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GOVERNMENT OF ZAMBIA

**ACT**

No. 3 of 2002

Date of Assent: 29th March, 2002

An Act to amend the Income Tax Act

[30th March, 2002

ENACTED by the Parliament of Zambia

Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2002, 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, 2002, 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, 2003, and in relation to each subsequent charge year.

2. Section *two* of the principal Act is amended in subsection (1)—

Amendment of section 2

(a) by the deletion of the definition of "Taxpayer Identification Number" and the substitution therefor of the following definition:

"Taxpayer Identification Number" means the national registration card number or such number as may be designated and issued by the Commissioner General to a taxpayer;

(b) by the insertion in the appropriate places of the following new definitions:

"approved share option scheme" means a scheme that has been approved, by the Commissioner-General, under the Eighth Schedule; and

"share option scheme" means a scheme that provides an option to an employee to acquire shares in the company that employs that employee or otherwise.

3. Section *twenty-one* of the principal Act is amended in subsection (5) by the deletion of the words "three million kwacha" and the substitution therefor of the words "five million kwacha."

Amendment of section 21

Single copies of this Act may be obtained from the Government Printer,  
P.O. Box 30136, 10100 Lusaka. Price K3000.00 each

Amendment  
of section  
29A

4. Section *twenty-nine A* of the principal Act is amended by the insertion after subsection (2) of the following new proviso:

Provided that any foreign currency exchange gains or losses of a bank of a capital nature shall not be assessable or deductible as the case may be in the charge year in which they are translated.

Amendment  
of section  
34A

5. Section *thirty-four A* of the principal Act is amended in subsection (2) by the insertion of the word "consecutive" immediately after the word "three".

Insertion of  
new section  
37A

6. The principal Act is amended by the insertion immediately after section *thirty-seven* of the following new section:

Deduction  
for share  
option  
scheme

37A. A deduction shall be allowed in ascertaining the gains or profits of an employer for a charge year of any amount incurred by the employer in the establishment or in the administration of an approved share option scheme for that charge year.

Repeal of  
section 43C

7. The principal Act is amended by the repeal of section *forty-three C*.

Amendment  
of section  
43D

8. Section *forty-three D* of the principal Act is amended—

(a) in subsection (1) by the deletion of the words "handicapped person" and the substitution therefor of the words "person with disability"; and

(b) in subsection (2) by the deletion of the words "two hundred and forty thousand kwacha" and the substitution therefor of the words "five hundred thousand kwacha".

Amendment  
of section 44

9. Section *forty-four* of the principal Act is amended by the insertion after paragraph (h) of the following new paragraph:

(i) any amount incurred by the employer in the establishment or administration of a share option scheme, except such amounts as are allowed under section *thirty-seven A*.

Amendment  
of section 46

10. Section *forty-six* of the principal Act is amended in subsection (2)—

(a) by the deletion in paragraph (b) of the word "and" after the semi-colon;

(b) by the deletion in paragraph (c) of the full stop after the word "year" and the substitution therefor of a semi colon and the word "and"; and

(c) by the insertion immediately after paragraph (c) of the following new paragraph:

(d) be designated in kwacha.

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

Amendment  
of section  
46A

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

(b) in subsection (2)—

(i) by the deletion in paragraph (b) of the word "and" after the semicolon;

(ii) by the deletion in paragraph (c) of the full stop after the word "year" and the substitution therefor of a semicolon and the word "and"; and

(iii) the insertion immediately after paragraph (c) of the following new paragraph:

(d) be designated in kwacha.

12. Section *fifty-three* of the principal Act is amended by the insertion of the words "or electronically stored data" after the words "charge of documents", and immediately after the words "those documents".

Amendment  
of section 53

13. Section *fifty-six* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following:

Amendment  
of section 56

(1) Notwithstanding the provisions of subsection (3) of section *fifty-five* every return furnished under subsection (1) of section *forty-six* by any person shall be accompanied by such accounts and other documents, in kwacha, as are necessary to support the return and shall be signed by the person furnishing the return.

14. Section *fifty-eight* of the principal Act is amended in paragraphs (a), (b), and (c), by the insertion of the words "or electronically stored data" after the words "other documents".

Amendment  
of section  
58

15. Section *sixty-three* of the principal Act is amended in the proviso to subsection (1)

Amendment  
of section 63

(a) by the deletion of the full stop after the words "*eighty-two A*" and the substitution therefor of a semicolon and the word "or" and

(b) by the insertion immediately after paragraph (iv) of the following new paragraph:

(v) interest on Government Bonds from which tax in respect of that charge year has been deducted under section *eighty-two A*

Amendment  
of section 64

16. Section *sixty-four* of the principal Act is amended—

(a) by the deletion of the colon in paragraph (c) and the substitution therefor of a “ semicolon ” and the word “ or ”; and

(b) by the insertion immediately after paragraph (c) of the following new paragraph:

(d) where the Commissioner General has reason to believe that the company is to be wound up or liquidated:

Amendment  
of section  
97AA

17. Section *ninety-seven AA* of the principal Act is amended—

(a) in subsection (4) by the deletion of paragraph (e) and the substitution therefor of the following:

(e) “ *Zambian grouping* ” refers to those companies that are members of a *Zambian grouping* within the meaning of subsection (3);

(b) in subsection (8)—

(i) by the deletion of paragraph (a) and the substitution therefor of the following:

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

(ii) by the deletion of the word “ and ” after paragraph (a);

(iii) by the deletion of the full stop at the end of paragraph (b) and the substitution therefor of a semi colon and the word “ and ”; and

(iv) by the insertion immediately after paragraph (b) of the following new paragraph:

(c) in respect of which the loan creditor is entitled, on repayment to an amount which does not exceed the amount lent.

Amendment  
of section  
104

18. Section *one hundred and four* of the principal Act is amended in paragraphs (a), (b) and (c) by the insertion of the words “ or electronically stored data ” after the word “ documents ”.

19. The First Schedule to the principal Act is amended by the insertion after paragraph 7 of the following new paragraph: Amendment  
of First  
Schedule

8. Income includes the gross sale proceeds or proceeds from sale of options in respect of shares allotted, reserved or acquired by an individual in terms of an approved share option scheme net of any amount paid for the acquisition or exercise of such shares or options by the individual concerned, and shares or options sold shall be deemed to be the shares or options longest held: Shares or  
options

Provided that the relief afforded by sub-section (5) of section *twenty-one* shall extend to such income to the extent not absorbed by compensation received for loss of office or employment where the gross sale proceeds are receivable within one year of termination of services.

20. The Second Schedule to the principal Act is amended— Amendment  
of Second  
Schedule

(a) in clause (f) of sub-paragraph (1) of paragraph 5 by the insertion of the words “ or approved share option scheme ” after the word “ society ”;

(b) in sub-paragraph (1) of paragraph 7 by the deletion of the words “ education allowance or ”;

(c) in paragraph 7 by the insertion after subparagraph (v) of the following new subparagraph:

(w) by way of allotment or acquisition of shares in terms of an approved share option scheme.

(d) in subparagraph (1) of paragraph 8—

(i) by the deletion of the definition “ education passage ”

(ii) by the deletion in the definition of “ leave passage ” of the words “ undergoing full time education outside the Republic, between the place where the child is receiving full-time education and the home country ”;

(iii) by the deletion in the definition of “ terminal passage ” of the words “ or, in the case of a child of the individual undergoing full-time education outside the Republic, from the place where the child is receiving full-time education to the home country ”;

(e) in subparagraph (5) of paragraph 8 by the deletion of paragraph (iv) of the proviso; and

(f) by the deletion of subparagraph (7) of paragraph 8.

Amendment  
of Fourth  
Schedule

21. The Fourth Schedule to the principal Act is amended in sub-clause (vii) of clause (c) of subparagraph (3) of paragraph 2 by the deletion of the words "one million kwacha" and the substitution therefor of the words "five million kwacha".

Amendment  
of Sixth  
Schedule

22. The Sixth Schedule to the principal Act is amended in paragraph (1) by the deletion in the definition of "farm dwelling" of the words "one million kwacha" and the substitution therefor of the words "five million kwacha".

Insertion of  
new Eighth  
Schedule

23. The principal Act is amended by the insertion of a new Eighth Schedule set out in the Appendix to this Act.

Amendment  
of Charging  
Schedule

24. The Charging Schedule to the principal Act is amended—

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

(i) the deletion in clause (a) of the words "one hundred and forty-four thousand kwacha" and the substitution therefor of the word "zero"; and

(ii) the deletion in clause (b) of the words "one hundred and forty-five thousand two hundred kwacha" and the substitution therefor of the words "eighteen thousand kwacha".

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

(i) by the deletion of clauses (c) and (d) 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 eight hundred thousand kwacha at the rate of zero per centum per annum; and

(d) on the balance of so much of an individual's income as exceeds one million eight hundred thousand kwacha, at the rate of thirty per centum per annum;

(ii) by the deletion of clause (e);

(c) in subparagraph (2) of paragraph 2 by the deletion of the words "sub-paragraph (c) to (e) of paragraph 1" and the substitution therefor of the words "clauses (c) to (d) of sub-paragraph (1)".

(d) in sub-paragraph (1) of paragraph 3 by the deletion of clause (e) and the substitution of the following clause:

(e) on the income of any former Zambia Consolidated Copper Mining Company or any other mining

company involved in copper and cobalt production at the rate of twenty-five per centum per annum;

(e) in paragraph 6 by the deletion of clause (c) and the substitution therefor of the following:

(c) at the rate of zero per centum per annum for any dividend paid by any former Zambia Consolidated Copper Mining Company or any other mining company involved in copper and cobalt production;

(f) in the proviso to paragraph 7 by the insertion after sub-paragraph (iii) of the following new sub-paragraphs:

(iv) tax required to be deducted from any interest, royalties and management fees paid by the former Zambia Consolidated Copper Mining Company or any other mining company involved in copper and cobalt production to its shareholders or affiliates or any lender of money shall in each case be deducted at the rate of zero per centum per annum; and

(v) tax required to be deducted from any payment of interest on Government Bonds shall be the final tax.

APPENDIX  
(Section twenty-three)EIGHTH SCHEDULE  
(Section thirty-seven A)

## Approved Share Option Schemes

1. In this Schedule, "trustee" means the person, by whatever name called, having the management or control of a scheme which is or was an approved share option scheme.

2. (1) Where any scheme is established by or on behalf of an employer under which some or all of the employees (including Directors) or such employer become entitled to acquire shares or an interest in shares in the issued or authorised equity capital of such employer or of some other entity specified in sub paragraph (2) (b) (i), an application may be made for that scheme to be approved by the Commissioner-general.

(2) The Commissioner-General shall approve any share option scheme if satisfied that the constitution (whether by trust deed or otherwise) and rules relating to the scheme have as their main objective the entitlement to acquire shares or an interest in shares as described in sub-paragraph (1), and that the entitlement is, for a set number of shares, at a fixed price, for a specific type of share and during a set period of times:

Provided that—

(a) the scheme is established in the Republic by or on behalf of an employer carrying on business wholly or partly within the Republic and employees who are citizens or permanent residents of the Republic regardless of the place where the duties of that employment are performed; and

(b) the constitution and rules—

(i) provide for the participation by all employees of the employer meeting clearly defined criteria or all employees of designated holding or subsidiary companies of the employer or other business enterprises which the Commissioner-General accepts as being closely affiliated with the employer in accordance with this Act;

(ii) restricts the criteria for participation so as to exclude employees who are not individuals or have not worked for the employer or entities specified in item (i) for a minimum of twenty hours per week during the period of two years to eligibility, or for at least five months as seasonal full-time personnel during such period;

(iii) restrict the criteria for participation so as to limit the total number of shares or interests in shares to be acquired under the scheme by any one employee to one-fifth of all of the shares and interests in shares issued or required to be issued in terms of the scheme;

(iv) require that, on becoming eligible for participation, all employees are advised by the employer in writing, of their eligibility, of the constitution and rules of the scheme, of the results of the scheme over the last ten financial years of operation or since inception if the scheme has been established for less than ten years and.



of the pricing formula and period over which the option may be exercised, and of the risk and benefits associated with participation in such schemes in general and the employer's scheme in particular, except that the price of the shares shall be fixed at the time the option is given and the price shall not be less than the market value of the shares at that time, and only ordinary shares of the company may participate in the scheme;

- (v) require that all shares and interests in shares acquired through the scheme are registered, with the details of the prices at which shares and interests in shares are issued, exercised, sold or relinquished whether by effluxion of time or otherwise;
- (vi) require that all administrative and other expenses of the scheme are borne by the employer, and that the scheme shall be independently audited by the auditors or independent accountants who examine or report on the financial statements of the employer;
- (vii) require that eligibility for participation in the scheme and the extent of that participation shall be on the basis of the period of service with the employer or other entities specified in item (i), basic emoluments over a defined period, termination of service benefits from employer or other entities specified in item (i) or a combination of some or all of these criteria which shall apply equally to all employees who are in the service of the employer and are not on notice by either party for termination of service at the date eligibility arises except to the extent that the rules of the scheme permit accrued or other terminal benefits to be applied for participation in the scheme;
- (viii) require that in the case of a scheme which provides for acquisition of shares or interests in shares in a private company notice of intent to sell or relinquish such shares or interests in shares shall be deemed to be given by an employee participating in the scheme on termination of service or on death, and that any amount unpaid in respect of the acquisition price of such shares or interests in shares, shall be recoverable by the trustees from the sale proceeds, but not exceeding that amount in the event of death;
- (ix) require the trustees and the employer to act as taxpayer agent for an employee participating in the scheme for all matters connected with the scheme including the taxation of proceeds of shares or interests in shares sold or otherwise disposed of by employees participating in the scheme;
- (x) provide that the scheme may be terminated at the instigation of an employer where shares and interests in shares held by employees participating in the scheme are the subject of unconditional arrangements for sale by participants at fair market value as certified by the auditor of the scheme and the employer.

- (xi) do not prevent an employee participating in the scheme from selling the employees shares on the basis of the price formula detailed herein after five years from acquisition of such shares or interests in shares, except where the date of termination of service with the employer or of the death of the employee in the course of the realisation of that employee's estate is earlier;
- (xii) do not provide for the issue to or acquisition by employees of shares as interests in shares conveying a preference as to dividends unless such shares participate in dividends declared on ordinary shares in the same entity in excess of the level of such preference and confer rights of participation on dissolution or redemption no less favourable than the rights attributable to holders of such ordinary shares or interests therein;
- (xiii) do not require any participating employee to contribute additional amounts beyond amounts determinable in terms of the constitution and rules at the date of the employee agreeing to participate in the scheme;
- (xiv) do not permit the rules or constitution to be amended in a manner detrimental to employees participating in the scheme without the consent of the trustees, and without confirmation from the Commissioner-General;
- (xv) do not permit the granting of credit for any amount towards financing the exercise of an option to acquire shares.

3. (1) In this Schedule "employee" or "employer" includes any employee or employer specified in paragraph 2 (2) (b) (i) except that as regards provision of financial information where an option scheme extends to holding or subsidiary companies or affiliates financial information shall be provided only to employees participating in the scheme or to employees eligible to participate in the scheme in respect of a company in which they are or will be entitled to acquire shares or interests in shares and that the auditors required in terms of paragraph 2 (2) (b) (vi) shall apply only to the employer who undertakes the administration of the fund or its procurement and, if more than one, to such employer having the largest number of participants in the scheme;

(2) In this Schedule "shares" means any shares issued by a company duly incorporated under the written laws of the Republic or elsewhere conveying rights to an undivided share of its distributable profits and of proceeds arising on dissolution or winding-up of such company and "interest in shares" means an employee's entitlement to shares held by or on behalf of such a scheme and to the employee's right, if any, to exercise an option to acquire shares.

4. (1) An application for approval of any share option scheme under paragraph 2, may be made by the trustees of the scheme or a sponsoring employer prior to appointment of such trustees in writing to the Commissioner-General, and the application shall be accompanied by a copy of the instrument constituting the scheme and of the rules relating to the scheme.

(2) Within one month of submission of any application referred to in sub-paragraph (1), the Commissioner-General shall inform the applicant in writing of approval or rejection of the share option scheme and of the charge year in relation to which it is approved.

(3) Where any share option scheme has been approved by the Commissioner-General under sub paragraph (2) for any charge year, the scheme shall be deemed to be approved for each subsequent charge year unless the Commissioner-General withdraws approval under sub-paragraph (5).

(4) Where there is any alteration to the instrument constituting any share option scheme approved by the Commissioner-General under this Schedule or to any rules relating to any such scheme, the trustee of the scheme shall forthwith inform the Commissioner-General in writing of the alteration; and, if the Commissioner-General is not so informed, the approval of the scheme shall be deemed to have been suspended as from the date of the alteration.

(5) The Commissioner-General shall at any time by notice in writing withdraw approval of any share option scheme if satisfied that—

(a) the conditions set out in paragraph 2 on which the approval of the scheme was granted have not been complied with; or

(b) there has been any alteration to the instrument constituting the scheme or to any rules relating to it resulting in the non-compliance with the conditions set out in paragraph 2.

(6) In the event of suspension or withdrawal of approval in respect of a share option scheme the Commissioner-General shall ensure, as far as practical that employees participating in the scheme are not prejudiced as regards transactions they have irrevocably committed themselves to prior to receiving notification of such suspension or withdrawal.

5. Where under this Schedule the Commissioner-General rejects an application to approve a share option scheme, or suspends or withdraws approval from any scheme, any person aggrieved by the refusal of the Commissioner-General to grant approval or by the suspension or withdrawal of any approval, may appeal therefrom as if the refusal or suspension or withdrawal of approval were a determination of the Commissioner-General under this Act.

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