

## GOVERNMENT OF ZAMBIA

**ACT**

No. 1 of 2009

Date of Assent: 31st March, 2009

**An Act to amend the Income Tax Act.**

[ 3rd April, 2009

ENACTED by the Parliament of Zambia.

Enactment

**1.** (1) This Act may be cited as the Income Tax (Amendment) Act, 2009, 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 April, 2009, 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, 2010, 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) in the definition of “business” —

(i) by the insertion in paragraph (c) of the word  
“and” after the semi colon;

(ii) by the deletion in paragraph (d) of the word  
“and”; and

(iii) by the deletion of paragraph (e);

(b) by the deletion of the definition of “non-traditional product” and the substitution therefor of the following new definition: “non-traditional product” means anything produced or manufactured in the Republic, excluding—

(a) minerals;

(b) electricity;

(c) services; or

(d) cotton lint exported without an export permit from the Minister responsible for commerce, trade and industry; and

(c) by the insertion in the appropriate place of the following new definitions: “hydro and thermo power generation”

means the production of electrical energy using physical and non-physical sources of energy such as moving water, petroleum, coal, biomass and any other source of energy except wood;

“public benefit activity” means an activity listed in the Tenth Schedule to this Act and any other activity determined by the Minister, by notice in the *Gazette*, to be of a benevolent nature having regard to the needs, interest and well being of the general public; and

“public benefit organisation” means an organisation which is—

- Cap. 388 (a) a company limited by guarantee incorporated in the Republic under the Companies Act;
- Cap. 186 (b) a trust incorporated under the Land (Perpetual Succession) Act;
- Cap. 119 (c) an association registered under the Societies Act;
- Cap. 134 (d) an educational institution registered under the Education Act;
- Cap. 297 (e) a health institution registered under the Medical and Allied Professions Act;
- Cap. 142 (f) an amateur sporting association registered under the Sports Council of Zambia Act; or
- (g) any association or organisation registered under the laws of Zambia;

exclusively established for the purpose of providing a public benefit activity.

Amendment  
of section 21

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

Amendment  
of section 30

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

(a) by the deletion of subsection (1A);

and

(b) in the proviso to subsection (2) by —

(i) the insertion immediately after clause (i) of the following new clause:

(ii) in the case of a loss incurred by a person carrying on hydro and thermo power generation, the loss shall not be carried forward beyond ten subsequent charge years after the charge year in which the loss was incurred; and

(ii) the renumbering of clauses (ii) and (iii) as (iii) and (iv) respectively.

5. The principal Act is amended by the repeal of section *thirty-seven* and the substitution therefor of the following new section:

Repeal and replacement of section 37

37. (1) A deduction shall, subject to the provisions of this subsection and subsection (12), be allowed in ascertaining the income from emoluments of an employee for a charge year of any amount paid by the employee during that charge year by way of contribution to any approved fund including the National Pension Scheme Authority, if the fund to which the contribution is made continues to be an approved fund for that charge year:

Approved deductions

Provided that no deduction shall be allowed under this subsection in respect of any contribution other than a contribution —

(a) which is not a contribution in arrear, in this subsection referred to as a current contribution; or

(b) which is a special lump sum contribution allowed to be deducted under and in accordance with subsection (2).

(2) A contribution paid by an employee—

(a) in respect of services rendered by the employee, while resident in the Republic, to that employee's employer prior to the date of the employee becoming a member of the approved fund to which the contribution is paid; or

(b) in respect of a period when the employee was resident and employed in the Republic prior to

the date of the employee becoming a member of a fund within paragraph (c) of the definition of approved fund or a fund approved under paragraph 5 of the Fourth Schedule to which the contribution is paid;

in order that the employee may qualify for benefits under the approved fund to which the contribution is paid in respect of such prior services or period shall be a special lump sum contribution and shall, for the purposes of subsection (1), be treated as a current contribution for the charge year or current contributions for the charge years, in such amounts as the Commissioner-General may direct.

(3) The deduction to be allowed to an employee for a charge year in respect of the employee's current contributions to approved pension funds shall not exceed—

(a) fifteen per centum of the employee's income from emoluments liable to tax which have been received for that charge year from any employer who established, adhered to or continued the said approved pension fund, the fifteen per centum to be calculated before any deduction under this subsection; or

(b) one million, eight hundred and sixty thousand kwacha; whichever is the less.

(4) The total deductions to be allowed to an employee for a charge year in respect of current contributions to an approved fund within the meaning of paragraph (c) of the definition of approved fund and a fund approved under paragraph 5 of the Fourth Schedule, shall not exceed fifteen per centum of the income from emoluments of the employee liable to tax before allowing any deduction under this subsection for that charge year or one million, eight hundred and sixty thousand kwacha, whichever is the less.

(5) The total of the deduction to be allowed for a charge year under subsections (3) and (4) shall not exceed fifteen per centum of the income from emoluments of the employee liable to tax before allowing any deduction under this subsection for that charge year or one million, eight hundred and sixty thousand kwacha, whichever is the less, and in any case shall not exceed the assessable income of the employee for the charge year before allowing the deductions under this subsection, subsection (9) and sections *thirty*, *thirty two*, *thirty six* and *forty one*.

(6) A deduction shall, subject to the provisions of this subsection, be allowed in ascertaining the gains or profits of an employer for a charge year of any amount paid during that charge year by the employer by way of contribution to an approved fund established for the benefit of the employees, including an approved fund within the meaning of paragraph (c) of the definition of approved fund and a fund approved under paragraph 5 of the Fourth Schedule, if the fund to which the contribution is made continues to be an approved fund for that charge year:

Provided that no deduction shall be allowed under this subsection in respect of any contribution other than a contribution—

- (a) which is not a contribution in arrear, in this subsection referred to as a current contribution; or
- (b) which is a special lump sum contribution which is allowed to be deducted under and in accordance with subsection (7).

(7) A contribution paid by an employer—

- (a) in respect of services rendered to the employer by an employee prior to the date of the employee becoming a member of the approved fund to which the contribution is paid in order that the employee may qualify for benefits under that approved fund in respect of such prior services; or
- (b) for any other reason approved by the Commissioner-General; shall be a special lump sum contribution and shall be treated as a current contribution for such charge year or as current contributions for such charge years and in such amounts as the Commissioner-General may direct.

(8) The deduction to be allowed for a charge year in respect of current contributions to an approved fund other than a fund approved under subsection (1) of section *eleven* of the former Act shall not exceed twenty per centum of the emoluments liable to tax received from the employer in that charge year by each employee in respect of whom the contributions are paid.

(9) A deduction shall, subject to the provisions of this subsection and subsection (12), be allowed from the income of an individual for a charge year of any amount paid by the individual during that charge year by way of a premium payable under an

approved annuity contract if the pension fund to which the contribution is paid or the annuity contract under which the premium is paid continues to be an approved fund for that charge year and such deduction shall be deducted from the income of an individual before deductions under sections *thirty, thirty two, thirty six and forty one*.

(10) The deduction to be allowed for a charge year under this subsection shall not exceed one million, eight hundred and sixty thousand kwacha or the assessable income of the individual for the charge year before allowing the deduction under this subsection and a deduction under sections *thirty, thirty two, thirty six and forty one*, whichever is the less, except that in the case of an individual who is not resident in the Republic, the deduction shall not exceed an amount equal to the contribution or premium paid, multiplied by the fraction of that individual's assessable income over the individual's world income.

(11) For the purposes of subsection (10) "world income" in relation to any person, means the total amount of that person's income from all sources, excluding the income which is chargeable to tax but which the Commissioner-General is precluded from including in an assessment, the amount of income from each source being substantiated to the satisfaction of the Commissioner-General.

(12) The total of all deductions to be allowed to an individual under subsections (1), (2), (3), (4), (5), (9) and (10) for a charge year shall not exceed one million, eight hundred and sixty thousand kwacha or the assessable income of that individual for that charge year before allowing the deductions under sections *thirty, thirty two, thirty six and forty one*, whichever is the less.

Repeal and  
replacement  
of section 41

6. The principal Act is amended by the repeal of section *forty one* and the substitution therefor of the following new section:

Public  
benefit  
organisation

41. (1) Subject to the other provisions of this section, an amount paid by a person during a charge year to a public benefit organisation shall be deducted from the income of that person for that charge year if—

- (a) the payment is in money or money's worth;
- (b) the payment is made for no consideration;
- (c) subject to subsections (2) and (3), the Minister approves the public benefit organisation to which the payment is made:

Provided that an approval by the Minister may be given retrospectively; or

(d) the payment is made to a public benefit organisation that is owned by the Government.

(2) Where a public benefit organisation is owned by the Government, the organisation shall not require the Minister's approval.

(3) The Minister may withdraw an approval given under paragraph (c) of subsection (1), if the public benefit organisation—

(a) is not exclusively providing a public benefit activity;

(b) submits false information in the organisation's application to the Minister for approval as a public benefit organisation; or

(c) uses resources for a purpose other than that provided for in the organisation's objectives.

(4) A deduction in the charge year under this section shall be allowed before a deduction under sections *thirty*, *thirty-one*, *thirty-two* and *thirty six* and shall not exceed fifteen per centum of the assessable income of a person for that charge year.

7. Section *forty-six* of the principal Act is amended by the deletion of subsections (5), (6), (7) and (8).

Amendment  
of section 46

8. Section *fifty six* of the principal Act is amended—

Amendment  
of section 56

(a) by the insertion immediately after subsection (1) of the following new subsection:

(2) The accounts referred to in subsection (1) shall be audited accounts, in the case of a company.; and

(b) by the renumbering of subsections (2), (3), (4) and (5) as (3), (4), (5) and (6) respectively.

9. The principal Act is amended by the repeal of section *sixty four B*.

Repeal of  
section 64B

10. Section *seventy seven* of the principal Act is amended by the deletion of subsection (1D).

Amendment  
of section 77

11. Section *seventy eight* of the principal Act is amended in subsection (1)—

Amendment  
of section 78

(a) by the insertion in paragraph (a) of the word “or” after the semi-colon;

- (b) by the deletion in paragraph (b) of the word “ or ”; and  
(c) by the deletion of paragraph (c).

Amendment  
of section  
79A

**12.** Section *seventy nine A* of the principal Act is amended in subsection (4) by the insertion immediately after the words “public auction” of a coma and the words “sealed tender or bids”.

Amendment  
of principal  
Act

**13.** The principal Act is amended—

(a) by the deletion of the words “Mines and Minerals Act” wherever they appear and the substitution therefor of the words “Mines and Minerals Development Act, 2008”; and

Act No. 7 of  
2008

(b) by the deletion of the words “ Small Enterprises Development Act ” wherever they appear and the substitution therefor of the words “ Zambia Development Agency Act, 2006”.

Act No. 11 of  
2006

Amendment  
of Second  
Schedule

**14.** The Second Schedule to the principal Act is amended

(a) in sub-paragraph (1) of paragraph 5, by—

(i) the insertion at the end of clause (j) of the word “ and ”; and

(ii) the insertion immediately after clause (j) of the following new clause:

(k) statutory body.;

(b) in paragraph 7, by the deletion in clause (p) of the words “ Investment Act, 1986 ” and the substitution therefor of the words “Zambia Development Agency Act, 2006”; and

Act No. 11 of  
2006

(c) in paragraph 9 by the deletion of sub-paragraphs (4) and (5).

Amendment  
of Fifth  
Schedule

**15.** The Fifth Schedule to the principal Act is amended by the deletion of sub-paragraph (2) of paragraph 22 and the substitution therefor of the following new sub-paragraph:

(2) The deduction to be allowed for a charge year for a mine shall be one hundred per centum of the original expenditure to the extent that the expenditure has not already been allowed as a deduction.

Repeal and  
replacement  
of Tenth  
Schedule

**16.** The principal Act is amended by the repeal of the Tenth Schedule and the substitution therefor of the Tenth Schedule set out in the Appendix to this Act.



17. The Charging Schedule of the principal Act is amended—
- Amendment  
of Charging  
Schedule

(a) in sub-paragraph (1) of paragraph 1, by the deletion in clause (b) of the words “six hundred thousand kwacha” and the substitution therefor of the words “nine hundred thousand kwacha”;

(b) in paragraph 2—

(i) by the deletion in clause (c) of subparagraph (1), of the words “seven million, two hundred thousand kwacha” and the substitution therefor of the words “eight million, four hundred thousand kwacha”;

(ii) in sub-paragraph (1)—

(a) by the deletion of clause (d) and the substitution therefor of the following new clause:

(d) on the balance of so much of an individual’s income as exceeds eight million, four hundred thousand kwacha but does not exceed sixteen million and twenty thousand kwacha at the rate of twenty-five per centum per annum; and

(b) by the deletion of clause (e) and the substitution therefor of the following new clause:

(e) on the balance of so much of an individual’s income as exceeds sixteen million and twenty thousand kwacha but does not exceed forty-nine million, two hundred thousand kwacha at the rate of thirty per centum per annum;

(iii) by the deletion in clause (f) of sub-paragraph (1), of the words “forty-eight million kwacha and the substitution therefor of the words “forty-nine million, two hundred thousand kwacha”;

and

(iv) by the deletion of sub-paragraph (2) and the substitution therefor of the following new sub-paragraph:

(2) Where in a charge year, a person receives income by way of gratuity under subsection (1) of section *twenty one* the gratuity shall be charged as follows:

- (i) income not exceeding the amount set out in clause (c) of sub-paragraph (1) of this paragraph shall be exempt; and
- (ii) the balance of so much of an individual's income as exceeds the income specified in clause (i) of this sub-paragraph at the rate of twenty five per centum per annum.;

(c) in paragraph 3—

(i) by the insertion immediately after clause (e) of the following new clause:

(f) where the income from mining operations exceeds eight per centum of the gross sales at the rate determined in accordance with the following formula:

$$Y = 30\% + [a - (ab/c)]$$

Where—

Y=the tax rate to be applied per annum;

a=15%

b=8%; and

c= the percentage ratio of the assessable income to gross sales; and;  
and

(ii) by the renumbering of clause

(f) as (g);

(d) in paragraph 5—

(i) by the deletion of the words “ paragraphs (1) and (4) ” and the substitution therefor of the words “ paragraphs (1), (2), (3),(4), (6) and (7) ”; and

(ii) by the deletion of clause (g) and the substitution therefor of the following new clause:

(g) tax to be deducted from a payment of any management fee, consultancy fee, interest or payment to a non-resident contractor by a person developing a multi-facility economic zone or an industrial park under the Zambia Development Agency Act, 2006, and any person operating in a multi-facility economic zone or an industrial park shall for a period of five years from the first date that the payment is due, be at the rate of zero per centum per annum; and

Act No. 11  
of 2006

(e) in paragraph 6—

(i) by the deletion of clause (c) of sub-paragraph (1) and the substitution therefor of the following clause:

(c) at the rate of zero per centum per annum for any dividends paid by any person carrying on mining operations.; and

(ii) by the deletion in sub-paragraph (2) of the words “ three per centum ” and the substitution therefor of the words “ six percentum ”.

## APPENDIX

*(Section 41)*

## TENTH SCHEDULE

*(Section 2)*

## PUBLIC BENEFIT ACTIVITIES

1. *Welfare and Humanitarian*

- (a)* the care or counselling of education programmes relating to abandoned, abused, neglected, orphaned or homeless children;
- (b)* the care or counselling of poor and needy persons where more than ninety per centum of those persons to whom the care or counselling is provided are over the age of sixty years;
- (c)* the care or counselling of, or the provision of education programmes relating to physically or mentally abused and traumatised persons;
- (d)* the provision of disaster relief;
- (e)* the rescue or care of persons in distress;
- (f)* rehabilitative care or counselling or education of persons with a physical disability;
- (g)* rehabilitative care or counselling or education of prisoners, former prisoners, parolees, convicted offenders and persons awaiting trial;
- (h)* the rehabilitation care or counselling of persons addicted to a dependence forming substance or the provision of preventative and education programmes regarding addiction to a dependence forming substance;
- (i)* conflict resolution, the promotion of reconciliation, mutual respect and tolerance among the various people of Zambia;
- (j)* the promotion or advocacy of human rights and democracy;
- (k)* the protection of the safety of the general public;
- (l)* the promotion or protection of family stability;
- (m)* the provision of legal services for poor and needy persons;

- (n) the provision of facilities or the protection and care of children under school going age or poor and needy parents;
- (o) the promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees;
- (p) community development for poor and needy persons and poverty eradication initiatives, including—
  - (i) the promotion of community based projects relating to self help, empowerment, capacity building, skills development or poverty eradication;
  - (ii) the provision of training support or assistance to community based projects contemplated in clause (i); or
  - (iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage a business, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of statutory instrument; or
- (q) the promotion of access to media and a free press.

## 2. *Health Care*

- (a) the provision of equipment or other aids used by persons with a physical disability, without the recovery of cost;
- (b) the provision of health care services to poor and needy persons;
- (c) the care or counselling of terminally ill persons or persons with a physical or mental disability and the counselling of their families in this regard;
- (d) the prevention of HIV infection and the provision of preventative and education programmes relating to HIV/AIDS;
- (e) the care, counselling or treatment of persons afflicted with HIV/AIDS, including the care or counselling of their families and dependants in this regard;
- (f) the provision of blood transfusion, organ donation or similar

services;

- (g) the provision of primary health care, education, sex education or family planning;
- (h) the prevention of malaria and programmes aimed at the eradication of malaria;
- (i) the prevention of tuberculosis and leprosy infection and the provision of preventative and education programmes relating to tuberculosis and leprosy; or
- (j) the care, counselling or treatment of cancer patients including the counselling of their families and dependants.

3. *Land and Housing*

- (a) the provision of residential care for retired persons, where—
  - (i) more than ninety per centum of the persons to whom the residential care is provided are over the age of sixty years and nursing services are provided by the organisation carrying on such activity; and
  - (ii) residential care for persons who are poor and needy is actively provided by that organisation without the recovery of cost;
- (b) building and equipping of—
  - (i) clinics or day care nursery; or
  - (ii) community centres, sport facilities or other facilities of a similar nature for the benefit of the poor, needy and persons with a physical disability;
- (c) construction of low cost housing for poor and needy persons without the recovery of cost; or
- (d) the promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.

4. *Education and Development*

- (a) the provision of education by a government school or grant aided school as defined in the Education Act;

- (b) the provision of higher education by an institution excluding a private institution as defined in terms of the Technical Education, Vocational and Entrepreneurship Training Act, 1998 or a public university as defined by the University Act, 1999;

Act No. 13  
of 1998

Act No. 11  
of 1999

- (c) educational enrichments, academic support, supplementary tuition or outreach programmes for the poor and needy;
- (d) the training or education of persons with a physical or mental disability;
- (e) the provision of educare or early childhood development services for pre school children to the poor, needy and vulnerable children;
- (f) the training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government;
- (g) the provision of school buildings or equipment for public schools and educational institutions engaged in public benefit activities;
- (h) career guidance and counselling services provided to persons attending any school or higher education institution as envisaged in subparagraphs (a) and (b);
- (i) programmes addressing needs in education provision, learning, teaching, training, curriculum support, governance, whole schools development, safety and security at schools, pre schools or educational institutions engaged in public benefit activities; or
- (j) the provision of scholarships, bursaries and awards for study, research and teaching on such conditions as may be prescribed by the Minister, by statutory instrument.

## 5. Religion

The promotion or practice of religious or ecclesiastical activities that encompass acts of worship, witness, teaching and community service.

## 6. Culture

- (a) the advancement, promotion or preservation of art, culture or customs;

(b) the promotion, establishment, protection, preservation or maintenance of areas, collections or buildings of historical or cultural interest, national monuments, national heritage sites, museums, including art galleries, archives and libraries; or

(c) the provision of youth leadership or development programmes.

7. *Conservation, Environment and Animal Welfare*

(a) the conservation, rehabilitation or protection of the natural environment, including flora, fauna or the biosphere;

(b) the care of animals, including the rehabilitation, or prevention of the ill treatment of animals;

(c) the promotion of, and education and training programmes relating to environment awareness, greening, clean up or sustainable development projects;

(d) the establishment and management of a trans frontier area, involving two or more countries, which

(i) is or will fall under a unified or co ordinated system of management without compromising national sovereignty; and

(ii) is established with the explicit purpose of supporting the conservation of biodiversity, job creation and free movement of animals and tourists across the international boundaries.

8. *Research and Consumer Rights*

(a) research including agricultural, economic, educational, industrial, medical, political, social, scientific and technological research; or

(b) the protection and promotion of consumer rights and the improvement of control and quality with regard to products or services.

9. *Sport*

The administration, development, co ordination or promotion of sport or recreation in which the participants take part on a non professional basis as a pass-time.



**10. *Providing of Funds, Assets or Other Resources***

The provision of—

- (a) funds, assets, services or other resources by way of donation;
- (b) assets or other resources by way of sale for a consideration not exceeding the direct cost to the organisation providing the assets or resources; or
- (c) funds by way of a loan at no charge.

**11. *General***

- (a) the provision of support services to, or promotion of the common interests of public benefit organisations contemplated in this Schedule; or
  - (b) the bid to host or the hosting of any international event approved by the Minister for purposes of this paragraph, having regard to
    - (i) the foreign participation in that event; and
    - (ii) the economic impact that the event may have on the country as a whole.
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