

THE SALES TAX BILL, 2019

MEMORANDUM

The objects of this Bill are to—

- (a) introduce a sales tax on the supply of goods in the Republic on manufacturers, producers, distributors, wholesalers, and retailers and the importers of goods into the Republic;
- (b) impose a sales tax on the supply of services in the Republic by service providers and importers of services into the Republic;
- (c) exempt certain supplies, imports and exports of goods and services from sales tax;
- (d) provide for the registration and de-registration of taxable suppliers;
- (e) provide for the use of electronic devices, equipment or any other devices;
- (f) provide for the collection of sales tax;
- (g) repeal and replace the Value Added Tax Act, 1995; and
- (h) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,
Attorney-General

N.A.B. 7, 2019
1st April, 2019

THE SALES TAX BILL, 2019

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SCHEDULE

A BILL

ENTITLED

An Act to introduce a sales tax on the supply of goods in the Republic on manufacturers, producers, distributors, wholesalers, and retailers and the importers of goods into the Republic; impose a sales tax on the supply of services in the Republic by service providers and importers of services into the Republic; exempt certain supplies, imports and exports of goods and services from sales tax; provide for the registration and de-registration of taxable suppliers; provide for the use of electronic devices, equipment or any other devices; provide for the collection of sales tax; repeal and replace the Value Added Tax Act, 1995; and provide for matters connected with, or incidental to, the foregoing.

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ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Sales Tax Act, 2019, and shall
5 come into operation on the date appointed by the Minister by
statutory instrument.

Short title
and
commence-
ment

2. In this Act, unless the context otherwise requires—
“accounting period” means the accounting period referred to in
section 17;
10 “assessment” means the determination by the Commissioner-
General of an amount of tax which a person is liable to pay
under this Act;

Interpretation

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- “authorised officer” means a person appointed as an authorised officer under section 4;
- Cap. 321 “Authority” means the Zambia Revenue Authority established by the Zambia Revenue Authority Act;
- “business” includes— 5
- (a) a trade, occupation, profession or venture conducted or carried on by one or more persons for gain or profit;
- (b) supply or acquisition of goods including capital goods or services in connection with commencement or 10 closure of business; and
- (c) provision for gain or profit by a club, association, society or any other body of facilities or benefits to its members on payment of a subscription or any other consideration; 15
- “calendar month” means the first day to the last day of a month under the Gregorian calendar;
- “certificate of registration” means a certificate issued in accordance with section 22;
- Cap. 321 “Commissioner-General” means the Commissioner-General 20 appointed in accordance with the Zambia Revenue Authority Act;
- Cap. 43 “document” has the meaning assigned to the word under the Evidence Act;
- “electronic fiscal device” means an electronic device, 25 approved by the Authority, which has a fiscal memory capable of generating and storing information and has the capacity to generate or record tax invoices and other reports and transmitting invoice data in real time to the tax invoice management system of the Authority, and includes a 30 fiscalised electronic register, an electronic fiscal printer and an electronic signature device;
- “electronic fiscal printer” means an electronic device, approved by the Commissioner-General, which may be connected to a point of sale device so as to capture 35 information for tax purposes, print invoices and other fiscal documents and the transaction data to the Authority in real time;

- 5 “electronic signature device” means an electronic device,
approved by the Commissioner-General, which assigns a
unique electronic signature and invoice number to a
transaction issued by a point of sale or related system and
transmits the transaction data to the Authority in real time;
- “export” has the meaning assigned to the word in the Customs
and Excise Act; Cap. 322
- 10 “fiscal memory” means a programmable read only memory
which is permanently built into a fiscalised electronic register
or electronic fiscal device to store tax information at the
time of transaction and only accessible by the Authority
or an authorised person;
- 15 “fiscalised electronic register” means an electronic fiscal
device, approved by the Authority, which has a fiscal
memory to record and calculate transactions for purposes
of tax at a point of transaction and which secures the
transaction against unauthorised manipulation and deletion
and which transmits the transactions in real time or, where
20 a transaction cannot be transmitted in real time, in batches,
to the invoice management system of the Authority in real
time;
- “goods” includes movable property, an article or substance
of value, immovable property and interest in land, but does
not include money, securities or any chose in action;
- 25 “import” has the meaning assigned to the word in the Customs
and Excise Act and includes importation of services; Cap. 322
- “input” means goods and services used or acquired to be
used by a taxable supplier in the course or furtherance of
a business that takes place in the Republic;
- 30 “repealed Act” means the Value Added Tax Act, 1995; Cap. 331
- “supplier” includes—
- (a) a person; or
 - (b) any Government ministry, department, spending
agency or statutory body;
- 35 “supply” includes, in relation to—
- (a) a service—
 - (i) the provision of goods on lease, hire, credit or loan;
and

- (ii) any other activity which the Minister may, by statutory instrument, declare to be a service for the purposes of this Act, but does not include the provision of a service without consideration, except as the Minister may prescribe; 5
- (b) a good—
- (i) a supply of goods;
- (ii) goods given as a gift; and
- (iii) where goods are obtained by a taxable supplier for the purposes of a business 10
carried on by the taxable supplier or in the course of business, are manufactured for supply, appropriated or transferred for the supplier's own use or consumption, or used or consumed by the supplier's 15
employees or partners, or otherwise in connection with a business carried on by the supplier; and
- (c) any other dealings with the goods and services which the Minister may, by statutory instrument, declare 20
to be a supply of goods and services for the purposes of this Act, but does not include an importation of the goods and services or any dealing with the goods and services which the Minister may, by statutory instrument, declare not to be a 25
supply of the goods and services for the purposes of this Act;
- “tax” means sales tax imposed in accordance with this Act;
- “tax invoice” means an invoice issued by a taxable supplier, showing details relating to a supply; 30
- “tax return” means a return prescribed in terms of section 18;
- “taxable supplier” means a registered supplier or a person required to be registered in accordance with section 22 and includes a recipient of an imported service under 35
section 6;
- “taxable supply” means a supply of goods or services made by a taxable supplier in the course or furtherance of a business that takes place in the Republic, but excludes an exempt supply; 40

- “taxable value” means the taxable value computed under section 11;
- “Tribunal” means the Tax Appeals Tribunal established by the Tax Appeals Tribunal Act, 2015; Act No. 1 of 2015
- 5 “withholding tax agent” means a person appointed as a withholding tax agent by the Authority under section 3; and
- 10 “Zambia Information and Communications Authority” means the Zambia Information and Communications Authority established by the Information Communication Authority Act, 2009. Act No. 15 of 2009

PART II

ADMINISTRATION

3. (1) The Authority is responsible for the administration and performance of the functions specified in this Act. Administration of Act
- (2) Subject to the Zambia Revenue Authority Act, the Commissioner-General shall perform the functions of the Authority specified in this Act. Cap. 321
- (3) The Authority may appoint a person as an agent to withhold tax on a payment made by a taxable supplier.
4. (1) Despite section 3, the Authority may appoint an authorised officer as it considers necessary for the performance of specific functions of the Authority. Authorised officer
- (2) An authorised officer shall be provided with a certificate of appointment which shall be *prima facie* evidence of that officer’s authority to perform the functions so stated.
- (3) An authorised officer carrying out functions under this Act shall, on demand by any person who is affected by the performance of the functions of the officer, produce for inspection the certificate referred to in subsection (2).

PART III

SALES TAX

5. A tax, shall be charged, levied, collected and paid in respect of— Scope of tax
- 35 (a) a taxable supply; or
- (b) a taxable importation of goods or services into the Republic.

Imposition of tax on goods and services Cap. 322	<p>6. (1) A taxable supplier shall pay a tax in respect of a taxable supply or importation of goods and services at the time of supply.</p> <p>(2) Tax on the importation of goods under this section shall be charged as if it were a duty under the Customs and Excise Act and is payable, accordingly by the importer of the goods. 5</p> <p>(3) A recipient of an imported service shall pay tax on the importation of the service, where that service is performed, undertaken or utilised in the Republic or the benefit of the supply is for a recipient in the Republic.</p> <p>(4) Despite subsection (3), a recipient who is not a registered supplier, and receives an imported service, is only required to account for the tax if that recipient meets the threshold of taxable value that the Minister may, by statutory instrument, prescribe. 10</p>
Issuance of tax invoice	<p>7. (1) A taxable supplier shall issue a tax invoice for supplied goods and services in the manner and form specified by the Commissioner-General. 15</p> <p>(2) A tax invoice under subsection (1), shall be issued using—</p> <p style="padding-left: 20px;">(a) an electronic fiscal device;</p> <p style="padding-left: 20px;">(b) accounting software; or</p> <p style="padding-left: 20px;">(c) a pre-printed tax invoice book. 20</p> <p>(3) A taxable supplier who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.</p>
Recording of daily supply	<p>8. (1) A taxable supplier shall record a daily supply in the prescribed manner and form. 25</p> <p>(2) A taxable supplier who fails to comply with this section commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both. 30</p>
Electronic monitoring of compliance	<p>9. The Authority may, through Zambia Information and Communications Authority, collect and record, in real time, transactional data from a taxable supplier for the purpose of ensuring compliance with this Act.</p>
Rate of tax	<p>10. (1) Tax on a taxable supply shall be charged on the taxable value at the rate of— 35</p> <p style="padding-left: 20px;">(a) nine percent in the case of goods and services supplied within the Republic; and</p> <p style="padding-left: 20px;">(b) sixteen percent in the case of imported goods and services.</p>

(2) Despite subsection (1), the Minister may, by statutory instrument, prescribe a lower rate of tax in respect of a taxable supply.

11. The computation of taxable value is as follows:

5 (a) in the case of goods manufactured in the Republic by a taxable supplier and supplied to a person independent of the supplier, the factory cost or the selling price, whichever is higher;

10 (b) in the case of other goods supplied by a taxable supplier, the price at which the goods would have been supplied in the ordinary course of business to a person independent of that supplier;

(c) in the case of taxable goods imported into the Republic, the sum of the following amounts:

15 (i) the value of the taxable goods ascertained for the purpose of customs duty in accordance with the Customs and Excise Act, whether or not customs duty is payable on the goods;

20 (ii) the amount of customs duty payable on the goods; and

(iii) the amount of excise duty payable on the goods; or

(d) in the case of services, the value or price for which the services are provided, and where applicable, the cost of any incidental services.

25 **12.** (1) Goods shall be regarded, for taxation purposes, as having been supplied in the Republic if—

(a) they are supplied within the Republic;

(b) their supply involves installation or assembly at a place within the Republic; or

30 (c) they are exported from the Republic.

(2) For the purposes of this section, where goods, in the course of their removal from one place to another within the Republic, are removed from and reenter the Republic, the removal of those goods shall not be regarded as a removal from or to the Republic.

35 (3) Where the Commissioner-General considers that, in relation to any case or class of cases—

(a) the place at which goods are regarded for taxation purposes as supplied is doubtful; or

Computation
of taxable
value of
goods and
services

Cap. 322

Place of
supply of
goods

(b) the application of the provisions of this section gives rise to inequity or anomaly, because of the taxation laws of any other country or for any other reason the Commissioner-General considers to be significant;

the Commissioner-General may, in relation to that case or class of cases, provide, by administrative rule, for or with respect to the determination, for taxation purposes, of the place of supply in a manner calculated to avoid doubt or rectify or mitigate any inequity or anomaly and any provision so made shall have effect in the relevant case or cases. 10

Place of
supply of
services

13. (1) A service shall be regarded, as a taxable supply in the Republic if the supplier of that service—

(a) has a place of business in the Republic and no place of business elsewhere;

(b) does not have a place of business in the Republic and elsewhere but the supplier's usual place of residence is in the Republic;

(c) has a place of business in the Republic and elsewhere but the place of business most directly concerned with the supply of the services in question is the one in the Republic; or 20

(d) imports the services which are performed.

(2) The Commissioner-General may, where services are supplied wholly or partly in the Republic, but at or near the border between the Republic and another country and whether or not the service is paid for in the Republic, by notice under this subsection, determine that the service shall be regarded for taxation purposes as supplied in the Republic where— 25

(a) the business supplying the service is registered in the Republic; or 30

(b) in the case of a foreign business, the business effectively operates in the Republic.

(3) The place of supply is the place where the service is performed, undertaken or utilised, wholly or partly, in the Republic if the supplier of the service— 35

(a) does not have a place of business in the Republic; or

(b) has a place of business in the Republic and elsewhere but the place of business associated with the supply of the service in question is not in the Republic.

(4) The place of supply of radio, television, telephone or other information and communication technology services, where the signal or service originates outside the Republic, shall be treated as being supplied at the place where the recipient receives the signal or service, except that a consideration is payable for receiving the signal or service.

(5) Where the Commissioner-General considers that, in relation to any case or class of cases—

10 (a) the place at which a service is regarded, for taxation purposes, as supplied is doubtful; or

(b) the application of the provisions of this section gives rise to inequity or anomaly, because of the taxation laws of any other country or for any other reason appearing to the Commissioner-General to be significant;

15 the Commissioner-General may, in relation to that case or class of cases, provide, by administrative rule, for or with respect to the determination, for taxation purposes, the place of supply in a manner calculated to avoid that doubt or rectify or mitigate that inequity or anomaly and any provision so made shall have effect in the relevant case or cases.

14. (1) The time at which the goods are supplied shall be whichever is the earliest of the following:

(a) the time when the goods are removed from the premises of the supplier;

25 (b) the time when the goods are made available to the customer;

(c) the time when payment for the goods is received; or

(d) the time when a tax invoice is issued.

(2) The time of supply of services shall be whichever is the earliest of the following:

30 (a) the time when payment for the services is received;

(b) the time when the tax invoice is issued; or

(c) the time when the services are rendered or performed.

(3) Where, in respect of the supply of goods or services, payment is received or a tax invoice is issued in respect of part of that supply, the time of supply of the goods or services shall be determined in accordance with subsection (1) or (2) and the tax on that part of the supply shall be payable accordingly.

Determina-
tion of time
of supply of
goods and
services

Determina- tion of time of importation Cap. 322	<p>15. For taxation purposes—</p> <p>(a) goods are considered to be imported into the Republic at the time when they are regarded as so imported under the Customs and Excise Act; and</p> <p>(b) services are considered to be imported into the Republic at the time when the service is performed, undertaken or utilised within the Republic.</p>	5
Exemptions	<p>16. The Minister, may by statutory instrument exempt from tax—</p> <p>(a) capital goods;</p> <p>(b) inputs;</p> <p>(c) designated basic and essential goods or services;</p> <p>(d) designated supplies to privileged persons; or</p> <p>(e) exports.</p>	10

PART IV

15

RETURNS, PAYMENTS AND ASSESSMENTS

Accounting period	<p>17. (1) The first accounting period of a taxable supplier shall begin from the effective date of registration and end on the last day of the month and the subsequent accounting period shall be a period of one month ending on the last day of the month of a calendar year.</p> <p>(2) Despite subsection (1), the Commissioner-General may determine a different accounting period for a taxable supplier, subject to the conditions that the Commissioner-General may determine.</p> <p>(3) A taxable supplier may apply, in writing, to the Commissioner-General for a different accounting period from the period specified in subsection (1).</p> <p>(4) The Commissioner-General may, on receipt of an application made in accordance with subsection (3)—</p> <p>(a) grant the application based on the accounting period applied for; or</p> <p>(b) reject the application stating reasons for the rejection.</p>	20 30
Tax returns	<p>18. (1) A taxable supplier shall, in respect of an accounting period, submit to the Commissioner-General a tax return in the prescribed manner and form whether or not there is tax to be paid.</p> <p>(2) A return referred to in subsection (1), shall be submitted not later than the eighteenth day of the month following the end of the accounting period to which it relates.</p>	35

(3) A taxable supplier shall include on the next tax return the underdeclarations and overdeclarations of tax discovered by the taxable supplier to have been made in a previous return.

(4) A withholding tax agent shall submit a return relating to sales tax as may be determined by the Commissioner-General.

(5) A return referred to in subsection (4) shall be submitted not later than the sixteenth day following the end of the accounting period to which it relates or within a time that the Commissioner-General may, by notice, determine.

10 (6) A person who fails to comply with this section is liable to an administrative penalty of two thousand penalty units for each month or part thereof that the failure continues.

15 **19.** (1) A supplier who is required to furnish a return under this Act, shall pay to the Authority, the amount of tax payable in respect of the accounting period to which the return relates, which shall be not later than the last day on which the taxable supplier is required to furnish the return.

Payment of tax

20 (2) Where tax remains unpaid after the day on which it became payable as required under subsection (1), an administrative penalty of five percent of the unpaid tax is payable for each month or part thereof for which the failure continues, except that the penalty shall not accrue on the taxable supplier on the basis of tax withheld by a withholding tax agent.

25 (3) Where a tax is payable as provided in this Act and is not paid within the time allowed, the prescribed interest rate applies, except that the interest will not accrue on the taxable supplier on the basis of tax withheld by a withholding tax agent.

30 (4) A withholding tax agent shall, where the withholding tax agent fails to pay a tax when it becomes payable by that agent's taxable supplier, pay the penalty and interest that the Authority may impose on account of that delay.

35 (5) In this section "prescribed interest rate" means the rate that exceeds, by two percent per annum, the prevailing official discount rate, as published by the Bank of Zambia, which is in force on the day following the payment due date.

40 **20.** (1) The Commissioner-General may assess tax due and interest payable thereon where, the Commissioner-General considers that a taxable supplier has failed to pay any of the tax payable by that taxable supplier because of the taxable supplier's failure to—

Assessment of tax

- (a) keep proper books of account, records or documents as required under this Act;
- (b) register under Part V;
- (c) submit a return required under this Act; and
- (d) submit complete and correct information. 5

(2) The Commissioner-General shall send a notice of an assessment to the taxable supplier concerned which shall notify the taxable supplier of the taxable supplier's right of objection under Part VIII.

(3) Subject to any rights of objection conferred by this Act or 10 any other law, the assessment of the Commissioner-General shall indicate the amount of tax payable, the time when it was due and ought to have been paid, the amount of any interest payable and any other matter incidental thereto.

(4) Despite the provisions of this section, an assessment based 15 on the incorrectness or inadequacy of a return is void if it is not made within two years after the Commissioner-General first had reason to believe it was incorrect or inadequate.

(5) The Commissioner-General may amend an assessment made under subsection (1), as is necessary to give effect to the 20 provisions of this Act and the Commissioner-General may increase, reduce or cancel the taxable supplier's tax liability as the circumstances may require.

(6) An assessed tax under this section is payable within thirty days from the date of the notice of assessment or an earlier date 25 specified in the notice of the assessment.

(7) A taxable supplier who is aggrieved by a decision of the Commissioner-General under this section may lodge an objection in accordance with Part VIII.

(8) Despite subsection (7), a taxable supplier who has lodged 30 an objection is liable to pay a tax as assessed by the Commissioner-General.

Accounts
and
records

21. (1) A taxable supplier shall keep complete, true and updated records relating to the business carried on by that taxable supplier and the records shall include— 35

- (a) records of supplies of taxable goods and services by or to that taxable supplier including tax invoices, receipts, debit notes, credit notes, sales day books, till rolls, records of

- daily gross takings, cash books, asset registers, annual accounts, bank statements, deposit records, stock counts and reconciliation, stock records, and production records;
- 5 (b) records of importation and exportation of taxable goods and services; and
- (c) other records that the Authority may determine.
- (2) A record kept under this subsection shall be—
- (a) maintained for a period of ten years from the latest date to which the record relates;
- 10 (b) in the English language; and
- (c) kept in the Republic, except as otherwise approved by the Authority and subject to conditions that the Authority may consider necessary.
- (3) A taxable supplier who contravenes this section commits
- 15 an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

PART V

REGISTRATION AND DE-REGISTRATION

- 20 **22.** (1) A person who carries on a business in the Republic and meets the registration requirements as prescribed by the Minister shall apply to the Authority for registration as a taxable supplier in the prescribed manner and form.
- (2) Where two or more individuals in partnership carry on a
- 25 business involving the supply of goods or services, registration may be effected in the name of the firm.
- (3) Where a club, association or other body unincorporate carries on a business involving the supply of goods or services, registration may be effected in the name of that body.
- 30 (4) The Authority shall issue a certificate of registration to a taxable supplier in the prescribed manner and form.
- (5) A taxable supplier shall notify the Authority of a change in particulars relating to the taxable supplier, or any business carried on by that taxable supplier.
- 35 (6) Subject to subsection (1), the Authority may de-register a taxable supplier who ceases to meet the registration requirements under this Act.

Registration and de-registration of taxable supplier

(7) The Minister may prescribe the criteria for determination that a taxable supplier has ceased to meet the requirements for registration under subsection (1), de-registration, surrender and cancellation of a registration certificate, by the supplier.

Compulsory registration

23. The Authority shall register a supplier who meets the registration requirements whether or not that supplier has applied for registration. 5

Effective date of registration

24. The registration of a supplier shall take effect—
 (a) in the case of a new business, from the date on which the supplier meets the registration requirements; or 10
 (b) in the case of a continuing business, at the date that the supplier meets the registration requirements.

Exemption from Registration

25. The Minister may, by statutory instrument, exempt, a person or class of persons from the provisions of section 22.

Failure to comply with registration requirements

26. (1) A person commits an offence if that person— 15
 (a) being a taxable supplier, contravenes a term or condition of that supplier's registration; or
 (b) not being a taxable supplier, holds out as a taxable supplier.
 (2) A person convicted of an offence under subsection (1) is 20 liable to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.
 (3) Despite subsection (2), where a supplier who is eligible for registration under section 22 fails to register under that section, the Authority shall charge that supplier a penalty equal to the tax due 25 on the supplies from the time the supplier was due for registration to the date of the assessment in accordance with section 20.
 (4) Where the supplier referred to in subsection (1)(b) receives consideration for the supply of goods or services, that consideration shall be deemed to be inclusive of tax for the purpose of determining 30 the taxable value.

PART VI

COLLECTION AND RECOVERY

Recovery of tax

27. (1) Tax under this Act is a debt due to the Republic and shall be recoverable at the suit of the Commissioner-General in 35 any court, by an attachment of debt, a charge on land or distress.

(2) A tax shown on an invoice as tax chargeable on a supply of goods or services shall be recoverable as tax due from the person issuing the invoice, regardless of whether—

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- (a) the invoice is made out in a form prescribed under this Act;
- (b) tax is chargeable in respect of the supply to which the invoice relates; or
- 5 (c) the person issuing the invoice is a registered supplier.
- (3) For the purposes of any provision of this Act relating to the collection or recovery of tax, a reference to a taxable supplier shall include a reference to any person from whom tax is recoverable by virtue of this section.
- 10 **28.** (1) Despite any other written law, where a taxable supplier from whom a tax is due owns land in the Republic, the Commissioner-General may notify the taxable supplier that the amount of tax due shall be a charge on the land. Charge on land
- (2) The charge referred to in subsection (1)—
- 15 (a) is effective from the date of service of the notice;
- (b) remains valid until the notice is withdrawn; and
- (c) shall be registered in accordance with the Lands and Deeds Registry Act. Cap. 185
- (3) A charge referred to in subsection (1), is subject to an
- 20 encumbrance that exists that is—
- (a) of a nature that the charge under subsection (1) is not capable of being made; or
- (b) higher in priority than the charge by the Authority.
- (4) For the purposes of this section, “land” has the meaning
- 25 assigned to the word in the Lands Act. Cap. 184
- 29.** (1) Where a tax due from a taxable supplier remains unpaid, the Commissioner-General may, by notice in writing, require any other person— Attachment of Debts, etc
- 30 (a) from whom money is due, or is accruing or may become due, to the supplier;
- (b) who holds or may subsequently hold money on account of some person, for or on account of, or for payment to, the supplier; or
- 35 (c) having authority from a person to pay money to the supplier;
- to pay that money, or so much as is sufficient to discharge the tax due from the taxable supplier, in the manner directed by the Commissioner-General as and when it would, but for the notice, be or become payable to the supplier.

(2) A supplier who fails to comply with a notice issued under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five thousand penalty units or ten percent of the amount demanded by the notice, whichever is the higher.

Security and
production
of
evidence

30. (1) The Commissioner-General may, in order to secure the payment of tax by a taxable supplier or compliance with the provisions of this Act, require the taxable supplier concerned to furnish security thereof in the manner, and in the amount, as may be prescribed.

(2) A taxable supplier who without reasonable excuse, fails to comply with a requirement under subsection(1), commits an offence.

Requirement
for early
payment

31. (1) Where the Commissioner-General considers that a tax from a taxable supplier may not be paid within the time allowed by disposition by the supplier's assets, the Commissioner-General may notify the taxable supplier to pay the tax earlier than the due date.

(2) On service of a notice under this section, the provisions of this Act shall apply as though the time allowed by or under this Act for payment by the taxable supplier of the tax concerned had expired.

(3) Where a taxable supplier fails to pay tax in accordance with subsection (1), the taxable supplier commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

Distress

32. (1) Where a tax due from a taxable supplier remains unpaid, an authorised officer may, under a warrant issued by the Commissioner-General, levy distress on the goods and chattels of the supplier.

(2) The authorised officer executing the warrant, with a police officer or other assistants, that the authorised officer considers necessary, may, at any time between sunrise and sunset, break open any premises of the supplier.

(3) Goods and chattels on which distress has been levied under this section shall be kept for ten days either at the premises at which distress was levied or at another place that the authorised officer executing the warrant may consider appropriate, at the cost of the supplier.

(4) If the supplier does not pay the tax due under this Act, together with any costs under subsection (3), the goods and chattels shall be sold by public auction by sealed tenders or bids.

(5) The Authority shall apply proceeds of an auction under subsection (4) towards payment of those costs incidental to the auction and the surplus if any, shall be applied towards payment of the amount due and the balance, if any, shall be paid to the supplier, after deduction of a tax due from a taxable supplier.

(6) A person on whose goods and chattels distress has been levied or is to be levied, or any other person, who fraudulently removes and takes away any goods and chattels to prevent the Commissioner-General from distraining them or completing the distress so levied, or assists in the same, commits an offence and is liable, on conviction, to—

- (a) a fine not exceeding one hundred thousand penalty units or three times the value of the goods taken away, whichever is the greater; or
- (b) imprisonment for a term not exceeding twelve months, or to both.

33. (1) A taxable supplier who is unable to pay a tax due may apply to the Commissioner-General to pay in instalments.

Payment in instalments

(2) The Commissioner-General may, where a taxable supplier has given satisfactory reasons regarding that taxable supplier's inability to pay a tax liability, allow that taxable supplier to pay in instalments.

34. (1) The Minister may, on the recommendation of the Commissioner-General, remit the whole or part of a tax due but not recoverable.

Remission of tax not recoverable

(2) The Minister shall, in remitting the whole or part of the tax as provided in subsection (1), consider whether the—

- (a) taxable supplier has—
- (i) been declared bankrupt under the Bankruptcy Act; or
- (ii) is insolvent as provided in the Corporate Insolvency Act, 2017; and
- (b) debt has been outstanding for a minimum period of six years.

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Act No. 9 of 2017

(3) The Commissioner-General may at the Commissioner-General's discretion remit the whole or part of a penalty or interest under this Act.

(4) A penalty and interest imposed under this Act relating to collection and recovery, is deemed to be a tax.

Credit or relief for overpaid tax

35. (1) The Authority shall, where for any accounting period a taxable supplier claims that tax has been paid in excess of the taxable amount by deduction, make an assessment or adjustment necessary to determine the amount of excess tax and notify the taxable supplier of the amount so determined as paid in excess, of 5 the amount—

(a) liable to be paid by the supplier in accordance with this Act;

(b) deductible by the supplier in accordance with this Act; and 10

(c) liable to be paid by the supplier because relief is due in accordance with this Act.

(2) A claim under subsection (1) shall be made in accordance with the provisions of this Act, and in writing to the Authority, not later than six years after the end of the accounting period to which 15 the claim relates.

(3) Where a tax is due and payable to the Authority for an accounting period under this Act, the amount of the excess shall first be applied towards the satisfaction of the tax payable to the extent of the tax, and the Authority shall notify the taxable supplier 20 to the credit or relief for the overpaid tax.

(4) Where a supplier claims a repayment of the excess amount as adjusted in accordance with subsection (3), the Authority shall credit or pay the excess amount to the taxable supplier.

Credit or relief in relation to bad debt

36. (1) The Authority may grant relief of the whole or part of 25 a tax paid by a taxable supplier relating to a bad debt, if that supplier—

(a) has claimed a credit or relief to the Commissioner-General; and

(b) satisfies the Commissioner-General that all reasonable 30 efforts have been made, by the supplier to collect a tax.

(2) The taxable supplier referred to in subsection (1) may within six years from the date the tax is paid claim a relief of the whole or part of the tax in relation to the bad debt and the Authority may relieve the whole or part of the tax after being satisfied that the 35 supplier has properly established the claim.

Payment of tax claimed in relation to bad debt

37. Where the Commissioner-General grants a claim for tax under section 35 to the taxable supplier and any payment in respect of a taxable supply for which the tax was written off as a bad debt is subsequently received by the supplier, the supplier shall pay tax 40 on the amount received.

PART VII
ENFORCEMENT

38. (1) Subject to this Act, an authorised officer may— Powers of authorised officers
- 5 (a) at any reasonable time enter any site or premises and inspect the site or premises after giving reasonable notice to the person responsible for the site or premises, for the purpose of ensuring compliance with this Act;
- 10 (b) at any time demand from a person, immediately or at a time and place fixed by the authorised officer, the production of a certificate, book, notice, record, list or other document which is in the possession, custody or control of that person;
- 15 (c) attach and, if necessary remove from the premises for examination or safeguarding any document or article that appears to have a bearing on the investigation;
- 20 (d) enter and search any site or premises that the authorised officer has reasonable ground to believe is being used for the commission of an offence or contrary to the provisions of this Act;
- 25 (e) search a person on any site or premises if the authorised officer has reasonable grounds to believe that the person has in that person's possession an article, certificate, book, notice, record, list or other document that has a bearing on an investigation, except that a person shall only be searched by a person of the same sex;
- (f) make copies of, or extracts from a certificate, book, notice, record, list or other document, relating to an investigation under this Act;
- 30 (g) require from a person referred to in paragraph (b), an explanation of any record of entry in a certificate, book, notice, record, list or other document;
- (h) seize a certificate, book, notice, record list or other document which the authorised officer believes can afford evidence of an offence under this Act;
- 35 (i) order a person to appear before the authorised officer, immediately or at a time and place fixed by the authorised officer, and at that time and place question that person with regard to a matter which the authorised officer is investigating for the purposes of this Act; or
- 40 (j) seize or order the seizure of a conveyance which the authorised officer reasonably believes is carrying goods in contravention of this Act or any other written law.

- (2) An authorised officer may enter a private dwelling with—
 (a) the consent of the owner or occupier; or
 (b) the authority of a warrant.
- (3) An authorised officer may at any reasonable time take samples of goods— 5
 (a) to ascertain whether the samples are goods of a description subject to tax;
 (b) to ascertain the tax payable on those goods; or
 (c) for other purposes as the authorised officer may consider necessary. 10
- (4) An authorised officer who removes anything from a site or premises shall—
 (a) issue a receipt for anything removed to the owner or person in control of the premises; and
 (b) return anything removed as soon as practicable after the thing has served the purpose for which it was removed. 15
- (5) An authorised officer who enters and inspects any premises or private dwelling in accordance with this section shall have regard to safety and security measures, decency, order and respect for each person’s right to dignity and privacy. 20
- (6) An authorised officer shall furnish the Authority with a written report relating to an inspection.
- (7) For the purposes of this section “conveyance” includes a vessel, train, vehicle, aircraft or any other means of transport for the carriage of persons or goods. 25
- 39.** An authorised officer may, where the authorised officer reasonably believes that an offence has been committed under this Act, seize and detain any tool, instrument, machinery, equipment, vehicle or other property suspected of having been used in the commission of an offence, until an order of the court is made regarding the disposal thereof. 30
- 40.** (1) An authorised officer shall, where a person from whom an article or other property has been seized under section 39 is found not guilty or the proceedings against that person are withdrawn— 35
 (a) without unnecessary delay, restore the article or property to that person; or

- (b) where the authorised officer is satisfied that the person cannot be found or is unwilling to receive back the article or property, apply to the court for an order of forfeiture of the article or property.
- 5 (2) The court shall make an order of forfeiture under subsection (1) if—
- 10 (a) the authorised officer has given notice, by publication in the *Gazette* and in one daily newspaper of general circulation in Zambia, to the effect that the article or property which has been seized under this Act shall vest in the State if it is not claimed within three months from the date of publication of the notice; and
- (b) three months after the giving of the notice under paragraph (a), the article or property remains unclaimed.
- 15 (3) Where a claim is made, in writing, by any person that is lawfully entitled to the article or property seized under this Act that the article or property is not liable to forfeiture under this Act, the authorised officer may order the release of the article or property to the claimant where the authorised officer is satisfied that there
- 20 is no dispute concerning the ownership of the article or property and that it is not liable to forfeiture.
- (4) An authorised officer shall refer a claim of ownership to the court where a claim is made in relation to the article or property seized under this Act and the authorised officer finds that—
- 25 (a) there is a dispute regarding the ownership of the article or property;
- (b) there is insufficient evidence to determine the ownership of the article or property; or
- 30 (c) an authorised officer is unable to ascertain whether the article or property is liable to forfeiture or not.
- 41.** Nothing in this Act prejudices, limits or restricts—
- (a) the operation of any other law which provides for the forfeiture of property or the imposition of penalties or fines;
- 35 (b) the remedies available to the Authority apart from this Act, for the enforcement of its rights and the protection of its interests; or
- (c) any power of search or any power to seize or to detain property which is exercisable by a authorised officer
- 40 apart from this Act.

Operation of
other laws

PART VIII

OBJECTIONS

Right of
objection
and review

42. A taxable supplier who is aggrieved by a decision made or direction given by the Authority under this Act may object to the Commissioner-General for a review of that decision or direction in the prescribed manner and form.

Objection to
assessment

43. (1) A taxable supplier or person who is dissatisfied with an assessment prepared by the Commissioner-General under section 20 or a decision or direction, may after receipt of the notice of assessment, direction or decision lodge, in writing, with the Commissioner-General within thirty days of receipt of the notice of assessment, direction or decision, an objection setting out the grounds of objection.

(2) The Commissioner-General shall, on receipt of the objection, consider and determine the objection within thirty days of receipt of the objection.

Extension of
time

44. The Commissioner-General may, on the application of a taxable supplier or other person, extend the time within which that taxable supplier or other person may lodge an objection, except that the period of extension shall not exceed fourteen days from the period specified under subsection (1).

PART IX

GENERAL PROVISIONS

Appeal

45. A person aggrieved by a decision made under this Act may appeal against the decision to the Tax Appeals Tribunal as provided under the Tax Appeals Tribunal Act.

Act No. 1
of 2015

Schemes for
obtaining
undue tax
benefits

46. (1) Despite any other provision of this Act, where the Commissioner-General consider that any scheme, whether entered into or carried out before or after the commencement of this Act, has the effect of conferring a tax benefit on any person was entered into or carried out—

(a) solely or mainly for the purpose of obtaining that benefit;
and

(b) by means or in a manner that would not normally be employed in good faith for business purposes, or by means of the creation of rights or obligations that would not normally be created between persons dealing at arm's length;

N.A.B. 7, 2019

the Commissioner-General may determine the liability for any tax imposed by this Act, and the amount thereof, as if the scheme had not been entered into or carried out, or in a manner that, in the circumstances of the case, the Commissioner-General considers
5 appropriate for the prevention or diminution of the tax benefit sought to be obtained by the scheme.

(2) A determination under sub-section (1) shall be deemed to be an assessment, and the provisions of section 20 shall apply.

(3) In this section—

10 “scheme” includes any transaction, operation, understanding or arrangement, whether entered into or carried out before or after the commencement of this Act, whether or not involving the alienation of any property and whether or not enforceable, and all acts and things done or performed in
15 furtherance thereof; and

“tax benefit” includes—

(a) any avoidance or reduction in the liability of any person to pay tax;

20 (b) any increase in the entitlement of any taxable supplier to a refund of tax;

(c) any reduction in the consideration payable by any person in respect of any supply or importation of goods and services; or

25 (d) any other avoidance or postponement of liability for the payment of any tax.

47. A person commits an offence under this Act if that person—

General offences

30 (a) knowingly or negligently gives an authorised officer information which is false or misleading in a material particular;

(b) takes steps with a view to evade tax or fraudulently claim tax;

35 (c) without just cause shown by the person, fails to furnish the Authority or an authorised officer with a document or notice served on that person within the time specified under this Act;

(d) fails to keep any records, books of accounts or documents that the person is required to keep under this Act;

- (e) fails to produce a document for the examination or inspection by the Authority or an authorised officer in accordance with requirements of this Act;
- (f) without just cause shown by the person, fails to attend at a time and place in accordance with the requirements of a notice served on the person under this Act;
- (g) delays, assaults, obstructs, hinders or resists an authorised officer in the performance of any powers under this Act;
- (h) fails to answer to the best of that person's ability, any relevant question which an authorised officer has put to that person in the exercise of the authorised officer's functions;
- (i) refuses to give an authorised officer information or assistance which is required for purposes of an investigation under this Act; or
- (j) impersonates an authorised officer or falsely represents oneself to be an authorised officer or to be acting under an authorised officer's orders.

(2) A person convicted of an offence under subsection (1), is liable to fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years or to both.

Immunity

48. An action or other proceeding shall not lie or be instituted for, or in respect of, an act or thing done or omitted to be done in good faith by a member of staff of the Authority or an authorised officer in the exercise or performance, of any of the functions conferred on a member of staff or an authorised officer under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

49. (1) A person shall not, without the consent in writing given by or on behalf of the Authority, otherwise than in the course of duties of that person, publish or disclose to any other person, the contents of any document, communication or information, which relates to, or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

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| <p>50. Where an offence under this Act is committed by a body corporate or unincorporate body, with the knowledge, consent or connivance of the director, manager, shareholder or partner, that director, manager, shareholder or partner of the body corporate or unincorporate body commits an offence and is liable, on conviction, to the penalty or term of imprisonment specified for that offence.</p> | <p>Offences by principal officers of body incorporate or unincorporate body</p> |
| <p>51. A person who contravenes a provision of this Act for which a specific penalty is not provided is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.</p> | <p>General penalty</p> |
| <p>52. Subject to the written consent of the Director of Public Prosecutions and where the Commissioner-General is satisfied after an investigation, or where a person admits that the person has committed an offence under this Act, the Commissioner-General may compound the offence by collection from that person a sum of money that the Commissioner-General considers appropriate, but not exceeding fifty percent of the maximum amount of the fine to which that person would have been liable on conviction, and a person having made that payment shall not thereafter be prosecuted in relation to the offence so compounded.</p> | <p>Compounding of offence by Commissioner-General</p> |
| <p>53. (1) Subject to this Act, where the Commissioner-General is satisfied, or where a person admits, that the person has contravened a provision of this Act which is not an offence, the Commissioner-General may impose one or more of the following administrative sanctions:</p> <p>(a) a financial penalty not exceeding two hundred thousand penalty units;</p> <p>(b) the restriction or suspension of certain specified business activities;</p> <p>(c) a directive to take remedial action or to make specific arrangements to redress identified non-compliance;</p> <p>(d) a reprimand;</p> <p>(e) publication of a public notice of any prohibition or requirement imposed by the Commissioner-General under this Part and of any rescission or variation thereof, and the notice may, if the Commissioner-General considers necessary, include a statement of the reason for the prohibition, requirement, variation or rescission; and</p> <p>(f) a caution not to repeat the conduct which led to the noncompliance with a provision of this Act;</p> | <p>Administrative penalty</p> |

(2) A person may within thirty days of receipt of an administrative sanction, appeal to the Tribunal.

Administrative rules

54. (1) The Commissioner-General, may by *Gazette* Notice, issue administrative rules for or with respect to—

(a) the keeping and maintenance of accounts and any other documents, the making of returns and accounting for tax for the purposes of this Act; and 5

(b) any matter which the Commissioner-General, is authorised, by this Act or any regulations made under this Act, to prescribe or regulate by administrative rules. 10

(2) Rules under subsection (1) may—

(a) require the keeping of accounts and the making of returns in the form and manner as may be prescribed by the Commissioner-General;

(b) may require taxable suppliers to provide returns with tax invoices containing statements of the particulars as may be prescribed of the supply, the tax chargeable on it and the persons by and to whom the goods or services are supplied; or 15

(c) provide for— 20

(i) methods of tax accounting and, in particular, for special methods of tax accounting by manufacturers, retailers or other suppliers of goods or services or any description of goods or services that may be prescribed by or under 25 the rules;

(ii) for treating tax chargeable in one prescribed accounting period as chargeable in another period;

(iii) for the adjustment of accounts in cases where tax has become chargeable by reference to a consideration and the amount of the consideration is reduced or no consideration becomes payable and in other circumstances that may, by administrative rules, be prescribed; 30

(iv) the round-off of figures in tax returns;

(v) the correction of errors; and

(vi) provision of any type of documents.

Regulations

55. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act. 40

- (2) Despite the generality of subsection (1), the regulations made under that subsection may provide for—
- (a) a notice, form, demand or other document required for the administration of this Act;
 - 5 (b) the application of this Act in relation to supplies in the course of a business conducted by the administrator of a bankrupt, or deceased estate, or business rescue administrator, receiver or liquidator of a company;
 - 10 (c) the transfer and exemption from tax of business from one supplier to another;
 - (d) the form of a certificate of registration issued under this Act;
 - (e) exemption from tax;
 - (f) registration of taxable suppliers; or
 - 15 (g) the use of electronic fiscal devices or other equipment in recording daily supplies.
- (3) The regulations may create offences and prescribe penalties not exceeding one hundred thousand penalty units for any contravention of the regulations or rules made under this Act.
- 20 **56.** An authorised officer or person appointed by the Authority may serve a document on a taxable supplier or other person—
- (a) personally;
 - (b) by registered post;
 - 25 (c) by leaving it at the registered place of business of that taxable supplier or other person; or
 - (d) electronically.
- 57.** The Value Added Tax Act, 1995 is repealed.
- 58.** The Schedule applies to the savings and transitional arrangements.

Service of
notice and
service of
process

Repeal of
Cap. 331

Savings and
transitional
arrangements

SCHEDULE

Section (56)

SAVINGS AND TRANSITIONAL PROVISIONS

- | | |
|--|---|
| Registration of existing suppliers | <p>1. On the coming into operation of this Act, a supplier registered under the repealed Act and meets the registration requirements is deemed to be registered under this Act and shall be issued a certificate of registration by the Commissioner-General.</p> |
| Submission of notice, form, demand or other document returns | <p>2. The Minister shall, by statutory instrument, after the coming into operation of this Act prescribe appointed dates for the filing of the final returns, notices, forms, demands or other documents with respect to value added tax on a taxable supplier and a withholding tax agent.</p> |
| Payments for accounting period | <p>3. After the coming into operation of this Act, the Authority shall, by statutory instrument prescribe, an appointed date for payment of tax due and payable or accruing and payable by a taxable supplier and withholding tax agent an accounting period before the commencement of this Act.</p> |
| Refunds to existing taxable supplier | <p>4. (1) Where in respect of any accounting period prior to the coming into operation of this Act, a taxable supplier who was registered under the repealed Act, whose allowable credits exceed what would have been their tax liabilities for the respective accounting periods, the Authority shall pay the taxable supplier the amount standing to the credit of that supplier by reason of the excess.</p> <p>(2) Where any tax is due and payable, by a taxable supplier referred to in subsection (1), under any written law administered by the Authority any excess due to taxable supplier shall first be applied to satisfy the tax due and payable to the extent of the outstanding tax and the Authority shall give written notice to the taxable supplier of the amount so applied to meet the tax liability under the relevant Act.</p> |
| Maintenance of records by existing taxable supplier | <p>5. An existing taxable supplier who was required under section 42 of the repealed Act to preserve records relating to a business shall continue to do so as if the records were kept in accordance with this Act for the unexpired residue of the period, specified under section 21.</p> |
| Value added tax assessments | <p>6. (1) The Commissioner-General may, after the coming into operation of this Act, assess value added tax that was due from a taxable supplier before the commencement of this Act.</p> |

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(2) The CommissionerGeneral may make value added tax assessments in respect of—

- (a) an audit or investigation; and
- (b) a refund claim and related output transactions.

5 7. (1) The Commissioner-General shall enforce the collection of any value added tax including penalties and interest—

Debt
recovery

- (a) unpaid at the commencement of this Act;
- (b) arising from an audit or investigation which was in progress before the commencement of this Act;

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10 (c) arising from an assessment in respect of a refund claim and related output transactions; and

- (d) arising from concluded cases that were under review or litigation before the commencement of this Act.

(2) The enforcement of the collection of value added tax under 15 subsection (1) shall be as provided for under this Act.

8. (1) Any legal proceedings or application by the Authority relating to value added tax pending immediately before the commencement of this Act by or against the Authority may be continued in accordance with the repealed Act.

Legal
proceedings

20 (2) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Authority may be instituted by or against the Authority under this Act.

