

Is cooperative compliance a solution for enhancing tax certainty for foreign mining enterprises in Africa? An examination of domestic and multilateral models

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Abstract

This article critically evaluates the suitability of cooperative compliance as a mechanism to enhance tax certainty and revenue collection in Africa's minerals and extractive sector. Drawing on domestic models and multilateral frameworks, it examines the design, objectives and operational requirements of cooperative compliance programs. Particular attention is given to the region's persistent tax challenges in transfer pricing and value added tax administration. The analysis concludes that while cooperative compliance holds promise, its adoption should follow foundational reforms in legislative clarity, administrative capacity and dispute resolution systems. A phased, context-sensitive approach is essential to ensure its effective implementation within Africa's distinct regulatory and economic landscape.

Keywords: cooperative compliance, transfer pricing, value added tax, tax administration, developing countries

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1. INTRODUCTION

For many African countries, minerals and extractive industries have been an important source of tax revenue. During the 2008 financial crisis in South Africa, this sector contributed 8.7 per cent of nominal gross domestic product.¹ The sector's contribution to the broader African region is reflected in the International Monetary Fund's estimate that 10 of the top 15 mining-intense economies are located in Africa.² This trend is expected to continue, as sub-Saharan African countries³ hold over 30 per cent of the world's proven mineral reserves, and the increasing demand for critical minerals in the clean energy transition will further intensify the significance of Africa's energy supply.⁴

Traditionally, Africa's minerals and extractive industries heavily rely on foreign investment, with over 80 per cent of foreign mining enterprises on the continent.⁵ A 2023 survey indicates that several African countries have enhanced their attractiveness to foreign investment – for example, Botswana climbed from 45th of 76 countries in 2019 to 15th of 86 countries in 2023⁶ – and Africa now has a jurisdiction in the top 10 jurisdictions based on the investment attractiveness, trailing only the United States and Canada (four jurisdictions each), yet outpacing Europe.⁷

Despite these positive statistics, political and economic instabilities in several African countries remain enduring concerns of foreign investors.⁸ Adding to these risks are evolving environmental regulations, land claim disputes, protection of designated conservation areas, increasingly stringent labour laws and complex tax regimes. In particular, amendments to tax legislation represent a significant risk for investment decisions in the minerals and extractive sector, where projects require substantial upfront capital outlays and involve extended lead times before achieving profitability.

¹ Davis Tax Committee (Judge Dennis Davis, chair), *Second and Final Report on Hard-Rock Mining for the Minister of Finance* (Report, December 2016) 33 ('*Second and Final Report on Hard-Rock Mining*').

² Giorgia Albertin, Boriana Yontcheva, Dan Devlin, Hilary Devine, Marc Gerard, Irena Jankulov Suljagic, Vimal Thakoor and Sebastian Beer, *Tax Avoidance in Sub-Saharan Africa's Mining Sector* (International Monetary Fund, 2021) 3.

³ Resource-intensive sub-Saharan African countries are Botswana, Burkina Faso, Central African Republic, Democratic Republic of the Congo, Ghana, Guinea, Liberia, Mali, Namibia, Niger, Sierra Leone, South Africa, Tanzania, Zambia, and Zimbabwe: *ibid* 3, n 1.

⁴ International Monetary Fund, 'Digging for Opportunity: Harnessing Sub-Saharan Africa's Wealth in Critical Minerals' (Analytical Note to *Regional Economic Outlook: Sub-Saharan Africa – A Tepid and Pricey Recovery*, April 2024) 2.

⁵ Albertin et al, above n 2, 5.

⁶ Julio Mejia and Elmira Aliakbari, *Fraser Institute Annual Survey of Mining Companies 2023* (Fraser Institute, 2024) 13. The ranking is according to the Investment Attractiveness Index, which evaluates exploration foreign direct investment based on both mineral resources potential and fiscal policies, such as taxation and public regulations. Another attractive foreign investment destination is Morocco, but its investment rankings had declined over the prior three years, moving from 8th of 84 countries in 2021 and 16th of 62 countries in 2022 to 27th of 86 countries.

⁷ *Ibid* 25, measuring against the regional Policy Perception Index, which assesses factors including tax regimes, environmental laws, legal system land claim disputes, local infrastructure, political (in)stability, labour laws, security and geological data.

⁸ See the political and economic considerations in assessing the Subject-to-Tax Rule newly proposed under the Base Erosion and Profit Shifting project of the Organisation for Economic Co-operation and Development (OECD) discussed in Christina Allen, 'Evaluating the Subject to Tax Rule in Nigeria: Implications, Challenges and Strategic Considerations amid Global Tax Reforms' (2024) 78(12) *Bulletin for International Taxation* 462.

Where a tax dispute arises, foreign investors have several avenues for recourse. Domestic mechanisms include the administrative appeal procedure, where a taxpayer lodges a formal objection to initiate an internal review and an administrative mediation procedure, which seeks a negotiated settlement through an independent and impartial mediator within the tax administration.⁹ Independent bodies – such as the judiciary, the tax ombudsman, independent mediators and arbitral tribunals – may also be involved in resolving tax disputes.¹⁰ Cross-border controversies can be addressed through unilateral or bilateral mutual agreement procedures provided in tax treaties.¹¹

Mechanisms to pre-empt tax disputes include domestic public and private rulings issued by tax administrations, advance (or pre-filing) agreements under which a taxpayer obtains a binding determination of an issue prior to lodging a return,¹² and advance pricing arrangements that provide binding predetermined transfer pricing methodologies before transactions occur.¹³ In the African context, foreign investors may also secure tax certainty through investment protection instruments such as domestic investment protection statutes, bilateral investment treaties, treaties with investment provisions and other multilateral or regional frameworks. Large investors can further negotiate bespoke agreements directly with governmental authorities, thereby anchoring greater stability and predictability in both their tax obligations and the broader business environment.

In addition to the dispute resolution and prevention mechanisms outlined above, the United Nations recommends that developing and less-developed countries cultivate a reciprocal relationship of trust and cooperation between tax administrations and taxpayers.¹⁴ This non-binding concept – termed ‘cooperative compliance’ – derives from sociological theory, particularly responsive regulation theory, which posits that ‘the first step towards effective regulation is for the regulator to create a setting in which subjects are stimulated to accept responsibility for regulating themselves in a manner that is consistent with the law’.¹⁵ It is underpinned by perceived procedural fairness on the part of tax administrations and enhanced transparency by taxpayers regarding their tax-related risks. Often summarised as ‘certainty in exchange for transparency’,¹⁶ within this framework taxpayers engage proactively with tax administrations, voluntarily providing information beyond their statutory obligations. In return, tax authorities undertake risk assessments to furnish taxpayers with tax certainty and to direct their resources towards high-risk areas. A cooperative compliance program typically requires taxpayers to be equipped with a robust tax control framework, an internal system

⁹ See United Nations, *Handbook on the Avoidance and Resolution of Tax Disputes* (United Nations, 2021) section 3.4 (*‘Handbook on the Avoidance and Resolution of Tax Disputes’*).

¹⁰ Ibid section 3.5.

¹¹ Ibid ch 4. Non-binding tax dispute resolution mechanisms are recommended in section 6.6.

¹² See the pre-filing agreement program available in the United States in Internal Revenue Service, ‘Pre-Filing Agreement Program’ (last reviewed or updated 2 January 2026) <<https://www.irs.gov/businesses/pre-filing-agreement-program>>.

¹³ In the US case *Eaton Corporation and Subsidiaries v Commissioner of Internal Revenue*, No 21-1569 (Sixth Cir. 2022), the Sixth Circuit Appeals Court held that advance pricing arrangements can be cancelled only according to the terms of revenue procedures.

¹⁴ United Nations, *Handbook on Dispute Avoidance and Resolution*, above n 9, 13, 45.

¹⁵ Maarten A Siglé, Sjoerd Goslinga, Roland F Speklé and Lisette ECJM van der Hel, ‘The Cooperative Approach to Corporate Tax Compliance: An Empirical Assessment’ (2022) 46 *Journal of International Accounting, Auditing and Taxation* 100447, 2 (references omitted).

¹⁶ OECD, *Co-operative Tax Compliance: Building Better Tax Control Frameworks* (OECD Publishing, 2016) 7 (*‘Co-operative Tax Compliance: Building Better Tax Control Frameworks’*).

designed to ensure the accuracy, timeliness and completeness of tax returns and related disclosures. Independent tax experts may be enlisted to test the reliability and robustness of the framework.¹⁷

Given the stated potential of cooperative compliance, this article examines its applicability to African tax systems, particularly within the mining sector. Section 2 discusses the concept and core design features of cooperative compliance, including its objectives, the scope of covered taxes and duties and eligibility criteria for taxpayers. Section 3 explores contemporary multijurisdictional frameworks – termed ‘multilateral cooperative compliance’ – with particular emphasis on initiatives led by the Organisation for Economic Co-operation and Development (OECD) and the European Union.

Building on this foundation, section 4 identifies two principal tax challenges confronting mining enterprises in Africa – transfer pricing and value added tax (used interchangeably with goods and services tax)¹⁸ – and evaluates them against the purported benefits of cooperative compliance, especially for multinational enterprises. It shows, however, that cooperative compliance alone cannot resolve the fundamental drivers of transfer pricing and value added tax disputes. Section 5 reiterates these findings, arguing that genuine tax certainty in Africa will depend first on clarifying transfer pricing rules and applications and streamlining value added tax refund processes free from budgetary constraints. Although cooperative compliance is promoted as a means for tax authorities to concentrate resources on high-risk tax compliance activities, there is scant evidence that it actually reduces administrative costs.¹⁹

2. THE CONCEPT AND DESIGN OF COOPERATIVE COMPLIANCE

In 2002, the OECD established the Forum on Tax Administration to ‘share knowledge, undertake research and develop new ideas to enhance tax administration around the world’.²⁰ Six years later, the Forum on Tax Administration released its *Study into the Role of Tax Intermediaries*, which sought to foster a cooperative, trust-based relationship between large corporate taxpayers and revenue authorities – a concept referred to as the ‘enhanced relationship’.²¹ Under this model, ‘in dealings with

¹⁷ Jeffrey Owens, Anastasiya Piakarskaya, Timoleon Angelos Christodouloupoulos and Olena Sushkova, ‘The Use of Cooperative Compliance for Minimizing Cross-Border VAT/GST Disputes’ (2024) 16(3) *World Tax Journal* 561, 593.

¹⁸ Ibid 562, 591.

¹⁹ Dennis de Widt and Lynne Oats, ‘Risk Assessment in a Co-operative Compliance Context: A Dutch-UK Comparison’ [2017] (2) *British Tax Review* 230 (‘Risk Assessment in a Co-operative Compliance Context’); Sjoerd Goslinga, Janneke de Jonge, Maarten Siglé and Lisette van der Hel-Van Dijk, ‘Cooperative Compliance Programmes: Who Participates and Why?’ (2021) 6(2) *Journal of Tax Administration* 95.

²⁰ OECD, ‘OECD Forum on Tax Administration’ <<https://www.oecd.org/en/networks/oecd-forum-on-tax-administration.html>> (accessed 17 May 2026).

²¹ OECD, *Study into the Role of Tax Intermediaries* (OECD Publishing, 2008) 8 (‘*Study into the Role of Tax Intermediaries*’). See also International Fiscal Association (IFA), *IFA Initiative on the Enhanced Relationship: Key Issues Report* (version 2.3, January 2012) 12, which proposes the following definition: ‘The Enhanced Relationship concerns a specifically defined institutional relationship, based on mutually expressed intentions and not on detailed rules, that [taxpayers] and [tax administrations] voluntarily enter into above and beyond their basic legal obligations, which relationship is based on mutual understanding, respect and true co-operation, and has as aim the administration of tax laws to the [taxpayer’s] business in the most efficient and timely manner, assuming full, timely and reciprocal disclosure of relevant tax related

taxpayers, revenue bodies demonstrat[e] understanding based on commercial awareness, impartiality, proportionality, openness through disclosure and transparency, and responsiveness’ and ‘in dealings with revenue bodies, taxpayers provid[e] disclosure and transparency’.²² However, the label ‘enhanced relationship’ risked engendering misunderstandings about the nature of the approach and raising concerns of preferential treatment for select taxpayers, potentially undermining equality in tax treatment.²³ In its 2013 report, the OECD therefore replaced ‘enhanced relationship’ with ‘co-operative compliance’, explicitly framing it as a mechanism to assure compliance.²⁴ Although countries have implemented domestic cooperative compliance programs differently, these programs rest on common design principles.

2.1 Aims and objectives

A cooperative compliance program seeks to secure ‘compliance with tax legislation with particular attention paid to the individual needs and expectations of key taxpayers in order to ensure better conditions for economic activity’ in the tax jurisdiction.²⁵ Its overarching objective is to guarantee the correct amount of tax paid on time.²⁶ Under such programs, taxpayers voluntarily disclose significant business transactions before filing a return and engage in open, non-adversarial discussions with the tax authority to assess transaction risks. Early engagement is presumed to foster responsive, constructive consultations and enables prompt remedial actions when necessary.

Many countries have adopted cooperative compliance regimes.²⁷ For example, Australia’s Annual Compliance Arrangement serves as a model. Large businesses may

information (including positions taken) and leading to the assessment of the correct amount of tax taking into account the spirit and purpose of the tax law (rather than merely the letter of the law) while respecting each parties’ rights and obligations under procedural laws in case of disagreement on what constitutes the correct amount of tax’.

²² OECD, *Co-operative Compliance: A Framework, From Enhanced Relationship to Co-operative Compliance* (OECD Publishing, 2013) 15 (‘Co-operative Compliance’).

²³ Ibid 16.

²⁴ Ibid 13.

²⁵ The phrase is quoted from the Polish cooperative compliance program in Poland: see Ministry of Finance, *Assumptions of the Cooperative Compliance Program* (22 April 2022) <<https://www.podatki.gov.pl/en/cooperative-compliance-programme/assumptions-of-the-cooperative-compliance-programme>> (accessed 28 April 2025). More details about the Polish program can be found in Małgorzata Sęk, ‘Co-operation Programme: A Novelty in the Polish Tax System’ in Ronald Hein and Ronald Russo (eds), *Co-operative Compliance and the OECD’s International Compliance Assurance Programme* (Wolters Kluwer, 2020) 177.

²⁶ OECD, *Study into the Role of Tax Intermediaries*, above n 21, 16.

²⁷ See OECD, *Co-operative Compliance*, above n 22, providing a comparison of cooperative compliance models in Australia, Austria, Canada, Denmark, Finland, France, Germany, Hong Kong, Hungary, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Russia, Singapore, Slovenia, South Africa, Spain, Sweden the United Kingdom and the United States. See also Lotta Björklund Larsen, Karen Boll, Benedicte Brögger, Jaana Kettunen, Tuulia Potka-Soininen, Jukka Pellinen, Mette Brehm Johansen and Kiran Aziz, ‘Nordic Experiences of Co-Operative Compliance Programmes: Comparisons and Recommendations’ (FairTax Working Paper Series No 20, 2018) (discussing Denmark, Finland, Norway and Sweden); Lynne Oats and Dennis de Widt, ‘Co-Operative Compliance: The UK Case – Playing the Long Game’ (FairTax Working Paper Series No 22, 2019); Dennis de Widt and Lynne Oats, ‘Co-operative Compliance: Views of Large Business in the Netherlands and UK’ (FairTax Working Paper Series No 23, 2018) (‘Co-operative Compliance: Views of Large Business’); Goslinga et al, above n 19 (discussing the Netherlands); Marcin Burzec, ‘Cooperative Compliance in Poland: The Question of Equality’ (2024) 58(3) *Review of European and Comparative Law* 117 (discussing Poland); Tina Sever and Tatjana Stanimirović, ‘Can Voluntary Tax Compliance Status Lead to Participation, Transparency and Co-operation?’ (2022) 22(2) *Croatian and Comparative Public Administration* 313 (discussing Slovenia).

enter an Annual Compliance Arrangement on a voluntary basis typically for a three-year term, although there is no fixed duration and either party may withdraw at any time. While the Annual Compliance Arrangement is non-binding, the Australian Taxation Office issues a sign-off letter, that ‘subject to any noted conditions, the tax return for a particular year, or specific periods in the case of [goods and services tax], are closed from further review or audit’.²⁸ Throughout the arrangement, the taxpayer must disclose any material developments so that the Australian Taxation Office can continuously assess the tax risks of covered matters. Annual review meetings provide a forum to discuss emerging risks and mitigation strategies, verify the effectiveness of the taxpayer’s internal controls, and identify any additional information or work required to renew the arrangement. Rather than undergoing formal audits or risk reviews, participants engage with the Australian Taxation Office via the Annual Compliance Arrangement channel. Under the arrangement, they are exempt from both pre-lodgment compliance review and post-lodgment risk reviews or audits for covered tax matters and periods and may qualify for concessional treatment of penalties and interest.²⁹

2.2 Covered taxes and duties

In Australia, an Annual Compliance Arrangement can be concluded for a range of taxes, such as income tax, goods and services tax, excise, petroleum resource rent tax and fringe benefits tax. In other jurisdictions, cooperative compliance programs can be tailored to a single regime (such as transfer pricing) or a discrete tax system (such as corporate tax or value added tax), or they can encompass a broad array of levies, incorporating corporate income tax, value added tax, customs duties, excise duties and other taxes administered by the revenue authority. For example, Singapore’s Assisted Compliance Programme specifically addresses goods and services tax,³⁰ Ireland’s cooperative compliance framework concentrates on refund-related matters within its corporate tax regime,³¹ and Zambia’s initiative is directed exclusively at customs and excise duties.³²

In the sphere of customs and excise duties, the risk profiles established through cooperative compliance can be leveraged to expedite clearance procedures. By shifting from transaction-based controls to a holistic, client-oriented model grounded in the client’s overall compliance, authorities are expected to streamline trade facilitation while maintaining rigorous oversight.

²⁸ Australian Taxation Office, ‘Annual Compliance Arrangements – What You Need to Know’ (last updated 7 November 2018) <https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/large-business/in-detail/compliance-and-governance/annual-compliance-arrangements-what-you-need-to-know#What_you_can_expect_to_see_during_the_ACA> (accessed 17 May 2026).

²⁹ Ibid. See also Celeste M Black, ‘Co-operative Compliance Programmes in Australia: Working Towards Justified Trust’ in Ronald Hein and Ronald Russo (eds), *Co-operative Compliance and the OECD’s International Compliance Assurance Programme* (Wolters Kluwer, 2020) 35, 37.

³⁰ Inland Revenue Authority of Singapore, ‘Assisted Compliance Assurance Programme (ACAP)’ (last updated 16 March 2026) <[https://www.iras.gov.sg/taxes/goods-services-tax-\(gst\)/getting-it-right/voluntary-compliance-initiatives/assisted-compliance-assurance-programme-\(acap\)>](https://www.iras.gov.sg/taxes/goods-services-tax-(gst)/getting-it-right/voluntary-compliance-initiatives/assisted-compliance-assurance-programme-(acap)>).

³¹ See Revenue (Irish Tax and Customs), *Co-operative Compliance Framework – Large Corporates Division and High Wealth and Financial Services Division* (Tax and Duty Manual, December 2025) 5.

³² Zambia Revenue Authority, ‘Customs Accredited Clients Program (CACP)’ (Customs Services Brochure) <<https://www.zra.org.zm/wp-content/uploads/2019/12/CACP-Brochure.pdf>>; Zambia Revenue Authority, ‘Trade Facilitation Tools’ <<https://www.zra.org.zm/trade-facilitation-tools>> (accessed 28 March 2025).

2.3 Eligible taxpayers

Cooperative compliance programs are predominantly designed for large business taxpayers, reflecting the greater complexity of their operations, the distinctive tax-risk profiles they present, and the significant administrative resources required to oversee their compliance. From the 1950s onwards, many revenue authorities have restructured from a functional organisation – segregated into units responsible for return processing, audits and enforcement – to a taxpayer-centred model that classifies taxpayers by size and risk profile (eg, individuals, small-to-medium enterprises and large businesses).³³ An International Monetary Fund survey found that by 2002 nearly two-thirds of over 40 countries had established a dedicated large business unit, with the dual objectives of gaining deeper insights into these taxpayers' activities and enhancing control over their compliance, particularly given that large enterprises, though few in number, contribute disproportionately to total tax receipts.³⁴

The OECD identifies the following characteristics as typical of large business enterprises for administrative purposes:

- (i) *multi-jurisdictional operations*: activities conducted across several geographical locations;
- (ii) *complex tax issues*: a broad spectrum of nuanced interpretative questions arising from varied transactions;
- (iii) *intragroup dealings*: frequent related-party transactions, often involving affiliates in preferential or low-tax jurisdictions;
- (iv) *high transaction volumes*: extensive and concentrated commercial activity occurring on a daily basis;
- (v) *sophisticated financing arrangements*: use of intricate funding structures and instruments; and
- (vi) *professional tax expertise*: employment of specialised tax personnel.³⁵

While the precise definition of 'large business' varies by jurisdiction, the eligibility criteria for participation in cooperative compliance programs exhibit a set of common features:

- (i) *size threshold*: the taxpayer must exceed a specified turnover or revenue benchmark established to demarcate large businesses;
- (ii) *clear compliance history*: the taxpayer should have a good compliance history free of significant previous misconduct – such as penalties, fines, late filings, default or fraud – over a defined period (eg, Ireland requires three years of unblemished customs and excise compliance);

³³ Katherine Baer, Olivier Benon and Juan Toro, *Improving Large Taxpayers' Compliance: A Review of Country Experiences* (International Monetary Fund, 2002) 3.

³⁴ *Ibid* 3.

³⁵ OECD, *Tax Administration in OECD and Selected Non-OECD Countries: Comparative Information Series (2006)* (OECD Publishing, 2007) 24.

- (iii) *enhanced transparency*: participants must commit to disclosure of information beyond statutory minima, proactively supplying any data likely to be material for risk assessment;³⁶
- (iv) *trust and cooperation*: the taxpayer must be willing to build trust with the tax authority, evidencing a cooperative attitude towards the process;
- (v) *prohibition of aggressive strategies*: in almost all programs, participants are required to refrain from engaging in aggressive tax planning; and
- (vi) *robust internal governance*: the taxpayer must have well-established internal tax policies and governance structures, such as a documented Tax Control Framework.³⁷ Revenue authorities assess these internal controls – alongside any other internal or external control mechanisms in place – to gauge the reliability and robustness of the system.³⁸

These criteria are intended to ensure that cooperative compliance remains focused on those taxpayers whose organisational scale, complexity and resourcing justify a more intensive, transparent and trust-based relationship with the tax administration.

3. MULTILATERAL COOPERATIVE COMPLIANCE MODELS

In its 2013 report *Co-operative Compliance: A Framework, From Enhanced Relationship to Co-operative Compliance*, the OECD observed that revenue authorities were increasingly adopting cooperative compliance.³⁹ The report also noted that a globalised economy requires enhanced cross-border transparency, disclosure and early certainty.⁴⁰ It subsequently introduced the concept of ‘multilateral co-operative compliance’, defined as an arrangement in which a taxpayer and two or more revenue authorities agree to apply cooperative compliance principles to tax issues of shared interest.⁴¹ This groundwork led, in January 2019, to the launch of the OECD’s

³⁶ The participants in a cooperative compliance program may sign a Memorandum of Understanding. See, for example, the Memorandum of Understanding template for the compliance assurance process in the United States, available at: <<https://www.irs.gov/pub/irs-lbi/2025-cap-memorandum-of-understanding-mou.pdf>>.

³⁷ The OECD stipulates that a sound tax control framework should include a well-articulated or documented tax strategy at the top-level management, integrating all transactions and their potential tax implications into daily management practices. The framework must assign responsibilities to top management, supported by a clearly defined and well-resourced tax department strategy. It should include detailed internal rules or reporting measures that are periodically reviewed to ensure alignment of all transactions with expected practices. These measures should also help identify potential non-compliance where possible and be subject to regular testing, monitoring and continuous maintenance. Stakeholders of the taxpayer (both internal or external) should also be consulted and assured that the taxpayer has robust and effective tax control frameworks in place to address potential tax risks. These frameworks should clearly demonstrate any risk appetite and mitigating strategies. See OECD, *Co-operative Tax Compliance: Building Better Tax Control Frameworks*, above n 16.

³⁸ Ibid 22-25 (assessing and testing the tax control framework).

³⁹ OECD, *Co-operative Compliance*, above n 22, 88.

⁴⁰ Ibid 88.

⁴¹ Ibid 33. The OECD had limited knowledge or evidence on how multilateral cooperative compliance might function in practice when the report was written. It stated that the Netherlands and the United Kingdom were the only countries who had ‘jointly and explicitly established a co-operative compliance relationship with a large business covering a variety of different various legal/fiscal questions, as distinct from multilateral Advanced Pricing Agreements (APAs)’ (at 34).

International Compliance Assurance Programme (ICAP), a multilateral process for joint risk assessment and assurance.⁴²

In July 2020, the European Commission announced its proposal for the European Trust and Cooperation Approach (ETACA), a non-legislative framework aimed at facilitating and promoting tax compliance through greater cooperation, trust and transparency.⁴³ In 2021, a pilot under ETACA was launched for multinational enterprises; a corresponding small-to-medium enterprise initiative was proposed in 2023 as part of the European Union's preventative resolution framework for cross-border tax issues. Although the small-to-medium enterprise proposal did not achieve the requisite level of support, the multinational enterprises pilot continues under review, with a second phase anticipated shortly.

Multilateral cooperative compliance differs from domestic (unilateral) programs. Under unilateral schemes, taxpayers may be obliged to disclose both domestic and international transactions⁴⁴ – and some jurisdictions (eg, Italy,⁴⁵ Belgium⁴⁶ and the Netherlands⁴⁷) extend participation to non-resident entities – but they cannot obtain comprehensive assurance for cross-border arrangements without additional mechanisms such as Country-by-Country reporting and, within the European Union, the automatic exchange of Country-by-Country data under DAC4.⁴⁸ As with domestic programs, multilateral regimes aim to cultivate voluntary compliance grounded in mutual trust; however, they are specifically tailored to cross-border issues such as transfer pricing and permanent establishments. By providing contemporaneous assurance across multiple tax administrations, these programs serve as proactive

⁴² OECD, 'OECD International Compliance Assurance Programme' <<https://www.oecd.org/en/about/programmes/icap.html>> (accessed 28 March 2025).

⁴³ European Commission, 'European Trust and Cooperation Approach – ETACA Pilot Project for MNEs' <https://taxation-customs.ec.europa.eu/eu-cooperative-compliance-programme/european-trust-and-cooperation-approach-etaca-pilot-project-mnes_en> (accessed 28 March 2025) ('European Trust and Cooperation Approach').

⁴⁴ In the United States, the Compliance Assurance Process requires participating taxpayers to submit an initial cross-border activity questionnaire, usually due within 90 days after the end of the prior tax year. See the Memorandum of Understanding template, above n 36, 4.

⁴⁵ Revenue Agency (Italy), 'Advance Tax Ruling on New Investments' <<https://www.agenziaentrate.gov.it/portale/web/english/nse/invest-in-italy/advance-tax-ruling-on-new-investments>> (accessed 28 March 2025). See also the decree issued by the Minister of Economy and Finance on 29 April 2016, available at:

<https://www.agenziaentrate.gov.it/portale/documents/180690/1185655/decreo_ruling_new_investments_decreo_ruling_new_investments.pdf/13923a61-58be-26ce-a796-65cee9c9dc3d?t=1510055333894>.

⁴⁶ Federal Public Service Finance (Belgium), *Co-operative Tax Compliance Programme: Innovative Way of Co-operation between Taxpayers and Tax Authorities* (2025) 10.

⁴⁷ Esther Huiskers-Stoop and Hans Gribnau, 'Cooperative Compliance and the Dutch Horizontal Monitoring Model' (2019) 5(1) *Journal of Tax Administration* 66.

⁴⁸ See European Union, *Council Directive (EU) 2016/881 of 25 May 2016 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation* [2016] OJ L 146/8 (3 June 2016), referred to as 'DAC4'. Action 13 of the OECD's Base Erosion and Profit Shifting project establishes a global minimum standard requiring multinational enterprises with consolidated revenues of at least EUR 750 million to prepare a Country-by-Country Report for their home jurisdiction tax authority, which is then exchanged with other jurisdictions under the OECD's Competent Authority Agreement or bilateral treaties to support high-level risk assessment. DAC 4 transposes this standard into European Union law by amending Directive 2011/16/EU, mandating harmonised filing deadlines, using the European Union's Common Communication Network for automatic exchange, and introducing European Union-specific definitions such as 'Surrogate Parent Entity'.

dispute-avoidance tools, complementing (unilateral or bilateral) advance pricing arrangements and mutual agreement procedures.

The following discussion examines how the OECD's ICAP and the ETACA might inform the design of multilateral cooperative compliance frameworks within the African mining sector.

3.1 OECD's International Compliance Assurance Programme (ICAP)

The OECD's Forum on Tax Administration describes the ICAP as 'a voluntary programme for a multilateral coordinated risk assessment of an MNE's key international tax risks'.⁴⁹ The program is founded on the assumption that tax assurance for cross-border transactions can be more effectively achieved when all, or most, tax administrations that share common interests or concerns about the transactions are involved. It was initially implemented as a pilot in January 2018 with eight tax administrations, followed by a second pilot involving 19 tax administrations in March 2019.⁵⁰ In September 2019, ICAP officially became a full program of the OECD's Forum on Tax Administration.⁵¹ Currently, 23 tax administrations, including Australia, participate;⁵² no African country is yet involved.

For entry into ICAP, the following factors are considered to determine a taxpayer's suitability:

- the taxpayer's footprint (geographical and operational reach);
- volume and transaction materiality;
- the willingness of the taxpayer's ultimate parent entity to interact with the Lead Tax Administration;
- cooperation of affiliates with respective tax administrations where economic activities occur;
- potential risk posed by the taxpayer's general operation (eg, base erosion and profit shifting concerns);
- the taxpayers' tax risk management and mitigation strategies;

⁴⁹ OECD, Forum on Tax Administration, 'International Compliance Assurance Programme (ICAP): Aggregated Results and Statistics' (Presentation, 29 January 2024) 2 ('International Compliance Assurance Programme').

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² The participating tax administrations can be found at 'OECD International Compliance Assurance Programme', above n 42, which lists Argentina, Australia, Austria, Belgium, Canada, Chile, Colombia, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Poland, Singapore, Spain, the United Kingdom and the United States, as of 28 March 2025. See different jurisdictional perspectives in Ronald Hein and Ronald Russo (eds), *Co-operative Compliance and the OECD's International Compliance Assurance Programme* (Wolters Kluwer, 2020). See also Turkey's consideration for participating in the ICAP in Hakkı Odabaş and İmran Arıtı Erdem, 'In Search of Cooperative Compliance: International Compliance Assurance Programme (ICAP) and Turkey' in Yılmaz Bayar and Lina Karabetyan (eds), *Economic and Social Implications of Information and Communication Technologies* (IGI Global, 2023) 252.

- internal policies and compliance history;
- the existence of advance pricing arrangements; and
- the taxpayer's capability to carry out risk assessments under the ICAP.⁵³

Unlike advance pricing arrangements or mutual agreement procedures, which focus on a narrow range of transactions and risks either unilaterally or bilaterally, ICAP can cover a broad range of intercompany transactions and permanent establishment risks, while focusing on five core areas of international tax risk: tangible goods, intangibles, services, financing and permanent establishments.⁵⁴ Transactions in a particular risk area may be considered outside the scope of an individual assessment.⁵⁵ Not all risk areas are covered in every assessment, and certain sectors may concentrate on specific risk areas.⁵⁶

A risk assessment involves a four-phase process – pre-entry, selection, risk assessment and issue resolution and outcomes – all proposed to be completed within 40 weeks. In the (informal) pre-entry stage, a multinational enterprise group engages with its proposed Lead Tax Administration to discuss scope, suitability and timing. A Lead Tax Administration assumes primary responsibility for scoping the risk assessment, liaising with the multinational enterprise group and convening other participating Covered Tax Administrations in jurisdictions where the group operates. The default Lead Tax Administration is the tax authority in the jurisdiction where the multinational enterprise's ultimate parent entity resides. However, if that jurisdiction elects not to act as Lead Tax Administration, whether due to capacity constraints or limited group activities, the multinational enterprise may propose a surrogate Lead Tax Administration in another participating jurisdiction.

In the second stage, initiated by submission of the Selection Documentation Package, participating tax administrations confirm whether they will join the assessment and agree on the precise scope, such as geography, lines of business and covered risks. Unlike domestic cooperative compliance models that assess prospective controls, ICAP is designed to assess risks with regard to facts and circumstances that have already taken

⁵³ OECD, *International Compliance Assurance Programme: Handbook for Tax Administrations and MNE Groups* (OECD Publishing, 2021) 15-16.

⁵⁴ OECD, Forum on Tax Administration, 'International Compliance Assurance Programme', above n 49, 9.

⁵⁵ Transactions can be outside the ICAP scope for several reasons. Such reasons include the following:

- Transactions may already be covered by an [advanced pricing arrangement], which means a further risk assessment is typically unnecessary.
- [A multinational enterprise] may be undergoing a restructuring of some of its operations during the covered period which means it would be inappropriate to include certain transactions within the scope of a risk assessment.
- Transactions may be considered sufficiently complex that they could not be reviewed within the target timeframes, and so scoping them out ensures a more effective and efficient risk assessment process.
- Transactions in a particular jurisdiction may not be considered material by its tax administration.
- [A multinational enterprise] may not have entered into an intercompany transaction in one or more core risk areas in the jurisdictions of tax administrations participating in its ICAP risk assessment'.

See *ibid* 10.

⁵⁶ For example, banks may develop proprietary assets like digital platforms or applications, which may exacerbate base erosion and profit shifting concerns and risk assessment of these transactions require tax administrations to understand the bank's global value chain and commercial reality.

place, primarily focusing on internal control of in-scope transactions.⁵⁷ While a Country-by-Country report is normally required for both the Selection and Main Documentation Package, the covered period for transactions often coincides with the Country-by-Country reporting period. Multinational enterprises without a Country-by-Country report may nevertheless enter the ICAP with a substitute report containing all relevant information.

The third, risk assessment and issue resolution stage involves the core substantive examination. The multinational enterprise delivers the Main Documentation Package; participating tax administrations perform their risk analyses; and, if any covered risk is flagged, enter an 'issue resolution' process to clarify or agree adjustments.⁵⁸

In the final stage, each Covered Tax Administration issues an outcome letter, confirming which risks it considers 'low risk' (and thus not subject to further compliance action) and setting any caveats or follow-up requirements, such as annual confirmations of no material change. Tax administrations are also expected to provide comprehensive assessments of the suitability, risk, assurance and robustness of the group's tax control measures, in addition to delivering timely risk assessment outcomes. Some administrations have introduced domestic measures to recognise low-risk determinations under the ICAP.⁵⁹

After the risk assessment outcome, taxpayers must remain willing to engage with all participating tax administrations, including providing all necessary information. This includes, but is not limited to, details of the group's planning, internal tax policies and risk mitigation strategies, as well as data pertinent to specific risks, transactions or related entities, which may also be exchanged under advance pricing arrangements or Country-by-Country reporting (or DAC4).

According to the OECD's latest statistics, of the 20 cases completed by October 2023, 40 per cent of multinational enterprises received low-risk outcomes⁶⁰ and, subject to the terms of the relevant outcome letter, none have been subject to further enquiries.⁶¹ There were some minor problems during early implementation: despite low-risk opinions and assurance against audit, Crispi and Barilla received audit letters although these were ultimately resolved through liaison with ICAP contacts.⁶² However, participating multinational enterprises' overall experience, particularly that of Shell and Repsol, has been described as 'overwhelmingly positive', with only minor suggestions expressed from ICAP participants for clearer scoping and more efficient processes.⁶³

⁵⁷ Mário H Martini, 'Introduction: An Investigation of Co-operative Compliance Regimes and the ICAP' in Ronald Hein and Ronald Russo (eds), *Co-operative Compliance and the OECD's International Compliance Assurance Programme* (Wolters Kluwer, 2020) 1, 9.

⁵⁸ The risk assessment process is summarised in Manfred Naumann and David Varley, 'Joint Audits, ICAP, and the Role of Risk Assessment', *International Tax Review* (21 March 2019) <<https://www.internationaltaxreview.com/article/2a68rfy5bw2ycq1rcvqkx/joint-audits-icap-and-the-role-of-risk-assessment>> (accessed 18 May 2026).

⁵⁹ OECD, Forum on Tax Administration, 'International Compliance Assurance Programme', above n 49, 24.

⁶⁰ Ibid 2.

⁶¹ Ibid 24.

⁶² Joe Stanley-Smith, 'Tax Heads Encourage More Companies to Use ICAP' (2019) 30(4) *International Tax Review* 56.

⁶³ Ibid 57-59.

Although ICAP targets a 40-week timeline, actual completion averaged 61 weeks (10.4 weeks for selection, 42.4 weeks for risk assessment and 8.3 weeks for outcomes), compared with the target timeframes of 4-8 weeks, 20-36 weeks and 4-8 weeks for the respective stages.⁶⁴ This delay, however, may be attributed to the disruptive impact of the Covid-19 pandemic.⁶⁵

Although ICAP is widely regarded as a promising direction for future tax administration,⁶⁶ Achim Pross, head of the OECD's International Co-operation and Tax Administration Division, has reserved rapid expansion of the program due to '[c]ountries' inexperience, the infancy of ICAP itself and the logistical and operational challenges of participating'.⁶⁷ Insufficient jurisdictional coverage remains the principal criticism.⁶⁸ Australia, for example, finds ICAP less useful where contentious tax structuring involves non-ICAP jurisdictions (eg, Singapore-based marketing hubs in the mining sector) and where domestic 'justified trust' initiatives mean that many conservative taxpayers have already obtained practical certainty on important tax issues.⁶⁹ Consequently, ICAP's benefits must be evaluated in light of each country's cross-border transaction profile and complementary administrative regimes. Although ICAP's secondary objective is to reduce unnecessary mutual agreement procedure inventories, current evidence shows that this objective seems achievable.⁷⁰

3.2 European Trust and Cooperation Approach (ETACA)

In July 2020, the European Commission published an action plan on fairer and simpler taxation, and on adapting tax systems to modern technologies.⁷¹ The third of its 25 initiatives in this plan was to collaborate with Member States to establish a framework promoting businesses' tax compliance through greater cooperation, trust and transparency among tax administrations within the European Union internal market.⁷²

The ETACA was organised into two branches. The first was intended to support small-to-medium enterprises' cross-border activities in the European Union, and a pilot program was carried out in 2022. However, small-to-medium enterprises have shown limited interest, perhaps reflecting a lack of trust in tax administrations (stemming from an adversarial relationship), perceived procedural burdens and concerns about

⁶⁴ OECD, Forum on Tax Administration, 'International Compliance Assurance Programme', above n 49, 19-20. By October 2023, 20 cases, including cases initiated under two pilots, had been completed.

⁶⁵ Ibid 20.

⁶⁶ See, eg, Hakkı Odabaş and İmran Arıtı Erdem, 'Cooperation in Voluntary Tax Compliance and International Compliance Assurance Programme (ICAP)' (2022) 7(2) *International Journal of Applied Business and Management Studies* 92.

⁶⁷ Discussion of interview with Achim Pross in Stanley-Smith, above n 62, 61.

⁶⁸ Ibid 60.

⁶⁹ See Australian Taxation Office, 'Large Business Justified Trust' (last updated 28 October 2021) <<https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/large-business/justified-trust>> (accessed 18 May 2026).

⁷⁰ Kun-Chol Kim, 'The OECD's International Compliance Assurance Programme' (2020) 39(3) *ABA Tax Times* 14.

⁷¹ European Commission, *Communication from the Commission to the European Parliament and the Council: An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy* (COM(2020) 312 final, 15 July 2020) 8-9.

⁷² See European Commission, *Annex to the Communication from the Commission to the European Parliament and the Council: An Action Plan for Fair and Simple Taxation Supporting the Recovery Strategy* (COM(2020) 312 final Annex, 15 July 2020) 1 (especially A3).

requirements, timeframe and costs of the program.⁷³ No further work was proposed after the pilot, although the European Union's 2022 report noted that small-to-medium enterprises spent approximately 2.5 per cent of turnover on tax compliance, significantly higher than 0.7 per cent spent by large businesses.⁷⁴

The second branch was tailored to large multinational enterprises operating in the European Union, initially focusing on transfer pricing risks. Following publication of ETACA guidelines in October 2021, a pilot began in November 2021 with 14 participating Member States, with broadened tax matters beyond transfer pricing.⁷⁵ A second pilot was initially expected to launch in late 2024 or early in 2025; however, while a stakeholder conference took place in September 2025 in preparation for the second pilot, no official launch has occurred as at January 2026.⁷⁶

ETACA shares many features with ICAP through its three-phase process of admission, risk assessment and outcomes.⁷⁷ An application for entry into the ETACA must be accompanied by information on the taxpayer's footprint, transaction volume and materiality, tax compliance history, commitment to transparency and cooperation and internal tax control frameworks.⁷⁸ The Lead Tax Administration is the authority in the Member State where the group's ultimate parent entity is resident. Although entry is limited to taxpayers with consolidated global revenue of at least EUR 750 million, those below that threshold may apply by supplying Country-by-Country-equivalent information.⁷⁹ Currently, the ETACA requires the ultimate parent entity to be located or operate within the European Union. However, in the future, it may extend to groups whose ultimate parent entity is outside the European Union but which operate regional headquarters in the European Union, subject to participating administrations' approval.⁸⁰ Ongoing tax audits do not preclude participation, though audit years and issues in scope may be taken into account.

Once participating tax administrations express preliminary interest, the applicant provides detailed information about relevant transactions,⁸¹ including:

- a description of the taxpayer's business operations;
- Country-by-Country reporting for the applicable period;

⁷³ See Angelo Di Legge, Davide Ceccanti and Fernando Hortal Foronda (VVA) and Marcell Németh and Márk Csonka (KPMG), *Tax Compliance Costs for SMEs: An Update and a Complement, Final Report* (European Commission, January 2022) 167.

⁷⁴ See European Commission, *Proposal for a Council Directive Establishing a Head Office Tax System for Micro, Small and Medium Sized Enterprises, and Amending Directive 2011/16/EU* (COM (2023) 528 final, 2023/0320 (CNS), 12 September 2023) (see especially text at n 1).

⁷⁵ European Commission, Directorate-General for Taxation and Customs Union, *Annual Report on Taxation 2023* (2023) 167.

⁷⁶ See the European Commission, 'European Trust and Cooperation Approach', above n 43.

⁷⁷ The ETACA is well-explained in Ronald Russo, JJ Engelman and Mário H Martini, 'Cooperative Compliance in the European Union: An Introduction to the European Trust and Cooperation Approach' (2022) 76(2) *Bulletin for International Taxation* 83.

⁷⁸ European Commission, Taxation and Customs Union, *Guidelines: European Trust and Cooperation Approach (ETACA)* (July 2025) 6.

⁷⁹ *Ibid* 4.

⁸⁰ *Ibid*.

⁸¹ *Ibid* 7

- existing information in relation to any mutual agreement procedure or advance pricing arrangement;
- information on joint audits or multilateral controls;
- audited financial statements;
- explanatory notes detailing external and internal drivers of profits;
- details of restructurings or transactions in the past three years;
- a list of all intragroup transactions proposed for ETACA coverage;
- comparables for each intragroup transaction;
- detailed transfer pricing methods and calculations; and
- verification of internal tax policies, including self-assessments of the internal tax control frameworks and risk assurance and mitigating strategies.⁸²

ETACA explicitly defines low-risk activities such as routine transactions of distribution, manufacturing contracts and low-value-added intragroup services,⁸³ while high-risk activities (eg, intellectual property transfers and business restructurings) may be excluded due to their complexity, time-consuming nature and significant resources required for their assessment.⁸⁴ Participating tax administrations may on a case-by-case basis include certain non-routine transactions.⁸⁵ The program may also cover transactions involving third or non-participating states, so long as they are relevant to the participating tax administrations in the European Union.⁸⁶ Like ICAP, ETACA does not confer legal certainty but offers practical certainty by excluding covered transactions from future audit.⁸⁷

4. TAX CHALLENGES IN AFRICA'S MINING SECTOR

A cost-benefit analysis of decision-making requires that the adoption of cooperative compliance, from a regulatory perspective, effectively addresses the areas that challenge revenue collection. While the design of existing cooperative compliance models generally targets large businesses and often covers complex international tax issues, such as transfer pricing, consideration of the resources required to implement such a model in Africa is particularly important, as living standards are generally lower than those of developed nations. In this regard, minerals and extractive industries are a strategically important sector in Africa. It is not only the main source of foreign direct investment, but its exports also represent, on average, half of total exports in most

⁸² Ibid, Annex 4 - Main Documentation Package.

⁸³ Ibid 5.

⁸⁴ Ibid

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid 3, 16.

resource-intensive sub-Saharan African countries.⁸⁸ Most of the world's largest mining multinational enterprises in fact already have a presence in Africa.⁸⁹

Mining enterprises have a longstanding presence in Africa as mining projects require a long lead time, often spanning decades, requiring substantial upfront capital, while it takes many years before these projects become profitable. As a result, multinational enterprises in the African mining sector maintain lasting physical presence on the continent, carrying out significant economic activities throughout the life of the project from exploration through construction, development, production, smelting, refining and transportation, to sales.⁹⁰

While there are common cross-border tax challenges related to base erosion and profit shifting, notably, the African mining sector presents particularly acute issues in two areas, transfer pricing and value added tax. These challenges must be contextualised when considering the adoption of a cooperative compliance regime.

4.1 Transfer pricing

The United Nations has cited studies estimating that in 2015 losses from transfer pricing manipulation ranged between USD 4.8 billion and USD 55.4 billion.⁹¹ In 2023, Africa was estimated to have lost approximately USD 88.6 billion annually (equivalent to 3.7 per cent of its gross domestic product) due to illicit activities, with transfer pricing identified as a major contributor.⁹² A more recent study estimates that revenue losses in sub-Saharan Africa alone, home to an estimated 30 per cent of the world's mineral reserves, range between USD 450 million and USD 730 million annually.⁹³

Multinational enterprises operating in this sector typically do not sell products directly to final consumers within Africa. Instead, they commonly sell minerals and extracted materials to their foreign affiliates. African minerals are largely exported in their raw

⁸⁸ Albertin et al, above n 2, 4.

⁸⁹ These multinational enterprises include Glencore Xstrata in the Democratic Republic of the Congo, Zambia and South Africa; Rio Tinto in Ghana, Guinea, Mozambique and South Africa; Anglo American in South Africa and Zimbabwe; Barrick in Zambia and Mali; Newmont in Ghana; AngloGold Ashanti in Ghana, Guinea, Mali, Namibia, Congo and South Africa, and Kinross in Ghana and Mauritania (see *ibid* 5).

⁹⁰ Pietro Guj, Stephanie Martin, Bryan Maybee, Frederick Cawood, Boubacar Bocoum, Nishana Gosai and Steef Huibregtse, *Transfer Pricing in Mining with a Focus on Africa: A Reference Guide for Practitioners* (World Bank, 2017) 17-22; Kalale Mambwe, 'Transfer Pricing in the Commodities Trade Sector' in Raffaele Petrucci, Giammarco Cottani and Michael Lang (eds), *Fundamentals of Transfer Pricing: Industries, Regions, New Technologies, and Other Topics* (Wolters Kluwer, 2022) 68.

⁹¹ These estimates are based on five separate studies. See United Nations Conference on Trade and Development, *Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa* (United Nations, 2020) 37.

⁹² *Ibid* 181; UN Trade and Development, 'Africa Could Gain \$89 Billion Annually by Curbing Illicit Financial Flows' (28 September 2020) <<https://unctad.org/isar/news/africa-could-gain-89-billion-annually-curbing-illicit-financial-flows?utm=>> (accessed 18 May 2026). See also High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, *Financial Integrity for Sustainable Development: Report of the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda* (United Nations, 2021) 9; African Tax Administration Forum, *Suggested Approach to Drafting Transfer Pricing Legislation* (2024) 2.

⁹³ Gorgia Albertin, Dan Devlin and Boriana Yontcheva, 'Countering Tax Avoidance in Sub-Saharan Africa's Mining Sector', *IMF Blog* (International Monetary Fund, 5 November 2021) <<https://www.imf.org/en/Blogs/Articles/2021/11/05/blog-countering-tax-avoidance-sub-saharan-africa-mining-sector>> (accessed 18 May 2026).

forms, with refinement taking place abroad. Newly produced or *sui generis* semi-finished goods that are unique to the mining process are sold to intragroup entities, which then negotiate and sell them to third parties. This operating model creates complexities in determining arm's length transfer prices across borders because comparables are not traded on open markets.⁹⁴ This lack of reliable comparables for determining arm's length values has made transfer pricing a primary area of tax dispute concerning profit shifting within the African mining sector.

This challenge is further complicated by legal and administrative uncertainty.⁹⁵ While many resource-rich African countries have introduced transfer pricing rules, these frameworks vary widely in scope, robustness and enforceability. In several countries, detailed guidance on how to apply transfer pricing principles remains lacking.⁹⁶ Recent developments in countries such as Nigeria, Uganda, Equatorial Guinea and Namibia illustrate increasing tension between tax authorities and multinational enterprises regarding the consistent and appropriate application of fiscal rules.⁹⁷

Beyond the pricing of natural resources, other intragroup transactions are also common sources of transfer pricing disputes in Africa, as is the case in other resource-rich jurisdictions such as Australia. Certain activities, such as financing, sales and marketing and the transfer of hard-to-value intangibles, may be carried out outside Africa. Payments to related entities for royalties and management and technical services are prevalent within the mining sector. The decision to locate these activities offshore is not necessarily driven by tax avoidance or minimisation strategies. Rather, business environment considerations, economic efficiency, proximity to clients, access to shipping and trade centres and the availability of a specialised labour force may play a more significant role in determining the location of economic functions.

Given that no two transactions are identical, pricing intragroup transactions remains complex even where commercial justifications exist. In South Africa, approximately ZAR 20 billion (around USD 110 million) in profit was found to have been shifted through a series of business restructurings. In one case, a South African company made payments to related entities based in low-tax offshore jurisdictions, even though those entities contributed little to generating value.⁹⁸

4.2 Value added tax

Mining royalties or resource rent taxes are often a significant source of revenue in developing, resource-rich countries.⁹⁹ These levies can be structured in various ways with payments calculated based on sales revenue, production volume or weight, or profits or revenue generated from resource extraction. Tax rates may be fixed,

⁹⁴ Guj et al, above n 90, 191.

⁹⁵ Various examples are provided in Alexandra Readhead, *Preventing Tax Base Erosion in Africa: A Regional Study of Transfer Pricing Challenges in the Mining Sector* (Natural Resources Governance Institute, 2016).

⁹⁶ United Nations Conference on Trade and Development, above n 91, 65.

⁹⁷ Ludovic Feulefack Kemmanang, 'Do Thin Capitalization Rules Crowd Out Multinational Firms in Africa? Looking Towards Efficiency in Revenue Mobilization' (2021) 41(2) *Economics Bulletin* 594, 600.

⁹⁸ Guj et al, above n 90, 80-82.

⁹⁹ See the extractive industry rents by the income level of countries shown in Naazneen H Barma, Kai Kaiser, Tuan Minh Le and Lorena Viñuela, *Rents To Riches? The Political Economy of Natural Resource-Led Development* (World Bank, 2012) 23-24, which also shows the increasing importance of extractive industry rents in developing countries.

progressive (increasing with project profitability), hybrid or, in some jurisdictions like Saudi Arabia and Kuwait, negotiable between the state and mining enterprises.

In Africa, many countries impose royalties on the mining sector. However, while royalties are a central component of revenue collection alongside corporate tax, their overall contribution remains relatively limited.¹⁰⁰ Moreover, many resource-rich African countries offer special regimes including tax incentives to attract foreign direct investment. To raise sufficient revenue, there is a pressing need to identify alternative sources of revenue.

Value added tax is an attractive alternative for revenue collection, particularly from the mining sector. Over the course of long-term projects, mining enterprises incur value added tax on locally sourced goods and services as well as on imported inputs. However, they collect only limited value added tax on outputs, as the significant value of their products (that is, natural resources) is exported and therefore zero-rated. From a multinational enterprise's perspective, timely and guaranteed value added tax refunds are essential for profitability given the high value of inputs, daily operations and cash flow management.

Nevertheless, the administration of value added tax refunds in many African countries is a persistent source of disputes between tax authorities and multinational enterprises, often regarded as the 'Achilles heel' of value added tax systems.¹⁰¹ Commentators point to the limited capacity of tax authorities to manage a large number of taxpayers as a major obstacle.¹⁰² In addition, there is a structural disincentive to process refunds efficiently in Africa. Unlike jurisdictions such as Australia, where value added tax revenue is calculated net of refund claims, many African countries treat gross value added tax collections as revenue and classify input tax credits as expenditure. As a result, input tax credits are subject to budgetary constraints and cash shortages faced by governments.¹⁰³

In practical terms, this gives rise to two key issues: first, not all taxes paid on inputs may be refunded, and second, when refunds are provided, they are often significantly delayed. These issues create considerable tax uncertainty and operational complexity for multinational enterprises engaged in mining activities across Africa.

5. EVALUATING THE PROPOSAL TO ADOPT COOPERATIVE COMPLIANCE IN AFRICA'S MINING SECTOR

Given the significance of Africa's minerals and extractive sector as a major contributor to regional gross domestic product, job creation and foreign direct investment, it is pertinent to evaluate cooperative compliance as a proposed mechanism for enhancing tax certainty and revenue collection. In 2021, the United Nations highlighted significant deficiencies inherent in current mechanisms for preventing and resolving tax disputes

¹⁰⁰ Albertin et al, above n 2, vii, 8, 44 (particularly, Annex Figure 2.1).

¹⁰¹ Graham Harrison and Russell Krelove, 'VAT Refunds: A Review of Country Experience' (International Monetary Fund Working Paper WP/05/218, 2005) 4.

¹⁰² Ibid 24.

¹⁰³ For example, Zambia paid approximately USD 400 million in value added tax refunds in 2020, which amounted to about 3.5 per cent of its external debt, with 67 per cent of the refunds allocated to the mining sector. See Reuters, 'Indebted Zambia Pays \$400 Million in VAT Refunds to Mining Firms' (13 January 2021) <<https://www.reuters.com/article/business/finance/indebted-zambia-pays-400-million-in-vat-refunds-to-mining-firms-idUSKBN29I1BT>> (accessed 18 May 2026).

in developing countries, including inadequate administrative resources, unclear legislative frameworks, and perceptions of opacity and corruption within public institutions.¹⁰⁴ Within this context, cooperative compliance has emerged as a compelling solution,¹⁰⁵ posited to strengthen mutual trust through heightened transparency and reduced opportunities for corruption.

An increased awareness of cooperative compliance is evident across Africa, with Nigeria and Zambia already initiating programs that align with its principles, such as enhanced transparency and collaboration between large taxpayers and tax authorities.¹⁰⁶ South Africa has also implemented measures without explicitly adopting the cooperative compliance terminology, such as the establishment of dedicated units engaging with large taxpayers to address tax matters proactively.¹⁰⁷ Notably, cooperative compliance has gained further traction, exemplified by discussions at a recent international workshop held in Pretoria, South Africa, with participation from various stakeholders including government officials, academics and industry representatives.¹⁰⁸

Cooperative compliance is an attractive concept to apply to the minerals and extractive sector in Africa. This sector, heavily reliant on foreign capital and significant upfront investment, faces inherent complexities related to extended lead times before profitability is achieved. These features amplify the sector's sensitivity to tax risks and uncertainties. The African Union and United Nations suggest the adoption of more robust cooperative arrangements in this sector to complement existing administrative and judicial mechanisms and enhance overall tax transparency.¹⁰⁹

Experiences from developed countries indicate that the implementation of domestic and multilateral cooperative compliance programs has often been motivated by inefficiencies observed in mutual agreement procedures.¹¹⁰ According to recent OECD statistics, mutual agreement procedure cases took on average 9.78 months to resolve at the unilateral stage and 26.35 months at the bilateral stage, covering approximately 140 jurisdictions globally, practically all mutual agreement procedure cases worldwide.¹¹¹

¹⁰⁴ United Nations, *Handbook on the Avoidance and Resolution of Tax Disputes*, above n 9, section 1.3.

¹⁰⁵ Ibid 27-28, sections 2.3.4-2.3.5.

¹⁰⁶ Aloisio Flávio Ferreira de Almeida, 'Cooperative Compliance and the CONFIA Program', CIAT Inter-American Center of Tax Administrations (9 May 2022) <<https://www.ciat.org/cooperative-compliance-and-the-confia-program/?lang=en>> (accessed 18 May 2026).

¹⁰⁷ Bram JM Geurts, 'Is Cooperative Compliance a Solution to African Countries? A Comparative Analysis based on South Africa and Nigeria' (International Business Taxation/LLM Thesis, Tilburg University, 2024).

¹⁰⁸ This joint workshop on *Cooperative Compliance: Building Win-Win Approach to Tax Administration in Africa* was held by the African Tax Institute, South African Revenue Service and the International Tax and Investment Centre (ITIC) in Pretoria on 27-28 August 2024.

¹⁰⁹ African Minerals Development Centre and United Nations Economic Commission for Africa, *Impact of Illicit Financial Flows on Domestic Resource Mobilization: Optimizing Revenues from the Mineral Sector in Africa* (2017) 68.

¹¹⁰ Konstantinos Taramountas, 'The Mutual Agreement Procedure: Coordinating the Global Tax Orchestra' (2019) 4 *LSE Law Review* 39.

¹¹¹ OECD, 'Mutual Agreement Procedure Statistics' <<https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm>> (accessed 28 March 2025) ('Mutual Agreement Procedure Statistics'). The OECD has published individual country reports in OECD, *Making Dispute Resolution Mechanisms More Effective – Consolidated Information on Mutual Agreement Procedures 2024*, OECD/G20 Base Erosion and Profit Shifting Project (OECD Publishing, 2024). See also the average cycle time for cases completed in 2022 in European Union Member States in European Commission, Directorate-General for

However, these average resolution times are more representative of developed countries than developing countries because developed countries typically have more extensive tax treaty networks than developing nations.¹¹² In African jurisdictions, even where mutual agreement procedures are formally available, ‘the MAP is largely undeveloped and many tax authorities lack experience on the procedure’.¹¹³

The most contentious area within mutual agreement procedure cases remains transfer pricing, requiring on average 15.48 months to resolve at the unilateral stage and 29.46 months bilaterally, significantly longer than the 8.85 and 23.04 months respectively for other types of disputes.¹¹⁴ To proactively mitigate such disputes, multinational enterprises may enter into an advance pricing arrangement, which offers upfront certainty concerning transfer pricing methodologies for proposed transactions. Advance pricing arrangements may be particularly beneficial in jurisdictions with limited tax treaty networks or inadequate mechanisms for cross-border tax dispute resolution. Nevertheless, Readhead observes that advance pricing arrangements are not widespread among African countries – for example, Zambia and Ghana explicitly avoid advance pricing arrangements – primarily due to concerns among local tax authorities of being ‘outgunned’ in negotiations by sophisticated mining-sector taxpayers.¹¹⁵ A survey conducted by Ernst & Young found that while corporate taxpayers are generally satisfied with the outcomes of advance pricing arrangements, the most cited point of dissatisfaction was the length of time required to complete the process, echoing similar concerns about inefficiencies observed in the mutual agreement procedure framework.¹¹⁶ Markham further notes that advance pricing arrangements can lead to tax audit that would not otherwise occur.¹¹⁷

In contexts where advance pricing arrangements are not viable, cooperative compliance might initially appear attractive. Yet, if limited administrative capacity discourages the adoption of advance pricing arrangements, the effective implementation of cooperative

Taxation and Customs Union, *Overview of Numbers Submitted for Statistics on Pending Mutual Agreement Procedures (MAPs) under the Arbitration Convention (AC) at the End of 2022* (Ref. Ares(2023)8464346–11/12/2023, December 2023).

¹¹² Two possible explanations for the low number of tax treaties are as follows: (1) ‘On the institutional front, many developing countries still do not have a dedicated tax policy unit, such that all policy-related matters are undertaken by the tax administration or agency’; (2) ‘the relatively low number of tax treaties in developing countries may render difficult the allocation of scarce resources to this specialized topic and accelerate the erosion of any prior institutional knowledge’. See Sébastien Leduc and Geerten Michiels, ‘Are Tax Treaties Worth It for Developing Economies?’ in Ruud de Mooij, Alexander Klemm and Victoria Perry, *Corporate Income Taxes under Pressure: Why Reform is Needed and How It Could Be Designed* (International Monetary Fund, 2021) 123, 169 (footnote omitted).

¹¹³ Annet Wanyana Oguttu, *Base Erosion and Profit Shifting: A Blueprint for Africa’s Response* (IBFD Publications, 2021) 270.

¹¹⁴ OECD, ‘Mutual Agreement Procedure Statistics’, above n 111.

¹¹⁵ Readhead, above n 95, 17. The advance pricing arrangement processing times in the United States, the United Kingdom and European Union Member States can be found in Internal Revenue Service, ‘Announcement and Report Concerning Advance Pricing Agreements’ (Announcement 2023-10, 27 March 2023); HM Revenue and Customs, ‘Transparency Data: Transfer Pricing and Diverted Profits Tax Statistics 2022 to 2023’ (25 January 2025) <[https://www.gov.uk/government/publications/transfer-pricing-and-diverted-profits-tax-statistics-2022-to-2023](https://www.gov.uk/government/publications/transfer-pricing-and-diverted-profits-tax-statistics-2022-to-2023/transfer-pricing-and-diverted-profits-tax-statistics-2022-to-2023)> (accessed 18 May 2026); European Commission, *Statistics on APA’s (Advance Pricing Agreements) in the EU at the End of 2022* (Ref. Ares(2023)8464346–11/12/2023, December 2023) 2-4.

¹¹⁶ Ernst & Young, *How Profound Change, Transparency and Controversy Are Reshaping a Critical Business Function: 2019 Transfer Pricing and International Tax Survey* (2019) 23.

¹¹⁷ Michelle Markham, ‘The Advantages and Disadvantages of Using an Advance Pricing Agreement: Lessons for the UK from the US and Australian Experience’ (2005) 33(5) *Intertax* 214.

compliance would similarly face significant challenges unless accompanied by a fundamental shift in institutional culture and attitude, addressing real and perceived imbalances in bargaining power.¹¹⁸ Furthermore, some underlying assumptions of cooperative compliance remain unproven or problematic. First, while procedural justice – ensuring consistent and fair tax treatment – has been empirically linked to higher compliance among individual taxpayers, this relationship has not been conclusively demonstrated for large corporate taxpayers.¹¹⁹ Second, although tax control frameworks represent a core component of cooperative compliance programs and are central to the OECD's ICAP model, their effectiveness may be limited to establishing organisational accountability rather than actually managing tax risks.¹²⁰

For taxpayers, the primary benefit of cooperative compliance is enhanced tax certainty, which can significantly improve business efficiency and reduce overall tax compliance costs.¹²¹ Nevertheless, critical perspectives have emerged. De Widt and Oats, for instance, assert that cooperative compliance offers limited practical value, arguing that a low-risk outcome can never truly reflect minimal risk due to the inherent complexity of large business enterprises.¹²² Moreover, being categorised as 'too compliant' may suggest that taxpayers' advisors are not acting optimally in the taxpayers' best interests.¹²³ Additionally, Bogenschneider observes that rather than effectively mitigating tax risks, the *ex ante* assurance provided by cooperative compliance programs may inadvertently facilitate tax avoidance by enterprises.¹²⁴

Advocates of cooperative compliance frequently highlight advantages such as access to efficient alternative dispute resolution mechanisms and centralised points of contact within tax administrations. However, empirical evidence from the United Kingdom indicates that corporate taxpayers who were classified as non-low risk appeared to receive comparatively greater support and engagement from HM Revenue and Customs.¹²⁵ Although real-time engagement is championed as a distinctive benefit – enabling taxpayers to proactively manage and mitigate tax risks, shorten audit durations and reduce transaction complexities – research indicates that real-time responses from tax authorities are 'neither welcome nor possible under all circumstances'.¹²⁶ Furthermore, commentators express concerns that taxpayers participating in cooperative compliance programs might implicitly waive their legitimate legal rights to

¹¹⁸ See Tuulia Potka-Soininen, Jukka Pellinen and Jaana Kettunen, 'Enhanced Customer Cooperation: Experiences with Cooperative Compliance in Finland' (FairTax Working Paper Series No 19, November 2018) 27-28, providing both parties must have the right attitude to make a cooperative compliance system work.

¹¹⁹ Lisette van der Hel – van Dijk and Maarten Siglé, 'Managing Compliance Risks of Large Businesses: A Review of the Underlying Assumptions of Co-operative Compliance Strategies' (2015) 13(3) *eJournal of Tax Research* 760, 775.

¹²⁰ *Ibid* 776.

¹²¹ De Widt and Oats, 'Co-operative Compliance: Views of Large Business', above n 27 (especially the Dutch example).

¹²² *Ibid* 5.

¹²³ *Ibid*.

¹²⁴ Bret N Bogenschneider, 'Non-Cooperative Compliance in the Corporate Tax Audit' (2020) 48(3) *Capital University Law Review* 351.

¹²⁵ De Widt and Oats, 'Risk Assessment in a Co-operative Compliance Context', above n 19 (especially the United Kingdom example).

¹²⁶ See Lotta Björklund Larsen and Lynne Oats, 'Taxing Large Businesses: Cooperative Compliance in Action' (2019) 54(3) *Intereconomics* 165, 170 (interviewing stakeholders of cooperative compliance systems in Denmark, Finland, the Netherlands, Norway, Sweden and the United Kingdom).

challenge tax assessments when irreconcilable differences arise, simply to preserve favourable relationships with tax authorities.¹²⁷

Despite the potential advantages attributed to cooperative compliance such as decreased compliance burdens and diminished tax risks,¹²⁸ the actual realisation of efficiency and improved regulatory effectiveness is often delayed or uncertain due to the adjustments required by novel administrative models.¹²⁹ While tax authorities might streamline data and information requests to conserve administrative resources, the implementation of cooperative compliance necessitates substantial upfront investments in new administrative infrastructures and the extensive training of tax officials. These requirements pose particular difficulties in African jurisdictions already constrained by limited administrative resources. Although cooperative compliance programs claim cost effectiveness through reallocating resources away from protracted audits towards targeted high-risk areas, in the short to medium term the financial and organisational investments required for program design, implementation and maintenance may outweigh these anticipated benefits.

The initial cost burden could potentially be justified if cooperative compliance substantially enhances revenue collection by effectively addressing persistent areas of concern, such as transfer pricing and value added tax, identified as primary tax challenges in Africa's mining and extractive sector. Organisations such as the African Tax Administration Forum or the African Tax Institute could play instrumental roles in developing pilot multilateral cooperative compliance programs among interested states. Nevertheless, given that the root cause of transfer pricing disputes is frequently legislative ambiguity and inconsistent enforcement, offering upfront assurance via cooperative compliance without addressing underlying legislative deficiencies could inadvertently reduce audit scrutiny, exacerbating rather than mitigating revenue leakage. Hence, more direct solutions involving clear and enforceable transfer pricing frameworks should precede the adoption of cooperative compliance initiatives.

Value added tax represents another significant tax administration challenge within the African mining sector. Some analysts argue that cooperative compliance may enhance large businesses' value added tax compliance, especially in contexts where non-participating enterprises have historically demonstrated limited proactive engagement.¹³⁰ However, cooperative compliance does not directly address structural administrative deficiencies – specifically, the practice of classifying value added tax refunds as governmental expenditure rather than as reductions in net value added tax revenue. Administrative processes for refund approvals remain subject to budgetary limitations. Moreover, the broad range of transactions for which multinational enterprises might seek value added tax assurances typically involve input-related expenditures rather than taxable output transactions, diminishing the utility of cooperative compliance from a revenue-raising perspective. Given the uncertainty

¹²⁷ Ronald Russo, 'Co-operative Compliance and ICAP in the Netherlands' in Ronald Hein and Ronald Russo (eds), *Co-operative Compliance and the OECD's International Compliance Assurance Programme* (Wolters Kluwer, 2020) 163, 165, 170.

¹²⁸ See, eg, De Widt and Oats, 'Risk Assessment in a Co-operative Compliance Context', above n 19 (studying the United Kingdom and Dutch cases); Eva Eberhartinger and Maximilian Zieser, 'The Effects of Cooperative Compliance on Firms' Tax Risk, Tax Risk Management and Compliance Costs' (2021) 73 *Schmalenbach Journal of Business Research* 125 (studying Austrian cases).

¹²⁹ De Widt and Oats, 'Risk Assessment in a Co-operative Compliance Context', above n 19.

¹³⁰ Owens et al, above n 17, 19.

surrounding future transactions, tax authorities would likely remain reluctant to provide comprehensive pre-transaction value added tax refund assurances, or if provided, these assurances would necessarily remain contingent upon subsequent audit or review. In this instance, the resources dedicated to obtaining tax assurances under cooperative compliance regimes in these contexts might be largely ineffective, rendering cooperative compliance futile relative to its intended purpose.

6. CONCLUSION

Given the significant reliance of African economies on minerals and extractive industries for employment, gross domestic product and foreign direct investment, ensuring tax certainty and transparency in this sector is paramount. This article has critically assessed the feasibility and potential effectiveness of adopting cooperative compliance in the African mining context. The analysis identified that, despite cooperative compliance being lauded as a potential solution for mitigating uncertainties and inefficiencies in existing dispute resolution mechanisms, its direct implementation in African tax administrations faces substantial practical obstacles. The primary impediments stem from inherent limitations such as inadequate administrative capacity, ambiguity in tax legislation, particularly transfer pricing rules, and structural deficiencies in value added tax refund mechanisms, exacerbated by budgetary constraints.

Transfer pricing disputes remain particularly problematic due to both the complexity of transactions and insufficient legislative clarity across African jurisdictions. Without first addressing these underlying deficiencies, cooperative compliance programs may inadvertently shield problematic transactions from necessary scrutiny, thereby intensifying rather than alleviating revenue leakage. Likewise, value added tax administration, hampered by structural challenges in refund processes and constrained public budgets, cannot effectively benefit from cooperative compliance alone, as pre-transaction assurances on input value added tax refunds remain impractical and resource intensive in their current administrative contexts.

Moreover, the anticipated benefits of cooperative compliance, such as enhanced taxpayer certainty, reduced compliance burdens and real-time risk management, are tempered by empirical findings from developed jurisdictions. Evidence indicates that cooperative compliance frameworks may inadvertently compromise taxpayers' advocacy rights and potentially facilitate tax avoidance. Real-time interactions, while advantageous in theory, have proven difficult to execute in practice, thus raising further doubts about their practical feasibility in resource-constrained African tax administrations.

Additionally, the significant upfront costs and resource allocations required to design, implement, and sustain cooperative compliance regimes cannot be underestimated. African countries already grappling with limited administrative resources, expertise and budgetary constraints may find the short- to medium-term expenses prohibitively high relative to the expected benefits. Thus, without substantial prior improvements in administrative infrastructure and personnel training, cooperative compliance could exacerbate rather than resolve existing systemic challenges.

Consequently, before considering cooperative compliance as a viable policy option, African countries should prioritise foundational reforms aimed at clarifying and reinforcing transfer pricing legislation, ensuring consistent enforcement, and

restructuring value added tax administration to mitigate systemic inefficiencies. Strengthening domestic dispute resolution mechanisms, including clearer administrative appeal and mediation procedures, along with greater judicial capacity and transparency, is equally essential. Simultaneously, African jurisdictions should aim to enhance mutual agreement procedures and explore cautiously the potential of advance pricing arrangements, provided that power imbalances with sophisticated multinational enterprises can be adequately addressed.

Once these fundamental legislative, administrative and capacity-building reforms have taken root, cooperative compliance could then serve as a complementary measure, fostering ongoing improvements in taxpayer-administration relations. Future initiatives should ideally be pursued within a broader, multilateral framework involving regional entities such as the African Tax Administration Forum and African Tax Institute, drawing carefully from international experiences, including the OECD's ICAP and the European Union's ETACA.

In sum, while cooperative compliance holds conceptual promise for improving tax certainty and transparency in Africa's minerals and extractive industries, its effective realisation necessitates a phased and context-sensitive approach. Only after addressing underlying structural, legislative and administrative deficiencies can cooperative compliance meaningfully contribute to sustainable tax administration reform. Parallel initiatives aimed at enhancing political stability, infrastructure management and fiscal governance should accompany these reforms to ensure comprehensive and durable improvements in Africa's mining sector governance.