2023 BUDGET SUBMISSIONS

1.0 Introduction

The Zambia Institute of Chartered Accountants (ZICA) is a professional membership body whose function among others is to advise Government on matters of economic and national development. The Institute prepared this submission in response to the call for submissions to the 2023 National Budget by the Ministry of Finance.

2.0 Overview of the Submissions

The Institute has a statutory duty to advise Government on aspects of social and economic policy relating to National Development. The 2023 Budget Submissions have been informed by our confidence in the National Budget as a key policy instrument for ensuring that national resources are distributed fairly amongst all citizens.

3.0 Revenue Measures

	Sector/Policy Area	Disadvantages, or Challenges of Current Policy	Proposed Policy Measures	Expected Implications of Proposed Measures or Policies
3.1	**Tourism**	Park Fees revenue is not invested in the parks and their surrounds, which means local communities bare the externalities and costs of tourism and wild animals without benefiting from the income generated, incentivizing poaching, charcoal burning and general degradation of the environment, comprising future earnings.	Park Fees paid to be ring fenced and specifically spent in the parks that the revenue is earned.	National parks will become long-term sources of revenue whilst preserving their environs. Ultimately, GRZ will receive increased income through corporate taxes.
3.2	**Tourism**	Road network to all areas of Zambia	Increased spending on drainage and repairs. Reduced spending on new major projects.	General maintenance and repairs will have a significant impact as far as poverty reduction is concerned as it is labour intensive. Repairs are cheaper than building new roads and this will ultimately save money. A better road network

				enables more tourism to rural and wildlife areas, leading to more tourism revenues.
3.3	**Tourism**	Extend utilization of tax credits for hotels	To extend from 5years to 10years	The industry has been badly affected by the pandemic as operations are slow or suspended. This will continue for years due to this business interruption as it was forced to temporarily cease operations while costs of maintenance and operations continue with no or reduced revenue
3.4	**Insurance**	The Government of the Republic of Zambia should increase the allowable pension deduction from the current K255 to K1, 000 or 15% of total allowable earnings. The culture of saving in the country is currently very poor owing to a number of reasons, some of which are cultural in nature. It is imperative that the government recognises the need to create an enabling environment for a savings culture in the country. Currently the majority of Zambian workers do not have retirement pension schemes apart from the mandatory National Pension Scheme contribution, and the other government schemes. Increasing the allowable	**Increase of the allowable pension deduction**	The expected impact of this measure will be a loss in the short run to the treasury but a significant gain in the long run. These benefits will arise from the fact that individuals will have enough resources to look after themselves thereby reducing the overall government expenditure on social services. The other benefits will come from Increased investments in Government bonds, Treasury Bills and the Lusaka stock exchange by the various pension administrators and managers

		threshold will act as an incentive for employees to consider joining approved pension schemes as a way of planning for their retirement.		
3.5	**Insurance**	Current tax on interest on GRZ securities negatively affects the growth of pension funds and member's benefits especially for Defined Contribution Schemes.	**Abolish withholding tax on interest earned on GRZ Securities (Treasury Bills and GRZ Bonds)**	There will be a loss in government revenue in the short run, but the medium to long-term benefits of an enhanced and development financial market which is a life blood of any economy will mitigate the short-term losses.
3.6	**Insurance**	Currently individuals are not encouraged to save, or take out investment products with a life insurance component. This will also motivate and mobilize savings which is a source of long-term capital in the economy	**Investment Income on Life Insurance Funds should be Tax exempt as per worldwide practice.**	The impact on the treasury in the short term will be minimal. This measure will Encourage the growth of the use of life insurance products with a savings component.
3.7	**Insurance**	Simply put, microinsurance is insurance targeted at the low income households and individuals who are vulnerable to various risks that can be insured. Currently the world over there has been a realisation that insurance if well designed, that is made appropriate and affordable can help in alleviating poverty and assist in uplifting the standard of living for the vulnerable or people in the	**Give Tax incentives to companies that offer micro-insurance products targeting the vulnerable in society**	The impact on the treasury would be minimal, as there would be a resultant serving in the monies spent on assisting members of society recover from disasters and also support through the social welfare system. The increased insurance penetration would also result in the increased volumes of insurance premiums that would

		low income bands. On the demand side there is lack of knowledge and understanding of the concept of insurance and its benefits among the majority of Zambians, especially those in the low income bracket, this requires substantial investment in consumer education alongside the normal marketing efforts. On the supply side, the insurers are still constrained by the investment required in research and development to find the right sustainable models for providing microinsurance. Clearly, there is a need for both demand side and supply side incentives.		result in more corporate tax and insurance premium levy.
3.8	**Insurance**	The three percent (3%) Investment Policy is discouraging persons from taking long-term savings as it is tantamount to punishing or reversing the objectives for savings. Indirectly it could result in double taxation. People might opt to save un-structurally through other vehicles	Remove 3% Levy on Investment Policies for life insurance. The levy can be limited to risk premiums only.	The expected impact of this measure will be a loss in the short run to the treasury but a significant gain in the long run. These benefits will arise from the fact that individuals will have enough resources to sustain themselves as opposed to depending on Government subsidies. The other benefits will come from Increased investments in Government bonds, Treasury Bills and the Lusaka stock

				exchange by the various Life insurance companies
4.0	**TAX MEASURES**			
4.1	**Taxation policy, Wage policy, Infrastructure program**	a) The current high copper price provides a huge opportunity for the country to significantly increase its revenues from mining. If handled properly, the country can quickly move into a balanced budget where revenues and grants equal budgeted expenditure thereby reducing Government borrowing in order to balance its expenditure. The country should thereafter be able to run surplus budgets whereby it can start investing surplus resources in the form of foreign reserves, which could grow into a sovereign fund. b) There are huge benefits to be derived from investments of surpluses in foreign reserves. Key among these are: √ Stable exchange rate, which sometimes may need to be managed to avoid the Dutch Disease (Currency too strong, making imports cheap and	i. Government to strive to achieve a balanced budget for 2023, and if not achievable in 2023 definitely by 2024; ii. Government to reduce on its external borrowings.	i. Create a low interest rate environment and private sector led development; and ii. Improved sovereign credit rating; and iii. The country giving itself a chance to roll over the $750 million Euro bond maturing in 2022 at the same coupon rate of +- 4.6%.

		discouraging exports from other sectors of the economy like agriculture) as is the Botswana case; and √ Revenues from foreign investments will contribute to the overall annual budget revenues, thereby enhancing the country`s ability to run balanced or surplus budgets. For example, in Botswana, the Ministry receives every year a share of the revenues made by its central bank in the management of foreign reserves; √ Foreign reserves provides a good cushion against unexpected economic disruptions such as the current Covid-19 global pandemic, low commodity prices cycles and natural disasters such as droughts and floods; and √ Foreign reserves will result in a much improved sovereign credit rating for the country, which will result in the repricing of all existing Euro bonds. This means that the Government can simply keep rolling over these Euro		

		bonds particularly the $750 million bond maturing in 2022. The cost of rolling over will be much lower, which means the Government can going forward significantly reduce its foreign debt interest cost. √ Improved sovereign credit rating for the country also means that banks, mining houses and other enterprises seeking to borrow externally will also benefit from lower interest cost for their projects. c) A balanced or surplus budget by the Government simply means that the Government will not need to borrow and therefore this will result in less demand for money on the domestic money market. This means lower interest rates for the domestic money market, and it also means more money from the domestic money market will be channelled towards the private sector.		
4.2	**Taxation of the digitised economy**	Our tax legislation does not have specific rules dealing with the digitized economy and digital services. This is despite rapid	As Part of the OECD's Base Erosion and Profit Shifting (BEPS) project's Action Plan 1	Government should endeavour to take action and start designing a framework around taxing the

		developments both locally and around the word that have included multi-sided social media services, digital revenue models with very little traditional physical presence in Zambia but generating significant economic returns. The traditional approaches to permanent establishment as enshrined in the Income Tax Act, double taxation agreements and place of supply rules found in the Value Added Tax Act are not adequate to tackle the challenges of taxing the digitized economy. As such, the nation continues to lose out on what could be potentially significant tax revenues from digital services whose value derives from the Republic.	"Addressing the Tax Challenges of the Digital Economy", there are ongoing efforts by the OECD/G20 BEPS Inclusive Framework to unify approaches on taxation of the digitised economy. Several papers have been released in this regard, culminating in the release of a paper titled Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy". As work around BEPS Action 1 continues, Governments around the world have recognised the difficulty involved in reaching consensus and have embarked on their own initiatives to tackle the challenges of the digitised economy and to change where and how digital companies pay taxes. These efforts largely involve adopting or adapting traditional tax concepts. Some jurisdictions are introducing a Digital Services Tax (DST) that redefines how income taxes are determined and paid in jurisdictions where businesses	digital space as most transactions are now emanating from this space. This will greatly increase the Tax base.

			operate and sell, even if they don't have a physical presence. Several individual European countries, including Austria, Belgium, France, Italy, Spain and the UK, have already moved forward with their own DSTs. The UK, for example, plans to target social media platforms, search engines and online marketplaces, as these business models are considered to derive significant value from participation by UK users. Non-EU countries are also seeking ways to tax the digital economy. In light of these developments, it is important that Government begins a process of re-examining tax legislation around digital services. With digital services becoming an increasingly significant part of the economy, there is scope for increasing tax revenue through the taxation of digital services. In line with actions being undertaken by other nations, it is important that Zambia is not left behind, irrespective of the progress of the Inclusive Framework project. We propose that government sets up	

			an agenda and programme for taxation of the digitised economy that will involve consultation with stakeholders. This will chart a path and methodology to ensure that an inclusive digital tax framework, suitable for the needs of our economy is established	
4.3	**The need for a unified Tax Administration Act**	Currently, the different pieces of domestic legislation all include different approaches to tax administration. In some instances, the provisions or their application (such as garnish orders) are not anchored in constitutional principles which includes the right to a fair hearing and administrative justice. This underscores the need for a unified Tax Administrative Act that would address among others:	***Administrative justice*** Guided by Section 173,198 and 199 of the Constitution, Administrative justice provisions govern the exercise by an administrative agency such as the Zambia Revenue Authority (ZRA) of powers delegated to it by Parliament. A unified Administrative Act would set out the rules and guidelines that the ZRA must follow when making decisions and also require the ZRA to give reasons for their decisions. These would include updating the Taxpayer Charter accordingly to reflect these values. ***Administration of tax audits*** Taxpayers have in many instances experienced frustration in dealing with the ZRA. Information requests are received from the	This will improve Tax Adminstration

			ZRA and taxpayers will submit the required information. Once the field work is conducted it may take months or longer before the taxpayer received any indication from the ZRA as to whether the inquiry or audit was completed, or, alternatively, what adjustments were to be made to the taxpayer's assessments. In some instances, no audit reports are provided with taxpayers given Excel workings that do not properly explain the technical basis of the findings. ***Voluntary Disclosure Programme*** The Commissioner proclaimed a tax amnesty in 2017 that we believe led to the recovery of substantial amounts of outstanding taxes. This underscores the need for a formal Voluntary Disclosure Programme (VDP) whereby taxpayers can approach the Commissioner to rectify pervious defaults under any domestic tax legislation. ***Binding Rulings*** Binding rulings are the interpretation of how a tax law	

			applies to a particular arrangement or transaction. Binding rulings can provide certainty on the tax position for a wide range of transactions. Taxpayers should be able apply for a binding ruling especially or proposed transactions. The rulings are useful where • the law is unclear and there is more than one possible interpretation • new legislation applies to the transaction • the transaction is novel, sensitive or controversial • the arrangement raises significant issues or may have a wide impact • the arrangement is a complex financing transaction Whilst we acknowledge that the ZRA provides rulings on a range of transactions, there is no formal provisions in the Act that make them binding (within the scope of facts provided). There is no provision that prevents the ZRA from adopting a different position from that provided in the ruling.	

			Furthermore, there is no formal process prescribed for the rulings, including the time taken for the taxpayer to receive a response. There are many instances where rulings have taken almost a year. For taxpayers that need certainty around proposed transactions, this results in delays where the parties do not wish to proceed without the rulings or uncertainty where they are forced to proceed in the interest of time (such as proposed merger and acquisition transactions). ***Arbitration procedures*** Despite the provisions of the Arbitration Act the provisions of the ITA give Commissioner the authority to execute on a final assessment. It appears from the provisions of the ITA that ZRA’s final assessment can only be set aside by the Tax Appeals Tribunal (“TAT”) or a superior Court on appeal. In this regard, there is always a risk that if an arbitration award is made in favour of a taxpayer, ZRA may reject the award and proceed to execute under the provisions of the ITA and argue that an assessment can only be reversed by the TAT or	

			Court. Whilst there are no known instances of this occurring, this risk has deterred a number of taxpayers from pursuing arbitration, which should be a cheaper and more expeditious option to litigation. This is a matter that should be clarified under a unified tax administration act. ***Tax Ombudsman*** Currently, save with the intervention of the TAT, the ZRA is effectively its own regulator. As such, there is not avenue for review of administrative decisions except the taxpayer approaching the TAT. As the Latin maxim says *“Nemo iudex in causa sua” meaning,* "No one should be a judge in his own case." There is need for an independent Ombud that will exercise oversight over the ZRA’s administrative actions. This has been a successful model in other Commonwealth jurisdictions including the UK, Canada and South Africa. The mandate of the Tax Ombudsman would include to review and address complaints by taxpayers	

			regarding service or procedural administrative matters. ***Audits and criminal investigations*** Currently, there is no provision that prevents the ZRA's routine audit Inspectors from pursuing criminal charges against a taxpayer, however unfounded they may be. This need to be addressed in a unified Tax Administration Act with the requirement that routine audits and criminal investigations are separated, ensuring that the rights of an accused under the Constitution are protected.	
4.4	**Income Tax Act (ITA) CAP 323**	***Clarification on date of assessment (Section 97A (11A)***	The 2019 amendment provides that a corresponding adjustment may be claimed within a period not exceeding twelve months from the date of assessment. However, we note that Practice note 1 of 2020 goes on to further add that for cases under litigation, the date of determination or the final ruling may be considered as the date of assessment.	

		Tax treatment of exchange gains/losses of a capital nature Section 29A provides for the taxation or deduction of foreign exchange gains or losses except for those of a capital nature. Section 29A includes a proviso that allows inclusion of gains or losses incurred on borrowings used for the building and construction of industrial or commercial buildings.	In this respect, we propose that section 11A of the ITA is updated to include this clarification. We propose that the provision should be extended to assessment or deduction of gains or losses incurred on debt capital employed wholly and exclusively for business purposes or in the production of income. This would align the treatment of foreign exchange gains or losses to the treatment of interest in the provison to Section 29(1).	
		Clarity on the application of Withholding Tax on International Haulage Currently, the law in Section 81A(1) of the ITA provides that: *"81A (1) Every person or partnership on making any payment on or after 1st April, 1998, to or on behalf of a non-resident*	The current treatment disadvantages a taxpayer who borrows in foreign currency. Most large loans are denominated in foreign currency and that makes the interest rates affordable. In addition, larger projects require syndication which may need the participation of foreign lenders. Such lenders will only finance in foreign	We agree with this interpretation and recommend that this be clearly defined in the legislation so as to avoid any misunderstanding or misinterpretation.

		contractor in respect of construction or haulage operations, irrespective of whether such payment is made outside the Republic or not, shall, before making any other deductions whatsoever, deduct tax from such payment at the rate specified in the Charging Schedule and that person or partnership shall account for such tax as prescribed in sub-section (1A)" We further note that, The ITA proceeds to define "haulage operations" in Section 81A(2)(d) as including "transportation by land, water or air of persons, livestock or any goods whatsoever including farm produce, or produce of a like nature, or ores and minerals, food stuffs and merchandise."	currency. Such taxpayers should not be disadvantaged compared to taxpayers that borrow in local currency. We note that the foreign currency and inflation risk are built into the higher interest cost levied on local currency borrowing for which relief is provided in terms of Section 29(1). In our view, the wording of the applicable legislation as shown above seems to indicate that WHT on haulage applies irrespective of destination, as long as the service is provided by a non-resident. This would be counter intuitive given that goods transported in Zambia by an non-resident would be subject to Customs Duty and Import VAT, both of which are calculated to include transportation and freight. There	

			is therefore no loss of revenue to the fiscus. In practice, however, we note that the ZRA has taken the interpretation that the WHT should only apply to haulage services provided by a non-resident within Zambia or from Zambia to a foreign destination.	
4.5	**Taxation of Informal Sector**	Government should endeavour to take action around taxing the informal sector. Consistently, new taxes are being introduced on the same set of organisations and people that are already contributing so much to the treasury. However, there has not been significant action that has been taken to bring various players in the informal sector into the fold.	The Government should re-focus their efforts in developing systems that will facilitate the taxation of companies and individuals in the informal sector. Government should, for example, come up with a policy that will compel companies and individuals in the informal sector to form cooperatives which will drive formalization and provide platforms for taxation compliance. Also presumptive tax to bus operators should be collected through RTSA at the point of the	There is need for the government to take significant action that will help to bring various players in the informal sector into the tax fold

			operator's getting and renewing the business permit. This will help promote accountability, efficiency and transparency in the revenue collection. The government can develop a community based taxation model for this sector to help encourage higher compliance level. The Government should also consider expanding the list of withholding Tax agents to include those in the informal sector so that they can comply with withholding VAT. Withholding tax certificates should be issued timely, if the WHT agent do not remit tax on time it should not impact various companies that make supplies to them. Further, to easy cash flow of most of WHTVAT agents they can be allowed to offset Withholding VAT against their VAT refunds.	
4.6	**Insurance**	According to the Income Tax amendment Act No. 18 of 2013, a 15% withholding tax has to be deducted on all commissions paid. In insurance, however the commissions earned by brokers are deducted from source and insurers only	Harmonisation of Insurance Act and Income Tax Act, in the accountability of Withholding Tax on Commission on Brokerage	This will ensure that Brokers can account for the 15% WHT on Commission, unlike the current situation where insurers are expected to withhold amounts that they have not received, resulting in

		receive the net amount, the Brokers collect the premiums directly from insurance clients and only remit the premiums to insurers net of withholding tax. This is in accordance with the Insurance Act of 1997. ZRA is however demanding that 15% Withholding Tax be paid on broker commissions by insurers, when insurers do not receive these amounts, but get only net premiums after deduction of commissions by brokers. This practice is impractical due to the nature of the flow of transactions in the insurance value chain.		a perpetual default position, with the delayed tax remittance to ZRA.
4.7	**Taxation of Cooperatives**	The taxation of cooperatives has not been revised from 2002 while the laws on cooperatives has evolved to extend to other sectors other than agriculture. Currently the income of a co-operative society registered under the Co-operative Societies Act (Cap. 397) is **exempt** from tax **only if** the gross income, before deduction of any expenditure, of such co-operative society when divided by the number of its members on the last day of any accounting period of twelve months does not exceed the K39,600 per individual. The balance is taxed at 35%. The law as it stands does not support the growth of cooperatives.	We propose that the income generating activities of cooperatives be taxed at the same rate as PBO, (which cooperatives are) which is currently at 15%.	

4.8	**Introduction of deductions for Research and Development**	The Government should consider introducing new forms of tax incentives to encourage investment in key sectors of the economy**.** This is primarily because tax incentives significantly influence investment decisions.	The Zambian Government has a number of policies designed to promote innovation in the private sector and MSMEs. Its main implementing agencies are MCTI, ZDA and specifically The National Technology Business Centre (NTBC) which was created to provide Innovation and Technology Support and encourage research and development in Enterprises. The following policies were developed to support innovation and develop the innovation ecosystem: • 8th National Development Plan (NDP) • The MSME Development Policy of 2009 • National Industrial Policy (2018)	We submit that if the goals of seventh 8NDP are to be realized, there is need to revisit Section 43(1) and make it more amenable to the needs of the modern businesses. The current provision is too heavily focused on the research and experimental phase of R&D and completely excludes the development of those ideas. This would include a comprehensive revision of definitions, possibly with input from the scientific and technology community. The restriction to expenditure of a revenue nature must also be removed to accord with the true nature of R&D.

			Local Content Strategy (2018) Development outcome 10 of the NDP focusses on enhancement of Research and Development (R&D). To this end we quote in 7.13 on Page 84. “Research and Development (R&D) plays a critical role in the innovation and development processes. R&D results in improvement of the quality and quantity of production. Research is a key element of many developmental agendas and, when well-planned and used, enables a government to formulate evidence-based policies that lead to massive economic gains over a period of time. Science, technology and innovation (STI) are recognised today as the most important drivers of sustained and inclusive development.”	

			To this end, we submit that our tax policy as a nation is a key instrument for enhancing R&D. We note that current provisions relating to R&D are set out in Section 43 of the ITA which states that; *43.(1)* A deduction is allowed in ascertaining the gains or profits of a business of any expenditure, not being expenditure of a capital nature, incurred by the business during a charge year on experiments or research relating to the business. In terms of Section 43(1) therefore, a taxpayer that wishes to claim R&D expenditure must cross a significant huddle with the exclusion of expenditure of a capital nature. As you are aware, it is an established principle of case law that expenditure incurred in creating or acquiring, improving or extending a taxpayers income earning capacity of a business is capital in nature whereas that expended to	

			maintain the income earning capacity is revenue in nature. The very essence of R&D would seem to be increasing a taxpayer's capacity and does not qualify for deduction in terms of current legislation. R&D must lead to the creation of new ventures and jobs and that we submit is capital in nature.	
4.9	**The Property Transfer Tax ("PTT")Act** ***Intra-group Relief should be extended to direct transfers between companies that are both incorporated within the Republic.***	Currently, the law in Section 5(2A) and (2B) of the PTT Act provide that: *(2A) Where the property to be valued is* ***a share issued by a company incorporated outside the Republic that directly or indirectly owns at least ten percent of a company incorporated in the Republic****, the realised value shall be whichever is greater of the—* *(a) effective shareholding multiplied by the value of the transferred shares;* *(b) effective shareholding multiplied by the consideration for the transferred shares; and* *(c) effective shareholding multiplied by the nominal value of the transferred shares.;*	The ZRA has argued that the application of Section 5(2B) is limited to indirect share transfers (shares in a company issued by a company incorporated outside Zambia). This has led to an unimaginable and absurd outcome in that indirect shareholders with no direct link to the Zambian economy are given relief for intra-group transfers whereas direct shareholders transferring shares in a company incorporated in	In light of the above, our suggested wording to effect the proposed solution and amend the two subsections is as highlighted in the Annexure A below. This includes the word "any" to the provisions of Section 5(2B). **Annexure A - Section 5 Property Transfer Tax Act and the Valuation of Indirect Transfers** <u>The Law</u> Section 5(2A) of the Zambian PTT Act provides:

		(2B) Despite subsection (2A),where the Commissioner-General is satisfied that a transfer is made for the purpose of group reorganisation and that there is no change in the effective shareholding with respect to the company incorporated in the Republic, the CommissionerGeneral may determine a nil value for that transfer except that this subsection shall not apply to a company that has not been part of the group of companies for at least three years preceding the transfer	Zambia, with stronger roots into the economy are denied the same relief.	*"(2A) Where the property to be valued is a share issued by a company incorporated outside the Republic that directly or indirectly owns at least ten per cent of a company incorporated in the Republic, the realised value shall be whichever is greater of the-* *(a) effective shareholding multiplied by the value of the transferred shares <u>attributable to the company incorporated in the republic</u>;* *(b) effective shareholding multiplied by the consideration for the transferred shares <u>attributable to the company incorporated in the republic</u>;* *and* *(c) effective shareholding multiplied by nominal value of the transferred shares <u>of the company incorporated in the republic."</u>* *(2B) Despite subsection (2A), where the Commissioner-General is satisfied that <u>any</u> transfer is*

				made for the purpose of group re-organisation and that there is no change in the effective shareholding with respect to the company incorporated in the Republic, the Commissioner-General may determine a nil value for that transfer except that this subsection shall not apply to a company that has not been part of the group of companies for at least three years preceding the transfer, unless such a company is newly incorporated for the purpose of the re-organisation.. *"(2C) For the purposes of this section* *(a) effective shareholding means the extent of control or ownership in the company incorporated in the Republic by the company incorporated outside the Republic expressed as a percentage.;* *(b) The attribution of shares for the purposes of Subsection 2A(a) and 2A(b) shall be determined by calculating the proportion that the*

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<td>The exemption afforded in Section 4 (1B) of the Property Transfer Act be extended to direct transfers between companies that are both incorporated within the Republic.</td>
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<td>Currently, Section 4(1B) as read together Section 4(1A) of the PTT Act provides that:

(1A) in the case of the transfer of a share issued by a company incorporated outside the Republic where that company directly or indirectly owns at least ten percent of a company incorporated in Zambia, tax shall be charged and collected from the Zambian incorporated company.;

(1B) A transfer of shares referred under sub-section (1A), is not liable to tax if the total value of the transferred shares over a period of three consecutive years represents less than ten percent of the total value of shares in the company incorporated in the Republic.

This definition of related company for the purposes of Section 12B is too wide and potentially makes compliance impossible; particularly that “connected companies” have not</td>
<td><u>value of shares of the company incorporated in the republic bears to the value of the transferred shares or consideration of the transaction, as the case may be.</u>

We re-echo our sentiments above with regards the importance of granting relief to direct shareholders. To this extent, we propose our suggested wording in Section 4(1B) be amended as follows:.

(1B) A transfer of shares<s> referred under sub-section (1A),</s> is not liable to tax if the total value of the transferred shares over a period of three consecutive years represents less than ten percent of the total value of shares in the company incorporated in the Republic.</td>
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	Definition of related company The 2017 amendments brought indirect share transfers within the scope of taxation in Zambia and also introduced disclosure requirements Under Section 12B of any companies that become related to a local entity.	We note that the term "related company" is defined as: related company" includes— (a) companies connected directly or indirectly through shareholding or equity; (b) any joint venture owned or operated jointly with or an unrelated company; (c)connected companies; or (d) companies connected through management and control; and	been defined. A multinational bank for example would have to disclose special purpose vehicles (SPV's) incorporated in other jurisdictions just for the purposes of ring-fencing debt finance. Not only would this be impossible to monitor but such disclosure may contravene privacy and confidentiality in other jurisdictions. To this effect, we propose the following wording to cure this defect in the legislation; "(b) the proportion of the consideration for the share being transferred attributable to Zambian company." i. Our commentary above also applies to the nominal value as the current wording would render the nominal value of B PLC as the tax base for PTT purposes rather than the nominal value of ZED Limited. Accordingly, we propose	

	Definition of Realised Value and Section 3 of the Property Transfer Tax Amendment Act of 2019 expanded the definition of realized value for the indirect transfer of shares in a Zambian resident company by amending Section 2A of the main Act as follows. (2A) Where the property to be valued is a share issued by a company incorporated outside the Republic that directly or indirectly owns at least ten percent of a company incorporated in Zambia, the realised value shall be, whichever is greater of the— (a) proportion that the value of the Zambian company bears	We have noted several challenges with this provision including: i. The consideration is not restricted to the proportion applicable to the Zambian entity. As such, Section 2A(b) would have the effect of taxing the global consideration for the transaction, an outcome the drafters would hardly have intended. For example, if A PLC, listed on the London Stock Exchange (LSE) acquires B PLC, also listed on the LSE for \$5bn and Company B has a Zambian subsidiary (ZED Limited) whose net asset value if \$3m, the effect of this provision is to tax PTT at 5% of \$5bn, being the consideration of the shares being transferred (B PLC's shares) rather than 5% of the proportion of the consideration attributable to ZED Limited.	the following wording to cure this defect in the legislation; *"(b) the nominal value of Zambian company*." ii. We note that the exceptions for group relief under Section 5 (2A)(ii) stipulate a three-year qualification criteria as an anti-avoidance measure. Our view is that this period may be too long and may only serve to inhibit new investments as well as legitimate restructuring. Furthermore, we note that corporate restructuring often includes incorporation of new companies. In some instances, this is a requirement to obtain debt finance as some lenders may which to have their funds ring-fenced in a new company to avoid contagion from older liabilities. The wording of this relief provision would	

	to the value of the transferred shares; (b) consideration for the share being transferred; or (c) nominal value; *except that-* *(i) where the Commissioner-General is satisfied that a transfer with the realised value is made for the purposes of group reorganization and that there is no change in the effective shareholding with respect to the Zambian company, the Commissioner-General may determine a nil value for that transfer; and*		exclude such new companies even if they are wholly owned. To this effect, we propose the following wording; *(i) where the Commissioner-General is satisfied that a transfer with the realised value is made for the purposes of group reorganization and that there is no change in the effective shareholding with respect to the Zambian company, the Commissioner-General may determine a nil value for that transfer; and* *(ii) this section shall not apply to a company that has not been part of the group of companies for at least two years or is a newly incorporated group company. Provided the provisions of Sub-Section 2C will apply if the companies cease to be members of the same group within a period of 18 months.; and*	

	(ii) this section shall not apply to a company that has not been part of the group of companies for at least three years.; and ***Double taxation on transfer of mining rights.*** In Property Tax Amendment Act of 2012 Section 2(1) of the Act was amended to expand the definition of property to mining rights as follows; "property" means- (a)…. (b)…. (c) a mining right issued under the Mines and Minerals Development Act,	The two provisions are not mutually exclusive and an "interest" in a mining right is not defined in any of our legislation. As such, the transfer of shares in a mining company (whether directly or indirectly) is liable to double taxation as PTT is imposed on both the net asset value (included in the valuation of the shares) which includes the mining right and potentially separately on the transfer of the interest in the mining right. This has further been execebated by the inclusion of mineral processing licences in the scope of PTT by the Property Transfer Tax Act of 2021. Its possible for a mining company that is the subject of a share transfer to have both a mining right as well as a mineral processing licence. The strict reading of the Act would lead to triple taxation with the transfer of the shares, mineral right and mineral processing right all subject to PTT.	Accordingly, these amendments served to impose PTT on the transfer of mining rights or an interest in mining rights as well as the indirect transfer of shares. The rates of tax are 10% for mining rights or an interest therein and 5% for indirect transfer of shares. It is clear that the intention of the legislators in introducing PTT on indirect transfer was to curb the offshore transfer of assets where the country did not receive any revenue. However, the two provisions when applied to mining assets have the unintended consequence of double taxation. This could incentivise buyers to only acquires the mining rights (purchase of assets) potentially leading to disruption and job losses as only the purchase of	We further propose that "interest in a mining right" and "interest in a mineral processing licence" be defined to specifically exclude the direct or indirect transfer of a share whose value includes a mining right or mineral processing licence as defined.

	2008 or an interest therein. In the Property Transfer Tax Amendment Act of 2017, the definition of “property” in Section 2(1) was further amended to read as follows: “property” means- (a)…. (b) a share issued by a company incorporated in the Republic or a share issued by a company incorporated outside the Republic where the company directly or indirectly owns at least ten percent of the shares in a company incorporated in the Republic.; and	This could be illustrated in the example below: Zambian based Zed Mining Limited is the only asset and subsidiary of UK Limited (UK based), a subsidiary of China PLC (China based). Zed Limited’s only asset is a mining right worth $5m and it has no other assets and liabilities. The Group structure as follows: China PLC (China) 100% UK Limited (UK) — Main asset Zed Limited valued at $5m 100% Zed Limited (Zambia) — Main asset mining right valued at $5m Should either China PLC (indirect transfer) of UK Limited (direct transfer) dispose of their shares in Zed Limited, the transfer of the shares will be subject to PTT at 5% ($250,000 based on net asset value). Further, as the disposal	shares guarantees full continuity of the business. Accordingly, we propose the following addition to subsection 3: *“property” means-* *(a) ….* *(b) a share issued by a company incorporated in the Republic or a share issued by a company incorporated* *outside the Republic where the company directly or indirectly owns at least ten percent of the shares in a* *company incorporated in the Republic but excludes transfer of a share whose value includes a mining asset or mineral processing licence or an interest therein.;* *and* *(c) a mining right issued under the Mines and Minerals Development Act, 2008 or an interest therein.* *(d) a mineral processing licence issued under the Mines*	

	(c) a mining right issued under the Mines and Minerals Development Act, 2008 or an interest therein.	could be deemed to be a disposal of an interest in a mining right or a mineral processing licence, whatever the case may be, China PLC or UK Limited (as the case may be) would be subject to PTT at 10% of the value of the mining right and/or mineral processing licence in Zed Limited ($500,000). The effective tax rate would therefore be 25%.	*and Minerals Development Act, 2015, or an interest in the mineral processing licence; and*	
4.10	**Impact of withholding VAT on Mining Companies**	The Withholding VAT system is increasing the VAT refund claims due to Mining Companies. In essence, mining companies are having a double cash outflow by paying the output VAT to the ZRA without the right to offset it against our WHVAT tax credit certificates because they are not issued to us on a timely basis. The certificate delays are twofold. Firstly, there is likely to be non-	**Solutions** 1. Consider introducing WHVAT exemption certificates on compliant taxpayers like ZAMEFA. 2. Mandating the ZRA to give status (Paid or Not) of WHVAT invoices upon request by supplier to prompt a follow up with the Agent who has not generated a WHVAT Certificate.	**Benefits** With the health cash flows, mining companies will add value to the national coffers through expansions resulting into more employment opportunities and increasing various tax and non-tax contributions by both employer and employees. These measures will reduce the administrative burden of enforcing compliance with the current

		remittance of the tax withheld by certain WHVAT Agents. With tax client confidentiality in place, it prevents us from getting a ZRA report to ascertain which Agent has not remitted the tax to the ZRA. Secondly, even if the Agent generates the certificate, we have no control on when to make a claim because the allocation of the generated WHVAT certificates is controlled by the ZRA. Those certificates generated after the submission of the VAT Return are left hanging in the ZRA System resulting into a steady accumulation of the certificates. Consequently, the company faces cash flow challenges as it is inevitably financing the government with an interest free loan averaging K1 million per month in non-utilised WHVAT certificates.	3. Enable the ZRA Tax admin System to allow a supplier to allocate all available generated certificates the way it used to be with the decommissioned Taxonline System. The fact that government is rolling out the use of electronic fiscal devices for tax invoicing (EFD) should be reason enough to give WHVAT exemptions since there will be enhanced transparency in VAT transactions.	WHVAT requirements and will reduce the challenges of refund processing. In addition, it will also reduce on the outstanding government debt in form of VAT refunds.
4.11	**<u>Value Added Tax (“VAT”) Act</u>** **Legislative clarity on the definition of e-commerce in light of digital services.**	Currently, pursuant to VAT Amendment Act No.14 of 2019, the VAT provides the definition of electronic services and electronic commerce to mean the following:	Our identified problem arising from the above is that, a number of words (i.e platform, advertising, marketing, buying or selling) are not defined in the context used in the VAT Act. This in practice, leads to the ordinary	To address the ambiguity highlighted above, we highly recommend that the various definitions as intended by the Revenue Authority be clearly outlined in the applicable legislation.

		Section 2 of the VAT Act defines "electronic service" as follows: *"electronic service" means a service capable of delivery of data across multiple electronic commerce* ***platforms****.* Section 2 goes on to define "electronic commerce" as follows: *"electronic commerce" means the buying, selling,* ***advertising*** *or* ***marketing*** *of goods and services using the internet, mobile telecommunication networks and other electronic commerce infrastructure."*	meaning of the words being used and has proved to lead to some ambiguity on whether certain business can be regarded as electronic service suppliers. Specifically, for instance, the ordinary meaning of the word "platform" as defined by The Merriam Webster Online Dictionary is *"an application or website that serves as a base from which a service is provided"* (see: Platform Definition & Meaning - Merriam-Webster). In light of the dictionary definition of the word "platform", an "electronic service" can on one hand be understood to mean a service capable of delivering data	

			(i.e. information) across multiple websites or applications. On the other hand, however, there is an another way to interpret the term "electronic service." One may argue that for a service to qualify as an electronic service it should be capable of delivering data across multiple electronic commerce platforms and not just its own.	
5.0	**NON TAX MEASURES**			
5.1	**Streamlining the Public Expenditure**	The Institute recognizes Government efforts in exploring ways of improving and expanding revenue collection. However, we note with concern that there has been little effort in mitigating potential revenue leaks and wasteful spending that can result in massive budgetary savings once addressed.	We strongly believe that the Tax reforms in isolation to bolster revenue cannot contribute to strengthen the fiscal system. It needs to be supported with appropriate expenditure rationalization measures as well. In October 2021 the Ministry of Finance announced policy measures aimed at reducing	This will help the Government reduce on wasted of financial resources.

			wasteful expenditure and embarking on cost saving. We are of the view that more needs to be done by undertaking a study on structural issues such as the number of Ministries, their functions, their sizes and their organization structures with the objective of determining the optimum Government structure in relation to the Revenue it can raise. This study will help Government objectively make decisions about public service reforms and long-term financial management control. The study should be done by independent professional experts to maintain credibility and objectivity of their report.	
5.2	**Specific policy initiatives dealing with the high lending rates**	Zambia generally has high lending commercial lending rates in comparison to other countries in the region and this is the major constraints of private sector growth in Zambia. However, there has not been a comprehensive policy reform by Government aimed at remedying the situation. We submit one strategy that can	The Government in the 2022 National Budget should undertake comprehensive policy reforms specifically aimed at reducing the commercial lending rates, which should facilitate growth of MSMEs and lead to	

		contribute to the gradual reduction of lending rates.	job creation and increasing tax revenues.	
5.3	**Government should Facilitate trade rated infrastructure at borders.**	Our borders such as Kasumbalesa and Chirundu present an unparalleled opportunity to drive the growth of non-traditional exports such as fresh agricultural produce and manufactured goods. However, these borders lack facilities that would enable proper storage and distribution of goods into neighbouring countries.	Government should consider declaring the borders as incentive zones in order to stimulate growth of exports into neighbouring countries. The incentives should focus on manufacturing and cold storage facilities.	
5.4	**Reform of the National Pension Scheme Authority (NAPSA)**	The Government to reform National Pension Scheme Authority (NAPSA). In its current state it does not benefit its members and/or contributors.	**Pitfalls** -Individual members do not benefit from the current NAPSA policy which does not empower its members by giving them loans or advances that could be deductible from their pension. • The Scheme keeps on expanding its investments while its members or contributors have remained poorer and poorer. • Non-investment in Human capital	**Recommendations** 1. The 2023 National budget should address the Public investment reform more especially for parastatal institutions such as NAPSA. The reforms should prioritise the contributors at the expense of investment. Give back to the owners what they deserve. 2. Give loans to employees or contributors who have saved at least ten (10) years

			As a result of such neglect of empowering contributors to possess their own houses, the nation has experienced challenges such as to mention but a few: i) Shortage of accommodation, ii) High rental charges, iii) Huge government expenditure on building houses for its workers which they can build on their own if they're given loans by the Pension Scheme. iv) Dampens the morale of the employees if they have been working for a long time but cannot afford to own a house.	to enable them to construct their houses of their choice. 3. Take a leaf from other Pension Schemes who are empowering their contributors. 4. Revise the monthly payment to the current food basket for those who retire. 5. Pay lump sum and other payments due to the retiree at once. The **Impact** of the above recommended measures are immense to mention but a few: 1. Empowering contributors to own their own houses will cushion the shortage of accommodation and empowers employees or contributors to become Landlords. In addition, workers will be more dignified and the abuse by the landlords will come to an end.

			v) Abuse by Landlords, because they take advantage of the scarce accommodation.	2. Increase of revenue base to the government by paying of turnover by Landlords or Tenants. And payment of land rates to the local councils. 3. Burden shift – the government will no longer take the burden of building houses for its workers because this could be done by the workers themselves hence the government focus will be on other priority areas. 4. Living in your own house is better than living in an Institution house and moreover the government will save a lot of money which goes to housing allowances. 5. No maintenance costs by the government as opposed to the houses build and maintained by the government for its workers.

5.5	**Specific policy initiatives dealing with the high lending rates**	Zambia generally has high lending commercial lending rates in comparison to other countries in the region and this is the major constraints of private sector growth in Zambia. However, there has not been a comprehensive policy reform by Government aimed at remedying the situation. We submit one strategy that can contribute to the gradual reduction of lending rates.	The Government in the 2023 National Budget should undertake comprehensive policy reforms specifically aimed at reducing the commercial lending rates, which should facilitate growth of MSMEs and lead to job creation and increasing tax revenues.	To make borrowers more credit worthy and to enable financial institutions providing credit to apply less risk adjustment to the loan interest rates we suggest that all credit from commercial banks, Micro lending institutions, and all other money lenders and suppliers of goods on credit such as furniture and appliances stores (providing hire purchase etc) be listed on Credit Reference Bureau. This listing and submission of credit history should be mandatory. Furthermore, we propose that the blacklisting of defaulters should be reduced from the current Seven (7) years to two (2) years after the credit default has been cleared and credit history regularized with exceptions made for extreme repetitive cases.

6.0 Conclusion

The Institute hereby submits the proposals for the 2023 National Budget and welcomes the opportunity to orally present the proposals to clarify any matters. It is hoped that the proposals contained herein will be favourably considered.