BRIEF ON THE MINES AND MINERALS DEVELOPMENT (AMENDMENT) BILL, NAB NO. 31 OF 2022 PRESENTED TO THE COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOR MATTERS

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INTRODUCTION

1.0. The Brief has been prepared in response to the request from the Committee on National Economy, Trade and Labour Matters to the Parliamentary Budget Office (PBO) to unpack the Mines and Mineral Development (Amendment) Bill, N.A.B No. 31 of 2022. The object of the Bill is to amend the Mines and Mineral Development Act, 2015, so as to restructure the taxation of mineral royalty.

2.0. The brief provides selected historical developments surrounding the mining taxation regime. The information will give Members an idea of what necessitated similar changes in the in the past and how these changes impacted the mining sector. The paper demonstrates how the proposed mining tax regime might impact tax revenue mobilisation.

HISTORICAL DEVELOPMENTS IN THE MINING TAX REGIME

3.0. Prior to 1995, there was insignificant investment in the mining sector, characterised by lack of financial resources resulting in poor performance. This adversely affected the overall performance of the economy. In order to attract foreign direct investment into the mining sector, an enabling legal framework was enacted. In this regard, Parliament passed the Mines and Minerals Act of 1995 which paved the way for the privatisation of the Mines in Zambia. This Law empowered the Minister to enter into development agreements with the investors.

4.0. In 2000, the Government extended tax concessions to the mining sector to support the privatisation of major assets of the Zambia Consolidated Copper Mines (ZCCM) Ltd, a state-owned company which was running the Mines at the time. The objective was to facilitate substantial re-capitalisation and investment needed in the sector. The concessions included:

- **mineral royalty rate reduction from 2 per cent to 0.6 per cent of gross value;**
- corporate tax rate reduction from 35 per cent to 25 per cent;
- period for loss carry-forward for KCM was increased to 20 years from 10 years;
- withholding tax on interest, dividends, royalties and management fees paid to shareholders and affiliates reduced from 15 per cent to 0 per cent; and
- deduction of 100 per cent of capital expenditure in the year the expenditure is incurred.

5.0. However, when the prices of copper were high, there was need to review the concessions so that the nation could benefit from increased earnings by the mining companies. Itwas unlikely that the country would maximise the benefits from the high prices because of the development agreements. These development agreements were one sided because they did not provide for clawing back excess profits or windfall gains when prices were high. All the windfall gains from the high prices were accruing to the mining companies.

6.0. The provision for development agreements in the 1995 mining tax regime was repealed in **2008** thereby nullifying the terms therein. Following the repeal, the following fiscal regime was introduced:

- a corporate tax rate of 30 per cent;
- a variable profit tax of up to 15 per cent on taxable income, which was above 8 per cent of the gross income;
- a windfall tax to be triggered at different price levels for different base metals. For copper, the windfall tax rate was 25 per cent at the copper price ranging from US$2.50

per pound to US$3.00 per pound, 50 per cent at the price between US$3.00 per pound and the US$3.50 per pound, and 75 per cent for the price above US$3.50 per pound.

- **mineral royalty was increased from 0.6 per cent at 3 per cent;**
- withholding tax on interest, royalties, management fees and payments to affiliates or sub-contractors in the mining sector was at 0 per cent;
- hedging, as a risk management mechanism, to be treated as a separate activity from mining and therefore be taxed separately;
- capital allowance, that is a depreciation of capital equipment, was reduced from 100 per cent to 25 per cent per annum;
- a 'reference price' deemed the arms-length price, was introduced for the purposes of assessing mineral royalties and any transaction for sale of base metals, gemstones or precious metals between related or associated parties. The reference price was the price tenable at the London Metal Exchange, metal bulletin or any other commodity exchange recognised by the Zambia Revenue Authority (ZRA);
- capital expenditures on new projects were ring-fenced and only became deductible when the projects started production.

7.0. Most of the mining companies did not comply with the amended law arguing that the development agreements were still valid and enforceable.

8.0. In 2009 the Government resolved to revise the 2008 mining tax regime. This was necessitated in part, by the challenges associated with the global financial crisis at the time and the change in the political leadership. The Government argued that the 2008 mining tax regime was very punitive to the mining companies and was a disincentive to investment.

9.0. In order to address the challenges and being cognisant of the problems the mines were facingas a result of the global financial meltdown, the Government fine-tuned the fiscal regime in 2009 as follows:

- remove windfall tax and retain the variable profit tax, which would still capture any windfall gains that could arise in the sector;
- allow hedging income to be part of the mining income for tax purposes; and
- increase capital allowance to 100 per cent as an investment incentive.

10.0. In **2015,** the mining tax regime was further revised as follows:

- 8 percent Mineral Royalty for underground mining operations as a final tax;
- 20 percent Mineral Royalty for open cast mining operations as a final tax;
- 30 percent Corporate Income Tax rate on income earned from tolling; and
- 30 percent Corporate Income Tax rate on income earned from processing of purchased mineral ores, concentrates and any other semi-processed minerals, currently taxed as income from mining operations.

11.0. In April **2016,** the Government presented the Mines and Minerals Development (Amendment) Bill, 2016 whose objects were to:

- reduce the rate of mineral royalty for copper extracted from both underground and open cast mining operations to rage from 4 per cent to 6 per cent depending on the prevailing prices;
- reduce the rate of mineral royalty for other base metals to 5 per cent for both underground and open cast mining operations;
- reduce the rate of mineral royalty for energy and industrial minerals to 5 per cent for both underground and open cast mining operations; and
- set the rate of mineral royalty for gemstones and precious metals at 6 per cent for both underground and open cast mining operations.

THE 2022 AND 2023 MINING TAX REGIME

12.0. During the 2022 budget presentation the Minister of Finance and National Planning reintroduced the deductibility of mineral royalty for corporate income tax assessment purposes as a way of attracting investment in the mining sector and to keep it in line with international best practices.

13.0. During the 2023 budget presentation, the Minister of Finance and National Planning further proposed to restructure mineral royalty with respect to Copper. The tax would now apply on incremental value in each adjusted price band as opposed aggregate value when the price crosses the respective price threshold as follows:

Table 1. Current and Proposed Mining Tax Regime

Mining Taxation Regine - Mineral Royaty					
Current Regime			**Proposed Regime**		
Price Range	**Rate (%)**	**Taxable Amount**	**Price Range**	**Rate (%)**	**Taxable Amount**
Less than US$4,500 per tonne	5.5	Full Price Amount	Less than US$4,000 per tonne	4	The first US$4,000
US$4,500 per tonne or more but less than US$6,000 per tonne	6.5	Full Price Amount	US$4,001 per tonne or more but less than US$5,000 per tonne	6.5	The next US$1,000
US$6,000 per tonne or more but less than US$7,500 per tonne	7.5	Full Price Amount	US$5,001 per tonne or more but less than US$7,000 per tonne	8.5	The next US$2,000
US$7,500 per tonne or more but less than US$9,000 per	8.5	Full Price Amount	US$7,001 per tonne or more	10	balance
US$9,000 per tonne or more	10	Full Price Amount			

Source: 2023 Budget Speech.

14.0. Mineral Royalty is computed using the “Gross Value” for most industrial metals and precious stones. Gross value is defined as the realisable price for sale Free on Board (FoB) at the point of export in Zambia or at the point of delivery in Zambia for purposes of calculating mineral royalties. For base metals, mineral royalty calculation is based on “Norm Value.” Norm value is calculated based on the monthly average London Metal Exchange (LME) cash price per metric tonne multiplied by quantity of the metal.

Comparison in computation between the 2022 and 2023

15.0. The 2023 miningtaxation regime has given relief to the mining sector and the Minister indicated a revenue loses to the Treasury of K2.8 billion. The following two scenarios highlighted below demonstrates the differences between the regimes. Table 1 below demonstrates tax liability when the price of copper on the LME is at US$6,000 with the 100 MT of copper produced. Under the proposed regime, the liability at US$31,000 is 31.0% lowerthan US$45,000 royalty liability under the current regime.The loss might even be higher when the proposed 2023 mining tax regime is compared with 2021 when not only was the computation of mineral royalty similar to 2022 but non-deductible as well.

Table 1. Proposed 2023 Mineral Royalty Regime on Copper Vs Current 2022Regime

Price (US$)	**6,000.00**			
QTY (MT)	100			
2023 Mining Tax Regime				
US$	**MT**	**US$**	**%**	**ROYALTY**
Price (P)	**Quantity (Q) MT**	**Norn Value (P.Q)**	**Rate**	**LIABILITY (US$)**
4,000.00	100.0	400,000.00	4.0%	16,000.00
1,000.00	100.0	100,000.00	6.5%	6,500.00
1,000.00	100.0	100,000.00	8.5%	8,500.00
TOTAL (US$)				**31,000.00**
Mineral Royalty is Non-deductible				

Price (US$)	**6,000.00**			
QTY (MT)	100			
2022 Mining Tax Regime				
US$	**MT**	**US$**	**%**	**ROYALTY**
Price (P)	**Quantity (Q) MT**	**rn Value (P.Q)**	**Rate**	**LIABILITY (US$)**
6,000.00	100.0	600,000.00	7.5%	45,000.00
TOTAL (US$)				**45,000.00**
Mineral Royalty is Non-deductible				

Contribution of mining tax collection

16.0. During the period Jan - June 2021 and Jan - Jun 2022, mining and quarrying sector contributed more to the Treasury. Mining and quarrying sector made a highest contribution to tax collections compared to other sectors in the first half of 2021 and 2022. However, it registered a decline by 2.2% as proportion of total contributions. Manufacturingrecorded a 0.5 decline while Financial and Insurance recorded an increase by 2.1%. In terms on contribution to the Treasury, the mining and quarrying sector makes a greater contribution with 46.2 % in the first half 2021 and 44.0% in the first half of 2022. Therefore, it might be important to appreciate the overall contribution of the sector than just focusing on one tax type only.For example, a stand-off on the structure of mineral royalty alone may lead to mining companies scaling-down production thereby affect the overall contribution of the sector.

17.0. Under revenue contribution by Tax Type, mining company tax increased from about K5.3 in 2021 bn to K9.4 bn in 2022. However, under the 2022 regime, Mineral Royalty was deductible for corporate income tax assessment purposes. In 2021, the total tax contribution by the mining companies included K6.4 bn mineral royalty and K5.3 mining company tax sincemineral royalty was non-deductible.Therefore, the 2021 tax regime may be described as being more robust in terms tax collections than the 2022 regime.

Table 2: Contribution by Sector and Tax Type

Rank	Revenue Contribution by Sector: January - June, 2022 collection vs January -June 2021 collection (K' Million)						
		Gross Tax Collection			Gross Tax Collection as % of Total		
	Sector	2022	2021	Variance	2022	2021	Variance
1	Mining and Quarying	24,241.10	19,926.70	21.7%	44.0%	46.2%	-2.2%
2	Whosale and Retail Trading	6,636.20	5,549.10	19.6%	11.7%	12.2%	-0.5%
3	Manufacturing	4,816.00	4,310.20	11.7%	8.4%	8.9%	-0.5%
4	Financial and Insurance activities	3,563.70	2,305.80	54.6%	7.0%	4.9%	2.1%

Rank	Revenue Contribution by Sector: January - June, 2022 collection vs January -June 2021 collection (K' Million)						
		Jan-June Collection			Jan-June (%) Contributions		
	Tax Type	2022	2021	Variance	2022	2021	Variance
1	Compnay Tax	14,052.20	8,542.70	64.5%	29.10%	21.20%	7.9%
	Mining Company Tax	***9,418.60***	***5,333.20***	***76.6%***	*19.50%*	*13.20%*	***6.3%***
	Non Mining Company Tax	***4,633.50***	***3,209.50***	***44.4%***	*9.60%*	*8.00%*	***1.6%***
2	PAYE	8,995.90	7,447.60	20.8%	18.6%	18.50%	0.1%
3	Import VAT	6,460.50	6,133.10	5.3%	13.40%	15.20%	-1.8%
4	**Mineral Royalty**	**6,241.00**	**6,352.20**	**-1.8%**	12.90%	15.80%	-2.9%

Source: ZRA

Table 3: Mineral Royalty Performance 2021 to 2023

Revenue Type	2021		2022		2023	
	Actual Collection (K'Millions)	Percentage of Domestic Revenue	Estimated Collection (K'Millions)	Percentage of Domestic Revenue	Estimated Collection (K'Millions)	Percentage of Domestic Revenue
Mineral Royalty	12,417.00	12.8	12,839.00	13.0	8,986.00	8.0
Total Domestic Revenue	**97,214.00**		**98,859.00**		**111,643.00**	

Source: Constructed with data from the 2023 Budget and Financial Report for 2021

Emerging issues

The 2023 estimates for Mineral Royalty shows a significant reduction in the projected collections and its contribution to domestic revenues compared to actual collections in 2021 and estimated collections in 2022. The Ministry estimates the revenue loss to be about K2.8 billion.