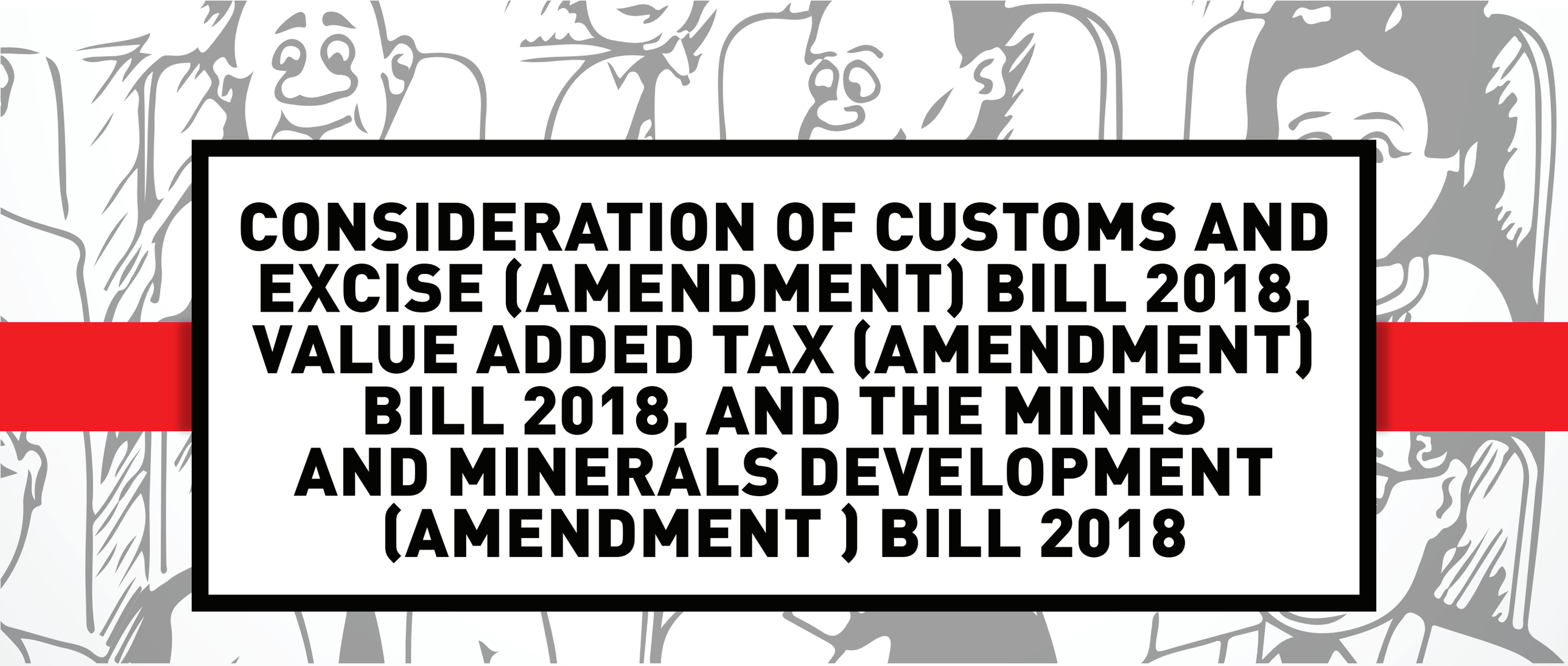

CONSIDERATION OF CUSTOMS AND EXCISE (AMENDMENT) BILL 2018, VALUE ADDED TAX (AMENDMENT) BILL 2018, AND THE MINES AND MINERALS DEVELOPMENT (AMENDMENT) BILL 2018

MR. AKABONDO KABECHANI

PMRC - HEAD OF MONITORING AND EVALUATION DIVISION

GO ▶

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Policy Monitoring and Research Centre

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POLICY MONITORING AND RESEARCH CENTRE

THE CUSTOMS AND EXCISE BILL 2018

The objectives of the amendments are;

1. Introduce the customs duty on motor cycles
2. Introduce excise duty on non-alcoholic beverages and aviation fuel
3. Introduce export duty on raw hides, raw skins, pearls. Precious stones and precious metals
4. Increase export duty on manganese ores and manganese concentrates
5. Revise duty payable on certain goods
6. Provide for penalties for offences connected to excisable services
7. Increase the specific duty on fuels
8. Revise the list of goods that are subject to surtax at importation and
9. Provide for matters connected with or incidental to the foregoing

RAMIFICATIONS

1. Introduction of customs duty om motor cycles

An introduction a customs duty of 25% will help government to diversify its revenue base as well harmonize duty with bicycles currently at 25 percent.

2. Introduction of excise duty on non-alcoholic beverages and aviation fuel

- An introduction of an excise duty of 30 ngwee per litre on nonalcoholic beverages will push the cost of the cost of non-alcoholic beverages up. In as much as the intention is to reduce prevalence of non-communicable diseases the final consumer is likely to bear and push costs of non-alcoholic beverages which will marginally go up.
- An introduction of Aviation fuel duty will have a negative impact on the cost of air tickets and negatively affect on the promotion of tourism as enshrined in the 7NDP.

RAMIFICATIONS

3. Introduction of export duty on raw hides, raw skins, pearls. Precious stones and precious metals

- The lift on ban of exports of raw hides and skin and introduce an export duty of 10% on these items is welcome the move because cattle skins were going to waste at the butcheries and abattoirs as farmers could not turn their animal skins into blue leather which could be exported. The subsequent export duty imposition will increase revenue for the government.
- An introduction of duty on Precious stones and precious metals is a revenue base diversification move which is welcome.

4. An Increase of export duty on manganese ores and manganese concentrates

This is a welcome come move and an effort to diversify the revenue base

RAMIFICATIONS

5. Revision of duty payable on certain goods

This includes the amendment of Third Schedule of the Principal Act by the insertion of some vehicles that were not included in the customs and excise Amendment NO. 14 of 2017. Examples of such are vehicles with engine capacity of less than 1000cc, station wagons and double cabs of gross vehicle weight of less than 3 tons which have now been included.

This measure is intended to include used vehicles of different body sizes that were omitted from the third schedule.

6. Provision for penalties for offences connected to excisable services

We welcome move to introduces a penalty regime for offences committed by providers of excisable services as this will improve compliance. The measure provides for provisions to cater for offenses specific to excisable services.

RAMIFICATIONS

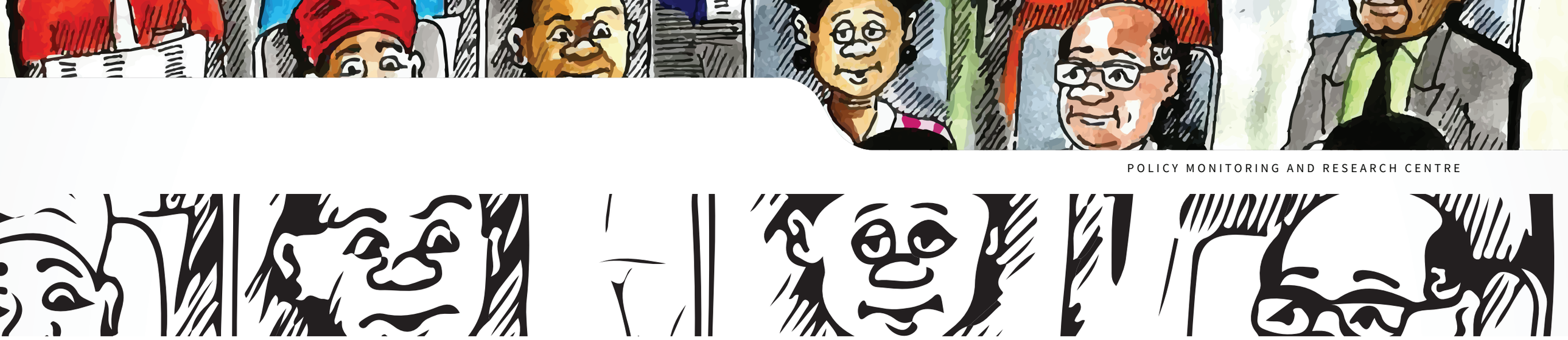
7. Increase on the specific duty on fuels

This will push the cost of fuel up and will have negative impact on the economy as almost all production processes will respond will increases in prices of goods and services.

8. Revision of the list of goods that are subject to surtax at importation

This will involve updating the surtax schedule by including and removing some items. This measure is intended to remove items that are locally available from the surtax exemption schedule and also introduce some products that are locally available to the surtax exemption schedule. This is aimed at promoting value addition and employment creation.

Related to this is an increase on carbon emission surtax on transiting vehicles to collect more revenue is welcome move.



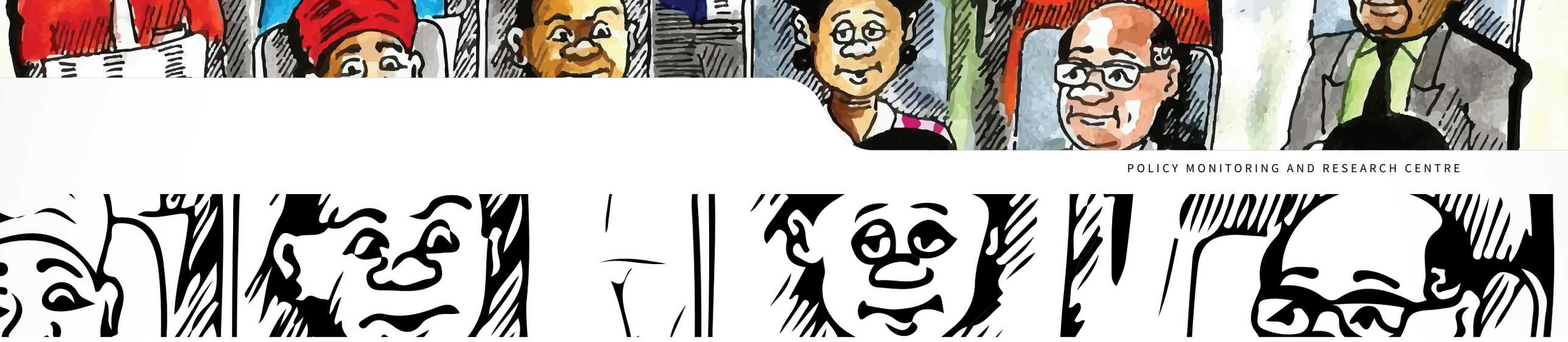
ACT TO AMEND THE MINES AND MINERALS DEVELOPMENT ACT 2015

Zambia's Mining Sector

Mining is a long-term business, and these rising production figures result from investment decisions taken years ago. So, **what can Zambia expect for the future?**

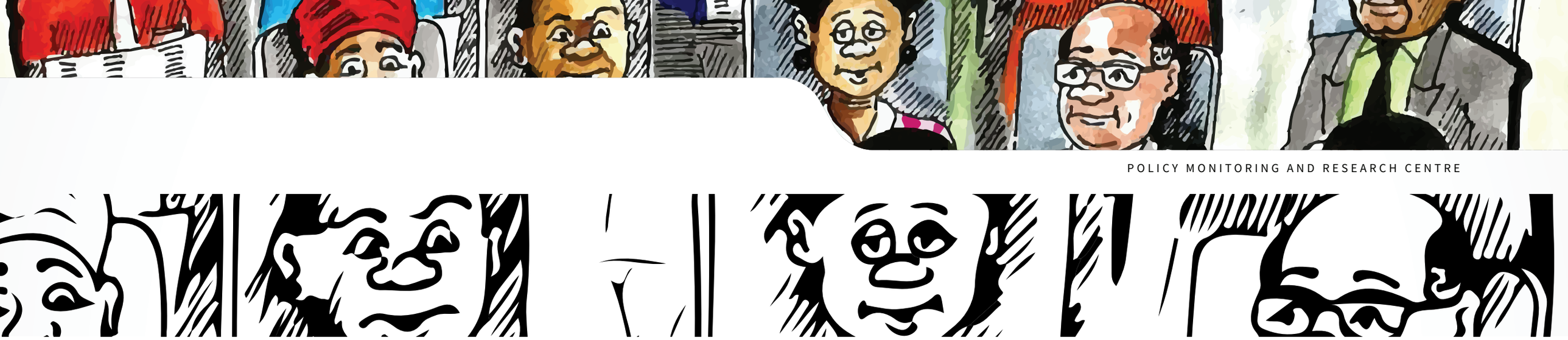
According to the World Bank **"growth in production will begin to slow after around 2019. Along with the decline in production, there will be a decline in government revenue, mining industry jobs, and foreign exchange. However, production levels can increase over the long run if there is a new wave of investment."**

Mining is beset with uncertainty – uncertainty about the quality and extent of what lies beneath the ground, uncertainty about the future direction of commodity prices, regulation, and so on. The capital investment necessary to maintain, or increase production levels – and government revenue and employment levels – is perceived to be high-risk and needs assurances to be deployed.



Mining companies do not themselves have access to the huge amounts of money necessary to deliver these expansion plans; it must be raised from investors all over theworld. The simplicity, stability, predictability, and ultimately the attractiveness of Zambia's minerals fiscal policy environment and taxation regime, is vital to providing the assurances these investors require, especially given that copper mining in Zambia is a high-cost business.

For the mining industry, this is critical: the instruments used within a taxation regime, and the rates at which taxes are set, together establish the incentives and disincentives a mining company faces in deciding whether and how much to invest, how many workers to employ, and what ore to extract – which in turn can affect the life-span of the mine.

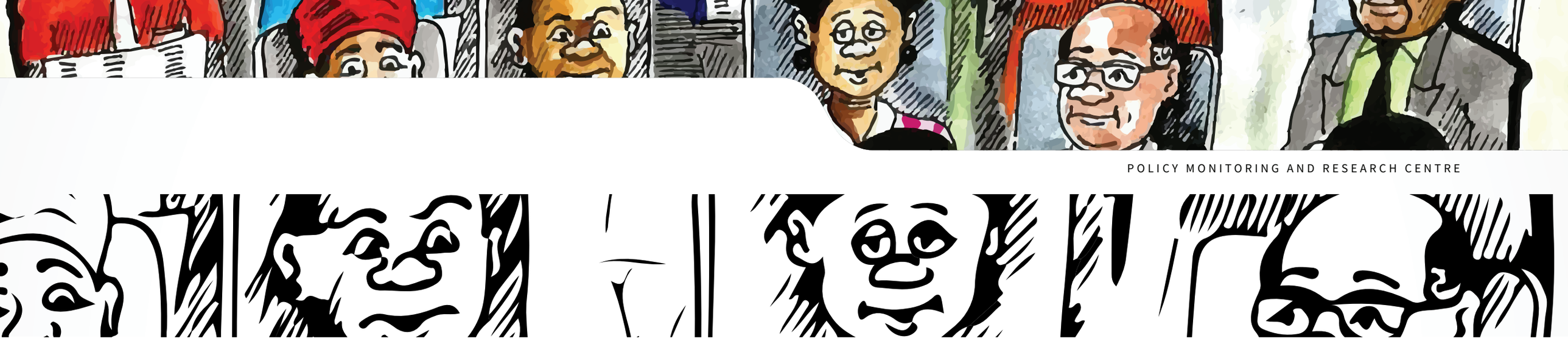


Mining Taxation: Walking a Tight Rope

What is an ideal mineral tax regime? It is one that delivers the maximum benefit for a country's citizens from its mineral resources. Maximum benefit to the citizenry might not necessarily be the same as maximum benefit to the Government, in terms of tax receipts. **For example,** a healthy mining industry has significant multiplier effects within the wider economy that far outweigh its contribution to the national coffers. Studies by the International Mining and Minerals Council (ICMM) have shown that for every USD$1 generated by mining, at least an additional USD $3 are generated elsewhere in the host economy. In addition, for every one direct mining employee, employment is generated for a further 3-5 employees elsewhere in the economy.

The broad aims of Government minerals taxation policy must therefore be to generate immediate and lasting revenue in a manner which:

- Has no adverse impact on the health of the Industry.
- Encourages (or, at least does not discourage) the investment needed for future development, which is the pipeline of future tax receipts.



Mineral Royalty Tax

The defining characteristic of a royalty tax is that it is levied on production, not profit.

Strictly speaking, a royalty payment is not a tax. Nor does it solely apply to minerals. A royalty is defined as a payment made to the owner of an asset by those who wish to make use of it to generate revenue. Royalties are often paid to writers, artists and musicians for the use of their copyrighted works. The payment of royalties for the use or extraction of mineral resources is similarly an acknowledgement of ownership, in this case paid to the Government, as steward of a nation's non-renewable resources.

Given that it is one of many potential sources of Government revenue levied on the extraction of mineral resources, royalties are regarded as part of a nation's wide minerals taxation policy.

Advantages of MRT

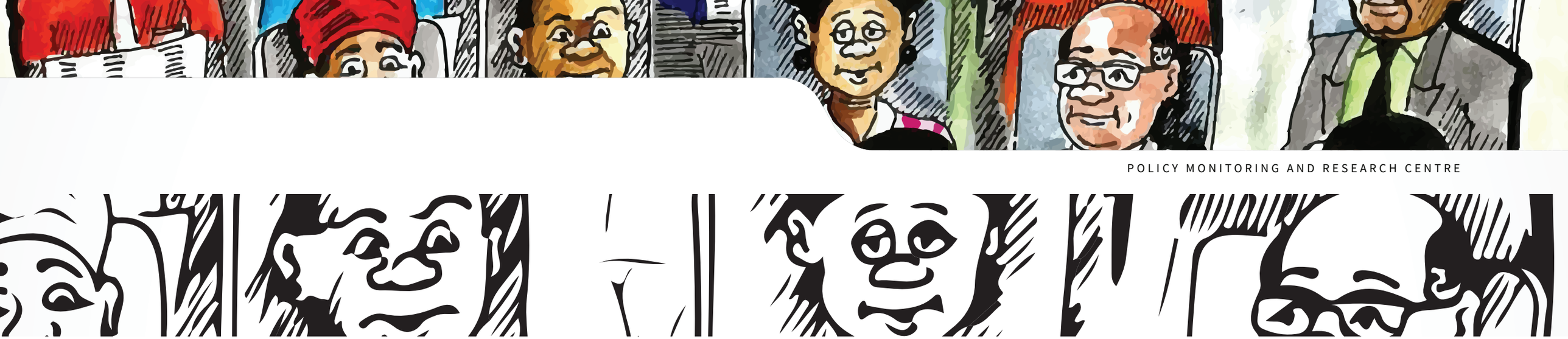
When applied to mineral resources, a royalty tax's defining characteristic is that it is levied on production (e.g. sales, revenue, tons mined), rather than profit.

This means that it is payable from the first day of operations, and thus generates an immediate revenue stream for the Government long before a mine is ever judged profitable. Furthermore it is relatively simple to calculate and administer, and is payable on a monthly basis.

Disadvantages of MRT

Royalties are a blunt instrument; they are not sensitive to the distinctive circumstancesof each mine. As MRT is based on production, it has no regard for costs – which will always vary between different mines. So, two mines with completely different cost structures and profit levels might end up paying the same royalty tax.

In fact, a mine can be making a loss and still have to pay the royalty – that is precisely what is happening across the Industry at the moment. Some loss-making mines might even have to borrow money in order to make the payments.



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How is that?

Remember, a royalty payment is a cost to the business. When falling prices drive margins to close to zero, or even below, the royalty rate can mean the difference between the mine breaking even or making a loss. Even if the mine is loss making it is still obliged to pay royalties, which must be funded somehow.

Further, there are other potential negative consequences that must be considered by policymakers. For instance, a royalty rate that is too high can lead to the underutilization of a nation's resources – particularly lower grade ore – because beyond a certain point dictated by the royalty tax, it makes more financial sense to leave it in the ground.

How does this work?

As a royalty rate increases, so do the costs of a mining operation. In order to stay profitable, mines are forced to restrict mining to the higher grades of ore available to them. Remember, for every ton of rock that is taken out of the ground, only a tiny amount of copper is extracted. This involves huge effort, and expense. When costs tighten, a mine is forced to only target those areas where the ore is highest – i.e. where the value of each ton extracted is that much higher. If this state of affairs persists, it inevitably means that the productive lifespan of a mine is that much shorter, and much of the copper will remain in the ground.

Consequences of the MRT adjustments

- MRT increment by 1.5% across the Sliding MRT bands makes us uncompetitive in attracting capital by pushing out break even times for mining projects,
- This is particularly disadvantageous particularly since we have low ore mines relative to our immediate neighbour . Democratic Republic of Congo is at a uniform 3.5% for copper
- Zambia is at 5.5% (from 4%) when prices are low ,7.5% (up from 6%) at todays prices and 10% above $7,500 per ton
- This is well over Democratic Republic of Congo's rates when prices are good and yet geologically Zambia's ore grades are a third of DRCs. DRC averages 2% of ore grade.
- This puts industry at risk as our northern neighbour is building capacity and reducing reliance on us while we will effectively be becoming more beholden to them for ore to feed our smelters and refineries

CONCLUSION

- Mining is the "life-blood" of the Zambian economy as it is for a good number of mineral-dependent African economies like Guinea, Mauritania, Niger, Mozambique, Central African Republic, and Zimbabwe, among others;
- Low taxation regime dominated the Zambian mining industry until April 2008 as in many African countries thus denying these countries adequate mining revenues for socio-economic development;
- A strong and capable state and its fiscal institutions are paramount in negotiating, formulating, and administering durable, simple, fair, stable, predictable, transparent, economic cycle-sensitive, and long-term revenue-maximizing mining development agreements and tax regimes; Investors are concerned more than taxes and royalties but also conducive operating environment, political stability, policy stability, and overall good governance;
- When considering mining taxes, African countries need to take account of all contributions, including identifiable and measurable taxes; expenses of business that are not allowed relief ('hidden taxes'); expenditure on infrastructure and social and community welfare projects and programs for the mineral bearing community; environmental impact; and distribution of benefits.

THE INCOME TAX AMENDMENT BILL, 2018

Introduction

The importance of the income tax on **domestic resource mobilization can not be overemphasised. 26.8% of the 2019 National Budget will be financed through Income taxes generated from personal income tax, company income tax, with holding tax and others.** The Income Tax Act has been amended in 2012, 2015, 2017 and 2018 which shows policy inconsistency, hence delayed enactment which reduces compliance. Given Zambia's current debt situation, the enactment of the Bill will ensure efficient resource mobilisation to enable the country to meet its obligations.

The Income Tax Act (Chapter 323 of the Laws of Zambia) is the legislation that governs the taxation of Income in Zambia. Income tax is tax on profits made by Limited Companies, Partnerships and Self-Employed individuals as well as on emoluments earned by employees. All profit making persons have an obligation to pay Income tax on their profits. Similarly, all individuals in employment have an obligation under the Income Tax Act to pay tax on their emoluments.

RAMIFICATIONS OF THE BILL

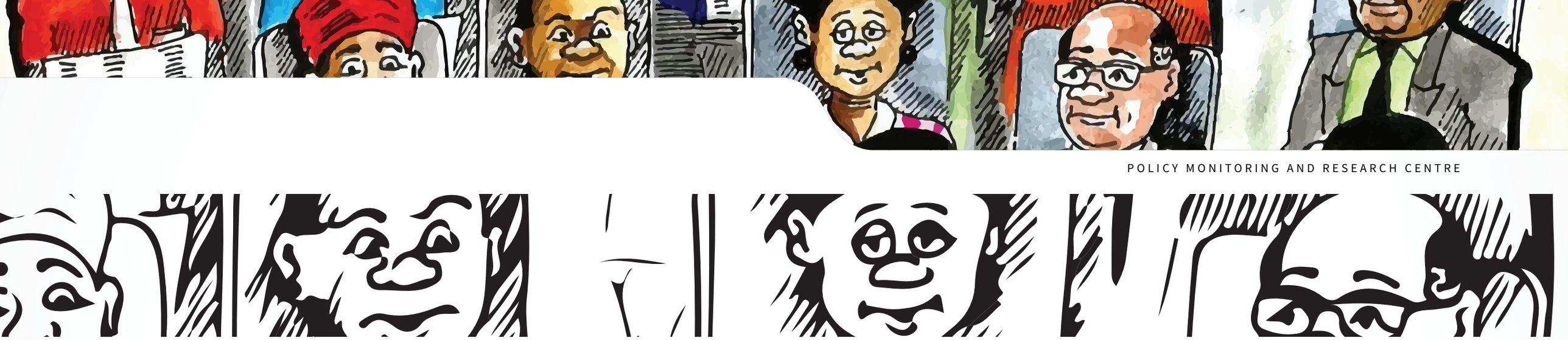
The Bill proposes the following amendments

a. **Limit the deductibility of interest on debt owed by certain taxpayers to thirty percent of tax earnings before interest, tax, depreciation and amortisation.**

This move will lessen the obligations in which a taxpayer needs to pay which will improve tax compliance as taxpayers will not be strained.

b. **Revise the Kwacha to United States Dollar exchange rate to be used in computing indexed losses and indexed capital allowances for persons carrying out mining operations and keeping their books of accounts in United States Dollar**

Given that the country is facing currency fluctuations, harmonising the computation of indexed losses and index capital in line with the currency in which books of account are keep will put into consideration the exchange rate at the time of reconciliation. It is important to note that this is more advantageous at the time in which the Kwacha depreciates, when the Kwacha appreciates, ZRA will collect less revenue. Looking at the fact that the Income Tax Act has been amended several times over the years, going forward, it is important to that the Act will not be amended to reverse this notion during a period in which the Kwacha appreciates.



RAMIFICATIONS OF THE BILL CONT..

c. Make mineral royalty non deductible for income tax purposes

Mineral royalty is a payment to the owner of mineral rights for the privilege of extracting the mineral from the ground based on a lease agreement. The royalty payment is based on a portion of earnings from production and varies depending on the type of mineral and the market conditions. The making of the the mineral royalty non deductible for income tax purposes entails that Mining companies will need to pay mineral royalty separately from income tax as opposed to it being deducted from the income that the company makes. Corporate tax and Mineral royalty are two separate taxes which need to be treated differently in order to maximize revenue collection.

RAMIFICATIONS OF THE BILL CONT..

d. Require a business, to which tax avoidance provisions of the Act apply, to retain documents and other information relating to the business transactions for the period of ten years

Tax avoidance is the use of legal methods to modify an individual's financial situation to lower the amount of income tax owed. This allows ZRA to have access to financial statements of institutions that have been found wanting for tax avoidance. Access to financial statements which will provide accurate information of the amount of taxes due. This will therefore provide ZRA with information to effectively charge penalties and taxes due.

RAMIFICATIONS OF THE BILL CONT..

e. Authorise the Commissioner- General to appoint a taxpayer as an agent to withhold turnover tax on payments made to suppliers of goods and services

Withholding tax is the amount withheld from one's payment for income taxes which is sent to the taxing agency(ZRA) to be held until one files their return, when they claim their exemptions. This will promote compliance at the same time will help ZRA capture income taxes of companies within this bracket. In a situation where ZRA withholds more money than what the tax payer owes, the tax payer can claim for a refund, this will ensure that businesses are not over taxed. The government can also borrow the excess taxes withheld at no interest rates, which will facilitate the development of various sectors of the economy.

RAMIFICATIONS OF THE BILL CONT..

f. Introduce a presumptive tax on betting and gaming businesses

Betting and gaming businesses have continued to mushroom around Zambia, betting and gaming businesses make excess profits, as the gaming and betting firm which is referred to as the 'House' always wins. For each game and bet placed, part of the betted amount and winnings are kept by the House. It is therefore, imperative that Government targets such institutions for revenue collection. The proposed percentages highlighted in Part III of the Amended Bill are realistic and will generate more revenue for the Government.

RAMIFICATIONS OF THE BILL CONT..

g. Allow an assessment in respect of transfer pricing cases to be made not more than ten years after the end of the charge year to which the assessment relates

Transfer pricing refers to regulations that governments and tax authorities use for regulating intercompany transfers. The move to allow an assessment to be made not more than ten years after the end of the charge case will lead to reduction in Administrative costs for ZRA as the years in question will be reduced.

RAMIFICATIONS OF THE BILL CONT..

h. Increase the maximum penalty that may be prescribed for non-compliance with transfer pricing regulations to twenty-four million Kwacha from three thousand Kwacha

Inter-company transfers done internationally which have tax advantages, has led ZRA to frown upon using transfer pricing for tax avoidance. When transfer pricing occurs, companies can book profits of goods and services in a different country that may have a lower tax rate. In some cases, the transfer of goods and services from one country to another within an interrelated company transaction can allow a company to avoid tariffs on goods and services exchanged internationally. The move to increase the **maximum penalty from K3000 to K24,000,000** will force such companies and other local companies to be compliant as they will not want to be found wanting.

RAMIFICATIONS OF THE BILL CONT..

i. Introduce penalties for negligent, fraudulent or wilful submission of an incorrect balance sheet, account or other document in respect of the skills development levy under the Skills Development Levy Act, 2016

The Skills Development Levy provides for the imposition, payment and collection of a skills development levy, which ZRA will administer under the provisions of the Zambian Income Tax Act 1966 (ÍTA). The SDL Act provides that every employer shall pay the levy at a rate of 0.5% on the gross remuneration (as defined in the ITA) paid, payable, or deemed to be paid or payable to its employees. The introduction of penalties will improve compliance and submission of accurate information with regards to the gross enumeration of the employees. The Bill should have had however, mentioned the penalties that will be charged.

RAMIFICATIONS OF THE BILL CONT..

j. Clarify that the income of a public benefit organisation is only exempt from income tax if the public benefit organization is approved for that purpose of the Minister

The Bill makes mention of tax exemption of public organization established for the promotion of religion, education and for poverty and other distress but does not make mention of which Minster will make the exemptions.

RAMIFICATIONS OF THE BILL CONT..

k. Revise the current turnover tax regime and introduce a flat rate of four percent on business with a turnover of K800,000 or below per annum

Taxation of the informal sector has been of a major challenge in Zambia. With the country's debt situation, effective domestic resource mobilization will play a key role in debt repayment. The amount proposed is convenient for Small and Medium Scale Enterprises, which will reduce the chances of tax evasion an will also provide a platform in which ZRA can collect revenue.

RAMIFICATIONS OF THE BILL CONT..

l. Dispense with the classification of certain foreign earnings as income originating from the exports of non-traditional exports and provide for a maximum tax rate of 10% on income determined by the Commissioner General as originating from the export of non-traditional products from farming or agro processing

In view of diversifying the agriculture sector, the move to impose a 10% tax on income of non- traditional products will cause a reduction in exports of non- traditional goods. PMRC would therefore, like to recommend that this notion be removed from the Amended Bill till a time where the country achieves its full potential in agriculture diversification.

RAMIFICATIONS OF THE BILL CONT..

m. Reduce the company income tax rate to 15% from 35% for companies that add value to copper cathodes

Manufacturing has been highlighted as one of the sectors that Government wishes to improve. Manufacturing promotes value addition and attracts higher prices for products both locally and internationally. The reduction in the company tax may seem as a way in which government may loss revenue collection but will have a positive impact in the long run. The reduction in company tax will be an initiative in which many mining companies will find as being attractive, hence will invest in manufacturing which will add value to the copper cathodes, resulting in larger sales revenue for mining companies. This provides a win win situation for both mining companies and the Government.

RAMIFICATIONS OF THE BILL CONT..

n. Increase the withholding tax rate on dividends, payment or distribution of branch profits and payment of interest to a non- resident to 20% from 15%.

This is a good measure when it comes to revenue collection, however the increment is too substantial which may make non- resident unlikely to to do business in Zambia. Taxes are changed twice for non-residences who are in countries that Zambia has not signed double taxation treaties with. The increase in taxes may result in non- residences charging more for their goods or services which will have a negative impact on the end users who are Zambia consumers.

PMRC'S RECOMMENDATIONS

For the effective implementation of the Income Tax Act, PMRC recommends the following;

- The need for policy consistency, the Act has been amended four times since 2012, which is unacceptable given the nature of the Act which seeks to maximise domestic resource mobilization
- The Contents of the Amended Bill should contain sections of all objectives for clearer understanding

INTRODUCTION

The Zambian government still faces challenges in the collection of VAT from both from local businesses and multinational corporations. The challenge has been to ensure that traders, local manufactures, mining companies and multinational companies pay VAT due to the treasury. The opposite has been happening were government has been paying VAT refunds more than what it has been collecting. This situation has been compounded by lack of capacity at the Zambia Revenue authority to enforce tax collection and low uptake of ICTS in tax collection. It is common among of small enterprises not to give receipts to customers for their purchase and customers to ask for receipts for goods bought as proof transaction that includes tax that should be remitted to ZRA.

INTRODUCTION CONT..

In order to enforce tax compliance especially for VAT many countries have introduced technological devices to enable them to monitor business to business and business to consumer transactions through Electronic Fiscal Devices (EFD). Improving VAT compliance is one of the most critical issues for domestic revenue mobilization in developing countries for two reasons. Firstly, VAT revenues tend to dwarf all other tax revenue streams, so even a small improvement have relatively large impacts. Secondly, the data generated to observe VAT liability generates a paper trail that strengthens a revenue authority's ability to enforce tax compliance across all domestic tax types. Therefore, the legalization of the use of EFD will boost revenue collections and simplify tax administration. EFD introduces for issuing of receipts and invoices for every sale made.

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TYPES OF ELECTRONIC FISCAL DEVICES (EFDS)

Electronic Tax Register (ETR)

The device is used by retail business that issue receipts manually.

Electronic Fiscal Printer (EFP)

The device is used by computerized retail outlets. It is connected to a computer network and stores every sale transactions or details made in its fiscal memory.

Electronic Signature Device (ESD)

The device is designed to authenticate by signing any personal computer (PC) produced financial document such as tax invoice. The device uses a special computer program to generate a unique number (Signature) which is appended to and printed to every invoice issued by the user's system.

Electronic Fiscal Pump Printer (EFPP)

The device is designed for use in Petrol Stations. It is connected to a pump and printed every receipt during the sale transactions.

IMPLICATIONS OF USING EFDS

- The use of EFD will enable improved data and information management and sharing system for both ZRA and tax payers. Most EFD devices have in-built Fiscal Memory which cannot be erased by mechanical, chemical or electromagnetic interferences this feature allows for ZRA to collection correct information pertaining to revenue collection while at the same time allows for tax payers to easily share information with ZRA as opposed to paper work;
- The use of EFDs promotes continuous collection of real time date needed for decision making for both ZRA and Tax payers EFDS automatically issue daily sales information that is transmitted to the revenue authority.
- As already started above, EFDs Transmits tax information to revenue authority system automatically which is a positive stride towards smart tax collection.

CONDITIONS FOR SUCCESS

The success of the ICTS in tax administration depends on a number of factors which include;

- Operating environment Interms of economic and technological development of a country should allow for the easy uptake of ICTs in tax administration.
- There is need for a good business enabling environment that will increases compliance
- There is need for reliable information flows and third-party reporting on income and transactions (e.g. employer reported wage incomes) makes it harder for taxpayers to evade VAT without detection. This in turn helps the revenue authority deal with complexity of the administration of VAT.
- There is need for a good institutional tax administration's relationships and coordination with other government institutions and private sector groups that are engaged in activities related to revenue collection.

RECOMMENDATIONS

The following are the recommendations for a successful integration the VAT systems electronically:

- Government should ensure that these devices are not a huge extra business costs to low capital tax payers because EFDs are considered to be expensive, therefore there should be a facility that these costs could be paid in instalments.
- The choice of EFDs by ZRA should consider field sales such that it cutters across all taxpayers in different walks of business.
- ZRA should continue to capacitate tax payers on the use of ICTS in remitting VAT like the way PAYEE is remitted online by employees.

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