

THE INCOME TAX (AMENDMENT) BILL, 2018

MEMORANDUM

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

- (a) limit the deductibility of interest on debts owed by certain taxpayers to thirty percent of tax earnings before interest, tax, depreciation and amortisation;
- (b) revise the Kwacha to United States dollar exchange rate to be used in computing indexed losses and indexed capital allowances for persons carrying out mining operations and keeping their books of accounts in United States dollars;
- (c) make mineral royalty non deductible for income tax purposes;
- (d) require a business, to which tax avoidance provisions of the Act apply, to retain documents and other information relating to the business= transactions for a period of ten years;
- (e) authorise the Commissioner-General to appoint a taxpayer as an agent to withhold turnover tax on payments made to suppliers of goods and services;
- (f) introduce a presumptive tax on betting and gaming businesses;
- (g) allow an assessment in respect of transfer pricing cases to be made not more than ten years after the end of the charge year to which the assessment relates;
- (h) increase the maximum penalty that may be prescribed for non-compliance with transfer pricing regulations to twenty-four million Kwacha from three thousand Kwacha;
- (i) introduce penalties for negligent, fraudulent or wilful submission of an incorrect balance sheet, account or other document in respect of the skills development levy under the Skills Development Levy Act, 2016;
- (j) clarify that the income of a public benefit organisation is only exempt from income tax if the public benefit organisation is approved for that purpose by the Minister;
- (k) revise the current turnover tax regime and introduce a flat rate of four percent on businesses with a turnover of eight hundred thousand Kwacha or below per annum;
- (l) dispense with the classification of certain foreign earnings as income originating from the export of non-traditional exports and provide for a maximum tax rate of ten percent on income determined by the Commissioner-General as originating from the export of non-traditional products from farming or agro-processing;

N.A.B. 15, 2018

20th November, 2018

- (m) reduce the company income tax rate to fifteen percent from thirty-five percent for companies that add value to copper cathodes;
- (n) increase the withholding tax rate on dividends, payment or distribution of branch profits and payment of interest to a non-resident to twenty percent from fifteen percent; and
- (o) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
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, 2018, 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

5 (2) This Act shall come into operation on 1st January, 2019.

2. Section 29 of the principal Act is amended by the—

Amendment of
section 29

(a) deletion of subsection 1(a) and the substitution thereof of the following:—

10 (a) in ascertaining business gains or profits in a charge year, there shall be deducted the losses and expenditures, other than of a capital nature, incurred in that year wholly and exclusively for the purposes of the business, except that a deduction shall not be
15 allowed on gross interest expense that exceeds thirty percent of the tax earnings before interest, tax, depreciation and amortisation; and

(b) insertion of the following new subsections immediately after subsection (2):

20 (3) Despite subsection (1) (a), interest, including disallowed interest, is subject to the deduction of withholding tax in accordance with section 82A.

N.A.B. 15, 2018

- Act No. 7 of
2017
Cap. 255
Act No. 27
of 1997
- (4) Interest on which a deduction is not allowed under this section may be carried forward and treated as incurred during the next charge year, except that interest shall not— 5
- (a) exceed thirty percent of the tax earnings before interest, tax, depreciation and amortisation; and
- (b) be carried forward for more than five years. 10
- (5) Section 97A applies to interest which is allowable as a deduction under this section or which would, but for this section, be allowable as a deduction. 15
- (6) This section does not apply to an institution registered under the Banking and Financial Services Act, 2017, the Pension Scheme Regulation Act, or the Insurance Act, 1997; 20
- (7) For the purposes of this section—
- “ gross interest expense ” means the interest paid or accrued by a business in a charge year; 25
- “ interest ” includes interest on all forms of debt, payments that are economically equivalent to interest and expenses incurred in connection with the raising of finance to the extent that the incidental costs of raising finance are not covered by section 44(n); and 30
- “ tax earnings before interest, tax, depreciation and amortisation ” means the sum of taxable income, gross interest expense, depreciation and amortisation. 35

3. Section 30A of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following: Amendment
of section
30A

(2) For the purposes of this section indexed losses shall be computed as follows:

5 $[1 + (R2 - R1)/R1] \times$ loss brought forward Where:

R1 is the Kwacha against the United States dollar at the average exchange rate for the accounting year preceding the accounting year in which the loss is being claimed; and

10 R2 is the Kwacha against the United States dollar at the average exchange rate for the accounting year in which the loss is being claimed.

(3) The Kwacha against the United States Dollar exchange rate to be used for the purpose of subsection (2) is the average Bank of Zambia mid rate for the relevant accounting years.

4. Section 33 of the principal Act is amended by the deletion of subsection (3) and the substitution therefor of the following: Amendment
of section
33

(3) For the purposes of this section indexed capital allowances shall be computed as follows:

20 $[1 + (R2 - R1)/R1] \times$ capital allowance] Where:

R1 is the Kwacha against the United States dollar at the average exchange rate for the accounting year preceding the accounting year in which the capital allowance is being claimed; and

25 R2 is the Kwacha against the United States dollar at the average exchange rate for the accounting year in which the capital allowance is being claimed.

(4) The Kwacha against the United States dollar exchange rate to be used for the purpose of subsection (3) is the average Bank of Zambia mid rate for the relevant accounting years.

(5) Despite the other provisions of this Act, a capital allowance granted under this section shall be granted for a charge year irrespective of the period covered by the accounts being assessed.

Repeal of section 43B	5. The principal Act is amended by the repeal of section 43B.	
Amendment of Section 44	6. Section 44 of the principal Act is amended by the repeal of paragraph (o) and the substitution therefor of the following:	
	(o) provision for a contingent employee cost that is not paid out to the employee in the charge year; and	5
Act. No. 11 of 2015	(p) mineral royalty payable under the Mines and Minerals Development Act, 2015.	
Amendment of Section 55	7. Section 55 of the principal Act is amended—	
	(a) in subsection (1), by the deletion of the words “ books and accounts ” and the substitution therefor of the words “ books, accounts, documents, records and other information ”;	10
	(b) by the insertion of the following new subsection immediately after subsection (1):	15
	(2) Despite subsection (1), businesses covered by Part IX shall retain books, accounts, documents, records and other information relating to the business for ten years from the date of the last entry in those books, accounts, documents, records and that other information.;	20
	(c) by the renumbering of subsections (2), (3) and (4) as subsections (3), (4) and (5) respectively; and	
	(d) by the deletion of the figure “ (3) ” in subsection (5) and the substitution therefor of the figure “ (4) ”.	
Amendment of Section 64	8. Section 64 of the principal Act is amended by the insertion of the following new subsection immediately after subsection (2):	25
	(3) The Commissioner-General may appoint a person as an agent to withhold turnover tax before making any payments for the supply of goods or services.	
Amendment of Section 64A	9. Section 64A of the principal Act is amended by the -	30
	(a) insertion of the following new subsection immediately after subsection (2):	
	(3) The Commissioner General may make a standard assessment requiring a person carrying on the business of betting and gaming to pay a presumptive tax as set out in Part III of the Ninth Schedule.; and	35

(b) renumbering of subsection (3) as subsection (4).

10. Section 65 of the principal Act is amended by the—

Amendment
of Section
65

(a) deletion of subsection (2) and the substitution therefor of the following:

5 (2) Subject to subsection (3), an assessment shall not be made for a charge year after six years from the end of that charge year.

10 (3) Despite subsection (2), an assessment may be made for a charge year after six years from the end of that charge year—

(a) in cases of fraud or wilful default; or

(b) for the purposes of—

15 (i) sections 21, 88, 91, 97A, 97B, 97C, 97D or 113, except that an assessment for the purposes of sections 97A, 97B, 97C and 97D shall not be made after ten years from the end of that charge year;

(ii) part VII;

20 (iii) paragraph 25 of the Fifth Schedule; or

(iv) granting tax credits as provided in the Charging Schedule.; and

25 (b) renumbering of subsections (3) and (4) as subsections (4) and (5) respectively.

11. The principal Act is amended by the repeal of section 97AA.

Repeal of
section
97AA

12. Section 97C(7) of the principal Act is amended by the deletion of the words “ten thousand” and the substitution therefor of the words “eighty million”.

Amendment
of section
97C

30 **13.** Section 100 (1) (e) of the principal Act is amended by the—

Amendment
section 100

(a) insertion of the following new subparagraph immediately after subparagraph (ii):

- (iii) in relation to a person liable to pay skills development levy in accordance with the Skills Development Levy Act, 2016
- (A) in the case of negligence, zero point two five percent of the amount; 5
- (B) in the case of wilful default, zero point five percent of the amount; and
- (C) in the case of fraud, zero point seven five percent of the amount; of any income omitted or understated, in consequence of such failure, incorrect return, information or submission.; and 10
- (b) renumbering of subparagraph (iii) as subparagraph (iv).
- Amendment of Second Schedule **14.** The Second Schedule to the principal Act is amended—
- (a) by the deletion of paragraph 6(1) and the substitution therefor of the following: 15
- (1) There is exempt from tax the income of a public benefit organisation established for the promotion of religion or education, or for the relief of poverty or other distress, if— 20
- (a) in relation to the people of the Republic, the income may not be expended for any other purpose; and
- (b) the Minister has approved the exemption from tax the income of that public benefit organisation.; and 25
- (b) in paragraph 6(2), by the deletion of the comma and the words “ body or persons or trust ” immediately after the word “ organisation ”. 30
- Amendment of Third Schedule **15.** The Third Schedule to the principal Act is amended by the deletion of paragraph 3.
- Amendment of Fifth Schedule **16.** The Fifth Schedule to the principal Act is amended—
- (a) in paragraph 19, by the insertion of the following new definition in the appropriate place: 35
- “ non contiguous ” means not one despite touching or sharing a common border;;

(b) by the deletion of paragraph 22A; and

(c) in paragraph 23(1), by the deletion of the words “ not contiguous ” and the substitution therefor of the word “non-contiguous”.

5 **17.** The Ninth Schedule to the principal Act is amended by the deletion of Part II and the substitution therefor of Parts II and III set out in the Appendix. Amendment of Ninth Schedule

18. The Charging Schedule to the principal Act is amended— Amendment of Charging Schedule

10 (a) in paragraph 3 (1) (g), by the deletion of the figure “ 6 ” and the substitution therefor of the figure “ 6 (2) ”;

(b) in paragraph 5, by the—

(i) deletion of subparagraph (c) and the substitution therefor of the following:

15 (c) the maximum rate of tax on income the Commissioner-General determines as originating from the export of non-traditional products is fifteen percent, except that where the Commissioner-General determines income as originating from the export of non-traditional products from farming or agro-processing, the maximum rate of tax on that income is ten percent;; and

20

25 (ii) insertion of the following new subparagraph immediately after subparagraph (e):

30 (f) the maximum rate of tax on income received by a company, from the manufacture of products made out of copper cathodes, is fifteen percent per annum.;

(c) in paragraph 6(1)—

(i) by the insertion of the words “ payable to residents ” immediately after the word “ dividends ” in item (a); and

35 (ii) by the deletion of item (b) and the substitution therefor of the following:

- (b) the rate of twenty percent for—
 - (i) dividends payable to non-residents; and
 - (ii) payments to non-resident contractors;; 5
- (d) in paragraph 6A, by the deletion of the word “ fifteen ” and the substitution therefor of the word “ twenty ”; and
- (e) in the proviso to paragraph 7, by the insertion of the following new item immediately after item (ix): 10
 - (x) tax required to be deducted from the payment of interest to a non resident shall be at the rate of twenty percent.

APPENDIX (Section 17) 15

PART II

TAX ON TURNOVER

<i>Turnover per annum</i>	<i>Tax Rate</i>
K800,000 or below	4 percent

PART III 20

TAX ON BETTING AND GAMING

<i>Type of Game</i>	<i>Monthly Tax Rate or Monthly Tax Amount</i>
1. Casino Live Games	20 percent of gross takings
2. Casino Machine Games	35 percent of gross takings 25
3. Lottery Winnings	35 percent of net proceeds
4. Betting	10 percent of gross takings
5. Gaming:	
(a) Slot Machines (Bonanza)	K250 per machine
(b) Gaming Machines (Limited Pay Out)	K500 per machine 30

NOTES:

1. “ Net proceeds ” means the gross proceeds less sums paid out for the prizes
2. “ Gross takings ” means the total amount staked by players less winnings payable 35