GOVERNMENT OF ZAMBIA

ACT

No. 10 of 2012

Date of Assent: 19th December, 2012

An Act to amend the Income Tax Act.

[21st December, 2012

ENACTED by the Parliament of Zambia. Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2012, 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 1st January, 2013, 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 December, 2013, and in relation to each subsequent charge year.

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

(a) the insertion, in the appropriate places, of the following new definitions:

" agro-processing " means subjecting any farming produce produced in Zambia to any process which materially changes the farming produce in substance, character or appearance thereby making it a food product, but does not include—

(a) processing of that farming produce into alcoholic and non-alcoholic beverages, sugar crystals, flour or maize meal; or

(b) further or additional processing of the farming produce by a third party;

" collective investment scheme " means a collective investment scheme registered under the Securities Act; and Cap. 354

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(b) the deletion of the definitions of "person with disability" and "business" and the substitution therefor of the following definitions—

" business " includes:

(a) any profession, vocation or trade;

(b) any adventure or concern in the nature of trade whether singular or otherwise;

(c) manufacturing;

(d) farming;

(e) agro-processing; and

(f) hedging; and

" person with disability " has the meaning assigned to it in the Persons with Disabilities Act, 2012.

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Amendment of section 37

3. Section *thirty-seven* of the principal Act is amended by the deletion of the words "one million, eight hundred and sixty thousand Kwacha", wherever they appear, and the substitution therefor of the words "three million and sixty thousand Kwacha".

Amendment of section 64A

4. Section *sixty-four A* of the principal Act is amended in subsection (2) by the deletion of the words "two hundred million Kwacha" and the substitution therefor of the words "eight hundred million Kwacha".

Amendment of section 65

5. Section *sixty-five* of the principal Act is amended in subsection (2) by the deletion of the words "eighty-seven".

Repeal and replacement of section 74

6. The principal Act is amended by the repeal of section *seventy-four* and the substitution therefor of the following new section:

Double taxation agreements and mutual assistance in tax matters

74. (1) The President may enter into an agreement, which may have retrospective effect, with the Government of any other country or territory—

(a) to prevent, mitigate or discontinue the levying, under the laws of the Republic and of such other country or territory, of taxes in respect of the same income; or

(b) for the exchange of information on tax matters or for mutual assistance in tax matters with the objective of rendering reciprocal assistance—

(i) in the determination of credits and exemptions in respect of Zambian tax and foreign tax;

(ii) in the provision of data on fraud, civil and criminal tax offences;

(iii) in the administration and collection of taxes under the tax laws of the Republic and such other country or territory;

(iv) in the carrying out of tax examinations in Zambia or abroad; and

(v) in the carrying out of simultaneous or joint tax examinations.

(2) Any information received by a country or territory under an agreement entered into under subsection (1) shall be treated as secret in the same manner as information obtained under the domestic laws of that country or territory and shall be disclosed only to persons or authorities involved in the assessment, collection enforcement, prosecution or determination of appeals in relation to, the taxes under this Act.

(3) Subsection (2) shall not be construed so as to impose on a country or territory the obligation to—

(a) carry out administrative measures at variance with the laws and administrative practices of that country or territory;

(b) supply information which is not obtainable under the laws of that country or territory or under the laws of Zambia; or

(c) supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

(4) The Minister shall lay a copy of an agreement referred to in subsection (1) before Cabinet for approval.

(5) The President shall, as soon as practicable after the conclusion and approval of any agreement under this section, notify the public of the terms of the agreement by statutory instrument, and the agreement shall, from the date of commencement of the statutory instrument, have effect as if enacted under this Act as long as the agreement has the effect of law in the other country or territory.

Amendment of section 78

7. Section *seventy-eight* is amended—

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

(1) a person who fails to pay tax in accordance with section *seventy-seven*—

(a) on or before the date on which the tax is due;

(b) within thirty days of the date of notice of assessment from which the tax assessed is due; or

(c) in the case of provisional tax, within fourteen days of the date on which that payment is due;

is liable to the penalty specified in subsection (2); and

(b) in subsection (2), by the insertion, immediately after the words "each month", of the words "or part thereof".

Amendment of section 87

8. Section *eighty-seven* of the principal Act is amended by the insertion, immediately after subsection (5), of the following new subsection:

(6) Notwithstanding subsection (1) to (5), where a person, pursuant to subsection (1), claims that the pay-as-you-earn tax for any charge year has been paid or is deemed to have been paid in excess by deduction or otherwise, that person shall make the claim, in writing, or by way of return to the Commissioner-General, not later than six years after the end of the charge year to which the claim relates.

Amendment of section 97B

9. Section *ninety-seven B* of the principal Act is amended by—

(a) the deletion of subsection (2); and

(b) the renumbering of subsection (3) as subsection (2).

Amendment of Second Schedule

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

(a) in subparagraph *(1)* of paragraph 5—

(i) by the deletion in item *(j)*, after the semi colon, of the word "and";

(ii) by the deletion in item *(k)* of the full stop and the substitution therefor of a semi colon and the word "and"; and

(iii) by the insertion, immediately after item *(k)*, of the following:

(l) collective investment scheme to the extent to which the income is distributed to participants in the collective investment scheme; and

(b) in item *(aa)* of paragraph 7, by the deletion of the words "first declaration" and the substitution therefor of the words "commencement of operations of the approved investment".

Amendment of Fifth Schedule

11. The Fifth Schedule to the principal Act is amended—

(a) in paragraph 4A by the deletion of the word "approved" and the substitution therefor of the words "operating in a multi-facility economic zone or industrial park declared";

(b) in subparagraph (5) of paragraph 10 by the insertion, immediately after the word "farming", of a comma and the words "agro-processing";and

(c) in paragraph 22 by the deletion of subparagraph (2) and the substitution therefor of the following:

(2) The deduction to be allowed for a charge year for a mine shall be twenty-five percent of the original expenditure to the extent that equipment, plant, machinery or anything related to capital expenditure as defined under paragraph 19 of this Part is brought into use in the carrying out of mining operations and the expenditure has not already been allowed as a deduction.

Amendment of Ninth Schedule

12. The Ninth Schedule to the principal Act is amended in Part II by the deletion of the figure "200,000,000" and the substitution therefor of the figure "800,000,000".

Amendment of Charging Schedule

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

(a) in subparagraph (1) of paragraph 2 by—

(i) the deletion in item *(c)* of the words "twenty-four million Kwacha" and the substitution therefor of the words "twenty-six million, four hundred thousand Kwacha";

(ii) the deletion in item *(d)* of the words "twenty-four million Kwacha" and "thirty-three million, six hundred thousand Kwacha" and the substitution therefor of the words "twenty-six million, four hundred thousand Kwacha" and "thirty-six million Kwacha", respectively;

(iii) the deletion in item *(e)* of the words "thirty-three million, six hundred thousand Kwacha" and "sixty-eight million, four hundred thousand Kwacha" and the substitution therefor of the words "thirty-six million Kwacha" and "seventy million, eight hundred thousand Kwacha", respectively; and

(iv) the deletion in item *(f)* of the words "sixty-eight million, four hundred thousand Kwacha" and the substitution therefor of the words "seventy million, eight hundred thousand Kwacha";

(b) in paragraph 5 by—

(i) the insertion in item *(b)*, immediately after the word "farming", of the words "and agro-processing";

(ii) the insertion in item *(d)*, immediately after the word "from", of the words "the production of organic fertiliser and";

(ii) the deletion of items *(e)*, *(f)* and *(g)* and the substitution therefor of the following:

(e) on the income of a business enterprise operating in a priority sector, multi-facility economic zone or industrial park declared under the Zambia Development Agency Act, 2006, tax shall be charged at—

Act No. 11 of 2006

(i) zero percent for a period of five years starting from the year of commencement of operations of the approved investment;

(ii) fifty percent from the sixth to the eighth year after commencement of operations of the approved investment; and

(iii) seventy-five percent from the ninth to the tenth year;

(f) the Commissioner-General shall withdraw the incentives granted under item *(e)* if a business enterprise fails or neglects to fulfil its pledge for employment of citizens of Zambia under the Zambia Development Agency Act, 2006;

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(g) tax to be deducted from any dividend declared by a company operating in a priority sector, multi-facility economic zone or industrial park declared under the Zambia Development Agency Act, 2006, shall, for a period of five years from the date of commencement of operations of the approved investment, be at the rate of zero percent per annum;

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(c) in paragraph 7, by the deletion of items (i) and (ii) and the substitution therefor of the following:

(i) tax required to be deducted from any payment of interest arising from savings or deposit accounts held with financial institutions to an individual under section *eighty-two A* shall be deducted at the rate of zero percent per annum; and

(ii) tax required to be deducted from any payment of interest, other than interest arising from savings or deposit accounts held with financial institutions to an individual under section *eighty-two A* shall be deducted at the rate of fifteen percent per annum and shall be the final tax; and

(d) by the insertion of the following new items:

(iv) tax required to be deducted from the payment of a management or consultancy fee deemed under section *eighteen* to be from a source within the Republic shall be at the rate of twenty percent; and

(v) tax required to be deducted from the payment of royalties to a non-resident deemed under section *eighteen* to be from a source within the Republic shall be at the rate of twenty percent.