

**AN APPRAISAL OF TAX INCENTIVES UNDER THE TIC
INVESTMENT REGIME**

**AN APPRAISAL OF TAX INCENTIVES UNDER THE TIC
INVESTMENT REGIME**

**By
DEOGRACIOUS MAYA**

**A Compulsory Dissertation Submitted to the Faculty of Law in Partial
Fulfillment of the Requirements for the Award of Masters Degree in
Commercial Laws (LL.M. - CL) of Mzumbe University**

2019

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled, **AN APPRAISAL OF TAX INCENTIVES UNDER THE TIC INVESTMENT REGIME**. In partial fulfillment of the requirement for award of the degree of Master in Laws of Mzumbe University.

.....
Major Supervisor (Dr. S. Bakta)

Date

.....
Internal Examiner

Date

Acceptance for the Board of Faculty of Law
.....
DEAN-FACULTY OF LAW

DECLARATION AND COPYRIGHT

I, **DEOGRACIOUS MAYA**, declare that this dissertation is my original work and that it has not been presented and will not be presented to any other university for a similar or any other degree award.

Signature:

Date:

©

This Dissertation is a copyrighted material under the Berne Convention, the Copyright and Neighboring Act of 1999 Cap. 218 [R. E. 2002], other international and national enactments, in that behalf, on intellectual property. It may not be reproduced by any means, in full or in part, except for short extracts in fair dealings for research or private study, critical scholarly review or discourse with an acknowledgment, without the written permission of the Mzumbe University, on behalf of the author.

ACKNOWLEDGEMENTS

Completeness of this dissertation has hardly involved numbers of people whom in one way contributed their unique, peculiar and outstanding views during preparation and writing of this study. I'm so indebted to you all, thank you for your contribution.

It would not be easy to name all involved however, I would like to present my very special and sincerely thanks to Almighty GOD for his outstanding, infinite, abundant LOVE, grace and health to courageously peruse, my studies and finally make this research study a reality.

Secondly, I am so grateful to my research supervisor Dr. S. Bakta who by her assiduously reading, her constructive logical critics and encouragement at every submission to the completion of this work.

Lastly, I am deeply indebted to my family for their support and patience during my study, without their patience, persevere love and prayers for the day and sleepless night devoted for this work, today this dissertation would not have been credible and plausible.

DEDICATION

This dissertation is dedicated to my family

LIST OF ABBREVIATION

ICC	International Chamber of Commerce
ICSID	International Centre for the Settlement of Investment Dispute
IMF	International Monetary Fund
TIC	Tanzania Investment Centre
TRA	Tanzania Revenue Authority

LIST OF STATUTES

The Export Processing Zones Act, 2002
The Export Processing Zones (Amendments) Act, 2006
The Economic Zones Laws (Miscellaneous Amendments) Act, 2011.
The Income Tax Act, 2004
The Mining Act, 2010
The Special Economic Zone Act, 2006
The Tanzania Investment Act [CAP 38 R.E 2002]
The Value Added Tax Act, 2014
The Written Laws (Miscellaneous Amendments) Act, No 7 of 2017

SUBSIDIARY LEGISLATION

The Investment Regulations G.N. No. 381 of 2002

ABSTRACT

Tax incentives are considered a necessary evil for attracting investments and increase Foreign Direct incentives. In that spirit Tanzania issue different tax incentives via the Tanzania Investment Centre as per the Tanzania investment Act, 1997. The law puts threshold qualification for an investor to be issues with an incentive certificate depending on relevant sector. Also, other laws like the Income Tax Act, 2004, the Value Added Tax Act [CAP I48 R.E 2002], Export Processing Zones Act, 2002 and The Mining Act, 2010 allow issuance of incentives to investors as qualified by threshold.

For example save for investments in mining and petroleum, centre can issue certificate of incentive to a foreigner or local investor with the qualification under section 2 (2) (a and b)¹, that to qualify for and obtain Tanzania Investment Centre Certificate of Incentives minimum fixed investment cost for New, Rehabilitation and Expansion Projects should be at least US\$ 100,000 for projects, which are wholly owned by Tanzanian Citizen (s), and US\$ 500,000 for projects, which are wholly owned by foreign investors, or if a joint venture. Or, to qualify for an Export Processing Zones licence, the investment should amongst other things, be new business or activity which has not been already established, with at least 80% of the goods produced or processed for export and annual export turnover of at least USD 500,000 for foreign investors (USD 100,000 for local investors).

This research looked the qualification of the investor under above metioned Acts, by making an analysis to see whether tax incentive attracts investment or not and if not what qualification are plausible for incentive certificate to be issue and then the merits of tax incentive in growth of tanzania economy was evaluated as against demerits. In order to get precise materials for writing this work, the researcher employed two research techniques: documentary review and case study. In documentary review materials were gathered from legislations, policy, documents, reports, newspapers and journal articles, online articles and textbooks,. In a case

¹ The Tanzania Investment Act [CAP 38 R.E 2002].

study the methods which were employed included direct interviews and use of questionnaires.

The research revealed that, tax incentive was not a major factor for attracting foreign direct investment in a country with poor infrastructure, geographical barriers and weak taxation system. Again, comparing tax incentive issued in Tanzania and her developments, the research found that tax incentives have resulted into more revenue losses than profit, because they are means used for tax avoidance and they beneficial bonus to investor who would have invested without tax incentives. The study further noted that, incentives qualifications under different laws are not cautious to obvious reasons, thus threshold can manipulate or hide investment to qualify for incentive while it does not. For example an investment which would have come in Tanzania despite of incentives because of market and raw material needs.

From the above mentioned finding, the researcher made recommendation that, the Tanzania Investment Act, 1997 should be amended, first to allow the parliament and the centre to amend or withdraw tax incentive certificate in case of abuse. Second the qualification for an investor should be reviewed, instead of looking on the threshold, each investment should be evaluated differently according to purposes and benefits to Tanzania. Third, tax incentives should be reduced or abolished and the taxation system should be enhanced to facilitate transparency and accountability.

TABLE OF CONTENTS

CERTIFICATION	i
DECLARATION AND COPYRIGHT	ii
ACKNOWLEDGEMENTS	iii
DEDICATION	iv
LIST OF ABBREVIATION	v
LIST OF STATUTES	vi
ABSTRACT	vii
LIST OF TABLES	xiii
LIST OF FIGURES	xiv
CHAPTER ONE	1
GENERAL INTRODUCTION	1
1.0 Introduction	1
1.1 Background to the problem	1
1.2 Statement of the problem	5
1.3 Objectives of the study.....	7
1.3.1 General Objective	7
1.3.2 Specific Objectives.....	7
1.4 Research Questions	7
1.5 Justification of the Study	7
1.6 Significance of the Study	8
1.7 Literature Review.....	9
1.8 Research Methodology.....	13
1.8.1 Research Design.....	13
1.8.2 Population and sampling Design	14
1.8.3 Sample size	14
1.8.4 Sample techniques.....	15
1.8.5 Data Collection Methods and Collection Instruments	15
1.8.6 Interviews	16
1.8.7 Questionnaires	16

1.8.8 Documentary Review	17
1.8.9 Data Processing and analysis.....	17
1.9 Scope of the study.....	19
1.10 Limitations of the Study	19
1.11 Chapterization.....	21
CHAPTER TWO	22
CONCEPTUAL FRAMEWORK ON TAX INCENTIVES IN INVESTMENT	
 SECTOR IN TANZANIA	22
2.1 Introduction	22
2.2 Investment	22
2.3 Investment Sectors subject of Tax Incentives in Tanzania	23
2.4 Tax Incentives.....	24
2.5 Types of Tax incentives	24
2.5.1 Tax exemption	24
2.5.2 Tax Holidays.....	25
2.6 Categories of Tax incentive for this study.....	26
2.6.1 Fiscal Incentives.....	27
2.6.2 Non- Fiscal Incentives.....	28
2.7 Issuing of Tax incentives in Tanzania.....	29
2.8 Conclusion.....	29
CHAPTER THREE.....	31
LEGAL AND INSTITUTIONAL FRAMEWORK FOR TAX INCENTIVES	
 IN TANZANIA	31
3.0 Introduction	31
3.1 Law Governing Tax incentives in Tanzania.....	31
3.1.1 The Income Tax Act, 2004.....	31
3.1.2 The Value Added Tax Act,2014	32
3.1.3 Export Processing Zones Act, 2002.....	32
3.1.4 The Tanzania Investment Act [CAP 38 R.E 2002].....	34
3.1.5 The Mining Act, 2010	35

3.2 Issuing Tax incentives in Tanzania.....	35
3.2.1 Direct tax incentives issued	35
3.2.2 Indirect tax incentives issued.....	36
3.2.3 Qualification to be issued with tax incentives	36
3.2.3.1 Qualifications under Tanzania investment Act, 1997	36
3.2.3.2 Qualification under Export Processing Zones Act, 2002 and the Special Economic Zone Act, 2006	37
3.2.3.3 Qualification for tax incentives in Minerals and Petroleum sector.....	38
3.3 Institution responsible to issue tax incentives in Tanzania	39
3.3.1 Tanzania Investment Centre	39
3.3.2 Dar es Salaam Stock Exchange	40
3.3.3 Tanzania Revenue Authority	41
3.4 Conclusion.....	42
CHAPTER FOUR.....	43
MERIT AND DEMERITS OF TAX INCETIVES IN TANZANIA	43
4.0 Introduction	43
4.1 Tax incentives as an influence to attract and retain investments in Tanzania... 44	44
4.2 Plausible qualification for investment to qualify for tax incentives	53
4.3 Do tax incentives merits outweigh the demerits in Tanzania.....	61
4.4 Research Findings and Discussion.....	65
4.4.1 Abuse and misuse of tax incentives	65
4.4.2 Tax incentive loophole for tax avoidance and evasion	67
4.4.3 Legal framework.....	68
4.4.4 Condition for issuing tax incentives.....	69
4.4.5 Tax losses	69
4.5 Conclusion.....	70
CHAPTER FIVE	71
CONCLUSION AND RECOMMENDATIONS.....	71
5.0 Conclusion.....	71
5.1 Recommendations.....	72

5.1.1 Amendment of Section 19 of the Tanzania investments Act [CAP 38 R.E 2002].....	72
5.1.2 Amendment of investment law	73
5.1.2.1 Setting economically reasonable condition for issuing incentives	73
5.1.2.2 Provide measures to curb abuse and misuse of incentives	73
5.1.3 Enhancing Taxation system.....	74
5.1.4 Reduction of Tax Incentives.....	74
5.1.5 Transparency in Contracts Concerning Tax Incentives	75
5.1.5 Control of fiscal incentives.....	75
REFERENCE	76
ANNEXURES	82

LIST OF TABLES

Table 4.1. Categories of respondents and their responses on Tax incentives as an influence to attract and retain investments in Tanzania	51
Table 4.2. General responses on Tax incentives as an influence to attract and retain investments in Tanzania	52
Table 4.3 Responses on Plausible qualification for investment to qualify for tax incentives	59
Table 4.4. General responses on plausible qualification for investment to qualify for tax incentives	60

LIST OF FIGURES

Figure 4.1 Categories of respondents and their responses on whether tax incentives attracts and retains investments	51
Figure 4.2 General responses on whether tax incentives attract or retain investments	52
Figure 4.3 Categories of respondents and responses on Plausible qualification for investment qualify for tax incentives	59
Figure 4.4 General responses on Plausible qualification for investment to qualify for tax incentives	60
Figure 4.5 Tanzania Gross Domestic Products Annual rates 2006-2018	62

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

Investment is an important contributor of economic growth and development. The rule is while weak investment tends to undermine growth, robust investment boosts and accelerates growth². The law governing Foreign Direct investments, Tanzania investments Act, 1997 specifically on how section 19 (1) is coached, suggests a weak investment. That has undermined economic Growth of Tanzania, by providing investments attraction through tax incentives without controlling mechanism, leaving the fate of this great nation in the hand of investors.

This study examined the merits and demerits of tax incentives in Tanzania by first tracing its origin and assessing the reasons why they were established. Again on the study assessed the social factor led to desirability of tax incentives in connection to current social factor and whether to date tax incentives are still desirable. Also, the study examined criteria and mechanisms used to issue tax incentives and to control investors from abuse.

1.1 Background to the problem

Origin of tax incentives in Tanzania is traced from colonial period. As the German Colony, Tanganyika tax system was designed to strengthen colonial administrator with unfettered powers against colonial subjects³. Tax incentives where issued to all foreigners during this period, allowing them to acquire super profits in their undertakings.⁴ Although no specific piece of legislation reflected this, literature reveal to be the practice.

² Mpango. P, *The Role Of Investment In Economic Development And Growth Strategy Of Tanzania: The Case Of The Lake Tanganyika Zone*, Dar es Salaam, 2015, Proceed of The Tanganyika Lake Investment Forum, available at www.mipango.go.tz accessed on 14 th of July 2018.

³ Luoga, F. D. A. M (2002) *Taxation in the Advent of Democratization and transition to free market Economy in Tanzania and Concerns on Rule of Law and Human Rights*, p.12.

⁴ Sunseri, T, Labour Migration in Colonial Tanzania and the Hegemony of South Africa Historiography, *African Affairs*, Vol 95, No 381, 1996, p. 589.

Codification of taxation rule is evidenced during the British Colonial administration. First, the enactment of the Income tax legislation in Kenya in 1937; with some amendments, this ordinance remained in effect until 1950. In 1948, under the East African (High Commission) Order-in-Council set up a Central Legislative Assembly that contained official and non-official representatives from the three constituent territories and was empowered to legislate with respect to certain specified matters. Such legislation would, when enacted, override the conflicting territorial legislation.⁵

The High Commission, suggested the enactment of the East African Income Tax (Management) Act, 1952 dealing, with respect to the whole of East Africa (excluding Zanzibar), with general matters, leaving each territory to enact separate legislation dealing with rates and allowances.⁶ Again apart from the rules of practice and the words of prominent authors, Tax incentives were not legal evidence, though argued to be presented especially on the raw materials exported from colonial territories, and imports by foreigners at some extent.

After independence no noteworthy changes were made on taxation system by TANU government. Although characterized by anti- private property ownership⁷, the TANU government realized that there was a need for investors due to the fact that the economy was still in the formative stages.⁸ And socialism was failing (after the collapse of the Soviet Union), price fluctuation, decrease of oil supply, hunger and war necessitating Tanzania to seek refugee from other nations. The rescue came (from World Bank and the International Monetary Fund (IMF) with its conditions that Tanzania was to adopt free market economy policies. Allowing outside investment, to attract such investment, tax incentives were introduced to attract Foreign Direct Investments.⁹

⁵Aspatore (2010) *Tax Law Client Strategies in the middle East and Africa* available at www.west.thompson.com, Accessed on 16th of July, 2018.

⁶ *Ibid.*

⁷ After the Arusha Declaration, 1967.

⁸ Peter. C. M and Saudin. J. M (2004), *Investment in Tanzania: Some comments- Some issues*, p.8.

⁹ Flavianus, M. (2012) *Determination of foreign direct investments (FDI's) In East Africa Countries of Tanzania and Kenya*: Mzumbe University retrieved from <http://www.clknet.or.tz/>.

Henceforth, to attract Foreign Direct Investment inflows in Tanzania, an Investment policy was put in place in 1990 when the government enacted the National Investment Promotion and Protection Act, 1990 which granted tax incentives to investors in the form of tax holidays for a specific period of time.¹⁰ Specifically, investors were taxed after seven years of investment. The Act was more of political nature, by promoting investment and insurance of Tax incentives for investors with no regulatory mechanisms and any law which was aimed at regulating those matters.

Repealing the National Investment Promotion and Protection Act, 1990, Tanzania Investment Act¹¹, established the Tanzania Investment Centre, with power to issue different tax incentives to investors. Tanzania Investment Centre can grant a Certificate of Incentives, Strategic Investor status and an Import Duty Draw Back Scheme which, as a package, provides tax relief as well as preferential treatment by authorities and lending institutions. Complimentarily, the Act established regulatory mechanism for issuing tax incentives in Tanzania.

Arguably, taking note that the Tanzania Investment Act, 1997 is still applicable to date, meaning that the formation of issuing tax incentives is the same, in the period where attraction of foreign Direct Investments, need not to be facilitated at our cost. As a country we have enough to offer to investors without such attraction. The emphasis of section 19 of the Act is encroach, envisage attracting business by ensuring investors are not interfered with by the Governments in their activities, however absolute power corpuses absolutely.

The evidence suggests that the tax concessions provided by the government, combined with the aggressive tax avoidance strategies employed by mining companies have resulted in a substantial loss of government revenue that might otherwise have been used to spur economic development.¹²

¹⁰ Flavianus, M. (2012) *Determination of foreign direct investments (FDI's) In East Africa Countries of Tanzania and Kenya*: Mzumbe University retrieved from <http://www.clknet.or.tz/>.

¹¹ Act no 26 of 1997

¹² Magai P.S, Marquez P, *Tanzania mining sector and its implications for the country's development*, p. 9.

For example, in the mining sector which is not under the TIC, Tanzania offered a raft of incentives to attract mining companies into the country; there are almost 11 areas where special incentives are being offered to mining companies. These include the following:¹³ exemption from capital gains tax (unlike other companies in Tanzania), special VAT relief, which includes exemption from VAT on imports and local supplies of goods and services to mining companies and their subcontractors, the ability to offset against taxable income the cost of all capital equipment incurred in a mining operation, a reduced rate of stamp duty, at 0.3 per cent. This is included in several mining agreements signed between the government and the mining companies, even though the rate of stamp duty is set by law at 4 per cent.

Revenue collected through international trade taxes grew by less than 30% from 2009 to 2015.¹⁴ For example, the Tanzania Revenue reports on Revenues, in 2010 reported that 45.12% of revenue ought to be collected from different FDIs were exempted by Tanzania Investment Centre due to investment promotion.¹⁵ The tax statistic reports show that the growth in revenues in 2016/2017¹⁶ was simply because of the current administration, which have tried to block all means used by foreign investors to avoid taxation through tax incentives.

The purpose of which section 19 of the Tanzania investments Act, 1997 was enacted for is long overdone. Changes in the provision for future growth of our country are needed, from that back ground this study was undertaken, in order to show the need to change the setting of the provision, for the better tomorrow.

¹³ Curtis. M & Lissu. T, “A Golden Opportunity: How Tanzania is Failing to Benefit From Gold Mining p.23, available at <https://www.kirkensnodhjelp.no> Accessed on 24th of June, 2018.

¹⁴NBS, Tax Statistics Report 2016/2017 Tanzania mainland, June, 2018 Available at https://nbs.go.tz/nbs/takwimu/Tax/Tax_Statistics_Report_2016-17.zip Accessed on 31th of July 2018.

¹⁵ UWAZI, Tanzania’s Tax Exemption: Are they too high and Making Us too Dependent on foreign aid? at www.uwazi.org, Accessed on 27th of June, 2018 12:35 PM.

¹⁶ Op cit, NBS

1.2 Statement of the problem

The government of Tanzania is providing tax incentive¹⁷ to investors who are willing to invest in Tanzania in accordance with criteria under the Tanzania Investment Act¹⁸ as a way to attract greater level of foreign and local investment into the country. Tax incentives are used to facilitate Foreign Direct investments and local business as well. Section 19 (2) of the Tanzania Investment Act¹⁹ read together with Regulation 45 of the Investments Regulations, 2002²⁰ provides for the purpose of creating a predictable investment climate, an investor be issued with certificate entitling benefits stipulated therein for a period of 5 years from the date of issuance of such certificate, without being amended or modified by any law to the detriment of such investor.

Plainly, section 19 (2) and regulation 45 above requires that Tanzania investment centre after granting the Tax incentives certificate should neither alter the certificate terms, nor can such certificate terms be amended or modified by the Act of the parliament, because the law prohibits amendment by the law expressly. Therefore, Tanzania hands are tied soon after granting the incentive certificate for five years with no power to revoke in case of circumstance warranting that effect or even when the tax incentives are no longer beneficial to Tanzania economy and its people.

Tax Incentives result in loss of revenue, for instance, the government lost Tanzania shillings two hundred ninety point seven billion because of the Tanzania Investment Center Incentives to investors in 2013 which is 19% of the all incentives granted by the government.²¹ And according to Tanzania Revenue Authority report the total

¹⁷ Section 3 of the Tanzania Investment Act, 1997 to mean tax reliefs and concessional tax rates which may be accessed by an investor under the Income Tax Act, 1973, the Customs Tariff Act, 1976, the Sales Tax Act, 1976 and any other law for the time being in force, and includes additional benefits that may be accessed by an investor under section 19 and 20.

¹⁸ [CAP 38 R.E 2002]

¹⁹ Ibid

²⁰ The Investment Regulations, G.N. No. 381A of 2002.

²¹ The Minister of State in the Prime Minister's Office (Investment and Empowerment), Dr. Mary Nagu speech at the Parliament published by Mwananchi (Dar es Salaam) Tanzania Tanzania Investment Centre gives tax incentives about Tshs 290 billion published on Wednesday Sharon Sauwa, 25 June 2014, p.4.

amount of incentives granted in the year 2013/2014 was Tanzania shillings one point four trillion.²²

For Tanzania, Tax incentives have not been proved fertile. In different investment sectors tax incentives have caused revenue losses; for example, in mining sector and transportation sector the Controller and Auditor General reports abuse of tax relief of Tanzania shilling 3.46 billion provided to two beneficiaries in the transportation sector who ordered 238 cars. According to the report the car were registered and used by unintended beneficiaries of exemption.²³ Also, the Controller and Auditor General report singled out a case in which no documentation was provided for 4.2 million liters of oil transported from Dar es Salaam between October 2014 and December 2015 for the use in mining areas in Buzwagi, Bulyankulu and Geita.

Tax incentives are issued in order; first to attract more Foreign Direct investments²⁴, which are expected to stimulate the country's economy by offering employments, developments in invested areas and transforming technology in to the country. Second, to facilitate new investments and motivate investors in certain locations for development. However, as shown above, tax incentives are used for tax evasion and avoidance and not for the intended purposes because most of the investor's shelf the previous investment to a new investment after accumulates profit from the incentives given before the expiration of incentive period.

²² The Minister of State in the Prime Minister's Office (Investment and Empowerment), Dr. Mary Nagu speech at the Parliament published by Mwananchi (Dar es Salaam) Tanzania Tanzania Investment Centre gives tax incentives about Tshs 290 billion published on Wednesday Sharon Sauwa, 25 June 2014, p.4.

²³ Controller and Auditor General Reports 2016/ 2017, available at www.nao.go.tz/?wpfd_dl=253 accessed on 15th of September, 2018 at 09:40 am.

²⁴ Ngowi. H.P (2000), Tax incentives for Foreign Direct Investments (FDI): Types and Who Should/Should Not Qualify in Tanzania, The Tanzanet Journal issue 1 Volume 1, pp 19-28, p.19.

1.3 Objectives of the study

This study was guided by both general and specific objectives as follows:

1.3.1 General Objective

The core objective of this research was to analyze Tax incentives laws and regulations in relation to provision dealing with different tax incentives offered in Tanzania in different investments sector. This entailed examining tax incentives merits in investments sectors against the demerits in Tanzanian economy.

1.3.2 Specific Objectives

- i. To examine how tax incentives provision can accord with our current economic status and developments;
- ii. To show why the law needs to specifically regulate revocation of certificate of incentives in case of abuse by investors;
- iii. To complement reforms of our investments law.

1.4 Research Questions

This study was conducted on the basis of the following questions:

- i. Does tax incentive influence the attraction and retention of investment in Tanzania?
- ii. What are the plausible qualifications for investment to be issued with tax incentives?
- iii. Do tax incentives merits outweigh the demerit in Tanzania?

1.5 Justification of the Study

The law, which regulates our prosperity in economy and social order, gives power to a foreigner to regulate themselves, with unspecified or rather unknown boundaries, breathing our country and economic to the mercy of investor, provoked this study. It is time to evaluate our investments laws, measure the level of our developments and see if there is any worth to such laws.

Completion of this research was envisaged to secure resolution to the problem by highlighting the losses suffered and suggesting the way the law can control Tax incentives in Tanzania, for prosperity economic.

1.6 Significance of the Study

This study extends knowledge about what should be the qualification for issuing tax incentives which results in merits. Thus, the research is viewed to add knowledge in relation to the impact of tax incentives in investment sectors, generally to government desiring to continue issuing tax incentives to different investors and those incentives which have been issued already. This study also extends knowledge to other economic stakeholders including Tanzania revenue Authorities, Local and Foreign investors, Tanzania investment centre and other interested persons in the field of taxation law.

The research also provides new insights into qualifications of tax incentives and the performance of Tanzania economy through tax incentives. Lacking qualified and competent investors creates conditions for the inefficiencies and poor performance of country economy. This research therefore has highlighted the gaps and provides recommendations that can be applied in influencing changes in the law.

The research raises awareness to the policy makers, law makers and other institutions in the society about the existing law and its inadequacies on the issuance of tax incentives as an attraction for investments. The research is directed to various stakeholders who directly and indirectly deal with issues of tax incentives as mentioned above, for example the Tanzania Revenue Authority, Tanzania Investment Centre, Ministry for finance, tourisms, transportation, energy and mining. This research therefore in general terms raises awareness and influences changes that can lead to the formulation of new policies or the amendments of the Tanzania Investments Centre Act specifically on the qualifications of an investment to be offered with incentive certificate.

1.7 Literature Review

There is a scarcity of literature which discusses the topic selected for this research. However, the researcher was able to come across some of the literature that in one way or another had some aspects of the covered topic as discussed below:

Curts, M and Tundu Lissu²⁵ in their report titled *A Golden Opportunity: How Tanzania is Failing to Benefit From Gold Mining*, discussed intensively on how tax incentives especially on mining sector contributes to the failure of our economy. The authors air out their views on the loophole of the tax incentives provision especially on managements and issuing of tax incentives certificates, relating the process to ethical dimation.²⁶

The authors argue, on sufferance of beneficiaries of investment in the name which Tax incentives are given. Thus, although Tax incentives are issued for development the government collects very low tax revenues and controlling of issuing of tax incentives is subject to minimal governmental and popular democratic scrutiny and is associated with the problem of corruption.

Jonas. J. in his article titled *Kenya, Uganda and the United Republic of Tanzania: Selected issues*; discusses on how unmanaged tax incentives in developing countries distorts the economy. He starts by discussing the forms in which tax incentives are issued. The fiscal Incentives which are sometimes referred to as Tax incentives are mainly in the form of enhanced capital deduction and tax allowances, which include investment allowance on capital expenditure, infrastructure allowance on infrastructure expenditure, preferential tax rates for withholding tax on dividends, royalties and interest, preferential tax rates on personal income tax and indirect tax; and double deductions on approved costs and expenses.

²⁵ Curtis. M & Lissu. T, “*A Golden Opportunity: How Tanzania is Failing to Benefit From Gold Mining* p.23, available at <https://www.kirkensnodhjelp.no> Accessed on 24th of June, 2018.

²⁶ Ibid p. 4.

Both local and foreign investors who are registered by Tanzania Investment Centre (TIC) and/or Tanzania Revenue Authority (TRA) are eligible for the Tax Incentives.²⁷

He argues that, Tax Incentives result in a loss of current and future tax revenue. Tax incentives allow the investor to benefit twice, by freely investing and leaving with the investments under lower price, as the result the country loses revenues twice.²⁸ He continues to argue that because Tax Incentives are hard to remove once granted. Tax Incentives create differences in effective tax rates and thus distortions in allocation of investments between activities that are subsidized and those which are not. Tax Incentives attract mainly footloose firms; and Tax Incentives can be outside the budget and non-transparent.²⁹

Saul L. and Dominique D³⁰ speak on the challenges associated with Tax incentives; for instance Tanzania being one of Africa's largest gold producers, the expectation has been that mining would contribute significantly to its economic development. This expectation has not been fulfilled.

The International Monetary Fund (IMF) notes that gold exports have risen from around US\$ 1.5 billion in the last five years due to rising gold prices, but that government revenues have remained at around US\$ 100 million per year. This is largely because of the corporate income tax holidays provided to mining companies. In this report the authors have tried to give out the negative impact of Fiscal Incentives and that is the purpose of this study but they have failed to provide the suggestions or the recommendations on what should be done so as to avoid such problems and at the same time they have failed to give the clear picture of the laws regulating this issue of Tax Incentives in Tanzania.

²⁷ Jonas. J. (2008) *Kenya, Uganda and United Republic of Tanzania: Selected issues*; IMF Country Report No. 08/353.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Saul L. and Dominique D. (2011); Staff Report for the Article IV consultation and second review under support instrument; IMF Country Report No. 11/105, p 55.

Yuduo Lu and Kung'unde G. Marko,³¹ in their journal article argue that although tax incentives are attributed much for the promising trend of the mining sector, still, there is a controversy linking the granted incentives and the actual benefits the country realizes. The provided tax incentives seem to be a way too generous causing the country to lose substantial amount of much-needed tax revenues.³² Among the strong reasons given by the author in relation to the problem of tax incentives is poor setting of tax regimes. He argued that local tax regimes seem to be the core issue surrounding this issue, by granting extensive favorable tax incentives which on occasions involve the complete writing off of the tax (zero tax).³³

These fiscal incentives although boost the inflows of FDI's in the industry, they seriously hurt the economy due to the loss of corporate tax revenues. Very low rates of royalties (3%) and exemption of tax deal a big blow to the local economy, and this as noted above has alarmed various international bodies such as IMF. In this journal article the authors have just given out the impacts of the fiscal incentives and their causes, but they did not elaborate on what to be done so as to overcome the problem neither did they provide the laws governing such incentives.

Moses, K. and Simon, N.³⁴ argued that the rationale for granting of tax incentives are improving productivity and efficiency by attracting Tax incentives act as a catalyst for industrial development, promoting the transfer of proprietary knowledge and technology; also it is creating employment opportunities for general public, giving the local human resource opportunity to be trained and become skilled. The authors have only provided the importance of Tax Incentives after attracting investors to invest in our country, they have only based on the contribution of investment after granting Tax Incentives, the said authors have proved failure on the issue of negative challenges of Tax exemptions and tax holidays, and they have failed to give out the concept of Tax Incentives, and the laws governing Tax

³¹ Yuduo Lu & Kung'unde G. Marko (2010); *Gold Mining Investment Incentives in Tanzania: Current Issues and the Possible Remedies*. International Journal of Business and Mngement. Vol. 5, No.3 available at www.ccsenet.org/journal/index.

³² Ibid.

³³ Ibid p. 101.

³⁴ Moses, K. and Simon. N. (2014); *Tax Exemptions; Implications on Social Development*; SEATIN Uganda, p 21.

Incentives. According to them it seems like this issue is not recognized by the laws of the country.

Mark C, Lucy K, James D.³⁵ argued that, Tax incentives are a wider term that can take different forms such as Tax exemption, Tax Concession, Tax holidays and Tax relief. The investment incentives are classified into two major categories: Fiscal Incentives and Non – Fiscal Incentives, Fiscal form include corporate income tax holidays and reductions in tax rates. Non tax incentives include direct subsidies like government grants, loans and guarantees for target projects. Tax incentives are granted to attract FDI and/or promote economic policies, such as to encourage investment in certain sectors.

Also, here the authors have elaborated the meaning of tax incentives, its form and its classification; also they have elaborated the reason as to why these fiscal incentives are provided but they have failed to show the negative impacts of the fiscal incentives, neither did they show the laws governing the tax incentives or who are the people concerned with it and also they did not give out their suggestions or recommendations on what should be done, so according to them it seems like the issue has not any impacts to the country.

Saudin, J. M.³⁶ argues that the investment incentives provided under the law are competitive and are aimed at or accessible to investments in areas which are strategically considered being crucial for the economic development of Tanzania. These sectors have included agriculture, agro-based industries, mining, tourism, petroleum and gas and economic infrastructure (Road, Railways, Air and Sea transport, Port facilities, Telecommunication, Banking and Insurance.

In this article, the main concern of the author based on showing the reason as to why we offer these incentives to the investors and he said it is because of the competition with other countries but the author has failed to provide the effects or challenges of

³⁵ Mark C, Lucy K, James D , *Tax Competition in East Africa a Race to the Bottom, Tax Incentives and Revenue Losses in Tanzania*; Tax Justice Network- Africa & Action Aid International, p 21.

³⁶ Saudin J. M. *Some Legal Perspectives on Investment Incentives*; The citizen, 25 May, 2017, www.citizen.co.tz accessed on 20th of July, 2018.

these incentive and what should be done so as to overcome these challenges and he has also failed to show the causes of these problems and he did not provide the concept of these incentives together with its form and types of the incentives if any, also they did not show the laws which regulate these fiscal incentives in Tanzania.

1.8 Research Methodology

Research methodology is a way to systematically solve the research problem. In it we study the various steps that are generally adopted by a researcher in studying his research problem along with the logic behind them.³⁷ This includes the sources of information (data), and the methods of data collection.

Research methodology shows the framework in which this research study was carried out. The empirical methodological approach for this study is informed by qualitative research methods. The qualitative research is flexible with multi-method focus.³⁸ This part therefore tells about the research design, area of the study, population sample, sampling techniques, types of data, data collection methods, data collection tools and data analysis techniques.

1.8.1 Research Design

Research design is the content analysis within which research is conducted; it constitutes the blueprint for the collection, measurement and analysis of data. As such the design includes an outline of what the researcher will do from writing the hypothesis and its operational implications to the final analysis of data.³⁹ The study was designed in way to collect important data within the fixed time. Among the important key issues was the determination of the sample size, sampling techniques and fixing time.

³⁷ Kothari, C. R. *Research Methodology: Methods and Techniques*, pg 7.

³⁸ Milanzi, M.C., (2002), *Research Methods in Social Sciences: Theory, Philosophy, Methodology and Observation*, Institute of Public Administration, Mzumbe University, p.29.

³⁹ Kothari, C. R. *Research Methodology: Methods and Techniques*, p . 31.

1.8.2 Population and sampling Design

Sampling may be defined as the selection of some part of an aggregate or totality on the basis of which a judgment or inference about the aggregate or totality is made. In other words, it is the process of obtaining information about an entire population by examining only a part of it.⁴⁰

1.8.3 Sample size

A total of 60 respondents were interviewed for this study. The population sample was based on the following categorization of respondents. Three members from National Audit Office were interviewed, namely one legal officer, and two auditing officers. Also, five companies namely VODACOM, Mantheakis Safari Limited, Kuku Food Company Ltd, Msumeno General Enterprises Ltd Cargo and East Cost Oil & Fats Co. Ltd in which the respondents were the company financial assistant, Human Resources Managers and company legal officers. The researcher also conducted interviews and issued questionnaires to twenty investors both local and foreigners in different companies and investments centre, three High court judges of the Commercial Division where one judge and the registrar of High Court commercial Division was interrogated, as well as seven Auditors in different Auditing firms in Dar es Salaam.

Others were eight members from Tanzania Revenue Authority from Kinondoni, Kimara, Samora, Magomeni, Ilala and Gerezani. The researcher also interviewed three Tanzania Investment Centre officers and collected questionnaire from five officers of the Export Zones Authority, two from the Dar es Salaam Stock Exchange Officers and from four members of the public.

⁴⁰ Ibid p. 152.

1.8.4 Sample techniques

Choosing a study sample is an important step in any research project since it is rarely practical, efficient or ethical to study the whole population.⁴¹ In obtaining the respondents, the researcher used a systematic sampling method and purposive sampling. Systematic sampling method requires that the population be accurately listed in such a way that each element of the population can be uniquely identified by its order. It consists of the selection of the term from the list.⁴²

The advantage of systematic sampling is that the information obtained is reliable.⁴³ Purposive sampling enables the researcher to choose respondents because of certain criteria⁴⁴ it is a deliberate selection of sample units that conform to some pre-determined criteria. This involves the selection of cases which we judge most appropriate ones for the given study.⁴⁵ That being the case therefore the selection of the respondents in this research was based on the reason that the respondents must be well acquainted with taxation law specifically on tax incentives issues and experience since the research at hand highly requires knowledge in such field.

1.8.5 Data Collection Methods and Collection Instruments

In this research the primary data was obtained from respondents or experience survey by interviewing and questioning key participants who were in position to answer the question. In this study the following data collection tools were employed personal interviews and questionnaires survey were the main methods used in collecting primary data. Secondary data was collected by literature review, literature like journals, fiscal reports by United Nations, World Bank, International Monetary Fund and different studies on effectiveness of tax incentives were preferred as they discuss

⁴¹ Mashall, M.N., (1996), Sampling for Qualitative Research , Family Practice, Oxford University Press, UK p.522.

⁴² Myneni, S. R. (2001). Legal Research Methodology, Allahabad Law Agency, Assian Offset Press p.226.

⁴³ Ibid .

⁴⁴ Dooley, D. (1995), Social Research Methods, (3rd Edn.), Prentice- Hall of India Private Limited, Delhi p. 136.

⁴⁵ Krishnaswami, O. R. and Ranganatham, M., (2005), *ibid* p. 139 it is based on the judgment of the researcher or some experts, the chance that a particular case be selected for the sample depends on the subjective test of the researcher. The advantages being it is less costly and more convenient and it guarantee inclusion of relevant in the sample.

and answer the question whether tax incentives results in merits or demerits. These are discussed herein below:-

1.8.6 Interviews

Interview as a method of data gathering, is a verbal method of securing data, it is a conversation with purpose.⁴⁶ It is a two-way systematic conversation between the researcher and an informant initiated for obtaining information relevant to the study involves not only conversation but also learning the respondent's gesture, facial expression and pauses and his environment.⁴⁷

The researcher chose using interviews because the approach allowed the researcher to elaborate questions to the respondent, helped making gathering relevant information from the respondents easy and also less time consuming.⁴⁸ Furthermore, the researcher was able to verify the accuracy and dependability of answers given by the respondents through observation and probes. This being the case a set of pre-determined interview guide was prepared; these were used when interviewing respondents of different categories. In this study, the researcher used semi-structured and unstructured interviews. The interviews were aimed at gathering the first hand information relating to the research questions.

1.8.7 Questionnaires

Questionnaire is another tool that was used for collection of primary data in this study. Questionnaire is the tool of investigation of social legal problems; it is used to collect data from large scattered population. It is a list of questions to be answered by a group of people, especially to get facts or information about their view.⁴⁹ The advantage of questionnaire to this research was to the effect that it helped me to get the respondents who did not have time for the interview with the researcher following the availability and time they had in their official capacity; for example,

⁴⁶ Dr. Myneni, S. R., (2001), p.186.

⁴⁷ Krishnaswami, O.R. and Ranganatham, M. (2005), *ibid* p. 183

⁴⁸ *Ibid* p. 188.

⁴⁹ *Ibid* p. 197.

respondents from Export Zones Authority and Dar es Salaam Stock Exchange. The researcher prepared a questionnaire guide which is appended in this report.

1.8.8 Documentary Review

Since the purpose of this research was to explore the tax incentives in different investment sectors in Tanzania and appraise the merits as against demerits, secondary data was collected by documentary review which involved reviewing different articles on effectiveness of tax incentives, financial reports and fiscal policy briefs. Selected companies were contacted to provide their company financial statements and reports showing how their returns contributes to and benefits the economy.

Other documents included statutes providing for tax incentives and qualifications for incentives in different sectors like the Export Processing Zones Act, 2006, Value Added Tax Act, Dar es Salaam Stock Exchange Market regulations, and the Mining Act, 2010 to name a few. These documents were obtained from different libraries, such as the Mzumbe University Library, The University of Dar es Salaam Library, and from the different websites. The purpose of these documents was to provide some of the information that was useful in answering the research problem and in making a comparative analysis in other jurisdictions on effective tax incentives.

1.8.9 Data Processing and analysis

This research used qualitative data analysis and symmetric data analysis for clarification. This is the process in which we move from the raw data that have been collected as part of the research study and use it to provide explanations, understanding and interpretation of the phenomena, people and situations which were under the study.

The aim of analyzing qualitative data is to examine the meaningful and symbolic content of that which is found within. What we are aiming at is to try to identify and understand such concepts, situations and ideas.

Qualitative research method involves the procedure in which the research question requires an understanding of the processes, events and relationships in the context of social and cultural situation. Qualitative research aims at producing factual description that is based on face to face knowledge of individuals and social groups in their natural setting that is relevant to this study. It is useful for obtaining insights into situations and problems concerning which one may have little knowledge.

It is argued that a qualitative method can be used for better understanding of phenomena which are not well known. It can also be used to gain new perspectives on the things or issues that are already known or to gain more in-depth information that may be difficult to convey quantitatively.⁵⁰ With the research at hand it was imperative that qualitative method be used to analyze data to explain the problem.

The researcher used content analysis⁵¹ with respect to documentary data which were obtained from the named libraries above. In addition, the analysis of primary data included the tabulation and graphing of the said data to explain the problem at hand.

Since this was a qualitative research, the researcher did a content analysis. Content Analysis means analysis of the contents of interviews, questionnaires in order to identify the main themes that emerge from the responses given by the respondents. Generally, this includes data management and reduction, identifying the main themes, classifying responses under the main themes, and conclusion drawing and verification.

⁵⁰ Marie C. H., (1997) Choosing Qualitative Research: Primary for Technology Researchers, in Journal of Technology Education, Vol. 9 No.1 of

⁵¹ Krishnaswami, O. R. and Ranganatham, M., (2005), *ibid* pp 211-212 defines Content analysis is a research technique for making inferences by objectivity and systematically identifying certain specified characteristics of a content of a document. This is the method of data collection and data analysis. This is used for gathering data from archival records, documents, news paper. The content of the written material serves as a basis of inference. The analysis is made objectively and systematically. Objectively refers to making to making analysis on the basis explicit rules which enable different researchers to obtain the same results from the same document. Systematic analysis refers to making inclusion or exclusion of content of according to consistently applied criteria of selection; only materials relevant to the research design are examined.

1.9 Scope of the study

This study is exclusively examining the legal and institution Framework governing issuing Tax incentives in Tanzania. Taking into account the limitation of time and specification of the Topic, The researcher focused on the key issue which was examining whether Tax incentives are panacea toward sustainable developments as per the reasons of their establishments or they just provide for neo- colonialism. The research was conducted in Dar es Salaam.

1.10 Limitations of the Study

There are various sectors in Tanzania governed by different legislations; such legislations allow issuance of different tax incentives. One of the challenges was identifying the sample of respondents to cover the study at wide range to represent different sectors.

Again, getting the responses in time was a challenge, some respondents argued to have no time and requested the researcher's patience and some misplaced the questionnaires necessitating the researcher to issue afresh and wait for response again. Thus, the researcher incurred additional cost in making such follow-ups. Costs were incurred for follow-up of different interview schedules which were rescheduled many times because the respondents were busy with their daily activities.

Few respondents feared to answer the question or giving true information believing that the researcher was a spy. For example, many questions were not answered by Tanzania Revenue Authority and Tanzania Investment Centre officer, especially when asked whether tax incentive draw advantages or disadvantages. There was also a problem with the time frame for completion of the dissertation compared to the multitude of the respondents selected and the nature of the problem particularly getting responses on time.

As noted in the previous section, the challenges above were dealt with using different approaches. For instance, the researcher had to remind the respondents particularly those who were given questionnaires that their opinions were vital in getting accurate

information about the legal aspects and practice in issuance and management of tax incentives. Therefore, the researcher consulted the respondents by making phone calls, issuing other questionnaires to respondents who misplaced them, speaking to them and also seeking audience to speak with them. In some situations, the researcher asked the respondents to fill in the questionnaires in his presence. This approach helped much as respondents were able to get clarification on some questions appearing to be unclear or vague in the questionnaire.

Overcoming other problems such as getting information for the questions that were not answered by the respondents while responding to the questionnaire, the researcher had to ask the same questions when conducting interviews. This approach helped the researcher obtain information for all the questions appearing on the questionnaire.

The researcher had to assure all candidates that the purpose of the research was academic only and the research had nothing to do with espionage. In addition, the researcher assured the candidates that he was not a spy particularly for those who had fears about the purpose of the research. In many occasions the researcher had to show the research proposal to those respondents who were worried. This approach helped build confidence among respondents. Consequently the respondents were able to provide their opinions freely. In addition, the researcher assured participants that their names would not appear in the published document for privacy reasons.

Overcoming the problem of additional costs due to follow-ups, the researcher devised a mechanism in which initial contacts with respondents were made using phone calls and agreeing on dates and times for interviews. In addition, before meeting with the respondents, the researcher called the participants to confirm if they were ready for interviews.

All these mentioned problems in one way or another contributed to the delay of finishing the dissertation. However, every challenge encountered and progress made was directly reported to the supervisor and the guidance was given on how to address the challenges encountered.

1.11 Chapterization

This research consists five chapters, chapter one discusses generally, the problem forming the subject matter of this research; examine scholarly views and approaches that have so far been taken in addressing effectiveness of tax incentives and the methodology of the research. Chapter two discusses the main concept underlining this research in detail. Chapter three deals with the Legal regime forming the basis of this research and Chapter Four deals with data analysis and presentation, while Chapter five deals with recommendations and conclusion of the research.

CHAPTER TWO

CONCEPTUAL FRAMEWORK ON TAX INCENTIVES IN INVESTMENT SECTOR IN TANZANIA

2.1 Introduction

With the aim of attracting different foreign direct investments, Tanzania under different laws governing and different investment sectors including mining, agriculture, fishing and tourism provides a wide range of incentives in general and tax incentives in particular in every fiscal year. This chapter discusses the essential concepts under this study. Mainly this chapter deals with the concept of investments, explains the investment sector subject of tax incentives, and concept of tax incentives. Types of tax incentives as defined and classified by legislation and how are they issued.

2.2 Investment

This phrase is spoken every day with purpose of explaining venturing in economic and social productive aspects for prosperity. Section 3⁵² defines investment to mean the creation or acquisition of new business assets and includes the expansion, restructuring or rehabilitation of an existing business enterprise. Investment connotes the production of goods that will be used to produce other goods.

Furthermore, investment is a result of saving (foregone consumption) by individuals, private firms and governments. It includes real investment such as new plant and equipment, public utilities including schools, roads, railways, ports and pipelines as well as financial investment which entail buying financial instruments shares, bonds and securities.⁵³

⁵² The Tanzania Investment Act, [CAP 38 R.E 2002].

⁵³ Mpango. P, *The Role Of Investment In Economic Development And Growth Strategy Of Tanzania: The Case Of The Lake Tanganyika Zone*, Dar es Salaam, 2015, Proceed of The Tanganyika Lake Investment Forum, available at www.mipango.go.tz accessed on 23th August 2018.

Thus, for every initiative taken for investments purposes, expectations are always to prosper, mainly economically and socially. Like any investment initiative, Tax incentives are used in Tanzania as investments, as means to attract investments in our sectors for prosperity of our economy and social life of her citizens.

2.3 Investment Sectors subject of Tax Incentives in Tanzania

With her natural resources, Tanzania offers investments opportunity in almost every economic, social and cultural sector. Special attention is directed to the priority sectors. The priority sectors are agriculture, agro-based industries, mining, economic infrastructure, tourism, and petroleum and gas sector. For all these sectors, except petroleum and gas sector, acquisition of all capital goods and parts are zero rated for import duty purposes and Value Added Tax thereon deferred⁵⁴. Research expenses for agriculture are allowable for income tax purposes, while capital acquisitions are 100% expensed. To attract productive investment in the petroleum and gas sector petroleum legislation was enacted. Equipment and materials used in exploration are tax-exempt.

Other sectors include manufacturing, natural resources such as fishing and forestry, aviation, commercial building, financial services, transport, broadcasting, human resource development and export oriented projects. Investors in these sectors enjoy zero import duty rates for importation of capital goods and deferment of Value Added Tax thereon. There is also a set of exemptions granted on those investing in export processing through the Free Economic Zones Authority and Export Processing Zones.⁵⁵ The incentives under this cluster range from long term tax holidays to full tax remissions.

⁵⁴ Section 5 (1), 56, 57 and 58 of the Value Added Tax, 2014.

⁵⁵ Section 15 of the Export Processing Zones Act, 2006.

2.4 Tax Incentives

The word Tax incentive is not the creature of the statute; however, it is attributed to incentives because all incentives as against taxes. The term “incentives” has been defined under section 3⁵⁶ to mean tax reliefs and concessional tax rates which may be accessed by an investor under any law for the time being in force, and includes additional benefits prescribed by the certificate of incentive. A tax incentive is defined as ‘a deduction, exclusion or exemption from a tax liability, offered as an enticement to engage in a specified activity such as investment in capital goods for a certain period’.⁵⁷

Tax incentives are the fiscal form of investment incentives and include corporate income tax holidays and reductions in tax rates. Non-fiscal or non-tax incentives include direct subsidies like government grants, loans and guarantees for target projects. Tax incentives are granted to attract FDI and/or to promote specific economic policies, such as to encourage investment in certain sectors.⁵⁸

2.5 Types of Tax incentives

Tax incentives can be in different forms, it can be tax exemption, tax holidays, capital allowance deductions, investment allowance and tax credit, timing differences and many others depending on how the law classifies them or allows them to be deducted during tax assessments.

2.5.1 Tax exemption

Tax exemption is in form of tax incentives, tends to exclude some classes of investments, earnings or business from paying taxes. Thus, its exclusion of tax liability by the law, normally a tax exemption is provided to an individual or organization which falls within a class which the government wishes to promote economically, such as charitable organizations.

⁵⁶ The Tanzania Investment Act [CAP 38 R.E 2002].

⁵⁷ See <http://www.businessdictionary.com/definition/tax-incentive.html> Accessed on 25th August, 2018.

⁵⁸ AJN-A, *Tax Competition in East Africa A Race to the bottom?: Tax incentives and Revenue Losses in Tanzania*, pg 4.

Tax exemptions are usually meant to either reduce the tax burden on a particular segment of society in the interests of fairness or to promote some type of economic activities through reducing the tax burden on those organizations or individuals who are involved in that activity⁵⁹. For example, the second schedule to the Income Tax Act, 2004, lists transactions exempted from taxation.

The minister enjoys power to exempt payment of tax under **section 10⁶⁰**, and The Finance Act, 2018 has added a new section 129 which empowers the Minister for Finance to make Regulations for the better carrying out of the objects of the principal legislation (Income tax Act). In addition, the Finance Act, 2018 has granted power to the Minister for Finance to exempt Government projects financed by non-concessional loans.

The Finance Act, 2018 has provided for tax Exemption on Withholding Tax on Interest on Government Loans paid by the Government to non-resident Banks and financial institutions, other Governments or their representatives arising from a loan agreement for the purpose of financing Government projects. Apart from the overwhelming power to the minister, likely to be misused, everyday exemptions are adding up, initiating losses of revenue and weighting the burden to fewer tax payers.

2.5.2 Tax Holidays

Tax holidays are time-limited exemptions from the corporate income tax, which may or may not be renewable. They are widely regarded as a particularly ill-designed form of investment incentive, and one that poses considerable dangers to the wider tax system, unless offered for periods so long as those investors are likely to doubt their credibility, they are most attractive to the most footloose firms, which are those likely to bring the least benefit to the wider economy.⁶¹

⁵⁹ Luoga, F. D. A. M, *Taxation in the Advent of Democratization and transition to free market Economy in Tanzania and Concerns on Rule of Law and Human Rights*, pg 11.

⁶⁰ The Income Tax Act [CAP 332 R.E 2008].

⁶¹ Odd H. F and Kari K. H, *the tax system in Mozambique, Tanzania and Zambia: Capacity and Constraints*. Available at www.Norad.no>.no.globalassets>filarkiv>summary-tax-systems-in-mozambique-tanzaniz-zambia-27-04-2011 Accessed on 25th August, 2018.

For example, under the Income Tax Act, 2004 a corporate newly registered under the Dar es Salaam enjoys tax holiday of 5 % off the required 30 % for three years. Another example of tax holiday is the recent amendment of the Income Tax Act, 2004 by the Financial Act, 2018 which reduced Corporate Income Tax from 30% to 20% for new investors in the pharmaceutical and leather industries for five consecutive years from the date of commencement of production.

From the last example, tax holiday as an incentive facilitates production and investment in pharmaceutical sector, although for five years the government will be losing 10% of the revenue from the company, the company business is facilitated and within five years the facility will be more capable in terms of establishments and from then the government harvests the proceeds.

2.6 Categories of Tax incentive for this study

Tax incentives are issued depending on the requirement of law, thus a specific provision of the law must provide incentives for certain purpose and at what rate, either whole or partly, for example the Income Tax Act, 2004 requires all companies registered in the Dar es Salaam Stock exchange Market to be taxed at the rate of 30%, however these new listed member have tax holiday of 5% for three years.

There is a lot of tax incentives, for the purpose of this study only tax incentive affecting investments were discussed, known as *investments Incentives*⁶². Generally, Investment Incentives can either be Fiscal incentives or Non- Fiscal incentives.

Non-fiscal incentives include direct subsidies like government grants, loans and guarantees for target projects. Tax Incentives are granted to attract FDI and or to promote economic policies, such as to encourage investment in certain sectors.⁶³

⁶² Investment incentives are measurable economic advantages that governments provide to specific enterprises or groups of enterprises, with the goal of steering investment into favored sectors or regions or of influencing the character of such investments.

⁶³ Mark C, Lucy K, James D. (2012); *Tax competition in East Africa a Race to the Bottom, Tax Incentives and Revenue Losses in Tanzania*; Tax Justice Network-Africa & Action Aid International, pg 21

2.6.1 Fiscal Incentives

Fiscal form includes corporate income tax holidays, reduction in tax rates, Tax holidays, Tax credits, Investment allowances, accelerated depreciation, reinvestment or expansion allowances and all exemptions on import tariffs, export duties, sales, wage income or property taxes and social security contributions. Fiscal incentives are tax provisions granted to qualified investment projects which represent a favorable deviation from the provisions applicable to other investment projects. In principle, the primary objective of fiscal incentives is to influence investment decisions by either directly affecting the potential profit streams of projects or reducing the risks attached to it. Tax incentives (or fiscal incentives) provide indirect support to investors in the form of tax breaks, access to subsidized credit, and lower customs tariffs among others, which are aimed at directly improving investors' earnings.⁶⁴ For example, under the Tanzania Investment Act, 1997 a certificate of incentive to withdraw all Value Added tax and import duties is issued on all inputs for mining, agriculture, tourism and goods manufactured for export.

That all agricultural facilities and any technological industrial equipment are exempted from taxation, this is also reflected on the Financial Act, 2018.

Fiscal incentives promoted in Tanzania in relation to the mining sector are tax holiday and tax exemption whereby the governments of Tanzania grant those as incentives with the role of attracting the investors to invest in Tanzania. For example, the Financial Act, 2018 amended section 90A (5) of the Mining Act⁶⁵ to exclude Salt producers from payment of inspection clearance fee for the purpose of boosting production. Again the Act amends Value Added Tax Act⁶⁶ by providing exemption on imported animal and poultry feeds additives, the aim being to reduce costs incurred by livestock keepers and increases the contribution of the sector to the economy.

⁶⁴ Senate Economic Planning Office, (2005); *Policy Insight; rationalizing the fiscal incentives system*. Retrieved on 27th January 2017 from www.senate.gov.ph/P1_2005-03_Rationalizing_the_fiscal_incentives_system-1.

⁶⁵ [CAP 123 R.E 2002].

⁶⁶ [CAP 148 R.E 2002].

The Tanzania's Export Processing Zones Act, 2006 provides Fiscal incentives including (i) 10-year corporate tax holiday; (ii) 10-year withholding tax holiday; (iii) duty and VAT exemption: raw material, capital goods, administrative vehicle, ambulances, firefighting equipment and two staff buses; (iv) VAT exemption on utilities and wharfage; and (v) exemption on taxes and levies charged by local government authorities.

2.6.2 Non- Fiscal Incentives

Non-fiscal incentives are service oriented tax incentives, mainly issued on business running by offering different services to facilitate economic growth, including direct subsidies like government grants, loans and guarantees for target projects. Also, it can refer to the services and assistance provided for investors by the government departments to facilitate registered enterprises operations and entry into the market. These are available to all firms including those that do not qualify for fiscal incentives.⁶⁷

The non-fiscal purposes of taxation are normally divided in three categories: re-distributional purposes, behavioural purpose and finally purposes where the objective is to make an influence on the trade cycles. To some extent, the above-mentioned purposes reflect certain basic elements in a tax system, thus aspects that should be taken into consideration when deciding the basis for tax computation and the tax rates.

The Tanzania's Export Processing Zones Act, 2006 provides for Non-fiscal incentives for firms operating within zones that include: (i) operating under only one license issued by the EPZA; (ii) the ability to acquire visa for key technical staff at point of entry; (iii) securing unconditional transferability of profits, dividends and royalties; (iv) access to one-stop-service centre by EPZA for set-up, facilitation and aftercare (work permits, labour relations, customs); and (v) on-site customs documentation and inspection from all relevant government authorities.

⁶⁷ See INCENTIVES (meaning of non-fiscal incentives) available at www.naga.gov.ph>investments/incentives.html Accessed on 24th of August, 2018.

2.7 Issuing of Tax incentives in Tanzania

Tax incentives as explained above, in whatever form should be provided by law. Issuing of tax incentives in Tanzania follows diverse procedures of issuing depending on the legislation establishing such tax incentive, the investment sector and nature of the incentive required. It should be noted that, not all incentives require certificate of incentives, other work automatically in the due cause of business, unless the law provides otherwise.

For example, section 15⁶⁸ gives the council for Tanzania export processing zone to issue different tax incentives as established under the act. The procedure of issuing will be executed in all processing zones in accordance with the council instruction. And Section 19⁶⁹ prohibits application of the Tanzania Investment Act, 1997. In other words, the certificates of incentives granted under the later Act are not applicable to the former Act.

The procedure for issuing tax incentives differs from one sector of investments to the other. For instance, enterprises engaging or intending to engage in Mining and Petroleum Sector shall follow the approval process contained in their respective legislations.⁷⁰

2.8 Conclusion

This chapter discusses the main concept of the study and their legality point of view in terms of application. The discussion details what amounts to tax incentives, with examples shows that, tax incentives can be both fiscal and non fiscal as described by different legislations.

⁶⁸ Export Processing Zones Act, 2006.

⁶⁹ Ibid.

⁷⁰ Tanzania Revenue Authority, *Taxation In Tanzania: The Tanzania Investment And Trade Promotion*, available at <http://www.sanec.org/themes/sanec/uploads/files/TANZANIA%20INVESTMENT%20AND%20TRADE%20PROMOTION%20final%20version.pdf> Accessed on 25th August 2018.

The chapter substantiates different investment sectors and their priority in investment process, and lastly the procedure of issuing the tax incentive has been proved to be diverse depending on the legislation requiring special procedure and issuance of certificates of incentives and other working automatically in due course of business.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR TAX INCENTIVES IN TANZANIA

3.0 Introduction

Taxes are charged only if established by the law, also tax holidays and exemption must be provided by the law; and authorities to collect and administer tax incumbents including tax incentive are established by the law. This chapter examines the law providing tax incentives in detail, the institutions for issuing tax incentives, that is Tanzania Revenue authority and the Tanzania Investment Center. Again the question on how tax incentives are issued in Tanzania through these institutions and qualification for tax incentives has also been discussed.

3.1 Law Governing Tax incentives in Tanzania

As argued above and in previous chapter, tax is subjected to law, unless established by law accorded with purpose it cannot be claimed nor granted. Tax incentives laws are discussed according with sectors. Note that, tax issued are financial matter, each year reports and budgets are planned for a fiscal year, therefore tax laws change each year through the financial Act. For the purpose of this discussion, the Financial Act, 2018 is discussed.

3.1.1 The Income Tax Act, 2004

It is the principal legislation governing taxation issues. Providing how to charge, assess and collect Income Tax and matters incidental thereto. The Act is subjected to amendment each fiscal year. Despite other tax incentives provided by the Act to be discussed below, section 10⁷¹ gives power to the minister to exempt any person, legal or natural, from tax, thus he can issue tax incentives at his or her discretion, without consultation or anything.

⁷¹ Income Tax Act, 2004.

The Act sources different tax incentives in Tanzania including corporate tax rate 30% exempting the newly registered companies to the Dar es Salaam Stock Exchange Market at charge of 25 %. Thus, any company local or foreign for three years since registration to the Dar es Salaam Stock Exchange Market will be exempted from income tax at rate of 5%.⁷² For agricultural sector the Act provides for 100% tax incentives for investors capital allowance on expenditure incurred for agricultural purpose. For mining operations, investors enjoy 100% tax incentives for expenditure incurred for the year either capital or revenue expenditure.

3.1.2 The Value Added Tax Act,2014

Value added tax was established in Tanzania in 1998, by this Act named after it. Value Added Tax is a general consumption tax assessed on the value added to all commercial activities involving the production and distribution of goods and the provision of services and on imports (taxable supplies). First schedule⁷³ provides for a long list of tax incentives charged under zero rates and the Second Schedule⁷⁴ provides for a long list of items exempted from tax.

The Act empowers Tanzania investment center and Tanzania revenue Authority to zero rate or exempt revenues from taxation. For example, certificate of incentives by Tanzania Investment Center, grants an investor with Zero per cent (0%) Import Duty on Project Capital Goods, Computers and Computer Accessories, Raw Materials and Replacement Parts for Agriculture, Animal Husbandry and Fishing, Human and Livestock Pharmaceuticals and Medicaments, Motor Vehicle in Completely Knocked Down form and inputs for Manufacturing Pharmaceutical Products.

3.1.3 Export Processing Zones Act, 2002⁷⁵

The Act gives power to the minister to establish different export processing zones⁷⁶ to facilitate export of goods manufactured by creating international competitive

⁷²Ibid Section 142 (7).

⁷³Made under section 9 (1) of the Value Added Tax Act, 2014

⁷⁴Made under section 10 (1) of the Value Added Tax Act, 2014.

⁷⁵The Act has been amended by the Export Processing Zones (Amendments) Act, 2006 and the Economic Zones Laws (Miscellaneous Amendments) Act, 2011.

market leading to economic growth. Section 15 of the Act, provides for tax incentives for Investors wishing to establish or operate in export processing zones. Of most interest an investor on export zones is *exempted from payment of corporate tax for an initial period of ten years and thereafter a corporate tax shall be charged at the rate of not more than twenty five per centum*⁷⁷.

For ten good years the country will benefit nothing as revenue from investments in which there is no assurance that other benefits will be accumulated no guarantee that after expiration of such period the investors will pay taxes, how absurd the law can be. Again from being exempted to pay taxes there are other incentives, double revenue loss with a single investor, imagine for ten or more.

Fortunately, the Act has been amended twice by the Export Processing Zones (Amendments) Act, 2006 and the Economic Zones Laws (Miscellaneous Amendments) Act, 2011, but no changes to that provision has been effected. Comentraries on tax incentives under this Act argue that tax exemption ‘for the first 10 years’ is the foot-loose investment, the investors may easily close their operations after the expiry of the tax incentives and relocate in other Export Processing Zones and Special Exports Zones within the country as a new investment or even flag out to other countries.⁷⁸

A pace has been taken under this Act, by first deterring the application of the Tanzania Investment Act, 1997, meaning section 19 of the latter is not applicable to investors of the former. Second under section 10⁷⁹ expressly prohibits an investor whose tax relief has been issued to carry bussiness out of those prescribed under the Act. But this alone does not safeguard our economic stagnation because the incentives issued overweigh the benefit accumulated by the country.

⁷⁶ Section 3 (1) of the Export Processing Zones Act, 2002.

⁷⁷ Ibid Section 15 (1)(b).

⁷⁸ Tax Justice Network-Africa (TJN-A), Tax Competition in East Africa; A race to the bottom? Tax incentives and Revenue Losses in Tanzania, p. 6 Available at http://www.tzdp.org.tz/fileadmin/migrated/content/uploads/Tax_Incentives_and_Revenue_Losses_in_Tanzania.pdf accessed on 13th September, 2018 at 9:57.

⁷⁹ Export Processing Zones Act, 2002.

3.1.4 The Tanzania Investment Act [CAP 38 R.E 2002]

The Act intends “to provide for more favorable conditions for investors.” and establishes the Tanzania Investment Center, and the center grants Certificates of Incentives under authority conferred upon it by Part III, Section 17 (1-8) of this Act. The Act showers investors with openhanded ‘incentives’ in the form of tax reliefs and concessional tax rates.⁸⁰ Although it does not list down which incentives can be issued by Tanzania Investment Centre; however absurdly protect investor with incentive to hold the same, without any amendments.

Substantial Section 19 (2) prohibits any amendment of tax laws at the detriment of the investors for purposes of creating a predictable investment climate. Adding to tax incentives, the Act allows free transfer of capital, profits and dividends⁸¹ that could have otherwise been paid to the country as revenue.

Again, the Act assures investors against expropriation without the due *process of the law*.⁸² The principle of *due process of law* is divided into two categories, namely substantive and procedural. In essence, the principle is meant to protect individuals or entities from coercive powers or abuse by the government by ensuring adjudication process under valid laws which are fair and impartial.

The principle has been interpreted further by the International Centre for the Settlement of Investment Dispute (ICSID) and the International Chamber of Commerce (ICC) that ‘due process of law’ imports other elements such as the fact that expropriation must not be discriminatory against the investor, it must be for a public purpose and be accompanied by full compensation that is prompt, adequate

⁸⁰ The term incentive is defined under Section 3 of the Act as including “tax reliefs and concessional tax rates which may be accessed by an investor under the *Income Tax Act*, 1973, the *Customs Tariff Act*, 1976 and the *Sales Tax Act*, 1976 and any other law for the time in force.”

⁸¹ See Section 21 The Tanzania Investment Act [CAP 38 R.E 2002].

⁸² See Sections . 22, 2 (1) (a), and Section 2 (3) of The Tanzania Investment Act [CAP 38 R.E 2002].

and effective. In essence, the provision meant to protect the business interest of the investor.⁸³

In support of that section 23 (1)⁸⁴, the Act allows settlement of disputes in accordance with the rules of procedure for arbitration of the International Centre for the Settlement of Investment Dispute where there is a dispute between a foreign investor and the Tanzania Investment Centre or the government in respect of a business enterprise.

3.1.5 The Mining Act, 2010

With this Act, tremendous changes have been witnessed in 2017, to ensure the government does not suffer revenue losses, as frequently reported. This study discusses the Mining Act, 2010 as amended by The Written Laws (Miscellaneous Amendments) Act, 2017⁸⁵. The Act⁸⁶ contains provisions regulating prospecting for minerals, mining, processing and dealing in minerals, to granting, renewal and termination of mineral rights, payment of royalties, fees and other charges and any other relevant matters.

3.2 Issuing Tax incentives in Tanzania

Issuing of tax incentives depends on the law directions, there are tax incentives which are issued by operation of the law and those subjected to application, for example though issued under by Tanzania Investment Centre.

3.2.1 Direct tax incentives issued

Categorically, tax payer does not apply for, by operation of the law; tax incentives are established automatically. If your investment falls in that category, it is excluded when Tanzania Revenue Authority are assessing tax liability. Tax payer is

⁸³ Mwakaje, S, How the Law Protects Investment on Tanzania,' the *Citizen*, 14th September, 2014 available at <http://www.thecitizen.co.tz/oped/How-the-law-protects-investments-in-Tanzania/1840568-2452308-4upkcw/index.html> accessed on 9th September, 2018 2:22 pm.

⁸⁴ The Tanzania Investment Act [CAP 38 R.E 2002].

⁸⁵ Act no 7 of 2017.

⁸⁶ Mining Act, 2010.

responsible for showing that, in returns, the expenditure and revenue obtained follow either under section 9 and 10 of the VAT Act⁸⁷ or any other law exempting such income.

3.2.2 Indirect tax incentives issued

This is in most cases done by foreigner investors, where a tax payer or investor by way of application will be issued with certificate of incentives by Tanzania Investment Centre only on taxes as exempted by law. There are some incentives by operation of law tax assessor cannot exclude automatically until the tax payer prove that tax incentives were issued to him, for example section 17 of Tanzania Investment Centre Act, authorizes Tanzania Investment Centre to grant certificates of incentives on issues specified by the Act, if an investor does not apply for such a certificate and issued with it, he cannot claim tax liability exemption.

3.2.3 Qualification to be issued with tax incentives

Qualifications to be issued with tax incentives in Tanzania, depends on the law establishing such incentive, this part discusses tax incentives qualification under Tanzania investment Center, Export Processing Zones Authorities and qualification in relation to minerals and petroleum investments.

3.2.3.1 Qualifications under Tanzania investment Act, 1997

Save for investments in mining and petroleum, a centre can issue certificate of incentive to a foreigner or local investor with the qualification under section 2 (2)(a and b)⁸⁸, which provides that to qualify for and obtain Tanzania Investment Centre Certificate of Incentives minimum fixed investment cost for New, Rehabilitation and Expansion Projects should be at least US\$ 100,000 for projects, which are wholly owned by Tanzanian Citizen (s), and US\$ 500,000 for projects, which are wholly owned by foreign investors, or if a joint venture.

⁸⁷ Value Added Tax Act [CAP I48 R.E 2002].

⁸⁸ The Tanzania Investment Act [CAP 38 R.E 2002].

Thus, if the investor meets the threshold is qualified for tax incentives, of course there are other procedural requirements and documents which an investor should possess as per section 17 (2)⁸⁹, which obviously every business to be formed must possess. The question remains does meeting the threshold only suffice?

It is argued that, the threshold alone does not guarantee that such foreign direct investment will at least offset the cost tax incentives.⁹⁰ Threshold qualification opens Pandora's box, for example the form of investment which would have come to Tanzania even in the absence of tax incentives or investment aiming at selling in the Tanzania domestic market need not to qualify for tax incentives, after all they in need, not us.

Arguably the threshold qualification is not enough, further examinations on condition capable of being proved physically should be set, for investor to qualify for tax incentives, for example condition necessitating the investor to build schools, hospitals, and infrastructure and provide employments should be mandatorily provided as qualifications.

3.2.3.2 Qualification under Export Processing Zones Act, 2002 and the Special Economic Zone Act, 2006

Investors operating business in the Export Processing Zones enjoys different tax incentives under the Act, but to enjoy them, an investor must obtain one among the licenses issued under the Act, either the Developer's Licence, the Operator's Licence or Service Provider's License⁹¹. Again the qualification under this Act is based on threshold of investment. To qualify for an Export Processing Zones licence, the investment should, amongst other things, be new business or activity which has not been already established, with at least 80% of the goods produced or processed

⁸⁹ Ibid.

⁹⁰ Ngowi.H.P, 'Tax Incentives for Foreign Direct investments(FDI): Types and Who Should/Shuld Not Qualify In Tanzania', The Tanzanet Journal, vol. 1, no. 1, 2010, p. 24.

⁹¹ Kasanda. P, Export Processing and Special Economic Zones in Tanzania, available at <https://www.lexology.com/library/detail.aspx?g=907bed45-7ec5-4438-983d-63d18a6447fe> accessed on 13th September, 2018 at 9:57.

for export and annual export turnover of at least USD 500,000 for foreign investors (USD 100,000 for local investors).

The process of obtaining a licence, including the establishment of a Tanzanian company through which the investment must be held officially takes three months although in practice this can be longer and the holder of such a licence must continue to comply with the terms of the licence in order to continue enjoying the related benefits.⁹²

The qualification for tax incentives under the Special Economic Zone Act, 2006 are based on the threshold of investment also, Investors qualify under the Special Economic Zone scheme if they demonstrate that their investment is new, achieve a minimum annual export turnover of US\$ 5 million for foreign investors and US\$ 1 million for domestic investors, and they can provide adequate environmental protection and safe utilization of resource .⁹³

3.2.3.3 Qualification for tax incentives in Minerals and Petroleum sector

Unlike the procedure above, tax incentives in minerals and petroleum are issued through mining contracts entered between the governments and the investor. To invest in mining an investor must obtain mining rights⁹⁴ which are in form of license depending on activities intended and the minerals targeted by the investor after meeting the qualification of age, incorporation for companies, solvency and all as mentioned under section 8 of the Mining Act, 2010⁹⁵. The amendment adds a qualification of development, physically displayed. Thus mining right license will not be issued unless there is proof that *substantial developments* have been effected

⁹² Kasanda. P, Export Processing and Special Economic Zones in Tanzania, available at <https://www.lexology.com/library/detail.aspx?g=907bed45-7ec5-4438-983d-63d18a6447fe> accessed on 13th September, 2018 at 9:57.

⁹³ Tax Justice Network-Africa (TJN-A), Tax Competition in East Africa; A race to the bottom? Tax incentives and Revenue Losses in Tanzania, Available at http://www.tzdp.org.tz/fileadmin/migrated/content/uploads/Tax_Incentives_and_Revenue_Losses_in_Tanzania.pdf accessed on 13th September, 2018 at 9:57.

⁹⁴ Section 7 of the Mining Act, 2010.

⁹⁵ The Written Laws (Miscellaneous Amendments) Act, 2017

by the holder of a mineral right. The 2017 amendments⁹⁶ depart from the concept in the Tanzania Investment Act, 1997 which qualifications basing only the threshold.

3.3 Institution responsible to issue tax incentives in Tanzania

3.3.1 Tanzania Investment Centre

This centre has been established under **section 4 of the Investment Act**⁹⁷ which states that, *there is hereby established a body to be known as the Tanzania Investment Centre, the centre shall be an Agency of the Government and shall be under the general supervision of the Minister.* The Centre has been given mandate to initiate and support measures that will enhance the investment climate in the country for both local and foreign investors, including those in oil and gas industries. In turn, the Centre in consultation with the Government institutions and agencies identify investment sites, estates, or land together with associated facilities of any sites, estates or land for purpose of investors and investments in general. What is more, it assists all investors, including those who are not bound by the provision of this Act, to obtain all necessary permits, licenses approval consents, authorizations, registrations and other matters required by the law for a person to set up and operate an investment, and enable certificates issued by the Centre to have full effect.⁹⁸

Moreover, the Centre is mandated to provide, develop, construct, alter, adapt, maintain and administer investment sites, estates or land together with associated facilities of those sites, estates, land and subject to relevant law, the creation and management of export processing zones and also to provide and disseminate up-to-date information on benefits or incentives available to investors.⁹⁹ Foreigners who want to invest on land in Tanzania must route their applications for allocation of land to the Tanzania Investment Centre (TIC). The Tanzania Investment Centre would issue land to successful applicants.

⁹⁶ See Section 8 of the the Written Laws (Miscellaneous Amendments) Act, 2017.

⁹⁷ Act No. 26 of 1997

⁹⁸ *Ibid*, section 6(c-d).

⁹⁹ *Ibid*, section 6(e-f).

Since the Tanzania Investment Centre is required to identify sites, estates or land for investment purposes; this has to be done in a consultative manner with local government authorities where the land is situated. The local authority must be consulted and be fully involved. The Tanzania Investment Centre has developed a “Land Data Bank” which provides for large tracts of land that have been considered suitable for investment projects (including those that may have a bearing on REDD+ programmes) in Tanzania. The derivative right of occupancy for purposes of investment is issued under section 20 (2) of the Land Act. The law requires that a survey of land be carried out prior to granting a right of occupancy. For land that is intended for investment purposes, the process originates at the Ministry level, in the Directorate of Surveys and Mapping. Depending on the use to which the land is to be put, there must be consultation with the relevant Ministry. Local communities must be involved where land is under Customary Law. This procedure is important for the implementation of REDD+ so that misdirection of foreign investments in forest lands can be avoided.

3.3.2 Dar es Salaam Stock Exchange

The Dar es Salaam stock exchange market (DSE) is incorporated under the Companies Act, 2002 as company limited by guarantee, was established by the Capital Market and Security Authority (CMSA). It is market where securities are traded by members of the exchange who may act as both agent (broker) and as principal (dealers). The Dar es Salaam Stock Exchange Market provides markets for listed securities, facilitates price discovery and transparency. Thus, it requires all listed companies to promptly furnish information disclosing all prices sensitive so that investors may make informed decision.¹⁰⁰

In dealing with the stock exchange or the security market the Dar es Salaam Stock Exchange Market has power to issue different tax incentives as authorised by Income Tax Act, Dar es Salaam Stock Exchange Market are exempted from tax on interest earned by investing in such bonds.

¹⁰⁰¹⁰⁰ Norman.A.S, *The Role of the Dar es Salaam Stock Exchange in Safeguarding Securities Investors in Tanzania*, International Business Management Journal, 2010, pp 222-228, p. 223.

The issuer of such bonds is not required to deduct withholding tax when paying out interest to investors. Also, the Expenditure incurred by a company for the purposes of an Initial Public Offer and first listing on the Dar es Salaam Stock Exchange Market is considered “research and development expenditure”, which is fully deductible in computing any taxable profits for the year in which the expenditure is incurred.¹⁰¹

Again a company newly listed on the Dar es Salaam Stock Exchange Market, with at least 30% of its shares issued to the public, enjoys a reduced corporate income tax rate of 25% (compared to 30% for unlisted companies) for 3 consecutive years from the date of listing.¹⁰²

3.3.3 Tanzania Revenue Authority

It is an autonomous revenue administration¹⁰³ charged with assessing, collecting and accounting of central government revenue.¹⁰⁴ Tanzania Revenue Authority territorial jurisdiction is within Tanzania mainland, collects non union taxes like VAT, excise duties, hotel levy, stamp duty, motor vehicle taxes and other charges, also is entitled to collect union revenues imposed by the Income Tax Act, 2004 and custom duties under the East Africa Custom Management Act, 2004. Among Tanzania Revenue Authority responsibilities is to advise the minister on effective tax incentives for the growth of the country. TRA assesses and collects all taxes, and on assessments those revenues and expenditures under tax incentive are deducted when calculating tax liability.

¹⁰¹ Section 15 (1) and (2) of the Income Tax Act, 2004.

¹⁰² Paragraph 2 of the First Schedule to the Income Tax Act, 2004.

¹⁰³ It is established under section 4 of the Tanzania Revenue Authority Act [CAP 399 R.E 2002]

¹⁰⁴ Section 5 of Tanzania Revenue Authority Act [CAP 399 R.E 2002]

3.4 Conclusion

This chapter explained the main legal themes underling this study. It intended to substantiate incentives in Tanzania in order to be understood in their legal context and literal context and how different legislations qualify them. Also, the chapter has enlightened the legal and institutional perspectives of the problem at hand; thus, how different laws discuss tax incentives in Tanzania.

CHAPTER FOUR

MERIT AND DEMERITS OF TAX INCETIVES IN TANZANIA

4.0 Introduction

This chapter endeavors at analyzing and presenting of data collected during the study in respect of tax incentives in investments sector; an appraisal of merits against demerits. The researcher was able to collect secondary and primary data. The primary data are explained using an inductive approach based on the response of specific groups, and then by the generalization of all respondents. Secondary data or information was analyzed using a content analysis approach.

The data analysis and findings are based on questions whether tax incentives influence the attraction and retention of investment in Tanzania; what are the plausible qualifications for investment to be issued with tax incentives and Do tax incentives merits outweigh the demerits in Tanzania? The research question were substantiated to form sub questions enabling the researcher to come up with concrete evidence of the issue. Also, question on issues of technicality on tax incentives were posed to only Tanzania Investment Centre, Tanzania Revenue Authority, Dar es Salaam Stock Exchange Market and the National Audit officers only.

The researcher found that, on the first question, tax incentives was not the major factor attracting investments in the country. Tanzania market potentials, availability of natural resources to extract, and politically stability were the major factors attracting investments and could retain the investment for longer period. On the second question, Tanzania legislation governing incentives regard the investment capital threshold as the only qualification for issuing incentives, however was found to implausible. Other qualifications like profitability of the investment and necessary need or desire for the investment should be given priority. On the third question, it was proved that tax incentives demerits outweigh the merits.

4.1 Tax incentives as an influence to attract and retain investments in Tanzania

Granting of tax incentives to attract either FDI or local investment was received with mixed feelings among respondents. A total of 60 respondents were asked this question by the researcher which divided into two questions as to what extent does tax incentives affect investment retention and to what extent does tax investment affect investment attraction as shown in Table I.

In the course of research the researcher came across several opinions in respect to this issue of whether tax incentive affects investments retention. Morisset¹⁰⁵ opined that tax incentive affects investment retention at a very little extent because incentives are only beneficial when a company begins earning income, while the benefits of a lower corporate tax accrue more slowly and over a long period¹⁰⁶.

As correctly noted that tax holidays as incentive benefit primarily short term investment typical of “footloose” industries in which companies can move at any time,¹⁰⁷ this author reveals that tax incentives affect investment at a very little extent. Also, tax incentive holiday tends to reward the founding of a company rather than investments in existing companies and to discriminate against investments that rely on long lived depreciable capital.¹⁰⁸ He asserts that, tax holidays can lead to erosion of tax base as taxpayers learn how to evade taxation of income from other sources.¹⁰⁹

The IMF, OECD, UN and the World Bank¹¹⁰ noted that developing Countries sometimes believe that an attempt to hold the line against multinational negotiations for necessary tax breaks will simply drive the investment in question into

¹⁰⁵ Morisset.J, (2003), Using Tax Incentives to Attract Foreign Direct Investment, available at https://www.researchgate.net/publication/238083093_Using_Tax_Incentives_to_Attract_Foreign_Direct_Investment retrieved on 14th February, 2019 at 10:54.

¹⁰⁶ Ibid.

¹⁰⁷ IMF, OECD, UN and Word Bank, (2011), Supporting the development of more Effective Tax Systems, Report to the G-20 Development Working Group available at <http://documents.worldbank.org/curated/en/615471538135713647/Supporting-the-Development-of-more-Effective-Tax-Systems> accessed on 16th June 2018 at 11:05.

¹⁰⁸ Op Cit, Morisset.J .

¹⁰⁹ Ibid.

¹¹⁰ Op Cit, IMF, OECD, UN and Word Bank.

neighboring country, this sort of bargain frequently results in a race to the bottom in which countries in region are made collectively worse off to the benefit of the multinational investments.¹¹¹ And the G-20 development working groups concluded that tax – driven investments do not provide a stable source of investment in the recipient country.¹¹²

On the second question as to what extent do tax incentives affect investment attraction; other author whose work was reviewed recognizes tax incentive as the least determinant factor for investment attraction in the country.¹¹³ Arguably, the most important factor reported to that impacted investment decision is market potential.¹¹⁴ Thus, where the Government is poor, corporate income exemption does little to attract FDI and in case they do, then it is at the expense of the domestic investment.¹¹⁵

For observation, many economists disdain tax incentives, seeing them as ineffective and a loss of revenue for the treasury and expensive distortions that actually reduce the true value of output.¹¹⁶ Tax incentives cause distortion and are preferred by footloose companies, which have ceasing concern. Incentives may not be main determinants of a country's attractiveness to investment¹¹⁷, other important factors like political stability, infrastructure, stable market and political climates are important.

¹¹¹ IMF, OECD, UN and World Bank, (2011), Supporting the development of more Effective Tax Systems, Report to the G-20 Development Working Group available at <http://documents.worldbank.org/curated/en/615471538135713647/Supporting-the-Development-of-more-Effective-Tax-Systems> accessed on 16th June 2018 at 11:05.

¹¹² Ibid.

¹¹³ Ngowi. H.P (2000), Tax incentives for Foreign Direct Investments (FDI): Types and Who Should/Should Not Qualify in Tanzania, The Tanzanet Journal issue 1 Volume 1, pp 19-28, p.23.

¹¹⁴ Policy Forum, 2013, Tanzania and the Problem of Tax Exemptions, available at <https://www.policyforum-tz.org/sites/default/files/Taxpolicybrief.pdf> retrieved on 16th June, 2018 at 11:54 AM.

¹¹⁵ Op Cit IMF, OECD, UN and World Bank.

¹¹⁶ Bergsman.J (1999), Advice on Taxation and Tax Incentives For Foreign Direct Incentives, available at www.unctad.org .

¹¹⁷ Ngowi. H.P (2000), Tax incentives for Foreign Direct Investments (FDI): Types and Who Should/Should Not Qualify in Tanzania, The Tanzanet Journal issue 1 Volume 1, pp 19-28, p.19.

Tax incentives are not the leading factor for foreign investments when deciding to invest in a country, for example as argued above,¹¹⁸ section 15 (1) (b)¹¹⁹ provided tax incentives for Investors wishing to establish or operate in export processing zones. However, the IMF report shows that the introduction of the EPZS in 2002 has not resulted in a noticeable pickup in foreign investments since its establishment.¹²⁰

In 2012 it was found that only 7.9% (39) out of 450 respondents in Burundi, Rwanda and Tanzania would not have invested without tax and fiscal incentives they received¹²¹. In 2013 the study on what was the most important factor that impacted investment decision, tax incentives ranked 17 out of 22 while market potential ranked first followed by Access to finance, electricity, good roads and other police brief 2013¹²². While tax incentives is the least attracting factor for investment proved to be costly, section 19(2)¹²³ and regulation 45 allows issuance of incentives without safe guard as its prohibit the Tanzania investment centre and the parliament to modify or amend the certificate terms.

Corporate tax incentive is the major tax incentive in Tanzania; for example, when issued with Tanzania Investment Centre Certificate of incentives, a corporate in the following sectors: agriculture, air aviation, geographical special developments areas, manufacturing, extraction of natural resources and tourism enjoy a 100% capital allowance deduction in the year of income¹²⁴. The study found out that Corporate Income Tax did not and does not play a major role in investment decisions on the part of the corporate. For example, the foreigner investor respondents in Telecommunication sector argued that the market for their business was the major attraction, for generally 84% of the respondents argued that they would have invested in Tanzania without Tax exemption while 11% would not invest.

¹¹⁸ See Chapter Three of this report.

¹¹⁹ Export Processing Zones Act, 2002.

¹²⁰ IMF, (2008), Kenya, Uganda and United Republic of Tanzania: Selected Issues, available at <https://www.imf.org/external/pubs/ft/scr/2008/cr08353.pdf> retrieved on 15th June, 2018 at 1:02 PM.

¹²¹ Sebastian, J. and Krasniqi, M. (2012) Investor Motivation Survey.

¹²² Policy Forum, 2013, Tanzania and the Problem of Tax Exemptions, available at <https://www.policyforum-tz.org/sites/default/files/Taxpolicybrief.pdf> retrieved on 16th June, 2018 at 11:54 AM.

¹²³ Tanzania Investment Act, 1997.

¹²⁴ Ngowi. H.P (2000), Tax incentives for Foreign Direct Investments (FDI): Types and Who Should/Should Not Qualify in Tanzania, The Tanzanet Journal issue 1 Volume 1, pp 19-28, p.21.

The study by the Investment Climate Advisory Services of the World Bank Group found that weak investment climate cannot be offset by offering lower tax rates to corporations¹²⁵. Results show that in countries where the investment climate is good, the effect of lowering effective tax rates on Foreign Direct Investment was positive, while in countries with poor investment climate that include Tanzania and other developing countries the effect was almost non-existent¹²⁶. This study further showed that 88.5% of business owners who have chosen to invest in Tanzania would have done so without tax incentives. Arguably, it is more important and efficient for Tanzania to focus on improving her investments climate, like stabilizing the market and developing infrastructure, rather than granting tax incentives to corporations.

Another survey conducted with investors in Tanzania, Burundi and Rwanda¹²⁷, shows that tax incentives are one of the least important factors that impact investors' decision. By far the most important factor mentioned by investors was the market potential (nearly 80% of respondents), followed by access to Finance (nearly 30%), access to electricity, good infrastructure, labour costs, and the like.

Further, The World Bank recently looked at a subset of twenty firms in Tanzania to assess whether tax incentives were beneficial. Despite the small size of the sample, the evidence suggests that overall, tax exemptions are not a key determinant of business investment decisions in Tanzania. For the majority of businesses, tax exemptions also do not appear to influence growth strategies. Furthermore, although the data is limited, it seems that many firms have fallen short of their expected targets which they have articulated to obtain tax exemptions. In terms of employment gains,

¹²⁵ World Bank Group, "Effectiveness of Investment Incentives in Development Countries, Evidence and Policy Implications", Investment Climate Advisory Services of the World Bank Group, Presentation, Vienna, May 14, 2012.

¹²⁶ Ibid.

¹²⁷ World Bank Group, "Investor Motivation Survey Results: Tanzania", Tax Incentives Study in the East African Community Member (EAC) States, Presentation by Global Tax Team, CIC, IFC, Washington.

the message is mixed, with some firms generating sufficient employment to justify the exemptions they receive.¹²⁸

From the respondents, this study came out with the responses that, tax incentives are not the influential factor for investments. The researcher managed to interview 36 of the respondents and 24 respondents responded via questionnaires, about 60% of the respondents answered the first question in negative, they argued that incentives would not be retained their business rather it is more of bonus and through incentives they can increase their capital. However, on the second question 70% of the respondents agreed that tax incentive would attract their business but not to the extent of investing if there is no potential market while 30% strongly affirmed that tax incentives are not an influential factor for them to invest.

The responses from five companies, three National Auditor Officers, five foreign investors and four out of seven Auditors, five Local investors, five out of eight Tanzania Revenue Authority officers and one Tanzania Investment Centre officer opined that for any investor whose business has a reliable market¹²⁹, good infrastructure¹³⁰ like electricity and roads. They further opined that taxation system contains excessive tax exemptions, which are governed by different laws and different institutions which tend to complicate the taxation system making it difficult to detect tax avoidance for companies with huge returns amount.

Other respondents that are three Auditors, three Tanzania Revenue Authority argued on the importance of tax incentives in influencing investments. For areas which are not geographically appealing like Kigoma, Songea and Mtwara incentives are necessary to influence developments in the area.¹³¹

¹²⁸ The World Bank Group, (2015), Tanzania Economic Update; Why Should Tanzanians Pay Taxes? The unavoidable need to Finance Economic Development, World Bank Group Macroeconomics and Fiscal Management Global Practice Africa Region, Issue 7, p. 41.

¹²⁹ Vodacom Marketing Director interviewed on 12th December, 2018, Human Resource Manager for Msumeno General Enterprises Ltd interviewed on 02nd December, 2019, Local investors interviews on 11th November and 28 December, 2019 and foreigner investors interviews on 12th December, 18th December, 5th June, and 11 November, 2018.

¹³⁰ Example from the interviews with marketing director of Mantheakis Safari Limited, and the one of the Directors of East Cost Oil & Co. Ltd was interviewed on 27th November, 1 2018.

¹³¹ Tanzania Revenue Authority officers and Auditors.

In line of the above question, 40% of the responses were collected via questionnaires, issued to 21 respondents. In respect of Export Zones Authority Officers Four officers among Five who filled questionnaire out of 5, opined that tax incentive was a great influence for investments in export zones because, the demands of today's world accompanied by investments competitions and financial crises require more attraction for investor to come and invest in Tanzania not in any other country like Kenya and Uganda. They said few substantial investments are required in export zones and special zones unlike in another sector where benefits are sumptuously seen, for export zones to secure such investments incentives are necessary because the benefits to investors are less obvious.

The respondents were of the view that tax incentive is technical knowhow for the betterment of the country, and it allows access to new material, technology, education and allows the country to go along with global trends. On the other hand, one Export Zone Authority Officer, two Dar es Salaam Stock exchange market officers and three High Court Commercial Judges thought that there was no need to have incentives, much less excessive incentives. Any true investor will invest in a place where his business prosperity is ensured regardless of tax incentives.

In line with these opinions, in respect of ten investors¹³² who filled the questionnaires, six answered the questions in negative inclination. Their business on agricultural products, Information and communication technology and pharmaceutical depends much on market acceptance of the products and the current high demands of products, although incentives help in building capitals, it was not such an influential factor for them to invest in. However, three investors all from pharmaceutical companies appreciated issuance of tax incentives for the three years of the business as their business required huge capital because developing products takes a lot of finances and manpower. Also, the product when introduced in the markets it is more of company expenditure than sales because they are new waiting for the market acceptance.

¹³² Five being Local Investors and five being Foreigners investors, the former are investors in pharmaceutical and agricultural investors while the latter are investors on Information, Communication and technology developments, agricultural, transportation and mining.

For Tanzania investment Centre Officers who filled questionnaires, answered the question in affirmative way that tax incentives issued by under Tax Incentives Act, were influential to investments. They opined that the centre has witnessed changes in investments because of incentives offered. For example, on agricultural sectors most of investors import modern agricultural tools and products like soil fertilizer to facilitate the sectors even at the time when the seasons are unfavorable (when it is not raining). They further opined that due to investment received via tax incentives, Tanzania benefits from infrastructure built, employments and transformation of new technology. The respondents were of the views that, in east Africa there is a big competition over investments because the region is geographically related in resources, therefore without incentives securing investments is near impossible.

Four respondents including one wholesaler, one vendor and two customers were sampled by the researcher as members of the public, to them tax incentives (*kupunguziwa kodi au kutokutozwa kodi kwa wawekezaji*)¹³³ was unfair practice, because if tax incentives are issued to investors for the betterments of the country why would those investors sell their products at high price. Thereafter, Tanzania Revenue Authority and the Municipal officer collect huge taxes from their business.

They opined that it was obvious that tax incentives would attract investments because the business will get profits twice. One of the respondents said;

*hata ningekuwa mimi ningekuja kuwekeza, maana mtaji utakuwa bila tozo ya kodi kwa miaka kumi, na faida nitapata sana.*¹³⁴

The above block quote is literally translated in English as “*even myself, I could come to invest since the capital would grow without being taxed for ten years, and I would get a lot of profit*”,

They concluded that, if the business has satisfactory market (*kama biashara inatoka*)¹³⁵ the tax incentives would not matter, rather will be bonus to the business

¹³³ To these respondents the questions were translated in Kiswahili for them to understand the questions.

¹³⁴ Response by Emmanuel Mushi, wholesaler at Kariakoo market; in translation, with tax incentives even I would invest because for tax holiday period the business capital will grow and profits will to the roof.

prosperity. Because even if incentives are issued on the whole business forever if there is no market, or good infrastructure to transport products or raw materials there can be no investments at all.

Table 4.1 Categories of respondents and their responses on Tax incentives as an influence to attract and retain investments in Tanzania

Respondents	Intended	Agreed	Disagreed	Moderate	Total
National Auditor Officers	3	0	3	0	3
Companies	5	0	5	0	5
Local Investors	10	3	6	1	10
Foreign Investors	10	2	5	3	10
High Courts Judges	3	0	3	0	3
Tanzania Revenue Authority officers	8	3	5	0	8
Tanzania Investments Centre officers	3	0	3	0	3
Auditors	7	3	4	0	7
Export Zone Authority Officers	5	4	1	0	5
Dar es Salaam Stock Exchange Market	2	0	2	0	2
Member of the Public	4	0	0	4	4
Total	60	15	37	8	60

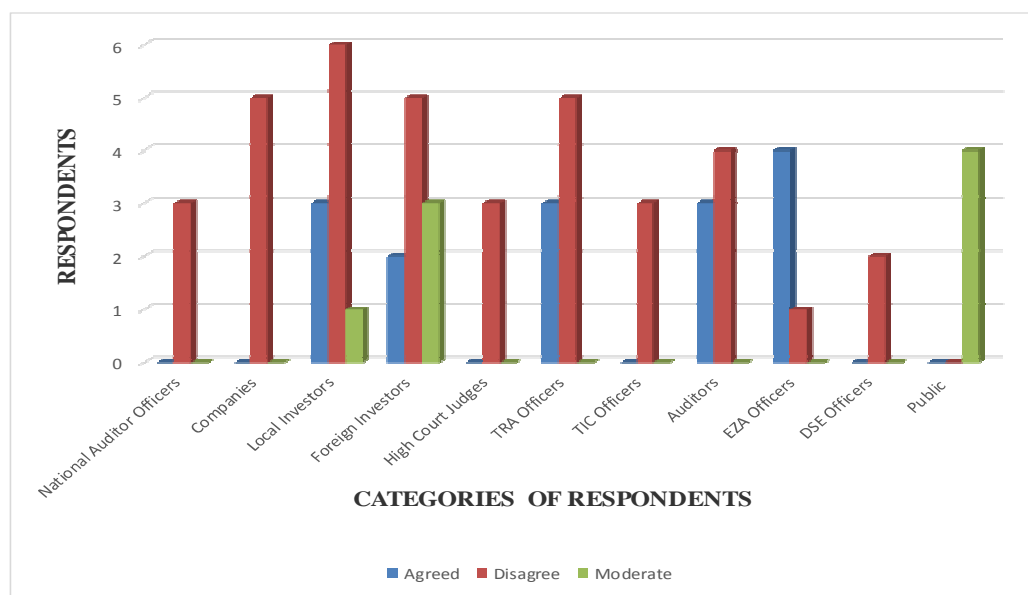


Figure 4.1 Categories of respondents and their responses on whether tax incentives attracts and retains investments

¹³⁵ The word used by wholesaler, vendor and one customer; in translation marketability of products.

Table 4.1 and Figure 4.1 above show the responses by the category of respondents in respect to Tax incentives as an influence to attract and retain investments in Tanzania. The response shows that the majority of the respondents answered the question negatively and disagreed to term incentives as an influencing factor for investment.

Table 4.2. General responses on Tax incentives as an influence to attract and retain investments in Tanzania

Responses	Number of respondents out of 60	Percentage
Agreed	15	25%
Disagreed	37	61.7%
Moderate	8	13.3%

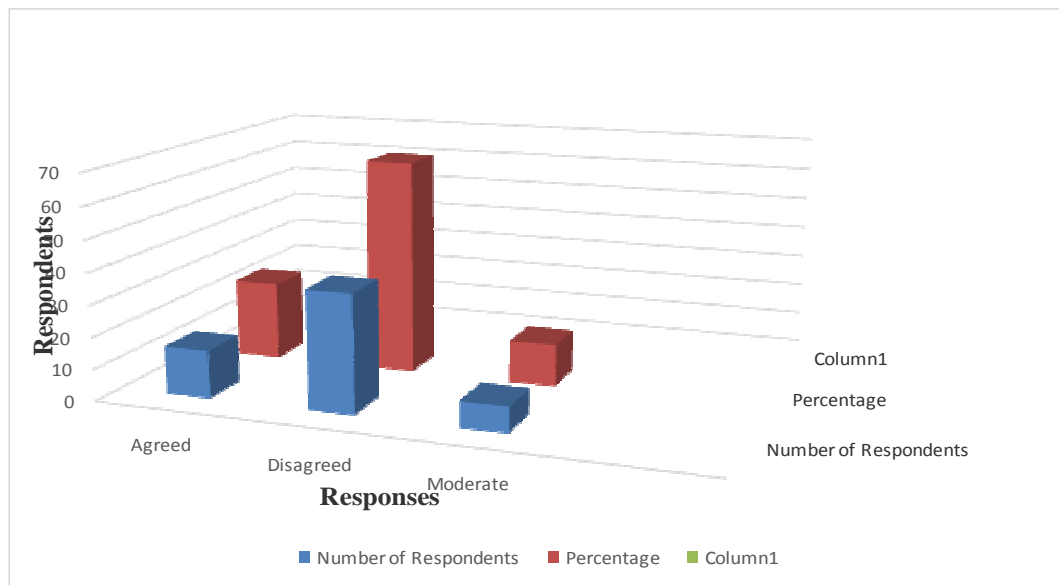


Figure 4.2 General responses on whether tax incentives attract or retain investments

Table 4.2 and Figure 4.2 show that the majority of respondents overwhelmingly favour the idea that tax incentives are a priority concern to an investor in making investment decisions. About (61.7%) of the intended respondents acknowledged that investments decisions are mostly influenced by availability of market, good

infrastructure, transparent and simple taxation system. The respondents noted that Tax laws should be amended first to abolish tax incentives in sectors like mining, tourisms and gas. Secondly, tax incentives should be issued cautiously. Eight respondents, about (13.3%) of the respondents were in the middle, they argued that depending on the sector tax incentives can attract and retain investments, but on other sectors tax incentive might be unnecessary. About (25%) of the respondents agreed that tax incentive attracts and retains investments in Tanzania, that is why there are things like incentives competitions in different countries, each country tries to win investments over the other.

4.2 Plausible qualification for investment to qualify for tax incentives

The Tanzania Investment Act under section 2 (2) (a and b)¹³⁶, provides that for an investor to qualify for and obtain Tanzania Investment Centre Certificate of Incentives his minimum fixed investment cost for New, Rehabilitation and Expansion Projects should be at least US\$ 100,000 for projects, which are wholly owned by Tanzanian Citizen (s), and US\$ 500,000 for projects, which are wholly owned by foreign investors, or if a joint venture. As correctly argued, in Tanzania this is the only qualification¹³⁷, however it should not be, because the threshold alone does not guarantee that Foreign Direct Investments will at least more than offset the cost of tax incentives¹³⁸.

Again to qualify for an Export Processing Zones licence, the investment should, amongst other things be new business or activity which has not been already established, with at least 80% of the goods produced or processed for export and annual export turnover of at least USD 500,000 for foreign investors (USD 100,000 for local investors). The qualification for tax incentives under the Special Economic Zone Act, 2006 are based on the threshold of investment also and Investors qualify under the Special Economic Zone scheme if they demonstrate that their investment is new, achieves a minimum annual export turnover of USD 5

¹³⁶ The Tanzania Investment Act [CAP 38 R.E 2002].

¹³⁷ Ngowi. H.P (2000), Tax incentives for Foreign Direct Investments (FDI): Types and Who Should/Should Not Qualify in Tanzania, The Tanzanet Journal issue 1 Volume 1, pp 19-28, p.26.

¹³⁸ Ibid p. 24.

million for foreign investors and USD 1 million for domestic investors, and they can provide adequate environmental protection and safe utilization of resource.¹³⁹

The reviewed literature demonstrates that when a government offers tax incentives to investors or its citizen it foregoes some income in form of taxes¹⁴⁰. Therefore, it is important to examine the investments' plausible benefits before issuing a certificate of incentive rather than depending of threshold qualification. Another writer argued that if tax incentives lead to an increase in flow of foreign direct investment into the country that would not come without the presence of tax incentives or when the investment will contribute to the country developments be it offering returns which offset the foregone tax revenue in form of tax incentive, then such investment should qualify.¹⁴¹ He further suggested that some investments should not qualify even if they meet the above threshold because threshold alone does not guarantee that such investments will at least more than offset the cost of tax incentives¹⁴².

Thus, tax incentives tend to reduce government revenue by 12% of the Gross Domestic Product, therefore the investment should be well targeted and narrowly on the activities they see and to promote if they have to be of any benefits¹⁴³. For Tanzania, it is argued that the following investment sector should not qualify for incentives even if it meets threshold: an investment with benefits not outweighing cost of incentives, and investment which would come to Tanzania in absence of tax incentives for example investment in tourism sector¹⁴⁴.

¹³⁹ Tax Justice Network-Africa (TJN-A), Tax Competition in East Africa; A race to the bottom? Tax incentives and Revenue Losses in Tanzania, Available at http://www.tzdpd.or.tz/fileadmin/migrated/content/uploads/Tax_Incentives_and_Revenue_Losses_in_Tanzania.pdf accessed on 13th September, 2018 at 9:57.

¹⁴⁰ Morisset,J, (2003), Using Tax Incentives to Attract Foreign Direct Investment, available at https://www.researchgate.net/publication/238083093_Using_Tax_Incentives_to_Attract_Foreign_Direct_Investment retrived on 14th February, 2019 at 10:54.

¹⁴¹ Ngowi. H.P (2000), Tax incentives for Foreign Direct Investments (FDI): Types and Who Should/Should Not Qualify in Tanzania, The Tanzanet Journal issue 1 Volume 1, pp 19-28.

¹⁴² Ibid, p.24.

¹⁴³ Thuita,G.W, An Investigation of the Effect of Tax Incentives on the FDIs: A Case pf EPZs in Athi River Kenya, Journal of Accounting, Finance and Auditing Studies, pp 17-35, p. 24.

¹⁴⁴ Op. Cit Ngowi,H.P (2000), p 25.

Also, investment in natural resources extraction like Mining Sector, instead of issuing tax incentive, the revenue should be collected and build good infrastructure, border security and enhance tax collection system. Again investment aiming at selling in the Tanzania market, as argued above 100% per cent of telecommunication investors said they could have invested in Tanzania without incentives. Others include foot- loose short term investments such as trade sector, construction of restaurants¹⁴⁵.

Professor Ngowi suggested abolishment of tax incentives in Tanzania. He argued that,

*On who should not qualify for tax incentives in Tanzania, an extreme suggestion is that all the tax incentives should be abolished; no investment should qualify*¹⁴⁶

While Ngowi suggestion was in 2000, eleven years later the Controller and Auditor General in his report suggested the abolishment of incentives in Tanzania, specifically; tax incentives being administered by Tanzania investment Centre should be abolished or harmonized with TRA and other Government Centre¹⁴⁷.

This study found that, some investment that don't meet the threshold might be more important than those which qualify¹⁴⁸, this study suggested that in every application for incentives certificate a thorough examination should be conducted to ensure that,

1. The benefits outweigh the cost of the incentives issued, and
2. The business is important, and could not come to Tanzania, except through incentive for example investments to develop low growth areas in the country thereafter,, the threshold under the Tanzania Investment Centre Act and other Acts are very important, as the company capital can determine the predictability of the business and ensure benefits to the county; but it should not be the only qualification.

¹⁴⁵ Op. Cit Ngowi, H. P (2000), p 25.

¹⁴⁶ Ibid.

¹⁴⁷ Annual General Reports of the Controller and Auditor General on the Audits of the Financial Statements f the Central Government for the year ending 30th June, 2011.

¹⁴⁸ Ngowi. H.P (2000), Tax incentives for Foreign Direct Investments (FDI): Types and Who Should/Should Not Qualify in Tanzania, The Tanzanet Journal issue 1 Volume 1, pp 19-28, p.26.

There are divergent opinions in respect of what qualification is needed for a company or investment to be issued with incentives in Tanzania. The question what should be plausible qualifications for issuance of tax incentives in Tanzania was posed to the respondents; the researcher managed to interview 36 respondents and 24 filled questionnaires. During interviews the researcher was able to explain the current qualification to be the threshold amount under the Tanzania Investment Centre, 1996 and the Export Zones Act, 2002, for questionnaires the law was cited above the questions.

From three National Auditors officers, three Companies out of five, six Local investors out of ten and seven Foreign investors out of ten their responses were to the effect that setting investments qualification for incentive is of significant importance depending on the type, nature of the investment and what they are needed for (purpose of the investment in the country. For example, an investment purpose is to enhance country infrastructure uniting rural areas, or intends to develop geographically unflavored areas or its imports new technology which cannot be accessed save for issuing of incentive must be issued with tax incentive certificates. They opined that if an investment does not have such qualification but colored with huge threshold it is difficult to establish whether it will benefit the country and offset the revenue loss through incentives. Furthermore, there are must be procedures enumerated by the law requiring every investor to follow in running investments affairs toward achieving the intended goals, thus setting effective and practical qualifications is significant because it may lead to effective performance of the investments in the country's economy through adherence to procedures.

They further opined that, lack of effective and practical qualifications results in revenue losses, because the investments enjoy incentives benefits but do not inject any developments in the area, but if the nature of the business is evaluated and conditioned by law, that for a certain period the investment should provide certain results in Tanzania, the benefits of incentive will outweigh the costs. The remaining respondent believes that, investments threshold is enough qualification for issuance of incentives.

They argued that the threshold under the Tanzania investments Act, 1996 of USD 100000 for Local investors and USD 500000 for Foreign investors was too high, thus if a business has such capital, it is obvious that its investments will benefit the country. Surprisingly, with such views they noted that evaluating other qualification than threshold was significant and should be considered.

Responses of the three Judges of the High Court Commercial were interesting. They considered the provision to be unreasonable if the threshold is the only qualification for issuing tax reliefs under the Act. Interpreting the provision during the interview Phillip,J argued that after reading section 19 (2) of the Tanzania Investments Act, 1996 and its regulations, I think this provision is unreasonable because it deters the parliament's power to check the government actions; second, even the governments cannot check on the investor and third to answer your question, the threshold alone is not variable qualification for issuance of tax incentive in the country, because an investment might meet the threshold but it is not needed in Tanzania or we need it but the investment plans will not benefit the country to the intended level¹⁴⁹. He noted that it is important to see the Hansard on why the parliament enacted this provision, and examine if in the current circumstance we can cure the mischief intended to be cured by the provision.

Four Tanzania Revenue Authorities Officers out of eight interviewed, opined that threshold was among the plausible qualifications for incentives but should not be the only one; other flexible qualification should be set. These views were supported also by four auditors out of seven interviewed, they argued threshold to be plausible qualifications, thus when the investment hold a capital of USD 500000 it is capable of creating employments, build social needs facility allowed in its investment area and its production can increase the Gross Domestic Products. But setting other standards for evaluating whether the investment is beneficial at the cost of incentives is significant and should be set by the law and in practice.

¹⁴⁹ Interview Conducted at the High Court of Tanzania (Commercial Division) on 12th September, 2018.

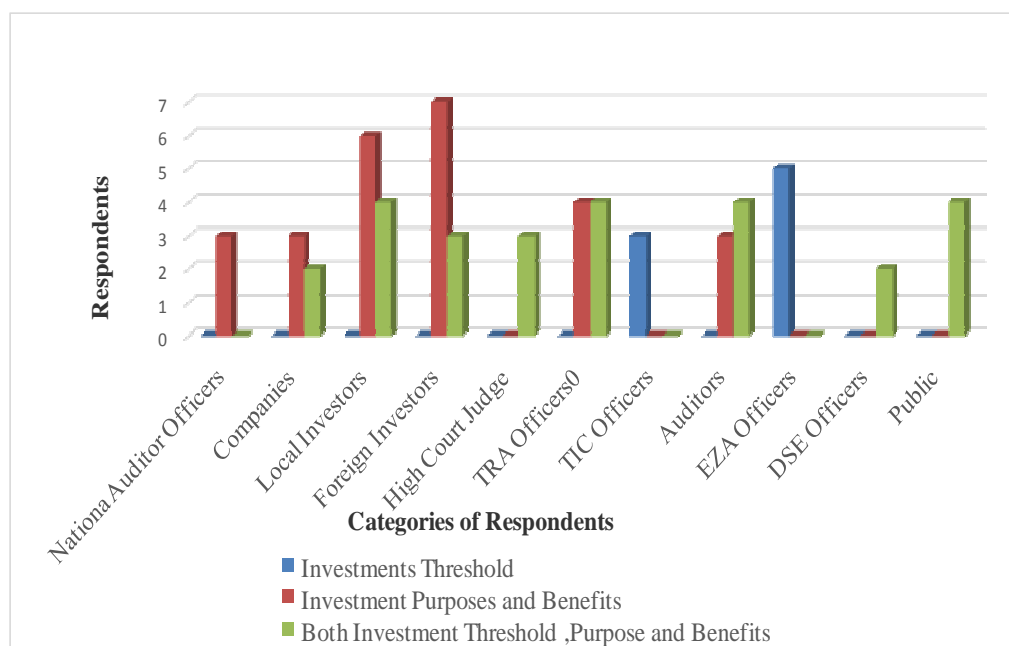
The remaining four Tanzania Revenue Authority officers and three auditors argued that the threshold as qualification was not plausible, to them only the assessments of the benefits of the investments and the needs for the investments in the country suffice to determine whether incentive certificate should be issued or not.

For five Export Zone Authority Officers, the threshold was plausible qualification regardless of others. Giving example of the export zones and special export zones they argued that, investments in those areas require huge capitals, unless you evaluate the investments threshold you cannot say how beneficial the business is to the country. Huge capital ensures smooth running of the zones, if the zones are effectively operating the country would obviously benefit. The same views were maintained by Tanzania Investment Centre Officers, they argued that the threshold determines the capacity of the investor to employ, produce and distribute. They added that because in some investments it is a condition that they employ Tanzanians, then huge capital ensures employments and from there developments can be witnessed. But they admitted that such conditions are not set by the law.

The responses from two officers at The Dar es Salaam Stock Exchange Market and the four members of the public were to the effect that, the threshold amount set by the laws was high and indeed the investments of such capital might be beneficial to offset incentives cost, however other factors can be set as qualifications because the country might lose investments meeting her purposes and need due to threshold. Thus, other investments might be beneficial but don't meet the threshold qualifications. To them qualification should be set to afford evaluation of each circumstance independently.

Table 4.3 Responses on Plausible qualification for investment to qualify for tax incentives

Respondents	Intended	Investment Threshold only	Investments Purpose and benefits	Moderate (Both investments threshold, purpose and benefits)	Total
National Auditor Officers	3	0	3	0	3
Companies	5	0	3	2	5
Local Investors	10	0	6	4	10
Foreign Investors	10	0	7	3	10
High Courts Judges	3	0	0	3	3
Tanzania Revenue Authority officers	8	0	4	4	8
Tanzania Investments Centre officers	3	3	0	0	3
Auditors	7	0	3	4	7
Export Zone Authority Officers	5	5	0	0	5



Dar es Salaam Stock Exchange Market	2	0	0	2	2
Member of the Public	4	0	0	4	4
Total	60	8	26	26	60

Figure 4.3 Categories of respondents and responses on Plausible qualification for investment qualify for tax incentives

Table 4.3 and Figure 4.3 above show the responses by the category of respondents in respect to plausible qualification for investment to qualify for tax incentives. The responses show that the majority of the respondents preferred investment purposes, benefits and threshold together as plausible qualification for issuance of incentive in Tanzania and not threshold only as provided by the Tanzania Investment Act, under section 19 (1) and (2).

Table 4.4. General responses on plausible qualification for investment to qualify for tax incentives

Responses	Number of respondents out of 60	Percentage
Investment Threshold	8	13.3%
Investment Purposes and Benefits	26	43.33%
Both Investment Purposes, Benefits and Threshold	26	43.33%

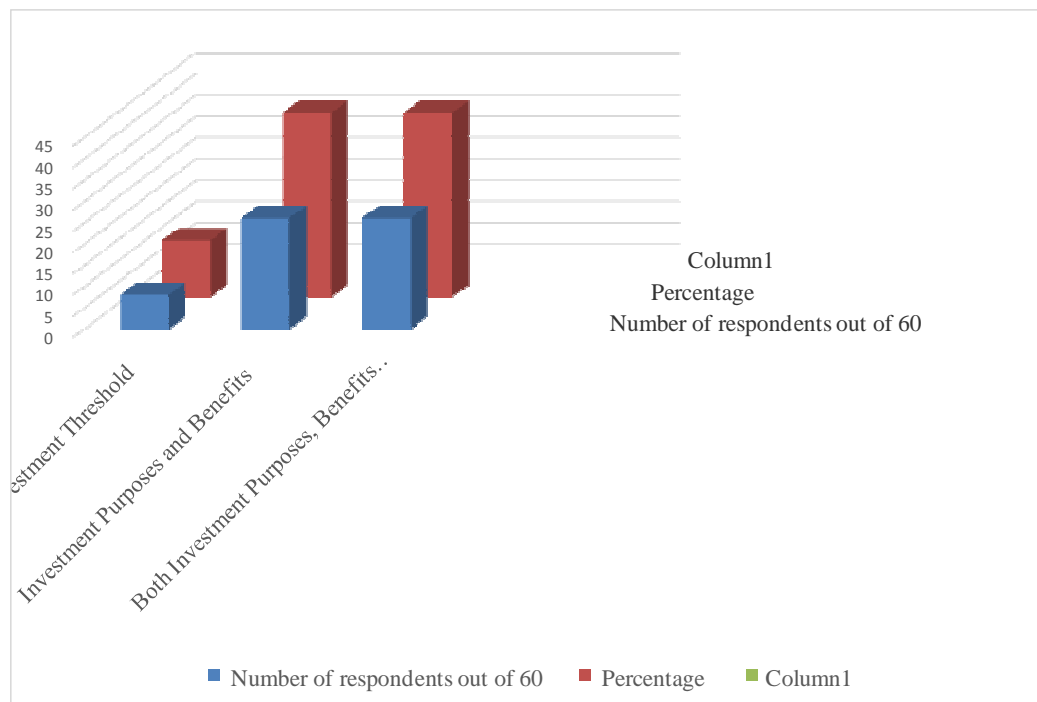


Figure 4.4 General responses on Plausible qualification for investment to qualify for tax incentives

Table 4.4 and Figure 4.4 above show that only 13.33 % of the respondents were of the view that, investment threshold as the only qualification for issuance of incentive is plausible. Furthermore, 43.33% of the respondent suggested flexible qualifications allowing each investment to be evaluated independently depending on its purpose and the benefits it can offer.

While 43.33% of the respondents suggested that threshold, purposes and benefits of the investments should be taken as qualification. Noting the equal percentage for investment benefits and investments benefits, as well as purpose, this study suggested them as plausible qualification for incentive issuance against the provision of the Tanzania Investment Act, 1996, the Export Zone Act, 2002 and the Special Zone Act, 2002.

4.3 Do tax incentives merits outweigh the demerits in Tanzania

This question intended to evaluate the effectiveness of tax incentives in Tanzania and obtain evidence of whether such excessive tax incentive as provided by different Tanzania laws are desirable. Although 33.33% of the respondents opined that tax incentives should be abolished and reasonable tax rates, as well as effective and accurate taxation systems¹⁵⁰ be established, they agreed with 66.67% of the respondent that tax incentives in the country like Tanzania is a necessary beneficial evil.

They argued that tax incentive stimulates investments, development and growth of economy, especially in places not geographically favored. However, Tanzania Gross Domestic products growth rates are not increasing ranging at 10.9 maximum for almost twelve years now.¹⁵¹ It is argued that GDP Annual Growth Rate in Tanzania averaged 6.73 per cent from 2002 until 2017, reaching an all-time high of 10.90 per cent in the first quarter of 2007 and a record low of 2.60 per cent in the third quarter of 2009¹⁵².

¹⁵⁰ Argued by Tanzania Revenue Authority Officers interviewed on different occasions, National Auditors Officers, Export Zone Authority officers and Dar es Salaam stock exchange.

¹⁵¹ Trading Economics, Tanzania GDP Annual Growth Rates,

¹⁵² Ibid.

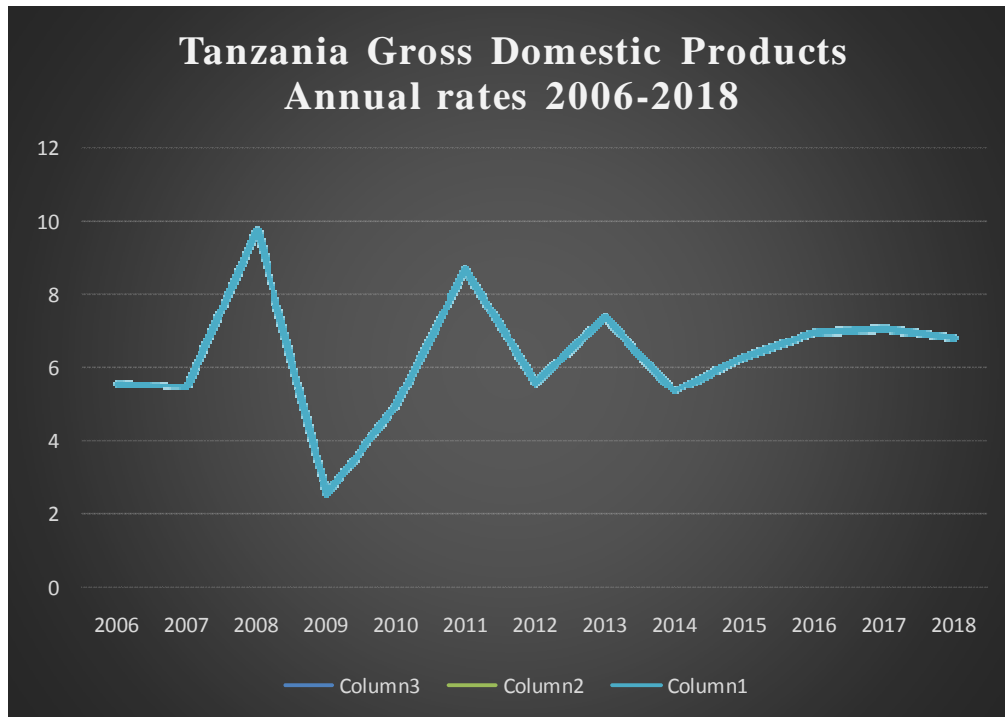


Figure 4.5 Tanzania Gross Domestic Products Annual rates 2006-2018

Arguably, offering of incentives has not done much in our economic progress. The World Bank reported that in 2013/14, the total value of lost revenue resulting from tax exemptions amounted to TZS 1,834 billion or 2.5 per cent of revised Gross Domestic Products. Surprisingly, before 2013/ 14 financial years the government had plans to reduce incentives as they were causing revenue losses, according to the speech by the then Minister for Finance William Mgimwa (during the 2013/14 Budget Speech) in Financial Year 2011/12, tax exemptions amounted to 4.3% of the Gross Domestic Product and the target in the medium term was to reduce them to 1%¹⁵³. Also, the National Audit Office expressed its disappointment in auditing big companies on oil and minerals that in respect of the expenditure and revenue exempted, there is no physical prove that they benefit Tanzania¹⁵⁴.

¹⁵³ Speech by the Minister for Finance William Mgimwa during the 2013/14 Budget Speech whilst introducing to the National Assembly, the estimates of Government revenue and expenditure for the Fiscal Year 2013/2014.

¹⁵⁴ Controller and Auditor General Reports 2016/ 2017, available at www.nao.go.tz/?wpfd_dl=253 accessed on 15th of September, 2018 at 09:40 am.

Also, 100% of the respondents argued for improvement of productivity and efficiency for industrial development. Cementing on this it's argued the rationale for granting of tax incentives is improving productivity and efficiency by attracting Tax incentives that act as a catalyst for industrial development, promoting the transfer of proprietary knowledge and technology, also it creates employment opportunities for the general public giving the local human resource opportunity to be trained and become skilled.¹⁵⁵

Again the respondents argued that, comparing with economic and social developments, save for a country in general, in areas invested like in mining there are no notable developments, no new technology to brag nor employments opportunity worth the name. Members of the public (former miner)¹⁵⁶ gave an example of Nyamongo mining and Buzwagi where he traveled expecting for best, but life in the mining area was so poor that he left for Kariakoo to engage in retail business as “machinga.”

The research found that comparing the merits of tax incentives adduced and the demerits on the economic, the latter is at the peak. The World Bank noted that, while tax exemptions can be justified to promote strategically significant economic activities, their excessive use can also result in inequality and a loss of revenue for the Government¹⁵⁷.

In Tanzania, a recent study has shown that the costs of tax incentives for Government do not usually justify the benefits of Tax incentives issued in Tanzania; in nature they are not economically based rather impressive. The argued rationale for granting of tax incentives are improving productivity and efficiency by attracting Tax incentives that act as a catalyst for industrial development, promoting the transfer of proprietary knowledge and technology, also it creates employment opportunities for

¹⁵⁵ Moses, K. and Simon. N. (2014) *Tax Exemptions; Implications on Social Development*; SEATIN Uganda, p 21

¹⁵⁶ An interview with Former miner, Anwali Hussein Kashanga on 15th November, 2018 at Kariakoo Market.

¹⁵⁷ The World Bank Group, (2015), Tanzania Economic Update; Why Should Tanzanians Pay Taxes? The unavoidable need to Finance Economic Development, World Bank Group Macroeconomics and Fiscal Management Global Practice Africa Region, Issue 7, p. 41.

the general public giving the local human resource opportunity to be trained and become skilled¹⁵⁸.

Nevertheless, in Tanzania incentives have not deployed merits to the extent incentives are provided by the law. Commentaries on tax incentives argue only on the demerits overtaking merits of incentives because tax Incentives result in a loss of current and future tax revenue. Of interest two auditors during an interview argued that Tanzania is the leading country in taxation and there so many taxes in Tanzania. To them the problem was not tax incentive rather the taxation system. They further opine that, if our tax system was transparent and flexible then the merits for tax incentives could be seen.

The research findings reveal that tax incentives threaten the country's economic growth as Tanzania government has been and is losing millions of shilling because of Tax Incentives in its investment laws. This is a great impediment since investments attracted benefit investors leaving us with economic problems, named poorest country.¹⁵⁹ For instance, the government lost Tanzania shillings two hundred ninety point seven billion because of the Tanzania Investment Centre Incentives to investors in 2013 which is 19% of the all incentives granted by the government.¹⁶⁰ And according to Tanzania Revenue Authority report the total amount of incentives granted in the year 2013/2014 was Tanzania shillings one point four trillion,¹⁶¹ trending the same in year 2015-17.

Tanzania Investment Act, 1997 grants irrevocable incentive until expiration. Even if the incentives are used in our detriment, the law deters any action even those of the parliament. Companies that are not profitable in early years of operation would not benefit from income tax holidays, in contrast, such holidays would be of less importance to companies that are profitable from the start of their operation, Tax

¹⁵⁸ Moses, K. and Simon. N, *Tax Exemptions; Implications on Social Development*, p. 21.

¹⁵⁹ Jonas. J, *Kenya, Uganda and United Republic of Tanzania: Selected issues*; IMF Country Report No. 08/353

¹⁶⁰ The Minister of State in the Prime Minister's Office (Investment and Empowerment), Dr. Mary Nagu speech at the Parliament published by Mwananchi (Dar es Salaam) Tanzania: Tanzania Investment Centre gives tax incentives about Tshs 290 billion published on Wednesday Sharon Sauwa, 25 June 2014, p.4.

¹⁶¹ Ibid.

Incentives attract mainly footloose firms; and Tax Incentives can be outside the budget and non-transparent.¹⁶²

The fiscal Incentives are *mainly* in the form of enhanced capital deduction and tax allowances, which include investment allowance on capital expenditure, infrastructure allowance on infrastructure expenditure, preferential tax rates for withholding tax on dividends, royalties and interest, preferential tax rates on personal income tax and indirect tax; and double deductions on approved costs and expenses. Both local and foreign investors who are registered by Tanzania Investment Centre and/or Tanzania Revenue Authority are eligible for the Tax Incentives.¹⁶³

4.4 Research Findings and Discussion

From the above data presentation and analysis this study found that because tax incentives are not the influential factor for investments, incentive are taken for granted by investors to benefit from Tanzania without developing her, resulting in revenue losses; comparing between merits of tax incentives and demerits this study found demerits outweighing merits as tax incentives are abuses and misused.

4.4.1 Abuse and misuse of tax incentives

*Other concerns are the misuse and abuse of tax incentives, granting of tax incentives without conditions such as creating employment and technology transfer and discretion powers vested to the minister in provision of incentives*¹⁶⁴

Among the East African countries Tanzania is appraised as country with more tax incentives, she issues tax incentive in all economic sectors, priority being agricultural

¹⁶² Op cit. Jonas. J.

¹⁶³ Ibid.

¹⁶⁴ Prof. Honest Ngowi quote, Kolumbia. L, Scrap tax incentives, expert urge Government, The Citizen, 27 January, 2018, <http://www.thecitizen.co.tz/News/Scrap-tax-incentives--experts-urge-govt/1840340-4280572-fwwwbg/index.html> accessed on 15th September, 2018, 07:35pm.

sector, mining, petroleum, transportation and tourism with the view of attracting investment; however tax incentives are misused and abused by beneficiaries.¹⁶⁵

Looking at Tanzania from 1995 to 2018, the country has developed; the main reason is because foreign direct investments were allowed. In areas where natural resources are extracted have been developed by foreign investor, building hospitals, schools and water schemes. They argued that for so many reasons; corruption, embezzling public funds, unprofitable and economically impracticable contacts with investors and abuse of power inclusive, Tanzania has failed to proclaim sustainable development.

Kama tunavyosikia tanzania ni Taifa lenye mali asili nying, ndivyo tunavyosikia kuhusu maendeleo yetu sisi wananchi, siwezi jua sana hayo mapunguzo ya kodi kama yameinua uchumi wetu kulingana na wingi wake, kupitia uwekezaji maana ni swala la kitaalam, lakini naweza kusema hivi kwa wawekezaji waliopo Tanzania sidhani kama tungekuwa hapa, sema faida za uwekezaji ni mali za wakubwa¹⁶⁶

In translation, we hear about how our country has developed, now we hear that she is filled with natural resources, am not aware on how tax incentive have increased our economy through investments, because it is a technical matter, however with so many foreigner investors in Tanzania, I don't think we are at the intended level, but the benefits are for top leaders.

Loopholes on legal framework governing tax incentives in Tanzania pave way for tax avoidance, termed as misuse of tax incentive and many activities conducted by investors through tax incentives as an umbrella are not for intended purpose, therefore instead of benefiting from such investments, we benefit the investors. For many years tax incentives have been issued and every day they are increasing, but the country seems stagnant unlike tax incentives which are picking up.

¹⁶⁵ Controller and Auditor General Reports 2016/ 2017, available at www.nao.go.tz/?wpfd_dl=253 accessed on 15th of September, 2018 at 09:40 am.

¹⁶⁶ Anonymous source.

For example, in mining sectors since 2011, misuse and abuse of tax incentives have been proved, it was reported in 2011, that Tanzania has lost at least \$265.5m in recent years as a result of an excessively low royalty rate, government tax concessions that allows companies' to avoid paying corporation tax and possibly even tax evasion by some companies if allegations are true. This is a very conservative estimate, in that it does not cover all the gold mining companies or all figures for recent years.¹⁶⁷ Neither does it cover the financial costs of other tax incentives such as VAT exemption, which are extremely difficult to estimate. These extra revenues could of course provide a huge boost to tackling poverty in Tanzania.¹⁶⁸

Furthermore, the report identifies three severe problems with gold mining in Tanzania, namely: (i) It provides the government with very low tax revenues (ii) it is subject to minimal governmental and popular democratic scrutiny and is associated with the problem of corruption (iii) People in the gold mining areas are barely benefiting and many are being made poorer.¹⁶⁹ And no information was given on whether the oil arrived to the intended terminals, which indicated that the exempted oil was used for unintended activities.¹⁷⁰ From this it is important to note that unless Tanzania scraps unnecessary tax incentives that are stumbling block in efforts to boost revenue collection, the aim of establishing tax incentives in the first place might not be realized.¹⁷¹

4.4.2 Tax incentive loophole for tax avoidance and evasion

Tax Incentives create differences in effective tax rates and thus distortions in allocation of investments between activities that are subsidized (exempted) and those which are not, increasing chances of tax avoidance and evasion. Tax incentives were

¹⁶⁷ Curtis.M and Lissu.T, “A Golden Opportunity: How Tanzania is Failing to Benefit From Gold Mining”, 2nd Edition available at <https://www.kirkensnodhjelp.no> , accessed on 10th of September, 2018 12:34 pm.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid p.7.

¹⁷⁰ Performance and specialized audit General report, 2015/2016, available at www.nao.go.tz/?wpfb_dl=229 accessed on 15th September, 2018 09:57 am.

¹⁷¹ Kolumbia. L, Scrap tax incentives, expert urge Government, The Citizen, 27 January, 2018, <http://www.thecitizen.co.tz/News/Scrap-tax-incentives--experts-urge-govt/1840340-4280572-fwwwbg/index.html> accessed on 15th September, 2018, 07:35pm.

established to facilitate investments and promotion of revenue for economic growth, evidently the provision for tax incentives results in loss because they avail loopholes for tax evasion. There is no mechanism to prove whether an income invested was used according to intended purpose.

The Controller and Auditor General Reports¹⁷² expenditure under umbrella of tax relief but used for other reason. For example, section 15 of the Export Processing Zone Act, 2002 afford an investor tax relief for ten years, this is enough loophole for both tax evasion and avoidance. Reasonably an investment for ten years would generate enough profit for the investor to close the business or shelf the company or investment into new business and register it under the Act, as new business, enjoy another ten years, meanwhile the country revenues decrease and the economy remains stagnated.

The research findings show that there are loopholes in our tax laws and those loopholes have been abused by the investors in a sense that, they use them to their own benefit without considering the benefit of the country as a result we continue lagging behind on the whole issue of development.

4.4.3 Legal framework

As argued above, investment laws in Tanzania provide tremendously tax incentives; some of the Acts intertwine¹⁷³ and offer the same investor incentives twice. For example, an investor with Certificate of incentive under Tanzania Investment Act, 1997, depending on the sector enjoys more than ten different incentives from import, manufacturing, expenditures, income exemption to export. The question remains at what time does Tanzania benefit from the investor if all sources of revenue are exempted?

¹⁷² Supra note 97.

¹⁷³ A holder of Tanzania Investment Centre certificate enjoys several incentives as provided by Income tax Act, 2004, the VAT Act, and Investment Guide to Tanzania, 1998.

4.4.4 Condition for issuing tax incentives

Appraising the amendment of the Mining Act, 2018¹⁷⁴ which makes it conditional subsequent for investors issued with mining right to prove substantial development. Conditions or qualification to be issued with incentives are economically unrealistic, disregarding the rationale for their establishment, thus increasing revenues and development through investment. The threshold only as condition is not enough for investors to be issued with certificate of incentives for the extent of five years without amendments or interference, living our economy on investor's fate.

But how will that investment affect the revenue presently or in the near future, are important and necessary question not asked. Reasonably, what if the investment would have come to Tanzania without incentives, because the investor needs Tanzania markets for his investments, or the investments is for short period of time or the raw material needed for the investment are found in Tanzania only (it is necessary for the investor business to invest in Tanzania) like Tanzanite, in these cases the investments need us more than how we need them.

Under those circumstances, the investor benefits twice, by gaining the raw material under less cost and exempted from contributing to the national revenue via his profits. The research urges on changing qualifications and strengthens them, to facilitate development.

4.4.5 Tax losses

For observations, given that Tanzania is one of Africa's largest gold producers, the expectation has been that mining would contribute significantly to its economic development. This expectation has not been fulfilled. The International Monetary Fund (IMF) notes that gold exports have risen from around US\$ 500 million to US\$ 1.5 billion in the last five years due to rising gold prices, but that government revenues have remained at around US\$ 100 million per year. This is largely because of the corporate income tax holidays provided to mining companies.

¹⁷⁴ Supra note 72.

In fact, ‘none of the existing gold projects have paid material income tax to date’, the IMF notes¹⁷⁵. It is further reported that, mining revenues will not grow much in the near future.¹⁷⁶

4.5 Conclusion

The main focus of tax incentives in Tanzania is to attract investment for prosperity of economy and avail sustainable developments to her citizens, instead were reporting revenue losses accompanied with poverty. Tax incentives cause demerits over merits; suddenly demerits are caused by our laws. Excessive incentives are issued to investors; other provision provides incentive first with limitation to check and balance, paving loopholes for tax avoidance and evasion through complication in tax assessment, abuse and misuse of incentives by investors. Second excessive incentives qualification for issuing are absurd, examining on the financial capital to invest disregarding the aim “development”, that is how are we benefiting from investment. Fundamental changes are needed; the questions of what changes and to what extent are explained in the following chapter.

¹⁷⁵ IMF, (2011), Staff Report for the 2011 Article IV Consultation and Second Review under the Policy Support Instrument , <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/United-Republic-of-Tanzania-2011-Article-IV-Consultation-and-Second-Review-Under-the-Policy-24849> retrieved on 21st September, 2018 at 11:39 AM.

¹⁷⁶ Ibid.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion

This study has thoroughly examined the tax incentives in different sectors by appraising the merits and demerits of incentives through examination of tax exemptions and tax holidays given to the investors. This research was conducted to examine how tax incentives provision can accord with our current economic status and developments; to show why the laws need to specifically regulate revocation of certificate of incentives in case of abuse by investors and to complement reforms of our investments law.

To achieve those objectives two main questions were raised, whether there are mechanisms to curb the abuse of tax incentives in Tanzania and whether Tax incentives provision pact with our economic status. The loopholes in Tanzania investments laws allow the investors to abuse the incentive issued, for example investor registers a company in a certain name and issued with tax holiday of five years in expiration of those years such company changes its name and pretends to be a new company gains five years of tax holiday, so the situations go like that and at the end of the day the government do not benefit in any way and they lose a lot of revenue.

Those tax incentives given to the investors have turned into burden to the government and its citizens, because the government gives incentives with intentions to invite many investors for investments in Tanzania not any elsewhere, to achieve that, excessive, rampant and repetitive incentives unreasonable, at our own risk. Thus, the incentives complicate our taxation system, availing tax avoidance results in revenue losses, investors benefit more than the government.

For example, despite mining being one of the fastest growing sectors in the Tanzanian economy, contributions to Gross Domestic Product from gold production remains low compared to its importance in exports sector.

Mining companies have been granted too many tax subsidies and concessions; there is a high incidence of tax avoidance among companies in the minerals sector, so this is regarded as a direct consequence of secret mining contracts and the efficacy of creative accounting mechanisms. Indeed, both of these problems are both presented as acute in Tanzania.

The government uses tax concessions merely as a tool to attract foreign mining investments, these tax concessions provided by the government are combined with the aggressive tax avoidance strategies employed by mining companies and have resulted in a substantial loss of government revenue that might otherwise have been used to spur economic development.

5.1 Recommendations

5.1.1 Amendment of Section 19 of the Tanzania investments Act [CAP 38 R.E 2002]

Section 19 provides that,

A business enterprise in respect of which a certificate is granted under this Act shall be entitled to the benefits which are applicable to that enterprise under the provisions of the Income Tax Act, the Customs Tariff Act, the Value Added Tax Act, or of any other written law for the time being in force.

In 1997 when the Act was amended, this proviso could have justified, because the country was in need of investments to boost up declined economy and upon pressure from outside world, whom without incentive and other means of attraction, we could have lost it all. However, the position currently is different and we are not in desperate need for investments, but the investor are desperate for natural resources we can offer, then the provision has been taken by events.

The research sees no reasons to maintain such colonial provision in our investment law, impressing or attracting investments already attracted to our value. The provision should be revisited and repealed to accommodate our own demand not otherwise.

Again if replaced the five-year incentive is too long, and the Tanzania Investment Center should be allowed to revoke the certificates whenever incentives are abused or misused with cost.

5.1.2 Amendment of investment law

The investments laws and tax laws should be amended to include the following:

5.1.2.1 Setting economically reasonable condition for issuing incentives

As discussed in Chapter three of this report, tax law affords investors with a lot of unreasonable and unorganized incentives, under qualification of threshold not necessity of investments for developments. This research recommends amendments of section 17 of the Tanzania Investment Act [CAP 38 R.E 2002] and include other qualification for incentive issuing. Arguably, the economic rationale for tax incentives must thus be evaluated in terms of their ability to achieve clear goals in ways that are both effective and efficient, relative to alternative policies, both tax and non-tax, that could achieve the same objectives.¹⁷⁷ An assessment on whether investment is beneficial to the country is very important, and whether that investment is necessary for the country's development, should be the determinant to issue incentives. The laws should set some condition subsequent, the example which the Written Laws (Miscellaneous Amendments) Act, 2017 has set. If the incentive is for five years, then within such years proof of substantial developments should be shown.

5.1.2.2 Provide measures to curb abuse and misuse of incentives

The authority with powers to issue tax incentives, should have power to check and balance the use of incentives issued. Also, measurements to curb the problem should be put in place, for example regular and unexpected audit of return of incentives

¹⁷⁷ IMF, Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment; A Report To The G-20 Development Working Group By The Imf, Oecd, Un And World Bank, available at <https://www.imf.org/external/np/g20/pdf/101515.pdf> Accessed on 16th of September, 2018 at 9:10 am.

holders, establishing special authority to check and balance power, if the authority issuing cannot handle the matters,

Taking an example in Mining sector where in 2017, where the special commission was established to regulates the investors action in minings and how their dealing with incentives, vesting the commission with power to terminate and issue fine in case of abuse.

5.1.3 Enhancing Taxation system

A good revenue system adopts taxes that are simple, fair and efficient. Tax incentives risk compromising these principles to the extent that they complicate the tax system, create horizontal inequities, and distort production efficiency; and they may forgo revenue that could have been spent more productively or needs to be replaced in other and more damaging ways. In recent years we have witnessed the change in tax collection and payments system, which is a good thing. An automatic system helps to identify who should pay what at what time. Issuance of such certificate be amended or modified to the detriment of such investor”

5.1.4 Reduction of Tax Incentives

There is a need to revisit the number of Tax Incentives in order to diminish revenue losses and reduce the level of Tax Incentives in Tanzania, as well as ensuring that relevant stakeholders are engaged in developing proposed interventions. This is possible through changes to the legal framework and administrative practice underpinning the incentives. In 2011 the Minister of Finance by then Mustafa Mkulo said in the budget speech that the government has already taken steps to review procedures for tax exemptions to strengthen control over abuse and the government policy was to review and harmonise various tax laws, which have provisions of exemptions from their current level of 2.5 per cent of GDP in his estimate to at least 1% of GDP.¹⁷⁸

¹⁷⁸ Finance Minister, Budget Speech 2011/12, pp. 11, 25 www.mof.go.tz

5.1.5 Transparency in Contracts Concerning Tax Incentives

All documents concerning Tax Incentives given by government to foreign and local investors, religious institutions, non-governmental organisations and public institutions should be mandatory required to publicly declare with full details on how much they pay and receive in tax. The government should also join the Extractive Industries Transparency Initiative (EITI), which is intended to improve the transparency of investors, religious institutions, non-governmental organisations and public institutions in payments of deducted amounts to the government. It will enable the government and the public in general to know what amount is forgone due to tax concessions and what amount is received.

5.1.5 Control of fiscal incentives

It has been stated that investors both local and foreign are not angels; they are business persons who above all are motivated by the possibility of making profit over and above that which could be made in a simple business transaction at home. Therefore, they would exploit each and every loophole in the statute books to ensure that they invest as little as possible, avoid paying taxes, pay low salaries as much as the law can permit and so on.¹⁷⁹

¹⁷⁹ Maina, P. C. and Mwakaje, S. J. (2004), Op.cit at pg. 51

REFERENCE

BOOKS

Dooley, D. (1995), *Social Research Methods*, (3rd Edn.), Delhi, Prentice- Hall of India Private Limited.

Mashall, M.N., (1996), *Sampling for Qualitative Research*, Family Practice, London, Oxford University Press.

Milanzi, M.C., (2002), *Research Methods in Social Sciences: Theory, Philosophy, Methodology and Observation*, Institute of Public Administration, Mzumbe University.

Myneni, S. R. (2001), *Legal Research Methodology*, Allahabad Law Agency, Asian Offset Press.

Moses, K. and Simon. N. (2014); *Tax Exemptions; Implications on Social Development*, Kampala, SEATIN Publisher.

Peter. C. M and Saudin. J. M (2004), *Investment in Tanzania: Some comments- Some issues*, Dar es Salaam, Friedrich Ebert Stiftung publisher.

JOURNALS & ARTICLES

Luoga, F. D. A. M, (2002), *Taxation in the Advent of Democratisation and Transition to Free Market Economy in Tanzania and Concerns on the Rule of Law and Human Rights*, *Law, Social Justice & Global Development Journal (LGD)*, Vol 1 , available at <http://elj.warwick.ac.uk/global/02-1/luoga.html> and http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2002_1/luoga/ accessed on 12th of May, 2018.

Marie C. H., (1997), *Choosing Qualitative Research: Primary for Technology Researchers*, *Journal of Technology Education*, Vol. 9 No.1, pp 12-31.

Ngowi. H.P (2000), Tax incentives for Foreign Direct Investments (FDI): Types and Who Should/Should Not Qualify in Tanzania, the Tanzanet Journal issue 1 Volume 1, pp 19-28.

Norman.A.S, (2010), The Role of the Dar es Salaam Stock Exchange in Safeguarding Securities Investors in Tanzania, International Business Management Journal, pp 222-228.

Sunseri, T, (1996), Labour Migration in Colonial Tanzania and the Hegemony of South Africa Historiography, African Affairs, Vol 95, No 381, pp. 581-598.

Thuita, G.W, (2014), An Investigation of the Effect of Tax Incentives on the FDIs: A Case of EPZs in Athi River Kenya, Journal of Accounting, Finance and Auditing Studies, pp 17-35.

The World Bank Group, (2015), Tanzania Economic Update; Why Should Tanzanians Pay Taxes? The unavoidable need to Finance Economic Development, World Bank Group Macroeconomics and Fiscal Management Global Practice Africa Region, Issue 7.

Yuduo Lu & Kung'unde G. Marko, (2010); Gold Mining Investment Incentives in Tanzania: Current Issues and the Possible Remedies. International Journal of Business and Management. Vol. 5, No.3 available at www.ccsenet.org/journal/index .

ONLINE MATERIALS

Aspatore.T, (2010), Tax Law Client Strategies in the middle East and Africa available at www.west.thompson.com , Accessed on 16th of July, 2018.

Bergsman.J (1999), Advice on Taxation and Tax Incentives For Foreign Direct Incentives, available at www.unctad.org accessed on 16th of June, 2019.

- Curtis. M & Lissu. T, (2008), “A Golden Opportunity: How Tanzania is Failing to Benefit from Gold Mining, available at <https://www.kirkensnodhjelp.no> Accessed on 24th of June, 2018.
- Flavianus. M, (2012) Determination of foreign direct investments (FDI’s) In East Africa Countries of Tanzania and Kenya: Mzumbe University retrieved from <http://www.clknet.or.tz/> on 17th of July, 2018.
- IMF, OECD, UN and World Bank, (2011), Supporting the development of more Effective Tax Systems, Report to the G-20 Development Working Group available at <http://documents.worldbank.org/curated/en/615471538135713647/Supporting-the-Development-of-more-Effective-Tax-Systems> accessed on 16th of June 2018.
- Kasanda. P, Export Processing and Special Economic Zones in Tanzania, available at <https://www.lexology.com/library/detail.aspx?g=907bed45-7ec5-4438-983d-63d18a6447fe> accessed on 13th September, 2018.
- Kolumbia. L, Scrap tax incentives, expert urge Government, The Citizen, 27 January, 2018, <http://www.thecitizen.co.tz/News/Scrap-tax-incentives--experts-urge-govt/1840340-4280572-fwwwbg/index.html> accessed on 15th of September, 2018.
- Magai P.S & Marquez. P, (2011), *Tanzania mining sector and its implications for the country’s development*, available at https://www.lai.fu-berlin.de/homepages/Alejandro_Marquez/Publikationen/wp_2011_04_Magai-Marquez_Tanzanias-Mining-Sector.pdf accessed on 14th of July 2018.
- Morisset.J, (2003), Using Tax Incentives to Attract Foreign Direct Investment, available at https://www.researchgate.net/publication/238083093_Using_Tax_Incentives_to_Attract_Foreign_Direct_Investment retrieved on 14th of February, 2019

Mwakaje.J.S, How the Law Protects Investment on Tanzania,' the Citizen, 14th September, 2014 available at <http://www.thecitizen.co.tz/oped/How-the-law-protects-investments-in-Tanzania/1840568-2452308-4upkcw/index.html> accessed on 9th of September, 2018.

Mwakaje.J.S, Some Legal Perspectives on Investment Incentives; The citizen, 25 May, 2017, www.citizen.co.tz accessed on 20th of July, 2018.

Mpango. P, (2015), *The Role Of Investment In Economic Development And Growth Strategy Of Tanzania: The Case Of The Lake Tanganyika Zone*, Dar es Salaam, , Proceed of The Tanganyika Lake Investment Forum, available at www.mipango.go.tz accessed on 14th of July, 2018.

NBS, Tax Statistics Report 2016/2017 Tanzania mainland, June, 2018 Available at https://nbs.go.tz/nbs/takwimu/Tax/Tax_Statistics_Report_2016-17.zip Accessed on 31th of July, 2018.

Odd H. F and Kari K. H, the tax system in Mozambique, Tanzania and Zambia: Capacity and Constraints. Available at www.Norad.no>.no.globalassets>filarkiv>summary-tax-systems-in-mozambique-tanzaniz-zambia-27-04-2011 Accessed on 25th of August, 2018.

Policy Forum, 2013, Tanzania and the Problem of Tax Exemptions, available at <https://www.policyforum-tz.org/sites/default/files/Taxpolicybrief.pdf> retrieved on 16th of June, 2018.

Tanzania Revenue Authority, Taxation In Tanzania: The Tanzania Investment And Trade Promotion, available at <http://www.sanec.org/themes/sanec/uploads/files/TANZANIA%20INVESTMENT%20AND%20TRADE%20PROMOTION%20final%20version.pdf> Accessed on 25th of August, 2018.

Tax Justice Network-Africa (TJN-A), Tax Competition in East Africa; A race to the bottom? Tax incentives and Revenue Losses in Tanzania, Available at http://www.tzdp.gov.tz/fileadmin/migrated/content/uploads/Tax_Incentives_and_Revenue_Losses_in_Tanzania.pdf accessed on 13th of September, 2018.

UWAZI, Tanzania's Tax Exemption: Are they too high and Making Us too Dependent on foreign aid? at www.uwazi.org, Accessed on 27th of June, 2018.

World Bank Group, "Investor Motivation Survey Results: Tanzania", Tax Incentives Study in the East African Community Member (EAC) States, Presentation by Global Tax Team, CIC, IFC, Washington, June, 2016.

World Bank Group, "Effectiveness of Investment Incentives in Development Countries, Evidence and Policy Implications", Investment Climate Advisory Services of the World Bank Group, Presentation, Vienna, May 14, 2012.

REPORT

Controller and Auditor General Reports 2016/ 2017, available at www.nao.go.tz/?wpfd_dl=253 accessed on 15th of September, 2018.

Controller and Auditor General Reports 2016/ 2017, available at www.nao.go.tz/?wpfd_dl=253 accessed on 15th of September, 2018.

IMF, Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment; A Report To The G-20 Development Working Group By The IMF, OECD, UN And World Bank, available at <https://www.imf.org/external/np/g20/pdf/101515.pdf> Accessed on 16th of September, 2018.

IMF, (2008), Kenya, Uganda and United Republic of Tanzania: Selected Issues, available at <https://www.imf.org/external/pubs/ft/scr/2008/cr08353.pdf> retrieved on 15th of June, 2018.

IMF, (2011), Staff Report for the 2011 Article IV Consultation and Second Review under the Policy Support Instrument, <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/United-Republic-of-Tanzania-2011-Article-IV-Consultation-and-Second-Review-Under-the-Policy-24849> retrieved on 21st of September, 2018.

Jonas. J, (2008) Kenya, Uganda and United Republic of Tanzania: Selected issues; IMF Country Report No. 08/353.

Performance and specialized audit General report, 2015/2016, available at www.nao.go.tz/?wpfb_dl=229 accessed on 15th September, 2018.

Saul L. and Dominique D. (2011); Staff Report for the Article IV consultation and second review under support instrument; IMF Country Report No. 11/105.

ANNEXURES

ANNEXURE No. 1; QUESTIONNAIRES

**MZUMBE UNIVERSITY
FACULTY OF LAW
QUESTIONNAIRE**

RESEARCH TITLE: Tax Incentives in Investment Sector in Tanzania: An Appraisal of Merits Vis A Vis Demerits.

NAME AND ADDRESS

DEOGRACIOUS MAYA

P.O.BOX

Dar es Salaam

Tanzania

E-mail: mayadeogracious@gmail.com

Tel#:

THE OBJECTIVES AND PURPOSE OF RESEARCH

I am a Master of Laws student at the Mzumbe University (MU) (Faculty of Law) conducting a research on the above research title, to wit; *Tax Incentives in Investment Sector in Tanzania: An Appraisal of Merits Vis A Vis Demerits*. Am interested in evaluating different tax incentives issued in Tanzania as against our economic development and appraise the merit vis a vis demerit. Moreover, the study aims at educating and contribution on the importance of tax incentive and at what point in should Tanzania issue tax incentives for our benefits.

NOTE: You may use extra sheet for explanation or write in back of this page, remember to indicate question number.

NAME

(Optional)

ADDRESS

(Optional)

OCCUPATION

1. What do you understand by the term Tax Incentives?

.....
.....
.....
.....
.....
.....

2. Does tax incentive influence the attraction and retention of investment in Tanzania? IF **YES, HOW** and IF **NO, WHY**

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

3. What qualification should an investor meet to be issued with tax incentives certificate or clearance (mention the law if any)

.....
.....
.....
.....
.....
.....

4. Do you consider what you have mentioned above to be plausible qualification, IF **YES, WHY** and IF **NO, WHY** and Please suggest any **QUALIFICATION WHICH YOU THINK IT IS PRAUSABLE. OR** What are the plausible qualifications for investment to be issues with tax incentives?

.....
.....
.....
.....
.....
.....
.....
.....

5. Do tax incentives merit out weight the demerit in Tanzania?

.....
.....
.....
.....
.....
.....
.....
.....

Thank You.