REPORT OF THE COMMITTEE ON ESTIMATES ON THE INCOME TAX (AMENDMENT) BILL, NATIONAL ASSEMBLY BILL NO. 7 OF 2015 FOR THE FOURTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON WEDNESDAY 24TH SEPTEMBER, 2014

Consisting of:

Mr H H Hamududu, MP (Chairperson); Mr G Lubinda, MP; Mr E M Sing'ombe, MP; Mr R L Mpundu, MP; Mr A L Lufuma, MP; Mr L Chabala, MP; Mr R P Mtolo, MP; Ms A C Kansembe, MP; and Mr P Phiri, MP.

The composition of your Committee changed following the appointment to ministerial positions of Mr G Lubinda, MP and Ms A C Kansembe, MP. The two were subsequently replaced by Dr G L Scott, MP and Ms I M Mphande, MP, respectively.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
P O Box 31299
LUSAKA

Sir

Your Committee on Estimates has the honour to present its Report on the *Income Tax (Amendment) Bill, N.A.B. No. 7 of 2015*, referred to it on Friday 19th June, 2015.

2. Functions of the Committee

In addition to any other duties conferred upon it by the Hon Mr Speaker, or any other Order of the House, your Committee is mandated to consider any Bill that may be referred to it by the House.

3. Meetings of the Committee

Your Committee held eleven (11) meetings to consider the Bill and interacted with various stakeholders and examined in detail all the submissions presented before it.

4. Procedure adopted by the Committee

In order to appreciate the ramifications of the Bill, your Committee sought both written and oral submissions from different stakeholders. The list of witnesses, who gave oral and written evidence to your Committee, is at Appendix II of this Report.

5. Object of the Income Tax (Amendment) Bill, N.A.B. No. 7 of 2015

The object of the Bill is to amend the *Income Tax Act* so as to:

a. increase the corporate income tax rate for mining operations from *0 per cent* to *30 per cent*;
b. introduce a variable profit tax of up to *15 per cent* for mining operations;
c. increase the corporate income tax rate for mineral processing from *30 per cent* to *35 per cent*;
d. limit the deduction of loses for mining operations to *50 per cent* of taxable profit for each charge year; and

e. provide for matters connected with, or incidental to the foregoing.

6. Background

Your Committee notes that the unstable trajectory of the mining tax regime has continued from 2008, when the windfall tax was introduced to date (See Table 1). The uncertainty has adverse effects on the promotion of investment into the sector.

Table 1: Mining Fiscal Regime from 2008 to 2015

Tax Type	2008*	2009	2010	2011	2012	2013	2014	2015
Corporate Income Tax	**30.0%**	**30.0%**	**30.0%**	**30.0%**	**30.0%**	**30.0%**	**30.0%**	**0.0%**
Mineral Royalty	**3.0%**	**3.0%**	**3.0%**	**3.0%**	**6.0%**	**6.0%**	**6.0%**	
Mineral Royalty-Open Cast	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**20.0%**
Mineral Royalty-Underground	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**0.0%**	**8.0%**
Variable Profit Tax	**15.0%**	**15.0%**	**15.0%**	**15.0%**	**15.0%**	**15.0%**	**15.0%**	**0%**

*Windfall Tax was introduced in 2008 and abolished in 2009
Source: Budget Speeches

i. Pre-2008 mining fiscal regime

Your Committee notes that before the 2008 mining tax regime was amended, the rate for company tax was pegged at *25 per cent* while that of mineral royalty was at *0.6 per cent*. The tax incentives against profits as enshrined in the Development Agreements were:

a. all pre-production expenses in the first year of production were allowable;
b. all capital expenses in the year incurred were allowable;
c. carry-over of losses for tax purposes and stability periods for ten to twenty years; and
d. *0 per cent* of: withholding taxes on dividends; and interest and management services sourced in Zambia.

ii. The 2008 mining tax regime

In 2008, the mining tax regime was amended by the reduction of capital allowances to *25 per cent* and the introduction of company tax at *30 per cent*; mineral royalty at *3 per cent*; and windfall tax. These measures were introduced against a backdrop of failed re-negotiations of the Development Agreements (DAs) as the mining firms insisted on standing by the agreements which the Government contended were unfair given the improvement in the metal prices that had significantly increased over the US$ 3,000 per ton projection to over US$ 8,000 per ton. The new measures, which were hailed widely including by the international community, were expected to promote transparency and accountability in the utilisation of income from the exploitation of mineral resources. They were also meant to harmonise the mining tax regime with the other sectors.

Your Committee notes that the introduction of the windfall tax in 2008, among other measures, was aimed at redressing the lopsided tax regime which favoured the mining firms. It was also meant to bring about a more equitable distribution of mineral wealth between the Government and the mining companies, particularly amid unexpectedly high copper prices. The resulting increase in revenue under the new measures was expected to reduce the country's dependency on donor funding to implement its development programmes. Overall, the elaborateness of the 2008 tax regime was expected to provide stability to the investment climate and administration of tax.

iii. The mining tax regime for 2009

The adoption of the 2008 tax regime, particularly the *windfall tax,* caused an outcry among the mining firms with some of them threatening to sue the Government for breaching the Development Agreements (DAs). In this regard, only two (2) out of the five mining firms paid the *windfall tax* although all of them complied with the new mineral tax. As a result of intense lobbying by the mining firms, the Government withdrew the windfall tax despite the public's objection which had the support of the international community. In 2009, the following were the changes to the 2008 tax regime:

a. withdrawal of windfall tax while retaining variable profit tax;
b. maintaining mineral royalty tax at the 2008 rates;
c. re-instatement of capital allowance at *100 per cent*; and
d. firms were allowed to write-off hedging losses against profits.

iv. The Mining tax regime for 2012

Your Committee notes that in 2012, mineral royalty rate was increased to *6 per cent* from *3 per cent.* However, Corporate Income Tax (CIT) and the variable profit tax were maintained at the same rates of *30 per cent* and *15 per cent*, respectively. Further, income arising from hedging activities was separated from core mining activities for income tax purposes.

v. The mining tax regime for 2015

The 2015 budget introduced a single tier mining tax regime. It was argued at the time, that although Zambia had sizeable mineral reserves, it was not getting a fair share from the mining operations to support accelerated development. It was further argued that minerals were a non-renewable and non-replenishable resource, hence the need to optimise the returns and benefits.

The Government, therefore, decided to restructure the tax regime by replacing the tax structure that had a combination of corporate income tax, profit variable tax and mineral royalty with a simple mineral royalty-based system which was final. In the 2015 Budget Speech, the Minister of Finance when proposing the new mining tax regime explained that it would achieve a more equitable distribution of the mineral wealth between the Government and the mining companies. The simplified mining tax structure was as follows:

a. mineral royalty at *8 per cent* for underground mining operations as a final tax;
b. mineral royalty at *20 per cent* for open cast mining operations as a final tax;
c. corporate income tax rate at *30 per cent* on income earned from tolling; and
d. corporate income tax at *30 per cent* rate on income earned from processing of purchased mineral ores, concentrates and any other semi-processed minerals, currently taxed as income from mining operations.

The justification for the new structure was to simplify tax administration and to capture more resources to meet public expenditure. The new mining tax regime was expected to raise estimated additional revenue of K1.7 billion. The main argument for the new tax structure was that being revenue-based, it prevented vices such as tax avoidance and evasion which were prevalent under a profit-based tax system. The problem, however, with this tax regime was the unexplained nature of how the authorities arrived at the taxable rates.

vi. Proposed Mid-2015 mining fiscal regime

Your Committee was informed that recent reports indicated that Zambia's copper output was trending downwards. The overall production was likely to decline owing to the recent mining dispute between the Government and the mining operators which had created uncertainty for most parts of the year 2015. Therefore, in mid-2015, the following changes were proposed in the Income Tax Amendment Bill under consideration:

a. to impose a corporate income tax at *30 per cent* on income earned from mining operations;
b. to impose *15 per cent* variable profit tax on income earned from mining operations; and
c. the provision for the deduction of tax losses carried forward to be limited to *50 per cent* of taxable income.

7. Concerns raised by Stakeholders

Some of the concerns raised by different stakeholders who appeared before your Committee are outlined below.

i. Introduce the variable Profit Tax of up to 15 per cent for mining operations

The Bill proposes that where profits exceed *8 per cent* of gross sales, the variable profit tax of *15 per cent* shall apply. This proposal is intended to raise additional tax revenue when the companies make supernormal profits. Some stakeholders were concerned that although the provision was well intended, it might not achieve the intended objective of increasing revenues. To the contrary, the measure might only exaggerate the effective tax rate without achieving the corresponding increase in revenue. Its incremental effect on the overall effective tax rate might lead to tax evasion. They further contended that the variable profit tax was a profit based-tax and as such, it was unlikely that the country would get adequate revenues. This is because most of these companies would continue to declare losses as a result of the carry forward of losses and by engaging in tax planning activities such as transfer pricing. Currently, only Chibuluma and Kansanshi mining companies were in the tax-paying bracket.

ii. Increase of the Company Income Tax rate for mineral processing from 30 per cent to 35 per cent

Some witnesses were concerned that the proposed provision will discourage value addition. While increasing the corporate rate for mineral processing was expected to raise additional revenue, it contradicted Government policy of promoting value addition.

iii. Limit deductions of loses to 50 per cent

Some witnesses were concerned that limiting of losses brought forward to *50 per cent* of taxable income from mining operations was discriminatory and punitive because it did not apply to other industries. The measure also violates one of the key fundamental principles of taxation of equitable treatment of all tax payers.

Other witnesses were concerned that the provision violates the essence of capital allowances and disregards mining development costs incurred in the start-up stages. It is also a disincentive to green-field investments because mining operations are expected to start paying tax in the first year of operations.

Others still were of the view that subjecting only *50 per cent* of the taxable income to tax will deprive the country of the much needed revenues. They argued that there was an incentive to load costs and reduce the taxable income by some of the mining companies in order to avoid both the corporate income tax and variable profit tax adding that the proposed Bill should be amended by limiting losses brought forward to *25 per cent*.

iv. Policy inconsistency

Stakeholders were concerned that the mining fiscal regime has been regularly changing. They argued that by its nature, the mining sector involved long-term planning. They contended that frequent changes in the tax regime have the potential to undermine investment in the mining sector and disrupt production. This may have adverse effects on the economy considering that the sector contributes a marked share to the foreign exchange earnings and employment of the country.

v. Single versus two tier tax system

Most of the witnesses were concerned that reverting to the two tire system will not yield a more equitable distribution of the mineral wealth between the Government and the mining companies. As has been the case in the past with other profit-based taxes, it was unlikely that the Government would collect a fair share of revenue from the mining companies.

vi. Limited capacity to collect taxes

Some stakeholders were concerned at the failure by the Zambia Revenue Authority to collect adequate revenue because of limited capacity. They argued that the low levels of tax revenues being collected may not entirely be attributed to the low tax rates. Furthermore, they argued that mining tax rates in the region were more competitive compared to what was being proposed in Zambia (See Table 2).

Table 2: Regional comparison of mining tax regimes

JURISDICTION	Company tax	Mineral royalty	Base
Botswana	22%	3%	Revenue
Ghana	35%	5%	Revenue
Kenya	30%	8%	Revenue
Namibia	37.5%	3%	Revenue
Tanzania	30%	4%	Revenue
DRC	30%	2%	Revenue
Zambia-Pre 2015 Tax Regime	30%	6%	Revenue
Zambia-Pre 2015 Tax Regime Open Cast	0%	20%	Revenue
Zambia-Pre 2015 Tax Regime Underground	0%	8%	Revenue
Zambia-April 20, 2015 Tax Regime Open Cast	30%	9%	Revenue
Zambia-April 20, 2015 Tax Regime Underground	30%	6%	Revenue

Source: Chamber of Mines of Zambia

vii. Mineral Royalty being tax deductable

Various stakeholders were concerned that the increase in mineral royalty would not yield substantial benefits as long as it continued to be corporate tax deductable. Your Committee notes from Table 3 below that the increase in mineral royalty in 2012 from *3 per cent* to *6 per cent* only led to a corresponding decline in the corporate income tax. This was because mineral royalty is currently treated as an expense and as such, is deductable for tax purposes.

Table 3: Relationship between Mineral Royalty and Company Tax

TAX TYPE	2006	2007	2008	2009	2010	2011	2012	2013	2014 proj	2015 proj
Corporate Tax	146.8	590.9	395.1	209.7	1258.8	2473.9	2610.3	1084.7	1654.8	
Mineral Royalty	51.5	69.4	223.9	242.2	392.7	868.0	1458.6	1760.7	1930.7	5936.9
Export Duty	0.0	0.0	178.0	15.0	2.4	1.9	3.5	12.2	56.1	0.0
PAYE	317.6	471.2	618.3	586.7	740.8	999.2	1162.6	1440.0	1729.5	1850.6
Mining Revenue as % of Total Tax Revenue	8.2%	13.8%	14.6%	10.9%	18.2%	23.0%	25.3%	18.6%	19.0%	24.9%
Mining Revenue (Without PAYE) as % of Total Tax Rev	3.1%	8.1%	8.2%	4.8%	12.6%	17.7%	19.7%	12.3%	12.9%	19.0%
Mining Revenue as % of GDP	1.1%	2.0%	2.1%	1.4%	2.5%	3.8%	4.1%	3.0%	3.2%	4.1%
Mining Revenue (Without PAYE) as % of GDP	0.4%	1.2%	1.2%	0.6%	1.7%	2.9%	3.2%	2.0%	2.2%	3.1%

Source: ZRA

viii. Production figures

Some witnesses were concerned that various Government institutions and indeed mining companies have continued to report conflicting production figures. They were also concerned that production output for the mining had continued to decline.

8. Committee's Observations and Recommendations

Your Committee jointly held a meeting with its counterpart Committee on Economic Affairs, Energy and Labour to harmonise the proposed mineral royalty and the Income Tax Amendments. Your Committee is aware that the Mineral Royalty Tax (MRT) and the proposed amendments to the Income Tax (Amendment) Bill, No. 7 2015, are a major component of the mining tax regime. Taking into account the above, your Committee makes the observations and recommendations highlighted hereunder.

i. Corporate Income Tax

Your Committee observes that the Government proposes to raise corporate income tax for mining operations from *0 per cent* to *30 per cent.* Your Committee is aware that the proposed rate is effectively reverting to the 2014 fiscal year. In view of the challenges facing the mining sector and the need to attract investment into the sector, your Committee urges the House to support the proposed amendment.

ii. Variable profit tax

Your Committee observes that the Government proposes to introduce the variable profit tax of up to *15 per cent* for mining operations. Your Committee is aware that the proposed rate effectively reverts to rates of the 2014 fiscal year. In view of the challenges facing the mining sector and the need to sustain employment, your Committee urges the House to support the proposed amendment.

iii. Introduce punitive penalties for tax planning transfer

Your Committee observes that the country has continued to register low levels of revenue from the mining companies because of tax planning activities such as transfer pricing. Your Committee, therefore, recommends that the Government should put in place punitive measures against such vices.

iv. Effective date of the Bill

Your Committee observes that the Bill proposes 1st July, 2015, as the effective date for implementation. Considering that this date has already passed, your Committee recommends that this provision should be amended to provide for the appropriate date for which the amendment will take effect.

v. Team of mining experts

Your Committee observes that there is no collaboration between policy makers and mining experts in the determination of appropriate taxes. This raises the problem of information asymmetry in terms of production figures and profits. In most cases, this has resulted in under-declaration of production figures by mining companies in order to reduce tax obligations.

Your Committee is aware that there is a standing structure of mining experts that monitor mining activities. However, it recommends that the Government should ensure that the team of experts is able to effectively monitor the mining activities and subsequent production levels for tax purposes.

vi. Enhance the capacity to collect Tax

Your Committee observes that the capacity by the Zambia Revenue Authority to administer profit-based taxes, particularly for multinational corporations, is inadequate. Your Committee notes that the average rates of taxes in the region are generally competitive. In this regard, your Committee urges the Government to focus on enhancing the capacity of the Zambia Revenue Authority to collect taxes as opposed to increasing the rates.

vii. Outsourcing of the audit experts

Your Committee observes that while capacity is being built in the Zambia Revenue Authority (ZRA), there will be a gap with regard to revenue collection. In this regard, your Committee recommends that the Government should outsource mining audit experts to undertake mining tax audits.

9. Conclusion

Your Committee wishes to pay tribute to all stakeholders who appeared before it and tendered both oral and written submissions. It also wishes to thank you, Mr Speaker, for affording it an opportunity to study the Bill. Your Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly during its deliberations.

We have the honour to be, Sir, your Committee on Estimates mandated to consider the *Income Tax (Amendment) Bill, N.A.B. No. 7 of 2015.*

Mr H H Hamududu, MP
(Chairperson)

Mr E M Sing'ombe, MP
Member

Mr L Chabala, MP
Member

Mr R Mpundu, MP
Member

Mr P Phiri, MP
Member

Mr A Lufuma, MP
Member

Mr R P Mtolo, MP
Member

Dr G L Scott, MP
Member

Mrs I M Mphande, MP
Member

H H Hamududu, MP	July 2015
CHAIRPERSON	**LUSAKA**

APPENDIX I

LIST OF OFFICIALS

National Assembly

Mr S C Kawimbe, Principal Clerk of Committees
Ms M K Sampa, Deputy Principal Clerk of Committees
Mr M F Kateshi, Budget Analyst (Expenditure)
Mr S Mtambo, Budget Analyst (Macroeconomics)
Mrs A M Banda, Assistant Committee Clerk
Mrs C T M Kasonde, Assistant Committee Clerk
Mrs C K Mumba, Assistant Committee Clerk
Mr C Chishimba, Assistant Committee Clerk
Ms S Kayawa, Acting Stenographer
Mr R Mumba, Committee Assistant
Mr M Chikome, Parliamentary Messenger

APPENDIX II

WITNESSES

Zambia Revenue Authority (ZRA)

Mrs B Muyenga, Commissioner-Finance
Mr E Phiri, Director
Ms D Bunting, Legal Counsel
Mr L Simbeye, Executive Assistant
Mr P Phiri, Director

Zambia Institute of Chartered Accountants (ZICA)

Mr B Mwewa, Technical Manager
Mr N Mwila, Tax Committee Member
Mr M Phiri, Tax Committee Member

Jesuit Centre for Theological Reflection (JCTR)

Mr M Kabinga, Programme Officer
Mr A Simpasa, Programme Officer

Civil Society for Poverty Reduction (CSPR)

Mr K P Nshindano, Executive Director
Mr H Mulemwa, Policy Research Analyst

Chamber of Mines of Zambia (CMZ)

Mr M Banda, Vice President
Mr C Banda, Tax Manager
Mr D Nyanga, Head of Tax
Mr S Shula, Economist

National Economic Advisory Council (NEAC)

Mr W Wake, Executive Secretary
Mr B Kambobe, Policy Analyst
Ms M Phiri, Policy Analyst
Dr O Mungule, Principal Policy Analyst
Mr H Simuchile, Senior Policy Analyst

Bankers Association of Zambia (BAZ)

Ms M Chibesakunda, Executive Member
Mr C Simatyaba, Chairman
Mr C Musiwa, Deputy Chairman
Mr L Z Mwanza, Chief Executive Officer
Mr J Koni, Treasurer

Bank of Zambia (BoZ)

Dr D Kalyalya, Governor
Dr B Ng'andu, Deputy Governor-Operations
Mr P Zyambo, Assistant Director-Economics
Mr P Banda, Senior Director-Monetary Policy
Mr J Mkandawire, Executive Assistant to the Governor
Mr K Mayondi, Head-Communications
Dr E Pamu, Director-Financial Markets

Premier Consult Limited

Prof O Saasa, Chief Executive Officer

ZCCM-IH

Dr P C Kasolo, Chief Executive Officer
Mr C Chabala, Company Secretary
Mr M Chipata, Chief Financial Officer
Ms Y Mkandawire, General Counsel

Ministry of Finance (MoF)

Mrs P C Kabamba, Permanent Secretary
Mr K Chimfwembe, Acting Chief Budget Analyst (Revenue)
Mr I Munjunga, Economist (Revenue)