

GOVERNMENT OF ZAMBIA

ACT

No. 6 of 1999

Date of Assent: 29th March, 1999

An Act to amend the Income Tax Act

[1st April, 1999

ENACTED by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 1999, and shall be read as one with the Income Tax Act, in this Act referred to as the principal Act.

Title and
commencement
Cap. 323

(2) This Act shall come into operation on the 1st April, 1999, and subject to any provisions to the contrary, shall have effect in relation to the charge of tax for the charge year which ends on 31st March, 2000 and in relation to each subsequent charge year.

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

Amendment
of section 2

(a) by the insertion in the appropriate places of the following new definitions:

“bank” means a company that holds a banking licence granted under section *four* of the Banking and Financial Services Act;

Cap. 387

“person with disability” has the meaning assigned to it under section *two* of the Persons with Disabilities Act, 1996;

Act No. 33
of 1996

(b) by the deletion in the definition of “Charging Schedule” of the words “personal allowances”;

(c) by the deletion in the definition of “effective shareholder” of the words “with his nominees or with its nominees” and the substitution therefor of the words “the nominees of that person”.

(d) by the deletion of the definition of " former Zambia Consolidated Copper Mining Company " and the substitution therefor of following new definition:

" former Zambia Consolidated Copper Mining Company " means any mining division of the Zambia Consolidated Copper Mining Company sold under the Privatisation Act;

Cap. 386

(e) by the deletion of the definition of " handicapped person ".

(f) by the insertion immediately after subsection (1) of the following new subsections—

(1A) Subject to subsection (1B) where a provision of this Act refers expressly or by implication, to a payment of a specified amount which is denominated in kwacha and the payment is made in another currency the amount of the payment, for purposes of that provision, shall be converted into kwacha at the appropriate rate published by the Bank of Zambia as at the end of the day on which the payment is due, irrespective of when the payment is actually made.

(1B) Where the payment referred to in subsection (1A) is a payment of interest and the borrower has borrowed the principal in the course of a business carried on by the borrower, the conversion required by subsection (1A) shall, subject to any direction by the Commissioner-General, be calculated as at the end of each day on which the interest accrues, irrespective of when payment of the interest is due.

Amendment
of section 5

3. Section *five* of the principal Act is amended in subsection (2) by the deletion of the proviso to paragraph (a) and the substitution therefor of the following proviso:

" Provided that where the resolution states that the dividend is to be paid to share or stock holders registered on a day in the future, the dividend shall be deemed to accrue to the share or stock holders on that day in the future; and "

Amendment
of section 14

4. Section *fourteen* of the principal Act is amended—

(a) in subsection (1) by the deletion of the words " Part III of "; and

(b) in subsection (2) by the deletion of the words " other than income which the Commissioner-General is prohibited

from including in any assessment under the proviso to subsection (1) of section *sixty-three* "

5. Section *eighteen* of the principal Act is amended by the deletion in subsection (3) of the words " applies and " and the substitution therefor of " applies or where such a person ";

Amendment
of section 18

6. Section *twenty-one* of the principal Act is amended—

Amendment
of section 21

(a) in subsection (1) by the deletion of the words " Part III of "; and

(b) in subsection (5) by the deletion of the words " two million kwacha " and the substitution therefor of the words " three million kwacha ".

7. The principal Act is amended by the repeal of section *twenty-nine A* and the substitution therefor of the following:

Repeal and
replacement
of section
29A.
Foreign
currency
exchange
gains and
losses

29A. (1) Notwithstanding the provisions of section *twenty-nine* or any other provisions of this Act, any foreign currency exchange gains or losses, other than those of a capital nature, shall be assessable or deductible, as the case may be, in the charge year in which such gains or losses are realised, that is to say, in the charge year in which the person or partnership concerned is required to pay the additional kwacha or is allowed a rebate or a reduction in settlement of a foreign debt or liability.

(2) Subsection (1) shall not apply in the case of a bank.

(3) Where subsection (2) applies any amount treated as unrealised by virtue of subsection (1) in the charge year ending 31st March, 1999 shall be brought into account for tax purposes for the charge year ending 31st March, 2000.

8. Section *thirty-seven* of the principal Act is amended—

Amendment
of section 37

(a) in paragraph (b) subsection (3) by the deletion of the words " as defined in subparagraph (3) of paragraph 8 of the Charging Schedule "; and

(b) by the insertion after subsection (3) of the following new subsection:

(3A) For the purposes of subsection (3) " world income " in relation to any person means the total amount of that person's income from all sources, excluding the income which is chargeable to tax but which the Commissioner-General is precluded from including in an assessment, the amount of income from each source being substantiated to the satisfaction of the Commissioner-General;

Repeal and
replacement of
section 43A

Deduction
for bad and
doubtful
debts

9. The principal Act is amended by the repeal of section *forty-three A* and the substitution therefor of the following section:

43A. (1) A deduction shall be allowed in ascertaining the income from any source for debts to the extent that the debts have been included in the income from that source and to the extent that they are proved to the satisfaction of the Commissioner-General to be bad or likely to become bad and, where there is no income from that source for the charge year for which such deduction is due that deduction shall be deemed to be a loss under section *thirty*.

(2) Where a deduction has been allowed under subsection (1) in respect of any debt, and in the subsequent charge year part of all of the debt is recovered, the amount of the recovery or, where less, the total deductions allowed in one or more charge years in respect of that debt, shall be assessable in the charge year in which the recovery is received:

Provided that where recoveries are effected in more than one charge year, the total amount assessable in each charge year after the first such charge year shall not exceed the amount of the recovery in that later year or, where less, the total of the deductions previously allowed less any recoveries assessable in previous charge years.

Insertion of
new section
43B

Deduction
for mineral
royalty

Cap. 213

10. The principal Act is amended by the insertion immediately after section *forty-three A* of the following new section:

43B. (1) A deduction shall be allowed in ascertaining gains or profits of a business of any mineral royalty payable and paid for a charge year in pursuance of the provisions of section *sixty-six* of the Mines and Minerals Act.

(2) This section shall not apply to any mineral royalty payable and paid for any charge year prior to the charge year ending 31st March 2000.

Amendment
of section
46A

11. Section *forty-six A* of the principal Act is amended—

(a) in the proviso to subsection (1), by the deletion of the words “ eight hundred and forty thousand kwacha ” and the substitution therefor of the words “ nine hundred and sixty thousand kwacha ”;

(b) in subsection (2)—

(i) by the addition at the end of paragraph (a) of the words “ but excluding any income which cannot be assessed by virtue of the proviso to subsection (1) of section *sixty-three* ;

(ii) by the deletion in paragraph (b) of the words "personal allowances, tax credit and which he is entitled" and the substitution thereof of the words "deducting any tax credit to which the individual is entitled, and any such computation shall exclude tax on income falling within Part VI (Pay As You Earn) and any tax deducted from any other income";

(c) by the deletion of the proviso to subsection (3);

(d) by the deletion of subsection (4) and the substitution thereof of the following subsection:

(4) Where at any time in any charge year, whether because of a change in a person's circumstances or for any other reason, a person becomes aware that the estimate of provisional income contained in a return for that year made in respect of that person, including a return made under this subsection, is likely to be substantially incorrect, that person shall make a revised return of provisional income and tax for that year.

(e) by the insertion after subsection (4) of the following new subsections:

(5) A revised return under subsection (4) shall be made within twenty-eight days of the time the person becomes aware of the changed circumstances referred to in subsection (4) and shall comply with subsection (2);

(6) Where an individual is not required to make a return of provisional income and tax for any charge year by virtue of the proviso to subsection (1) but at a time subsequent to 30th June in that year that proviso ceases to apply to the individual, that individual shall make a return in accordance with subsections (1) and (2) within twenty-eight days of that time.

(7) In this Act any reference to a person's provisional income for any charge year is a reference to the estimate calculated in accordance with paragraph (a) of subsection (2) of that person's income for that charge year.

(8) In this Act any reference to any provisional tax which a person is liable to pay during any charge year is

a reference to the estimate calculated in accordance with paragraph (b) of subsection (2) of that person's tax liability for that charge year.

(9) Where a person fails to submit a return or a revised return in accordance with this section, there shall be charged a penalty of—

(a) in the case of an individual, one hundred and seventy penalty units per month or part thereof during which such failure continues; or

(b) in the case of a company, three hundred and forty penalty units per month or part thereof during which such failure continues:

Provided that the Commissioner-General may remit the whole or part of any such penalty.

(10) Any reference to tax in subsection (7) of section *seventy-eight*, and in sections *seventy-eight A*, *seventy-nine*, *seventy-nine A*, *seventy-nine B*, *seventy-nine C*, *seventy-nine D*, *eighty-three*, *eighty-four*, *eighty-six*, *eighty-seven*, and *ninety-two* includes a reference to provisional tax.

Amendment
of section 47

12. Section *forty-seven* of the principal Act is amended by the deletion of subsection (4).

Amendment
of section 62

13. Section *sixty-two* of the principal Act is amended—

(a) by the insertion after subsection (3) of the following new subsections:

(3A) Where a company makes up the accounts of its business for a period in this section referred to as "the accounting period" ending on a date other than 31st March and such accounts are or will be accepted by the Commissioner-General for the purpose of determining the gains or profits of the business in respect of a charge year, in accordance with the provisions of this section and that company is required by any provision of this Act to submit a return of income, including a return of provisional income and tax, for that charge year, that return shall be of income, or provisional income, for the accounting period for which relevant accounts are or will be made up.

(3B) For purposes of subsection (3A) “ relevant accounts ” in relation to any charge year means the accounts which are or will be submitted to the Commissioner-General for the purpose of determining the gains or profits of the business in question in respect of that charge year.

14. Section *sixty-three* of the principal Act is amended—

Amendment
of section 63

(a) in subsection (1)—

(i) by the addition of the words “ subsection (1A) and ” immediately after the words “ provisions of ”;

(ii) by the deletion in paragraph (iv) to the proviso of the word “ interest ”; and

(iii) by the insertion immediately after paragraph (iv) of the proviso of the following new paragraph:

(v) in the case of an individual, interest from which tax in respect of that charge year has been deducted under section *eighty-two A*.

(b) by the insertion immediately after subsection (1) of the following new subsections:

(1A) In any case where a person has made payments of tax or provisional tax in respect of any charge year under section *forty-six* or *forty-six A* if the Commissioner-General is satisfied that the person has no outstanding tax liability for that year, the Commissioner-General need not assess that person under this section, unless the person makes a request in writing for an assessment.

(1B) Where a person has made a return of tax under section *forty-six* but is assessed under this section for any amount, the assessment shall not relieve that person of any liability under section *seventy-eight* in respect of any failure to make any payment of tax.

(1C) Where a person has made payments of tax or provisional tax for a charge year but subsection (1A) does not apply, the Commissioner-General shall make an assessment in respect of that year and that person only for the amount by which the payments made differ from the amount of tax due for that year.

- (c) in subsection (2) by the deletion of “ subsection (1) ” and the substitution therefor of “ subsection (1) to (1C) ”.
- Amendment of section 64 **15.** Section *sixty-four* of the principal Act is amended by the deletion in item (i) of the proviso to paragraph (c) of the words “ two hundred and sixty-six penalty units ” and the substitution therefor of “ fifty thousand kwacha ”.
- Amendment of section 71 **16.** Section *seventy-one* of the principal Act is amended by the insertion immediately after subsection (6) of the following new subsection:
- (6A) Regulations under this section may create offences punishable with a fine not exceeding ten thousand penalty units for any failure to comply with the provisions of the regulations, other than a failure to which subsection (3) applies.
- Amendment of section 77 **17.** Section *seventy-seven* of the principal Act is amended—
- (a) by the deletion of subsection (1) and the substitution therefor of the following subsection:
- (1) Subject to the provisions of this Act, tax for any charge year payable by any person required to submit a return under section *forty-six* in respect of any income shall be due and payable on 30th September immediately following the end of the charge year.
- (b) by the insertion immediately after subsection (1) of the following new subsections:
- (1A) Any person who is liable to pay any tax in accordance with subsection (1) for any charge year may deduct from the amount due—
- (a) the amount of any payment of provisional tax which the person has made for that charge year; and
- (b) any amount of tax or provisional tax agreed by the Commissioner-General to have been overpaid and which has not been refunded to that person or otherwise taken into account.
- (1B) Any person who is required by section *forty-six A* to submit a return of provisional income and tax for any charge year shall make payments of provisional tax to the Commissioner-General in accordance with subsections (1C) to (3).

(1C) Provisional tax for any charge year required to be paid under subsection (1B) shall be paid during the charge year in four instalments, each one of which shall be equal to one-quarter of the amount of provisional tax shown in the return, and shall be paid after:

- (a) 1st instalment on 30th June;
- (b) 2nd instalment on 30th September;
- (c) 3rd instalment on 30th December; and
- (d) 4th instalment on 30th March;

of the charge year to which such return of provisional income relates.

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

(2) Any person who is liable to pay any provisional tax in accordance with subsection (1B) for any charge year may deduct from the amount due any amount of tax or provisional tax agreed by the Commissioner-General to have been overpaid and which has not been refunded to that person or otherwise taken into account.

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

(2A) A person who reduces an instalment of tax or provisional tax under this section shall—

- (a) certify in writing to the Commissioner-General the amount of tax or provisional tax overpaid and the charge year to which it relates; and
- (b) attach to that certificate a copy of the Commissioner-General's agreement that the tax or provisional tax has been overpaid.

(2B) Where a revised return is required to be made under subsection (4) or (6) of section *forty-six A* by any date, the payments of tax required to be made in accordance with subsection (1B) shall—

- (a) be made in instalments on the dates mentioned in subsection (1C) as fall on or after that date; and
- (b) be equal in amount to the amount of provisional tax shown in the return divided by four;

but where an instalment payment has been made before an instalment of a revised amount is due under this subsection, the amount of that revised instalment shall be increased or reduced, as the case may require, so as to take into account the excess or shortfall in the earlier payment or payments.

(e) by the deletion of subsection (3) and the substitution therefor of the following subsection:

(3) Any payment required by this section shall be made in such form as the Commissioner-General may determine.

(f) by the deletion of subsection (4) and the substitution therefor of the following subsection:

(4) Any tax payable by any person under an assessment made under subsection (3) of section *sixty-three* or section *sixty-four* shall be due and payable on the date notice of the assessment is given to the person under section *sixty-five*.

(g) by the deletion of subsection (5) and the substitution therefor of the following subsection:

(5) The Commissioner-General, may extend the time limited by subsections (1), (1C) and (4) and where a time limit has been extended under this subsection, any reference elsewhere in this Act or any regulations made under it to the time when any payment of tax or provisional tax is due shall be construed as a reference to the time as so extended.

(h) by the deletion of subsection (7).

Amendment
of section 78

18. Section *seventy-eight* of the principal Act is amended—

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

(1) Any person who fails to pay—

(a) any amount of tax within one month; or

(b) any amount of provisional tax within fourteen days;

of the date on which that payment is due under section *seventy-seven* shall be liable to the penalty specified in subsection (2).

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

(2) Any person who fails to pay tax or provisional tax in accordance with section *seventy-seven* shall be liable to pay, in respect of each month during which that

amount or any part of it remains unpaid, an amount equal to five per centum of that amount or so much of it as remains unpaid during the month in question.

(c) by the insertion immediately after subsection (2) of the following new subsection:

(2A) Where any person contravenes more than one provision of this Act in respect of tax or provisional tax on the same income in respect of the same period of time that person shall, under this section, be liable to pay only one penalty in respect of that contravention.

19. Section *seventy-eight A* of the principal Act is amended in subsection (1) by the deletion of the word "and" immediately after the words "*seventy-one*" and the substitution therefor of the word "or".

Amendment
of section
78A

20. Section *eighty-two* of the principal Act is amended in subsection (1) by the deletion of "Part I of Annexure B of Part III of".

Amendment
of section 82

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

Amendment
of section 82A

(a) in subsection (1)—

(i) by the insertion at the beginning of the subsection of the words "Subject to the provisions of this section";

(ii) by the deletion in the proviso to paragraph (b) of the words "twenty thousand kwacha" and the substitution therefor of the words "twenty-five thousand kwacha";

(iii) by the deletion after the words "in paragraphs (a), (b)" of the words "(c) and (d) at the rate specified in Annexes E, F, G, and I, respectively, of Part III of" and the substitution therefor of the words "and (c) at the rate specified in";

(iv) by the deletion of paragraph (d) and the substitution immediately after paragraph (c) of the following new paragraph:

(d) commissions, other than commissions received by an individual whose income is from employment or office;

Provided that the Commissioner-General may determine that the provisions of paragraph (c) or (d) shall not apply in any

particular case and shall, in writing, direct the person or partnership concerned in that behalf; and the provisions of paragraph (c) or (d) as applicable shall not apply to such person or partnership to the extent and to the period specified in such direction.

(b) in subsection (3), by the deletion of the words "of each charge year, or such longer period as the Commissioner-General may generally or in any particular case allow, every person who or partnership which has made a payment referred to in subsection (1), " and the substitution therefor of the words "of the month in which the payment from which tax is required to be deducted under subsection (1) was made, the person or partnership making the payment ";

(c) by the deletion of subsection (4) and the substitution therefor of the following subsection:

(4) Within fourteen days of the end of the month in which any payment under subsection (1) is made, the person or partnership making the payment shall furnish each person or partnership to or on behalf of whom a payment has been made with a certificate stating the amount of the payment made to or on behalf of such person or partnership, the amount of tax deducted therefrom, the date of issue of the certificate and such other particulars as the Commissioner-General may require;

(d) in subsection (5), by the deletion of the words "ten days after the date of payment shown thereon" and the substitution therefor of the words "fourteen days after the end of the charge year in which the payment to which the certificate relates was made:" and

(e) by the insertion after subsection (7) of the following new subsection:

(8) Where a person fails to furnish the Commissioner-General or any other person authorised by the Commissioner-General with any document in accordance with the requirements of this section, there shall be charged a penalty of—

(a) in the case of an individual one hundred and seventy penalty units per month or part thereof during which such failure continues; or

(b) in the case of a company, three hundred and forty penalty units per month or part thereof during which such failure continues:

Provided that the Commissioner-General may remit the whole or part of any such penalty.

22. Section *ninety* of the principal Act is amended—

Amendment
of section 90

(a) by the deletion of the word “*eighty*”; and

(b) by the deletion of paragraph (i) of the proviso and the substitution therefor of the following paragraph:

(i) subject to paragraph (ii), where the amount of tax which a company is required by subsection (1) of section *eighty-one* to account for in any charge year is reduced by an amount of tax which has been deducted from dividends received by the company in that year, the amount of tax on income from dividends received by the company in that year which may be set off under this section against the tax chargeable on the company's income for that year shall be the balance of that tax after any such reduction.

23. Section *ninety-five* of the principal Act is amended in subsection (2) by the deletion of paragraph (c).

Amendment
of section 95

24. Section *ninety-five B* of the principal Act is amended by the deletion of the words “or amounts treated as distributed under the provisions of section *ninety-five* by those companies”.

Amendment
of section 95B

25. Section *ninety-five D* of the principal Act is amended—

Amendment
of section 95D

(a) by the deletion in the definition of “grossed up equivalent of a loan” of the words “Part II of Annexure B or Part III of ” and by the insertion after the word “Schedule” of the words “in respect of the income of an individual”;

(b) in subsection (2) by the deletion of the words “to which the provisions of section *ninety-five* apply”; and

(c) by the insertion immediately after subsection (2) of the following new subsection:

(2A) Subsection (2) shall not apply where the ordinary business of the lender includes the making of loans and the loan is a normal commercial loan made in the ordinary course of that business.

(d) by the deletion in subsection (12) of “twenty thousand kwacha ” wherever it appears and by the substitution therefor of “ten million kwacha ”.

Insertion of
new sections
97A, 97B, 97C,
97D
Transfer
pricing

26. The principal Act is amended by the insertion immediately after section *ninety-seven* of the following new sections:

97A. (1) In this section—

“ actual conditions ” means conditions which are made or imposed between any two associated persons in their commercial or financial relations;

“ arms length conditions ” means conditions or no conditions which would have been made or imposed if persons were not associated with each other.

(2) The provisions of this section shall apply where by reason of the actual conditions having been made or imposed instead of the arms length conditions there is, except for this section, a reduction in amount of income taken into account in computing the income of one of those 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.

(3) The income of the first taxpayer chargeable to tax in the income year shall be computed for tax purposes on the basis that the arm's length conditions had been made or imposed, as between the first taxpayer and the other associated person referred to in subsection (2) instead of the actual conditions; and a computation on that basis is referred to as a computation on the arm's length basis.

(4) If—

(a) in the income year and by reason of the actual conditions, an amount of income received by that other person associated with the first taxpayer, in this section referred to as the second taxpayer, is increased;

(b) that increase in income corresponds to the reduction in income of the first taxpayer referred to in subsection (2); and

(c) a claim under this subsection has been made in writing by the second taxpayer to the Commissioner General;

the second taxpayer's income chargeable to tax in the income year shall be computed on the arm's length basis for all tax purposes except for the purposes of section *forty-six A*.

(5) For the purposes of this section—

(a) references to a reduction in an amount of income include references to a reduction to nil or to the accrual of a loss or an increased loss; and

(b) references to an increase in income include references to the reduction in a loss whether to a smaller amount or to nil.

(6) Subsection (4) shall not apply unless the amount of income mentioned in paragraph (a) of that subsection would be taken into account in computing the amount of the second taxpayer's income chargeable to tax for the income year.

(7) For the purposes of subsection (6) in a case where no loss accrues or a smaller loss accrues, as mentioned in paragraph (a) of subsection (4) and in subsection (5), a profit shall instead be deemed to have accrued.

(8) Where an assessment or an amended assessment is made on the first taxpayer and the computation of income on which it is based takes into account a different amount of income from that on which earlier computations were based, the second taxpayer may amend a claim under subsection (4) accordingly.

(9) A claim by the second taxpayer under subsection (4) shall not be made in relation to an income year unless—

(a) the first taxpayer has made a return on the arm's length basis under section *forty-six* or *forty-sixA* for the income year or an assessment on the arm's length basis is made on that first taxpayer for that year; and

(b) it is made within three years of the date on which that return or, if earlier, that assessment is made, or such longer period as the Commissioner-General may allow.

(10) A claim may not be amended under subsection (8) by reason of an assessment or amended assessment unless the amended claim is made within one year of the date on which the assessment or amended assessment is made.

(11) Where a claim under subsection (4) or an amended claim under subsection (8) is allowed and the claimant has been or may be given credit by virtue of any agreement made under section *seventy-four* or under *seventy-six* for foreign tax, within the meaning of section *seventy-five* or *seventy-six*; in computing the amount of that credit—

(a) the foreign tax to be taken into account as having been paid or as being payable by the claimant shall exclude any amount of foreign tax which would not have been paid or payable if the computation of the income on which the foreign tax is chargeable had, so far as it includes income to which the claim or amended claim relates, been made on the arm's length basis; and

(b) the amount of the income to be taken into account as having been received by the claimant and in respect of which the claimant is or may be given credit for foreign tax shall be determined, so far as it includes income to which the claim or amended claim relates, on the arm's length basis.

(12) Any adjustment required to be made by virtue of this section shall be made by way of discharge or repayment of tax, by an amended assessment or otherwise and may be made notwithstanding that the adjustment relates to a charge year which ended more than six years earlier; and subsections (3), (4) and (5) of section *eighty-seven* shall apply to any excess tax due to the taxpayer under this section as they apply to an excess determined under subsection (1) of section *eighty-seven*.

Non
application
of section
97A

97B. (1) Section *ninety-seven A* (2) shall not apply in relation to the computation of income of any person who carries on a business in so far as that income is determined by reference to the accounts for that business for a period beginning before 1st April, 1999.

(2) Nothing in section *ninety-seven A* shall apply in relation to any interest which is allowable as a deduction under paragraph 22 of the Fifth Schedule to this Act or which would be so allowable but for the provisions of paragraph 22A of that Schedule.

(3) Nothing in section *ninety-seven A* shall apply for the computation of any allowance which may, in accordance with sections *thirty-three*, *thirty-four* or *thirty-four A* of this Act, be deducted in ascertaining the profits or gains of a business or the emoluments of any employment or office.

Provisions
supplemen-
tary to 97A

97C. (1) For the purposes of sections *ninety-seven A* and *ninety-seven B*—

- (a) any reference to a computation on the arm's length basis shall be construed in accordance with subsection (3) of section *ninety-seven A*;
- (b) a return by a person or an assessment on a person is made on the arm's length basis if the computation of income on which it is based is made by virtue of subsection (3) of section *ninety-seven A*;
- (c) any reference to arrangements or agreements means any arrangement or agreement whether legally enforceable or not, and includes a reference to understandings or mutual practices; and

(d) " person " includes a partnership.

(2) Section *ninety-seven A* applies whenever the conditions in question were made or imposed, whether before, on or after 1st April, 1999.

(3) For the purposes of sections *ninety-seven A* and *ninety-seven B* conditions may be taken to have been made or imposed between associated persons in their commercial or financial relations—

(a) whether they are made or imposed in one arrangement or agreement or in a series of arrangements or agreements; and

(b) where conditions are made or imposed in a series of arrangements or agreements, notwithstanding that—

(i) conditions made or imposed in one arrangement or agreement differ from those made or imposed in another; or

(ii) the parties to one arrangement or agreement differ from those to another; or

(iii) any party to an arrangement or agreement is not associated with any other party to that or any other arrangement or agreement.

(4) The Minister may by regulations make supplementary provision for the interpretation of subsection (3).

(5) For the purposes of section *ninety-seven A* and *ninety-seven B* one person is associated with another if—

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

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

(6) The Minister shall make provision by regulations on the direct and indirect participation in the management, control or capital of a person, and different provision may be made in relation to different cases or different classes of each case.

(7) For the purposes of section *ninety-seven A* and *ninety-seven B* where conditions are made or imposed between 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 *ninety-seven A*, it shall be for the claimant to prove that the claim satisfies that subsection.

Objections
and appeals
involving
transfer
pricing

97D. (1) The Minister shall make regulations enabling a person, in such cases as may be prescribed in the regulations, to be joined as a party to an appeal to the Revenue Appeal Tribunal under section *one hundred and nine* or to make representations to the Commissioner-General on an objection against an assessment under section *one hundred and eight*.

(2) Regulations under subsection (1) shall apply only in cases where one of the grounds of the appeal or the objection relates to the question whether section *ninety-seven A* applies in relation to any computation relevant to the assessment or whether any computation has been made in accordance with that section.

Amendment
of section 99

27. Section *ninety-nine* of the principal Act is amended—

(a) by the addition in paragraph (a) after “ this Act ” of “ or of section *forty-six* or *forty-six A* ”; and

(b) by the deletion of the words “ or by subsection (2) of section *forty-six* ”.

Amendment
of section 100

28. Section *one hundred* of the principal Act is amended—

(a) in subsection (1)—

(i) by the insertion after paragraph (a) of the following new paragraph:

(aa) fails to furnish a provisional return of income and tax in accordance with the requirements of section *forty-six A*;

(ii) in item (i) by the deletion of the words “ fifty per centum ” and the substitution therefor of “ seven-teen point five per centum ”;

(iii) in item (ii) by the deletion of the words “ the amount ” and the substitution therefor of words “ thirty-five per centum of the amount ”; and

(iv) in item (iii) by the deletion of the words “ one hundred and fifty per centum ” and the substitution therefor of the words “ fifty-two point five per centum ”;

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

(2) Except for paragraph (a), any reference in subsection (1) to tax or income includes a reference to provisional tax and provisional income respectively.

29. The principal Act is amended by the deletion of the words "handcapped person" wherever they appear and the substitution therefor of "person with disability".

Replacement of
handcapped
person" with
"person with
disability"

30. The First Schedule to the principal Act is amended by the deletion in paragraph 7 of the words "other than livestock bought by a farmer for stud".

Amendment
of First
Schedule

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

Amendment
of Second
Schedule

(a) in paragraph 7, by the insertion after sub-paragraph (t) of the following new sub-paragraph:

(u) by a person designated as an enterprise under the Small Enterprises Development Act, 1996 who has been granted the incentives provided under that Act.

Act No. 29
of 1996

(b) in sub-paragraphs (4) and (5) of paragraph 9 by the deletion of the words "two hundred and forty thousand kwacha" and the substitution therefor of "three hundred thousand kwacha".

32. The Fifth Schedule to the principal Act is amended—

Amendment
of Fifth
Schedule

(a) in sub-paragraph (5) of paragraph 10 by the deletion of the words "farming, manufacturing or tourism" and the substitution therefor of the words "farming, manufacturing, tourism or leasing".

(b) by the deletion of the proviso to item (a) of sub-paragraph (2) of paragraph 22;

(c) by the deletion of sub-paragraph (7) of paragraph 22; and

(d) by the insertion immediately after paragraph 22 of the following new paragraph:

22A. Where at any time in any charge year a company has outstanding loans which in aggregate exceed an amount equal to more than twice the equity of the company at that time, any interest on borrowings which may be allowed in any charge year shall not include any amount of interest paid in that year in respect of so much of the borrowings in that year as exceed that amount; and where there is more than one loan, interest on borrowings taken out earlier shall be allowed in priority to interest on later borrowings.

Disallow-
ance of
interest in
certain areas

Repeal
replacement
of Charging
Schedule

33. The principal Act is amended by the repeal of the Charging Schedule and the substitution therefor of the the Charging Schedule set out in the Appendix to this Act.

APPENDIX

(Section thirty-three)

THE CHARGING SCHEDULE

(Section 12)

PART I

TAX CREDIT

1. (1) Subject to sub-paragraph (2) the tax credit referred to in subsection (2) of section *fourteen* which is appropriate— Tax credit

(a) to an individual for any charge year is ninety-six thousand kwacha.

(b) to an individual who is a person with disability for any charge year is ninety-seven thousand two hundred kwacha.

(2) The tax credit for any charge year appropriate to an individual to whom this sub-paragraph applies shall be equal to,

$\frac{A \times B}{12}$

12

where A is the amount of the tax credit apart from this sub-paragraph, and B is the number of months in the charge year in which the individual is living in the Republic for any time.

(3) Sub-paragraph (2) applies to any individual who—

(a) is resident in the Republic for the charge year in question but was not so resident for the immediately preceding charge year and is not so resident for the immediately succeeding charge year; or

(b) is not resident in the Republic for the charge year in question, and who in either case is absent from the Republic for part of that charge year.

PART II

RATES OF TAX

2. (1) Subject to the provisions of this Act, tax in respect of the income of an individual for a charge year shall be charged as follows— Individuals

(a) on income received by way of lump sum payments, at the rate of ten per centum per annum:

(b) on any income falling within subsection (5) of section *twenty-one* which is not exempt from tax under that subsection, at the rate of ten per centum per annum;

(c) on the balance of so much of an individual's income as does not exceed one million two hundred thousand kwacha, at the rate of ten per centum per annum;

(d) on the balance of so much of an individual's income as exceeds one million two hundred thousand kwacha but does not exceed one million eight hundred thousand kwacha, at the rate of twenty per centum per annum;

(e) on the balance of so much of the income of the individual as exceeds one million eight hundred thousand kwacha, at the rate of thirty per centum per annum.

(2) Where in any charge year a person receives income by way of a gratuity under subsection (1) of section *twenty-one* and other income not being a lump sum, sub-paragraphs (c) to (e) of paragraph (1) shall apply separately to the income received by way of gratuity and to the other income.

Companies
etc

3. (1) Subject to the provisions of this Act, tax in respect of the income of a person other than the income of an individual, a trust, deceased's estate or a bankrupt's estate for a charge year, shall be charged as follows:

(a) on the income of any company listed on the Lusaka Stock Exchange, at the rate of thirty per centum per annum;

(b) on the income of any company other than a bank, at the rate of thirty-five per centum per annum;

(c) on so much of the income of any bank as does not exceed one hundred million kwacha, at the rate of thirty-five per centum per annum;

(d) on so much of the income of any bank as exceeds one hundred million kwacha, at the rate of forty-five per centum per annum.

Trust etc.

4. Subject to the provisions of this Act, tax in respect of the income of a trust, a deceased's estate or a bankrupt's estate for a charge year shall be charged at the rate of thirty-five per centum per annum.

Special cases

5. Notwithstanding the provisions of paragraphs 1 and 4—

(a) the tax chargeable on income received from a rural enterprise shall be reduced, for each of the first five charge years for which that business is carried on, by such amount as equal to one-seventh of the tax which would otherwise be chargeable on that income:

(b) the maximum rate for income received from farming shall be fifteen per centum per annum;

(c) the maximum rate of tax on that portion of income which is determined by the Commissioner-General as originating from the export of non-traditional products shall be fifteen per centum per annum; and

(d) the maximum rate of tax for income received from the chemical manufacture of fertilizer shall be fifteen per centum per annum.

6. Tax required to be deducted from any dividend under section *eighty-one* and section *eighty-one A* shall be deducted— Withholding tax

(a) at the rate of fifteen per centum per annum;

(b) at 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

(c) at the rate of ten per centum per annum for any dividend paid by any former Zambia Consolidated Copper Mining Company.

7. Tax required to be deducted from any payment under section *eighty-two A* shall be deducted at the rate of fifteen per centum per annum. Rate of tax to be deducted

Provided that—

(i) tax required to be deducted from any interest paid by former Zambia Consolidated Copper Mining Company under section *eighty-two A* shall be deducted at the rate of ten per centum per annum; and

(ii) in the case of an individual, tax required to be deducted from any other payment of interest under section *eighty-two A* shall be deducted at the rate of twenty-five per centum per annum with effect from 1st April, 1999 and shall be the final tax.

8. Any reference in this Act or in any other document to any provision of the Charging Schedule as it had effect immediately before the coming into operation of the Income Tax (Amendment) Act, 1999 shall be construed as a reference to the corresponding provision of this Schedule as it has effect thereafter. Interpretation
