

REPORT OF THE COMMITTEE ON ESTIMATES ON THE INCOME TAX (AMENDMENT) BILL, N.A.B NO. 23 OF 2015, FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY APPOINTED ON WEDNESDAY, 23RD SEPTEMBER, 2015

Consisting of:

Mr H H Hamududu, MP (Chairperson); Mr E M Sing'ombe, MP; Mrs I M Mphande, MP; Mr R L Mpundu, MP; Mr G K Mwamba, MP; Mr B M Ntundu, MP; Mr R P Mtolo, MP; Mr P Phiri, MP; and Dr G L Scott, MP.

The composition of your Committee changed following the appointment of Mr R L Mpundu, MP, to a ministerial position and he was replaced by Mr J Shuma, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

Your Committee has the honour to present its Report on the Income Tax (Amendment) Bill, N.A.B No. 23 of 2015, referred to it by the House on 5th November, 2015.

Functions of the Committee

2. In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bills that may be referred to it by the House.

Meetings of the Committee

3. Your Committee held seven meetings to consider the Income Tax (Amendment) Bill, N.A.B No. 23 of 2015, referred to it by the House.

Procedure adopted by the Committee

4. In order to acquaint itself with the Bill, your Committee requested written and oral submissions from various relevant stakeholders.

Object of the Income Tax (Amendment) Bill, N.A.B No. 23 of 2015

5. The object of the Bill is to amend the *Income Tax Act* so as to:

- (a) *extend the application of the ten year period for carrying forward of losses to businesses carrying out electricity generation;*

- (b) extend the application of withholding tax on management and consultancy fees to resident consultants;
- (c) clarify the tax treatment of winnings from gaming, lottery and betting when such winnings are by virtue of employment or office held;
- (d) remove the withholding tax application on the discount income of Government bonds;
- (e) increase the capital allowance rate from twenty – five percent to fifty percent for businesses carrying out electricity generation;
- (f) clarify that only companies whose shares are listed on the Lusaka Stock Exchange qualify for a reduced corporate tax rate; and
- (g) provide for matters connected with, or incidental to, the forgoing.

Background

6. The Bill seeks to amend the *Income Tax Act*, Chapter 323 of the Laws of Zambia in order to extend the application of the ten years period for carrying forward losses to businesses conducting electricity generation; extend the application of withholding tax on management and consultancy fees to resident consultants; remove withholding tax applicable on the discount income of Government bonds; clarify the tax treatment of winnings from gaming, lotteries and betting; clarify that only companies whose shares are listed on the Lusaka Stock Exchange qualify for a reduced corporate tax rate; and increase the capital allowance rate from twenty-five percent to fifty percent for businesses carrying on electricity generation.

Income tax is a tax that governments impose on financial income generated by all entities within their jurisdiction. The *Income Tax Act*, Chapter 323 of the Laws of Zambia is the legislation that governs income tax in Zambia. Income tax is a tax on profits made by limited companies, partnerships and self-employed individuals as well as on emoluments earned by employees. All profit making organisations have the obligation to pay income tax on their profits. Similarly, individuals in employment have an obligation under the Act to pay tax on their emoluments.

Salient Provisions of the Bill

7. The salient provisions of Income Tax (Amendment) Bill, N.A.B No. 23 of 2015, are as set out hereunder.

Clause 2 - Amendment of Section 2

Clause 2 seeks to amend Section 2 of the Principal Act by:

- a. deleting the definition of “*thermo and hydro power generation*” on which the ten year loss carry forward was based for electricity generation and provide for the definition of “*electricity generation*” which will include the production of electricity using all sources except wood; and
- b. updating the definition of retirement age to take account of the new retirement age of sixty in accordance with the amendments made to the *National Pension Scheme (Amendment) Act of 2015*.

Clause 3 - Amendment of Section 21

Clause 3 seeks to revise the *Income Tax Act* and align it to the changes made to the *National Pensions Act* by including the aspect of late retirement and clarify the tax treatment of benefits of such retirement. Currently, the law provides for the tax treatment of benefits at early retirement and normal retirement. However, the introduction of late retirement in the *National Pensions Act* requires that clarity should be provided in the *Income Tax Act* on the tax treatment of benefits at late retirement.

Clause 4 - Amendment of Section 30

Clause 4 seeks to revise the period for carrying forward losses for all businesses involved in generating electricity using other sources of energy to ten years. The current provision limits the ten year loss carry forward to business generating electricity using hydro and thermal sources only. The extending of the loss carry forward period to electricity generation from all other energy sources is meant to level the playing field in the sector and encourage investments.

Clause 5 - Amendment of Section 43B

Clause 5 seeks to update the *Income Tax Act* and align it with the *Mines and Minerals Development Act of 2015*, by deleting the reference to section 66 of the *Mines and Minerals Development Act of 2008* in Section 43B so as to refer to the *Mines and Minerals Development Act of 2015*. Currently, the provisions relating to the Mineral Royalty is contained in the *Mines and Minerals Development Act* is in Sections 88 to 95, Part VII of the Act and not in Section 66.

Clause 6 - Amendment of Section 46

Clause 6 seeks to provide for different due dates for submission of annual income tax returns, for both manual and electronic. In particular, the Clause seeks to provide for the submission of returns to have an earlier submission date for manual returns and a later date for the electronic return as follows: for manual, not later than 5th June following the end of any charge year; and for electronic, not later than 30th June following the end of any charge year.

This is meant to encourage electronic filing, ease compliance and reduce costs for both the tax payers and the administrator. In addition, it will provide for input time by the Zambia Revenue Authority where returns are submitted manually. Further, under the 2015 budget, the differentiation of due dates for submission of returns in electronic or manual form was done for turnover tax, and as such, there is need to align the submission of returns for annual and provisional tax to this same principle.

Clause 7 - Amendment of Section 46A

Clause 7 seeks to amendment Section 46A of the *Income Tax Act* to provide for different due dates for manual and electronic submission of provisional income tax returns. In particular, the amendment seeks to provide for the submission of returns to have an earlier submission date for manual returns and a later date for the electronic return.

Clause 8 - Amendment of Section 77

Clause 8 seeks to amend Section 77 of the *Income Tax Act* which provides for the due date for payment of tax on rental income. The amendment is in line with the proposed amendment to Section 82A which provides for the accounting of tax on rental income by the landlord where the Commissioner-General approves.

Clause 9 - Amendment of Section 81B

Clause 9 seeks to align the *Income Tax Act* to the *Mines and Minerals Development Act* of 2015 as it relates to the issuance of licenses, certificates and permits. In particular, it will provide for the mandatory requirement to obtain a tax clearance certificate before any license, certificate and permit under the *Mines and Minerals Development Act* is issued; and to delete the definition of a “*mining licences*” which has become redundant. The requirement for a tax clearance certificate is meant to enhance compliance and enforcement.

Clause 10 - Amendment of Section 82A

This Clause seeks to amend Section 82A so as to-

- a. extend the application of withholding tax to local consultants such as lawyers, accountants, economists and engineers; this is intended to increase compliance levels;
- b. provide clarity that the applicable tax on winnings from gaming, lotteries and betting when it is resulting from employment or by virtue of one holding office will be the Pay-As-You-Earn (PAYE) regime and not the withholding tax; currently, the law is silent on the tax treatment of such winnings and taxation of these is left to the determination of the Tax Authority which may be in conflict with the declaration of the employer who may choose to either apply a withholding tax or the PAYE depending on circumstance;
- c. remove the withholding tax applicable on the discount income of the Government bonds; currently, the interest earned on bonds, whether resulting from the coupon value or discount value, is taxable. This entails that the initial value of the bond regardless of how many times it is traded on the secondary market, has to be tracked to take into account interest resulting from the discount, hence complicating the pricing. The removal of withholding tax on the discount income will remove the complication in the pricing of bonds in the secondary market; and
- d. provide for the accounting of tax on rental income by the landlord where the Commissioner-General approves in writing; currently, the tenant is required to account for the tax and this has been a challenge in some cases; the amendment is intended to bring in flexibility to allow for the landlord to account for the tax where convenient.

Clause 11 - Amendment of Section 111

Clause 11 seeks to amend the *Income Tax Act* by aligning the appeal procedures to the provision of the new *Tax Appeals Tribunal Act, 2015*. The current law provides for an appeal process that includes application to the High Courts where a tax payer is not satisfied with the Tribunal's ruling. However, the Tax Appeals Tribunal has been equated to the High Court and, therefore, the provisions in the *Income Tax Act* need to be aligned.

Clause 13 - Amendment of the First Schedule

Clause 13 seeks to revise the *Income Tax Act* in the First Schedule by making corrections on the reference to sections in the *New Mines and Minerals Development Act* of 2015, as they relate to the Environmental Protection Fund for purposes of restoration of the environment in mining areas.

Clause 14 - Amendment of the Fourth Schedule

Clause 14 seeks to amend the Fourth Schedule to the principal Act which is meant to update the *Income Tax Act* so as to align it with amendments made to the *National Pensions Scheme Act* regarding the retirement age.

Clause 15 - Amendment of the Fifth Schedule

Clause 15 seeks to amend the Fifth Schedule to the *Income Tax Act* so as to:

- a. increase the capital allowance for plant, machinery and equipment for businesses carrying on electricity generation from twenty-five percent to fifty percent to encourage capital investments in the electricity sub-sector and spur diversification of electricity generation; and
- b. update the *Income Tax Act* by aligning the reference to the section on environmental protection funds in the *New Mines and Minerals Development Act, 2015*.

Clause 16 - Amendment of the Charging Schedule

Clause 16 seeks to amend the Charging Schedule to clarify the reduction in corporate income tax rate provided for companies listed on the Stock Exchange that the reduction is only applicable to companies whose shares are listed on the stock exchange. Currently, companies listed may not have their shares listed, but may have other instruments listed such as debt (Bonds). However, the reduced tax incentive is meant to encourage the listing of shares to encourage local participation.

Concerns Raised by Stakeholders

8. The stakeholders who appeared before your Committee raised some concerns as summarised below.

Stakeholders noted the decision to zero rate all power generating appliances from paying tax and to allow the investors in the energy sector to carry forward tax losses for ten years as well as the increase of capital allowance rate from twenty-five percent to fifty percent for business carrying on electricity generation. However, some expressed concern that although it was understandable that the Government is trying to cushion the existing power deficit, the ten year period for carrying forward the tax losses was too long. They were of the view that it should be reduced to five years. They further submitted that the process of investing in the energy sector should be simplified so as to promote private investors to put up power plants.

Some stakeholders noted the amendments relating to the extension of withholding tax on management and consultant services which were deemed to have a source within Zambia and the removal of withholding tax applicable on the discount income of the Government Bonds. They were of the view that the measure to remove withholding tax on Bonds will facilitate growth of funds through reinvestments. However, the move to extend withholding tax on management and consultant services would create adverse cash flow constraints on the operations of local consultants.

Committee's Observations and Recommendations

9. Your Committee notes the intentions of the Bill and support it. On specific provisions, your Committee notes the extension of the period for carrying forward losses for business engaged in generating electric power and the increase in capital allowance rate to fifty percent from twenty-five percent on implements, machinery and plant. It, however, recommends that more should be done to attract investment in the electricity power sector to reduce the power deficit such as the charging of cost-reflective tariffs. It further recommends the streamlining of the requirements to invest in the energy sector.

Conclusion

10. Sir, your Committee concluded its deliberations within its terms of reference. To do this, your Committee had invited a number of stakeholders from whom it sought comments and reactions to the Bill. Your Committee is grateful to the stakeholders who made both oral and written submissions.

Your Committee Sir, also wishes to thank you, Mr Speaker, for affording it an opportunity to consider the Bill. Your Committee further thanks the Office of the Clerk of the National Assembly for its assistance and advice throughout its deliberations.

Your Committee has the honour to present its Report on the Income Tax (Amendment) Bill, N.A.B No. 23 of 2015, referred to it by the House on 5th November, 2015.

Mr H H Hamududu, MP
Chairperson

Mr E M Sing'ombe, MP
Member

Mrs I M Mphande, MP
Member

Mr J Shuma, MP
Member

Mr R P Mtolo, MP
Member

Mr G K Mwamba, MP
Member

Mr B M Ntundu, MP
Member

Mr P Phiri, MP
Member

Dr G L Scott, MP
Member

APPENDIX I

List of Officials

Mr S C Kawimbe, Principal Clerk of Committees
Ms M K Sampa, Deputy Principal Clerk of Committees
Mr F Nabulyato, Committee Clerk (SC)
Mr M F Kateshi, Revenue and Expenditure Analyst
Mr S Mtambo, Budget Analyst (Microeconomics)
Mr C Chishimba, Assistant Committee Clerk
Mrs D Mukwankwa, Assistant Committee Clerk
Mr A Chilambwe, Assistant Committee Clerk
Mr F Chikambwe, Assistant Committee Clerk
Ms K Lufuma, Intern
Ms S Kayawa, Stenographer
Mr R Mumba, Committee Assistant
Mr M Chikome, Parliamentary Messenger

APPENDIX II

Ministry of Justice (MoJ)

Mr A Nkunya, Acting Chief Parliamentary Counsel
Mr M Chola, Acting Deputy Chief Parliamentary Counsel
Ms D Kafunga, Acting Senior Parliamentary Counsel

Zambia Revenue Authority (ZRA)

Mr B Msiska, Commissioner-General
Mr D Banda, Commissioner-Customs
Ms P Banda, Commissioner-Domestic Tax
Ms M Mudenda, Commissioner-Corporate
Ms D Goramota, Legal Counsel
Mr E Phiri, Director-Research
Mr L Simbeye, Executive Assistant
Mr S Sifuniso, Senior Collector

Civil Society for Poverty Reduction (CSPR)

Mr M Nkhoma, Programmes Officer
Mr E Musosa, Programmes Officer

Zambia Institute of Chartered Accountants (ZICA)

Mr C Chiteba, Acting Chief Executive Officer
Mr M Phiri, Committee Member

Zambia Association of Chambers of Commerce and Industry (ZACCI)

Mr M Nyirenda, Board Member
Mr C Sakala, Officer - Business

Bankers Association of Zambia (BAZ)

Mr L Mwanza, Chief Executive Officer
Mr C Simatyamba, Chairman
Ms D Tembwe, Member

Real Estate Investment of Zambia (REIZ) PLC

Mr S E Popota, Acting Chief Executive Officer

National Economic Advisory Council (NEAC)

Mr W Wake, Executive Secretary

Dr O K Mungule, Policy Analyst

Ministry of Finance (MoF)

Mrs P Kabamba, Permanent Secretary

Ms M Mukubesa, Acting Director-Budget

Ms M Chikuba, Principal Analyst

Ms P Chitulangoma, Principal Analyst

Mr K Chimfwembe, Acting Chief Analyst