

# THE INCOME TAX (AMENDMENT) BILL, 2013

## MEMORANDUM

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

- (a) increase the tax free income threshold for individuals from twenty-six thousand four hundred kwacha to thirty-six thousand kwacha per annum;
- (b) introduce withholding tax on profits distributed by branches of foreign companies at the standard rate of fifteen percent;
- (c) increase withholding tax to twenty percent from fifteen percent on payments to nonresident contractors and commissions and public entertainment fees paid to nonresidents;
- (d) introduce withholding tax at the rate of twenty percent on winnings from gaming, lotteries and betting and make it a final tax;
- (e) reduce the withholding tax rate to ten percent from fifteen percent on rental income, make it a final tax and exclude the payment of rental income from turnover tax;
- (f) provide for access to financial information required for tax purposes by the Commissioner-General;
- (g) repeal the tax incentives granted pursuant to the Zambia Development Agency Act, 2006, except for a rural business enterprise or business enterprise operating in a priority sector, a multifacility economic zone or an industrial park; and
- (h) provide for matters connected with, or incidental to, the foregoing.

M. MALILA,  
*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, 2013, 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 1<sup>st</sup> January, 2014, and shall have effect in relation to the charge of tax for the charge year which ends on 31<sup>st</sup> December, 2014, and in relation to each subsequent charge year.

2. Section *two* of the principal Act is amended in subsection (1)  
10 by the insertion, in the appropriate places, of the following new definitions:

Amendment  
of section 2

“branch profits” means the profits of a foreign company derived from the operation of its business within the Republic which are not re-invested in the Republic;

15 “industrial park” has the meaning assigned to it in the Zambia Development Agency Act, 2006;

Act No. 11 of  
2006

“multi- facility economic zone” has the meaning assigned to it in the Zambia Development Agency Act, 2006;

Act No. 11 of  
2006

20 “property loan stock company” means a company listed on the Lusaka Stock Exchange which is involved in real estate investment and development and has a capital structure that consists of property linked units; and

25 “property linked unit” means a unit comprising a share and a debenture in a company, where the share and debenture are linked together and cannot be disposed of independently of each other.

3. Section *twenty-one* of the principal Act is amended by the deletion of subsection (5) and the substitution therefor of the following:

Amendment  
of section 21

(5) Where, upon the termination of the services of an individual in an office or employment, income is received by way of—

(a) compensation for loss of office or employment;  
or 5

(b) repatriation allowance or severance pay, on termination by reason of redundancy, early retirement, normal retirement or death;

the first thirtyfive thousand Kwacha of the total or aggregate income received, as applicable, shall be exempt from income 10 tax.

Amendment  
of section  
46A

4. Section *forty-six A* of the principal Act is amended in the proviso to subsection (1) by the deletion of the words “one thousand nine hundred and twenty Kwacha” and the substitution therefor of the words “the amount specified in subparagraph (c) of paragraph 15 2 of the Charging Schedule.”

Insertion of  
new section  
48A

5. The principal Act is amended by the insertion, immediately after section *forty-eight* of the following new section:

Disapplication  
of secrecy  
obligations

48A. (1) Subject to subsection (2), the provisions of this Act shall have effect notwithstanding any obligation as to 20 secrecy or other restriction on the disclosure of information imposed under the Banking and Financial Services Act, the Evidence Bankers Books Act, the Accountants Act, 2008 and the Legal Practitioners Act in respect of information required by the Commissioner-General for the purposes of 25 this Act.

Cap. 387  
Cap. 44  
Act No. 13  
of 2008  
Cap. 30

(2) Subsection (1) shall not apply to information received from, or obtained on, a client by a legal practitioner—

(a) in the course of ascertaining or receiving instructions from a client; or 30

(b) in defending or representing a client, or concerning judicial, administrative, arbitration or mediation proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after 35 such proceedings.

Amendment  
of section 63

6. Section *sixty-three* of the principal Act is amended in subsection (1) by the insertion, immediately after paragraph (vii), of the following new paragraphs:

(viii) income from gaming, lotteries and betting from which tax in respect of that charge year has been deducted under section *eighty-two A*; and

5 (ix) income from letting of property from which tax in respect of that charge year has been deducted under section *eighty-two A*.

7. Section *seventy eight* of the principal Act is amended in subsection (1) by the deletion of paragraph (b) and the substitution thereof of the following:

Amendment  
of section 78

10 (b) within the period of the notice of assessment during which the tax assessed is due;

8. Section *seventy-nine C* of the principal Act is amended by the deletion in subsection (1) of the words “without registration that may be required under any law relating to the registration of  
15 charges upon land”.

Amendment  
of section  
79C

9. Section *eighty-two A* of the principal Act is amended by—

Amendment  
of section  
82A

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

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

(a) a management or consultant fee deemed under section *eighteen* to be from a source within the Republic;

25 (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; or

(g) winnings from gaming, lotteries and betting;

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), (b), (c), (d), (e), (f) and (g) 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 *seventy four* or the provisions of the Second Schedule. 5

(2) A person or partnership to whom subsection (1) applies shall account for tax as if the payment were subject to Part VI and for the purposes of this subsection, payment shall be deemed to be made when the income is received by the recipient as provided in section *five*, except that — 10

(a) this section shall not apply to interest payable on a bill of exchange drawn for one hundred and eighty days or less; 15

(b) the payment of an amount in excess of the original issue price for any treasury bill or similar financial instrument sold at a discount from face value which shall be deemed for the purposes of this section to be payment of interest when the treasury bill or any other similar financial instrument is presented for redemption or rediscount; 20

(c) the Commissioner General may determine that the provisions of paragraph (b) or (d) of subsection (1) shall not apply in any particular case and shall, in writing, notify the person or partnership concerned that the provisions of paragraph (b) or (d) of subsection (1), as applicable, shall not apply to such person or partnership to the extent and to the period specified in such notification; and 25 30

(d) in the case of paragraph (b) of subsection (1), the direction to be issued under paragraph (c) shall only be for interest arising from a property linked unit of a property loan stock company; and 35

(b) the re-numbering of of subsections (2), (3), (4), (5), (6), (7) and (8) as subsections (3), (4), (5), (6), (7), (8) and (9) respectively. 40

10. Section *ninety-five* of the principal Act is amended by the insertion, immediately after subsection (3), of the following new subsection:

Amendment  
of section 95

5 (4) For the purposes of determining liability to tax under subsection (1), the Commissioner-General may—

(a) re-characterise a transaction or an element of a transaction that was entered into as a tax avoidance scheme; and

10 (b) re-characterise a transaction the form of which does not reflect the substance.

11. Section *ninety-seven A* of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following:

Amendment  
of section  
97A

15 (2) This section shall apply where a taxpayer engages in one or more commercial or financial transactions with an associated person and the actual conditions made or imposed in that transaction or transactions are different from the arm's length conditions and there is, except for this section, a reduction in amount of income taken into account in computing  
20 the income of one of the associated persons referred to in subsection (1), in this section referred to as "the first taxpayer," chargeable to tax for a charge year, in this section referred to as "the income year".

12. Section *ninety-seven C* of the principal Act is amended by the deletion of subsections (4) to (7) and the substitution therefor of the following:

Amendment  
of section  
97C

(4) For the purposes of section *ninety seven A* and *ninety seven B*, a person is associated with another if—

30 (a) the person participates directly or indirectly in the management, control or capital of the other; or

(b) the persons participate directly or indirectly in the management, control or capital of both of them.

(5) For the purposes of section *ninetyseven A* and *ninety seven B*, where conditions are made or imposed between  
35 associated persons in their commercial or financial relations—

(a) it shall be assumed, unless the contrary is shown to the satisfaction of the Commissioner-General, that different conditions or no conditions would have been imposed if those persons were not associated; and

(b) where a claim is made under subsection (4) of section *ninetyseven A*, it shall be for the claimant to prove that the claim satisfies that subsection.

(6) The Minister may, by statutory instrument, prescribe—

(a) the direct and indirect participation in the management, control or capital of a person and different provision that may be made in relation to different cases or different classes of each case; 5

(b) the determination of whether the conditions of a controlled transaction under subsection (3) of section *ninety-seven A* are consistent with the arm's length conditions and the quantum of any adjustment made to the income of the first person or the second person in relation to subsections (3) and (4) of section *ninety-seven A*; and 10 15

(c) documentation rules in relation to section *ninety-seven A* that specify the information and documents required to be kept by a person in relation to section *ninety-seven A* and penalties for noncompliance of the Regulations. 20

(7) Regulations under this section may create offences punishable with a fine not exceeding ten thousand penalty units for a failure to comply with the provisions of the Regulations.

Amendment  
of  
First  
Schedule

12. The First Schedule to the principal Act is amended by the— 25

(a) deletion of paragraph 8 and the substitution therefor of the following:

(8) Income includes the difference between the market value of the shares at the date of exercise of the share options and the option price or the gross sale proceeds or proceeds from sale of options in respect of shares allotted, reserved, vested or acquired by an individual in terms of a share option scheme net of any amount paid for the acquisition or exercise of the shares or options by the individual concerned, and shares or options sold shall be deemed to be the shares or options longest held, except that the relief afforded by subsection (5) of section *twentyone* shall extend to such income to the extent not absorbed by compensation received for loss of office or employment where the gross sale proceeds are receivable within one year of termination of services.; and 30 35 40

(b) insertion, immediately after paragraph 9, of the following new paragraph:

(10) Income includes benefits arising from gaming, betting and lottery winnings.

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13. The Second Schedule to the principal Act is amended by the—

Amendment  
of Second  
Schedule

(a) insertion, immediately after clause

(b) of sub-paragraph (2) of paragraph 5, of the following new clause:

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(c) Millennium Challenge Account Zambia (MCAZambia) and any implementing entity appointed under the Millennium Challenge Compact Act, 2013; and

Act No. 6 of  
2013

15  
(b) deletion in paragraph 7, of clauses (p), (u) and (aa).

14. The Fifth Schedule to the principal Act is amended in paragraph 4A by the insertion immediately after the words “person operating in” of the words “a priority sector or in respect of a priority product”.

Amendment  
of Fifth  
Schedule

20  
15. The Charging Schedule to the principal Act is amended by the—

Amendment  
of Charging  
Schedule

(a) deletion in sub-paragraph (1) of paragraph 2 in—

(i) item (c) of the words “twenty-six thousand four hundred kwacha” and the substitution therefor of the words “thirty-six thousand kwacha”;

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(ii) item (d) of the words “twenty-six thousand four hundred kwacha” and “thirty-six thousand kwacha” and the substitution therefor of the words “thirty-six thousand kwacha” and “forty-five thousand six hundred kwacha”, respectively; and

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(iii) item (e) of the words “thirty-six thousand kwacha” and the substitution therefor of the words “forty-five thousand six hundred kwacha”;

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



(e) on the income of a rural business enterprise or business enterprise in a priority sector operating in 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; 5

(f) tax to be deducted from any dividend declared by a rural business enterprise or business enterprise in a priority sector operating in a multifacility economic zone or an 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; 15

(c) deletion of sub-paragraph (1) of paragraph 6 and the substitution therefor of the following:

(1) Tax required to be deducted from any payment made under section *eighty one* and section *eightyone A* shall be deducted at 20

(a) the rate of fifteen percent for dividends;

(b) the rate of twenty percent for payments nonresident contractors;

(c) such other rate as the Commissioner-General directs to give effect to the provisions of any agreement made under section *seventy four* or to give effect to any provision in the Second Schedule; or 25 30

(d) the rate of zero percent per annum for any dividends paid by any person carrying on mining operations.;

(d) insertion, immediately after paragraph 6, of the following new paragraph: 35

Tax on profit distributions

6A. Tax required to be deducted from a payment or distribution of branch profits shall be at the rate of fifteen percent.; and

(e) insertion in the proviso to paragraph 7 of the following new clauses: 40

- 5 (vi) tax required to be deducted from the payment of commissions to a nonresident deemed under section *eighteen* to be from a source within the Republic shall be at the rate of twenty percent;
- (vii) tax required to be deducted from the payment of public entertainment fees shall be at the rate of twenty percent;
- 10 (viii) tax required to be deducted from the payment of winnings from gaming, lotteries and betting shall be at the rate of twenty percent; and
- (ix) tax required to be deducted from the payment of rent shall be at the rate of ten percent.
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