

REPORT OF THE COMMITTEE ON ESTIMATES ON THE MINES AND MINERALS DEVELOPMENT (AMENDMENT) BILL, N.A.B NO. 6 OF 2016 FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON WEDNESDAY, 23RD SEPTEMBER 2015

Consisting of:

Mr H H Hamududu, MP (Chairperson); Mr E M Sing'ombe, MP; Mrs I M Mphande, MP; Mr R L Mpundu, MP; Mr G K Mwamba, MP; Mr B M Ntundu, MP; Mr R P Mtolo, MP; Mr P Phiri, MP; and Dr G L Scott, MP.

The composition of your Committee changed following the appointment of Mr R L Mpundu, MP, to a ministerial position. He was replaced by Mr J Shuma, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

Your Committee has the honour to present its Report on the Mines and Minerals Development (Amendment) Bill, N.A.B No. 6 of 2016 for the Fifth Session of the Eleventh National Assembly referred to it by the House on Wednesday, 13th April, 2016.

Functions of the Committee

2.0 In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bills that may be referred to it by the House.

Meetings of the Committee

3.0 Your Committee held seven meetings to consider the Mines and Minerals Development (Amendment) Bill, N.A.B No. 2 of 2016.

Procedure adopted by the Committee

4.0 In order to acquaint itself with the ramifications of the Bill, your Committee sought both written and oral submissions from stakeholders. The stakeholders who appeared before your Committee are listed at Appendix II.

Object of the Mines and Minerals Development (Amendment) Bill, 2016, N.A.B No. 6 of 2016

5.0 The object of the Mines and Minerals Development (Amendment) Bill of 2016 is to amend the *Mines and Minerals Development Act of 2015* so as to:

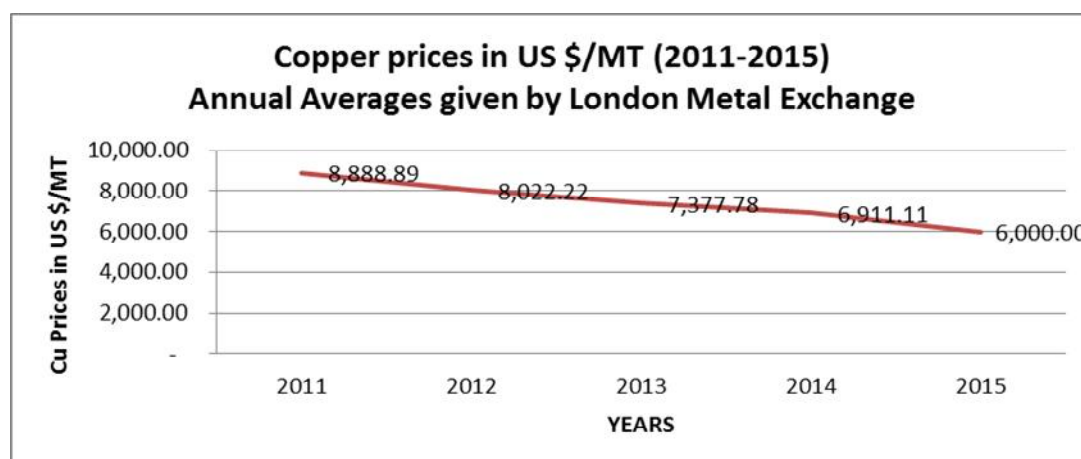
- a) reduce the rate of mineral royalty for copper extracted from both underground and open cast mining operations to range from four to six percent depending on the prevailing prices;
- b) reduce the rate of mineral royalty for other base metals to five per cent for both underground and open cast mining operations;
- c) reduce the rate of mineral royalty for energy and industrial minerals to five per cent for both underground and open cast mining operations;
- d) set the rate of mineral royalty for gemstones and precious metals at six percent for both underground and open cast mining operations; and
- e) provide for matters connected with, or incidental to the foregoing.

Background

6.0 The global economic slowdown had adversely affected the copper prices on the international market resulting in severe strain on the mining sector in the country. Particularly, this has precipitated the scaling down of production and cutting down on labour in the mining industry. Further, export earnings from copper which has been the mainstay of Zambia’s economy accounting for over seventy per cent of the country’s export earnings has been adversely affected resulting in lower revenue collection from the sector. This has necessitated the need by the Government to come up with intervening measures specifically to revise the rates of mineral royalty for all minerals so as to sustain mining operations in the face of falling metal prices.

Further, the proposed amendment to the *Mines and Mineral Development Act of 2015* is aimed at making the Bill progressive and to become more responsive to changes in metal prices on the international market. In addition, the sliding scale mineral royalty rate for copper, being the largest component of minerals in Zambia will potentially increase the proportion of the Government revenue from the mining industry in times of relatively high metal prices.

The figure below shows the annual averages of copper prices on the international market from 2011-2015 as monitored by the London Metal Exchange



Salient Provisions of the Bill

Clause 2

7.0 Clause 2 intends to amend Section 89 of the *Mines and Minerals Development Act of 2015* by introducing a flat mineral royalty rate of five per cent on all base metals other than copper and six per cent on gemstones and precious metals. The clause further introduces a sliding rate ranging from four per cent to six per cent on copper as follows:

- i) four per cent of the norm value when the price of copper is equal to or below US\$4,500 per tonne;
- ii) five per cent of the norm value when the price of copper is above US\$4,500 but below US\$6,000 per tonne; and
- iii) six per cent of the norm value when the price of copper is above US\$6000 per tonne.

The justification for introducing a flat mineral royalty rate on metals other than copper is that they trade at different prices, therefore, making it difficult to set specific sliding scale for each of them. In addition, precious metals and gemstones such as gold and emeralds have been given a higher mineral royalty rate of six per cent due to their intrinsic value and also to curb the risk of the Government losing revenue through under declarations and smuggling.

Submissions from Stakeholders

8.0 Stakeholders that appeared before your Committee submitted as summarised hereunder.

- a) Some stakeholders were of the view that although the proposed rates were consistent with international norms, in the event of an increase of copper prices above US\$8000 per tonne on the international market, the proposed upper band of six per cent of the norm value when the price of copper is above US\$6000 per tonne will remain locked, hence denying Government to collect royalties that are proportional to the increase in the copper prices.
- b) Some stakeholder further raised concern on the lack of a steady mining tax regime that takes into account the changes in the metal prices on the international market arising from both economic meltdowns and booms without adversely affecting the operations of the local mines. It was noted that the mining tax regime had changed nine times since 2000 when the mines were privatised. The stakeholders opined that lack of predictability in mining taxation has the potential to erode investor confidence and affect execution of the Government developmental programmes due to a mismatch in the planned expenditure vis-à-vis projected revenue collection.
- c) Lack of fair and equitable approach in the application of the mineral royalty tax regime on copper and the base metals was another concern raised by some stakeholders. They submitted that a flexible tax system applied on copper and a flat rate on other base metals raises issue of equity and fairness as the pricing of both minerals is a functionality of interplays on the international market. Therefore, a graduated framework for mineral royalty tax system would be appropriate for both copper and other base metals to allow for self-adjusting mechanism and, therefore, proportionate revenue contribution to the Government when prices changes on the international market.

- d) Tax revenue from mining companies has largely been a function of both metal production and international metal prices. In order to promote transparency and predictability of both tax obligation and revenue especially in the administration of company income tax which relies on net profit, some stakeholders were of the view that Government must compel mining firms to start localising the sales and receipts of proceeds from metals in Zambia as opposed to having this done offshore.
- e) Stakeholders proposed an amendment to the wording of the new Section 89 (2) (b) to make it more clear as follows:
 - (b) *five per cent of the norm value, when the norm price of copper is greater than four thousand five hundred United States Dollars per tonne but less than or equal to six thousand United States Dollars per tonne;*

Committee's Observations and Recommendations

9.0 Your Committee observes that the Bill intends to remove the distinction between underground and open cast mining operations is likely to make the assessments for tax purposes a lot easier for the Zambia Revenue Authority.

Your Committee also observes that the proposed graduated tax system for copper will remove the rigidity that was in the *Mines and Minerals Development Act of 2015* as it did not allow automatic adjustments to amounts paid in royalties based on the prevailing prices.

Further, your Committee is concerned with the graduated mechanism of applying mineral royalty rates on copper which if not well monitored can create another problem when copper prices on the international market go beyond US\$6,000 per tonne, mining companies may resort to backstopping production to influence the prices to become sticky downward.

In recommending the house to pass the Bill, your Committee makes the below stated recommendations:

- i) Since the privatisation of the mines, the mining tax system has kept on changing, therefore, affecting predictability of tax obligations for mining investors. The Government should, therefore, devise a stable mining tax model that has a self-adjusting mechanism to changes that affect the mining operations.
- ii) The upper band of the mineral royalty on copper caters for prices above US \$6000 per tonne. However, when there is a boom in the global economy, the price of copper on the international market can go up beyond US \$8,000 per tonne as history can show.

Consideration should therefore be made for the proposed graduated tax regime for copper to also cater for higher prices beyond a certain limit say US\$8,000 per tonne. This will enable the Government to benefit more in terms of tax revenue when there is a boom in the global economy.

- iii) For purposes of clarity, the wording of Section 89 (2) (b) be amended as suggested by stakeholders.

Conclusion

10.0 Your Committee wishes to express its gratitude to all stakeholders who appeared before it and tendered both oral and written submissions; and to thank you, Mr Speaker, for according it an opportunity to scrutinise the Bill. Your Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly, and the permanent witness, the Ministry of Justice.

Sir, we are glad to have the honour to be your Committee on Estimates mandated to consider the Mines and Mineral (Amendment) Bill, N.A.B No.6 of 2016 for the Fifth Session of the Eleventh National Assembly.

Mr H H Hamududu, MP
Chairperson

Dr G L Scott, MP
Member

Mr R P Mtolo, MP
Member

Mr E M Sing'ombe, MP
Member

Mr J Shuma, MP
Member

Mr G K Mwamba, MP
Member

Mr P Phiri, MP
Member

Mr B M Ntundu, MP
Member

Mrs I Mphande, MP
Member

APPENDIX I

List of National Assembly Officers

Mr S C Kawimbe, Principal Clerk of Committees
Ms M K Sampa, Deputy Principal Clerk of Committees
Mr M F Kateshi, Revenue and Expenditure Analyst
Mr S Mtambo, Budget Analyst (Macroeconomics)
Mr F Chikambwe, Assistant Committee Clerk
Mrs B C Chanda, Assistant Committee Clerk
Ms S Kayawa, Stenographer
Mr C Bulaya, Committee Assistant
Mr M Chikome, Parliamentary Messenger

APPENDIX II

Witnesses

Ministry of Justice (Permanent Witness)

Ms M T Sitali, Parliamentary Counsel
Ms O J Sakala, Parliamentary Counsel

Ministry of Finance

Mrs P Kabamba, Permanent Secretary – Budget and Economic Affairs
Mr K Chimfwembe, Acting Director of Budget
Mrs M Chikuba, Principal Budget Analyst

Ministry of Mines and Mines Development

Mr P Chanda, Permanent Secretary
Ms B Mwakacheya, Director Planning
Mr M Chibonga, Assistant Director
Mr F Banda, Acting Director
Mr F Chibesakunda, Acting Director
Mr G Ndalama, Director

Zambia Revenue Authority (ZRA)

Mr B Msiska, Commissioner-General
Ms N Mudenda, Commissioner - Corporate Affairs
Mr D Banda, Commissioner of Customs
Ms P Banda, Commissioner of Domestic Taxes
Mr P Phiri, Director LTO
Ms D Bunting, Legal Counsel
Mr E Phiri, Director Research
Mrs N K Katongo, Director - Legal Counsel
Mr L Simbeye, Executive Assistant to the Commissioner General

Zambia Institute of Chartered Accountants (ZICA)

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

Civil Society for Poverty Reduction (CSPR)

Mr T Singongi, Coordinator
Mr M Nkhoma, Coordinator

University of Zambia and Economics Association of Zambia

Mr K S Ndumba, EAZ Executive Director
Dr D Mudenda, EAZ Member
Mr G Sizala, Programme Officer

Zambia Chamber of Mines (CMZ)

Mr N Chishimba, President
Mr M Akakandelwa, Member
Mr C Banda, Member

Mr J Gladston, Member
Ms G Walter, Member
Mr D Nyanga, Head of Taxes
Mr P Kangamba, Tax Manager
Mr S Shula, Member
Mr I Lutumbi, Member

National Economic Advisory Council (NEAC)

Mr W Wake, Executive Director
Dr O Mungule, Principal Policy Analyst