

THE INCOME TAX (AMENDMENT) BILL, 2014

MEMORANDUM

The object of this Bill is to amend the Income Tax Act so as to—

- (a) increase the presumptive tax payable by public service vehicles for carrying passengers;
- (b) restrict the deduction of bad and doubtful debts incurred by banks and other financial institutions when determining taxable income;
- (c) remove the requirement for businesses to submit financial statements and other information with the electronically filed annual return;
- (d) align tax incentives applicable to manufacturing enterprises located in a rural area, multifacility economic zone or industrial park to the Zambia Development Agency Act, 2006;
- (e) align the definition of “minerals” to the definition provided in the Mines and Minerals Development Act, 2008;
- (f) restructure the tax regime for businesses carrying on mining operations; and
- (g) provide for matters connected with, or incidental to, the foregoing.

M. MWENYE,
Attorney-General

A BILL

ENTITLED

An Act to amend the Income Tax Act.

ENACTED by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2014, and shall be read as one with the Income Tax Act, in this Act referred to as the principal Act.

Short title

Cap. 323

5 (2) This Act shall come into operation on 1st January, 2015.

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

Amendment
of section 2

(a) deletion of the definitions of “mineral” and “mining operations” and the substitution therefor of the following:

10 “mineral” has the meaning assigned to it in the Mines and Minerals Development Act, 2008;

Act No. 7 of
2008

“mining operation” has the meaning assigned to it in the Mines and Minerals Development Act, 2008; and

Act No. 7 of
2008

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

“industrial minerals” has the meaning assigned to it in the Mines and Minerals Development Act, 2008;

“mineral processing” means the practice of beneficiating or liberating valuable minerals from their ores, concentrates, or any semi-processed substance belonging to or purchased from another person; 5

“open cast mining operations” has the meaning assigned to it in the Mines and Minerals Development Act, 2008; and

“underground mining operations” has the meaning assigned to it in the Mines and Minerals Development Act, 2008. 10

Amendment of section 18

3. Section *eighteen* of the principal Act is amended in subsection (1) by the insertion after paragraph (i) of the following new paragraph:

(j) income earned by a person resident in Zambia from the carriage of persons, mail, livestock or any other goods shipped or loaded outside Zambia to other destinations outside Zambia. 15

Amendment of section 43A

4. Section *forty-three A* of the principal Act is amended in subsection (3) by the deletion of paragraph (b) and the substitution therefor of the following: 20

(b) the maximum deduction for any debt falling within the classifications set out under the Banking and Financial Services Act shall not exceed the prescribed level of provisioning for the debt required by the Bank of Zambia under the Banking and Financial Services Act, less the value of security or collateral pledged against the debt. 25

Cap. 387

Cap. 387

Amendment of section 46

5. Section *forty-six* of the principal Act is amended by the—

(a) insertion, after subsection (3), of the following:

(4) A return referred to in subsection (1) shall be lodged electronically.; and 30

(b) renumbering of subsection (4) as subsection (5).

Amendment of section 56

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

(1) Notwithstanding subsection (3) of section *fifty-five*, a return furnished under subsection (1) of section *forty-six* by a person may be supported by such accounts in Kwacha and other documents as are necessary to support the return and shall be signed by the person furnishing the return. 35 40

7. The principal Act is amended by the repeal of section *eighty-one AA* and the substitution therefor of the following:

Repeal and replacement of section 81 AA

81AA. (1) In this Act, “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on, and includes—

Definition of permanent establishment

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or other place of extraction or exploitation of natural resources;

(g) a building site, a construction, assembly or installation project or any supervisory activity in connection with the site, project or activity, but only where that site, project or activity continues for a period of more than one hundred and eighty-three days;

(h) a place where an enterprise provides services, including consultancy services, through employees or other personnel engaged by the enterprise for that purpose within the Republic for a period or periods exceeding in the aggregate ninety days in any twelvemonth period commencing or ending in the fiscal year concerned;

(i) in relation to an individual, a place where the individual performs services in the Republic for a period or periods aggregating more than ninety days within any twelve-month period commencing or ending in the fiscal year concerned; and

(j) an installation or structure continuously used for the exploration for natural resources for a period of not less than one hundred and eighty-three days.

(2) Notwithstanding subsection (1), “permanent establishment” does not include—

(a) the use of facilities solely for storage, display or delivery of goods or merchandise belonging to an enterprise;

- (b) the maintenance of a stock of goods or merchandise belonging to an enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to an enterprise solely for the purpose of processing by another enterprise; 5
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise; 10
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or
- (f) the maintenance of a fixed place of business solely for any combination of activities referred to in paragraphs (a) to (e), if the overall activity of the fixed place of business resulting from the combination is of a preparatory or auxiliary character. 15 20

(3) Notwithstanding sub sections (1) and (2), a person, other than an agent of an independent status to whom subsection (4) applies, acting on behalf of an enterprise and habitually exercising in the Republic an authority to conclude contracts on behalf of the enterprise, shall be deemed to have a permanent establishment in the Republic in respect of any activities which that person undertakes for the enterprise, unless the activities of that person are limited to those mentioned in subsection (2) which, if exercised through a fixed place of business, would not make the fixed place of business a permanent establishment under the provisions of that subsection. 25 30

(4) An enterprise of another country shall not be considered to have a permanent establishment in the Republic merely because it carries on business in the Republic through a broker, general commission agent or any other agent of an independent status, if the persons are acting in the ordinary course of their business. 35

(5) Where the activities of an agent referred to in subsection (4) are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between 40

5 that enterprise and the agent in their commercial and financial relations which differ from those which should have been made between independent enterprises, the agent shall not be considered an agent of an independent status within the meaning of this subsection.

10 (6) Notwithstanding subsections (1), (2), (3), (4) and (5), an insurance enterprise of another country shall, except with regard to re-insurance, be deemed to have a permanent establishment in the Republic if it collects premiums within the Republic or insures risks situated in the Republic through a person other than an agent of an independent status to whom subsection (4) applies.

15 (7) The fact that a company which is a resident of the Republic controls or is controlled by a company which is a resident of another country, or which carries on business in the other country, whether through a permanent establishment or otherwise, shall not of itself constitute either company a permanent establishment of either country.

20 8. Section *eighty-two A* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following:

Amendment
of section
82A

(1) Subject to the provisions of this section, a person or partnership making a payment of—

- 25 (a) a management or consultant fee deemed under section *eighteen* to be from a source within the Republic;
- (b) interest and royalties from a source within or deemed under section *eighteen* to be within the Republic;
- (c) rent from a source within the Republic;
- 30 (d) commissions, other than commissions received by an individual whose income is from employment or office;
- (e) a public entertainment fee to, or on behalf of, a person or persons in partnership not resident in the Republic;
- 35 (f) commission deemed under section *eighteen* to be from a source within the Republic;
- (g) winnings from gaming, lotteries and betting; or
- (h) branch profits;

irrespective of whether the payment is made outside the Republic shall, before making any other deduction, deduct tax from the payment referred to in paragraphs (a) to (h) 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 *seventyfour* or the provisions of the Second Schedule. 5

Amendment
of Second
Schedule

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

(a) in subparagraph (2) of paragraph 5, by the deletion of paragraph (c) and the substitution therefor of the following: 10

(c) Millennium Challenge Account Zambia (MCA-Zambia) and any person eligible for income tax exemption as provided in the Millennium Challenge Compact Act, 2013; and 15

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2013

(b) in paragraph 6A, by the deletion of the subheading and the substitution therefor of the following new subheading:

Interest on Treasury bills etc received by public benefit organisation, body, person or trust subject to withholding tax. 20

Amendment
of Fifth
Schedule

10. The Fifth Schedule to the principal Act is amended in subparagraph (5) of paragraph 10 by the insertion, immediately after the word "farming", of the words "mineral processing".

Amendment
of Ninth
Schedule

11. The Ninth Schedule to the principal Act is amended by the deletion of Part I and the substitution therefor of the following: 25

PRESUMPTIVE TAX

PART I

<i>Type of vehicle (sitting capacity)</i>	<i>Amount of tax per vehicle (per annum)</i>	
64 seater and above	K14,400	30
50-63 seater	K12,000	
36-49 seater	K 9,600	
22-35 seater	K 7,200	
18-21 seater	K 4,800	
12-17 seater	K 2,400	35
Below 12 seater (including taxis)	K 1,200	

12. The Charging Schedule to the principal Act is amended--

Amendment
of Charging
Schedule

(a) in paragraph 3, by the deletion of subparagraphs (e) and (f) and the substitution therefor of the following:

5 (e) on income from mineral processing, at the rate of thirty percent;

(f) on the income from mining operations, at the rate of zero percent per annum, and on income from mining operations of industrial minerals, at the rate of thirty percent; and

10 (g) where the income from mining operations of industrial minerals exceeds eight percent of the gross sales, at the rate determined in accordance with the following formula:

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

15 Where

Y= the tax rate to be applied per annum;

a= 15%

b= 8%; and

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

(b) in paragraph 5, by the deletion of subparagraphs (e) and (f) and the substitution therefor of the following:

25 (e) on the income of a business enterprise approved by the Zambia Development Agency and carrying on manufacturing activities in a rural area, a multifacility economic zone or an industrial park tax shall be charged at zero percent for a period of five years starting from the year of commencement of operations of the approved investment;

30 (f) tax to be deducted from any dividend declared by a business enterprise approved by the Zambia Development Agency and carrying on manufacturing activities in a rural area, a multifacility economic zone or industrial park shall be at the rate of zero percent per annum for a period of five years starting from the year of commencement of operations of the approved investment.

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