WHAT IS A COMPETITIVE FISCAL REGIME FOR FOREIGN INVESTMENT? WITH SPECIAL REFERENCE TO NAMIBIA AND BOTSWANA

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ABSTRACT: *Developing countries are in a race to attract foreign investment in their extractive industries. The competiveness of a fiscal regime coupled with the consideration of geological risks and rewards, political and macro-economic risk is essential in winning over the investors, Due to globalisation, investors have many options when considering where to invest. So what makes a country's fiscal regime more attractive for investment without comprising its objectives? Governments have a challenging task to ensure that they receive an appropriate share of the economic rent from its resources and at the same time attract and sustain foreign investment. For that reason, a competitive regime for foreign investment is one that enables both parties to achieve their objectives to a certain extent. This paper aims to evaluate the key features of a competitive fiscal regime with special reference to Namibia and Botswana. It will examine the concepts of economic rent, discount rate and neutrality in taxation which aim to reconcile the parties' interests.*

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TABLE OF CONTENTS

ABBREVIATIONS

GDP	Gross Domestic Product
RRT	Resource Rent Tax
SACU	Southern Africa Customs Union
SADC	Southern African Development Community
VITR	Variable Income Tax Rate

1 Introduction

A nation's overall 'tax system should be equitable to both the nation and the investor and be globally competitive'. [1]

Developing countries are in a race to attract foreign investment in their mineral resources industries,[2] as they heavily rely on the substantial economic rents obtained from their exploitation. The competiveness of a fiscal regime is pivotal in winning over the investors, alongside the consideration of geological risks and rewards, political and macro-economic risk. Due to the global economy and the drive for foreign investment, companies have many options when deciding which country to invest in. So how does a nation gain a competitive advantage and at the same time be equitable?

Government has a difficult task and responsibility to strike a balance between capturing fair and sustainable revenue for its resources and simultaneously providing sufficient incentives that attracts and sustains foreign investment. This paper will examine the key characteristics of a competitive fiscal regime. It will look at how a regime can accommodate the objectives of both government and investor with a special reference to Namibia and Botswana's fiscal regimes.

2 Taxation of the Mineral Sector

The mining industry is often taxed differently than other industries due to its unique characteristics. First, the extraction of minerals may generate economic rents[3] and the government, who is usually the owner of the mineral rights, imposes a special tax to capture

[1] Otto, J. et al, Mining Royalties: A Global Study of Their Impact on Investors, Government and Civil Society, (The International Bank for Reconstruction and Development/The World Bank, 2006) p.3
[2] ICMM & Commonwealth Secretariat, *Mineral Taxation Regimes: A review of issues and challenges in their design and application, The Challenge of Mineral Wealth: using resource endowments to foster sustainable development*. (2009) p. 22
[3] Infra Section 3.1

some of this rent i.e. the price for the exploitation of a public asset.[4] Furthermore, the industry is capital intensive, immobile and has a long time scale. It is also high-risk due to the geological uncertainty and high dependency on international market prices.

The extractive industry is the economic backbone of many nations. However, it has its limitations i.e. few spin offs, low level of employment and the resources are non-renewable.[5] And the profits are usually made by foreign companies who repatriate their funds. These factors have significant implications for both parties. It is against this background that government impose different types of taxes on the natural resources sector to maximise their revenue.[6] However, taxes come with benefits and drawbacks. If a poor tax policy is formulated it can deter investment and the country may receive little benefit from a highly profitable industry and thus result in the inefficient exploitation preventing long-term benefits.[7]

2.1 **Balancing Objectives: Government vs. Investors**

According to Colbert, 'the art of taxation consists of plucking the goose so as to obtain the largest amount of feathers with the least possible amount of hissing.'[8] This reflects the controversial and emotive nature of taxation.[9] This illustrates the difficult task faced by governments to design a fiscal regime that allows both parties to achieve their different objectives.

[4] Garnaut, R., and Ross, A.C, Taxation of Mineral Rents, (Oxford: New York: Clarendon Press: 1983)18
[5] Sarma, J.V.M., and Naresh, .G., *Mineral Taxation Around the World: Trends and Issues,* Asia-Pacific Tax Bulletin (International Bureau of Fiscal Documentation) 2001
[6] Mining, Minerals and Sustainable Development, Breaking New Ground, (Earthscan Publications Ltd: London and Sterling, VA: 2002)
[7] Ibid note 5
[8] J.B. Colbert (1619-1683), Louis XIV's Controller-General of Finance
[9] Ibid note 2

2.1.1 **Investor Outlook**

Mining companies' main objective is to make enough profit to attract investors and sustain market positions.[10] Hence profit maximisation and the right to repatriate funds without restriction is a priority. Furthermore, companies want total management control over the operating and sales decisions with little interference from government.

2.1.2 **Government Outlook**

Government objectives are much broader and complex; economic activity is taxed to raise revenues needed to carry out its functions i.e. to provide socio-economic development and build infrastructure.[11] In the mining sector, it is used to increase foreign exchange revenue, encourage local processing and diversification of products, and the transfer of skills and technology. Furthermore, taxation is used as an instrument to encourage and discourage certain economic activities and behaviour for instance to lessen the environmental impact of exploitation.[12]

3 What is Competitive?

Despite their divergent interests, government and mining companies do share a common objective which is to make money. For that reason a competitive regime is one that enables both parties to achieve their objectives to a certain extent. However, this is difficult to achieve as both parties always want a greater take. The concepts of economic rent, discount rate and neutrality in taxation aim to reconcile their interests and thus strike a balance.

[10] Otto. J., and Cordes, J., The Regulation of Mineral Enterprises: A Global Perspective on Economics, Law and Policy, (Colorado: Rocky Mountain Mineral Law Foundation: 2002.) p.7-11
[11] Ibid P 7-12
[12] Ibid note 5

Moreover stability and predictability are one of the most significant features of a mineral taxation regime.[13]

3.1 **Economic Rent**

'The key to an effective fiscal regime is to direct taxes at profits rather than revenue.'[14] This can be achieved by taxing the economic rent which is the total revenue from a mine minus all the costs of production including a competitive rate of return. [15] Thus taxation will be limited to the economic rent, the property value of a mineral resource.[16] This means that government can raise revenue without distorting economic activity decisions which is an incentive for investment. However, in practice, this concept is problematic to implement because it is difficult to calculate economic rent.

3.2 **Discount Rate**

The discount rate is a decisive factor for investment decisions. It is the measure of the time value of money, an interest rate used to determine the present value of future cash flows. Investors have a high discount rate because they have to satisfy the expectations of their lenders and shareholders who invested in the mining project. In contrast, governments tend to have a lower discount rate because they have fewer risks and therefore 'government should be prepared to wait longer than the company for its share of the "profit" from a mine'.[17] A comprise can therefore be reached regarding the distribution of revenue if government applies a lower rate than the investor. However, some countries have a high discount rate thus conflict is imminent.

[13] Ibid note 2, p 56
[14] Andrews-Speed, P., *Fiscal Systems for Mining in Countries with Mineral Resources and Their Effect on the Commercialisation of Minerals with Special Reference to Brazil*, NO.SP25 CEPMLP (1997)
[15] Ibid note 5
[16] Otto, J. Taxation of Mineral Enterprises, Ed. By Otto, J., Graham & Trotman,(London:1995) p.21
[17] Andrews-Speed, P. (1998), *Fiscal Systems for Mining -The Case of Brazil*, *JMPBE ,13 (2)*, p 16

3.3 **Neutrality**

A competitive fiscal regime is neutral i.e. based on the ability to pay. All taxes have the potential to distort a company's decisions on investment, production and trade. [18] Thus the more neutral the tax, the less effect it will have on the investor's business decisions or their expected returns.[19] Non-neutral tax components can have a negative impact on government including reduced net revenue and insufficient investment. Neutrality in taxation may be satisfied by taxing no more and no less than the economic rent.[20] However, government is not guaranteed revenue once production starts. In addition, achieving a neutral tax is difficult in practice because the exact amount of the economic rent cannot be known in advance and the minimum rate of return is difficult to quantify.[21]

3.4 **Stability**

Investors are greatly influenced by how they perceive the stability of the existing regimes. Stability is also important to government because the investors' perception is linked to their expected rate of returns. If a country is perceived to be very stable, investors will expect lower returns. Hence government is able to collect a greater share of wealth through taxes. Investors are also willing to invest in unstable countries if the risks are commensurate to the potential rewards but the expected rate of return will be higher. Stability is difficult to guarantee, governments face pressure to capture more revenue when the prices of commodities rise or when there is certainty in the profitability of a project.[22] Frequent changes increase the perception of risk and instability. Stability is achieved through

[18] Garnaut, R. and Ross, A.C., *Taxation of Mineral Rents*, (Oxford: Clarendon: 1983). P87
[19] Ibid note 5
[20] Ibid note 17, p.26
[21] Ibid note 17, p.24
[22] Ibid note 1, p.12

flexibility i.e. governments should mainly tax the profits. This can be achieved through a mix of taxes that target both profits and revenue.[23]

4 Country Profiles

Namibia and Botswana are both natural resource-rich countries that belong to the Southern African Development Community (SADC).[24] The neighbouring countries share many similarities i.e. large surface area, small population, arid climates and favourable geological conditions. Most significantly, the mining sector is their economic backbone. Namibia, Botswana and other SADC members are competitors for foreign investment as tax competition arguably matters more on a regional level than internationally.[25] Developing countries like Namibia and Botswana heavily rely on mining revenue to achieve their economic development goals[26] including the eradication of poverty.[27]

4.1 Namibia

Namibia gained its independence in 1990. It is among the 10 largest exporters of diamonds [28] and is the world's fourth largest producer of uranium after Canada, Kazakhstan and Australia.[29] It is located on the South Western coast of Africa with a population of approximately 2.1 million. The economy is heavily dependent on the extraction and processing of minerals for export. In 2008, Namibian mining sector accounted for around

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[23] Ibid note 1, p.14

[24] Matshediso, I.B. and Cawood, F.T. (2005) 'Mineral Development in the SADC Region: A Policy Perspective', Minerals & Energy –Raw Materials Report, 20:2, 16-27 at http://www.informaworld.com/smpp/content~content=a727254983&db=all Last visited 01 May 2010

[25] Van Meurs, P., *World Fiscal Systems for Oil*, 109, vol.3, 1997.

[26] Namibia Vision 2030 http://www.npc.gov.na/vision/vision_2030bgd.htm Last visited 23 April 2010

[27] United Nations Millennium Development Goals, http://www.un.org/millenniumgoals/ Last visited 4 May 2010

[28] World Bank, *Enhancing Competitiveness in Four African Economies: The Case Studies Of Botswana, Mauritius, Namibia and Tunisia, 2009* http://siteresources.worldbank.org/EXTAFRSUMAFTPS/Resources/chapter6.pdf

[29] World Nuclear Association, http://www.world-nuclear.org/info/inf23.html Last visited 05 may 2010

16% of GDP and provided for more than 50% of foreign exchange earnings.[30] The main mining products include diamonds, gold, uranium, zinc, copper and lead.

4.2 Botswana

Botswana gained independence in 1966. Four decades following independence it transformed from one of the poorest countries in Africa to an economic powerhouse even surpassing the South East Asian tiger countries.[31] It is a landlocked country in Southern Africa with a population of approximately 2 million. Botswana is the world's leading diamond producer by value.[32] The diamond sector contributes more than one third of the country's GDP, over 45% of revenue for government and 75% of its export earnings.[33] Its mineral resources include diamonds, coal, copper and soda ash. In 2008/2009, the mineral revenues collected were about 32% lower compare to 2007/2008 because of the low diamond sales due to the global economic crises.[34]

5 Stability Factor

Namibia and Botswana are both perceived as having stable political, legal and fiscal regimes. In 2009, Botswana was ranked 36 out of 180 countries by the Transparency International in its Global Corruption Report, the highest ranked country in Africa.[35] It was also ranked 18 out of 71 jurisdictions on its policy potential index. In 2009, Namibia was ranked 61 out of

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[30] Mobbs, P.M., *The Mineral Industry of Namibia*, 2007 Mineral Year Book, USGS, 2010 http://minerals.usgs.gov/minerals/pubs/country/2007/myb3-2007-wa.pdf

[31] World Bank, *Botswana: Country Brief* (2010) http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/BOTSWANAEXTN/0,,print:Y~isCURL:Y~menuPK:322821~pagePK:141132~piPK:141107~theSitePK:322804,00.html

[32] Newman, H.R., *The Mineral Industry of Botswana*, 2008 Mineral Year Book, USGS, 2010 http://minerals.usgs.gov/minerals/pubs/country/2008/myb3-2008-bc.pdf

[33] Ibid 30

[34] Annual Report Botswana Mineral, http://www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Minerals-Energy-and-Water-Resources-MMWER/Reports-and-Publications/Annual-Reports/Department-of-Mines-Annual-Reports/?p_id=3691

[35] Global Corruption Report, http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table last visited 06 May 2010

180 countries by the Transparency International in its Global Corruption Report.[36] It was also ranked 34 out of 71 jurisdictions on its policy potential index.[37]

However, the recent changes can possibly change the perception of the stability of Namibia's fiscal regime. However, the changes were reasonable as most countries, including Botswana and South Africa impose a royalty on other minerals to capture more revenue. In addition, it should be noted that Rossing Uranium Limited, the Rio Tinto operated uranium mine was formed before independence and that the Namibian government has a 3.38% equity share which can justify the new royalty payment coupled with the country becoming the fourth largest producer of uranium.

6 Mining Regulatory Framework

International competition for foreign investment has obliged the countries to adopt an investor friendly regulatory framework to balance the interests of the investors, government, community and environmental matters. Namibia's mineral policy aims to create an environment that attracts both foreign and local investment and thus contribute to socio-economic development.[38] The Mineral rights are vested in the state and the industry is primarily regulated by the Minerals (Prospecting and Mining) Act of 1992. Botswana's general mining policy aims to maximise the national economic benefit from the development of mineral resources.[39] The industry is primarily governed by the Botswana Mines and Minerals Act of 1999. Both countries legal frameworks are clear and efficiently administered. The Fraser Institute Survey ranked Botswana 18 out of 71 jurisdictions on its policy potential index, being the highest ranked jurisdiction in Africa. Namibia was ranked

[36] Ibid note 33 http://www.transparency.org/publications/gcr/gcr_2009 last visited 05 may 2010
[37] Ibid note 33
[38] Ministry of Mines and Energy, *Minerals Policy of Namibia*, http://www.chamberofmines.org.na/fileadmin/downloads/Minerals_Policy_Final.pdf last visited 23 April 2010
[39] Department of Mines, *Botswana Mineral Investment Promotion* (2009) http://www.mines.gov.bw/Botswana%20Mineral%20Investment%20Promotion.pdf

34 and was third in Africa.[40] This reflects the stability of the legal regime which is a key factor in establishing competiveness.

7 Key Fiscal Instruments

The table below shows the mining taxes of Botswana and Namibia which reflect the key elements of most mining fiscal regimes. Both countries use the royalty system combined with corporate income tax to capture revenue which distributes the risk of mining between states and companies.

Table 7.1 Botswana and Namibia Mining Fiscal Regimes.[41]

Tax Payable	Namibia	Botswana
Mineral Royalty Rates	- Diamond mining: **10%** - Rossing Uranium: **6%** - Dimension Stone: **5%** on all unprocessed stone blocks - Precious stones, base & rare, - nuclear fuel minerals: **3%** - Semi-precious stones, industrial & Non-nuclear fuel minerals: **2%**	- Precious stones: **10%** - Precious metals: **3%** - Other Metals: **3%** - calculated from the gross market value of mineral sales at the 'Mine gate'
Corporate Income Tax	- Diamond Mining: **55%** - Other Minerals: **37.5%** - Non mining activities:**40%**	- **25%** or Tax derived from formula 70- 1500/x, where x (%) = taxable Income/gross income. - Variable Income Tax Rate
Dividend Withholding Tax	- Dividends: 10% paid to	Dividends: **15%** on

[40] Fraser Institute's Annual Survey on Mining Companies 2008/2009 http://www.fraserinstitute.org/commerce.web/product_files/MiningSurvey20082009_Cdn.pdf

[41] Mbendi Information Services, *Mining in Namibia* and Botswana; Namibia Chamber of Mines, http://www.mbendi.com/indy/ming/af/na/p0005.htm; http://www.chamberofmines.org.na/

	non- residents and certain foreign residents - Royalties: 10.5% on distribution to non-residents	distribution to residents and non-residents shareholders
Import Duty	Uplift – 10% - Subject to SACU standards.	Mining equipment and Zero – rated, otherwise duties are payable
Value Added Tax	15%	10% - applies to all but zero-rated items, which includes exports of minerals. VAT refunds available upon re-export of items within 6 months of being brought into country
Taxation for Downstream Processing (Cutting, polishing and refining minerals)		15% Tax Rate (5% basic rate and additional company tax rate)

7.1.1 **Corporate Income Tax**

The Corporate Income Tax in Namibia is fixed at a minimum of 25% for minerals but the average tax is 37.5%. Diamond Mining has a special tax rate of 55%. Furthermore, Mining companies are taxed 40% for non-mining activities. In Botswana, all mining companies, besides diamond extraction, are liable to pay income tax at a rate of 25%. A variable income tax formula is used to tax highly profitable mines which can rise to a maximum of 50% this is only applicable when the taxable profit equals gross income. The diamond industry is given special tax treatment in both countries. This is due to the diamond industry's strong role in their economies i.e. both governments have a 50-50 joint venture with De Beers Century AG.

Namibia's minimum income tax of 25% is equivalent to Botswana flat rate. Both taxes are based on profits. Namibia's average rate of 37.5% is high compared to international standards i.e. most countries impose an average of 30% (Chile: 15%) (Argentina: 35%) (Ghana:

35%).[42] This high rate can result in the early closure of marginal mines and loss of employment. Nonetheless it is to be noted that Namibia does provide generous incentives.[43] In Botswana, income is also taxed based on a formula which takes into account the profitability of the mine. Therefore mines that are marginally profitable are taxed at a lower rate and can therefore have a longer life. This is beneficial in the long term as it will secure employment and sustain investment. Thus the income tax rates in Botswana compared to Namibia are more attractive as they are flexible. It should be noted that the diamond companies in Botswana are taxed differently: companies are able to negotiate their own arrangement with government which would regulate their taxation.

7.1.2 **Mineral Royalties**

Mineral royalty tax is unique to the natural industries. It is advised that nations that want a competitive advantage to attract mineral sector investment, should forgo a royalty tax as investors prefer to be taxed on their ability to pay.[44] However, due to the concept of national sovereignty over natural resources, royalty is viewed as compensation for the exploitation of non-renewable natural resources i.e. payment for the mining rights. For governments, it is an important means of earning revenue which enables them to fulfil their socio-economic obligations. Moreover, they tend to be easier to administer and monitor.

Namibia and Botswana impose ad valorem royalties which is based on the value of the mineral produced. This type of royalty is payable regardless of whether the mine is profitable or not.[45] Investors favour royalty tax based on income or profits as it is based on their ability

[42] J. Otto et al, (2nd Ed) Global Mining Taxation Comparative Study), (Colorado School of Mines, Golden: 2000)
[43] Supra section 5.2
[44] Ibid note 1
[45] Ibid note 2

to pay.[46] However, the royalty is flexible as it changes depending on the commodity prices therefore governments will earn more revenue when the prices are high and vice versa.

In Namibia, 10% royalty payment is imposed on diamonds and 5% on all unprocessed dimension stone. The tax on the unprocessed is meant to encourage local processing. In 2006, Namibia introduced royalty tax on other minerals.[47] It imposed a 6% royalty payment on the Rossing uranium mine, predominately owned by Rio Tinto and other stakeholders.[48] In comparison, Botswana levies a 10% royalty payment on precious stones compared to Namibia's 3% rate. In addition, it imposes 3% on precious metals and other metals.

The calculation of value-based royalty varies hence the percentages should not be viewed at face value. For instance, Namibia's royalty value is based on sales revenue minus some costs. In addition, alternative royalty rate can be negotiated.[49] On the other hand, Botswana's royalty is based on net smelter return i.e. value at the mine gate. This allows smelting, processing and refining costs to be deducted in addition to other cost including off-mine transport.[50] This is to encourage local processing. It is evident that Namibia has higher royalty rates in comparison to Botswana. It is also important to note that the absence of royalty rate doesn't automatically make a fiscal regime competitive for foreign investment evident in the case with Zimbabwe.[51] Competitiveness is based on a combination of factors.

7.1.3 **Withholding Tax**

Withholding Tax in Namibia is applied to both dividends (10%) and royalties (10.5%) whilst Botswana's (15%) is applied only to dividends. The tax on dividends is much higher in

[46] Ibid note 2
[47] Minerals Royalty Act 2006
[48] Namibia Chamber of Mines, *Annual Review 2007-200*8, http://www.chamberofmines.org.na/uploads/media/Chamber_of_Mines_Annual_Review_2008.pdf Last visited on 12 April 2010.
[49] Ibid note 1
[50] Ibid note 1
[51] Ibid note 1

Botswana however Namibia's taxes total 25.5% withholding tax, which is arguably higher than the considerable range amongst developing countries. [52]

7.2 **Tax Allowances:**

Tax allowances demonstrate the extent to which government is sharing in the investment risks.[53] Their main purpose is to provide a means for a company to decrease their tax liability by taking into consideration the costs and losses. Allowances are an important aspect of the project evaluation and thus 'the nature and size of the tax allowances can make or break a fiscal regime'.[54]

Namibia offers a range of tax allowances. All preproduction exploration expenditure is fully deductible in the first year of production. In addition initial and subsequent development cost including start-up capital and loan finance, are fully deductible in equal instalments over a period of three years. Losses are carried forward indefinitely and, subsequent exploration expenditure is not ring fenced and is fully deductible in the year. The absence of the ring fence is a strong financial incentive for investors.[55] Furthermore, Namibia has signed double-taxation treaties with the United Kingdom, the Republic of South Africa, Mauritius, Sweden, France, India, the Russian Federation, Romania, and Germany.[56]

Botswana offers a 100% depreciation of capital expenditure in the year investment is made and losses are carried forward indefinitely. In addition, mining equipment and spares are zero-rated. Both countries offer attractive incentives including indefinite loss carry forward

[52] Ibid note 1

[53] Kemp, A.G., *Economic Considerations in the Taxation of Petroleum,* in Khan, K. (ed) Petroleum Resources and Development. Economic, Legal and Policy Issues for Developing Countries, Belhaven Press, London: 1987 p 132

[54] Andrew-Speed, *Tax Allowance*, Mineral and Petroleum Taxation Lecture Notes, CEPMLP, Unit 3, 2009

[55] Johnston, D., International Petroleum Fiscal Systems and Product Sharing Contracts,(Tulsa,Penwell:1994) p. 69

[56] Ministry of Trade and Industry, Republic of Namibia, *Trade preference Scheme* http://www.mti.gov.na/subpage.php?linkNo=29 last visited 28 April 2010.

which allows for early recovery of losses. The disadvantage is that payment of government revenue is delayed in the short term; however it is beneficial in the long run taking into consideration the discount rate. Further, Botswana has double taxation agreements with Barbados, Mozambique, India, Namibia, South Africa, the United Kingdom, Sweden, Mauritius, Zimbabwe, France and the Seychelles.[57]

8 Evaluation and Analysis:

8.1 **Taxation Instruments**

Royalties are considered as a regressive form of taxation and thus high levels of royalty rates can distort business decisions. In contrast, Investors prefer profit based taxes like the corporate income tax as their tax payments are deferred until they have recovered their production costs. This is a progressive tax that targets the profit which is less than the gross income of the mining company.

8.2 Recommendations

Namibia and Botswana both have attractive fiscal regimes that are open to foreign investment. However, Namibia has a much higher corporate income tax rate compared to Botswana thus it may be less attractive to the investors and might appear to be non-neutral especially due to the high royalty relates. It also introduced royalties on other minerals without changing the income tax. Thus the high royalties by international and regional standards could potentially discourage foreign investment in new mines and existing mines. Further, it could result in the early closure of marginal mines that are in operation. Botswana's regime is more attractive for private investment because the rate is lower and it has an additional tool to target highly profitable mines i.e. VITR.

[57] Botswana Double Taxation Treaties, http://www.lowtax.net/lowtax/html/botswana/jbo2tax.html last visited 23 April 2010.

Namibia can introduce a form of resource rent tax which will target a mining project's surplus profits when there is a rise in the price of commodity. Thus companies that are not profitable do not bear the excessive tax burden. The RRT is neutral to investment decisions thus it is more attractive to investors. However this type of tax is difficult to administer and monitor. [58] Thus it depends on the capacity of Namibia. To lessen the effects of the high royalty rates; Namibia can lower the income tax to the same level as the basic rate applied to other industries in Namibia i.e. 35% excluding the diamond industry. [59]

9 Conclusion

A competitive regime for foreign investment is one that enables both government and the investor to achieve their objectives to a certain extent. However, this is difficult to achieve due to the divergent objectives thus striking a balance is fundamental. This can be achieved through the usage of a mix of tax instruments that allocate risks between the government and investor. The concepts of economic rent, discount rate and neutrality are tools that help maintain this balance. A competitive regime taxes the economic rent and thus encouraging the economic efficient exploitation of the resources. Different nations have different expectations, circumstances and needs and thus an approach to taxes that is most favourable for one nation may be unworkable for another. [60] Political, legal and fiscal stability are key determinants for investors, despite the tax incentives afforded, as there is an inverse relationship between low rates and the stability of a fiscal regime. [61] Investors look at the cumulative effects of the taxes.

[58] Tordo, S., *Fiscal Systems for Hydrocarbons: Design Issues,* World Bank Working Paper No. 123 at http://siteresources.worldbank.org/INTOGMC/Resources/fiscal_systems_for_hydrocarbons.pdf Last visited 01 May 2010
[59] Ibid.
[60] Ibid. 1
[61] Ibid. note 2 p. 11

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