

GOVERNMENT OF ZAMBIA

ACT

No. 7 of 2006

Date of Assent: 1st April, 2006

An Act to amend the Income Tax Act

[1st April, 2006

ENACTED by the Parliament of Zambia.

Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2006, and shall be read as one with the Income Tax Act, in this Act referred to as the principal Act.

Short title and commencement

Cap. 323

(2) This Act shall come into operation on 1st April, 2006, 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, 2007, 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 deletion of the definition “ former Zambia Consolidated Copper Mining Company ”; and

(b) by the insertion in the appropriate place of the following new definition:

“ base metal ” means a non-precious metal that is either common or more chemically active, or both common and chemically active and includes iron, copper, nickel, aluminium, lead, zinc, tin, magnesium, cobalt, manganese, titanium, scandium, vanadium and chromium;

3. Section *thirty* of the principal Act is amended in paragraph (i) of the proviso to subsection (2) by the deletion of the words “ any former Zambia Consolidated Copper Mining Company ” and the substitution therefor of the words “ any mining company holding a large-scale mining licence issued under section *twenty-three* of the Mines and Minerals Act and carrying on the mining of base metals ”.

Amendment of Section 30

Cap 213

Insertion of new section 30A 4. The principal Act is amended by the insertion immediately after section *thirty* of the following new section:

Indexation of losses Cap 213 30A. (1) The losses to be deducted by any mining company holding a large-scale mining licence pursuant to section *twenty-three* of the Mines and Minerals Act and carrying on the mining of base metals shall be indexed losses.

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

$$\left[1 + \frac{(R_2 - R_1)}{R_1} \right] \times \text{loss brought forward}$$

Where:

R_1 is the Kwacha against the United States Dollar at the exchange rate ruling on the last day of the preceding accounting year in which the loss is being claimed; and

R_2 is the Kwacha against the United States Dollar at the exchange rate ruling on the last day of the accounting year in which the loss is being claimed.

The Kwacha against the United States Dollar exchange rate to be used for this purpose is the Bank of Zambia mid-rate at the end of the accounting period.

Amendment of section 33 5. Section *thirty-three* of the principal Act is amended —
(a) by the renumbering of the paragraph of that section as subsection (1); and

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

Cap. 213 (2) The capital allowances to be claimed by any mining company holding a large-scale mining licence pursuant to section *twenty-three* of the Mines and Minerals Act and carrying on the mining of base metals shall be indexed capital allowances.

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

$$\left[1 + \frac{(R_2 - R_1)}{R_1} \right] \times \text{Capital Allowance}$$

Where:

R_1 is the Kwacha against the United States Dollar at the exchange rate ruling on the last day of the preceding accounting year in which the loss is being claimed; and

R_2 is the Kwacha against the United States Dollar at the exchange rate ruling on the last day of the accounting year in which the loss is being claimed.

The Kwacha against the United States Dollar exchange rate to be used for this purpose is the Bank of Zambia mid-rate at the end of the accounting period.

6. The principal Act is amended by the insertion immediately after section *eighty-one A* of the following new section:

Insertion of new section 81AA

81AA. (1) Where a person, other than an agent of an independent status to whom subsection (2) applies is acting on behalf of an enterprise and has, and habitually exercises, in the Republic an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the Republic in respect of any activity which the person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in subsection (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that subsection.

Definition of permanent establishment

(2) An enterprise shall not be deemed to have a permanent establishment in the Republic merely because it carries on business in the Republic through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(3) The fact that a company which is a resident of the Republic controls or is controlled by a company which is a resident of another country, or which carries on business in that other country (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of either country.

(4) For purposes of subsection (1) the following activities shall not make a fixed place of business a permanent establishment:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

- (b) the maintenance of the stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of the stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraph (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) For the purposes of section *eighty-one A*, “ permanent establishment ” means a fixed place of business at which the business of an enterprise is wholly or partly carried on and includes —

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, quarry or any other place of extraction or exploitation of natural resources;
- (g) a building site, a construction, assembly or installation project or supervisory activity in connection with such site or activity, but only where such sites, project or activity continues for a period, or periods, of more than one hundred and eighty-three days;
- (h) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Republic

for a period or periods exceeding in the aggregate one hundred and eighty-three days in any twelve-month period commencing on or ending in the fiscal year concerned.

7. Section *eight-one* B of the principal Act is amended in subsection (4)— Amendment of section 81B

(a) by the deletion of the full stop at the end of the subsection and the substitution therefor of a colon; and

(b) by the insertion after the colon of the following new proviso:
“provided that the Minister may by regulations determine the threshold at which goods or services may be supplied by a person or partnership without the requirement of a tax clearance certificate.”

8. The First Schedule to the principal Act is amended by the insertion immediately after paragraph (8) of the following new paragraph: Amendment of First Schedule

(9) Amounts refunded to any person carrying on mining operations pursuant to paragraph (a) of subsection 3 of section *eighty-two* of the Mines and Minerals Act shall be deemed to be income in the year that the refund is made.

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9. The Second Schedule to the principal Act is amended— Amendment of Second Schedule

(a) in paragraph 7 —

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

(u) by a person designated as a micro or small enterprise and approved under the Small Enterprises Development Act. Act No. 29 of 1996

Provided that—

(i) for an enterprise in an urban area the income shall be exempt from tax for the first three years;

(ii) for an enterprise in a rural area income shall be exempt from tax for the first five years.

(ii) by the insertion immediately after subparagraph (x) of the following new subparagraphs:

(y) by way of a dividend declared by a company listed on the Lusaka Stock Exchange to an individual; and

- (z) by way of dividends for a period of five years from the date of first declaration by a company engaged in the assembly of motor vehicles, motor cycles and bicycles.; and
- (aa) by way of dividends declared by a company approved under the Small Enterprises Development Act for a period of five years from the date of the first declaration.
- Act No. 29 of 1996
- Amendment of Fifth Schedule
- Cap. 213
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- Amendment of Charging Schedule
10. The Fifth Schedule to the principal Act is amended—
- (a) in paragraph 22 by the insertion immediately after subparagraph (7) of the following new subparagraph:
- (8) A deduction shall be allowed in ascertaining, the gains or profits of a person involved in mining operations in respect of actual costs incurred by way of restoration and rehabilitation works or amounts paid into the Environmental Protection Fund pursuant to subsection (2) of section *eighty-two* of the Mines and Minerals Act.; and
- (b) in the proviso to paragraph 23 by the deletion of the words “ any former Zambia Consolidated Copper Mining Company ” wherever they appear and the substitution therefor of the words “ any mining company holding a large-scale mining licence issued under section *twenty-three* of the Mines and Minerals Act and carrying on the mining of base metals ”.
11. The Charging Schedule to the principal Act is amended—
- (a) in subparagraph (1) of paragraph 2—
- (i) by the deletion in clause (c) of the words “ three million, three hundred and sixty thousand Kwacha ” and the substitution therefor of the words “ three million, eight hundred and forty thousand Kwacha ”; and
- (ii) by the deletion of clauses (d), (e) and (f) and the substitution therefor of the following new clauses:
- (d) on the balance of so much of an individual's income as exceeds three million, eight hundred and forty thousand Kwacha but does not exceed thirteen million, six hundred and ninety-eight thousand, two hundred and forty Kwacha at the rate of thirty per centum per annum;

- (e) on the balance of so much of an individual's income as exceeds thirteen million, six hundred and ninety-eight thousand, two hundred and forty Kwacha but does not exceed sixty-eight million, four hundred and sixty-six thousand, two hundred and forty Kwacha at the rate of thirty-five per centum per annum; and
- (f) on the balance of so much of an individual's income as exceeds sixty-eight million four hundred and sixty-six thousand, two hundred and forty Kwacha at the rate of thirty-seven point five per centum per annum;
- (b) in subparagraph (1) of paragraph 3 by the deletion of clauses (d) and (e) and the substitution therefor of the following new clauses:
- (d) on so much of the income of any bank as exceeds two hundred and fifty million Kwacha, at the rate of forty per centum per annum;
- (e) on the income of any mining company holding a large-scale mining licence issued under section *twenty-three* of the Mines and Minerals Act, and carrying on the mining of base metals at the rate of twenty-five per centum per annum; and
- (c) in paragraph 6 —
- (i) by the renumbering of the paragraph as subparagraph (1);
- (ii) by the deletion of clause (c) and the substitution therefor of the following:
- (c) at the rate of zero per-centum per annum for any dividend paid by any mining company holding a large-scale mining licence issued under section *twenty-three* of the Mines and Minerals Act and carrying on the mining of base metals.
- (d) in the proviso to paragraph 7 by the deletion of subparagraph (iv) and the substitution therefor of the following:
- (iv) tax required to be deducted from any interest, royalties or management fees by any mining company holding a large-scale mining licence

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issued under section *twenty-three* of the Mines and Minerals Act and carrying on the mining of base metals, to its shareholders or affiliates or any lender of money shall in each case be deducted at the rate of zero per centum per annum.
