 Administrative Capacity and Implementation Constraints

Ogembo's analysis of Kenya's tax administration highlights persistent challenges in resource allocation, policy consistency, and enforcement capacity.[61]

This reinforces a key comparative conclusion that statutory reform is only as effective as the administrative machinery that implements it. In the context of restructuring taxation, where valuation and classification issues are frequent, administrative capacity becomes a determinative factor in legal certainty. The reintroduction period in Kenya was accompanied by judicial recognition of the structural uncertainty the regime imposed on taxpayers. In **Unilever Kenya Ltd v Commissioner General[62]**, the Kenya High Court acknowledged that, where domestic guidance is unavailable, "*we must look elsewhere*" and purposively borrowed authoritative international material to fill the interpretive gap

3.3.5 Political Economy of Tax Reform

Oxford Analytica highlights that Kenya's fiscal reforms operate within a politically sensitive environment where revenue imperatives often compete with investment considerations.[63]

This dynamic creates instability in tax policy continuity, particularly in politically visible tax instruments such as capital gains taxation. For Zambia, the implication is that reform design must anticipate political reversibility and incorporate structural safeguards.

3.3.6 Kenyan Model: Doctrinal Synthesis

Kenya demonstrates that:

i. Tax reform generates transitional uncertainty;

[61] Karinga (n 55)
[62] [2005] KEHC 3176 (KLR)
[63] Daisy Ogembo, "Evaluating Kenya's Experience with International Tax Standards: Adoption, Suitability, and Effectiveness" (2026) <https://doi.org/10.19088/ictd.2025.071> accessed January 2026.

ii. Administrative capacity determines operational success; and
iii. Political economy considerations influence reform durability.

Unlike South Africa, Kenya offers less doctrinal precision but richer empirical insight into reform dynamics.

3.4 Mauritius: Peripheral but Conceptually Informative Comparator

Mauritius is not a direct comparator for PTT exemption design but provides insight into how small open economies structure tax incentives.

Lim Tung highlights that Mauritius integrates tax incentives into broader land-use planning frameworks, particularly in smart-city development contexts.[64] Beebeejaun further notes that Mauritius relies heavily on general anti-avoidance principles rather than detailed statutory restructuring rules.[65]

The key comparative insight is that Mauritius demonstrates the viability of broad anti-avoidance frameworks, but only in jurisdictions with relatively high administrative coherence and investment-driven tax policy design.

For Zambia, Mauritius is therefore relevant only at the level of anti-avoidance philosophy, not exemption architecture.

3.5 Integrated Comparative Analysis

3.5.1 Structural Typology of Systems

The comparative jurisdictions can be classified into three structural models:

i. Codified threshold model (South Africa)
ii. Transitional reform model (Kenya)

[64] Oxford Analytica, "Kenya's Government Faces Tricky Fiscal Balancing Act" [2024] Emerald expert briefings <https://doi.org/10.1108/oxan-db291219> accessed December 2025.

[65] Odile Juliette Lim Tung, "Smart City Regulation and Environmental Sustainability in the Context of Land Use Planning in Mauritius: A Critical Review" (2023) 26 Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad <https://doi.org/10.17159/1727-3781/2023/v26i0a17151> accessed March 2026.

iii. Generalised discretion model (Zambia)

This classification is significant because it demonstrates that Zambia's model is not inevitable but represents a specific design choice with identifiable consequences.

3.5.2 Legal Certainty Gradient

The gradient of legal certainty across South Africa, Kenya, and Zambia reflects the varying degrees to which statutory thresholds are entrenched within each jurisdiction's legal framework, and it highlights the interplay between codification, transitional reform, and discretionary reliance. In South Africa, high certainty is achieved through comprehensive codification, where statutes and regulations provide clear thresholds that minimize judicial discretion and enhance predictability in both commercial and constitutional matters. Kenya, positioned at a medium level of certainty, is navigating transitional dynamics in its legal system, where reforms and evolving jurisprudence are gradually embedding statutory thresholds but still leave room for interpretive fluidity, particularly in areas of governance and regulatory enforcement. Zambia, by contrast, demonstrates low certainty due to its heavier reliance on judicial and administrative discretion in the absence of consistently applied statutory thresholds, which creates variability in enforcement and interpretation, especially in commercial and mining law contexts. This gradient underscores a direct correlation between the presence of codified statutory thresholds and the degree of legal certainty: the more explicit and entrenched the thresholds, the greater the predictability and stability of the legal environment, while their absence or inconsistency amplifies reliance on discretionary power, thereby reducing certainty and increasing risk for parties operating within the jurisdiction.

3.5.3 OECD Alignment Assessment

Measured against OECD principles of tax neutrality, the comparative positioning of South Africa, Kenya, and Zambia reveals a divergence rooted less in policy intent than in the structural design of their legal frameworks. South Africa aligns most closely with OECD standards through its structured exemption rules, which provide clarity and predictability, thereby reinforcing neutrality in the application of tax law. Kenya demonstrates partial alignment, as its policy architecture reflects OECD principles, but the jurisdiction struggles with implementation stability, where

transitional reforms and administrative inconsistencies dilute the intended neutrality. Zambia, meanwhile, formally aligns with OECD principles on paper, but the absence of operational precision undermines practical enforcement, leaving neutrality compromised in practice. Thus, while all three jurisdictions exhibit a shared policy intent to adhere to OECD norms, the divergence arises from differences in legal architecture: South Africa's codified and structured rules foster certainty, Kenya's transitional framework introduces instability, and Zambia's reliance on discretionary application erodes predictability, collectively illustrating how the strength of statutory design determines the degree of effective tax neutrality.

3.5.4 Core Doctrinal Gap

The central weakness across these systems is not merely the availability of exemptions but the determinacy with which those exemptions are defined and applied, and Zambia illustrates this gap most acutely. Unlike South Africa, where structured exemption rules provide clarity, or Kenya, where transitional reforms at least attempt to embed thresholds, Zambia lacks defined ownership thresholds that would establish clear lines of entitlement, fails to articulate criteria for internal reorganisations that would distinguish legitimate restructuring from tax avoidance, omits structured valuation rules that could standardize asset assessments, and does not provide procedural certainty mechanisms to guide both taxpayers and administrators. In the absence of these statutory design features, the system defaults to reliance on administrative discretion, effectively substituting judgment for codified determinacy, which undermines predictability, weakens neutrality, and increases the risk of inconsistent application across cases.

3.6 Conclusion

The comparative analysis demonstrates that corporate restructuring taxation systems function along a continuum between codification and discretion.

South Africa represents a highly codified system with controlled interpretive flexibility, achieving relative certainty through statutory thresholds. Kenya represents a transitional system where reform dynamics and administrative capacity determine effectiveness. Mauritius represents a discretionary, incentive-driven model that is not structurally comparable but offers insights into anti-avoidance design.

Zambia currently occupies the least structured position on this continuum, with broad exemption language and limited definitional architecture.

The core normative implication is that reform cannot rely on administrative discretion to resolve structural uncertainty. Instead, Zambia must adopt:

i. Codified ownership and group thresholds;
ii. Defined criteria for internal reorganisations; and
iii. Procedural certainty mechanisms such as advance rulings.

Chapter 4 will examine how these comparative lessons manifest in Zambian administrative practice and enforcement behaviour.

CHAPTER 4

ANALYSIS OF EXEMPTIONS, CHALLENGES AND POLICY IMPLICATIONS COMPARED TO SOUTH AFRICA AND KENYA

4.1 Introduction

This chapter synthesises the doctrinal analysis undertaken in Chapter 2 and the comparative analysis in Chapter 3 to evaluate the practical operation of Zambia's Property Transfer Tax (PTT) exemption framework, with specific emphasis on internal corporate reorganisations and non-cash equity contributions. The analysis moves beyond description to identify structural weaknesses in the statutory design, interpretive uncertainty in administrative practice, and systemic policy tensions that emerge when exemption provisions interact with broader tax and regulatory architecture.

The central argument developed in this chapter is that Zambia's PTT exemption regime is characterised not by the absence of exemption rules, but by the absence of operational determinacy. In other words, while exemptions exist in formal statutory terms, their application is mediated through undefined concepts, broad administrative discretion, and limited procedural safeguards. This produces a system in which predictability is weak, compliance costs are elevated, and administrative decision-making becomes the primary source of normative content.

The chapter therefore maps each identified challenge onto its corresponding policy implication, forming a structured analytical bridge to the reform proposals developed in Chapter 5.

4.2 Challenge: Statutory Ambiguity

4.2.1 The Diagnosis

The foundational weakness of the Zambian PTT exemption regime lies in the indeterminacy of its operative statutory language. The Property Transfer Tax Act (Cap. 340) establishes exemptions for intra-group transfers and equity contributions but does not define core triggering concepts such as "group of companies," "internal reorganisation," or "realised value" with sufficient specificity to guide consistent application.

As established in Chapter 2, this creates a normative vacuum in which legal meaning is effectively deferred to administrative interpretation. Mwila's analysis identifies this as the central structural deficiency of the regime, noting that the absence of objective thresholds—particularly shareholding or control benchmarks—renders exemption eligibility contingent on interpretive discretion rather than predictable legal criteria.[66]

Similarly while exemptions are formally present within the statutory framework, their operational content remains underdeveloped in both legislative drafting and administrative articulation. The consequence is that the statutory scheme operates at a level of abstraction that is incompatible with modern corporate structuring practice, particularly in cross-border or multi-tier holding structures.

This ambiguity is not merely technical. It generates what comparative tax literature describes as a "compliance interpretation gap," where taxpayers must anticipate administrative preferences rather than apply clear legal tests. Mwape et al. reinforce this broader institutional concern by linking legislative ambiguity in Zambia's tax system to enforcement deficits and base erosion pressures.[67] Although their analysis is grounded in transfer pricing, the structural logic applies equally to PTT: ambiguity expands discretion, and discretion increases variance.

4.2.2 The Policy Implication

The primary policy implication is that Zambia's reform trajectory must prioritise statutory codification of definitional thresholds within the PTT exemption framework. The ongoing Property Transfer Tax (Amendment) Bill 2025 presents a critical legislative opportunity to address this gap.[68]

Comparative experience strongly supports codification. South Africa's Income Tax Act embeds a structured definition of "group of companies," relying on a 70% equity threshold as the principal control indicator.[69] This approach removes ambiguity by converting a qualitative concept

[66] J Mwila, 'Group Reorganisations and Transfer Taxes in Zambia' (2019)

[67] Victor Mwape, Munyonzwe Hamalengwa and Austin Mwange, 'Unmasking Transfer Pricing Manipulation in Zambia's Copper Mining Sector: An Analysis of Schemes, Legal Gaps, and Enforcement Challenges under the Arm's Length Principle' (2025) 4 East African Finance Journal 163.

[68] Income Tax Act 58 of 1962 (South Africa), s 1 (definition of "group of companies"); see also Khodani Sengwane (2023).

[69] Esther Njeri Karinga, 'The Announcement Effect of Capital Gains Tax on Stock Performance at Nairobi Securities Exchange' (2015).

("group") into a quantifiable legal test. The result is not the elimination of discretion, but its confinement to residual interpretive questions rather than foundational classification disputes.

Kenya's reform trajectory underscores how definitional clarity is indispensable during fiscal transition periods, particularly when reintroducing capital gains tax, where the state was compelled to articulate scope and application rules with sufficient precision to enable market actors to adjust without destabilising transactional flows. Where definitional uncertainty persists in the midst of reform, it magnifies volatility and injects uncertainty into transaction structuring, thereby undermining neutrality and predictability[70].

Translating this lesson into Zambia's context, reform of the Property Transfer Tax exemption framework must embed statutory shareholding or control thresholds to delineate "group" classification, adopt definitional criteria for "internal reorganisation" grounded in continuity of ownership, and clarify the meaning of "realised value" through objective valuation triggers. Without these statutory anchors, Zambia risks perpetuating a regime where administrative discretion substitutes for legal determinacy, leaving taxpayers exposed to unpredictability and compliance burdens that could otherwise be mitigated through precise legislative design. Without such codification, administrative discretion will continue to function as the de facto source of law.

4.3 Challenge: Administrative Discretion Unconstrained by Procedural Mechanism

4.3.1 The Diagnosis

A second structural challenge arises from the breadth of discretion vested in the Commissioner-General in applying exemption provisions. In the absence of binding interpretive criteria, advance rulings, or published guidance, administrative discretion becomes the central mechanism through which legal meaning is produced.

Mwila characterises this as excessive interpretive latitude, particularly where exemption eligibility depends on evaluative judgments rather than defined statutory criteria.[71] This is exacerbated by

[70] J Mwila (n 61)
[71] Mwape, Hamalengwa and Mwange (n 62).

institutional constraints identified in broader Zambian tax governance literature, which highlight capacity limitations, fragmented administrative systems, and inconsistent enforcement practices.

The result is a system where similarly structured transactions may receive divergent tax treatment depending on timing, administrative personnel, or interpretive posture. This undermines legal certainty, which is a core principle of tax neutrality and investment predictability.

4.3.2 The Policy Implication

The policy implication is that substantive reform must be paired with procedural infrastructure. Comparative and institutional literature converges on this point.

The IMF's guidance on Advance Tax Rulings demonstrates that mature tax systems rely on structured pre-transaction interpretive mechanisms to reduce uncertainty and prevent retrospective dispute.[72] Similarly, OECD tax administration frameworks emphasise that legal clarity without procedural channels for interpretation remains incomplete.

The Ugandan private rulings regime offers a relevant regional illustration. While it enhances predictability, it also reveals design weaknesses including non-publication, lack of fees, and institutional bias risks.[73] These limitations demonstrate that procedural mechanisms must be carefully designed to avoid creating "secret law" or discretionary capture.

For Zambia, the implication is not simply the establishment of a ruling system in abstract terms, but the creation of a transparent, publishable, and administratively resourced interpretive framework that can anchor exemption practice in determinacy rather than discretion. Such a framework would need to incorporate binding or semi-binding advance rulings to give taxpayers reliable guidance before transactions are executed, the publication of anonymised decisions to build a body of precedent and foster consistency, structured turnaround timelines to reduce compliance costs and prevent administrative delay, and internal review or appeal mechanisms to safeguard against arbitrary or inconsistent application. Together, these elements would shift the normative weight of Zambia's Property Transfer Tax exemption regime away from ad hoc

[72] IMF, 'Introducing an Advance Tax Ruling (ATR) Regime' (Tax Law Technical Note, 2016)

[73] Samuel Kahima, Solomon Rukundo and Victor Phillip Makmot, 'Tax Certainty? The Private Rulings Regime in Uganda in Comparative Perspective' (2021).

administrative discretion and toward a predictable statutory and interpretive architecture, thereby enhancing neutrality, reducing uncertainty, and aligning practice more closely with international standards of tax governance.

Without such safeguards, codification alone will not resolve uncertainty; it will merely shift interpretive ambiguity into administrative practice.

4.4 Challenge: Anti-Avoidance Calibration

4.4.1 The Diagnosis

A persistent structural tension exists between facilitating legitimate corporate restructuring and preventing artificial tax avoidance. Broad exemption provisions, if insufficiently constrained, can be used to engineer transactions that formally qualify as internal reorganisations while substantively extracting value. Mwape et al. identify analogous risks in Zambia's broader tax system, where legislative ambiguity and enforcement gaps create opportunities for base erosion.[74] The same logic applies to PTT: exemption provisions without anti-abuse calibration create structural leakage risks.

However, comparative evidence also demonstrates that overly aggressive anti-avoidance frameworks can undermine legitimate commercial restructuring. Stronkhorst's analysis of South Africa's section 42 regime highlights interpretive friction even in codified systems, particularly where timing and control thresholds intersect with corporate law requirements.[75]

4.4.2 The Policy Implication

The policy implication for Zambia is not simply the adoption of an anti-avoidance overlay but the embedding of a calibrated anti-avoidance framework directly within the design of the exemption regime itself, ensuring that the rules are proportionate and integrated rather than externally imposed. This calibration would require the enactment of a statutory general anti-avoidance rule (GAAR) tailored specifically to Property Transfer Tax, complemented by targeted anti-avoidance provisions aimed at intercepting circular or artificial restructuring arrangements. At the same time,

[74] Angelique Stronkhorst, 'Section 42 Asset-for-Share Transactions' (2025).
[75] OECD, 'Corporate Restructuring and Tax Neutrality' (2019).

the framework should explicitly preserve exemptions where continuity of ownership is demonstrable, thereby safeguarding genuine reorganisations from unnecessary disruption. Finally, clear burden-of-proof allocation rules must be introduced to delineate responsibilities between taxpayers and administrators, reducing uncertainty and preventing arbitrary enforcement. The overarching design principle is proportionality: anti-avoidance rules must be strong enough to intercept abuse but sufficiently precise to avoid destabilising legitimate transactions, thereby striking a balance between integrity of the tax base and predictability for compliant taxpayers.

4.5 Challenge: Interaction with Other Tax Regimes

4.5.1 The Diagnosis

PTT does not operate in isolation. It interacts with capital gains tax, transfer pricing rules, corporate income tax, and withholding tax systems. This creates a layered compliance environment in which a single restructuring transaction may trigger multiple tax consequences.

Mwape et al. emphasise that fragmentation across tax regimes in Zambia contributes to enforcement inefficiencies and uncertainty.[76] The same structural problem arises in PTT: exemption interpretation becomes more complex when transactions simultaneously engage multiple tax heads.

The absence of integrated interpretive guidance means that taxpayers must navigate overlapping regimes without a unified framework.

4.5.2 The Policy Implication

The policy implication is that reform of Zambia's Property Transfer Tax (PTT) should be embedded within a coordinated tax system architecture rather than pursued as an isolated amendment exercise. To achieve this, reform must incorporate:

i. **Harmonisation of definitions across tax statutes** to ensure consistency and eliminate interpretive gaps.

[76] Mwape, Hamalengwa and Mwange (n 62).

ii. **Cross-referencing rules between PTT and capital gains tax** so that exemptions and valuation principles operate coherently across regimes.

iii. **Administrative coordination within ZRA units** to align enforcement practices and reduce duplication or conflict in interpretive approaches.

iv. **Consolidated guidance notes for corporate restructurings** to provide taxpayers with clear, accessible, and authoritative direction.

By embedding PTT reform within an integrated system, Zambia can reduce interpretive fragmentation, strengthen legal certainty, and improve compliance efficiency, thereby aligning exemption practice with broader principles of neutrality and predictability.

4.6 Challenge: Investor Confidence and Ease of Doing Business

4.6.1 The Diagnosis

From an investment perspective, uncertainty in tax treatment of corporate restructuring directly affects transaction costs, deal structuring, and jurisdictional attractiveness. Multinational enterprises prioritise jurisdictions where restructuring can be executed without unpredictable tax leakage.

The OECD confirms that tax neutrality in restructuring is essential to investment efficiency.[77] Zambia's current exemption framework does not consistently deliver this neutrality due to interpretive unpredictability.

4.6.2 The Policy Implication

The policy implication is that reform of Zambia's Property Transfer Tax (PTT) exemptions should be conceived not merely as a revenue-raising or anti-avoidance exercise, but as a deliberate instrument of investment facilitation designed to strengthen Zambia's position in regional and global capital markets. By embedding certainty into exemption design, reform would:

[77] George M Nduruchi and K' Odongo Kaire, 'The Capital Gains Tax—Boon or Bane: A Case of Kenya' (2020).

- **Reduce transaction structuring costs**, allowing businesses to allocate resources more efficiently and lowering barriers to entry for corporate reorganisations.

- **Increase cross-border investment predictability**, giving foreign investors confidence in the stability of Zambia's tax regime and reducing the risk premium attached to Zambian transactions.

- **Enhance Zambia's competitiveness in regional capital markets**, positioning the jurisdiction as a more attractive destination for investment flows relative to peers with clearer exemption frameworks.

Kenya's reform experience demonstrates that even well-intentioned measures, such as the reintroduction of capital gains tax, can generate transitional uncertainty if not accompanied by clear statutory guidance and administrative readiness.[78] For Zambia, the lesson is that reform must integrate a **communication strategy** into its design—ensuring that definitions, thresholds, and valuation rules are not only codified but also explained through consolidated guidance notes, advance rulings, and proactive stakeholder engagement. In this way, reform can simultaneously safeguard revenue, deter avoidance, and facilitate investment by reducing interpretive ambiguity and aligning Zambia's tax architecture with international expectations of transparency and predictability.

4.7 Challenge: Rhetoric–Implementation Gap

4.7.1 The Diagnosis

A recurring issue in Zambia's tax governance environment is the gap between formal policy articulation and operational implementation. Legislative reforms often outpace administrative capacity, resulting in incomplete or inconsistent application.

Munyandi's analysis confirms that international tax standards are frequently adopted in principle but inconsistently implemented in practice due to institutional constraints.[79]Mwape et al. similarly

[78] Ibid
[79] Mwape Etal. (n67)

identify enforcement deficits and capacity limitations as structural constraints across Zambia's tax system.

4.7.2 The Policy Implication

The implication is that legislative reform of Zambia's Property Transfer Tax (PTT) exemptions cannot be effective unless it is accompanied by a robust implementation architecture that ensures clarity, consistency, and administrative readiness. This architecture should include:

- **Administrative training programmes** to equip officers with the technical knowledge and interpretive skills necessary to apply exemption provisions consistently.
- **Interpretive manuals** that provide structured guidance on statutory thresholds, valuation rules, and reorganisation criteria, thereby reducing reliance on ad hoc discretion.
- **Phased implementation schedules** to allow taxpayers and administrators to adjust gradually, mitigating transitional uncertainty and avoiding abrupt compliance shocks.
- **Monitoring and evaluation frameworks** to track the effectiveness of reforms, identify interpretive bottlenecks, and ensure accountability in administrative practice.

Without such alignment between legislative design and administrative execution, reform risks exacerbating uncertainty rather than reducing it, as statutory changes alone cannot guarantee predictability unless they are operationalised through clear procedures, trained personnel, and transparent oversight mechanisms. This integration of law and practice is therefore essential to achieving determinacy, neutrality, and investor confidence in Zambia's tax system.

4.8 Conclusion

This chapter has demonstrated that the challenges facing Zambia's PTT exemption regime are not isolated drafting defects but interrelated structural issues spanning statutory design, administrative discretion, anti-avoidance calibration, regime fragmentation, investment confidence, and implementation capacity.

Across all dimensions, a consistent pattern emerges: uncertainty is generated not by the absence of law, but by the indeterminacy of its application environment.Comparative evidence from South Africa and Kenya confirms that these challenges are not unique to Zambia, but also that they can be mitigated through a combination of codified thresholds, procedural mechanisms, calibrated anti-avoidance rules, and sustained administrative investment.

Chapter 5 builds on this diagnostic framework to propose a structured reform model for Zambia's Property Transfer Tax exemption regime.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter concludes the study by drawing together the principal findings arising from the doctrinal and comparative analysis undertaken in the preceding chapters. The study examined the Property Transfer Tax (PTT) exemption regime applicable to corporate reorganisations and equity contributions in Zambia and assessed whether the existing framework adequately promotes certainty, neutrality, and administrative efficiency. Through an analysis of the Property Transfer Tax Act, relevant tax policy documents, comparative jurisdictions, and international standards, the study identified several structural weaknesses within the current regime.

The chapter is divided into five parts. First, it summarises the conclusions reached in relation to the Zambian legal framework analysed in Chapter 2. Secondly, it presents the principal findings emerging from the comparative study undertaken in Chapter 3. Thirdly, it synthesises the policy challenges identified in Chapter 4. Fourthly, it proposes recommendations for legislative and administrative reform. Finally, it concludes by assessing the broader significance of the study for tax policy, legal practice, and future reform of Zambia's PTT regime.

5.2 Findings from Chapter 2: The Zambian Legal Framework

Chapter 2 examined the evolution and current operation of the Property Transfer Tax regime in Zambia, with particular emphasis on exemptions applicable to corporate reorganisations and equity contributions. The analysis revealed that while the Property Transfer Tax Act contains several exemptions intended to facilitate legitimate corporate restructuring, the statutory framework lacks the precision necessary to ensure consistent application.

The principal conclusion from Chapter 2 is that the current regime is characterised by significant statutory ambiguity. Key concepts such as “group of companies,” “internal reorganisation,” and “realised value” are either undefined or inadequately defined within the legislation. Consequently, taxpayers and practitioners are required to rely heavily on administrative interpretation and

discretionary decision-making by the Zambia Revenue Authority (ZRA). This creates uncertainty regarding the circumstances in which exemptions will be granted and increases the likelihood of disputes between taxpayers and the revenue authority.

Chapter 2 further demonstrated that the absence of objective qualifying criteria undermines the tax neutrality that exemption provisions are intended to achieve. Corporate reorganisations are ordinarily undertaken to improve operational efficiency, facilitate investment, consolidate assets, or enhance governance structures. Where such transactions do not result in a substantive change in economic ownership, the imposition of transfer taxes may distort commercial decision-making. However, because the Zambian framework does not clearly identify the conditions under which neutrality should be preserved, taxpayers face uncertainty when planning restructuring transactions.

Another important finding was that the Commissioner-General's discretionary powers are not accompanied by corresponding procedural safeguards. The legislation grants broad authority to determine whether transactions qualify for exemption, yet provides limited guidance regarding the factors that should inform such determinations. The result is a framework that depends heavily on administrative practice rather than clear legislative rules.

The overall conclusion from Chapter 2 is therefore that Zambia possesses the foundations of a corporate reorganisation exemption regime but lacks the legislative clarity and procedural architecture necessary to ensure certainty, consistency, and predictability.

5.3 Findings from Chapter 3: Comparative Analysis

Chapter 3 examined the approaches adopted in South Africa and Kenya in regulating tax relief for corporate restructurings. The comparative analysis demonstrated that while both jurisdictions pursue broadly similar policy objectives, they have adopted different mechanisms for balancing tax neutrality, administrative certainty, and anti-avoidance concerns.

The South African framework emerged as the more developed model. The South African Income Tax Act contains detailed corporate reorganisation provisions, including clear definitions of qualifying transactions, objective ownership thresholds, timing requirements, and anti-avoidance safeguards. The existence of codified criteria significantly reduces uncertainty and enables

taxpayers to assess, with a reasonable degree of confidence, whether proposed transactions qualify for relief. The South African experience demonstrates that certainty is best achieved through legislative precision rather than reliance on broad administrative discretion.

The Kenyan experience provided a different but equally valuable lesson. Kenya's reintroduction of Capital Gains Tax highlighted the importance of implementation, transitional arrangements, and administrative preparedness. The comparative analysis showed that even well-designed tax reforms can generate uncertainty if taxpayers are not provided with sufficient guidance regarding their application. Kenya's experience illustrates that successful reform requires not only legislative change but also effective communication, stakeholder engagement, and administrative capacity.

A further conclusion emerging from the comparative analysis is that tax neutrality remains a central principle in modern corporate tax systems. Both South African and international practice recognise that transactions which merely reorganise assets within a continuing economic group should generally not attract immediate tax consequences. Relief mechanisms therefore exist to ensure that taxation occurs when economic gains are realised rather than when assets are transferred internally.

Chapter 3 therefore concluded that Zambia's existing exemption regime departs from emerging international best practice by relying on undefined concepts and broad discretion rather than objective qualifying criteria and transparent procedures.

5.4 Findings from Chapter 4: Challenges and Policy Implications

Chapter 4 synthesised the doctrinal and comparative findings to identify the principal challenges affecting Zambia's exemption regime. The analysis demonstrated that these challenges extend beyond legislative drafting and encompass broader issues of administration, policy design, and institutional capacity.

The first challenge identified was statutory ambiguity. The absence of precise definitions creates uncertainty for taxpayers, advisers, and administrators. Legislative ambiguity increases compliance costs, encourages inconsistent interpretation, and undermines confidence in the tax system.

The second challenge concerns administrative discretion. The current framework places substantial interpretive responsibility on the Commissioner-General without providing formal mechanisms through which taxpayers can obtain advance certainty. The absence of advance rulings, published guidance, or structured administrative procedures increases the risk of inconsistent outcomes and reduces predictability.

The third challenge relates to anti-avoidance design. While broad exemptions may create opportunities for abuse, excessive discretion can discourage legitimate commercial transactions. The central policy issue is therefore not whether anti-avoidance safeguards should exist, but how they should be calibrated to distinguish artificial arrangements from genuine corporate reorganisations.

The fourth challenge concerns coordination between PTT and other components of Zambia's tax system. Corporate groups operate within a broader framework that includes transfer pricing, capital gains taxation, withholding taxes, and income tax provisions. Reform of the PTT regime in isolation may therefore produce limited benefits unless broader tax policy objectives are considered.

Finally, Chapter 4 highlighted the implementation gap that often characterises tax reform in developing economies. Legislative amendments alone do not guarantee practical improvement. Without adequate administrative capacity, training, guidance, and stakeholder engagement, reform measures may fail to achieve their intended objectives.

The overall conclusion from Chapter 4 is that successful reform requires a comprehensive strategy combining legislative clarification, procedural reform, anti-avoidance safeguards, and institutional capacity building.

5.5 Recommendations

Based on the findings of this study, several recommendations are proposed.

Firstly, the Property Transfer Tax Act should be amended to provide clear statutory definitions of "group of companies," "internal reorganisation," and "realised value." Objective ownership

thresholds should be introduced to determine eligibility for exemption, thereby reducing reliance on administrative discretion.

Secondly, Zambia should establish a statutory advance ruling mechanism allowing taxpayers to obtain binding confirmation regarding the tax consequences of proposed transactions. Such a system would enhance certainty and reduce disputes while improving the transparency of tax administration.

Thirdly, the Zambia Revenue Authority should publish detailed interpretive guidelines explaining the practical operation of exemption provisions. These guidelines should address evidential requirements, valuation methodologies, and common transaction structures.

Fourthly, targeted anti-avoidance provisions should be introduced to address transactions lacking genuine economic substance while preserving relief for legitimate corporate reorganisations. Such provisions should be narrowly tailored and supported by procedural safeguards.

Fifthly, reform should be implemented in phases and accompanied by investment in administrative capacity. Legislative amendments should be supported by specialised training, stakeholder engagement, technological systems, and monitoring mechanisms to ensure effective implementation.

Finally, reform should be coordinated with broader tax policy initiatives to ensure consistency across Zambia's tax framework and avoid duplication or conflict between different tax regimes.

Areas for further research

Further studies could examine the impact of Property Transfer Tax exemptions on foreign direct investment and corporate restructuring behaviour in Zambia, with a view to assessing whether current tax treatment promotes or constrains investment activity.

Secondly comparative empirical research could be undertaken to evaluate the effectiveness of tax dispute resolution and advance ruling systems in jurisdictions such as South Africa and Kenya, and their potential applicability to Zambia.

Finally, there is room for broader research on the interaction between Property Transfer Tax and other elements of the Zambian tax system, particularly income tax and capital gains tax, in the context of corporate reorganisations and equity transactions

5.7 Overall Conclusion

This study has demonstrated that Zambia's Property Transfer Tax exemption regime occupies an important position within the country's corporate tax framework but currently falls short of achieving the certainty and neutrality required for efficient business restructuring. Although the legislation recognises the need for exemptions in certain circumstances, the absence of clear qualifying criteria and procedural safeguards undermines the effectiveness of those exemptions.

The comparative analysis undertaken in this study demonstrates that alternative approaches are available. South Africa illustrates the benefits of detailed statutory drafting and objective qualifying criteria, while Kenya highlights the importance of effective implementation and administrative preparedness. International standards similarly emphasise the importance of certainty, transparency, and neutrality in the taxation of corporate reorganisations.

The study therefore concludes that Zambia should move towards a more codified and predictable exemption framework. Such a framework should be built upon four pillars: legislative clarity, procedural certainty, calibrated anti-avoidance safeguards, and institutional capacity. Together, these reforms would enhance taxpayer confidence, improve administrative efficiency, protect the revenue base, and strengthen Zambia's attractiveness as a destination for investment.

Ultimately, the challenge is not whether Zambia should provide relief for genuine corporate reorganisations. Rather, the challenge is how that relief should be structured to balance certainty, neutrality, and revenue protection. This study has argued that a rules-based framework supported by transparent administration provides the most effective means of achieving that balance and offers a practical roadmap for future reform of Zambia's Property Transfer Tax regime.

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