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GOVERNMENT OF ZAMBIA

ACT

No. 1 of 2001

Date of Assent: 22nd March, 2001

An Act to amend the Income Tax Act

[26th March, 2001

ENACTED by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2001, and shall be read as one with the Income Tax Act, in this Act referred to as the principal Act.

Short title and commencement
Cap. 323

(2) This Act shall come into operation on the 1st April, 2001, and subject to any provisions to the contrary, shall have effect in relation to the charge of tax for the charge year which ends on 31st March, 2002, and in relation to each subsequent charge year.

2. Section *four* of the principal Act is amended in paragraph (b) of subsection (3) by the insertion of the word "central" immediately before the word "management".

Amendment to section 4

3. Section *seven* of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsection:

Amendment of section 7

(3) The Commissioner-General may confer any of the functions of the Commissioner-General under this Act upon any person if that person consents; and that person shall perform those functions under the direction of the Commissioner-General.

Amendment
of section 37

4. Section *thirty-seven* of the principal Act is amended—

(a) in subsection (1)—

(i) by the deletion in paragraph (a) of the words “Zambia National Provident Fund” and the substitution therefor of the words “National Pension Scheme Authority”;

(ii) in sub-paragraph (ii) of paragraph (c), in paragraph (d) and in paragraph (e), by the deletion of the words “one hundred and twenty thousand kwacha” and the substitution therefor of the words “one hundred and eighty thousand kwacha”;

(b) in subsection (3) by the deletion in paragraph (b) of the words “one hundred and twenty thousand kwacha” and the substitution therefor of the words “one hundred and eighty thousand kwacha”; and

(c) in subsection (4) by the deletion of the words “one hundred and twenty thousand kwacha” and the substitution therefor of the words “one hundred and eighty thousand kwacha”.

Amendment
of section
43A

5. Section *forty-three A* of the principal Act is amended in subsection (2) by the deletion of the words “part of all” immediately after the word “year” and the substitution therefor of the words “part or all”.

Amendment
of section
46A

6. Section *forty-six A* of the principal Act is amended—

(a) in the proviso to subsection (1) by the deletion of the words “one million two hundred thousand kwacha” and the substitution therefor of the words “one million four hundred and forty thousand kwacha”;

(b) in subsection (3) by the insertion of the following new proviso:

Provided that where during the course of the charge year, any person discovers that the return of provisional income furnished under this section is likely to be substantially incorrect because of changed circumstances, such person shall furnish a revised return of revised provisional income and in such a case, any alteration in the amount of estimated tax payable shall be taken into account in the next instalment (pursuant to section *seventy-seven*) immediately following the date of such revised return;

(c) by the deletion of subsection (4) and the substitution therefor of the following subsection:

(4) Where an individual is not required to make a return of provisional income and tax for any charge year by virtue of the proviso to subsection (1) but at a time subsequent to 30th June in that year that proviso ceases to apply to the individual, that individual shall make a return in accordance with subsections (1) and (2) within fourteen days of the proviso ceasing to apply to that individual.

(d) by the deletion of subsection (5) and the substitution therefor of the following subsection:

(5) Where, upon the receipt of a return of income pursuant to section *forty-six*, it is discovered that income has been so underestimated that the tax on such estimate has been underpaid by at least one-third, then such person shall be liable to a penalty under this section calculated at the rate of twenty-five percent of the tax which has been underpaid;

(e) by the deletion of sub-section (6);

(f) by the re-numbering of subsections (7), (8), (9) and (10) as subsections (6), (7), (8) and (9).

7. Section *seventy-eight* of the principal Act is amended—

Amendment
of section 78

(a) by the deletion of subsections (3), (4) and (10); and

(b) by the re-numbering of subsections (2A), (5), (6), (7), (8) and (9) as subsections (3), (4), (5), (6), (7) and (8).

8. Section *eighty-one B* of the principal Act is amended—

Amendment
of section
81B

(a) by the deletion of subsection (1) and the substitution therefor of the following subsection:

(1) Where any person, institution or authority is empowered by any written law or otherwise to register the transfer of any property, that person, institution or authority shall not register the transfer unless there is produced a tax clearance certificate issued in respect of the person or partnership transferring the property;

(b) by the deletion of subsections (3) and (6); and

(c) by the re-numbering of subsections (4), (5) and (7) as subsections (2), (3) and (4).

Amendment
of section
82A

9. Section *eighty-two A* of the principal Act is amended—

(a) in subsection (1)—

(i) by the deletion of the proviso to paragraph (b) and the substitution therefor of the following proviso:

Provided that—

(i) where the interest payment to an individual during any one month on any single savings account, deposit account or building society account, does not exceed twenty-five thousand kwacha, then that interest payment shall be exempt from the requirement of this section;

(ii) this section shall not apply to interest payable on a bill of exchange drawn for one hundred and eighty days or less; and

(iii) the payment of any amount in excess of the original issue price for any treasury bill or any other similar financial instrument sold at a discount from face value shall be deemed for the purposes of this section to be payment of interest when any such treasury bill or any other similar financial instrument is presented to the Bank of Zambia for redemption or re-discount; or

(ii) by the deletion of the proviso to paragraph (c);

(iii) by the insertion immediately after paragraph (e)

of the words "irrespective of whether such payment under this subsection is made outside the Republic, shall, before making any other deductions, deduct tax from the payment referred to in paragraphs (a), (b), (c), (d) and (e) at the rate specified in the Charging Schedule or as the Commissioner-General may direct to give effect to the provisions of any agreement made under section *seventy-four* or the provisions of the Second Schedule and that person or partnership shall account for such tax as if that payment were subject to Part VI (which relates to Pay As You-Earn) and for the purposes of this subsection, payment shall be deemed to be made when the income is received by the recipient as provided in section *five*"; and

(b) by the deletion of subsection (9).

10. Section *ninety-seven A* of the principal Act is amended in subsection (1) by the insertion in the definition of "arm's length conditions" of the words "subject to section *ninety-seven AA* where that section applies.", immediately after the word "means".

Amendment
of section
97A

11. The principal Act is amended by the insertion immediately after section *ninety-seven A* of the following new section:

Insertion of
new section
97AA

97AA (1) Where—

Special
provisions
where actual
conditions
include
issuing
security

(a) actual conditions are imposed in terms of subsection (1) of section *ninety-seven A* between two associated persons and those conditions include the issuing of a security; and

(b) the matters specified in subsection (2) are relevant, in any way and to any extent, to the determination of the arm's length conditions for the purposes of section *ninety-seven A*;

those conditions shall be determined, not only as if the issuing company and the other person, referred to in this section as "the first associate", were not associated, but also as if there were no relationship, arrangement or connection, whether formal or informal, between the issuing company and any other person which is associated with the issuing company unless they are both members of the same Zambian grouping.

(2) The matters referred to in paragraph (b) of subsection (1) are—

(a) the appropriate level or extent of the issuing company's overall indebtedness;

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to that company; and

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction;

and the fact that it is not part of any company's business to make loans generally shall be disregarded for the purposes of this section.

(3) The membership of a Zambian grouping in relation to any issuing company shall be determined as follows:

(a) Where the issuing company is not a subsidiary of a company resident in the Republic—

(i) if the issuing company has no subsidiaries, the only member of the Zambian grouping shall be the issuing company;

- (ii) if it has one or more subsidiaries, the only members of the *Zambian grouping* shall be the issuing company and its subsidiaries; and
- (b) where the issuing company is a subsidiary of a company resident in the Republic, in this section referred to as "the *Zambian holding company*", the only members of the *Zambian grouping* shall be—
- (i) if there is more than one company resident in Zambia of which the issuing company is a subsidiary, such one of them as is not itself a subsidiary of any of the others, and all its subsidiaries;
 - (ii) if sub paragraph (i) does not apply, the *Zambian holding company* and all its subsidiaries; but the first associate is not a member of the *Zambian grouping* in any case.

(4) For the purposes of this section—

- (a) a company, in this section referred to as "the subsidiary", is a subsidiary of another company in this section referred to as "the parent" at any time if—
- (i) the parent is beneficially entitled to more than fifty percent of any profits of the subsidiary available for distribution to equity holders of the subsidiary; and
 - (ii) the parent would be beneficially entitled to more than fifty percent of any assets of the subsidiary available for distribution to its equity holders on winding up; and for this purpose any profits or assets available for distribution to any equity holder otherwise than as an equity holder shall be disregarded;
- (b) "the issuing company" means the company, which issued the security referred to in paragraph (a) of subsection (1);
- (c) "security" includes securities not creating or evidencing a charge on assets, and any—
- (i) interest paid or payable by a company on money advanced without the issue of a security for the advance; or

(ii) other consideration given by a company for the use of money so advanced;

shall be treated as if paid or payable or given in respect of a security issued for the advance by the company;

(d) "subsidiary" shall have the meaning assigned to it by paragraph (a) of this subsection; and

(e) "Zambian grouping" refers to those companies that are associated in terms of subsection (5) of section *ninety-seven C* and are resident in the Republic or deemed to be resident in the Republic for tax purposes and may, as determined by the Commissioner-General, include non-resident companies which are associated in terms of that subsection.

(5) For the purposes of subsection (4)—

(a) the percentage entitlement of a company means the percentage to which the company is or would be entitled either directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate;

(b) the entitlement means, in the case of profits, the entitlement during the charge year, which is the income year in question within the meaning of subsection (2) of section *ninety-seven A* and, in the case of assets, the entitlement at the end of that charge year;

(c) "equity holder" means a person who—

(i) holds ordinary shares in the company; or

(ii) is a loan creditor of the company in respect of a loan which is not a normal commercial loan; and

(d) "ordinary shares" means all shares other than fixed-rate preference shares.

(6) A "loan creditor", referred to in subparagraph (ii) of paragraph (c) of subsection (5), in relation to a company, means a creditor in respect of any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company; or

(b) in respect of any redeemable loan capital issued by the company:

Provided that a person carrying on the business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by that person in the ordinary course of that business.

(7) The "fixed rate preference shares" referred to in paragraph (d) of subsection (5) are shares which—

(a) do not carry any right either to conversion into shares or securities of any description or to the acquisition of any additional shares or securities;

(b) do not carry any right to dividends other than dividends which—

(i) are of a fixed amount or at a fixed rate per centum of the nominal value of the shares; and

(ii) represent no more than reasonable commercial return on the consideration received by the company in respect of the issue of the shares; and

(c) on the repayment do not carry any rights to an amount exceeding that consideration.

(8) A "normal commercial loan" referred to in paragraph (c) of subsection (5) is a loan—

(a) which does not carry any right either to conversion into shares or securities; and

(b) which does not entitle the loan creditor to any amount by way of interest which depends to any extent on the results of the company's business or which exceeds a reasonable commercial return on the amount lent.

Amendment
of Second
Schedule

12. The Second Schedule to the principal Act is amended—

(a) in sub paragraph (3) of paragraph 5 by the deletion of the words "eight hundred kwacha" wherever they appear and the substitution therefor of the words "three million six hundred thousand kwacha"; and

(b) in paragraph 7, by the insertion after sub-paragraph (u) of the following new sub-paragraph:

(v) by way of a lump sum payment paid to an employee on loss of office or employment on medical grounds.

Amendment
of Third
Schedule

13. The Third Schedule to the principal Act is amended in paragraph 2 by the insertion immediately after sub-paragraph (2) of the following new sub-paragraph:

(2a) Any expenses of management which are not set against a life insurance company's investment income for a financial year in accordance with sub-paragraph (1) or (2) due to an insufficiency of investment income shall, for the purposes of this Act, be treated as losses accruing to the company for that year.

14. The Fifth Schedule to the principal Act is amended in paragraph 10 by the deletion of sub-paragraph (5) and the substitution therefor of the following sub-paragraph: Amendment
of Fifth
Schedule

“ (5) Notwithstanding any other provisions of this Act to the contrary the wear and tear allowance on any implement, machinery or plant which is proved to the satisfaction of the Commissioner-General to be exclusively and directly used in farming, manufacturing, tourism or leasing for any charge year, shall be calculated on a straight line basis at the rate of fifty per cent of the cost.

15. The Charging Schedule to the principal Act is amended— Amendment
of Charging
Schedule

(a) in sub-paragraph (1) of paragraph 1 by—

(i) the deletion of the words “one hundred and twenty thousand kwacha” and the substitution therefor of the words “one hundred and forty-four thousand kwacha”; and

(ii) by the deletion in clause (b) of the words “one hundred and twenty-one thousand two hundred kwacha” and the substitution therefor of the words “one hundred and forty-five thousand two hundred kwacha”.

(b) in sub-paragraph (1) of paragraph 2 by—

(i) the insertion in clause (a) of the words “under section *eighty-two*” immediately after the words “lumpsum payments”;

(ii) the deletion of clauses (c), (d) and (e) and the substitution therefor of the following clauses:

(c) on the balance of so much of an individual's income as does not exceed one million six hundred thousand kwacha, at the rate of ten per cent per annum;

(d) on the balance of so much of an individual's income as exceeds one million six hundred thousand kwacha but does not exceed two million two hundred thousand kwacha, at the rate of twenty per cent per annum; and

(e) on the balance of so much of an individual's income as exceeds two million two hundred thousand kwacha, at the rate of thirty per cent per annum.

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