

GOVERNMENT OF ZAMBIA

ACT

No. 18 of 2013

Date of Assent: 20th December, 2013

An Act to amend the Income Tax Act

[20th December, 2013

ENACTED by the Parliament of Zambia

Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2013, and shall be read as one with the Income Tax Act, in this Act referred to as the principal Act.

Short title
and
commencement
Cap. 323

(2) This Act shall come into operation on 1st January, 2014, and shall have effect in relation to the charge of tax for the charge year which ends on 31st December, 2014, and in relation to each subsequent charge year.

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

Amendment
of section 2

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

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

Act No. 11 of
2006

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

Act No. 11 of
2006

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

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

Amendment
of section 21

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

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

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

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

the first thirty-five thousand Kwacha of the total or aggregate income received, as applicable, shall be exempt from income tax.

Amendment
of section
46A

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

Insertion of
new section
48A

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

Disapplication
of secrecy
obligations

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

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

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

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

(b) in defending or representing a client, or concerning judicial, administrative, arbitration or mediation proceedings, including advice on instituting or

avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

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

Amendment
of section 63

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

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

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

Amendment
of section 78

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

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

Amendment
of section
79C

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

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

Amendment
of section
82A

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

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

(b) interest and royalties from a source within or deemed under section *eighteen* to be within the Republic;

(c) rent from a source within the Republic;

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

(e) a public entertainment fee to, or on behalf of, a person or persons in partnership not resident in the Republic;

(f) commission deemed under section *eighteen* to be from a source within the Republic; or

(g) winnings from gaming, lotteries and betting;

irrespective of whether the payment is made outside the Republic shall, before making any other deduction, deduct tax from the payment referred to in paragraphs (a), (b), (c), (d), (e), (f) and (g) at the rate specified in the Charging Schedule or as the Commissioner-General may direct to give effect to the provisions of any agreement made under section *seventy-four* or the provisions of the Second Schedule.

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

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

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

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

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

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

10. Section *ninety-five* of the principal Act is amended by the insertion, immediately after subsection (3), of the following new subsection: Amendment of section 95

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

- (a) re-characterise a transaction or an element of a transaction that was entered into as a tax avoidance scheme; and
- (b) re-characterise a transaction the form of which does not reflect the substance.

11. Section *ninety-seven A* of the principal Act is amended by the deletion of subsection (2) and the substitution therefor of the following: Amendment of section 97A

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

12. Section *ninety-seven C* of the principal Act is amended by the deletion of subsections (4) to (7) and the substitution therefor of the following: Amendment of section 97C

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

- (a) the person participates directly or indirectly in the management, control or capital of the other; or
- (b) the persons participate directly or indirectly in the management, control or capital of both of them.

(5) For the purposes of section *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.

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

- (a) the direct and indirect participation in the management, control or capital of a person and different provision that may be made in relation to different cases or different classes of each case;
- (b) the determination of whether the conditions of a controlled transaction under subsection (3) of section *ninety-seven A* are consistent with the arm's length condition, and the quantum of any adjustment made to the income of the first person or the second person in relation to subsections (3) and (4) of section *ninety-seven A*; and
- (c) documentation rules in relation to section *ninety-seven A* that specify the information and documents required to be kept by a person in relation to section *ninety-seven A* and penalties for non-compliance of the Regulations.

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

Amendment
of
First
Schedule

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

- (a) deletion of paragraph 8 and the substitution thereof of the following:
- (8) Income includes the difference between the market value of the shares at the date of exercise of the share options and the option price or the gross sale proceeds or proceeds from sale of options in respect of shares allotted, reserved, vested or acquired by an individual in terms of a share option scheme net of any amount paid for the acquisition or exercise of the shares or options by the individual concerned, and shares or options sold shall be deemed to be the shares or options longest held, except that the relief afforded by subsection (5) of section

twenty-one shall extend to such income to the extent not absorbed by compensation received for loss of office or employment where the gross sale proceeds are receivable within one year of termination of services; and

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

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

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

Amendment
of Second
Schedule

(a) insertion, immediately after clause (b) of sub-paragraph (2) of paragraph 5, of the following new clause:

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

Act No. 6 of
2013

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

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

Amendment
of Fifth
Schedule

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

Amendment
of Charging
Schedule

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

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

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

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

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

(e) on the income of a rural business enterprise or business enterprise in a priority sector operating in a multifacility economic zone or an industrial park tax shall be charged at zero percent for a period of five years starting from the year of commencement of operations of the approved investment;

(f) tax to be deducted from any dividend declared by a rural business enterprise or business enterprise in a priority sector operating in a multifacility economic zone or an industrial park shall be at the rate of zero percent per annum for a period of five years starting from the year of commencement of operations of the approved investment;

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

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

(a) the rate of fifteen percent for dividends;

(b) the rate of twenty percent for payments to non-resident contractors;

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

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

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

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

Tax on profit
distributions

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

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