

GOVERNMENT OF ZAMBIA

ACT

No. 15 of 2019

Date of Assent: 27th December, 2019

An Act to amend the Income Tax Act.

[27th December, 2019

ENACTED by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2019, and shall be read as one with the Income Tax Act, in this Act referred to as the principal Act.

Title and commencement
Cap. 323

(2) This Act shall come into operation on 1st January, 2020.

2. Section 2(1) of the principal Act is amended by the—

Amendment
of section 2

(a) deletion of the definition of “ farming ” and the substitution therefor of the following definition:

“ farming ” means the cultivation of crops and plants, raising of livestock or poultry, beekeeping and rearing fish but excludes the letting of any property or provision of a service ancillary to farming; and

“ livestock ” has the meaning assigned to the word under the Animal Health Act, 2010;; and

Act No. 27
of 2010

(b) insertion of the following definition in the appropriate place in alphabetical order:

“ approved collective investment scheme ” means a collective investment scheme approved under the Securities Act, 2016;.

Act No. 41
of 2016

- Amendment of section 77 **3.** Section 77(4) of the principal Act is amended by the deletion of the words “ or section *sixty-four* ” and the substitution therefor of the words “ section *sixty-four* or section *sixty-fourA* ”.
- Amendment of section 78 **4.** Section 78 of the principal Act is amended—
- (a) in subsection (1), by the deletion of the words “ section *seventy-seven* ” and the substitution therefor of the words “ sections seventy-seven, eighty-one, eighty-one A, eighty-two and eighty-two A ”; and
- (b) in subsection (2), by the deletion of the words “ section seventy-seven ” and the substitution therefor of the words “ sections seventy-seven, eighty-one, eighty-one A, eighty-two and eighty-two A. ”
- Amendment of section 81 **5.** Section 81 of the principal Act is amended by the insertion of the following new subsection immediately after subsection (1A):
- (1B) A person who fails to submit a return in accordance with subsection (1A) is liable to pay a penalty of three hundred and forty penalty units for each month or part thereof during which that failure continues.
- Amendment of section 81A **6.** Section 81A of the principal Act is amended by the insertion of the following new subsection immediately after subsection (1A):
- (1B) A person or partnership that fails to submit a return under subsection (1A) is liable to pay a penalty of three hundred and forty penalty units for each month or part thereof during which that failure continues.
- Amendment of section 82A **7.** Section 82A (1)(b) of the principal Act is amended by the insertion of the words “ other than interest payable to a bank or financial institution licensed under the Banking and Financial Services Act, 2017 ” immediately after the word “ Republic ”.
- Act No. 7 of 2017
- Amendment of section 97A **8.** Section 97A of the principal Act is amended by the—
- (a) deletion of subsection (1) and the substitution therefor of the following:
- (1) In this section —
- “ actual conditions ” means conditions which are made or imposed between any two or more associated persons on their commercial or financial relations;
- “ arm’s length conditions ” means conditions or no conditions which would have been

made or imposed if persons were not associated with each other;

“equity holder ” means a person who—

- (a) holds ordinary shares in the company; or
- (b) is a loan creditor of the company in respect of a loan other than a normal commercial loan;

“ fixed rate preference shares ” for the purposes of this Act and despite the Companies Act, 2017, means shares which—

Act No. 10
of 2017

- (a) do not carry any conversion right or rights to acquire 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 shares; and
- (c) on payment, do not carry any rights to an amount exceeding the consideration;

“ loan creditor ” 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;

except that a person carrying on the business of banking is not for the purposes of this Part, 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;

“normal commercial loan” means a loan—

- (a) which does not carry any conversion rights or rights to acquire any additional shares or securities;
- (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 loan; and
- (c) in respect of which the loan creditor is entitled, on repayment, to an amount which does not exceed the loan;

“ordinary share” means a share other than a fixed rate preference share;

“reference price” means—

- (a) the monthly average London Metal Exchange cash price;
- (b) the monthly average Metal Bulletin cash price to the extent that the base metal or precious metal price is not quoted on the London Metal Exchange; or
- (c) the monthly average cash price of any other metal exchange market as approved by the

Commissioner-General to the extent that the base metal price or precious metal price is not quoted on the London Metal Exchange or Metal Bulletin;

“ related or associated persons ” include—

- (a) parties connected directly or indirectly through shareholding, equity or partnerships;
- (b) any joint venture owned or operated jointly with an unrelated person;
- (c) connected persons;
- (d) parties connected through direct or indirect management control and capital; or
- (e) any existing arrangements, whether in writing or not, that benefit two or more entities whose conditions are deemed not to be at arm’s length;

“ relative ” has the meaning assigned to the word in the Anti-Corruption Act, 2012;

Act No. 3 of 2012

“ security ” includes securities not creating or evidencing a charge on assets, and any—

- (a) interest paid or payable by a company on money advanced without the issue of a security for the advance; or
- (b) other consideration given by a company for the use of money so advanced;

which is treated as if paid or payable or given in respect of a security issued for the advance by the company; and

“ subsidiary ” has the meaning assigned to the word in the Companies Act, 2017;

Act No. 10 of 2017

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- (b) deletion of subsection (11) and the substitution therefor of the following:
- (11) Where a claim or credit is given by virtue of any agreement made under section *seventy-four* for foreign tax, within the meaning of section *seventy-five*, in computing the amount of that credit—
- (a) the foreign tax to be taken into account as having been paid or as being payable by the claimant shall exclude any amount of foreign tax which would not have been paid or payable if the computation of the income on which the foreign tax is chargeable had, so far as it includes income to which the claim or amended claim relates, been made on arm's length conditions; and
- (b) the amount of income to be taken into account as having been received by the claimant and in respect of which the claimant is or may be given credit for foreign tax shall be determined, so far as it includes income to which the claim or amended claim relates, on arm's length conditions.
- (c) insertion of the following new subsection immediately after subsection (11):

(11A) For the purposes of subsection (11), a claim shall be made no later than twelve months from the date of the assessment.;

(d) deletion of subsections (13), (14), (15), (16) and (17) and the substitution therefor of the following:

(13) Despite any other provisions in this Act, for any transaction for the sale or purchase of base metals or any substance containing base metals or precious metals, directly or indirectly, between related or associated persons, the applicable sale or purchase price of those metals or recoverable metals shall be the reference price.

(14) The reference price may be adjusted to take into account any premiums or discounts on account of quality or grade of the base or precious metals sold or purchased.

(15) Where the base or precious metal is sold by a resident or a non-resident person to a related or associated person who sells that base or precious metal to an unrelated person—

(a) the resident person or non-resident person shall, provide to the

Commissioner-
General on the
Commissioner-
General's request,
all third party sale
agreements and all
third party invoices
relating to that sale;
or

- (b) if the sale by the
resident person or
non-resident person
to an unrelated
person involves no
further milling,
blending, treatment,
or refinement or
transformation to
the base or precious
metals and the
subsequent agreed
price is higher than
the reference price
as at the month the
base or precious
metal is sold by the
resident or the non-
resident person to a
related or associated
person, the agreed
price in that case
shall be the sale
price for the pur-
pose of computing
the seller's taxable
income in the Repu-
blic.

- (16) For the purposes
of determination of a
related or associated
person, two persons
are connected with
each other if —

- (a) one of them is an individual and the other is that person’s spouse, a relative of that person or of that person’s spouse, or the spouse of that relative; or
- (b) one of them is a trustee of a settlement and the other is—
 - (i) a person who, in relation to that settlement, is a settlor; or
 - (ii) a person who is connected with a person falling within subparagraph (i).

9. The Second Schedule to the principal Act is amended by the insertion in paragraph 5(1) (L) of the word “ approved ” immediately before the word “ collective ”.

Amendment of Second Schedule

10. The Fifth Schedule to the principal Act is amended in paragraph 22(2) by the deletion of the words “ twenty five ” and the substitution therefor of the word “ twenty ”.

Amendment of Fifth Schedule

11. The Charging Schedule to the principal Act is amended in the proviso to paragraph 7 by the deletion of item (x) and the substitution therefor of the following:

Amendment of Charging Schedule

- (x) tax required to be deducted from the payment of interest, except interest on Treasury Bills and Government bonds to a non-resident, shall be at the rate of twenty percent.

12. The principal Act is amended by the deletion of the words “ Lusaka Stock Exchange ” wherever it appears and the substitution therefor of the words “ Lusaka Securities Exchange ”.

General amendment
