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List of Abbreviations

CAD	Canadian Dollar
CCA	Capital Cost Allowance
CDE	Canadian Development expense
CEE	Canadian Exploration expense
CIT	Corporate Income Tax
CRA	Canadian Revenue Agency
EAC	East African Community
FDI	Foreign Direct Investment
GAAR	General Anti-Avoidance Rule
GDP	Gross Domestic Product
IMF	International Monetary Fund
MDA	Mining Development Agreement
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
TJN	Tax Justice Network
TNCs	Transnational Companies
TRA	Tanzania Revenue Authority
USD	US Dollar
VAT	Value Added Tax
WTO	World Trade Organization

I. Introduction

Corporate Taxation is a useful tool to raise a country's revenue. However according to the IMF, developing countries face formidable challenges to establish efficient tax law regimes[12]. To attract foreign investment, tax incentives are a common method used in many low-income countries. The use and effectiveness of such incentives is however highly controversial. The conflict is evident. While corporate taxes are needed for government expenditure to respond to the needs of their respective community, tax incentives lower the revenue from such taxation to attract more investments into a country. In addition to that there seems to be an ongoing tax competition within the international community, causing an overall decline in corporate tax rates. Simultaneously many transnational companies (TNCs) are highly invested in aggressive tax planning by interpreting tax laws in a way they can legally avoid paying taxes on their profits. This issue has by now attracted the attention of the international community. Based on their base erosion and profit shifting project the OECD argues that the losses on global corporate taxation amount to between 4% and 10%, yearly. Accordingly there are especially low income countries struggling with tax losses as they have a greater reliance on the income from corporate taxes than high income countries[2]. In this context also natural resources play an important role. Many low-income countries' economies largely depend on the exploitation and export of natural resources. Nevertheless it has been argued that respective governments and affected societies often do not benefit to full extent from their resources[3]. One assumed reason for that are various losses in taxation. While the extractive sector generates major profits from the countries' natural resources, the tax revenues from this sector remain relatively low.

1.1. Problem Statement

As there are different approaches on taxing corporations in the mining sector, varying from profit based taxation to royalties and rent taxes, it makes sense to discuss and

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[1] Vito Tanzi, Howell Zee, *Tax Policy for Developing Countries*, Economic Issues No. 27, International Monetary Fund, 2001, available at: http://www.imf.org/external/pubs/ft/issues/issues27/, last visited 15.02.2016

[2] OECD/G20, *Base Erosion and Profit Shifting Project – Explanatory Statement*, 2015, available at: http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf, last visited: 15.02.2016, Page 4f.

[3] See for example: taxjustice.org, *Make Mining Companies Accountable*, available at: http://taxjustice.org.au/take-action/mining-company-tax-transparency/, last visited: 15.02.2016

compare different tax law regimes. For this purpose, two distinct countries, one considered low income, the other high-income, have been selected for further discussion. Both, Tanzania's and Canada's mining sectors are considered to be important contributors to the respective national economies. Tanzania's mining sector focusing primarily on gold, copper, silver and diamonds contributes 3.7% or 1.8 billon USD to country's gross domestic product (GDP)[4] but is expected to rise in the following years[5]. Canada's mining sector, one of the largest worldwide, producing over 60 different minerals and metals, accounted for about 3.5% of Canada's GDP of $1,973 trillion CAD (or $1,783 trillion USD) in 2014[6]. Both countries have been selected for discussion based on the impact of the mining sector to the national economy, the amount of legal and statistical data available and the fact that the former is considered to be a peripheral low-income country whereas the latter is regarded as a western high-income centrum. Especially the last aspect is considerably interesting for discussion and comparison. This thesis will aim to determine the differences between both national tax law regimes and consequently determine which of those regimes can be considered as being fair within the discourse of tax justice. While it is beyond the scope of this paper to determine the overall fairness of taxation in the respective countries, the focus will be on taxation of the mining sector in specific. In the course of that, this thesis will also discuss and address current challenges in international and national taxation as dealt with in the selected jurisdictions. Comparison will be based on several elements, which are then used to establish country profiles for discussion. The following elements, derived from literature on tax justice[7], have been identified as being paramount for the analysis of fairness with regard to national mining sector taxation: The country's mining sector and its contribution to the national economy; Corporate Income taxation; Rent taxes and royalties; Other relevant taxes and payments applicable; Tax incentives, allowances and deductions; And legislation in place to address current challenges in tax law.

[4] Tanzania Invest, *Tanzania Economy*, available at: http://www.tanzaniainvest.com/economy, last visited 10.08.2016.

[5] Website of Tanzania Chamber of Minerals and Energy, *Overview of the mining sector*, available at: http://www.tcme.or.tz/mining-in-tanzania/industry-overview/, last visited 15.02.2016.

[6] Website of the Mining Association of Canada, *Mining Facts*, available at: http://www.acareerinmining.ca/en/industry/, last visited 15.02.2016.

[7] See for instance: Tax Justice Network, *Tax us if you can*, 2nd Edition, 2012, available at: http://www.taxjustice.net/cms/upload/pdf/TUIYC_2012_FINAL.pdf, last visited 16.11.2016.

1.2. Scope and Structure

This thesis will give an overview over the taxation of corporations in general and over the taxation of corporations operating in the mining sector in particular. For this purpose the next chapter will include an introduction of the most relevant taxation tools used in this context. Followed by that this thesis will discuss mining sector taxation as applied by Canada and Tanzania, as to the above mentioned elements. The fifth chapter will then discuss the tax justice discourse and subsequently determine what amounts to fair taxation. Based on that the research model will be presented, while elaborating on the methodology of a weighted scorecard and the criteria for evaluation. The results of the evaluation of the scorecard are described and discussed in chapter seven. Finally this thesis will end with concluding remarks as to the limitations of the method used and with regard to a further outlook.

2. Corporate Taxation of the Mining Sector

Before discussing the basic concepts governing the taxation of corporate income in general and in the mining sector in particular, it is useful to first address the idea of the comparative legal approach. It is important to keep in mind that when discussing and analyzing particular legislation and tax statutes in the following chapters, the approach taken will include interdisciplinary aspects. This is because the analysis of taxes in general tends to be interdisciplinary, as it does not only include the analysis of tax laws but might also include the analysis of related policies and economic considerations[8]. Therefore when assessing a tax law regime, it is crucial to do so also within the context of its economic surrounding. For instance, in order to assess the impact of taxes on a country's economy, the size of tax revenue relative to the size of the total state revenue, as well as the constitution of different taxes within the tax revenue might be considered[9]. As tax laws are often linked to political and economic considerations, it is important to keep the socio-economic context of each tax law regime in mind, as opposed to looking at it from an isolated perspective. The following will give a comprehensive overview on how laws on corporate income taxation in general and corporate income taxation of the mining sector are usually designed and applied.

2.1 What is Corporate Income Taxation?

Taxes applicable to corporations are complex. They can be applied at different government levels and differ according to the jurisdiction in which they are applied. In most cases we can speak about a tax on all kinds of profits of a legal entity, hence a corporate income tax (CIT), while in some jurisdictions special taxes might be applicable according to the character of the corporation in question[10]. In general it can be said that the purpose of taxes is to finance government spending, ideally to further social justice and to meet the needs of a country's population[11]. Corporate tax revenues can therefore serve as an important source of income for the state. As already noted corporate income taxes may differ greatly when it comes to the specifics but they always refer to all taxes

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[8] Victor Thuronyi, Comparative Tax Law, Kluwer Law International, The Hague, 2003, Page 6.
[9] *Ibid*. Page 10.
[10] M.P. Devereux, P.B Sorensen, *The Corporate Income Tax: International Trends and Options for Fundamental Reform*, European Commission, Economic Papers, Nr. 264, December 2006, Page 5f.
[11] William Gorham, *Foreword*, in: David Brunori (Ed), *The Future of State Taxation*, The Urban Institute Press, Washington, 1998, Page xi.

levied based on the income of the said corporation[12]. In any case the CITs levied are based on a statutory rate, while again they might differ for certain sectors or certain corporations[13]. In most cases the CIT is based on a single rate, while it may include further specified provisions on additional levies, tax incentives or cost deductions from the tax base[14].

Figure 1: CIT rates in selected OECD countries[14]

Year	2015				
Unit	Percentage				
	Central government				
Corporate income tax rate	Corporate income tax rate	Statutory corporate income tax rate exclusive of surtax	Adjusted central government corporate income tax rate	Sub-central government corporate income tax rate	Combined corporate income tax rate
Country					
Austria	25	..	25	..	25
Belgium	33	33	33,99	..	33,99
Chile	22,5	..	22,5	..	22,5
Czech Republic	19	..	19	..	19
Denmark	23,5	..	23,5	..	23,5
France	34,43	33,3	34,43	..	34,43
Germany	15,83	15	15,83	14,35	30,18
Greece	26	..	26	..	26
Hungary	19	..	19	..	19
Iceland	20	..	20	..	20
Ireland	12,5	..	12,5	..	12,5
Israel	26,5	..	26,5	0	26,5
Italy	27,5	..	27,5	..	27,5
Japan	23,9	..	22,55	9,56	32,11
Korea	22	..	22	2,2	24,2
Luxembourg	22,47	21	22,47	6,75	29,22
Mexico	30	..	30	..	30
Norway	27	..	27	..	27
Poland	19	..	19	..	19
Portugal	28	21	28	1,5	29,5
Slovenia	17	..	17	..	17
Spain	28	..	28	..	28
Sweden	22	..	22	..	22
Switzerland	8,5	..	6,7	14,45	21,15
Turkey	20	..	20	..	20
United Kingdom	20	..	20	..	20
United States	35	..	32,85	6,15	39

Data extracted on 15 Mar 2016 16:19 UTC (GMT) from OECD.Stat

As shown above the statutory corporate income tax rates, including surtaxes can heavily differ from country to country. Therefore we see countries like Ireland with a very low CIT of only 12.5%, just as we can find countries with relative high CITs like France, Germany or Japan. Simultaneously the above figure illustrates that CITs can be levied

[12] Richard D. Pomp, *The Future of the State Corporate Income Tax: Reflections (and Confessions) of a Tax Lawyer*, in: David Brunori (Ed), *The Future of State Taxation*, The Urban Institute Press, Washington, 1998, Page 49.
[13] R. Boadway, M. Keen, *Theoretical perspectives on resource tax design*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 60f. [14] Caroline Nakhle, *Petroleum fiscal regimes: Evolution and changes*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 96.
[14] OECD.stat, *Table II.1. Corporate income tax rates*, available at: http://stats.oecd.org//Index.aspx?QueryId=58204, last visited 15.03.2016.

by both, national or central governments, as well as by regional governments. The latter is especially relevant in federal states, where taxing powers are allocated among central and regional governments[15]. For a state to levy a tax on a corporation's income, the corporation needs to have a relevant connection with the state's territory or with a national of that state. Domestic tax claims then do not only have to relate to domestic corporate income but can in addition to that also relate to cross-border income, generally derived from outbound investments of corporations resident in the country or inbound investments from foreign corporations. To avoid double taxation or overlapping tax claims over the same taxable amount from different jurisdictions, most states are parties to bilateral or multilateral tax treaties, regulating taxing rights[16]. The income on which the CIT is calculated upon is based on the net profits of the corporation, meaning that capital expenditures are deducted from the profits. In addition to that, most countries also allow for further tax depreciations as an incentive for further investments[17]. The latter is especially true when it comes to the taxation of extracting corporations, as discussed in the next section.

2.2. Corporate Taxation in the Mining Sector

Natural resources can heavily contribute to a country's revenue and wealth. Whether a country can however actually financially profit from those natural resources at least partly depends on the design of its tax law regime applicable to extracting businesses[19]. When discussing corporate income taxation in the mining sector, it is important to remember that this does not only include the CIT *per se* but might in fact also relate to a number of additional taxes and levies specific to the sector. In most cases the general corporate income tax regime applies to all corporations in the same way, including those active in the mining sector. What might however differ are the applicable statutory rates and possible cost reductions[20]. In addition to that the concerned corporations are often

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[15] Victor Thuronyi, *Comparative Tax Law*, Kluwer Law International, The Hague, 2003, Page 73.
[16] OECD, *Fundamental principles of taxation*, in: A*ddressing the Tax Challenges of the Digital Economy*, OECD Publishing, Paris, 2014, Page 32ff.
[17] Caroline Nakhle, *Petroleum fiscal regimes: Evolution and changes*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 96. [19] R. Boadway, M. Keen, *Theoretical perspectives on resource tax design*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 13. [20] Caroline Nakhle, *Petroleum fiscal regimes: Evolution and changes*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 96.

subject to incentives and special treatments, as mining activities are typically contingent on high costs and extensive time of production[18]. As to this, it is important to note, that especially with regard to the mining sector, the choice of taxation tools might heavily influence a corporation's decision to invest and extract a certain mineral[19].

Starting with taxation, governments have a wide range of tax instruments available to them in order to be applied to the mining sector. Even though the tax names might substantially differ from country to country, the tax designs are the same in essence. The next paragraph will therefore give an overview over the most common tax instruments, apart from the generally applicable CIT, used in this context. The list of resource tax or tax-like instruments available to state governments is almost non-exhaustible and includes among others royalties, rent taxes, sector specific profit taxes, auctions[20], import and export duties, withholding taxes, usage and registration fees, property taxes and further surtaxes[24]. This chapter will give a comprehensive overview over the most relevant taxation tools in this context, starting with the two most commonly used tools to tax mining companies: royalties and rent-based taxes.

Royalties

(Mining) Royalties are a form of payment, which are due to the owner of a specific nonrenewable resource in exchange for the right to extract the resource. In most countries natural resources are a common good and thus belong to the state. If a state decides to use royalties as a taxation tool for corporations in the mining sector, those corporations pay royalties according to the resources they extract[21]. Like other taxes, royalties can again be levied by state or by the regional government[26]. In any case, royalties can take on different forms and the calculation of their base can depend on various factors, for example based on the market value of one ton of material extracted

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[18] R. Boadway, M. Keen, *Theoretical perspectives on resource tax design*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 14f.
[19] Paul Mitchell, *Taxation and Investment Issues in Mining*, in: *Advancing the EITI in the Mining Sector*, 2006, Page 27
[20] R. Boadway, M. Keen, *Theoretical perspectives on resource tax design*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 27ff. [24] Kato Lambrechts *et al.*, *Breaking the curse: How transparent taxation and fair taxes can turn Africa's mineral wealth into development*, March 2009, Page 18f.
[21] R. Boadway, M. Keen, *Theoretical perspectives on resource tax design*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 27ff. [26] PWC, *Corporate income taxes, mining royalties and other mining taxes – A summary of rates and rules in selected countries*, June 2012, Page 3.

or based on the profits made from that material[22]. In addition to that, governments tend to use different royalty rates for different minerals, as exploitation costs and efforts often differ from one mineral to another[28]. When it comes to the royalty base, there are generally two distinct ways to calculate it. The first type is based on a fixed price per unit of material extracted, whereas the second type is charged based on the value of what has been produced. The former are typically called specific or unity based royalties, while the latter refer to value-based or ad-valorem royalties. Specific or unity based royalties are closely linked to the actual material and the amount extracted by using a fixed rate, that might be adjusted due to inflation or commodity world-price changes[23]. Value-based or ad-valorem royalties are on the other hand based on a certain percentage of the value of the mineral itself[24]. Both royalty types have to be paid during the period of production, usually before the extracting corporation is able to generate profits from the minerals in question. This does not apply to a third type of royalties, profit-based royalties, which are due as soon as the corporation generates profits[25]. Profit based royalties are a form of profit tax, which are levied based on a certain percentage of a corporation's profits, derived from the production[26]. The decision as to which royalty is most useful as a taxation tool for mineral extraction thus also depends on when royalty payments are due. Unity based and ad-valorem royalties contrary to profit-based royalties are the main taxation tool which can serve as a reliable income for the government during the first years of production[27].

Over the past years royalties have become a matter of debate among tax scholars as to their assumed effects on economic efficiency and profitability[28]. This debate especially highlights that the usefulness of royalties highly depends on the circumstances of each case and the characteristics of the royalty in question[29]. Anyhow it can be said that

[22] The World Bank, *Mining Royalties*, Washington, 2006,
Page 9f. [28] *Ibid*. Page 17.
[23] Pietro Guj, *Mineral royalties and other mining-specific taxes*, International Mining for Development Centre, 2012, Page 4.
[24] The World Bank, *Mining Royalties*, Washington, 2006, Page 32.
[25] *Ibid.* Page 64.
[26] R. Dowell, *Profits Based Royalties and Productive Efficiency*, Resources and Energy, Vol. 2 (2), 1979, pp. 103-130, Page 104.
[27] Kato Lambrechts *et al*., *Breaking the curse: How transparent taxation and fair taxes can turn Africa's mineral wealth into development*, March 2009, Page 28.
[28] The World Bank, *Mining Royalties*, Washington, 2006, Page 1f.
[29] *Ibid*. Page 9ff.

companies and the World Bank tend to advocate for profit based royalties, as they allocate the risk of financial losses in mining activities between the state and the mining corporation[30]. On the contrary governments tend to favor output based royalties, as they guarantee revenue income even if the corporation in question does not generate profits[31].

Rent taxes

Before discussing how rent taxes, which are often also referred to as mineral taxes, are determined and applied it is necessary to define the term rent in an economic context. Simply put, a rent or economic rent is the differential value derived from a certain output minus all productive factors such as labor, capital or other inputs[32]. Therefore a rent refers to an unproductive factor, namely the mine or land from which the resource is extracted from. This means that the rent is what is left after subtracting all other factor used to extract the resource. Similar to royalties, rent taxes are thus closely connected to the resource they are applied to. Royalties and rent taxes, although sometimes similar in effect, differ from another as to their legal justifications. Royalties rest upon the ownership of a specific resource, while a rent tax is applicable to the realized rent or revenue of a resource when it is sold[33]. The idea of rent taxes or resource rent taxes is therefore that the nation who collectively owns the natural resources of its territory can profit from the private sector by taxing it for the rents generated from natural resource related business activities. In order to not distort business decisions by taxing too much nor taxing to less, it is crucial to determine the right tax base[34]. This is because other than royalties, rent taxes take the costs related to mining activities into account[35]. While the price for a specific mineral is determined on the world markets, production costs depend on a variety of factors, such as the specific location of extraction and the

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[30] *Ibid*. Page 10.

[31] K. Lambrechts *et al*., *Breaking the curse: How transparent taxation and fair taxes can turn Africa's mineral wealth into development*, March 2009, Page 27.

[32] R. Garnaut, *Principles and Practice of Resource Ret Taxation*, The Australian Economic Review, Vol. 43, No. 4, 2010, pp. 347-356, Page 347f.

[33] D. Lund, *Rent Taxation for Nonrenewable Resources*, Annual Review of Resource Economics, Vol. 1 (2009), pp.287-307, Page 288f.

[34] R. Boadway, M. Keen, *Theoretical perspectives on resource tax design*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 60f.

[35] L. Hogan, B. Goldsworthy, *International mineral taxation – experience and issues*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, P.135f.

characteristics of the minerals itself[36]. According to this the rent in a Ricardian sense[37] defines the surplus profits made solely on the basis of the location of extraction and the resource-endowment characteristics. Even though there are several different forms of rent based taxes, they are usually levied at a certain percentage of the surplus above normal profit[44]. Following that a rent tax is a tax on the rent itself not on profit or income. For this reason rent taxes are widely considered to be neutral as they should in theory not affect investment decisions[38]. The base upon which a (resource) rent-tax is applied can differ from one rent tax instrument to another. In addition to that most resource rent taxes also specify a certain threshold rate of return on investment after which the rent tax will apply[39]. The most prominent examples for rent taxes in the mining sector are the Brown tax and the resource rent tax (RRT) as defined by Garnaut and Ross[40], but the list of rent tax instruments is non-exhaustive[41].

Other taxes

In addition to several forms of royalties and rent taxes, there is a variety of other taxes, depending on the jurisdiction, which might be applicable to the mining sector. Among those taxes are sector specific profit taxes, local fees, sector specific charges, local taxes, property taxes, as well as standard taxes such as import duties which are applicable to most sectors within a certain jurisdiction[42]. Most countries however rely on royalties (ad-valorem or specific), rent taxes or a mix of both to tax the mining industry[43]. Further tax instruments, such as local taxes mostly play a subsidiary role. For the purpose of this paper it will not be necessary to lay out the details of all further tax instruments. The

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[36] O. Bomsel, *The Political Economy of Rent in Mining Countries*, in: J.E. Tilton (Ed), *Mineral Wealth and Economic Development*, Resources for the Future, 1992, Page 63.

[37] R. Boadway, M. Keen, *Theoretical perspectives on resource tax design*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 60f. [44] G.W. Walrond, R. Kumar, *Options for Developing Countries in Mining Development*, Macmillan, 1986, Page 52.

[38] R. Garnaut, *Principles and Practice of Resource Rent Taxation*, The Australian Economic Review, Vol. 43, No. 4, 2010, pp. 347-356, Page 347f.

[39] B.C. Land, *Resource rent taxes – A re-appraisal*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 247.

[40] See: Garnaut, Ross, A.C. Ross, *Uncertainty, Risk Aversion and the Taxing of Natural Resource Projects*, Economic Journal, Vol. 85, 1975, pp. 272-287.

[41] R. Boadway, M. Keen, *Theoretical perspectives on resource tax design*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 31ff.

[42] *Ibid*. Page 27ff.

[43] L. Hogan, B. Goldsworthy, *International mineral taxation – experience and issues*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 135ff.

chapters on Canadian and Tanzanian taxation will however include brief descriptions on applicable taxes, apart from CITs and mining taxes and royalties. While the following chapters will elaborate on the idea of tax justice, the next subchapter will briefly give an overview over tax incentives used to attract FDI in the mining sector and in general.

2.3. Tax Incentives

Tax incentives are a commonly used tool to promote investment. While in some cases they fulfill that purpose, tax incentives can also lead to a reduced tax revenue, as their main objective is to reduce taxes that would otherwise have to be paid. In addition to that tax incentives are a way for a country to compete with other countries in order to attract TNCs. Accordingly their application is highly controversial, though common amongst most states[44]. In fact, it has been shown that there is a growing international trend among states to offer even more incentives to TNCs[45]. While commonly applied, their characteristics and effects may greatly differ depending on the incentive used. There are various ways to characterize incentives, such as with regard to the tax they aim to reduce, whether they are profit-based or otherwise based, or whether they take immediate effect or last for a longer period of time[46]. The most prominent examples for tax incentives are reduced corporate income tax rates, tax holidays and (re)investment allowances[47]. While reduced corporate tax rates refer to a lower than usual CIT rate for specific sectors or businesses, tax holidays refer to tax exemptions not only with regard to the CIT, but often also to other taxes, for a specified duration[48]. The latter incentive is one of the most common ones and has been heavily criticized for being used by many TNCs in an abusive manner by relocating once the tax holiday has expired[49]. Investment allowances on the other hand are applicable when it comes to new qualifying investments, which can later be deducted to a certain percentage from the taxable income

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[44] A. Easson, *Tax Incentives for Foreign Direct Investment*, Kluwer Law International, 2004, Page 85f.
[45] United Nations Conference on Trade and Development, *World Investment Report – Transnational Corporations, Extractive Industries and Development*, New York, 2007, Page 14f.
[46] A. Easson, *Tax Incentives for Foreign Direct Investment*, Kluwer Law International, 2004, Page 131ff.
[47] *Ibid*. Page 133ff.
See also: United Nations Conference on Trade and Development, *Tax Incentives and Foreign Direct Investment – A Global Survey*, ASIT Advisory Studies No. 16, Geneva, 2000, Page 19ff.
[48] *Ibid*. Page 133ff.
[49] Tax Justice Network, *The Race to the Bottom: Incentives for New Investment?*, 2008, Page 8, available at: http://www.taxjustice.net/cms/upload/pdf/Bruno-John_0810_Tax_Comp.pdf, last visited: 15.06.2016. [57] A. Easson, *Tax Incentives for Foreign Direct Investment*, Kluwer Law International, 2004, Page 142ff.

over a specified period[57]. A further commonly used incentive are the so-called loss carry forwards, which allow for investors to carry forward a specified amount of their losses to be deducted from their taxable income during the next years[50]. Further forms of incentives target the deduction or exemption from sales taxes, import taxes or tariffs. As with taxation tools, the number of possible tax incentive designs is again non-exhaustive, as they can also be directed towards specific sectors or individual businesses.

Having established a brief overview over the idea of corporate income taxation, taxation forms specific to the mining sector and tax incentives, the next two chapters will deal with a description of corporate taxation of the Canadian and Tanzanian mining sectors. Those chapters will illustrate two different approaches on how governments tax the extraction and monetarization of natural resources.

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[50] United Nations Conference on Trade and Development, *Tax Incentives and Foreign Direct Investment – A Global Survey*, ASIT Advisory Studies No. 16, Geneva, 2000, Page 19.

3. Corporate Taxation of the Canadian Mining Sector

Canada, the geographically second largest country in the world, is a federal state consisting of 10 provinces and three territories of different landscapes and geological characteristics[51]. Following its geological diversity, Canada is a very resource abundant country, with a resource base of numerous different minerals[52]. The list of mined products is enormous and includes among many more potash, uranium, steel, copper, aluminum, lithium, coal, iron, zinc, lead or cadmium[53], while most important minerals according to their value of production are gold, potash, copper, iron ore, nickel, coal and diamonds[54]. Accordingly Canada's mining industry is not only considered to be one of the most productive worldwide but it is also one of the key drivers of the Canadian economy[55]. While the sector currently employs approximately 375.000 workers, it contributed about $57 billion CAD to Canada's GDP of $1,973 trillion CAD (or $1,783 trillion USD) in 2014, which translates into 3.5%. The mining sector's contribution even grew, compared to $54 billion CAD in 2012[56]. Taxes on profits and income from all sectors accounted for about 34% of Canadian revenue in 2014[57]. Similarly the mining sector's contributions to the GDP are mainly realized by means of taxes and royalties levied by the federal and regional governments[58]. In his Report on Plans and Priorities for the Mining Sector, the Canadian Minister of Natural Resources emphasizes the need to increase Canada's global competitiveness, while simultaneously ensure the sector's contribution to the national economy[59]. Among the corporations operating in the

[51] Government of Canada, Canada: A brief overview, available at http://www.cic.gc.ca/english/newcomers/before-land.asp, last visited 21.07.2016.
[52] D. Cranstone, *Mineral Resources*, The Canadian Encyclopedia, Historica Canada, 2010, available at: http://www.thecanadianencyclopedia.ca/en/article/mineral-resources/, last visited: 24.07.2016.
[53] B. Marshall, The Mining Association of Canada, *Facts & Figures of the Canadian Mining Industry*, 2015, Page 22f.
[54] *Ibid*. Page 28.
[55] *Ibid*. Page 6ff.
[56] B. Marshall, The Mining Association of Canada, *Facts & Figures of the Canadian Mining Industry*, 2013, Page 6.
[57] OECD, *Revenue Statistics 2014 – Canada*, available at: http://www.oecd.org/ctp/consumption/revenuestatistics-and-consumption-tax-trends-2014-canada.pdf.
[58] *Ibid*. Page 12.
[59] The Honorable G. Rickford, P.C., M.P. Minister of Natural Resources, *Natural Resources Canada 2015/16 Report on Plans and Priorities*, available at: http://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/plansperformancereports/rpp/2015-2016/pdf/NRCan-RPPApr10-eng.pdf.

Canadian mining sector, most are operating globally but are headquartered in Canada[60]. In fact Canadian mining corporations were active in 105 countries besides Canada in 2014[61]. According to the Canadian government more 50% of all mining corporations globally had their headquarters in Canada in 2013, while their mining expenditures accounted for about 31% globally[62].

The Canada Revenue Agency (CRA) is responsible for tax collection and administration on a federal level and for most provinces[71]. In addition to that the agency has a number of measures in place to ensure it does not abuse its powers[63]. When it comes to corruption, there have been efforts to convict officers who have been engaged in an form of corrupt activities[64]. The legal basis for taxation powers of the federal and provincial governments can be found in Section 91(3), 92(2) and 92(9) of the Constitution Act, 1867. According to Section 91(3), the Canadian Parliament is vested with the right to raise a revenue by means of taxation, while Section 92(2) and 92(3) allow for provincial legislators to enact laws concerning direct taxation within their own Provinces and concerning various business licenses, both to raise a provincial revenue[65]. It follows that not only the federal state but also all Provincial legislators have the power to collect taxes. During the year of 2014 the federal government was able to generate revenues of $258.5 billion CAD (about $197.6 USD[66]) by means of taxation. The combined tax revenues of all provincial and territorial governments during the same year totaled $240.6 CAD (about $183.98 USD)[67]. It follows that not only the federal government but

[60] Canadian Mining Journal, *Who are the Top 40*, 2014, available at: http://www.canadianminingjournal.com/features/who-are-the-top-40/, last visited: 25.07.2016
[61] Natural Resources Canada, *Canadian Mining Assets – Information Bulletin, December 2015*, available at: http://www.nrcan.gc.ca/mining-materials/publications/17965, last visited 25.07.2016.
[62] Global Affairs Canada, *Canada's Enhanced Corporate Social Responsibility Strategy to Strengthen Canada's Extractive Sector Abroad,* available at: http://www.international.gc.ca/trade-agreements-accordscommerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng, last visited 25.07.2016.
[71] Canada Revenue Authority, *About the Canada Revenue Agency*, available at: http://www.craarc.gc.ca/gncy/menu-eng.html, last visited 17.08.2016.
[63] Canada Revenue Authority, *About the Canada Revenue Agency*, available at: http://www.craarc.gc.ca/ntcs/scrty-eng.html, last visited 17.08.2016.
[64] See: Canada Revenue Authority, *Criminal investigations actions, charges, and convictions*, available at: http://www.cra-arc.gc.ca/nwsrm/cnvctns/menu-eng.html, last visited 17.08.2016.
[65] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5, VI Distribution of Legislative Powers, Sections 91 and 92.
[66] Mid-market rate: 2016-07-21
[67] OECD.Stat, *Details of Tax Revenue - Canada*, available at: https://stats.oecd.org/Index.aspx?DataSetCode=REV, last visited: 21.07.2016. [77] Income Tax Act (R.S.C., 1985, c. 1 (5th Supp,))

also all provincial legislators are very relevant when discussing taxation in Canada. The following sections will discuss how the relevant taxes and royalties applicable to the mining sector are designed and applied.

3.1 Corporate Income Tax

On a federal level, corporate income taxation in Canada is based on the Income Tax Act[77]. According to Section 2 for each taxation year all resident persons have to pay an income tax on their taxable income. The same applies under Section 2(3) to non-resident persons who are linked to Canada either through employment, business activities or property located in Canada. As specified in Section 248(1) the term person must be interpreted as also being applicable to corporations. Taxable income is defined by Section 2(2) as being the income of the taxpayer during the taxation year, taking into account possible additions and deductions. This is relevant as Income Tax Act also allows for loss carry-forwards as provided by Section 110(1). Section 3 states that the term taxable income refers to the global income of the taxpayer.

As determined by Section 123(1) (a) the applicable tax rate for corporations is set at 38% of the taxable amount for the taxation year. Section 124(1) further allows for a 10% deduction from the taxable corporate income if it was earned in one of the provinces or territories in the year in question. This section has been designed in order to allow the provinces and territories to impose their own CITs to raise their tax revenues[68]. Unless the taxable income is earned outside of Canada the effective federal tax rate applicable to corporations is hence 28%. A further general rate reduction as specified in Section 123.4(1) is applicable to most corporations, with a few exemptions relating for instance to investment or mortgage corporations after 2011, at a rate of 13%. The effective corporate income tax at a federal level is therefore effectively levied at 15%. This rate has been lowered gradually over the past decade[69]. In addition to this rate, all territories

[68] PWC, *Tax Summaries – Canada – Taxes on corporate income*, available at: http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Canada-Corporate-Taxes-on-corporate-income, last visited: 24.07.2016.
[69] Trading Economics, *Canada Corporate Tax Rate*, available at: http://www.tradingeconomics.com/canada/corporate-tax-rate, last visited 25.08.2016. [80] Natural Resources Canada, *Tables on the Structure and Rates of Main Taxes*, available at: http://www.nrcan.gc.ca/mining-materials/taxation/mining-taxation-regime/8890, last visited 25.07.2016. [81] Tax Foundation, *Corporate Income Tax Rates around the World*, 2014, available

and provinces levy a CIT at their own rates. The provinces and territories accordingly levy rates applicable to the mining sector ranging between 10% as in Alberta or Ontario and 16% as in Nova Scotia[80]. Therefore the final corporate income tax payable by corporations operating in Canada ranges between 26% and 31%. Based on the 2014 global average corporate income tax of 22.6% and an average of 30,7% in the G7[81], the Canadian CIT is above global but below G7 average. While the corporate income tax is payable by all corporations, the following sections will take a closer look at taxes and rents that are specifically applicable to the mining sector.

3.2. Rent taxes and Royalties

Due to its federal character taxation of mining activities in Canada is subject to three levels of taxation. While the federal government imposes corporate income taxes, the goods and service tax (GST) and custom duties, it is up to the provinces and territories to impose among others, mining taxes and royalties. Municipalities are further able to impose taxes on properties and are able to charge licenses and fees[70]. The power to impose mining taxes and royalties hence fully lies with the provinces and territories. Taxes on mining activities are levied upon corporations as a tool for compensation for extracting nonrenewable resources located within the relevant territory or province. As the power to tax mining activities is vested with the territories and provinces, they all have relevant legislation in place. Even though the various Acts differ to some extent in certain tax rules, they follow the same conception in general[83]. Figure 2 gives an overview over the different tax instruments and tax rates used. Even though the relevant tax provisions differ as to their rates and application, all territories and provinces start computing relevant mining taxes after profits from mining and processing have been generated. This follows the idea that during the mining stage, corporations are not expected to make profits yet[71].

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at: http://taxfoundation.org/article/corporate-income-tax-rates-around-world-2014, last visited: 25.07.2016.

[70] Natural Resources Canada, *Taxes and Levies by Level of Taxation*, available at: https://www.nrcan.gc.ca/mining-materials/taxation/mining-taxation-regime/8884, last visited 25.07.2016. [83] Natural Resources Canada, *Overview of Main Tax Instruments*, available at: https://www.nrcan.gc.ca/miningmaterials/taxation/mining-taxation-regime/8886, last visited 25.07.2016.

[71] *Ibid*.

Figure 2: Provincial tax instruments and tax rates[72]

Province/Territory	Tax Instrument	First Tier Rate	Second Tier Rate
Alberta	Royalty	Minimum 1% of mine mouth revenue before payout	After payout: The greater of 1% minimum rate and 12% of net revenue
British Columbia	Mineral tax	Minimum 2% on net current proceeds (deductable against second tier rate)	13% on net revenue
Manitoba	Mining tax	n/a	Depending on profits: Under $50Mil. = 10%; $50Mil. - $100Mil. = 15%; $100Mil. - $105Mil. = 57% (on the last $5Mil.); Over $105Mil. = 17%
New Brunswick	Mining tax	2% on net revenue (deductable against second tier rate)	16% on net profits exceeding $100.000
Newfoundland & Labrador	Mining tax	15% on taxable income (deductions against provincial CIT possible)	20% on net income
Northwest Territories & Nunavut	Royalty	n/a	The lesser of: 13% of the value of mine output and; between 0% (below $10.000) and 14% (Over $45Mil.) on profits (formula based on value)
Nova Scotia	Royalty	n/a	The greater of 2% of net revenue and 15% of total mine net income or a different rate determined by the government
Prince Edward Isalnd	n/a	n/a	n/a
Ontario	Mining tax	n/a	10% on taxable profits above $500.000/ 5% in remote areas (not applicable to diamonds)
Quebec	Mining tax	n/a	16%-28% on net profits
Saskatchewan	Mixed System	n/a	Depending on mineral extracted. Precious and Base metals: 5% on net profits during initial production and 10% afterwards
Yukon	Royalty	n/a	Depending on profits: Under $10.000 = 0%; $10.000 - $1Mil. = 3%; $1Mil. - $5Mil. = 5%; Rate increases every $5Mil. by another 1% up to a maximum of 12% (not applicable to gold)

While all the above provinces and territories apply mining taxes or royalties at different rates, it is evident that all specified tax instruments are profit-based. Greater variations are visible, when looking at the determination of taxable income, possible tax deductions and allowances. Due to the variations in provincial mining taxation the four most economically relevant provinces will serve as representatives for Canadian mining taxation for the purpose of his thesis' comparative analysis. The four provinces who accounted for 76.8% of Canadian mineral production in 2015 were British Columbia, Ontario, Quebec and Saskatchewan. It is therefore necessary to take a deeper look into the taxation statutes of these provinces. Figure 3 illustrates the applicable CIT rates, tax and royalty rates, as well as the applicable taxable bases.

[72] Data based on relevant tax statutes; Natural Resources Canada, *Tables on the Structure and Rates of Main Taxes*, available at: http://www.nrcan.gc.ca/mining-materials/taxation/mining-taxation-regime/8890, last visited 25.07.2016; and KPMG, *A Guide to Canadian Mining Taxation*, September 2011.

Figure 3: Mining taxation British Columbia, Ontario, Quebec and Saskatchewan[73]

Province	CIT Applicable to Mining Sector	Combined federal and provincial CIT	Taxable Base	Appplicable Mining Tax and Royalty Rates
British Columbia	10,75%	25,75%	Adjusted PBT*	(2% minimum tax) 13% once invested capital of the mine is recovered and no investment allowance is applicable
Ontario	10,00%	25%	Adjusted PBT	**Minerals:** 10% on taxable profits above $500.000/ 5% in remote areas **Diamonds:** 5% - 14% value-based Royalty ($10.000 - above $45Mil.)
Quebec	11,90%	26,90%	Adjusted PBT	16% - 28% flat tax on profits depending on operators profit margin (0%-35% = 16% tax, 35%-50% = 22% tax, 50%-100% = 28% tax)
Saskatchewan	10%	25%	Adjusted PBT	**Precious and Base metals:** 5% on net profits during initial production and 10% afterwards **Potash:** 2,1% - 4,5% value-based Royalty depending on ore grade + Monthly Base Payment of between $11 - $12,33 per tonne sold + 15% (profit per tonne below $59,55) - 35% profit tax (can be reduced) **Uranium:** 5% royalty on gross sales + 10% (below $22)- 15% royalty on profits per Kg **Coal:** 15% Royalty on mine mouth value** + 7% production tax on mine mouth value **Diamonds:** 1% value-based Royalty + up to 10% profit-based Royalty once investments are recoverd
* Adjusted Profit before Tax is calculated based on profits before taxes minus interest and operating and expenses				
** Mine mouth value is calculated based on gross sales less approved costs, such as costs for transportation				

With the exception of Saskatchewan all applicable tax statutes are quite comprehensive. Whereas British Columbia has a flat tax in place which apply as soon as investments in the mine are recovered, Ontario follows the same concept with an adjusted rate for remote areas and a royalty scheme for diamonds. Quebec, which used to impose a flat tax of 16%, recently imposed a more progressive mining tax system reflecting on the

[73] Data based on relevant tax statutes; Natural Resources Canada, *Tables on the Structure and Rates of Main Taxes*, available at: http://www.nrcan.gc.ca/mining-materials/taxation/mining-taxation-regime/8890, last visited 25.07.2016; and KPMG, *A Guide to Canadian Mining Taxation*, September 2011.

profitability of mining corporations[74]. Saskatchewan on the contrary has a mixed system in place, which includes taxes and royalties dependent on the minerals extracted. As shown in Figure 3, the mineral based system in Saskatchewan always includes a royalty in addition to at least one further tax or royalty. Except for the regulations concerning precious and base metals, all regulations applicable to a specific mineral include profit-based taxes and royalties, as well as non-profit based taxes and royalties. While revenue from profit-based tax instruments is subject to volatilities, revenue from other taxes such as the value-based royalty on potash is not. Even though the applicable mining tax and royalty rates are crucial to determine a mining corporation's tax burden, it is equally important to take a look at further taxes that might be applicable to the sector. Therefore the following section will discuss taxes that are relevant in this context.

3.3 Other relevant taxes and payments

In addition to federal and provincial CITs and mining taxes and royalties, corporations operating in the mining sector might be subject to a number of further tax instruments. According to the Canadian Mining Journal those taxes account for about one-third of the taxes paid by the mining sector industry[75]. As applicable to all territories and provinces, corporations operating in British Columbia, Ontario, Quebec and Saskatchewan are subject to property taxes levied by the municipalities at a certain percentage of the value of the property itself. While capital taxes have been eliminated as of 2012[76], corporations are obliged to pay value-added taxes at each stage of production by means of a federal goods and services tax (GST), also applicable to imported goods and services, and in some cases by means of a provincial sales tax. The applicable rates range between 5% and 15% but they can be recovered through tax credits, as only the final consumer bears the GST/sales tax burden[77]. Some goods such as basic food stuffs, female hygiene products or medical services are either zero-rated or

[74] Revenu Québec, *Calculating the Mining Tax on Annual Profit*, available at: http://www.revenuquebec.ca/en/entreprises/obligationsparticulieres/impotminier/calculerimprofitannuel/default. aspx, last visited 10.08.2016.
[75] J. Gravelle, *Taxes take a toll on global mining companies*, Canadian Mining Journal, 2010, available at: http://www.canadianminingjournal.com/features/taxes-take-a-toll-on-global-mining-companies/, last visited 20.07.2016.
[76] Natural Resources Canada, *Overview of Main Tax Instruments*, available at: https://www.nrcan.gc.ca/miningmaterials/taxation/mining-taxation-regime/8886, last visited 25.07.2016.
[77] KPMG, *A Guide to Canadian Mining Taxation*, September 2011, Page 49f.

GST exempt[78]. Imported goods and services are additionally subject to custom duties[79]. In order to obtain mineral rights, mining corporations have to obtain and subsequently pay for either a license or a permit to start mining operations within the different territories[80]. British Columbia, Ontario, Quebec and Saskatchewan all have public license- or mineral claims registers[81]. In addition to that all corporations have to pay Employment Insurance and have to contribute to the Canada Pension Plan on a federal level or in the case of Quebec to the Quebec Pension Plan. Further payroll taxes, such as worker's compensation or post-secondary education taxes can be charged by the provinces and territories[82]. As we can see, corporations might be liable to pay a number of taxes and payments on top of CITs and mining taxes and royalties. With the exception of social contributions, like contributions to pension plans, most of these taxes and payments can be reduced or recovered. The actual tax burden can only be determined after assessing possible allowances, deductions and available tax incentives. The next paragraph will therefore discuss instruments available in this context.

3.4 Tax incentives, allowances, deductions and credits

The Canadian tax system offers a number of tax allowances and deductions, both on the federal and the provincial level. On a federal level Canadian tax law allows for the deduction of provincial mining taxes and royalties from computable income for the federal CIT[83]. In addition to that it is possible to deduct a number of specified expenses from the federal CIT. The Income Tax Act determines that any expenses that occurred in the initial phase of mining, the exploration phase, can be deducted in full from the

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[78] Canada Revenue Authority, *GST/HST Overview*, available at: http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gsttps/gnrl/menu-eng.html, last visited 20.08.2016.
[79] Natural Resources Canada, *Overview of Main Tax Instruments*, available at: https://www.nrcan.gc.ca/miningmaterials/taxation/mining-taxation-regime/8886, last visited 25.07.2016.
[80] See: British Columbia: http://www2.gov.bc.ca/gov/content/industry/mineral-exploration-mining, Ontario: http://www.mndm.gov.on.ca/en/mines-and-minerals/mining-act-forms;
Quebec: https://www.mern.gouv.qc.ca/english/mines/rights/rights-gestim.jsp
Saskatchewan: http://www.economy.gov.sk.ca/mining
[81] See: British Columbia: https://www.mtonline.gov.bc.ca/mtov/home.do
Ontario: https://www.mci.mndm.gov.on.ca/claims/clm_mmen.cfm
Quebec: https://www.mern.gouv.qc.ca/english/mines/rights/rights-gestim.jsp
Saskatchewan: https://mars.isc.ca/MARSWeb/default.aspx
[82] L. d. Matteo, M. Shannon, Payroll Taxation in Canada: An Overview, Canadian Business Economics, 1995, Page 5ff.
[83] Natural Resources Canada, Mining-Specific Tax Provisions, available at: http://www.nrcan.gc.ca/miningmaterials/taxation/mining-taxation-regime/8892#lnk4, last visited 25.07.2016.

computable income for the purpose of the CIT. Expenditures falling under the Canadian exploration expense (CEE) include any expenditures aiming at the determination of all relevant factors of a certain natural resource, such as existence, location and quality[84]. Similarly the Act provides for a 30% deduction of Canadian development expenses (CDE) from computable income, which includes sinking and excavating expenditures, as well as the expenses for the mineral property relating to the acquisition of land, mineral rights and royalties[85]. Further deductions are possible under the framework of capital costs allowances (CCA), which allows mining businesses to claim deductions for depreciable property at a rate of usually 25%. Property in this sense does not only include buildings, but also machinery and necessary equipment that was acquired before production was initiated[86]. Accordingly typical mine operators are able to deduct from their computable income for federal CIT purposes all expenses during the exploration phase, 30% of their expenses during the development phase and about 25% of their investments in property, machinery and equipment. Further possible deductions, allowances and tax incentives are however provided by the provinces and territories themselves.

British Columbia, Ontario, Quebec and Saskatchewan all have legislation in place to reduce the tax burden for mining businesses in some way or another. British Columbia allows mining corporations to write off pre-production and exploration expenses fully against computable income for provincial CIT purposes. The same is applicable for Ontario, while Quebec and Saskatchewan even provide for deductions of up to 125% and 150% respectively[87]. This is usually done by using a system of tax credits which can be weighed against the current tax liability. Mining tax exemptions and deductions for new mines are further available in British Columbia, where one third of capital costs of new mines and the expansion of mines can be claimed until 2019 under the New Mine Allowance provision[88]. Ontario provides for a mining tax exemption for new mines on the first $10 million CAD of profit during a period of three years (10 years for mines in

[84] Section 66.1, Income Tax Act (R.S.C., 1985, c. 1 (5th Supp,)).
[85] Section 66.2, Income Tax Act (R.S.C., 1985, c. 1 (5th Supp,)).
[86] Part XI, Income Tax Act (R.S.C., 1985, c. 1 (5th Supp,)).
[87] Natural Resources Canada, *Overview of Main Tax Instruments*, available at: https://www.nrcan.gc.ca/miningmaterials/taxation/mining-taxation-regime/8886, last visited 25.07.2016.
[88] Section 5, *Mineral Tax Act, Mineral Tax Costs and Expenditures* Regulation, B.C. Reg. 405/89.

remote areas)[89]. Contrary to Quebec, which does not allow tax exemptions for new mines, Saskatchewan offers a 10 year royalty holiday for newly established gold and base metal mines[90]. Processing allowances are a further way to reduce a mine operator's tax liability by granting a tax deduction by a certain percentage of the costs of the properties used to process extracted minerals. Ontario and Quebec offer an 8-16%[91] and respectively 10-20%[92] processing allowance depending on the complexity and location of processing. Finally all four provinces provide depreciation allowances for mining and processing assets. The provincial rates vary from 30% to 100%. Accordingly corporations are able to deduct lost value of mining and processing assets, i.e. property, from their computable income for provincial tax purposes[93]. As stated by the Ministry of Natural Resources the Canadian tax regimes saw, contrary to most other jurisdictions, a trend of growing tax incentives, with the exception of Quebec[94]. The government of British Columbia has committed to extend its tax incentive programs[95], whereas the governments of Ontario[109], Quebec[96] and Saskatchewan[97] have by no means expressed their intention to reduce tax incentives available to the mining sector. Similarly the Canadian government has not made any statements to change their policy as with regard to tax incentives available to the mining sector[98].

It becomes evident that applicable CIT rates, as well as mineral taxes and royalties only indicate a vague tax liability for corporations, while after assessing available tax incentives, allowances and deductions, the actual tax liability can be reduced heavily. Whereas the applicable rates of taxes and royalties stay the same, it is the computable

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[89] Section 3.1 *Mining Tax Act*, R.S.O. 1990, c. M.15
[90] Government of Saskatchewan, *Our Key Economic Sectors – Minerals*, available at: http://www.economy.gov.sk.ca/minerals, last visited 03.08.2016.
[91] Section 9, R.R.O. 1990, Reg. 769.
[92] Section 20.1., *I-0.4 Mining Tax Act*, 2011, c.6, s.15.
[93] Natural Resources Canada, *Tables on the Structure and Rates of Main Taxes*, available at: http://www.nrcan.gc.ca/mining-materials/taxation/mining-taxation-regime/8890, last visited 25.07.2016
[94] Natural Resources Canada, *Taxation Issues for the Mining Industry: 2010 Update*, available at: http://www.nrcan.gc.ca/mining-materials/publications/8802 , last visited 25.07.2016
[95] https://www.pwc.com/ca/en/mining/publications/pwc-mining-industry-british-columbia-2016-en.pdf page 16 [109] Government of Ontario, Ontario's Mineral Development Strategy 2015, available at: http://www.mndm.gov.on.ca/sites/default/files/mndm_mds_english_2015.pdf, Page 16.
[96] See: Government of Quebec, Strategic Vision for Mining Development in Quebec, available at: https://www.mern.gouv.qc.ca/english/mines/strategy/index.jsp.
[97] See: Government of Saskatchewan, Plan of 2014-15 Ministry of the Economy, available at: http://www.finance.gov.sk.ca/PlanningandReporting/2014-15/EconomyPlan1415.pdf.
[98] See: Natural Resources Canada, *The Minerals and Metals Policy of the Government of Canada*, available at: http://www.nrcan.gc.ca/mining-materials/policy/8690, last visited 15.08.2016

income used for tax purposes that is altered after tax allowances and deductions have been taken into consideration. In addition to that it is noticeable that especially new mines and mines in remote areas might profit greatly from tax incentives and deductions. Three out of four provinces offer great tax exemptions or deductions, including tax holidays, to attract new investments. Apart from assessing legal ways to reduce a corporation's tax liability it is further important to assess Canadian legislation addressing current challenges in tax law, including the problem of profit shifting.

3.5. Legislation in place to address current challenges in tax law

So-called anti-avoidance measures enforced by the Canadian revenue agency (CRA) generally apply to all economic sectors. One commonly used approach by many countries to counteract tax avoidance has also been adopted by the Canadian government in form of the introduction of a general anti-avoidance rule (GAAR) under the Income Tax Act[99]. This rule is intended to allow the CRA to hold corporations liable that engage in transactions that serve the purpose of either directly or indirectly resulting in a tax benefit for them. Consequently the CRA can sanction all transactions that imply a misuse of Canadian tax law in force. This provision aims at a number of corporate actions, including profit shifting. Article 247 of the Income Tax Act is further applicable to transactions qualifying as transfer pricing. According to this transactions involving the mispricing of a payment between related legal entities for the purpose of creating a tax benefit are punishable. Transaction between related parties are therefore compared to transactions between two independent parties that act upon their own best interest, as referred to in article 247 as the arm's length principle. As determined by Section 247(4) the tax payer is further obliged to provide records of transactions concerned in due time. In addition to that Canada has a withholding tax in place which is only applicable to non-residents. The withholding tax is applicable at a rate of 25% to all payments, such as dividends or royalties, made by a Canadian resident to a non-resident[100]. Accordingly a Canadian resident or his or her agent would be responsible for withholding, on behalf of the CRA, 25% of the amount paid. As a consequence the recipient of the payment has no chance of avoiding applicable taxes. With regard to classified mining deals, British Columbia does not have the legal basis to enter such agreements, unless they are with

[99] Section 245, Income Tax Act (R.S.C., 1985, c. 1 (5th Supp,)).
[100] Section 212, Income Tax Act (R.S.C., 1985, c. 1 (5th Supp,)).

the First Nations of Canada[101], the same seems to be the case in Ontario, Quebec and Saskatchewan. While classified mining deals do not distort the taxation of TNCs, another international tax measure might. To avoid double taxation, Canada has entered a total of about 90 so-called double tax agreements in form of bilateral tax treaties[116].

Nevertheless tax treaties help avoiding the double taxation of certain kinds of income, it has been argued that in the same way those tax deals might be the source of further opportunities for aggressive tax planning abroad[102]. This is why it is not only necessary to examine anti avoidance measures directed towards mining corporations operating in Canada, but also to take a look at the existing measures as to their effect upon the international community. Over the past years reports on Canadian mining corporations engaging in tax avoidance and evasion have multiplied. It has been argued that the Canadian government is at least partially responsible for these developments as it is not pursuing Canadian corporations avoiding taxes internationally and signing tax treaties with tax havens. Prominent examples linked to the Canadian mining sector are Eldorado Gold avoiding taxes in Greece [103] and a subsidiary of Barrick Gold avoiding taxes in Tanzania[119]. As in the case of Eldorado Gold, TNCs establish mailbox subsidiaries in countries with very low tax rates, like the Netherlands, in order to avoid paying taxes in the countries they actually operate in. This practice is however not only harmful to jurisdictions outside Canada but also to the Canadian government, which loses out on billions of CAD in tax revenue. One of the cases currently receiving much public attention is the case of Cameco Corp., The Saskatchewan based mining company has been accused of having evaded $2.1 billion CAD in taxes by allegedly setting up a mailbox subsidiary in Switzerland and shifting their profits there. While Cameco Corp. argues it has not violated any law, a Toronto court is going to determine whether this

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[101] See: Government of British Columbia, *Economic and Community Development Agreements*, available at: http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/firstnations-negotiations/economic-and-community-development-agreements, last visited 18.08.2016 [116] Department of Finance Canada, *Tax Treaties: In Force*, available at: https://www.fin.gc.ca/treatiesconventions/in_force--eng.asp, last visited 25.07.2016.

[102] see for instance: CBC News, *CBC Investigates: Deals Canada signed to catch tax cheats allow billions in taxes to escape*, June 15, 2016, available at: http://www.cbc.ca/news/business/canada-offshore-tax-avoidancecorporations-tiea-1.3639597, last visited 05.08.2016.

[103] Canadians for Tax Fairness, *Canadian Mining Company Evading Taxes in Greece*, available at: http://www.taxfairness.ca/en/news/canadian-mining-company-evading-taxes-greece, last visited 06.08.2016. [119] The Globe and Mail, *Barrick Gold subsidiary evaded Tanzanian taxes, tribunal rules*, April 5, 2016, available at: http://www.theglobeandmail.com/report-on-business/international-business/african-and-mideastbusiness/barrick-gold-subsidiary-evaded-tanzanian-taxes-tribunal-rules/article29533858/, last visited 06.08.2016.

case of aggressive tax planning was lawful[104]. In this context it is worth noting that Canada and Switzerland have a bilateral tax treaty currently in force. This treaty only includes provisions on the exchange of relevant information, solely upon request of one of the parties, since 2010[105]. This proofs again that looking at existing tax measures is important, while looking at the effects of those measures might be even more.

We have seen that the Canadian tax law regime taxes corporate income on a federal level and on a provincial level, while mining specific taxes and royalties are again levied on provincial level. As applicable to the latter level of taxation, tax instruments might differ from one province to another but by determining and comparing the four most relevant provinces in the context of mining, it was possible to take a closer look at the similarities and differences. As a general observation most Canadian mining laws are profit based, with the exception of Saskatchewan, which offers the most complex mining tax regime, including value-based royalties and base payments. While it is almost impossible to determine the actual tax liability of mining corporations, given the availability of numerous tax deductions allowances and incentives, it is clear that this paper can only assess the applicable tax rates, the availability of exiting measures and finally their presumed affect. Notwithstanding the effects of tax measures on their national economy, it is equally necessary to see the bigger picture and look at their possible consequences for the international community. The next chapter will follow the same approach, when discussing corporate taxation of the Tanzanian mining sector.

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[104] B. Livesey, *Did this company engineer the largest tax dodge in Canadian history?*, National Observer, April 25, 2016, available at: http://www.nationalobserver.com/2016/04/25/news/did-company-engineer-largest-taxdodge-canadian-history, last visited 06.08.2016.

[105] Convention between Canada and Switzerland For the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital, 1997, amended 2010, available at: http://www.fin.gc.ca/treatiesconventions/switzerland-suisse-eng.asp, last visited 06.08.2016.
see also: Gowling WLG, *Canada/Switzerland: Double Tax Treaty to meet OECD's Standard on Information Exchange*, 2011, available at: https://gowlingwlg.com/en/canada/insights-resources/canada-switzerland-doubletax-treaty-to-meet-oecd-s-standard-on-information-exchange, last visited 06.08.2016.

4. Corporate Taxation of the Tanzanian Mining Sector

The United Republic of Tanzania, a sovereign unitary state in East Africa since 1964, comprises 30 administrative regions[106]. With a population of more than 43 million citizens[107], Tanzania is considered to be one of the least developed countries[108]. While the Tanzanian GDP is constantly growing, three economic sectors have been identified as being responsible for this development: agriculture, tourism and mining[109]. Mining activities in Tanzania date back to the German colonial period, where the first gold deposits were found in the Lake Victoria region[110]. Ever since mining has played an important role for the country's development. In 2014 the mining sector has contributed 3.7% or 1.8 billon USD to Tanzania's GDP of 44.3 billion USD[127], whereas the main source of tax revenue comes from the VAT[111]. The most economically relevant mined products are gold, diamonds, copper, silver, tanzanite and coal[112], while gold alone accounts for more than 90% of total mineral exports[113]. The country's mineral sector is increasingly attracting FDI, which is currently estimated at about $460 million USD per year. A further increase in mining operations is expected as exploration work for a number of minerals, such as iron ore, nickel or uranium, is continuously ongoing,

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[106] United Republic of Tanzania, Government Portal, *Tanzania Profile*, available at: http://www.tanzania.go.tz/home/pages/68, last visited 10.08.2016.
[107] United Republic of Tanzania, Government Portal, *Demography*, available at: http://www.tanzania.go.tz/home/pages/220, last visited 10.08.2016.
[108] United Republic of Tanzania, Government Portal, *Tanzania Profile*, available at: http://www.tanzania.go.tz/home/pages/68, last visited 10.08.2016.
[109] Tanzania Invest, *Tanzania Economy*, available at: http://www.tanzaniainvest.com/economy, last visited 10.08.2016.
[110] P. S. Magai, A. Marquez-Velazquez, *Tanzania's Mining Sector and Its Implications for the Country's Development*, Berlin Working Papers on Money, Finance, Trade and Development, No. 04/2011, Page 1. [127] Tanzania Invest, *Tanzania Economy*, available at: http://www.tanzaniainvest.com/economy, last visited 10.08.2016.
[111] United Republic of Tanzania, Ministry of Finance and Planning, *Revenue & Taxation Policy*, available at: http://www.mof.go.tz/index.php?option=com_content&view=article&id=37:revenue-a-taxationpolicy&Itemid=52, last visited 20.08.2016.
[112] Tanzania Minerals Audit Agency, *Annual Report 2015*, Page 6ff, available at: http://www.tmaa.go.tz/uploads/TMAA_Annual_Report_2015-4.pdf, last visited 11.08.2016.
[113] Tanzania Invest, *Gold*, available at: http://www.tanzaniainvest.com/gold, last visited 11.08.2016.

including mining projects which are already at advanced stages. The process of growth of the Tanzanian mining sector is best demonstrated by numbers. From 1997 to 2013 mineral export earnings have increased by 52%, while employment increased from 1700 employees to 15000. The mining sector's contribution to the GDP grew from 1% to 3.5%[114]. According to the Tanzanian Ministry of Energy and Minerals the mining sector's contribution to the GDP is projected to further expand to 10% by 2025[115]. The government stated the objective to strengthen the mineral sector also under the objective of social responsibility[116]. The mining sector's contribution to the GDP is realized in form of revenue from taxes and royalties levied by the government. According to the Tanzanian Constitution the power of taxation is vested with the Union[117]. Since 1996 the Tanzania Revenue Authority (TRA) is responsible to carry out the administration of tax matters on behalf of the central government. To ensure that the TRA and its employees do not abuse their powers, there is a procedure to complain against misconduct[118].

4.1 Corporate Income Tax

Corporate income taxation or corporate tax in Tanzania is based on the Income Tax Act, 2004[119]. According to Section 4, paragraph 1 every person, who has earned income in any form shall be obliged to pay an income tax on their taxable income for a taxation year. A person, as determined by Section 2, can either be an individual or an entity. While total income, as defined by Section 5, paragraph 1, refers to income from employment, business activities or investments, minus applicable deductions. Section 6(1) clarifies that this applies to resident persons with respect to their global income and non-resident persons with respect to their income earned in Tanzania. The applicable tax rates are further listed in paragraph 3 of the fist schedule of the act. Accordingly both,

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[114] United Republic of Tanzania, Ministry of Energy and Minerals, *Tanzania Mining Industry Investor's Guide*, June 2015, Page 9ff, available at: http://www.tanzania.go.tz/egov_uploads/documents/TANZANIA_Mining_Industry_Investor_Guide__June_2015_-1_sw.pdf, last visited 11.08.2016.

[115] *Ibid.* Page 6.

[116] United Republic of Tanzania, Ministry of Energy and Minerals, *The Mineral Policy of Tanzania*, 2009, Page 17.

[117] First Schedule, Constitution of the United Republic of Tanzania, 1977, (CAP. 2), as amended.

[118] Tanzania Revenue Authority, About TRA, available at: http://www.tra.go.tz/index.php/others, last visited 11.08.2016.

[119] Income Tax Act, Cap. 332, revised Edition 2008

resident and non-resident entities, are in general subject to a 30% tax on taxable income for a taxation year. A reduced tax rate of 25%, as determined by paragraph 3(2) of the fist schedule, is available for three consecutive years to companies which newly listed with the Dar es Salaam stock exchange if they made at least 35% of their shares available to the public. Revenue from corporate taxes has been an important source of income for the Tanzanian government. From 2009 to 2015 the TRA was able to collect TZS 680.5 billion or about $31.05 million[120] USD in corporate taxes from the mining sector alone[121]. As corporate taxes are only collected at a union level, there are no further corporate income taxes at a local level.

4.2. Rent taxes and Royalties

The main source for mineral taxation in Tanzania is the Mining Act, 2010[122]. Section 5 of the Act clarifies that the United Republic of Tanzania is vested with the right of ownership and control over all minerals in and under the land. Derived therefrom is the right to tax the extraction and use of minerals owned by the state. It follows that any mining activities carried out without granted permission in form of a mineral right are deemed to be illegal and are punishable by law[140]. Therefore mining operations can only be carried out when the relevant mineral right has been granted by the Ministry of Energy and Minerals. Mineral rights can be applied for in form of various licenses, depending on the character of planned mining related activities, at the same Ministry[141]. Depending on the license, applicants have to fulfill a number of requirements, such as environmental permits or evidence of the needed financial needs to carry out the proposed mining related activity[123]. Once mining activities are conducted, mine operators are obliged to pay royalties on the gross value of production output as stipulated by Section 87.(1) of the Mining Act. The value-based royalty rates depend on the mineral produced. Minerals are therefore grouped into five categories. While Metallic minerals include gold, silver,

[120] Mid-market rate: 2016-08-12

[121] Tanzania Minerals Audit Agency, *Annual Report 2015*, Page 5, available at: http://www.tmaa.go.tz/uploads/TMAA_Annual_Report_2015-4.pdf, last visited 11.08.2016.

[122] The Mining Act, No.
14, 2010 [140] *Ibid*.
Section 6. [141] *Ibid*.
Section 7.

[123] Ministry of Energy and Minerals, *Procedures for applying for Mineral rights in Tanzania*, May 2014, available at: https://mem.go.tz/wp-content/uploads/2014/05/08.05.2014procedures-for-applying-for-mineralrights-in-tanzania.pdf, last visited 12.08.2016. [143] Section 87.(1) The Mining Act, No. 14, 2010

copper and platinum group minerals, other minerals include everything from building materials to salt.

Figure 4: Royalty rates per mineral produced[143]

Mineral produced	Royalty rate
Uranium	5%
Gemstone and Diamond	5%
Metallic Minerals	4%
Gem	1%
Other Minerals	3%

Accordingly mine operators have to make royalty payments as to the mineral they produce. The royalty rates as percentages of the gross value of production refer to the market value of the produced minerals, when sold. According to Section 87(3) the Minister of the Ministry of Energy and Minerals has the power to consider whether or not the price for which the minerals was sold, corresponds with the actual market value. In the case a mine operator fails to make the stipulated royalty payments, the Minister has the right to prohibit further extractions from the mine concerned[124]. It becomes evident that the royalty scheme provided by the Mining Act is very straight forward, providing single royalty rates depending on the mineral extracted. Due to the value-based character of the royalties applicable, the revenue derived from those royalties is relatively stable. Even though market prices and subsequently value-based royalty payments might vary, revenue is not depended on profits. Whether or not a mining corporation is profitable or not is thus irrelevant and revenue for the state is assured as long as a mine is producing minerals. Even though the applicable the rates are crucial in order to determine a mining corporation’s tax burden, it is equally important to take a look at further taxes that might be applicable to the sector. Therefore the following section will discuss taxes that are relevant in this context.

[124] *Ibid*. Section 91.(1)

4.3 Other relevant taxes and payments

In addition to the corporate tax and applicable royalties, corporations operation in the mining sector might be subject to a number of further tax instruments. Under Section 13(1) of the Local Government Finances Act the power to impose taxes and therefore to raise local revenue is delegated to local government authorities[125]. While the local property tax rates differ, the TRA is planning to start collecting property taxes on behalf of the local authorities[126]. The effective property tax rates are not transparent but seem to be as low as 0.15% per year of the value of the property in question in some regions. Property taxation is one area of taxation which is still under government review[127]. A further tax applicable to all corporations is the VAT, which is levied at a rate of 18% for all local and imported products and services. The VAT is however not applicable to exports and certain exempted food supplies[128]. In addition to that corporations operating in the mining sector do not have to pay custom duties for imported equipment or machinery used for production[129]. Apart from that there is one further tax applicable to almost all sectors which also has to be paid by mining corporations which employ more than four workers. The Skills Development Levy (SDL) is effectively a payroll tax which is paid to the Vocational Education and Training Authority in order to provide training to future employees[130]. According to the Section 14(2) of the Vocational Education Training Act[131] the employer shall make a payment of 6% on total gross monthly emoluments. Lastly, there is one further payment which is specifically applicable to the mining sector. Apart from licenses for mining operations, such as prospecting or mining licenses, additional licenses are needed in order to export minerals. As stipulated by Section 76 of the Mining Act a dealer license is needed in order to buy, sell and export minerals, while Section 83 of the Act stipulates that only

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[125] Local Government Finances Act, No. 9 of 1982, as amended in 2000.

[126] All Africa, *Tanzania: Local Governments to Help Collect Property Tax*, available at: http://allafrica.com/stories/201607070724.html, last visited 13.08.2016.

[127] R. Kelly, Z. Musunu, Implementing Property Tax Reform in Tanzania, Lincoln Institute of Land Policy Working Paper, 2000, Page 4ff, available at: https://www.lincolninst.edu/subcenters/property-valuation-andtaxation-library/dl/kelly_musunu.pdf.

[128] Tanzania Revenue Authority, *VAT*, available at: http://www.tra.go.tz/index.php/value-added-tax-vat, last visited 13.08.2016.

[129] Foreign Investment Advisory Service, *Tanzania*, May 2006, available at: http://siteresources.worldbank.org/EXTEXPCOMNET/Resources/2463593-1213973103977/09_Tanzania.pdf.

[130] The United Republic of Tanzania, Ministry of Finance and Planning, *Other TRA Taxes*, available at: http://www.mof.go.tz/index.php?option=com_content&id=42:other-tra-taxes&Itemid=57, last visited 13.08.2016.

[131] Vocational Education Training Act, 1994, Cap. 82, revised edition 2006.

the owner of a broker license is authorized to buy and sell gold and gemstones from a dealer as specified in Section 76. The latter license does however not authorize the holder to export the acquired minerals[132]. Nevertheless those additional taxes might raise the taxpayers tax liability, the actual tax burden can only be assessed after determining possible allowances, deductions and available tax incentives. The next paragraph will therefore discuss instruments available in this context.

4.4 Tax incentives, allowances, deductions and credits

The Tanzanian mining sector is considered by the government to be one of the lead sectors for development[133]. For this reason the government has created a number of incentives to further investments in the sector[134]. Incentives *inter alia* include a number of tax allowances, deductions and tax exemptions. In the year of 2009/2010 tax exemptions granted amounted to about 2.3% of the total Tanzanian GDP[155]. It however has to be noted that the mining act of 1998 provided more tax exemptions than the act of 2010[135]. As already discussed the mining sector enjoys tax exemptions when it comes to the payment of custom duties and VAT on imported goods. In addition to that mining corporations enjoy a depreciation allowance for defined depreciable assets. Those depreciable assets include, according to the Third Schedule of the Income Tax Act, plant and machinery used for mining operations and prospecting, exploration and development expenditures. The latter as specified in Paragraph 3(6) of the Third Schedule is depreciable at a rate of 100%, while the former stands at a depreciation rate of 25%. The list of depreciable assets is long and therefore allows tax payers to depreciate almost all investments in material goods, ranging from computers and construction equipment (37.5%) to office furniture (12.5%). Section 36 of the Finance Act, 2016[136], further specifies that from now on corporations in the mining sector are granted a depreciation allowance at a rate of 100% for all expenditures relating to prospecting, exploration and development. The same act allows for mining corporations

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[132] *Ibid*. Section 83.(2)

[133] Embassy of the United Republic of Tanzania in Japan, *Business Information – Tax Incentives*, available at: http://www.tanzaniaembassy.or.jp/english/Business/investment_in_en.html, last visited 13.08.2016.

[134] United Republic of Tanzania, Ministry of Energy and Minerals, *Strategic Plan 2011/12-2015/16*, November, age 11, available at: https://mem.go.tz/wpcontent/uploads/2014/02/0097_18102013_MEM_Strategic_Plan_2011_12-2015_16.pdf.

[135] Society for International Development, *The Extractive Resource Industry in Tanzania: Status and Challenges of the Mining Sector*, 2009, Page 25ff.

[136] The Finance Act, 2016, No. 12.

to deduct all annual charges and royalties from computable income for CIT purposes[137]. While the mining sector is exempted from paying a capital gains tax, losses can be carried forward indefinitely[138]. Those incentives, allowances and deductions may have a great effect upon the actual tax liability of mining corporations operating in Tanzania. Whereas the applicable rates of taxes and royalties stay the same, it is the computable income used for income tax purposes that is altered after tax allowances and deductions have been taken into consideration. Accordingly typical mine operators are able to deduct from their computable income for corporate tax purposes all expenses relating to prospecting, exploration and development, as well as all fees and royalties as specified under the Mining Act, while being mostly exempted from the VAT, import duties and the capital gains tax. While all those deductions and allowances are in line with Tanzanian tax law, it is further important how the government and all relevant agencies deal with current challenges in tax law, such as tax avoidance and profit shifting. The next paragraph will therefore discuss efforts made in this context.

4.5. Legislation in place to address current challenges in tax law

Tax avoidance has historically been an issue of controversy in Tanzania. It has been argued that in some cases tax avoidance and aggressive tax planning were very much tolerated such as in *CIR v. Newman*, where the court argued that it was only natural for a person to minimize his or her tax burden as much as possible under the law[160]. Nevertheless it is the Tanzanian government and the TRA that have started to deal with the issue. The Income Tax Act therefore incorporates provisions to counteract tax avoidance arrangements. Section 35 of the Act specifies that the Commissioner of Income Tax may make adjustments to a person's tax liability in cases where he or she is of the opinion that the person has engaged in tax avoidance arrangements. The latter is defined by the same section as arrangements serving the sole purpose of reducing or avoiding a person's tax liability or obstructing the collection of taxes in any way. This section can be understood as a general anti-avoidance rule. It is however worth noting that according to the wording of Section 35 it is the Commissioner who bears the burden

[137] *Ibid*. Section 65E.(1)

[138] Embassy of the United Republic of Tanzania in Japan, *Business Information – Tax Incentives*, available at: http://www.tanzaniaembassy.or.jp/english/Business/investment_in_en.html, last visited 13.08.2016. [160] V.M. Nongwa, *Tax Avoidance in Tanzania Mainland: The Law and Practice of Anti-Avoidance Provisions under the Income Tax Act No.11 of 2004*, Dissertation at Mzumbe University, 2013, Page 4f.

of proof. The income Act further incorporates a provision on transfer-pricing. Transfer-pricing as specified in Section 33 stipulates that any arrangement between two parties must be in accordance with the arm's length principle and therefore not serve the purpose of mispricing transactions. Even though the Commissioner can intervene in the case of non-compliance the Act does not stipulate any mandatory documentation provided by the taxpayer. A further important measure to avoid aggressive tax planning is the provision on ring-fencing as stated in Section 65F of the Finance Act. Accordingly mining corporations are prohibited to offset losses of one mine to another. Each mining operation is therefore seen as independent. Additionally certain payments are subject to withholding taxes in order to prevent the recipient of the payment from avoiding taxation in Tanzania. Withholding taxes are applicable to specified payments at different rates, which might differ depending on whether the recipient is a resident or non-resident person. Withholding taxes are *inter alia* applicable to dividend payments at 5% for residents and non-residents, to technical service fees in mining at 5% for residents and 15% for non-residents and to interests at 10% for residents and non-residents[139]. In order to avoid double taxation, Tanzania has ten double taxation in place with Canada, Denmark, Finland, India, Italy, Norway, South Africa, Sweden, Switzerland and Zambia. It has however been argued that some of those agreements restrict Tanzania's taxing powers for instance with respect to the taxation of foreign income[140].

Apart from the discussed general and specific anti-avoidance provisions, the Tanzanian government is further engaged in counteracting corruption in the mining sector. One issue of controversy in the sector was caused by the so-called Mining Development Agreements (MDA). While Section 10 of the Mining Act, 2010 allows for the Commissioner to enter into such agreements under certain conditions with mining corporations investing at least one hundred million USD in the sector, the 1998 Mining Act allowed to enter into such agreement without having to fulfill any legal requirements[141]. This is why the TRA has been reviewing older MDAs with unfavorable

[139] Paragraph 4, First Schedule, Income Tax Act, Cap. 332, revised Edition 2008

[140] Tanzania Tax Justice Coalition, *Double Taxation Agreements – Gain or Loss to Tanzania?*, May, 2016, Page 22f, available at: http://www.policyforum-tz.org/sites/default/files/DTAStudy_0.pdf.

[141] Society for International Development, *The Extractive Resource Industry in Tanzania: Status and Challenges of the Mining Sector*, 2009, Page 25.

conditions, whereas new MDAs are reviewed every five years[142]. While it has been argued that some of the older agreements were made by means of corruption, last year a Tanzanian court convicted two former ministers for abusing their authority and signing bad MDAs[143]. Combating corruption is an important step, to ensure effective and just tax collection. In addition to that the TRA is aiming to constantly improve functional tax administration[144]. In order to increase transparency of mining sector taxation Tanzania has also joined the Extractive Industries Transparency Initiative[145].

We have seen that Tanzanian tax law applicable to the mining sector incorporates different tax tools in order to raise national tax revenue. As all sectors corporations operating in the mining sector are liable to pay a corporate tax on taxable income from business activities. Additionally extractive businesses have to obtain licenses for mining activities and subsequently pay royalties at a specified rate depending on the mineral extracted. Whereas local taxes, service fees and social taxes and levies increase the tax burden, there are number of deductions, allowances and incentives available which reduce the actual tax burden respectively. Accordingly typical mine operators are able to deduct from their computable income for corporate tax purposes all expenses relating to prospecting, exploration and development, as well as all applicable fees and royalties. The TRA has however increasingly engaged in efforts to increase compliance and efficiency in tax collection and raise tax revenues. This is reflected by the growth rate of the mining sectors contribution to the GDP, which increased from 1% in 1997 to 3.5% in 2013. If current efforts are retained, the government expects the mining sector's contribution to the GDP to expand to 10% by 2025. In order to determine whether the Tanzanian tax law regime applicable to the mining sector can be considered fair, the next chapter of this paper will discuss the tax justice movement and identify criteria for fair taxation.

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142 The Citizen, *New move on gas, minerals*, September 4, 2014, available at: http://www.thecitizen.co.tz/News/TRA-wants-review-of-gas--mining-deals/-/1840392/2440534/-/to69d2z//com.coremedia.mauritius.cae.contentbeans.MauArticleImpl$$, last visited 15.08.2016.
143 Reuters, *Tanzania jails former finance, mining ministers over gold deal*, July 6, 2015, available at: http://www.reuters.com/article/us-tanzania-corruption-idUSKCN0PG1VW20150706, last visited 15.08.2016.
144 See: Tanzania Revenue Authority, *Fourth Corporate Plan, 2013/14-2017/18*, available at: http://www.tra.go.tz/images/uploads/CORPORATEPLAN.pdf.
145 Extractive Industries Transparency Initiative, *Tanzania*, available at: https://eiti.org/implementing_country/23, last visited 15.08.2016.

5. Tax Justice

Tax justice is an issue that has gained increasing significance over the past decades. Numerous activists and organizations, such as the Tax Justice Network (TJN) and its regional partners, the Global Alliance for Tax Justice, Citizens for Tax Justice or Tax Research UK have become engaged with promoting this concept. Tax justice has also become an issue that ranges over several dimensions, concerning not only the national sphere but especially the international one. Concerns about tax injustice therefore have to be considered from a holistic angle rather than from an isolated perspective. In order to explain how the movement of tax justice evolved, it is necessary to take a look at the consequences of what is called tax injustice. As all efforts and endeavors to improve global and national taxation frameworks were and are born out of the notion that the integrity of the global financial markets is at stake. The problems of tax injustice will therefore be the starting point in this chapter.

5.1. Consequences of tax injustice

When it comes to tax injustice two phenomena have been called out instantly, both tightly connected to financial globalization. The perhaps more prominent phenomenon is that of tax havens. Tax havens or secrecy jurisdictions, as the TJN has called them, are states, which have been identified as fostering financial secrecy[146]. Even though there is no universally applicable definition of secrecy jurisdictions or tax havens it can be said that those states being identified as such, all have legislative frameworks in place that deliberately favor nonresident persons and entities. At the same time those legislative frameworks are drafted in a way they subvert the legislation of other jurisdictions[147]. The main focus of those regulations usually lies on the circumvention

[146] Tax Justice Network, *Tax us if you can*, 2nd Edition, 2012, Page 3, available at: http://www.taxjustice.net/cms/upload/pdf/TUIYC_2012_FINAL.pdf, last visited 16.11.2016.
[147] Tax Research UK, *What do you do to oppress people? Turn their state into a tax haven?*, 12.08.2012, available at: http://www.taxresearch.org.uk/Blog/2013/08/12/what-do-you-do-to-oppress-people-turn-their-stateinto-a-tax-haven/,last visited 16.11.2016.

of other jurisdictions' laws applicable to financial matters including tax laws, transparency laws, inheritance laws or other financial regulations[148]. Due to financial globalization or the greater mobility of capital and the existence of secrecy jurisdictions, rich individuals, as well as various business entities are able to shift their wealth and profits to places where they pay little or no taxes at all, while being protected by secrecy. As a result vast amounts of money are being held offshore, off limits for jurisdictions that would otherwise subject it to taxation. This development is often favored by so-called tax treaties or double taxation agreements, bilateral agreements between states, which often provide loopholes and opportunities for TNCs to engage in aggressive tax planning. Those deals, which usually aim at preventing double taxation are often flawed by providing opportunities for treaty shopping, meaning that TNCs can set up subsidiaries in tax havens to avoid taxation in other jurisdiction[149]. Estimates suggest that financial assets bypassing other regulatory regimes through tax havens range between $21 trillion and $32 trillion USD in total, while yearly worldwide tax losses are estimated at around $3 trillion USD[150]. An Oxfam Report published in 2000 already noted that tax havens provide fora not only for tax evasion but also for all kinds of illicit money laundering[151]. It is obvious that this negatively affects many governments' revenues but evidence suggests that profit shifting is one of the reasons why especially peripheral countries suffer from tax revenues losses due to their higher dependency on taxes[152]. However as mentioned before tax havens or secrecy jurisdiction, and as a result the practice of profit shifting, are only one aspect of tax injustice. Another phenomenon, which in the light of this paper is of great importance, concerns the problem of tax competition.

Tax competition, as an ongoing practice among various states, leads to tax injustice for a number of reasons. The phenomenon, often also referred to as "race to the bottom"

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[148] Taxjustice.net, *Frequently asked Questions, Tax Havens*, available at: http://www.taxjustice.net/faq/, last visited: 16.11.2016.
[149] M. Henn, *Tax Havens and the Taxation of Transnational Corporations*, Friedrich Ebert Stiftung, June 2013, Page 10.
[150] Tax Justice Network, *Tax us if you can*, 2nd Edition, 2012, Page 2f, available at: http://www.taxjustice.net/cms/upload/pdf/TUIYC_2012_FINAL.pdf, last visited 16.11.2016.
[151] Oxfam International, *Tax Havens: Releasing the hidden billions for poverty eradication*, Oxfam Briefing Papers, June 2000, Page 5.
[152] C. Fuest, N. Riedel, *Tax Evasion and Tax Avoidance in Developing Countries: The Role of International Profit Shifting*, Oxford University Centre for Business Taxation, WP 10/12, June 2010, Page 13ff.

describes a process in which governments are trying to compete against another in order to attract capital investments[153]. That means that governments are purposely reducing their tax bases, while TNCs have the ability to choose where to invest depending on whether or not the jurisdiction in question is in line with their idea of a favorable tax regime [154]. The consequence is an inflationary spiral, in which governments feel pressured to erode their tax base to foster investments. Instead of concentrating on domestic economic concerns, governments aim to attract foreign investors, leading to a greater international focus and spillover effects, as other states try to stand the pace[155]. It is however important to note that tax competition does not only refer to the lowering of taxes but does in fact include a number of presumably attracting measures, also prominent among developing countries. Those measures serving as incentives for TNCs and the extracting industries include tax holidays, fixed reduced statutory rates for certain regions or sectors, direct export tax breaks, so called free-trade zones[178], low royalty rates, as well as, granted access to water, lumber and land[156]. Still, it has been argued that tax competition is not only furthered by TNCs pressuring governments to give them preferential tax treatments but also by international organizations such as the World Bank or the International Monetary Fund (IMF), who often categorize trade liberalization and low taxes as development friendly[180]. A so-called tax consensus, promoted by both organizations, suggests reductions when it comes to corporate and to some extent personal income taxes, while investment tax incentives are endorsed as important policy tools. In addition to that it is encouraged to reduce trade taxes on exports and imports, while indirect taxes, such as a VAT are being favored[157]. In practice the proposed measures can have adverse effects, especially for countries of the global south, which highly depend on their tax revenues. The shift away from corporate income

[153] Tax Justice Network, *Tax us if you can*, 2nd Edition, 2012, Page 5, available at: http://www.taxjustice.net/cms/upload/pdf/TUIYC_2012_FINAL.pdf, last visited 16.11.2016.
[154] J. Christensen, P. Coleman, S. Kapoor, *Tax Avoidance, Tax Competition and Globalisation: making tax justice a focus for global activism*, Conference paper presented to the Global Tax Workshop, Finland, October 2004, Page 5.
[155] OECD, *Harmful Tax Competition – An Emerging Global Issue*, Paris, 1998, Page 13, paragraph 20.
[178] M. Keen, A. Simone, *Is Tax Competition Harming Developing Countries More Than Developed?*, Tax Notes International, Special Supplement, 28. June 2004, pp. 1317 – 1325, Page 1319.
[156] Tax Justice Network-Africa, *Tax us if you can – Why Africa should stand up for Tax Justice*, 2011, Page 13f, available at: http://www.taxjustice.net/cms/upload/pdf/tuiyc_africa_final.pdf. [180] Tax Justice Network, *Tax us if you can*, 2nd Edition, 2012, Page 5, available at: http://www.taxjustice.net/cms/upload/pdf/TUIYC_2012_FINAL.pdf.
[157] John Marshall, *One size fits all? IMF tax policy in sub-Saharan Africa, Christian Aid*, Occasional Paper No. 2, April 2009, Page 3ff.

and trade taxation (direct taxation) towards consumption taxes (indirect taxation) might in fact lead to regressive taxation[158].

Regressive taxation refers to the proportionally higher tax burden for low-income households[159]. Therefore, if corporate taxes are reduced whereas indirect taxes, such as consumption taxes are increased, domestic low-wage households end up paying a higher percentage of their income for taxes than high-wage households and companies. The New Oxford Companion to Law links regressive taxation with the ability-to-pay principle, stating that a citizen should only be obliged to contribute taxes proportionate to the benefits received by the government[160]. According to that, consumption taxes are inherently regressive since some parts of the population, namely the poorest households, pay proportionally more taxes than others. Further, the substitution of income taxes with value added taxes increases the administrative burden for the state. Especially low-income countries do often not possess the capacities to make up for the revenue losses from decreased income taxation by increasing sales and value added taxes[161]. Unfortunately though regressive taxation is not the only possible consequence of tax competition. Apart from regressive taxation and gradually decreasing tax revenues, tax competition also puts bigger businesses/TNCs in a favorable position. Since smaller businesses lack the bargaining power, they often receive less favorable tax deals. That does not only seem unfair but affects usually smaller businesses from less developed countries more than TNCs from the global north[162]. In addition to that it can be argued that financial globalization represents a threat to democratic nation states, which do no longer fully exercise their legislative and regulatory powers on the basis of their democratic mandate, subject to democratic scrutiny. Instead many governments' actions

[158] N. Gemmell, O. Morrissey, *Distribution and Poverty Impacts of Tax Structure Reform in Developing Countries: How little we know*, Development Policy Review, 2005, 23 (2), pp. 131 – 144, Page 137f.

[159] Tax Justice Network, *Tax us if you can*, 2nd Edition, 2012, Page 8, available at: http://www.taxjustice.net/cms/upload/pdf/TUIYC_2012_FINAL.pdf.

[160] See: *regressive taxation; tax, ability to pay*; In: P. Cane, J. Conaghan, *The New Oxford Companion to Law*, Oxford University Press, 2008.

[161] Aldo Caliari, *The Fiscal Impact of Trade Liberalisation*, in: M. Kohonen, F. Mestrum (Eds), *Tax Justice – Putting Global Inequalities on the Agenda*, Pluto Press, London, 2009, Page 134f.

[162] J. Christensen, P. Coleman, S. Kapoor, *Tax Avoidance, Tax Competition and Globalisation: making tax justice a focus for global activism*, Conference paper presented to the Global Tax Workshop, Finland, October 2004, Page 6.

are heavily influenced by transnational factors, which are again beyond national democratic control[163].

Apart from the phenomena of secrecy jurisdictions and profit shifting, tax competition is of great relevance for this paper due to the higher sphere of influence of national governments. Later sections of this chapter will therefore explicitly deal with national governments as actors to further tax justice within and to some extent beyond their national territory. First, it is however necessary to look at how the movement for tax justice has evolved.

5.2. The Tax Justice Movement

As discussed before, tax injustice has and can lead to a number of undesirable consequences for the majority of nation states but most significantly for low-income countries and their populations. Taxation is at the core of a state's sovereignty but due to the globalized political economy and powerful TNCs, states are no longer fully able to sovereignly regulate and implement their taxation policies[164]. The concept of tax justice aims to question the current state of the global political economy by linking it to democratic values, such as transparency, accountability and equity[165]. Strongly connected to the latter and central for the concept of tax justice is the idea of social justice[190]. Here fiscal redistribution plays a crucial role. Redistribution as a measure to achieve social justice refers to a just distribution of national income. Evidence shows that tax injustice and particularly tax competition foster not only inequality between different states but also and especially within the states concerned[166]. Born out of the observation, that tax injustice fosters inequality and poverty, rather than distributing wealth, it has been emphasized that only through raising the attention of the civil society

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[163] Peter Wahl, *The Global Financial System and Enduring Poverty*, in: M. Kohonen, F. Mestrum (Eds), *Tax Justice – Putting Global Inequalities on the Agenda*, Pluto Press, London, 2009, Page 81.
[164] J. Leaman, A. Waris, *Introduction - Why Tax Justice Matters in Global Economic Development*, in: J. Leaman, A. Waris (Eds), *Tax Justice and the Political Economy of Global Capitalism, 1945 to the Present*, Berghahn Books, 2013, Page 1.
[165] *Ibid.*
Page 8.
[190] *Ibid.*
Page 3.
[166] J. Leaman, *The Fiscal Lessons of the Global Crisis for the European Union – The Destructive Consequences of Tax Competition*, in: J. Leaman, A. Waris (Eds), *Tax Justice and the Political Economy of Global Capitalism, 1945 to the Present*, Berghahn Books, 2013, Page 95.

to the injustices of current taxation, change can be achieved. Only backed by a public understanding of tax justice, progressive taxation can be legitimized[167].

Issues related to tax justice already started to attract public attention in the late 1970s. It was a time, where measures for trade liberalization and deregulation of the financial markets were implemented, allowing room for offshore secrecy jurisdictions to develop. A decade later policy makers noticed the risk inherent in secrecy jurisdictions and established an anti-money laundering program (Financial Action Task Force), barely affecting the jurisdictions concerned but establishing an unprecedented framework. In the late 1990s the phenomena of tax injustice and its consequences were already widely known, prompting the OECD to publish a report on harmful tax competition[168]. More reports by intergovernmental organizations and NGOs were to follow but *de facto* not much progress was made to improve the discussed problems of the global political economy. As a result civil society has increasingly engaged in addressing these issues. After Oxfam published a report on tax havens and poverty eradication in 2000, the TJN was formally created in 2003 advocating for sustainable, transparent and democratic international tax policies[169]. Ever since then a wide area network of numerous civil society initiatives has evolved, addressing the nuisances of the current global financial markets, in a way intergovernmental organizations have not been able to until today. Nevertheless it seems that even decades after the harmful consequences of tax injustice have become publicly known, not much has changed. In fact, quite the opposite appears to be true. As revealed by a newly published Oxfam report, global wealth distribution has never been more unequal. The presented statistics suggest that in 2016 the richest 1% of the global population has accumulated more than 50% of the total global wealth[170]. This is especially shocking since those statistics also show that over the past decades global wealth has significantly grown, while the richest 10% have

[167] J. Leaman, A. Waris, *Introduction - Why Tax Justice Matters in Global Economic Development*, in: J. Leaman, A. Waris (Eds), *Tax Justice and the Political Economy of Global Capitalism, 1945 to the Present*, Berghahn Books, 2013, Page 8.
[168] M. Kohonen, F. Mestrum, Introduction, in: M. Kohonen, F. Mestrum (Eds), *Tax Justice – Putting Global Inequalities on the Agenda*, Pluto Press, London, 2009, Page 15f.
[169] Tax Justice Network, *Tax us if you can*, 2nd Edition, 2012, Page 32, available at: http://www.taxjustice.net/cms/upload/pdf/TUIYC_2012_FINAL.pdf, last visited 16.11.2016.
[170] Oxfam International, *An Economy for the 1% - How privilege and power in the economy drive extreme inequality and how it can be stopped*, Oxfam Issue Briefing, 18 January 2016, Page 1, available at: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp210-economy-one-percent-tax-havens180116-en_0.pdf, last visited 19.01.2016 [196] *Ibid*. Page 9.

unproportionally profited from that[196]. As a consequence we can observe that the divide between rich and poor is constantly growing. The reasons for this development are again related to the consequences of tax injustice, including tax base erosion due to harmful tax competition and profit shifting to secrecy jurisdictions[171]. Only because of that, utterly wealthy individuals and TNCs are able to evade or avoid taxes, which could otherwise be used to improve social justice.

5.3. Fair Taxation of corporations operating in the mining sector

The discussion on tax justice not only addresses the adverse consequences of tax injustice but also proposes a number of improvements. For the purpose of this paper a wide range of tax justice literature has been considered in order to identify a set of criteria to determine whether a tax regime is just. In this context, this paper will focus on the state, as entity responsible, rather than on natural or legal persons. In addition to that, this chapter will also include some considerations with regard to some of the challenges encountered by the mining sector itself. Only this way it will be possible to holistically determine how a fair system of taxing the mining sector should look like.

The TJN has identified a comprehensive number of factors, which should be considered in order to evaluate whether a tax regime can be categorized as being fair. As a starting point the first objective of collecting taxes is to raise a countries revenue, in a way that the government is able to fulfill its governmental functions, while being able to increase social justice. According to the TJN, the state and its respective government is further responsible to establish an effective tax system, characterized by a number of aspects. The basis for effective taxation is a revenue authority which is able to collect and administer taxes. In this context it is important that the authority in question is well organized, free of corruption and administers and collects the taxes in accordance with the applicable law[172]. It is obvious that in order to do this in an organized manner the relevant revenue authority must have sufficient training and all needed resources available[173]. When it comes to the taxation of the mining sector it is important that there is a broad variety of taxes which cover all kinds of income generated from mining related

[171] *Ibid*. Page 19.
[172] Tax Justice Network, *Tax us if you can*, 2nd Edition, 2012, Page 7ff, available at: http://www.taxjustice.net/cms/upload/pdf/TUIYC_2012_FINAL.pdf.
[173] Make Taxes Fair, Fair Tax Monitor, *Methodology and Results*, available at: http://maketaxfair.net/ftm/.

activities[174]. While it is crucial that mineral tax and royalty rates are being applied at sufficient level to ensure a stable tax revenue, it is especially important that those taxes are not solely profit based. Profit based taxes do not generate tax revenue unless the taxed corporation is making profits. Non-profit royalties on the other hand guarantee revenue income even if the corporation in question does not generate profits, as they are mostly based on output. Therefore tax justice advocates argue for non-profit based royalties, even though profit-based royalties allocate the risk of financial losses in mining activities between the state and mining corporations[175]. When it comes to royalty and mineral tax rates it is useful to take a look at the average rates applied in the most relevant mineral producing countries. PricewaterhouseCoopers has compiled a database which comprehensively lists royalty and mineral tax rates per mineral applied by the most relevant mineral producing countries. Calculating the average rates applicable, while taking the average rate for countries with flexible rates, royalty and mineral average rates are 5.38% for coal, 5.4 for copper, 4.7% for gold and 5.7% for iron ore. Figure 5 shows the mineral and royalty rates per country and mineral.

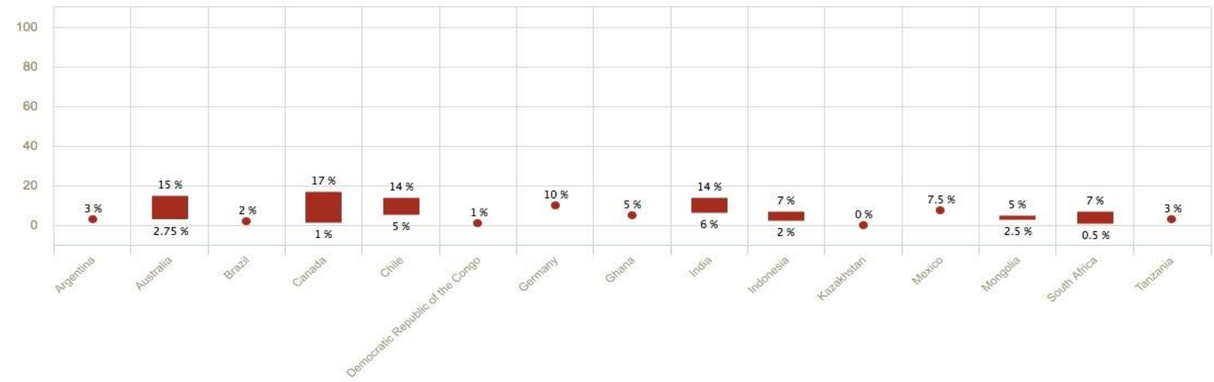
Figure 5: Royalty and Mineral tax rates per country and mineral produced[176]

[174] L. Hogan, B. Goldsworthy, *International mineral taxation – experience and issues*, in: P. Daniel, M. Keen, C. McPherson (Eds), *The Taxation of Petroleum and Minerals: Principles, Problems and Practice*, Routledge, 2010, Page 130f.

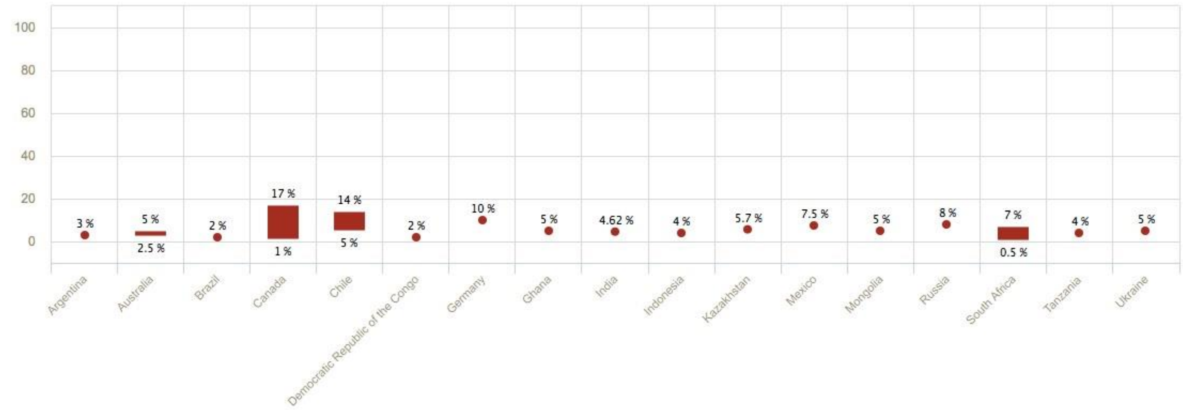
[175] K. Lambrechts *et al*., *Breaking the curse: How transparent taxation and fair taxes can turn Africa's mineral wealth into development*, March 2009, Page 27f.

[176] PWC, *Compare Mining taxes*, available at: http://www.pwc.com/gx/en/industries/energy-utilitiesmining/mining/tax/data-tool.html, last visited 19.08.2016.

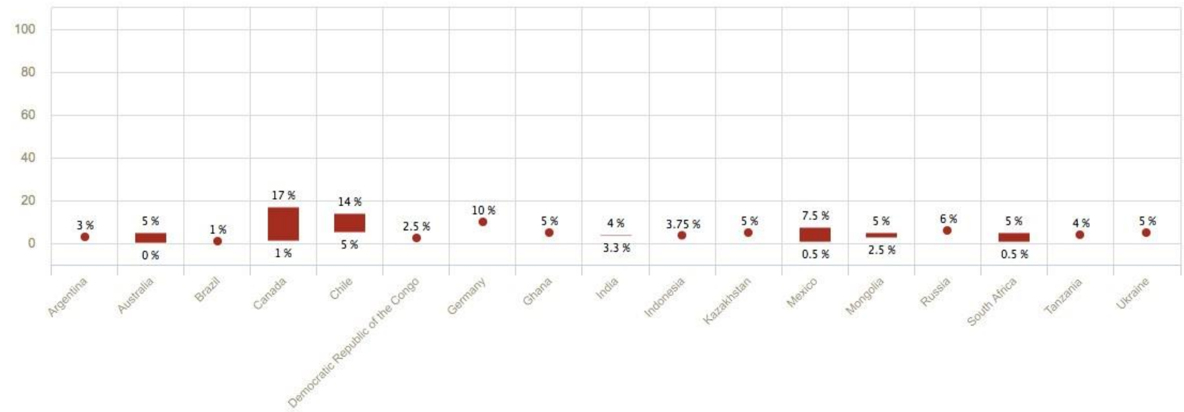
COAL

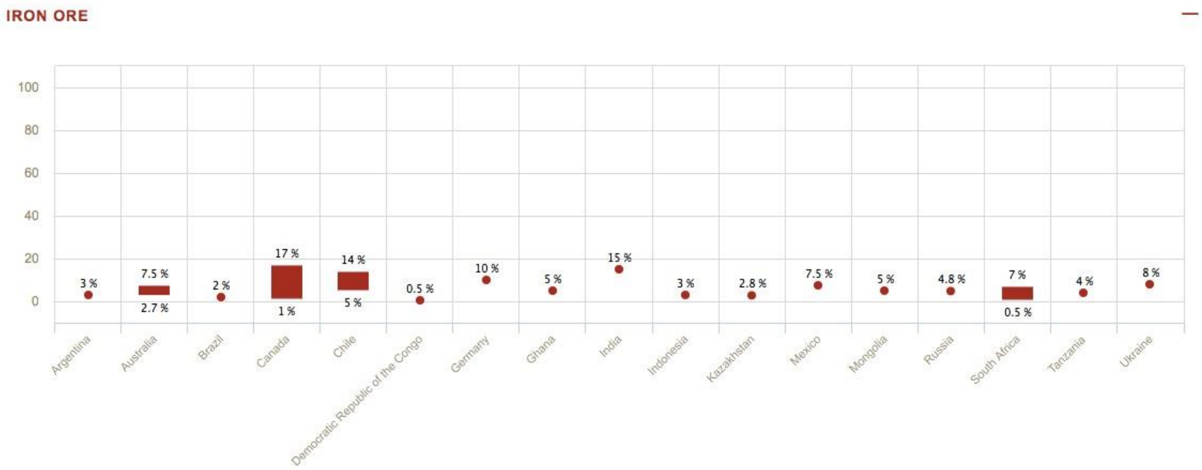


COPPER



GOLD





In addition to sufficient tax and royalty rates there is growing demand in the tax justice discourse to limit tax holidays, exemptions and deductions as the offered incentives aiming at attracting FDI in fact mostly result in huge tax losses. Therefore instead of increasing revenue, those incentives have the opposite effect. This is especially harmful to resource abundant countries which depend on tax revenue from the mining sector[177]. Arguably harmful are also secret mining tax deals between the government and mining corporations. They often include very favorable tax treatments for TNCs in exchange for investment. Those deals are however neither publicly accessible nor approved by the parliament, while lowering tax revenues from the mining sector substantially[178]. In this context transparency is a key issue. For years the Extractive Industries Transparency Initiative (EITI) has advocated the need for more transparency, and hence accountability to the public, when it comes to mining taxation, arguing that it is crucial in order to reach a high standard of compliance[179]. Accordingly the EITI, in cooperation with a number of countries, has committed to make all relevant information on the relevant legal and institutional frameworks, exploration and production activities, revenue collection and allocation publicly available[180]. Transparency by all democratic means, therefore allows the public to understand who is active in the sector, how much is paid in taxes and most importantly what those taxes are being spent for. After all it is important to understand that the tax justice discussion ultimately aims at increasing social justice by promoting

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[177] Tax Justice Network-Africa, *Tax us if you can – Why Africa should stand up for Tax Justice*, 2011, Page 13f, available at: http://www.taxjustice.net/cms/upload/pdf/tuiyc_africa_final.pdf.

[178] *Ibid.* Page 38.

[179] Extractive Industries Transparency Initiative, *The EITI Principles*, available at: https://eiti.org/standard/principles, last visited 15.08.2016.

[180] Extractive Industries Transparency Initiative, *The EITI Requirements*, available at: https://eiti.org/standard/principles, last visited 15.08.2016.

fair taxation. It is the tax revenue which gives governments the possibility to further social justice and tackle economic inequality[181]. This is why it is not only important for the government to tax the mining sector at an appropriate rate but the government should also spend at least a part of the revenue derived therefrom for social purposes, as health care or education. In order to ensure a stable tax revenue it is finally important that the relevant taxation framework provides provisions needed to combat tax avoidance. The idea of fair taxations incorporates all of the above. In an ideal case everyone, whether being a private individual or a legal entity, pays taxes in proportion to their means in order to enable the government to provide and sustain social and material infrastructures needed in a society.

6. Research Model

The following Chapter will discuss how tax justice with regard to mining sector taxation has been assessed and further how two distinct tax law regimes with regard to their approach towards mining sector taxation have been compared to another. Accordingly the next paragraph will deal with the methodology used, followed by a determination of all relevant criteria for assessment.

6.1. Methodology

For the purpose of this thesis two distinct legal tax regimes have been compared with regard to their fairness of mining sector taxation as described in the Tax Justice discourse. The method used was inspired by the methodology of the Fair Tax Monitor, which compares the tax regimes of Bangladesh, Pakistan, Senegal and Uganda with respect to their tax fairness in form of a weighted scorecard[182]. Similarly the same method, using different criteria, was used for the purpose of comparing the Canadian and the Tanzanian tax regime governing the mining sector for this thesis. This was done by first identifying the characteristics of fair taxation and then adjusting those characteristics to as to their relevance for the mining sector. The identified characteristics or requirements for fair taxation have then been grouped into six categories. Each

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[181] Tax Justice Network, *Aid, Tax & State Building*, available at: http://www.taxjustice.net/topics/inequalitydemocracy/aid-tax-state-building/, last visited 15.08.2016.
[182] Make Taxes Fair, Fair Tax Monitor, *Methodology and Results*, available at: http://maketaxfair.net/ftm/.

category consists of four to eight questions. While the former chapters dealt with the specific tax instruments used in the context of mining taxation and their assumed effects upon corporate tax burden and government revenues, the questions used for assessment aim at comprehensively presenting the strengths and weaknesses of the tax regimes in question. Each question was then answered by using available data from all relevant legal statutes, national databases and international data sources, such as the Tax Justice Network, the Tax Justice Network Africa, the OECD, the Fair Tax Monitor and the Extractive Industries Transparency Initiative. The questions were designed as polar questions, meaning they could only be answered with either yes or no. Whereas every question answered with yes was scored with one point, every question which was answered with a no was scored with zero points. As some tax instruments are applied at a provincial level in Canada, only the four most economically relevant provinces were taken into account. Therefore questions with regard to tax instruments which are applied at a provincial level in Canada were scored with 0.25% points per positive answer per province. Scoring questions with regard to tax instruments applied at a federal and provincial level were scored with 0.20% points per province and 0.20% for the federal instrument. After evaluation, each tax regime received a total score per category and an overall score. To reflect the assumption that all categories are equally important, each category received the same weight for evaluation. The total score per category was calculated by adding all scores within the category, while the overall or total score was calculated by taking the sum of all scores of all categories. The maximum score possible was then divided by the sum of all scoring points. In order to receive a number on a scoring scale from 0 to 10, where 0 stands for unfair and 10 for perfectly fair, the number was further multiplied by 10. Accordingly this method offered a way to represent the strengths and weaknesses of the tax regimes in question, while being able to quantify the findings.

6.2. Framework for Evaluation

In order establish a scorecard reflecting on all relevant criteria for evaluating Tax Justice with regard to mining sector taxation the following six categories have been identified: (I.) Sufficient revenue from the mining sector, (II.) effective tax administration, (III.) effective taxation of the mining sector, (IV.) transparency and accountability, (V.) measures in place to counteract tax avoidance and (VI.) tax progressiveness. Each category further consists of a number of scoring questions in order to quantify the strength and weaknesses of both tax regimes in questions. As mentioned before the scoring questions are based on the discussed literature regarding tax justice and mining sector taxation. The following will present all scoring questions within each category.

(I.) Sufficient Revenue from Mining Sector Taxation

1. Is the mining sector's contribution to the GDP growing?
2. Does the government aim at increasing the mining sector's contribution to the GDP?
3. Are incentives offered to the sector not substantially affecting the mining sector's contribution to the GDP?
4. Are there not more tax exemptions for the mining sector than 5 years ago?
5. Is the government aiming at reducing tax exemptions offered to the sector?

(II.) Effective Tax Administration

1. Does the country have a centralized revenue authority?
2. Does the authority cooperate with the local governments?
3. Are there safeguards to ensure the revenue authority does not abuse its powers?
4. Are there mechanisms in place to counteract corruption?
5. Is there a training for tax officers?

(III.) Effective Taxation of the Mining Sector

1. Is there a variety of different taxes covering all kinds of income in the sector?
2. Is there a licensing system for the awarding of mineral rights in place?
3. Is there no lower CIT rate for the mining sector?
4. Are there non-profit based royalties?
5. Are royalty/tax rates not lower than in other mineral producing countries?
6. Is there no legal possibility for the government to agree on classified mining deals?
7. Are existing mining deals regularly reviewed/renegotiated?
8. Are there no extensive tax holidays/exemptions available to the sector?

(IV.) Transparency and Accountability

1. Are tax revenues from the mining sector published?

2. Is the country of the Extractive Industries Transparency Initiative?
3. Is there a publicly available register for license holders?
4. Are information about produced minerals publicly available?
5. Are information about exported minerals publicly available?
6. Are detailed information about mining tax revenues publicly available?
7. Are tax incentives and exemptions transparent?

(V.) Measures in place to counteract Tax Avoidance

1. Is there a general anti-avoidance rule?
2. Are there laws to combat transfer-pricing techniques?
3. Does the taxpayer have to provide sufficient documentation with regard to transfer pricing?
4. Is there a provision on ring-fencing?
5. Are there withholding taxes applicable to payments to non-residents?
6. Have there been convictions for corporate tax avoidance/evasion?
7. Are there no tax treaties with tax havens?
8. Are there automatic information exchange agreements with other countries?

(VI.) Tax Progressiveness

1. Is main source of tax revenue a direct tax?
2. Are there no VAT exemptions for the mining sector?
3. Is there a reduced VAT rate for basic foodstuffs?
4. Is there a reduced VAT rate for basic female products?
5. Is the mining sector obliged to make social payments?
6. Is some proportion of tax revenue from the mining sector spent on social policies?
7. Are there progressive taxes applicable to the mining sector?
8. Is the CIT not lower than 5 years ago?
9. Is the CIT rate above or at the global average?
10. Is property and income from property taxed?

The above scoring questions have been answered based on the data from all relevant legal statutes, national databases and international data sources, such as the Tax Justice Network, the Tax Justice Network Africa, the OECD, the Fair Tax Monitor and the Extractive Industries Transparency Initiative. While the Canadian and Tanzanian tax regimes governing the taxation of the mining sector have already been discussed in the previous chapters, the next chapter will present the results gained from the scorecard evaluation. Subsequently the last chapter will discuss and compare the results. The last section will than deal with the limitations of this thesis, as well as further research needed in the area.

7. Conclusion

7.1 Results

Based on the evaluation of the scorecard, with 8.06 points Tanzania scores a slightly higher result than Canada with 7.94 points. This indicates that the Tanzanian tax regime governing the taxation of the mining sector is slightly fairer than the Canadian one. Taking a look at the six categories relevant for evaluation, it becomes evident that each tax law regime has different strengths and weaknesses. Whereas both countries reached the maximum score with regard to effective tax administration, the scores for the other categories vary. Tanzania on the one hand reached higher scores with regard to sufficient revenue from mining sector taxation, effective taxation of the mining sector and transparency and accountability, while Canada received higher scores with regard to measures in place to counteract tax avoidance and tax progressiveness.

7.2 Discussion

It becomes evident that none of the two tax law regimes applicable to mining sector taxation is perfect. Both, the Canadian and the Tanzanian approaches towards mining sector taxation have their strengths and weaknesses. In the course of this discussion it is important to note that even though this study was able to point out the strengths and weaknesses of both tax regimes, it does not reflect on their severity.

It has been determined that corporate taxation is an important tool for governments to raise their revenue. This is especially true when it comes to the taxation of extracting industries who profit from a state' natural resources. Only with a sufficient contribution of the mining sector to the respective national GDP, it is possible for governments to invest in welfare spending in order to outweigh the sale of a collectively owned good. While the Canadian mining sector contributed $54 billion CAD to the GDP, the sector's contribution grew to about $57 billion CAD to Canada's GDP of 2014. Similarly the Tanzanian mining sector contribution to the GDP is constantly growing. Interestingly both countries' mining sectors' contributions translate into about 3.5% of the respective national GDPs. While both countries argue that they want to increase the sector's contribution to the national economy, Canada's strategic focus seems to lie on competitiveness. Both countries consequently score points for having a growing mining sector contribution to the respective national GDP, as well for the governments' intention to increase tax income from that sector. As stated by the Ministry of Natural Resources the Canadian tax regimes saw, contrary to most other jurisdictions, a trend of growing tax incentives over the past years, with the exception of Quebec. Tanzania on the other hand has seen a reduction in tax incentives with the Introduction of the Mining Act 2010. Accordingly Tanzania scored one point for limiting tax exemptions available to the mining sector over the past five years, whereas Canada only scores 0.25 points due to the reform The government of British Columbia has committed to extend its tax incentive programs, whereas the government of Ontario and the governments of Quebec and Saskatchewan have by no means expressed to reduce tax incentives available to the mining sector. Similarly the Canadian government has not expressed the intention to reduce tax incentives available to the sector. The Tanzanian government only states in its mineral strategy the need to provide incentives to the sector to further investments. Therefore both countries have been evaluated as not having the intention to reduce available tax exemptions for the mining sector.

As the basis for effective taxation, both countries have a centralized revenue authority, which also cooperate with the local governments. While the CRA administers the tax collection for most provinces, the TRA has only started to cooperate with the local governments as in the case of property taxes. The CRA has a number of measures in place to ensure it does not abuse its powers, including the possibility to open investigations for internal breaches. To ensure that the TRA and its employees do not abuse their powers, there is a procedure to complain against misconduct. Both agencies therefore have mechanisms to fight corruption. Additionally both countries have convicted officers who have been engaged in corruption. Similarly both agencies pledge on their websites to train their officer also according to their codes of conduct and taxpayers charters. With regard to effective tax administration Canada and Tanzania received the full score, for having the required legal measures in place. The score however again does not reflect upon the extent of effectiveness nor the application of those measures.

Touching the effectiveness of taxation tools, specifically for the mining sector, it can be said that both countries apply a variety of taxes, including among others mineral taxes and royalties, corporate income taxes, property taxes, as well as license fees for mineral rights. The province of Saskatchewan stands out for applying the greatest variety of tax instruments to the mining sector. None of the jurisdictions in question offers a lower CIT rate for the mining sector as a whole. Accordingly both countries score fully with regard to taxation tools in place and the nonexistence of a lower CIT rate for the sector. Earlier in this thesis it has been determined that profit based royalties have the disadvantage that they do not generate tax revenue unless the taxed corporation is making profits. This means that the state does not generate income in earlier stages of production, while once a company does make profits it can apply deductions, allowance and loss carry forwards to reduce the taxable amount. Accordingly it is important that there are sufficiently high, non-profit based royalties applied to the sector. While Tanzania and Saskatchewan have a mineral based ad-valorem royalty schemes in place, British Columbia, Ontario and Quebec apply profit based mineral taxes. All royalty and mineral tax rates applied in the selected Canadian provinces are above average, while the Tanzanian royalty rates are all very low and below average. Accordingly Tanzania scores one point with regard to non-profit based royalties but none for the rate at which they are applied. Canada on the other hand only scores 0.25 points for Saskatchewan's royalty scheme, while scoring fully with regard to the rate at which royalties are applied in all territories. With regard to classified mining deals, British Columbia does not have the legal basis to enter such agreements, unless they are with the First Nations of Canada, the same seems to be the case in Ontario, Quebec and Saskatchewan. With the introduction of the Mineral Act 2000, Tanzania has adopted a new policy forbidding secret mining agreements. Such agreements or MDAs can now be entered into by the Commissioner only under certain conditions with mining corporations investing at least one hundred million USD in the sector. Further MDAs are reviewed every five years. As with regard to classified mining deals, both countries fulfill the relevant criteria and score a point. With the exception of Quebec, which does not allow tax exemptions for new mines, two of the other three provinces apply extensive tax holidays and exemptions for new mines in order to attract investments. While Ontario provides a mining tax exemption for new mines on the first $10 million CAD of profit during a period of three years (10 years for mines in remote areas), Saskatchewan offers a 10 year royalty holiday for newly established gold and base metal mines. Tanzania on the hand only offers deductions and allowances within a reasonable range. It follows that according to the exemptions in place Canada can only score 0.5 points due to the extensive tax exemptions offered in Ontario and Saskatchewan, while Tanzania received the full score.

Both, transparency and accountability have been identified as important contributors to tax justice. This is due to the fact that without those democratic attributes it is almost impossible to ensure a high standard of compliance. Canada and Tanzania both publish their revenue from mining sector taxation, while only Tanzania is a member of the Extractive Industries Transparency Initiative. In addition to that, all relevant Canadian provinces and the Republic of Tanzania have publicly available registers concerning license holders. Both countries regularly publish the amount of produced minerals. Additionally they make information about exported minerals publicly available. This proves to be true also for mining tax revenues, which have been made publicly available in both countries. While Tanzania and Canada, on a federal and provincial level, transparently inform on available tax incentives and exemptions for the mining sector, the level of transparency differs. Still measures directed towards increasing transparency and accountability are prominently existing in both jurisdiction. Tanzania therefore received the full score, whereas Canada received one point less as it is not a member of the EIT.

The scores are not as high when it comes to measures in place to counteract tax avoidance and aggressive tax planning. While both countries have general anti-avoidance rules and transfer-pricing provisions in place. Those rules are crucial tools in order to hold corporations liable that engage in transactions that serve the purpose of either directly or indirectly resulting in a tax benefit for them. Nevertheless only the Canadian tax regime obliges the tax payer to provide records of transactions concerned, whereas in Tanzania the Commissioner bears the burden of proof. This means that while Canada scores three points, Tanzania only receives two. However when it comes to ring-fencing Tanzania has legislation in place to tax each mine, even of the same operator, separately. This is not the case in Canada, where the rule applies when computing taxable income for federal CIT but not when computing provincial CITs. British Columbia and Ontario do however apply ring-fencing rules for mineral tax purposes. This translates into 0.5 points for Canada and one point for Tanzania. While withholding taxes in Canada are applicable to payments directed towards nonresidents, Tanzanian tax law provides for withholding taxes applicable to residents and nonresidents depending on the character of the concerned transaction. Withholding taxes are important in order to prevent the recipient of the payment from avoiding taxation. In the effort of limiting corporate tax avoidance, both countries have prosecuted related offenses. Accordingly both countries score two points in this regard. No points are scored with regard to tax treaties as both countries are members of tax treaties with so-called tax havens, such as the Netherlands or Switzerland.

Tax progressiveness is an important element of tax justice. As opposed to regressive taxation which refers to the proportionally higher tax burden for low-income households, progressive taxation stands for an equally distributed tax burden which is linked to the individual's ability to pay taxes. This does not apply to indirect taxes like the VAT and other consumption taxes as some parts of the population, namely the poorest households, pay proportionally more taxes than others. While the main source of the Canadian tax revenue are direct taxes, the opposite is true for the Tanzanian tax revenue which is mainly derived from VAT. Still the Tanzanian tax law regime allows for VAT exemptions for the mining sector industry, while the Canadian tax regime does not. This results in two points for Canada and zero for Tanzania. When it comes to reduced VAT rates for basic foodstuffs, both countries provide either reduced or zero-rated VAT rates for certain specified food products. A reduced VAT rate for basic female products is however only available in Canada. Therefore Canada scores two points, while Tanzania only received one. Both countries oblige corporations operating in the mining sector to make social payments. CIT rates in Tanzania remained at the same level for the past 5 years, while Canada has continued to lower its CIT rate over the same period of time. Nevertheless both countries' CIT rates are above the global average. When looking at the taxation of property and income from property though, only Canada has an effective framework for taxation in place. This translates into three further points for each country.

Based on the overall evaluation of the scorecard, with 8.06 points Tanzania scores a slightly higher result than Canada with 7.94 points. According to the requirements and criteria for tax justice identified for the purpose of this thesis, Tanzania therefore has a slightly fairer legal taxation framework in place when it comes to mining sector taxation.

7.3. Final Remarks

While it has been determined that Tanzania applies a slightly fairer tax framework to its respective mining sector, it needs to be noted that there are some limitations with regard to the method used. Inspired by the comparative legal approach, different interdisciplinary aspects of both countries legal, economic and social systems have been taken into account. Those aspects were however not chosen randomly but were determined based on the reviewed literature on tax justice. While the focus of this thesis lies on the taxation of mining corporations, further elements such as the considerations on progressive taxation have been included to reflect upon corporate taxation as opposed to other taxation tools. It follows that the criteria chosen for evaluation are to some extent based on the author's assessment on what is most relevant for the purpose of assessing mining taxation fairness in a certain jurisdiction. With an extended scope of assessment, newly published literature and studies and further research, the weighted scorecard model used could be extended indefinitely. While this method has proven useful in order to quantify the discussed aspects and considerations, it is limited as with regard to effectiveness and application of the measures assessed. Nevertheless it clearly demonstrates the areas in which both countries would need to adjust their tax policies in order to make taxation fairer. Whenever Canada or Tanzania have scored zero points in a certain category, there is backlog. As all criteria for evaluation have been given the same weight, all measures have been assumed of having equal importance. Whereas it can be debated whether this is actually true, it was assumed that accumulated all identified criteria lead an ideal case of tax fairness, whereas a limited set of criteria does not.

Finally it needs to be noted that it was beyond the scope if this thesis to evaluate the entire tax systems of both countries. Therefore this thesis focusses on mining sector taxation in specific, rather than only giving an overview over taxation in general. This does however mean that a substantially more extensive study on the entire taxation frameworks of both countries could lead to a different result, given the use of further scoring questions. While comparative studies in this context are rarely available, this could be a matter of further research.

Annex

Weighted Scorecard Part 1

	Criteria	Canada			Tanzania		
		Weight	Answer	Score	Weight	Answer	Score
	Sufficient Revenue from Mining Sector Taxation	100,00			100,00		
1	Is the mining sector's contribution to the GDP growing?	25,00	1	25,00	25,00	1	25,00
2	Does the government aim at increasing the mining sector's contribution to the GDP?	25,00	1	25,00	25,00	1	25,00
3	Are there not more tax exemptions for the mining sector than 5 years ago?	25,00	0,2	5,00	25,00	1	25,00
4	Is the government aiming at reducing tax exemptions offered to the sector?	25,00	0	0,00	25,00	0	0,00
	Sub Score		2,2	55,00		3	75,00
	Effective Tax Administration	100,00			100,00		
1	Does the country have a centralized revenue authority?	20,00	1	20,00	20,00	1	20,00
2	Does the authority cooperate with the local governments?	20,00	1	20,00	20,00	1	20,00
3	Are there safeguards to ensure the revenue authority does not abuse its powers?	20,00	1	20,00	20,00	1	20,00
4	Are there mechanisms in place to counteract corruption?	20,00	1	20,00	20,00	1	20,00
5	Is there a training for tax officers?	20,00	1	20,00	20,00	1	20,00
	Sub Score		5	100,00		5	100,00
	Effective Taxation of the Mining Sector	100,00			100,00		
1	Is there a variety of different taxes covering all kinds of income in the sector?	14,29	1	14,29	12,50	1	12,50
2	Is there a licensing system for the awarding of mineral rights in place?	14,29	1	14,29	12,50	1	12,50
3	Is there no lower CIT rate for the mining sector?	14,29	1	14,29	12,50	1	12,50
4	Are there non-profit based royalties?	14,29	0,25	3,57	12,50	1	12,50
5	Are royalty/tax rates not lower than in other mineral producing countries?	14,29	1	14,29	12,50	0	0,00
6	Is there no legal possibility for the government to agree on classified mining deals?	14,29	1	14,29	12,50	1	12,50
7	Are existing mining deals regularly reviewed/renegotiated?	0,00	n/a	0,00	12,50	1	12,50
8	Are there no extensive tax holidays/exemptions available to the sector?	14,29	0,5	7,14	12,50	1	12,50
	Sub Score		5,75	82,14		7	87,50

Weighted Scorecard Part 2

Criteria		Canada			Tanzania		
		Weight	Answer	Score	Weight	Answer	Score
	Tranparency and Accountablity	100,00			100,00		
1	Are tax revenues from the mining sector published?	14,29	1	14,29	14,29	1	14,29
2	Is the country of the Extractive Industries Transparency Initiative?	14,29	0	0,00	14,29	1	14,29
3	Is there a publicly available register for license holders?	14,29	1	14,29	14,29	1	14,29
4	Are information about produced minerals publicly available?	14,29	1	14,29	14,29	1	14,29
5	Are information about exported minerals publicly available?	14,29	1	14,29	14,29	1	14,29
6	Are detailed information about mining tax revenues publicly available?	14,29	1	14,29	14,29	1	14,29
7	Are tax incentives and exemptions transparent?	14,29	1	14,29	14,29	1	14,29
	Sub Score		6	85,71		7	100,00
	Measures in place to counteract tax avoidance	100,00			100,00		
1	Is there a general anti-avoidance rule?	14,29	1	14,29	14,29	1	14,29
2	Are there laws to combat transfer-pricing techniques?	14,29	1	14,29	14,29	1	14,29
3	Does the taxpayer have to provide sufficient documentation with regard to transfer-pricing?	14,29	1	14,29	14,29	0	0,00
4	Is there a provision on ring-fencing?	14,29	0,5	7,14	14,29	1	14,29
5	Are there withholding taxes applicable to payments to non-residents?	14,29	1	14,29	14,29	1	14,29
6	Have there been convictions for corporate tax avoidance/evasion?	14,29	1	14,29	14,29	1	14,29
7	Are there no tax treaties with tax havens?	14,29	0	0,00	14,29	0	0,00
	Sub Score		5,5	78,57		5	71,43
	Tax progressiveness	100,00			100,00		
1	Is main source of tax revenue a direct tax?	12,50	1	12,50	12,50	0	0,00
2	Are there no VAT exemptions for the mining sector?	12,50	1	12,50	12,50	0	0,00
3	Is there a reduced VAT rate for basic foodstuffs?	12,50	1	12,50	12,50	1	12,50
4	Is there a reduced VAT rate for basic female products?	12,50	1	12,50	12,50	0	0,00
5	Is the mining sector obliged to make social payments?	12,50	1	12,50	12,50	1	12,50
6	Is the CIT not lower than 5 years ago?	12,50	0	0,00	12,50	1	12,50
7	Is the CIT rate above or at the global average?	12,50	1	12,50	12,50	1	12,50
8	Is property and income from property taxed?	12,50	1	0,00	12,50	0	0,00
	Sub Score		7	75,00		4	50,00
	Sub Total	600,00		476,43	600,00		483,93
	Total Score		7,94			8,07	

Abstract

This thesis comprises a comparative analysis on corporate mining sector taxation in Tanzania and Canada with regard to criteria based on the tax justice development. The basic underlying idea is that the purpose of taxes is to finance government spending, ideally to further social justice and to meet the needs of a country's population. Natural resources can similarly contribute to a country's revenue and wealth. Whether a country can however actually financially profit from those natural resources at least partly depends on the design of its tax law regime applicable to extracting businesses. While certain tax tools can be described as mostly having a positive effect upon a country's revenue, others favor the international trend of transnational companies being engaged in aggressive tax planning. Therefore one hand countries try to design their tax law in a way they attract foreign investment, on the other hand taxes and incentives should still guarantee a certain government income. The conflict is evident. While corporate taxes are needed for government expenditure to respond to the needs of their respective community, tax incentives lower the revenue from such taxation to attract more investments into a country.

Therefore this thesis assesses two distinct tax law regimes, one applied in a western high-income centrum and the other one as applied in a peripheral low-income country. For assessment six different criteria categories have been identified as being necessary for fair taxation. Those categories include: (I.) Sufficient revenue from the mining sector, (II.) effective tax administration, (III.) effective taxation of the mining sector, (IV.) transparency and accountability, (V.) measures in place to counteract tax avoidance and (VI.) tax progressiveness. Each category consists of a number of polar scoring questions in order to quantify the strength and weaknesses of both tax regimes in questions. Based on the answers of the scoring questions a weighted scorecard was created and evaluated. According to the evaluation of the scorecard, Tanzania scores a slightly higher result than Canada indicating that the Tanzanian tax regime governing the taxation of the mining sector is slightly fairer than the Canadian one.

Abstract – German

Diese These befasst sich mit einer vergleichenden Analyse der Besteuerung von Unternehmen in Bergbausektor in Kanada und Tansania vor dem Hintergrund der Steuergerechtigkeit. Die grundlegende Annahme hierzu ist, dass die Besteuerung von Unternehmen dem Zweck dient, Staatsausgaben zu finanzieren, idealerweise zur Förderung sozialen Gerechtigkeit und zur Erfüllung der Bedürfnisse der Bevölkerung eines Landes. Gleichermaßen können natürlich Ressourcen zu dem Wohlstand und Vermögen eines Landes beitragen. Ob ein Land jedoch tatsächlich finanziell von diesen natürlichen Ressourcen profitieren kann, hängt zumindest teilweise von der Gestaltung seines steuerrechtlichen Regimes ab. Während sich bestimmte Steuerinstrumente zumeist positiv auf die Einnahmen eines Landes auswirken, begünstigen andere den internationalen Trend der aggressiven Steuerplanung durch transnationalen Unternehmen. Deshalb versuchen Länder einerseits, ihr Steuerrecht so zu gestalten, dass sie ausländische Investitionen anziehen, andererseits sollen Steuern und Incentivierungen ein gewisses Staatseinkommen garantieren. Der Konflikt ist offensichtlich. Während Körperschaftssteuern für eine Regierung erforderlich sind, um auf die Bedürfnisse ihrer jeweiligen Gesellschaft reagieren zu können, senken steuerliche Anreize die Einnahmen aus dieser Besteuerung, um mehr Investitionen gewinnen. Um herauszufinden, wie gerechte eine Besteuerung des Bergbausektors aussehen kann, untersucht diese These zwei verschiedene Steuerregelungen, zum einen in einem westlichen Hocheinkommenszentrum und des Weiteren in einem peripheren Niedrigeinkommensland. Für die Beurteilung wurden sechs verschiedene Kriterienkategorien als notwendig für eine faire Besteuerung identifiziert. Zu diesen Kategorien gehören: (I.) Ausreichende Einnahmen aus dem Bergbausektor, (II.) Effektive Steuerverwaltung, (III.) Effektive Besteuerung des Bergbausektors, (IV.) Transparenz und Rechenschaftlichkeit (V.) Maßnahmen gegen Steuervermeidung und (VI.) steuerliche Progressivität. Jede Kategorie besteht aus einer Reihe von polaren Scoring-Fragen, welche die Stärken und Schwächen beider Steuerregelungen quantifizieren. Basierend auf den Antworten der Scoring-Fragen wurde eine gewichtete Scorecard erstellt und ausgewertet. Nach der Auswertung der Scorecard erzielt Tansania ein etwas höheres Ergebnis als Kanada, was darauf hinweist, dass die tansanischen Steuerregelungen für die Besteuerung des Bergbausektors etwas gerechter sind als die kanadischen.

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