

**ICAZ STUDENT LEGISLATION HANDBOOK -  
COMPANIES AND OTHER BUSINESS ENTITIES ACT**

**COMPANIES AND OTHER  
BUSINESS ENTITIES ACT**

# **ICAZ STUDENT LEGISLATION HANDBOOK - COMPANIES AND OTHER BUSINESS ENTITIES ACT**

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**ICAZ STUDENT LEGISLATION HANDBOOK -  
COMPANIES AND OTHER BUSINESS ENTITIES ACT**

**CHAPTER 24:31  
COMPANIES AND OTHER  
BUSINESS ENTITIES ACT**

*Act 4 of 2019*

Gazetted on the 15<sup>th</sup> November, 2019

Into force on the 13th February, 2020.

*Amended by Act 8/2020.*

*Subpart A: Duties of office bearers of companies and private business corporation*

*Subpart B: Duty of loyalty – conflicts of interest*

*Subpart C: Other legal proceedings and remedies*

*Subpart D: Indemnification and insurance*

*Sub-Part A: Incorporation of companies and matters incidental thereto*

*Sub-Part B: Membership of company*

*Sub-Part C: Private companies*

*Sub-Part D: Co-operative companies*

*Sub-Part A: General nature of share capital of companies*

*Sub-Part B: Prospectus*

*Sub-Part C: Allotment*

*Sub-Part D: Commissions and discounts*

*Sub-Part E: Issue of shares at premium or discount and redeemable preference shares*

*Sub-Part F: Miscellaneous provisions as to share capital*

*Sub-Part G: Reduction of share capital*

*Sub-Part H: Transfer of shares and debentures, evidence of titles, etc.*

*Sub-Part A: Restrictions on commencement of business and register and index of members*

*Sub-Part B: Annual return and meetings and proceedings*

*Sub-Part C: Accounts and audit*

*Sub-Part D: Directors and other officers*

*Sub-Part E: Responsibilities of boards, audit committees of public company and corporate governance guidelines for public companies*

*Sub-Part F: Protection of minority shareholders*

*Sub-Part G: Mergers etc.*

*Sub-Part H: Takeovers*

*Sub Part A: General*

*Sub-Part B: Prospectuses of foreign companies*

*Sub-Part A: Incorporation of private business corporations and matters incidental thereto*

# **ICAZ STUDENT LEGISLATION HANDBOOK - COMPANIES AND OTHER BUSINESS ENTITIES ACT**

*Sub-Part B: Members*

*Sub-Part C: Members' interests*

*Sub-Part D: Management and administration*

*Sub-Part E: Accounting*

## **ACT**

**To provide for the constitution, incorporation, registration, management and internal administration of companies and winding up of companies and private business corporations; to enable the voluntary registration of other business entities; to ensure the removal of defunct companies and private business corporations by re-registering all existing companies and private business corporations; to repeal the Companies Act [Chapter 24:03] and the Private Business Corporations Act [Chapter 24:11]; and to provide for matters connected therewith or incidental thereto.**

**ENACTED** by the Parliament and the President of Zimbabwe

# ICAZ STUDENT LEGISLATION HANDBOOK -

## COMPANIES AND OTHER BUSINESS ENTITIES ACT

### PART I PRELIMINARY

#### 1 Short title and date of commencement

This Act may be cited as the Companies and Other Business Entities Act [Chapter 24:31], and shall commence on the ninetieth (90th) day after the date of its promulgation.

[13<sup>th</sup> February,2020 - Editor.]

#### 2 Interpretation

(1) In this Act—

**“accounting officer”** means a person chosen by the members of a private business corporation to do the tasks specified in Chapter IV Part I;

**“accounts”** includes a public company’s group accounts, whether prepared in the form of financial statements or not;

**“articles”** means a company’s articles of association registered in accordance with section eighty-one (“Articles of association and alteration thereof”);

**“associate”** or **“associated”**, for the purposes of section 43 (“Power of inspectors to investigate related registered or unregistered business entities”), 44 (“Production of records and evidence on investigation”), 56 (“Transactions involving conflict of interest”), 57 (“Duty to disclose conflict of interest”) or 73 (“Prohibition of concealment of beneficial ownership”), has the meaning given to it by section 3 (“When persons deemed to be associates and when persons deemed to control companies”);

**“beneficial owner”** in relation to a company means a natural person who ultimately owns or controls the rights to or benefits from property or a person who exercises ultimate effective control over a legal person, and, more specifically, refers to a natural person who—

- (a) directly or indirectly holds more than **20%** of the company’s shares; or
- (b) directly or indirectly holds more than **20%** of the company’s voting rights; or
- (c) directly or indirectly holds the right to appoint or remove a majority of the company’s directors; or

(d) otherwise exercises or has the right to exercise significant influence or control;

**“business entity”** means a company, a private business corporation, a syndicate, a partnership or any other association of persons, whether corporate or unincorporated, which has a business character;

**“business entity incorporation agent”** and **“business entity service provider”** have the meanings given to those terms in section two hundred and ninety-two (“Business entity incorporation agents and business entity service providers”)(1);

**“by-laws”** means the by-laws of a private business corporation adopted or altered in terms of section two hundred and sixty-six (“By-laws”);

**“certified”**, in relation to a copy or translation of any document, means certified in the prescribed manner to be a true copy or a correct translation;

**“Chief Registrar”** means the Chief Registrar of Companies and Other Business Entities appointed in terms of section six (“Office for the Registration of Companies and Other Business Entities; Registrar, registries and inspectorate”)(3)(a);

**“civil penalty order”** means an order issued in terms of Part I (“Civil Penalty Orders”) of Chapter VII (“General”);

**“civil penalty provision”** means any provision of this Act for the breach of which a defaulter is liable to a civil penalty;

**“Companies Office”** or **“Office”** means the Office for the Registration of Companies and Other Business Entities established by section six (“Office for the Registration of Companies and Other Business Entities; Registrar, registries and inspectorate”);

**“company”** means—

- (a) a company incorporated under this Act or a repealed law; or
- (b) a foreign company, to the extent that the provisions of this Act apply to such companies;

**“company limited by guarantee”** means a company described in section seventy-six (“Mode of forming a company”)(b);

**“company limited by shares”** means a company described in section seventy-six (a);

**“company secretary”** or **“secretary”** includes any official of a company, whatever his or her

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title, who performs the duties normally performed by a secretary of a company;

**“constitutive documents”**, in relation to—

- (a) a company other than a foreign company, means its memorandum and articles;
- (b) a foreign company, means its charter, statutes, memorandum, articles or other instrument that constitutes it or defines its scope;
- (c) a private business corporation, means its incorporation statement and by-laws;
- (d) a business entity other than a company or a private business corporation, means the constitution or agreement that constitutes it or defines its scope;

**“controlling member”**, in relation to a private business corporation—

- (a) means the member having a percentage interest that enables him or her to control the corporation; and
- (b) when used in the plural, means any 2 or more members who, between them, have a combined percentage interest that enables them to control the corporation;

**“co-operative company”** has the meaning given it by *section eighty-seven (“Definition of co-operative company and consequences of default in complying with conditions for co-operative company”)*;

**“court”**, in relation to—

- (a) any offence against this Act means the Magistrate’s court (which for this purpose shall have jurisdiction in relation to that offence even if under the Magistrates Court Act [Chapter 7:10] the penalty for such offence exceeds its criminal jurisdiction);
- (b) the recovery of any civil penalty means a Magistrates court (which for this purpose shall have jurisdiction in relation to that matter even if under the Magistrates Court Act [Chapter 7:10] that matter exceeds its civil monetary jurisdiction);
- (c) 162 (“Power of court to rectify register”), 233 (“Dissenting shareholders’ appraisal rights”), 255 (“Cessation of membership by order of court”) and 269 (“Protection against unfair prejudice”), the magistrates court having jurisdiction in the area where the registered business entity concerned has its registered office or physical address, as the case may be;

(d) contexts other than those mentioned above, means whichever court has jurisdiction in the matter;

**“cumulative penalty clause”** has the meaning given to it in *section two hundred and ninety-four (“Power of Registrar to issue civil penalty orders and categories thereof”)*;

**“debenture”** includes debenture stock and bonds;

**“director”** includes any person occupying the position of director or alternate director of a company, whatever his or her title;

**“distribution”**, in relation to a distribution by a company, means a direct or indirect—

- (a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of members or shareholders in their capacity as members or shareholders of that company or of another company within the same group of companies, whether—

- (i) in the form of a dividend; or
  - (ii) as a payment *in lieu* of a capitalisation share, as contemplated in *section one hundred and thirty-seven (“Capitalisation shares”)*; or
  - (iii) in consideration for the acquisition—

- A. by the company of any of its shares, as contemplated in *section one hundred and twenty-eight (“Power of company to purchase own shares”)*; or

- B. by any company within the same group of companies, of any shares of a company within that group of companies; or

- (iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to *section two hundred and thirty-three (“Dissenting shareholders’ appraisal rights”)* (17);

- (b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or

- (c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies, but does not include any such action taken upon the final liquidation of the company;

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**“document”** means any document or material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device, and includes a register, index, minute and financial record;

**“effective date”** means the date of commencement of this Act specified in *section one* (“*Short title and date of commencement*”);

**“electronic record”** has the meaning given to it in *section nine* (“*Form of registers and other documents*”);

**“electronic registry”** has the meaning given to it in *section two hundred and seventy-nine* (“*Interpretation in Chapter V*”);

**“emoluments”**, means all or any of the items comprehended by the expression “emoluments” in *section two hundred and fifteen* (“*Particulars in accounts of directors’ salaries and pensions*”)(2);

**“equity share capital”** has the meaning given to it by *section one hundred and eighty-five* (“*Meaning of holding company, subsidiary and wholly owned*”) (6);

**“expert”** means any person whose professional or technical training gives authority to a statement made by him or her;

**“financial records”**, in relation to—

(a) a company, mean the records referred to in *section one hundred and eighty-two* (“*Keeping of financial records*”)(1) (a), (b) and (c), otherwise known as the **“books of account”**;

(b) private business corporation mean the records referred to in *section two hundred and seventy-one* (“*Financial records*”)(2);

**“financial statements”**, in relation to—

(a) a company, mean any of the following—

(i) the statement of comprehensive income (inclusive of what is commonly known as a profit and loss account or income and expenditure account);

(ii) the statement of financial position, otherwise known as the balance sheet;

(iii) audited or unaudited monthly, quarterly or annual financial accounts;

(iv) financial information in a circular, prospectus or provisional announcements of results that an actual or prospective creditor or holder of the company’s securities or the Office

or Securities and Exchange Commission may reasonably be expected to rely on;

(v) any other statement that may be prescribed under this Act or the Public Accountants and Auditors Act [*Chapter 27:12*] in relation to companies or private business corporations;

(b) in relation to a private business corporation mean any of the financial statements referred to in *section two hundred and seventy-three* (“*Annual financial statements*”);

**“financial year”**, in relation to a business entity, means the period covered by its financial statements laid before its members in general meeting, whether that period is a year or not;

**“fixed penalty clause”** has the meaning given to it in *section two hundred and ninety-four* (“*Power of Registrar to issue civil penalty orders and categories thereof*”);

**“foreign company”** means a company or other association of persons incorporated outside Zimbabwe which has established a place of business in Zimbabwe;

**“foreign country”** means a state or territory other than Zimbabwe;

**“foreign language”** means any language other than an officially recognised language;

**“generally accepted accounting practices”** means accounting practices and procedures that are consistent with this Act and are recognised by the Public Accountants and Auditors Board established by *section 5* (“*Entities that maybe registered and effect of registration*”) of the Public Accountants and Auditors Act [*Chapter 27:12*];

**“group accounts”** has the meaning given to it by *section one hundred and eighty-six* (“*Obligation to lay group accounts before holding company*”)(1);

**“holding company”** means a holding company as defined by *section one hundred and eighty-five* (“*Meaning of holding company, subsidiary and wholly owned subsidiary*”);

**“identity document”** means—

(a) a document issued to a person in terms of *section 7(1)* or (2) of the National Registration Act [*Chapter 10:17*] or a passport or drivers licence issued by the Government of Zimbabwe; or

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(b) a passport, identity document or drivers licence issued by the government of a foreign country;

**“incorporation statement”** means the incorporation statement of a private business corporation registered in terms of *section two hundred and forty-eight* (“*Incorporation statement, signing thereof and registration of private business corporation*”) or *two hundred and forty-nine* (“*Registration of amended incorporation statement*”);

**“inspector”** means an officer of the Companies Office responsible for assisting the Registrar to conduct investigations in terms of this Act and ensuring compliance generally with this Act;

**“interest”**, in relation to a member of a private business corporation, means the member’s percentage interest in the private business corporation as stated in its incorporation statement;

**“internal rules”**, in relation to—

(a) a company, means its articles and, if appropriate, any rules binding on the company by virtue of a shareholder’s agreement;

(b) a private business corporation, means its by-laws;

**“issued generally”**, in relation to a prospectus, means issued to persons who are not members or debenture holders of the company;

**“level”**, in relation to a penalty imposed under a civil penalty order, means a level on the Standard Scale of Fines referred to in section 280 of the Criminal Law Code, as amended or replaced from time to time;

**“local securities exchange”** means a stock exchange registered in terms of the Securities and Exchange Act [Chapter 24:25];

**“manager”** in relation to a company or private business corporation, means a person (whatever his or her title and whether or not he or she is a director) who is the principal officer and agent of the company or corporation with authority to represent and bind the company or corporation in transactions with other parties;

**“member”**, in relation to—

(a) a company, has the meaning given to it in *section twenty* (“*Effect of registration of constitutive documents and limitation of liability of members of companies and private business corporations*”)(3)(a);

(b) a private business corporation, means a person who has an interest in a private business corporation;

**“memorandum”** means a company’s memorandum of association registered in terms of *section seventy-seven* (“*Memorandum of company*”);

**“minimum subscription”** has the meaning given to it by *section one hundred and fifteen* (“*Prohibition of allotment unless minimum subscription received*”)(2);

**“Minister”** means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

[Administration assigned to the Minister of Justice, Legal and Parliamentary Affairs by SI 192/2023 w.e.f. 20<sup>th</sup> October, 2023.]

**“near relative”** of a person means (for the purpose of *section three*)—

(a) a spouse of that person; or

(b) a parent of that person, including a step-father or step-mother; or

(c) a child (natural or adopted) or step-child of that person; or

(d) a brother, half-brother, step-brother, sister, half-sister or step-sister of that person; or

(e) the adopter or adopters of that person; or

(f) the spouse of a relative of a person referred to in paragraph (c), (d) or (e);

**“officer”** in relation to a company, means an officer appointed by the company’s board of directors as provided in *section two hundred and twenty-one* (“*Officers of company*”) and includes a director, manager or secretary;

**“officer who is in default”**, in relation to a civil penalty provision, means—

(a) an officer or employee of a company;

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or

(b) a member or employee of a private business corporation;

who knowingly authorised or permitted the default, refusal, omission or contravention mentioned in the provision;

**“officially recognised language”** means any one of the languages mentioned in section 7(1) of the Constitution;

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**“ordinary resolution”** has the meaning given to it by *section one hundred and seventy-five (“Special resolutions”)(5);*

**“prescribed”** means prescribed by regulations made under this Act;

**“prescribed form”** means any form set out in a *Schedule* to this Act or any form prescribed under this Act;

**“printed”** in relation to words, figures or symbols, means embodied in any readable, material and visible form;

**“private business corporation”** means a private business corporation incorporated under this Act;

**“private company”** has the meaning given to it by *section eighty-five (“Definition of private company and consequences of default in complying with conditions for private company”);*

**“promoter”**, in relation to a prospectus, means any person who is a party to the preparation of the prospectus but does not include a person who acts in a professional capacity for persons engaged in procuring the formation of a company;

**“prospectus”** means a prospectus, notice, circular or advertisement, in printed or electronic form, inviting the public to subscribe for or purchase any shares or debentures of a company;

**“public company”** means any company, including a co-operative company, which is not a private company or a company limited by guarantee;

**“quoted”**, in relation to a share, debenture or other security, means that dealings in the share, debenture or security are permitted on a local securities exchange or on a securities exchange in a foreign country, and **“unquoted”** shall be construed accordingly;

**“register”** without qualification, includes incorporate ( in relation to a domestic company or private business corporation) or register (in relation to a foreign company), as may be appropriate to the context;

**“registered business entity”** means a company, including a foreign company, or a private business corporation, registered or incorporated in terms of this Act;

**“registered user”** means a person who is registered as a user of the electronic registry in terms of *section two hundred and eighty-three*

*(“Registration of registered users and suspension or cancellation of registration”);*

**“Registrar”** means—

(a) the Chief Registrar or other registrar appointed in terms of *section six* ; or

(b) in relation to anything which an officer has been authorised to do on behalf of the Registrar in terms of *section 6(4)*, that officer;

**“repealed law”** means the Companies Act [*Chapter 24:03*] or the Private Business Corporations Act [*Chapter 24:11*];

**“self-actor”** means any authorised user of the electronic registry other than a legal practitioner, chartered accountant, chartered secretary, or business entity service provider referred to in *section two hundred and ninety-two (“Business entity incorporation agents and business entity service providers”);*

**“serve”**, in relation to any document or record, has the meaning given to it in *section sixty-four (“Service of documents”);*

**“share”** means a share in the share capital of a company and includes stock, except where a distinction between stock and shares is expressed or implied;

**“shelf company”** has the meaning given to it in *section two hundred and ninety-three (“Shell companies and shelf companies”)(1);*

**“shell company”** has the meaning given to it in *section two hundred and ninety-three (1);*

**“special notice”** has the meaning given to it by *section one hundred and seventy-five (“Resolutions requiring special notice”);*

**“special resolution”** means a resolution passed at a general meeting of a company in accordance with *section one hundred and seventy-five (“ Special resolutions”)(1), (2) and (3);*

**“statement of comprehensive income”** means a statement which, as well as detailing profits and losses (or income and expenditure, as the case may be), reflects any changes in net assets due to transfer of equity holdings, change of ownership, and other factors.

**“subsidiary”** and **“wholly owned subsidiary”** have the meanings given to them by *section one hundred and eighty-five (“Meaning of holding company, subsidiary and wholly owned subsidiary”);*

**“syndicate”** means an association of individuals, companies or other business

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entities, or other bodies corporate or unincorporated, formed for the purpose of conducting and carrying out some particular business transaction;

**“treasury share”** has the meaning given to that phrase in section ninety-five (“*Legal nature of company shares and requirement to have shareholders*”) (5);

**“uncertificated share”** means a share the title to which is evidenced and transferred without a material certificate;

**“unregistered association”** means any association of persons whatsoever not registered under any law whether incorporated or unincorporated;

**“untrue statement”** or **“false statement”** includes a statement that is misleading in the form and context in which it is made, subject to subsection (4) and (5).

(2) References in this Act to—

(a) the citation clause of a civil penalty order shall be construed as references to the part of the order in which the Registrar names the defaulter and cites the provision of the Act in respect of which the default is alleged to have been made, together with, if necessary, a brief statement of the facts constituting the default;

(b) the penalty clause of a civil penalty order shall be construed as references to the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly;

(c) the remediation clause of a civil penalty order shall be construed as references to the part of the order that stipulates the remedial action to be taken by the defaulter.

(3) Where a civil penalty provision states that any person or entity is liable to a civil penalty order, the provision shall be construed as meaning that the Registrar may serve a civil penalty order on that person or entity.

(4) For the purposes of this Act, a person is to be regarded by or in respect of a company as being a member of the public, despite that person being a shareholder of a company or a purchaser of goods from the company.

(5) An untrue statement is regarded to have been included in a prospectus, written statement, or summary directing a person to either a prospectus or written statement, if it is contained in any report or memorandum—

(a) that appears on the face of the prospectus, written statement, or summary:

or

(b) that is incorporated by reference within, or has attached to or accompanies, the prospectus, written statement or summary.

### 3 When persons deemed to be associates and when persons deemed to control companies

(1) This section applies where it is necessary for the purposes of section *Power of inspectors to investigate related registered or unregistered business entities*, (43 (“**44** Production of records and evidence on investigation”), 71 (“Prohibition of concealment of beneficial ownership”) or 56 (“Transactions involving conflicts of interest”), 57 (“Duty to disclose conflict of interest”) or 58 (“Avoidance and other remedies for conflict-of-interest transactions”), or any regulations that apply this section to the determination of any prescribed matter, to determine whether or not a person or entity is associated with or related to another person or entity, or whether or not a person controls a company,

(2) Where a person, other than an employee, acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons shall be treated as associates of each other for the purposes of this Act.

(3) Without limiting the generality of subsection (2), the following shall be treated as a person’s associate—

(a) a near relative of the person, unless the Registrar is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;

(b) a partner of the person, unless a court or the Registrar is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;

(c) a partnership in which the person is a partner, if the person, either alone or together with one or more associates, controls **50% or more** of the rights to the partnership’s income or capital;

(d) the trustee of a trust under which the person, or an associate of the person, benefits or may benefit;

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(e) a company which is controlled by the person, either alone or together with one or more associates;

(f) where the person is a partnership, a partner in the partnership who, either alone or together with one or more associates, controls **50% or more** of the rights to the partnership's income or capital;

(g) where the person is the trustee of a trust, any other person who benefits or may benefit under the trust;

(h) where the person is a company—

(i) a person who, either alone or together with one or more associates, controls the company; or

(ii) another company which is controlled by a person referred to in subparagraph (i), either alone or together with one or more associates.

(4) For the purposes of this section, a person shall be deemed to control a company if the person, either alone or together with one or more associates or nominees—

(a) controls the majority of the voting rights attaching to all classes of shares in the company, whether directly or through one or more interposed companies, partnerships or trusts; or

(b) has any direct or indirect influence that, if exercised, results in him or her or his or her associates or nominees factually controlling the company.

### 4 Non-application of Act to certain institutions

(1) Nothing contained in this Act shall apply to any banking institution, building society, insurer, micro-finance institution, co-operative society or other entity, the formation, registration and management whereof are governed by any other enactment, save as may be otherwise expressly provided in this Act or in such enactment.

(2) This Act shall not be construed as applying to a trade union or employers' organisation.

(3) In this section "**employers organisation**" and "trade union" have the meanings given to them respectively by section 2 of the Labour Act [Chapter 28:01].

### 5 Registrable business entities

(1) The following types of business entities are registrable under this Act—

(a) a public limited company;

(b) a private limited company;

(c) a company limited by guarantee;

(d) a co-operative company;

(e) a foreign company;

(f) a private business corporation;

(g) subject to *section two hundred and seventy-eight ("Voluntary registration of partnership agreements, etc.")*, partnerships, syndicates, joint ventures and certain associations of persons.

(2) The effects of registering the entities referred to in subsection (1) shall be as set out in this Act.

### PART II ADMINISTRATION

### 6 Office for the Registration of Companies and Other Business Entities; Registrar, registries and inspectorate

(1) For the registration of companies and other business entities registrable under this Act, there is hereby established the Office for the Registration of Companies and Other Business Entities ("the Companies Office"), which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of doing anything that bodies corporate may do by law.

(2) The Companies Office shall be located in Harare and Bulawayo and other locations that the Minister may designate.

(3) There shall be—

(a) a Chief Registrar of Companies and Other Business Entities, who shall exercise general supervision and direction of the Companies Office; and

(b) such numbers of registrars, assistant registrars and other officers as may be necessary for the purposes of this Act, and

(c) such number of inspectors as may be necessary for the purposes of this Act;

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whose offices shall be public offices and form part of the Civil Service.

(4) The Chief Registrar of Companies and Other Business Entities may in writing authorise an assistant registrar, inspector or other officer referred to in subsection

(3) (b) or (c) to exercise any of the functions of a Registrar under this Act.

(5) Subsection (4) shall not be construed as limiting the power of the Chief Registrar of Companies and Other Business Entities to delegate functions under any other law.

(6) The Chief Registrar shall provide every inspector with a document identifying him or her as an inspector, and the inspector shall produce it on request by any interested person.

### 7 Funds of Companies Office

The funds of the Companies Office shall consist of—

(a) such funds as may be appropriated for the purpose of the Companies Office by Parliament; and

(b) such portion of the Deeds Retention Fund established under section 18 of the Public Finance Management Act [Chapter 22:19] (inclusive also of the proceeds of fees and civil penalties levied in terms of this Act) which must be credited to the office in terms of the constitution of that fund; and

(c) funds that may accrue to the Office in virtue of *section fifty-three* ("Undistributed property of dissolved or defunct company or private business corporation: bona vacantia orders"); and

(d) such donations as are approved by the Minister.

### 8 Annual and other reports of Companies Office

(1) The Chief Registrar shall, on behalf of the Companies Office, **no later than 60 days** after the end of each financial year submit to the Minister an annual report on the operations and activities of the Companies Office during the preceding financial year.

(2) In addition, the Chief Registrar, on behalf of the Companies Office—

(a) shall submit to the Minister any other report, and provide him or her with any other information, that he or she may require in

regard to the operations and activities of the Companies Office; and

(b) may submit to the Companies Office any other report that it considers desirable.

(3) The Minister shall table before Parliament all reports submitted to him or her by the Chief Registrar under subsections (1) and (2) **within 90 days**.

### 9 Form of registers and other documents

(1) Any register, index, minutes or financial records required by this Act to be kept by a registered business entity may be kept either by making entries in written and legible form, paginated, indexed and bound together (thereafter in this section called a "bound record") or by recording the matters in question in any other written or electronic and easily retrievable, visible, readable and referable manner.

(2) Where any such register, index, minutes, financial statements or other document required by this Act to be kept by a registered business entity is not kept by making entries in a bound record, but by some other means, adequate precautions shall be taken for guarding against falsification and for facilitating their retrieval.

(3) Any such register, index, minutes, financial statements and document required by this Act to be kept by a registered business entity and every document required by this Act or by an entity's constitutive documents to be issued or circulated by a registered business entity shall be in the English language or in any officially recognised language:

Provided that where such a record is not in the English language and is required to be furnished to the Registrar, an auditor or any other person, the business entity shall provide the Registrar, auditor or other person with a certified English translation.

(4) If it comes to the notice of the Registrar that default is made in complying with—

(a) subsection (1) the Registrar may serve a category 4 civil penalty order upon the defaulting registered business entity, the suspension of which is conditioned upon the defaulting entity (no later than 7 days from the date of service of the civil penalty order) binding or embodying all relevant records to the satisfaction of the Registrar that were or should have been made in relation to a period of 3 years before the issuance of the order, or if the

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entity has been incorporated or registered for less than 3 years, from the date of its incorporation or registration;

(b) subsection (2) the Registrar may serve a category 2 civil penalty order upon the defaulting registered business entity, the suspension of which is conditioned upon the defaulting entity (no later than 7 days from the date of service of the civil penalty order) instituting adequate precautions to the satisfaction of the Registrar, guarding against falsification or facilitating their retrieval.

(c) subsection (3) the Registrar may serve a category 4 civil penalty order, the suspension of which is conditioned upon the defaulting registered business entity (no later than 7 days from the date of service of the civil penalty order) furnishing the required translation.

(5) If a registered business entity is a registered user of the electronic registry, it may, subject to *section two hundred and eighty-two* ("User agreements"), keep the documents referred to in this section in electronic or digital form, in which event the provisions of this section shall not apply to such company with respect to the transfer of shares.

### 10 Forms and tables and application of certain Schedules and licences

(1) Subject to *section three hundred and two* ("Alteration of fees, tables, forms and certain provisions of this Act"), the forms and tables set forth in the *First* ("Form of memorandum of association of a company"), *Second* ("Form of statement *in lieu* of prospectus to be delivered to Registrar by private company on ceasing to be private company and reports to be set out therein"), *Third* ("Form of statement *in lieu* of prospectus to be delivered to Registrar by a company which does not issue a prospectus or which does not go to allotment on a prospectus issued and reports to be set out therein") and *Fourth* ("Form of annual return of company") *Schedules* or forms and tables as near thereto as the circumstances admit shall be used in all matters to which those forms and tables refer.

(2) Subject to *section three hundred and two* and to the discretion by this Act conferred on the Registrar, there shall be paid in respect of the several matters or services mentioned in the *Fifth Schedule* ("Fees") the several fees specified therein.

### 11 Registrar's power to refuse registration

(1) If the Registrar is satisfied that any document submitted to him or her—

- (a) contains any matter contrary to law; or
- (b) by reason of any omission or misdescription has not been duly completed; or
- (c) does not comply with the requirements of this Act; or
- (d) contains any error, alteration or erasure; he or she shall refuse to register or receive the document and request that the document be appropriately amended or completed and resubmitted or that a fresh document be submitted in its place.

### 12 Extension of time for lodging returns, etc.

Whenever by this Act a time is prescribed for filing with or delivering or sending to the Registrar any return, account or other record or for giving notice to him or her of any matter, the Registrar may, on application to him or her before the expiry of the prescribed time, extend such time for so long as may seem to him or her to be reasonable; and if any prescribed time is extended by the Registrar under this section the provisions of *section two hundred and ninety-eight* ("Enforcement of duty to make returns") shall be read as applying to a default in respect of the time as so extended.

### 13 Proof of certain facts by affidavit

(1) In any civil proceedings in the name of the Registrar, or criminal proceedings under this Act concerning the failure of a person to file with or deliver to the Registrar any return or other document, a document purporting to be an affidavit made by a person who alleges therein that—

- (a) he or she is employed in the Companies Office; and
- (b) if the said return or other document had been filed with or delivered to the Registrar, it would in the ordinary course of events have come to the deponent's knowledge and a record thereof, available to him or her, would have been kept; and
- (c) no such return or other document has to the deponent's knowledge been filed with or delivered to the Registrar and that he or she has

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satisfied himself or herself that no such record was kept;

shall on its mere production in those proceedings by any person, but subject to subsection (2), be *prima facie* proof that such return or other document has not been filed with or delivered to the Registrar.

(2) The court in which any such affidavit is produced in evidence may, and, at the request of the accused made not less than 7 days before the trial, shall, cause the person who made it to be summoned to give oral evidence in the proceedings in question.

(3) Nothing in this section contained shall affect any other rule of law under which any certificate or other document is admissible in evidence, and this section shall be deemed to be additional to, and not in substitution for, any such rule of law.

### **14 Inspection and copies of documents in Companies Office and production of documents in evidence**

(1) Any person may after application in the prescribed manner and on payment of the prescribed fees, inspect the documents kept under this Act by the Companies Office; and any person may require a certificate of the incorporation or registration of any registered business entity or a copy or extract of any constitutive document or other document or part of any other document to be certified by the Registrar or assistant registrar on payment of the prescribed fee for the certificate, certified copy or extract.

(2) A copy of or extract from any document kept under this Act by the Companies Office, certified to be a true copy under the hand of the Registrar or assistant registrar, shall in all legal proceedings be admissible in evidence as of equal validity with the original document. Certified copies or extracts may be handed into court by the party who desires to avail himself or herself of them.

(3) It shall not be necessary in any legal proceedings for the Registrar himself or herself or for any officer under him or her to produce any original document kept under this Act by the Registrar, but it shall be deemed sufficient if such document is produced by some person authorised by him or her to do so.

### **15 Additional copies of returns or documents**

(1) Where in or under this Act any document is lodged or transmitted, the person lodging or transmitting the same shall, as and when it is required by or under this Act, lodge or transmit an additional copy or additional copies of the document.

(2) The Minister may in regulations provide in the respective cases whether such additional copy or copies shall be in duplicate original form, or shall be in the form of clearly legible copy or copies certified in a manner prescribed in such regulations or be in the form of an electronic record.

### **16 Replacement of lost documents**

(1) Where a document required to be filed by a registered business entity has been lost, defaced or destroyed, or where the Registrar cannot locate the file copy of a document, the registered business entity may apply to the Registrar in the prescribed manner for leave to file a copy of the document, and the Registrar, on being satisfied—

- (a) that the original document has been lost, defaced or destroyed; and
- (b) of the date of the filing of the original document; and
- (c) that the copy of the document produced is a correct copy;

may certify on that copy that he or she is so satisfied and direct that the copy be filed in the same manner as the original document.

(2) Where the Registrar has lost or cannot locate a document that was filed in the Companies Office, no fee shall be payable for filing a copy of it in terms of subsection (1).

(3) A copy filed in terms of subsection (1) shall have the same effect as the original document.

(4) Where a document required to be issued by the Registrar has been lost, defaced or destroyed, the Registrar shall upon application in the prescribed manner replace the document.

(5) The company secretary shall submit all the contemplated applications in this section together with affidavits as prescribed in the regulations.

(6) If a duplicate certificate has been issued in substitution for a certificate which has been lost, defaced or destroyed, the original certificate if

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still in existence shall thereupon become void and in the case of a defaced certificate, the applicant for its replacement must return it to the Registrar.

(7) If a certificate which has become void in terms of subsection (6) comes into the possession or custody of any person who knows that a duplicate has been issued in substitution therefor, he or she must without delay deliver or transmit such certificate to the Registrar.

(8) If any person makes a fraudulent application for the replacement for a lost, defaced or destroyed document or certificate under this section, or if a person contravenes subsection (7), he or she shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

### 17 Exemption from liability for acts or omissions of Companies Office and persons employed therein

No act or omission whatever of the Companies Office or the Registrar or of any officer, clerk, inspector or other person employed in the Companies Office shall render the Companies Office, the State or the Registrar or any such officer, clerk, inspector or person liable in respect of any loss or damage sustained by any person in consequence of such act or omission unless the act or omission was in bad faith or was due to a want of reasonable care or diligence.

## CHAPTER II

### PROVISIONS COMMON TO COMPANIES AND PRIVATE BUSINESS CORPORATIONS

#### PART I

#### GENERAL

### 18 Registration of constitutive documents

(1) The registration of a memorandum and articles of association or an incorporation statement may be done either electronically or manually in accordance with this section.

(2) The electronic registration of constitutive documents shall be done by a person who is

either a self-actor or a registered user of the electronic registry.

(3) Where the registration is manual the constitutive documents shall be delivered to the Registrar together with either a duplicate original or a printed notarial copy:

Provided that in the case of a company or private business corporation to be registered in Bulawayo or any other location that the Minister may designate there shall be delivered in addition either a further duplicate original or a further printed notarial copy.

(4) In relation to a company, subject to due compliance with *section one hundred and ninety-nine ("Restrictions on appointment or advertisement of director; share qualifications of director")* (whenever that section is applicable) and upon payment of the prescribed fees, the Registrar shall, if the memorandum and the articles, if any, are in accordance with this Act, register the same, and shall return to the company a duplicate original or one notarial copy of the memorandum and of the articles, if any, with the date of the registration endorsed thereon.

(5) In relation to a private business corporation, the Registrar shall, upon payment of the prescribed fee, register any incorporation statement delivered to him or her, if it is in accordance with this Act

(6) On registering the memorandum of association or the incorporation statement as the case may be, the Registrar shall—

(a) assign a registered number to the company or the private business corporation; and

(b) return one copy of the memorandum of association or the incorporation statement to the applicant; and

(c) issue a certificate of incorporation.

(7) The certificate of incorporation or a copy thereof issued in terms of subsection (6)(c) shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the company or private business corporation is duly incorporated under this Act.

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### 19 Incorporation of companies and private business corporations and capacity and powers thereof

A company or a private business corporation shall be incorporated from the date of issue by the Registrar of its certificate of incorporation and the company or private business corporation shall thereupon become a body corporate, with the capacity and powers of a natural person of full legal capacity in so far as a body corporate is capable of having such capacity and exercising such powers, until it is struck off the register or dissolved in terms of the Insolvency Act [Chapter 6:07].

[ *Eagle Liner Coaches (Pvt) Ltd v Paratema. P 16-HH-655*  
whether director may represent his company *J.Muguti v Portlook Services (Pvt) Ltd 16-HH-713*  
*NSSA Workers Union & Zim.Pension Rights v Ncube N.O. 20-HMA-021*]

### 20 Effect of registration of constitutive documents and limitation of liability of members of companies and private business corporations

(1) Subject to this Act, the constitutive documents of a company or private business corporation shall, when registered, bind the company or private business corporation and the members thereof to the same extent as if they respectively had been signed by each member and contained undertakings on the part of each member to observe all the provisions of the constitutive documents.

(2) Individual natural persons of full capacity acting in their own right and, subject to section eighty-three ("Membership of company; personal liability where business carried on with no members") or section two hundred and fifty-three ("Requirements for membership"), other persons may be members of a company or private business corporation.

(3) Membership of a company or private business corporation is commenced, evidenced and terminated as follows—

(a) in the case of a company—

(i) the subscribers to the memorandum of the company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members;

(ii) every other person who agrees to become a member of a company and whose name is

entered in its register of members shall be a member of the company and continue to be so until his or her name is removed from it for any reason;

and in either case membership is terminated if the company is dissolved in terms of the Insolvency Act [Chapter 6:07];

(b) in the case of a private business corporation—

(i) a member's membership shall commence on the registration of the incorporation statement or amended incorporation statement in which his or her name and signature as a member first appear;

(ii) unless previously terminated by an order of court made under section two hundred and fifty-five ("Cessation of membership by order of court"), a member's membership shall terminate—

A. on the registration of an amended incorporation statement in which his or her name and signature as a member first do not appear; or

B. on the dissolution of the private business corporation in terms of the Insolvency Act [Chapter 6:07].

(4) Subject to this Act, the members of a company or a private business corporation shall not, solely by reason of their membership, be liable for the debts or obligations of the company or private business corporation.

(5) All money payable by any member to the company or private business corporation under the constitutive documents thereof shall be a debt due from him or her to the company or private business corporation.

### 21 Availability and publicity of constitutive documents

(1) Every company and private business corporation shall send to every member at his or her request, on payment of one United States dollars (or such reasonable greater amount as the Minister may prescribe for the purposes of this section), or such other amount as the company or private business corporation may fix, a copy of its constitutive documents, or shall afford to every member or to his or her duly authorised agent reasonable facilities for making a copy at his or her own expense of the constitutive documents.

(2) Every company and private business corporation shall keep either at its registered office or accounting officer's physical address,

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the original or a certified copy of its constitutive documents together with any amendments.

(3) Any person is entitled to inspect any document referred to in subsection (2) at any reasonable time during normal business hours and, on payment of the reasonable costs thereof, to obtain a copy of any such document.

(4) If it comes to the notice of the Registrar that any company or private business corporation has made default in complying with subsections (1), (2) or (3), the Registrar may serve a category 3 civil penalty order upon the defaulting company or corporation. 77

### **22 No constructive notice of constitutive documents or other public documents**

The fact that a company's memorandum of association or a private business corporation's incorporation statement or any other constitutive document has been registered in terms of this Act or is available or required to be available for inspection in terms of this Act, shall not, of itself, be construed as giving any person notice or knowledge of its contents.

### **23 Copies of constitutive documents to embody alterations**

(1) Where an alteration is made in the constitutive documents of a company or a private business corporation, every copy of the constitutive documents issued after the date of the alteration must embody such alteration.

(2) If it comes to the notice of the Registrar that any such alteration has been made, and that the company or private business corporation has at any time after the date of the alteration issued any copy of its constitutive documents which does not embody the alteration, the Registrar may issue a category 3 civil penalty order upon the defaulting company or corporation.

### **24 Presumption of regularity; liability not affected by fraud**

(1) Any person having dealings with a registered business entity or with someone deriving title from a registered business entity shall be entitled to make the following assumptions, and the company or private business corporation and anyone deriving title from it shall be estopped from denying their truth—

[*Engen Petroleum Zimbabwe (Pvt) Ltd v Wedzera Petroleum & Anor* 16-HH-253]

(a) that the company's or private business corporation's internal regulations have been duly complied with;

(b) that every person described in the company's register of directors and secretaries or as a member in its register of members, or every person described as a member in the incorporation statement of the private business corporation, or in any return delivered to the Registrar by the company or the private business corporation in terms of *section two hundred and seventeen ("Register of directors and secretaries")* as a director, manager or secretary of the company or member of the private business corporation, has been duly appointed and has authority to exercise the functions customarily exercised by a director, manager or secretary of a company or member of the private business corporation, as the case may be, carrying on business of the kind carried on by the company or the private business corporation;

[*Stanbic Bank Zimbabwe Ltd v Ceezed Construction (Pvt) Ltd & Ors* 18-HH-008]

(c) that every person whom the company, acting through its members in general meeting or through its board of directors or its manager or secretary, represents to be an officer or agent of the company, has been duly appointed and has authority to exercise the functions customarily exercised by an officer or agent of the kind concerned;

(d) that the secretary of the company, and every other officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the company, has authority to warrant the genuineness of the documents or the accuracy of the copies so issued;

(e) that a document has been sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signature of a person who, in accordance with paragraph (b), can be assumed to be a director of the company:

Provided that—

(i) a person shall not be entitled to make such assumptions if he or she has actual knowledge to the contrary or if he or she ought reasonably to know the contrary;

(ii) a person shall not be entitled to assume that any one or more of the directors of the company have been appointed to act as a

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committee of the board of directors or that an officer or agent of the company has the company's authority merely because the company's articles provide that the authority to act in the matter may be delegated to a committee or to an officer or agent.

(2) A company or private business corporation shall be bound in terms of subsection (1), notwithstanding that the officer or agent concerned acted fraudulently or forged a document purporting to be sealed or signed on behalf of the company or corporation.

[*Engen Petroleum Zimbabwe (Pvt) Ltd v Wedzera Petroleum & Anor* 16-HH-253  
*Stanbic Bank Zimbabwe Ltd v Ceezed Construction (Pvt) Ltd & Ors* 18-HH-008]

(3) For the avoidance of doubt it is declared that if the registered business entity has a seal, and the entity's constitutive documents require that any execution of a document should be done under its seal, any person having dealings with the entity shall not be assumed to have notice of that fact.

[*Eagle Liner Coaches (Pvt) Ltd v Paratema*. P 16-HH-655]

### 25 Prohibition of undesirable name

(1) The Registrar may refuse to register a company or private business corporation with a name which—

- (a) is identical to that under which another company or private business corporation is already registered under this Act, or which is so similar to any such name as to be likely to deceive; or
- (b) is likely to mislead the public; or
- (c) is blasphemous or indecent or likely to cause offence to any person or class of persons; or
- (d) suggests patronage of the Government or some other authority or organisation unless the consent thereof has been obtained; or
- (e) is undesirable for any other reason.

(2) The Registrar may upon application and payment of such fees as may be prescribed reserve, for a period not exceeding one month, a name for a company or a private business corporation pending its registration or change of name.

(3) If the Registrar after due inquiry and considering any evidence that may be placed before him or her, considers that a company or private business corporation is registered,

whether originally or by reason of a change of name, by a name which is objectionable for any reason mentioned in subsection (1) (a), (b), (c), (d) or (e), he or she shall serve upon the company or private business corporation a category 2 civil penalty order ordering the company or private business corporation in writing to change its name, and the company or private business corporation shall thereupon do so within a period of **6 weeks** from the date of service of the civil penalty order or such longer period as the Registrar may see fit to allow:

Provided that the Registrar may not make such an order if a period of more than 12 months has elapsed since the date of the registration of the company or private business corporation or the change of name of the company or private business corporation, as the case may be.

(4) If a company or private business corporation fails to comply with an order made in terms of subsection (3), the Registrar may apply to the High Court for an order to have the name of the company or private business corporation changed.

(5) The High Court, on application by an interested person, shall have the same powers as the Registrar to make an order in terms of subsection (1), but shall not be limited in the exercise of its powers by the period of 12 months referred to in the proviso to that subsection.

### 26 Change of name

(1) A company (by special resolution filed with the Registrar) or private business corporation that wishes to change its name shall first obtain the written approval of the Registrar.

(2) If the Registrar grants written approval for a registered business entity to change its name, the company or private business corporation shall publish in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company or private business corporation is situated an advertisement stating the change of name, and shall then apply for a certificate of change of name.

(3) Where the name of a registered business entity is changed in terms of this section, the Registrar shall enter the new name in the register in place of the former name.

(4) Upon the application in writing of a registered business entity that has changed its name in terms of this section and on production of the certificate of change of name, a Registrar of Deeds or mining commissioner, or other

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officer responsible for the registration of deeds or mining titles, shall make such alterations in his or her registers and on any title deeds and other documents evidencing title as may be necessary as a result of the changed name:

Provided that nothing in this subsection shall exempt the registered business entity from paying any fees prescribed under the Deeds Registries Act [Chapter 20:05] or the Mines and Minerals Act [Chapter 21:05] in respect of such alterations.

(5) The change of the name of a registered business entity shall not affect any right or obligation of the registered business entity, or render defective any legal proceedings by or against the entity, and any legal proceedings that might have been continued or commenced by or against it under its former name may be continued or commenced under its new name.

[Editor's Note : check if such change of name affects a change to a name specified in the first column of the *Schedule of the Names (Alteration) Act* [Chapter 10:14]]

### 27 Statement of objects of registered business entity and effect thereof

(1) No—

(a) statement of the objects of a registered business entity, whether in its constitutive documents or elsewhere; or

(b) agreement by the members of a registered business entity to enlarge or restrict the objects or activities of the entity;

shall invalidate any transaction carried out by the entity which exceeds any such objects or extends any such activities, even if any other party to the transaction was aware of the statement or agreement.

(2) Without derogation from any other remedies that may be available—

(a) a court may, on application made prior to the event by a member or debenture holder of a registered business entity whose members have agreed to limit its activities to specified objects, issue an interdict restraining the entity from entering into or completing any transaction that exceeds its objects;

(b) where a registered business entity has concluded a transaction that exceeded its objects and resulted in loss to the entity, a court may, on application made by a member or debenture holder of the entity, order any officer or member of the entity who entered into or took

part in the transaction to compensate the entity for the loss:

Provided that, where it appears that the officer or member against whom the claim is made acted honestly and reasonably and, having regard to all the circumstances of the case, it would be just and fair to do so, the court may decline to award compensation against him or her or may make an award for part only of the compensation or may make such other order or award as the court thinks fit.

### 28 Provisions in connection with use of names by registered business entities

(1) In this section—

“business paper” means any—

(a) business letter, notice or other official publication of a registered business entity; or

(b) bill of exchange, promissory note, cheque or order for money or goods purporting to be signed by or on behalf of a registered business entity, including any endorsement made or purporting to be made by the entity on any such bill, note, cheque or order; or

(c) delivery note, invoice, receipt or letter of credit of a registered business entity.

(2) Every registered business entity—

(a) shall have its name engraved in legible characters on its seal, if any;

and

(b) shall have its name mentioned in legible characters in all its business papers.

(3) For the purposes of subsection (2), the abbreviations “Ltd”, “Pvt”, “Co-op” and “PBC” may be used for the words “Limited”, “Private”, “Co-operative” and “private business corporation” respectively, and the abbreviation “Co” and the symbol “&” may be used for the words “Company” and “and”.

(4) Any officer or member of a registered business entity or any person on its behalf who—

(a) uses or permits the use of a seal, purporting to be a seal of the entity, on which its name is not engraved as required in subsection (2)(a); or

(b) issues or permits the issue of any business paper of the entity, or signs or endorses or permits to be signed or endorsed on behalf of the entity any bill of exchange,

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promissory note, cheque or order for money or goods on which the entity's name is not mentioned as required in subsection (2)(b);

shall be guilty of an offence and liable to a fine not exceeding level three and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof, unless it is duly paid by the registered business entity concerned.

(5) If default is made in complying with subsection (2) (a) or (b), any person acting on behalf of the registered business entity concerned who uses or permits the use of any seal or business paper so as to constitute such a default shall be personally liable for any debt incurred by the entity as a result of such use, unless the debt is duly discharged by the entity.

(6) Any person who trades or carries on business under a name or title—

(a) of which “Limited”, “Co-operative Company”, “Private Business Corporation” or any contraction or imitation of those words, is the last word; and

(b) which is not registered in terms of this Act as the name of that person;

shall be guilty of an offence and liable to a fine not exceeding level two for every day on which that name or title has been used.

(7) If it comes to the notice of the Registrar that any default is made in complying with subsection (5) or (6) then, independently of a prosecution, if any, for an offence under that subsection, the Registrar may serve a category 4 civil penalty order upon the defaulter conditioned upon his or her demonstrating to the satisfaction of the Registrar within the period specified in the order that he or she has ceased to trade or carry on business under a name that contravenes subsection (6), or that the entity concerned has ceased using or permitting the use or any seal or business paper in contravention of subsection (2)(a) or(b), as the case may be.

### 29 Lawful use of assumed names by registered business entities

(1) Subject to this section, a registered business entity may assume a name other than its registered name for use in conducting business in Zimbabwe.

(2) Before using an assumed name in terms of subsection (1), a registered business entity shall file with the Registrar a notice that it will be

conducting business under the name, which notice shall state—

(a) the entity's true name as stated in its constitutive documents; and

(b) the assumed name under which it will be conducting business; and

(c) that the entity intends to conduct business in Zimbabwe under that assumed name;

and the Registrar shall keep the notice on public file, together with the entity's constitutive documents.

(3) Section twenty-five (“*Prohibition of undesirable name*”) shall apply, with any necessary changes, in relation to the use by a registered business entity of an assumed name in terms of this section.

### 30 Publication of directors' or members' names

(1) In this section—

“**business letter**” includes a quotation or order form, but does not include—

(a) an invoice, statement, delivery note, packing note or similar document; or

(b) a letter written by a professional person on behalf of a registered business entity as a client;

“**send or issue**”, in relation to a business letter, includes send or issue electronically.

(2) Every registered business entity shall, in all business letters which it sends or issues to any person and on or in which the entity's name appears, state in legible characters the present forenames, or their initials, and present surname of—

(a) every director, in the case of a company; and

(b) every member, in the case of a private business corporation:

Provided that, in the case of a private business corporation with **more than 3 members**, it shall suffice for its business letters to bear the name of its controlling members or, if the interests held in the corporation are equal or nearly equal, the names of at least 2 current members followed by the phrase “and others” or words to the same effect.

(3) Any person acting on behalf of a registered business entity who sends or issues or permits the sending or issuing of a business

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letter that does not comply with subsection (2) shall be personally liable for any debt incurred by the entity as a result of the letter, unless the debt is duly discharged by the entity.

(4) A private business corporation may, in complying with this section, describe any or all of its members as directors:

Provided that the fact that some but not all of the members are so described shall not of itself be taken as notice to any person dealing with the private business corporation that a member not so described has no authority or restricted authority to act on behalf of the private business corporation.

### 31 Postal address, electronic mail address and registered office

(1) Every registered business entity shall have in Zimbabwe—

(a) a postal address, that is to say an address to which postal articles may be sent to the entity; and

(b) a registered office at a physical address at which legal process may be served on the entity:

Provided that the registered office of a private business corporation may be the physical address of its accounting officer.

(2) Particulars of a registered business entity's postal address and registered office shall be recorded in the entity's constitutive documents and amended whenever necessary.

(3) Where a registered business entity transacts any of its business or administration electronically, it shall—

(a) record the particulars of its electronic mail address, website, portal or other interactive electronic link in its constitutive documents and amend those documents whenever the particulars change; and

(b) deliver a notice to the Registrar setting out the particulars referred to in paragraph (a), and any changes in those particulars, which notice the Registrar shall file with the entity's constitutive documents.

(4) The Registrar may, on application being made in the prescribed form, authorise a registered business entity to use its electronic mail address, website, portal or other interactive electronic link for effecting any filings or other transactions with the Companies Office that may be required under this Act, whether or

not the entity is a registered user of the electronic registry.

(5) If it comes to the notice of the Registrar that default has been made in complying with subsections (1), (2) or (3), he or she may serve a category 3 civil penalty order upon the defaulting business entity, in which order the cumulative part of the penalty shall be suspended conditionally upon the defaulter satisfying the Registrar within 7 days of service that it has remedied the default.

### 32 Ratification of contracts

A contract made in writing by a person professing to act as agent or trustee for a company or private business corporation not yet formed, incorporated or registered shall be capable of being ratified or adopted by or otherwise made binding upon and enforceable by the company or private business corporation after it has become a registered business entity, if—

(a) on registration, the entity's constitutive documents contain as one of the entity's objects the adoption or ratification of or the acquisition of rights and obligations in respect of such contract; and

(b) the contract or a certified copy thereof is delivered to the Registrar simultaneously with the delivery of the entity's constitutive documents in terms of section eighteen ("Registration of constitutive documents").

### 33 Form of contracts

(1) Contracts on behalf of a registered business entity may be made in the following manner—

(a) any contract which, if made between private persons, would be required to be in writing and signed by the parties, may be made on behalf of the entity in writing and signed by any person acting under its authority, expressed or implied, and may in the same manner be varied or discharged;

(b) any contract which, if made between private persons, would be valid though made verbally only and not reduced to writing, may be made verbally on behalf of the entity by any person acting under its authority, expressed or implied, and may in the same manner be varied or discharged.

(2) All contracts made in accordance with subsection (1) shall be effectual in law and shall bind the registered business entity and its

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successors and all other parties to the contracts.

### 34 Promissory notes and bills of exchange

(1) A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a registered business entity if made, accepted or endorsed in the name of, or by or on behalf or on account of, the registered business entity by any person acting under its authority.

(2) All documents, other than the documents mentioned in *section thirty-three ("Form of contracts")* (1), shall, if executed on behalf of a registered business entity, be signed as prescribed in *section thirty-five* by any person acting under its authority, expressed or implied, unless the articles otherwise provide.

### 35 Execution of documents domestically and in foreign countries

(1) Except as otherwise provided in this Act or in the constitutive documents of the entity concerned, documents to be executed by a registered business entity shall be validly executed if signed by any person acting under its authority, express or implied.

(2) A registered business entity may in writing authorise any person, either generally or in respect of any specified matters, to execute documents on its behalf in any foreign country; and every document signed by such agent, on behalf of the entity, shall bind the entity, if valid in other respects:

Provided that—

(i) if the entity has a seal, and the entity's constitutive documents require that any execution of a document should be done under its seal, such authorisation shall be under its seal and signed, in the case of a company, by one of its directors or, in the case of a private business corporation, by one of its members;

(ii) if the entity has no seal, such authorisation shall be signed—

A. in the case of a company, by 2 of its directors or by one director and its secretary;

B. in the case of a private business corporation, by 2 of its members.

### 36 Official seal for use in foreign countries

(1) A registered business entity whose objects require or comprise the transaction of business in a foreign country may, if authorised by its constitutive documents, have an official seal for use in a foreign country, which seal shall be a facsimile of the seal referred to in subsection (2), if the entity has such a seal, with the addition on its face of the name of the foreign country where it is to be used.

(2) Subject to subsection (4), where a registered business entity has an official seal for use in a foreign country, a document to which the seal has been affixed by a person authorised thereto by the entity in writing shall bind the entity, if valid in other respects.

(3) A person in a foreign country affixing an official seal to a document in terms of subsection (2) shall certify on the document the date on which and the place at which the seal is affixed.

(4) Unless the law of a foreign country in question requires the document concerned to be affixed with a seal for the transaction in question to be valid, the failure to affix such seal shall not affect the validity of any transaction to which the document relates if the transaction is valid in other respects and was executed by any person authorised thereto in writing by the entity, or the document relating to the transaction is signed—

(a) by two of its directors or by one director and its secretary, in the case of a company; or

(b) by two of its members, in the case of a private business corporation.

### 37 Authentication of documents

A document or proceeding requiring authentication by a registered business entity may be signed by a director, secretary, member or other authorised officer of the entity, and need not be under its seal.

## PART II INSPECTION AND INVESTIGATION

### 38 Purposes of inspections and investigations and powers in connection therewith

(1) In addition to ensuring compliance with this Act, the purpose of inspection and

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investigation of registered business entities is to —

- (a) promote good corporate governance; and
- (b) inspire confidence in investors in such entities that their investments are safe and are being dealt with transparently.

(2) For the purposes of this Part, the Registrar and every inspector shall have the same powers, rights and privileges as are conferred upon a commissioner by Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply with necessary changes in relation to the investigation or inspection by the Registrar and to any person summoned to give evidence or giving evidence before him or her.

[Zvinavashe NO v Bikita Minerals (Pvt) Ltd & Ors - 17-HH-545]

### 39 Investigation by Registrar

(1) Where the Registrar has reasonable cause to believe that provisions of this Act relating to the submission to him or her of any document are not being complied with, or where he or she is of the opinion that any document submitted to him or her under this Act does not disclose the true facts or a full and fair statement of the matters to which it purports to relate, he or she may, by written order, call on the registered business entity concerned to produce all or any of the documents of the registered business entity specified in the order and to furnish in writing such information or explanation as the Registrar may specify in his or her order, and such documents shall be produced and such information or explanation shall be furnished within such time as may be specified in the order.

(2) On receipt of an order under subsection (1) it shall be the duty of all persons who are or have been officers of the registered business entity to produce such documents or to furnish such information or explanation so far as lies within their power.

(3) Any person who fails to comply with subsection (2) shall be in default and subject to a category 2 civil penalty order:

Provided that the period within which the documents or information must be produced or furnished before the defaulter becomes criminally liable in terms of section two hundred and ninety-four ("Power of Registrar to issue civil penalty orders and categories thereof") (3)

shall be **7 days** and the level of the daily cumulative civil penalty shall be level six.

### 40 Investigation on request of minority stakeholders

(1) On the request of a shareholder or shareholders or member or members holding at **5%**

of the ordinary shares of the company, or **5%** of the interests of the private business corporation, the Registrar may assign one or more inspectors to investigate the affairs of the registered business entity and to report thereon as the Registrar may direct.

(2) Any such request shall be dated and signed by all of the requesting shareholders or members, shall state the number of shares or the extent of the interests they each hold, and shall state the purpose for which the investigation is requested, and a copy of the request shall be delivered by the requesting shareholders or members to the company's board of directors or to the private business corporation's controlling members, as the case may be.

(3) The Registrar may, before assigning an inspector, require the requesting shareholders or members to give satisfactory security in an amount which may be prescribed towards the costs of the investigation.

### 41 Investigation to determine ownership or control

(1) The Registrar may, with or without a request from members of the registered business entity concerned, assign one or more inspectors to investigate and report on the shareholding of a company, the interests of a private business corporation and other matters, to determine the persons who are or have been financially interested in the success or failure of the entity or are able to control or materially influence the entity's policies.

(2) Where an investigation under this section is conducted at the request of any member of a registered business entity, that member shall pay the reasonable costs incurred by the Registrar in conducting it and, before assigning an inspector under subsection (1), the Registrar may require the member to give satisfactory security, not exceeding an amount that may be prescribed, for payment of the costs of the investigation.

(3) In an investigation under this section an inspector may require any person whom he or she has reasonable cause to believe—

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- (a) to be or to have been interested in any shares, debentures or interests; or
- (b) to act or to have acted in relation to any shares, debentures or interests as the agent of someone interested therein;

to give the inspector such information as that person has or can reasonably be expected to obtain concerning present and past interests in those shares, debentures or interests, and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares, debentures or interests.

- (4) For the purposes of this section, and without limiting the phrase, a person shall be deemed to have an interest in a share if he or she has a right to acquire or dispose of the share or any interest therein or to vote with respect thereto, or if the person's consent is necessary for the exercise of any of the rights of other persons interested therein, or other persons interested therein can be required or are accustomed to exercise their rights in accordance with the person's instructions.

### 42 Investigation of registered business entity's affairs in other cases

(1) Without prejudice to his or her powers under section thirty-nine ("Investigation by Registrar"), the Registrar—

(a) shall assign one or more inspectors to investigate the affairs of a registered business entity and to report thereon in such manner as he or she directs if—

- (i) in the case of a company, the company by special resolution; or
- (ii) the High Court by order;

declares that its affairs ought to be investigated by the Registrar; and

(b) may do so, if it appears to the Registrar that there are circumstances suggesting a reasonable suspicion that—

(i) its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or

(ii) persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud or

other misconduct towards it or towards its members; or

(iii) its members have not been given all the information with respect to its affairs which they might reasonably expect.

(2) Whenever the Registrar intends to act in terms of subsection (1)(b) he or she shall give adequate prior notice to the Minister of his or her intended action.

### 43 Power of inspectors to investigate related registered or unregistered business entities

(1) In this section—

**"associated entity"** means an entity, whether registered or not, which controls or is controlled by a primary business entity;

**"primary business entity"** means the registered business entity whose affairs an inspector has been assigned to investigate.

(2) Subject to subsections (3), (4) and (5), where an inspector who has been assigned to investigate the affairs of a primary business entity considers that, for the purposes of that investigation, it is necessary to investigate the affairs of an associated entity, the inspector may, with the approval of the Registrar and subject to subsection (3), investigate the affairs of the associated entity and report on them in so far as the inspector thinks the results of that investigation are relevant to the affairs of the primary business entity.

(3) Before conducting an investigation in terms of subsection (1) into the affairs of—

(a) an associated entity which is a registered business entity, the inspector shall obtain the written authority of the Registrar; or

(b) an associated entity which is not a registered business entity, the inspector shall obtain a warrant from—

(i) a justice of the peace (other than a police officer) for the district;

or

(ii) a magistrate having jurisdiction in the area;

in which the entity is located or carries on any of its activities.

(4) A justice of the peace or magistrate may issue a warrant for the purposes of subsection (3)(b) if he or she is satisfied, from information on oath, that—

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(a) the primary business entity is located or carries on any of its activities in his or her district or area; and

(b) the inspector has lawful authority to investigate the affairs of the primary business entity and that the entity in respect of which the warrant is sought is an associated entity of the primary business entity; and

(c) there are reasonable grounds for believing that an investigation of the affairs of the associated entity will disclose information relevant to the investigation of the primary business entity.

(5) A warrant issued for the purposes of subsection (3)(b) shall be in writing and state—

(a) the identity and registered office of the primary business entity and the purpose for which it is being investigated; and

(b) the identity and address of the associated entity; and

(c) the period for which the warrant is required to be issued.

(6) An inspector to whom a warrant has been issued in terms of this section shall have the same powers—

(a) to enter and search the premises of the associated entity concerned and to seize its property as a police officer to whom a search warrant has been issued in terms of Part VI of the Criminal Procedure and Evidence Act [Chapter 9:07]; and

(b) to investigate the affairs of the associated entity concerned as if the entity was the primary business entity whose affairs the inspector had been assigned to investigate.

### 44 Production of records and evidence on investigation

(1) In this section—

**“agent”**, in relation to a registered business entity or an associated entity, includes any person who is or at any time was engaged as the entity’s legal practitioner, accountant, auditor or banker;

**“officer”**, in relation to a registered business entity or an associated entity, means any person who is or at any time was an officer or employee of the entity.

(2) Subject to the laws relating to privileges, all officers and agents of a registered business entity or associated entity whose affairs are

investigated by an inspector under this Part shall—

(a) on request, produce to the inspector all records relating to the entity which are in their custody or power; and

(b) subject to subsection (3), answer any lawful question the inspector may put to him or her regarding the affairs of the entity;

and generally shall give the inspector all assistance in connection with the investigation which they are reasonably able to give.

(3) An officer or agent may refuse to answer a question in terms of subsection (2) if the answer would render him or her liable to—

(a) criminal proceedings in respect of an offence against the law of Zimbabwe;

or

(b) proceedings for the recovery of any penalty or forfeiture in favour of the State in terms of any enactment in force in Zimbabwe:

Provided that if, at the request of the Registrar—

(a) the Prosecutor-General by written notice to the officer or agent concerned grants him or her immunity from prosecution for the offence, criminal proceedings shall not thereafter be instituted against the officer or agent for the offence; or

(b) the Attorney-General by written notice to the officer or agent concerned grants him or her exemption from the penalty or forfeiture concerned, the officer or agent shall no longer be liable to the penalty or forfeiture;

and the officer or agent shall thereupon answer the question.

(4) Subject to subsection (3), if an officer or agent contravenes subsection (2), he or she shall be in default and the Registrar may serve upon him or her a category 5 civil penalty order, suspended on condition that he or she remedies the default as soon as possible and in any event **within 24 hours** of the service of the order:

Provided that—

(i) the period within which any records or information shall be produced or furnished under the order shall be **7 days**; and

(ii) the level of the fixed penalty under the order shall be level six.

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### 45 Registrar's report

On concluding an investigation under this Part, an inspector shall furnish a written report on it to the Registrar, who—

- (a) shall send a copy of the report to—
  - (i) the Minister; and
  - (ii) every entity (primary or associated) whose affairs were investigated;
- and
- (iii) every shareholder or member who requested the investigation in terms of *section forty* ("Investigation on request of minority shareholders"); and
- (iv) the Registrar of the High Court, where the Court ordered the investigation in terms of *section forty-two* ("Investigation of registered business entity's affairs in other cases") (1)(a)(ii);
  - and
  - (b) may, on request and on payment of the prescribed fee, provide a copy of the report to any shareholder, member or creditor of an entity whose affairs were investigated, or to any other person whose interests appear to the Registrar on reasonable grounds to be affected by the report; and
  - (c) may cause the report to be published if it appears to the Registrar on reasonable grounds that such publication is in the public interest.

### 46 Proceedings on Registrar's report

- (1) If, from the report made under *section forty-five* ("Registrar's report"), it appears to the Registrar that—
  - (a) any person is liable to prosecution for an offence in relation to an entity whose affairs were investigated by the inspector, the Registrar shall refer the matter to the Prosecutor-General;
  - (b) an entity whose affairs were investigated by the inspector should be wound up, the Registrar may apply to the High Court for it to be wound up;
  - (c) an entity whose affairs were investigated by the inspector should bring proceedings for the recovery of damages in respect of fraud or misconduct in connection with the entity's promotion or formation or the conduct of its affairs, or for the recovery of any property of the

entity which has been misappropriated or wrongfully retained, the Registrar may, if it appears to the Registrar that such proceedings ought in the public interest to be brought on behalf of the entity (unless the members of the entity have earlier instituted the proceedings in question) bring such proceedings in any court in the name of and on behalf of the entity:

Provided that the Registrar shall indemnify the entity against costs incurred in connection with such proceedings.

(2) After considering the report made under *section forty-five*, the Registrar may, by written notice to an entity whose affairs were investigated by the inspector, direct that the entity shall not pay dividends on, or permit the exercise of any rights, including the right of transfer, attached to any of its shares or interests for a specified period and subject to any specified conditions.

(3) Any officer or member of an entity on which a notice in terms of subsection (2) has been served who knowingly contravenes the notice shall be in default and the Registrar may serve on him or her a category 1 civil penalty order.

### 47 Expenses of investigation of affairs of registered business entity

(1) The expenses of and incidental to an investigation by an inspector under this Part shall be defrayed in the first instance by the Registrar, but the following persons shall, to the extent mentioned, be liable to repay the Registrar—

- (a) any person who is convicted on a prosecution instituted as a result of the investigation or who is ordered to pay damages or restore any property in proceedings brought by virtue of *section forty-six* may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified in the order;
- (b) any entity in whose name proceedings are brought as aforesaid shall be liable to the amount or value of any sums of property recoverable by it as a result of those proceedings;
- (c) unless as a result of the investigation a prosecution is instituted—
  - (i) any entity dealt with by the report, where the inspector was assigned otherwise than of the Registrar's own motion, shall be liable, except so far as the Registrar may otherwise direct; and

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(ii) the applicants for the investigation, where the inspector was assigned under section forty ("Investigation on request of minority stakeholders"), shall be liable to such extent, if any, as the Registrar may direct; and any amount for which an entity is liable by virtue of paragraph (b) shall be a first charge on the sums or property mentioned in that paragraph.

(2) The report by the Registrar of an investigation initiated otherwise than by his or her own motion may, if he or she thinks fit, include a recommendation as to the directions, if any, which he or she thinks appropriate, in the light of his or her investigation, to be given under subsection (1)(c).

(3) For the purpose of this section, any costs or expenses incurred by the Registrar on or in connection with proceedings brought by virtue of section forty-six ("Proceedings on Registrar's report") (1)(c), shall be treated as expenses of the investigation giving rise to the proceedings.

(4) Any liability to repay the Registrar imposed by subsection (1)(a) and (b) shall be a liability also to indemnify —

(a) all persons against liability under subsection (1) (c), that is to say to be liable to reimburse—

(i) the Registrar (if the Registrar has not already received repayment) pursuant to subsection (1)(a) or (b); and

(ii) the applicants for the investigation under section forty (if they have made repayment to the Registrar under subsection (1) (c));

(b) the entity against liability under subsection (1)(b), that is to say to be liable to reimburse the entity for any repayment made by it to the Registrar by virtue of that provision.

(5) Any person liable to make reimbursement by virtue of subsection (4) shall be entitled to contribution from any other person with whom he or she is jointly so liable according to the amount of their respective liabilities.

(6) The expenses to be defrayed by the Registrar under this section shall, so far as not recovered, be paid out of the funds of the Companies Office.

### 48 Power to require information as to holders of shares, debentures or interests

(1) Where it appears to the Registrar that there is good reason to investigate—

(a) the ownership of any share in or debenture of a company; or

(b) who holds an interest in a private business corporation, or the extent of that interest;

the Registrar may by written notice require any person whom he or she has reasonable cause to believe—

(i) to be or to have been interested in that share, debenture or interest;

or

(ii) to act or to have acted in relation to that share, debenture or interest as the agent of someone else;

to give him or her any information which he or she has or can reasonably be expected to obtain as to the share, debenture or interest and the name and address of any person who holds or has held it or who is or has been interested in it.

(2) For the purposes of subsection (1), a person shall be deemed to be interested in a share, debenture or interest if he or she has any right to acquire or dispose of it or any interest in it or to vote in respect of it, or if his or her consent is necessary for any other person to exercise any right in it, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his or her instructions.

(3) Any person who—

(a) fails to give any information required of him or her under subsection (1) shall be in default and liable to a category 2 civil penalty order:

Provided that the period within which the information shall be produced or furnished before the defaulter becomes criminally liable in terms of section two hundred and ninety-four ("Power of Registrar to issue civil penalty orders and categories thereof") (3) shall be 7 days and the level of the cumulative penalty shall be level six;

(b) in response to a notice under subsection (1), makes a statement which he or she knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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### 49 Power to impose restrictions on shares, debentures or interests

(1) Where, in connection with an investigation or inquiry under this Part, it appears to the Registrar that there is undue difficulty in ascertaining relevant facts about any share, debenture or interest and that the difficulty is due wholly or mainly to the unwillingness of the registered business entity that is the subject of the investigation or inquiry or of any person with an interest in the share, debenture or interest concerned to assist the investigation as required by this Part, the Registrar may, by written order, direct that until the order is revoked or amended the share, debenture or interest shall be subject to the restrictions imposed by this section.

(2) So long as an order under subsection (1) is in force in relation to any share, debenture or interest—

(a) any transfer of the share, debenture or interest or, in the case of an unissued share, any issue of it or transfer of the right to be issued with it, shall be void; and

(b) no voting rights shall be exercisable in respect of the share, debenture or interest; and

(c) no further shares or debentures shall be issued in right of the share or debenture or in pursuance of any offer made to its holder; and

(d) except in a liquidation, no payment shall be made of any sums due from the registered business entity on those shares, debentures or interests, whether in respect of capital or otherwise.

(3) The Registrar may at any time, by written order, amend or revoke an order under subsection (1).

(4) Any person aggrieved by an order under subsection (1), or by the Registrar's refusal to amend or revoke such an order, may apply to the High Court for appropriate relief and the court may make such order in the matter as it considers appropriate.

(5) Any person who, knowing that a share, debenture or interest is subject to an order under subsection (1)—

(a) knowingly contravenes or fails to comply with the order; or

(b) assists any other person to do anything that contravenes the order in relation to the share, debenture or interest;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### 50 Saving for legal practitioners and bankers

Nothing in this Part shall require disclosure to the Registrar or an inspector—

(a) by a legal practitioner of any privileged communication or information made to or held by him or her in that capacity, except as respects the name and address of his or her client; or

(b) except by order of a court, by a registered business entity's banker of any information as to the affairs of any of its customers other than the registered business entity concerned.

### 51 Report following investigation to be evidence

A copy of any report of any inspector assigned under this Part shall be admissible in any legal proceedings as evidence.

## PART III DEFUNCT BUSINESS ENTITIES

### 52 Striking off of defunct business entities from register and remedy for persons aggrieved by striking off

(1) Where the Registrar has reasonable grounds to believe that a registered business entity is not carrying on business or is not in operation, he or she may send the entity a written notice to that effect, stating that if an answer showing cause to the contrary is not received within 14 days from the date of the notice, a notice will be published in the *Gazette* with a view to striking the name of the entity off the register.

[eg *Pelagro Investments (Private) Limited* – GN 244/22 gazetted on the 11<sup>th</sup> February, 2022]

(2) A notice under subsection (1) shall be sent to the registered office of the registered business entity concerned or, if it has no registered office, to any of its officers whose name and address are known to the Registrar or, if there is no such officer, to each of the persons who signed the entity's memorandum or incorporation statement.

(3) Unless the Registrar receives an answer within 14 days from the date of the notice sent

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in terms of subsection (1) to the effect that the registered business entity is carrying on business or is in operation, the Registrar may publish in the *Gazette* and send to the entity, a notice that at the expiration of one month from the date of that notice the entity's name will, unless cause is shown to the contrary, be struck off the register and the entity will thereby be dissolved.

(4) Whenever the Registrar receives notice in the prescribed form from a registered business entity or a director, secretary or member thereof that the entity is not carrying on business or is not in operation the Registrar may if the entity in question has not rendered a return for the preceding year and the Registrar is otherwise satisfied that the entity is not carrying on business or is not in operation, forthwith publish in the *Gazette* a notice referred to in subsection (3).

(5) If, on the expiry of the period mentioned in a notice referred to in subsection (3), no cause to the contrary has been shown, the Registrar may strike the name of the registered business entity concerned from the register and shall publish notice of the striking off in the *Gazette*.

Provided that the liability, if any, of the liquidator and of every officer and of every member of the entity shall continue and may be enforced as if the entity had not been dissolved.

(6) If the Registrar receives from a registered business entity a written statement in the form prescribed, signed—

- (a) in the case of a company, by every director of the entity; or
- (b) in the case of a private business corporation, by every member;

stating that the entity has ceased to carry on business and has no assets or liabilities, the Registrar may strike the entity's name from the register and shall publish notice off the striking off in the *Gazette*.

(7) Upon the publication of a notice in the *Gazette* in terms of subsection (5) or (6) to the effect that the name of a business entity has been struck from the register, the entity shall, subject to subsections (8) and (9), thereby be dissolved:

Provided that the liability, if any, of the liquidator and of every officer and member of the entity shall continue and may be enforced as if the entity had not been dissolved.

(8) Where the name of a business entity has been struck from the register in accordance

with this section, any creditor or member or former member of the entity may at any time after the date of publication of the notice of striking off of the entity under subsection (5) apply to the magistrates court within whose area of jurisdiction the entity had its principal place of business for an order that the entity's name be restored to the register, and if the court is satisfied that—

(a) the entity was carrying on business or in operation when its name was struck off; or

(b) it is otherwise just that the entity's name should be restored to the register;

the court may grant the order sought and, in addition may—

(i) direct that the entity, or any officer or member of the entity, need not file or lodge any return that the entity, officer or member may have been required to file or lodge in terms of this Act; and

(ii) give such directions and orders as seem just for placing the entity and all other persons in the same position, as nearly as may be, as if the entity's name had not been struck from the register.

(9) Upon the making of an order in terms of subsection (8)—

(a) the business entity concerned shall be deemed, subject to the terms and conditions of the order, to have continued in existence as if its name had not been struck from the register; and

(b) the Registrar shall forthwith restore the name of the business entity concerned to the register, with a note indicating that it has been restored in accordance with this section.

### 53 Undistributed property of dissolved or defunct company or private business corporation: *bona vacantia* orders

(1) Where a company or private business corporation is dissolved, whether as a result of being wound up or as a result of being struck off the register as defunct, any undistributed property of the company or corporation shall, subject to this section, become *bona vacantia* and shall vest in the State.

(2) At any time after a company or private business corporation (in this section referred to as a "defunct entity") is declared to be defunct in terms of section fifty-two ("Striking off of defunct business entities from register and

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*remedy for persons aggrieved by striking off")* (6), the Attorney-General may (unless application has earlier been made to restore a defunct entity to the register under section fifty-two and such application was successful), on behalf of and in the name of the Chief Registrar apply *ex parte* to the High Court for an order (hereinafter called a "*bona vacantia* order") declaring any property of the defunct company or private business corporation to be *bona vacantia*.

(3) Before the making of an application under subsection (2), the Chief Registrar shall publish a notice in the *Gazette* notifying any persons who may be interested in the contemplated application that—

(a) it is intended to make such an application in relation to the named defunct company or private business corporation **not earlier than 14 days** from the date of publication of the notice in the *Gazette*; and

(b) any interested person has a right to oppose the application; and

(c) notice of the Registrar's intention to strike off the defunct entity was published on a specified date and that the defunct entity was struck off the Register by notice published section fifty-two(5) or (6) on a specified date; and

(d) specified property (a brief description of which shall be given in the notice) belonged or apparently belonged to the defunct entity at the date when it was struck off the Register; and

(e) any interested person who is a creditor of the defunct entity or has any other interest in the defunct entity or its property may, at any time before the application for a *bona vacantia* order is made, restore the defunct entity to the Register in terms of section fifty-two(8).

(4) If, **within 14 days** from the publication of the notice in terms of subsection (3), no interested person has instituted the application required to restore the defunct entity to the register in terms of section fifty-two (or, having instituted such application, the application failed), the Attorney-General may proceed with the application for the *bona vacantia* order.

(5) There shall be submitted together with the application for the *bona vacantia* order a copy of the notice referred to in subsection (3), together with a copy of the notices referred to in subsection (3)(c).

(6) If the court grants the application for a *bona vacantia* order, it shall have the same

effect as a writ for the attachment and sale in execution of the property declared to be *bona vacantia*.

(7) The proceeds from the sale in execution of property declared to be *bona vacantia* shall be applied to meeting the following costs in the following sequence—

(a) the sheriff's costs of executing the *bona vacantia* order; and

(b) the costs incurred by the Attorney-General in obtaining the *bona vacantia* order; and

(c) the costs incurred by the Companies Office in publishing the notices referred to in subsection (2) and (2)(c), together with the proven costs incurred by the Office in identifying, securing and safeguarding the property declared to be *bona vacantia*;

(8) Any amount remaining after application of the amounts referred to in subsection (7) shall form part of the Deeds Office Fund.

## PART IV

### COMMON PROVISIONS RELATING TO FIDUCIARY DUTIES, REMEDIES AND LEGAL PROCEEDINGS

*Subpart A: Duties of office bearers of companies and private business corporations*

#### 54 Duty of care and business judgment rule

(1) Every manager of a private business corporation and every director or officer of a company has a duty to perform as such in good faith, in the best interests of the registered business entity, and with the care, skill, and attention that a diligent business person would exercise in the same circumstances.

(2) In performing that duty, the manager, officer or director as the case may be referred to in subsection (1) may rely on information, opinions, reports or statements (including financial statements) of independent auditors or legal practitioners or of experts or employees of the registered business entity whom the person reasonably believes are reliable and competent to issue such information, opinions, reports or statements.

(3) Subsection (2) applies only if the person makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that such reliance is unwarranted.

(4) A person who makes a business judgment acting as stated in subsection (1), (2) and (3)

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fulfils the duty under this section with respect to that judgment if that person—

(a) does not have a personal interest as defined in *section fifty-six* (“*Transactions involving conflict of interest*”) in the subject of the judgment; and

(b) is fully informed on the subject to the extent appropriate under the circumstances; and

(c) honestly believes when the judgment is made that it is in the best interests of the company or corporation.

(5) No provision, whether contained in a company’s articles or a private business corporation’s by-laws or otherwise, shall relieve a director or member from the duty to act in accordance with this Part or relieve him or her from any liability incurred as a result of any breach of such duty.

### 55 Duty of loyalty

(1) For purposes of this section a “controlling member” is a person referred to in the definition of “controlling member” in *section two* or a person referred to in *section three*(4).

(2) A manager or controlling member of a private business corporation and a director, officer or controlling member of a company has a duty to act with loyalty to that registered business entity and, in the case of a company, towards any subsidiary of that company.

(3) The duty of loyalty referred to in subsection (2) includes but is not limited to a duty—

(a) not to use property of the registered business entity for his or her personal benefit or for the benefit another person other than the entity; and

(b) not to disclose confidential information of the entity or to use confidential information of the entity for his or her personal benefit or for the benefit another person other than the entity; and

(c) to communicate to the board or members (as the case may be) at the earliest practicable opportunity any information that comes to his or her attention, unless the he or she—

(i) reasonably believes that the information is—

A. immaterial to the entity; or

B. generally available to the public, or known to the other managers, directors, officers or controlling members;

or

(ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality;

and

(d) not to abuse the person’s position in the registered business entity for his or her personal benefit, or for the benefit another person other than the entity; and

(e) not to take business opportunities of the registered business entity for his or her personal benefit, or for the benefit another person other than the entity; and

(f) not to compete in business with the registered business entity (including competing individually or as a manager of a private business corporation, or a director or officer of a company which competes in business with the registered business entity of which he or she is manager, director or officer); and

(g) not to accept a benefit from a third party for doing or not doing anything as a person referred to above (but this shall not include benefits which are *de minimis* in value or cannot reasonably be regarded as likely to give rise to a conflict of interest with the registered business entity concerned); and

(h) to never knowingly cause harm to the entity; and

(i) to serve only the registered business entity’s interest in all transactions involving the entity in which the person has a personal interest.

*Subpart B: Duty of loyalty – conflicts of interest*

### 56 Transactions involving conflict of interest

(1) In this section—

“**personal financial interest**”, when used with respect to any person—

(a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but

(b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act [*Chapter 24:19*], unless that

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person has direct control over the investment decisions of that fund or investment.

(2) This section does not apply—

(a) to a director of a company—

(i) in respect of a decision that may generally affect—

A. all of the directors of the company in their capacity as directors;

or

B. a class of persons, despite the fact that the director is one member of that class of persons, unless the only members of the class are the director or associates of the director;

(ii) in respect of a proposal to remove that director from office as contemplated in *section two hundred and two* (“*Removal and resignation of directors*”);

or

(b) to a company or its director, or a private business corporation—

(i) if one person—

A. holds all of the beneficial interests of all of the issued securities of the company and is the only director of that company; or

B. holds all the beneficial interests of the private business corporation and is the only member of the private business corporation.

(3) If a person is the only director of a company, but does not hold all of the beneficial interests of all of the issued shares or debentures of the company, that person may not—

(a) approve or enter into any agreement in which the person or an associate has a personal financial interest; or

(b) as a director, determine any other matter in which the person or an associate has a personal financial interest,

unless the agreement or determination is approved by an ordinary resolution of the shareholders after the director has disclosed the nature and extent of that interest to the shareholders.

(4) At any time, a director may disclose any personal financial interest in advance, by delivering to the board, or shareholders in the case of a company contemplated in subsection (3), a notice in writing setting out the nature and extent of that interest, to be used generally for

the purposes of this section until changed or withdrawn by further written notice from that director.

(5) A person referred to in *section fifty-five* (“*Duty of loyalty*”) is deemed to have a personal financial interest in an act or transaction with the registered business entity if—

(a) that person or a near relative or other associate of that person is a party to the act or transaction or has a material financial interest in the act or transaction; or

(b) that person has a financial or family member relationship with a party to the act or transaction, or with a person who has a material financial interest in the act or transaction, that could reasonably be expected to affect that person’s judgment adversely to the registered business entity.

(6) A person who enters into a contract or transaction with the registered business entity in which that person has a personal interest, has not violated the duty of loyalty stated in *section fifty-five* (“*Duty of loyalty*”) if the contract or transaction is authorised in advance or ratified after the fact by either—

(a) a majority of the votes of members of the registered business entity who do not have a personal interest in the act or transaction; or

(b) a majority of the board of directors who do not have such personal interest, in the case of a company; or

(c) all members in a case where there are no members who do not have such personal interest;

Provided that in all such cases all material facts regarding the personal interest have been disclosed or are known to the authorising persons, and the conflicted person did not participate in their decision.

(7) Any person who contravenes subsection (3) shall be guilty of an offence and be liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years, or both.

(8) If it comes to the notice of the Registrar that any default is made in complying with this section, then independently of a prosecution, if any, for an offence under subsection (7), the Registrar may serve upon a person referred to in *section fifty-five* alleged to be in contravention of this section a category 1 civil penalty order.

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### 57 Duty to disclose conflict of interest

- (1) If a person referred to in *section fifty-five* ("Duty of loyalty") (but subject to *section fifty-six* ("Transactions involving conflict of interest"))(2)(b) or (3)), has a personal financial interest in respect of a matter to be considered at a meeting of the board of the company or meeting of the members of the private business corporation , or knows that an associate has a personal financial interest in the matter, the person—
- (a) must disclose the interest and its general nature before the matter is considered at the meeting; and
  - (b) must disclose to the meeting any material information relating to the matter, and known to the person; and
  - (c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other persons; and
  - (d) if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in paragraph (b) or (c); and
  - (e) must not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c); and
  - (f) while absent from the meeting in terms of this subsection—
    - (i) is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors or members are present to constitute the meeting; and
    - (ii) is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted;
  - and
  - (g) must not execute any document on behalf of the registered business entity in relation to the matter unless specifically requested or directed to do so by the board or meeting of members.
- (2) If a director of a company acquires a personal financial interest in an agreement or other matter in which the company has a material interest, or knows that an associate has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the company, the director must promptly disclose to the board, or to the

shareholders in the case of a company contemplated in section *fifty-six*(3), the nature and extent of that interest, and the material circumstances relating to the director or associate's acquisition of that interest.

- (3) A decision by the board, or a transaction or agreement approved by the board, or by a company as contemplated in section *fifty-six* (3), is valid despite any personal financial interest of a director or an associate of the director, if it—
- (a) was approved in the manner contemplated in this section; or
  - (b) has been ratified by an ordinary resolution of the shareholders.
- (4) A court, on application by any interested person, may declare valid a transaction or agreement that had been approved by the members of a private business corporation, or board or shareholders of a company, as the case may be, despite the failure of the person referred to in *section fifty-five* to satisfy the requirements of *section fifty-six* and this section.
- (5) Any person referred to in *section fifty-five* who fails to comply with this section shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.
- (6) If it comes to the notice of the Registrar that any default is made in complying with this section, then independently of a prosecution, if any, for an offence under subsection (5), the Registrar may serve upon a person referred to in *section fifty-five* alleged to be in contravention of this section a category 1 civil penalty order.
- (7) Nothing in this Part shall be taken to prejudice the operation of any rule of law restricting any person referred to in *section fifty-five* from having any interest in contracts with the registered business entity concerned.

### 58 Avoidance and other remedies for conflict-of-interest transactions

- (1) A transaction which is contrary to *section fifty-six* shall be voidable at the option of the registered business entity concerned, but any such avoidance shall be without prejudice to rights of a third party which were acquired in good faith and without knowledge of or participation in the contravention.

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(2) A registered business entity concerned may also assert, and the competent court shall have power to order, other remedies including remedies of the kind referred to in sections 59, 60, 61 and 62, and the person having the conflict of interest shall be liable to account for and transfer to the registered business entity any gain which he or she has made from the act or transaction and to indemnify the registered business entity for any loss or damage suffered by it as a result of the act or transaction.

*Subpart C: Other legal proceedings and remedies*

### 59 Power of court to grant relief to defendants or potential defendants in certain cases

(1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he or she has acted honestly and reasonably and that, having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him or her, either wholly or partly, from his or her liability, on such terms as the court may think fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, breach of duty or breach of trust, he or she may apply to the court for relief and the court on any such application shall have the same power to relieve him or her as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are—

- (a) officers of a company (subject however to *section one hundred and ninety-seven* ("Liability of directors and prescribed officers") or members of the private business corporation;
- (b) directors, managers and other officers of a foreign company;
- (c) persons appointed by a company or foreign company as its auditors.

### 60 Direct actions by members

(1) A member of a private business corporation or a company may bring an action in court in such person's own name against any manager, officer or director referred to in *section fifty-four* or *fifty-five* to enforce, or recover damages caused to him or her caused by violation of a duty incumbent upon any such manager, officer or director under this Act or any other law including laws against fraud or misappropriation.

(2) An action under subsection (1) may be brought by one person in the person's own name or by two or more persons in their names acting together.

### 61 Derivative actions by members on entity's behalf

(1) A member or shareholder of a company or private business corporation may bring an action in court in such person's name and on the company's behalf against any manager, officer or director referred to in *sections fifty-four* or *fifty-five* to enforce, or to recover from that manager, officer or director damages caused to the company by violation of, duties owed by that manager, officer or director to the company under this Act or any other law including laws against fraud or misappropriation.

(2) Such an action may be brought by one person in the person's own name and on the company's or corporation's behalf or by two or more persons in their names acting together on the company's or corporation's behalf.

(3) An action may be brought under this section only in cases in which:

- (a) damage or a breach of duty to the company itself is claimed; and
  - (b) the plaintiff was a member or shareholder at the time of the acts which are complained of, or acquired that status as a result of a transfer of that person's interest or shares from a person who had that status at that time;
- and
- (c) the plaintiff holds interests or shares representing at least **10%** of the private business corporation or company's voting power (which in the case of a private company or public company shall mean **10%** votes of the ordinary shares), and where 2 or more plaintiffs

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bring the action together the holdings of all of them shall be counted for this purpose; and

(d) the plaintiff has previously requested the manager or controlling members of the private business corporation or board of company in writing to rectify the acts which are complained of, and that request was refused or not responded to **within 30 days** (but the court on good cause shown to it may dispense with this requirement).

(4) Any complaint under this section shall include a copy of the request referred to in subsection (3) and details of all other efforts to have the private business corporation or company itself bring the complaint, or shall state in detail why such a request would not succeed.

(5) A complaint under this section may not be discontinued or settled between the plaintiff and the defendant without the court's approval given after full disclosure of the details of the proposed discontinuance or settlement.

(6) All damages received in a derivative case shall be the property of the company or corporation except that the plaintiffs who prevailed shall be paid their reasonable expenses, including legal fees, from the moneys paid by the defendants.

(7) The amount of such expenses under subsection (6) must be approved by the court.

### 62 Court remedies in deadlock, fraud, oppression and other situations; piercing the corporate veil

(1) In a legal action by a member of a private business corporation or a company the court may order one or more of the remedies listed in subsections (2) and (3) of this section if it is established that—

*[Ticharehwa I v Greynut Investments(Pvt) Ltd & Master, Registrar of Coys & & Zimbabwe Defence Forces 23-HH-064]*

(a) the managers or directors, or the member, of the entity are deadlocked, whether because of even division in their number or another reason, and irreparable injury to the entity is likely to be caused to the entity's business or the business can no longer be conducted to the members' advantage, or

(b) the managers, directors or any other persons in control of the entity have acted illegally, fraudulently or oppressively toward the petitioning member.

(2) In an action under subsection (1) the court shall have the power to order one or more of the following remedies or similar remedies—

(a) dissolution or liquidation of the entity, but if the court finds that the grounds stated in subsection (1) are curable, it may order a reasonable time period for cure;

(b) the performance, variance or setting aside of any transaction or other action of the entity or its members, managers or directors;

(c) the cancellation or amendment of a provision of the entity's constitutive documents;

(d) the removal of any manager, director or officer, or the appointment of any person as a manager, director or officer;

(e) an investigation of the financial effects of any matter in dispute, which may include a forensic audit;

(f) the appointment of one or more inspectors to investigate the acts complained of or of a custodian to manage the business of the company or corporation for a term and under conditions determined by the court;

(g) the submission of the dispute to mediation or other non-binding alternative dispute resolution;

(h) the payment of dividends or other distributions;

(i) the award of damages to any aggrieved party; (j) the purchase by the company or corporation or another member or shareholder of all of the interests or shares of the petitioning member or shareholder for their fair value as determined by the court.

(3) If the court finds that—

(a) the juristic form of the private business corporation or company has been abused by the board, or a manager, director or officer or any one or more members of the company or private business corporation, for their own or some other person's advantage; or

(b) any acts done or omitted to be done by or on behalf of the private business corporation or company constitutes an unconscionable abuse of the juristic person of the private business corporation or the company; the court may declare the entity not to be a juristic person with respect to the said abuses, acts or omissions and impute those abuses, acts or omissions to the persons responsible for them in their personal capacities.

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### 63 Security for costs

Where a company or foreign company or a private business corporation is plaintiff or applicant in any legal proceedings, the court may at any stage, on sufficient proof that there is reason to believe that the company, foreign company or private business corporation will be unable to pay the costs of the defendant or respondent if successful in his or her defence, require sufficient security to be given for those costs and may stay all proceedings till the security is given.

[*Grandwell Holdings [Pvt] Ltd v Minister of Mines & Mining Development & Ors 16-HH-193*]

### 64 Service of documents

(1) Without derogation from *section forty of the Interpretation Act [Chapter 1:01]* but subject to subsection (2), any notice, order or other document which by this Act is required or permitted to be served upon or delivered or sent to a business or other entity may be served, delivered or sent—

(a) by leaving it at, or sending it by prepaid registered post to—

(i) the entity's registered office, in the case of a company or private business corporation; or

(ii) any place of business established by the entity in Zimbabwe, in the case of a foreign company; or

(iii) the entity's head office or principal place of business in Zimbabwe, in the case of a voluntary association;

or

(b) in the case of an electronic notice, order or document, by sending it to—

(i) the entity's electronic mail address, website, portal or other interactive electronic link whose particulars were notified to the Registrar in terms of *section thirty-one ("Postal address electronic mail address and registered office")*(3)operated or used by the entity; or

(ii) an electronic mail address, website, portal or other interactive electronic link operated or used by the entity's legal practitioner in Zimbabwe:

Provided that in either case the electronic communication shall be authenticated by the sender's electronic signature.

(2) Where—

(a) any provision of this Act prescribes the manner in which a notice, order or other document is to be served, delivered or sent, the document shall be served, delivered or sent in that manner unless it is impossible to do so, in which event subsection (1) shall apply;

(b) the High Court has directed the manner in which a notice, order or other document is to be served, delivered or sent, the document shall be served, delivered or sent in that manner.

### 65 Allegations of voidness, impropriety, etc. by registered business entities

(1) If a registered business entity—

(a) enters into any agreement or makes any resolution in respect of which it is alleged that such agreement or resolution or any provision of it is prohibited, void or voidable under this Act; or

(b) does anything in the purported exercise of any power under its constitutive documents, which power or exercise is alleged to be prohibited, void or voidable under this Act;

such agreement, resolution, provision of such agreement or resolution, power or exercise of such power shall not be considered to be prohibited, void or voidable under this Act unless a court declares the same to be prohibited, void or voidable as the case may be, or the agreement, resolution, provision, power or exercise in question has been adjudged to be prohibited or void by the issuance of a civil penalty order in relation thereto.

(2) Any person who contravenes any provision of this Act is liable to any other person for any loss or damage suffered by that person as a result of that contravention.

(3) The provisions of this section do not affect the right to any remedy that a person may otherwise have.

*Subpart D: Indemnification and insurance*

### 66 Indemnification and insurance of persons referred to in sections 54, 55 and 57

(1) A registered business entity may indemnify a person referred to in *section fifty-four* or *fifty-five* against expenses (including legal practitioner's fees) incurred by the person in a proceeding—

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- (a) to which the person was a party because he or she was a person referred to in those sections, and
- (b) in which the person was wholly successful in the defence of the proceeding, whether on the merits, on procedural grounds, or otherwise.
- (2) A registered business entity may indemnify a person referred to in *sections fifty-four or fifty-five* against—
- (a) liability incurred to any person other than the entity (and other than in the right of the entity under *section sixty*) in a proceeding to which the person was a party because he was a person referred to in *sections fifty-four or fifty-five*; or
- (b) expenses (including legal practitioner's fees) incurred by the person in defending or settling any claim in the proceeding relating to any such liability; if such liability was not criminal liability, was not liability for a breach of a duty stated in sections 54, 55 or 57, and was not liability for conduct for which the person was adjudged liable on the basis of receiving a financial benefit to which he or she was not entitled, whether or not involving action in the person's official capacity.
- (3) A registered business entity may purchase insurance to protect a person referred to in sections 54, 55 or 57 against liability asserted against or incurred by the person in the capacity referred to in this section, whether or not the entity would have power to indemnify the person against the same liability under subsections (1) or (2) of this section.
- (4) This section is additional to, and do not derogate from, *section seventy-four* ("*Indemnity and civil and criminal liability of officers and auditors of companies and members of PBCs*").

### PART V OFFENCES AND DEFAULTS COMMON TO REGISTERED BUSINESS ENTITIES

#### 67 Penalties for false statements and oaths

- (1) If any person in any statement, return, report, certificate, statement of financial position or other document required by or for the purpose of any provisions of this Act makes a statement false in any material particular,

knowing it to be false, he or she shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

- (2) If any person, on examination on oath authorised under this Act, or in any affidavit or deposition in or about any matter arising under this Act, wilfully and corruptly gives false evidence he or she shall be guilty of an offence and liable to the a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (3) Every officer or auditor of a company or foreign company, or accounting officer or controlling member of a private business corporation or any other person employed generally or engaged for some special work or service by the company, foreign company or private business corporation who makes, circulates or publishes or concurs in making, circulating or publishing any certificate, written statement, report or account in relation to any property or affair of the company, foreign company or private business corporation which is false in any material particular, shall, subject to subsection (4), be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (4) In any prosecution under subsection (3) it shall be a defence if it is proved that the person charged had, after reasonable investigation, reasonable ground to believe and did believe that the statement, report or account was true and that there was no omission to state any material fact necessary to make the statement as set out not misleading.

#### 68 Fraudulent, reckless or grossly negligent conduct of business

- (1) A creditor, member, judicial manager or liquidator of a company or private business corporation may, in an action instituted in the High Court, seek a declaration in terms of subsection (3).
- (2) The High Court may, in the course of any ongoing criminal or civil proceedings before it in connection with a company or private business corporation, on its own motion or on the application of the Master of the High Court or of any creditor, member, judicial manager or liquidator of the company or private business corporation, make a declaration in terms of subsection (3).

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(3) If it appears to a court that any business of a company or private business corporation was or is being carried on—

- (a) recklessly; or
- (b) with gross negligence; or
- (c) with intent to defraud any person or for any fraudulent purpose;

the court may declare that —

[Court not to equate “recklessness” or “gross negligence” with *dolus*  
*Toakoana Trading (Pvt) Ltd v van Rooyen C. & Anor*  
14-HH-684  
having benefited from fraudulent conduct, directors hid behind the corporate status to avoid paying *Railings Enterprises (Pvt) Ltd v Dowood Services (Pvt) Ltd t/a Bradfield Motors* 16-HB-053]

(d) any of the past or present directors of the company or any other persons who were knowingly parties to the carrying on of the business in such manner or in such circumstances; or

(e) any person who was knowingly a party to the carrying on of business of the private business corporation in such manner or in such circumstances;

(hereinafter called an **“impugned person”**) shall be personally responsible, without limitation of liability, for all or any of the debts or other liabilities of the company or private business corporation as the court may direct, and the court may give such further orders as it considers proper for the purpose of giving effect to the declaration and enforcing the liability, including an order under subsection (4).

(4) In particular the court may, subject to the prior rights of other creditors of the impugned person, make his or her declared liability a charge on any debt or obligation due from the company or private business corporation to the impugned person or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company or private business corporation held by or vested in the impugned person or in any company, private business corporation or person on his or her behalf, or in any person claiming as assignee from or through the impugned person, company, private business corporation or person, and may from time to time make such further order as may be necessary for the purpose of enforcing any charge imposed under this subsection.

For the purposes of this subsection, the expression **“assignee”** includes any person to

whom, or in whose favour, by the directions of the impugned person, the debt, obligation, mortgage or charge or interest therein was created, issued or transferred but does not include an assignee for valuable consideration given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) On the production to the Registrar by any member or creditor of a company or private business corporation of proof satisfactory to the Registrar that a director of the company or controlling member of the private business corporation is carrying on its business in the manner or in the circumstances specified in subsection (3)(a) or (b), the Registrar may (unless an action is earlier instituted or taken under subsection (1) or (2)) serve upon the director or the controlling member a category 2 civil penalty order in which the remediation clause (instead of the cumulative penalty) shall require the controlling member to take the remedial action specified in the order within a specified period.

(6) Any person who is knowingly a party to the carrying on of business in the manner or in the circumstances specified in subsection (1)(c) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(7) If it appears in the course of an investigation under Part II of this Chapter that any past or present officer or member of a company or private business corporation has been guilty of an offence under subsection (6) or other offence for which he or she is criminally responsible under this Act or the Criminal Law Code, the Registrar or inspector shall cause all the facts known to him or her which appear to constitute the offence to be laid before the Prosecutor-General.

### 69 Fraudulent, reckless or wilful failure of financial accounting; falsification of records

(1) Without derogating from *section sixty-eight* (“*Fraudulent, reckless or grossly negligent conduct of business*”), any—

- (a) director of a company who fraudulently, recklessly or wilfully fails to take all reasonable steps to secure compliance by the company with the requirements of *section one hundred and eighty-two* (“*Keeping of financial records*”), *section one hundred and eighty-three* (“*Statement of financial position and statement of comprehensive income and financial year of*

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*holding company and subsidiary*"), section one hundred and eighty-four ("General provisions as to contents and form of financial statements"), section one hundred and eighty-six ("Obligation to lay group accounts before holding company") or section one hundred and eighty-nine ("Directors report to be attached to statement of financial position"), or has by his or her own wilful act been the cause of any default by the company thereunder, he or she shall in respect of each default be guilty of an offence and liable to a fine not exceeding level twelve, or to imprisonment for all defaults for a period not exceeding twelve months or to both such fine and such imprisonment:

Provided that—

(i) it shall be a defence in any proceedings against a director under this paragraph for the director to prove, on a balance of probabilities, that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty;

(ii) if the court accepts the defence proffered under paragraph (i), it may direct the Registrar to serve upon the director the civil penalty order referred to in section 182(5), 183(5), 184(6) or 189(3), as the case may be;

(b) controlling member of a private business corporation who fraudulently, recklessly or wilfully fails to take all reasonable steps to secure compliance by the private business corporation with the requirements of section two hundred and seventy-one ("Financial records"), section two hundred and seventy-three ("Annual financial statements") or section two hundred and seventy-four ("Examination of financial statements and reports thereon"), or has by his or her own wilful act been the cause of default by the private business corporation in complying with any of those requirements, he or she shall, in respect of each default, be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for all defaults for a period not exceeding six months, or to both such fine and such imprisonment:

Provided that—

(i) it shall be a defence for him or her to prove on a balance of probabilities that he or she believed on reasonable grounds that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and that such person was in a position to discharge that duty

and that he or she had no reason to believe that such person had in any way failed to discharge that duty;

(ii) if the court accepts the defence proffered under paragraph (i), it may direct the Registrar to serve upon the member the civil penalty order referred to in section 271(7), 273(4) or 274(4).

(2) Any person who conceals, destroys, mutilates, falsifies or makes or is privy to the making of any false entry in or, with intent to defraud or deceive, makes or is privy to the making of any erasure in any register, records, including any minutes, records, security, account or document of any company or foreign company or private business corporation shall, unless he or she satisfies the court in each case that he or she had no intention to defraud or deceive, be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### 70 Power to restrain fraudulent persons from managing companies or controlling PBCs

(1) Where—

(a) a person is convicted before the High Court of any offence in connection with the promotion, formation or management of a company or private business corporation; or

(b) in the course of the winding up or judicial management of a company it appears that a person—

(i) has been guilty of any offence for which he or she is liable, whether he or she has been convicted or not, under section sixty-eight; or

(ii) has otherwise been guilty, while an officer of the company or accounting officer or controlling member of a private business corporation, of any fraud in relation to the company or of any breach of his or her duty to the company or private business corporation;

the court may on application make an order that that person shall not, without the leave of the court, be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of any company, foreign company or private business corporation for such period as may be specified in the order.

(2) A person intending to apply for the making of an order under this section shall give **not less than 10 days' notice** of his or her intention

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to the person against whom the order is sought and on the hearing of the application the last-mentioned person may appear and himself or herself give evidence or call witnesses.

(3) An application for the making of an order under this section may be made by the Master or by the liquidator or judicial manager of the company or by any person who is or has been a member or creditor of the company; and on the hearing of any application for an order under this section by the Master of the High Court or the liquidator or judicial manager or of any application for leave under this section by a person against whom an order has been made on the application of the Master or the liquidator or judicial manager, the Master or liquidator or judicial manager, as the case may be, may appear and call the attention of the court to any matters which seem to him or her to be relevant and shall do so if summoned by the court and may himself or herself give evidence and call witnesses.

(4) An order may be made by virtue of subsection (1)(b)(ii) notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made and for the purposes of the said subparagraph (ii) the expression "*officer*" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

(5) If any person contravenes an order made under this section, he or she shall, be liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### 71 Unlawful personation and misrepresentation in relation to shares and interests

(1) If any person falsely and deceitfully personates any owner of any share or interest in any company or of any interest in a private business corporation and thereby obtains or endeavours to obtain any such share or interest or receives or endeavours to receive any money due to any such owner as if the impersonator were the true and lawful owner, he or she shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(3) If a member of—

(a) a company makes use of a certificate of any share, debenture or debenture stock delivered to him or her or another person in terms of *section one hundred and fifty-three* ("Evidence of title to shares"); or

(b) a private business corporation makes use of a certificate issued to him or her or another person in terms of *section two hundred and fifty-seven* ("Certificate of members interest"); at a time when he or she knows it does not reflect the existence or true extent of his or her current interest in the company, to obtain any benefits or advantage for himself or herself or the private business corporation, he or she shall be guilty of an offence and liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

### 72 Obligations to maintain and file beneficial ownership information

(1) Every company shall maintain an accurate and up-to-date register of the beneficial owner or owners of the company, to be known as the register of beneficial owners which register shall—

(a) be kept, within Zimbabwe, and at the same office at which the register of members is kept; and

(b) with respect to each director, record his or her first name and surname, any former first name and surname, an identification reference number appearing in his or her identity document, his or her full residential or business address and postal address and his or her nationality, as well as the nature and extent of his or her beneficial ownership in the company.

[On the 15<sup>th</sup> JULY 2021 the BUSINESS TIMES published on page 5 an ULTIMATE BENEFICIAL OWNERSHIP ("UBO") NOTICE issued by the Deputy registrar of Companies confirming the deadline for compliance to be the 31<sup>st</sup> JULY 2021 – Now extended to February 2023]

(2) Every company shall file with the Registrar, in prescribed form, accurate and up-to-date beneficial ownership information referred to in this section and shall **within 7 days** of any change file updates as and when there is any material change to the information.

(3) Beneficial ownership information held and maintained in terms of this section, either by the company or by the Registrar, shall be made available for inspection by the Financial Intelligence Unit or by a law enforcement agency referred to in section 2 of the Money

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Laundering and Proceeds of Crime Act [Chapter 9:24].

(4) The company shall appoint a person, resident in Zimbabwe, who shall be responsible for keeping custody of the register of beneficial owners and who shall be authorised to make the information available to the Financial Intelligence Unit or law enforcement authorities, upon request.

(5) The names and sufficient contact details of the person referred to in subsection (4) shall be recorded in the form filed by the company with the Registrar in terms of subsection (2).

(6) Beneficial ownership and other company information held by the Registrar, shall be public information and shall be available for inspection, whether electronically or physically—

(a) by members of the public (subject to section seventy-three (10)); and

(b) by a financial institution or a designated non-financial business or profession referred to in section 2 and section 13, respectively, of the Money Laundering and Proceeds of Crime Act [Chapter 9:24].

(7) The Registrar or the Financial Intelligence Unit may each, on its own behalf or on behalf of a law enforcement agency, seek beneficial ownership or other company information from their foreign counterparts, in respect of any company, and, likewise, may provide beneficial ownership or other company information to their foreign counterparts.

(8) The Registrar and the Financial Intelligence Unit and any competent authority which, through them, requests beneficial ownership and other company information from other countries, shall monitor the quality of the assistance given by the foreign authorities and shall keep records of such requests and responses.

(9) The company or its administrators, liquidators or other persons involved in the dissolution of the company, shall maintain beneficial ownership information records for a period of at least five years after the date on which the company is dissolved or otherwise ceases to exist.

(10) Any person who fails to comply with the requirements of subsection (1), (2), (3), (4), (5) or (9) shall be guilty of an offence and be liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding five

years or to both such fine and such imprisonment.

### 73 Prohibition of concealment of beneficial ownership

(1) Subject to subsection (2), no company or private business corporation shall—

(a) allot or issue any of its shares to, or register any of its shares in the name of, or issue a certificate of member's interest to (as the case may be), any person other than the intended beneficial owner (that is to say, the person who, even if it is purported that the ownership of the share or interest belongs to someone else (in this section referred to as the "nominee"), enjoys the dividend and other benefit of the share or interest, whether that benefit is a present or a future one, or is vested or contingent); or

(b) transfer any of its shares or interests in the name of a person other than the beneficial owner.

(2) Subsection (1) shall not affect the allotment or issue, or the registration of the transfer, of shares or interests in a company or private business corporation in the name of—

(a) a nominee if he or she is the nominee of a beneficial owner who (whether alone or together with any "associate" as defined in section three ("When persons deemed to be associates and when persons deemed to control companies")) holds less than twenty per centum of the shares or interests in the company or private business corporation; or

(b) a manager or trustee of a collective investment scheme registered in terms of the Collective Investment Schemes Act [Chapter 24:19]; or

(c) an executor of a deceased estate, a trustee of an insolvent estate or the liquidator of a company in liquidation; or

(d) a curator or guardian of a person under a disability; or

(e) a holder of a licence issued in terms of Part V of the Securities and Exchange Act [Chapter 24:25]; or

(f) a central securities depository established in terms of Part IX of the Securities and Exchange Act [Chapter 24:25]; or

(g) such other persons as may be prescribed.

(3) Without derogating from section two hundred and thirty-five ("Disclosure of potential

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*control acquisition*"), a company or private business corporation may, and if so directed by the Registrar shall, request any person to whom it is about to allot, issue or transfer any of its shares or interests to furnish it with such information as the company or private business corporation may require to enable it to comply with subsection (1), and if the person fails or refuses within a reasonable time to comply with the request the company or private business corporation shall not allot, issue or transfer the shares or interest to him or her.

(4) If a company or private business corporation has reason to believe that any of its shares or interests are held by a nominee, the company or private business corporation may request the alleged nominee to provide it with such information as will identify the beneficial owner and additionally, or alternatively, the capacity in which the alleged nominee holds the shares or interests, and the alleged nominee shall without delay comply with the request.

In addition, for so long as a shareholder of a company or holder of an interest in a private business corporation fails or refuses to comply with a request in terms of this subsection, he or she shall not, either personally or by proxy, cast a vote attached to the share or interest nor receive a dividend payable on the share or interest.

(5) Where a share or interest in a company or private business corporation has been allotted, issued or transferred to a nominee, or registered in a nominee's name, in contravention of subsection (1), then—

(a) no nominee shall, either personally or by proxy, cast a vote attached to the share or interest nor shall any person receive a dividend payable on the share or interest; and

(b) the Registrar may (unless the company has earlier taken the action referred to in subsection (4)) serve a category 2 civil penalty order upon the alleged nominee, in which—

(i) the remediation clause shall require the nominee to divest himself or herself of the share or interest within a specified period; and

(ii) it is declared that the failure or refusal of the nominee to divest himself or herself of a share or interest within the specified period will result in every share or interest concerned becoming *bona vacantia* and vesting in the State, which may thereafter dispose of it.

(6) The validity of any resolution adopted by a company or private business corporation shall not be affected by a vote cast in contravention

of subsection (4) or (5) (a), if the resolution was adopted by the requisite majority of votes which were validly cast

(7) A dividend referred to in subsection (4) or (5)(b)(i) shall accrue to the company or private business corporation concerned.

(8) Before requiring an alleged nominee to divest himself or herself of a share or interest in terms of subsection (5)(b)(i), the Registrar shall, for the purposes of *section two hundred and ninety-six ("Additional due process requirements before service of certain civil penalty orders")* (1), also inform—

(a) the person from whom the alleged nominee acquired the share or interest, if that person is readily identifiable; and

(b) the company or private business corporation concerned;

of his or her reasons for requiring the alleged nominee to do so, and shall give all those persons an adequate opportunity to make representations in the matter.

(9) With reference to subsection (2)(a) the nominee of a beneficial owner shall disclose the name and relevant particulars of the beneficial owner to the company or private business corporation together with a written request that such beneficial owner and particulars not appear on the face of the shares or in the share certificate in the certificate of interest or in the register of shareholders or interest holders. Whereupon such company or private business corporation shall comply with such request but keep a separate register containing the names and relevant particulars of beneficial owners in question in accordance with *section seventy-two*.

(10) The name and relevant particulars of the beneficial owners referred to in subsection (9) shall not be disclosed except with the consent of the nominee or by virtue of an order of a court of competent jurisdiction.

(11) Any company or private business corporation that fails to keep the register of names and particulars of a beneficial owner referred to in subsection (9) shall be liable to a category 4 civil penalty order at the instance of the Registrar.

(12) An agreement under *section two hundred and ninety-nine* may give standing to a foreign company registry to apply to a domestic court for an order referred to in subsection (10).

(13) Every company or private business corporation shall nominate a director or an

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officer who shall be responsible for maintaining the registers for beneficial owners, failure to comply with such shall render the company or private business corporation concerned liable to a category 4 civil penalty.

### 74 Indemnity and civil and criminal liability of officers and auditors of companies and members of PBCs

(1) Subject to subsections (1) and (2), and unless otherwise provided in this Act or in the articles of the company or by-laws of the private business corporation, or in any contract with a company or private business corporation or otherwise, every director, managing director, agent, auditor, secretary and other officer for the time being of a company or member for the time being of the private business corporation, shall be entitled to an indemnity from the company or private business corporation for payments made and personal liabilities incurred by him or her—

(a) in the ordinary and proper conduct of the affairs of the company or private business corporation; and

(b) in or about anything necessarily done for the preservation of the undertaking or property of the company or private business corporation.

(2) Subject to this section, any provisions, whether contained in the articles of a company or by-laws of the private business corporation, or in any contract with a company or private business corporation or otherwise, for exempting any officer of the company or member of the corporation or any person employed by the company or corporation as auditor from, or indemnifying him or her against, any liability which by law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the company or private business corporation shall be void.

(3) In particular, no officer of a company or member of a private business corporation who is personally liable for a civil penalty shall be indemnified by the company or corporation against such liability, and any provisions, whether contained in the articles of a company or by-laws of the private business corporation, or in any contract with a company or corporation or otherwise, for exempting or indemnifying such officer shall be void.

(4) A company or private business corporation that contravenes subsection (2) or (3) and every officer, auditor or member who is

party to the payment or receipt of any indemnity in contravention of those subsections shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and imprisonment, and the court imposing such fine or imprisonment or both may suspend the whole or any part of such fine or imprisonment or both conditionally upon the company or private business corporation recovering, or the officer, auditor or member in default reimbursing the company or private business corporation for, the full value of the indemnity.

(5) Despite subsections (2) and (3) a company or private business corporation may indemnify any such officer auditor or members against any liability incurred by him or her in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted or in connection with any application under section fifty-nine (“Power of court to grant relief to defendants or potential defendants in certain cases”) in which relief is granted to him or her by the court.

## CHAPTER III

### COMPANIES

#### PART I

##### INTRODUCTION

*Sub-Part A: Incorporation of companies and matters incidental thereto*

### 75 Prohibition of association or partnership exceeding 20 persons

(1) No company, association, syndicate or partnership consisting of **more than 20 persons** shall be formed in Zimbabwe for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, syndicate or partnership, or by the individual members thereof, unless it is registered as a company under this Part or as a private business corporation under Part I of Chapter IV, or is formed in pursuance of some other law:

Provided that an association, syndicate or partnership which—

(a) consists solely of persons who are members of a designated profession or calling; and

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(b) is formed for the purposes of practising or carrying on in Zimbabwe that designated profession or calling;

may consist of **more than 20 persons**.

(2) For the purposes of this section

**“designated profession or calling”** means—

(a) legal practitioners registered under the Legal Practitioners Act [Chapter 27:07];

(b) public accountants and auditors registered under the Public Accountants and Auditors Act [Chapter 27:12];

(c) architects registered under the Architects Act [Chapter 27:01];

(d) quantity surveyors registered under the Quantity Surveyors Act [Chapter 27:13];

(e) medical practitioners registered under the Health Professions Act [Chapter 27:19];

(f) any other profession or calling which is controlled and regulated by a council or other body established by or under any Act in force in Zimbabwe, and which is declared by the Minister by notice in the *Gazette* to be a designated profession or calling for the purposes of this proviso.

### 76 Mode of forming company

Any one or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company whether—

(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them, in this Act termed a **company limited by shares**;

or

(b) if a licence is granted in terms of section eighty-two (“Power to dispense with “Limited” in certain cases”), a company having no share capital but having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up, in this Act termed a **company limited by guarantee**.

[its common law status as an **association** is lost when it sought, and was granted a licence to register as a **company** limited by guarantee and its tax

exempt status is also lost -*Zimbabwe Revenue Authority v FC Platinum 22-SC-044*]

### 77 Memorandum of company

(1) In the case of a company limited—

(a) by shares, the memorandum shall be in the English language, or subject to subsection (6) in an officially recognised language and must state—

(i) the name of the company which shall, unless a licence has been granted under section eighty-two (“Power to dispense with “Limited” in certain cases”), have “Limited” as the last word and shall also have included therein—

A. in the case of a private company, the term “(Private)” as the penultimate word;

B. in the case of a co-operative company, the word “Co-operative” or the abbreviation “Co-op”;

(ii) the objects of the company, if the promoter wishes to specify them;

(iii) that the liability of the members is limited;

(iv) the number of shares with which the company proposes to be registered;

(b) by guarantee, the memorandum shall be in the English language or any other prescribed language and must state—

(i) the name of the company;

(ii) the objects of the company;

(iii) that the liability of the members is limited;

(iv) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he or she is a member or within one year after he or she ceases to be a member for payment of the debts and liabilities of the company contracted before he or she ceases to be a member and of the costs, charges and expenses of the winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding a specified amount.

(2) No subscriber to the memorandum of a company limited by shares may take less than one share.

(3) Each subscriber to the memorandum of a company limited by shares must state in words opposite to his or her name the number of shares he or she takes:

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Provided that where the subscriber is—

(a) a company, association, syndicate or other corporate body, a director of the company or the authorised representative of any other corporate body;

or

(b) a partnership, one of the partners; or

(c) a minor, the guardian;

as the case may be, shall indicate in their handwriting (or by affixing their digital signature thereto) the number of shares taken.

(4) A public company which converts itself into a private company in terms of *section eighty-six* ("Statement in lieu of prospectus on ceasing to be private company") (3) shall, **within 1 month** after the conversion, insert the term "(Private)" before the word "Limited" in the name.

(5) The insertion of the term "(Private)" in the name of the company in compliance with subsection (4) shall not be regarded as a change of name for the purpose of *section twenty-six* ("Change of name") (1).

(6) If the memorandum is submitted in an officially recognised language such memorandum must be accompanied by a translation of the same in English authenticated by a person who in the opinion of the Registrar is competent to translate such language into English.

### 78 Signing of memorandum

The memorandum shall be printed and shall be signed and dated, in the presence of at least one attesting witness, by each subscriber and opposite every such signature of a subscriber or a witness there shall be typed his or her full name, occupation, and full residential or business address:

Provided that where the subscriber is—

(a) a company, association, syndicate or other corporate body, a director of the company or the authorised representative of any other corporate body; or

(b) a partnership, one of the partners; or

(c) a minor, the guardian;

(d) a person with a disability impairing his or her ability to sign, his or her representative;

as the case may be, shall sign the memorandum.

### 79 Alteration of memorandum

(1) A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

(2) A company may by special resolution—

(a) subject to the Insolvency Act, alter any condition contained in its memorandum which could lawfully have been contained in articles of association:

Provided that this paragraph shall not apply where the memorandum itself provides for or prohibits the alteration of all or any of the said conditions, and shall not authorise any variation or abrogation of the special rights of any class of members;

(b) alter its memorandum with respect to the objects of the company:

Provided that, if the name of the company describes the main objects of that company and such objects are to be altered so that the name of the company would no longer describe its main objects, the memorandum shall not be so altered unless the name of the company is changed accordingly in terms of *section twenty-six* ("Change of name").

(3) Notwithstanding subsection (2), if an application (hereafter called a "cancellation application") is made to the court in accordance with this section for an alteration in terms of subsection (2)(a) or (b) to be cancelled, the alteration shall not have effect except in so far as it is confirmed by the court.

(4) A cancellation application may be made—

(a) by the holders of not less in the aggregate than 5% in nominal value of the company's issued share capital or any class thereof; or

(b) by a group of shareholders referred to in *section eighty* ("Group voting on amendments to memorandum"):

Provided that a cancellation application shall not be made by any person who, or group of shareholders referred to in *section eighty* that, has consented to or voted in favour of the alteration.

(5) A cancellation application shall be made within one month after the date on which the resolution altering the condition contained in the memorandum or the company's objects, as the case may be, was passed, and may be made on behalf of the persons entitled to make the

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application by such one or more of their number as they may appoint in writing for the purpose.

(6) On being seized of a cancellation application the court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company shall be expended in any such purchase.

(7) In the case of a company which is, by virtue of a licence from the Minister, exempt from the obligation to use the word "Limited" as part of its name, a resolution altering the company's objects shall require the same notice to the Minister as to members of the company, and where such a company alters its objects the Minister, unless he or she sees fit to revoke the licence, may vary the licence by making it subject to such conditions and regulations as he or she thinks fit, in place of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

(8) Where a company passes a resolution altering its objects—

(a) if no application is made with respect thereto under this section, it shall within one month from the end of the period for making such an application deliver to the Registrar a copy of its memorandum as altered;

and

(b) if such an application is made, it shall—

(i) forthwith give notice of that fact to the Registrar; and

(ii) **within 1 month** from the date of any order cancelling or confirming the alteration, deliver to the Registrar a certified copy of its memorandum as altered.

Provided that the court may by order at any time extend the time for the delivery of documents to the Registrar under this paragraph for such period as the court may think proper.

(9) If a company makes default in giving notice or delivering any document to the Registrar as required by subsection (8), the

Registrar may issue a category 3 civil penalty order upon the defaulting company.

(10) The validity of an alteration of a company's memorandum with respect to the objects of the company shall not be questioned on the ground that it was not authorised by subsection (2) except in proceedings taken for the purpose, whether under this section or otherwise, **before the expiration of 1 month** after the date of the resolution in that behalf; and where any such proceedings are taken otherwise than under this section, subsections (8) and (9) shall apply in relation thereto as if they had been taken under this section and as if an order declaring the alteration invalid were an order cancelling it and as if an order dismissing the proceedings were an order confirming the alteration.

### 80 Group voting on amendments to memorandum

The holders of any type or class of shares shall be entitled to vote as a group on an amendment to the memorandum of association (that is to say, a majority of the votes of the group on the question whether to amend the memorandum shall be deemed to be the totality of the votes of the group) if the memorandum of association so provides or if the change would—

- (a) increase or decrease the number of authorised shares of such group;
- (b) change any of the rights or preferences of the shares of such group;
- (c) create a right of the holders of any other shares to exchange or convert their shares into shares of the type or class held by such group;
- (d) change the shares held by such group into a different number of shares or into shares of another type or class; or
- (e) create a new type or class of shares having rights or preferences superior or substantially equal to those of such group, or increase the rights and preferences of any type or class of shares having rights and preferences substantially equal to or superior to those of such group, or increase the rights and preferences of any type or class of shares having rights and preferences subordinate to those of such group if such increase would then make them substantially equal or superior to those of such group; or
- (f) limit or deny the existing pre-emptive rights of the shares of such group; or

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- (g) cancel or otherwise affect accumulated dividends on the shares of such group; or
- (h) limit or deny the voting rights of such group; or
- (i) otherwise change the rights or preferences of the shares held by such group so as to affect them adversely.

### 81 Articles of association and alteration thereof

(1) Articles of association signed by the subscribers to the memorandum of a company and prescribing its internal rules may be registered with such memorandum.

(2) Articles of association may adopt all or any of the internal rules contained in Table A (for public companies), B (private companies limited by shares) or C (private companies limited by guarantee) in the *Sixth Schedule* ("Model Articles and By-Laws").

(3) In the case of—

(a) a **public company**, if articles of association are not registered with the memorandum of association, or if articles of association are registered in so far as the articles do not exclude or modify the internal rules contained in Table A, those internal rules shall, so far as applicable, be the internal rules of the company in the same manner and to the same extent as if they were contained in duly registered articles;

(b) a **private company**, if articles of association are not registered with the memorandum of association, or if articles of association are registered in so far as the articles do not exclude or modify the internal rules contained in Table B, those internal rules shall, so far as applicable, be the internal rules of the company in the same manner and to the same extent as if they were contained in duly registered articles;

(c) a **company limited by guarantee**, if articles of association are not registered with the memorandum of association, or if articles of association are registered in so far as the articles do not exclude or modify the internal rules contained in Table C, those internal rules shall, so far as applicable, be the internal rules of the company in the same manner and to the same extent as if they were contained in duly registered articles;

(4) Any provision contained in a company's articles shall be void in so far as it would have the effect either—

(a) of excluding the right to demand a poll at a general meeting on any question other than the election of the chairperson of the meeting or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on any such question which is made—

(i) by **not less than 5 members** having the right to vote at the meeting;

or

(ii) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to **not less than 1/10** of the total sum paid up on all the shares conferring that right.

(5) The articles shall be in English or any other officially recognised language and shall be signed and dated by each subscriber to the memorandum in the presence of at least one attesting witness and opposite every such signature of a subscriber or a witness there shall be written in legible characters his or her full name, occupation and full residential or business address:

Provided that, if any other official language is used for the articles, the articles shall be accompanied by a translation of the same in English, authenticated by a person who in the opinion of the Registrar is competent to translate such language into English.

(6) Subject to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles and any alteration or addition so made in the articles shall be as valid as if originally contained therein, and be subject in like manner to alteration by special resolution.

### 82 Power to dispense with "Limited" in certain cases

(1) Where the Minister is satisfied that an association exists for any lawful purpose, the pursuit of which is calculated to be in the interests of the public, or any section of the public, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, and that it is desirable that such association should be incorporated, the Minister may, if the association submits to him

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or her a memorandum complying with section seventy-four ("*Indemnity and civil and criminal liability of officers and auditors of companies and members of private business corporations*"), by licence signed by him or her, directing that the association be registered as a company without the addition of the word "Limited" to its name, and the association may thereupon be registered accordingly.

[its common law status as an **association** is thereby lost when it sought, and was granted a licence to register as a **company** limited by guarantee and its tax exempt status is also lost -*Zimbabwe Revenue Authority v FC Platinum 22-SC-044*]

(2) The association, upon such registration, shall enjoy all the privileges of a company and be subject to all the obligations thereof, except those of using the word "Limited" as any part of its name and of complying with sections one hundred and fifteen ("*Prohibition of allotment unless minimum subscription received*"), section one hundred and sixteen ("*Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar*"), section one hundred and twenty-one ("*Register and return as to allotments*"), section one hundred and fifty-eight ("*Restrictions on commencement of business*"), Section one hundred and sixty-five ("*Annual return to be made by company*"), 166 ("*Statutory meeting and statutory report*"), section one hundred and seventy ("*Right to receive copy of statement of financial position and auditor's report*") and section one hundred and ninety-nine ("*Restrictions on appointment or advertisement of director; share qualifications of directors*")

(3) Subject to subsection (4), a licence under this section may at any time be revoked by the Minister and upon revocation the Registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall thereupon cease to enjoy the exemptions and privileges granted by this section.

(4) Before a licence is so revoked the Minister shall give to the association notice in writing of his or her intention, and shall afford it an opportunity to submit in writing arguments in opposition to revocation.

(5) Any application to the court to review the Minister's decision in terms of subsection (3) must be made **no later than 30 days** after the company in question receiving notice of the Minister's decision to that effect.

(6) Whenever it is proved to the satisfaction of the Minister that the objects of a company are those defined in subsection (1) and objects

incidental or conducive thereto, and that by its constitution the company is required to apply its profits, if any, or other income in promoting its objects and is prohibited from paying any dividend to its members, the Minister may by licence authorise the company to change its name by special resolution by the omission therefrom of the word "Limited", and as from the date of the receipt of the certificate of the Registrar recording the registration of such special resolution passed pursuant to such licence the company shall be deemed to be a company licensed under this section.

(7) Section twenty-six ("*Change of name*") shall apply to a change of name under this section.

(8) A licence by the Minister under this section may be granted on such conditions and subject to such regulations as he or she may think fit, and those conditions and regulations shall be binding upon the association or company and shall, if the Minister so directs, be inserted in the memorandum and articles, or in one of those documents.

(9) No alteration of the memorandum or articles of association in respect of which a licence under this section is in force shall take effect until such alteration is approved by the Minister, and if the Minister approves the alteration he or she may vary the licence by making it subject to such conditions and regulations as he or she thinks fit, *in lieu* of or in addition to the conditions and regulations, if any, to which the licence was formerly subject.

### *Sub-Part B: Membership of company*

## **83 Membership of company; personal liability where business carried on with no members**

(1) Section twenty ("*Effect of registration of constitutive documents and limitation of liability of members of companies and private business corporations*") (3)(a) describes how membership in a company is commenced, evidenced and terminated.

(2) If a company has no members and carries on business for more than 6 months without members, any person who knowingly causes it to do so shall be liable, jointly and severally with the company, for all debts incurred by it after the six months have elapsed.

## **84 Membership of holding company**

(1) Except as provided under this section—

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- (a) a body corporate cannot be a member of a company that is its holding company, and
- (b) any allotment or transfer of shares in a company to its subsidiary is void.

(2) Subject to subsection (3), subsection (1) shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in subsections (1) to such a body corporate included references to a nominee for it.

(3) The prohibition in subsection (1) does not apply where the subsidiary is concerned only—

- (a) as personal representative; or
- (b) as trustee;

unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

(4) For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—

- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business that includes the lending of money;

(b) any interest within—

(i) subsection (5) (a) (interests to be disregarded: residual interest under pension scheme or employees' share scheme); or

(ii) subsection (5)(b) (interests to be disregarded: employer's rights of recovery under pension scheme or employees' share scheme);

(c) any rights that the company or subsidiary has in its capacity as trustee, including in particular—

(i) any right to recover its expenses or be remunerated out of the trust property; and

(ii) any right to be indemnified out of the trust property for any liability incurred by reason of any act or omission in the performance of its duties as trustee.

(5) Where shares in a company are held on trust for the purposes of a pension scheme or employees' share scheme, there shall be disregarded for the purposes of subsection (3) any—

- (a) residual interest that has not vested in possession; or

(b) charge or *lien* on, or set-off against, any benefit or other right or interest under the scheme for the purpose of enabling the employer or former employer of a member of the scheme to obtain the discharge of a monetary obligation due to him or her from the member.

(6) In subsections (4) and (5)—

**"employee"** shall be read as if a director of a company were employed by it;

**"employees' share scheme"** means an "approved employee share ownership scheme or trust" as defined in section 2 of the Income Tax Act [*Chapter 23:06*] or an employee share ownership scheme or trust as defined in the Indigenisation and Economic Empowerment Act [*Chapter 14:33*];

**"pension scheme"** means a scheme for the provision of benefits consisting of or including relevant benefits for or in respect of employees or former employees;

**"relevant benefits"** means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death;

**"residual interest"** means a right of the company or subsidiary ("the residual beneficiary") to receive any of the trust property in the event of—

(a) all the liabilities arising under the scheme having been satisfied or provided for; or

(b) the residual beneficiary ceasing to participate in the scheme; or

(c) the trust property at any time exceeding what is necessary for satisfying the liabilities arising or expected to arise under the scheme;

**"vest in possession"**, in relation to a residual interest, means—

(a) in a case within paragraph (a) of the definition of "residual interest", the occurrence of the event mentioned there (whether or not the amount of the property receivable pursuant to the right is ascertained);

(b) in a case within paragraph (b) or (c) of the definition of "residual interest", when the residual beneficiary becomes entitled to require the trustee to transfer to him or her any of the property receivable pursuant to the right.

(7) In subsection (6), in the definition of **"residual interest"**—

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(a) the reference to a right includes a right dependent on the exercise of a discretion vested by the scheme in the trustee or another person, and

(b) the reference to liabilities arising under a scheme includes liabilities that have resulted, or may result, from the exercise of any such discretion.

### *Sub-Part C: Private companies*

#### **85 Definition of private company and consequences of default in complying with conditions for private company**

(1) In this Act—

**“private company”** means a company other than a co-operative company, which by its articles—

(a) restricts the right to transfer its shares; and

(b) limits the number of its members to **50**, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment and have continued, after the termination of that employment, to be members of the company; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) Where 2 or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

(3) With the sanction of a special resolution and subject to confirmation by the High Court, a public company may convert itself into a private company.

(4) If a company registered as a private company—

(a) knowingly permits its membership to exceed 50 members (other than members who are its employees or former employees as contemplated in paragraph (b) of the definition of the “private company”) it shall be guilty of an offence and liable to a fine not exceeding level two for every day during which it is in contravention of this paragraph; or

(b) invites members of the public to subscribe for its shares or debentures, the provisions of sections **one hundred and eight** (“Civil liability

for misstatements in prospectus”) and section **one hundred and eleven** (“Document containing offer of shares or debentures for sale to be deemed to be prospectus”) to section **one hundred and fourteen** (“Restrictions on offering shares for subscription or sale”) shall apply to it as if it was a public company, without affecting the liability of the private company under subsection (5).

(5) If it comes to the notice of the Registrar that a company is in default of subsection (4)(a) or (b) or has not complied with the restriction referred to in paragraph (a) of the definition of “private company” in subsection (1) then, independently of a prosecution, if any, for an offence under subsection (4)(a) or (b), the Registrar may serve a category 1 civil penalty order upon the defaulting company.

#### **86 Statement in lieu of prospectus on ceasing to be private company**

(1) If a company, being a private company, alters its articles in such manner that they no longer include the provisions which, under section **eighty-five** (“Definition of private company and consequences of default in complying with conditions for private company”), are required to be included in the articles of a company in order to constitute it a private company, the company shall, as on the date of the alteration, cease to be a private company and shall, **within a period of 1 month** after the said date, remove the term “(Private)” from its name and deliver to the Registrar for registration a statement *in lieu* of prospectus in the form and containing the particulars set out in Part I of the *Second Schedule* and, in the cases mentioned in Part II of that *Schedule*, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that *Schedule*:

Provided that a statement *in lieu* of prospectus need not be delivered if within the said period a prospectus relating to the company which complies with the *Eighth Schedule* is issued and is lodged with the Registrar as required by section **one hundred and six** (“Registration of prospectus”).

(2) Every statement *in lieu* of prospectus delivered under subsection (1) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 in Part III of the said *Schedule*, have endorsed

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thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving reasons therefor.

(3) If a company is in default of subsection (1), the Registrar may serve a category 1 civil penalty order upon the defaulting company.

(4) *Section one hundred and fifteen ("Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar")* (5) and (6) shall apply, with such changes as may be necessary, to every statement *in lieu* of prospectus lodged under this section as they apply to a statement *in lieu* of prospectus lodged under that section.

(5) The removal of the term "(Private)" from the name of a company in compliance with subsection (1) shall not be regarded as a change of name for the purposes of section twenty-six ("Change of name") (1).

### *Sub-Part D: Co-operative companies*

#### **87 Definition of co-operative company and consequences of default in complying with conditions for co-operative company**

(1) A co-operative company is a company, other than a private company, which—

(a) in its memorandum states that its main object is one or other or both of the following—

(i) the provision for its members of a service facilitating the production or marketing of agricultural produce or livestock;

(ii) the sale of goods to its members;

and

(b) by its articles—

(i) restricts the right to transfer its shares; and

(ii) provides that its ordinary shares shall be of one class only; and

(iii) subject to *section eighty-nine ("Voting rights of members of the co-operative company")*, fixes a limit to the number of shares which may be held by any one member; and

(iv) regulates the voting rights of its members in accordance with *section eighty-nine*; and

(v) limits the dividend which may be paid on its shares to a rate not exceeding **10% per annum** on the amounts paid up thereon;

and

(vi) provides for the distribution of a part or the whole of its profits amongst its members on the basis of certain or all of their business transactions with the company.

(2) With the sanction of a special resolution and subject to confirmation by the court, a public company, which is not a co-operative company, may convert itself into a co-operative company.

(3) For the purposes of subsection (1)(a)—

**"member"**, in relation to a co-operative company, includes any person who is a member of a co-operative company which is a member of the first-mentioned co-operative company.

(4) Where the memorandum and articles of a company include the provisions which under subsection (1) are required to be included in the memorandum and articles of a company in order to constitute it a co-operative company but default is made in complying with any of those provisions the company shall cease to be entitled to the privileges and exemptions conferred on co-operative companies by this Act and the provisions thereof shall in all respects apply to the company as if it were not a co-operative company.

(5) If it comes to the notice of the Registrar that a company is in default of subsection (4), the Registrar may serve a category 1 civil penalty order upon the defaulting company:

Provided that the Registrar, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, may waive the civil penalty and relieve the company from the consequences referred to in subsection (4).

(6) If no civil penalty order has been served in relation to the foregoing default, or, having been served, it is appealed in terms of *section two hundred and ninety-six ("Additional due process requirements before service of certain civil penalty orders")* (3), the court, on being satisfied that the failure to comply with the conditions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested and on such terms and conditions as seem to the court just and expedient, order that the company be relieved from such consequences as aforesaid.

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### 88 Co-operative company to maintain reserve fund

(1) Every co-operative company shall maintain a reserve fund which may be used for any purpose for which the share capital of the co-operative company may be used but which shall not be available for distribution to members except in the event of the winding-up of the co-operative company.

(2) The articles of the co-operative company shall provide for the creation and operation of its reserve fund and for the method of determining the amount to be appropriated thereto from the annual surplus of the co-operative company.

### 89 Voting rights of members of co-operative company

(1) Subject to subsection (2), every member of a co-operative company shall have at least one vote in respect of the conduct of the affairs of the co-operative company but, save in the case where the membership of the co-operative company is **less than 100 members** or is restricted solely to other co-operative companies, no member may exercise **more than 1%** of the total votes in respect of the conduct of the affairs of the co-operative company which are accorded to all the members thereof:

Provided that—

(i) the articles of a co-operative company may provide that votes shall be accorded to the members thereof in relation to their shareholding in the co-operative company or their transactions with the co-operative company during a specified period or to both such factors but in no case shall a member be entitled to be accorded more than 6 votes in respect of either such factor or 12 votes in respect of both;

(ii) if a co-operative company forms a subsidiary co-operative company or acquires another co-operative company as its subsidiary, the first-mentioned co-operative company shall be entitled to exercise in respect of the conduct of the affairs of the subsidiary such number or percentage of the total votes accorded to all members of the subsidiary which does not exceed such number or percentage as may be prescribed;

(iii) in the case of a co-operative company, where the membership is **less than 100 members** and is not restricted solely to other co-operative companies, no member thereof

shall have more than one vote in the conduct of the affairs of the co-operative company unless provision has been made in the articles of the co-operative company as envisaged by proviso (i).

(2) The holder of a preference share in a co-operative company shall have no vote in respect of the conduct of the affairs of the co-operative company:

Provided that the articles of the co-operative company may provide that such a holder may have a vote, subject to subsection (1), in respect of matters affecting the rights of any such holder of any such preference shares or the dissolution of the co-operative company.

### 90 Application of surplus assets on liquidation of co-operative company

If in any winding up of a co-operative company after the application of the assets thereof in terms of Part XV ("Costs of liquidation and application of Free Residue") of the Insolvency Act [Chapter 6:07], there remains any surplus of assets the liquidator shall distribute such surplus, including the capital reserve and any other reserves of the co-operative company, in the following order—

(a) amongst the holders of the preference shares of the co-operative company which are preferential as to capital, if any, in repayment of the amounts paid up by them on such preference shares;

(b) amongst the holders of shares of the co-operative company, not referred to in paragraph (a), in repayment of the amounts paid up by them on such shares;

(c) if the articles of the co-operative company so provide, in payment to the holders of the preference shares of the co-operative company, if any, of a dividend, which shall not in any case exceed a rate of **10% per annum** on the amounts paid up thereon, for any period for which no disposal of profits was made;

(d) if the articles of the co-operative company so provide, in payment to the holders of the ordinary shares of the co-operative company of a dividend, which shall not in any case exceed a rate of **10% per annum** on the amounts paid up thereon, for any period for which no disposal of profits was made;

(e) any remaining surplus shall be paid to existing members in proportion to the number of ordinary shares in the co-operative company held by each of them multiplied by the number

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of completed months which has elapsed since—

- (i) the date of the issue of such shares; or
- (ii) the date of registration of such shares in the name of the present holders;

whichever of such cases may be provided for in relation to any particular circumstances in the articles of the co-operative:

Provided that, where there are different amounts paid up on the shares in question, the proportion payable shall be adjusted accordingly.

### 91 Special method for reduction of share capital

Notwithstanding, but without derogation from, this Act a share in a co-operative company may be cancelled and the amount paid up thereon refunded in such circumstances relating to the termination of membership or otherwise as are authorised in its articles:

Provided that no such cancellation of a share or refund of the amount paid up thereon shall—

- (a) affect the liability of a contributory on insolvency, that is to say, every person liable to contribute to the assets of a company in the event of its being wound up (and, for the purposes of all proceedings for determining and all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory);
- (b) be made unless there is appropriated from the free reserves, surplus or profit of the co-operative company and added to its capital reserve an amount equal to the nominal value of such cancelled share.

### 92 Disposal of produce of members to or through co-operative company

(1) A co-operative company which has as one of its objects the disposal of any produce or livestock of its members may provide in its articles or may otherwise contract with its members—

- (a) that no member shall dispose of any such produce or livestock or any part of such produce or livestock by sale or barter other than by sale to or through the co-operative company;
- (b) that any member who contravenes any such articles or commits a breach of any such contract shall pay to the co-operative company as liquidated damages a sum ascertained or

assessed in such manner as is provided in the articles or contract.

(2) Whenever any produce or livestock or any part thereof is delivered to a co-operative company by a member thereof in accordance with its articles or a contract referred to in subsection (1) for the purpose of disposal to or through the co-operative company or its agents, whether statutory bodies or otherwise, no creditor of the member delivering the same may attach or charge such produce or livestock or part thereof or the proceeds of the sale thereof that remain under the control of the co-operative company.

### 93 Shares or interest of members: charge and set-off, and immunity from attachment or sale in execution

(1) A co-operative company shall have a charge upon the shares, interest in the capital and deposits of a member, past member or deceased member and upon any dividend, bonus or profits payable to a member, past member or estate of a deceased member in respect of any debt due to the co-operative company from such member, past member or estate and may set-off any sum credited or payable to a member, past member or estate of a deceased member in or towards payment of any such debt.

(2) Subject to subsection (1), the share or interest of a member in the capital of a co-operative company shall not be liable to attachment or sale under an order of any court in respect of any debt or liability incurred by such member:

Provided that nothing contained in this subsection shall prohibit the cancellation of the share or the transfer or sale of the share or interest of a member in accordance with the articles of such co-operative company.

### 94 Company ceasing to be co-operative company

(1) If a company being a co-operative company alters its memorandum or articles in such a manner that they no longer include the provisions which, under *section eighty-five* (“*Definition of co-operative company and consequences of default in complying with conditions for co-operative company*”) are required to be included in the memorandum and articles of a company in order to constitute it a co-operative company, the co-operative company shall as on the date of the alteration cease to be a co-operative company and shall within a period of one month after the said date

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remove the term “Co-operative” or any contraction or imitation thereof from its name.

(2) The removal of the term “Co-operative” or any contraction or imitation thereof from the name of a company in terms of subsection (1) shall not be regarded as a change of name for the purposes of *section twenty-six (“Change of name”)* (1).

(3) If it comes to the notice of the Registrar that a company is in default of subsection (1), the Registrar may serve a category 1 civil penalty order upon the defaulting company.

### PART II SHARE CAPITAL AND DEBENTURES

*Sub-Part A: General nature of share capital of companies*

#### 95 Legal nature of shares and requirement to have shareholders

(1) A share issued by a company is movable property and transferable in any manner provided for by the articles of the company or recognised by this Act or any other law.

(2) Subject to *section three hundred and four (“Transitional provisions in relation to par value shares, treasury shares, capital accounts and share certificates”)*, a share does not have a nominal or par value.

(3) A company may not issue shares to itself as provided in *section one hundred and twenty-eight (“Power of company to purchase own shares”)*.

(4) An authorised share of a company has no rights associated with it until it has been issued.

(5) Shares of a company that have been issued and subsequently—

(a) acquired by that company, as contemplated in *section 129 (“Authority required by company to purchase its own shares”)*; or

(b) surrendered to that company in the exercise of appraisal rights in terms of *section two hundred and thirty-three (“Dissenting shareholders’ appraisal rights”)*;

have the same status as treasury shares, that is to say, shares that have been authorised but not issued.

(6) Despite the repeal of the Companies Act [Chapter 24:03], a share issued by a pre-existing company, and held by a shareholder

immediately before the effective date, continues to have all of the rights associated with it immediately before the effective date, irrespective of whether those rights existed in terms of the company’s memorandum or articles, or in terms of that Act, subject only to—

(a) amendments to that company’s memorandum or articles after the effective date; and

(b) the operation of subsection (5); and

(c) the regulations contemplated in *section three hundred and three (“Repeals, registration of companies and PBCs, general transitional provisions and savings”)* ( (30).

#### 96 Authorisation for shares

(1) A company’s memorandum—

(a) must set out the classes of shares, and the number of shares of each class, that the company is authorised to issue; and

(b) must set out, with respect to each class of shares—

(i) a distinguishing designation for that class; and

(ii) the preferences, rights, limitations and other terms associated with that class, subject to paragraph (d);

and

(c) may authorise a stated number of unclassified shares, which are subject to classification by the board of directors in accordance with subsection (3)(c); and

(d) may set out a class of shares—

(i) without specifying the associated preferences, rights, limitations or other terms of that class; or

(ii) for which the board of directors must determine the associated preferences, rights, limitations or other terms; or

(iii) which must not be issued until the board directors has determined the associated preferences, rights, limitations or other terms, as contemplated in subparagraph (ii).

(2) The authorisation and classification of shares, the numbers of authorised shares of each class, and the preferences, rights, limitations and other terms associated with each class of shares, as set out in a company’s memorandum, may be changed only by—

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- (a) an amendment of the memorandum by special resolution of the shareholders; or
- (b) the board of directors, in the manner contemplated in subsection (3), except to the extent that the memorandum provides otherwise.
- (3) Except to the extent that a company's memorandum provides otherwise, the company's board may—
- (a) increase or decrease the number of authorised shares of any class of shares on a *pro rata* basis to the shareholders of one or more classes of those shares, by the use of any one or more of the following expedients—
- (i) consolidate and divide all or any part of its share capital into shares of larger amount than its existing shares;
- (ii) convert all or any of its paid-up shares into stock and reconvert such stock into paid-up shares of any denomination;
- (iii) subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (iv) cancel shares which at the time of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled;
- or
- (b) reclassify any classified shares that have been authorised but not issued;
- or
- (c) classify any unclassified shares that have been authorised as contemplated in subsection (1)(c), but are not issued; or
- (d) determine the preferences, rights, limitations or other terms of shares in a class contemplated in subsection (1)(d).
- (4) If the board of directors acts pursuant to its authority contemplated in subsection (3), the company must file a notice of amendment of its memorandum, setting out the changes effected by the board of directors.

### 97 Preferences, rights, limitations and other share terms

- (1) All of the shares of any particular class authorised by a company have preferences, rights, limitations and other terms that are identical to those of other shares of the same class, except to the extent that the company's memorandum provides otherwise.
- (2) Each issued share of a company, regardless of its class, has associated with it one general voting right, except to the extent provided otherwise by—
- (a) this Act; or
- (b) the preferences, rights, limitations and other terms determined by or in terms of the company's memorandum in accordance with section ninety-six ("Authorisation for shares").
- (3) Despite anything to the contrary in a company's memorandum—
- (a) every share issued by that company has associated with it an irrevocable right of the shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that share; and
- (b) a company must always have ordinary shares and in addition to any class of share as may be prescribed in the company's constitutive documents.
- (4) If a company's memorandum has established more than one class of shares the memorandum, in setting out the preferences, rights, limitations and other terms of those classes of shares, must provide that—
- (a) for each particular matter that may be submitted for a decision to shareholders of the company, at least one class of the company's shares has voting rights that may be exercised on that matter; and
- (b) the holders of at least one class of the company's shares, irrespective of whether it is the same as any class contemplated in paragraph (a), are entitled to receive the net assets of the company upon its liquidation.
- (5) Subject to this Act or any other enactment a company's memorandum may establish, for any particular class of shares, preferences, rights, limitations or other terms that—
- (a) bestow special, conditional or limited voting rights; or
- (b) provide for shares of that class to be redeemable, subject to the requirements of

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section one hundred and twenty-nine (“Authority required by company to purchase its own shares”), or convertible, as specified in the memorandum—

(i) at the option of the company, the shareholder, or another person at any time, or upon the occurrence of any specified contingency; or

(ii) for cash, indebtedness, securities or other property; or

(iii) at prices and in amounts specified, or fixed in accordance with a formula determined by the board; or

(iv) subject to any other terms set out in the company’s memorandum;

or

(c) entitle the shareholders to distributions calculated in any manner, including dividends that may be cumulative, non-cumulative, or partially cumulative; or

(d) provide for shares of that class to have preference over any other class of shares with respect to distributions, or rights upon the final liquidation of the company.

(6) The memorandum of a company may provide for preferences, rights, limitations or other terms of any class of shares of that company to vary in response to any objectively ascertainable external fact or facts.

(7) For the purpose of subsection (6)—

(a) “external fact or facts” includes the occurrence of any event, a variation in any fact, benchmark or other point of reference, a determination or action by the company, its board, or any other person, an agreement to which the company is a party, or any other document; and

(b) the manner in which a fact affects the preferences, rights, limitations or other terms of shares must be expressly determined by or in terms of the company’s memorandum, in accordance with section ninety-six (“Authorisation for shares”).

(8) If the memorandum of a company has been amended to materially and adversely alter the preferences, rights, limitations or other terms of a class of shares, any holder of those shares is entitled to seek relief in terms of section two hundred and thirty-three (“Dissenting shareholders and appraisal rights”) if that shareholder—

(a) notified the company in advance of the intention to oppose the resolution to amend the memorandum; and

(b) was present at the meeting, and voted against that resolution.

### 98 Issuing shares

(1) The board of directors may resolve to issue shares of the company at any time, but only within the classes, and to the extent, that the shares have been authorised by or in terms of the company’s memorandum, in accordance with section ninety-six (“Authorisation of shares”).

(2) If a company issues shares—

(a) that have not been authorised in accordance with section ninety-six; or

(b) in excess of the number of authorised shares of any particular class; the issuance of those shares may be retroactively authorised in accordance with section ninety-six.

(3) If a resolution seeking to retroactively authorise an issue of shares, as contemplated in subsection (2), is not adopted when it is put to a vote—

(a) the share issue is a nullity to the extent that it exceeds any authorisation;

and

(b) the company must return to any person the fair value of the consideration received by the company in respect of that share issue to the extent that it is nullified, together with interest in accordance with the Prescribed Rate of Interest Act [Chapter 8:10], from the date on which the consideration for the shares was received by the company, until the date on which the company complies with this paragraph; and

(c) any certificate evidencing a share so issued and nullified, and any entry in the shareholders’ register in respect of such an issue, is void; and

(d) a director of the company is liable to the extent set out in section one hundred and ninety-seven (“Liability of directors and prescribed officers”) (3)(e)(i) if the director—

(i) was present at a meeting when the board approved the issue of any unauthorised shares, or participated in the making of such a decision in terms of section one hundred and ninety-six (“Directors acting other than at meeting”); and

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(ii) failed to vote against the issue of those shares, despite knowing that the shares had not been authorised in accordance with *section ninety-six*.

### 99 Subscription for additional shares in private companies

(1) This section—

(a) does not apply to a public company or State-owned company, except to the extent that the company's memorandum provides otherwise; and

(b) applies to a private company with respect to any issue of its shares, other than—

(i) shares issued—

A. in terms of options or conversion rights; or  
B. as contemplated in *section one hundred ("Consideration for shares")* (5) to (7); or

(ii) capitalisation shares issued as contemplated in *section one hundred and thirty-seven ("Capitalisation shares")*.

(2) If a private company proposes to issue any shares, other than as contemplated in subsection (1)(b), each shareholder of that private company has a right, before any other person who is not a shareholder of that company, to be offered and, within a reasonable time to subscribe for, a percentage of the shares to be issued equal to the voting power of that shareholder's general voting rights immediately before the offer was made.

(3) A private company's memorandum may limit, negate, restrict or place conditions upon the right set out in subsection (2), with respect to any or all classes of shares of that company.

(4) Except to the extent that a private company's memorandum provides otherwise—

(a) in exercising a right in terms of subsection (2), a shareholder may subscribe fewer shares than the shareholder would be entitled to subscribe under that subsection; and

(b) shares not subscribed by a shareholder within the reasonable time contemplated in subsection (2), may be offered to other persons to the extent permitted by the memorandum.

### 100 Consideration for shares

(1) The board of directors may issue authorised shares only—

(a) for adequate consideration to the company, as determined by the board of directors; or

(b) in terms of conversion rights associated with previously issued shares or debentures of the company; or

(c) as a capitalisation share as contemplated in *section one hundred and thirty-seven ("Capitalisation shares")*.

(2) Before a company issues any particular shares, the board must determine the consideration for which, and the terms on which, those shares will be issued.

(3) The consideration referred to in subsection (2) may be in money, in other tangible or intangible property, other rights having monetary value, a binding obligation to pay money, or services previously performed:

Provided that the value of any non-monetary consideration shall be verified by the opinion of an independent expert, which opinion has been made available to all existing members before any shares are issued for such non-monetary consideration and shall, in addition, be approved by all such existing members.

(4) A determination by the board of directors in terms of subsection (2) as to the adequacy of consideration for any shares may not be challenged on any basis other than in terms of *section one hundred and ninety-five ("Directors and their functions and responsibilities")*.

(5) Subject to subsections (6) to (8), when a company has received the consideration approved by its board of directors for the issuance of any shares—

(a) those shares are fully paid; and

(b) the company must issue those shares and cause the name of the holder to be entered on the company's shareholders' register in accordance with *section one hundred and fifty-nine ("Register and index of members and use of register as presumptive proof of membership")*.

(6) If the consideration for any shares that are issued or to be issued is in the form of an instrument that is not negotiable by the company at the time the shares are to be issued, or is in the form of an agreement for future services, future benefits or future payment by the subscribing party—

(a) the consideration for those shares is regarded as having been received by the company at any time only to the extent—

(i) that the instrument is negotiable by the company; or

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(ii) that the subscribing party to the agreement has fulfilled its obligations in terms of the agreement;

and

(b) upon receiving the instrument or entering into the agreement, the company must—

(i) issue the shares immediately; and

(ii) cause the issued shares to be transferred to a third party, to be held in trust and later transferred to the subscribing party in accordance with a trust agreement.

(7) Except to the extent that a trust agreement contemplated in subsection (6)

(b) provides otherwise—

(a) voting rights, and appraisal rights set out in *section two hundred and thirty-three* (“*Dissenting shareholders appraisal rights*”), associated with shares that have been issued but are held in trust may not be exercised; and

(b) any rights of first refusal associated with shares that have been issued but are held in trust may be exercised only to the extent that the instrument has become negotiable by the company or the subscribing party has fulfilled its obligations under the agreement; and

(c) any distribution with respect to shares that have been issued but are held in trust—

(i) must be paid or credited by the company to the subscribing party to the extent that the instrument has become negotiable by the company or the subscribing party has fulfilled its obligations under the agreement; and

(ii) may be credited against the remaining value at that time of any services still to be performed by the subscribing party, any future payment remaining due, or the benefits still to be received by the company;

and

(d) shares that have been issued but are held in trust—

(i) may not be transferred by or at the direction of the subscribing party unless the company has expressly consented to the transfer in advance; and

(ii) may be transferred to the subscribing party on a quarterly basis, to the extent that the instrument has become negotiable by the company or the subscribing party has fulfilled its obligations under the agreement; and

(iii) must be transferred to the subscribing party when the instrument has become negotiable by the company, or upon satisfaction of all of the subscribing party’s obligations in terms of the agreement; and

(iv) to the extent that the instrument is dishonoured after becoming negotiable, or that the subscribing party has failed to fulfil its obligations under the agreement, must be returned to the company and cancelled, on demand by the company.

(8) A company may not make a demand contemplated in subsection (7)(d)(iv) unless—

(a) a negotiable instrument is dishonoured after becoming negotiable by the company; or

(b) in the case of an agreement, the subscribing party has failed to fulfil any obligation in terms of the agreement for a period of at least forty (40) business days after the date on which the obligation was due to be fulfilled.

### 101 Options for subscription for shares or debentures

(1) A company may issue options for the allotment or subscription of authorised shares or debentures of the company if so authorised by its articles, but such issuance must comply with this section.

(2) The board of a company must determine the consideration or other benefit for which, and the terms upon which—

(a) any options are issued; and

(b) the related shares or debentures are to be issued.

(3) A decision by the board that the company may issue—

(a) any options, constitutes also the decision of the board to issue any authorized shares or debentures for which the options may be exercised;

or

(b) any shares or debentures convertible into shares of any class, constitutes also the decision of the board to issue the authorized shares into which the first mentioned shares or debentures may be converted.

(4) A director of a company is liable to the extent set out in *section one hundred and ninety-seven* (“*Liability of directors and prescribed officers*”)(3)(e)(iii) if the director—

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(a) was present at a meeting when the board approved the granting of an option or a right as contemplated in this section, or participated in the making of such a decision in terms of *section one hundred and ninety-six* ("Directors acting other than at meeting"); and

(b) failed to vote against the granting of the option or right, despite knowing that any shares—

(i) for which the options could be exercised; or

(ii) into which any securities could be converted,

had not been authorised in terms of *section ninety-six* ("Authorisation for shares").

### 102 Solvency and liquidity test

(1) For any purpose of this Act, a company satisfies the solvency and liquidity test at a particular time if, considering all reasonably foreseeable financial circumstances of the company at that time—

(a) the assets of the company or, if the company is a member of a group of companies, the aggregate assets of the company, as fairly valued, equal or exceed the liabilities of the company or, if the company is a member of a group of companies, the aggregate liabilities of the company, as fairly valued; and

(b) it appears that the company will be able to pay its debts as they become due in the ordinary course of business for a period of—

(i) twelve (12) months after the date on which the test is applied; or

(ii) in the case of a distribution contemplated in paragraph (a) of the definition of 'distribution' in *section two* ("Interpretation"), twelve (12) months following that distribution.

(2) For the purposes contemplated in subsection (1)—

(a) any financial information to be considered concerning the company must be based on—

(i) financial records that satisfy the requirements of *section one hundred and eighty-two* ("Keeping of financial records") and

(ii) financial statements that satisfy the requirements of *section one hundred and eighty-four* ("General provisions as to contents and form of financial statements");

and

(b) subject to paragraph (c), the board of directors or any other person applying the solvency and liquidity test to a company—

(i) must consider a fair valuation of the company's assets and liabilities, including any reasonably foreseeable contingent assets and liabilities, irrespective of whether or not arising as a result of the proposed distribution, or otherwise; and

(ii) may consider any other valuation of the company's assets and liabilities that is reasonable in the circumstances;

and

(c) unless the memorandum of the company provides otherwise, a person applying the test in respect of a distribution contemplated in paragraph

(a) of the definition of 'distribution' in *section two* ("Interpretation") is not to regard as a liability any amount that would be required (if the company were to be liquidated at the time of the distribution) to satisfy the preferential rights upon liquidation of shareholders whose preferential rights upon liquidation are superior to the preferential rights upon liquidation of those receiving the distribution.

### Sub-Part B: Prospectus

### 103 Dating of prospectus

A prospectus issued by or on behalf of a company or in relation to an intended company shall be dated and that date shall, unless the contrary is proved, be taken as the date of publication of the prospectus.

### 104 Matters to be stated and reports to be set out in prospectus

(1) Every prospectus issued by or on behalf of a company or on behalf of any person who is or has been engaged or interested in the formation of the company shall be in the English language or any other officially recognised language (subject to the requirement of an authenticated translation in English as provided in *section nine* ("Form of registers and other documents"))(3)) and must state the matters specified in Parts I and II of the *Eighth Schedule* ("Matters to be specified in prospectus and reports to be set out therein") and set out—

(a) the reports specified in Part II of that Schedule, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule;

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(b) the report of any expert who is mentioned in the prospectus or an abstract from such report certified by the expert as truly conveying the substance of his or her report and of his or her opinions and conclusions.

(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any requirement of this section, or purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) It shall not be lawful to issue, distribute or deliver or cause to be issued, distributed or delivered any form of application for shares in or debentures of a company unless the form is issued with and attached to a prospectus which complies with the requirements of this section:

Provided that this subsection shall not apply if it is shown that the form of application was issued either —

(a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(b) in relation to shares or debentures which were not offered to the public.

(4) If it comes to the notice of the Registrar that any person is in default of subsection (3), the Registrar may serve upon him or her a category 1 civil penalty order.

(5) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention if—

(a) as regards any matter not disclosed, he or she proves that he or she was not cognisant thereof; or

(b) he or she proves that the non-compliance or contravention arose from an honest mistake of fact on his or her part; or

(c) the non-compliance or contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters specified in paragraph 15 of the *Eighth*

*Schedule*, no director or other person shall incur any liability in respect of the failure unless it be proved that he or she had knowledge of the matters not disclosed.

(6) Any person who becomes a director of a company after the issue of any prospectus by or on behalf of that company and prior to the first general meeting of the company at which directors are elected or appointed shall be deemed to be a person responsible for the prospectus and to have incurred liability in the same manner as a director or a proposed director who has signed the prospectus or on whose behalf the prospectus was signed by an agent.

(7) This section shall not apply to—

(a) the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or

(b) the issue of a prospectus or form of application relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a securities exchange registered under the Securities and Exchange Act [*Chapter 24:25*] or on a stock exchange of good repute outside Zimbabwe;

but, subject as aforesaid, this section shall apply to a prospectus or a form of application whether issued on or with reference to the formation of a company or subsequently.

(8) Nothing in this section shall limit or diminish any liability which any person may incur under the common law or this Act apart from this section.

(9) Every newspaper or other advertisement whatsoever offering or calling attention to an offer or intended offer of shares in or debentures of a company to the public for subscription or purchase shall be deemed to be a prospectus issued by the person responsible for publishing or disseminating the advertisement (and all enactments and rules of law as to the contents of prospectuses and as to liability in respect of statements in and omissions from prospectuses or otherwise relating to prospectuses shall apply and have effect accordingly), unless it contains a statement as to the places at and times during which copies of the prospectuses may be obtained and no more than the following—

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- (a) the number and description of the shares or debentures concerned;
  - (b) the name and date of registration of the company;
  - (c) the general nature of the main business or proposed main business of the company;
  - (d) the names of the directors or proposed directors.
- (10) No statement that or to the effect that the advertisement is not a prospectus shall avail to prevent the operation of this subsection.

### 105 Expert's consent to issue of prospectus containing statement by him or her

(1) A prospectus inviting persons to subscribe for shares in or debentures of a company and including a statement purporting to be made by an expert shall not be issued unless—

(a) he or she has given and has not, before delivery of a copy of the prospectus for registration, withdrawn his or her written consent to the issue thereof with the statement included in the form and context in which it is included;

and

(b) a statement that he or she has given and has not withdrawn his or her consent as aforesaid appears in the prospectus.

(2) If any prospectus is issued in contravention of subsection (1), the company and every person who is knowingly a party to the issue thereof shall be guilty of an offence and liable, in the case of the company, to a fine not exceeding level 14 and, in the case of any such person, to a fine not exceeding level 14 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) In addition, the Registrar may serve upon a company in contravention of subsection (1), a category 1 civil penalty order.

### 106 Registration of prospectus

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, a copy thereof has been filed with and registered by the Registrar. Such copy shall be signed by every person who is named therein as a director or proposed director of the company, or by his or her agent authorised in

writing, and shall have endorsed thereon or attached thereto—

(a) any consent to the issue of the prospectus required by *section one hundred and five* (“*Expert's consent to issue of prospectus containing statement by him or her*”) from any person as an expert; and

(b) in the case of a prospectus issued generally, also—

(i) a copy of any contract required by paragraph 14 of the *Eighth Schedule* to be stated in the prospectus or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 26 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor; the references of paragraph (b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a foreign language, be taken 136

as references to a copy of a certified translation of the contract or a copy embodying a certified translation of the parts in a foreign language, as the case may be.

(2) Every prospectus shall, on the face of it—

(a) specify the date of its registration under subsection (1); and

(b) specify or refer to statements included in the prospectus which specify any documents required by this section to be endorsed on or attached to the copy so delivered.

(3) The Registrar shall not register a prospectus unless it is dated and the copy thereof signed in manner required by this section and unless it has endorsed thereon or attached thereto the documents, if any, specified as aforesaid.

(4) If a prospectus states that the whole or portion of the share capital or debentures offered for subscription has been underwritten the prospectus shall not be registered until there is lodged with the Registrar the documents required by *section one hundred and ten* (“*Underwriting contract and affidavit to be delivered to Registrar*”).

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(5) The Registrar shall not register any prospectus which names any person as the auditor, legal practitioner, banker or broker of the company or proposed company unless it is accompanied by the consent in writing of the person so named to act in the capacity stated, but such person shall not be deemed thereby to have authorised the issue of the prospectus.

(6) No prospectus shall be issued more than three months after the date of its registration by the Registrar and if a prospectus is so issued it shall be deemed to be a prospectus a copy of which has not been registered.

### **107 Non-registration of prospectus; unapproved alteration of terms mentioned in prospectus or in statement in lieu of prospectus**

(1) If it comes to the notice of the Registrar that a prospectus is issued—

(a) without a copy thereof being filed with and registered by the Registrar under *section one hundred and six* ("Registration of prospectus"); or

(b) without the copy so filed and registered having endorsed thereon or attached thereto the required documents as required by *section one hundred and six*;

the Registrar may serve upon the defaulting company and every person who is knowingly a party to the issue of the prospectus in contravention of this section a category 3 civil penalty order.

(2) A company not being a private company shall not previously to the statutory meeting vary in any material respect the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

(3) If it comes to the notice of the Registrar that default has been made in complying with subsection (2), the Registrar may serve upon the defaulting company a category 1 civil penalty order.

### **108 Civil liability for misstatements in prospectus**

(1) Subject to this section, where a prospectus invites persons to subscribe for shares in or debentures of a company, the following persons shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may

have sustained by reason of any untrue statement included therein, that is to say—

(a) every person who is a director of the company at the time of the issue of the prospectus; and

(b) every person who has in writing authorised himself or herself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time; and

(c) every person being a promoter of the company; and

(d) every person who has authorised the issue of the prospectus:

Provided that—

(i) where, under *section one hundred and five* ("Expert's consent to issue of prospectus containing statement by him or her"), the consent of a person is required to the issue of a prospectus and he or she has given that consent, he or she shall not by reason of his or her having given it be liable under this subsection as a person who has authorised the issue of the prospectus except in respect of an untrue statement purporting to be made by him or her as an expert;

(ii) no person whose ordinary business or part of whose ordinary business it is to do secretarial or administrative work, shall be liable under this subsection as a person who has authorised the issue of the prospectus by reason only that he or she is employed by the company to perform on its behalf the secretarial and administrative work of the issue of shares or debentures to which the prospectus relates and is named in the prospectus as secretary or manager for the issue.

(2) No person shall be liable under subsection (1) if he or she proves—

(a) that, having consented to become a director of the company, he or she withdrew his or her consent in writing before the issue of the prospectus and that it was issued without his or her authority or consent; or

(b) that the prospectus was issued without his or her knowledge or consent and that, on becoming aware of its issue, he or she forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or

(c) that, after the issue of the prospectus and before allotment thereunder, he or she, on becoming aware of the untrue statement, made an immediate written withdrawal of his or her

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consent thereto and gave reasonable public notice of such withdrawal and of the reason therefor; or

(d) that—

(i) as regards every untrue statement, not purporting to be made on the authority of an expert or of a public official document or statement, he or she had reasonable grounds to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, and he or she had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it and had given the consent required by *section one hundred and four* ("Matters to be stated and reports to be set out in prospectus") to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document:

Provided that this subsection shall not apply in the case of a person liable, by reason of his or her having given a consent required of him or her by section 105, as a person who has authorised the issue of the prospectus in respect of an untrue statement purporting to be made by him or her as an expert.

(3) A person who apart from this subsection would under subsection (1) be liable, by reason of his or her having given the consent required of him or her by *section one hundred and five* as a person who has authorised the issue of a prospectus in respect of an untrue statement purporting to be made by him or her as an expert shall not be so liable if he or she proves—

(a) that, having given his or her consent under *section one hundred and five* to the issue of the prospectus, he or she withdrew it in writing

before delivery of a copy of the prospectus for registration; or

(b) that, after delivery of a copy of the prospectus for registration and before allotment thereunder, he or she, on becoming aware of the untrue statement, made an immediate written withdrawal of his or her consent and gave reasonable public notice of such withdrawal and of the reason therefor; or

(c) that he or she was competent to make the statement and that he or she had reasonable ground to believe and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true.

(4) Where—

(a) the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he or she has not consented in writing to become a director or has in writing withdrawn his or her consent before the issue of the prospectus and has not authorised or consented to the issue thereof; or

(b) the consent of a person is required under *section one hundred and five* to the issue of the prospectus and he or she either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof shall be liable, jointly and severally, to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs and expenses to which he or she may be made liable by reason of his or her name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him or her as an expert, as the case may be, or in defending himself or herself against any action or legal proceeding brought against him or her in respect thereof:

Provided that a person shall not be deemed for the purposes of this subsection to have authorised the issue of a prospectus by reason only of his or her having given the consent required by *section one hundred and seven* ("Non-registration of prospectus; unapproved alteration of terms mentioned in prospectus or in statement in lieu of prospectus") to the inclusion therein of a statement purporting to be made by him or her as an expert.

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### 109 Criminal liability for misstatements in prospectus

(1) Where a prospectus includes any untrue statement, any person who authorised the issue of the prospectus shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment unless he or she proves either that the statement was immaterial or that he or she had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

(2) A person shall not be deemed for the purposes of subsection (1) to have authorised the issue of a prospectus by reason only of his or her having given the consent required by *section one hundred and five* ("Expert consent to issue of prospectus containing statement by him or her") to the inclusion therein of a statement purporting to be made by him or her as an expert.

### 110 Underwriting contract and affidavit to be delivered to Registrar

(1) If the whole or portion of the share capital or debentures of a company being offered for subscription has been or is being underwritten, the company shall deliver to the Registrar, not later than the date of the proposed offer of shares or debentures, a copy of the underwriting contract and an affidavit sworn by the person named as underwriter or, if such underwriter be a company, by two directors of such company, stating that to the best of the deponent's knowledge and belief the underwriter is and will be in a position to carry out his or her obligations even if no shares or debentures, as the case may be, are applied for.

(2) The underwriter shall furnish the company within seven days of a written request by the company with the affidavit required by subsection (1).

(3) If the underwriter fails to comply with subsection (2), he or she shall be in default and liable to a category 3 civil penalty order.

(4) In the event of any underwriter, if such an affidavit is sworn, being unable, when duly called upon, to carry out his or her obligations under the underwriting contract, the affidavit shall be deemed to have been sworn without reasonable ground for belief that the person named as underwriter was or would be in a position to carry out his obligations under that

contract; and the person swearing such affidavit, unless he or she proves that he or she did so believe and had reasonable ground for the belief, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### 111 Document containing offer of shares or debentures for sale to be deemed to be prospectus

(1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall for all purposes be deemed to be a prospectus issued by the company, and this Act shall apply and have effect accordingly, as if the shares or debentures had been offered to the public for subscription and as if persons accepting the offer in respect of any shares or debentures were subscribers for those shares or debentures, but without prejudice to the liability, if any, of the persons by whom the offer is made, in respect of misstatements contained in the document or otherwise in respect thereof.

(2) In this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown—

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(3) *Section one hundred and four* ("Matters to be stated and reports to be set out in prospectus") as applied by this section shall have effect as if it required a prospectus to state, in addition to the matters required by that section to be stated in a prospectus—

(a) the net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates;

and

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(b) the place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected;

and *section one hundred and six (“Registration of prospectus”)* as applied by this section shall have effect as though the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where an offer to which this section relates is made by a company or a partnership it shall be sufficient if the document aforesaid is signed on behalf of the company or partnership by two directors of the company or not less than half of the partners, as the case may be, and any such director or partner may sign by his or her agent authorised in writing.

### 112 Interpretation of provisions relating to prospectus

In this Act—

(a) a statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included;

(b) a statement shall be deemed to be included in a prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith;

(c) if any matter which ought, under *sections one hundred and four (“Matters to be stated and reports to be set out in prospectus”)*, *section one hundred and six (“Registration of prospectus”)* and the *Eighth Schedule (“Matters to be specified in prospectus and reports to be set out therein”)* or under *section one hundred and eleven (“Document containing offer of shares or debentures for sale to be deemed to be prospectus”)*(3), to be inserted in a prospectus is omitted therefrom and if such omission is calculated to mislead then the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included.

### 113 Construction of references to offering shares or debentures to public

(1) Any reference in this Act to offering shares or debentures to the public shall, subject to any provision to the contrary contained therein, be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the

person issuing the prospectus or in any other manner, and references in this Act or in a company’s articles to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be similarly construed.

(2) Subsection (1) shall not be taken as requiring any offer or invitation to be treated as made to the public if it can properly be regarded, in all the circumstances, as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a domestic concern of the persons making and receiving it, and in particular—

(a) a provision in a company’s articles prohibiting invitations to the public to subscribe for shares or debentures shall not be taken as prohibiting the making to members or debenture holders of an invitation which can properly be regarded as aforesaid; and

(b) provisions of this Act relating to private companies shall be construed accordingly.

### 114 Restrictions on offering shares for subscription or sale

(1) It shall not be lawful for any person to engage in the door-to-door solicitation of members of the public at their homes or in offices, shops or business premises, to subscribe for shares or debentures (however, the solicitation at the office or business premises of any person whose ordinary business or part of whose ordinary business it is to deal in shares or debentures, whether as principal or agent, is permitted)

(2) No person shall either verbally or in writing, including any newspaper advertisement—

(a) make an offer of shares for sale to the public or any member of the public;

or

(b) invite offers from the public or any member of the public to purchase any shares;

and no person shall issue, distribute or publish any material which in its form and context is calculated to be understood as an offer or invitation as aforesaid unless the offer, invitation or material is accompanied either by a prospectus complying with this Act or by a written statement containing the particulars required by this section to be included therein.

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(3) The said statement shall be dated and signed by the person or persons making the offer or invitation or issuing, distributing or publishing the said material and, if such person is a company, by every director thereof:

Provided that this subsection shall not apply—

(a) if the shares to which the offer or invitation or material relates are shares which are quoted on, or in respect of which permission to deal has been granted by, a securities exchange registered under the Securities and Exchange Act [Chapter 24:25] or a stock exchange of good repute outside Zimbabwe, and the person making the offer or invitation or publishing the material so states in writing specifying the stock exchange; or

(b) if the shares in question are shares which a company has allotted or agreed to allot with a view to their being offered for sale to the public; or

(c) if the offer or invitation is made or the material is published only to persons whose ordinary business or part of whose ordinary business it is to deal in shares or debentures whether as principals or agents; or

(d) to an offer for sale to the public of or an invitation to the public to tender for unquoted shares made in the course of winding up a company in liquidation or in a deceased, insolvent or assigned estate or in an estate held under curatorship or in execution of a judgment of any competent court; or

(e) to an offer or invitation made in respect of unquoted shares by a person who is at the time of the offer or invitation the *bona fide* registered beneficial owner of them.

(4) The said statement shall contain particulars with respect to the following matters—

(a) whether the person making the offer is acting as principal or agent, and if as agent the name of his or her principal and an address in Zimbabwe where that principal can be served with process and the nature and extent of the remuneration received or receivable by the agent for his or her services;

(b) the date on which and the country in which the company was incorporated and the address of its registered or principal office in Zimbabwe or, if none, the address of its principal office outside Zimbabwe;

(c) the authorised share capital of the company and the amount thereof which has been issued, the classes into which it is divided

and the rights of each class of members in respect of capital, dividends and voting and the number and amount of shares issued for cash and the number and amount thereof issued for a consideration other than cash, giving the dates on which and the prices at which or the consideration for which such shares were issued;

(d) the dividends, if any, paid by the company on each class of shares during each of the five financial years immediately preceding the offer or such lesser period as the company may have operated and, with respect to the rates of such dividends, particulars of each such class of shares on which such dividends have been paid, and if no dividend has been paid in respect of shares of any particular class during any of those years, a statement to that effect;

(e) the total amount of any debentures issued by the company and outstanding at the date of the statement, together with the rate of interest payable thereon;

(f) the names and addresses of the directors of the company;

(g) whether or not the shares offered are fully paid up and, if not, to what extent they are paid up;

(h) whether or not the shares are quoted on, or permission to deal therein has been granted by, a securities exchange registered under the Securities and Exchange Act [Chapter 24:25] or any stock exchange outside Zimbabwe, and, if so, which, and, if not, a statement that they are not so quoted or that no such permission has been granted;

(i) if the offer relates to units, particulars of the names and addresses of the persons in whom the shares represented by the units are vested, the date of and the parties to any document defining the terms on which those shares are held and an address in Zimbabwe where that document or a copy thereof can be inspected;

(j) particulars of the dates on which and the prices at which the shares offered were—

(i) originally issued by the company; and

(ii) acquired by the person making the offer, or by his or her principal, giving the reasons for any difference between such prices and the prices at which the shares are being offered.

In this subsection the expression "company" means the company by which shares to which a statement relates were or are to be issued.

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(5) If any person contravenes this section he or she shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(6) If a person convicted of an offence under this section is a company, whether a company within the meaning of this Act or not, every director of the company shall be guilty of the like offence and subject to the like penalties unless he or she proves that the act constituting the offence took place without his or her knowledge or consent.

(7) In this section, unless the context otherwise requires, the expression "offer" includes an invitation to make an offer, the expression "shares" means the shares of a company, whether a company within the meaning of this Act or not, and includes debentures and units, and the expression "unit" means any right or interest, by whatever name called, in a share, and for the purposes of this section a person shall not, in relation to a company, be regarded as not being a member of the public by reason only that he or she is a holder of shares in the company or a purchaser of goods from the company.

(8) If any person is convicted of having made an offer in contravention of this section the court before which he or she is convicted may order that any contract made as a result of the offer shall be void and, where it makes any such order, may give such consequential directions as it thinks proper for the repayment of any money or the retransfer of any shares.

### *Sub-Part C: Allotment*

#### **115 Prohibition of allotment unless minimum subscription received**

(1) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which, in the opinion of the directors, must be raised by the issue of share capital in order to provide for the matters specified in paragraph 4 of the *Eighth Schedule* ("Matters to be specified in prospectus and reports to be set out therein") has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company. For the purposes of this subsection an amount stated in any cheque or undertaking to pay through a bank or other intermediary received by the company in payment shall be deemed not to

have been paid to and received by the company—

(a) until the amount of any such cheque or undertaking has been credited to the account of the company with its bankers;

(b) if the company has at any time delivered to the payer and has not been repaid the amount or value of any money, bill, promissory note, cheque or undertaking to pay through a bank or other intermediary or other valuable consideration otherwise than in discharge of a debt *bona fide* due by the company to such payer, then to the extent of the amount or value of such money, bill, promissory note, any cheque or undertaking to pay through a bank or other intermediary or other valuable consideration.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as "the minimum subscription".

(3) The amount payable on application on each share shall be the same in respect of all shares of the same class in any one issue and shall not be less than ten *per centum* of the nominal amount of the share.

(4) The amount paid on application shall be set apart by the directors in a separate bank account and shall not be available for the purposes of the company or for the satisfaction of its debts until the minimum subscription has been made up.

(5) If the conditions aforesaid have not been complied with on the expiration of sixty days after the first issue of the prospectus, all money received from applicants for shares shall forthwith be repaid to them without interest and, if any such money is not so repaid within seventy days after the issue of the prospectus the directors of the company shall be in default and liable to a category 3 civil penalty.

(6) Any condition requiring or binding any applicant for shares to waive compliance with any requirements of this section shall be void.

#### **116 Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar**

(1) This section shall not apply to a private company.

(2) A company which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has

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not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his or her agent authorised in writing, in the form and containing the particulars set out in Part I of the *Third Schedule* ("Form of statement in lieu of prospectus to be delivered to registrar by a company which does not issue prospectus or which does not go to allotment on a prospectus issued and reports to be set out therein") and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to Part III of that Schedule.

(3) Every statement in lieu of prospectus delivered under subsection (2) shall, where the persons making any such report as aforesaid have made therein or have, without giving the reasons, indicated therein any such adjustments as are mentioned in paragraph 5 of the *Third Schedule*, have endorsed thereon or attached thereto a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(4) If a company contravenes subsection (2) or (3) the company and every director of the company who knowingly and wilfully authorises or permits the contravention shall be in default and liable a category 3 civil penalty order.

(5) Where a statement in lieu of prospectus delivered to the Registrar under subsection (2) includes any untrue statement, any person who authorised the delivery of the statement in lieu of prospectus for registration shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment, unless he or she proves either that the untrue statement was immaterial or that he or she had reasonable grounds to believe and did up to the time of the delivery for registration of the statement in lieu of prospectus believe that the untrue statement was true.

(6) For the purposes of this section—

(a) a statement included in a statement in lieu of prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and

(b) a statement shall be deemed to be included in a statement in lieu of prospectus if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein; and

(c) if any matter which ought, under the provisions of the *Third Schedule*, to be inserted in a statement in lieu of prospectus is omitted therefrom and if such omission is calculated to mislead then the statement in lieu of prospectus shall be deemed, in respect of such omission, to be a statement in lieu of prospectus in which an untrue statement is included.

### 117 Effect of irregular allotment

(1) An allotment made by a company in contravention of section one hundred and fifteen ("Prohibition of allotment unless minimum subscription received") or section one hundred and sixteen ("Prohibition of allotment in certain cases unless statement in lieu of prospectus delivered to Registrar") shall be voidable at the instance of a person who makes application to a court within one month after the holding of the statutory meeting and not later; or in any case, where the company is not required to hold a statutory meeting, or where the allotment is made after the holding of the statutory meeting, within one month after the date of the allotment, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes, or permits or authorises the contravention of section one hundred and fifteen or one hundred and sixteen he or she shall be liable to compensate the company and the allottee, respectively, for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.

### 118 Allotment voidable if application form not attached to prospectus

Where an application form is required by section one hundred and four ("Matters to be stated and reports to be set out in prospectus") to be attached to a prospectus, every allotment of shares or debentures made otherwise than in pursuance of an application form which was attached to a prospectus as required by section 104(3) shall be voidable at the instance of the allottee who makes application to a court within

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one month after allotment, unless it is shown that the allottee at the time of his or her application was in fact possessed of a copy of the prospectus or was aware of its contents.

### 119 Application for and allotment of shares

(1) No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the third day after that on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus.

The beginning of the said third day or such later time as aforesaid is in this Act referred to as "the time of the opening of the subscription lists".

(2) In subsection (1) the reference to the day on which the prospectus is first issued generally shall be construed as referring to the day on which it is first issued as a newspaper advertisement:

Provided that, if it is not so issued as a newspaper advertisement before the third day after that on which it is first so issued in any other manner, the said reference shall be construed as referring to the day on which it is first so issued in any manner.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section but, in the event of any such contravention, the company and every officer of the company who is knowingly a party to the default shall be in default and liable to a category 1 civil penalty order.

(4) In the application of this section to a prospectus offering shares or debentures for sale, the foregoing subsections shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is knowingly a party to the default of a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the contravention.

(5) An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the third day after the time of the opening of the subscription lists, or the giving before the expiration of the said third day, by some person responsible under section one hundred and

eight ("Civil liability for misstatements in prospectus") for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.

(6) In reckoning for the purposes of this section and of section one hundred and twenty ("Allotment of shares and debentures to be dealt in on stock exchange") the third day after another day, any intervening day which is a Saturday or Sunday or which is a public holiday in Zimbabwe shall be disregarded and if the third day, as so reckoned, is itself a Saturday or Sunday or a public holiday there shall for the said purposes be substituted the first day thereafter which is none of them.

### 120 Allotment of shares and debentures to be dealt in on stock exchange

(1) Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be dealt in on any local stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the third day after the first issue of the prospectus or if the permission has been refused before the expiration of twenty-one days from the date of the closing of the subscription lists or such longer period not exceeding forty-two days as may, within the said twenty-one days, be notified to the applicant for permission by or on behalf of the stock exchange.

(2) Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate prescribed in the Prescribed Rate of Interest Act [Chapter 8:10] from the expiration of the eighth day:

Provided that a director shall not be liable if he or she proves that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

(3) All money received as aforesaid shall be kept in a separate bank account and shall not be available for the purposes of the company or for the satisfaction of its debts so long as the

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company may become liable to repay it under subsection (2) and, if default is made in complying with this subsection, the company and every officer of the company who is in default shall be guilty of an offence and—

- (a) in the case of a company, liable to a fine not exceeding level ten; or
- (b) in the case of an officer, liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Any conditions requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(5) For the purposes of this section, permission shall not be deemed to be refused if it is intimated that the application for it, though not at present granted, will be given further consideration.

(6) This section shall have effect—

(a) in relation to any shares or debentures agreed to be taken by a person underwriting an offer thereof by a prospectus as if he or she had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering shares for sale with the following modifications, that is to say—

(i) references to sale shall be substituted for references to allotment;

and

(ii) the persons by whom the offer is made, and not the company, shall be liable under subsection (2) to repay money received from applicants, and references to the company's liability under that subsection shall be construed accordingly; and

(iii) for the reference in subsection (3) to the company and every officer of the company who is in default there shall be substituted a reference to any person by or through whom the offer is made and who knowingly and wilfully authorises or permits the default.

### 121 Register and return as to allotments

(1) Every company shall keep a register of allotments at its registered office.

(2) A company, whenever it makes any allotment of its shares, shall, within one month thereafter, lodge with the Registrar—

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names and addresses of the allottees and the amount, if any, paid or due and payable on each share; and

(b) in the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing and signed by the parties thereto, constituting the title of the allottee to the allotment, together with any contract of sale or for services or other consideration in respect of which that allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up and the consideration for which they have been allotted:

Provided that it shall not be necessary for a return referred to in paragraph (a) to state the names and addresses of the allottees in the case of an allotment of a class which has been prescribed as being one in relation to which the names and addresses of the allottees shall not be stated in the return.

(3) Where a contract such as is referred to in subsection (2)(b) has not been reduced to writing, the company shall, within one month after the allotment of its shares, lodge with the Registrar such particulars of the contract as may be prescribed.

(4) If default is made in complying with the requirements of this section the company and every officer of the company who is knowingly a party to the default shall be liable to a category 3 civil penalty order:

Provided that in case of default in lodging with the Registrar within one month after the allotment any document required to be lodged by this section, the company, or any person liable for the default, may request the Registrar to extend the time for the lodging of the documents for a specified period, and if the Registrar is satisfied that the omission to lodge the document was accidental or due to inadvertence, the Registrar may grant the request and waive the civil penalty.

*Sub-Part D: Commissions and discounts*

### 122 Power to pay certain commissions and prohibition of payment of all other commissions, discounts

(1) It shall be lawful for a company to pay a commission to any person in consideration of

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his or her subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

- (a) the payment of the commission is authorised by the articles; and
- (b) the commission paid or agreed to be paid does not exceed five *per centum* of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and
- (c) the amount or rate *per centum* of the commission paid or agreed to be paid is—

(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered, before payment of the commission, to the Registrar for registration, and where a circular or notice, not being a prospectus, inviting subscription for the shares is issued, also disclosed in that circular or notice;

and

(d) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in the manner aforesaid.

(2) Save as aforesaid, no company shall apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance to any person in consideration of his or her subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

(4) A vendor to, promoter of or other person who receives payment in money or shares from a company, shall have and shall be deemed

always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

(5) If default is made in complying with the provisions of this section relating to the delivery to the Registrar of the statement in the prescribed form the company and every officer of the company who is in default shall be liable to a category 1 civil penalty order.

### 123 Financial assistance by company for purchase of its own or its holding company's shares

(1) It shall not be lawful for a company to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or, where the company is a subsidiary company, in its holding company unless—

- (a) such assistance is given in accordance with a special resolution of the company; and
- (b) immediately after such assistance is given, on a fair valuation the company's assets, excluding any asset resulting from the giving of the assistance, exceed its liabilities and it is able to pay its debts as they become due in ordinary course of its business.

(2) If a company gives financial assistance in contravention of subsection (1)—

(a) any transaction relating to such assistance and any transfer or allotment of shares arising therefrom may be set aside by the court at the suit of the company or its liquidator or any member or creditor of the company or of any party to the transaction; and

(b) whether or not the court makes an order in terms of paragraph (a), every officer of the company who made or took part in the decision that the company should enter into the transaction may be ordered by the court at the suit of the company or its liquidator or any member or creditor of the company or of any party to the transaction, to compensate the company and any other party to the transaction who entered into it in good faith for any loss resulting from the contravention of subsection (1):

Provided that no compensation for loss of anticipated profits shall be awarded to the company.

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*Sub-Part E: Issue of shares at premium or discount and redeemable preference shares*

### 124 Application of share premiums

(1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account called "the share premium account" and provisions of this Act relating to the reduction of a company's share capital shall apply, except as provided in this section, as if the share premium account were part of its paid-up share capital.

(2) A company may apply its share premium account—

(a) in paying up unissued shares to be allotted to its members, directors or employees, or to a trustee for such persons, as fully paid bonus shares;

or

(b) in writing off—

(i) the company's preliminary expenses; or

(ii) the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;

or

(c) in providing for the premium payable, if any, on redemption of any redeemable preference shares or of any debentures of the company.

### 125 Power to issue shares at a discount

(1) Subject to this section, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that—

(a) the issue of the shares at a discount must be authorised by special resolution of the company and must be sanctioned by the court;

(b) the special resolution must specify the maximum rate of discount at which the shares are to be issued;

(c) not less than one year must, at the date of the issue, have elapsed since the date on which the company was entitled to commence business;

(d) the shares to be issued at a discount must be issued within thirty days after the date on which the issue is sanctioned by the court or

within such extended time as the court may allow.

(2) Where a company has passed a special resolution authorising the issue of shares at a discount, it may apply to the court for an order sanctioning the issue, and on any such application the court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a category 1 civil penalty order.

### 126 Power to issue redeemable shares

(1) Subject to this section and sections 127 ("Financing at redemption"), 128 ("Power of company to purchase own shares"), 133 ("Capital redemption reserve") and 134 ("Effect of failure by company to redeem or purchase shares"), a company may, if authorised by its articles, issue shares which are to be redeemed or which are liable to be redeemed at the option of the company or the shareholder concerned.

(2) No redeemable shares shall be issued at a time when there are no issued shares of the company which are not redeemable.

(3) Redeemable shares may not be redeemed unless they are fully paid, and the terms of redemption shall provide for payment on redemption.

### 127 Financing at redemption

(1) Subject to section one hundred and thirty-four ("Effect of failure by company to redeem or purchase shares") (2) and (4)—

(a) redeemable shares shall be redeemed only out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(b) any premium payable for redemption shall be paid out of profits of the company which would otherwise be available for dividend.

(2) If redeemed shares were issued at a premium, any premium payable on their

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redemption may be paid out of the proceeds of a fresh issue of shares made for the purposes of the redemption, up to an amount equal to—

- (a) the aggregate of the premiums received by the company on the issue of the shares redeemed; or
- (b) the current amount of the company's share premium account, including any sum transferred to that account in respect of the premiums on the new shares;

whichever is the lesser, and in that event the amount of the company's share premium account shall be reduced by a sum corresponding, or by sums in the aggregate corresponding, to the amount of any payment made by virtue of this subsection out of the proceeds of the issue of the new shares.

(3) Subject to this section and to sections 128 ("Power of company to purchase own shares"), 133 ("Capital redemption reserve") and 134 ("Effect of failure by company to redeem or purchase shares"), redemption of shares may be effected on such terms and in such manner as may be provided by the company's articles.

(4) Shares redeemed under this section shall be treated as cancelled on redemption and the amount of the company's share capital shall be diminished by the nominal value of those shares, but the redemption of shares by a company shall not be taken as reducing the amount of the company's authorised share capital.

(5) Without prejudice to subsection (4), where a company is about to redeem shares, it shall have power to issue shares up to the nominal value of the shares to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not, for the purposes of any law relating to stamp duty, be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

### 128 Power of company to purchase own shares

(1) Subject to this section and to sections one hundred and twenty-nine ("Authority required by company to purchase its own shares") to section one hundred and thirty-four, ("Effect of

failure by company to redeem or purchase shares"), a company may, if authorised by its articles, purchase its own shares, including any redeemable shares.

(2) Sections one hundred and twenty-six ("Power to issue redeemable shares") and section one hundred and twenty-seven ("Financing at redemption") shall apply, with the necessary changes, to the purchase by a company of its own shares save that the terms and manner of purchase need not be determined by the articles as required by section 127 (3).

(3) A company shall not purchase its own shares if as a result of the purchase there would no longer be any member holding shares other than redeemable shares.

### 129 Authority required by company to purchase its own shares

(1) A company shall not purchase its own shares unless the purchase has been authorised in advance by the company in a general meeting.

(2) An authority granted by the company in a general meeting shall not be valid for the purposes of subsection (1)—

(a) unless it specifies—

(i) the price, or the maximum and minimum prices, at which the shares may be acquired; and

(ii) the maximum number of shares which may be acquired and the class thereof; and

(iii) the date on which the authority will expire;

(b) where the shares are to be purchased otherwise than on a securities exchange registered under the Securities and Exchange Act [Chapter 24:25], if any person holding shares to which the authority relates has voted for the resolution conferring the authority:

Provided that this paragraph shall not apply in the case of a private company or in the case of a public company when a class of shares are all to be purchased or are to be purchased *pro rata* from all the shareholders who hold shares of the class concerned.

### 130 Cession or renunciation of rights

(1) Where a company has obtained rights to purchase shares pursuant to an authority obtained in terms of section one hundred and

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twenty-nine ("Authority required by company to purchase its own shares")—

(a) such rights shall not be capable of being ceded;

(b) any agreement to renounce such rights shall not be valid unless the renunciation has been authorised in advance by the company in a general meeting.

(2) An authority granted by the company in a general meeting shall not be valid for the purposes of subsection (1) (b)—

(a) unless it specifies the shares or the number of shares concerned; or

(b) where the purchase is to be effected otherwise than on a securities exchange registered under the Securities and Exchange Act [Chapter 24:25], if any person holding shares to which the authority relates has voted for the resolution conferring the authority:

Provided that this paragraph shall not apply in the case of a private company or in the case of a public company when a class of shares are all to be purchased or are to be purchased *pro rata* from all the shareholders who hold shares of the class concerned.

### 131 Payments for rights to purchase or for release thereof

(1) A payment made by a company in consideration of—

(a) acquiring any right to purchase its shares pursuant to an authority granted in terms of *section one hundred and twenty-nine* ("Authority required by company to purchase its own shares"); or

(b) the release of any obligation to purchase shares in pursuance of an authority granted in terms of *section one hundred and twenty-nine*;

shall be made out of the profits that would otherwise be available for dividend.

(2) If the requirements of subsection (1) are not complied with, the purchase or release concerned, as the case may be, shall be void.

### 132 Disclosure by company of purchase of own shares

(1) Within the period of 28 days next following the date of delivery of any of its own shares purchased by it, a company shall deliver to the Registrar a return in the prescribed form showing, with respect to each class of shares purchased—

(a) the number and nominal value of the shares; and

(b) the date on which the shares were delivered to the company; and

(c) the aggregate amount paid by the company for the shares; and

(d) the maximum and minimum prices paid in respect of shares of each class purchased.

(2) Particulars of shares delivered to the company on different dates and under different authorities to purchase may be included in a single return to the Registrar and, when this is done, the amount to be stated in terms of subsection (1)(c) shall be the aggregate amount paid by the company for all the shares to which the return relates.

(3) Where a company has purchased its own shares it shall keep a copy of the contract of purchase or, if the purchase is not in terms of any written contract, a memorandum of the terms of the purchase at its registered office for a period of ten years reckoned from the date of completion of the purchase of all the shares concerned or, as the case may be, from the date of termination of the contract.

(4) The copy of the contract or memorandum, as the case may be, required to be kept in terms of subsection (3) shall be available for inspection, at all reasonable times, free of charge by any person.

(5) Every officer of a company who is in default in complying with—

(a) subsection (3) shall be liable to a category 1 civil penalty order;

(b) subsection (4) shall be liable to a category 4 civil penalty order;

(6) The obligation to keep and to allow inspection of a copy of any contract or a memorandum in terms of subsections (3) and (4) shall apply, with necessary changes, to any variation of the contract.

### 133 Capital redemption reserve

(1) Where shares of a company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with *section one hundred and twenty-seven* ("Financing at redemption") (4) on cancellation of the shares concerned shall be transferred to a reserve, to be called "the capital redemption reserve".

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(2) If shares are redeemed or purchased by a company wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.

(3) The provisions of this Act relating to the reduction of a company's share capital shall apply to any reduction of the capital redemption reserve as if the capital redemption reserve were paid-up share capital of the company:

Provided that the reserve may be applied by the company in paying up its unissued shares to be allotted to its members, directors or employees, or to a trustee for such persons, as fully paid bonus shares.

### 134 Effect of failure by company to redeem or purchase shares

(1) Where a company has—

- (a) issued shares on terms that they are or are liable to be redeemed; or
- (b) agreed to purchase any of its own shares;

the company shall not be liable in damages in respect of any failure on its part to redeem or purchase any of the shares, and no order for specific performance of the terms of redemption or purchase shall be made by any court, if the company shows that it is unable to meet the costs of redeeming or purchasing, as the case may be, the shares in question out of profits of the company that would otherwise be available for dividend.

(2) Subject to subsection (3), if a company is wound up and at the commencement of the winding up any shares referred to in subsection (1) have not been redeemed or purchased by the company, the terms of redemption or purchase may be enforced against the company, and when shares are redeemed or purchased under this subsection they shall be treated as cancelled.

(3) Subsection (2) shall not apply if—

(a) the terms under which the shares were to be redeemed or purchased provided for the redemption or purchase to take place at a date later than that of the commencement of the winding up; or

(b) during the period commencing with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up, the company could not at any time have lawfully

paid a dividend to shareholders equal in value to the price at which the shares were to have been redeemed or purchased.

(4) There shall be paid in priority to any amount which the company is liable in terms of subsection (2) to pay in respect of any shares—

(a) all other debts and liabilities of the company, other than any due to members in their capacity as such; and

(b) if other shares carry rights, whether as to capital or as to income, which are preferential to the rights as to capital attaching to the first-mentioned shares, any amount due in satisfaction of those preferential rights;

and, thereafter, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights, whether as to capital or income, as members.

(5) Where by virtue of the Insolvency Act [Chapter 6:07], a creditor of a company is entitled to the payment of any interest only after payment of all other debts of the company, the company's debts and liabilities shall, for the purpose of subsection (4), include the liability to pay that interest.

*Sub-Part F: Miscellaneous provisions as to share capital*

### 135 Power of company to arrange for different amounts being paid on shares

A company, if so authorised by its articles, may do any one or more of the following things—

(a) make arrangements on the issue of shares for a difference between members in the amounts and times of payment of calls on their shares;

(b) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him or her, although no part of that amount has been called up, and, if the whole amount unpaid on any shares be paid, issue those shares as fully paid up;

(c) where a larger amount is paid up on some shares than on others, pay dividends in proportion to the amount paid up on each share.

### 136 Reserve liability of company

A company may by special resolution determine that any portion of its share capital which has not been already called up shall not

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be capable of being called up, except in the event and for the purposes of the company being wound up or, in respect of a company placed under judicial management, with the sanction of the court, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

### 137 Capitalisation shares

(1) Except to the extent that a company's memorandum of incorporation provides otherwise—

(a) the board of that company, by resolution, may approve the issuing of any authorised shares of the company, as capitalisation shares, on a *pro rata* basis to the shareholders of one or more classes of shares; and

(b) shares of one class may be issued as a capitalisation share in respect of shares of another class; and

(c) subject to sub-section (2), when resolving to award a capitalisation share, the board may at the same time resolve to permit any shareholder entitled to receive such an award to elect to receive payment in cash, at a value determined by the board.

(2) The board of a company may not resolve to offer a cash payment in lieu of awarding a capitalisation share, as contemplated in subsection(1)(c), unless the board—

(a) has applied the solvency and liquidity test, as required by *section one hundred and thirty-eight ("Distributions must be authorised by board")*, on the assumption that every such shareholder would elect to receive cash; and

(b) is satisfied that the company would satisfy the solvency and liquidity test immediately upon the completion of the distribution.

### 138 Distributions must be authorised by board

(1) A company must not make any proposed distribution unless—

(a) the distribution—

(i) is pursuant to an existing legal obligation of the company, or a court order; or

(ii) the board of the company, by resolution, has authorised the distribution;

and

(b) it reasonably appears that the company will satisfy the solvency and liquidity test

immediately after completing the proposed distribution; and

(c) the board of the company, by resolution, has acknowledged that it has applied the solvency and liquidity test, as set out in *section one hundred and two ("Solvency and liquidity test")*, and reasonably concluded that the company will satisfy the solvency and liquidity test immediately after completing the proposed distribution.

(2) When the board of a company has adopted a resolution contemplated in subsection (1)(c), the relevant distribution must be fully carried out, subject only to subsection (3).

(3) If the distribution contemplated in a particular board resolution, court order or existing legal obligation has not been completed within one hundred and twenty (120) business days after the board made the acknowledgement required by subsection (1)(c), or after a fresh acknowledgement being made in terms of this subsection, as the case may be—

(a) the board must re-apply the solvency and liquidity test with respect to the remaining distribution to be made pursuant to the original resolution, order or obligation; and

(b) despite any law, order or agreement to the contrary, the company must not proceed with or continue with any such distribution unless the board adopts a further resolution as contemplated in subsection (1)(c).

(4) If a distribution takes the form of the incurrence of a debt or other obligation by the company, as contemplated in paragraph (b) of the definition of 'distribution' set out in *section two (" Interpretation")*(1), the requirements of this section—

(a) apply at the time that the board resolves that the company may incur that debt or obligation; and

(b) do not apply to any subsequent action of the company in satisfaction of that debt or obligation, except to the extent that the resolution, or the terms and conditions of the debt or obligation, provide otherwise.

(5) If, after applying the solvency and liquidity test as required by this section, it appears to the company that the section prohibits its immediate compliance with a court order contemplated in subsection (1)(a)(i)—

(a) the company may apply to a court for an order varying the original order;

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and

- (b) the court may make an order that—
- (i) is just and equitable, having regard to the financial circumstances of the company; and
  - (ii) ensures that the person to whom the company is required to make a payment in terms of the original order is paid at the earliest possible date compatible with the company satisfying its other financial obligations as they fall due and payable.
- (6) A director of a company is liable to the extent set out in *section one hundred and ninety-seven* (“*Liability of directors and prescribed officers*”) (3)(e)(vi) if the director—
- (a) was present at the meeting when the board approved a distribution as contemplated in this section, or participated in the making of such a decision in terms of *section one hundred and ninety-six* (“*Directors acting other than at a meeting*”); and
  - (b) failed to vote against the distribution, despite knowing that the distribution was contrary to this section.

### 139 Existing shareholders' right of first refusal to new shares

- (1) Shareholders of a company shall have a pre-emptive right to acquire newly-issued shares as provided in this section, for which purpose—
- (a) “shares” does not include options to acquire shares or non-share securities convertible into shares;
  - (b) the right shall be to acquire the newly-issued shares *pro rata* in proportion to the number of shares already held by such existing shareholders, at a price no less favourable than that offered to other persons.
- (2) The company shall give each existing shareholder advance notice of any proposed issuance stating, at a minimum, the number of shares to be issued, the proposed price or method of determining the price of issuance, and the time period and procedure for exercising the pre-emptive rights:

Provided that the time period must be a reasonable one and all rules and procedures for the exercise of the pre-emptive rights shall be uniform for all shareholders having the right.

- (3) Unless otherwise (and except to the extent) provided in the company's memorandum of association, only holders of

ordinary shares shall have pre-emptive rights, and there shall be no pre-emptive rights to acquire any of the following—

- (a) preference shares, except for preference shares which are convertible into or carry a right to subscribe for or acquire ordinary shares;
  - (b) shares issued in accordance with this Act to directors, officers or employees as compensation for their services;
  - (c) shares issued in accordance with this Act to satisfy conversion or option rights created to provide compensation to directors, officers or employees for their services.
- (4) Shares subject to pre-emptive rights that are not acquired by existing shareholders pursuant to such rights may be issued to any person for a period of three months after having been offered to existing shareholders under this section, at the same price as the price set for the exercise of pre-emptive rights. Any offer at a lower price during such three-month period, and any offer after such period, shall be subject to existing shareholders' rights under this section.

- (5) The pre-emptive rights provided for in this section may be further restricted or eliminated by a company's memorandum of association.

### 140 Notice to Registrar of consolidation of share capital, conversion of shares into stock

- (1) If the company has—
- (a) consolidated and divided its share capital into shares of larger amount than its existing shares; or
  - (b) converted any shares into stock; or
  - (c) reconverted stock into shares; or
  - (d) subdivided its shares or any of them; or
  - (e) redeemed any redeemable preference shares; or
  - (f) cancelled any shares, otherwise than in connection with a reduction of share capital under *section ninety-six* (“*Authorisation for shares*”) (3)(a);

it shall, **within one month** after so doing, give notice thereof to the Registrar specifying, as the case may be, the shares consolidated, divided, converted, subdivided, redeemed or cancelled or the stock reconverted and the Registrar shall register such consolidated, divided, converted,

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subdivided, redeemed or cancelled shares or the stock reconverted shares.

(2) If default is made in complying with the requirements of subsection (1) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

### 141 Notice of increase of share capital

(1) Where a company, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered share capital, it shall give to the Registrar notice thereof within one month after the passing of the special resolution authorising such increase and the Registrar shall register the increase.

(2) If default is made in complying with the requirements of subsection (1) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

### 142 Payment of interest out of capital

Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of works or buildings or the provision of any plant which cannot be made profitable for a lengthy period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and may charge the sum to capital as part of the cost of construction of the works or buildings or the provision of plant, as the case may be, subject to the following conditions—

- (a) no such payment shall be made unless it is authorised by the articles or by special resolution; and
- (b) whether authorised by the articles or by special resolution, no such payment shall be made without the prior approval of the Minister; and
- (c) before approving any such payment the Minister may at the expense of the company appoint a person to inquire and report to him or her as to the circumstances of the case and before making such appointment may require the company to give satisfactory security for the payment of the costs of the inquiry; and
- (d) the payment shall be made only for such period as may be determined by the Minister and such period shall in no case extend beyond

the close of the half year next after the half year during which the works or buildings have been completed or the plant provided, as the case may be; and

(e) the rate of interest shall in no case exceed **6% per annum** or such other rate as may for the time being be prescribed; and

(f) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

### 143 Variation of rights attaching to shares

(1) If, in the case of a company the shares of which are divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the provisions of *section two hundred and thirty-two* ("*Dissenting shareholders appraisal rights*") shall apply to any holder of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, with necessary changes.

(2) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

*Sub-Part G: Reduction of share capital*

### 144 Special resolution for reduction of share capital

(1) Subject to confirmation by the court, a company may, if so authorised by its articles, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company;

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and may, if and so far as is necessary, amend its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under subsection (1) is in this Sub-Part referred to as "a resolution for reducing share capital".

### 145 Application to court to confirm order, objections by creditors

(1) Where a company has passed a resolution for reducing share capital it may apply to the court for an order confirming the reduction.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any member of any paid-up share capital, and in any other case if the court so directs, the following provisions shall have effect, subject nevertheless to subsection (3)—

(a) every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(b) the court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not been determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor on the company securing payment of his or her debt or claim by appropriating, as the court may direct, the following amount—

(i) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, then an amount fixed by the court after the like inquiry and adjudication as if the company were being wound up by the court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any member of any paid-up share capital, the court may, if having regard to any special circumstances of the case it thinks proper so to do, direct that subsection (2) shall not apply as regards any class or any classes of creditors.

### 146 Order confirming reduction

The court, if satisfied, with respect to every creditor of the company who under section *one hundred and forty-five* ("Application to court to confirm order, objections by creditors") is entitled to object to the reduction, that either his or her consent to the reduction has been obtained or his or her debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

### 147 Registration of order and minute of reduction

(1) The Registrar, on production to him or her of an order of the court confirming the reduction of the share capital of a company, and the delivery to him or her of a copy of the order and of a minute approved by the court, showing with respect to the share capital of the company, as amended by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect.

(3) Notice of the registration shall be published in such manner as the court may direct.

(4) The Registrar shall certify the registration of the order and minute, and his or her certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the minute.

(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum and shall be valid and amendable as if it had been originally contained therein.

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(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an amendment of the memorandum within the meaning of section twenty-three ("Copies of constitutive documents to embody alterations").

### 148 Liability of members in respect of reduced shares

(1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount of the share as fixed by the minute and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, through no default on his or her part, ignorant of the proceedings for reduction and is in consequence not entered on the list of creditors and if at any time within twelve months after the reduction the company is unable within the meaning of section 3 of the Insolvency Act [Chapter 6:07] to pay the amount of his or her debt or claim then—

(a) every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he or she would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

(b) if the company is wound up, the court, on the application of any such creditor and proof of his or her ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(2) Nothing in subsection (1) shall affect the rights of the contributories among themselves.

### 149 Penalty for concealing name of creditor

If any officer of the company—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid;

he or she shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

*Sub-Part H: Transfer of shares and debentures, evidence of titles, etc.*

### 150 Numbering of shares

(1) Each share in a company shall be distinguished by its appropriate number:

*[ZB-Financial Holdings Ltd v Transnational Holdings Ltd 19-HH-510]*

Provided that if at any time all the issued shares in a company, or all the issued shares therein of a particular class, are fully paid up and rank on an equal footing for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks on an equal footing for all purposes with all shares of the same class for the time being issued and fully paid up.

(2) Where in terms of the proviso to subsection (1) shares are not distinguished by appropriate numbers, the certificates of such shares shall be so distinguished, and upon the registration of transfer of any such shares the certificate relating thereto shall, in addition to the distinguishing number, bear on its face such an endorsement, in the form of a reference number or otherwise, as will enable the immediately preceding holder of the shares to be identified.

### 151 Transfer of title to shares and debentures

(1) Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company:

*[ZB-Financial Holdings Ltd v Transnational Holdings Ltd 19-HH-510]*

Provided that nothing in this section shall prejudice any power of the company to register as member or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(2) On the application of the transferor of any share or interest in a company, the company

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shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for entry were made by the transferee and subject also to the law relating to stamp duty.

(3) If a company refuses to register a transfer of any shares or debentures the company shall, **within 2 months** after the date on which the transfer was lodged with the company, send to the transferor and the transferee notice of the refusal.

(4) If default is made in complying with the requirements of subsection (3) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty.

(5) A transfer of the share or other interest of a deceased member of a company made by his or her executor shall, although the executor is not himself or herself a member, be as valid as if he or she had been a member at the date of the execution of the instrument of transfer subject always to the law relating to stamp duty.

### 152 Prohibition of bearer shares

(1) No company shall issue any share (commonly known as a "bearer share") in respect of which it is purported that the holder at any time of the share certificate thereof has title to it without the need to register him or her as the owner of the share in the share register, and any such share purportedly so issued is void.

(2) Where a share in a company or is held or purported to be held by a person as a bearer share in contravention of subsection (1), then—

(a) no person purporting to hold a bearer share shall, either personally or by proxy, cast a vote attached to the share nor shall any person receive a dividend payable on the share; and

(b) the Registrar may issue a category 1 civil penalty order upon the company purporting to issue any bearer share.

(3) The validity of any resolution adopted by a company shall not be affected by a vote cast in contravention of subsection (2)(a), if the resolution was adopted by the requisite majority of votes which were validly cast.

(4) A dividend referred to in subsection (2)(a) shall accrue to the company concerned.

### 153 Evidence of title to shares

(1) Subject to subsection (3) and (5), every company shall, within two months after the allotment of any of its shares, debentures or debenture stock, and within two months after the date on which a transfer of any such shares, debentures or debenture stock is lodged with the company, complete and have ready for delivery the certificates of all shares, the debentures and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

For the purpose of this subsection, the expression "transfer" means a transfer duly stamped and otherwise valid and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(2) A certificate evidencing any certificated share, debenture or debenture stock of a company must state on its face —

- (a) the name of the issuing company; and
- (b) the name of the person to whom the share, debenture or debenture stock was issued; and
- (c) the number and class of share, debenture or debenture stock and the designation of the series, if any, evidenced by that certificate; and
- (d) any restriction on the transfer of the share, debenture or debenture stock evidenced by that certificate.

(3) A certificate, whether or not under the seal of the company, shall be signed by one of its directors and counter-signed by another director or the secretary, specifying any shares or stock held by any member in that company shall be *prima facie* evidence of the title of the member to such shares or stock.

(4) The signature of a director and secretary for the purpose of subsection (3) may be affixed to the certificate by autographic, electronic or manual means.

(5) If a company is a registered user of the electronic Registry, it may issue uncertificated shares, subject to the conditions of the issuance of such shares in *section two hundred and eighty-nine ("Use of electronic registry otherwise than for business entity registration")*, in which event the provisions of this section shall not apply to such company with respect to the transfer of shares.

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(6) Any holder of any uncertificated shares may demand proof of title to his or her shares in the form of a material certificate endorsed in accordance with subsection (5), and the company concerned shall issue such certificates to the shareholder **no later than 14 days** after such request is received in writing:

Provided that if there is any restriction on the transfer of such shares by virtue of the shares in question being warehoused in pursuance of an employee share ownership trust or scheme or for any other reason, such certificate shall be clearly endorsed to that effect.

(7) If default is made in complying with the requirements of subsection (1), (2), (3) or (6) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

### 154 Creation and registration of debentures; contracts to subscribe for debentures

(1) A company, if so authorised by its memorandum or articles, may, subject to this section, create and issue debentures, and as security for the fulfilment of the obligation undertaken by the company thereunder may in the manner hereinafter described bind so much of the movable or immovable property of the company as is described therein.

(2) If such debentures purport to bind only movable property, or assets that may be detached from immovable property, they may be registered as a security interest in terms of the Movable Property Security Interest Act [Chapter 14:35].

[With effect from the 4<sup>th</sup> November, 2022, when the above Act 9/2017 came into force- Editor]

(3) If such debentures purport to bind immovable property, registration in respect thereof may be effected in the Deeds Registry by means of a mortgage bond or bonds executed on behalf of the company.

(4) A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

### 155 Register of mortgages and debentures and register of debenture holders

(1) Every company shall keep—

(a) a register of mortgages, registered security interests referred to in section one hundred and fifty-four ("Creation and

registration of debentures; contracts to subscribe for debentures") (2) and debentures and enter therein **within 14 days** of the date of any hypothecation full particulars thereof, giving in each case the date of the hypothecation, a short description of the property mortgaged, the amount of the debt secured, the rate of interest payable thereon and the names and addresses of the mortgagees and debenture holders;

(b) a register of debenture holders showing the number of debentures issued, and outstanding, specifying whether issued to bearer or not, and, in the case of those not issued to bearer, specifying further the names and addresses of the holders thereof.

(2) The registers referred to in subsection (1) shall be kept at the registered office of the company:

Provided that if—

(a) the work of making them up is done at another office of the company, they may be kept at that other office;

(b) the company arranges with some other person for the making up of the registers to be undertaken on behalf of the company by that other person, they may be kept at the office of that other person at which the work is done;

so, however, that they shall not be kept at a place outside Zimbabwe.

(3) If a company keeps the registers referred to in subsection (1) at an office other than its registered office, the company shall give notice in writing to the Registrar of the office at which the registers are kept and of any change of that office and any such notice shall be given **within one month** of the date on which the registers are first kept at the office or of the change of that office, as the case may be.

(4) If default is made in complying with subsection (1), (2) or (3) the company and every officer of the company who is in default shall liable to a category 4 civil penalty.

(5) The register of mortgages, registered **security interests** and debentures shall be open at all reasonable times to the inspection of the Registrar or any person authorised by him or her or any creditor or member of the company without fee, and any other person on payment of such fee, not exceeding twenty cents per hour or part of an hour, for such inspection as the company may fix.

(5A) For the avoidance of doubt, no bond shall be registered for purposes of **binding movable property** in terms of this section and

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any such bond shall be effected in terms of the Movable Property Security Interests Act [Chapter 14:35] (No.9/2017).

**[Editor's Note:** 5A has been inserted for ease of reference to the above Act which came into force on the **4<sup>th</sup> November, 2022**. The Law Reviser's corrections are awaited.]

(6) The register of debenture holders shall, except when closed during such period or periods, not exceeding in the whole 60 days in any year, as may be specified in the articles, be open to the inspection of any creditor or member of the company but subject to such reasonable restrictions as the company may in a general meeting impose so that at least 2 hours in each business day are appointed for inspection and the company shall furnish to any creditor or member at his or her request extracts from the register on payment of fifteen cents for every one hundred words or fractional part thereof required to be extracted.

(7) A copy of any trust deed for securing any issue of debentures shall be transmitted to any holder of such debentures at his or her request on payment of the sum of seventy-five cents or such less sum as may be fixed by the company.

(8) If any inspection, copy, extract or other facility prescribed by subsection (5), (6) or (7) is refused or not transmitted the Registrar may serve upon the company and every officer of the company who is in default a category 4 civil penalty order in which the remediation clause may, in addition to forbidding future defaults, direct that an immediate inspection be granted of the register concerned or that copies required shall, subject to payment of the prescribed sum, be delivered to the person requiring them.

(9) If a company is a registered user of the electronic registry, it may create and issue any debenture in dematerialised form, subject to the conditions of the issuance and creation of such debentures in *section two hundred and eighty-nine ("Use of electronic registry otherwise than for business entity registration")*, in which event the provisions of this section shall not apply to such company with respect to the creation and issuance of debentures.

(10) Any holder of a dematerialised debenture may demand proof that he or she is the holder thereof in the form of a material debenture certificate and the company concerned shall issue such certificate to the debenture holder **no later than 14 days** after such request is received in writing.

(11) If default is made in complying with the requirements of subsection (10) the company and every officer of the company who is in default shall be liable to a category 3 civil penalty order.

### 156 Branch registers of debenture holders

(1) A company issuing debentures may, if so authorised by its articles, cause to be kept in any foreign country a branch register of debenture holders (in this Act called "a branch register of debenture holders").

(2) The company shall give to the Registrar notice of the situation of the office where any branch register of debenture holders is kept and of any change in its situation, and if it is discontinued or discontinued, and any such notice shall be given within one month of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with the requirements of subsection (2) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

(4) A branch register of debenture holders shall be deemed to be part of the company's register of debenture holders (in this section called "the principal register").

(5) It shall be kept in the same manner in which the principal register is by this Act required to be kept.

(6) The company shall—

(a) transmit to the office at which the principal register is kept a copy of every entry in its branch register of debenture holders as soon as may be after the entry is made; and

(b) cause to be kept at the place where the company's principal register is kept a duplicate of its branch register of debenture holders duly entered up from time to time.

(Every such duplicate shall for all the purposes of this Act be deemed to be part of the principal register).

(7) Subject to the provisions of this section with respect to the duplicate register, the debentures registered in a branch register of debenture holders shall be distinguished from the debentures registered in the principal register, and no transaction with respect to any debentures registered in a branch register of debenture holders shall, during the continuance

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of that registration, be registered in any other register.

(8) A company may discontinue to keep a branch register of debenture holders, and thereupon all entries in that register shall be transferred to some other branch register of debenture holders or to the principal register.

(9) Subject to this Act and any law relating to stamp duty, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers of debenture holders.

(10) If default is made in complying with subsection (6) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

### 157 Power to re-issue redeemed debentures in certain cases

(1) Where a company has redeemed any debentures previously issued, then—

(a) unless any provision to the contrary, whether expressed or implied, is contained in the articles or in any contract entered into by the company;

or

(b) unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled and not re-issued;

the company shall have, and shall be deemed always to have had, power to re-issue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(3) Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so

treated for the purposes of any provision limiting the amount or numbers of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section, which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his or her security without payment of the stamp duty or any penalty in respect thereof, unless he or she had notice or, but for his or her negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

## PART III

### MANAGEMENT AND ADMINISTRATION OF COMPANIES

*Sub-Part A: Restrictions on commencement of business and register and index of Members*

### 158 Restrictions on commencement of business

(1) Nothing in this section shall apply to a private company or to an existing company or to an association licensed under section eighty-two ("Power to dispense with "Limited" in certain cases").

(2) If a company has issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers unless—

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to a total amount of not less than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him or her and for which he or she is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription;

and

(c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that the aforesaid conditions have been complied with; and

(d) the Registrar has certified that the company is entitled to commence business.

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(3) If a company has not issued a prospectus inviting the public to subscribe for its shares, the company shall not commence any business or exercise any borrowing powers, unless—

(a) there has been delivered to the Registrar for registration a statement in lieu of prospectus; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him or her and for which he or she is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares payable in cash; and

(c) there has been delivered to the Registrar for registration an affidavit by the secretary or one of the directors in the prescribed form that paragraph

(b) has been complied with; and

(d) the Registrar has certified that the company is entitled to commence business.

(4) The Registrar shall, on the delivery to him or her of the affidavit and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such statement, certify that the company is entitled to commence business and that certificate shall be conclusive evidence that the company is so entitled.

(5) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding.

(6) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(7) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a category 4 civil penalty.

### 159 Register and index of members and use of register as presumptive proof of membership

(1) Every company shall keep a register of its members and punctually enter therein the following particulars—

(a) the names and addresses of the members, a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(b) the date at which each person was entered in the register as a member;

(c) the date at which any person ceased to be a member:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in paragraph (a).

(2) The register of members shall be kept at the registered office of the company:

Provided that if—

(a) the work of making it up is done at another office of the company, it may be kept at that other office; or

(b) the company arranges with some other person for the making up of the register to be undertaken on behalf of the company by that other person, it may be kept at the office of that other person;

so, however, that it shall not be kept at a place outside Zimbabwe.

(3) Every company shall send notice in writing to the Registrar of the place where its register of members is kept and of any change in that place within one month of the date of its incorporation or change of place:

Provided that a company shall not be required to send any notice in terms of this subsection where the register is kept at the registered office of the company.

(4) Every company having more than fifty members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(5) The index shall in respect of each member contain a sufficient indication to enable the account of that member in the register to be readily found.

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(6) The index shall be at all times kept at the same place as the register of members.

(7) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a category 4 penalty, and for the purposes of this section any person with whom the company makes an arrangement in terms of proviso (b) to subsection (2) shall be deemed to be an officer of the company and liable accordingly.

(8) If a company is a registered user of the electronic Registry, it may keep an electronic register of its members, subject to the conditions of the keeping of such a register in *section two hundred and eighty-nine ("Use of electronic registry otherwise than for business entity registration")*, in which event the provisions of this section and of *sections one hundred and sixty ("Inspection of register and index")* and *section one hundred and sixty-four ("Power to keep branch register in foreign countries")*, shall not apply to such company.

(9) The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

### 160 Inspection of register and index

(1) Except where the register of members is closed under this Act, the register and index of the names of the members of a company shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be allowed for inspection), be open to the inspection of any member without charge and of any other person on payment of twenty-five cents per hour or part of an hour, or such less sum as the company may fix, for each inspection.

(2) Any member may require a copy of the register, or of any part thereof, on payment of twenty cents or such less sum as the company may fix, for every 100 words or fractional part thereof required to be copied.

The company shall cause any copy so required by any member to be sent to such member **within a period of 21 days** commencing on the day next after the day on which the requirement is received by the company.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall, in the case of a contravention of subsection (1), be liable to a category 4 penalty, and in the case of a

contravention of subsection (2) be liable to a category 3 penalty, and the remediation clause of the relevant civil penalty order may, in addition to any other appropriate remedial action, compel an immediate inspection of the register and index or direct that the copies required shall, subject to payment of the appropriate sum, be sent to persons requiring them.

### 161 Power to close register

(1) A company may by resolution of its directors close the register of members at any time for a period not exceeding thirty days, so, however, that the number of days on which the register is closed shall not exceed sixty in any year.

(2) Every person to whom inspection of the register of members is refused on the ground that the register is closed under subsection (1) shall be entitled to require a written certificate from the company stating the period during which the register is so closed.

(3) If default is made in complying with the request for a certificate referred to in subsection (2) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

### 162 Power of court to rectify register

(1) If—

(a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company; or

(b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member;

the person aggrieved or any member of the company or the company may apply to the court for rectification of the register.

[*Fumia & Fumia v Matshiya N.O. & Falcon Hauliers*  
16-HH-031]

(2) Where an application is made under this section, the court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section the court may decide any question relating to the title of any person who is a party to the application to have his or her name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged

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members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register.

[may only be carried out where applicant has shown an entitlement to the shares. *Mparutsa S. v Mparutsa A. & Registrar of Companies & Another* 16-HH-688]

(4) The court, when making an order for rectification of the register, shall by its order direct notice of the rectification to be given to the Registrar.

### 163 Trusts in respect of shares

(1) A company may in its discretion enter in its register the fact that any share is held in trust but where it exercises its discretion to register that fact, it must verify the legal status of any trust or of any trustee who is registered as a member.

(2) There shall be no obligation on any company that exercises its discretion to register the fact that any share is held in trust, to see to the due and proper carrying out of any trust, whether express, implied or constructive, in respect of any share.

### 164 Power to keep branch register in foreign countries

(1) A company may, if so authorised by its articles, cause to be kept in any foreign country a register (in this Act called a "branch register") of members resident in that foreign country.

(2) The company shall give to the Registrar notice of the situation of the office where any branch register is kept and of any change in its situation, and if it is discontinued of the discontinuance, and any such notice shall be given within one month of the opening of the office or of the change or discontinuance, as the case may be.

(3) If default is made in complying with subsection (2) the company and every officer of the company who is in default shall be liable to a category 4 penalty.

(4) A branch register, shall be deemed to be a part of the company's register of members in this section called the principal register.

(5) A branch register shall be kept in the same manner in which the principal register is required by this Act to be kept.

(6) The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made; and shall cause to be kept at its

registered office, duly entered up from time to time, a duplicate of its branch register, and the duplicate shall, for all purposes of this Act, be deemed to be part of the principal register.

(7) The company may discontinue any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept by the company, or to the principal register.

(8) Subject to this Act and of any law relating to stamp duty, any company may, by its articles, make such provisions as it may think fit respecting the keeping of branch registers.

(9) If default is made in complying with subsection (6) the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

*Sub-Part B: Annual return and meetings and proceedings*

### 165 Annual return to be made by company

(1) Subject to subsection (2), every company shall make and file with the Registrar an annual return consisting of a summary, in the form contained in the *Fourth Schedule* (" Form of annual return of company") or as near thereto as circumstances admit, specifying the following particulars—

(a) all such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is secretary of the company as are by this Act required to be contained with respect to directors and the secretary, respectively, in the register of directors and secretaries of a company and the name and address of every person appointed as an auditor of the company;

(b) the situation of the registered office of the company;

(c) the place where the register of members is kept if, under the provisions of this Act, it is not kept at the registered office of the company (this provision does not apply if the company is permitted in terms of section 153(5) to issue uncertificated shares);

(d) the number of the shares of the company analysed by class of share as at the date of the return, and the number of shares issued and fully paid-up as at the date of return;

(2) The annual return of a company must be submitted within twenty-one (21) days of the anniversary date of its incorporation,

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registration or re-registration (in terms of section three hundred and three).

(3) Every private company shall send with the annual return a certificate signed by a director and the secretary stating—

(a) that the company has not since the date of the last return or, in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares, stock or debentures of the company; and

(b) the number of members of the company at the date of the certificate; and

(c) if the number exceeds fifty, that such excess consists only of persons who, under *section eighty-five ("Definition of private company and consequences of default in complying with conditions for private company")*, are to be excluded in reckoning the number of fifty.

(4) Every annual return filed by a company with the Registrar shall be certified under the hands of a director and the secretary of the company in the manner prescribed in the *Fourth Schedule* and a duplicate copy so signed shall be kept at the registered office of the company and shall be open for inspection by any person whenever the register of members is open for inspection by such person.

(5) In the case of a company keeping a branch register, where an annual return is made between the date when any entries are made in the branch register and the date when copies of those entries are received at the registered office of the company, the particulars contained in those entries so far as relevant to an annual return shall be included in the next or a subsequent annual return as may be appropriate, having regard to the particulars included in that return with respect to the company's register of members.

(6) The Registrar may from time to time require a company to transmit to him or her particulars of the transfer of any fully paid up share or shares and a list of the persons for the time being members of the company and of all persons who have ceased to be members since the date of the last return or, if no return has been made, since the date of the incorporation of the company.

(7) If the company makes default in complying with any of the requirements of this section the company and every officer of the company who is in default shall be liable to a category 3 civil penalty.

### 166 Statutory meeting and statutory report

(1) Save in the case of a private company, every company shall, within a period of not less than one month nor more than three months from the date at which it is entitled to commence business, hold a general meeting of its members which shall be called "the statutory meeting".

(2) The directors shall, at least fourteen days before the day on which the meeting is held, forward a certified report, in this Act referred to as "the statutory report", to every member of the company:

Provided that if the statutory report is forwarded later than is required by this subsection it shall, notwithstanding that fact, be deemed to have been duly forwarded if it is so agreed by all the members entitled to attend and vote at the meeting.

(3) The statutory report shall be certified by not less than two directors of the company and shall state—

(a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up or paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted; and

(b) the total amount of cash received by the company in respect of all the shares allotted, distinguishing as aforesaid; and

(c) an abstract of the receipts of the company and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company; and

(d) the names, addresses and descriptions of the directors, auditors, if any, managers, if any, and secretary of the company; and

(e) if the modification or proposed modification of any contract is to be submitted to the meeting for its information or approval, full particulars thereof.

(4) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such

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shares and to the receipts and payments of the company, be certified as correct by the auditors, if any, of the company.

(5) The directors shall cause a copy of the statutory report, certified as required by this section, to be filed with the Registrar within one month of the date on which it is so certified.

(6) The directors shall cause a list showing the names, descriptions and addresses of the members of the company and the number of shares held by them, respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(8) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, whether before, at or subsequently to the former meeting, may be passed and the adjourned meeting shall have the same power as an original meeting.

(9) If default by any director is made in complying with—

(a) subsection (1), (2) (unless this default is condoned in terms of the proviso thereto) or (5), he or she shall be liable to a category 3 civil penalty;

(b) subsection (6), he or she shall be liable to a category 4 civil penalty;

(c) subsection (7), he or she shall be liable to a category 1 civil penalty.

### 167 Annual general meeting

(1) Subject to this section, every company shall, within the periods specified in subsection (2), hold general meetings to be known and described in the notices calling such meetings as annual general meetings of that company.

(2) Annual general meeting of a company must be held once in every period of twelve months.

(3) The annual general meeting of a company shall deal with and dispose of all matters required in terms of this Act to be dealt with and disposed of at an annual general meeting and

may deal with and dispose of such further matters as are provided for in the articles of the company and, subject to this Act, any matters capable of being dealt with by any general meeting of the company.

(4) At an annual general meeting, only matters within the scope of the notice and agenda previously sent may be voted on except in the case of essential and urgent matters which arose after the notice was given and could not have been included in the notice, but this restriction shall not prevent discussion of other matters and shareholders shall be free to raise any other matters.

(5) The agenda for an annual general meeting shall in any event include the following items—

(a) electing the members of the board of directors who are to be elected at that time;

(b) setting or approving the compensation of directors including emoluments, salaries and pensions referred to in *sections two hundred and seven* ("Shareholder approval of directors' emoluments") and *section two hundred and fifteen* ("Particulars in accounts of directors' salaries and pensions");

(c) reviewing the report of the board with respect to its responsibilities and activities referred to in *sections one hundred and eighty-three* ("Statement of financial position and statement of comprehensive income and financial year of holding company and subsidiary") and *section two hundred and eighteen* ("Board's role and responsibilities") (5);

(d) in a public company, the report of the audit committee pursuant to *section two hundred and nineteen* ("Audit committee of public company");

(e) in a public company, reviewing the board's "comply or explain" report on the company's corporate governance guidelines and the current National Code on Corporate Governance referred to in *section two hundred and twenty* ("Corporate governance guidelines for public companies");

(f) reviewing the external auditor's report (if an audit report is required under this Act or is otherwise provided) and this report shall include but not be limited to—

(i) a statement of whether the auditor has obtained the information it deems necessary for performing its duties satisfactorily; and

(ii) whether the financial statements are in accordance with the financial reporting

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standards prescribed by the Public Auditors and Accounting Board under the Public Accountants and Auditors Act [Chapter 27:12], and any other appropriate accounting rules and standards; and

(iii) whether the board's report is consistent with those standards; and

(iv) whether there have been violations of the company's memorandum of association or of this Act during the financial year which affect the company's activities or financial position;

(g) appointing the company's external auditor and setting its compensation for the following financial year after review of the report and recommendation of the board's audit committee with respect thereto (except in cases where an external audit is not required); and

(h) reviewing the board's recommendations and actions authorising any distributions or relating to issuance of bonds or other borrowing by the company.

(6) A member or members of a company shall have the right to place issues on the agenda of that meeting including the right to propose candidates for election at that meeting to the company's board of directors, as provided in *section one hundred and seventy-four* ("Circulation of members resolutions").

(7) A company which has failed to hold an annual general meeting within the period specified in terms of subsection (2) shall be liable to a category 4 civil penalty.

### 168 Convening of extraordinary general meeting on requisition

(1) On the requisition of members of a company holding at the date of the deposit of the requisition **not less than 5%** of such of the paid-up capital of the company as at the date of the deposit carries the right of voting at general meetings of the company the directors of the company, notwithstanding anything in its articles, shall, within 21 days of the deposit of the requisition, issue a notice to members convening an extraordinary general meeting of the company for a date not less than 14 nor more than 28 days from the date of the notice:

[*Simmons M v Nzaráyapenga M & 3 Ors* 22-HB-225 BILTRANS 23-HH-188]

Provided that if a special resolution is to be submitted the period of the notice shall not be less than 21 days.

(2) The requisition shall state the objects of the meeting and shall be signed by the

requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

[23-HH-188]

(3) If the directors do not within 21 days from the date of the deposit of the requisition issue a notice as required by subsection (1) the requisitionists, or any of them numbering more than 50 or representing **more than 50%** of the total voting rights of all of them, may themselves convene a meeting, stating the objects thereof, on 21 days' notice, but no meeting so convened shall be held after the expiration of three months from the said date.

[23-HH-188]

(4) Any meeting convened under this section by the requisitionists—

(a) shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors;

[23-HH-188]

(b) at an extraordinary meeting, only business within the scope of the notice and agenda previously sent may be voted on.

(5) Any reasonable expense incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were knowingly party to the default.

(6) Any officer of the company who is knowingly a party to a default in convening a meeting as required by subsection (1) shall be liable to a category 3 civil penalty.

### 169 Length of notice for calling meetings

(1) A company's annual general meeting may be called by twenty-one days' notice in writing, and a meeting of a company, other than an annual general meeting or a meeting for the passing of a special resolution, may be called by fourteen days' notice in writing or, in the case of a private company, by seven days' notice in writing; and any provision of a company's articles shall be void so far as it provides for the calling of a meeting of the company, other than an adjourned meeting, by shorter notice than that specified in this subsection.

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(2) A meeting of a company shall, notwithstanding that it is called by shorter notice than that specified in subsection (1) or in the company's articles, as the case may be, be deemed to have been duly called if it is so agreed—

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat;

(b) in the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five *per centum* in nominal value of the shares giving a right to attend and vote at the meeting.

(3) If it is mutually agreed in writing between the officer of the company responsible for calling meetings of the membership of the company and any of the members concerned to serve notices of any such meeting by electronic mail, then, if such meeting is called by such means and in accordance with the conditions agreed between the officer and the members, such notice shall be valid for the purpose of this section.

### 170 General provisions as to meetings and votes and power of court to order meeting

(1) A majority of the total number of votes entitled to vote on a matter shall constitute a quorum for decision of the meeting on that matter unless the company's memorandum of association provides for a greater or lesser quorum but not less than one-third of the votes of the shares entitled to so vote.

(2) A meeting may not act or make decisions for the company unless a quorum is present.

(3) If a quorum specified in subsection (2) is not present the meeting shall be adjourned.

(4) If a meeting is adjourned because of a lack of quorum it may be reconvened with the same proposed agenda for a date **not later than 20 days** from the date of adjournment:

Provided that the quorum at such a reconvened meeting shall be **25%** of the votes of shares entitled to vote on a matter which shall be decided, unless the memorandum requires a greater quorum.

[*Stalap Investments (Pvt) Ltd & 2 Ors v Willoughby's Investments (Pvt) Ltd & 2 Ors* 19-HH-726]

(5) If a quorum is present, the affirmative vote of a majority of the shares present and entitled to vote on the matter shall be the decision of the

meeting, unless a greater number of votes are required by this Act or the company's memorandum.

[*Simmons M v Nzaráyapenga M & 3 Ors* 22-HB-225]

(6) The vote of a special resolution is required under this Act—

(a) whenever so stated in a memorandum; or

(b) for adoption of an amendment to the memorandum; or

(c) for adoption of a plan and contract for merger; or

(d) for approval of a major transaction; or

(e) for a decision to dissolve the company.

(7) The following provisions shall have effect in so far as the articles of a company do not make other provision in that behalf—

(a) notice of the meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A of the *Sixth Schedule* ("Model, articles and by-laws");

(b) two or more members holding not less than one-tenth of the issued share capital may call a meeting, subject to *section one hundred and seventy five* ("Special resolutions");

(c) any member elected by the members present at a meeting may be chairperson thereof;

(d) every member shall have one vote in respect of each share or each twenty dollars of stock held by him or her.

(8) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Act, or if for any other reason the court sees fit, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

[*Simmons M v Nzaráyapenga M & 3 Ors* 22-HB-225]

(9) Any meeting called, held and conducted in accordance with an order under subsection (8)

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shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

(10) If so provided in the articles of a company or by a resolution thereof—

(a) a private company may hold a virtual as opposed to a physical meeting, that is to say a meeting at which the members can hear and see each other by electronic means although they are not physically present at the meeting;

(b) a public company may permit the participation of members who are not physically present at the meeting, but can be heard and seen by the other members by electronic means.

### **171 Proxies and voting on poll**

(1) Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint one or more persons, whether members or not, to act in the alternative as his or her proxy to attend and vote instead of him or her, and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting.

(2) The instrument appointing a proxy to vote at a meeting of a company shall be deemed also to confer authority to demand or join in demanding a poll.

(3) In every notice calling a meeting of a company and on the face of every proxy form issued at the company's expense shall appear, with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint one or more proxies to act in the alternative, to attend and vote and speak instead of him or her, and that a proxy need not also be a member; and if default is made in complying with this subsection as respects any meeting every officer of the company who authorizes, knowingly permits or is party to the default shall be liable to a category 1 civil penalty.

[23-HH-188]

(4) Any provision contained in a company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting in order that the appointment may be effective thereat.

(5) If, for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, every officer of the company who authorizes or knowingly permits or is a party to the issue as aforesaid shall be liable to a category 1 civil penalty:

Provided that an officer shall not be liable under this subsection by reason only of the issue to a member at his or her written request of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) On a poll taken at a meeting of a company, a member entitled to more than one vote need not, if he or she votes, use all his or her votes or cast all the votes he or she uses in the same way.

(7) This section shall apply to meetings of any class of members of a company as it applies to general meetings of the company.

(8) A director or officer of a company may not act as a proxy for a shareholder, and shall be liable to a category 1 civil penalty if he she purports to do so.

(9) No proxy appointment shall be valid for longer than six months unless otherwise provided in the proxy appointment or the Articles of Association.

(10) Any vote cast by a person purporting to vote as a proxy in violation of subsection (8) or (9) shall be invalid.

### **172 Procedure for compulsory adjournment**

(1) If, at any meeting of a company, any member of the company who is present and entitled to vote at that meeting demands an adjournment of the meeting upon any grounds stated by him or her, the chairperson shall put the demand to the vote of the meeting, and if a majority of the members present personally or by proxy and entitled to vote at the meeting or if such members representing either personally or by proxy more than half of the share capital of the company represented at the meeting vote in favour of an adjournment, the chairperson shall adjourn the meeting to a day seven days after the date of the meeting or, if that day is a public holiday, to the next succeeding day, other than a public holiday.

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(2) When a meeting has been adjourned as aforesaid the secretary of the company shall, upon a date not later than four days after the adjournment, publish in a newspaper circulating in the district where the registered office of the company is situated, a notice stating—

- (a) the time and place to which the meeting was adjourned; and
- (b) the matter before the meeting at the time when it was adjourned; and
- (c) the ground for adjournment.

This subsection shall not apply to a private company.

(3) Any person acting as chairperson of a meeting of a company who fails to comply with the requirements of subsection (1) and any secretary of a company other than a private company who fails to comply with the requirements shall be liable to a category 1 civil penalty.

### 173 Representation of body corporates at meeting of company and of creditors

(1) A body corporate whether a company within the meaning of this Act or not, may—

(a) if it is a member of another body corporate, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company;

(b) if it is a creditor, including a holder of debentures, of another body corporate, being a company within the meaning of this Act or any other law, authorise, by resolution of its directors or other governing body, such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made thereunder, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be.

(2) A person authorised as aforesaid shall be entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member, creditor or holder of debentures of that other company.

### 174 Circulation of members' resolutions

(1) Subject to the following provisions, it shall be the duty of a company, on the requisition in writing of such number of members as is hereinafter specified and, unless the company otherwise resolves, at the expense of the requisitionists—

- (a) to give to members of the company entitled to receive notice of the next annual general meeting notice of any resolution which may properly be moved and is intended to be moved at that meeting;
- (b) to circulate to members entitled to have notice of any general meeting sent to them any statement of not more than one thousand words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

(2) The number of members necessary for a requisition under subsection (1) shall be—

(a) any number of members representing not less than five *per centum* of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting to which the requisition relates; or

(b) not less than one hundred members holding shares in the company on which there has been paid up an average sum, per member, of not less than two hundred United States dollars.

(3) Notice of any such resolution shall be given, and any such statement shall be circulated, to members of the company entitled to have notice of the meeting sent to them by serving a copy of the resolution or statement on each such member in any manner permitted for service of notice of the meeting and notice of any such resolution shall be given to any other member of the company by giving notice of the general effect of the resolution in any manner permitted for giving him or her notice of meetings of the company:

Provided that the copy shall be served, or notice of the effect of the resolution shall be given, as the case may be, in the same manner and, so far as practicable, at the same time as notice of the meeting and, where it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable thereafter.

(4) A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—

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(a) a copy of the requisition signed by the requisitionists, or two or more copies which between them contain the signatures of all the requisitionists, is deposited at the registered office of the company—

(i) in the case of a requisition requiring notice of a resolution, not less than six weeks before the meeting;

(ii) in the case of any other requisition, not less than twenty-one days before the meeting;

and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:

Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting 179

is called for a date **6 weeks** or less after the copy has been deposited, the copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes thereof.

(5) The company shall also not be bound under this section to circulate any resolution or statement if, on the application either of the company or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the court may order the company's costs on an application under this section to be paid in whole or in part by the requisitionists, notwithstanding that they are not parties to the application.

(6) Notwithstanding anything in the company's articles, the business which may be dealt with at an annual general meeting shall include any resolution of which notice is given in accordance with this section, and for the purposes of this subsection notice shall be deemed to have been so given notwithstanding the accidental omission, in giving it, of one or more members.

(7) In the event of any default in complying with this section every officer of the company who authorizes, or knowingly permits or is party to, the default shall be liable to a category 1 civil penalty.

### 175 Special resolutions

(1) A resolution shall be a special resolution when it has been passed by a majority of not

less than **75%** of such members entitled to vote as are present in person or by proxy at a general meeting of which not less than twenty-one days' notice has been given, specifying the intention to propose the resolution as a special resolution and the terms of the resolution and at which members holding in the aggregate not less than **25%** of the total votes of the company are present in person or by proxy.

(2) If the members present at the meeting hold less than **25%** of the total votes of all members entitled to vote, the meeting shall stand adjourned to the same day in the following week or, if that is a public holiday, to the next succeeding day other than a public holiday. At the adjourned meeting the members present in person or by proxy may deal with the business for which the original meeting was convened and a resolution passed by not less than **75%** of such members shall be deemed to be a special resolution, notwithstanding that less than **25%** of the total votes of the company are represented at such adjourned meeting.

(3) If it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding not less than **95%** in nominal value of the shares giving that right, a resolution may be proposed and passed as a special resolution at a meeting of which **less than 21 days' notice** has been given, and subsection (7) shall not apply for the purposes of this subsection.

(4) All other resolutions at a general meeting shall be called ordinary resolutions.

(5) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairperson that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(6) When a poll is demanded regard shall be had in computing the majority on the poll to the number of votes cast for and against the resolution.

(7) For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and meeting held in the manner provided by the articles but subject always to the provisions of this Act.

### 176 Written resolutions

(1) In the case of a **private** company, a resolution in writing signed by all the members

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for the time being entitled to attend and vote on such resolution at a general meeting, or, being bodies corporate, by their duly authorised representatives, shall be as valid and effective for all purposes as if the same had been passed at a general meeting of the company duly convened and held, and if described as a special resolution shall be deemed to be a special resolution.

Such resolution shall be deemed to have been passed on the date on which the same was signed by the last member to sign, and where the resolution states a date as being the date of his or her signature thereof by any member such statement shall be *prima facie* evidence that it was signed by that member on that date.

[*Sheriff of Zimbabwe & Gurta. A v Manja. A & 97 Ors 19-HH-325*]

(2) Subsection (1) shall **not apply** to a resolution to **remove** an auditor or to remove a director.

### 177 Resolutions requiring special notice

(1) Where, in this Act or in the articles of association of a company, special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty-one days before the meeting:

Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date **28 days** or less after the notice has been given, the notice though not given within the time required by this subsection shall be deemed to have been properly given for the purposes thereof.

(2) If the status of any person in relation to a company will be affected by the terms of a resolution of which special notice has been given the company shall send to, or serve upon, such person a copy of such resolution and of the notice of the meeting at which it will be moved at the time when similar notice is given to the members of the company, and such person shall be entitled to speak on the

resolution at the meeting before any vote is taken upon it.

(3) If default is made by a company in giving notice to its members or to any person whose status is affected as aforesaid the company and every officer of the company who is in default shall be liable to a category 3 civil penalty.

### 178 Registration and copies of special resolution

(1) Within one month after the passing of any special resolution a copy of that resolution shall be transmitted to the Registrar who shall, subject to subsection (2), register that resolution and that resolution shall be of no force or effect until it is so registered:

Provided that on the registration of the special resolution that resolution shall be of force or effect from the date it was passed.

(2) The Registrar may, except upon the order of the court, refuse to register any special resolution so transmitted to him or her if such resolution appears to him or her to be contrary to this Act or of the memorandum or articles of the company.

(3) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the registration of the resolution.

(4) Where articles have not been registered, a copy of every special resolution shall be transmitted to any member of the company at his or her request on payment of one United States dollar or such less sum as the company may direct.

(5) If default is made—

(a) in transmitting the copy of a special resolution to the Registrar

(b) in complying with subsection (3) or (4);

the company and every officer of the company who is in default shall be liable to a category 4 civil penalty.

### 179 Resolutions passed at adjourned meetings

If a resolution is passed at an adjourned meeting of—

(a) a company; or

(b) the holders of any class of shares in a company; or

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(c) the directors of a company;

the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

### 180 Minutes of meetings of members

(1) A record of each meeting of members shall be prepared as promptly as possible but not later than twenty (20) days after the meeting, and shall be signed by the chairperson and any secretary of the meeting, who shall be responsible for its completeness and accuracy.

(2) The minutes shall include the date, time and place of the meeting, the name of the chairperson and any secretary of the meeting, in the case of a private company, the names of the shareholders present, the agenda, the number of shares and votes represented both in person and by proxy, the ballot or other procedures used for voting, the issues voted on and the number of votes "for," "against" or abstained on each issue, a summary of speeches and discussions, and a list of the decisions actually made at the meeting.

(3) The minutes shall be retained by the company and made available to any shareholder for inspection and copying at his or her expense during normal business hours.

(4) If it comes to the notice of the Registrar that a company has not been keeping minutes in accordance with this section it shall be liable to a category 2 civil penalty.

### 181 Inspection of minutes

(1) The minutes of proceedings of any general meeting of a company, certified by a director or secretary, shall be kept at the registered office of the company and shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection), be open to the inspection of any member without charge.

(2) Any member shall be entitled to be furnished, **within 14 days** after he or she has made a request in that behalf to the company, with a copy of such minutes as aforesaid certified by the secretary or a director as correct, at a charge not exceeding US\$0.20 for every 100 words.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time the

Registrar may serve upon company and every officer of the company who is in default a category 3 civil penalty order, in which the remediation clause must, in addition to any other appropriate remedial action, require an immediate inspection of the books in respect of all proceedings of general meetings or direct that the copies required shall, subject to the payment of the appropriate sum, be sent to the persons requiring them.

*Sub-Part C: Accounts and audit*

### 182 Keeping of financial records

(1) Every company shall cause to be kept in the English language or (subject to the proviso to section nine ("Form of registers and other documents"))(3) any officially recognised language financial records with respect to—

- all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- all sales and purchases of goods by the company;
- the assets and liabilities of the company.

(2) For the purposes of subsection (1), financial records shall not be deemed to be kept with respect to the matters aforesaid if there are not kept such records as are necessary to give a true and fair view of the state of the company's affairs and to explain transactions.

(3) The financial records shall be kept at the registered office of the company or at such other place as the directors think fit and shall at all times be open to inspection by the directors:

Provided that if financial records are kept at a place outside Zimbabwe there shall be sent to, and kept at a place in, Zimbabwe and be at all times open to inspection by the directors such accounts and returns with respect to the business dealt with in the financial records so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding twelve months and will enable to be prepared in accordance with this Act the company's financial statements, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given.

(4) The financial records kept in terms of this section may be destroyed after eight years from the completion of the transactions or operations to which they relate.

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(5) If any director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section or has been the cause of any default by the company thereunder the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event *section sixty-nine ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records")*(1)(a) shall apply) serve upon him or her a category 2 civil penalty order in which the remediation clause may, in addition to any other appropriate remedial action, require that proof be given to the Registrar within a specified period that—

(a) the director concerned has commenced or completed an appropriate course of instruction to enable him or her to comply with the requirements of this section; or

(b) the company has employed a competent and reliable person with the duty of seeing that the requirements of this section are complied with.

(6) It shall be no defence to a civil penalty order or proposed civil penalty under subsection (5) for a director to prove that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty.

(7) Subsection (3) shall not exempt a person from compliance with the Customs and Excise Act [Chapter 23:02] or any other law.

(8) A person who retains, in terms of section 81(2) of the Income Tax Act [Chapter 23:06], a photographic reproduction of any books of account shall be deemed for the purposes of this section to have kept such financial records.

### 183 Statement of financial position and statement of comprehensive income and financial year of holding company and subsidiary

(1) The directors of a company shall cause to be made out in respect of every financial year of the company, and to be laid before the company at each annual general meeting required to be held in terms of *section one hundred and sixty-seven ("Annual general meeting")*, a statement of financial position and a statement of comprehensive income as at the end of the financial year, which shall comply with *section one hundred and eighty-four ("General provisions as to contents and form of financial statements")*.

(2) A holding company's directors shall ensure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiaries shall coincide with the company's own financial year.

(3) In addition to the requirements of subsection (1), directors of a public company shall cause to be presented at each annual general shareholders' meeting the report of the board's audit committee referred to in *section two hundred and twenty ("Corporate governance guidelines for public companies")*, giving a descriptive review of the nature of the business of the company and any subsidiaries and any changes therein, and the total amount of remuneration paid to and the value of any benefits received by each director or former director during the financial year last ended.

(4) If any director of a company fails to take all reasonable steps to comply with the requirements of this section the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event *section sixty-nine ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records")* (1)(a) shall apply), subject to subsection (5), serve upon him or her a category 3 civil penalty order.

(5) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (4) for a director to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in *section two hundred and ninety-four ("Power of Registrar to issue civil penalty orders and categories thereof")* (4)(a) and (b)(i).

### 184 General provisions as to contents and form of financial statements

(1) Every statement of financial position of a company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every statement of comprehensive income of a company, shall give a true and fair view of the profits and losses (or income and expenditure, as the case may be) and other items of comprehensive income of the company for the financial year.

(2) Subject to subsection (1), a company's statement of financial position and statement of

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comprehensive income and income and expenditure account shall comply with any requirements that may be prescribed in regard to their form and content and any additional information to be provided by way of notes.

(3) The requirements of subsection (2) shall be without prejudice either to the general requirements of subsection (1) or to any other requirements of this Act.

(4) The Registrar may, on the application or with the consent of a company's directors, modify in relation to that company any of the requirements of this Act as to the matters to be stated in a company's statement of financial position or statement of comprehensive income, except the requirements of subsection (1), for the purpose of adapting them to the circumstances of the company.

(5) Subsections (1) and (2) shall not apply to a company's statement of comprehensive income if—

- (a) the company has subsidiaries; and
- (b) the statement of comprehensive income is framed as a consolidated statement of comprehensive income dealing with all or any of the company's subsidiaries as well as the company and—
  - (i) complies with the requirements of this Act relating to consolidated statements of comprehensive income; and
  - (ii) shows how much of the consolidated comprehensive income for the financial year is dealt with in the accounts of the company.

(6) If a director of a company fails to take all reasonable steps to secure compliance by the company as respects any financial statements required to be laid before the company in general meeting with the provisions of this section and with the other requirements of this Act as to the matters to be stated in financial statements, the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event *section sixty-nine ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records")*(1)(a) shall apply), subject to subsection (7), serve upon him or her a category 3 civil penalty order.

(7) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (6) for a director to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person

was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in *section two hundred and ninety-four ("Power of Registrar to issue civil penalty orders and categories thereof")* (4)(a) and (b)(i).

(8) For the purposes of this Act, except where the context otherwise requires, any reference to a statement of financial position or statement of comprehensive income shall include any note thereon or document annexed thereto giving information which is required by this Act and is thereby allowed to be so given.

(9) Financial statements made in terms of this section shall comply with international financial accounting standards adopted by the Public Accountants Auditors Board constituted under the Public Accountants and Auditors Act [Chapter 27:12] and prescribed as applicable for the purposes of this section.

[See section 301(2) where the Minister shall have regard to **Generally Accepted Accounting Practices**, so presumably will not be gazetting any substitution of SI 62 of 1996- Editor.]

### 185 Meaning of holding company, subsidiary and wholly owned subsidiary

(1) A company shall, subject to subsection (3), be deemed to be a subsidiary of another if

—

- (a) that other either—
  - (i) is a member of it and controls the composition of its board of directors; or
  - (ii) holds more than half in nominal value of its equity share capital;
- or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary:

Provided that the first-mentioned company shall be deemed to be a subsidiary of that other if subsidiaries of that other between them hold more than **50%** in nominal value of the equity share capital of the first-mentioned company or if that other and one or more of its subsidiaries between them hold more than **50%** of such capital.

(2) For the purposes of subsection (1), the composition of a company's board of directors shall be deemed to be controlled by another

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company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(a) that a person cannot be appointed thereto without the exercise in his or her favour by that other company of such power as aforesaid; or

(b) that a person's appointment thereto follows necessarily from his or her appointment as director of that other company.

(3) In determining whether one company is a subsidiary of another—

(a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for that other except where that other is concerned only in a fiduciary capacity; or

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity; shall be treated as held or exercisable by that other;

(c) any shares held or power exercisable by any person by virtue of any debenture of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary, not being held or exercisable as mentioned in paragraph (c), shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A company shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

(5) A company shall be deemed to be another's holding company if that other is its subsidiary.

(6) In this section, the expression "company" includes any body corporate, including a body corporate formed under the law of a foreign country, and the expression

"**equity share capital**" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

### 186 Obligation to lay group accounts before holding company

(1) Where at the end of its financial year a company has subsidiaries, accounts or statements, in this Act referred to as "group accounts", dealing as hereinafter mentioned with the state of affairs and comprehensive income of the company and the subsidiaries shall, subject to subsection (2), be laid before the company in general meeting when the company's own financial statements are so laid.

(2) Notwithstanding anything in subsection (1)—

(a) group accounts shall not be required where the company is, at the end of its financial year, the wholly owned subsidiary of another company incorporated in Zimbabwe;

(b) group accounts need not deal with a subsidiary of the company if the company's directors are of the opinion that—

(i) it is impracticable, or would be of no real value to members of the company, in view of the insignificant amounts involved, or would entail expense or delay out of proportion to the value to members of the company; or

(ii) the result would be misleading or harmful to the business of the company or any of its subsidiaries; or

(iii) the business of the holding company and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking;

(c) group accounts shall not be required if the directors are of an opinion described in paragraph (b) about each of the company's subsidiaries:

Provided that—

(i) the auditor of the holding company shall in every case report on the decision of directors not to deal in group accounts with any subsidiary;

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(ii) he approval of the Registrar shall be required for not dealing in group accounts with a subsidiary on the ground that the result would be harmful or on the ground of the difference between the business of the holding company and that of the subsidiary.

(3) If any director of a company fails to take all reasonable steps to secure compliance as respects the company with the requirements of this section the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event *section sixty-nine* ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records") (1)(a) shall apply), subject to subsection (4), serve upon him or her a category 3 civil penalty order.

(4) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (3) for a director to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in *section two hundred and ninety-four* ("Power of Registrar to issue civil penalty orders and categories thereof") (4)(a) and (b)(i).

### 187 Form and contents of group accounts

(1) The group accounts laid before a holding company shall be consolidated accounts comprising—

(a) a consolidated statement of financial position dealing with the state of affairs of the company and all the subsidiaries to be dealt with in the group accounts;

(b) a consolidated statement of comprehensive income dealing with the profit or loss (or income and expenditure, as the case may be) and other items of comprehensive income of the company and those subsidiaries.

(2) If the company's directors are of opinion that it is better for the purpose—

(a) of presenting the same or equivalent information about the state of affairs and comprehensive income of the company and those subsidiaries; and

(b) of so presenting it that it may be readily appreciated by the company's members;

the group accounts may be prepared in a form other than that required by subsection (1) and in particular may consist of more than one set of consolidated accounts, that is to say, one set dealing with the company and one group of subsidiaries and one or more sets dealing with other groups of subsidiaries, or of separate accounts dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company's own accounts, or any combination of these forms.

(3) The group accounts may be wholly or partly incorporated in the company's own financial statements.

(4) The group accounts laid before a company shall give a true and fair view of the state of affairs and comprehensive income of the company and the subsidiaries dealt with thereby as a whole, so far as concerns members of the company; and in particular shall exclude inter-group balances and any profit or loss (or income and expenditure) arising from transactions within the group in so far as those profits or losses (or income and expenditure) may not have been realized or incurred so far as concerns members of the company.

(5) Where the financial year of a subsidiary does not coincide with that of the holding company the group accounts shall, unless the Registrar on the application or with the consent of the holding company's directors otherwise directs, deal with the subsidiary's state of affairs as at the end of its financial year ending last before that of the holding company and with the subsidiary's profit or loss for that financial year.

(6) Without prejudice to subsection (4), the group accounts, if prepared as consolidated accounts, shall comply with the requirements of the regulations referred to in *section three hundred and one* ("Regulations") (2) so far as applicable thereto and if not so prepared, shall give the same or equivalent information:

Provided that the Registrar may, on the application or with the consent of a company's directors, modify the said requirements in relation to that company for the purpose of adapting them to the circumstances of the company.

### 188 Accounts and auditor's report to be annexed to signed statement of financial position

(1) The statement of comprehensive income and, so far as not incorporated in the financial statements, any group accounts laid before a

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company in general meeting shall be annexed to the statement of financial position and approved by the board of directors before the statement of financial position is signed on its behalf and the auditor's report shall be attached thereto, except in the case of a private company which in terms of *section one hundred and sixty-six* (" *Statutory meeting and statutory report*" ) (7) is not required to appoint an auditor.

(2) If any copy of a statement of financial position is issued, circulated or published without having a copy annexed thereto of the statement of comprehensive income or any group accounts required by this section to be so annexed or without having attached thereto a copy of the auditor's report as required by this section, the Registrar may serve upon the company and every officer who is in default a category 2 civil penalty order.

(3) Every statement of financial position of a company shall be signed on behalf of the board by two of the directors of the company.

(4) If any copy of a statement of financial position which has not been signed as required by this section is issued, circulated or published, the Registrar may serve upon the company and every officer who is in default a category 2 civil penalty order.

### 189 Directors' report to be attached to statement of financial position

(1) There shall be attached to every statement of financial position laid before a company in general meeting a report by the directors with respect to the state of the company's affairs, the amount, if any, already paid or declared or which they recommend should be paid by way of dividend and the amount, if any, which they propose to carry to reserves within the meaning of the regulations referred to in *section three hundred and one* (" *Regulations*" ) (2) and, if directors' remuneration is to be determined at the meeting, the amount of remuneration recommended:

Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

- (a) a public company, whether incorporated under this Act or the law of a foreign country; or
- (b) a private company which is a subsidiary, as determined in terms of *section one hundred and eighty-five* (" Meaning of holding company, subsidiary and wholly owned subsidiary"), of a public company referred to in paragraph (a).

(2) The said report shall deal, so far as is material for the appreciation of the state of the company's affairs by its members and will not in the directors' opinion be harmful to the business of the company or of any of its subsidiaries, with any change during the financial year in the nature of the company's business or in the company's subsidiaries or in the classes of business in which the company has an interest, whether as member of another company or otherwise.

(3) If any director of a company fails to take all reasonable steps to comply with subsection (1) the Registrar may (unless he or she is satisfied that the director's conduct was fraudulent, reckless or wilful, in which event *section sixty-nine* (" *Fraudulent, reckless or wilful failure of financial accounting; falsification of records*" ) (1)(a) shall apply), serve upon the defaulting director a category 1 civil penalty order:

Provided that the Registrar may waive the penalty if director to proves that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty.

### 190 Right to receive copy of statement of financial position and auditor's report

(1) A copy of every statement of financial position, including every document required by this Act to be annexed thereto, which is to be laid before the company in general meeting, together with group accounts, if any, prepared under *sections one hundred and eighty-six* (" *Obligation to lay group accounts before holding company*" ) and *section one hundred and eighty-seven* (" *Form and contents of group accounts*" ) and a copy of the auditor's report, shall, not less than fourteen days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company:

Provided that this subsection shall not apply to a private company unless one or more members of that private company is—

- (a) a public company, whether incorporated under this Act or the law of a foreign country; or
- (b) a private company which is a subsidiary, as determined in terms of *section one hundred and eighty-five* (" Meaning of holding company, subsidiary and wholly owned subsidiary"), of a public company referred to in paragraph (a).

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(2) Any member and any debenture holder of the company shall be entitled to be furnished on demand, without charge, with a copy of the last statement of financial position of the company, including every document required by law to be annexed thereto, together with a copy of the auditor's report on the statement of financial position unless he or she shall previously have been supplied therewith.

(3) If default is made in complying with subsection (1) the company and every officer of the company who is in default shall be liable to a category 1 civil penalty, and if, where any person makes a demand for a document to which he or she is by virtue of subsection (2) entitled, default is made in complying with the demand within fourteen days after the making thereof, the company and any officer of the company who is in default shall be liable to a category 3 civil penalty.

### 191 Appointment, remuneration, duties, powers and removal of auditors

(1) The first auditor of a company shall be appointed by the directors within one month of the issue of the certificate that the company is entitled to commence business in the case of a company to which *section one hundred and fifty-eight* ("*Restrictions on commencement of business*") applies and, in the case of other companies, **within 1 month** of the issue of the certificate of incorporation; and an auditor so appointed shall hold office until the conclusion of the first annual general meeting:

Provided that—

(i) the company may at a general meeting remove any such auditor and appoint in his or her place any other person who has by special notice been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company **not less than 14 days** before the date of the meeting;

(ii) if the directors fail to exercise their powers under this subsection the company in general meeting may appoint the first auditor and thereupon the said powers of the directors shall cease;

(iii) if neither the directors nor the company appoint an auditor under this subsection the Registrar may on the application of any member do so.

(2) Every company shall, at each annual general meeting, appoint an auditor to hold

office from the conclusion of that annual general meeting until the conclusion of the next annual general meeting.

(3) Where at an annual general meeting no auditor is appointed or reappointed, the Registrar, on the application of any member may appoint a person to fill the vacancy.

(4) The company shall, within one week of the Registrar's power under subsection (3) becoming exercisable, give the Registrar notice of that fact and, if a company fails to give notice as required by this subsection, the company and every officer of the company who is in default shall be liable to a category 3 civil penalty:

Provided that, instead of the remediation clause in the civil penalty order concerned, the Registrar shall give notice to the company of his or her appointment of the auditor.

(5) The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor, if any, may act.

(6) The remuneration of the auditor of a company shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

For the purposes of this subsection, any sums paid by the company in respect of the auditor's expenses shall be deemed to be included in the expression "remuneration".

(7) A private company shall not be required to appoint an auditor if—

(a) the number of members in such company does not exceed ten; and

(b) none of the members of such company is—

(i) a public company, whether incorporated under this Act or the law of a foreign country; or

(ii) a private company which is a subsidiary, as determined in terms of *section one hundred and eighty-five* ("Meaning of holding company, subsidiary and wholly owned subsidiary"), of a public company referred to in subparagraph (i);

and

(c) such company is not a subsidiary of a holding company which has itself appointed auditors; and

(d) all the members in such company agree that an auditor shall not be appointed.

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(8) The relevant provisions of the Public Accountants and Auditors Act [Chapter 27:12] and of generally accepted accounting practices shall apply to the terms of appointment, qualifications, independence and work of the auditor.

(9) Without limiting the foregoing—

(a) a company's auditor may not own shares in the company, may not be a director or officer of the company, and may not directly or indirectly supervise the company's internal accounts, while engaged in auditing the company or for a period of two years prior thereto or thereafter;

(b) a company's auditor may not perform non-audit services for the company if the performance of those services is or may be inconsistent with the performance of audit services for the company

(10) For the purposes of subsection (9) an auditor includes an individual who is an auditor and any family member of that individual, and any firm that is an auditor or any employee or agent of that firm who participates in that firm's audit of the company in question.

(11) No person shall serve as an auditor of a company for more than five consecutive financial years:

Provided that where a person has served as the auditor or designated auditor of a company for two or more consecutive financial years and then ceases to be such, such person shall not be re-appointed as the auditor or designated auditor of that company until after the expiry of at least two further financial years.

(12) A company's auditor shall have the right—

(a) of full access to the company's books, records, vouchers, securities and documents, and the right to verify the existence and value of the company's assets and liabilities;

(b) to ask any director or officer of the company for particulars which the auditor deems necessary for the performance of the auditor's duties and responsibilities;

(c) of access to all current and former accounts of any company subsidiary thereto and be entitled to require from the officers of the holding or subsidiary company all such information and explanations in connection therewith as he or she may deem necessary;

(d) to attend any general meeting of the company and to receive all notices of and other

communications relating to any general meeting which any member of the company is entitled to receive and to be heard at any general meeting which he or she attends on any part of the business of the meeting which concerns him or her as auditor.

(13) Special notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor or providing expressly that a retiring auditor (other than one retiring by the operation of subsection (11)) shall not be reappointed.

### 192 Disqualifications for appointment as auditor

(1) The following persons shall not be qualified for appointment as auditors of a company—

- (a) an officer or servant of the company;
- (b) a person who is a partner of an officer or servant of the company;
- (c) a person who is an employer or an employee of an officer or servant of the company;
- (d) a person who is an officer or servant of a body corporate which is an officer of the company;
- (e) a person who by himself or herself, or his or her partner or his or her employee, regularly performs the duties of secretary or bookkeeper to the company.

(2) A person shall also not be qualified for appointment as auditor of a company if he or she is, by virtue of subsection (1), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company, or a subsidiary of that company's holding company, or would be so disqualified if the body corporate were a company.

(3) Any person who acts as auditor of a company when disqualified as aforesaid shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment not exceeding two years.

(4) In addition, the Registrar may serve upon a company that is knowingly in contravention of this section a category 2 civil penalty order.

### 193 Auditor's report

(1) The auditor shall make a report to the members on the accounts examined by him or

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her and on every financial statement laid before the company in general meeting during his or her tenure of office and the report shall contain statements as to the following matters—

(a) whether, in his or her opinion, the financial statements or, in the case of a holding company submitting group accounts, the said accounts of the company and the group accounts are properly drawn up in accordance with this Act so as to give a true and fair view of the state of the company's affairs at the date of its financial statements for its financial year ended on that date;

or

(b) in the case of a company registered as a commercial bank, an accepting house or a finance house in terms of the Banking Act [Chapter 24:20], whether, in his or her opinion, the financial statements or, in the case of a holding company submitting group accounts, the said accounts of the company and the group accounts are properly drawn up so as to disclose the state of the company's affairs at the date of its financial statements for its financial year ended on that date, so far as is required by the provisions of this Act applicable to the class of company concerned.

(2) The auditor shall include in his or her report statements which, in his or her opinion, are necessary if—

(a) he or she has not obtained all the information and explanations which to the best of his or her knowledge and belief were necessary for the purposes of his or her audit;

(b) so far as appears from his or her examination, proper financial records have not been kept by the company;

(c) proper returns adequate for the purpose of his or her audit have not been received from branches not visited by him or her;

(d) the company's financial statements are not in agreement with the financial records and returns from branches.

(3) In the event of the auditor being unable to make such report or to make it without further qualification he or she shall inscribe upon or attach to the statement of financial position a statement of that fact or of the nature of the qualification, as the case may be, and he or she shall set forth therein the facts or circumstances which prevent him or her from making the report or from making it without qualification.

(4) The auditor's report or any statement under subsection (3) shall, unless all the

members present agree to the contrary, be read before the company in general meeting and shall, in any event, be open to inspection by any member.

### 194 Construction of references to documents annexed to accounts

References in this Act to a document annexed or required to be annexed to a company's accounts or any of them shall not include the directors' report or the auditor's report:

Provided that any information which is required by this Act to be given in accounts, and is thereby allowed to be given in a statement annexed, may be given in the directors' report instead of the accounts and, if any such information is so given, the report shall be annexed to the accounts and this Act shall apply in relation thereto accordingly, except that the auditor shall report thereon only so far as it gives the said information.

*Sub-Part D: Directors and other officers*

### 195 Directors and their functions and responsibilities

(1) A private company with more than one and fewer than ten shareholders shall have two or more directors, a private company with ten or more shareholders shall have not fewer than three directors, and a public company shall have not fewer than seven nor more than fifteen directors.

(2) At least one director shall be ordinarily resident in Zimbabwe.

(3) Any director who is a company's chief executive officer shall not also be the chairperson of the board of that company

(4) Each or every director (as the case may be) shall exercise independent judgment and shall act within the powers of the company in a way that he or she considers, in good faith, to promote the success of the company for the benefit of its shareholders as a whole.

(5) For the purpose of subsection (4), every director shall have regard to, among other things—

(a) the long-term consequences of any decision;

(b) the interests of the company's employees;

(c) the need to foster the company's relationships with suppliers, customers and others;

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- (d) the impact of the company's operations on the community and the environment;
  - (e) the desirability of the company maintaining a reputation for high standards of business conduct;
  - (f) the need to act fairly as between shareholders of the company.
- (6) An individual director may not assign or delegate his or her responsibility or accountability under this Act to another person.

Provided that for the avoidance of doubt this subsection does not prohibit the delegation of clerical, administrative and other non-core management functions to other staff or to a company service provider licensed under section *two hundred and ninety-two* ("Business entity incorporation agents and business entity service providers").

- (7) Every person signing the memorandum of a company shall, until other directors are appointed, be deemed to be a director of the company and be liable for all the duties and obligations of a director:

Provided that where a person signs the memorandum, whether as agent or otherwise, on behalf of some other person who is not qualified to be a director of the company, the first-mentioned person shall be deemed to be a director.

- (8) The provision of this section relating to the duties of a director of a company are in addition to, and do not derogate from, the duties of care and loyalty outlined in *sections fifty-four* ("*Duty of care and business judgment rule*") and *section fifty-five* ("*Duty of loyalty*").

- (9) In the case of public company no director shall serve on more than 6 boards of unassociated public companies, and his or her service to other boards shall be disclosed at every general meeting.

- (10) Where any director contravenes subsection (9), he or she shall be in default and be liable to a category 2 civil penalty:

Provided that any director who serves on more than 6 boards on the effective date may continue to do so until the expiration of his or her term of office of the board in question.

- (11) The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

### 196 Directors acting other than in person at meeting

(1) A decision that could be voted on at a meeting of the board of a company may instead be adopted by written consent, stating the action so taken, signed by all of the directors entitled to vote on the matter. A decision made in such manner is of the same effect as if it had been approved by voting at a meeting.

(2) Unless prohibited by a company's memorandum of association or articles of association, a meeting of a company's board may be held by means of electronic, conference telephone or other audio or visual communications equipment if all participants can hear and talk or otherwise communicate concurrently with each other. The persons attending a meeting in this way shall be considered to be present at the meeting.

### 197 Liability of directors and prescribed officers

- (1) In this section—

**"director"** includes an alternate director, and a person who is a member of a committee of a board of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company's board;

**"reasonable public notice"**, in relation to the giving of such notice by a director for the purpose of proviso (vii) or (viii) to paragraph (d), may be constituted by the giving of a written notice to the Registrar timeously, that is to say before the issue of the prospectus in the case of proviso (viii), or at the time the director concerned became aware of the untrue statement in the case of proviso (viii), as the case may be (but in either case the onus is on the director to prove timeousness).

- (2) A director of a company may be held liable—

(a) in accordance with the principles of the common law relating to breach of a fiduciary duty, for any loss, damages or costs sustained by the company as a consequence of any breach by the director of—

(i) a duty contemplated in *section fifty-four* ("*Duty of care and business judgment rule*"), *section fifty-five* ("*Duty of loyalty*"), and *section fifty-seven* ("*Duty to disclose conflict of interest*") and *section one hundred and ninety-five* ("*Directors and their functions and responsibilities*") (4), (5) and (6); or

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(ii) section fifty-six (“Transactions involving conflict of interest”); or

(iii) any provision of this Act not otherwise mentioned in this section;

or

(iv) any provision of the company’s memorandum and articles of association for which the director is personally responsible or may be held personally liable.

(3) A director of a company is liable for any loss, damages or costs sustained by the company as a direct or indirect consequence of the director having—

(a) acted in the name of the company, signed anything on behalf of the company, or purported to bind the company or authorise the taking of any action by or on behalf of the company, despite knowing that the director lacked the authority to do so; or

(b) acquiesced in the carrying on of the company’s business despite knowing that it was being conducted in a manner described in section sixty-eight (“Fraudulent, reckless or grossly negligent conduct of business”)(3); or

(c) been a party to an act or omission by the company despite knowing that the act or omission was calculated to defraud a creditor, employee or shareholder of the company, or had another fraudulent purpose; or

(d) signed, consented to, or authorised, the publication of—

(i) any financial statements that were false or misleading in a material respect; or

(ii) a prospectus or a statement *in lieu* of prospectus that contains—

A. an “**untrue statement**” as defined and described in section two (“*Interpretation*”)(1); or  
B. a statement to the effect that a person had consented to be a director of the company, when no such consent had been given, despite knowing that the statement was false, misleading or untrue, as the case may be:

Provided that the liability contemplated in this paragraph does not apply if —

(iii) with respect to every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, the director had reasonable grounds to believe, and did up to the time of the allotment of the shares or the acceptance of the offer, as the statement may be, believe that the statement was true;

or

(iv) the director had reasonable grounds to believe and did up to the time that the prospectus believe that the expert who made the statement was competent to make it and consent as required by this Act to the issue of the prospectus or the making of the offer and had not withdrawn that consent before the prospectus was filed or, to that director’s knowledge, before any allotment or before the acceptance of the offer; or

(v) any untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document was a correct and fair representation of the statement or copy or extract from the document; or

(vi) the director consented to become a director of the company, but subsequently withdrew that consent before the issue of the prospectus and that it was issued without his or her consent; or

(vii) the prospectus was issued without the knowledge or consent of the director concerned, and on becoming aware of its issue, the director forthwith gave reasonable public notice that it was issued without his or her knowledge or consent; or

(viii) after the issue of the prospectus and before allotment or acceptance thereunder, the director, on becoming aware of any untrue statement in it, withdrew any consent to the prospectus and gave reasonable public notice of the withdrawal and of the reason for it;

(e) been present at a meeting, or participated in the making of a decision in terms of section one hundred and ninety-six (“Directors acting other than *in person at meeting*”), and failed to vote against—

(i) the issuing of any unauthorised shares, despite knowing that those shares had not been authorised in accordance with section ninety-six (“Authorisation for shares”);

(ii) the issuing of any authorised shares or debentures, despite knowing that the issue of those shares or debentures was inconsistent with sections ninety-six and one hundred and thirty-nine (“Existing shareholders’ right of first refusal to new shares”);

(iii) the granting of options to any person contemplated in section one hundred and one (“Options for subscription of shares or debentures”)(4), despite knowing that any shares—

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A. for which the options could be exercised;  
or  
B. into which any shares could be converted;  
had not been authorised in terms of *section ninety-six*;

(iv) the provision of financial assistance to any person contemplated in *section one hundred and twenty-three* ("Financial assistance by company for purchase of its own or its holding company's shares") for the acquisition of securities of the company, despite knowing that the provision of financial assistance was inconsistent with *section one hundred and twenty-one* or the company's memorandum of association, to the extent that the resolution or agreement has been declared void in terms of section 123(2)(a) ("Financial assistance by company for purchase of its own or its holding company's shares"), read with *section sixty-five* ("Allegations of voidness, impropriety, etc. by registered business entities") (1);

(v) the provision of financial assistance to a director for a purpose contemplated in *section two hundred and eight* ("Prohibition of financial assistance to directors"), despite knowing that the provision of financial assistance was inconsistent with that section or the company's memorandum of association;

(vi) a resolution approving a distribution, despite knowing that the distribution was contrary to *section one hundred and thirty-eight* ("Distributions must be authorised by board"), subject to subsection (4);

(vii) the acquisition by the company of any of its shares, or the shares of its holding company, despite knowing that the acquisition was contrary to *section one hundred and thirty-eight* or *section one hundred and twenty-eight* ("Power of company to purchase own shares"); or

(viii) an allotment by the company, despite knowing that the allotment was contrary to any provision of Sub-Part C ("Allotment") of Part II ("Share Capital and Debentures") of this Chapter to the extent that the allotment or an acceptance is declared void under that Sub-Part as read with section 65(1).

(4) The liability of a director in terms of subsection (3)(e)(vi) as a consequence of the director having failed to vote against a distribution in contravention of *section one hundred and thirty-eight* -

(a) arises only if—

(i) immediately after making all of the distribution contemplated in a resolution in terms of *section one hundred and thirty-five* ("Power of company to arrange for different amounts being paid on shares"), the company does not satisfy the solvency and liquidity test; and

(ii) it was unreasonable at the time of the decision to conclude that the company would satisfy the solvency and liquidity test after making the relevant distribution;

and

(b) does not exceed, in aggregate, the difference between—

(i) the amount by which the value of the distribution exceeded the amount that could have been distributed without causing the company to fail to satisfy the solvency and liquidity test; and

(ii) the amount, if any, recovered by the company from persons to whom the distribution was made.

(5) If the board of a company has made a decision in a manner that contravened this Act, as contemplated in subsection (3)(e)—

(a) a company, or any director who has been or may be held liable in terms of subsection (3)(e), may apply to a court for an order setting aside the decision of the board; and

(b) the court may make—

(i) an order setting aside the decision in whole or in part, absolutely or conditionally; and

(ii) any further order that is just and equitable in the circumstances, including an order—

A. to rectify the decision, reverse any transaction, or restore any consideration paid or benefit received by any person in terms of the decision of the board; and

B. requiring the company to indemnify any director who has been or may be held liable in terms of this section, including indemnification for the costs of the proceedings under this subsection.

(6) The liability of a person in terms of this section is joint and several with any other person who is or may be held liable for the same act.

(7) Proceedings to recover any loss, damages or costs for which a person is or may be held liable in terms of this section may not

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be commenced more than three years after the act or omission that gave rise to that liability.

(8) In addition to the liability set out elsewhere in this section, any person who would be so liable is jointly and severally liable with all other such persons—

(a) to pay the costs of all parties in the court in a proceeding contemplated in this section unless the proceedings are abandoned, or exculpate that person; and

(b) to restore to the company any amount improperly paid by the company as a consequence of the impugned act, and not recoverable in terms of this Act.

(9) In any proceedings against a director, other than for wilful misconduct or wilful breach of trust, the court may relieve the director, either wholly or partly, from any liability set out in this section, on any terms the court considers just if it appears to the court that—

(a) the director is or may be liable, but has acted honestly and reasonably;

or

(b) having regard to all the circumstances of the case, including those connected with the appointment of the director, it would be fair to excuse the director.

(10) A director who has reason to apprehend that a claim may be made alleging that the director is liable, other than for wilful misconduct or wilful breach of trust, may apply to a court for relief, and the court may grant relief to the director on the same grounds as if the matter had come before the court in terms of subsection (9).

### 198 Company secretary: functions, qualifications and disqualifications

(1) Every company shall have at least one secretary ordinarily resident in Zimbabwe.

(2) The board of a public company shall appoint one or more secretaries, being a person or persons who are qualified in terms of subsection (4) to be the secretary of a public company, and who must not also hold another office as an officer of the company.

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(3) The functions of the secretary shall include but need not be restricted to—

(a) acting as custodian of the company's records including the shareholder records referred to in Sub-Part H ("Transfer of shares

and debentures, evidence of titles, etc") of Part II ("Share Capital and Debentures") of Chapter III and the company's accounting records; and

(b) ensuring that notices of all shareholder meetings, board meetings and board committee meetings are given in accordance with this Act; and

(c) ensuring that minutes of all such meetings are recorded in accordance with this Act; and

(d) advising the directors as to their duties and powers under this Act; and

(e) making the directors aware of other laws relevant to or affecting the company; and

(f) certifying in the company's annual financial statements whether the company has filed required returns and notices in terms of this Act, including but not limited to the company's annual return and the board's "comply or explain" report to shareholders on corporate governance under *section two hundred and twenty ("Corporate governance guidelines for public companies")*(3).

(4) A person shall be qualified to hold office as secretary of a public company if—

(a) for at least three of the 5 years immediately before his or her appointment as secretary, he or she held office as secretary of a public company; or

(b) he or she is registered or entitled to be registered as a chartered accountant under the Chartered Accountants Act [Chapter 27:02]; or

(c) he or she is registered or entitled to be registered as a chartered secretary under the Chartered Secretaries (Private) Act [Chapter 27:03]; or

(d) he or she is registered or entitled to be registered as a legal practitioner under the Legal Practitioners Act [Chapter 27:07];

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or

(e) he or she is registered or entitled to be registered as a public accountant or public auditor under the Public Accountants and Auditors Act [Chapter 27:12]; or

(f) he or she holds such other qualification as may be prescribed in regulations.

(5) The following persons shall be disqualified from being appointed as secretary of a public company (and if any of the following disqualifications affect a secretary of a private

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company, subsection (10) shall apply thereto)—

(a) a minor or any other person under legal disability;

(b) except with the leave of the court, any person who has at any time been adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, and has not been rehabilitated or discharged;

(c) except with the leave of the court, any person who has at any time been convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced for that offence to imprisonment without the option of a fine or to a fine exceeding level five;

(d) except with the leave of the court, any person who has been removed by a competent court from an office of trust on account of misconduct.

(6) The directors of every public company shall take reasonable steps to ensure that the company's secretary is a person who is qualified in terms of subsection (4) and is not disqualified in terms of subsection (5) and, in addition, has the requisite knowledge and experience to discharge the functions of secretary of the company.

(7) A secretary of a public company shall cease to hold office as such if—

(a) he or she has at any time been or is adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country; or

(b) he or she is convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five; or

(c) he or she is removed by a competent court from any office of trust on account of misconduct.

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(8) If a person who is disqualified under this section from being or continuing to be a secretary of any public company directly or indirectly takes part in or is concerned in the management of any company, he or she shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(9) Nothing in this section shall be deemed to prevent a company from applying under its regulations any further disqualification for the appointment of, or the retention of office by, a secretary.

(10) The director or principal shareholder of a private company is not bound by the provisions of subsections (4) and (5) when appointing or continuing to retain the secretary of that company, but the director or principal shareholder must file with the Registrar (within thirty days of becoming so aware) a statement in the event that the secretary of his or her company becomes affected by any of the disqualifications in subsection (3) that would apply to him or her if the secretary was the secretary of a public company, which statement shall be available for inspection to the public at normal working hours.

Provided that the director or principal shareholder shall withdraw such filing in the event of the secretary of his or her company no longer being subject to any such disqualification.

### 199 Restrictions on appointment or advertisement of director; share qualifications of directors

(1) This section shall not apply to—

(a) an association licensed under section eighty-two (“Power to dispense “Limited” in certain cases”); or

(b) a private company; or

(c) a company which was a private company before becoming a public company; or

(d) a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company was entitled to commence business.

(2) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in the list to be lodged in terms of subsection (4) or in any prospectus issued by or on behalf of the company, or in relation to an intended company or in any statement in lieu of prospectus lodged by or on behalf of the company, unless, before the lodging of the list or registration of the articles or the publication of the prospectus, or the lodging of the statement in lieu of prospectus, as the case may be, he or she has himself or herself or by his or her agent authorised in writing—

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(a) signed and lodged with the Registrar a consent in writing to act as such director; and

(b) either signed the memorandum of association for a number of shares not less than his or her qualification, if any, or signed and lodged with the Registrar a contract in writing to take from the company and pay for his or her qualification shares, if any.

(3) The share qualification mentioned in subsection (2) means a share qualification required on appointment to the office of director or within a period determined by reference to the time of appointment and the words "qualification shares" shall be construed accordingly.

(4) When application is made under section eighteen ("Registration of constitutive documents") for registration of the memorandum and of the articles, if any, of a company the applicant shall lodge with the Registrar a list, in the prescribed form, of the persons, if any, not being less than two, with their full names, addresses and occupations, who have consented to be directors of the company and, upon such registration, the persons who have so consented shall, until other directors are appointed, be deemed to be the directors of the company and liable for all the duties and obligations of a director.

(5) For the purposes of subsection (4), a person who, having consented to be a director, has before the lodging of the list with the Registrar withdrawn his or her consent by notice in writing lodged with the Registrar, shall be deemed to be a person who has not so consented.

(6) Without prejudice to the restrictions imposed by this section, it shall be the duty of every director who is by the articles of the company required to hold a specified share qualification and who is not already qualified, to obtain his qualification within two months after his or her appointment or such shorter time as may be fixed by the articles.

(7) The office of director of a company shall be vacated if the director does not, within two months from the date of his or her appointment or within such shorter time as may be fixed by the articles, obtain his qualification or if, after the expiration of the said period or shorter time, he or she ceases at any time to hold his or her qualification.

(8) A person vacating office under subsection (7) shall be incapable of being reappointed director of the company until he or she has obtained his or her qualification.

(9) If, after the expiration of the said period or shorter time, any unqualified person acts as a director of the company, the Registrar may serve upon him or her a category 1 civil penalty order, in which the cumulative penalty shall be calculated for every day between the expiration of the said period or shorter time, or the day on which he or she ceased to be qualified, as the case may be, and the last day on which it is proved that he or she acted as a director.

### 200 Disqualification for appointment as director

(1) Any of the following persons shall be disqualified from being appointed a director of a public company—

(a) a body corporate; or

(b) a minor or any other person under legal disability; or

(c) a person who is removed by the court from any office of trust on account of misconduct save with the leave of the court; or

(d) a person who has at any time been convicted whether in Zimbabwe or elsewhere, of theft, fraud, forgery or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine or to a fine exceeding level five.

(2) A director of any public company shall cease to hold office as such if—

(a) he or she has any time been or is adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country; or

(b) he or she is convicted, whether in Zimbabwe or elsewhere of theft, fraud, forgery or perjury and has been sentenced therefore to serve a term of imprisonment without the option of a fine or to a fine exceeding level five; or

(c) except with the leave of the court, any person who has at any time been adjudged or otherwise declared insolvent or bankrupt under a law in force in Zimbabwe or any other country, and has not been rehabilitated or discharged;

(3) If any person who is disqualified under this section from being or continuing to be a director of any company directly or indirectly takes part in or is concerned in the management of any company he or she shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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(4) Nothing in this section shall be deemed to prevent a company from applying under its regulations any further disqualification for the appointment of, or the retention of office by, a director.

(5) In relation to private companies, the secretary or principal shareholder shall file with the Registrar (**within 30 days** of becoming so aware) a statement in the event that a director of his or her company is or becomes affected by any of the disqualifications in this section that would apply to him or her if the director was the director of a public company, which statement shall be available for inspection to the public at normal working hours:

Provided that the secretary or principal shareholder shall withdraw such filing in the event of the director of his or her company no longer being subject to any such disqualification.

### 201 Appointment of directors to be voted on individually

(1) At a general meeting of a company other than a private company a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.

(2) A resolution moved in contravention of subsection (1) shall be void, whether or not its being so moved was objected to at the time:

Provided that—

(i) this subsection shall not be taken as excluding the operation of *section one hundred and ninety-five ("Directors and their functions and responsibilities")*(5);

(ii) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

(3) For the purposes of this section, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his or her appointment.

### 202 Removal and resignation of directors

(1) One or more directors may be removed, with or without a stated reason or cause, at a general meeting by a majority of the votes of shares then entitled to vote at an election of directors, except that no director may be

removed unless the notice of the meeting states that a purpose of the meeting was to vote on the removal of such director at the meeting.

(2) The removal of a director shall not in itself prejudice any right to compensation upon removal which the director may have under a contract with the company. However, the election or status of a person as a director shall not, in itself, create any such rights.

(3) A director may resign at any time by giving written notice, as far in advance as is practicable, to the board of directors or its chairperson. A resignation is effective when the notice is given unless the notice specifies a future date. The pending vacancy may be filled before the effective date of the resignation, but the successor shall not take office until the effective date.

### 203 Vacancies on board of directors

(1) A vacancy on a board of directors shall be filled by election at the next general meeting at which directors are to be elected, except that the company's articles of association may provide that the board of directors may fill such vacancy until such time, in which case it may do so but subject to subsection (2).

(2) If at any time vacancies on a board equal twenty-five (25) *per centum* or more of the total number of board seats, the board shall convene an extraordinary shareholder meeting to meet within two months after that event occurs, for the purpose filling the vacancies.

(3) The foregoing shall not apply if the annual general meeting is to occur within that time.

(4) A director elected to fill a vacancy shall serve until the expiration of the term of the director whose vacancy the person filled.

### 204 Quorum and vote required

(1) A majority of the total number of directors fixed in a company's articles of association shall constitute a quorum for decision making and the transaction of business, unless a greater number for a quorum is specified in the articles of association.

(2) The affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act and decision of the board of directors, unless the articles of association requires a greater number of directors.

(3) The chairperson of the board shall have a casting vote in the event of a deadlock of the vote referred to in subsection (2), unless

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provided otherwise in the articles of association.

### 205 Minutes of meeting of board and committees

(1) Minutes of each meeting of the board and any committee shall be prepared promptly after the meeting, and shall be submitted to the board or committee at its next meeting for its review and adoption.

(2) The minutes referred to in subsection (1) shall include—

- (a) a statement of the place and time of the meeting; and
- (b) the persons present; and
- (c) the agenda at the meeting; and
- (d) the issues submitted for voting; and
- (e) the results of each vote including the names of the directors who voted "for" or "against" or who abstained; and
- (f) the decisions which were adopted at the meeting.

(3) The minutes required to be kept in terms of this section shall be deemed approved if signed by the chairperson of the meeting.

(4) Failure to act as required by subsection (1) shall not in itself affect otherwise valid decisions of the board of directors

(5) If it comes to the notice of the Registrar that a company has not been keeping minutes in accordance with this section it shall be liable to a category 2 civil penalty.

### 206 Independent directors required for public companies

(1) In this section—

**"independent director"** means a director of the company who has not, or whose family members have not received any payment or held any share or interest, or any post in the company referred to in the definition of "non-executive director";

**"non-executive director"** means a director of the company who, or any of whose family members either separately or together with him or her or each other, during the **2 years** preceding the time in question—

- (a) was not an employee of the company; and
- (b) did not—

(i) make to or receive from the company payments of more than **US\$50 000** or the equivalent thereof; or

(ii) own more than a **20%** of the shares or other ownership interest of the same extent, directly or indirectly, in an entity that made to or received from the company payments of more than the amount stated in subparagraph (i); or

(iii) act as a partner, manager, director or officer of a partnership or company that made to or received from the company payments of more than such amount; and

(c) did not own directly or indirectly (including for this purpose ownership by and family shareholder or related person) more than **20%** of the shares of any type or class of the company; and

(d) was not engaged directly or indirectly as an auditor for the company.

(2) A public company shall have **at least 3** non-executive or independent directors on its board of directors.

(3) In a public company, any person who nominates candidates for the board who would comprise a majority of the members of the board must nominate at least 3 candidates any one of whom would, if appointed, be an independent director.

### 207 Shareholder approval of directors' emoluments

(1) A company may pay reasonable emoluments to directors which may include shares or options for shares of the company.

(2) The emoluments of a director of a public company must be approved by the shareholders of that company at the annual general meeting.

(3) If it comes to the notice of the Registrar that a public company has not complied with subsection (2) to the Registrar shall serve a category 2 civil penalty order upon the company

### 208 Prohibition of financial assistance to directors

(1) It shall not be lawful for a company to make a loan or render other financial assistance to any person who is its director or a director of its holding company or to enter into any guarantee or provide any security in connection with a loan made to such a person as aforesaid by any other person:

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Provided that nothing in this section shall apply—

(a) subject to subsection (2), to anything done to provide any such person as aforesaid with funds to meet expenditure incurred or to be incurred by him or her for the purposes of the company or for the purpose of enabling him or her properly to perform his or her duties as an officer of the company; or

(b) in the case of a company whose ordinary business includes the lending of money or the giving of guarantees in connection with loans made by other persons, to anything done by the company in the ordinary course of that business; or

(c) to anything done by a private company, which is not a subsidiary company, with the consent of members holding at least nine-tenths of the issued share capital; or

(d) to the making of a loan to a director with a view to enabling him or her to purchase or subscribe for fully paid shares in the company to be held by him or her or in trust for him or her, if the loan is made in accordance with *section one hundred and twenty-three* ("Financial assistance by company for purchase of its own or its holding company's shares").

(2) Proviso (1) (a) shall not authorise the making of any loan or the entering into any guarantee or the provision of any security, except—

(a) with the prior approval of the company given at a general meeting at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the approval of the company is not given as aforesaid at or before the next following annual general meeting, the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be, within six months from the conclusion of that meeting.

(3) Where the approval of the company is not given as required by any such condition, the directors authorising the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss arising therefrom.

(4) If it comes to the notice of the Registrar that any default has been made in complying with subsection (1), he or she may serve a category 3 civil penalty order upon the company

and every officer of the company who is in default, in which the remediation clause shall require the director receiving any loan in contravention of this section to repay it to the company within the specified period together with interest at twice the level of the prescribed rate of interest prevailing at the time the civil penalty order is issued

(5) In relation to any private company, the secretary or principal shareholder shall file with the Registrar (**within 30 days** of becoming so aware) a statement in the event that a director receives any loan which in this section would be prohibited if the director was a director of a public company, which statement shall be available for inspection by the public during normal working hours.

### 209 Approval of company requisite for payment by it to director for loss of office

(1) It shall not be lawful for a public company to make to any director of the company any payment by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, without full particulars with respect to the proposed payment, including the amount thereof, being disclosed to members of the company and the proposal being approved by the company in general meeting.

(2) In relation to private companies, the secretary or principal shareholder shall file with the Registrar (within thirty days of becoming so aware) a statement in the event that a director has been paid for loss of office, furnishing all the particulars thereof, which statement shall be available for inspection by the public during normal working hours.

### 210 Approval of company requisite for payment in connection with transfer of its property to director for loss of office

(1) It shall not be lawful, in connection with the transfer of the whole or any part of the undertaking or property of a public company, for any payment to be made by any person to any director of the company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal approved by the company in general meeting.

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(2) Where a payment which is hereby declared to be illegal is made to a director of the company, the amount received shall be deemed to have been received by him or her in trust for the company.

(3) In relation to private companies, the secretary or principal shareholder shall file with the Registrar (**within 30 days** of becoming so aware) a statement in the event that a transfer contemplated by subsection (1) has been made, furnishing all the particulars thereof, which statement shall be available for inspection by the public during normal working hours.

### **211 Duty of director to disclose payments for loss of office, made in connection with transfer of shares in company**

(1) Where, in connection with the transfer to any persons of all or any of the shares in a public company, being a transfer resulting from—

- (a) an offer made to the general body of shareholders; or
- (b) an offer made by or on behalf of some other body corporate with a view to the company becoming its subsidiary or a subsidiary of its holding company; or
- (c) an offer made by or on behalf of an individual with a view to his or her obtaining the right to exercise or control the exercise of not less than one-third of the voting power at any general meeting of the company; or
- (d) any other offer which is conditional on acceptance to a given extent;

a payment is to be made to a director of the company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, it shall be the duty of that director to take all reasonable steps to secure that particulars with respect to the proposed payment, including the amount thereof, shall be included in or sent with any notice of the offer made for their shares which is given to any shareholders

(2) If—

- (a) any such director fails to take reasonable steps as aforesaid; or
- (b) any person who has been properly required by any such director to include the said particulars in or send them with any such notice as aforesaid fails so to do;

such director or such person, as the case may be, shall be liable to a category 1 civil penalty.

(3) If—

(a) the requirements of subsection (1) are not complied with in relation to any such payment as is therein mentioned; or

(b) the making of the proposed payment is not, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of the said shares;

any sum received by the director on account of the payment shall be deemed to have been received by him or her in trust for any persons who have sold their shares as a result of the offer made and the expenses incurred by him or her in distributing that sum amongst those persons shall be borne by him or her and not retained out of that sum.

(4) Where the shareholders referred to in subsection (3)(b) are not all the members of the company and no provision is made by the articles for summoning or regulating such a meeting as is mentioned in that provision, the provisions of this Act and of the company's articles relating to general meetings of the company shall, for that purpose, apply to the meeting either without modification or with such modifications as the Registrar on the application of any person concerned may direct for the purpose of adapting them to the circumstances of the meeting.

(5) If at a meeting summoned for the purpose of approving any payment as required by subsection (3)(b) a quorum is not present and, after the meeting has been adjourned to a later date, a quorum is again not present, the payment shall be deemed for the purposes of that subsection to have been approved.

### **212 Provisions supplementary to sections 209, 210 and 211**

(1) Where in proceedings for the recovery of any payment as having, by virtue of *section two hundred and nine* ("Approval of company requisite for payment by it to director for loss of office") (1), *section two hundred and ten* ("Approval for company requisite for payment in connection with transfer of its property to director for loss of office") (1) and (2) or *section two hundred and eleven* ("Duty of director to disclose payment for loss of office, made with transfer of shares in company") (1) and (3),

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been received by any person in trust it is shown that—

- (a) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question or within one year before or two years after that agreement or the offer leading thereto; and
- (b) the company or any person to whom the transfer was made was privy to that arrangement;

the payment shall be deemed, except in so far as the contrary is shown, to be one to which the aforementioned provisions apply.

(2) If, in connection with any such transfer as is mentioned in *sections two hundred and ten* or *section two hundred and eleven* —

- (a) the price to be paid to a director of the company whose office is to be abolished or who is to retire from office for any shares in the company held by him or her is in excess of the price which could at the time have been obtained by other holders of the like shares; or
- (b) any valuable consideration is given to any such director; the excess or the money value of the consideration, as the case may be, shall, for the purposes of that section, be deemed to have been a payment made to him or her by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office.

(3) References in *section two hundred and eight* ("Prohibition of financial assistance to directors"), *section two hundred and nine* or *section two hundred and ten* to payments made to any director of a company by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office do not include any *bona fide* payment by way of damages for breach of contract or by way of pension in respect of past services and for the purposes of this subsection the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment.

(4) Nothing in *section two hundred and eight* or *two hundred and nine* shall be taken to prejudice the operation of any rule of law requiring disclosure to be made with respect to any such payments as are therein mentioned or with respect to any other like payments made or to be made to the directors of a company.

### 213 Register of directors' share holdings

(1) Every company, other than a private company, shall keep a register showing as respects each director of the company the number, description and amount of any shares in or debentures of the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company, which are held by or in trust for him or her or of which he or she has any right to become the holder, whether on payment or not:

Provided that the register need not include shares in any body corporate which is the wholly owned subsidiary of another body corporate.

(2) The nature and extent of a director's interest or right in or over any shares or debentures recorded in relation to him or her in the said register must be indicated in the register.

(3) The company shall not, by virtue of anything done for the purposes of this section, be affected with notice of or put upon inquiry as to, the rights of any person in relation to any shares or debentures.

(4) The said register shall, subject to this section, be kept at the company's registered office and shall be open to inspection during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than two hours in each day be allowed for inspection, as follows—

(a) during the period beginning fourteen days before the date of the company's annual general meeting and ending three days after the date of its conclusion, it shall be open to the inspection of any member or holder of debentures of the company; and

(b) during that or any other period it shall be open to the inspection of any person acting on behalf of the Registrar.

In computing the fourteen days and the three days mentioned in this subsection any day which is a Saturday or Sunday or public holiday shall be disregarded.

(5) The Registrar may at any time require a copy of the said register or any part thereof.

(6) The said register shall be produced at the commencement of the company's annual general meeting and remain open and

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accessible during the continuance of the meeting to any person attending the meeting.

(7) In this section—

(a) any person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director of the company; and

(b) a director of a company shall be deemed to hold, or to have an interest or right in or over, any shares or debentures if a body corporate other than the company holds them or has that interest or right in or over them, and—

(i) that body corporate or its directors are accustomed to act in accordance with his or her directions or instructions; or

(ii) he or she is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of that body corporate.

(8) It shall be the duty of every director of a company and of every person deemed to be a director under subsection (7) (a) to give notice to the company of such matters relating to himself or herself as may be necessary for the purposes of this section. Any such notice shall be in writing and if it is not given at a meeting of directors the person giving it shall take reasonable steps to secure that it is brought up and read at the next meeting of directors after it is given. Any person who makes default in complying with this subsection shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(9) If default is made in complying with—

(a) subsection (1) or (2), the company and every officer of the company who is in default shall be liable to a category 3 civil penalty;

(b) subsection (4), the company and every officer of the company who is in default shall be liable to a category 4 civil penalty;

(c) subsection (5), the company and every officer of the company who is in default shall be liable to a category 2 civil penalty;

(d) subsection (6) or (8), the company and every officer of the company who is in default shall be liable to a category 1 civil penalty.

### 214 Prohibition of allotment of shares to directors save on same terms as to all members, and restriction on sale of undertakings by directors

(1) Notwithstanding anything in the articles, the directors of a company shall not be empowered, without the approval of the company in general meeting—

(a) to issue or allot reserve shares or new shares to any director or his or her nominee save in so far as they are issued or allotted to him or her or to such nominee as a member on the same terms and conditions as have been simultaneously offered in respect of the said issue or allotment of shares to all the members of the company in proportion to their existing holdings;

(b) to dispose of the undertaking of the company or of the whole or the greater part of the assets of the company.

[see *Chevron Investments (Pvt) Ltd v Chihuri & Registrar of Deeds* para 31 of **06-SC-036**]

(2) No resolution of the company shall be effective as approving of the differential issue or allotment of shares to a director or of a disposal in terms of subsection (1)(b) unless it authorises, in terms, the specific transaction proposed by the directors.

### 215 Particulars in accounts of directors' salaries and pensions

(1) In any accounts of a company laid before it in general meeting or in a statement annexed thereto there shall, subject to and in accordance with this section, be shown so far as the information is contained in the company's financial records or the company has the right to obtain it from the persons concerned—

(a) the aggregate amount of the directors' emoluments; and

(b) the aggregate amount of directors' or past directors' pensions; and

(c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.

(2) The amount to be shown under subsection (1) (a) —

(a) shall include any emoluments paid to or receivable by any person in respect of his or her services as director of the company or in

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respect of his or her services, while director of the company, as director of any subsidiary thereof or otherwise in connection with the management of the affairs of the company or any subsidiary thereof; and

(b) shall distinguish between emoluments in respect of services as director, whether of the company or its subsidiary, and other emoluments;

and for the purposes of this section the expression "**emoluments**", in relation to a director, includes fees and share of the profits, shares and share options, any sums paid by way of expenses allowance in so far as those sums are deemed under any law to be taxable income of the recipient, any contribution paid in respect of him or her under any pension scheme and the estimated money value of any other benefits received by him or her otherwise than in cash.

(3) The amount to be shown under subsection (1) (b) —

(a) shall not include any pension paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme, but save as aforesaid shall include any pension paid or receivable in respect of any such services of a director or past director of the company as are mentioned in subsection (2), whether to or by him or her or, on his or her nomination or by virtue of dependence on or other connection with him or her, to or by any other person; and

(b) shall distinguish between pensions in respect of services as director, whether of the company or its subsidiary, and other pensions;

and for the purposes of this section the expression "pension" includes any superannuation allowance, superannuation gratuity or similar payment and the expression "pension scheme" means a scheme for the provision of pensions in respect of services as director or otherwise which is maintained in whole or in part by means of contributions, and the expression "**contribution**", in relation to a pension scheme, means any payment, including an insurance premium, paid for the purposes of the scheme by or in respect of persons rendering services in respect of which pensions will or may become payable under the scheme, except that it does not include any payment in respect of two or more persons if the amount paid in respect of each of them is not ascertainable.

(4) The amount to be shown under subsection (1) (c) —

(a) shall include any sums paid to or receivable by a director or past director by way of compensation for the loss of office as director of the company or for the loss, while director of the company or on or in connection with his or her ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary thereof; and

(b) shall distinguish between compensation in respect of the office of director, whether of the company or its subsidiary, and compensation in respect of other offices;

and for the purposes of this section references to compensation for loss of office shall include sums paid as consideration for or in connection with a person's retirement from office.

(5) The amounts to be shown under each paragraph of subsection (1) —

(a) shall include all relevant sums paid by or receivable from—

- (i) the company; and
- (ii) the company's subsidiaries; and
- (iii) any other person;

except sums to be accounted for to the company or any of its subsidiaries or, by virtue of *section two hundred and eleven ("Duty of director to disclose payment for loss of office, made in connection with transfer of shares in company")*, to past or present members of the company or any of its subsidiaries or any class of those members; and

(b) shall distinguish, in the case of the amount to be shown under subsection (1)(c), between the sums respectively paid by or receivable from the company, the company's subsidiaries and persons other than the company and its subsidiaries.

(6) The amounts to be shown under this section for any financial year shall be the sums receivable in respect of that year, whenever paid, or, in the case of sums not receivable in respect of a period, the sums paid during that year so, however, that where—

(a) any sums are not shown in the accounts for the relevant financial year on the ground that the person receiving them is liable to account therefor as mentioned in subsection (5)(a), but

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the liability is thereafter wholly or partly released or is not enforced within a period of two years; or

(b) any sums paid by way of expenses allowance are included in the recipient's taxable income after the end of the relevant financial year;

those sums shall, to the extent to which the liability is released or not enforced or they are included as aforesaid, as the case may be, be shown in the first accounts in which it is practicable to show them or in a statement annexed thereto and shall be distinguished from the amounts to be shown therein apart from this provision.

(7) Where it is necessary so to do for the purpose of making any distinction required by this section in any amount to be shown thereunder, the directors may apportion any payments between the matters in respect of which they have been paid or are receivable in such manner as they think appropriate.

(8) If in the case of any accounts the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report thereon, so far as they are reasonably able to do so, a statement giving the required particulars.

(9) In this section any reference to a company's subsidiary—

(a) in relation to a person who is or was, while a director of the company, a director also, by virtue of the company's nomination, direct or indirect, of any other body corporate, shall, subject to paragraph (b), include that body corporate, whether or not it is or was in fact the company's subsidiary;

and

(b) shall, for the purposes of subsections (2) and (3), be taken as referring to a subsidiary at the time the services were rendered and, for the purposes of subsection (4), be taken as referring to a subsidiary immediately before the loss of office as director of the company.

(10) It shall be the duty of every director of a public company and of every person who has at any time during the preceding two years been a director to give notice to the company of such matters relating to himself or herself as may be necessary for the purposes of this section; and if he or she makes default in complying with such duty he or she shall be liable to a category 3 civil penalty.

### 216 Particulars in accounts of loans to officers

(1) Save in the case of private companies, the accounts which, in pursuance of this Act, are to be laid before every company in general meeting shall, subject to this section, contain particulars showing—

(a) the amount of any loans which during the period to which the accounts relate have been made by the company or by any subsidiary company, or by any other person under a guarantee from or on a security provided by the company or such subsidiary to any director or other officer of the company, including any such loans which were repaid during the said period;

(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof.

[*Shakala Hills Farms (Pvt) Ltd v Zimbabwe Leaf Tobacco Co (Pvt) Ltd* 18-HH-733]

(2) With respect to loans subsection (1) shall not apply—

(a) in the case of a company or a subsidiary thereof the ordinary business of which includes the lending of money, to a loan made by the company or the subsidiary in the ordinary course of its business; or

(b) to a loan made by the company or the subsidiary to any employee of the company if the loan does not exceed four thousand United States dollars and is certified by the directors of the company or the subsidiary, as the case may be, to have been made in accordance with any scheme adopted by the company or the subsidiary with respect to loans to its employees.

(3) With respect to loans subsection (1) shall apply to a loan to any person who has, during the company's financial year, been a director or other officer of the company made before he or she became a director or officer, as it applies to a loan to a director or officer of the company.

(4) If in the case of any such accounts as aforesaid provisions of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the balance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

(5) References in this section to a subsidiary shall be taken as referring to a subsidiary at the

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end of the company's financial year, whether or not a subsidiary at the date of the loan.

(6) It shall be the duty of every director and of every other officer of a company and of every person who had, at any time within the previous two years, been a director or officer to give notice to the company of any such matters relating to himself or herself as may be necessary for the purposes of this section; and if he or she makes default in complying with such duty he or she shall be liable to a category 3 civil penalty.

### 217 Register of directors and secretaries

(1) Every company shall keep at the office at which the register of members of the company is kept a register of its directors and secretaries.

(2) The said register shall contain with respect to each director his or her present first name and surname, any former first name and surname, an identification reference number appearing in his or her identity document, his or her full residential or business address and postal address, his or her nationality and particulars of any other directorships held by him or her:

Provided that it shall not be necessary for the register to contain particulars of directorships held by a director in companies of which the company is the wholly owned subsidiary or which are the wholly owned subsidiaries either of the company or another company of which the company is the wholly owned subsidiary, and for the purposes of this proviso the expression "company" shall include any body corporate incorporated in Zimbabwe.

(3) The said register shall contain the following particulars with respect to the secretary, that is to say—

(a) in the case of an individual, his or her present first name and surname, any former first name and surname, an identification reference number appearing in his or her identity document and his or her full residential address or business and postal addresses; and

(b) in the case of a corporation, partnership or other association, its name and registered or principal office.

(4) The company shall, within the periods respectively mentioned in subsection (5), deliver to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its

directors or in its secretary or in any of the particulars contained in the register and of the date of any such change:

Provided that, except when making its annual return in terms of section one hundred and sixty-five ("Annual return to be made by company"), it shall not be necessary for a company to deliver to the Registrar a notification of any change in the particulars of directorships held by any of its directors in any other company.

[*Base Minerals Zimbabwe (Pvt)Ltd & Anor v Chiroswa Minerals(Pvt) Ltd & Ors 16-HH-021*]

(5) The period within which the return or notification referred to in subsection

(4) is to be delivered to the Registrar shall be one month after the incorporation of the company or the date on which the change is notified to the company, as the case may be.

(6) It shall be the duty of every director and secretary of every company to furnish the company with all particulars required for inclusion in the said register, including any addition to or alteration or other change in any such particulars, and any director or secretary who neglects or fails without reasonable excuse to furnish the company with any particulars so required within seven days after demand made by the company, or who furnishes the company with any particular which is incorrect in any respect, shall be in default and liable to a category 3 civil penalty.

(7) The resignation of a director or a secretary shall not relieve him or her of his or her duties as director or secretary, as the case may be, under this Act or under the articles of the company unless the director or secretary, having notified the Registrar and the company of his or her resignation, had reasonable ground to believe that the company would comply with subsection (5).

[*Base Minerals Zimbabwe (Pvt)Ltd & Anor v Chiroswa Minerals(Pvt) Ltd & Ors 16-HH-021*dee]

(8) The register to be kept under this section shall, during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that **not less than 2 hours in each day** be allowed for inspection, be open to the inspection of any member of the company without charge, and of any other person on payment of **20 cents** or such less sum as the company may prescribe for each inspection.

(9) The company shall, on application, furnish any person with a copy or extract from such

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register on payment of **25 cents** or such less sum as the company may prescribe for every hundred words or part thereof of the required copy or extract or afford to such person adequate facilities for making such copy or extract.

The company shall cause any copy or extract so required by any person to be sent to that person within a **period of 21 days** commencing on the day next after the day on which the requirement is received by the company.

(10) Subject to subsection (11), if default is made in complying with subsection (1), (2), (3) or (4) the defaulting company shall be liable to a category 4 civil penalty.

(11) If any inspection under this section is refused, the defaulting company shall be liable to a category 2 civil penalty.

(12) For the purposes of this section—

(a) a person in accordance with whose directions or instructions the directors of a company are accustomed to act shall be deemed to be a director and officer of the company;

(b) in the case of a peer or person usually known by a title different from his or her surname the expression "surname" means that title;

(c) references to a former first name or surname do not include—

(i) in the case of any person, a former first name or surname where the name or surname was changed or disused before the person bearing the name attained the age of eighteen years; or

(ii) in the case of a married woman, the name or surname by which she was known previous to the marriage.

*Sub-Part E: Responsibilities of boards, audit committees of public company and*

*corporate governance guidelines for public companies*

### 218 Board's role and responsibilities

(1) The board of directors shall be responsible for decisions on all matters except those reserved to the shareholders by this Act or by the company's constitutive documents.

(2) Without limiting the foregoing, the board's responsibilities include—

(a) determining and directing overall business performance and strategy plans for the company; and

(b) ensuring that the financial records, financial statements and external audit referred to in Sub-Part C (" Accounts and audit") are kept, maintained and performed as stated in that Sub-Part; and

(c) the appointment, removal, compensation and performance of officers and oversight of management of the company; and

(d) the convening of and preparation of the initial agenda for shareholder meetings; and

(e) determining the record date for shareholders entitled to participate in a shareholder meeting, and setting the amounts and the record dates of, and payment dates for, and procedures in connection with, the payment of dividends and other distributions; and

(f) authorising the issuance of shares and other securities that the board is authorised to issue and authorising the borrowing of money and otherwise incurring debt, except in each case when those powers are reserved to the shareholders; and

(g) deciding any other matters referred to the exclusive competence of the board of directors in the company's constitutive documents.

(3) The board shall exercise collectively the responsibilities that under section 195 ("Directors and their functions and responsibilities") (2) directors must exercise individually.

(4) The responsibilities and accountability of the board of directors and its committees may not be transferred to, discharged by or determined by other persons or other bodies within or outside the company; in particular, an individual director may not assign or delegate his or her responsibilities or accountability under this Act to another person.

### 219 Audit committee of public company

(1) The Board of every public company shall have such committees as may be specified in its articles of association, but must in any event appoint an audit committee consisting of at least three appointees, all of whom shall be independent directors (under no circumstances may the chairperson of the board be a member of the audit committee) and having the responsibilities specified in subsection (2).

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- (2) The audit committee shall be responsible for—
- (a) the selection, remuneration, and terms of engagement of an external auditor, who, in its judgment, is independent of the company, subject to ratification by the shareholders; and
  - (b) proposing, for approval by the shareholders, the engagement of that auditor upon such remuneration and other terms as it has determined to be reasonable; and
  - (c) monitoring the independence of the company's external auditor in terms of subsection (4); and
  - (d) discharging the particular tasks referred to in subsection (5); and
  - (e) reporting to the shareholders generally on its activities and on matters of its greatest concern.
- (3) Subsection (2) does not preclude the appointment by the shareholders at an annual general meeting of an auditor other than one nominated by the audit committee, but if such an auditor is appointed, the appointment shall be valid only if the audit committee is satisfied that the proposed auditor is independent of the company and qualified to audit public companies under the Public Accountants and Auditors Act [Chapter 27:12].
- (4) For that purpose of subsection (2)(c) the audit committee shall have authority to pre-approve any arrangement under which the auditor, directly or indirectly, provides non-audit services to the company, and the audit committee shall, in any event, make a determination at least once each year of the auditor's independence taking account of any relationships of the auditor with the company or other persons that may compromise the auditor's independence
- (5) The audit committee shall, in addition—
- (a) regularly review and discuss with the auditor the scope and results of its audit, any difficulties the auditor encountered including any restrictions on its access to requested information and any disagreements or difficulties encountered with management; and
  - (b) review and discuss with the company's management and the auditor each annual and each quarterly financial statement of the company including judgments made in connection with the financial statements; and
  - (c) review and discuss the adequacy of the company's internal auditing personnel and

procedures and its internal controls and compliance procedures, and any risk management systems, and any changes to those; and

(d) oversee the company's compliance with legal and regulatory requirements including but not limited to its compliance with generally accepted accounting practices; and

(e) review and discuss arrangements under which company employees can confidentially raise concerns about possible improprieties in financial reporting or other matters, and ensure that arrangements are in place for independent investigation and follow-up regarding such matters.

(6) The board shall ensure that the audit committee has the resources necessary for its duties including the authority to engage external legal, accounting or other advisors without seeking the approval of the Board. The company shall provide funding for the compensation of any such persons.

### **220 Corporate governance guidelines for public companies**

(1) The board of every public company shall establish or adopt written corporate governance guidelines covering matters such as standards for qualification and independence of a director, directors' responsibilities including meeting attendance, diligence in reviewing materials, and rules for disclosure and review of potential conflicts of interest with the company, director compensation policy, succession planning for both directors and officers, and other corporate governance matters deemed appropriate. Such guidelines shall be consistent with the then current National Code on Corporate Governance.

(2) The company shall make such guidelines available in print to any shareholder who requests it, at the shareholder's expense.

(3) At each annual shareholders' meeting the company's board of directors shall report to the meeting on the company's compliance with its guidelines and their conformity to the principles set forth in the National Code on Corporate Governance, and explain the extent if any to which it has varied them or believes that any noncompliance therewith is justified.

(4) Every public company shall formulate and implement a policy to promote diversity and gender balance in their governance structures and employment policies from the board downwards.

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### 221 Officers of company

- (1) A board of directors shall appoint one or more individual persons as officers.
- (2) A person may be both a director and an officer, and a person may simultaneously hold more than one office, unless provided otherwise in the company's memorandum or articles.
- (3) The officers shall be under the direction of the board of directors and their responsibility shall include management and operation of current activities of the company or parts thereof, other than matters within the exclusive competence of the board of directors or the members.

[23-HH-188]

- (4) The board of directors may elect a head officer and give such person the title "chief executive officer," "president," "managing director," or another similar title, and the person's duties may be prescribed in detail in the company's articles of association or by a separate resolution of the board.
- (5) The head officer referred to in subsection (4) shall have authority to act generally in the company's name, representing the company's interests, concluding transactions on the company's behalf and giving instructions to the company's employees.

- (6) The board shall elect such other officers, and may authorise officers to appoint subordinate officers, as the board considers appropriate, and the board may prescribe their respective titles, functions and authorities.

- (7) An appointment as an officer shall not of itself create contractual rights, and any officer may be removed by the board of directors at any time with or without specific cause, but such removal shall not in itself prejudice rights under an employment contract, if any, of the person so removed.

*Sub-Part F: Protection of minority shareholders*

### 222 Meaning of "member" and "company" in sections 223 to 225

- (1) In sections two hundred and twenty-three ("Order on application of member"), section two hundred and twenty-four ("Order on application of Registrar") and section two hundred and twenty-five ("Powers of High Court in applications under sections two hundred and twenty-three and section two hundred and twenty-four")—

"member" includes a person who is not a member of the company but to whom shares in the company have been transferred or transmitted by operation of law.

- (2) In sections two hundred and twenty-three and two hundred and twenty-four—

"company" includes a body corporate referred to in section forty-three ("Power of inspectors to investigate related registered or unregistered entities").

### 223 Order on application of member

A member of a company may apply to the court for an order in terms of section 225 ("Powers of High Court in applications under sections 223 to 224") on the ground that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, including himself or herself, or that any actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be so oppressive or prejudicial.

[*Stalap Investments (Pvt) Ltd & 2 Ors v Willoughby's Investments (Pvt) Ltd & 2 Ors* 19-HH-726]

### 224 Order on application of Registrar

- (1) If in the case of any company—
- (a) the Registrar has received a report from an investigator under section forty-five ("Registrar's report") (1); and
- (b) it appears to him or her that the company's affairs are being or have been conducted in a manner which is oppressive or unfairly prejudicial to the interests of some part of the members, or that any actual or proposed act or omission of the company, including an act or omission on its behalf, is or would be so oppressive or prejudicial;

he or she may, in addition to or instead of applying under section 46(2) ("Proceedings on inspector's report") for the winding up of the company, apply to the court for an order in terms of section two hundred and twenty-five ("Powers of High Court in applications under sections 223 to 224").

### 225 Powers of court in applications under sections 223 and 224

- (1) If the High Court is satisfied that an application under section two hundred and twenty-three ("Order on application of member") or section two hundred and twenty-

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four ("Order on application of Registrar") is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may—

- (a) regulate the conduct of the company's affairs in the future;
- (b) require the company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons as the court may direct;

(d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

(3) If an order under this section prohibits a company from altering its constitutive documents, the company shall not have power without leave of the court to make any such alteration.

(4) Any alteration in the company's constitutive documents made by virtue of an order under this section shall be of the same effect as if duly made by resolution of the company.

(5) A copy of an order under this section altering or giving leave to alter a company's constitutive documents, certified by the registrar of the court shall, within fourteen days from the making of the order or such longer period as the court may allow, be delivered by the company to the Registrar for registration.

(6) If it comes to the notice of the Registrar that a company has made default in complying with subsection (5), the defaulting company shall be liable to a category 3 civil penalty.

*Sub-Part G: Mergers, etc.*

### 226 Definitions in Chapter II Part III (G)

In this Sub-Part—

**"amalgamation"** means a merger in which one or more existing companies merge into another existing company;

**"consolidation"** means a merger in which two or more companies are consolidated into a new company;

**"major asset transaction"** means a transaction or related series of transactions involving—

- (a) the purchase or other acquisition outside the usual course of the company's business; or
- (b) the sale or other transfer outside the usual course of the company's business; or
- (c) the pledge or mortgage or other encumbrance outside the usual course of the company's business;

by the company of another company's property, property rights, or other rights the value of which, on the date of the company's decision to complete the transaction, is 50% or more of the book value of the company's assets based on the company's most recently compiled statement of financial position;

**"merger"** means amalgamation or consolidation of 2 or more companies.

### 227 Power to undertake mergers and major asset transactions

A private or public company or cooperative company may undertake and complete a merger at any time as provided by the Tariff and Competition Act [Chapter 14:20] or a major asset transaction in accordance with this Sub-Part.

### 228 Procedure for merger

(1) 2 or more public companies or any combination of companies consisting of at least one public company and at least one private company (hereafter called the **"merging companies"**) may undertake a merger which must comply with the following requirements—

(a) enter into a provisional contract for merger compliant with *section two hundred and twenty-nine ("Contents of contract of merger")*; and

(b) the merging companies shall publish notice of the proposed merger in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company is situated, making mention of the names of the merging companies;

(c) give notice of the provisional contract of merger to the shareholders of each of the merging companies, which notice shall be compliant with the requirements for a special resolution and shall be accompanied by—

(i) a copy of the contract for merger together with an explanation which describes the legal and economic grounds for the merger; and

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(ii) any recommendation of the board of directors on the proposed merger and the reasons for the recommendation; and

(iii) a copy of an opinion of an independent financial adviser if such an opinion has been obtained or is required under *section two hundred and thirty* ("Independent financial opinion"); and

(iv) the annual financial statements of all the companies which are parties to the merger for the previous 3 years (or any shorter time of the company's existence):

Provided if the latest annual financial statement was as of a date more than 6 months before the contract for merger, an audited financial statement for the intervening period ending not less than one month before the shareholder meeting concerned which reflects the financial condition of the company concerned (except that the foregoing shall not apply to any new company which was created to be the surviving company in the merger);

and

(v) a notice that in the event that the merger is approved, dissenting shareholders are entitled to the rights referred to *section two hundred and thirty-three* ("Dissenting shareholders' appraisal rights");

(d) not later than 14 days after the approval of the merger by the last shareholder meeting to approve it, the merged company or the merging companies, as the case may be, shall—

(i) file the contract for merger with the Registrar in the prescribed manner and form and together with the prescribed fee, upon which registration the merger shall become effective;

(ii) publish notice of the merger in the *Gazette* and in a daily newspaper circulating in the district in which the registered office of the company is situated, making mention of the names of the merging companies.

(2) Notwithstanding the foregoing provisions of this section, a company that owns 90% or more of the shares of each class of shares of another company may—

(a) merge that subsidiary into itself; or

(b) merge that company into another such subsidiary; or

(c) merge itself into that subsidiary; without the approval of the board of directors or shareholders of the subsidiary, unless the

constitutive documents of the subsidiary expressly provides otherwise.

(3) A company engaging in a merger referred to in subsection (2) shall not require approval of its shareholders in terms of this section, unless the constitutive documents of the holding company provides otherwise. In any such case where approval by the subsidiary's shareholders is not required, the parent company shall, within 10 days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(4) If default is made in complying with subsection (1)(d) (i) or (ii) the defaulting merged company or the merging companies, as the case may be, shall be liable to a category 3 civil penalty.

### 229 Contents of contract of merger

A contract of merger shall include—

(a) the name of the registered office and company secretary of each company that will merge and of the surviving or new company into which each company plans to merge; and

(b) the terms and conditions of the proposed merger; and

(c) the manner and basis of converting the shares of each merging company into cash or other property, or shares, other securities or debt or other obligations of the surviving or new company or of any shareholder of the surviving company; and

(d) the full text of the constitutive documents of the surviving or new company as it will be in effect immediately following the merger; and

(e) the date from which the transactions of each non-surviving company shall be treated for accounting purposes as being those of the surviving or new company; and

(f) the rights conferred by the surviving or new company on the holders of securities other than shares, or the measures proposed concerning them;

and

(g) any provisions under which the proposed merger can be abandoned before its completion; and

(h) other provisions relating to the merger including but not limited to a possible provision that payment will not be made for any converted shares until after the merger has become effective.

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### 230 Independent financial opinion

The board of directors of a private company may, and the board of a public company must, obtain an opinion of an independent professional financial adviser on the terms of the contract for merger and the proposed merger, in which the adviser shall state—

- (a) the adviser's analysis and an explanation of all the terms of the contract for merger, including the method or methods used to arrive at any proposed share exchange ratio and the values arrived at using each method; and
- (b) an opinion as to the fairness of the merger to the shareholders and, if there is more than one type or class of shareholders, to each type or class of shareholders and creditors of the merging companies.

### 231 Effect of merger

The effect of a merger is that--

- (a) the companies that are parties to the merger are one single company which will be the new or surviving company named in its constitutive documents filed with the Registrar under *section two hundred and twenty-eight ("Procedure for merger")* (1)(d)(i), and the separate existence of all such companies except the surviving or new company shall terminate on the date of such filing; and
- (b) the surviving or new company owns all of the assets of and claims by each company that was a party to the merger, in each case of every kind, whether in contract, delict or otherwise and whether known or unknown, and will owe all of the debts, liabilities and obligations of and be subject to and responsible for all of the claims by any person against each company that was a party to the merger, in each case of every kind, whether in contract, delict or otherwise and whether known or unknown; and
- (c) all legal actions or other claims against any company that was a party to the merger may be continued against the surviving or new company, which will be substituted in the lawsuit or claim for the company whose existence has terminated; and
- (d) the constitutive documents of the surviving or new company shall be the constitutive documents as set forth in or together with the contract; and
- (e) the shares of each company that was a party to the merger are converted into shares, other securities or debt or other obligations or the right to receive money of the surviving or

new company, and the former holders of such shares shall be entitled only to the rights provided in the contract of merger.

### 232 Procedure for major asset transactions

(1) A public company may undertake a major asset transaction subject to the following conditions—

- (a) the board of directors of the company must recommend the transaction and direct that it be submitted for approval to an annual or extraordinary shareholder meeting; and
- (b) written notice of the transaction must be dispatched not less than 21 days before the meeting of the shareholders, stating that the purpose of the meeting is to consider the transaction and including—

- (i) a summary of the transaction and the recommendation of the board of directors on the transaction; and
- (ii) a statement of the shareholders' right to dissent to the transaction;

and

- (iii) a statement that in the event that the transaction is approved, aggrieved shareholders are entitled to the rights referred to *section two hundred and thirty-three ("Dissenting shareholders appraisal rights")*; and

- (c) the shareholders shall approve the transaction by adopting a special resolution upon the affirmative vote of holders of all shares entitled to vote on the transaction and, if group voting is required, a special resolution of the votes of each voting group entitled to group voting on the transaction and of the total number of votes of the shares entitled to vote on the transaction.

(2) If at any time before the transaction in question is referred to a meeting of shareholders, any dispute or question arises as to whether the transaction in question is outside the usual course of the business of the company or not, or that the transaction is a merger and not a major asset transaction, any dissenting director or shareholder of the company concerned or any other interested person may on notice to the other disputants make a chamber application to a Magistrate having jurisdiction in the area where the company has its registered office.

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### 233 Dissenting shareholders' appraisal rights

(1) If a company has given notice to shareholders of a meeting to consider adopting a resolution to enter into a transaction contemplated in *section one hundred and forty-three* ("Variation of rights attaching to shares") and *section two hundred and twenty-eight* ("Procedure for merger"), that notice must include a statement informing shareholders of their rights under this section.

(2) At any time before a resolution referred to in subsection (1) is to be voted on, a dissenting shareholder may give the company a written notice objecting to the resolution.

(3) Within ten business days after a company has adopted a resolution contemplated in this section, the company must send a notice that the resolution has been adopted to each shareholder who—

(a) gave the company a written notice of objection in terms of subsection (1); and

(b) has neither—

(i) withdrawn that notice; or

(ii) voted in support of the resolution.

(4) A shareholder may demand that the company pay the shareholder the fair value for all of the shares of the company held by that person if—

(a) the shareholder—

(i) sent the company a notice of objection, subject to subsection (5);

and

(ii) in the case of *section one hundred and forty* ("Notice to Registrar of consolidation of share capital, conversion of shares into stock") holds shares of a class that is materially and adversely affected by the alteration;

and

(b) the company has adopted the resolution contemplated in subsection (1);

and

(c) the shareholder—

(i) voted against that resolution; and

(ii) has complied with all of the procedural requirements of this section.

(5) The requirement of subsection (4)(a)(i) does not apply if the company failed to give notice of the meeting, or failed to include in that notice a statement of the shareholders rights under this section.

(6) A shareholder who satisfies the requirements of subsection (4) may make a demand contemplated in that subsection by delivering a written notice to the company within—

(a) **20 business days** after receiving a notice under subsection (4); or

(b) if the shareholder does not receive a notice under subsection (4), within 20 business days after learning that the resolution has been adopted.

(7) A demand delivered in terms of subsections (4) to (6) must state—

(a) the shareholder's name and address; and

(b) the number and class of shares in respect of which the shareholder seeks payment; and

(c) a demand for payment of the fair value of those shares.

(8) A shareholder who has sent a demand in terms of subsections (4) to (6) has no further rights in respect of those shares, other than to be paid their fair value, unless—

(a) the shareholder withdraws that demand before the company makes an offer under subsection (9), or allows an offer made by the company to lapse, as contemplated in subsection (10)(b); or

(b) the company fails to make an offer in accordance with subsection (9) and the shareholder withdraws the demand; or

(c) the company revokes the adopted resolution that gave rise to the shareholder's rights under this section.

(9) If any of the events contemplated in subsection (8) occur, all of the shareholder's rights in respect of the shares are reinstated without interruption.

(10) **Within 5 business days** after the later of—

(a) the day on which the action approved by the resolution is effective; or

(b) the last day for the receipt of demands in terms of subsection (6)(a); or

(c) the day the company received a demand as contemplated in subsection (6)(b), if

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applicable; the company must send to each shareholder who has sent such a demand a written offer to pay an amount considered by the company's directors to be the fair value of the relevant shares, subject to subsection (14), accompanied by a statement showing how that value was determined.

(11) Every offer made under subsection (10)—

(a) in respect of shares of the same class or series must be on the same terms;

and

(b) lapses if it has not been accepted **within 30 business days** after it was made.

(12) If a shareholder accepts an offer made under subsection (10)—

(a) the shareholder must either in the case of—

(i) shares evidenced by certificates, tender the relevant share certificates to the company or the company's transfer agent; or

(ii) uncertificated shares, take the steps required in terms of *section one hundred and fifty-one ("Transfer of title to shares and debentures")* to direct the transfer of those shares to the company or the company's transfer agent;

and

(b) the company must pay that shareholder the agreed amount **within 10 business days** after the shareholder accepted the offer and—

(i) tendered the share certificates; or

(ii) directed the transfer to the company of uncertificated shares.

(13) A shareholder who has made a demand in terms of subsections (4) to (7) may apply to a court to determine a fair value in respect of the shares that were the subject of that demand, and an order requiring the company to pay the shareholder the fair value so determined, if the company has—

(a) failed to make an offer under subsection (10); or

(b) made an offer that the shareholder considers to be inadequate, and that offer has not lapsed.

(14) On an application to the court under subsection (13)—

(a) all dissenting shareholders who have not accepted an offer from the company as at the date of the application must be joined as parties and are bound by the decision of the court; and

(b) the company must notify each affected dissenting shareholder of the date, place and consequences of the application and of their right to participate in the court proceedings; and

(c) the court—

(i) may determine whether any other person is a dissenting shareholder who should be joined as a party; and

(ii) must determine a fair value in respect of the shares of all dissenting shareholders, subject to subsection (15); and

(iii) in its discretion may—

A. appoint one or more appraisers to assist it in determining the fair value in respect of the shares; or

B. allow a reasonable rate of interest on the amount payable to each dissenting shareholder from the date the action approved by the resolution is effective, until the date of payment; and

(iv) may make an appropriate order of costs, having regard to any offer made by the company, and the final determination of the fair value by the court; and

(v) must make an order requiring—

A. the dissenting shareholders to either withdraw their respective demands, in which case the shareholder is reinstated to their full rights as a shareholder, or to comply with subsection (12)(a); and

B. the company to pay the fair value in respect of their shares to each dissenting shareholder who complies with subsection (12)(a), subject to any conditions the court considers necessary to ensure that the company fulfils its obligations under this section.

(15) The fair value in respect of any shares must be determined as at the date on which, and time immediately before, the company adopted the resolution that gave rise to a shareholder's rights under this section.

(16) If there are reasonable grounds to believe that compliance by a company with subsection (12)(b), or with a court order in terms of subsection (14)(c)(v)(B), would result in the company being unable to pay its debts as they

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fall due and payable for the ensuing 12 months—

[applicant may not avoid proving its claims by seeking the liquidation of respondent. *Profert Zim (Pvt) Ltd v Macdom Investments (Pvt) Ltd* 16-HB-083]

(a) the company may apply to a court for an order varying the company's obligations in terms of the relevant subsection; and

(b) the court may make an order that—

(i) is just and equitable, having regard to the financial circumstances of the company; and

(ii) ensures that the person to whom the company owes money in terms of this section is paid at the earliest possible date compatible with the company satisfying its other financial obligations as they fall due and payable.

[*Profert Zim (Pvt) Ltd v Macdom Investments (Pvt) Ltd* 16-HB-083wingin up  
*Kim D. v Sensationell (Zimbabwe) Pvt) Ltd* 16-HH-484]

(17) If the resolution that gave rise to a shareholder's rights under this section authorised the company to conclude a merger or major asset transaction or variation of shares with one or more other companies, such that the company whose shares are the subject of a demand in terms of this section has ceased to exist, the obligations of that company under this section are obligations of the successor to that company resulting from the amalgamation or merger or variation of shares.

(18) For greater certainty, the making of a demand, tendering of shares and payment by a company to a shareholder in terms of this section do not constitute a distribution by the company, or an acquisition of its shares by the company within the meaning of *section one hundred and twenty-eight ("Power of company to purchase its own shares")*, and therefore are not subject to—

- (a) the provisions of that section; or
- (b) the application by the company of the solvency and liquidity test set out in *section one hundred and two ("Solvency and liquidity test")*.

### *Sub-Part H: Takeovers*

#### **234 Definitions in Sub-Part H**

In this Sub-Part—

**"associate"** of a person means any natural or juristic person who (whether or not with a view to enabling them to acquire a control block of shares in a public company) is an associate in

virtue of all or any of the following, that is to say in virtue of—

(a) acting by mutual agreement in concert or combination with the first-mentioned person; or

(b) holding the control block of shares in the first-mentioned person, or the first mentioned person holding the controlling block of shares in the associate; or

(c) acting in accordance with the first-mentioned person's instructions, or the first-mentioned person acting in accordance with the associate's instructions; or

(d) being related by blood or marriage to each other;

**"control block"** means 35% or more of the total of the ordinary shares of a company and any preference shares which have the right to vote with ordinary shares.

#### **235 Disclosure of potential control acquisition**

(1) A person who alone or together with any associate acquires or owns more than twenty *per centum* of the ordinary shares of a public company shall, no later than fifteen days from the date that such person acquires such number of shares, send written notice to the company stating the person's name, the names of the associate or associates, if any, the number of shares of the company belonging to him or her or to each of them (as the case may be), and whether the person intends to acquire a control block.

(2) If a person makes default in complying with subsection (1) the company secretary or other responsible officer of the public company concerned shall request any person—

(a) to whom it is about to allot, issue or transfer any of its shares that may exceed the threshold mentioned in that provision, to furnish it with the information required by that provision, and if the person fails or refuses within a reasonable time to comply with the request the company shall not allot, issue or transfer the shares or interest to him or her; or

(b) whom it has reason to believe holds shares that may exceed the threshold mentioned in that provision to furnish it with the information required by that provision, and for so long as the person fails or refuses within a reasonable time to comply with the request he or she shall not, either personally or by proxy, cast a vote attached to the share nor receive a dividend payable on the share.

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### 236 Acquisition of control block of shares of public company

(1) A person who intends, alone or together with one or more associates to acquire, taking into account the number of shares belonging to the person and the associate or associates, a control block of shares of a public company must, no later than thirty days prior to the date of acquiring the control block, send written notice to the company stating the person's intent to acquire a control block of shares.

(2) A public company in which a control block of shares is sought to be acquired under subsection (1), may stop the acquisition of the control block, by a decision of a shareholder meeting within the thirty-day notice period, adopted by majority vote of the holders of ordinary shares participating in the meeting, excluding votes of shares held by shareholders who intend to acquire the control block, and excluding votes of shares held by associates who intend to acquire the control block.

(3) Any shareholder or class of shareholders may for good cause shown, by application to a magistrate in chambers having jurisdiction in the area where the takeover is being effected, apply for an interdict stopping the acquisition of the control block after notice of intention to acquire it is given in terms of this section, whereupon the magistrate may if he or she thinks fit, refer the matter for trial.

### 237 Offer for remaining shares

(1) A person who alone or together with the person's associate or associates has acquired a control block of shares of a public company must on the date of acquisition give notice thereof to shareholders in writing and within sixty days of such notice must give further notice in writing to all of the remaining company's shareholders offering to acquire the company's ordinary shares belonging to them at a price not less than the weighted average price at which he or she acquired the company's shares comprising the control block during the last six months preceding the date of acquisition of the control block, except for the case when a shareholder meeting adopts a decision to waive the rights of shareholders to sell the shares belonging to them in accordance with subsection (3).

(2) The notice of offer shall contain information identifying and describing the person who has acquired the control block and the person's associate or associates, including

their names, residence and business addresses, the number of shares belonging to them, the price offered for the shares, the price or prices paid by them for the shares which they hold, and the period during which the offeree shareholders can accept the offer to acquire shares (which may not be less than thirty days from the date of sending the offer to shareholders).

(3) Any decision under subsection (1) to waive the shareholders' right to sell shares belonging to them to a person who has acquired or intends to acquire a control block may be adopted by a shareholder meeting by a majority of votes of the holders of ordinary shares participating in the meeting, excluding votes of shares belonging to the person who has acquired or intends to acquire a control block of shares and excluding votes of shares held by the person's associate or associates.

(4) Any shareholder or class of shareholders may by application to a magistrate in chambers having jurisdiction in the area where the takeover is being effected, apply for an interdict stopping the acquisition of the control block on the grounds that the person acquiring the control block and his or her associates are not complying with the requirements of this section, whereupon the magistrate may if he or she thinks fit, refer the matter for trial.

(5) Acquisition of a control block and sending to holders of ordinary shares the offer to acquire the ordinary shares belonging to them shall be completed within one hundred and twenty days from the date of sending the notice under subsection (2) of the offer of a control block of a company's shares.

### 238 Drag-along: right of offeror with 90% to squeeze out minority

(1) **If within 128 days** after the date of an offer made under *section two hundred and thirty-seven ("Offer for remaining shares")* the offer has been accepted by the holders of at least ninety *per centum* of the target shares, other than any such shares held before the offer by the offeror and its associate or associates—

[see Publication by Corpserve (Pvt) Ltd in the *Government Gazette* on the 29<sup>th</sup> October, 2021 regarding **African Sun Ltd** targeting **Dawn Properties Ltd-Editor**]

(a) the offeror may **within 60 days** thereafter notify the holders of the remaining target shares that the offer has been accepted to that extent and the offeror wishes to acquire all remaining target shares; and

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(b) after giving such notice the offeror shall be entitled and bound to acquire all such remaining shares on the same terms that applied to shares whose holders accepted the original offer.

(2) If an offer to acquire such remaining shares has not been accepted by all such offerees, the offeror may apply to the magistrates court having jurisdiction in the area where the takeover is being effected, for an order authorising the offeror to give again the notice contemplated by subsection (1)(b) with the effect stated in that subsection. The court shall issue such order if the court finds that—

(a) the minimum number of acceptances referred to in subsection (1) have been received; and

(b) the offeror, after making reasonable inquiries, has been unable to trace holders if any of target shares to whom the notice is not given; and

(c) the court is satisfied that it is just and reasonable to make the order having regard, in particular, to the number of holders of target shares who have been traced and notified but who have not accepted the offer.

### 239 Tag-along: right of minority to sell out to offeror having 90%

(1) If an offer made under *section two hundred and thirty-seven ("Offer for remaining shares")* has resulted in the offeror's acquisition of at least ninety *per centum* of the target shares, the offeror must inform the holders of the remaining target shares in writing **no later than 30 days** after acquiring them that the offer has resulted in the acquisition of the target shares to that extent.

[see Publication by Corpserve (Pvt) Ltd in the *Government Gazette* on the 29<sup>th</sup> October, 2021 regarding **African Sun Ltd** targeting **Dawn Properties Ltd**-Editor]

(2) **Within 90 days** of receipt of such information any holder of the remaining target shares may demand by notice in writing that the offeror acquire all of that person's target shares.

(3) After receiving such notice the offeror is bound to acquire all of such person's target shares on the same terms that applied to shares of holders who accepted the original offer.

(4) An offeror who fails to comply with this section is subject to a category 3 civil penalty.

### PART IV FOREIGN COMPANIES

#### Sub Part A: General

### 240 Definitions in Chapter II Part IV (A)

For the purposes of this Part—

**"banking company"** means a company which carries on in Zimbabwe banking business as defined in section 2(1) of the Banking Act [Chapter 24:20];

**"insurance company"** means a company which carries on insurance business within the meaning of the Insurance Act [Chapter 24:07];

**"place of business"**, in relation to a company, means any place where the company transacts or holds itself out as transacting business, and includes a share transfer or share registration office;

**"principal officer"**, in relation to a foreign company, means the person notified in terms of *section two hundred and forty-one ("Requirements as to foreign companies")*(3)

(b) as the person responsible for the management of the business of that company in Zimbabwe

### 241 Requirements as to foreign companies

(1) Subject to subsection (16), every foreign company which intends to establish a place of business in Zimbabwe shall submit to the Minister—

(a) a copy, duly certified to be a true copy of the original by a director residing in Zimbabwe or by a notary public, of its constitutive documents and, if the instrument is in a foreign language, a certified translation thereof;

(b) a list in the prescribed form of its directors resident or who will upon the establishment of the place of business be resident in Zimbabwe containing in respect of each director similar particulars to those required by *section two hundred and seventeen ("Register of directors and secretaries")* to be contained in the register of directors and secretaries referred to in that section;

(c) if the foreign company is the subsidiary of another company or companies, the name or names of such holding company or companies as the case may be.

(2) Unless the Minister is of the opinion that it would not be in the public interest to do so, he

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or she shall issue a certificate, subject to such conditions as may be prescribed, authorising the foreign company to establish a place of business in Zimbabwe.

(3) No foreign company shall establish a place of business within Zimbabwe unless it is registered and for such purpose shall lodge with the Registrar—

(a) the documents referred to in subsection (1) together with the certificate referred to in subsection (2);

(b) a notice in the prescribed form of the name and residential address of the principal officer who will be the person responsible for the management of its business in Zimbabwe, being a person who is ordinarily resident or a citizen of Zimbabwe and shall accept on its behalf service of process and any notice required to be served on it;

(c) the address of its principal place of business in Zimbabwe

(4) If any alteration is made in—

(a) the constitutive documents of a foreign company; or

(b) the directors resident in Zimbabwe or the principal officer of a foreign company or the particulars contained in the list referred to in subsection (1)(b); or

(c) the address of the said principal place of business; the foreign company shall, within one month of such alteration, lodge with the Registrar for registration a return containing particulars of the alteration and, if the alteration is in any instrument referred to in paragraph (a), also a certified copy and certified translation, if need be, of the instrument showing the alteration.

(5) Every foreign company shall, **within 1 month** after the date of a request in writing by the Registrar to that effect, lodge with the Registrar particulars of the name, residential address and nationality of every director of that foreign company who is not resident in Zimbabwe.

(6) Any process or notice required to be served on a foreign company shall be sufficiently served if delivered at the address of the principal officer:

Provided that—

(a) where any such foreign company makes default in filing with the Registrar the name and address of its principal officer; or

(b) if at any time the principal officer is dead or has ceased to reside in Zimbabwe or for any other reason cannot be served;

any process or notice may be served on the foreign company by leaving it at any place of business established by it in Zimbabwe.

(7) Every foreign company shall in every year make out a statement of financial position and profit or loss and other comprehensive income account, in such form, and containing such particulars and including such documents as under this Act it would, had it been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting and lodge a copy of such statement of financial position, profit or loss and other comprehensive income account with the Registrar. If such statement of financial position and other documents are in a foreign language there shall be annexed a certified translation thereof:

Provided that this subsection shall not apply to a foreign company which is a banking company or an insurance company.

(8) Every foreign company shall, **within 1 month** after the 1<sup>st</sup> January in each year, lodge with the Registrar for registration a return in the prescribed form containing particulars of the nominal and issued share capital of the foreign company as at that date and such other particulars as may be prescribed:

Provided that a foreign company shall not be required to lodge such return in the year following that in which it was registered in Zimbabwe.

(9) If any foreign company ceases to have a place of business within Zimbabwe, it shall, **within 1 month** of such cessation, give written notice of the fact to the Registrar, and as from the date on which the notice is so given the obligation of the foreign company to deliver to the Registrar any document, save any document which should have been delivered prior to such cessation, shall cease.

(10) On receipt of a notice from a foreign company that it has ceased to have a place of business in Zimbabwe, the Registrar shall remove the name of that foreign company from the register and shall publish notice thereof in the *Gazette*.

(11) When the Registrar has reasonable cause to believe that a foreign company has ceased to have a place of business in Zimbabwe, *section fifty-two* ("Striking off of defunct business entities from register and

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*remedy for persons aggrieved by striking off")* shall, with such changes as may be necessary, apply.

(12) Where the Minister is of the opinion that it will be in the public interest to do so, he or she may, **not later than 6 months** after the registration of the foreign company concerned—

(a) revoke; or

(b) amend any conditions of or impose any new conditions upon;

the certificate issued in terms of subsection (2) in respect of any foreign company:

Provided that—

(i) before exercising any of his or her powers in terms of this subsection, the Minister shall give the foreign company concerned **not less than 1 month's notice** in writing of his or her proposal to do so, and shall afford it an opportunity of making, in writing, such representations to him or her relating to his or her proposal as it may wish;

(ii) a foreign company whose representations to the Minister are rejected may within 14 days of receiving notice of rejection have recourse to the High Court in terms of the Administrative Justice Act [Chapter 10:28].

(13) If any foreign company—

(a) establishes a place of business within Zimbabwe without being registered;

or

(b) carries on business in Zimbabwe after the certificate which was issued in respect of the foreign company in terms of subsection (2) has been revoked in terms of subsection (12);

the foreign company and every officer of the foreign company in Zimbabwe who is in default shall be guilty of an offence and liable to a fine not exceeding level eleven.

(14) In addition, the Registrar may serve upon the foreign company and every officer of the foreign company in Zimbabwe who is in default as described in subsection

(13) a category 4 civil penalty order.

(15) If any foreign company—

(a) establishes a place of business within Zimbabwe without being registered the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 2 civil penalty; or

(b) fails to comply with subsection (1), (3) or (7), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 2 civil penalty; or

(c) fails to comply with any condition imposed upon any certificate which was issued in respect of the foreign company in terms of subsection (2), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 4 civil penalty; or

(d) fails to comply with subsection (4), (5), (8) or (9), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 3 civil penalty; or

(e) carries on business in Zimbabwe after the certificate which was issued in respect of the foreign company in terms of subsection (2) has been revoked in terms of subsection (12), the foreign company and every officer of the foreign company in Zimbabwe shall be liable to a category 1 civil penalty.

(16) This section shall not apply to any foreign company which—

(a) has obtained an investment licence;

(b) has obtained a licence as a bank or an insurer;

(c) is operating in a special economic zone in terms of the \*Special Economic Zones Act [Chapter 14:34].

**[Editor's Note:** This Act was Repealed and Substituted by the Zimbabwe Investment and Development Agency Act [CHAPTER 14:38]. with effect from the 7th February, 2020]

### 242 Further administrative duties of foreign company

(1) Every foreign company shall—

(a) continuously display on the outside of every place in which it carries on business in Zimbabwe in a conspicuous position, in letters easily legible, its name and the country in which it is incorporated; and

(b) have its name engraved in legible characters on its seal, if any; and

(c) have its name mentioned in legible characters in all letterheads, notices, advertisements and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all delivery notes, invoices, receipts and letters of credit of the company and additionally, in the

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case of letterheads, have mentioned in legible characters the name of the foreign country in which the company is incorporated; and

(d) in all business letters on or in which the name of the company appears and which are issued or sent by the company to any person, state in legible characters, with respect to every director resident in Zimbabwe or, if there is no such director, the principal officer, his or her present first names or the initials thereof and present surname; and

(e) in respect of its transactions within Zimbabwe, comply with *section one hundred and eighty-two* ("Keeping of financial records").

(2) *Section twenty-eight* (" *Provisions in connection with use of names by companies and private business corporations* ") (1)(c) and subsections (2), (3), (4), (5) and (6) of that section and *section thirty-one* ("Postal address, registered office and electronic mail address")

(3) shall apply, with such changes as may be necessary, in relation to a foreign company and to the officers or any person acting on behalf of an officer of a foreign company.

(3) For the purposes of subsection (1)(d)—

"business letter" includes any quotation or order form but does not include any invoice, statement, delivery note, packing note or similar document.

### 243 Exemption in respect of transfer duty

Notwithstanding anything contained in any law, whenever a foreign company satisfies the court that—

(a) it carries on its principal business within Zimbabwe; and

(b) the company is about to be or is being wound up voluntarily in its country of incorporation for the purpose of transferring the whole of its business and property wherever situate to a company which will be or has been registered under this Act, hereinafter referred to as the new company, for the purpose of acquiring such business and property; and

(c) the sole consideration for such transfer is the issue to the members of the foreign company of shares in the new company in proportion to their shareholdings in the foreign company; and

(d) no shares in the new company will be available for issue to any persons other than the members of the foreign company;

the court may, subject to the certificate of the Registrar that—

(i) the foreign company is being wound up voluntarily for the said purpose; and

(ii) a company has been registered under this Act for the said purpose;

and

(iii) the members of the foreign company have had issued to them the shares in the new company to which they are entitled;

order that no duty shall be payable in respect of the transfer of immovable property from the foreign company to the company so registered.

*Sub-Part B: Prospectuses of foreign companies*

### 244 Provisions with respect to prospectus of foreign company

(1) No person shall—

(a) issue, circulate or distribute in Zimbabwe any prospectus offering for subscription shares in or debentures of a foreign company, whether the foreign company has or has not been established or when formed will or will not establish a place of business in Zimbabwe, unless—

(i) before the issue, circulation or distribution of the prospectus in Zimbabwe a copy thereof, certified by the chairperson and two other directors of the foreign company or by all directors of the company if the number is certified to be **less than 3** as having been approved by resolution of the managing body, has been delivered for registration to the Registrar; and

(ii) the prospectus states on the face of it that the copy has been so delivered; and

(iii) the prospectus is dated; and

(iv) the prospectus otherwise complies with this section and *section two hundred and forty-five* ("Contents of prospectus");

or

(b) issue to any person in Zimbabwe a form of application for shares in or debentures of such a foreign company or intended foreign company as aforesaid, unless the form is attached to a prospectus which complies with this section and *section two hundred and forty-five*:

Provided that this provision shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a

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person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a foreign company or subsequently.

(3) Where any document by which any shares in or debentures of a foreign company are offered for sale to the public would, if the foreign company had been a company within the meaning of this Act, have been deemed by virtue of section one hundred and eleven ("Document containing offer of shares or debentures for sale to be deemed to be prospectus") to be a prospectus issued by the foreign company, that document shall be deemed to be, for the purpose of this section, a prospectus issued by the foreign company.

(4) An offer of shares or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business it is to buy or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) Section one hundred and eight ("Civil liability for misstatements in prospectus") shall extend to every prospectus to which this section applies.

(6) Subsection (1)(a)(iii) and (iv) and (b) and subsections (2) to (4) shall not apply to the issue only to existing members or debenture holders of a foreign company, of a prospectus or form of application relating to shares in or debentures of the foreign company, whether an applicant for such shares or debentures will or will not have the right to renounce in favour of other persons.

(7) Any person who is knowingly responsible for the issue, circulation or distribution of any prospectus or for the issue of a form of application for shares or debentures in contravention of any of this section shall be guilty of an offence and liable to a fine not exceeding level eleven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### 245 Contents of prospectus

(1) A prospectus issued, circulated or distributed under section two hundred and forty-four ("Provisions with respect to prospectus of foreign company") shall—

(a) contain particulars with respect to the following matters—

(i) the instrument constituting or defining the constitution of the foreign company;

(ii) the enactments or provisions having the force of an enactment, by or under which the incorporation of the foreign company was effected;

(iii) an address in Zimbabwe where the said instrument, enactments or provisions or copies thereof and, if the same are in a foreign language, a certified translation thereof can be inspected;

(iv) the date on which and the country in which the foreign company was incorporated;

(v) whether the foreign company has established a place of business in Zimbabwe and, if so, the address of its principal office in Zimbabwe:

Provided that subparagraphs (i), (ii) and (iii) shall not apply in the case of a prospectus issued more than two years after the date at which the foreign company commenced business in Zimbabwe;

(b) subject to this section, state the matters specified in Part I and set out the reports specified in Part II, subject always to Part III, of the *Fourth Schedule*:

Provided that in paragraph 2 of the said Schedule a reference to the constitution of the company shall be substituted for the reference to the articles.

(2) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him or her with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) In the event of non-compliance with or contravention of any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(a) as regards any matter not disclosed, he or she proves that he or she was not cognisant thereof; or

(b) he or she proves that the non-compliance or contravention arose from an honest mistake of fact on his or her part; or

(c) the non-compliance or contravention was in respect of matters which, in the opinion of the court dealing with the case, were immaterial or

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were otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused:

Provided that, in the event of failure to include in a prospectus a statement with respect to the matters contained in paragraph 15 of the *Fourth Schedule* ("Form of annual return of company"), no director or other person shall incur any liability in respect of the failure unless it be proved that he or she had knowledge of the matters not disclosed.

(4) Nothing in this section or *section two hundred and forty-four* shall limit or diminish any liability which any person may incur under the common law or this Act, apart from this section.

### 246 Provisions as to expert's consent and allotment

(1) A prospectus shall be deemed not to comply with *sections two hundred and forty-four* ("Provisions with respect to prospectus of foreign company") and *section two hundred and forty-five* ("Contents of prospectus")—

(a) if, where it includes or refers to a statement purporting to be made by an expert, he or she has not given or has before delivery of a copy of the prospectus for registration withdrawn his or her written consent to the issue of the prospectus with the statement or reference in the form and context in which it is included and there does not appear in the prospectus a statement that he or she has given and has not withdrawn his or her consent as aforesaid; or

(b) if it does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by *section one hundred and twenty* ("Allotment of shares and debentures to be dealt in on stock exchange") so far as applicable.

(2) The requirements of section 244(1) for delivery of a copy of the prospectus to the Registrar before the prospectus is issued, circulated or distributed in Zimbabwe shall be deemed not to be satisfied unless there is endorsed on or attached to the copy so delivered—

(a) any consent required by the foregoing subsection to the issue of the prospectus; and

(b) the written consent so to act of any person named in the prospectus as the legal practitioner, auditor, banker or broker of the company; and

(c) a copy of any contract required by section 244(1)(b) and paragraph 14 of the *Fourth Schedule* to be stated in the prospectus or, in the case of a contract not reduced to writing, a memorandum giving full particulars thereof; and

(d) where the person making any report required by section 244(1)(b) to be set out in the prospectus has made in the report, or has without giving the reasons indicated in the report any such adjustments as are mentioned in this Act relating to such reports, a written statement signed by that person setting out the adjustments and giving the reasons therefor.

(3) Where any such contract as is mentioned in subsection (2)(c) is wholly or partly in a foreign language, the reference in that paragraph to a copy of the contract shall be taken as a reference to a copy of a certified translation thereof.

## CHAPTER IV

### PRIVATE BUSINESS CORPORATION AND OTHER BUSINESS ENTITIES

### PART I

#### PRIVATE BUSINESS CORPORATIONS

*Sub-Part A: Incorporation of private business corporations and matters incidental thereto*

### 247 Formation

Any one or more persons, not exceeding twenty, who qualify for membership of a private business corporation in terms of section two hundred and fifty-three ("Requirements for membership") may, by subscribing their names to an incorporation statement and otherwise complying with the requirements of this Act in respect of registration, form a private business corporation.

### 248 Incorporation statement, signing thereof and registration of private business corporation

(1) The incorporation statement shall be in the prescribed form and shall state—

(a) the name of the private business corporation with "Private Business Corporation" as the last words of the name or the abbreviation "PBC", in capital letters, at the end of the name; and

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(b) the postal address of the private business corporation for the purposes of *section thirty-one* ("Postal address, registered office and electronic mail address");

and

(c) the physical address, not being a post office box or private bag number, of the registered office of the private business corporation for the purposes of *section thirty-one*, and

(d) the full name of each member and his or her national identity number or, if he or she has no such number, the number of any other official identity document he or she may possess and his or her date of birth; and

(e) the percentage of each member's interest in the private business corporation, taking the total of members' interests as one hundred *per centum*; and

(f) the amount of each member's contribution to the assets of the private business corporation, stating the extent to which each contribution is in cash or in property or in services rendered towards the formation or registration of the private business corporation, and stating the fair value of any contribution that is not in cash; and

(g) the name and postal address of an accounting officer to whom the members of the private business corporation intend to submit their financial statements in terms of *section two hundred and seventy-four* ("Examination of financial statements and report thereon"); and

(h) the date of the end of the financial year of the private business corporation.

(2) Subject to *section twenty-seven* ("Statement of objects of registered business entity and effect thereof"), the incorporation statement shall state the objects of the private business corporation.

(3) An incorporation statement shall be signed by—

(a) every person who is to become a member of the private business corporation upon its incorporation; and

(b) a person who is qualified to become the accounting officer of the private business corporation upon its incorporation.

(4) The effect of each member's signature on an incorporation statement shall be to acknowledge the correctness of each item in the incorporation statement and the fairness of

any valuation included therein in terms of subsection (1) (f), and the effect of the signature of the person referred to in subsection (3)(b) shall be to indicate that he or she has no cause to believe that such valuation is unfair.

(5) The registration of incorporation statements and the issuance of a certificate of incorporation shall be as provided in *section eighteen* ("Registration of constitutive documents").

### 249 Registration of amended incorporation statement

(1) Subject to the proviso to *section two hundred and fifty-three* ("Requirements for membership") (1), if any change takes place in any of the matters stated in an incorporation statement in accordance with *section two hundred and forty-eight* ("Incorporation statement, signing thereof and registration of Private Business Corporations") (1) (d), (e) or (f), the private business corporation shall within twenty-eight days send to the Registrar—

(a) an amended incorporation statement complying in every respect with *section 248* (1) and incorporating the change that has taken place, signed in accordance with *section 248* (3) by every existing and new member, together with the duplicate original or originals or copy or copies required by *section eighteen* ("Registration of Constitutive documents") (3); and

(b) the private business corporation's copy of its original incorporation statement and any previous amended incorporation statement.

(2) The Registrar shall, upon payment of the prescribed fee, register any amended incorporation statement sent to him or her in terms of subsection (1) if it is in accordance with the provisions of this Act.

(3) On registering an amended incorporation statement the Registrar shall—

(a) endorse on each copy the date of registration; and

(b) endorse on each copy of the private business corporation's original incorporation statement and any previous amended incorporation statement the date of registration of the new amendment; and

(c) return to the private business corporation one copy of the new amended incorporation statement and its own copy of its original incorporation statement and any previous

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amended incorporation statement if any so endorsed.

(4) If any change takes place in any of the matters stated in an incorporation statement in terms of section 248(1) (a), (b), (c), (g) or (h), the private business corporation and the Registrar shall proceed in terms of subsections (1), (2) and (3), but the change shall not take effect until registration of the amended incorporation statement or any later date specified therein.

(5) If a private business corporation defaults in complying with subsection (1) or (4), the Registrar may, on his or her own motion or on application by a member or creditor, serve on the members individually by registered post or electronic mail a direction that they rectify the default **within 28 days**.

(6) If the members of a private business corporation fail to comply with any direction given in terms of subsection (5), the Registrar may, by further written notice served on the members individually by registered post or electronic mail, impose on them, or any of them, liability jointly and severally with the private business corporation for every debt of the private business corporation incurred from the date on which the direction referred to in subsection (5) was sent until the default is rectified.

(7) On application by any member or members the court may relieve the members or any of them from any liability imposed under subsection (6).

### 250 Conversion of private business corporation into company

(1) A private business corporation that wishes to convert to a company shall deliver to the Registrar—

- (a) an application in the prescribed form signed by all its members; and
- (b) all documents necessary for the formation of a company under this Act.

(2) If the Registrar is satisfied that the private business corporation has complied with subsection (1) and is not in default under this Act, he or she shall—

- (a) cancel its registration as a private business corporation; and
- (b) proceed in accordance with section eighteen (“*Registration of Constitutive documents*”).

(3) A company registered in accordance with this section shall be a company for all purposes under this Act and shall be the same body corporate as the private business corporation from which it was converted.

### 251 Conversion of company into private business corporation

(1) Any company having not more than twenty members, all of whom qualify for membership of a private business corporation in terms of *section two hundred and fifty-three (“Requirements for membership”)*, may apply for conversion to a private business corporation in terms of this section.

(2) A company referred to in subsection (1) shall publish a notice in the *Gazette* and in a newspaper circulating in the district in which its registered office is situated stating that—

(a) an application is intended to be made, on a date to be specified in the notice, to the Registrar for the conversion of the company to a private business corporation; and

(b) the application may be inspected at the office of the Registrar; and

(c) any interested person who wishes to oppose the application may do so by lodging his or her objections and his or her name and address, in writing, with the Registrar **within the 10 days** next following the date on which the application will be made.

(3) Where a company has given notice in terms of subsection (2), it shall lodge with the Registrar, not later than the date specified in the notice—

(a) an application for conversion in the prescribed form signed by all the members of the company and containing a statement that upon conversion the assets of the private business corporation, fairly valued, will exceed its liabilities and that upon conversion it will be able to pay its debts as they become due in the ordinary course of its business; and

(b) an incorporation statement which complies with *section two hundred and forty-eight (“Incorporation statement, signing thereof and registration of private business corporations”)* but in which the members' contributions to the private business corporation are shown as an aggregate amount, which amount shall not be greater than the excess of the fair value of the assets to be acquired by the private business corporation over the liabilities to be assumed by the private business corporation:

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Provided that—

(i) the private business corporation may treat any portion of such excess not reflected as members' contributions as amounts which may be distributed to its members;

(ii) the members' interests in the private business corporation shall be in the same proportions to each other as their relative shareholdings in the company.

(4) An incorporation statement referred to subsection (3) (b) shall reflect every member of the company as a member of the private business corporation on its incorporation, and shall be signed accordingly by every such member and by an accounting officer in terms of section 248(3).

(5) Upon the expiry of the period of 10 days next following the date specified in terms of subsection (2) (a), the Registrar shall, if he or she is satisfied that subsections

(2) and (3) have been complied with by the company, consider the application and any objections thereto that may have been lodged and may grant or refuse the application:

Provided that, if any objections have been lodged, the Registrar shall give the objector or objectors and the company an opportunity of being heard in the matter.

(6) The Registrar shall notify the company and any objector of his or her decision on the application for conversion and the company or any objector may, within ten days of the notification of the decision, appeal against it to the High Court, which may confirm, reverse or vary the decision of the Registrar or give such other direction in the matter as it thinks fit.

(7) Where an application for conversion has been granted in terms of this section, the Registrar shall proceed in terms of section eighteen ("Registration of constitutive documents") (5) and (6) and shall include in the certificate of incorporation of the private business corporation a statement that the private business corporation has been converted from a company, referring to its previous name and registered number.

(8) When he or she has registered a private business corporation which previously existed as a company, the Registrar shall ensure that the company's registration has been cancelled.

(9) Upon registration of a private business corporation which previously existed as a company, the private business corporation shall forthwith give notice of its conversion in writing

to all the creditors of the company at the time of conversion and to all other parties to contracts or legal proceedings in which the company was concerned at the time of conversion.

(10) On the registration of a private business corporation which previously existed as a company, all the assets, rights, obligations and liabilities of the company concerned shall vest in the private business corporation and any legal proceedings instituted by or against the company or other things done or commenced by or against the company shall be deemed to have been instituted, done or commenced, as the case may be, by or against the private business corporation.

(11) The conversion of a company to a private business corporation shall not affect—

(a) any liability of a director or officer of the company to the company on the ground of breach of trust or negligence, or to any other person pursuant to any provision of this Act; and

(b) any liability of the company, or of any other person, as surety;

and the juristic person of the company shall continue to exist in the form of the private business corporation to which it has been converted.

(12) Upon the production by a private business corporation, which previously existed as a company, of its certificate of incorporation to any registrar or other officer charged with the custody of any register or record in terms of any law, such registrar or officer shall, free of charge, make all such alterations in his or her registers or records as may be necessary as a result of the conversion of the company to a private business corporation, and no transfer or stamp duty shall be payable in respect thereof.

### Sub-Part B: Members

#### 252 Number of members; commencement and termination of membership

(1) A private business corporation shall have a minimum of one member and a maximum of 20 members.

(2) A private business corporation shall not cease to exist solely on account of its having no members or more than 20 members:

Provided that—

(i) any person who knowingly causes a private business corporation to incur a debt

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whilst it has no members shall be liable, jointly and severally with the private business corporation, for the debt;

(ii) if a private business corporation has or purports to have more than 20 members, every member and purported member shall be liable, jointly and severally with the private business corporation, for every debt incurred by the private business corporation whilst the number of its members and purported members exceeds twenty.

(3) Section 20 ("Effect of registration of constitutive documents and limitation of liability of members of companies and private business corporations") (3)(b) describes how membership in a private business corporation is commenced, evidenced and terminated.

### 253 Requirements for membership

(1) Subject to this section, only individual natural persons acting in their own right may be members of a private business corporation, and no partnership, association or body corporate or other legal person shall be a member, whether directly or through a nominee:

Provided that, if a member dies or becomes insolvent, mentally challenged or subject to any other legal disability, his or her estate may, without it being necessary to amend the incorporation statement, become a member in his or her place, and he or she or his or her estate shall be represented for all purposes of membership by his or her executor, trustee, curator or other legal representative, whether or not such representative is a partnership, association or body corporate or other legal person.

(2) Subject to this section, a minor or an unrehabilitated insolvent may be a member of a private business corporation:

Provided that in the case of a minor he or she shall be represented or assisted by his or her guardian in the exercise of his or her rights and duties as a member, and, in the case of an unrehabilitated insolvent, he or she must exhibit to the Registrar the written leave of his or her trustee in insolvency to become such member.

(3) Any person, partnership, association or body corporate or other legal person who or which, as the case may be, purports to become a member of a private business corporation in contravention of subsection (1) or (2) shall, notwithstanding the invalidity of his or her or its purported membership, be liable jointly and severally with the private business corporation for every debt of the private business

corporation incurred while such purported membership continues.

### 254 Members' contributions

(1) Each person who is to become a member of a private business corporation upon its incorporation shall, with the agreement of every other such person, make a contribution to the private business corporation's assets in the form of money or property or services rendered towards its formation or registration, or in a combination of those forms.

(2) Any person becoming a member of an existing private business corporation may, with the agreement of all existing members, make a contribution to the private business corporation's assets similar to that referred to in subsection (1).

(3) Any member's contribution may, with the agreement of all members, be increased or reduced:

Provided that a reduction involving a reduction of the private business corporation's assets shall be subject to *section two hundred and seventy ("Restriction on payments to members")*.

(4) A private business corporation shall record and secure the registration of any new member's contribution and any increase or reduction in an existing member's contribution by the procedure laid down in *section two hundred and forty-nine ("Registration of amended incorporation statement")* (1).

(5) All money payable or property transferable by any member to the private business corporation as a member's contribution shall be a debt due by him or her to the private business corporation.

### 255 Cessation of membership by order of court

(1) On application by a private business corporation or by any member or members, a court may order that any member shall cease to be a member of the private business corporation in any of the following cases—

(a) where the member is shown to the satisfaction of the court to have become permanently of unsound mind;

(b) where the member is shown to the satisfaction of the court to have become in any other way permanently incapable of performing his or her duties as a member;

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(c) where the member has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the private business corporation's undertaking, is calculated prejudicially to affect the carrying on of the undertaking;

(d) where the member has wilfully or persistently committed a breach of the private business corporation's by-laws, or has otherwise so conducted himself or herself in matters relating to the private business corporation's undertaking that it is not reasonably practicable for the other member or members to carry on the undertaking in association with him or her;

(e) whenever circumstances have arisen which, in the opinion of the court, render it just and equitable that the member should cease to be a member of the private business corporation.

(2) Application to a court on either or both of the grounds specified in subsection

(1) (c) and (d) shall not be made by the member whose conduct is alleged to justify the making of an order that he or she shall cease to be a member.

(3) The court making an order in terms of subsection (1) (a) may order for the appointment of a curator who may represent a member in a private business corporation.

(4) The court making an order in terms of subsection (1) may make such consequential orders as appear to it necessary to effect a just settlement between the person it has ordered to cease being a member, the other members and the private business corporation concerned.

### *Sub-Part C: Members' interests*

#### **256 Nature of member's interest**

(1) Each member's interest in a private business corporation shall be expressed as a percentage, taking the total of members' interests as one hundred *per centum*, and shall be transferable by the method specified by section two hundred and forty-nine ("Registration of amended incorporation statement").

(2) Each member's interest in a private business corporation shall entitle him or her, on the winding up or dissolution of the private business corporation, to a corresponding percentage of the assets of the private business corporation that are then distributable to members.

(3) Each member's interest in a private business corporation shall be held by that member alone, and shall not be capable of joint ownership.

#### **257 Certificate of member's interest**

(1) Each member shall be entitled to a certificate showing the percentage of his or her interest in the private business corporation, signed by every member.

(2) Whenever the percentage of a member's interest in a private business corporation changes he or she shall forthwith surrender to the private business corporation for cancellation any certificate previously issued to him or her and he or she shall be entitled to a new certificate reflecting his or her current interest.

(3) If a private business corporation is a registered user of the electronic registry, it may issue membership interests in dematerialised form, subject to the conditions of the issuance of such shares in *section two hundred and eighty-nine ("Use of electronic registry otherwise than for business entity registration")*.

(4) Any holder of a dematerialised membership interest may demand proof of title to his or her membership interest in the form of a material certificate signed by every member in accordance with subsection (1), and the corporation concerned shall issue such certificate to the member no later than fourteen days after such request is received in writing:

Provided that if there is any lawful restriction on the transfer of such an interest, such certificate shall be clearly endorsed to that effect.

#### **258 Acquisition of member's interest by new member**

Subject to the by-laws of the private business corporation concerned, a new member may acquire his or her member's interest in an existing private business corporation either—

(a) subject to *section two hundred and fifty-nine ("Other disposals of members' interests")*, from one or more existing members or their estates; or

(b) by making a contribution to the assets of the private business corporation in accordance with *section two hundred and fifty-four ("Members' contributions")*(2), in which case the percentage of his or her interest shall be agreed between him or her and the existing members.

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### 259 Disposal of interest of insolvent member

(1) On the insolvency of the sole member of a private business corporation his or her trustee in insolvency shall, in the exercise of his or her functions as trustee, have unrestricted power to sell his or her member's interest.

(2) On the insolvency of a member of a private business corporation having two or more members his or her trustee in insolvency shall, in the exercise of his or her functions as trustee, have power to sell the member's interest—

(a) to the private business corporation, subject to *section two hundred and sixty-three* ("Acquisition by private business corporation of members' interests"); or

(b) to any or all of the other members *pro rata* or in such proportions as they and the trustee may agree; or

(c) after giving a right of pre-emption on twenty-eight days' written notice to the private business corporation and the other members, to any person qualified under *section two hundred and fifty-three* ("Requirements for membership") to be a member.

(3) The members of a private business corporation shall be obliged to accept as a new member a person who has acquired an insolvent member's interest in accordance with subsection (2)(c).

(4) No by-laws or agreement to which the private business corporation or any member is a party shall affect the powers conferred on a trustee in insolvency by this section

### 260 Disposal of interest of deceased member

(1) The executor of the estate of a deceased member of a private business corporation shall give effect to any by-law of the private business corporation which makes provision for the sale or disposal of the member's interest on his or her death, and any such by-law shall override any provision to the contrary in the deceased member's will or the law of intestate succession.

(2) If there is no provision to the contrary in the by-laws of the private business corporation concerned, on the death of the sole member of a private business corporation his or her executor shall have unrestricted power, in the exercise of his or her functions as executor, to sell or dispose of the member's interest.

(3) If there is no provision to the contrary in the by-laws of the private business corporation concerned, on the death of a member of a private business corporation having two or more members, his or her executor shall have power, in the exercise of his or her functions as executor, to sell or dispose of the member's interest—

(a) to the private business corporation, subject to *section two hundred and sixty-three* ("Acquisition by private business corporation of members' interests"); or

(b) to all or any of the remaining members *pro rata* or in such proportions as they and the executor may agree; or

(c) after giving a right of pre-emption on twenty-eight days' written notice to the private business corporation and the other members, to any person qualified under *section two hundred and fifty-three* ("Requirements for membership") to be a member.

(4) The members of a private business corporation shall be obliged to accept as a new member any person who has acquired a deceased member's interest in accordance with subsection (3)(c).

### 261 Other disposals of members' interests

Subject to sections two hundred and fifty-five ("Cessation of membership by order of court"), two hundred and fifty-nine ("Disposal of interest of insolvent member") and two hundred and sixty ("Disposal of interest of deceased member"), a private business corporation's by-laws may restrict the right to dispose of members' interests, but in the absence of such restriction all disposals of members' interests shall require the consent of every member.

### 262 Maintenance of total members' interests

To maintain the total members' interests at one hundred per centum, in conformity with section two hundred and forty-eight ("Incorporation statement, signing thereof and registration of private business corporation") (1)(e), and section two hundred and fifty-six ("Nature of member's interest") (1) —

(a) when a person becomes a new member of an existing private business corporation by making a contribution to its assets in accordance with *section two hundred and fifty-four* ("Members' contributions") (2), the interests of all existing members shall be reduced in proportion to their existing

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percentages, so that the total of those reductions equals the percentage of the interest acquired by the new member in accordance with *section two hundred and fifty-eight* ("*Acquisition of member's interest by new member*") (b); and

(b) when a private business corporation acquires any member's interest it shall be distributed between the remaining members' interests in proportion to their existing percentages.

### 263 Acquisition by private business corporation of members' interests

(1) Subject to *section two hundred and fifty-two* ("*Number of members; commencement and termination of membership*"), a private business corporation may—

(a) accept the surrender of any member's interest for no consideration; or

(b) with the consent of all members, acquire any member's interest in exchange for payment or the delivery of property if, immediately after such payment or delivery, the private business corporation's assets, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due in the ordinary course of its business.

(2) If a private business corporation makes a payment or delivers property in contravention of subsection (1)(b) the purported acquisition of the interest shall be void and every member, including both parties to the purported acquisition, shall be liable, jointly and severally with the private business corporation, for every debt of the private business corporation incurred before the acquisition was given, unless he or she can prove that he or she had no knowledge of the making of the payment or delivery of the property or took all reasonable steps to prevent it.

### 264 Financial assistance by private business corporation for acquisition of members' interests

(1) A private business corporation may, with the consent of all its members, give financial assistance for the acquisition of a member's interest in the private business corporation if, immediately after such assistance is given, the private business corporation's assets, excluding any claim or security resulting from the giving of assistance, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due in the ordinary course of its business:

Provided that, where the lending of money is a part of the ordinary business of a private business corporation, nothing in this subsection shall be taken to prohibit the lending of money by the private business corporation in the ordinary course of its business.

(2) If a private business corporation gives financial assistance for the acquisition of a member's interest in the private business corporation in contravention of subsection (1), the purported giving of the assistance and acquisition of the interest shall be void and every member, including both parties to the purported acquisition, shall be liable, jointly and severally with the private business corporation, for every debt of the private business corporation incurred before the assistance was given, unless he or she can prove that he or she had no knowledge of the giving of the assistance or took all reasonable steps to prevent it.

#### *Sub-Part D: Management and administration*

### 265 Power of members to bind private business corporation

(1) Subject to this section, every member who is not a minor shall be an agent of the private business corporation for the purpose of the business of the private business corporation

(2) The acts of every member shall bind the private business corporation if—

(a) such acts were authorised, expressly or impliedly, by the private business corporation or were subsequently ratified by it; or

(b) such acts were done for carrying on, in the usual way, business of the kind carried on by the private business corporation, unless the member so acting has in fact no authority to act for the private business corporation in the particular matter and the person with whom he or she is dealing knew or ought reasonably to have known that he or she had no authority.

(3) Where any act of a member is for a purpose apparently not connected with the private business corporation's ordinary business, the private business corporation shall not be bound unless it authorised him or her to do the act or subsequently ratified the act.

(4) If a private business corporation's by-laws or any agreement place any restriction on the authority of any member to bind the private business corporation, no act done in contravention of the restriction shall bind the private business corporation to any person who

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knew or ought reasonably to have known of the restriction.

(5) The fact that some but not all of the members of a private business corporation are described as directors or executive members shall not of itself be taken as notice, for the purposes of subsection (2) (b) or subsection (4), that any member not so described has no authority or restricted authority to act on behalf of the private business corporation.

### 266 By laws

(1) A private business corporation shall if it has not adopted the by-laws specified in Table D of the *Sixth Schedule*—

(a) as soon as practicable adopt by-laws agreed to by all members regulating the management of its affairs; or

(b) on the registration of its incorporation statement or at any time thereafter adopt all or any of the by-laws set out in Table D in the *Sixth Schedule* (“Model Articles and By-laws”).

(2) By-laws shall be signed by every member at the time of their adoption, and shall be kept at the registered office of the private business corporation or accounting officer's physical address.

(3) A private business corporation may at a meeting, by the affirmative votes of members whose combined interests total at least seventy-five *per centum*, amend its by-laws, and any amendment so made in the by-laws shall be as valid as if originally contained therein and be subject to amendment by the same method.

(4) Subject to this Act, by-laws shall, when signed by every member at the time of the adoption, bind the private business corporation and the members thereof, including persons becoming members after the time of adoption, to the same extent as if they had been signed by each member and contained undertakings on the part of each member to observe all the by-laws.

(5) All moneys payable or property transferable by any member to the private business corporation under the by-laws shall be a debt due by him or her to the private business corporation.

(6) Every member of a private business corporation shall be entitled to one free copy of the private business corporation's by-laws and of any amendments thereto.

(7) In the absence of by-laws the members of a private business corporation may, subject to section two hundred and sixty-seven (“*Variable rules for management*”), regulate the management of its affairs in any manner agreed to by them from time to time.

### 267 Variable rules for management

(1) Unless otherwise provided in this Act or in the by-laws of the private business corporation concerned or in any agreement between members or between the private business corporation concerned and its members—

(a) every member may take part in the management of the affairs of the private business corporation;

(b) no member shall be entitled to remuneration for taking part in the management of the affairs of the private business corporation;

(c) any difference arising between members in connection with the affairs of the private business corporation shall be decided by majority vote.

(2) Each matter listed below shall require the agreement of all of the private business corporation members, unless provided otherwise in the private business corporation by-laws. The by-laws may reduce such unanimous vote requirement for any or all matters listed below by specifying a smaller vote requirement, but not less than a simple majority of all members' voting power—

(a) amendment of the private business corporation's incorporation statement or by-laws (but an amendment may not in any event increase a member's obligation to make contributions or eliminate or reduce a member's rights, without that member's consent);

(b) authorisation or ratification of a conflict of interest transaction under Chapter II Part IV of this Act;

(c) making of a distribution to members, including a purchase by the private business corporation of a member's interest;

(d) admission of a new member of the private business corporation, including either a transferee of an existing member's interest or a person who becomes a new member by a payment into the capital of the private business corporation;

(e) a decision to dissolve the private business corporation;

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(f) a decision to merge the private business corporation with another private business corporation;

(g) a decision to convert the private business corporation into another form of entity; or

(h) the sale, lease, pledge, mortgage or other transfer of all or substantially all of the private business corporation's assets.

(3) If the by-laws of the private business corporation so allow the election and responsibilities of managers shall be in accordance with the relevant provisions of the model by-laws in Table D of the *Sixth Schedule*.

(4) A manager of a private business corporation is an agent of the private business corporation with authority to represent and bind the private business corporation in transactions with third parties. An act of a manager, including signing an agreement in the private business corporation's name, which is for carrying on the usual business of the private business corporation, is binding on the private business corporation, unless the manager had no authority to act for the private business corporation in that particular matter and the person with whom the manager was dealing knew that the manager lacked authority.

(5) An act of a manager which is not apparently for carrying on the usual business of the private business corporation is binding on the private business corporation only if the act was authorised by the members.

(6) A manager or other person who knowingly purports to act for a private business corporation without authority of the private business corporation shall be personally liable for damages caused thereby to the private business corporation and any person with whom he or she has dealt.

### 268 Meetings of members

(1) Every private business corporation with more than one member shall hold a meeting of its members annually, to be known as its annual meeting, not later than six months after the end of the private business corporation's financial year.

(2) Any member of a private business corporation may at any time convene an additional meeting by giving all members seven days notice, not necessarily in writing, of the time and place and purpose of the meeting:

Provided that the time and place of the meeting shall be convenient for the attendance of members.

(3) Unless otherwise provided in the by-laws, at any meeting of members of a private business corporation—

(a) to constitute a quorum, there shall be present in person or by proxy, members whose interests exceed **50%** of the total members' interests;

(b) the chairperson of the meeting shall be the member elected as chairperson of the private business corporation or, if no member has been so elected or he or she is not present, the meeting shall elect its own chairperson.

(c) the chairperson shall not have a casting vote;

(d) each member shall have a vote corresponding with the percentage of his or her interest:

Provided that the appointment of a proxy by a member shall be in writing.

(4) Every private business corporation shall cause minutes of all proceedings of meetings of its members to be kept for that purpose, and any such minutes, signed by the chairperson of the meeting or of the next succeeding meeting, shall be evidence of the proceedings and evidence that the meeting was properly convened and conducted:

Provided that **no later than 3 months** after the annual meeting the chairperson or other responsible member of the private business corporation shall submit a signed declaration in accordance with the prescribed form that the annual meeting was held in conformity with this section.

(5) Unless otherwise provided in the by-laws of a private business corporation, a resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at meetings of members shall, with effect from the date of the last signature, which date shall be recorded on the signed document, be as valid and effective as if it had been passed at a meeting of members duly convened and held in terms of this section.

### 269 Protection against unfair prejudice

(1) A member may apply to a court for an order under this section on the ground that the private business corporation's affairs are being

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or have been conducted in a manner which is unfairly prejudicial to—

- (a) his or her interests; or
- (b) his or her interests and the interests of one or more of the other members;

or on the ground that any actual or proposed act or omission of the private business corporation, including an act or omission on its behalf, is or would be so prejudicial.

(2) Subsection (1) shall apply to a person who is not a member but is representing or assisting a member or his or her estate in accordance with *section two hundred and fifty-nine* ("Disposal of interest of insolvent member") (1) or (2), and references in this section to a member or members shall be construed accordingly.

(3) If the court is satisfied that an application under this section is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(4) Without prejudice to the generality of subsection (3), the court's order may—

- (a) regulate the conduct of the private business corporation's affairs in the future;
- (b) require the private business corporation to—
  - (i) refrain from doing or continuing an act complained of by the applicant;
  - (ii) do an act which the applicant has complained it has omitted to do;
- (c) authorise civil proceedings to be brought or defended in the name and on behalf of the private business corporation by such person or persons and on such terms as the court may direct;
- (d) provide for the purchase of the interests of any members of the private business corporation by other members or by the private business corporation itself.

(5) If an order under this section required the private business corporation not to make any, or any specified, amendment in its incorporation statement or by-laws, the private business corporation shall not then have power without leave of the court to make any such amendment in breach of that requirement.

(6) Any amendment in a private business corporation's incorporation statement or by-laws made by virtue of an order under this section shall be of the same effect as if duly

made by agreement of all the members, and the provisions of this Act shall apply to the incorporation statement and by-laws as so amended accordingly.

### 270 Restriction on payments to members

(1) A private business corporation shall not directly or indirectly pay any dividend, make any distribution, repay any contribution, make any other payment or transfer any property to any member by reason only of his or her membership unless, immediately after the payment or transfer, the private business corporation's assets, fairly valued, will exceed its liabilities and it will be able to pay its debts as they become due in the ordinary course of its business.

(2) A member shall repay any money and return any property he or she has received from the private business corporation in contravention of subsection (1), and until he or she does so he or she shall be liable, jointly and severally with the private business corporation, for all its debts.

(3) Nothing in this section shall apply to the discharge by a private business corporation in good faith of—

(a) an obligation towards a member arising out of contract or enrichment and resulting from the private business corporation—

(i) employing the member as an officer or employee; or

(ii) buying or hiring property from the member or borrowing money from him or her or otherwise contracting with him or her;

(iii) in the ordinary course of its business;

or

(b) a statutory obligation towards a member; or

(c) a delictual obligation towards a member.

(4) A member, manager or other person who causes such a prohibited distribution to be made, and who knew at the time that the distribution was thus prohibited, shall be personally liable to the private business corporation for the return of the amount of all such distributions.

*Sub-Part E: Accounting*

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### 271 Financial records

- (1) Every private business corporation shall cause financial records to be kept in accordance with this section.
- (2) The financial records shall be such as are necessary fairly to present the state of affairs and business of the private business corporation and to explain the transactions and financial position of the private business corporation, including—
- (a) records showing its assets and liabilities, members' contributions, undrawn profits, revaluations of fixed assets and amounts of loans to and from members; and
  - (b) records containing entries from day to day of all cash received and paid out, in sufficient detail to enable the nature of the transactions and, except in the case of cash sales, the names of the parties to the transactions to be identified; and
  - (c) records of all goods purchased and sold on credit, and services received and rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and
  - (d) statements of the annual stock-taking and records to enable the value of stock at the end of the financial year to be determined; and
  - (e) vouchers supporting entries in the financial records.
- (3) The financial records relating to—
- (a) contributions by members; and
  - (b) loans to and from members; and
  - (c) payments to members;
- shall contain sufficient detail of individual transactions to enable the nature and purpose thereof to be clearly identified.
- (4) The financial records referred to in subsection (1) shall be kept in such a manner as to provide adequate precautions against falsification and to facilitate the discovery of any falsification.
- (5) The financial records referred to in subsection (1) shall be kept at the place or places of business or at the registered office of the private business corporation or accounting officer's physical address concerned and, wherever kept, shall be open at all reasonable times for inspection by any member.

(6) Every private business corporation shall preserve its financial records for six years from the end of the financial year to which they relate.

(7) If any member of a private business corporation fails to take all reasonable steps to secure compliance by the private business corporation with the requirements of this section, or has by his or her own wilful act been the cause of default by the private business corporation in complying with any of those requirements, the Registrar may (unless he or she is satisfied that the member's conduct was fraudulent, reckless or wilful, in which event *section sixty-nine ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records")*(1)(b) shall apply), subject to subsection (8), serve upon him or her a category 3 civil penalty order

(8) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (7) for a director to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in *section two hundred and ninety-four ("Power of Registrar to issue civil penalty orders and categories thereof")* (4)(a) and (b)(i).

### 272 Financial year

(1) The date of the end of the financial year of a private business corporation shall be fixed in accordance with *section two hundred and forty-eight ("Incorporation statement, signing thereof and registration of private business corporation")*(1)(h) and may be changed in accordance with *section two hundred and forty-nine ("Registration of amended incorporation statement")*:

Provided that the change from an old to a new financial year shall be effected by fixing a period of not less than six months and not more than eighteen months as the private business corporation's financial year on the occasion of the change.

(2) For convenience of accounting, a private business corporation may take as the end of its financial year any date **not more than 14 days** before or after the date fixed in accordance with subsection (1).

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### 273 Annual financial statements

(1) The members of a private business corporation shall, **within 3 months** after the end of every financial year of the private business corporation, cause financial statements in respect of that financial year to be made out.

(2) The financial statements of a private business corporation—

(a) shall consist of—

(i) a statement of financial position and any notes thereon, where applicable; and

(ii) an income statement, or any similar financial statement where appropriate, and any notes thereon where applicable;

and

(b) shall, in conformity with generally accepted accounting practice appropriate to the business of the private business corporation, fairly present the state of affairs of the private business corporation as at the end of the financial year concerned, and the results of its operations for that year; and

(c) shall disclose separately the aggregate amounts, as at the end of the financial year, of contributions by members, undrawn profits, revaluations of fixed assets and amounts of loans to and from members, and the changes in those amounts during the year; and

(d) shall be in agreement with the financial records, which shall be summarised in such a form that—

(i) compliance with this subsection is made possible; and

(ii) an accounting officer is enabled to report to the corporation in terms of *section two hundred and seventy-five ("Duties of accounting officer")*(1)(c) without having to refer to any subsidiary financial records and vouchers supporting the entries in the financial records:

Provided that nothing contained in this paragraph shall be construed as preventing an accounting officer, if he or she considers it necessary, from inspecting such subsidiary financial records and vouchers;

and

(e) shall contain the report of an accounting officer referred to in section 275(1)(c).

(3) The annual financial statements of a private business corporation shall be approved

and signed by or on behalf of one or more members who have an aggregate of more than fifty *per centum* of all the members' interests.

(4) If any member of a private business corporation fails to take all reasonable steps to comply with the requirements of this section, or has by his or her own act been the cause of any default by the private business corporation or its members in complying with any of those requirements, the Registrar may (unless he or she is satisfied that the member's conduct was fraudulent, reckless or wilful, in which event *section sixty-nine ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records")* (1)(b) shall apply), subject to subsection (6), serve upon him or her a category 3 civil penalty order.

(5) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (4) for a member to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in *section two hundred and ninety-four ("Power of Registrar to issue civil penalty orders and categories thereof")* (4)(a) and (b)(i).

### 274 Examination of financial statements and report thereon

(1) Not later than three months after completion of its annual financial statements in terms of *section two hundred and seventy-three ("Annual financial statements")*, a private business corporation shall submit them to an accounting officer, who shall be a person who is either—

(a) a member, entitled to practise as such, of a profession approved by the Minister in accordance with regulations made under *section three hundred and one ("Regulations")*; or

(b) a person licensed by the Minister in accordance with regulations made under *section three hundred and one*; for examination, review and report in terms of *section two hundred and seventy-five ("Duties of accounting officer")*.

(2) A private business corporation may submit its financial statements to one of its own members for examination, review and report if the member is qualified under subsection (1) to

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be an accounting officer and the private business corporation has at least one other member.

(3) If any member of a private business corporation fails to take all reasonable steps to comply with the requirements of this section, or has by his or her own act been the cause of any default by the private business corporation or its members in complying with any of those requirements, the Registrar may (unless he or she is satisfied that the member's conduct was fraudulent, reckless or wilful, in which event *section sixty-eight ("Fraudulent, reckless or wilful failure of financial accounting; falsification of records")* (1)(b) shall apply), subject to subsection (6), serve upon him or her a category 3 civil penalty order.

(4) It shall be a partial defence to a civil penalty order or proposed civil penalty under subsection (4) for a member to prove (the burden whereof rests on him or her) that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of seeing that the requirements of this section were complied with and was in a position to discharge that duty, in which case the Registrar may waive those parts of the penalty clause of the order referred to in *section two hundred and ninety-four ("Power of Registrar to issue civil penalty orders and categories thereof")* (4)(a) and (b)(i).

### 275 Duties of accounting officer

(1) An accounting officer to whom the annual financial statements of a private business corporation have been submitted in terms of *section two hundred and seventy-four ("Examination of financial statements and report thereon")* shall without delay—

- (a) determine whether the annual financial statements are in agreement with the financial records of the private business corporation as provided in *section two hundred and seventy-three ("Annual financial statements")*(2)(d); and
- (b) review the appropriateness of the accounting policies applied in the preparation of the annual financial statements; and
- (c) report in respect of paragraphs (a) and (b) to the private business corporation.

(2) If in the performance of his or her duties the accounting officer of a private business corporation becomes aware of any contravention of this Act, he or she shall describe the nature of such contravention in his or her report made in terms of subsection (1)(c).

(3) If an accounting officer is—

(a) a member or employee of the private business corporation; or

(b) a partner of a member or employee of the private business corporation;

or

(c) a member of a partnership or firm which employs a member or employee of the private business corporation;

he or she shall state that fact in his or her report made in terms of subsection (1)(c).

(4) If an accounting officer of a private business corporation—

(a) at any time knows, or has reason to believe, that the private business corporation is not carrying on business or is not in operation and has no intention of resuming operations in the foreseeable future; or

(b) in the performance of his or her duties finds—

(i) that any change in respect of any particulars mentioned in the private business corporation's incorporation statement has not been registered; or

(ii) that the financial statements prepared in terms of *section two hundred and seventy-three* indicate that, as at the end of the financial year concerned, the private business corporation's liabilities exceeded its assets; or

(iii) that the financial statements prepared in terms of *section two hundred and seventy-three* incorrectly indicate that, as at the end to the financial year concerned, the assets of the private business corporation exceeded its liabilities, or if he or she has reason to believe that such an incorrect indication is given; he or she shall forthwith report his or her findings to the Registrar:

Provided that, if the accounting officer subsequently finds that any matter or situation reported on in terms of this section has been amended he or she may report thereon to the Registrar.

(5) Any report submitted to the Registrar in terms of subsection (4), including any subsequent report submitted in terms of the proviso thereto, shall be open for inspection at his or her office in terms of *section fourteen ("Inspection and copies of documents in Companies Office and production of documents in evidence")*.

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### 276 Accounting officer's right of access to records, etc., and to convene meetings

An accounting officer to whom the annual financial statements of a private business corporation have been submitted in terms of section *two hundred and seventy-four* ("Examination of financial statements and report thereon") shall—

- (a) have a right of access at all times to the records, accounts, vouchers and securities of the private business corporation; and
- (b) be entitled to require from the members and any manager and employee of the private business corporation such information and explanations as he or she thinks necessary for the performance of his or her duties; and
- (c) have the same right as is conferred on members of the private business corporation by section *two hundred and sixty-eight* ("Meetings of members") (2) to convene a meeting of members; and
- (d) be entitled to be heard at any meeting of members of the private business corporation on any matter which concerns him or her as the accounting officer.

### 277 Termination of accounting officer's mandate

(1) If for any reason a private business corporation terminates the mandate of an accounting officer before he or she has been able to carry out his or her duties in terms of section *two hundred and seventy-five* ("Duties of accounting officer"), the accounting officer shall forthwith report the fact of termination, in writing, to the Registrar.

(2) If an accounting officer has reason to believe that the termination of his or her mandate results from the commission by the private business corporation or any member of any fraud or financial or other irregularity in the conduct of the private business corporation's affairs, he or she shall append to his or her report under subsection

(1) a concise statement of the fraud or irregularity.

(3) No action or other proceedings shall lie against an accounting officer in respect of any statement made in terms of subsection (2) unless it is false and malicious.

### PART II OTHER BUSINESS ENTITIES

### 278 Voluntary registration of partnership agreements, etc.

(1) In this section—

**"constitutive document"**, means, as the case may be, a partnership agreement, a joint venture agreement or a constitution, or other contract or agreement by which the entity or unregistered association, in question is constituted.

(2) The authorised representative of any partnership, syndicate, consortium, joint venture or unregistered association, may, on payment of the prescribed fee and in the prescribed manner register a copy of the constitutive document relating to the entity in question, and thereupon the document lodged in the Registry shall be deemed for all purposes to be the authentic record of such document.

(3) A certificate by the Registrar that—

(a) the constitutive document of a partnership, a joint venture or unregistered association is registered with the Office; or

(b) a copy of the constitutive document of a partnership agreement, a joint venture agreement or unregistered association is an authentic copy of the one registered at the Office; shall be presumptive proof of the facts thus certified and be admissible as such in all legal proceedings.

(4) Any changes to a constitutive document registered under this section must be notified to the Registrar within the prescribed time and in the prescribed manner, in default of which the party responsible for the registration shall be liable to a category 2 civil penalty.

### CHAPTER V ELECTRONIC REGISTRY

### 279 Interpretation in Chapter V

In this Part—

**"access"**, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of the electronic registry;

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**“affixing a digital signature”**, in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;

**“business entity registration work”** means the preparation by a legal practitioner, chartered accountant, chartered secretary, business entity incorporation agent or business entity service provider of any document for registration with the Office or for attestation or execution by the Registrar;

**“computer”** means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;

**“computer network”** means the interconnection of one or more computers through—

- (a) the use of satellite, microwave, terrestrial line or other communication media; and
- (b) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

**“computer system”**, means a device or collection of devices, including input and output devices, capable of being used with external files which contain computer programmes, electronic instructions, input and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

**“digital signature”** means an electronic signature created by computer that is intended by the registered user using it and by the Registrar accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in *section two hundred and eighty-four (“Digital signatures”)(1)*;

**“electronic data”** means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;

**“electronic registry”** means the computer system or computer network that constitutes the electronic version of the Office for the Registration of Companies and Other Business Entities;

**“electronic record or communication”** means electronic data that is recorded, received or sent in an electronic form or in microfilm or computer-generated microfiche;

**“intermediary”**, with respect to any particular electronic communication, means any person who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;

**“Internet”** has the meaning given to that word by the Postal and Telecommunications Act [Chapter 12:05];

[Editor has corrected this Chapter number]

**“notarial practice”**, means the work of a notary public;

**“originator”**, means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

**“registered user”** means a person registered in terms of section 283 (“Registration of registered users and suspension or cancellation of registration”);

**“researcher”** means a person engaged in research and information gathering for statistical, economic, sociological and similar *bona fide* scientific or academic work;

**“self-actor”** means a person wishing to register a company (other than a shell company or a shelf company) or private business corporation on his or her own behalf or on behalf of his or her fellow members, that is to say without the assistance of a legal practitioner, chartered accountant or chartered secretary;

**“unique electronic document”** means a document in electronic form having no contemporaneous material counterpart, or whose material prototype is lost, damaged or destroyed;

**“user agreement”**, means the agreement between the registered user and the Registrar referred to in *section two hundred and eighty-two (“User agreements”)*.

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### 280 Establishment of electronic registry

(1) The Registrar may establish an electronic registry, for which purpose, despite anything to the contrary in this Act, the Registrar may—

(a) digitise every register, constitutive document or other record under his or her charge; and

(b) establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including the despatch and receipt and processing of any return, record, declaration, form, notice, statement or other record or document for the purposes of this Act.

(2) The electronic registry shall become operational from such date as the Registrar, in consultation with the Minister, shall specify by notice in a *statutory instrument*.

Provided that before such date the Registrar may in terms of sections 282 ("User agreements") and 284 ("Digital signatures") **register users** of the electronic registry to allow them to access the electronic registry for research and information gathering purposes only.

(3) The use of the electronic registry shall be restricted to registered users, but—

(a) such use shall not interrupt or prejudice the continued use of the paper-based Registry by users who are not so registered; and

(b) registered users may be required to use concurrently the paper-based deeds registry to such extent and under such conditions or in such circumstances as may be prescribed by regulations under section 301("Regulations").

### 281 Use of electronic data generally as evidence

(1) In the event of any discrepancy between an electronic copy of a document lodged with the electronic registry and the material version of the same document that is lodged with the paper-based Registry, the latter shall be deemed to be the authentic record of the document.

(2) If a unique electronic document is generated by, stored with or communicated to, from or through the electronic registry, a certificate by the Registrar—

(a) that the document is a unique electronic document and that is or was so generated, stored and communicated; or

(b) as to the identity of the originator or recipient of the document; or

(c) that, to the best of his or her knowledge, the contents of the document are an authentic record of any transaction to which it relates; or

(d) attesting to all or any combination of the foregoing paragraphs (a), (b) and (c);

shall be presumptive proof of the facts thus certified and be admissible as such in all legal proceedings.

(3) Apart from subsection (2), with respect to the admissibility in evidence of any electronic data for any purpose under this Act, and notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

(a) on the sole ground that it is electronic data; or

(b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(4) Information in the form of electronic data shall be given due evidential weight.

(5) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

(a) the reliability of the manner in which the data was generated, stored and communicated; and

(b) the reliability of the manner in which the integrity of the data was maintained; and

(c) the manner in which its originator was identified.

### 282 User agreements

The Registrar shall, for the purpose of regulating the use of the electronic registry by registered users, enter into a user agreement with each registered user substantially in the form set out in the *Seventh Schedule* ("User Agreement").

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### 283 Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Registrar through the electronic registry unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Registrar may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Registrar is satisfied that the applicant—

(a) is a person qualified to do business entity registration work or notarial practice, or a researcher, or a self-actor;

(b) will introduce adequate measures to—

(i) prevent disclosure of the digital signature allocated to him or her by the Registrar to any person not authorised to affix such signature;

and

(ii) safeguard the integrity of information communicated through the electronic registry, apart from any change which may occur in the normal course of such communication or during storage and display of such information;

and

(c) will maintain the standard of reliability of his or her own computer system required in accordance with the user agreement;

the Registrar may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (2), the Registrar is satisfied that a registered user—

(a) has not complied with the requirements of his or her user agreement or with any condition or obligation imposed by the Registrar in respect of such registration; or

(b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration; or

(c) has contravened or failed to comply with any provision of this Act; or

(d) has been convicted of an offence under this Act; or

(e) has been convicted of an offence involving dishonesty; or

(f) is an unrehabilitated solvent or liquidated; or

(g) no longer carries on the business for which the registration was issued;

the Registrar may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Registrar shall—

(a) give notice to the registered user of the proposed cancellation or suspension; and

(b) provide the reasons for the proposed cancellation or suspension; and

(c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

### 284 Digital signatures

(1) Every digital signature intended for use in connection with the electronic registry shall comply with the following requirements, namely, it must—

(a) be unique to the registered user and under the sole control of the registered user; and

(b) be capable of verification; and

(c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and

(d) be in complete conformity with the requirements prescribed by the Registrar and contained in the user agreement.

(2) The Registrar shall, on registering a user, allocate to the registered user—

(a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or

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(b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

### 285 Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

(a) the information contained therein remains accessible so as to be subsequently usable; and

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;

and

(c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

### 286 Sending and receipt of electronic communications

(1) An electronic communication through the electronic registry or the record of such communication shall be attributed to the originator—

- (a) if it was sent by the originator; or
- (b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or
- (c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Registrar and a registered user have not agreed that an acknowledgement of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by—

- (a) any communication by the Registrar, electronic or otherwise; or
- (b) conduct by the Registrar or any officer sufficient to indicate to the registered user that the electronic communication has been received.

(3) Where the Registrar and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(4) As between the electronic registry and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

(a) where the electronic communication is by a registered user, at any office of the Registry, or to the Registrar, to whichever it was addressed, and such office shall be the place of receipt; or

(b) if the electronic communication is sent by the Registry or the Registrar to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any return, record, declaration, form, notice, statement or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Registry or the Registrar, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Registrar and the registered user.

(7) The Registrar may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically, any return, record, declaration, form, notice, statement or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Registrar may stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

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### 287 Obligations, indemnities and presumptions with respect to digital signatures

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Registrar in writing of that fact without delay.

(2) No liability shall attach to the Registrar, the Registry or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Registry or the Registrar—

(a) without the authority of the registered user to whom such signature was allocated; and

(b) before notification to the Registry or the Registrar by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Registry or the Registrar shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Registry is a party, the question arises whether a digital signature affixed to any electronic communication to the Registry or the Registrar was used in such communication with or without the consent and authority of the registered user, it shall be presumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

### 288 Alternatives to electronic communication in certain cases

(1) Whenever the electronic registry or a computer system of a registered user is inoperative, the registered user and the Registrar shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Registrar may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

### 289 Use of electronic registry otherwise than for business entity registration

(1) The Registrar may, in accordance with the prescribed conditions and subject to payment of the prescribed fee, if any, permit any company or private business corporation to become a registered user of electronic registry for any or all of the following purposes—

(a) the keeping and rendering of documents and returns in electronic form for the purposes of *sections nine* ("Form of registers and other documents") and *fifteen* ("Additional copies of returns or records");

(b) the electronic service of process and documents as between the company or private business corporation and the Office in terms of *section sixty-four* ("Service of documents");

(c) the issuance of uncertificated shares or of dematerialised membership interests in terms of *section one hundred and fifty-three* ("Evidence of title to shares") or 257 ("Certificate of member's interest") (3);

(d) the issuance of debentures in dematerialised form in terms of *section one hundred and fifty-four* ("Creation and registration of debentures; contracts to subscribe for debentures");

(e) the keeping of an electronic register of members in terms of *section one hundred and fifty-nine* ("Register and index of members and use of register as presumptive proof of membership").

(2) For the avoidance of doubt it is declared that nothing in this section prohibits registered business entities that are not registered users from transacting their internal or external business electronically, but unless and until they become registered users they must continue to comply fully with the paper-based requirements of the sections of this Act mentioned in subsection (1).

### 290 Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Registry or the Registrar without the authority of such registered user, commits an offence and is liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten

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years or to both such fine and such imprisonment.

(2) A person who—

(a) makes a false electronic record or falsifies an electronic record; or

(b) dishonestly or fraudulently—

(i) makes, affixes any digital signature to, transmits or executes an electronic record or communication; or

(ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

### 291 Restrictions on disclosure of information

(1) Except for the purposes of a prosecution in respect of an offence under this Act, no user of the electronic registry who is registered to use it for purposes other than business entity registration work, business entity service provision, or notarial practice shall—

(a) disclose to any other person any information relating to an individual without the consent of the individual concerned; or

(b) put any information obtained from the electronic registry into the public domain unless such information is sufficiently anonymised, that is to say it must only be presented in bulk for statistical purposes and so presented as not to name any individual to which such information relates.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

### CHAPTER VI

### BUSINESS ENTITY

### INCORPORATION AGENTS

### AND BUSINESS ENTITY SERVICE

### PROVIDERS, AND SHELL AND

### SHELF COMPANIES

### 292 Business entity incorporation agents and business entity service providers

(1) In this section—

**“business entity incorporation agent”** means a person licensed under this section to do business entity registration work;

**“business entity registration work”** means the preparation by any person for profit, or otherwise than on his or her own behalf, of any document for registration with the Companies Office or for attestation or execution by the Registrar;

**“business entity service provision”** means the business of providing any one or more of the following services for profit, and otherwise than on his or her own behalf or on behalf of more than three registrable business entities (whether or not in addition to doing business entity registration work)—

(a) acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons;

(b) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

(c) managing the share registers of other companies and providing services pertinent thereto such as the issuance of share certificates and the payments of dividends to shareholders on behalf of the companies in question;

(d) acting as, or arranging for another person to act as, a nominee shareholder for another person;

and **“business entity service provider”** shall be construed accordingly.

(2) No person other than a legal practitioner, chartered accountant, person registered under the Public Accountants and Auditors Act

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[*Chapter 27:12*] or chartered secretary may engage in business entity registration work or business entity service provision unless he or she is licensed in terms of this section.

(3) Any individual who—

(a) is not a legal practitioner, chartered accountant, person registered under the Public Accountants and Auditors Act [*Chapter 27:12*] or chartered secretary; but

(b) is an individual who has either or both of the following qualifications—

(i) is registered as a public accountant or auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; or

(ii) has a Bachelor in Business Administration degree from a recognised university or an equivalent prescribed qualification; may apply to the Registrar in the prescribed form and manner and on payment of the prescribed fee to be licensed as a business entity incorporation agent or business entity service provider.

(4) Any person who—

(a) is not a legal practitioner, chartered accountant or chartered secretary;

and

(b) is incorporated as a company under this Act;

may apply to the Registrar in the prescribed form and manner and on payment of the prescribed fee to be licensed as a business entity incorporation agent or a business entity service provider.

(5) If the Registrar is satisfied that the applicant is qualified to be a business entity incorporation agent or business entity service provider, the Registrar shall issue him, her or it with a licence in the prescribed form with or without such conditions as may be specified in the licence:

Provided that it shall not be necessary for a person licensed as a business entity service provider whose services include the incorporation of business entities to be also licensed as a business entity incorporation agent.

(6) A business entity incorporation agent's licence or a business entity service provider's licence shall not be transferable

(7) A business entity incorporation agent's licence or a business entity service provider's

licence shall expire on the 31st December following the year in which it was issued, and may be renewed in accordance with the provisions of this section for obtaining a first licence.

(8) The Registrar may refuse an application for a licence or the renewal thereof, or cancel or suspend a licence if the applicant or licensee has—

(a) given false or misleading information in an application to be licensed; or

(b) persistently failed to comply with any provision of this Act; or

(c) been convicted of an offence under this Act, or any other offence involving fraud, forgery, or money laundering, or an offence referred to in Chapter IX ("bribery and corruption") of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

(9) Any person other than a legal practitioner, chartered accountant, chartered secretary, licensed business entity incorporation agent or licensed business entity service provider who engages in or offers services in connection with business entity registration work or business entity service provision shall be guilty of an offence and is liable to a fine of level 7 or imprisonment for a period of two years or both.

(10) A person who, having been licensed to engage in business entity registration work or business entity service provision, continues to engage in such work after the expiry of his or her licence, shall be in default and liable to category 4 civil penalty.

(11) Any person who, at the effective date, is engaged in business entity registration work or business entity service provision at the date of commencement of this Act shall have six months within which to become licensed in terms of this section

### 293 Shell and shelf companies

(1) In this section—

**"active business entity"** means a company or private business corporation that, in addition to submitting regular statutory returns and notices to the Registrar, is being operated in accordance with its stated objects, and is otherwise active in business;

**"shelf company"** means a shell company incorporated or registered in the name of a person who intends to sell or otherwise transfer it to another person or persons, who in turn may

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operate it as an active business entity, a shell company or a shelf company;

**“shell company”** means a company that, apart from submitting regular statutory returns and notices to the Registrar, is not being operated in accordance with its stated objects, or is not otherwise active in business for more than twelve (12) months after its registration.

(2) Any person engaging in business entity registration work or business entity service provision who wishes to incorporate any shelf company or shell company whether singly or in bulk—

(a) must lodge together with the constitutive documents of the shelf company or shell company in question a declaration to the effect that the constitutive documents relate to such shelf company or shell company; and

(b) shall (subject to a prescribed discount for bulk lodgements) pay double the fees for the registration of each set of constitutive documents relating to each such company.

(3) If it comes to the notice of the Registrar that any person engaging in business entity registration work or business entity service provision has incorporated any shelf company or shell company without making the declaration required by subsection (2) (a), the Registrar shall serve on that person a category 2 civil penalty order, whose remediation clause shall require the payment of the fees outstanding for each named shelf company or shell company dealt with in contravention of subsection (2).

## CHAPTER VII GENERAL

### PART I CIVIL PENALTY ORDERS

#### 294 Power of Registrar to issue civil penalty orders and categories thereof

(1) Where default is made in complying with any provision of this Act or of regulations made under this Act for which a civil penalty is specified to be leviable, the Registrar may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act, or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate

category specified in subsection (2), (3), (4), (5) or (6) or any combination of such orders as the provision in question may allow.

(2) A category 1 civil penalty order provides for a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the Registrar or is possible), of which—

(a) the fixed penalty shall be the maximum amount specified for level ten;

and

(b) the cumulative penalty shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under paragraph (a).

(3) A category 2 civil penalty order provides for a cumulative civil penalty for a specified completed but remediable default which—

(a) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the specified period; and

(b) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide for a penalty of the maximum amount of level three for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action).

(4) A category 3 civil penalty order provides for a combination of a fixed penalty and potentially 2 cumulative penalties for a specified completed but partially remediable default, of which—

(a) the fixed penalty shall be the maximum amount specified for level five;

and

(b) the cumulative penalty—

(i) relating to paragraph (a) shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under paragraph (a); and

(ii) relating to the taking of the specified remedial action—

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A. shall be the maximum amount of level three for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date;

and

B. must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order.

(5) A category 4 civil penalty order provides for a cumulative penalty for a continuing default which—

(a) must be suspended conditionally upon the defaulter immediately (that is to say, on the day after the civil penalty is served on him or her or such longer period not exceeding seven days as may be specified in the provision or in the order in question) ceasing the default; and

(b) upon the civil penalty becoming operative because of failure to cease the default immediately, shall be the maximum amount fixed for level one for each day during which the default continues, not exceeding a period of ninety days.

(6) A category 5 civil penalty order provides for a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—

(a) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order; and

(b) which, upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide—

(i) a fixed penalty of the maximum amount for level ten for not meeting the specified deadline; and

(ii) a cumulative penalty of the maximum amount of level three for each day, not exceeding ninety days, for which the defaulter fails to pay the amount specified in subparagraph (i).

(7) References in this Act to—

(a) the “**citation clause**” of a civil penalty order are references to the part of the order in which the Registrar names the defaulter and cites the provision of the Act in respect of which the default was made or is alleged, together

with (if necessary) a brief statement of the facts constituting the default;

or

(b) the “**penalty clause**” of a civil penalty order are references to the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly;

or

(c) the “**remediation clause**” of a civil penalty order are references to the part of the order that stipulates the remedial action to be taken by the defaulter.

### 295 Service and enforcement of civil penalties and destination of proceeds thereof

(1) References to the Registrar serving upon a defaulter any civil penalty order in terms of this Act (or serving upon an alleged defaulter a show cause notice referred to in *section two hundred and ninety-six (“Additional due process requirements before service of certain civil penalty orders”)*), are to be interpreted as requiring the Registrar to deliver such order (or such notice) in writing to the defaulter (or alleged defaulter) concerned in any of the following ways—

(a) by registered post addressed to the defaulter’s (or alleged defaulter’s) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or

(b) by hand delivery to the director, manager, secretary or accounting officer of the defaulter (or alleged defaulter) in person (or through an inspector or other person employed in the Office, or a police officer), or to a responsible individual at the place of business of the defaulter; or

(c) by delivery through a commercial courier service to the defaulter’s (or alleged defaulter’s) principal office in Zimbabwe or other place of business of the defaulter (or alleged defaulter); or

(d) by electronic mail or telefacsimile at the electronic mail or telefacsimile address furnished by the defaulter (or alleged defaulter) to the Registrar:

Provided that in this case a copy of the order or notice shall also be sent to the electronic mail or telefacsimile address of the defaulter’s (or alleged defaulter’s) legal practitioner in Zimbabwe.

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(2) The Registrar shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted shall be noted by the Registrar in the civil penalty enforcement register referred to in *section two hundred and ninety-seven* ("Evidentiary provisions in connection with civil penalty orders").

(3) If in this Act both the defaulting company and every officer of the company who is in default are said to be liable to a civil penalty order, the Registrar may—

(a) in the same civil penalty order, name the defaulting company and every officer concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulting company and each of the officers concerned;

(b) may choose to serve the order only upon the defaulting company if, in his or her opinion (which opinion the Registrar shall note in the civil penalty enforcement register referred to in *section two hundred and ninety-seven*, there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default:

Provided that nothing in this section affects the default liability of officers of the company mentioned in subsection (8).

(4) The Registrar may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Act if the defaults in question —

(a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or

(b) arose in connection with the same set of facts.

(5) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the Registrar may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

(a) summons is issued to the accused person for the prosecution of the offence;

or

(b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or

(c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

(6) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid, the defaulter shall be guilty of an offence and liable to a fine not exceeding level 6 or to imprisonment for a period not exceeding one year or to both.

(7) The amount of any civil penalty shall—

(a) be payable to the Registrar and shall form part of the funds of the Office;

and

(b) be a debt due to the Office and may be sued for in any proceedings in the name of the Registrar in any court of competent civil jurisdiction.

(8) If the defaulter is a company, private business corporation or other body corporate, every officer of the company, corporation or body corporate, mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the Registrar to pay the civil penalty in the event that the company, corporation or body corporate does not pay.

(9) If the Registrar in terms of subsection (7)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, he or she may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties —

(a) were all served within the period of twelve months preceding the institution of the proceedings; and

(b) were served—

(i) on the same company or private business corporation; or

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(ii) in relation to the same default or set of defaults, whether committed by the same company or private business corporation or different companies or private business corporations; or

(iii) on two or more companies or private business corporations whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(10) Unless the Registrar has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subsection (6), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the Registrar for the amount of any outstanding civil penalty due from the convicted defaulter.

### 296 Additional due process requirements before service of certain civil penalty orders

(1) Except in relation to any civil penalty order which the Registrar is satisfied concerns a strictly administrative default that does not involve any substantive dispute of fact, the Registrar must notify the alleged defaulter in writing of the Registrar's intention to serve the civil penalty order (which notice shall hereafter be called a "**show cause notice**") and the Registrar's reasons for doing so and shall call upon the alleged defaulter to show cause within the period specified in the notice (which period shall **not be less than 48 hours or more than 7 days** from the date of service of the notice) why the civil penalty order should not be served upon him or her, and, if the alleged defaulter—

(a) makes no representations thereto within the notice period, the Registrar shall proceed to serve the civil penalty order, or

(b) makes representations showing that the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control or for any other reason specified in the civil penalty provision in question, the Registrar shall not proceed to serve the civil penalty order;

or

(c) makes no representations of the kind referred to in paragraph (b) the Registrar shall proceed to serve the civil penalty order.

(2) In addition, where it appears to the Registrar from written representations received under subsection (1) that there may be a

material dispute of fact concerning the existence or any salient aspect of the alleged default, the Registrar must afford the alleged defaulter an opportunity to be heard by making oral representations before the Registrar, for which purpose the Registrar shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply with necessary changes in relation to the hearing and determination before the Registrar of the alleged default in question, and to any person summoned to give evidence or giving evidence before the Registrar.

(3) Any person who is aggrieved by a civil penalty order made after the making of representations in terms of this section may appeal against the order to a Magistrate's Court or a judge of the High Court, and the magistrate or the judge may make such order as he or she thinks fit

### 297 Evidentiary provisions in connection with civil penalty orders

(1) For the purposes of this Sub-Part the Registrar shall keep a civil penalty enforcement register wherein shall be recorded—

(a) the date of service of every show cause notice, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the alleged defaulter was alleged to be in default, and whether or not the show cause notice was followed by the service of a civil penalty order:

Provided that a record or an adequate summary of any representations made in response to a show cause notice shall be made by way of an entry or cross-reference in, or annexure to, the register, and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least three years from the date when they were made to the Registrar;

(b) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered as the case may be.

(2) A copy of—

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(a) any entry in the civil penalty enforcement register, and of any annexure thereto or record cross-referenced therein, authenticated by the Registrar as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the contents therein; or

(b) any civil penalty order that has been served in terms of this Act, authenticated by the Registrar as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the service of the order on the date stated therein upon the defaulter named therein, and of the contents of the order.

## PART II

### FURTHER GENERAL PROVISIONS

#### 298 Enforcement of duty to make returns

If a registered business entity, having made default in complying with any provision of this Act which requires it to file with, deliver or send to the Registrar any return, account or other record, or to give notice to him or her of any matter, fails to make good the default **within 14 days** after the service of a notice on the registered business entity requiring it to do so, the Registrar may serve a category 2 civil penalty order upon the defaulting registered business entity.

#### 299 Co-operation with foreign company registries

(1) The President, or the Minister with the President's authority, may enter into agreements with the government of any other country or territory with a view to the rendering of reciprocal assistance in any or all of the following—

(a) the incorporation or registration of companies and other business entities and the exchange of information related thereto;

(b) the exchange of information and the rendering of mutual assistance related to the combating of the transnational abuse of the company form for criminal purposes, the monitoring of the quality of the assistance given and the keeping of records of requests for information or assistance and of the responses thereto;

(c) the administration of any office or offices that are a counterpart to the Office for the

Registration of Companies and Other Business Entities, including the mutual secondment and training of the staff of the Office and such offices.

(2) In particular, an agreement referred to in subsection (1) may empower the Registrar or the financial intelligence unit of the Reserve Bank, on his or her or its own behalf or on behalf of any law enforcement agency, to seek beneficial ownership or other information in respect of any company from the foreign counterpart, and, likewise, may provide beneficial ownership or other information in respect of any company to the foreign counterpart.

(3) As soon as may be after the conclusion of any such agreement the terms thereof shall be notified by the President by proclamation in the *Gazette*, whereupon until such proclamation is revoked by the President the agreement shall have effect as if enacted in this Act but only if, and for so long as, the agreement has the effect of law in such country or territory.

(4) The President may at any time revoke any such proclamation by a further proclamation in the *Gazette*, and the agreement shall cease to have effect upon the date fixed in such latter proclamation, but the revocation of any proclamation shall not affect the validity of anything previously done thereunder.

(5) Any agreement referred to in subsection (1) may be made with retrospective effect if the President considers it expedient so to do.

#### 300 Minister may give policy directions to Registrar

(1) Subject to subsection (2), the Minister may, on his or her own motion or at the written request of the Registrar in any specific or general case, give the Registrar such general directions relating to the policy the Registrar is to observe in the exercise of his or her functions referred to in sections 25 ("Prohibition of undesirable name"), 39 ("Investigation by Registrar"), 41 ("Investigation to determine ownership or control"), 142 ("Payment of interest out of capital") (b), (c) and (d), 184 ("General provision as to contents and form of financial statements") (4), 186 ("Obligation to lay group accounts before holding company") (2)(c)(ii), 187 ("Form and contents of group accounts") (5) and (6)(proviso), 191 ("Appointment remuneration, duties, powers and removal of auditors") (1) (proviso (iii)) and (3), 211 ("Duty of director to disclose payments for loss of office, made in connection with transfer of shares in company") (4), 213

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(“Register of directors’ share holdings”) (4)(b), 224 (“Order on application of Registrar”) and 299 (“Co-operation with foreign company registries”), or generally in the exercise of his or her functions as the Minister considers to be necessary in the national interest.

[Companies and Other Business Entities (**Pre-formation and Post-formation**) Regulations, 2020. SI 46/2020  
Companies and Other Business Entities (**Fees**) Regulations, 2020. SI 47/2020]

(2) Before giving the Registrar a direction in terms of subsection (1), the Minister shall (unless the Registrar requested the direction) inform the Registrar, in writing, of the proposed direction and the Registrar shall, **within 30 days** or such further period as the Minister may allow, submit to the Minister, in writing, his or her views on the proposal.

(3) The Registrar shall take all necessary steps to comply with any direction given to him or her in terms of subsection (1).

(4) When any direction has been given to the Registrar in terms of subsection (1), the Registrar shall ensure that the direction is set out in the Office’s annual report.

### 301 Regulations

(1) The Minister may, after consultation with the Companies Office, from time to time make—

(a) regulations providing for anything required by this Act to be prescribed by regulations; and

(b) regulations altering any amount referred to in section 40 (“Investigation on request of minority stakeholders”)(3), 155 (“Register of mortgages and debentures and register of debenture holders”)(5), (6) and (7), 160 (“Inspection of register and index”)(1) and (2), 170 (“General provisions as to meetings and votes and power of court to order meeting”)(1), 174 (“Circulation of members’ resolutions”)(2)(b), 181 (“Inspection of minutes”)(2), 215 (“Particulars in accounts of loans to officers”)(2)(b) or 217 (“Register of directors and secretaries”)(8) and (9);

(c) such other regulations as he or she may deem expedient or necessary for the carrying out of the purposes of this Act.

(2) When making regulations for the purpose of *section one hundred and eighty-four* (“General provisions as to contents and form of financial statements”) (2), the Minister shall have regard to generally accepted accounting practices.

### 302 Alteration of fees, tables, forms and certain provisions of this Act.

(1) The Minister may, from time to time—  
(a) alter or add to the tables in the *Third Schedule* (“Form of statement *in lieu* of prospectus to be delivered to Registrar by a company which does not issue prospectus or which does not go to allotment on a prospectus issues and reports to be set out therein”);

(b) alter any of the Tables in the *Sixth Schedule* (“model articles”) or any of the forms in the *First, Second, Third and Fourth Schedules* but no such alteration in or addition to *Sixth Schedule* shall, as respects any company or private business corporation registered before the publication of the alteration or addition, repeal any portion of *Sixth Schedule* which at the date of such publication applies to it;

(c) subject to subsection (3), amend any provisions concerned with the electronic Registry in Chapter V or the *Seventh Schedule* (“User Agreement”).

(2) Any alteration, addition or amendment made in terms of subsection (1) shall be by *statutory instrument* and from the date of publication of a *statutory instrument* made under subsection (1) (a) or (b) any reference in this Act to any Schedule or Table shall be construed as a reference to that Schedule or Table with any alterations or additions made and in force in terms of subsection (1):

Provided that no alteration or addition made in terms of subsection (1)(b) shall apply to a foreign company which is a banking company as defined in *section two hundred and forty* (Definitions in Chapter II Part IV (A)).

(3) The Minister shall on the next sitting day of the National Assembly after he or she publishes a *statutory instrument* in terms of subsection (1) (c), lay it before the National Assembly and, unless the National Assembly by a negative resolution earlier resolves not to approve it, the *statutory instrument* shall come in to effect on the 30th day after the date on which it was laid before the National Assembly.

### 303 Repeals, re-registration of companies and PBCs, general transitional provisions and savings

(1) In this Part—

“**repealed Companies Act**” means the Companies Act [Chapter 24:03];

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**“repealed Private Business Corporations Act”** means the Public Business Corporations Act [Chapter 24:11];

**“transfer date”** means the date fixed by the Minister in terms of subsection (4)(b) or, where 2 or more such dates are so fixed, the first such date.

(2) Subject to this section, the Companies Act [Chapter 24:03] and the Private Business Corporations Act [Chapter 24:11] are repealed.

[their constituent provisions thereafter cease to have any force of law *Saruchera.N.O. v Valleco Investments & Master of High Court 23-HH-108*]

(3) The establishment for which the Chief Registrar of Companies was responsible under the repealed Companies Act (the “Companies Registration Office”) shall continue in existence after the effective date as the Office for the Registration of Companies and Other Business Entities (the “Companies Office”).

(4) The assets and rights of the State which—

(a) before the effective date, were used or otherwise connected with the Companies Registration Office ; and

(b) are specified by the Minister by notice in a *statutory instrument*; together with any liabilities or obligations attaching to them shall be transferred with effect from the transfer date to the Companies Office .

(5) On the relevant transfer date, every asset and liability of the State which the Minister has directed shall be transferred to the Companies Office shall vest in the Companies Office.

(6) All contracts, instruments, documents, banking accounts and working arrangements that subsisted immediately before the relevant transfer date and to which the State on behalf of the Companies Registration Office was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the Companies Office.

(7) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his or her registers in respect of any immovable property, right or obligation which passes to the Companies Office under this section, but the Registrar of Deeds, when so requested in writing by the Registrar in relation to any particular such property, right or obligation, shall cause the name of the Office to be substituted, free of charge, for that of the State on the appropriate title deed or other document or in the appropriate register.

(8) Subject to subsections (9) and (23), every domestic company or private business corporation incorporated, and every foreign company registered under the repealed Companies Act or repealed Private Business Corporations Act, as the case maybe, that appears in the registers of the Companies Registration Office on the effective date shall continue to be incorporated or registered under the same name and registration number previously assigned to it as if incorporated or registered under the appropriate provisions of this Act.

[Subsection (8) amended by section 18 of the Finance Act 8 of 2020 gazetted on the 28<sup>th</sup> October, 2020.]

(9) A company or private business corporation referred to subsection (8), but not one referred to in subsection (23), must **no later than the 13<sup>th</sup> February, 2023** re-register under this Act by submitting the form in the *Tenth Schedule* as may be appropriate, together with the fee and other documentation as maybe required in terms of that form. A company or private business corporation must re-register under its existing name, without prejudice to its right after re-registration to change its name under *section twenty-six*.

[Subsection (9) amended by section 18 of the Finance Act 8 of 2020 gazetted on the 28<sup>th</sup> October, 2020.]

(10) The object of re-registration under subsection (9) is twofold, namely—

(a) to establish a new and updated register of companies and private business corporations;

(b) to expunge apparently defunct business entities from the register, that is to say a company or private business corporation which appears to the Registrar to be defunct because—

(i) it is not submitting to the Registrar the statutory returns and notices required by the repealed Acts and this Act; and

(ii) it appears to the Registrar to be inactive, that is to say it is not being operated or is not active in business.

(11) Accordingly under subsection (10) no company or private business corporation may change its name, address, registered office, directorship or its share structure or do any other thing affecting its rights and liabilities and those of its members under the guise of re-registration, without prejudice however to its right to make such changes in accordance with

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the formalities prescribed in this Act, before, after or together with re-registration.

(12) The effect of failing to re-register in terms of subsection (9) is that the existing company or private business corporation will be struck off the register with effect from the expiry of the period of 12 months referred to in that subsection, and subject to this section, will no longer be able to carry on business as a company or private business corporation unless it registers as a new company or private business corporation under Part I of Chapter II after that date.

(13) For the avoidance of doubt it is declared that the re-registration in terms of subsection (9) or of an existing company or private business corporation does not—

- (a) create a new legal entity; or
  - (b) prejudice or affect the identity of the body corporate constituted by the company or private business corporation its continuity as a legal entity;
- or
- (c) affect the property, rights or obligations of the company or private business corporation; or
  - (d) affect legal or other proceedings by or against the company or private business corporation.

(14) For the avoidance of doubt it is declared that the failure by an existing company or private business corporation to re-register in terms of subsection (9) does not –

- (a) affect the property, rights or obligations of the company or private business corporation in relation to its members or third parties; or
- (b) affect legal or other proceedings by or against the company or private business corporation in relation to its members or third parties.

(15) Subject to this section, every licence issued and in force under section 82 ("Power to dispense with "Limited" in certain cases") of the repealed Companies Act, shall continue in force after the effective date.

(16) Any cause of action or proceeding which existed or was pending by or against the Registrar immediately before the effective date may be enforced or continued, as the case may be, on and after that date by or against the Registrar in the same way that it might have been enforced or continued by or against the Registrar had this Act not been passed.

(17) Any guarantee or suretyship which was given or made by the Government or any other person in respect of any debt or obligation of the Companies Office or the Registrar and which was effective immediately before the effective date shall remain fully effective against the guarantor or surety on and after that date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the Companies Office or the Registrar to which it was transferred.

(18) The Registrar, every assistant Registrar and other civil servant employed in the Companies Registration Office before the effective date shall continue in such office or employment after the effective date as members of the Civil Service.

(19) The portion of the proceeds of fees and other revenues that accrued to the Deeds Retention Fund before the effective date shall continue to so accrue after the effective date until such time, if any, as a separate retention Fund is established for the Office under section 18 of the Public Finance Management Act [Chapter 22:19] .

(20) For the avoidance of doubt, if on the effective date—

(a) there were any disciplinary proceedings in terms of the Civil Service Act [Chapter 16:04] pending against a person who is employed in the Companies Registration Office, such proceedings shall continue after the effective date;

(b) any promotion or advancement was being processed in terms of the Civil Service Act [Chapter 16:04] in relation to any person employed in the Companies Registration office such promotion or advancement shall be processed and completed after the effective date.

[Public Service is now referred to as the \*Civil Service i.t.o. PART I of Act 3 of 2016 w.e.f 1st July, 2016 -Editor]

(21) All regulations and other statutory instruments and general notices in force or having effect immediately before the effective date, shall continue in force or have effect after the effective date until repealed or replaced under this Act.

(22) At any time within a period of **24 months** from the effective date, the Minister, after consultation with the Minister responsible for Finance and the Companies Office, may make any regulations for the purpose of this section and section three hundred and one

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(“Regulations”) that he or she deems necessary or expedient to manage the transition from the repealed Acts to this Act.

(23) The following provisions apply to every company or private business corporation listed in Schedule 1 to the **Global Compensation Deed** agreed between and signed on the 29th July, 2020 on behalf of the Republic of Zimbabwe, the Commercial Farmers Union of Zimbabwe, the Southern African Commercial Farmers Alliance-Zimbabwe and the Valuation Consortium (Private) Limited, in respect of the compensation for improvements on agricultural land compulsorily acquired for resettlement purposes—

[Subsection (23) inserted by section 18 of the Finance Act 8 of 2020 gazetted on the 28<sup>th</sup> October, 2020.]

- (a) subsection (8) applies to such company or private business corporation; and
- (b) such company or private business corporation is not required to re-register in terms of subsection (9) but shall be deemed to be registered without interruption of registration and without payment of any fee or the rendering of any statutory or other return in terms of this Act for a period of six (6) years from the date of signing of the Global Compensation Deed; and
- (c) if any such company or private business

(c) if any such company or private business corporation has been **struck off** the registers of the Companies Office under this Act or the registers of its predecessor office under a repealed law, such company or private business corporation is hereby deemed not to have been so struck off; and

(d) if the registration of any such company or incorporation of any such private business corporation had, before the date of signing of the Global Compensation Deed, lapsed for any reason, the registration of such company or the incorporation of such private business corporation is hereby deemed not to have so lapsed.

### 304 Transitional Provisions in relation to par value of shares, treasury shares, capital accounts and share certificates

(1) Despite section ninety-three ("Legal nature of company shares and requirement to have shareholders") (2) any shares of a company existing on the effective date (in this section called a "**pre-existing company**") that have been issued with a nominal or par value, and are held by a shareholder immediately

before the effective date, continue to have the nominal or par value assigned to them when issued, subject to any regulations made in terms of *section three hundred and three* (22).

(2) A failure of any share certificate issued by a pre-existing company to satisfy the requirements of section one hundred and fifty-three ("Evidence of title to shares") (2)—

- (a) is not a contravention of that section; and
- (b) does not invalidate that share certificate.

## **FIRST SCHEDULE**

### **(Section 10)**

FORM OF MEMORANDUM OF  
ASSOCIATION OF A COMPANY

1st. The name of the company is "The Zimbabwe Transport Company Limited".

**2nd.** The objects for which the company is established are, "the conveyance of passengers and goods in motor vehicles between such places as the company may from time to time determine and the doing of all such other things as are incidental or conducive to the attainment of the above object".

**3rd.** The liability of the members is limited.

**4th.** The share capital of the company is four hundred thousand dollars divided into one thousand shares of four hundred dollars each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

*Names, Addresses, and Descriptions of  
Subscribers: Number of Shares taken by  
each Subscriber*

.....

.....

.....

.....

### Total shares taken

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Dated ..... the .....  
..... day of .....  
..... 20 .....

Witness to the above  
signatures,..... Address:

.....

## **SECOND SCHEDULE**

### **(Section 9)**

FORM OF STATEMENT IN LIEU OF  
PROSPECTUS TO BE DELIVERED  
TO REGISTRAR BY PRIVATE COMPANY ON  
CEASING TO BE PRIVATE COMPANY AND  
REPORTS TO BE SET OUT THEREIN

## PART

**FORM OF STATEMENT AND PARTICULARS  
TO BE CONTAINED THEREIN**  
*Companies Act [Chapter 24:31]*

(b) Amount of commissions paid in connection therewith.

4. Unless more than one year has elapsed since the date on which the Company was entitled to commence business—

(a) Amount of preliminary expenses.....

By whom those expenses have been paid or are payable.

(b) Amount paid to any promoter.....

(c) Consideration for the payment.....

(d) Any other benefit given to any promoter.....

(e) Consideration for giving of benefit .....

5. If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively

Statement *in lieu* of Prospectus  
delivered for registration by **Shares of \$**  
..... **each**

(Insert the name of the company). Shares of \$  
each

Pursuant to section thirty-five of the Companies Act [Chapter 24:03].

Delivered for registration by each  
..... Shares of \$

1. Names, descriptions and addresses of directors or proposed directors. Shares of \$ each

2. (a) The nominal share capital of the company..... Shares of \$ each

Divided into ..... \$  
(b) Amount, if any, of above capital \$  
which consists of redeemable  
preference shares Name of

	promoter
Amount \$	
(c) The earliest date on which the company has power to redeem these shares	

3. (a) Amount of shares issued Consideration Nature and

Divided into benefit

## THIRD SCHEDULE

**(Section 86)**

FORM OF STATEMENT *IN LIEU* OF  
PROSPECTUS TO BE DELIVERED TO  
REGISTRAR BY A COMPANY WHICH DOES  
NOT ISSUE A PROSPECTUS OR WHICH  
DOES NOT GO TO ALLOTMENT ON A  
PROSPECTUS ISSUED, AND REPORTS TO  
BE SET OUT THEREIN

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**PART I**  
**FORM OF STATEMENT AND**  
**PARTICULARS TO BE CONTAINED**  
**THEREIN**

*Companies Act [Chapter 24:31]*

Statement in lieu of Prospectus delivered for registration by ..... ..... ..... .... (Insert the name of the Company)	
Pursuant to <i>section sixty-six of the Companies Act [Chapter 24:31]</i> . Delivered for registration by ..... ..... ....	
(I) Names, descriptions and addresses of directors or proposed directors.	
(II) – a) The nominal share capital of the company \$	
Divided into.....	Shares of \$ each Shares of \$ each Shares of \$ each Shares of \$ each
b) Amount, if any, of above capital which consists of redeemable preference shares..... .....	Shares of \$ each
c) The earliest date on which the company has power to redeem these shares	
III. If the share capital of the company is divided into different classes of shares the right of voting at meetings of the company	

conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
IV. – a) Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash	1. .... Shares of \$ fully paid. 2. .... shares upon which \$ per share credited as paid
b) The consideration for the intended issue of those shares and debentures	3. ...Debenture \$ 4. Consideration
V. The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind has been or is proposed to be given to any person to subscribe for any shares in or debentures of a company or to acquire them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale; giving the number, description and amount of any such shares or debentures and including the following particulars of the option or right—	1. 2. Shares of \$ and debentures of \$
a) The period during which it is exercisable	3. Until
b) The price to be paid for shares or debentures subscribed for under it	4.
c) The consideration, if any, given or to be given for it or the right to it.	5. Consideration
d) The names and addresses of the persons to whom it or the right to it was given or if given to existing members or debenture holders as such, the relevant shares or debentures.	6. Names and addresses

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e) Any other material fact or circumstance relevant to the grant of such option or right.	7.	or proposed director of the company had any interest, direct or indirect, with particulars of such interest.	
VI –		VII –	
a) Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired, by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.		a) Amount, if any, paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid Amount payable
b) Amount (in cash, shares or debentures) payable to each separate vendor.		b) Rate of Commission	Rate per centum
c) The amount payable by way of premium, if any, on each share which has been or is to be issued stating the reasons for any such premium and where some shares have been or are to be issued at a premium and other shares at a lesser or no premium, also the reasons for the differentiation, and how any premium is to be or has been disposed of		c) The number of shares, if any, which persons have agreed for a commission to subscribe absolutely	
d) Amount, if any, paid or payable (in cash or shares or debentures) for any such property, specifying amount, if any, paid or payable for goodwill.	<p>Total purchase price:</p> <p>Cash.....\$</p> <p>Shares.....\$</p> <p>Debentures.....\$</p> <p>Goodwill ____\$</p>	VIII –	<p>a) Estimated amount of \$ preliminary expenses</p> <p>b) By whom these expenses have been paid or \$ are payable</p> <p>c) Amount paid or intended to be paid to any promoter</p> <p>Name of promoter Amount \$</p>
e) Short particulars of any transaction relating to any such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director		IX –	<p>Consideration for the payment</p> <p>Consideration</p> <p>a) Dates of, parties to and general nature of every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).</p> <p>b) Time and place at which the contracts or copies thereof may be inspected or (1) in the case of a contract not reduced to writing, a memorandum giving full particulars thereof, and (2) in the case of a contract wholly or partly</p>

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in a foreign language, a copy of a translation thereof in English or embodying a translation in English of the parts in a foreign language, as the case may be, being a translation certified in the prescribed manner.	
X – Names and addresses of the auditors of the company, if any.	
XI - Full particulars of the nature and extent of the interest, if any, of every director or promoter in the promotion of, or in the property acquired within two years of the date of the prospectus or proposed to be acquired by, the company, or where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association and the nature and extent of such director's or promoter's interest in the partnership company, syndicate or other association, with a statement of all sums paid or agreed to be paid to him or her or to it in cash or shares or otherwise by any person either to induce him or her to become, or to qualify him or her as, a director or otherwise for services rendered by him or her or by it in connection with the promotion or formation of the company.	
(Signatures of the persons above named as directors or proposed directors or of their agents authorised in writing). .....	
Date: .....	

**PART II**  
**REPORTS TO BE SET OUT**

1

Where it is proposed to acquire a business, a report made by accountants, who shall be named in the statement, upon—

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar;

and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

2

(1) where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants, who shall be named in the statement, with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with subparagraph (2) or (3) as the case requires, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in subparagraph (1) shall—

(a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar;

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in subparagraph (1) shall—

(a) so far as regards profits and losses, deal separately with the other body corporate's

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profits or losses as provided by subparagraph (2), and in addition deal—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries;

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by subparagraph (2) and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.

### PART III PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

3

In this Schedule the expression "vendor" includes a vendor as defined in Part III of the *Eighth Schedule* and the expression "financial year" has the meaning assigned to it in that Part of that Schedule.

4

If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five years, the accounts of the business or body corporate have only been made up in respect of four years, three years, two years or one year, Part II of this Schedule shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years.

5

Any report required by Part II of this Schedule shall either indicate by way of note any

adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the person making the report necessary or shall make those adjustments and indicate that adjustments have been made.

6

Any report by accountants required by Part II of this *Schedule* shall not be made by any accountant who is an officer or servant, or a partner or employer of or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor.

### FOURTH SCHEDULE

(Section 165)

form of annual return of a company

*The Companies Act [Chapter 24:03] The Companies Act [Chapter 24:03]*

Form of Annual Return of a Company

Annual Return of the  
.....  
.....Company,

Limited, made up to the date of the Annual General Meeting.

Date of Meeting .....  
(Adjourned to .....

The address of the registered office of the company is:—

.....  
.....  
.....  
.....

The address at which the register of members is kept (if not kept at the registered office):—

.....  
.....  
.....  
.....  
.....

A. Summary of Shares and Debentures

(a) Number of shares

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Number of shares  
.....di  
vided into:

(Insert number and class)

..... shares  
..... shares  
..... shares  
..... shares

*(b) Issued Shares and Debentures*

Number Class

Number of shares of each class taken

.....  
date of this return. ....  
..... shares  
..... shares  
..... shares  
..... shares

Number of shares of each class fully paid up  
..... shares

..... shares  
..... shares  
..... shares

**B. Particulars of Directors, Auditors and Secretaries**

Names and Addresses of the Directors, Auditors and Secretaries of the ..... Limited, on the ..... day of ..... , 20.....

**DIRECTORS**

Names	Addresses	Other Directorships
.....	.....	.....

**AUDITORS**

Names	Addresses
.....	.....

**SECRETARY**

Names	Addresses
.....	.....

..... Director

..... Secretary

Copy of Last Audited Balance Sheet and Accounts of the Company (where required in

terms of section one hundred and sixty-five of the Act.)

**Note:** This return must include a copy, certified both by a Director and by the Secretary of the Company to be a true copy, of every balance sheet (including every document required by law to be annexed to the balance sheet) laid before the company in general meeting during the period to which the summary relates, and, in addition, a copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, such balance sheet.

*Certificates to be given by a Private Company*

A.—We certify—

(i) that the Company has not since the date of the incorporation of the Company/the last Annual Return\* issued any invitation to the public to subscribe for any shares or debentures of the Company;

\*Delete whichever is inappropriate.

(ii) the number of members of the company is  
.....  
.....

Director

Secretary

B.—Should the number of members of the Company exceed fifty, the following certificate is required:—

We certify that the excess of members of the Company above fifty consists wholly of persons who are in the employment of the Company and/or of persons who, having been formerly in the employment of the Company, were while in such employment, and have continued after the determination of such employment to be, members of the Company.

.....  
Director

## FIFTH SCHEDULE

(Section 10, 18 (1)(b), 69(2))

**fees**

**FIRST TABLE**

*Table of fees to be paid by a company (other than a foreign company) under this Act*

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1. For registration of a company— fifty cents for every \$100 or portion of \$100 of the nominal capital of the company, with a minimum fee of—	
(a) in the case of a private company or a non-profit company	100,00
(b) in the case of any other company	500,00
2. For registration of any increase of capital made after the first registration of the company— fifty cents for every \$100 or portion of \$100 of such additional capital	
3. For registration of any statement in lieu of the prospectus pursuant to section 86 to 116	75,00
4. For registration of any prospectus pursuant to section 56	75,00
5. On each application for search as to availability of a name or names proposed to be adopted by or for a company, including a reservation of such name or names	30,00

## SECOND TABLE

*Table of fees to be paid by a foreign company under this Act*

1. For the registration of the charter, statutes or memorandum and articles of the company or other instrument consisting or defining the constitution of the company	300,00
2. For the registration of the prospectus of the company	75,00

## THIRD TABLE

*Table of fees to be paid in respect of any company or foreign company under this Act*

1. For delivery to the Registrar of any annual return pursuant to section 165 or section 241 (8) of this Act—	
(a) where the share capital of the company does not exceed \$20 000	50,00
(b) where the share capital of the company exceeds \$20 000	50,00

plus an additional \$10 for each \$10 000 or part thereof of the share capital in excess of \$20 000, subject to a maximum fee of \$500. For the purposes of this item, the share capital of a company means the share capital subscribed for or issued in payment for services rendered or rights acquired or otherwise allotted, whether fully paid-up or not.	
2. For the delivery to the Registrar of any return, document or notice required to be lodged with the Registrar pursuant to this Act and not otherwise provided for:	5,00
Provided that this fee shall not be payable if the return, document or notice is lodged within the time prescribed by the Act	
3. For every report prepared for the court by the Registrar	15,00
4. For any certificate issued by the Registrar	10,00
5. For each entry extracted from any register for publication in a newspaper or periodical	0,50
6. For a copy of any document, per page	1,00

## SIXTH SCHEDULE

*(Section 18 (1)(b), 170(7)(a) and 266(1)(b))*

Model Articles and By-Laws

[Explanatory note: in this *Schedule annotations* in square brackets and *italics* do not form part of the articles but are inserted to draw the attention of potential adopters or adapters of these articles to relevant provisions of this Act]

### Table A: Model Articles for Public Companies

### Index to the Articles

Part 1: Interpretation and Limitation of Liability  
Article

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- |   |  |
|---|--|
| 1. Definitions.   | 28. Members can call general meeting if not enough directors |
| 2. Liability of members.                                      | 29. Attendance and speaking at general meetings              |
| <b>Part 2: Directors</b>                                      | 30. Quorum for general meetings                              |
| <i>Directors' Powers and Responsibilities</i>                 | 31. Chairing general meetings                                |
| 3. Directors' general authority.                              | 32. Attendance and speaking by directors and non-members     |
| 4. Members' reserve power.                                    | 33. Adjournment.   |
| 5. Directors may delegate.                                    | <i>Voting at General Meetings</i>                            |
| 6. Committees.  | 34. Voting: general  |
| <i>Decision-making by Directors</i>                           | 35. Errors and disputes                                      |
| 7. Directors to take decisions collectively                   | 36. Demanding a poll   |
| 8. Calling a directors' meeting                               | 37. Procedure on a poll                                      |
| 9. Participation in directors' meetings                       | 38. Content of proxy notices                                 |
| 10. Quorum for directors' meetings                            | 39. Delivery of proxy notices                                |
| 11. Meetings where total number of directors less than quorum | 40. Amendments to resolutions                                |
| 12. Chairing directors' meetings                              | <i>Restrictions on Members' Rights</i>                       |
| 13. Voting at directors' meetings: general rules              | 41. No voting of shares on which money owed to company       |
| 14. Chairperson's casting vote at directors' meetings         | <i>Application of Rules to Class Meetings</i>                |
| 15. Alternates voting at directors' meetings                  | 42. Class meetings.  |
| 16. Conflicts of interest                                     | <b>Part 4: Shares and Distributions</b>                      |
| 17. Proposing directors' written resolutions                  | <i>Issue of Shares</i>                                       |
| 18. Adoption of directors' written resolutions                | 43. Powers to issue different classes of share               |
| 19. Directors' discretion to make further rules.              | 44. Payment of commissions on subscription for shares        |
| <i>Appointment of Directors</i>                               | <i>Interests in Shares</i>                                   |
| 20. Methods of appointing directors                           | 45. Company not bound by less than absolute interests        |
| 21. Retirement of directors by rotation                       | <i>Share Certificates</i>                                    |
| 22. Termination of director's appointment                     | 46. Certificates to be issued except in certain cases        |
| 23. Directors' remuneration                                   | 47. Contents and execution of share certificates             |
| 24. Directors' expenses.                                      | 48. Consolidated share certificates                          |
| <i>Alternate Directors</i>                                    | 49. Replacement share certificates                           |
| 25. Appointment and removal of alternates                     | <i>Share not Held in Certificated Form</i>                   |
| 26. Rights and responsibilities of alternate directors        | 50. Uncertificated shares                                    |
| 27. Termination of alternate directorship.                    | 51. Share warrants.  |
| <b>Part 3: Decision-making By Members</b>                     |  |
| <i>Organisation of General Meetings</i>                       |  |

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<i>Partly Paid Shares</i>	
52. Company's lien over partly paid shares	79. Means of communication to be used.
53. Enforcement of the company's lien	80. Failure to notify contact details.
54. Call notices	<i>Administrative Arrangements</i>
55. Liability to pay calls	81. Company seals.
56. When call notice need not be issued	82. Destruction of documents.
57. Failure to comply with call notice: automatic consequences	83. No right to inspect accounts and other records.
58. Notice of intended forfeiture	84. Provision for employees on cessation of business.
59. Directors' power to forfeit shares	<i>Directors' Indemnity and Insurance</i>
60. Effect of forfeiture	85. Indemnity
61. Procedure following forfeiture	86. Insurance
62. Surrender of shares.	
<i>Transfer and Transmission of Shares</i>	
63. Transfers of certificated shares	<b>Definitions</b>
64. Transfer of uncertificated shares	1
65. Transmission of shares	(1) In the articles, unless the context requires otherwise—
66. Transferees' rights	“ <b>alternate</b> ” or “ <b>alternate director</b> ” has the meaning given in article 25;
67. Exercise of transfees' rights	“ <b>appointor</b> ” has the meaning given in article 25;
68. Transferees bound by prior notices	“ <b>articles</b> ” means the company's articles of association;
<i>Consolidation of Shares</i>	“ <b>call</b> ” has the meaning given in article 54;
69. Procedure for disposing of fractions of shares.	“ <b>call notice</b> ” has the meaning given in article 54;
<i>Distributions</i>	“ <b>certificate</b> ” means a paper certificate (other than a share warrant) evidencing a person's title to specified shares or other securities;
70. Procedure for declaring dividends.	“ <b>certificated</b> ” in relation to a share, means that it is not an uncertificated share or a share in respect of which a share warrant has been issued and is current;
71. Calculation of dividends.	“ <b>chairperson</b> ” has the meaning given in article 12;
72. Payment of dividends and other distributions.	“ <b>chairperson of the meeting</b> ” has the meaning given in article 31;
73. Deductions from distributions in respect of sums owed to the company.	“ <b>Act</b> ” means the Companies and Other Business Entities Act [Chapter 24:31];
74. No interest on distributions.	“ <b>company's lien</b> ” has the meaning given in article 52;
75. Unclaimed distributions.	
76. Non-cash distributions.	
77. Waiver of distributions.	
<i>Capitalisation of Profits</i>	
78. Authority to capitalise and appropriation of capitalised sums	
<i>Part 5: Miscellaneous Provisions</i>	
<i>Communications</i>	

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**“director”** means a director of the company, and includes any person occupying the position of director, by whatever name called;

**“distribution recipient”** has the meaning given in article 72;

**“document”** includes, unless otherwise specified, any document sent or supplied in electronic form;

**“fully paid”** in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

**“holder”** in relation to shares means the person whose name is entered in the register of members as the holder of the shares, or, in the case of a share in respect of which a share warrant has been issued (and not cancelled), the person in possession of that warrant;

**“insolvency”** includes individual insolvency proceedings in a jurisdiction other than Zimbabwe which have an effect similar to that of insolvency;

**“instrument”** means a document in hard copy form;

**“lien enforcement notice”** has the meaning given in article 53;

**“member”** has the meaning given in *section eighty-three of the Companies Act*;

**“ordinary resolution”** has the meaning given in section 175(4) of the Act;

**“paid”** means paid or credited as paid;

**“participate”**, in relation to a directors’ meeting, has the meaning given in article 9;

**“partly paid”** in relation to a share means that part of that share’s nominal value or any premium at which it was issued has not been paid to the company;

**“prescribed rate of interest”** means the maximum rate of interest prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*] or any other law that may be substituted for that Act;

**“proxy notice”** has the meaning given in article 38;

**“securities seal”** has the meaning given in article 47;

**“shares”** means shares in the company;

**“special resolution”** has the meaning given in section 175 of the Act;;

**“subsidiary”** has the meaning given in section 185 of the Act;

**“transmittee”** means a person entitled to a share by reason of the death or insolvency of a shareholder or otherwise by operation of law;

**“uncertificated”** has the meaning given in section 2(1) of the Act;

**“writing”** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company.

### *Liability of members*

2

The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

## Part 2: DIRECTORS

### *Directors’ powers and responsibilities*

### *Directors’ General Authority*

3

Subject to the articles, the directors are responsible for the management of the company’s business, for which purpose they may exercise all the powers of the company.

### *Members’ reserve power*

4

(1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

### *Directors may delegate*

5

(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

(a) to such person or committee; and

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- (b) by such means (including by power of attorney); and
  - (c) to such an extent; and
  - (d) in relation to such matters or territories; and
  - (e) on such terms and conditions;
- as they think fit.

(2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

### Committees

6

(1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

### Decision-making by Directors

#### Directors to take decisions collectively

7

Decisions of the directors may be taken—

- (a) at a directors' meeting; or
- (b) in the form of a directors' written resolution.

#### Calling a directors' meeting

8

- (1) Any director may call a directors' meeting.
- (2) The company secretary must call a directors' meeting if a director so requests.
- (3) A directors' meeting is called by giving notice of the meeting to the directors.
- (4) Notice of any directors' meeting must indicate—
  - (a) its proposed date and time; and
  - (b) where it is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(5) Notice of a directors' meeting must be given to each director, but need not be in writing.

(6) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

#### Participation in directors' meetings

9

(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles;

and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

#### Quorum for directors' meetings

10

(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than 2, and unless otherwise fixed it is 2.

#### Meetings where total number of directors less than quorum

11

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(1) This article applies where the total number of directors for the time being is less than the quorum for directors' meetings.

(2) If there is only one director, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

(3) If there is more than one director—

(a) a directors' meeting may take place, if it is called in accordance with the articles and at least 2 directors participate in it, with a view to appointing sufficient directors to make up a quorum or calling a general meeting to do so; and

(b) if a directors' meeting is called but only one director attends at the appointed date and time to participate in it, that director may appoint sufficient directors to make up a quorum or call a general meeting to do so.

### *Chairing directors' meetings*

12

(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairperson.

(3) The directors may appoint other directors as deputy or assistant chairperson to chair directors' meetings in the chairperson's absence.

(4) The directors may terminate the appointment of the chairperson, deputy or assistant chairperson at any time.

(5) If neither the chairperson nor any director appointed generally to chair directors' meetings in the chairperson's absence is participating in a meeting within 10 minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

### *Voting at directors' meetings: general rules*

13

(1) Subject to the articles, a decision is taken at a directors' meeting by a majority of the votes of the participating directors.

(2) Subject to the articles, each director participating in a directors' meeting has one vote.

(3) Subject to the articles, if a director has an interest in an actual or proposed transaction or arrangement with the company—

(a) that director and that director's alternate may not vote on any proposal relating to it; but

(b) this does not preclude the alternate from voting in relation to that transaction or arrangement on behalf of another appointor who does not have such an interest.

### *Chairperson's casting vote at directors' meetings*

14

(1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

### *Alternates voting at directors' meetings*

15

A director who is also an alternate director has an additional vote on behalf of each appointor who is—

(a) not participating in a directors' meeting; and

(b) would have been entitled to vote if they were participating in it.

### *Conflicts of interest*

16

(1) If a directors' meeting, or part of a directors' meeting, is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in that meeting, or part of a meeting, for quorum or voting purposes.

(2) But if sub-article (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in a decision at a directors' meeting, or part of a directors' meeting, relating to it for quorum and voting purposes.

(3) This sub-article applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in, or voting at, a directors' meeting; or

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(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities;

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) Subject to sub-article (6), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairperson whose ruling in relation to any director other than the chairperson is to be final and conclusive.

(6) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairperson, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairperson is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

### *Proposing directors' written resolutions*

17

(1) Any director may propose a directors' written resolution.

(2) The company secretary must propose a directors' written resolution if a director so requests.

(3) A directors' written resolution is proposed by giving notice of the proposed resolution to the directors.

(4) Notice of a proposed directors' written resolution must indicate—

(a) the proposed resolution; and

(b) the time by which it is proposed that the directors should adopt it.

(5) Notice of a proposed directors' written resolution must be given in writing to each director.

(6) Any decision which a person giving notice of a proposed directors' written resolution takes regarding the process of adopting that resolution must be taken reasonably in good faith.

### *Adoption of directors' written resolutions*

18

(1) A proposed directors' written resolution is adopted when all the directors who would have been entitled to vote on the resolution at a directors' meeting have signed one or more copies of it, provided that those directors would have formed a quorum at such a meeting.

(2) It is immaterial whether any director signs the resolution before or after the time by which the notice proposed that it should be adopted.

(3) Once a directors' written resolution has been adopted, it must be treated as if it had been a decision taken at a directors' meeting in accordance with the articles.

(4) The company secretary must ensure that the company keeps a record, in writing, of all directors' written resolutions for at least 10 years from the date of their adoption.

### *Directors' discretion to make further rules*

19

Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

### *Appointment of Directors*

#### *Methods of appointing directors*

20

Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(a) by ordinary resolution; or

(b) by a decision of the directors.

### *Retirement of directors by rotation*

21

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(1) At the first annual general meeting all the directors must retire from office.

(2) At every subsequent annual general meeting any directors—

(a) who have been appointed by the directors since the last annual general meeting; or

(b) who were not appointed or reappointed at one of the preceding 2 annual general meetings, must retire from office and may offer themselves for reappointment by the members.

### *Termination of director's appointment*

22

A person ceases to be a director as soon as—

(a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;

(b) a liquidation order is made against that person;

(c) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;

(f) notification is received by the company from the director that the director is resigning from office as director, and such resignation has taken effect in accordance with its terms.

### *Directors' remuneration*

23

(1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

(a) for their services to the company as directors; and

(b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

(a) take any form; and

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

### *Directors' expenses*

24

The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

(a) meetings of directors or committees of directors; or

(b) general meetings; or

(c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

### *alternate Directors*

#### *Appointment and removal of alternates*

25

(1) Any director (the "appointor") may appoint as an alternate any other director, or any other person approved by resolution of the directors, to—

(a) exercise that director's powers; and

(b) carry out that director's responsibilities;

in relation to the taking of decisions by the directors in the absence of the alternate's appointor.

(2) Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the appointor, or in any other manner approved by the directors.

(3) The notice must—

(a) identify the proposed alternate; and

(b) in the case of a notice of appointment, contain a statement signed by the proposed

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alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

### *Rights and responsibilities of alternate directors*

26

(1) An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor.

(2) Except as the articles specify otherwise, alternate directors—

(a) are deemed for all purposes to be directors; and

(b) are liable for their own acts and omissions; and

(c) are subject to the same restrictions as their appointors; and

(d) are not deemed to be agents of or for their appointors.

(3) A person who is an alternate director but not a director—

(a) may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating); and

(b) may sign a written resolution (but only if it is not signed or to be signed by that person's appointor).

No alternate may be counted as more than one director for such purposes.

(4) An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company.

### *Termination of alternate directorship*

27

An alternate director's appointment as an alternate terminates—

(a) when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate; or

(b) on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director; or

(c) on the death of the alternate's appointor; or

(d) when the alternate's appointor's appointment as a director terminates, except that an alternate's appointment as an alternate does not terminate when the appointor retires by rotation at a general meeting and is then re-appointed as a director at the same general meeting.

## Part 3: DECISION-MAKING BY MEMBERS

### *organisation of general meetings*

*Members can call general meeting if not enough directors*

28

If—

(a) the company has fewer than two directors; and

(b) the director (if any) is unable or unwilling to appoint sufficient directors to make up a quorum or to call a general meeting to do so; then 2 or more members may call a general meeting (or instruct the company secretary to do so) for the purpose of appointing one or more directors.

### *Attendance and speaking at general meetings*

29

(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or

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more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

### *Quorum for general meetings*

30

No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

### *Chairing general meetings*

31

(1) If the directors have appointed a chairperson, the chairperson shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairperson, or if the chairperson is unwilling to chair the meeting or is not present within 10 minutes of the time at which a meeting was due to start—

(a) the directors present; or

(b) (if no directors are present), the meeting; must appoint a director or member to chair the meeting, and the appointment of the chairperson of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as “the chairperson of the meeting”.

### *Attendance and speaking by directors and non-members*

32

(1) Directors may attend and speak at general meetings, whether or not they are members.

(2) The chairperson of the meeting may permit other persons who are not—

(a) members of the company; or

(b) otherwise entitled to exercise the rights of members in relation to general meetings; to attend and speak at a general meeting.

### *Adjournment*

33

(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairperson of the meeting must adjourn it.

(2) The chairperson of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment; or

(b) it appears to the chairperson of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairperson of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairperson of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given; and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

### *Voting at general meetings*

#### *Voting: general*

34

A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

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<i>Errors and disputes</i>	
35	
(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.	
(2) Any such objection must be referred to the chairperson of the meeting whose decision is final.	
<i>Demanding a poll</i>	
36	
(1) A poll on a resolution may be demanded—	
(a) in advance of the general meeting where it is to be put to the vote; or	
(b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.	
(2) A poll may be demanded by—	
(a) the chairperson of the meeting; or	
(b) the directors; or	
(c) two or more persons having the right to vote on the resolution; or	
(d) a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.	
(3) A demand for a poll may be withdrawn if—	
(a) the poll has not yet been taken, and	
(b) the chairperson of the meeting consents to the withdrawal.	
<i>Procedure on a poll</i>	
37	
(1) Subject to the articles, polls at general meetings must be taken when, where and in such manner as the chairperson of the meeting directs.	
(2) The chairperson of the meeting may appoint scrutineers (who need not be members) and decide how and when the result of the poll is to be declared.	
(3) The result of a poll shall be the decision of the meeting in respect of the resolution on which the poll was demanded.	
	(4) A poll on—
	(a) the election of the chairperson of the meeting; or
	(b) a question of adjournment; must be taken immediately.
	(5) Other polls must be taken within 30 days of their being demanded.
	(6) A demand for a poll does not prevent a general meeting from continuing, except as regards the question on which the poll was demanded.
	(7) No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded.
	(8) In any other case, at least 7 days' notice must be given specifying the time and place at which the poll is to be taken.
	<i>Content of proxy notices</i>
38	
(1) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which—	
(a) states the name and address of the member appointing the proxy; and	
(b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed; and	
(c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and	
(d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.	
(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.	
(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.	
(4) Unless a proxy notice indicates otherwise, it must be treated as—	
	(a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and

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(b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### *Delivery of proxy notices*

39

(1) Any notice of a general meeting must specify the address or addresses ("proxy notification address") at which the company or its agents will receive proxy notices relating to that meeting, or any adjournment of it, delivered in hard copy or electronic form.

(2) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(3) Subject to sub-articles (4) and (5), a proxy notice must be delivered to a proxy notification address not less than 48 hours before the general meeting or adjourned meeting to which it relates.

(4) In the case of a poll taken more than 48 hours after it is demanded, the notice must be delivered to a proxy notification address not less than 24 hours before the time appointed for the taking of the poll.

(5) In the case of a poll not taken during the meeting but taken not more than 48 hours after it was demanded, the proxy notice must be delivered—

(a) in accordance with sub-article (3); or

(b) at the meeting at which the poll was demanded to the chairperson, secretary or any director.

(6) An appointment under a proxy notice may be revoked by delivering a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given to a proxy notification address.

(7) A notice revoking a proxy appointment only takes effect if it is delivered before—

(a) the start of the meeting or adjourned meeting to which it relates, or

(b) (in the case of a poll not taken on the same day as the meeting or adjourned meeting) the time appointed for taking the poll to which it relates.

(8) If a proxy notice is not signed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

### *Amendments to resolutions*

40

(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(a) notice of the proposed amendment is given to the company secretary in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairperson of the meeting may determine), and

(b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution.

### *restrictions on members' rights*

#### *No voting of shares on which money owed to company*

41

No voting rights attached to a share may be exercised at any general meeting, at any adjournment of it, or on any poll called at or in relation to it, unless all amounts payable to the company in respect of that share have been paid.

### *application of rules to Class meetings*

#### *Class meetings*

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The provisions of the articles relating to general meetings apply, with any necessary modifications, to meetings of the holders of any class of shares.

### Part 4: SHARES AND DISTRIBUTIONS ISSUE OF SHARES

*Powers to issue different classes of share*

43

(1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

*Payment of commissions on subscription for shares*

44

(1) The company may pay any person a commission in consideration for that person—

(a) subscribing, or agreeing to subscribe, for shares; or

(b) procuring, or agreeing to procure, subscriptions for shares.

(2) Any such commission may be paid—

(a) in cash, or in fully paid or partly paid shares or other securities, or partly in one way and partly in the other; and

(b) in respect of a conditional or an absolute subscription.

*interests in shares*

*Company not bound by less than absolute interests*

45

Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

*share Certificates*

*Certificates to be issued except in certain cases*

46

(1) The company must issue each member with one or more certificates in respect of the shares which that member holds.

(2) This article does not apply to—

(a) uncertificated shares; or

(b) shares in respect of which a share warrant has been issued; or

(c) shares in respect of which the Act permits the company not to issue a certificate.

(3) Except as otherwise specified in the articles, all certificates must be issued free of charge.

(4) No certificate may be issued in respect of shares of more than one class.

(5) If more than one person holds a share, only one certificate may be issued in respect of it.

*Contents and execution of share certificates*

47

(1) Every certificate must specify—

(a) in respect of how many shares, of what class, it is issued; and

(b) the nominal value of those shares; and

(c) the amount paid up on them; and

(d) any distinguishing numbers assigned to them.

(2) Certificates must—

(a) have affixed to them the company's common seal or an official seal which is a facsimile of the company's common seal with the addition on its face of the word "Securities" (a "securities seal"); or

(b) be otherwise executed in accordance with the Act.

*Consolidated share certificates*

48

(1) When a member's holding of shares of a particular class increases, the company may issue that member with—

(a) a single, consolidated certificate in respect of all the shares of a particular class which that member holds; or

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(b) a separate certificate in respect of only those shares by which that member's holding has increased.

(2) When a member's holding of shares of a particular class is reduced, the company must ensure that the member is issued with one or more certificates in respect of the number of shares held by the member after that reduction. But the company need not (in the absence of a request from the member) issue any new certificate if—

(a) all the shares which the member no longer holds as a result of the reduction;

and

(b) none of the shares which the member retains following the reduction;

were, immediately before the reduction, represented by the same certificate.

(3) A member may request the company, in writing, to replace—

(a) the member's separate certificates with a consolidated certificate; or

(b) the member's consolidated certificate with two or more separate certificates representing such proportion of the shares as the member may specify.

(4) When the company complies with such a request it may charge such reasonable fee as the directors may decide for doing so.

(5) A consolidated certificate must not be issued unless any certificates which it is to replace have first been returned to the company for cancellation.

### *Replacement share certificates*

49

(1) If a certificate issued in respect of a member's shares is—

(a) damaged or defaced, or

(b) said to be lost, stolen or destroyed,

that member is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A member exercising the right to be issued with such a replacement certificate—

(a) may at the same time exercise the right to be issued with a single certificate or separate certificates; and

(b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and

(c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

*share not held in Certificated form*

### *Uncertificated shares*

50

(1) In this article, "**the relevant rules**" means—

(a) any applicable provision of the Act about the holding, evidencing of title to, or transfer of shares other than in certificated form; and

(b) any applicable legislation, rules or other arrangements made under or by virtue of such provision.

(2) The provisions of this article have effect subject to the relevant rules.

(3) Any provision of the articles which is inconsistent with the relevant rules must be disregarded, to the extent that it is inconsistent, whenever the relevant rules apply.

(4) Any share or class of shares of the company may be issued or held on such terms, or in such a way, that—

(a) title to it or them is not, or must not be, evidenced by a certificate; or

(b) it or they may or must be transferred wholly or partly without a certificate.

(5) The directors have power to take such steps as they think fit in relation to—

(a) the evidencing of and transfer of title to uncertificated shares (including in connection with the issue of such shares); or

(b) any records relating to the holding of uncertificated shares; or

(c) the conversion of certificated shares into uncertificated shares; or

(d) the conversion of uncertificated shares into certificated shares.

(6) The company may by notice to the holder of a share require that share—

(a) if it is uncertificated, to be converted into certificated form; and

(b) if it is certificated, to be converted into uncertificated form;

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to enable it to be dealt with in accordance with the articles.

(7) If—

(a) the articles give the directors power to take action, or require other persons to take action, in order to sell, transfer or otherwise dispose of shares; and

(b) uncertificated shares are subject to that power, but the power is expressed in terms which assume the use of a certificate or other written instrument;

the directors may take such action as is necessary or expedient to achieve the same results when exercising that power in relation to uncertificated shares.

(8) In particular, the directors may take such action as they consider appropriate to achieve the sale, transfer, disposal, forfeiture, allotment or surrender of an uncertificated share or otherwise to enforce a lien in respect of it.

(9) Unless the directors otherwise determine, shares which a member holds in uncertificated form must be treated as separate holdings from any shares which that member holds in certificated form.

(10) A class of shares must not be treated as two classes simply because some shares of that class are held in certificated form and others are held in uncertificated form.

### *Share warrants*

51

(1) The directors may issue a share warrant in respect of any fully paid share.

(2) Share warrants must be—

(a) issued in such form; and

(b) executed in such manner,

as the directors decide.

(3) A share represented by a share warrant may be transferred by delivery of the warrant representing it.

(4) The directors may make provision for the payment of dividends in respect of any share represented by a share warrant.

(5) Subject to the articles, the directors may decide the conditions on which any share warrant is issued. In particular, they may—

(a) decide the conditions on which new warrants are to be issued in place of warrants which are damaged or defaced, or said to have been lost, stolen or destroyed; and

(b) decide the conditions on which bearers of warrants are entitled to attend and vote at general meetings; and

(c) decide the conditions subject to which bearers of warrants may surrender their warrant so as to hold their shares in certificated or uncertificated form instead; and

(d) vary the conditions of issue of any warrant from time to time;

and the bearer of a warrant is subject to the conditions and procedures in force in relation to it, whether or not they were decided or specified before the warrant was issued.

(6) Subject to the conditions on which the warrants are issued from time to time, bearers of share warrants have the same rights and privileges as they would if their names had been included in the register as holders of the shares represented by their warrants.

(7) The company must not in any way be bound by or recognise any interest in a share represented by a share warrant other than the absolute right of the bearer of that warrant to that warrant.

### *partly paid shares*

### *Company's lien over partly paid shares*

52

(1) The company has a lien ("the company's lien") over every share which is partly paid for any part of—

(a) that share's nominal value; and

(b) any premium at which it was issued;

which has not been paid to the company, and which is payable immediately or at some time in the future, whether or not a call notice has been sent in respect of it.

(2) The company's lien over a share—

(a) takes priority over any third party's interest in that share; and

(b) extends to any dividend or other money payable by the company in respect of that share and (if the lien is enforced and the share is sold by the company) the proceeds of sale of that share.

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(3) The directors may at any time decide that a share which is or would otherwise be subject to the company's lien shall not be subject to it, either wholly or in part.

### *Enforcement of the company's lien*

53

(1) Subject to the provisions of this article, if—

(a) a lien enforcement notice has been given in respect of a share; and

(b) the person to whom the notice was given has failed to comply with it;

the company may sell that share in such manner as the directors decide.

(2) A lien enforcement notice—

(a) may only be given in respect of a share which is subject to the company's lien, in respect of which a sum is payable and the due date for payment of that sum has passed; and

(b) must specify the share concerned; and

(c) must require payment of the sum payable within 14 days of the notice; and

(d) must be addressed either to the holder of the share or to a person entitled to it by reason of the holder's death, insolvency or otherwise; and

(e) must state the company's intention to sell the share if the notice is not complied with.

(3) Where shares are sold under this article—

(a) the directors may authorise any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser, and

(b) the transferee is not bound to see to the application of the consideration, and the transferee's title is not affected by any irregularity in or invalidity of the process leading to the sale.

(4) The net proceeds of any such sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied—

(a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice;

(b) second, to the person entitled to the shares at the date of the sale, but only after the certificate for the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost

certificates, and subject to a lien equivalent to the company's lien over the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

(5) A statutory declaration by a director or the company secretary that the declarant is a director or the company secretary and that a share has been sold to satisfy the company's lien on a specified date—

(a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and

(b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.

### *Call notices*

54

(1) Subject to the articles and the terms on which shares are allotted, the directors may send a notice (a "call notice") to a member requiring the member to pay 304

the company a specified sum of money (a "call") which is payable in respect of shares which that member holds at the date when the directors decide to send the call notice.

(2) A call notice—

(a) may not require a member to pay a call which exceeds the total sum unpaid on that member's shares (whether as to the share's nominal value or any amount payable to the company by way of premium); and

(b) must state when and how any call to which it relates is to be paid; and

(c) may permit or require the call to be paid by instalments.

(3) A member must comply with the requirements of a call notice, but no member is obliged to pay any call before 14 days have passed since the notice was sent.

(4) Before the company has received any call due under a call notice the directors may—

(a) revoke it wholly or in part; or

(b) specify a later time for payment than is specified in the notice;

by a further notice in writing to the member in respect of whose shares the call is made.

### *Liability to pay calls*

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55

- (1) Liability to pay a call is not extinguished or transferred by transferring the shares in respect of which it is required to be paid.
- (2) Joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
- (3) Subject to the terms on which shares are allotted, the directors may, when issuing shares, provide that call notices sent to the holders of those shares may require them—
- (a) to pay calls which are not the same; or
  - (b) to pay calls at different times.

*When call notice need not be issued*

56

- (1) A call notice need not be issued in respect of sums which are specified, in the terms on which a share is issued, as being payable to the company in respect of that share (whether in respect of nominal value or premium)—
- (a) on allotment; or
  - (b) on the occurrence of a particular event; or
  - (c) on a date fixed by or in accordance with the terms of issue.

(2) But if the due date for payment of such a sum has passed and it has not been paid, the holder of the share concerned is treated in all respects as having failed to comply with a call notice in respect of that sum, and is liable to the same consequences as regards the payment of interest and forfeiture.

*Failure to comply with call notice: automatic consequences*

57

- (1) If a person is liable to pay a call and fails to do so by the call payment date—
- (a) the directors may issue a notice of intended forfeiture to that person; and
  - (b) until the call is paid, that person must pay the company interest on the call from the call payment date at the relevant rate.
- (2) For the purposes of this article—
- (a) the “**call payment date**” is the time when the call notice states that a call is payable, unless the directors give a notice specifying a later date, in which case the “call payment date” is that later date;

(b) the “**relevant rate**” is—

- (i) the rate fixed by the terms on which the share in respect of which the call is due was allotted; or
- (ii) such other rate as was fixed in the call notice which required payment of the call, or has otherwise been determined by the directors; or
- (iii) if no rate is fixed in either of these ways, 5 % *per annum*.

(3) The relevant rate must not exceed by more than 5 percentage points the prescribed rate of interest.

(4) The directors may waive any obligation to pay interest on a call wholly or in part.

*Notice of intended forfeiture*

58

A notice of intended forfeiture—

- (a) may be sent in respect of any share in respect of which a call has not been paid as required by a call notice; and
- (b) must be sent to the holder of that share or to a person entitled to it by reason of the holder’s death, insolvency or otherwise; and
- (c) must require payment of the call and any accrued interest by a date which is not less than 14 days after the date of the notice; and
- (d) must state how the payment is to be made; and
- (e) must state that if the notice is not complied with, the shares in respect of which the call is payable will be liable to be forfeited.

*Directors’ power to forfeit shares*

59

If a notice of intended forfeiture is not complied with before the date by which payment of the call is required in the notice of intended forfeiture, the directors may decide that any share in respect of which it was given is forfeited, and the forfeiture is to include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.

*Effect of forfeiture*

60

- (1) Subject to the articles, the forfeiture of a share extinguishes—

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<p>(a) all interests in that share, and all claims and demands against the company in respect of it; and</p> <p>(b) all other rights and liabilities incidental to the share as between the person whose share it was prior to the forfeiture and the company.</p> <p>(2) Any share which is forfeited in accordance with the articles—</p> <p>(a) is deemed to have been forfeited when the directors decide that it is forfeited; and</p> <p>(b) is deemed to be the property of the company; and</p> <p>(c) may be sold, re-allotted or otherwise disposed of as the directors think fit.</p> <p>(3) If a person's shares have been forfeited—</p> <p>(a) the company must send that person notice that forfeiture has occurred and record it in the register of members; and</p> <p>(b) that person ceases to be a member in respect of those shares;</p> <p>(c) that person must surrender the certificate for the shares forfeited to the company for cancellation;</p> <p>(d) that person remains liable to the company for all sums payable by that person under the articles at the date of forfeiture in respect of those shares, including any interest (whether accrued before or after the date of forfeiture); and</p> <p>(e) the directors may waive payment of such sums wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.</p> <p>(4) At any time before the company disposes of a forfeited share, the directors may decide to cancel the forfeiture on payment of all calls and interest due in respect of it and on such other terms as they think fit.</p>	<p>(a) is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share; and</p> <p>(b) subject to compliance with any other formalities of transfer required by the articles or by law, constitutes a good title to the share.</p> <p>(3) A person to whom a forfeited share is transferred is not bound to see to the application of the consideration (if any) nor is that person's title to the share affected by any irregularity in or invalidity of the process leading to the forfeiture or transfer of the share.</p> <p>(4) If the company sells a forfeited share, the person who held it prior to its forfeiture is entitled to receive from the company the proceeds of such sale, net of any commission, and excluding any amount which—</p> <p>(a) was, or would have become, payable; and</p> <p>(b) had not, when that share was forfeited, been paid by that person in respect of that share; but no interest is payable to such a person in respect of such proceeds and the company is not required to account for any money earned on them.</p> <p><i>Surrender of shares</i></p> <p>62</p> <p>(1) A member may surrender any share—</p> <p>(a) in respect of which the directors may issue a notice of intended forfeiture; or</p> <p>(b) which the directors may forfeit; or</p> <p>(c) which has been forfeited.</p> <p>(2) The directors may accept the surrender of any such share.</p> <p>(3) The effect of surrender on a share is the same as the effect of forfeiture on that share.</p> <p>(4) A share which has been surrendered may be dealt with in the same way as a share which has been forfeited.</p> <p><i>Transfer and transmission of shares</i></p> <p><i>Transfers of certificated shares</i></p> <p>63</p> <p>(1) Certificated shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of—</p> <p>(a) the transferor; and</p>
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- (b) (if any of the shares is partly paid) the transferee.
- (2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any instrument of transfer which is registered.
- (4) The transferor remains the holder of a certificated share until the transferee's name is entered in the register of members as holder of it.
- (5) The directors may refuse to register the transfer of a certificated share if—
- (a) the share is not fully paid; or
  - (b) the transfer is not lodged at the company's registered office or such other place as the directors have appointed; or
  - (c) the transfer is not accompanied by the certificate for the shares to which it relates, or such other evidence as the directors may reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf; or
  - (d) the transfer is in respect of more than one class of share; or
  - (e) the transfer is in favour of more than 4 transferees.
- (6) If the directors refuse to register the transfer of a share, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

### *Transfer of uncertificated shares*

64

A transfer of an uncertificated share must not be registered if it is in favour of more than 4 transferees.

### *Transmission of shares*

65

- (1) If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.
- (2) Nothing in these articles releases the estate of a deceased member from any liability in respect of a share solely or jointly held by that member.

### *Transmittees' rights*

66

- (1) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—
- (a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and
  - (b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- (2) But transmittees do not have the right to attend or vote at a general meeting in respect of shares to which they are entitled, by reason of the holder's death or insolvency or otherwise, unless they become the holders of those shares

### *Exercise of transmittees' rights*

67

- (1) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.
- (2) If the share is a certificated share and a transmittee wishes to have it transferred to another person, the transmittee must execute an instrument of transfer in respect of it.
- (3) If the share is an uncertificated share and the transmittee wishes to have it transferred to another person, the transmittee must—
- (a) procure that all appropriate instructions are given to effect the transfer, or
  - (b) procure that the uncertificated share is changed into certificated form and then execute an instrument of transfer in respect of it.
- (4) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

### *Transmittees bound by prior notices*

68

If a notice is given to a member in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the member before the transmittee's name has been entered in the register of members.

### *Consolidation of shares*

### *Procedure for disposing of fractions of shares*

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- (1) This article applies where—
- (a) there has been a consolidation or division of shares; and
- (b) as a result, members are entitled to fractions of shares.
- (2) The directors may—
- (a) sell the shares representing the fractions to any person including the company for the best price reasonably obtainable; and
- (b) in the case of a certificated share, authorise any person to execute an instrument of transfer of the shares to the purchaser or a person nominated by the purchaser; and
- (c) distribute the net proceeds of sale in due proportion among the holders of the shares.
- (3) Where any holder's entitlement to a portion of the proceeds of sale amounts to less than a minimum figure determined by the directors, that member's portion may be distributed to an organisation which is a charity for the purposes of the law.
- (4) The person to whom the shares are transferred is not obliged to ensure that any purchase money is received by the person entitled to the relevant fractions.
- (5) The transferee's title to the shares is not affected by any irregularity in or invalidity of the process leading to their sale.

### *Distributions*

#### *Procedure for declaring dividends*

70

- (1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- (2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- (3) No dividend may be declared or paid unless it is in accordance with members' respective rights.
- (4) Unless the members' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each member's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

(7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

#### *Calculation of dividends*

71

- (1) Except as otherwise provided by the articles or the rights attached to shares, all dividends must be—
- (a) declared and paid according to the amounts paid up on the shares on which the dividend is paid; and
- (b) apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

(2) If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.

(3) For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

#### *Payment of dividends and other distributions*

72

- (1) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means—
- (a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide; or
- (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution

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recipient either in writing or as the directors may otherwise decide; or

(c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, “**the distribution recipient**” means, in respect of a share in respect of which a dividend or other sum is payable—

(a) the holder of the share; or

(b) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or insolvency, or otherwise by operation of law, the transferee.

*Deductions from distributions in respect of sums owed to the company*

73

(1) If—

(a) a share is subject to the company's lien; and

(b) the directors are entitled to issue a lien enforcement notice in respect of it;

they may, instead of issuing a lien enforcement notice, deduct from any dividend or other sum payable in respect of the share any sum of money which is payable to the company in respect of that share to the extent that they are entitled to require payment under a lien enforcement notice.

(2) Money so deducted must be used to pay any of the sums payable in respect of that share.

(3) The company must notify the distribution recipient in writing of—

(a) the fact and amount of any such deduction; and

(b) any non-payment of a dividend or other sum payable in respect of a share resulting from any such deduction; and

(c) how the money deducted has been applied.

*No interest on distributions*

74

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued; or

(b) the provisions of another agreement between the holder of that share and the company.

*Unclaimed distributions*

75

(1) All dividends or other sums which are—

(a) payable in respect of shares; and

(b) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

(3) If—

(a) 12 years have passed from the date on which a dividend or other sum became due for payment; and

(b) the distribution recipient has not claimed it;

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

*Non-cash distributions*

76

(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

(2) If the shares in respect of which such a non-cash distribution is paid are uncertificated, any shares in the company which are issued as a non-cash distribution in respect of them must be uncertificated.

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(3) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

- (a) fixing the value of any assets;
- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients;
- (c) vesting any assets in trustees.

### *Waiver of distributions*

77

Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

- (a) the share has more than one holder; or
- (b) more than one person is entitled to the share, whether by reason of the death or insolvency of one or more joint holders, or otherwise;

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

### *Capitalisation of profits*

#### *Authority to capitalise and appropriation of capitalised sums*

78

(1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

- (a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
- (b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalised sums must be applied—

- (a) on behalf of the persons entitled; and
- (b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then

allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalised sum which was appropriated from profits available for distribution may be applied—

- (a) in or towards paying up any amounts unpaid on existing shares held by the persons entitled; or

(b) in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to the articles the directors may—

- (a) apply capitalised sums in accordance with sub-articles (3) and (4) partly in one way and partly in another; and

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and

- (c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

## Part 5: MISCELLANEOUS PROVISIONS

### *Communications*

#### *Means of communication to be used*

79

(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

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## COMPANIES AND OTHER BUSINESS ENTITIES ACT

### *Failure to notify contact details*

80

(1) If—

- (a) the company sends two consecutive documents to a member over a period of at least 12 months; and
- (b) each of those documents is returned undelivered, or the company receives notification that it has not been delivered;

that member ceases to be entitled to receive notices from the company.

(2) A member who has ceased to be entitled to receive notices from the company becomes entitled to receive such notices again by sending the company—

- (a) a new address to be recorded in the register of members; or
- (b) if the member has agreed that the company should use a means of communication other than sending things to such an address, the information that the company needs to use that means of communication effectively.

### *Administrative arrangements*

#### *Company seals*

81

(1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal or securities seal is to be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorised person is—

- (a) any director of the company; or
- (b) the company secretary; or
- (c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

(5) If the company has an official seal for use abroad, it may only be affixed to a document if its use on that document, or documents of a

class to which it belongs, has been authorised by a decision of the directors.

(6) If the company has a securities seal, it may only be affixed to securities by the company secretary or a person authorised to apply it to securities by the company secretary.

(7) For the purposes of the articles, references to the securities seal being affixed to any document include the reproduction of the image of that seal on or in a document by any mechanical or electronic means which has been approved by the directors in relation to that document or documents of a class to which it belongs.

### *Destruction of documents*

82

(1) The company is entitled to destroy—

- (a) all instruments of transfer of shares which have been registered, and all other documents on the basis of which any entries are made in the register of members, from six years after the date of registration; and

- (b) all dividend mandates, variations or cancellations of dividend mandates, and notifications of change of address, from 2 years after they have been recorded; and

- (c) all share certificates which have been cancelled from one year after the date of the cancellation; and

- (d) all paid dividend warrants and cheques from one year after the date of actual payment; and

- (e) all proxy notices from one year after the end of the meeting to which the proxy notice relates.

(2) If the company destroys a document in good faith, in accordance with the articles, and without notice of any claim to which that document may be relevant, it is conclusively presumed in favour of the company that—

- (a) entries in the register purporting to have been made on the basis of an instrument of transfer or other document so destroyed were duly and properly made; and

- (b) any instrument of transfer so destroyed was a valid and effective instrument duly and properly registered; and

- (c) any share certificate so destroyed was a valid and effective certificate duly and properly cancelled; and

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(d) any other document so destroyed was a valid and effective document in accordance with its recorded particulars in the books or records of the company.

(3) This article does not impose on the company any liability which it would not otherwise have if it destroys any document before the time at which this article permits it to do so.

(4) In this article, references to the destruction of any document include a reference to its being disposed of in any manner.

### *No right to inspect accounts and other records*

83

Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member.

### *Provision for employees on cessation of business*

84

The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

### *Directors' indemnity and insurance*

#### *Indemnity*

85

(1) Subject to sub-article (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

(b) any other liability incurred by that director as an officer of the company or an associated company;

(2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.

(3) In this article—

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(b) a “relevant director” means any director or former director of the company or an associated company.

#### *Insurance*

86

(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(a) a “relevant director” means any director or former director of the company or an associated company;

(b) a “relevant loss” means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company;

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

### **Table B: Model Articles for Private Companies Limited By Shares**

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#### *Articles*

1. Definitions.

2. Liability of members.

#### *Part 2: Directors*

##### *Directors' powers and responsibilities*

3. Directors' general authority.

4. Shareholders' reserve power.

5. Directors may delegate.

6. Committees.

##### *Decision-making by Directors*

7. Directors to take decisions collectively.

8. Unanimous decisions.

9. Calling a directors' meeting

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| 30. Procedure for declaring dividends                             | <b>Part 1:</b>  |
| 31. Payment of dividends and other distributions                  | <b>INTERPRETATION AND LIMITATION OF LIABILITY</b>   |
| 32. No interest on distributions                                  |   |
| 33. Unclaimed distributions                                       | <i>Definitions</i>  |
| 34. Non-cash distributions  | 1   |
| 35. Waiver of distributions                                       | (1) In the articles, unless the context requires otherwise—   |
| <i>Capitalisation of profits</i>                                  | “articles” means the company's articles of association;   |
| 36. Authority to capitalise and appropriation of capitalised sums | “insolvency” includes individual insolvency proceedings in a jurisdiction other than Zimbabwe which have an effect similar to that of insolvency; |
| <b>Part 4: Decision-making By Shareholders</b>                    | “chairperson” has the meaning given in article 12;  |
| <i>Organisation of general meetings</i>                           | “chairperson of the meeting” has the meaning given in article 39;   |

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**“Act”** means the Companies and Other Business Entities Act [Chapter: 24:31];

**“director”** means a director of the company, and includes any person occupying the position of director, by whatever name called;

**“distribution recipient”** has the meaning given in article 31;

**“document”** includes, unless otherwise specified, any document sent or supplied in electronic form;

**“fully paid”** in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

**“holder”** in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

**“instrument”** means a non-electronic document;

**“ordinary resolution”** means a resolution other than a special resolution;

**“paid”** means paid or credited as paid;

**“participate”**, in relation to a directors' meeting, has the meaning given in article 10;

**“proxy notice”** has the meaning given in article 45;

**“shareholder”** means a person who is the holder of a share;

**“shares”** means shares in the company;

**“special resolution”** has the meaning given in *section one hundred and seventy-five of the Act*;

**“subsidiary”** has the meaning given in *section one hundred and eighty-five of the Act*;

**“transmittee”** means a person entitled to a share by reason of the death or insolvency of a shareholder or otherwise by operation of law;

**“writing”** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company.

*Liability of members*

2

The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

### Part 2: DIRECTORS

#### DIRECTORS' POWERS AND RESPONSIBILITIES

*Directors' general authority*

3

Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

*Shareholders' reserve power*

4

(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

*Directors may delegate*

5

(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

(a) to such person or committee; and

(b) by such means (including by power of attorney); and

(c) to such an extent; and

(d) in relation to such matters or territories; and

(e) on such terms and conditions;

as they think fit.

(2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

*Committees*

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6

(1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

### *Decision-making By Directors*

#### *Directors to take decisions collectively*

7

(1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.

(2) If—

- (a) the company only has one director; and
- (b) no provision of the articles requires it to have more than one director,

the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

#### *Unanimous decisions*

8

(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

#### *Calling a directors' meeting*

9

(1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

(2) Notice of any directors' meeting must indicate—

- (a) its proposed date and time; and
- (b) where it is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

#### *Participation in directors' meetings*

10

(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles;

and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

#### *Quorum for directors' meetings*

11

(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

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(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.

(3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—

- (a) to appoint further directors; or
- (b) to call a general meeting so as to enable the shareholders to appoint further directors.

### *Chairing of directors' meetings*

12

(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairperson.

(3) The directors may terminate the chairperson's appointment at any time.

(4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

### *Casting vote*

13

(1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

### *Conflicts of interest*

14

(1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if sub-article (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

(3) This sub-article applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process; or

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries; and

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

(6) Subject to sub-article (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairperson whose ruling in relation to any director other than the chairperson is to be final and conclusive.

(7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairperson, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairperson is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

### *Records of decisions to be kept*

15

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The directors must ensure that the company keeps a record, in writing, for at least 8 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

### *Directors' discretion to make further rules*

16

Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

### *Appointment of Directors*

#### *Methods of appointing directors*

17

(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

- (a) by ordinary resolution; or
- (b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of sub-article (2), where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

### *Termination of director's appointment*

18

A person ceases to be a director as soon as—

- (a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law; or
- (b) on the day on which the person is declared to be insolvent by a court; or
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts; or
- (d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that the person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or

(f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

### *Directors' remuneration*

19

(1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

- (a) for their services to the company as directors; and

- (b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

- (a) take any form; and

- (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

### *Directors' expenses*

20

The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

- (a) meetings of directors or committees of directors;

- (b) general meetings, or

- (c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

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### Part 3: SHARES AND DISTRIBUTIONS SHARES

*All shares to be fully paid up*

21

(1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.

(2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

*Powers to issue different classes of share*

22

(1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

*Company not bound by less than absolute interests*

23

Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

*Share certificates*

24

(1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

(2) Every certificate must specify—

- (a) in respect of how many shares, of what class, it is issued; and
- (b) the nominal value of those shares; and
- (c) that the shares are fully paid; and

(d) any distinguishing numbers assigned to them.

(3) No certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one certificate may be issued in respect of it.

(5) Certificates must—

(a) have affixed to them the company's common seal; or

(b) be otherwise executed in accordance with the Act.

*[If a company is a registered user of the electronic registry, it may issue uncertificated shares, that is to say, shares in dematerialised form, subject to the conditions of the issuance of such shares in section one hundred and fifty-three of the Act.]*

*Replacement share certificates*

25

(1) If a certificate issued in respect of a shareholder's shares is—

(a) damaged or defaced; or

(b) said to be lost, stolen or destroyed;

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A shareholder exercising the right to be issued with such a replacement certificate—

(a) may at the same time exercise the right to be issued with a single certificate or separate certificates; and

(b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and

(c) must pay a fee of **25 United States cents** per certificate; and

(d) must comply with such conditions as to evidence and indemnity as the directors may determine.

*[If a company is a registered user of the electronic registry, it may issue replacement uncertificated shares, that is to say, shares in dematerialised form, subject to the conditions of the issuance of such shares in section one hundred and fifty-three of the Act.]*

*Share transfers*

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26

- (1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- (2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any instrument of transfer which is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
- (5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

*[If a company is a registered user of the electronic registry, it may transfer uncertificated shares, otherwise than by instrument, subject to the conditions of the transfer of such shares in section 153 of the Act.]*

*Transmission of shares*

27

- (1) If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.
- (2) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—
  - (a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person; and
  - (b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- (3) But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or insolvency or otherwise, unless they become the holders of those shares.

*Exercise of transmittees' rights*

28

- (1) Transmittees who wish to become the holders of shares to which they have become

entitled must notify the company in writing of that wish.

- (2) If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

- (3) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

*Transmittees bound by prior notices*

29

If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

*Dividends and other Distributions*

*Procedure for declaring dividends*

30

- (1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- (2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- (3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- (4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- (5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- (6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

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(7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

### *Payment of dividends and other distributions*

31

(1) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means—

- (a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
- (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
- (c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
- (d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, “**the distribution recipient**” means, in respect of a share for which a dividend or other sum is payable—

- (a) the holder of the share; or
- (b) if the share has 2 or more joint holders, whichever of them is named first in the register of members; or
- (c) if the holder is no longer entitled to the share by reason of death or insolvency, or otherwise by operation of law, the transferee.

### *No interest on distributions*

32

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued, or

- (b) the provisions of another agreement between the holder of that share and the company.

### *Unclaimed distributions*

33

- (1) All dividends or other sums which are—

- (a) payable in respect of shares; and
- (b) unclaimed after having been declared or become payable;

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

- (2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

- (3) If—

- (a) eight years have passed from the date on which a dividend or other sum became due for payment; and

- (b) the distribution recipient has not claimed it;

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

### *Non-cash distributions*

34

- (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

- (2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

- (a) fixing the value of any assets; and
- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- (c) vesting any assets in trustees.

### *Waiver of distributions*

35

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Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

- (a) the share has more than one holder; or
- (b) more than one person is entitled to the share, whether by reason of the death or insolvency of one or more joint holders, or otherwise; the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

### *Capitalisation of profits*

#### *Authority to capitalise and appropriation of capitalised sums*

36

(1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

- (a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
- (b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalised sums must be applied—

- (a) on behalf of the persons entitled; and
- (b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to the articles the directors may—

- (a) apply capitalised sums in accordance with sub-articles (3) and (4) partly in one way and partly in another; and

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and

(c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

## Part 4: DECISION-MAKING BY SHAREHOLDERS

### ORGANISATION OF GENERAL MEETINGS

#### *Attendance and speaking at general meetings*

37

(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) 2 or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

#### *Quorum for general meetings*

38

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No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

### *Chairing general meetings*

39

(1) If the directors have appointed a chairperson, the chairperson shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairperson, or if the chairperson is unwilling to chair the meeting or is not present within 10 minutes of the time at which a meeting was due to start—

(a) the directors present; or

(b) (if no directors are present), the meeting;

must appoint a director or shareholder to chair the meeting, and the appointment of the chairperson of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairperson of the meeting".

### *Attendance and speaking by directors and non-members*

40

(1) Directors may attend and speak at general meetings, whether or not they are shareholders.

(2) The chairperson of the meeting may permit other persons who are not—

(a) shareholders of the company; or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings;

to attend and speak at a general meeting.

### *Adjournment*

41

(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairperson of the meeting must adjourn it.

(2) The chairperson of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment; or

(b) it appears to the chairperson of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairperson of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairperson of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given; and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

### *Voting at general meetings*

#### *Voting: general*

42

A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

#### *Errors and disputes*

43

(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

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(2) Any such objection must be referred to the chairperson of the meeting, whose decision is final.

### *Poll votes*

44

- (1) A poll on a resolution may be demanded—
- (a) in advance of the general meeting where it is to be put to the vote, or
  - (b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- (2) A poll may be demanded by—
- (a) the chairperson of the meeting; or
  - (b) the directors; or
  - (c) 2 or more persons having the right to vote on the resolution; or
  - (d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- (3) A demand for a poll may be withdrawn if—
- (a) the poll has not yet been taken; and
  - (b) the chairperson of the meeting consents to the withdrawal.
- (4) Polls must be taken immediately and in such manner as the chairperson of the meeting directs.

### *Content of proxy notices*

45

- (1) Proxies may only validly be appointed by a notice in writing (a “**proxy notice**”) which—
- (a) states the name and address of the shareholder appointing the proxy; and
  - (b) identifies the person appointed to be that shareholder’s proxy and the general meeting in relation to which that person is appointed; and
  - (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
  - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it must be treated as—

- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
- (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### *Delivery of proxy notices*

46

(1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf.

### *Amendments to resolutions*

47

(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

- (a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later

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time as the chairperson of the meeting may determine); and

(b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution.

### Part 5: ADMINISTRATIVE ARRANGEMENTS

#### *Means of communication to be used*

48

(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### *Company seals*

49

(1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal is to be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorised person is—

(a) any director of the company;

(b) the company secretary (if any); or

(c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

#### *No right to inspect accounts and other records*

50

Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

#### *Provision for employees on cessation of business*

51

The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

#### *Directors' indemnity and insurance*

##### *Indemnity*

52

(1) Subject to sub-article (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company;

(b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a

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trustee of a pension scheme (as defined in section 84(6) of the Act),

(c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.

(3) In this article—

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(b) a “**relevant director**” means any director or former director of the company or an associated company.

### *Insurance*

53

(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(a) a “**relevant director**” means any director or former director of the company or an associated company;

(b) a “**relevant loss**” means any loss or liability which has been or may be incurred by a relevant director in connection with that director’s duties or powers in relation to the company, any associated company or any pension fund or employees’ share scheme of the company or associated company; and

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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### PART 1 INTERPRETATION AND LIMITATION OF LIABILITY

#### Definitions

1

(1) In the articles, unless the context requires otherwise—

“articles” means the company’s articles of association;

“chairperson” has the meaning given in article 12;

“chairperson of the meeting” has the meaning given in article 25;

“Act” means the Companies and Other Business Entities Act [Chapter 24:31];

“director” means a director of the company, and includes any person occupying the position of director, by whatever name called;

“document” includes, unless otherwise specified, any document sent or supplied in electronic form;

“insolvency” includes individual insolvency proceedings in a jurisdiction other than Zimbabwe which have an effect similar to that of insolvency;

“member” has the meaning given in section 76(b) of the Act;

“ordinary resolution” has the meaning given in section 175(4) of the Act;

“participate”, in relation to a directors’ meeting, has the meaning given in article 10;

“proxy notice” has the meaning given in article 31;

“special resolution” has the meaning given in section one hundred and seventy-five of the Act;

“subsidiary” has the meaning given in section one hundred and eighty-five of the Act; and

“writing” means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

(2) Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Act as in force on the date when these articles become binding on the company.

#### *Liability of members*

2

The liability of each member is limited to \$1,00, being the amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for—

(a) payment of the company’s debts and liabilities contracted before he ceases to be a member; and

(b) payment of the costs, charges and expenses of winding up, and

(c) adjustment of the rights of the contributories among themselves.

### PART 2 DIRECTORS

#### DIRECTORS’ POWERS AND RESPONSIBILITIES

##### *Directors’ general authority*

3

Subject to the articles, the directors are responsible for the management of the company’s business, for which purpose they may exercise all the powers of the company.

##### *Members’ reserve power*

4

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(1) The members may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

### *Directors may delegate*

5

(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

- (a) to such person or committee;
- (b) by such means (including by power of attorney);
- (c) to such an extent;
- (d) in relation to such matters or territories; and
- (e) on such terms and conditions;

as they think fit.

(2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

### *Committees*

6

(1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

### *DECISION-MAKING BY DIRECTORS*

#### *Directors to take decisions collectively*

7

(1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.

(2) If—

- (a) the company only has one director, and
- (b) no provision of the articles requires it to have more than one director,

the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

#### *Unanimous decisions*

8

(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

#### *Calling a directors' meeting*

9

(1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

(2) Notice of any directors' meeting must indicate—

- (a) its proposed date and time; and
- (b) where it is to take place; and
- (c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days

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after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

### *Participation in directors' meetings*

10

(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles;

and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

### *Quorum for directors' meetings*

11

(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than 2, and unless otherwise fixed it is 2.

(3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—

(a) to appoint further directors; or

(b) to call a general meeting so as to enable the members to appoint further directors.

### *Chairing of directors' meetings*

12

(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairperson.

(3) The directors may terminate the chairperson's appointment at any time.

(4) If the chairperson is not participating in a directors' meeting within 10 minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

### *Casting vote*

13

(1) If the numbers of votes for and against a proposal are equal, the chairperson or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairperson or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

### *Conflicts of interest*

14

(1) If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if sub-article (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

(3) This paragraph applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process; or

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for securities of the company or any

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of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such securities;

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

(6) Subject to sub-article (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairperson whose ruling in relation to any director other than the chairperson is to be final and conclusive.

(7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairperson, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairperson is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

### *Records of decisions to be kept*

15

The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

### *Directors' discretion to make further rules*

16

Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

## **APPOINTMENT OF DIRECTORS**

### *Methods of appointing directors*

17

(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(a) by ordinary resolution; or

(b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no members and no directors, the personal representatives of the last member to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where 2 or more members die in circumstances rendering it uncertain who was the last to die, a younger member is deemed to have survived an older member.

### *Termination of director's appointment*

18

A person ceases to be a director as soon as—

(a) that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law; or

(b) a liquidation order is made against that person; or

(c) a composition is made with that person's creditors generally in satisfaction of that person's debts; or

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than 3 months; or

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or

(f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

### *Directors' remuneration*

19

(1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

(a) for their services to the company as directors; and

(b) for any other service which they undertake for the company.

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- (3) Subject to the articles, a director's remuneration may—
- (a) take any form; and
  - (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.
- (4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.
- (5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

### *Directors' expenses*

20

The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

- (a) meetings of directors or committees of directors; or
- (b) general meetings; or
- (c) separate meetings of the holders of debentures of the company;

or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

## PART 3 MEMBERS

### BECOMING AND CEASING TO BE A MEMBER

#### *Applications for membership*

21

No person shall become a member of the company unless—

- (a) that person has completed an application for membership in a form approved by the directors; and
- (b) the directors have approved the application.

#### *Termination of membership*

22

- (1) A member may withdraw from membership of the company by giving 7 days' notice to the company in writing.

- (2) Membership is not transferable.

- (3) A person's membership terminates when that person dies or ceases to exist.

### *ORGANISATION OF GENERAL MEETINGS*

#### *Attendance and speaking at general meetings*

23

- (1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

- (2) A person is able to exercise the right to vote at a general meeting when—

- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

- (b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

- (4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

#### *Quorum for general meetings*

24

No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

#### *Chairing general meetings*

25

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(1) If the directors have appointed a chairperson, the chairperson shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairperson, or if the chairperson is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present; or

(b) (if no directors are present), the meeting; must appoint a director or member to chair the meeting, and the appointment of the chairperson of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as “the chairperson of the meeting”.

*Attendance and speaking by directors and non-members*

26

(1) Directors may attend and speak at general meetings, whether or not they are members.

(2) The chairperson of the meeting may permit other persons who are not members of the company to attend and speak at a general meeting.

*Adjournment*

27

(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairperson of the meeting must adjourn it.

(2) The chairperson of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment; or

(b) it appears to the chairperson of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairperson of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairperson of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given; and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

### ***VOTING AT GENERAL MEETINGS***

*Voting: general*

28

A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

*Errors and disputes*

29

(1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection must be referred to the chairperson of the meeting whose decision is final.

*Poll votes*

30

(1) A poll on a resolution may be demanded—

(a) in advance of the general meeting where it is to be put to the vote; or

(b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

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- (2) A poll may be demanded by—
- (a) the chairperson of the meeting; or
  - (b) the directors; or
  - (c) 2 or more persons having the right to vote on the resolution; or
  - (d) a person or persons representing not less than one tenth of the total voting rights of all the members having the right to vote on the resolution.
- (3) A demand for a poll may be withdrawn if—
- (a) the poll has not yet been taken; and
  - (b) the chairperson of the meeting consents to the withdrawal.
- (4) Polls must be taken immediately and in such manner as the chairperson of the meeting directs.

### *Content of proxy notices*

31

- (1) Proxies may only validly be appointed by a notice in writing (a “**proxy notice**”) which—
- (a) states the name and address of the member appointing the proxy; and
  - (b) identifies the person appointed to be that member’s proxy and the general meeting in relation to which that person is appointed; and
  - (c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine; and
  - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (4) Unless a proxy notice indicates otherwise, it must be treated as—

- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
- (b) appointing that person as a proxy in relation to any adjournment of the general

meeting to which it relates as well as the meeting itself.

### *Delivery of proxy notices*

32

- (1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf.

### *Amendments to resolutions*

33

- (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—
- (a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairperson of the meeting may determine), and
  - (b) the proposed amendment does not, in the reasonable opinion of the chairperson of the meeting, materially alter the scope of the resolution.
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—
- (a) the chairperson of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

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(3) If the chairperson of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairperson's error does not invalidate the vote on that resolution.

### PART 4 ADMINISTRATIVE ARRANGEMENTS

#### *Means of communication to be used*

34

(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

#### *Company seals*

35

(1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal is to be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorised person is—

- (a) any director of the company; or
- (b) the company secretary (if any); or
- (c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

#### *No right to inspect accounts and other records*

36

Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member.

#### *Provision for employees on cessation of business*

37

The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

#### *DIRECTORS' INDEMNITY AND INSURANCE*

##### *Indemnity*

38

(1) Subject to sub-article (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,

(b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of a pension scheme (as defined in section 84(6) of the Act),

(c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Act or by any other provision of law.

(3) In this article—

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

(b) a “**relevant director**” means any director or former director of the company or an associated company.

##### *Insurance*

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39

(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(a) a “**relevant director**” means any director or former director of the company or an associated company;

(b) a “**relevant loss**” means any loss or liability which has been or may be incurred by a relevant director in connection with that director’s duties or powers in relation to the company, any associated company or any pension fund or employees’ share scheme of the company or associated company;

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

## Table D: Model By-laws for Private Business Corporations Index to the By-laws

### By-laws

1. Members of PBC.
2. Principal place of business of PBC.
3. Purpose and powers of PBC.
4. Members’ percentage interests and admission of new members.
5. Members’ contributions to PBC’s capital.
6. Members’ voting and decisions.
7. Managers and agents of PBC.
8. Distributions.
9. Sale or other transfer of member’s interest
10. Accounting and financial matters
11. Termination of membership.

The persons listed in By-Law 1 below (the “Members”) adopt this agreement as the by-laws of \_\_\_\_\_, a private business corporation (“PBC”) registered under the Companies and Other Business Entities Act (the “Act”).

### Members of PBC

1

The following persons are all of the Members of the ----- PBC registered on the -----:

[State below the full name of each Member and the member’s identity particulars]

---

---

---

---

---

[.....more or fewer lines as needed]

*Principal place of business of PBC*

2

The PBC’s principal place of business is:

---

---

*Purpose and powers of PBC*

3

The business purpose of the PBC is:

---

---

etc.

[state this to the extent desired] and to carry on any other lawful business or activity relating to the foregoing. The PBC shall have the power to do acts necessary or proper for that purpose.

*Members’ percentage interests and admission of new members*

4

(1) The percentage interest of each Member in the PBC is:

Name:

---

---

: \_\_\_\_ %

Name:

---

---

: \_\_\_\_ %

Name:

---

---

: \_\_\_\_ %

[more or fewer lines as needed]

(2) Each member’s interest at any time will be that member’s then-current percentage of the total amounts which all members have paid in to the PBC’s capital in exchange for an interest.

(3) A person shall be admitted as a member of the PBC after its formation only—

(a) with the unanimous consent of the members; or

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(b) after the death of a member, as a result of the nomination by that member of a person to be his or her successor to his or her interest.

### *Members' contributions to PBC's capital*

5

(1) A member's payment into the PBC for the member's interest may be in money, in other tangible or intangible property, in services already performed for the PBC, or in a binding obligation to contribute money or property.

(2) The percentage interest to be issued to a member for non-monetary contributions shall be determined by agreement of the members.

(3) If a member's contribution is other than in money, an agreed dollar value of that contribution may be stated.

### *Members' voting and decisions*

6

(1) Members of a private business corporation shall (in addition to the meetings they are obliged to hold under the Act) hold at least one regular meeting each year, no later than six months after the end of the PBC's financial year.

(2) Any member of the PBC may at any time convene a special meeting by giving all members reasonable notice, not necessarily in writing, of the time and place and purpose of the meeting:

Provided that the time of the meeting shall be at least 7 days from the date when the meeting is notified to all members. and the place of the meeting shall be reasonably convenient for the attendance of members.

(3) At any meeting of members of the PBC—

(a) to constitute a quorum, there shall be present in person or by proxy, not necessarily in writing, members whose interests exceed **50%** of the total members' interests;

(b) the chairperson of the meeting shall be the member elected as chairperson of the PBC or, if no member has been so elected or he or she is not present, the meeting shall elect its own chairperson;

(c) the chairperson shall not have a casting vote;

(d) each member shall have a vote corresponding with the percentage of his or her interest.

(4) The secretary at every meeting of the PBC (who may or may not be a member) shall take the minutes of all proceedings of the meeting, and any such minutes, if purporting to be signed by the chairperson of the meeting or of the next succeeding meeting, shall be evidence of the proceedings and evidence that the meeting was properly convened and conducted.

(5) The minutes need not be a verbatim report of the proceedings but must specify which members were in attendance at the meeting concerned, the issues voted on and the results of each vote.

(6) A resolution in writing signed by all the members for the time being entitled to receive notice of and to attend and vote at meetings of members shall, with effect from the date of the last signature, which date shall be recorded on the signed document, be as valid and effective as if it had been passed at a meeting of members duly convened and held in terms of this by-law.

### *Managers and agents of PBC*

7

(1) Subject to subsection (2), all members of the PBC shall be the agents and managers of the PBC.

(2) The members may agree to appoint one or more managers and agents of the PBC, whose functions and powers will be embodied in a written agreement between the PBC and the managers and agents concerned.

### *Distributions*

8

(1) A PBC may make distributions to its members at any time with the consent of members whose interests exceed **50%** of the total members' interests

(2) Any distributions to members shall be made to them in proportion to their percentage interests.

(3) When a member becomes entitled to receive a distribution, that member becomes a creditor of the PBC with respect to the distribution

### *Sale or other transfer of member's interest*

9

(1) Except by way of succession contemplated under By-Law 4(3)(b), a member may not sell or transfer his or her interest unless—

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- (a) the interest has first been offered to the PBC or to other members; and
- (b) if the PBC or its members do not buy the interest, the other members unanimously agree to its transfer to another person.

(2) A transfer of an interest does not by itself cause the transferee to become a member of the PBC. If a transferee does not become a member in accordance with By-Law 4, the transfer shall be an assignment only of the transferor's rights to distributions from the PBC, and the transferor shall continue to be a member with the other rights of a member and all duties and obligations of a member.

### *Accounting and financial matters*

10

(1) The PBC shall keep accounting records which are necessary and sufficient to present fairly its business, state of affairs, transactions and financial position. This shall include records which show—

- (a) the PBC's assets and liabilities, income, undistributed income, and any revaluations of fixed assets; and
- (b) cash received and paid out in sufficient detail to enable the nature of the transactions and, except in the case of cash sales, the names of the parties to the transactions, to be identified; and
- (c) goods purchased and sold on credit and services received and rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and
- (d) all contributions by members, distributions to members, any loans to or from members and payments made thereunder, and all payments to members for any reason.

(2) Accounting records shall be kept at the principal place of business or the registered office of the PBC; shall be kept in such a manner as to provide adequate precautions against falsification and to facilitate the discovery of any falsification; and shall be open and available at all reasonable times for inspection by any member.

(3) In addition to the financial accounts stated above, the PBC shall comply with the requirements of any bank or other financial institution, and with all other laws and regulations including such of the financial accounting and reporting requirements and standards of the Public Accountants and

Auditors Board under the Public Accountants and Auditors Act as may be applicable with respect to that PBC or its financial accounts and reporting.

### *Termination of membership*

11

(1) A person shall cease to be a member of the PBC upon any of the following events—

- (a) death or insolvency as provided for in the Act; or

- (b) voluntary withdrawal as provided for in subsection (2); or

- (c) expulsion as provided for in subsection (4);

- (d) transfer of all of the person's interest to another person who becomes a member as provided for in these By-Laws, or to another existing member, or to the PBC as provided for in these By-Laws.

(2) A member of the PBC has the right to withdraw as a member at any time by giving written notice of his or her withdrawal to the PBC at its registered office with copies sent to all other members. The withdrawal shall be effective on the PBC's receipt of the notice or on such later date as may be stated in the notice.

(3) A member in good standing with the PBC who withdraws is entitled to receive from the PBC, within a reasonable time after ceasing to be a member, the fair value of his or her interest as of the date of ceasing to be a member. Any such payment shall be considered a distribution subject to the restrictions on distributions stated in By-Law 8.

(4) A member may be expelled by the unanimous vote of the other members if the member wrongfully damaged the PBC or other members, wilfully or persistently violated the PBC's Incorporation Statement or By-Laws or duties of the member, or engaged in conduct that makes it impossible to carry on the PBC's business with the member.

(5) A member who is expelled from the PBC is entitled to receive from the PBC, within a reasonable time after ceasing to be a member, the fair value of his or her interest as of the date of ceasing to be a member, minus the value of any assessed damages that member may have caused the PBC. Any such payment shall be considered a distribution subject to the restrictions on distributions stated in By-Law 8. Any dispute as to whether damages are

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payable or their extent shall be determined by arbitration in accordance with the Arbitration Act.

### SEVENTH SCHEDULE

#### (Section 282)

user agreement

#### Scope and Purpose of User Agreement

1

(1). This User Agreement (“Agreement”) enables the user to (*tick applicable*):

- (a) have access to the electronic registry as a researcher ;
- (b) to engage in company registration work and/or notarial practice ;
- (c) to engage in company registration work as a self-actor

(2) This Agreement governs access to, and the use and disclosure of data in, the electronic registry.

#### Interpretation

2

Unless the context otherwise requires, any word or phrase used in this Agreement which has been defined in the Companies and other Business Entities Act (“the Act”) shall bear the same meaning when used in this Agreement.

#### Electronic Registry User Agreement Training Course

3

The Registered User agrees (if he or she has not already completed such course) to complete at his or her own expense the Electronic Registry User Agreement Training Course prescribed by the Registrar as a condition for the continuance of this Agreement, and such additional courses in connection with the use of the electronic registry as the Registrar may from time to time prescribe.

#### Interconnectivity requirements

4

The Registered User shall—

- (a) use the computer equipment and facilities of a class or kind specified in regulations made in terms of *section three hundred and one of the Act* or of the description specified in the annexure hereto;

(b) affix a digital signature that is compliant with the requirements of section 284 (1) of the Act to any electronic communication or record in such a manner as may be directed by the Registrar

(c) allow reasonable access to the computer system of the Registered User by the Registrar for such verification and audit purposes as by the Act and this Agreement may be required or expedient;

(d) keep such electronic records in the manner and for such period as by the direction and in the opinion of the Registrar are necessary or convenient to be kept in connection with the proper functioning of the electronic Registry

#### Confidentiality and security

5

(1) This Agreement prohibits the Registered User from releasing, disclosing, publishing, or presenting any individually identifying information obtained under its terms except—

- (a) in the normal course of company registration work or notarial practice; or
- (b) with the consent of the individual concerned; or
- (c) to such extent as may be prescribed under regulations made in terms of *section three hundred and one of the Act*.

(2) No person other than the Registered User or his or her authorised agents (whose names and other relevant particulars shall be notified in advance to the Registrar) shall use or have access to the electronic registry.

(3) The Registered User hereby acknowledges that he or she is aware of the provisions of *section two hundred and ninety-one (“Restrictions on disclosure of information”) of the Act*.

#### Integrity of electronic registry data

6

(1) The Registered User or his or her authorised agents undertake that, in accessing or obtaining any records by means of the electronic registry, every precaution shall be taken to ensure the integrity of such records against unauthorised alteration or damage or unauthorised access by persons who are not registered users.

(2) The Registered User hereby acknowledges that he or she is aware of the

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provisions of section two hundred and ninety (“Unlawful uses of computer systems”) of the Act.

### *Electronic signatures and passwords*

7

(1) If or to the extent that the Registrar does not allocate to the Registered User any digital signature or password for accessing and using the electronic registry, the Registered User shall without delay give notice to the Registrar of every electronic signature and password to be used by the registered user for the purpose of accessing and using the electronic registry, and the registered user undertakes that no other electronic signature and password than the ones referred to in this clause shall be used by him or her for that purpose.

(2) The Registered User undertakes that every precaution shall be taken to ensure that every electronic signature and password referred to in sub-clause (1) is protected against unauthorised access by or disclosure to persons who are not his or her authorised agents.

(3) The Registered User hereby acknowledges that he or she is aware of the provisions of section two hundred and eighty-seven (“Obligations, indemnities and presumptions with respect to digital signatures”) of the Act.

### *Use of electronic registry data for gain*

8

This Agreement prohibits a Registered User from releasing, disclosing, publishing, or presenting any information obtained from the electronic registry for gain except—

- (a) in the normal course of company registration work or notarial practice; or
- (b) to such extent and under such conditions as may be prescribed under regulations made in terms of section three hundred and one of the Act

### *Commencement, Term and Renewal of Agreement*

9

(1) A non-refundable application fee of such amount as shall be prescribed under regulations made in terms of section three hundred and one of the Act must be paid before the registered user may access the electronic registry.

(2) This agreement expires on the 31st December of every year but is automatically renewable (subject to previous compliance with its terms) upon payment of a non-refundable renewal fee of such amount as shall be prescribed under regulations made in terms of section three hundred and one of the Act.

### *Breach and termination of Agreement*

10

(1) Any violation of the terms of this Agreement, or the happening of event specified in section 283(4) of the Act, shall be grounds for the immediate termination of this Agreement.

(2) The Registrar shall determine, on reasonable grounds—

(a) whether a registered user has violated any term of the Agreement;

(b) what actions, if any, are necessary to remedy a violation of this Agreement, and the Registered User shall comply with pertinent instructions from Registrar

(3) Actions taken by Registrar may include but not be limited to—

(a) the imposition of a civil penalty payable to and forming part of the funds of the Registry not exceeding **US\$5**, for every day that the registered user fails to comply with an instruction of the Registrar after being notified of it (provided that the amount of such penalty shall not accumulate so as to exceed **US\$900**, at which point the Registrar must terminate this Agreement or take other action to enforce this Agreement);

(b) providing notice of the termination or violation to affected parties and prohibiting Registered User from accessing the electronic registry in the future

### *Material changes*

11

Any material changes to the particulars furnished by a registered user in his or her application to become a registered user or in the particulars furnished below shall be promptly notified the Registrar, and in any event within seven days from the change having occurred or been made.

Signed:

.....

.....

# ICAZ STUDENT LEGISLATION HANDBOOK - COMPANIES AND OTHER BUSINESS ENTITIES ACT

Date: .....  
.....  
Print or Type Name: .....  
.....  
Title: .....  
.....  
Organization: .....  
.....  
Address: .....  
.....  
Address: .....  
.....  
Phone (land and/or cell): .....  
.....  
Fax: .....  
.....  
E-mail: .....  
.....

## EIGHTH SCHEDULE

### (Section 104)

matters to Be specified in Prospectus and reports to Be set out therein

### PART I MATTERS TO BE SPECIFIED

1

Except where the prospectus is issued prior to the incorporation of the company, the date of incorporation of the company and the address of its registered office.

2

The number of shares, if any, fixed by the articles as the qualification of a director, and any provisions as to the remuneration of the directors whether for their services to the company as directors, managing directors or otherwise, whether under the articles or under contract or otherwise.

3

- (1) The names, occupations and addresses of the directors or proposed directors.
- (2) The name and address of the auditor, if any.

(3) The term for which any present director and managing director hold office and the manner in and term for which any future director and managing director will be appointed, including information as to any exclusive or special right held in respect of the appointment of any director and managing director.

4

Where shares are offered to the public for subscription, particulars as to—

(a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters—

(i) the purchase price of any property, including goodwill, if any, purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his or her agreeing to subscribe for, or of his or her procuring or agreeing to procure subscriptions for, any shares in the company;

(iii) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(iv) working capital;

(v) any other expenditure, stating the nature and purpose thereof and the estimated amount in each case;

and

(b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

5

The time of the opening of the subscription lists.

6

(1) The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted and the amount, if any, paid on the shares so allotted.

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(2) The amount payable by way of premium, if any, on each share which has been or is to be issued stating the dates of issue, the reasons for any such premium, and, where some shares have been or are to be issued at a premium and other shares at par or at a lower premium, also the reasons for the differentiation, and how any premium has been or is to be disposed of.

7

The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind has been or is proposed to be given to any person to subscribe for any shares in or debentures of a company; giving the number, description and amount of any such shares or debentures and including the following particulars of the option or right—

- (a) the period during which it is exercisable;
- (b) the price to be paid for shares or debentures subscribed for under it;
- (c) the consideration, if any, given or to be given for it or for the right to it;
- (d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing members or debenture holders as such, the relevant shares or debentures;
- (e) any other material fact or circumstance relevant to the grant of such option or right.

Subscribing for shares or debentures shall, for the purpose of this paragraph, include acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his or her offering them for sale.

8

The number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

9

(1) As respects any property to which this paragraph applies—

- (a) the names and addresses of the vendors;
- (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the

company is a sub-purchaser, the amount so payable to each vendor;

(c) short particulars of any transaction relating to the property completed within the preceding 2 years in which any vendors of the property to the company, or any person who is or was, at the time of the transaction, a promoter or a director or proposed director of the company, had any interest, direct or indirect. When the vendors, or any of them, are a partnership, the members of the partnership shall not be treated as separate vendors.

(2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property—

- (a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or
- (b) as respects which the amount of the purchase money is not material.

10

The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which the last foregoing paragraph applies, specifying the amount, if any, payable for goodwill.

11

The amount, if any, and the nature and extent of any consideration, paid within the two preceding years, or payable as commission to any person, including commission so paid or payable to any sub-underwriter, who is a promoter or director or other officer of the company but excluding commission so paid or payable to any other sub-underwriter, for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in or debentures of the company, the name, occupation and address of each person, particulars of the amounts which each has underwritten or sub-underwritten, of the rate of the commission payable to such underwriting or sub-underwriting, and any other material term or condition of the underwriting or sub-underwriting contract with such person; and when such person is a company, the name

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of the directors of such company and the nature and extent of any interest, direct or indirect, in such company of any promoter, director or other officer of the company in respect of which the prospectus is issued.

12

The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

13

Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter with his or her name and address, or to any partnership, syndicate or other association of which he or she is or was at any material time a member, and the consideration for such payment or the giving of such benefit.

14

The dates of, parties to and general nature of every material contract not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus and a reasonable time and place at which any such contract or a copy thereof may be inspected.

15

Full particulars of the nature and extent of the interest, if any, of every director or promoter in the promotion of, or in the property acquired within 2 years of the date of the prospectus or proposed to be acquired by, the company or, where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association and the nature and extent of such director's or promoter's interest in the partnership, company, syndicate or other association, with a statement of all sums paid or agreed to be paid to him or her or to it in cash or shares or otherwise by any person either to induce him or her to become, or to qualify him as, a director or otherwise for services rendered by him or her or by it in connection with the promotion or formation of the company.

16

(1) The number of founders' and management or deferred shares, if any, and any special rights attaching thereto, and the nature and extent of the interest of the holders in the property and profits of the company

(2) Particulars of the share capital, nominal, issued, paid up and held in reserve; the number and classes of shares and the nominal value thereof, and if the prospectus invites the public to subscribe for shares in the company, a description of the respective voting rights, preference, conversion and exchange rights, rights to dividends, profits or capital of each class, including redemption rights and rights on liquidation or distribution of capital assets.

17

In the case of a company which has been carrying on business, or of a business which has been carried on, for less than 5 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

## PART II

### REPORTS TO BE SET OUT

18

(1) A report by the auditors of the company with respect to—

(a) profits and losses and assets and liabilities, in accordance with subparagraph (2) or (3), as the case requires; and

(b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the 5 financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years;

and, if no accounts have been made up in respect of any part of the period of 5 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.

(2) If the company has no subsidiaries, the report shall—

(a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the 5 financial years immediately preceding the issue of the prospectus; and

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(b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall—

(a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by subparagraph (2), and in addition, deal—

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the company; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company;

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by subparagraph (2) and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or liabilities; or

(ii) individually with the assets and liabilities of each subsidiary;

and shall indicate as respects the assets and liabilities of the subsidiaries the adjustment to be made for persons other than members of the company.

19

If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants, who shall be named in the prospectus, upon—

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up.

20

(1) If—

(a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company;

a report made by accountants, who shall be named in the prospectus, upon—

(i) the profits or losses of the other body corporate in respect of each of the 5 financial years immediately preceding the issue of the prospectus; and

(ii) the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) The said report shall—

(a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and, for holders of other shares, what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, if the company had at all material times held the shares to be acquired; and

(b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by paragraph 18(3) of this Schedule in relation to the company and its subsidiaries.

### PART III PROVISIONS APPLYING TO PARTS I AND II OF SCHEDULE

21

Paragraph 2 and paragraph 12, so far as it relates to preliminary expenses, and paragraph 15 of this Schedule shall not apply in the case of a prospectus issued more than 3 years after the date at which the company is entitled to commence business.

22

Every person shall, for the purpose of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

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- (a) the purchase money is not fully paid at the date of the issue of the prospectus; or
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or
- (c) the contract depends for its validity or fulfilment on the result of that issue.

23

Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchase" included a sub-lessee.

24

If in the case of a company which has been carrying on business, or of a business which has been carried on for less than 5 years, the accounts of the company or business have only been made up in respect of 4 years, 3 years, 2 years or one year, Part II of this Schedule shall have effect as if references to 4 years, 3 years, 2 years or one year, as the case may be, were substituted for references to 5 years.

25

The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of that Part of this Schedule be deemed to be a financial year.

26

Any report required by Part II of this Schedule shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.

27

Any report by accountants required by Part II of this Schedule shall not be made by any accountant who is an officer or servant, or a partner or employer of or in the employment of

an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company; and for the purposes of this paragraph the expression "officer" shall include a proposed director but not an auditor

### NINTH SCHEDULE

(Section 18 (4) and (5))

If the document or notice be lodged within the under-mentioned periods after the date when the act in respect of which the document is to be furnished or notice given took place	Penalty to be paid
(a) 3 months	Twice the prescribed fee
(b) 6 months	Three times the prescribed fee
(c) 12 months	Four times the prescribed fee
(d) More than 12 months	Five times the prescribed fee

### TENTH SCHEDULE

(Section 303 (a))

#### Form For re-registration of Companies and PBCs

*Application for reregistration of a company or PBC*

Document No:.....

*(for office use only)*

Please note that the information in this form must be either typewritten or printed. It must not be handwritten. If there is insufficient space on the form to supply the information required, attach a separate sheet containing the information set out in the *prescribed format*.

1

According to section *three hundred and three(9)* of the new Companies and Other Business Entities Act [Chapter 24:31], every existing Company registered under the repealed Companies Act and every PBC incorporated under the repealed Private Business Corporations Act must re-register no

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**later than the 13th February, 2023.** The effect of failing to re-register is that the company or PBC concerned will be struck off from the appropriate register with effect from that date, and will no longer be able to carry on business as a company or PBC unless a new company is registered or a new PBC is incorporated under the new Act after that date.

[Paragraph (1) deleted and substituted by section 18 of the Finance Act 8 of 2020 gazetted on the 28<sup>th</sup> October, 2020.]

2

A company or PBC must re-register under its original name without prejudice to its right after

Type of company (if not a PBC):...

(Public, private, cooperative, Limited by guarantee or foreign):...

Company name or PBC name:...

Company or PBC No:...

Address of existing registered office:...

Postal address and email address to which communications from the Registrar may be sent:...

Directors (or Members in the case of PBC):...

Name and Date of Birth: \*...

*\*Please give surname in BLOCK letters followed by first name(s).*

ID Number/Passport Number:...

Residential address and Email:...

Shares (or percentage Interests in the case of PBC):...

The total number of shares in the company is: [enter nil, if the company does not have a share capital] or percentage interests held by each PBC member:...

The rights, privileges, limitations and conditions that will attach to the shares of the company on reregistration are:...

5

*Memorandum and Articles of Association/Incorporation Statement*

You must lodge a new Memorandum of association and new Articles of association (or Incorporation Statement) in conformity with the new Act together with this form. Doing so does not mean that there is any break in that

re-registration to change their name if they so wish under section twenty-six of the new Act.

3

Together with this form a fee of **US\$10** (or its equivalent in Zimbabwe dollars on the date of submission of this form) must be paid, which will also cover the fee for the annual return referred to in paragraph 6.

[Paragraph (3) amended by section 18 of the Finance Act 8 of 2020 gazetted on the 28<sup>th</sup> October, 2020.]

4

Particulars of existing company and directors:...

*continuity of your company or PBC from the time of its original incorporation or registration.*

If you do not wish to lodge new articles of association or incorporation or statement please indicate in the space below which table of the model articles or by-laws in the fifth schedule do you propose to adopt for your company or PBC

Place a tick in the appropriate box

- ◆ Table A Model Articles for Public Companies
- ◆ Table B Model Articles for Private companies limited by shares
- ◆ Table C Model Articles for Private Companies limited by guarantee
- ◆ Table D Model By-laws for PBC.

6

*Annual Return* Together with this re-registration form you must lodge a new annual return form in accordance with the *Fourth Schedule*. The date of lodgement will be the date every year by which you must lodge future annual returns.

7

*Object of re-registration* The object of re-registration under section 303 (9) is to establish a new and up-dated register of companies and private business corporations; and to expunge apparently defunct business entities from the register.

No company or private business corporation may change its name, address, registered office, directorship or its share structure or do any other thing affecting its rights and liabilities and those of its members under the guise of re-registration, without prejudice however to its right to make such changes in accordance with

## **ICAZ STUDENT LEGISLATION HANDBOOK - COMPANIES AND OTHER BUSINESS ENTITIES ACT**

the formalities prescribed in this Act, before, after or together with re-registration.

Signature of Company  
Secretary:.....

Name of above person(s) (*in  
full*):.....

Date:.....

Telephone (*if different from given  
above*):.....

E-mail Address of the Company Secretary (*if  
different from given above*):.....

**ICAZ STUDENT LEGISLATION HANDBOOK -  
INCOME TAX ACT**

**INCOME TAX ACT**

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**ICAZ STUDENT LEGISLATION HANDBOOK -**  
**INCOME TAX ACT**  
**CHAPTER 23:06**  
**INCOME TAX ACT**

**Acts 5/1967: 13/1996; 17/97, 23/1997; 29/1998; 9/99, 14/99, 17/99, 21/99, 22/1999; 6/00, 18/2000; 22/01, 27/2001; 15/2002; 10/2003; 16/04, 18/04, 29/2004; 2/05, 8/05, 11/2005; 6/06, 12/2006; 8/07, 16/2007; 3/09, 5/09, 10/09, 11/2009; 3/10, 5/2010; 8/11, 9/2011; 4/12, \*6/2012; 1/14, 8/14, 11/2014; 8/15, 9/2015; 2/2017; 1/18, 12/2018; 1/19, 7/19, 13/2019; 8/20, 10/2020; 7/2021; 8/22 and 10/2022 .**

*Statutory Instrument 80/2021*

**INTERMEDIATED MONEY TRANSFER TAX**

[The Minister of Finance purported to amend this ACT by newspaper on the 5th October, 2018; and later published his amendment to section 22G by SI 205/2018 gazetted on the **12 October 2018**:  
– which Regulations were –

challenged on the 12<sup>th</sup> February, 2019 in the High Court;  
“validated” the following week on the 20<sup>th</sup> February by Act 1/2019 backdated to the 13<sup>th</sup> October 2018;  
“re-validated” another 6 months later Act 7 of 2019 promulgated on the 21<sup>st</sup> August backdated to the **1<sup>st</sup> August 2019**.  
The High Court Judgment of **Justice Zhou** handed down 4 weeks later on the 18<sup>th</sup> September, 2019 in *M.Milio v Minister of Finance 19-HH-605 declared SI 205/2018 ergo the 30<sup>th</sup> SCHEDULE ultra vires* –  
Parliament ignored this finding by passing the misworded section 32 of Act 13/2019 gazetted on the 31<sup>st</sup> December, 2019. This “illegal” 30<sup>th</sup> Schedule is again amended by the latest Finance (No.2) Act 2020, pending the outcome of the Appeal to the **Supreme Court** –  
The pandemic has delayed its Set Down while **SI 80/2021** remains unchallenged – Editor.]

[Repealed by Act 8/2011.]

[Repealed by the Revenue Authority Act.]

[Repealed]

[Repealed by Act 29 of 1998.]

[Repealed by Act 5/2009.]

[Repealed]

[Repealed by Act 5/2009.]

[Repealed by Act 10 of 2020]

[Repealed by Act 29 of 1998 from 1 January 1999.]

[Repealed w.e.f. 17th September, 2010.]

[Repealed by Act 5/2009.]

**AN ACT to provide for the taxation of incomes and for other taxes; and to provide for matters incidental thereto.**

[Date of commencement: 1st April, 1967.]

# ICAZ STUDENT LEGISLATION HANDBOOK -

## INCOME TAX ACT

### PART I PRELIMINARY

#### 1 Short title

This Act may be cited as the Income Tax Act [Chapter 23:06].

#### 2 Interpretation

(1) In this Act—

**“affiliate”**, in relation to a petroleum operator, has the meaning given by subsection (4) of section *thirty-two*;

**“agent”** includes—

(a) any partnership or company or any other body of persons, corporate or unincorporate, when acting as an agent; and

(b) any person declared by the Commissioner to be the agent of some other person for the purposes of this Act;

**“amount”**, for the purposes of the provisions of this Act relating to the determination of the gross income, income or taxable income, as defined in subsection (1) of section *eight*, of a person, means—

(a) money; or

(b) any other property, corporeal or incorporeal, having an ascertainable money value;

[*BB v COT 78-ITC-1272*  
*M Coy (Pvt) Ltd v Zimra 21-SC-098*]

**“accrued”**, **“paid”**, **“received”** or any cognate expression shall, in so far as it applies to an amount as defined in paragraph (b), be construed in a sense correlative with that in which it is construed when it applies to money;

[*A.T.S. Schools v Zimra 17-SC-061*]

**“approved employee share ownership trust”** means an arrangement embodied in a notarised trust deed which satisfies the Commissioner that its dominant purpose or effect is to enable employees of a company or group of companies to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the stock, shares, debentures or any property, including money, of the company or group of companies concerned where—

(a) the stock, shares, debentures and any property, including money, are held in trust for the employees; and

(b) the arrangement has either or both of the following characteristics—

(i) the employees’ contributions, if any, and the profits and income out of which payments are to be made are pooled;

(ii) each employee has a right or interest, whether described as a unit or otherwise, in the stock, shares, debentures and any property, including money, held in trust for the employee, which may be acquired or disposed of under the arrangement ;

[Definition inserted by Act 27 of 2001, and amended by Act 15/2002 from 1st January, 2002

*Old Mutual Zimbabwe Ltd v Commissioner-General of Zimra & ZIMRA 16-HH-143*]

**“assessed loss”** means any amount by which the sum of the deductions to be made under Part III of this Act from the income (as defined in Part III) of any taxpayer exceeds such income:

Provided that no amount received by or accruing to the taxpayer under a contract of employment shall be taken into account for the purpose of determining his assessed loss;

**“assessment”** means the determination by the Commissioner—

[Definition substituted by Act 12/2006 w.e.f. 1<sup>st</sup> January, 2007 and further substituted by section 8 of the Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.  
*JK Motors (Pvt) Ltd t/a Flo Petroleum v ZIMRA 23-HH-336*]

(a) of any amount upon which any **tax** leviable under this Act is chargeable;

[lumped up figures without any explanation by Zimra become meaningless *TL v Zimra 20-HH-413*

—must also give the taxpayer notice that any objection to the assessment shall be lodged within 30 days from the date of the notice *Barclays Bank of Zimbabwe v Zimra 04-HH-162*

The words “*this assessment is subject to an audit*” invalidates it *Nestle Zimbabwe (Pvt) Ltd v Zimra 21-SC-148*

**Quaere**; can Zimra garnishee bank accounts to recover **mining royalties** -which are not a tax - before doing an assessment ?. *Unki Mines P/L v ZIMRA & Stanbic Bank 22-HH-729*]

or

(b) of the **credits** to which a person is entitled in terms of the Charging Act; or

# ICAZ STUDENT LEGISLATION HANDBOOK -

## INCOME TAX ACT

(c) of any **assessed loss** ranking for deduction;

and includes a self-assessment in terms of section *thirty-seven A*;

[If ZIMRA raises queries/adjusts that self-assessment once accepted, then it becomes a **final assessment**. *Nestle Zimbabwe (Pvt) Ltd v Zimra 21-SC-148*]

**“associate”** has the meaning in section *twoA*;

[Definition inserted by Act 1 of 2014 with effect from the 1st January, 2014]

**“beneficiary with a vested right”**, in relation to income the subject of a trust created by a trust instrument, means a person named or identified in the trust instrument who has at the time the income is derived an immediate certain right to the present or future enjoyment of the income;

**“benefit fund”**, save as otherwise provided in paragraph 1 of the *First Schedule*, means—

(a) a scheme or fund approved by the Commissioner in respect of the year of assessment in terms of subsection (1) of section *thirteen*; or

(b) a fund registered or provisionally registered as a provident fund under the Pension and Provident Funds Act [*Chapter 24:32*];

**“charging Act”** means the enactment by which credits and rates of tax are fixed;

**“child”** includes a step-child and a lawfully adopted child;

**“Commissioner”**, subject to section *three*, means—

(a) the Commissioner in charge of the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of the taxes leviable under this Act; or

(b) the Commissioner-General of the Zimbabwe Revenue Authority, in relation to any function which he has been authorized under the Revenue Authority Act [*Chapter 23:11*], to exercise;

**“company”** includes any association wheresoever incorporated;

[*Zimbabwe Revenue Authority v FC Platinum 22-SC-044*]

**“credit”** means a credit to which paragraph (c) of section *seven* relates;

**“export processing zone”** means any part of Zimbabwe declared in terms of the \*Export Processing Zones Act to be an export processing zone;

[**Editor’s note** - the \*EPZ Act was replaced w.e.f. 1<sup>st</sup> January, 2007 by the now current Zimbabwe Investment & Development Agency Act *Chapter 14:38*]

**“family taxpayer”** . . . . .

[*X v COT 80-ITC-1323*]

**“farmer”** means any person who derives income from pastoral, agricultural or other farming activities, including any person who derives income from the letting of a farm used for such purposes, and **“farming operations”** and **“farming purposes”** shall be construed accordingly;

[Intention to trade as a farmer *GG v COT 76-ITC-1258*

*“Farmer 3” v COT 80-ITC-1324*

*“Farmer 2” v COT 82-ITC-1373*

*“Farmer” v COT 86-ITC-1424*

*ITC No 1324 (1980) 42 SATC*

*H v Commissioner of Taxes 1980 ZLR 518*

*ITC No 1177 (1972) 34 SATC 147*]

**“holder”**, in relation to a special mining lease, means—

(a) any person to whom the special mining lease has been issued or transferred under the Mines and Minerals Act [*Chapter 21:05*]; \* or

[The \*word **“or”** was omitted in the 1996 Revised Edition, which should have included it as having been inserted by section 4 of the Finance (No.2) Act 23 of 1995 w.e.f. the 23<sup>rd</sup> February, 1996- Editor]

(b) any person who is a **tributor** under a tribute agreement approved in terms of the Mines and Minerals Act [*Chapter 21:05*] in relation to all or part of the special mining lease area;

and, in relation to a year of assessment, includes a person who is or was such a holder at any time in that year;

**“income derived from mining operations”** means income derived from a particular mining location;

[Definition inserted by Act 18/2000 from 1 January 2001.]

**“income from trade and investment”**, in the case of income received by or accruing to a person other than a company or trust, means any part of the income of such person which is

# ICAZ STUDENT LEGISLATION HANDBOOK -

## INCOME TAX ACT

received by or accrues to him from any trade, investment or other activities, but does not include income from employment;

[warden of game park selling trophies as “a hobby”  
*E v COT 89-ICT-1510*

Definition inserted by Act 18/2000 from 1 January 2001.]

**“income the subject of a trust to which no beneficiary is entitled”** means income the subject of a trust created by a trust instrument which—

(a) is not paid to or applied to the benefit of—

(i) a beneficiary with a vested right; or

(ii) a person who would but for—

A. the conferment on the trustee by the trust instrument of a discretion so to pay or apply the income; and

B. the happening of some event stipulated in the trust instrument other than the exercise of that discretion;

be a beneficiary with a vested right;

or

(b) is not income deemed by virtue of section ten to have been received or have accrued to or in favour of the person by whom the trust instrument was made; or

(c) is not accumulated in terms of the trust instrument for the future benefit of a beneficiary with a vested right;

**“individual”** means a person other than a company;

**“industrial park”** means any premises or area which is approved by the Minister by statutory instrument and in which 2 or more persons, independently of the industrial park developer, carry on the business of—

(a) manufacturing or processing goods for export from Zimbabwe; or

(b) manufacturing or processing components of goods which are intended for export from Zimbabwe;

**“industrial park developer”** means a person who owns and maintains an industrial park;

**“insolvency”** and **“insolvent”** shall be construed in accordance with any law relating to insolvency and as including an assignment with creditors made in terms of that law;

**“investment licence”** for the purposes of this Act, means an investment licence issued in

terms of the Zimbabwe Investment and Development Agency Act [Chapter 14:38] to a licensed investor with a qualifying degree of export-orientation, and **“licensed investor”** shall be construed accordingly;

[Definition substituted by the Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

**“law”** means an enactment as defined in the Interpretation Act [Chapter 1:01];

**“lawful minor child”**, in relation to a taxpayer, means a lawful child of the taxpayer who—

(a) was under the age of 17 years on the last day of the immediately preceding year of assessment; or

(b) is born in the year of assessment; or

(c) was under the age of 25 immediately prior to the commencement of the year of assessment and receives during any part of the year of assessment full-time instruction as a student at any educational institution;

**“LIBOR”** means the London Interbank Offered Rate referred to in section *ninety-sevenB*(2) and (3);

[Inserted by section 8 of Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; corrected by the Editor to refer to 97B and not 97A.]

**“licensed investor”** means the holder of an investment licence, **other than** the holder of such a licence whose licensed activity is mining;

[Definition substituted by Finance (No. 2) Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022 excluding mining activity.]

**“local authority”** means—

(a) a city or municipal council, town council, local board or rural district council; or

(b) any body declared by the President to be a local authority for the purposes of the Interpretation Act [Chapter 1:01] which is not a body or authority referred to in paragraph (a);

**“marriage”** means—

(a) a marriage solemnized within Zimbabwe in accordance with any law relating to the solemnization of marriage; and

(b) a marriage solemnized outside Zimbabwe in accordance with the laws or customs relating to the solemnization of marriage of the country in which the marriage is solemnized;

# ICAZ STUDENT LEGISLATION HANDBOOK -

## INCOME TAX ACT

(c) a marriage contracted according to customary law, notwithstanding that the marriage may not have been celebrated or solemnized in terms of any law relating to marriage;

and “**married**”, “**husband**” and “**wife**” shall be construed accordingly;

“**married woman**” means a woman married with or without community of property who is not a woman referred to in paragraph (c),(d) or (e) of the definition of “**spouse**”;

“**medical aid society**” means any society or scheme which is approved by the Commissioner in respect of the year of assessment in question in terms of subsection (2) of section *thirteen*;

“**mineral**” includes any valuable crystalline or earthy substance forming part of or found within the earth’s surface and produced or deposited there by natural agencies, including —

[definition substituted by Finance (No.2) Act 7/2019 gazetted on the 21<sup>st</sup> August,2019 w.e.f. **1<sup>st</sup> August, 2019**]

(a) cut or uncut dimensional stone subjected to tax on the exportation of uncut and cut dimensional stone in terms of section 12E of the Value Added Tax Act [*Chapter 23:12*];

but does **not** include —

(b) petroleum; or

(c) any clay (other than fire-clay), gravel, sand, stone (other than limestone or stone referred to in paragraph (a) or other like substance ordinarily won by the method of surface working known as quarrying;

“**mining location**” means a mining location registered as such in terms of the Mines and Minerals Act [*Chapter 21:05*];

[Inserted by Act 18/2000 from 1st January 2001]

“**mining operations**” means—

(a) any operations for the purpose of winning a mineral from the earth; and

(b) any operations for the purpose of winning a mineral from any substance or constituent of the earth which are carried on in conjunction with operations referred to in paragraph (a) by the person carrying on those operations; and

(c) such operations for the purpose of winning a mineral from any substance or constituent of the earth which are not carried on in conjunction with operations referred to in paragraph (a) or

by a person carrying on those operations as the Commissioner may determine to be mining operations for the purposes of this Act;

and “**mine**”, whether used as a noun or a verb, shall be construed accordingly;

“**Minister**” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the Administration of this Act;

[Administration assigned to the Minister of Finance, Economic Development and Investment Promotion by SI 197/2023 w.e.f. 20<sup>th</sup> October, 2023.]

“**minor child**” means a child who is under **18 years** of age and is unmarried;

“**near relative**” means—

(a) a lineal ascendant of an individual, including a step-father or step-mother; or

(b) a child or a lineal descendant of an individual other than a child; or

(c) a brother, half-brother, step-brother, sister, half-sister, step-sister, uncle, aunt, nephew or niece of an individual; or

(d) the adopter or adopters of an individual; or

(e) the spouse of a relative of an individual referred to in paragraphs (a) to (d);

“**nominee**”, in relation to an individual, means a person who—

(a) holds shares in a company, directly or indirectly, on behalf of the individual; or

(b) can be required to exercise voting powers in the affairs of a company in accordance with the directions of the individual;

“**parent**” includes a person liable at law to maintain a child;

“**pension fund**” means—

(a) a fund established by any law for the purpose of providing, amongst other things, annuities or pensions on superannuation or retirement; or

(b) a fund registered or provisionally registered as a pension fund or retirement annuity fund under the Pension and Provident Funds Act [*Chapter 24:32*];

“**period of assessment**” means any period within the year of assessment in respect of which tax is to be charged, levied or collected in terms of this Act;

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**“person”** includes a company, body of persons corporate or un-incorporate (not being a partnership), local or like authority, deceased or insolvent estate and, in relation to income the subject of a trust to which no beneficiary is entitled, the trust;

[includes a non-resident entity *Mota Engenharia Construction SA v Zimra 22-SC-115*]

**“petroleum”** means any naturally occurring hydrocarbon or any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state, and includes crude oil and natural gas but does not include hydrocarbons obtained from coal by destructive distillation or in any other way;

**“petroleum agreements”** means an agreement between the Government and any person to whom a petroleum special grant has been or is to be issued, incorporating terms and conditions of that grant;

**“petroleum operations”** means—

(a) exploration in Zimbabwe with a view to detecting the existence of deposits of petroleum;

(b) the appraisal of reservoirs, the preparation of wells for production, the development of producing facilities and the extraction of petroleum, whether or not those operations are carried on in conjunction with operations such as are referred to in paragraph (a), and any preliminary treatment of such petroleum for the purpose of purification and stabilization of the petroleum extracted in order to facilitate transport of such petroleum from the site of the petroleum operations;

(c) the disposal of petroleum obtained from operations referred to in paragraph (b);

**“petroleum operator”** means a person that is, for the purposes of Part XX of the Mines and Minerals Act [Chapter 21:05], the grantee of a petroleum special grant and, in relation to a year of assessment, includes a person who was or is such a grantee at any time in that year;

**“petroleum special grant”** means a special grant issued under Part XX of the Mines and Minerals Act [Chapter 21:05] authorizing the grantee to win petroleum on terms and conditions included in the grant pursuant to a petroleum agreement;

**“prescribed”** means, unless otherwise provided, prescribed by the Commissioner;

**“previous law”** means the Income Tax Act, 1954 (No. 16 of 1954), or a law repealed by that Act;

**“private business corporation”** means a private business corporation incorporated under the Private Business Corporations Act [Chapter 24:11]

[repealed by the Companies and Other Business Entities Act **Chapter 24:31**- Editor]

**“qualifying degree of export-orientation”**, as characterising a licensed investor, means that the licensed investor **exports all** of its goods and services;

[Definition inserted by Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January, 2017]

**“recoupment from capital expenditure”** means any amount accruing to a person from the sale or other disposal of or damage to or destruction of—

(a) an asset ranking for a redemption allowance in accordance with paragraph 2, 3 or 4 of the *Fifth Schedule* or the corresponding provisions of a previous law; or

(b) an asset in respect of which a deduction has been allowed to the person in accordance with paragraph 6 of the *Fifth Schedule* or the corresponding provisions of a previous law;

but in the case of any amount accruing from damage to or destruction of such asset does not include such portion thereof as is in excess of the original cost of such asset;

**“retirement annuity fund”** means a fund registered or provisionally registered as a retirement annuity fund under the Pension and Provident Funds Act [Chapter 24:32];

**“return”** includes a self-assessment return;

[Inserted by Act 12/2006 from 1<sup>st</sup> January, 2007]

**“securities”** means—

(a) stocks or securities, including bonds and Treasury bills, issued by any government, local authority or statutory corporation or like authority or body, whether situated inside or outside Zimbabwe; and

(b) debentures or debenture bonds; and

(c) mortgages or notarial bonds; and

(d) loans or deposits; and

(e) shares issued by any building society; and

(f) stocks or shares issued by any company;

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and for the purposes of the *Eighth Schedule* includes any other stocks or shares and rights in immovable property;

**“self-assessment return”** means a return rendered in terms of section *thirty-seven A*;

[Inserted by Act 12/2006 from 1<sup>st</sup> January, 2007]

**“Special Court”** means the Special Court for Income Tax Appeals established by subsection (1) of section *sixty-four*,

**“special economic zone”** means any part of Zimbabwe declared in terms of the Zimbabwe Investment and Development Agency Act [*Chapter 14:38*];

[Definition substituted by the Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

**“special mining lease”** means a special mining lease issued under Part IX of the Mines and Minerals Act [*Chapter 21:05*];

**“special mining lease agreement”** means an agreement between the Government and the holder of a special mining lease, entered into in terms of section 167 of the Mines and Minerals Act [*Chapter 21:05*];

**“special mining lease area”** means the area covered by a special mining lease;

**“special mining lease operations”** means any mining operations, or exploration operations or development operations as defined in paragraph 1 of the *Twenty-Second Schedule*, carried out in or in relation to a special mining lease area pursuant to the special mining lease;

**“spouse”** does not include—

(a) a husband who is separated from his wife under a judicial order or written agreement of separation; or

(b) a husband who—

(i) is living apart from his wife; and

(ii) is not wholly maintaining his wife;

or

(c) a wife who is separated from her husband under a judicial order or written agreement of separation; or

(d) a wife who—

(i) is living apart from her husband; and

(ii) is not wholly maintained by her husband; or

(e) in the case of a polygamous marriage, a wife, other than the first wife, who is living with and wholly maintained by her husband;

**“statutory corporation”**—

(a) means a body, other than a private society, incorporated by or in terms of a law for special purposes specified in or under the law; and

(b) includes any other body or association specified in subparagraphs (b) to (d) of paragraph 1 of the *Third Schedule*;

**“tax”** means any tax or levy leviable under this Act;

**“tax clearance certificate”** means a valid tax clearance certificate issued to a person by or on behalf of the Commissioner-General under section 34C (1) (a), (b), (c) or (d) of the Revenue Authority Act [*Chapter 23:11*];

[Inserted by Act 2 of 2005 from 12<sup>th</sup> September, 2005.]

**“taxpayer”**—

(a) means any person in respect of whom an assessment is made; and

(b) includes, for the purposes of any provision of this Act relating to a return, any person who is required in terms of this Act to furnish a return;

**“trade”** includes any profession, trade, business, activity, calling, occupation or venture, including the letting of any property, carried on, engaged in or followed for the purposes of producing income as defined in subsection (1) of section *eight* and anything done for the purpose of producing such income;

[trotting horses- 'JA' v COT 92-1TC-1645  
Matching expenses thus incurred *Deb (Pvt) Ltd v Zimra* 19-HH-664]

**“trade mark”** means a trade mark as defined in section 2 of the Trade Marks Act [*Chapter 26:04*];

**“trading stock”** includes—

(a) goods and other property of any description, including livestock, which are acquired, manufactured, produced, bred, constructed or improved in the ordinary course of trade for the purposes of disposal in the ordinary course of trade;

[debentures in investment company *T v CoT* 78-HS-003]

and

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(b) goods and other property of any description, including livestock—

(i) which are acquired in the ordinary course of trade for the purposes of or in connection with the manufacture, production, breeding, construction or improvement of goods or other property of any description, including livestock; and

(ii) the expenditure on which is allowable as a deduction in terms of paragraph (a) of subsection (2) of section fifteen;

and

(c) goods and other property of any description referred to in paragraph (b), other than livestock, which, at the end of the year of assessment, are partially manufactured, produced, constructed, improved, consumed or used; and

(d) advertising, packing or other materials, the acquisition, manufacture or production of which is incidental to the disposal in the ordinary course of trade of goods or other property of any description, including livestock; and

(e) goods and other property of any description of a person, including livestock, which—

(i) are acquired by that person otherwise than in the ordinary course of his trade; and

(ii) are brought to hand or otherwise appropriated or allocated by that person for the purposes of or in connection with his trade; and

(iii) would have been “**trading stock**” as defined in paragraph (a), (b), (c) or (d) had they been acquired in the ordinary course of the trade of that person;

“**trust instrument**” means a deed, will, contract of settlement or other disposition, including a verbal declaration, by which a trust is created;

“**trustee**” includes—

(a) the administrator or executor of a deceased estate; and

(b) the trustee or assignee of an insolvent estate; and

(c) the liquidator or judicial manager of a company which is being wound up or is under judicial management; and

(d) the legal representative of any individual under a legal disability or other person having,

whether in an official or private capacity, the possession, disposal, control or management of the property of an individual under a legal disability; and

(e) the person having the administration or control of property subject to a usufruct, *fidei commissum* or other limited interest;

and “**trust**”, “**property the subject of a trust**” and “**income the subject of a trust**” shall be construed accordingly;

“**year of assessment**” means the period of **12 months** beginning on the 1st January in any year in respect of which tax is to be charged, levied and collected in terms of this Act; and includes any period within such a year of assessment:

[Definition substituted by Act 17 of 1997.]

Provided that—

(i) for the period before the 1st April, 1997, a year of assessment shall be the period of 12 months beginning on the 1st April in any year;

(ii) the 9-month period beginning on the **1st April, 1997**, and ending on the 31st December, 1997, shall constitute a year of assessment.

(iii) the year of assessment beginning on the **1st January, 2004**, consists of the following 2 periods, each of which shall be deemed for all purposes of this Act to be a year of assessment—

A. the 8-month period beginning on the 1st January, 2004, and ending on the 31<sup>st</sup> August, 2004;

B. the 4-month period beginning on the 1<sup>st</sup> September, 2004, and ending on the 31<sup>st</sup> December, 2004.

(iv) the year of assessment beginning on the **1st January, 2005**, in respect of the taxable income from employment of a person other than a company, a trust or a pension fund, consists of the following 2 periods, each of which shall be deemed for all purposes of this Act to be a year of assessment—

A. the 8-month period beginning on the 1st January, 2005, and ending on the 31st August 2005;

B. the 4-month period beginning on the 1st September, 2005, and ending on the 31st December, 2005.

[Proviso (iii) inserted by Act 18 of 2004 from the 5<sup>th</sup> November, 2004 and amended by Act 2 of 2005

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from 12<sup>th</sup> September, 2005 which also inserted proviso (iv).]

(v) the year of assessment beginning on the 1st January, 2006, in respect of the taxable income from employment of a person other than a company, a trust or a pension fund, consists of the following 2 periods

A. the 8-month period beginning on the 1st January, 2006, and ending on the 31st August, 2006;

B. the 4-month period beginning on the 1st September, 2006, and ending on the 31st December, 2006

[Proviso (v) inserted by Act 6 of 2006.]

(vi) the year of assessment beginning on the 1st January, 2007, in respect of the taxable income from employment of a person other than a company, a trust or a pension fund, consists of the following 3 periods

A. the **6-month** period beginning on the 1st January, 2007, and ending on the 30th June, 2007;

B. the **2-month** period beginning on the 1st July, 2007, and ending on the 31st August, 2007;

C. the **4-month** period beginning on the 1st September, 2007, and ending on the 31st December, 2007;

[Proviso (vi) inserted by SI 136 of 2007 which expired on the 28<sup>th</sup> December, 2007- confirmed by the Finance (No.2) Act No.16 of 2007, which created a **third** period for the 2007 tax year – as will be seen from the proviso(x) to the definition of “*gross income*” in section 8(1) para (f)II below - Editor.]

(vii) the year of assessment beginning on the **1st January, 2019**, in respect of the taxable income from employment of a person **other than** a company, a trust or a pension fund, consists of the following two periods —

A. the 7-month period beginning on the 1st January, 2019, and ending on the 31st July, 2019;

B. the 5-month period beginning on the 1st August, 2019, and ending on the 31st December, 2019.

[Proviso (vii) inserted by Act 13/2019 which created a third period for this 2019 year-Editor]

(viii) the year of assessment beginning on the **1st January, 2020**, in respect of the taxable income from employment of a person **other than** a company, a trust or a pension fund, consists of the following two periods—

A. the 7-month period beginning on the 1st January, 2020, and ending on the 31st July, 2020;

B. the 5-month period beginning on the 1st August, 2020, and ending on the 31st December, 2020.

[Proviso (viii) inserted by section 9 of Act 8/2020 gazetted on the 28th October, 2020 which created a second period for this 2020 year – Editor.]

(ix) the year of assessment beginning on the **1st January, 2022**, in respect of the taxable income from employment of a person **other than** a company, a trust or a pension fund, consists of the following 2 periods—

A. the 7-month period beginning on the 1st January, 2022, and ending on the 31st July, 2022;

B. the 5-month period beginning on the 1st August, 2022, and ending on the 31st December, 2022.

[Proviso (ix)-not (viii) as gazetted, inserted by sect 8 of Finance Act 8/2022 gazetted on 24th October, 2022]

**“Zimbabwe Revenue Authority”** means the Zimbabwe Revenue Authority established by section 3 of the Revenue Authority Act [Chapter 23:1].

(2) For the purposes of this Act —

(a) a company shall be deemed to be under the control of a person if the majority of the voting rights attaching to all classes of shares in the company is controlled, directly or indirectly, by the person; and

(b) a person and his nominee shall be deemed to be one person.

(3) For the purposes of this Act—

(a) a **deceased** estate shall be treated as ordinarily resident in Zimbabwe if the deceased person at the time of his death was ordinarily resident in Zimbabwe; and

(b) an **insolvent** estate shall be treated as ordinarily resident in Zimbabwe if the insolvent person at the time he was adjudged or otherwise declared insolvent was ordinarily resident in Zimbabwe; and

(c) a **trust** shall, in relation to income the subject of the trust to which no beneficiary is entitled, be treated as ordinarily resident in Zimbabwe if—

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- (i) part of the income subject to the trust is derived from sources in Zimbabwe or the trustee is ordinarily resident in Zimbabwe; and
- (ii) the person by whom the trust instrument was made was ordinarily resident in Zimbabwe at the time he made the trust instrument.

### 2A When persons deemed to be associates

[Sections 2A and 2B inserted by Act 1 of 2014 w.e.f. the 1<sup>st</sup> January, 2014]

(1) Where a person, **other than** an employee, acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons shall be treated as associates of each other for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the following shall be treated as a person's associate—

(a) a **near relative** of the person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;

(b) a **partner** of the person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;

(c) a **partnership** in which the person is a partner, if the person, either alone or together with 1 or more associates, controls **50% or more** of the rights to the partnership's income or capital;

(d) the **trustee** of a trust under which the person, or an associate of the person, benefits or may benefit;

(e) a **company** which is controlled by the person, either alone or together with 1 or more associates;

(f) where the person is a **partnership**, a partner in the partnership who, either alone or together with 1 or more associates, controls **50% or more** of the rights to the partnership's income or capital;

(g) where the person is the **trustee** of a trust, any other person who benefits or may benefit under the trust;

(h) where the person is a company—

(i) a person who, either alone or together with one or more associates, controls the company; or

(ii) another company which is controlled by a person referred to in subparagraph (i), either alone or together with 1 or more associates.

### 2B When person deemed to control company

For the purposes of this Act, a person shall be deemed to control a company if the person, either alone or together with 1 or more associates or nominees—

(a) controls the majority of the voting rights attaching to all classes of shares in the company, whether directly or through one or more interposed companies, partnerships or trusts; or

(b) has any direct or indirect influence that, if exercised, results in him or her or his or her associates or nominees factually controlling the company.

## PART II ADMINISTRATION

### 3 . . . . .

[Repealed by the Finance Act 8/2011 w.e.f. the 16th September, 2011.]

### 4 . . . . .

[Substituted by the Revenue Authority Act *Chapter 23:11* with effect from January, 2001 *Refer to section 51\_Editor*]

### 5 Preservation of secrecy

(1) All persons who—

(a) are employed in carrying out the provisions of this Act; or

(b) examine records under the control or in the custody of the Commissioner in terms of the laws relating to the Civil Service, the collection and safe custody of public moneys and the audit of public accounts;

[Civil Service is now referred to as the \*Civil Service i.t.o. PART I of Act 3 of 2016 w.e.f. 1<sup>st</sup> July, 2016]

shall, subject to subsections (2),(3) and (3a), keep secret, and aid in keeping secret, all information coming to their knowledge in the exercise of their functions.

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[subsection (1) amended by the Money Laundering and Proceeds of Crime Amendment Act No.12 of 2018 w.e.f. 20<sup>th</sup> July, 2018]

(2) No person referred to in subsection (1) shall, except in the exercise of his functions under this Act or unless he is required to do so by order of a competent court—

(a) communicate information coming to his knowledge in the exercise of his functions to any person who is not—

(i) the taxpayer or other person to whom the information relates or by whom the information was furnished; or

(ii) the lawful representative of the taxpayer or other person to whom the information relates or by whom the information was furnished; or

(iii) a person to whom the provisions of the laws referred to in paragraphs (a) and (b) of subsection (1) require the information to be communicated;

or

(b) allow any person who is not a person referred to in subparagraph (i), (ii) or (iii) of paragraph (a) to have access to any record under the control or in the custody of the Commissioner which contains information referred to in that subparagraph.

(3) The Commissioner shall, if he is required to do so by the Minister, inform the Minister of the total amount of taxable income (as defined in subsection (1) of section *eight*) which, according to the records under the control or in the custody of the Commissioner, accrued during such periods to such classes of persons from such sources as the Minister may specify.

(3a) Where the Commissioner is satisfied that any information is required for the purpose of—

(a) detecting, investigating or preventing a serious offence; or

(b) combating money laundering or terrorist financing;

as defined in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], the Commissioner shall disclose that information to the Director-General of the Financial Intelligence Unit established by that Act.

[subsection (3a) inserted by the Money Laundering and Proceeds of Crime Amendment Act No.12 of 2018 w.e.f. 20<sup>th</sup> July, 2018]

(4) All persons referred to in subsection (1) shall, before commencing to exercise the

functions conferred or imposed upon them by the laws referred to in paragraphs (a) and (b) of that subsection, take and subscribe before a magistrate, justice of the peace or commissioner of oaths the prescribed oath of secrecy.

(5) Every person who, in contravention of this section or the true intent of the oath of secrecy taken by him and without lawful excuse, reveals to any person whomsoever any matter or thing which has come to his knowledge in the course of his official duties, or suffers or permits any person to have access to any records in the possession or custody of the Commissioner, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Amended by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002.]

(5a) Any person referred to in subsection (1) who, in the course of his official duties, has acquired information relating to the business or affairs of another person and who uses that information for personal gain, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Inserted by the Criminal Penalties Amendment Act 22 of 2001 from the 10th September, 2002.]

(6) Any person who acts in the execution of his office before he has taken the oath prescribed in terms of this section shall be guilty of an offence and liable to a fine not exceeding level four.

[Penalty increased by Act 18/2000, amended by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002, and further by Act 15/2002 from 30th December, 2002.]

### PART III INCOME TAX

#### 6 Levy of income tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund an income tax in respect of the taxable income, as defined in this Part, received by or accrued to or in favour of any person during the year of assessment ending the 31st March, 1968, and each succeeding year of assessment thereafter.

[*Zimplats v ZIMRA* 22-HH-845]

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### INCOME TAX ACT

#### 7 Calculation of income tax

(1) The income tax with which a person is chargeable shall, subject to section *fifty*, be calculated in accordance with the charging Act by reference to—

- (a) the taxable income of the person in the year of assessment; and
- (b) the appropriate rates of income tax fixed by the charging Act relating to that year;

[See *Gonese I v Minister of Finance and Economic Development* 22-HH-265 Editor]

and

(c) the credits to which the person is entitled in terms of the charging Act relating to that year.

(2) The tax payable in respect of a self-assessment return shall be calculated in accordance with subsection (1) in respect of each year of assessment during which a taxpayer carried on a trade and is required to submit a self-assessment return in terms of section *thirty-seven A*.

[Subsection (2) inserted by Act 12/2006 from 1<sup>st</sup> January, 2007]

#### 8 Interpretation of terms relating to income tax

(1) For the purposes of this Part—

“**gross income**” means the total amount received by or accrued to or in favour of a person or deemed to have been received by or to have accrued to or in favour of a person in **any year** of assessment from a source within or deemed to be within Zimbabwe excluding any amount (not being an amount included in “*gross income*” by virtue of any of the following paragraphs of this definition) so received or accrued which is proved by the taxpayer to be of a capital nature and, without derogation from the generality of the foregoing, includes—

[*NYS v Zimra* 19-HH-517  
any year, including **over 6 years** ago *Deb (Pvt) Ltd v Zimra* 19-HH-664  
*Delta Beverages (Pvt) Ltd v Zimra* 22-SC-003  
*Zimplats v ZIMRA* 22-HH-845]

(a) any amount so received or accrued by way of **annuity** other than that part of that amount which, in the opinion of the Commissioner, represents, in the case of an annuity the right to which was acquired by means of the payment of the annuitant or his spouse of a sum of money or the disposal by the annuitant or his spouse of an asset or by both those means, a return of any part of that

sum of money or of the value of that asset in respect of which a deduction or a credit in terms of this Act is not allowable or an abatement, deduction or rebate in terms of a previous law was not allowable;

Provided that, in the case of an annuity on retirement as defined in paragraph 1 of the *First Schedule* the right to which was acquired from the disposal of any part of a lump sum payment to which reference is made in paragraph 3, 4, 7 or 8 of that *Schedule*, the whole of such annuity shall be included;

(b) any amount so received or accrued in respect of services rendered or to be rendered, whether due and payable under any contract of employment or service or not, and any amount so received or accrued by reason of the cessation of the employment or service of a person other than a benefit (not being a pension or gratuity) received or accrued by reason of contributions made to the Consolidated Revenue Fund, and any amount so received or accrued in commutation of amounts due under a contract of employment or service:

Provided that—

(i) ...

[proviso (i) repealed by Finance Act 15/2002 from 1 January, 2003.]

(ii) an amount paid to an employee when proceeding on leave shall be deemed to accrue and to be paid proportionately on the last day of each month during the continuance of the period of leave;

(iii) any portion of any amount paid by an employer to an employee by way of compensation for leave due but not taken or by reason of the cessation of the employment or service of such employee or in commutation of an amount due under a contract of employment or service or when proceeding on leave which, under any previous law, fell to be apportioned over a number of years of assessment, shall for the purposes of this Act be included in gross income as though the relevant provisions of such previous law were still in force;

(iv) any amount so received or accrued in the year of assessment ending on the 31st March, 1974, or any subsequent year of assessment which is paid or payable to a member of the Police Force or of the Regular Force of the Army or Air Force by way of a re-engagement or extended service gratuity shall, notwithstanding section *seven*, be charged to tax in such manner and at such rates as may be fixed by the charging Act relating to the year

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of assessment in which such amount was received or accrued;

(c) any amount so received by or accrued to a person by reason of his withdrawal from or the winding up of a benefit or pension fund or an unapproved fund (as defined in the *First Schedule*) or any amount so received by or accrued to a person which is a benefit (not being a pension or gratuity) received or accrued by reason of contributions to the Consolidated Revenue Fund which is not—

- (i) an amount referred to in paragraph (a) or (b); or
- (ii) an amount received or accrued by way of a lump sum payment to which the *First Schedule* relates;
- (iii) an amount which, in the Commissioner's opinion, represents a return or repayment of any money in respect of whose payment a deduction was not allowable in terms of this Act or a previous law:

Provided that any amount so received or accrued shall, notwithstanding section seven, be charged to tax in such manner and at such rates as may be fixed by the charging Act relating to the year of assessment in which such amount was received or accrued;

(d) any amount so received or accrued from another person as a premium or like consideration paid by such other person—

[-i.e. the additional payment of a royalty on top of the licence fees -*SDC Ltd (2) v Zimra 21-HH-338*]

- (i) for the right of use or occupation of land or buildings;

[*P v Commissioner of Taxes 82-ITC-1372*]

or

- (ii) for the right of use of plant or machinery; or

(iii) for the right of use of any patent, design, trade mark, copyright, model, plan, secret process or formula or any other property which, in the opinion of the Commissioner is of a similar nature; or

(iv) for the right of use of any motion picture film or television film, sound recording or advertising matter connected with such film or recording; or

(v) for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such plant or machinery, patent design, trade mark,

copyright, model, plan, secret process or formula or other property as aforesaid, film, sound recording or advertising matter;

(e) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings or by the cession or assignment of any rights under any such agreement, there has accrued in any such year the right to have improvements affected on the land or to the buildings by any other person—

- (i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on improvements; or
- (ii) if no amount is so stipulated, an amount representing, in the opinion of the Commissioner, the fair and reasonable value of the improvements;

and, in either case, any such amount shall be deemed to have accrued to such first-mentioned person from the date such improvements were effected, in equal monthly instalments over the unexpired period of such agreement, cession or assignment, as the case may be, or over a period of **10 years**, whichever is the less:

Provided that—

(i) all instalments which have not in any year of assessment formed part of the gross income of such first-mentioned person in terms of this paragraph immediately before the date of the happening of the first of any of the following events, shall be deemed to have accrued to him immediately before that date—

A. the cancellation of such agreement, cession or assignment; or

B. the sale or other disposal of the land or buildings on which the improvements were effected; or

C. the death or insolvency of such first-mentioned person or, if such first-mentioned person is a company, the liquidation of the company;

(ii) in any case where such agreement is for an initial period which may be extended or renewed for a further period or periods, the period of such agreement shall be deemed to be the initial period only;

(iii) in any case where such agreement is silent or indefinite as to the period of use or occupation, the period of such agreement shall be deemed to be a period of **10 years**;

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(iv) any portion of any instalments which, under any previous law, fell to be apportioned over a number of years of assessment shall, for the purposes of this Act, be included in gross income as though the relevant provisions of such previous law were still in force;

(f) an amount equal to the value of an advantage or benefit in respect of employment, service, \*office or other gainful occupation or in connection with the taking up or termination of employment, service, office or other gainful occupation:

[payments during termination period ? Restraint of trade *H v COT* 89-ITC-1512  
directors loans *Zacks.E v COT* 93-HB-104  
\*director/employee living in own flat "Fringe benefits"  
*v COT* 93-ITC-1590  
-value of shares at date option exercised *Barclays Bank Ltd v ZIMRA* 06-SC-031-  
-concessionary school fees paid by parents employed by the school *A.T.S. Schools v Zimra* 16-HH-314: on appeal **17-SC-061**  
-meals for employees *LFCZ Ltd v Zimra* 19-HH-164  
-“employees business purposes test” used for canteen meals provided in a bakery *IAB Company v Zimra* 22-HH-032  
-“ used for lunch packs provided only to shift workers in an exclusive mining village *Zimplats v Zimra* 23-SC-016 ]

Provided that—

(i) an amount equal to the value of the grant of a passage benefit as defined in subparagraph (i) of paragraph (a) of the definition of that term in this paragraph shall not be included in the gross income of an employee if no other passage benefit as defined in that subparagraph has been granted to the employee by the same employer;

(ii) an amount equal to the value of the grant of a passage benefit as defined in subparagraph (ii) of paragraph (a) of the definition of that term in this paragraph shall not be included in the gross income of an employee if no other passage benefit as defined in that subparagraph has been granted to the employee by the same employer.

For the purposes of this paragraph—

[paragraph (f)] – Editor.]

### SUBPARA I

**“advantage or benefit”—**

[Definition substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. year of assessment beginning **1<sup>st</sup> January, 2022.**]

(a) means—

(i) board; or

(ii) the occupation of quarters or of a residence;

[*O v Commissioner of Taxes* 82-ITC-1374]

or

(iii) the use of furniture or of a motor vehicle; or

(iv) the use or enjoyment of any other property whatsoever, corporeal or incorporeal, **including a loan**, whether of the same kind as that referred to in subparagraph (i),(ii) or (iii) or not, which is not an amount referred to in paragraph (a), (b) or (c) of the definition of “gross income” in this subsection;

[directors loans *Zacks.E v COT* 93-HB-104]

or

(v) an allowance; granted to an employee, his spouse or child by or on behalf of his employer in so far as it is not \*consumed, occupied, used or enjoyed, as the case may be, for the purpose of the business transactions of the employer and in so far as an amount is not paid by the employee, his spouse or child in respect of its grant;

[ -meals for employees *LFCZ Ltd v Zimra* 19-HH-164 consumed as lunches provided for employees on shift in a big mining village *Zimplats v Zimra* 23-SC-016 ]]

and

(vi) **30%** of the cost of the provision by the employer to the employee for use at the home of the employee or outside of the work premises of—

A. mobile or landline telephone airtime; or

B. airtime or data for broadband or internet access, **unless** the employer proves to the Commissioner that any part of the taxable portion of such cost was used for the purposes of **the employee’s employment**;

[Subpara (vi) inserted by section 9 of the Finance Act 7/2021 gazetted on the 31<sup>st</sup> December 2021 w.e.f. 1<sup>st</sup> January 2022.]

(vii) in the case of a member of the teaching or non-teaching **staff** of a “school” as defined in the Education Act [*Chapter 25:04*], the waiver of the whole or any portion of the amount of tuition fees, levies and boarding fees (hereinafter called a **“school benefit”**) that would otherwise be payable by the member of staff for any child of his or hers (not exceeding

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3 children) who is a student at that or another school:

Provided that only half of the cost to the employer of the school benefit shall be included in the gross income of the member of staff concerned.

[Subpara (vii) inserted by section 9 of Finance Act 8/2022 gazetted on the 24th October, 2022; w.e.f. the year of assessment beginning on the 1<sup>st</sup> January, 2022.]

(b) includes a **passage benefit**;

“advantage or benefit”—

**[ONLY FOR THE YEARS ENDED 31<sup>ST</sup> DECEMBER, 2021]**

— republished below for **historical purposes** —  
[Editor]

(a) means—

(i) board; or

(ii) the occupation of quarters or of a residence; or

(iii) the use of furniture or of a motor vehicle; or

(iv) the use or enjoyment of any other property whatsoever, corporeal or incorporeal, including a loan, whether of the same kind as that referred to in subparagraph (i), (ii) or (iii) or not, which is not an amount referred to in paragraph (a), (b) or (c) of the definition of “gross income” in this subsection;

[director's loans *Zacks.E v COT 93-HB-104*]

or

(v) an allowance; or

(vi) in the case of an employee who is a member of the teaching or non-teaching staff of a “school” as defined in the Education Act [Chapter 25:04], the waiver of the whole or any portion of the amount of tuition fees, levies and boarding fees (hereinafter called a **“school benefit”**) that would otherwise be payable by employee for any child of his or hers who is a student at that or another school;

[subpara (vi) inserted by Act 6 of 2012 w.e.f. 1<sup>st</sup> January, 2013. Discussed in *A.T.S. Schools v Zimra 16-HH-314 and 17-SC-061* —meals for employees *LFCZ Ltd v Zimra 19-HH-164*]

granted to an employee, his spouse or child by or on behalf of his employer in so far as it is not consumed, occupied, used or enjoyed, as the case may be, for the purpose of the business transactions of the employer and in so far as an

amount is not paid by the employee, his spouse or child in respect of its grant; and

(b) includes a **passage benefit**; and

(c) includes any other benefit whatsoever *in lieu* of or in the nature of “**remuneration**” as defined in paragraph 1(1) of the *Thirteenth Schedule*;

[Para (c) inserted by section 8 of Act 8/2011 w.e.f. 1<sup>st</sup> January, 2012]

“**employee**” includes a person who is a director of a company, agent or servant or is otherwise gainfully occupied and “**employer**”, in relation to such person, shall be construed accordingly;

“**loan**” means any form of loan or credit whatsoever granted directly or indirectly to an employee, his spouse or child by or on behalf of his employer or a person associated with his employer, but does not include any such loan or credit which is proved to the satisfaction of the Commissioner to have been granted for the purpose of the education or technical training or medical treatment of such employee, spouse or child;

“**passage benefit**” means so much as is borne of the cost or paid by an employer towards the cost of—

(a) any journey made by an employee, his spouse and children or 1 or more of them—

(i) in connection with his taking up of employment, service, office or other gainful occupation; or

(ii) on the termination of his employment, service, office or other gainful occupation;

or

(b) any other journey made by an employee, his spouse and children or 1 or more of them in so far as that journey is not made for the purpose of a business transaction of the employer;

“**person associated**”, in relation to an employer, means—

(a) in the case of an employer that is a company, any other company that is managed by or under the same control as the employer; or

(b) in the case of an employer that is not a company—

(i) any company managed by or under the control of such employer; or

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(ii) any partnership of which such employer is a member;

or

(c) any person to whom or fund to which the employer makes or has made any contribution, loan or other payment in order that such person or fund may pay or grant pensions, loans or any other amounts whatsoever to or in respect of his employees or their spouses or children;

#### SUBPARA II

The **value** of the grant of an advantage or benefit, **other than** a payment by way of an allowance, shall be **determined**—

(a) in the case of the occupation or use of quarters, residence or furniture, by reference to its **value to the employee**; and

(b) in the case of any other advantage or benefit, by reference to the **cost to the employer**:

[A.T.S. Schools v ZIMRA 17-SC-061]

Provided that—

(i) **in the case of a loan** on which the rate of interest payable by the grantee—

(a) during the period beginning on the 1st October, **1984**, and ending on the 31st March, 1985, is less **9.75% per annum**; or

(b) during the year of assessment beginning on the 1st April, **1985**, is less than **11.5% per annum**; or

(c) during the years of assessment beginning on the 1st April, 1986, and ending on the **31st March, 1991** is less than—

A. **12½ % per annum**, where the amount of the loan does not exceed zw\$ 12 000; or

B. **13¼ % per annum**, where the amount of the loan exceeds zw\$ 12 000;

or

(d) during the year of assessment beginning on the 1st April, **1991**, is less than—

A. **13% per annum**, where the amount of the loan does not exceed zw\$ 12 000;

B. **14½ % per annum**, where the amount of the loan exceeds zw\$ 12 000s;

or

(e) during the year of assessment beginning on 1st April, **1992**, is less than—

A. ten per centum per annum, where the amount of the loan does not exceed thirty-five thousand dollars;

B. twelve per centum per annum, where the amount of the loan exceeds thirty-five thousand dollars;

or

(f) in respect of the years of assessment beginning on the 1st April, **1993** and ending on the 31st **December 2000**, is less than—

A. ten and one-half *per centum*, where the amount of the loan does not exceed thirty-five thousand dollars;

B. fourteen *per centum*, where the amount of the loan exceeds thirty-five thousand dollars;

the cost to the employer in respect of that period or year of assessment shall be deemed to be equal to an amount determined by applying the following formula—

#### A - B

in which—

A. represents the amount of interest that would have been payable on the loan during such period or year of assessment by the person to whom the loan had been granted, had interest been payable by him at the appropriate rate specified in paragraph (a), (b), (c), (d), (e), (f) or (g);

[proviso (f) amended by Act 18/2000 from 1<sup>st</sup> January 2001.]

B. represents the amount of interest payable on the loan during such period or year of assessment by the person to whom the loan has been granted;

or

(g) during the year of assessment beginning on the 1st January, 2001, and any subsequent year of assessment, is less than

[proviso (g) inserted by s 9 of Act 18/2000 from 1st January, 2001]

A. **12½ % per annum**, where the amount of the loan does not exceed zw\$ 35 000; or

B. **16% per annum**, where the amount of the loan **exceeds** zw\$ 35 000;

(h) during the year of assessment beginning on the 1st January, 2021, and every subsequent year of assessment, is less than the LIBOR rate plus 5%, where the amount of the loan exceeds **US\$100** or **less than 15%**

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where the amount of the loan exceeds zwl\$8 000;

[proviso (h) inserted by Act 5/2009 w.e.f. 30th September, 2009; substituted by the Finance (No.2) Act 10/2020 w.e.f. 1st January, 2021.]

(ii) **in the case of a motor vehicle**, the cost to the employer shall be deemed to be the following in respect of any period before the **31st December, 1998**, unless the person entitled to use the motor vehicle proves the contrary or unless the Commissioner considers such cost to be greater—

[proviso amended by Act 29 of 1998 from 1st January, 1999.]

(a) in respect of the years of assessment beginning on the 1st April, 1984, and ending on the 31st March, **1991**—

(i) one thousand five hundred dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(ii) two thousand dollars, in the case of a motor vehicle whose engine capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(iii) three thousand dollars, in the case of a motor vehicle whose engine capacity exceeds two thousand cubic centimetres;

(b) in respect of the years of assessment beginning on the 1st April, 1991, and ending on the 31st March, **1997**—

(i) two thousand four hundred dollars, in the case of a motor vehicle whose capacity does not exceed one thousand five hundred cubic centimetres;

(ii) three thousand two hundred dollars, in the case of a motor vehicle whose engine capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(iii) four thousand eight hundred dollars in the case of a motor vehicle whose engine capacity exceeds two thousand cubic centimetres;

and such deemed cost shall be reduced proportionately where the period of use of the motor vehicle is less than the year of assessment;

[para (b) amended by Act 13/1996]

(c) in respect of the period beginning on the 1st April, 1997, and ending on the 31st December, **1997**, 50% of the cost to the employer;

[para (c) substituted by Act 17 of 1997]

(d) in respect of the period beginning on the 1st January, 1998, and ending on the 31st December, **1998**, 75% of the cost to the employer;

(e) .....

[Para (e) repealed by section 9(b)(i)B of Act 29 of 1998 from 1st January, 1999]

(iii) **in the case of a motor vehicle**, in respect of the year of assessment beginning on the **1st January, 1999**, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

[Proviso (iii) inserted by section 9(b)(ii) of Act 29 of 1998]

(a) twenty-five thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(b) forty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(c) seventy thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(d) one hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionately where the period of use of the motor vehicle is less than the year of assessment;

(iv) **in the case of a motor vehicle**, in respect of the year of assessment beginning on the 1st January, 2000, and ending on the 31st December, 2001 and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

[Proviso (iv) inserted by Act 18/2000 and amended by Act 27 of 2001]

(a) forty thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

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(b) sixty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(c) one hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(d) one hundred and fifty thousand dollars, in the case of a motor vehicle whose engine capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment.

(v) in the case of a motor vehicle, in respect of the year of assessment beginning on the **1st January, 2002**, and ending on the 31st December, 2002 and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

[Proviso (v) amended by Act 15/2002]

(a) fifty thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(b) one hundred and fifty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(c) two hundred and fifty thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(d) four hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment.

(vi) in the case of a motor vehicle, in respect of the year of assessment *beginning on the 1st January, 2003, and ending on the 31st December, 2003*, the cost to the employer shall be deemed to be the following—

[Proviso (vi) inserted by Act 15/2002 and amended erroneously by Act 10/2003 from 1<sup>st</sup> January, 2004- the dates in italics are corrected by the Law Reviser]

(a) two hundred and forty thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(b) four hundred and twenty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(c) five hundred and forty thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(d) nine hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment.

(vii) in the case of a motor vehicle, in respect of the year of assessment *beginning on the 1st January, 2004, and ending on the 31st December, 2004*, the cost to the employer shall be deemed to be the following—

[Proviso (vii) amended erroneously by Act 29 of 2004 from 1<sup>st</sup> January, 2005- the dates in italics are corrected by the Law Reviser]

(a) six hundred thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(b) one million two hundred and sixty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(c) two million four hundred and eighty thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(d) three million three hundred and twelve thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the

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motor vehicle is less than the year of assessment;

(viii) in the case of a motor vehicle, in respect of the year of assessment beginning on the **1st January, 2005**, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

[Proviso (viii) inserted by Act 10/2003 and wrongly amended by section 6 of Act 8 of 2005]

(a) two million two hundred and eighty thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(b) four million two hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(c) six million four hundred and eighty thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(d) seven million two hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment;

(ix) in the case of a motor vehicle, in respect of the year of assessment beginning on the **1st January, 2007**, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following:-

[proviso (ix) inserted by section 6 of Act 8 of 2005 and amended by Act 12/2006. The Law Reviser confirms that Act 12/2006 erroneously substituted 1st January, 2007 for 1st January, 2006.]

(a) nine million dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(b) fifteen million dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(c) eighteen million dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(d) twenty-four million dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment;

(x) in the case of a sale or disposal of a motor vehicle to an **\*employee**, whether during or on termination of the employee's employment, in respect of the year of assessment beginning on the 1st January, 2009, and any subsequent year of assessment, the deemed benefit shall be determined in accordance with the following formula: —

#### A - B

[proviso (x) substituted by section 5 of Act 5/2009 from 30th September, 2009. Word 'employee' corrected to 'above by s 12(a) of Act 10/2009 w.e.f. 1st January, 2010]

where—

**A** represents the market value of the motor vehicle;

**B** represents the cost at which the **\*employee** acquired the motor vehicle:

Provided that if the motor vehicle was **acquired before the 1st January, 2009**, the cost of the vehicle shall be the value of the vehicle shown in the final balances of the employer determined and carried forward in terms of **\*section 3(3) and (4)** of the Finance Act, 2009 (as substituted by the Finance Act (No. 2) Act 5/2009).

No advantage or benefit in terms of this proviso shall be deemed to have accrued to an employee who, on the date of the sale or disposal, is of or over the age of **55**.

In determining the market value of a motor vehicle for the purposes of this proviso, the Commissioner shall have regard to the valuation of a member of such institution or association of motor dealers or valuers as is prescribed by the Commissioner by notice in the *Gazette*.

(xi) in the case of a motor vehicle, in respect of the year of assessment beginning on the **1st January, 2020**, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following

[Proviso (xi) substituted by Finance Act 13/2019.]

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**Provided that** where a person earns any part of his or her income from employment in **foreign currency**, there shall be substituted for the figures referred to in subparagraphs (a) to (d) the following figures —

[US\$ amounts increased by sect 39 of Finance Act 7/2021 w.e.f. 31st December, 2021  
ZWL\$ amounts increased by sect 36 of Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(a) **\$ 312 500**, or **US\$ 625** in the case of a motor vehicle whose engine capacity does not exceed 1500 c.c's;

(b) **\$ 415 000**, or **US\$ 830** in the case of a motor vehicle whose capacity exceeds 1500 c.c's but does not exceed 2 000 c.c's;

(c) **\$ 625 000**, or **US\$ 1 250** in the case of a motor vehicle whose capacity exceeds 2 000 c.c's but does not exceed 3 000 c.c's;

(d) **\$ 830 000**, or **US\$ 1 660**, in the case of a motor vehicle whose capacity exceeds 3 000 c.c's;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment:

(xii) – (xiv)

[Provisos (xii), (xiii) and (xiv) repealed by section 12(b) of Act 10/2009 w.e.f. 1st January, 2010.]

(g) subject to paragraph 3 of the *Seventh Schedule*, where land is sold or otherwise disposed of and **timber or other crops** are growing on such land which, in the opinion of the Commissioner, have been grown for sale, the market value of such timber or growing crops at the time such land is sold or so disposed of:

Provided that no amount will be included in gross income if such timber or crops were acquired by such person by way of **inheritance** or **donation** and did not become assets of any trade carried on by him;

(h) an amount equal to the value, determined in accordance with the provisions of the *Second Schedule*, of the **trading stock** belonging to a person carrying on a trade which—

(i) has not been disposed of at the end of the year of assessment; or

(ii) has, during the year of assessment, been taken by the person for his domestic or private consumption or use; or

(iii) has, during the year of assessment—

A. vested in the trustee of the person on the insolvency, winding up or death of the person; or

B. been given by the person to some other person; or

C. been disposed of by the person otherwise than—

I. in a manner described in this paragraph; or

II. by sale or exchange;

or

(iv) is, at the end of the year of assessment, attached in pursuance of an order of court; or

(v) has, during the year of assessment, been—

A. disposed of by the person in pursuance of the sale or other disposal of his business; or

B. sold in pursuance of an order of court;

(i) any recoupments from capital expenditure which—

(i) exceed the balance of capital expenditure ranking for redemption in terms of paragraphs 2, 3, 4 and 5 of the *Fifth Schedule* or the corresponding provisions of any previous law; or

(ii) are a recovery of amounts allowed as a deduction in terms of paragraph 6 of the *Fifth Schedule* or the corresponding provisions of any previous law;

(j) any amount allowed to be deducted under subsection (2) of section *fifteen* or the corresponding provisions of any previous law other than any sums deducted in terms of paragraph 5 of the *Fourth Schedule*, the *Sixth Schedule*, paragraph 2 of the *Seventh Schedule* and paragraph 3 of the *Fourteenth Schedule* or the corresponding provisions of any previous law, whether in the current or any previous year of assessment, which has been recovered or recouped:

Provided that—

(i) if an amount which has been allowed as a deduction under paragraph 2 or 3 of the *Fourth Schedule*, or under the corresponding provisions of any previous law, has been recovered or recouped by a person as a result of damage or destruction of any asset in respect of which a deduction—

(a) has been allowed; or

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- (b) would have been allowed had it been new or unused at the time of acquisition; or
- (c) would have been allowed had the expenditure been incurred on or after the 1st April, 1967; or
- (d) would have been allowed, if it had been new or unused at the time of acquisition and the expenditure had been incurred on or after the **1st April, 1967**;

in terms of paragraph 5 of that *Schedule* as it existed on the 31st March, 1981, or, with effect from the year of assessment beginning on the **1st April, 1981**, would have been so allowed had that paragraph not been repealed with effect from that year, such amount shall not be included in the gross income of that person if he satisfies the Commissioner—

A. that he has purchased or constructed or will purchase or construct, within a period of 18 months from the date the asset was damaged or destroyed, a further asset of a like nature in replacement thereof; and

B. that such further asset has been or will be brought into use within a period of 3 years from the date the aforesaid asset was damaged or destroyed;

so, however, that if in the event the Commissioner is not satisfied—

I. that the whole of the amount so recovered or recouped has been fully expended on the purchase or construction of a further asset of a like nature within the period stipulated in subparagraph A, he shall include any amount not so expended in that person's gross income in the year of assessment in which the amount was originally recovered or recouped; or

II. that the further asset of a like nature has been brought into use within the period stipulated in subparagraph B, he shall include in that person's gross income, in the year of assessment in which the amount was originally recovered or recouped, any part of that amount not previously included in gross income;

(ii) any amount recovered or recouped by an employer on the winding up of a benefit or pension fund or on his ceasing to be an employer because of insolvency or liquidation or on the withdrawal of all his employees from membership of the fund shall not be excluded from gross income;

(k) the amount or value of any benefit received by or accrued to a taxpayer as a result of any concession granted by, or compromise

or arrangement made with, a creditor whereby a liability which arose from expenditure in respect of which a deduction has been made under subsection (2) of section *fifteen* or the corresponding provisions of any previous law, is reduced or extinguished:

Provided that—

(i) any benefit relating to expenditure in respect of assets ranking for the allowances referred to in paragraphs (c), (f) and (z) of subsection (2) of section *fifteen* shall not exceed the total amount of the allowances so granted less any allowance granted under paragraph 5 of the *Fourth Schedule* prior to its repeal;

(ii) the provisions of this paragraph shall not apply in respect of any reduction in liability in consequence of—

A. a taxpayer having been adjudged or otherwise declared, or having become, insolvent or having made an assignment of his property or estate for the benefit of his creditors; or

B. the estate of the taxpayer having been vested in the Corporation as defined in section 2 of the Agricultural Finance Act [*Chapter 18:02*]

[Paragraph B substituted by Act 14 of 1999]

C. the taxpayer, in the case of a company, having been wound up by the court on the grounds that it is unable to pay its debts;

(i) in the case of a person by whom any movable or immovable property has been acquired, any amount paid, whether in the form of rent, premium, consideration in the nature of a premium or otherwise, for the right of use or occupation of such property which has been allowed as a deduction under this Act or a previous law in the determination of any person's taxable income and which, or the equivalent of which, is upon the subsequent acquisition of such property applied in reduction or towards settlement of the purchase price of such property.

For the purposes of this paragraph—

(i) any expenditure incurred by a person in pursuance of an obligation to effect improvements to land or buildings under an agreement by which the right of use or occupation of the land or buildings is granted by another, shall be deemed to be an amount which has been paid;

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(ii) where any amount has been paid by any person for the right of use or occupation of any property, which is thereafter acquired by that or any other person for no consideration or for a consideration which, in the opinion of the Commissioner, is not an adequate consideration, such amount, unless the Commissioner, having regard to the circumstances of the case, otherwise decides, or so much thereof as does not exceed the fair market price, as determined by the Commissioner, of such property where no consideration was given, or the difference between such fair market price and the amount of the consideration for which it has been acquired as aforesaid, as the case may be, shall be deemed to have been applied in reduction or towards settlement of the purchase of such property:

Provided that—

(i) any amount included in the gross income of any person under this paragraph may, if that person so elects (which election shall be binding) be deemed to accrue in 6 successive equal instalments, the first instalment to be deemed to have accrued in the year of assessment in which he acquired the property and the subsequent instalments being deemed to accrue in each year of assessment thereafter, so, however, that, if a person who has made an election in terms of this paragraph subsequently disposes of the property in question before the expiry of the period of **6 years**, the balance of the instalments which have not already been included in his income shall be included in his income for the year of assessment in which the property is so disposed of;

(ii) any portion of any amount which was included in the gross income of any person under similar provisions of a previous law and which under such previous law fell to be apportioned over a number of years of assessment shall, for the purposes of this Act, be included in gross income as though the relevant provisions of such previous law were still in force;

(m) any amount received or accrued by way of grant or subsidy in respect of any expenditure allowed or allowable as a deduction under this Act or a previous law;

(n) any amount received or accrued by way of commutation of a pension or annuity, the right to which was acquired by virtue of contributions first made on or after the 1st August, 1970, and which is payable by a retirement annuity fund, to the extent that it exceeds the amount that

would have been payable had  $\frac{1}{3}$ rd only of the total value of the pension or annuity been commuted;

[Subpara (n) amended by Act 17 of 1997 from 10 June 1996.]

(o) any amount received or accrued, directly or indirectly, from the State in terms of the Designated Areas Grant Scheme;

(p) any amount so received accrued to a petroleum operator which, in terms of the *Twentieth Schedule*, is income attributable to petroleum operations carried on by the petroleum operator;

(q) any amount so received or accrued by way of commutation of a pension or annuity which is payable from the Consolidated Revenue Fund or a pension fund, **other than** a retirement annuity fund, if the pension or annuity itself would not have been subject to income tax;

[lump sum paid under a Voluntary Retirement Scheme *B v COT 00-ICT 1673* para substituted by Act 29 of 2004 from the 1<sup>st</sup> December, 2004.]

(r) any amount so received or accrued to the holder of a special mining lease, where the amount, in terms of the *Twenty-Second Schedule*, is income attributable to special mining lease operations carried out by him;

(s) the amount so received or accrued as a result of the sale of shares offered to an employee pursuant to a share option scheme, as adjusted in accordance with the following formula:

$$A - (B+C)$$

where

**A** represents the sale value of the shares at the time of the exercise of the share option by the employee;

**B** represents the value of the shares offered to the employee pursuant to a share option scheme;

**C** represents the figure **B** to which the inflation allowance is applied, which allowance is to be determined in accordance with the following formula:

$$((D-E)/E) \times B$$

Where

**D** is the figure for the All-items Consumer Price Index issued by the Central Statistics Office at the time the employee exercises the share option;

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**E** is the figure for the All-items Consumer Price Index issued by the Central Statistics Office at time when the shares were offered to the employee pursuant to a share option scheme.

[subpara (t) inserted by Act 16 of 2007 w.e.f. the year of assessment beginning on the 1st January, 2007.]

**“income”** means the amount remaining of the gross income of any person for any such year after deducting therefrom any amounts exempt from income tax under this Act;

[*Delta Beverages (Pvt) Ltd v Zimra* 22-SC-003]

**“taxable income”** means the amount remaining after deducting from the income of any person all the amounts allowed to be deducted from income under this Act.

(2) For the purposes of the definition of **“gross income”** in subsection (1), when, owing to a variation in the rate of exchange of currency between Zimbabwe and any other country, the amount received, expressed in Zimbabwean currency, differs from the amount that had accrued prior to the variation in the rate of exchange—

[*PP v COT* 81-ITC-1333]

(a) the amount to be included in gross income shall be the said amount received, expressed in Zimbabwean currency; and

(b) if the receipt and the accrual occur in different years of assessment, effect shall be given to the increase or reduction in the gross income in the year of assessment in which the amount was received.

(3) For the purposes of the definition of **“gross income”** in subsection (1), any amount received that constitutes prepayment for goods, services or benefits that will be used up in any subsequent year of assessment will not form part of the gross income for the year of assessment for which a return of income is made, but must be included in the year of assessment in which the goods, services or benefits are used up or, if used up in stages or batches, included proportionately in the returns for the years of assessment in which the goods, services or benefits are so used up.

[subsection (3) inserted by the Finance Act 1 of 2018 w.e.f. 1 January 2018.]

**9 . . . .**

[Section 9 repealed by the Finance (No.3) Act 10/2009 w.e.f. the 1st January, 2010.]

\*Provided that where a person made an election under the foregoing provision **before the 1st January, 2010**, whose period of operation would have continued beyond that date, such election shall not be affected by the repeal of the foregoing provision.

[The \*above proviso was added by section 13 of the above repealing Finance (No.3) Act 10/2009 – Editor]

### 10 Special circumstances in which income is deemed to have accrued

(1) Income shall be deemed to have accrued to a person notwithstanding that such income—

(a) has been invested, accumulated or otherwise capitalized by him; or

(b) has not been actually paid over to him but remains due and payable to him; or

(c) has been credited to an account or re-invested or accumulated or capitalized or otherwise dealt with in his name or on his behalf;

and a complete statement of all such income shall be included by any person in the returns rendered by him under this Act.

(2) Income received by or accrued to or in favour of a partnership in any period ending on an accounting date shall be deemed to be income received by or accrued to or in favour of the partners on such accounting date in the proportions in which the partners agree to share the profits of the partnership as at such date.

(3) If, in pursuance or by reason of a donation, settlement or other disposition, income accrues to or in favour of or is paid to or applied to the benefit of or is accumulated for the future benefit of a minor child, whether legitimate or illegitimate, of the person by whom the donation, settlement or other disposition was made, the income so accruing, paid, applied or accumulated shall be deemed to be income received by or accrued to or in favour of the person by whom the donation, settlement or other disposition was made.

(4) If—

(a) in pursuance or by reason of a donation, settlement or other disposition made by a person, income accrues to or in favour of or is paid to or applied to the benefit of or is accumulated for the future benefit of a minor child, whether legitimate or illegitimate, of some other person; and

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(b) the parent of the child or his spouse or a near relative of the parent of the child or of the spouse of the parent of the child has made a donation, settlement or other disposition or given some consideration to or in favour of the person or the spouse or a near relative of the person or of the spouse of the person by whom the donation, settlement or other disposition referred to in paragraph (a) was made;

the income so accruing, paid, applied or accumulated shall be deemed to be income received by or accrued to or in favour of the parent of the child.

(5) If in any deed of donation, settlement or other disposition a person has stipulated that the beneficiaries, or some of them, shall not receive the income thereunder or some portion of that income until the happening of some event, whether fixed or contingent and—

(a) if by virtue of the powers conferred under such deed upon that person, his spouse, his near relative or a near relative of his spouse he or she has power to control the ultimate evolution of that income or portion thereof or of any funds derived from the accumulation of such income; or

(b) if that income or portion thereof or those funds or any property under such deed may—

(i) devolve upon that person, his spouse, his deceased estate, the deceased estate of his spouse or the deceased estate of the first dying spouse and the surviving spouse; or

(ii) be lent to that person or any of the persons referred to in paragraph (a) or to a company controlled by that person and those other persons or one or more of them;

the income or portion thereof, as the case may be, to the extent to which it is to be withheld from the beneficiaries, shall, until the happening of the event stipulated in the deed, be deemed to be income of that person.

(6) If any deed of donation, settlement or other disposition contains any stipulation that the right to receive any income thereby conferred may, under powers retained by the person by whom that right is conferred, be revoked or conferred upon another, so much of any income as in consequence of the donation, settlement or other disposition, is received by or accrues to or in favour of or is deemed to be received by or to accrue to or in favour of the person on whom that right is conferred, shall be deemed to be the income only of the person by whom it is conferred, so long as he retains those powers.

(7) Subject to subsection (2) of section *eight* and sections *seventeen* and *eighteen*, where during any year of assessment a taxpayer becomes entitled to any amount which is payable after the last day of that year of assessment, the amount shall be deemed to have accrued to him during that year of assessment:

Provided that, if in respect of any year of assessment before the **1st April, 1991**, the taxpayer submitted a return of income prepared on the basis that the value of the amount accruing to him during that year of assessment was less than the amount that he would ultimately receive, there shall be deemed to have accrued to him, in any subsequent year of assessment in which he received the amount or any portion thereof, a sum equal to the difference between the value of the amount or portion thereof which he so declared and the amount or portion thereof which he received.

### 11 Special provisions in connection with income derived from assets in deceased and insolvent estates

(1) In this section—

**"ascertained beneficiary"**, in relation to income received or accruing by virtue of an asset in a deceased estate or the proceeds or any part of the proceeds of an asset in a deceased estate, means a person named or identified in the will of the deceased person who by reason of the will, acquires on the death of the deceased person an immediate certain right to claim the present or future enjoyment of the income so received or accruing;

**"asset in a deceased estate"** does not include a right to claim an amount which became due and payable before the death of the deceased person.

(2) So much of the income received or accruing by virtue of an asset in a deceased estate or the proceeds or any part of the proceeds of an asset in a deceased estate during the period beginning immediately after the death of the deceased person and ending immediately before a person, other than a person who acquires the asset in pursuance of the realization of the assets in the deceased estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, as is received by or accrues to or in favour of an ascertained beneficiary, shall be treated for the purposes of this Act as income of the ascertained beneficiary and not as income received in or accruing to the deceased estate.

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(3) Income received or accruing by virtue of an asset in a deceased estate or an asset in an insolvent estate or the proceeds or any part of the proceeds of an asset in the deceased or insolvent estate during the period beginning immediately after a person becomes entitled to the transfer from the deceased or insolvent estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, and ending immediately before the transfer from the deceased or insolvent estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, shall, unless the effect of a condition governing the transfer is to provide that the income so received or accruing shall continue to be income of the deceased or insolvent estate, be treated for the purposes of this Act—

(a) in the case of income which is not income the subject of a trust to which no beneficiary is entitled, as income of the person who has immediately after the transfer an immediate certain right to the present or future enjoyment of the income so received or accruing; and

(b) in the case of income the subject of a trust to which no beneficiary is entitled, as income of the trust;

and not as income received in or accruing to the deceased or insolvent estate.

(4) For the avoidance of doubt it is declared that—

(a) an amount received or accruing by virtue of a right forming part of the assets in a deceased estate which did not become due and payable before the death of the deceased person shall, subject to paragraph (b), be income for the purposes of this Act if the amount would have been income of the deceased person had it been received or been deemed to have been received by him or accrued or been deemed to have accrued to him or in his favour in his lifetime; and

(b) an amount received in a deceased estate which would have been income of a deceased person had it been received or been deemed to have been received by him or accrued or been deemed to have accrued to him or in his favour in his lifetime shall not be income for the purposes of this Act if—

(i) the deceased person had no right to claim the amount in his lifetime; and

(ii) the amount is received *ex gratia* or in pursuance of a gratuitous promise made after the death of the deceased person;

and

(c) an amount received or forming part of the assets in a deceased estate—

(i) which became due and payable before the death of the deceased person; and

(ii) which the deceased person had a right to claim in his lifetime;

shall be income received by or accruing to or in favour of the deceased person on the date the amount became due and payable if the amount would have been income of the deceased person had it been received by him in his lifetime.

### 12 Circumstances in which amounts are deemed to have accrued from sources within Zimbabwe

(1) An amount shall be deemed to have accrued to any person from a source within Zimbabwe whenever it has been received by or has accrued to or in favour of such person—

(a) under any contract made within Zimbabwe for the sale of goods, whether such goods have been delivered or are to be delivered in or out of Zimbabwe;

(b) for any service rendered or work or labour done by such person in the carrying on in Zimbabwe of any trade, whether the payment for such service or work or labour is made or is to be made by a person resident in or out of Zimbabwe, and wherever payment for such service or work or labour is made or is to be made;

[Ka. v CoT 93-SC-001]

(c) for any service rendered or work or labour done as an employee by such person outside Zimbabwe, during any temporary absence of such person from Zimbabwe, if such person is ordinarily resident in Zimbabwe, whether the payment for such service or work or labour is or is to be made by a person resident in or out of Zimbabwe and wheresoever payment for such service or work or labour is or is to be made.

For the purposes of this paragraph—

(i) “**temporary absence**” means an absence for a period or periods not exceeding in the aggregate **183 days** during the year of assessment;

(ii) “**employee**” includes a director of a company;

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(d) for services rendered to the State either inside or outside Zimbabwe:

Provided that an amount received by or accrued to or in favour of a person by virtue of services rendered outside Zimbabwe shall not be deemed to have accrued from a source within Zimbabwe if the person was not ordinarily resident outside Zimbabwe solely for the purpose of rendering such service;

(e) by virtue of a pension or annuity for services rendered which is or was granted to the person by—

- (i) any person wherever resident; or
- (ii) the Government of the former Federation; or
- (iii) the State;

wherever the funds from which the pension or annuity is paid are situate or payment of the pension or annuity is made:

Provided that—

(i) a pension or annuity shall not be deemed to be derived from a source within Zimbabwe if the service or employment for which it was granted was performed wholly outside Zimbabwe and the remuneration for the service or employment was not deemed by virtue of paragraph (d) to accrue from a source within Zimbabwe;

(ii) a pension or part of a pension granted by the Government of the former Federation shall not be deemed to be derived from a source within Zimbabwe if—

A. the pension was granted in pursuance of the dissolution of the former Federation and the recipient of the pension was—

I. ordinarily resident in Malawi or Zambia on the 31st March, 1964; or

II. not ordinarily resident in Malawi or Zambia on the 31st March, 1964, in any of the Territories which comprised the former Federation and his home Territory, as determined in Part I of Schedule II to the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963 of the United Kingdom or the regulations in terms of which such pension is payable, as the case may be, was not Zimbabwe, and, if he had no home Territory, he was not ordinarily resident in Zimbabwe at the time he first became entitled to such pension;

B. the pension was granted otherwise than in pursuance of the dissolution of the former

Federation and the recipient of the pension was not employed by—

I. the Government of Southern Rhodesia immediately before he joined the service of the Government of the former Federation; or

II. any of the Governments of the Territories which comprised the former Federation immediately before he joined the service of the Government of the former Federation and was not ordinarily resident in Zimbabwe at the time when he first became entitled to such pension; or

III. the State at the time he first became entitled to such pension;

(iii) if a pension or annuity, other than a pension or annuity granted in respect of employment by the State or the Government of the former Federation, was granted for service or employment performed both within and outside Zimbabwe, only that part of the pension or annuity which bears the same proportion to the whole of the pension or annuity as the period of the person's service or employment within Zimbabwe bears to the whole of the period of the person's service or employment for which the pension or annuity was granted shall be deemed to be derived from a source within Zimbabwe.

For the purposes of this paragraph—

I. a pension granted to a member of the Public Service of the former Federation in pursuance of the dissolution of the former Federation shall be deemed to have been granted to him by the Government of the former Federation;

II. a pension which devolves upon another person by reason of the death of a person who was in receipt of a pension from the Government of the former Federation shall not be deemed to be from a source within Zimbabwe if the pension receivable by the deceased person at the time of his death was not derived or deemed to be derived from a source within Zimbabwe.

(f) in the circumstances specified in subsections (6) and (7).

[para (f) inserted by Finance Act 1/2019 gazetted 20th February 2019 w.e.f. 1<sup>st</sup> January, 2019 ]

(2) An amount derived from a source outside Zimbabwe by way of interest or dividends on securities which is received by or accrues to or in favour of a person or would, had it been derived from a source within Zimbabwe, be deemed in terms of section *ten* to be income

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received by or accruing to or in favour of a person shall, if the person is ordinarily resident in Zimbabwe at the time the amount is so received or so accrues or is deemed to be so received or to so accrue, be deemed to be income from a source within Zimbabwe:

[PPC v ZIMRA 19-HH-755]

Provided that—

(i) any amount so received or accrued in any year of assessment by way of income arising from securities referred to in paragraph (f) of the definition of “**securities**” in subsection (1) of section two—

(a) shall, notwithstanding section seven, be charged to tax in such manner and at such rates as may be fixed by the charging Act relating to that year of assessment; and

(b) shall not reduce any assessed loss which the taxpayer would have had in that year of assessment if such amount had not been received by or accrued to him;

(ii) for the purposes of this Act the amount of any credit which, in terms of the laws of any other country, a taxpayer is entitled to claim in respect of income referred to in proviso (i) shall be deemed to constitute such income and shall be deemed to have accrued to such taxpayer.

(3) Any amount received or accrued by way of an annuity from any source outside Zimbabwe, the right to which was acquired by means of the payment by the annuitant of a sum of money or the disposal by the annuitant of an asset or by both those means, shall be deemed to be income from a source within Zimbabwe if the annuitant was ordinarily resident in Zimbabwe at the time the right to the annuity was acquired.

(4) An amount shall be deemed to have accrued to any person from a source within Zimbabwe if it has been received by or has accrued to or in favour of such person by virtue of the use in Zimbabwe of or the grant of permission to use in Zimbabwe, or the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use in Zimbabwe of—

(a) any patent, design, trade mark, copyright, model, plan, secret process or formula or any other property which, in the opinion of the Commissioner, is of a similar nature; or

(b) any motion picture film or television film or any sound recording or advertising matter used or intended to be used in connection with such film;

wheresoever such patent, design, trade mark, copyright, model, plan, secret process, formula, property, film, sound recording or advertising matter has been produced or made or such permission has been granted or such knowledge has been imparted or such undertaking has been given or payment for such use, grant of permission, imparting of knowledge or undertaking has been made or is to be made, and whether such payment has been made or is to be made by a person resident in or out of Zimbabwe.

[TM Fee' v COT 91-ITC-1535]

(5) Any amount which is specifically required to be included in a person's gross income in terms of paragraph (i) or (j) of the definition of “**gross income**” in subsection (1) of section eight shall be deemed to have been received by or accrued to such person from a source within Zimbabwe notwithstanding that such amount may have been recovered or recouped outside Zimbabwe.

(6) Any amount receivable by or on behalf of a **satellite broadcasting service** domiciled outside Zimbabwe from persons resident in Zimbabwe in respect of the provision or delivery of television or radio programmes to those persons shall be deemed to be income from a source within Zimbabwe.

[subsections (6),(7) & (8) inserted by inserted by Finance Act 1/2019 gazetted 20th February 2019 w.e.f. 1<sup>st</sup> January, 2019 ]

(7) Any amount receivable by or on behalf of an **electronic commerce operator** domiciled outside Zimbabwe from persons resident in Zimbabwe in respect of the provision or delivery of goods or services (other than services specified in section twelve (1)(d) and twelve (4) above) to those persons shall be deemed to be income from a source within Zimbabwe.

[substituted by Finance (No.2) Act 7/2019 gazetted on the 21<sup>st</sup> August,2019 w.e.f.1<sup>st</sup> September, 2019]

(8) In subsections (6) and (7)—

“**electronic commerce operator**” means an operator selling, providing or delivering services from outside Zimbabwe by the use of a telecommunications network or electronic means (and whether mediated by computers, mobile telephones or other devices) to customers or users in Zimbabwe;

[definition substituted by Finance (No.2) Act 7/2019 gazetted on the 21<sup>st</sup> August,2019 w.e.f.1<sup>st</sup> September, 2019]]

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**“satellite broadcasting service”** means a service which by means of a satellite (whether or not in combination with cable optical fibre or any other means of delivery) delivers television or radio programmes to persons having equipment appropriate for receiving that service.

### 12A Taxation of certain income deemed to be from a source within Zimbabwe

[section inserted by Finance Act 1/2019 gazetted 20th February 2019 w.e.f. 1<sup>st</sup> January, 2019 See its relevance in section 53(1)(a) below- Editor ]

(1) This section applies to the taxation of income deemed in terms of section twelve (6) and (7) to be income from a source within Zimbabwe.

(2) Every person who provides services as a satellite broadcasting service or provides or delivers goods and services as an **electronic commerce operator** which receives revenues in excess of five hundred thousand United States dollars (**US\$500 000,00**) in any year of assessment from the provision or delivery of such services or services to persons resident in Zimbabwe, shall pay tax on such revenues charged and levied at the rate specified in section 14(2)(k) of the Charging Act.

[Amended by Finance (No.2) Act 7/2019 gazetted on the 21<sup>st</sup> August,2019 w.e.f.**1st September, 2019:** then amended into **US** denominated currency by Finance (No.3) Act 13/2019 gazetted on the 31st December,2019 back dated to take effect from the **24<sup>th</sup> June, 2019**]

(3) Any amount so received or accrued in any year of assessment by way of income arising by virtue of section twelve (6) and (7)—

(a) shall, notwithstanding section seven, be charged to tax in such manner and at such rates as may be fixed by the charging Act relating to that year of assessment; and

(b) shall not reduce any assessed loss which the taxpayer would have had in that year of assessment if such amount had not been received by or accrued to him or her.

(4) Sections **nineteenA** (“Non-resident companies: basis of charge to and determination of company tax”) and section **nineteenB** (“Meaning of “permanent establishment””) shall not apply to the taxation of income deemed to have accrued from a source within Zimbabwe in terms of section twelve(6) and (7).

(5) Where a company or other entity domiciled **outside Zimbabwe** is liable to pay tax in terms of subsection (2), such company or entity shall, **within 30 days** of becoming so liable or within 30 days of the promulgation of the \*Finance (No. 3) Act, 2019, as the case may be, appoint a person domiciled in Zimbabwe to act as its representative taxpayer, and notify such appointment in writing to the Commissioner.(failing which the Commissioner may, by written notice, appoint any person as its representative taxpayer).

[Subsection (5) inserted by \*Act 13/2019 promulgated on the 31<sup>st</sup> December, 2019.]

(6) Subject to this section, the tax payable in terms of subsection (3) shall be paid as follows—

[Subsection (6) substituted by Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020.]

(a) the 1<sup>st</sup> quarter payment shall be paid on or before the **25th March** in relevant year of assessment for income which has accrued in December, January and February; and

(b) the 2<sup>nd</sup> quarter payment shall be paid on or before the **25th June** in the relevant year of assessment, for income which has accrued in March, April and May; and

(c) the 3<sup>rd</sup> quarter payment shall be paid on or before the **25th September** in the relevant year of assessment, for income which has accrued in June, July and August; and

(d) the 4<sup>th</sup> quarter payment shall be paid on or before the **20th December** in the relevant year of assessment, for income which has accrued in September, October and November.

(7) If the taxpayer fails to submit any return, on the dates in subsection (8), as required by subsection (5), the Commissioner-General may estimate the taxable income which is required to be estimated, and such estimate shall be final and conclusive.

[Subsections (7)-(13) inserted by Act 8/2020 w.e.f. the 28th October, 2020.]

(8) Subject to this section, the tax payable in terms of subsection (3) shall be paid as follows—

(a) the first quarter payment shall be paid on or before the 25th March in relevant year of assessment; and

(b) the second quarter payment shall be paid on or before the 25th June in the relevant year of assessment; and

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(c) the third quarter payment shall be paid on or before the 25th September in the relevant year of assessment; and

(d) the fourth quarter payment shall be paid on or before the 20th December in the relevant year of assessment:

(9) The tax payable shall be paid **in foreign currency** on the dates mentioned in subsection (7).

(10) The providers of services shall be required to notify the Commissioner General by 31 March of every year of assessment where they remain eligible to pay tax.

(11) Any person who fails to pay to the Commissioner-General any amount of the tax mentioned in subsection (3) shall liable for the payment to the Commissioner, not later than the date on which payment should have been made of—

(a) the amount of non-residents' tax on **e-commerce payments** which the payer, as the case may be, failed to pay to the Commissioner; and

(b) a further amount equal to **100%** of such non-residents' tax on e-commerce payments.

(12) The Commissioner-General, if satisfied in any particular case that the failure to pay to the tax was not due to any intent to evade the provisions of this section, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit .

(13) If it is proved to the satisfaction of the Commissioner-General that any person has been charged with tax in excess of the amount properly chargeable in terms of this section, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner-General shall not authorise any refund in terms of this subsection unless the claim therefor is made **within 6 years** of the date of payment of such tax.

### 13 Commissioner may approve of benefit funds and medical aid societies for the purposes of this Act

(1) For the purposes of this Act, the Commissioner may, in respect of each year of assessment, approve of a benefit fund subject to such limitations or conditions as he may determine if he is satisfied that such fund—

(a) is a permanent fund, other than—

- (i) a pension fund; or
- (ii) a medical aid society; or
- (iii) a fund registered or provisionally registered as a provident fund under the **\*Pension and Provident Funds Act [Chapter 24:32]**;

[This Act replaced **\*Chapter 24:09** on the 2nd September, 2022- Editor]

and

- (b) is *bona fide* established for the purpose of providing—
  - (i) sickness, accident or unemployment benefits for its members; or
  - (ii) benefits for the widows, children, dependants or nominees of deceased members.

(2) For the purposes of this Act, the Commissioner may, in respect of each year of assessment, approve of a medical aid society or scheme subject to such limitations or conditions as he may determine if he is satisfied that it is a permanent society or scheme *bona fide* established for the purpose of providing benefits for its members and their dependants in respect of expenditure incurred on medical, dental or optical treatment, including treatment prescribed by a medical or dental practitioner, the provision of drugs for medical, dental or optical purposes, the provision of medical, surgical, dental or optical appliances or the provision of ambulance services.

### 14 Exemptions

(1) There shall be exempt from income tax the amounts specified in the *Third Schedule*.

[*Zimbabwe Revenue Authority v FC Platinum* 22-SC-044]

(2) The exemptions provided by paragraphs 1 and 2 of the *Third Schedule* shall not extend to the salaries, wages, allowances, other remuneration or pensions of persons employed by any local authority, society, institution, company, association or statutory corporation specified in those paragraphs although the same may be paid wholly or in part out of the revenues or funds thereof.

(3) The exemptions provided by paragraphs 9, 10, and 11 of the *Third Schedule* shall not apply in respect of any portion of an annuity paid out of the amounts specified in those paragraphs.

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### 15 Deductions allowed in determination of taxable income

(1) For the purpose of determining the taxable income of any person, there shall be deducted from the income of such person the amounts allowed to be deducted in terms of this section:

Provided that—

[Provisos substituted by Act 18/2000 from the 12th January, 2001]

(a) When, owing to a variation in the rate of exchange of currency between Zimbabwe and any other country, the amount actually paid in Zimbabwean currency differs from the amount of the liability that had been incurred prior to the variation in the rate of exchange—

(i) the amount to be deducted shall be the said amount actually paid in Zimbabwean currency

(ii) if the incurring of the liability and the payment therefor occur in different years of assessment, effect shall be given to the increase or reduction in the amount in the year of assessment in which the amount was paid.

(b) in a case where a person earns income from trade and investment \*and income from employment, any amounts allowed to be deducted in terms of this section shall only be claimed in respect of the income to which they relate;

[not apply to **corporates** through the deliberate insertion of the conjunctive\* “and” *A Bank Ltd v Zimra 20-HH-270*]

(c) in a case where a person earns income from mining operations and income from other trade and investment, any amounts allowed to be deducted in terms of this section shall only be claimed in respect of the income to which they relate.

[*SZ (Pvt) Ltd v Zimra 20-HH-142*  
*Zimplats v ZIMRA 22-HH-845*]

(2) The deductions allowed shall be—

(a) expenditure and losses **to the extent to** which they are incurred for the purposes of trade or in the production of the income

[*SW (Pvt)(Ltd)v ZIMRA 19-HH-499*  
*Delta Beverages (Pvt) Ltd v Zimra 22-SC-003*  
*IAB Company v Zimra 22-HH-032*]

**except**—

[Improper to split the payments of expenditure into segments some deductible and some not deductible. *NOC (Pvt) Ltd v ZIMRA 19-HH-765*]

(i) to the extent to which they are expenditure or losses of a **capital nature**;

[“T.”Ltd. v. COT 66-RLR-021  
- intention to trade as a farmer *GG v COT 76-ITC-1258*  
- intention relating to sale of property ? speculator to provide a residence *CC v COT 78-ITC-1271*  
- change of intention relating to investment *ZZ v COT 78-ITC-1278*  
- incurring future expenses of mitigating losses occasioned by the liquidation of its company are allowed -*COT v A Company 79-RLR-029*  
*R v COT 80-ITC-1325*  
*Q v COT 82-ITC-1371*  
- eye operation for lawyer disallowed *L v COT 91-HH-001*  
- horse-breeding *JA’ v COT 92-1TC-1645*  
*D Bank Ltd v ZIMRA 15-HH-135*  
- staff retrenchment costs *G Bank Ltd v ZIMRA 15-HH-207*  
- losses from theft by directors & other persons in control of business not deductible *M (Pvt) Ltd v ZIMRA 15-HH-665*  
- expenses incurred to mitigate loss by a company in liquidation allowed 79-RLR-029  
- computer expenses of a capital nature *A Bank Ltd v ZIMRA 20-HH-270*  
- donations to preserve the appellant’s income-earning structure *Unki Mine (Pvt) Ltd v ZIMRA 22-SC-015*]

(ii) expenditure that constitutes **prepayment** for goods, services or benefits that will be used up in any **subsequent** year of assessment (in which event the expenditure will be allowed proportionately over the years of assessment in which the goods, services or benefits are used up);

[para (a) substituted by the Finance Act 1 of 2018 w.e.f. the year of assessment beginning on the 1st January, 2018.]

(b) expenditure incurred during the year of assessment on—

(i) repairs to articles, implements, machinery and utensils used and property occupied for the purposes of trade;

[*ZIMRA v Stanbic Bank Zimbabwe Ltd 19-SC-013*]

and

(ii) repairs resulting from the letting of property;

[*FF v COT 77-ITC-1263*]

(c) the allowances in respect of—

[*GC (Pvt) Ltd v ZIMRA 15-HH-759*]

(i) commercial buildings, farm improvements, fencing, industrial buildings, railway lines, staff housing and tobacco barns acquired or

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constructed and in both cases used by the taxpayer for the purposes of his trade;

(ii) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his trade;

[intention GG v COT 76-ITC-1258  
U v COT 80-ITC-1324]

(iii) training buildings and training equipment; which are provided in the *Fourth Schedule*;

(d)

(i) an allowance in respect of any premium or consideration in the nature of a premium paid by any taxpayer—

A. for the right of use or occupation of land or buildings used or occupied for the purposes of trade or in the production of income; or

B. for the right of use of plant or machinery used for the purposes of trade or in the production of income; or

C. for the right of use of any patent, design, trade mark, copyright, model, plan, secret process or formula or any other property which in the opinion of the Commissioner is of a similar nature, if such patent, design, trade mark, copyright, model, plan, secret process or formula or other property is used for the purposes of trade or in the production of income; or

D. for the right of use of any **motion picture film** or television film, sound recording or advertising matter connected with such film or recording if such film, sound recording or advertising matter is used for the purposes of trade or in the production of income; or

E. for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such plant or machinery, patent, design, trade mark, copyright, model, plan, secret process or formula or other property as aforesaid, film, sound recording or advertising matter:

Provided that—

(i) the allowances under subparagraph A, B, C or D shall not exceed for any year of assessment such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or **1/10th** of the said amount, whichever is the greater;

(ii) if in any case the right of use or occupation of any property referred to in subparagraph A, B, C or D is granted for an initial period which may be extended or renewed for a further period or periods, the period for which the taxpayer is entitled to the use or occupation shall be deemed to be the initial period only;

(iii) in any case where the agreement granting the use or occupation of any property referred to in subparagraph A, B, C or D is silent or indefinite as to the period of use or occupation, the period of such agreement shall be deemed to be a period of **10 years**;

(iv) the allowance under subparagraph E shall not exceed for any year of assessment that portion (not being less than **1/10th**) of the amount of the premium or consideration so paid as the Commissioner may allow having regard to the period during which the taxpayer will enjoy the right to use such plant or machinery, patent, design, trade mark, copyright, model, plan, secret process or formula or other property as aforesaid, film, sound recording or advertising matter and any other circumstances which in the opinion of the Commissioner are relevant;

(v) if the land or buildings referred to in this paragraph are used or occupied by the taxpayer for the purposes of his trade or in the production of income and for other purposes, the allowance under this paragraph shall be reduced by such amount as the Commissioner, in the circumstances, considers fair and reasonable;

(vi) where the taxpayer acquires the ownership of any land or buildings, plant or machinery, patent, design, trade mark, copyright, model, plan, secret process or formula or other property, motion picture film or television film, sound recording or advertising matter in respect of which allowance has been made in terms of this paragraph, then from the year of assessment following that in which he acquires such ownership he shall cease to be entitled to any allowance under this paragraph in respect thereof;

(ii) for the purposes of this paragraph, the amount of any premium or consideration in the nature of a premium shall be reduced by the total amount of any similar allowance made under any previous law:

Provided that for the purposes of the calculation of the annual allowance in terms of proviso (i) to subparagraph (i) the amount of the premium or consideration shall not be reduced;

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### INCOME TAX ACT

(e)

(i) an allowance in respect of any expenditure actually incurred by the taxpayer in pursuance of an obligation to **effect improvements** on land or to buildings incurred under any agreement whereby the right of use or occupation of the land or buildings is granted by any other person, where the land or buildings are used or occupied for the purposes of trade or in the production of income:

Provided that—

(i) the aggregate of the allowances under this paragraph shall not exceed the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements or, if no amount is so stipulated, an amount representing in the opinion of the Commissioner the fair and reasonable value of the improvement;

(ii) any such allowance shall not exceed for any year of assessment such portion of the aggregate of the allowances under this paragraph as is equal to the said aggregate divided by the number of years (calculated from the date on which the improvements are first used or occupied for the purposes of trade or in the production of income) for which the taxpayer is entitled to the use or occupation, or 1/10th of the said aggregate, whichever is the greater, and if the taxpayer is entitled to such or occupation for an indefinite period, he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupation for a period of 10 years;

(iii) if the land or buildings referred to in this paragraph are used or occupied by the taxpayer for the purposes of his trade or in the production of income and for other purposes, the allowance under this paragraph shall be reduced by such amount as the Commissioner, in the circumstances, considers fair and reasonable;

(iv) in any case where such agreement is for an initial period which may be extended or renewed for a further period or periods, the period of such agreement shall be deemed to be the initial period only;

(v) where the taxpayer acquires the ownership of improvements in respect of which an allowance has been made under this paragraph, then from the year of assessment following that in which he acquires such ownership he shall cease to be entitled to any allowance under this paragraph in respect thereof;

(ii) for the purposes of this paragraph, the aggregate of the allowances determined under the provisions of proviso (i) to subparagraph (i) shall be reduced by the aggregate of any allowances of whatever nature made under a previous law in respect of the same improvements:

Provided that for the purposes of the calculation of the annual allowance in terms of proviso (ii) to subparagraph (i) the aggregate of the allowances shall not be so reduced;

(f)

(i) in respect of income from **mining operations**, the allowances and deductions for which provision is made in the *Fifth Schedule in lieu* of the allowances and deductions provided in paragraphs (c), (d), (e) and (f);

[SZ (Pvt) Ltd v Zimra 20-HH-142]

Provided that an allowance or deduction in terms of this subparagraph may be claimed in respect of 2 or more mining locations together, whether or not the expenditure or losses are attributable to either or any one of the mining locations concerned, where the Commissioner is satisfied that the mining operations conducted on the mining locations are inseparable or substantially interdependent, that is to say—

(i) both or all of the mining locations are held by the same taxpayer; and

(ii) the mineral or minerals produced at the locations are part of an integrated process of beneficiation under the control of the taxpayer;

[proviso inserted by Act 18/2000 from 1st January, 2001; substituted by Finance Act 1/2019 gazetted 20th February 2019 w.e.f. 1<sup>st</sup> January, 2019.]

(ii) where the taxpayer is a **miner**, any expenditure (other than expenditure in respect of which a deduction is allowable in terms of paragraph (a), which is proved to the satisfaction of the Commissioner to have been incurred during the year of assessment by the taxpayer on surveys, boreholes, trenches, pits and other prospecting and exploratory works undertaken for the purpose of acquiring rights to mine minerals in Zimbabwe or incurred on a mining location in Zimbabwe, together with any other expenditure (**other than** expenditure referred to in paragraph (a) of the definition of "capital expenditure" in paragraph 1 of the *Fifth Schedule*) which, in the opinion of the Commissioner, is incidental thereto:

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Provided that the taxpayer may elect (which election shall be binding) that the expenditure be—

- (a) allowed in the year of assessment in which it is incurred; or
- (b) carried forward and allowed against income from mining operations in any subsequent year of assessment.

[*LCF Zimbabwe Ltd v Zimra 20-HH-227*]

For the purposes of this subparagraph—

“**miner**” means any person who at the time the expenditure was incurred was—

- (a) the owner, tributor or option holder of a mining location; or
- (b) the holder of a prospecting licence issued or an exclusive prospecting order granted in terms of the Mines and Minerals Act [*Chapter 21:05*];
- (iii) where the taxpayer is ‘a miner’ as defined in subparagraph (ii), the amount of any royalty paid during the year of assessment in terms of section 245 of the Mines and Minerals Act [*Chapter 21:05*].

[subpara (iii) was inserted by Act 10/2003, then repealed by Act 1/2014 w.e.f. 1 January, 2014; and then re-inserted by Finance (No.2) Act 7/2019 gazetted on the 21<sup>st</sup> August, 2019 w.e.f. **1<sup>st</sup> January, 2020**. The repeal in 2014 does not affect the general formula for deduction of revenue expenditure *Zimra v Murowa Diamonds (Pvt) Ltd 23-SC-085*]

(g) the amount of any **debts** due to the taxpayer to the extent to which they are proved to the satisfaction of the Commissioner to be **bad**, if such amount is included in the current year of assessment or was included in any previous year of assessment in the taxpayer’s income either in terms of this Act or a previous law;

[Amended by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010.

*MR Bank Ltd v Zimra 19-HH-779*

*Man Ltd v Zimra 20-HH-078*

*MBCA Bank (Pvt) Ltd v Zimra 21-SC-140*]

(h) an amount to be determined in accordance with the *Sixth Schedule* in respect of contributions made in the year of assessment to a benefit or pension fund or the Consolidated Revenue Fund:

[*EE v COT 77-ITC-1269*]

Provided that no contribution to a retirement annuity fund shall be allowed as a deduction to a member of such fund who was not ordinarily

resident in Zimbabwe at the time he made the contribution unless—

- (i) he was ordinarily resident in Zimbabwe at the time he became a member of the fund; and
- (ii) he became a member of the fund before the 1<sup>st</sup> April 1967; and
- (iii) no amount in respect of the contribution is allowed as a deduction in terms of any law imposing a tax on income which is in force in a country other than Zimbabwe;

Provided further that if contributions to a benefit or pension fund are not payable wholly or in part in Zimbabwean currency but in a **foreign currency**, the amount of the appropriate contribution shall be the equivalent in **United States** dollars that is obtained by dividing the Zimbabwean dollar amount of the contribution on the **22nd February 2019** (when the rate of exchange of the RTGS dollar to the United States dollar was one-to-one) by **10**.

[further proviso inserted by Finance (No.2) Act 7/2019 gazetted on the 21<sup>st</sup> August, 2019 w.e.f. **1<sup>st</sup> August, 2019** to the **31<sup>st</sup> December 2019**]

(i) the amount of any arrear contributions which are paid by the taxpayer in respect of past service with his employer to a pension fund, other than a retirement annuity fund, or to the Consolidated Revenue Fund and which—

(i) do not exceed **8%** of the aggregate of his annual emoluments as defined in paragraph 1 of the *Sixth Schedule* for any period ending on or before the **31<sup>st</sup> March, 1972**, in respect of which the calculation of the arrear contributions payable was based; or

(ii) together with any amounts which have been allowed for the appropriate year of assessment as a deduction in terms of paragraph (h), do not, in relation to any period in respect of which the calculation of the arrear contributions payable was based, exceed—

A. if the period commences on or after the 1<sup>st</sup> April, 1972, and ends on or before the 31<sup>st</sup> March, 1975, two thousand dollars *per annum*; or

B. if the period commences on or after the 1<sup>st</sup> April, 1975, and ends on or before the 31<sup>st</sup> March, 1988, two thousand four hundred dollars *per annum*;

C. if the period commences on or after the 1<sup>st</sup> April, 1988, and ends on or before the 31<sup>st</sup> March, 1991, three thousand dollars *per annum*;

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D. if the period commences on or after the 1st April, 1991, and ends on or before the 31st March, 1994, three thousand six hundred dollars *per annum*;

**\*Provided that** no deduction shall be allowed in terms of this paragraph in respect of contributions paid by a member of a partnership in respect of any period **prior to the 1st April, 1995.**

**[Editor's note –** Because the **\*proviso** above was type-set incorrectly under para D in the 1996 Revised Edition , the repeal of D by section 10(c) of Act 18/2000 wrongly appears to repeal the following proviso as well.]

or

E. if the period commences on or after the 1st April, 1994, and ends on or before the 31st March, 1996, five thousand four hundred dollars *per annum*; or

F. if the period commences on or after the 1st April, 1996, and ends on or before the 31st December, 1998, ten thousand dollars *per annum*; or

G. if the period commences on or after the 1st January, 1999, and ends on or before the 31st December, 2000, fifteen thousand dollars *per annum*; or

H. if the period commences on or after the 1st January, 2001, thirty thousand dollars *per annum*;

[para D repealed and paras D – H substituted by Act 18/2000 from 1st January, 2001.]

I. if the period commences on or after the **1st January, 2009, US\$1800 per annum;**

[Subpara I inserted by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009.]

J. if the period commences on or after the **1st January, 2019, ZW\$14 400 per annum;**

[Subpara J (not I as gazetted- Editor) inserted by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August,2019: redesignated from **\$ US\$1 800**]

K. if the period commences on or after the **1st January, 2020, ZW\$80 000 per annum;**

[Subpara K -renumbered by Law Reviser-inserted by Act 13/2019 gazetted on the 31<sup>st</sup> December, 2019; threshold increased to the above from ZW18 000 by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

L. if the period commences on or after the **1st January, 2022, ZW\$ 500 000 per annum;**

[Subpara L -renumbered by the Editor-inserted by section 36 of Act 8/2022 gazetted on 24th October,2022.]

(j) the amount of any contributions paid to a **medical aid society** by an employer in respect of his employees or their dependents;

(k) in respect of income from the **sale of crops** or timber, or the sale of the right to reap crops or fell timber, which were growing on the land at the time of the acquisition of the ownership of such land by the taxpayer or in respect of income to which paragraph (h) of the definition of "gross income" in subsection (1) of section *eight* applies, an amount determined as follows—

(i) where such land was acquired by the taxpayer for valuable consideration, so much of the valuable consideration as the Commissioner thinks just and reasonable as representing the cost of such crops or timber;

(ii) where no valuable consideration was given by the taxpayer for such land, an allowance fixed by the Commissioner as representing the value of such crops or timber at the time that the taxpayer acquired such land;

(iii) where the taxpayer sells the crops or timber the amount to be deducted for any year of assessment shall be the proportion attributable to the crops or timber sold during that year;

(l) in respect of income from the sale by the taxpayer of crops or timber, the right to reap or fell and dispose of which was not acquired with the land on which the crops or timber were grown, so much of the consideration for which the crops or timber were acquired as is attributable to the amount of the crops or timber sold by the taxpayer in the year of assessment;

(m) the amount of any expenditure incurred by the taxpayer during the year of assessment in carrying out experiments and research relating to his trade, other than capital expenditure on plant, machinery, land or premises or on the acquisition by the taxpayer of rights, whether for the purpose of his trade or otherwise;

(n) any sum contributed by the taxpayer during the year of assessment in respect of expenditure incurred by any other person to which paragraph (m) would have applied had the expenditure been incurred by the taxpayer:

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Provided that the deduction shall not exceed an amount arrived at by applying the following formula—

**(A x B)/C**

in which—

A represents the amount of the contribution by the taxpayer;

B represents the amount of the expenditure incurred by the other person referred to in this paragraph which would have been allowed as a deduction in terms of paragraph (m) had it been incurred by the taxpayer;

C represents the amount of the expenditure which is incurred by the other person referred to in this paragraph in carrying out experiments and research;

(o) an amount equal to the sum contributed by the taxpayer during the year of assessment to a scientific or educational society or institution or other like body of a public character approved by the Commissioner if the taxpayer has stipulated that the sum must be utilized by such society, institution or body, as the case may be, solely for the purpose of industrial research or scientific experimental work connected with the trade of the taxpayer;

[Amended by Act 15/2002 from the 1st January, 2003,

and by the Finance (No.3) Act 10/2009 with effect from the year of assessment beginning on the 1st January, 2010 by deleting the doubling of 'the sum'.]

(p) any sum contributed by the taxpayer during the year of assessment in the form of a grant, bursary or scholarship to enable any person not connected with the taxpayer to take a course of technical education related to the trade of such taxpayer at any educational institution.

For the purposes of this paragraph—

**"director"** does not include a director—

(a) whose time, in the opinion of the Commissioner, is wholly occupied in the service of the company; and

(b) who is unable, either directly or indirectly, to control more than 5% of the voting rights attaching to all classes of the shares of the company;

**"person not connected with the taxpayer"** means a person who is not—

(a) the taxpayer, the spouse or a near relative of the taxpayer or a near relative of the spouse of the taxpayer; or

(b) in the case where the taxpayer is a company—

(i) an individual controlling the company or the spouse or near relative or nominee of an individual controlling the company or a near relative or nominee of the spouse of an individual controlling the company; or

(ii) a director of the company or the spouse or near relative or nominee of a director of the company or near relative or nominee of the spouse of a director of the company;

(q) any amount paid by way of an annuity, allowance or pension during the year of assessment by the taxpayer—

(i) to a **former employee** who has retired from the taxpayer's employment on the grounds of ill-health, infirmity or old age; or

(ii) to a **former partner** who has retired from the former partnership on the grounds of ill-health, infirmity or old age; or

(iii) to any person who is dependent for his maintenance upon a former employee or former partner of such taxpayer or, where such former employee or former partner is deceased, was so dependent immediately prior to his death:

Provided that—

(i) the deduction allowable in terms of this paragraph shall not exceed—

(a) under subparagraph (i), an amount of **\$zw250 000 or US\$ 500** in respect of any one former employee or, if that former employee received any amount by way of a pension or annuity during the year of assessment from any fund, wherever situated, of which the former employee contributed in respect of that former employee, an amount of **\$65 000** reduced by the amount of that pension or annuity;

(b) under subparagraph (ii), an amount of **zw\$100 000 or US\$ 200** in respect of any one former partner or, if that former partner received any amount by way of a pension or annuity during the year of assessment from any fund, wherever situated, to which the former partnership contributed in respect of that former partner, an amount of \$100 000 reduced by the amount of that pension or annuity;

[Amended in US\$ by Act 5/2009 w.e.f. 30<sup>th</sup> September, 2009; -further amended duly re-designated from US\$ to

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**zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019;  
amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019;  
threshold increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020;  
further by Finance Act 7/2021 w.e.f. 1<sup>st</sup> January, 2022;  
further by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

Provided that—

(i) the deduction allowable in terms of this paragraph shall not exceed—

(a) under subparagraph (i), an amount of **\$40 000** in respect of any one former employee or, if that former employee received any amount by way of a pension or annuity during the year of assessment from any fund, wherever situated, of which the former employee contributed in respect of that former employee, an amount of **\$40 000** reduced by the amount of that pension or annuity; or

[Amended in US\$ by Act 5/2009 w.e.f. 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; threshold increased by the Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

(b) under subparagraph (ii), an amount of **\$16 000** in respect of any one former partner or, if that former partner received any amount by way of a pension or annuity during the year of assessment from any fund, wherever situated, to which the former partnership contributed in respect of that former partner, an amount of **\$16000** reduced by the amount of that pension or annuity; or

[Amended in US\$ by Act 5/2009 w.e.f. 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by the Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; further by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(c) under subparagraph (iii), an amount of **\$100 000** in respect of persons so dependent on any one retired or deceased former employee or former partner, as the case may be, or, if those persons so dependent received any amount by way of pensions or annuities during the year of assessment from any fund, wherever situated, to which the former employer or former

partnership, as the case may be, contributed in respect of that retired or deceased former employee or former partner, as the case may be, **\$100 000** reduced by the amount of those pensions or annuities;

[Amended in US\$ by Act 5/2009 w.e.f. 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by the Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

(ii) **no deduction** shall be allowed in terms of this paragraph in respect of a former employee if the remuneration paid to the former employee during his employment with the taxpayer was a **domestic or private expense** of the taxpayer.

For the purposes of this paragraph—

**“former partner”**, in relation to a taxpayer, means a person who was a member of a partnership—

- (a) of which the taxpayer was a member; or
- (b) of which any other person with whom the taxpayer is in partnership was a member; or
- (c) which was a predecessor of any partnership of which the taxpayer is or was a member;

and **“former partnership”** shall be construed accordingly;

(i) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to—

(i) the National Scholarship Fund established in terms of the Public Finance Management Act [Chapter 22:19]; or

(ii) the National Bursary Fund established in terms of the Public Finance Management Act [Chapter 22:19]

(iii) a **charitable trust** administered by—

A. the Minister responsible for Social Welfare; or

B. the Minister responsible for Health;

in his capacity as such, or by any official in his Ministry, in his official capacity;

[Subpara (iii) inserted by Act 13/1996 from 1 April 1996.

the I.Cultural Institute was not a Trust *MW (Pvt) Ltd*

*v* *Zimra* 19-HH-806

Compare *MW (Pvt) Ltd v Zimra* 22-HH-022 which held that it was, and so reversed the tax assessed

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and paid on the donation made to the Institute in 2014.]

(r 1) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to the State or to a fund for any one or more of the following purposes approved by the Minister responsible for **health**—

(i) the purchase of medical equipment for a hospital operated by the State, a local authority or a religious organisation; or

(ii) the construction, extension or maintenance of a hospital operated by the State, a local authority or a religious organisation; or

(iii) the procurement of drugs, including anti-retroviral drugs, to be used in a hospital operated by the State, a local authority or a religious organisation:

[para (r1) inserted by Finance Act (No. 2) of 1999 from 1st January 2000; subpara (iii) amended by Act 29 of 2004 from the 1st January, 2005.]

**Provided that** the deduction allowable under this paragraph shall not exceed, **US\$ 100 000** converted at the auction rate prevailing on the day the donation is made;

[**proviso** amended by Act 10/2003 from 1st January, 2004; by Act 29 of 2004 from 1st January, 2005; by Act 12/2006 from 1st January, 2007; by Act 16 of 2007 increasing the limit beyond \$ 20 billion w.e.f. 1st January, 2008 and by the reduction to \$ 2.00 with effect from 1st August, 2008 i.t.o SI 109/2008; then increased to zw 20 billion by SI 149 of 2008, gazetted on the 23rd October, 2008 backdated to 1st October, 2008, and ending the 31st December, 2008; then increased to the above limit by Act 3/2009 w.e.f. 1st January, 2009; further amended re-designated from US\$ to zw\$ 1 million by Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; re-designated from zw back to US\$ by section 11 of Act 8/2020 gazetted on the 28<sup>th</sup> October, 2020 w.e.f. the **1st April, 2020**; deduction increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1st January, 2022; Amount converted **to zw1 50 million** by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(r 2) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to a **research institution** approved by the Minister responsible for higher or tertiary education:

[para (r 2) inserted by Act 27 of 2001 from 1st January, 2002]

Provided that the deduction allowable under this paragraph shall not exceed **zw\$50million**;

[proviso increased from \$10 million by Act 15/2002 from 1st January, 2003,

further from \$20 million by Act 10/2003 from 1st January, 2004,

further from \$100 million by Act 29 of 2004 from 1st January, 2005;

further by Act 12/2006 from 1st January, 2007; by Act 16 of 2007 increasing the limit of the deduction beyond \$ 25 million w.e.f. the year of assessment beginning on the 1st January, 2008;

and by the reduction from \$ 20 billion to \$ 2.00 w.e.f. 1st August, 2008 i.t.o SI 109/2008, without any increase beyond the above reduced limit by SI

149 of 2008 –

then increased by Act 3/2009 w.e.f. 1st January, 2009,

further amended re-designated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019; amended by Act 13/2019 w.e.f. 31st December, 2019;

deduction increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020;

amount converted **to zw1 50 million** by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(r 3) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to the State or to a fund for any one or more of the following purposes approved by the Minister responsible for **Education**—

(i) the purchase of educational equipment for a school operated by the State, a local authority or a religious organization; or

(ii) the construction, extension or maintenance of a school operated by the State, a local authority or a religious organization; or

(iii) the procurement of books or other educational materials to be used in a school operated by the State, a local authority or a religious organization:

**Provided that** the deduction allowable under this paragraph shall not exceed **zw1 50 million**.

[para (r 3) inserted by Act 27 of 2001 from 1st January, 2002;

proviso increased from ten million by Act 15/2002 from 1st January, 2003,

further from twenty million by Act 10/2003 from 1st January, 2004;

further from 100 million by Act 29 of 2004 from 1st January, 2005;

by Act 12/2006 from 1st January, 2007; further by Act 16 of 2007 increasing the limit of the deduction beyond \$ 25 million w.e.f. the year of assessment beginning on the 1st January, 2008;

## ICAZ STUDENT LEGISLATION HANDBOOK -

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and by the reduction from \$ 20 billion to \$ 2.00 with effect from 1st August, 2008 i.t.o SI 109/2008; and then increased to the above limit by SI 149 of 2008, gazetted on the 23<sup>rd</sup> October, 2008 backdated to the new period; beginning on the 1<sup>st</sup> October, 2008, and **ending the 31<sup>st</sup> December, 2008** – apparently in breach of Section 3(2) of this Act – See Note thereunder regarding backdating; and then increased to the above limit by Act 3/2009 w.e.f. 1<sup>st</sup> January, 2009; and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; deduction increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; amount converted to **zw\$ 50 million** by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(r 4) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to the Public Private Partnership Fund:

Provided that the deduction allowable under this paragraph shall not exceed **zw\$25 million**;

[para (r 4) inserted by Finance Act 10/2003 from 1<sup>st</sup> January, 2004 and reduced from **\$ 100 million** to the above limit w.e.f. 12/8/06 i.t.o. Act 12/06 and w.e.f. 1st August, 2008 i.t.o. SI 109/2008 ; amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009 and further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019 amended by Act 13/2019 w.e.f. 31st December, 2019; deduction increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020 : and to zw\$ 25 million by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(r 5) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to the Destitute Homeless Persons Rehabilitation Fund, being a fund established by the Ministry of Finance under the Public Finance Management Act [Chapter 22:19] to alleviate the condition of destitute homeless persons:

[para (r 5) inserted by Finance Act 29 of 2004 from the 1st January, 2005]

Provided that the deduction allowable under this paragraph shall not exceed **zw\$25 million**;

[proviso reduced from **\$ 500 million** to the above limit w.e.f. 12/8/06 i.t.o. Act 12/06 and w.e.f. 1st August, 2008 i.t.o. SI 109/2008; amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009 further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019 amended by Act 13/2019 w.e.f. 31st December, 2019; deduction increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December,

2020 and to zw\$ 25 million by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(s) any subscription paid during the year of assessment by the taxpayer in respect of his continued membership for any period of any business, trade, technical or professional association;

(t) in respect of income from a business, the amount of any expenditure which—

(i) is incurred by the taxpayer not more than 18 months before beginning a business in the course of establishing the business; and

(ii) would have been allowed as a deduction had it been incurred after beginning the business; and

(iii) is claimed as a deduction in the year of assessment in which the business is commenced;

[W v COT 80-ITC-1323]

(u) in respect of income derived by the taxpayer from the carrying on of a trade, an amount equal to the value, determined for the purposes of subparagraphs (i) and (iv) of paragraph (h) of the definition of “gross income” in subsection (1) of section *eight*, of the **trading stock** belonging to the taxpayer which had not been disposed of or for which was attached in pursuance of an order of court at the end of the immediately preceding year of assessment. For the first year of assessment under this Act, the value of the trading stock included in the gross income of the taxpayer for the last year of assessment in terms of the previous law or which would have been included had he been liable for tax, shall be the value of the trading stock to be deducted for the purposes of this paragraph;

(v) in respect of income derived by the taxpayer during any year of assessment from the carrying on of a trade, an amount equal to the amount which the Commissioner considers was at the date it was brought to hand, or at the date it was acquired, whichever the Commissioner may decide, the fair and reasonable value of such of the trading stock of the taxpayer as was acquired by the taxpayer otherwise than in the ordinary course of trade:

Provided that in no case other than that of inheritance by a beneficiary in a deceased estate shall the deduction exceed the amount which would have been allowed as a deduction to the person from whom the stock was acquired had it been sold by such person in the ordinary course of trade;

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(w) any expenditure not exceeding **zw\$1,250 000** incurred by the taxpayer during the year of assessment in attending during that year—

[increased by Act 15/2002 from 1st January, 2003, further increased by Act 10/2003 from 1st January, 2004

and further increased from 5 million by Act 29 of 2004 from 1st January, 2005, by Act 12/2006 from 1st January, 2007 and further by Act 16 of 2007 increasing the limit of the deduction beyond \$ 1 million w.e.f. 1/1/08; and by the reduction from \$ 7.5 billion to **\$ 0.75** with effect from **1st August, 2008** i.t.o **SI 109/2008**; increased to the zw\$1.25 billion by **SI 149 of 2008**, gazetted on the 23<sup>rd</sup> October, 2008 backdated to the period beginning on the 1<sup>st</sup> October, 2008, and **ending the 31<sup>st</sup> December, 2008** – apparently in breach of Section 3(2) of this Act – See **Note** thereunder regarding backdating – and then increased to the above limit by Act 3/2009 w.e.f. 1<sup>st</sup> January, 2009 and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019: deduction increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020. and to zwl 1,250 000 by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(i) not more than 1 convention which, in the opinion of the Commissioner, was in connection with the trade carried on by the taxpayer; or

(ii) **not more than 1 trade mission**, approved by the Minister, in connection with the trade carried on by the taxpayer:

Provided that—

(i) if any such convention or trade mission commences in one year of assessment and ends in another, then for the purposes of this paragraph the convention or trade mission shall be deemed to have been attended, and the expenditure shall be deemed to have been incurred, in the year of assessment in which the convention or trade mission ends;

(ii) where the person attending such convention or trade mission is a member of a **partnership** and the expenditure has been incurred by the partnership, the deduction shall be allowed in respect of 1 convention or trade mission for each partner to the extent of the expenditure incurred by the partnership in connection with the attendance or \* **zw\$1,800,000,00**, whichever is the lesser, and shall be allowed to that person and to the other members of that partnership in the same proportion as each member shares in the profits or losses of the partnership during the year of assessment in which the expenditure was

incurred or deemed to have incurred in terms of proviso (i);

[increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(x) ...

[repealed by s 7 of Act 17 of 1995 from 1 April 1996.]

(y) in respect of income derived by a co-operative agricultural company or co-operative society—

(i) any amount distributed during the year of assessment by way of discounts, rebates or bonuses granted by the company or society to shareholders, members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the company or society; and

(ii) an amount calculated at the rate of one dollar for each dollar by which the taxable income of such company or society, before the deduction of any allowance in term of this subparagraph, is less than **zw\$250 000**:

[amount increased from \$15 by Act 18/2000 from the 12th January, 2001; then limit reduced from \$15 000 to the above limit w.e.f. 12/8/06 i.t.o. Act 12/06 and w.e.f. 1st August, 2008 i.t.o **SI 109/2008** amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009 – and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019. amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019: deduction increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020 .increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022  
*D v COT 99-ICT-1669*]

Provided that—

(i) if, in the opinion of the Commissioner, the company or society and one or more other co-operative agricultural companies or co-operative societies are under the management or control of the same persons, the deduction allowable under this subparagraph shall not exceed an amount determined by applying the formula—

$$((A/(A+B)) \times C)$$

in which—

**A** represents the taxable income of the company or society before the deduction of any allowance in terms of this subparagraph;

**B** represents the total of the taxable income of such other companies or societies before the

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deduction of any allowance in terms of this subparagraph;

**C** represents the amount that would have been calculated in terms of this subparagraph if such amount had been calculated on the total of the taxable incomes, before the deduction of any allowances in terms of this subparagraph, of the company or society and such other companies or societies;

(ii) the deduction allowable in terms of this subparagraph shall not exceed the taxable income of the company or society calculated before the deduction of any allowance in terms of this subparagraph;

For the purposes of this paragraph—

**“co-operative agricultural company”** means a co-operative company which is registered under the Companies and Other Business Entities Act [Chapter 24:31] and which by its articles provides that only—

(a) a person carrying on farming operations for the benefit of himself in Zimbabwe, either exclusively or in conjunction with some other person or with some other business, profession or occupation; or

(b) another co-operative agricultural company; or

(c) a co-operative society;

shall be admitted to membership;

**“co-operative society”** means a co-operative society which is registered in terms of the Co-operative Societies Act [Chapter 24:05];

(z) in addition to the deductions allowable in terms of this subsection, a farmer shall be entitled in respect of his farming operations to the deductions for which provision is made in the *Seventh Schedule*;

(aa) the amount of any costs, taxed by the registrar of the High Court during the year of assessment and not recovered from any source whatsoever, incurred by the taxpayer in connection with an appeal made in terms of section *sixty-five*, if—

(i) the appeal is allowed in full; or

(ii) the appeal is allowed to a substantial degree and the High Court or the Special Court, as the case may be, directs that such costs shall be allowed as a deduction in terms of this paragraph;

Provided that—

(i) if any determination of the High Court or the Special Court is reversed, affirmed or amended by the Supreme Court on an appeal in terms of section *sixty-six*, no deduction shall be made in terms of this paragraph unless the decision of the Supreme Court is wholly or substantially favourable to the taxpayer and the Supreme Court directs that such costs shall be allowed as a deduction in terms of this paragraph;

(ii) no deduction shall be made in terms of this paragraph until the time for noting an appeal in terms of section *sixty-six* has lapsed or any appeal so noted has been heard and determined and any costs shall be deemed not to have been taxed until such lapse or determination;

(bb) the amount of any costs, taxed by the registrar of the Supreme Court during the year of assessment and not recovered from any source whatsoever, incurred by the taxpayer in connection with an appeal made in terms of section *sixty-six*, if—

(i) the decision of the Supreme Court is wholly or substantially favourable to the taxpayer; and

(ii) the Supreme Court directs that such costs shall be allowed as a deduction in terms of this paragraph.

[*Nestle Zimbabwe (Pvt) Ltd v Zimra* 21-SC-148]

(cc) if the taxpayer so elects, an allowance of such amount as may be fixed by the Commissioner in respect of such expenditure or losses, not being expenditure or losses of a capital nature, as he considers will be incurred by the taxpayer after the end of the year of assessment and will be directly related to gross income received by or accrued to the taxpayer during the year of assessment in respect of services to be rendered or goods to be delivered after the end of the year of assessment:

[*SZ (Pvt) Ltd v Zimra* 20-HH-142]

Provided that—

(i) such allowance shall be reduced by the amount of any expenditure or losses, not being expenditure or losses of a capital nature, which are incurred during the year of assessment and which are directly related to gross income to be received or to accrue after the end of the year of assessment in respect of services rendered or to be rendered or goods delivered or to be delivered;

(ii) such allowance, after any reduction in terms of proviso (i), shall be included in the

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income of the taxpayer for the following year of assessment.

[applies to drawdowns *GFZ Ltd v ZIMRA 19-HH-843*]

(*dd*) in addition to the deductions allowable in terms of this subsection a person operating a business in a **growth point area** shall be entitled for the year of assessment beginning on the 1st April, 1981, and any subsequent year of assessment in respect of such operations to the deductions for which provision is made in the *Fourteenth Schedule*;

(*ee*) in respect of **petroleum operations**, the allowances and deductions for which provision is made in the *Twentieth Schedule in lieu* of the allowances and deductions provided for under the other paragraphs of this subsection.

(*ff*) in respect of **special mining lease operations**, the allowances and deductions for which provision is made in the *Twenty-Second Schedule in lieu* of the allowances and deductions provided for under the other paragraphs of this subsection;

(*gg*) the amount of any export-market development expenditure incurred by the taxpayer during the year of assessment, together with an amount equal to 100% of such expenditure.

For the purposes of this paragraph—

**“export market development expenditure”** means expenditure, not being expenditure of a capital nature, that is proved to the satisfaction of the Commissioner to have been incurred wholly or exclusively for the purpose of seeking opportunities for the export of goods from Zimbabwe or of creating or increasing the demand for such exports and, without derogation from the generality of the foregoing, includes expenditure for any one or more of the following purposes—

(i) research into, or the obtaining of information relating to, markets outside Zimbabwe;

(ii) research into the packaging or presentation of goods for sale outside Zimbabwe;

(iii) advertising goods outside Zimbabwe or otherwise securing publicity outside Zimbabwe for goods;

(iv) soliciting business outside Zimbabwe or participating in trade fairs;

(v) investigating or preparing information, designs, estimates or other material for the

purpose of submitting tenders for the sale or supply of goods outside Zimbabwe;

(vi) bringing prospective buyers to Zimbabwe from outside Zimbabwe;

(vii) providing samples of goods to persons outside Zimbabwe;

**“goods”** means anything that has, in Zimbabwe, been manufactured, produced, grown, assembled, bottled, canned, packed, graded, processed or otherwise dealt with in such manner as the Commissioner may approve;

(*hh*) the amount of any tobacco levy paid in the year of assessment in terms of section *thirty-six A*;

(*jj*) an amount representing the fair value of any stock, shares, debentures, units or other interest paid or given by the taxpayer to an employee of the taxpayer or for the benefit of an employee of the taxpayer pursuant to an approved employee share ownership scheme or trust.

[paragraphs (*gg*) and (*hh*) repealed by Act 18/2000 from the 1st January, 2001, and re- inserted with a new para (*jj*) by Act No.27 of 2001 from 1st January, 2002.

*Old Mutual Zimbabwe Ltd v Commissioner-General of Zimra & Zimra 16-HH-143]*

(*kk*) an amount paid by the taxpayer during the year of assessment in respect of expenditure approved by the Minister responsible for Local Government at the request of the Local Authority concerned for the maintenance of any one or more of the following things managed or owned by the Local Authority—

(i) buildings;

(ii) roads;

(iii) bridges;

(iv) sanitation works;

(v) water works;

(vi) public parks;

(vii) any other utility, amenity or item of infrastructure approved by the Minister responsible for Local Government:

Provided that the deduction allowable under this paragraph shall not exceed zw\$25 million.

[Paragraph (*kk*) inserted by Act 10/2003 from the 1st January, 2004; amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup>

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September, 2009; further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; deduction increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(II) an amount—

(i) of any contribution or donation paid by a taxpayer in the year of assessment to a **community share ownership trust** or scheme established by the taxpayer in compliance with the Indigenisation and Economic Empowerment Act [Chapter 14:33];

[Donations to preserve the appellant's income-earning structure *Unki Mine (Pvt) Ltd v ZIMRA* 22-SC-015.]

(ii) equivalent to the value of the shares of a corporate taxpayer that are lent in the year of assessment to an indigenisation partner of the taxpayer pursuant to a **corporate vendor-financed loan** (this deduction to be allowed in equal annual instalments over the period of the loan);

(iii) (\*of) interest payable by an indigenisation partner in the year of assessment on any loan advanced to him or her to purchase shares in the company of which he or she is an indigenous partner;

For the purposes of this paragraph—

**“community share ownership trust or scheme”** means such a scheme approved in terms of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in SI 21/2010;

**“corporate vendor-financed loan”** means a loan of shares in a corporate taxpayer to an aspirant shareholder of that taxpayer which are purchased by the aspirant shareholder by means of dividends forgone on those shares in favour of the taxpayer;

**“indigenisation partner”** means an indigenous person who benefits (whether as an employee or in any other capacity) under an indigenisation implementation plan approved in terms of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in SI 21/2010;

(mm) the amount of a lump sum contribution made by an employer in the year of assessment concerned towards capitalising a pension fund of which his or her employees are members,

that is to say, an amount which the Commissioner is satisfied, on the basis of—

(i) an **actuarial certificate** furnished to the Commissioner by or on behalf of the employer; and

(ii) a **certificate by the Minister** (issued after consultation with Insurance and Pensions Commission) to the effect that, having taken the actuarial certificate into account, the Minister is satisfied that the lump sum contribution made by the employer will result in increased pensions or benefits for persons who are or have been members of the pension fund, which increased pensions or benefits will be fair and not unfairly discriminate against or unfairly prejudice any class of persons who are or have been members of the pension fund;

For the purposes of this paragraph —

**“actuarial certificate”** means a certificate issued by an actuary;

**“actuary”** means a person who is a member or fellow of an institute, faculty, society or association of actuaries approved by the Pensions and Insurance Commission for the purposes of the Insurance Act [Chapter 24:21];

**“Insurance and Pensions Commission”** means the Insurance and Pensions Commission established by section 3 of the Insurance and Pensions Commission Act [Chapter 24:21];

**“pension fund”** means a pension fund registered in terms of the \*Pension and Provident Funds Act [Chapter 24:32].

[paragraph (mm) inserted by Finance (No.3) Act 11 of 2014 w.e.f. 6th January, 2015 This \*Act replaced Chapter 24:09 on the 2<sup>nd</sup> September, 2022- editor]]

(nn) the amount of any expenditure related to technical and support services that is incurred by a taxpayer who is an anchor company to an **outgrower farmer** during the year of assessment, together with an amount equal to 50% of such expenditure.

For the purposes of this paragraph—

**“anchor company”** means a company that provides inputs, agronomic advice and marketing opportunities to a group of outgrower farmers and small or medium enterprises;

**“expenditure related to technical and support services”** means such items of

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expenditure as the Minister shall specify in regulations made under section *ninety*;

**“outgrower farmer”** means a farmer who is a party to a scheme or contract whereunder an anchor company supplies inputs, agronomic advice and marketing opportunities in return for the outgrower farmer selling or delivering the contract or scheme produce to the anchor company or other person designated by the scheme or contract;

[subparagraph (nn) inserted by the Finance Act 1 of 2018 w.e.f. the year of assessment beginning on the 1st January, 2018 corrected by SI 188/2018.]

(oo) the amount of any expenditure incurred by a prescribed company under a BOT and BOOT public private partnership agreement on projects and related off-site infrastructure.

[Subparagraph (oo) inserted by the Finance (No.2) Act 10/2020 w.e.f. 1<sup>st</sup> January, 2021.]

For the purposes of this sub-paragraph—

**“BOT public private partnership agreement”** and **“BOOT public private partnership agreement”** bear the meanings assigned to those terms in paragraphs 3 and 5 of Part III of the Fourth Schedule to the Zimbabwe Investment and Development Agency Act [Chapter 14:38];

**“prescribed company”** means a company prescribed for the purposes of this paragraph by the Minister by notice in the *Gazette*.

(2a) No tax invoice for the supply of goods or services subject to value added tax in terms of the Value Added Tax Act [Chapter 23:12] shall be submitted to the Commissioner in proof of any expenditure qualifying for deduction under subsection (2) unless it is a fiscal tax invoice provided by a registered operator, and printed by a fiscalised electronic register or fiscal memory device used by a registered operator for the purpose of section 20 of the Value Added Tax Act [Chapter 23:12].

[Subsection (2a) inserted by Finance (No. 2) Act 10 of 2022 w.e.f. 1<sup>st</sup> January, 2023.]

(3) Subject to this section, from the amount of income remaining after the deductions referred to in subsection (2) and sections *seventeen* and *eighteen* have been made, there shall be deducted any assessed loss determined in respect of the previous year of assessment:

Provided that—

(i) no taxpayer who—

(a) has been adjudged or otherwise declared or become insolvent; or

(b) has made an assignment of his property or estate for the benefit of his creditors;

shall be entitled to carry forward an assessed loss incurred before the date he was adjudged or otherwise declared or become insolvent or made the assignment, as the case may be;

(ii) if during any year of assessment there is a change in the shareholding of a company with an assessed loss or in the shareholding of any company which directly or indirectly controls any company with an assessed loss and the Commissioner is satisfied that such change has been effected solely or mainly in pursuance of or in connection with any scheme for taking advantage of such assessed loss, no assessed loss incurred prior to that change shall be deductible.

For the purposes of this proviso a company shall be deemed to be controlled by another company if the majority of the voting rights attaching to all classes of its shares are held directly or indirectly by such other company;

(iii) if the Commissioner decides that a company with an assessed loss (hereinafter called **“the old company”**)—

(a) was incorporated outside Zimbabwe; and

(b) carried on its principal business within Zimbabwe; and

(c) is about to be wound up voluntarily in its country of incorporation for the purpose of the transfer of the whole of its business and property wherever situate to a company which will be or has been incorporated under any law (hereinafter called **“the new company”**) for the sole purpose of acquiring the whole of the business and property wherever situate of the old company and where—

I. the sole consideration for the transfer will be the issue to the members of the old company of shares in the new company in proportion to their shareholdings in the old company; and

II. no shares in the new company will be available for issue to any persons other than members of the old company;

the new company shall be allowed as a deduction after the transfer referred to in paragraph (c) has been effected, the assessed loss of the old company;

(iv) where taxpayer, whether before, on or after the 1st April, 1991, has carried forward an

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assessed loss over 2 or more consecutive years of assessment—

(a) subject to paragraph (b), that part of the assessed loss which was determined in respect of the earliest such year shall be deducted first, then that part determined in respect of the next such year, and so on until—

(i) the entire assessed loss has been deducted; or

(ii) there is no further income against which to deduct the assessed loss, in which event, subject to provisos (i), (ii) and (iii), the balance of the assessed loss shall be carried forward to the next year of assessment;

(b) except in the case of an assessed loss or any part thereof arising from mining operations, no part of an assessed loss shall be deducted which was first determined in respect of a year of assessment more than 6 years before the year of assessment in which the deduction is made;

(v) if—

(a) a company which is incorporated under the Companies and Other Business Entities Act [*Chapter 24:31*] and which has an assessed loss is converted into a private business corporation; or

(b) a private business corporation with an assessed loss is converted into a company in terms of the Companies and Other Business Entities Act [*Chapter 24:31*];

and the Commissioner is satisfied that such conversion has not been effected solely or mainly in pursuance of or in connection with any scheme for taking advantage of the assessed loss, the new private business corporation or the new company, as the case may be, shall be allowed the assessed loss as a deduction after the conversion.

[Subsection (3) amended by Act 13/1996 from 1 April 1996.]

(vi) in the case of a person engaged in **mining operations** in more than one mining location who has an assessed loss in respect of the year of assessment ending on the 31st December, 2000, and at the end of any subsequent year of assessment, no such assessed loss shall be allowed as a deduction unless the person concerned submits for the approval of the Commissioner a breakdown showing the extent to which such assessed loss is attributable to each of the locations concerned.

[proviso (vi) inserted by Act 18/2000 from the 12th January, 2001.]

(4) Where in respect of any amount, a deduction would but for this subsection be allowable under more than one provision of this Act and whether it would be so allowable in respect of the same or different years of assessment, the taxpayer shall not be entitled to claim that such amount shall be deducted more than once and, where the deduction would but for this subsection be allowable under more than one provision of this Act in respect of the same year of assessment, the taxpayer shall elect under which one of those provisions he wishes to claim such amount as a deduction.

[*ZIMRA v Murowa Diamonds (Pvt) Ltd 23-SC-085*]

(5) No assessed loss attributable to **petroleum operations**, as defined in paragraph 1 of the *Twentieth Schedule*, shall be allowable as a deduction to the petroleum operator concerned in respect of any income accruing to him from any trade other than petroleum operations.

(6) No assessed loss shall be allowed as a deduction from income consisting of interest payable by—

(a) any bank, discount house or finance house registered or required to be registered in terms of the Banking Act [*Chapter 24:20*]; or

(b) any building society registered or required to be registered in terms of the Building Societies Act [*Chapter 24:02*];

in respect of any loan to or deposit with that bank, discount house, finance house or building society.

(7) No assessed loss, as defined in paragraph 1 of the *Twenty-Second Schedule*, shall be allowable as a deduction to the holder of a **special mining lease** in respect of income other than income attributable to special mining lease operations, and no expenditure or loss in respect of any other trade carried on by him shall be allowable against income from special mining lease operations.

(8) No assessed loss attributable to business operations carried on by a taxpayer shall be allowable as a deduction from income received by or accruing to him under a contract of employment.

[Subsection (8) inserted by Act 13/1996 w.e.f. the year of assessment beginning on 1 April 1996.]

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#### 16 Cases in which no deduction shall be made

(1) Save as is otherwise expressly provided in this Act, **no deduction** shall be made in respect of any of the following matters—

(a) the cost incurred by any taxpayer in the maintenance of himself, his family or establishment;

[eye operation for lawyer disallowed *L v COT 91-HH-001*]

(b) domestic or private expenses of the taxpayer, including expenses incurred in travelling between his home and the place at which he carries on a trade and, in the case of a taxpayer who carries on 2 or more trades which are distinct in nature, between the places at which such trades are carried on;

(c) any loss or expense which is recoverable under any insurance contract or indemnity;

(d) tax upon the income of the taxpayer or interest payable thereon, whether charged in terms of this Act or any law of any country whatsoever;

(d1) any amount of Intermediated Money Transfer Tax charged in terms of section **36G** of this Act;

[para (d1) inserted by sect 8 of Finance Act 1/2019 w.e.f. 13th October, 2018 - declared *ultra vires* by *Milo.M v Minister of Finance 19-HH-605* - against which an appeal has been filed in the Supreme Court; section 36G substituted in place of 'section 22G' by section 10 of Finance Act 8/2022 gazetted on the 24th October, 2022.]

(e) income carried to a **reserve fund** or capitalized in any way;

[*CF (Pvt) Ltd v ZIMRA 18-HH-099*  
*DNS (Pvt) Ltd v ZIMRA 19-HH-722*]]

(f) so much of any expenditure or loss, including the whole or any part of an assessed loss in a previous year of assessment, as is incurred—

(i) in the production of any amount exempt from income tax in terms of this Part or not derived or deemed to be derived from sources within Zimbabwe;

[*"T." Ltd. v. Commissioner of Taxes 66-RLR-021*]

or

(ii) in connection with any operation or transaction or the carrying on of a trade which would, had any amount been derived as a

result, direct or indirect, of the operation or transaction or the carrying on of the trade, have been expenditure or a loss such as is described in subparagraph (i);

(g) any contribution made by a taxpayer to a fund established for the purpose of providing pensions, annuities or sickness, accident or unemployment or other benefits for employees or the widows, children, dependants or nominees of deceased employees or for all or any of those purposes;

(h) interest which might have been earned on any capital employed in trade;

(i) the rent of, or cost of repairs to, any premises not occupied for the purposes of trade, or any dwelling-house or domestic premises, **except such part** thereof as may be occupied for the **purposes of trade**;

(j) any expenditure incurred by the taxpayer in pursuance of an obligation imposed on him under an agreement which restrains another person from selling goods other than those supplied to him by the taxpayer;

(k) any expenditure incurred by a taxpayer in **leasing a passenger motor vehicle** as defined in subparagraph (2) of paragraph 14 of the *Fourth Schedule* and first leased—

(i) in or after the year of assessment beginning on the 1st April, 1986, but before the **1st April, 1991**, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds **\$ 22 000**;

(ii) in the year of assessment beginning on the 1st April, 1991, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds **\$ 30 000**;

(iii) in or after the year of assessment beginning on the 1st April, 1992, but before the **1st April, 1995**, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds **\$ 50 000**;

(iv) in or after the year of assessment beginning on the 1st April, 1995, but before the **1st January, 1999**, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds **\$ 75 000**;

[Amended by Act 29 of 1998 from 1 January 1999.]

(v) in or after the year of assessment beginning on the **1st January, 1999**, to the

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extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds **\$ 200 000**;

[substituted below by Finance Act of 2021 w.e.f....,2021]

(vi) in or after the year of assessment beginning on the **1st January, 2021**, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds **zw\$ 1 300 000 or US 10 000**;

[Inserted by Act 29 of 1998 from the 1 January 1999.]

(vi) in or after the year of assessment beginning on the **1st January, 2009**, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds **\$ 5 million**;

[Inserted by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009;  
further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August,2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019;  
amount increased by the Finance (No.2) Act 10/2020 w.e.f. 1<sup>st</sup> January, 2021;  
increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(l) the cost of any shares awarded by any company to any employee.

For the purposes of this paragraph **"employee"** includes a director.

(m) any expenditure incurred by any taxpayer on entertainment whether directly or by the provision of any allowance to any employee to incur expenditure or entertainment on behalf of the taxpayer.

For the purposes of this paragraph—

**"employee"** includes a director;

**"entertainment"** includes hospitality in any form;

[lunch taken at the work place in the mine or the canteen *SZ (Pvt) Ltd v Zimra* 20-HH-142 -hospitality test to be applied where canteen meals provided in a bakery *IAB Company v Zimra* 22-HH-032]

(n) any expenditure incurred in the production of any income referred to in proviso (i) to subsection (2) of section *twelve*;

(o) any expenditure incurred in the production of income consisting of interest payable by—

(i) any bank, discount house or finance house registered or required to be registered in terms of the Banking Act [*Chapter 24:20*]; or

(ii) any building society registered or required to be registered in terms of the Building Societies Act [*Chapter 24:02*];

in respect of any loan to or deposit with that bank, discount house, finance house or building society.

[Para (o) amended by s 82 of & the Schedule to the Banking Act [*Chapter 24:20*]

para (p) repealed by Act 15/2002 from the 1st January, 2002.]

(q) any expenditure incurred by a local branch or subsidiary of a foreign company, or by a local company or subsidiary of a local company, in **servicing any debt** or debts contracted in connection with the production of income to the extent that such debt or debts cause the person to exceed a debt to equity ratio of **3 : 1** (for the purpose of this paragraph, "**equity**" means issued and paid-up capital, unappropriated profits, reserves, realised reserves and interest-free loans from shareholders):

[[Improper to split the payments of expenditure into segments some deductible and some not deductible. *NOC (Pvt) Ltd v ZIMRA* 19-HH-765 para (q) substituted by the Finance Act 1 of 2018 w.e.f. the year of assessment beginning on the 1st January, 2018.]

Provided that this paragraph shall not apply if the debt or debts in question—

[proviso substituted by Finance (No.2) Act 7/2019 gazetted on the 21<sup>st</sup> August 2019 w.e.f. **1st August, 2019**]

(i) are contracted by a local company or subsidiary of a local company with a locally domiciled, registered or incorporated financial institution or other person ordinarily resident in Zimbabwe, and the contracting parties are not associated with each other within the meaning contemplated in section *twoA*, and have not colluded for the purpose of avoiding tax by the application of this proviso;

(ii) are contracted through a Government credit facility by a public entity as defined in the Public Entities Corporate Governance Act [*Chapter \*10:33*]

[Editor has corrected this \*Chapter to read as above]

(r) in the case of expenditure incurred on **fees**, administration and management in favour of a company of which the taxpayer is an

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associated enterprise, or (where the company is a **foreign company**) the local branch—

[100% penalty applied for deliberately invoking the inapplicable provisions of s 15 (2)(cc). *GFZ Ltd v Zimra* 19-HH-843  
*TL v Zimra* 20-HH-413]

(i) **incurred prior to** the commencement of trade or the production of income or during any period of non-production, any amount in excess of **0,75%** of the amount obtained by applying the following formula—

**A – (B + C)**

where —

**A** represents the total expenditure qualifying for deduction in terms of section *fifteen*;

**B** represents the expenditure on fees or administration and management paid outside Zimbabwe;

[*MR Bank Ltd v Zimra* 19-HH-779]

**C** represents expenditure qualifying for deduction in terms of section *fifteen*(2)(f)(i);

(ii) **incurred after** the commencement of trade or the production of income , any amount in excess of **1%** of the amount obtained by applying the above formula: **A- (B+C)**

[para (r) inserted by Act 18/2000 w.e.f. 1<sup>st</sup> January, 2001; amended by Act 10/2003 w.e.f. 1<sup>st</sup> January,2004 ; and substituted by the Finance Act No.2 of 2017 gazetted on 23<sup>rd</sup> March,2017 backdated to the 1<sup>st</sup> January,2017  
*MBCA Bank (Pvt) Ltd v Zimra* 21-SC-140]

(s) any interest expenditure incurred on foreign loans in excess of the interest that would have been payable had the exchange rate used to purchase the foreign currency needed to service the interest on the loan been the same exchange rate as that ordinarily offered to other clients of the financial institution providing or mediating the loan on the date of the transaction in question.

[para (s) inserted by Act 13/2019 w.e.f. 1st January, 2020]]

(2) No deduction which is not a deduction in respect of expenditure or loss shall be made in respect of any matter, other than those referred to in paragraph (h) or (q) of subsection (2) of section *fifteen*, if the Commissioner decides that the matter is not directly related to the trade carried on by the taxpayer in Zimbabwe.

### 17 Special provisions relating to hire-purchase or other agreements providing for postponement of passing of ownership of property

If any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of movable property, the ownership shall pass or, in the case of immovable property, transfer shall be effected from the taxpayer to that other person upon or after receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer on the date on which the agreement was entered into:

[*CF (Pvt) Ltd v ZIMRA* 18-HH-099]

Provided that—

(i) in the case of **movable** property—

A. the Commissioner, taking into consideration any allowance he has made under paragraph (g) of subsection (2) of section *fifteen*, may make such further allowance as under the special circumstances of the trade of the taxpayer seems to him reasonable in respect of all amounts which are deemed to have accrued under such agreement but which have not been received at the close of the taxpayer's accounting period;

B. any allowance so made shall be included as income in his return for the following year of assessment and shall form part of the income of the said taxpayer and for the first year of assessment under this Act the amount to be included shall be the amount of any similar allowance made in the immediately preceding year of assessment in terms of the previous law;

C. if any such agreement has been ceded or otherwise disposed of for valuable consideration by the taxpayer, then no such allowance shall be made by the Commissioner in the year of assessment in which such cession or disposal took place;

(ii) in the case of **immovable** property—

A. the Commissioner shall deduct an allowance determined by applying the following formula—

**D x (E- (F+G))/E**

in which—

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**D** represents that portion of the amount deemed to have accrued under such agreement which is not receivable at the close of the taxpayer's accounting year;

**E** represents the amount deemed to have accrued under the agreement;

**F** represents the cost to the taxpayer of the immovable property so disposed of;

**G** represents that proportion of development and other charges which the Commissioner considers is applicable to such property;

**B.** any allowance so deducted shall be included as income in his return for the following year of assessment and shall form part of the income of the said taxpayer;

**C.** if any such agreement is ceded or otherwise disposed of for valuable consideration by the taxpayer, then no such allowance shall be made by the Commissioner in the year of assessment in which such cession or disposal took place.

### 18 Special provisions relating to credit sales

If any taxpayer has entered into any agreement with any other person in respect of any movable property the effect of which is that—

(a) the ownership shall pass to that other person on delivery of the property; and

(b) the amount payable to the taxpayer under the agreement shall be paid in instalments;

the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer on the date on which the agreement was entered into:

Provided that—

(i) the Commissioner, taking into consideration any allowance he has made under paragraph (g) of subsection (2) of section fifteen, may make such further allowance as under the special circumstances of the trade of the taxpayer seems to him reasonable in respect of all amounts which are deemed to have accrued under such agreement but which have not been received at the close of the taxpayer's accounting period;

(ii) any allowance made in terms of proviso (i) shall be included as income in his return for the following year of assessment and shall form part of the income of the said taxpayer.

### 19 Special provisions relating to persons carrying on business which extends beyond Zimbabwe

(1) Where the trade of any person, other than a person carrying on the business of insurance, extends to any country other than Zimbabwe and the Commissioner is satisfied that it is impossible or impracticable to ascertain the taxable income derived by such person from sources in Zimbabwe in the manner otherwise provided in this Act, such person shall submit to the Commissioner proposals for the determination of his taxable income in some alternative manner.

(2) The Commissioner shall consider the proposals submitted in terms of subsection (1) and, if of the opinion that the taxable income calculated in accordance therewith approaches as closely as possible to that which might be expected to ensue if the general provisions of this Act were applied, may accept the same, and the taxable income so determined for any year of assessment shall be deemed to be the taxable income of such person for that year.

(3) Should no such proposals be submitted, or if the Commissioner is not satisfied with the proposals so submitted, the Commissioner may determine the taxable income in such manner as appears to him most appropriate, having regard to the circumstances of the case.

(4) The foregoing provisions shall apply, *mutatis mutandis*, to the determination of an assessed loss.

### 19A Non-resident companies: basis of charge to and determination of company tax

[section inserted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January, 2017]

(1) A company not resident in Zimbabwe ("the non-resident company") is liable to tax if it carries on a business in Zimbabwe through a permanent establishment in Zimbabwe.

(2) If it does so, it is liable to tax subject to any exceptions provided for by this Act, on all taxable income, wherever arising, that is attributable to its permanent establishment in Zimbabwe.

(3) The taxable income attributable to a permanent establishment of a non-resident company for the purposes of tax may derive from—

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(a) **trade**, that is to say business income arising directly or indirectly through or from the establishment, and

(b) **investment**, that is to say income from property or rights used by, or held by or for, the establishment.

(4) There shall be attributed to the permanent establishment of a non-resident company the taxable income it would have made if it were a distinct and separate enterprise, engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the non-resident company.

(5) In applying subsection (3)—

(a) it shall be assumed that the permanent establishment has the same credit rating as the non-resident company of which it is the permanent establishment, and

(b) it shall also be assumed that the permanent establishment has such equity and loan capital as it could reasonably be expected to have in the circumstances specified in that subsection; and

(c) no deduction may be made in respect of costs in excess of those that would have been incurred on the foregoing assumptions; and

(d) there shall be allowed as deductions any allowable expenses incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in Zimbabwe or elsewhere (in this paragraph "**allowable expenses**" means expenses of a kind in respect of which a deduction would be allowed for tax purposes if incurred by a company resident in Zimbabwe.

#### 19B Meaning of "permanent establishment"

[section inserted by the Finance Act (No.2) of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January, 2017]

(1) For the purposes of this Act a company has a permanent establishment in Zimbabwe if, and only if—

(a) it has a fixed place of business there through which the business of the company is wholly or partly carried on; or

(b) an agent is acting on behalf of the company and in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material

modification by the company, and these contracts are—

- (i) in the name of the company; or
- (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that company or that the company has the right to use; or
- (iii) for the provision of services by that company.

(2) The above description is subject to the following provisions—

(a) a "**fixed place of business**" includes (without prejudice to the generality of that expression)—

- (i) a place of management;
- (ii) a branch;
- (iii) an office;
- (iv) a factory;
- (v) a workshop;
- (vi) an installation or structure for the exploration of natural resources;
- (vii) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (viii) a building site, or construction or installation project.

(b) a company is not regarded as having a permanent establishment in Zimbabwe by reason of the fact that it carries on business there through an agent of independent status acting in the ordinary course of his or her business (where, however, a person acts exclusively or almost exclusively on behalf of one or more companies to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such company);

(c) nor is a company regarded as having a permanent establishment in Zimbabwe by reason of the fact of—

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

(ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely

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for the purpose of processing by another enterprise;

(iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(v) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;

(vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (i) to (v);

provided that such activity or, in the case of subparagraph (vi), the overall activity of the fixed place of business, is of a preparatory or auxiliary character;

(d) for the purposes of this section, a person is closely related to a company if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or companies. In any case, a person shall be considered to be closely related to an company if one possesses directly or indirectly **more than 50%** of the beneficial interest in the other (or, **in the case of a company, more than 50%** of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly **more than 50%** of the beneficial interest (or, **in the case of a company, more than 50%** of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the company.

### 20 Special provisions relating to insurance business

(1) In the case of any person carrying on the business of insurance, that part of his taxable income or assessed loss, as the case may be, which is attributable to that business for a year of assessment shall be determined in accordance with the *Eighth Schedule*.

(2) If such person derived income from any source other than insurance, that part of his taxable income or assessed loss, as the case may be, which is attributable to that other source shall be determined in accordance with the general provisions of this Act.

### 21 Special provisions relating to petroleum operations

(1) In the case of any petroleum operator, that part of the operator's taxable income or

assessed loss, as the case may be, attributable to petroleum operations for a year of assessment shall be determined in accordance with the *Twentieth Schedule*.

(2) If a petroleum operator derives income from any trade other than petroleum operations, that part of his taxable income or assessed loss, as the case may be, which is attributable to that other trade shall be determined in accordance with the general provisions of this Act.

### 22 Special provisions relating to special mining lease operations

(1) In the case of the holder of a special mining lease, that part of the holder's taxable income or assessed loss, as the case may be, which is attributable to special mining lease operations for a year of assessment shall be determined in accordance with the *Twenty-Second Schedule*.

(2) If the holder of a special mining lease derives income from any trade other than special mining lease operations, that part of his taxable income or assessed loss, as the case may be, which is attributable to that other trade shall be determined in accordance with the general provisions of this Act.

### 23 Special provisions relating to determination of taxable income of persons buying & selling any property at a price in excess of or less than the fair market price & of non-resident persons exporting products of Zimbabwe without prior sale

(1) Where any person carrying on a trade in Zimbabwe purchases any property, whether movable or immovable, from any other person at a price in excess of the fair market price, or where he sells any property, whether movable or immovable, to any other person at a price less than the fair market price, the Commissioner may, for the purpose of determining the taxable income or assessed loss, as the case may be, of such first-mentioned person, determine the fair market price at which such purchase or sale shall be taken into his accounts or returns for assessment.

SDC Ltd v Commissioner General Zimra 18-HH-648]

(2) Where a non-resident person produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves or

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constructs, in whole or in part, anything within Zimbabwe, and exports the same without sale prior to the export thereof, he shall be deemed to have derived from a source within Zimbabwe a taxable income corresponding to the proportionate part of any profit ultimately derived from the sale or disposal thereof outside Zimbabwe and section *nineteen* shall apply for the purposes of determining such taxable income.

### 24 Special provisions relating to determination of taxable income in accordance with double taxation agreements

The Commissioner may—

(a) if any person—

(i) carrying on business in Zimbabwe participates directly or indirectly in the management, control or capital of a business carried on by some other person outside Zimbabwe; or

(ii) carrying on business outside Zimbabwe participates directly or indirectly in the management, control or capital of a business carried on by some other person in Zimbabwe; or

(iii) participates directly or indirectly in the management, control or capital both of a business carried on in Zimbabwe by some other person and of a business carried on outside Zimbabwe by some other person;

and

(b) if conditions are made or imposed between any of the persons mentioned in paragraph (a) in their business or financial relations which, in the opinion of the Commissioner, differ from those which would be made between 2 persons dealing with each other at arm's length;

determine the taxable income of the person carrying on business in Zimbabwe as if such conditions had not been made or imposed but in accordance with the conditions which, in the opinion of the Commissioner, might be expected to have been made or imposed between 2 persons dealing with each other at arm's length.

[*BAT & Ors v Commissioner of Taxes* 94-HH-001 deeming income not actually received to have accrued *CF (Pvt) Ltd v ZIMRA* 18-HH-099 *CF (Pvt) Ltd v ZIMRA* 18-HH-099]

### 25 Deduction of tax from dividends

Any company incorporated in Zimbabwe shall be entitled to deduct from any dividends on stocks or shares income tax at the rate applicable to a company for the year of assessment immediately preceding the year of assessment within which the dividend was declared or, if no such rate was applicable, at the rate which was last applicable whether in terms of this Act or the previous law:

Provided that in the case of dividends on—

- (a) preference stocks or shares; or
- (b) any stocks or shares in terms of a contract or of the memorandum or articles of association of a company which provides for a stipulated amount or rate of dividend;

the amount so deducted shall not exceed the difference between the amount of such dividends and the minimum benefit to which the holder of the stocks or shares is entitled.

## PART IIIA REGISTRATION OF TRADERS AS TAXPAYERS

[Part inserted by Finance (No. 2) Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022.]

### 25A Interpretation in Part IIIA

In this Part—

“**registerable taxpayer**” means a person—

- (a) carrying on any trade; or
- (b) who has registered a company, trust, pension fund or other juristic person;

but does not include—

- (i) a **presumptive taxpayer**, except such class of presumptive taxpayer as may be specified in a notice prescribed under section 25B; or
- (ii) an employer registered as such for the purpose of the *Thirteenth Schedule*, except such class of employer as may be specified in a notice prescribed under section 25B.

### 25B Prescription and registration of registerable taxpayers

- (1) The Minister may prescribe by notice in a *statutory instrument* the category of persons earning income from trade who, by reference to all or any of the factors referred to in the definition of “*registerable taxpayer*”, must register as taxpayers under this Part.

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(2) **No later than 30 days** after the Minister has prescribed the notice referred to in subsection (1), every registrable taxpayer shall apply to the Commissioner-General in such form as may be prescribed for registration as a registrable taxpayer.

(3) A person who is not registrable taxpayer on the date that the Minister prescribes a notice referred to in subsection (1), but who thereafter—

(a) commences trade as a registrable taxpayer; or

(b) becomes qualified as a registrable taxpayer;

shall, **no later than 30 days** after so commencing or becoming qualified, apply to the Commissioner-General in such form as may be prescribed for registration as a registrable taxpayer.

(4) Every person who has registered as a registrable taxpayer under this section shall, **within 14 days** after changing his or her address or ceasing to be a registrable taxpayer, notify the Commissioner in such manner and form as may be prescribed of his or her new address or of the fact of his or her having ceased to be a registrable taxpayer, as the case may be.

(5) The Commissioner may, at such times as he or she may decide, issue public notices drawing attention to the provisions of this section.

(6) Every **non-resident registrable** taxpayer shall appoint a resident representative to secure registration on its behalf under this section and otherwise to act as its agent for all purposes of this Part.

(7) A non-resident registrable taxpayer shall give notice in writing to the Commissioner-General of the appointment of a resident representative under subsection (6).

(8) If a non-resident registrable taxpayer fails, when required in writing to do so by the Commissioner-General, to furnish the Commissioner-General with particulars of the appointment of a resident representative under subsection (6) within such period as the Commissioner-General shall specify, the Commissioner-General may—

(a) appoint a person to be the non-resident registrable taxpayer's resident representative, and such person shall secure registration on the registrable taxpayer's behalf under this

section and otherwise act as the registrable taxpayer's agent for all purposes of this Part; and, additionally or alternatively.

(b) cause any work permit held by the registrable taxpayer or any director or employee of the registrable taxpayer to be forthwith cancelled upon the written request of the Commissioner-General to the Chief Immigration Officer.

### 25C Penalties for non-compliance

(1) A natural or legal person shall be guilty of a civil infringement and liable to a civil penalty if he or she fails timeously comply with section 25B(2), (3), (4), (6) or (7).

(2) In the event of default in complying with subsection (1), the civil penalty shall provide for a combination of—

(a) a fixed penalty of **US\$30** or its equivalent in Zimbabwe dollars on the day of the service of the order;

and

(b) a cumulative penalty over a period not exceeding 90 days of **US\$30** or its equivalent in Zimbabwe dollars for each day (beginning on the day after the service of a civil penalty order) that the fixed penalty or any outstanding amount thereof remains unpaid by the defaulter.

### 25D Savings for noncompliance with this Part

The obligations and liabilities of a person under this Act are not affected by his or her failure to register as a registrable person under this Part or his or her ceasing to be so registered.

## PART IV

### TAXES ON SHAREHOLDERS, INTEREST, FEES, REMITTANCES & ROYALTIES

### 26 Non-resident shareholders' tax

(1) There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a non-resident shareholders' tax in accordance with the *Ninth Schedule* at the rate of tax fixed from time to time in the charging Act.

(2) For the purposes of this section, any amount paid outside Zimbabwe by a local branch or subsidiary of a foreign company in

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excess of the amount allowable as a deduction in terms of paragraph (q) or (r) of subsection-(1) of section sixteen shall be deemed to be the payment of a dividend upon which non-resident shareholders' tax shall be charged, and the term "dividend" shall be so construed for the purposes of the *Ninth Schedule*.

[subs (2) inserted by Act 18/2000 from 1<sup>st</sup> January, 2001 and amended by Act 10/2003 from 1<sup>st</sup> January, 2004.]

### 27 .....

[Repealed by Act 29 of 1998 from the 1<sup>st</sup> January 1999.]

### 28 Resident shareholders' tax

(1) There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a resident shareholders' tax in accordance with the *Fifteenth Schedule* at the rate of tax fixed from time to time in the charging Act.

(2) For the purposes of this section, any amount paid inside Zimbabwe by a local company or a subsidiary of a local company in excess of the amount allowable as a deduction in terms of section sixteen(1)(q) or (r) shall be deemed to be the payment of a dividend upon which resident shareholders' tax shall be charged, and the term "dividend" shall be so construed for the purposes of the *Fifteenth Schedule*;

[Directors' loans Zacks.E v COT The Commissioner of Taxes 93-HB-104  
-subs (2) inserted by Act 18/2000 from the 1<sup>st</sup> January, 2001;  
amended by Act 10/2003 from the 1<sup>st</sup> January, 2004;

Tax accrues on the act of declaring a dividend *Delta Corporation Ltd v ZIMRA* 15-HH-621;  
section 16(1)(q) or(r) substituted in place of the above by section 11 of Finance Act 8/2022 gazetted on the 24th October, 2022.]

### 29 Non-residents' tax on interest

[repealed by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009.]

### 30 Non-residents' tax on fees

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a non-residents' tax on fees in accordance with the provisions of the *Seventeenth Schedule* at the rate of tax fixed from time to time in the charging Act.

[fees includes only income sourced from inside Zimbabwe, not including the commissions paid

thereon. *Sunfresh Enterprises (Pvt) Ltd v Zimra* 04-HB-078

commissions paid to outside agent *M Coy (Pvt) Ltd v Zimra* 16-HH-661-

-upheld on appeal **21-SC-098**

*Standard Chartered Bank Zimbabwe Ltd v Zimra* 18-SC-023

*SW (Pvt)(Ltd)v Zimra* 19-HH-499

*E (Pvt) Ltd v Zimra* 22-HH-010

*Mota Engenhari Construction SA v Zimra* 22-SC-115]

### 31 Non-residents' tax on remittances

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a non-residents' tax on remittances in accordance with the provisions of the *Eighteenth Schedule* at the rate of tax fixed from time to time in the charging Act.

### 32 Non-residents' tax on royalties

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a non-residents' tax on royalties in accordance with the provisions of the *Nineteenth Schedule* at the rate of tax fixed from time to time in the charging Act.

### 33 Additional profits tax in respect of special mining lease areas

(1) There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund an additional profits tax, determined in accordance with the *Twenty-Third Schedule*, in respect of the first accumulated net cash position and the second accumulated net cash position, as so determined, in respect of any special mining lease area for any year of assessment.

[*Zimbabwe Platinum Mines (Pvt) Ltd v ZIMRA* 21-SC-159]

(2) The additional profits tax referred to in subsection (1) shall be determined, charged and levied in respect of each special mining lease area separately.

(3) Where 2 or more persons are holders of a special mining lease for the whole or any part of a year of assessment, those persons shall be jointly and severally liable to pay any additional profits tax referred to in subsection (1) chargeable for that year of assessment in respect of the special mining lease area concerned.

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(4) Subsection (3) shall not affect any right a holder referred to in that subsection may have to claim a refund or contribution from any other such holder in respect of any amount of additional profits tax paid by him.

### 34 Residents' tax on interest

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a resident' tax on interest in accordance with the *Twenty-First Schedule* at the rate of tax fixed from time to time in the charging Act.

### 35 Exemption of petroleum operators and affiliates from certain taxes

(1) Where, after consultation with the Minister responsible for the administration of the Mines and Minerals Act [Chapter 21:05], the Minister is satisfied that it is in the interest of Zimbabwe to exempt a petroleum operator or any affiliate wholly or partly from any tax charged under section *twenty-seven, twenty-nine, thirty, thirty-one or thirty-two*, he may, by *statutory instrument*—

- (a) declare the petroleum operator to be an approved petroleum operator for the purposes of any of those sections;
- (b) where he has made a declaration in terms of paragraph (a) in relation to a petroleum operator, declare any affiliate of the petroleum operator to be an approved affiliate for the purposes of any of those sections;

and may impose any limits or conditions on any such declaration.

(2) Where the Minister has published a *statutory instrument* in terms of subsection (1)—

(a) the petroleum operator or affiliate concerned shall be exempt, subject to the statutory instrument, from any tax specified therein; and

(b) any other person who, in terms of any other provision of this Act, is required to collect any tax specified in the notice shall be exempt, subject to the statutory instrument, from any such requirement.

(3) The Minister may at any time revoke any declaration under subsection (1) by a further *statutory instrument*.

(4) An affiliate, in relation to a petroleum operator, is a company which controls, is

controlled by, or is under common control with, the petroleum operator and, for that purpose, a company shall not be treated as having control of another company unless it holds directly or indirectly all the share capital or voting rights in or in relation to the other company.

### 36 Exemption of holders of special mining leases from certain taxes

(1) Where, after consultation with the Minister responsible for the administration of the Mines and Minerals Act [Chapter 21:05], as the Minister is satisfied that it is in the interests of Zimbabwe to exempt the holder of a special mining lease, wholly or partly from any tax charged under section *twenty-six, twenty-seven, twenty-nine, thirty, thirty-one or thirty-two*, he may, by *statutory instrument* declare the holder concerned to be an approved holder of a special mining lease for the purposes of any of those sections.

[Subsection (1) amended by Act 13/1996. See **GN 451 of 1996** – Hartley Platinum Mines and BHP Minerals Zimbabwe. **GN 354 of 2015** – Great Dyke Investments (Pvt) Ltd An application challenging the constitutionality of these provisions was dismissed in *Mayor Logistics(Pvt) Ltd v ZIMRA 14-CC-007*]

(2) The Minister may impose limits or conditions on any declaration in terms of subsection (1).

(3) Where the Minister has published a *statutory instrument* in terms of subsection (1)—

(a) the approved holder of a special lease concerned shall be exempt, subject to the *statutory instrument*, from any tax specified in the instrument; and

(b) any other person who, in terms of any other provision of this Act, is required to collect any tax specified in the *statutory instrument* shall be exempt, subject to the provisions of the *statutory instrument*, from any such requirement.

(4) The Minister may at any time, by further *statutory instrument*, revoke or vary any declaration in terms of subsection (1):

Provided that the Minister shall not revoke any such declaration or vary it in such a manner as to diminish any exemption conferred by it, unless the approved holder of a special mining lease concerned—

(a) has consented to the revocation or variation; or

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(b) has failed to comply with any provision of the declaration.

#### 36A Tobacco levy

There shall be charged, levied and collected for the benefit of the Consolidated Revenue Fund a tobacco levy in accordance with the *Twenty-Fourth Schedule*, at the rate fixed from time to time in the charging Act.

#### 36B Automated financial transactions tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund an automated financial transactions tax in accordance with the *Twenty-Fifth Schedule*, at the rate of tax fixed from time to time in the charging Act.

#### 36C Presumptive tax

[Section substituted by Act 2 of 2005; and further amended by the Finance (No.2) Act of 2005, and further amended as noted below]

(1) For the benefit of the Consolidated Revenue, there shall be charged, levied and collected throughout Zimbabwe in accordance with the *Twenty-Sixth Schedule* and at the rate from time to time in the charging Act, a tax on the basis of the presumed income (commonly known as a “**presumptive tax**”) of those persons engaging in any of the trades, occupations or undertakings specified in the *Twenty-Sixth Schedule*.

(1a) The Commissioner-General may, on behalf of the Zimbabwe Revenue Authority, in writing invite any **tax-compliant local authority** (that is, a local authority that is not in arrears to the Zimbabwe Revenue Authority for any amount of employees’ tax or value added tax), to enter into an arrangement with the Zimbabwe Revenue Authority authorising the local authority concerned to collect, on behalf of the Authority, in return for the retention by the local authority of **not more than 10%** of the proceeds of the presumptive taxes collected by it, of all or any of the following presumptive taxes from persons liable to pay presumptive tax within the area of jurisdiction of the local authority—

[Subsection (1a) inserted by Act \*5 of 2010 w.e.f. the year of assessment beginning on the 1st January, 2011]

- (a) **informal traders** presumptive tax;
- (b) presumptive tax payable by operators of **taxicabs** for the carriage of passengers for hire

or reward having seating accommodation for not more than **7 passengers**; or

(c) presumptive tax payable by operators of **omnibuses** for the carriage of passengers for hire or reward having seating accommodation for **not less than 8 or more than 14 passengers**;

(d) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for **not less than 15 or more than 24 passengers**;

(e) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for **not less than 25 or more than 36 passengers**;

(f) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for **not less than 37 passengers**;

(g) presumptive tax payable by operators of **driving schools** providing driving tuition—

(i) for class 4 vehicles only;

(ii) for class 1 and 2 vehicles (whether or not in addition to providing driving tuition for other classes of vehicles);

(h) presumptive tax payable by operators of **hairdressing salons**;

(i) presumptive tax payable by operators of **restaurants or bottle-stores**;

(j) **cottage industry** operators presumptive tax.

(1b) Subject to this section, the Zimbabwe National Road Administration established by the Roads Act [*Chapter 13:18*] is hereby appointed as the agent of the Zimbabwe Revenue Authority for the collection of any or all of the following presumptive taxes —

(a) presumptive tax payable by operators of **taxicabs** for the carriage of passengers for hire or reward having seating accommodation for not more than 7 passengers; or

(b) presumptive tax payable by operators of **omnibuses** for the carriage of passengers for hire or reward having seating accommodation for not less than 8 or more than 14 passengers;

(c) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation

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for not less than 15 or more than 24 passengers;

(d) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than 25 or more than 36 passengers;

(e) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than 37 passengers;

(f) operators of **goods vehicles** having a carrying capacity —

(i) of more than 10 tonnes but less than 20 tonnes;

(ii) of 10 tonnes or less but which drive 1 or more trailers resulting in a combined carrying capacity of more than 15 tonnes but 30 less than 20 tonnes;

(iii) of 20 tonnes or more;

(g) presumptive tax payable by operators of **driving schools** providing driving tuition—

(i) for class 4 vehicles only;

(ii) for classes 1 and 2 vehicles (whether or not in addition to providing driving tuition for other classes of vehicles).

[subsection (1b) substituted by Finance (No.3) Act 11 of 2014 with effect from the year of assessment beginning 1st January, 2015]

(1c) .....

[subsection(1c) inserted by Finance (No.3) Act 11 of 2014 w.e.f.1st January, 2015: then repealed by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March, 2018 corrected by SI 188/2018.(h)]

(2) A taxpayer who, before the \*date of commencement of the Finance Act, 2005

[\*12th September, 2005,]

or (in the case of operators of **goods vehicles** and **driving schools**) the \*Finance (No.2) Act, 2005

[\*30th December, 2005]

furnished a return under section *thirty-seven* in any year of assessment shall be not liable to pay presumptive tax in accordance with the *Twenty-Sixth Schedule* or, if he or she pays such tax, shall not be entitled to a tax clearance certificate in terms of paragraph 14 of the *Twenty-Sixth Schedule* unless he or she continues to furnish a return under section *thirty-seven*.

### 36D Demutualisation levy

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a demutualisation levy in accordance with the *Twenty-Seventh Schedule* at the rate fixed from time to time in the charging Act.

### 36E Carbon tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a carbon tax in accordance with the *Twenty-Eighth Schedule* at the rate fixed from time to time in the charging Act.

[Inserted by Act 18/2000 from 1st January, 2001.]

### 36F .....

[Inserted by Act No.27 of 2001 from 1st January, 2002 ; then repealed by the Finance (No.3) Act 10/2009 from 1st January, 2010.]

### 36G Intermediated money transfer tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund an intermediated money transfer tax in accordance with the *Thirtytith Schedule* at the rate fixed from time to time in the charging Act.

[Inserted by Act 15/2002 from 1st January, 2003.]

### 36H NOCZIM debt redemption and strategic reserve levy

(1) There shall be charged, levied and collected throughout Zimbabwe for the benefit of—

(a) the NOCZIM Debt Redemption Sinking Fund a NOCZIM debt redemption levy in accordance with the *Thirty-First Schedule* at the rate fixed from time to time in the Charging Act; and

(b) the Strategic Reserve Fund a strategic reserve levy in accordance with the *Thirty-First Schedule* at the rate fixed from time to time in the Charging Act.

(2) Subsection (1)(a) above, subsection 22H(a) of the Charging Act and all provisions of the *Thirty-First Schedule* relating to the NOCZIM debt redemption levy, shall lapse on the date when the debts for which NOCZIM Debt Redemption Sinking Fund was established have been repaid in full.

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[Inserted by Act 10/2003 from 1st December, 2003 , and substituted by Act 8/2011 w.e.f. the 1st September, 2011.]

#### **36I Property or insurance commission tax**

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a property or insurance commission tax paid by estate agents and insurers in accordance with the *Thirty-Second Schedule* at the rate fixed from time to time in the charging Act.

[Inserted by Act 29 of 2004 from 1st January, 2005.]

#### **36J Tax on non-executive directors' fees**

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a tax on non-executive directors' fees in accordance with the *Thirty-Third Schedule* at the rate fixed from time to time in the charging Act.

[Inserted by Act 12/2006 from 1st January, 2007.]

#### **36K Petroleum importers levy**

There shall be charged, levied and collected from every petroleum importer who transports petroleum products by road a petroleum importers levy in accordance with the *Thirty-First Schedule* at the rate fixed from time to time in the Charging Act.

[Inserted by Act \*5 of 2010 w.e.f. the year of assessment beginning on the 1<sup>st</sup> January, 2011 and substituted by Act 8/2011 w.e.f. the 1st September, 2011]

#### **36L Bookmakers tax**

There shall be charged, levied and collected throughout Zimbabwe for the benefit the Consolidated Revenue Fund a bookmakers tax paid by bookmakers in accordance with the *Thirty-Sixth Schedule* at the rate fixed from time to time in the charging Act.

[Inserted by the Finance Act 1 of 2018 w.e.f. the year of assessment beginning on the 1 January 2018.]

### **PART V RETURNS AND ASSESSMENTS**

#### **37 Notice by Commissioner requiring returns for assessment under this Act and manner of furnishing returns and interim returns**

(1) Subject to section *thirty-seven A* ,the Commissioner shall annually give public notice that all persons who fall within any of the classifications prescribed in such notice, whether personally or in any representative capacity, are required, **within 30 days** after the date of such notice, or within such further time as the Commissioner may for good cause allow, to furnish returns for assessment:

Provided that no dormant company (that is to say, a company that has not carried on any trade or business for the whole of the year of assessment in respect of which the Commissioner gives the notice) shall be subject to any penalty provided in this Act for failing to furnish a return if its public officer or a director, or the holder of a majority or plurality of its shares makes a written and sworn declaration to that effect to the Commissioner **within 30 days** after the date of such notice.

[proviso inserted by Finance (No.3) Act 11 of 2014 w.e.f. the year of assessment beginning 1st January, 2015]

(2) Such notice shall state the places at which the prescribed forms may be obtained, and it shall be the duty of all such persons, and of all persons required by this Act to furnish such returns, to apply for the prescribed forms of returns.

(3) Any such person failing to furnish such return shall not be relieved from any penalty by reason only of his having received no notice to furnish the same, or of the prescribed form not having been delivered to him, but the Commissioner may, if he deems it so advisable, cause forms to be delivered or sent by registered or unregistered post to any person.

(4) The Commissioner may, prior to the issue of any such annual notice, require any person by notice in writing to render an interim return for any period he may designate in such notice, and may proceed to make an assessment in respect of that period.

(5) Every person who falls within any of the classifications prescribed in the annual notice

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published in terms of subsection (1) or to whom a form or notice has been delivered or sent in terms of this section shall, on publication of the annual notice or on receipt of any such form or written notice, prepare and deliver in the prescribed manner, within the period mentioned in such form or notice, to the person appointed to receive the same, a return in the form prescribed, giving the particulars required and all other details in relation thereto which may be prescribed. Such return shall be signed by the taxpayer, or by his agent duly authorized in that behalf.

(6) Any person signing any such return shall be deemed for all purposes in connection with this Act to be cognizant of all statements made therein.

(7) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act shall be deemed to be duly made and signed by the person affected, unless such person proves that such return was not made or signed by him or on his behalf.

(8) If any person fails to make such a return, the Commissioner may appoint a person to make a return on behalf of such person, and the return made by the person so appointed shall be, for all the purposes of this Act, the return of the person liable to make the same.

(9) The returns furnished by or on behalf of every person required to furnish returns under this Act shall contain such particulars, be in such form and be furnished to the person appointed to receive the same at such time as may be prescribed.

(10) The Commissioner may, when and as often as he thinks necessary, require any person to make fuller or further returns respecting any matter of which a return is required or prescribed by this Act.

(11) All returns required to be furnished under this Act shall be delivered at, or sent by post to, the prescribed address.

(12) Notwithstanding any other provision of this section, unless he is specifically called upon by the Commissioner to do so, no return need be made by a taxpayer whose taxable income consists solely of remuneration from which employees' tax has been deducted by an employer in accordance with a directive issued in terms of paragraph 20A of the *Thirteenth Schedule*.

[Subsection (12) repealed by Act 13/1996, and this new subsection reinserted by Act 21 of 1999 from 1st January 2000.]

(13)

(a) The return of income to be made by any person in respect of any year of assessment chargeable under this Act shall be a full and true return for the whole period of 12 months ending upon the last day of that year of assessment.

(b) —

(i) Where the Commissioner is satisfied that any individual usually makes up his accounts for a period of 12 months ending on some date other than end of a year of assessment, the Commissioner may in his discretion, and subject to such terms and conditions as he may impose, accept for the year of assessment any such accounts the period of which includes a portion of such year of assessment. Any return in respect of which accounts have been so accepted shall be deemed for all purposes of this Act to be a return for the year of assessment:

Provided that where the account of an individual have been accepted for a year or period ending on some date other than the than end of a year of assessment, all subsequent accounts of the individual shall, except in the year of assessment in which the individual ceases to trade, be made up for each succeeding period of 12 months ending on that other date unless the Commissioner, subject to such terms and conditions as he may impose, otherwise agrees.

(ii) If any company makes up its accounts for a period ending on some date other than the than end of a year of assessment, the Commissioner may in his discretion accept such accounts for assessment in respect of the assessment year ending immediately before or after the closing date of such accounts, and no part of such assessment shall be charged to tax in any other year of assessment. Any return in respect of which accounts have been so accepted shall be deemed for all purposes of this Act to be a return for such year of assessment:

Provided that where the accounts of a company have been accepted for a year or period ending on some date other than the than end of a year of assessment, all subsequent accounts of the company shall be made up for each succeeding period of 12 months ending on that other date unless the Commissioner, subject to such terms and conditions as he may impose, otherwise agrees.

(iii) If the accounts of an individual or a company have been accepted by the

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Commissioner, in terms of a previous law, for a year or period ending on some date other than the 31st March, such acceptance shall be deemed to have been made in terms of this Act.

(c)

(i) Where a company whose accounts have been accepted in terms of subparagraph (ii) of paragraph (b) ceases to operate, there shall be returned for assessment accounts which shall include all income which has been received by or accrued to such company in the period between the closing date of the late accounts so accepted for the immediately preceding year of assessment and the date when such company ceased to operate.

(ii) Where such period exceeds 12 months, separate accounts shall be rendered for a period of 12 months ending on the date accepted as the closing date of its account under subparagraph (ii) of paragraph (b) and for the balance of the period in excess of 12 months.

(iii) The taxable income determined on the basis of such accounts shall be charged to tax as follows—

A. if the period is in excess of 12 months, the taxable income determined on the basis of the accounts rendered for 12 months as required in terms of subparagraph (ii) shall be deemed to be the taxable income for the year of assessment succeeding that in which the taxable income based on the accounts for the immediately preceding year of assessment was assessed, and the taxable income for the remaining period shall be deemed to be the taxable income for the following year of assessment;

B. if the period is one of less than 12 months, the taxable income based on the accounts rendered in terms of subparagraph (i) shall be deemed to be the taxable income for the year of assessment succeeding that in which the taxable income based on the accounts for the immediately preceding year was assessed:

Provided that, where a company has rendered accounts for assessment and the whole or part of the taxable income determined from such accounts has been charged to tax in more than one year of assessment, either under this Act or under any previous law, then when such company ceases to operate the taxable income for the last year of assessment shall be reduced by an estimate of the taxable income which has been so charged to tax in more than one year of assessment. If such estimate exceeds the

taxable income for the last year of assessment, then the taxable income for the penultimate year of assessment shall be reduced by the amount of such excess.

(iv) The said taxable income shall be assessed as the taxable income of such company notwithstanding that such company may not have been in existence during any portion of such year of assessment.

(14) If any person when called upon to furnish a return under this Act is unable to furnish such return, the Commissioner may accept a return of estimated income for assessment or he may make an estimated assessment in terms of section *forty-five* without imposing the additional tax payable under section *forty-six* if he is satisfied that there is no intent to defraud the revenue or to postpone payment of such tax, and any such assessment shall be adjusted by the Commissioner when a return of actual income is furnished.

(15) Persons carrying on any trade in partnership shall, subject to subsection (13), in respect of each year of assessment, make a joint return of income as partners in such trade together with such particulars as may from time to time be prescribed, and such return shall, notwithstanding any provisions to the contrary contained in any agreement of partnership, be accompanied by such accounts as are necessary to show the result of the operations of the partnership for each such year of assessment, and each partner shall be separately and individually liable for the rendering of the joint return, but the partners shall be liable to tax only in their separate individual capacities:

Provided that, where because of the death of a partner accounts are prepared in order to show the results of the operations of the partnership for the period from the last accounting date to the date of the death of the partner, the surviving partners shall not be required to include their shares of the income as shown by such accounts in any return other than that for the year of assessment in which the first anniversary of the accounting date prior to the date of the death of the partner falls and their shares of income shall be deemed to accrue accordingly.

#### 37A Self-assessment

[Inserted by Act 12/2006 from the 1st January, 2007.]

(1) Every taxpayer specified in a notice published by the Commissioner-General as a taxpayer or member of a class of taxpayers to

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whom this section is to apply for any year of assessment (hereafter in this section called a "specified taxpayer") shall, **not later than 4 months** after the end of the tax year (or, if the Commissioner-General has exercised his or her discretion in relation to any specified taxpayer under section 37(13) to accept some date, other than the end of a year of assessment, as the date on which the taxpayer concerned makes up his or her annual accounts, not later than 4 months after the end of that other date)—

[Subsection (1) substituted by Finance (No. 2) Act 10 of 2022 w.e.f. year of assessment beginning on the 1<sup>st</sup> January, 2023.]

- (a) furnish the Commissioner-General with a self assessment return in the prescribed form reflecting such information as may be required for the calculation of tax payable in respect of that year in terms of section **seven (2)**; and
- (b) calculate the amounts of such tax in accordance with section **seven (2)** and pay the tax payable to the Commissioner-General or calculate the amount of any refund due to the taxpayer.

(2) Every specified taxpayer shall, within the period allowed in subsection (1), furnish to the Commissioner-General the return referred to in that subsection in respect of each year of assessment, whether or not tax is payable or a refund is due in respect of such year of assessment.

(3) The Commissioner-General may require any taxpayer by notice in writing to render an interim self-assessment return for any period he or she may designate in such notice.

(4) The Commissioner-General may, having regard to the circumstances of any case but subject to section **seventy-one**, extend the period within which such return is to be furnished or such tax is to be paid.

(5) Subject to subsection (6), a self-assessment return of income shall be signed by the specified taxpayer and include a declaration that the return is complete and accurate. Any person signing any such return shall be deemed for all purposes in connection with this Act to be cognisant of all statements made therein.

(6) A self-assessment return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act shall be deemed to be duly made and signed by the person affected, unless such person proves

that such return was not made or signed by him or her or on his or her behalf.

(7) If any specified taxpayer fails or is unable to make a self-assessment return, the Commissioner-General may appoint a person to make a return on behalf of such taxpayer, and the return made by the person so appointed shall be, for all the purposes of this Act, treated as the return of the specified taxpayer.

(8) Notwithstanding any other provision of this section, unless he or she is specifically called upon by the Commissioner-General to do so, no return need be made by a specified taxpayer whose taxable income consists solely of remuneration from which employees' tax has been deducted by an employer in accordance with a directive issued in terms of paragraph 20A of the *Thirteenth Schedule*.

(9) Where a specified taxpayer is legally incapacitated, the taxpayer's self-assessment return of income, and a declaration as to its completeness and accuracy, shall be signed by the taxpayer's legal representative.

(10) Where a specified taxpayer has furnished a self-assessment return accompanied by the relevant documents for a year of assessment, the taxpayer is deemed to have made an assessment of his or her taxable income and the tax payable on that taxable income for that year, being those respective amounts shown in the return.

[*IAB Company v Zimra 22-HH-032*]

(11) Where a specified taxpayer has furnished a return in terms of subsection (1), the taxpayer's return of income is treated as an assessment served on the taxpayer **by the Commissioner-General** on the due date for the furnishing of the return or on the actual date of furnishing the return, whichever is the later.

[*CF (Pvt) Ltd v ZIMRA 18-HH-099*  
*DNS (Pvt) Ltd v ZIMRA 19-HH-722*  
*TL v ZIMRA 20-HH-413*  
- if it complies with the law *Nestle Zimbabwe (Pvt) Ltd v ZIMRA 20-SC-290* and *23-HH-312* ]

(12) Notwithstanding subsection (1), the Commissioner-General may make an assessment under section **forty-six and forty-seven** on a specified taxpayer in any case in which the Commissioner-General considers necessary.

(13) Where the Commissioner-General raises an assessment in terms of subsection (12), the Commissioner-General shall include with the assessment a **statement of reasons**

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as to why the Commissioner-General considered it necessary to make such an assessment.

[the fixing of allowances by the Commissioner *GFZ Ltd v ZIMRA 19-HH-843 Bath Ltd v ZIMRA 20-HH-552*]

#### 37AA Separate returns to be rendered where any part of income from trade or investment earned in foreign currency

[Inserted by section 12 of Finance Act 8/2022 gazetted on the 24th October, 2022 w.e.f. **1st January 2022**.]

(1) A taxpayer who earns—

**[2023 Exchange Rates for Income Tax Purposes- for Quarter Q1: See GN 31/2023 issued on 23<sup>rd</sup> March, 2023 Zimra Public Notice 75 of 2022 – Editor]**

(a) his or her income from trade and investment exclusively in **Zimbabwe dollars** or exclusively in foreign currency shall render a return in respect of that income;

(b) any **part** of his or her income from trade and investment in the form of **foreign currency**, must render a **separate return** in respect of that income:

Provided that, where a return is rendered under paragraph (a) or (b) in respect of income from **trade and investment** earned in a foreign currency, the currency of account shall be the United States dollar, and if such part of such income is earned in another foreign currency or in more than one foreign currency, the taxpayer **shall convert the currency** or each such currency that is not United States dollars into United States dollars at the international cross rate of exchange on the date of the return.

(2) The Commissioner shall, according to the proportions in which each part of the income was earned in the year of assessment, assess the proportions of tax to be paid in Zimbabwe dollars and in United States dollars by a taxpayer who renders separate returns for income in terms of subsection:

[Proviso below substituted by Finance (No. 2) Act 10 of 2022 w.e.f. **1<sup>st</sup> January, 2023**.]

Provided that if there is any need for the purpose of this subsection to convert any sum from Zimbabwe dollars into United States dollars or the reverse, the taxpayer shall—

(a) in the case of a person making quarterly payments of provisional tax in terms of section

72 ("Payment of provisional tax"), use the **average auction rate** of exchange during the quarter concerned;

(b) in any other case, make an election between the following modes ((i) or (ii) and rates of conversion to be applied (which election shall be binding on the taxpayer and shall apply to all transactions and expenditures in the return for the year of assessment concerned)—

(i) the average auction rate of exchange during the year of assessment;

or

(ii) the spot rate of exchange prevailing on the date or dates of the transaction or expenditure during the year of assessment.

In this subparagraph "**spot rate of exchange**" means—

A.in respect of the period from the **1st January to the 13<sup>th</sup> May, 2022**, the auction rate of exchange of the Zimbabwe dollar to the United States dollars; and

B.in respect of the period beginning on the **14<sup>th</sup> May, 2022**, the interbank rate of exchange of the Zimbabwe dollar to the United States dollars;

prevailing on the date of the transaction or any other event by reference to which that rate is to be applied;

(3) In all cases to which this section is applicable, deductions and allowances shall be apportioned proportionately to reflect the percentage share of income earned in all foreign currencies and the percentage earned in Zimbabwe dollars, in such manner.

(4) This Part, and in particular section *thirty-sevenA*, applies to each of the returns rendered separately under this section as they apply to a single return.

#### 37B Duty to keep records

(1) Every person whose gross income does not consist solely of salary, wages or similar compensation for personal service, shall keep or cause to be kept in the English language, proper books and accounts of all his or her transactions and, unless otherwise authorised by a competent court or by the Commissioner, shall retain for a period of **6 years** from the date of the last entry therein all ledgers, cash-books, journals, paid cheques, bank statements and deposit slips, stock sheets, invoices, and all other books of account relating to any trade

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carried on by him or her and recording the details from which his or her returns for the purposes of this Act were prepared.

[NYS v Zimra 19-HH-617]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to—

- (a) a fine not exceeding level seven; or
- (b) a fine equivalent to **10%** of the person's taxable income;

whichever is the greater amount, or to imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

[Section substituted by Act 3/2009 w.e.f. the 23rd April, 2009. Penalty clause (2) substituted by Act 8/2011 w.e.f. 1st January, 2012]

### 38 Income of minor children

Every parent shall include in his return—

- (a) any income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of, any of his minor children, either directly or indirectly, from himself or from his wife or husband, together with such particulars thereof as may be required by the Commissioner; and
- (b) any income deemed to be his in terms of subsections (3) and (4) of section ten.

### 39 Duty to furnish further returns and information

(1) Every person shall, if required by the Commissioner, furnish to him, in such form and at such time as may be prescribed or as the Commissioner may require, returns of all or any particular class of persons employed by him, and the earnings, salary, wages, allowances, advantages, benefits or pensions, whether in money or otherwise, paid or allowed to each person so employed.

(2) Every person **carrying on a trade in Zimbabwe** shall, in such manner and form and at such times as may be prescribed, furnish to the Commissioner returns showing—

- (a) all payments made to any person in respect of any share or interest in such trade; and
- (b) all moneys received by him from any person on deposit for any fixed time or period,

with or without interest, and any amount of interest received or paid by him; and

(c) all such other information in his possession with regard to the income received by or accruing to or in favour of himself or any other person as may be prescribed or may be required by the Commissioner.

(2a) In addition to any information required to be furnished to the Commissioner under subsection (2), every person deriving any taxable income **from mining operations** shall, in such manner and form and at such times as may be prescribed, furnish to the Commissioner returns showing, with such particularity and supporting documentation as the Commissioner may require —

(a) the particulars of the **expenditure, exploration and development** incurred or undertaken in connection with the mining operations in the year of assessment concerned, including particulars of exploration expenditure, exploration operations, development expenditure and development operations, as those terms are defined in the *Twenty-Second Schedule*, regardless of whether such exploration, development or expenditure was incurred or undertaken in connection with special mining lease operations; and

(b) all information concerning the **servicing of any debt** or debts contracted in connection with the production of income from mining operations (including the ratio of debt to equity of the business carried on by him or her in connection with mining operations), whether contracted by the person or by an agent, local branch or subsidiary of the person; and

(c) what proportions of the total amount received by or accrued to or in favour of the person or deemed to have been received by or to have accrued to or in favour of the person in any year of assessment from mining operations are incurred on or set aside for—

(i) any expenditure incurred by a local branch or subsidiary of a foreign company, or by a local company or subsidiary of a local company, in servicing any debt or debts contracted in connection with the production of income from mining operations, both before and after the commencement of mining operations; and

(ii) any expenditure on general administration and management in favour of a company of which the person is the subsidiary or holding company or (where the company is a foreign company) the local branch, both before and

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after the commencement of mining operations; and

(iii) **dividends or profits** (whether distributed or retained) on the one hand and wages, salaries, commissions and other remuneration on the other;

and

(d) all such other information in the person's possession with regard to the income received by or accruing to or in favour of himself or herself or any other person from mining operations in the year of assessment concerned as may be prescribed or may be required by the Commissioner.

[Subsections (2a) and (2b) inserted by Finance (No.3) Act 11 of 2014 w.e.f. 1st January, 2015]

(2b) In addition to the information that may be disclosed to the Minister under section *five*(3), the Commissioner shall, upon the written request of the Minister (or of the Minister on behalf of the Governor of the Reserve Bank) made on the grounds that the Minister requires such information for ascertaining the level of compliance or otherwise with existing or projected mining fiscal regimes provided for under this Act or any other enactment (or, in the case of a request made on behalf of the Governor of the Reserve Bank, made for the purpose of ascertaining compliance with the existing exchange control regime), avail to the Minister any information and supporting documentation availed to the Commissioner in or together with a return furnished in terms of subsection (2a) in relation to any particular person deriving any taxable income from mining operations or group or class of such persons, and may direct the Commissioner to require the person or persons concerned to furnish to the Commissioner such supplementary information or supporting documentation in connection with a return rendered in terms of subsection (2a) if, in the opinion of the Minister, any information referred to in paragraph (a), (b), (c) or (d) of that subsection lacks sufficient particularity.

(3) In addition to the returns specified in this section and in sections *thirty-four* and *thirty-five* every person, whether a taxpayer or not, shall, as and when required by the Commissioner, make such further or other returns or furnish such further information as to any matter whatsoever as the Commissioner may require for the purposes of this Act.

(4) Every person to whom a form of return is sent by the Commissioner shall complete the same in accordance with the requirements of

the Commissioner and shall return it to the Commissioner at such time and place as the Commissioner may direct.

#### 40 Commissioner to have access to all public records

(1) Notwithstanding anything to the contrary contained in any law relating to post offices or to post office savings banks or any other law, any officer in the \*Civil Service having in his custody any registers, books, accounts, records, returns, papers, documents or proceedings, the inspection whereof may tend to secure any tax or to give proof or lead to the discovery of any fraud, offence or omission in relation to any tax, shall, without fee or charge, permit the Commissioner, or any person authorized by the Commissioner, to inspect for such purposes such registers, books, accounts, records, returns, papers, documents or proceedings and to take such notes and extracts as he may consider necessary.

(2) Every officer in the \*Civil Service shall, if required by the Commissioner, furnish to him in such form and at such time as the Commissioner may require, such information as such officer in the Civil Service is able to give from the registers, books, accounts, records, returns, papers, documents or proceedings in his custody.

(3) In any legal proceedings, civil or criminal, any such document as is referred to in subsection (1) which purports to be signed by the taxpayer or the accused, as the case may be, may on its mere production be received in evidence, unless such taxpayer or accused raises an objection that the signature is not his signature, in which case the court, before receiving such document in evidence, shall hear evidence as to whether or not the signature is that of the taxpayer or the accused, as the case may be:

Provided that no such document shall be tendered in evidence unless the taxpayer or accused, as the case may be, has been given not less than **10 days' written notice** of the intention so to produce such document and an opportunity to inspect the same and make a copy thereof.

(4) Notwithstanding anything to the contrary contained in any law relating to post offices or post office savings banks or any other law, in any legal proceedings under this Act, whether civil or criminal, evidence may, if relevant to the inquiry, be admitted in regard to the transactions with any bank, including the Reserve Bank of Zimbabwe, the Post Office

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Savings Bank and any savings bank, of the spouse or minor children of the taxpayer or accused, as the case may be, and sections 39, 40, 41, 42 and 44 of the Civil Evidence Act [Chapter 8:01], or sections 285, 286 and 287 of the Criminal Procedure and Evidence Act [Chapter 9:07], as the case may be, may be used in relation to such evidence.

(5) Subsections (1), (2) and (3) shall apply in relation to an employee of the Posts and Telecommunications Corporation and any registers, books, accounts, records, returns, papers, documents or proceedings in his custody as they apply in relation to an officer in the Civil Service and any registers, books, accounts, records, returns, papers, documents or proceedings in his custody.

[Civil Service is now referred to as the \*Civil Service i.t.o. PART I of Act 3 of 2016 w.e.f. 1<sup>st</sup> July, 2016]

#### 41 Returns as to shareholdings

(1) Every person who makes a return of his own income or, in a representative capacity, makes a return of the income of some other person, shall, if called upon by the Commissioner to do so, attach to such return a statement showing fully—

(a) the number and class of shares in any company registered in the name of the taxpayer for whom the return is rendered;

(b) the gross dividends from any company received by or accrued to the taxpayer for whom the return is rendered and the amounts of tax, if any, deducted therefrom;

(c) if the taxpayer for whom the return is rendered is not entitled to retain the dividends received or accrued from any company, the name and address of the person who, under any agreement or arrangement, is entitled to receive and retain such dividends;

(d) the number and class of shares in any company which are not registered in the name of the taxpayer for whom the return is rendered but in respect of which such taxpayer, under an agreement or arrangement with the registered owner, obtains all dividends payable by such company;

(e) the gross amount of the dividends and the amount of the tax, if any, deducted therefrom, so received by the taxpayer for whom the return is rendered from the person in whose name such shares are registered.

(2) Any person who has been called by the Commissioner to attach a statement to his

return in terms of subsection (1) and who without just cause—

(a) fails or refuses to attach such a statement to his return; or

(b) attaches a statement containing incorrect information;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment:

Provided that, if it is provided that the person's conduct was wilful, he shall be liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[subpara (2) inserted by the Criminal Penalties Act No. 22 of 2001, from the 10th September, 2002.]

#### 42 Duties of companies to furnish returns & copy of memorandum & articles of association

(1) Every company shall file with the Commissioner a copy of the memorandum and articles of association constituting the company **within 30 days** of its incorporation or registration under any law and copies of all amendments thereto **within 30 days** of the making of any such amendment.

(2) Any company which, without just cause, fails or refuses to file with the Commissioner a copy of its memorandum or articles of association or any amendment thereto when required to do so by subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subpara (2) inserted by the Criminal Penalties Act No. 22 of 2001, from the 10th September, 2002.]

#### 43 Duty of person submitting accounts in support of return or preparing accounts for other persons

(1) Every return required to be rendered by a taxpayer under the provisions of this Act shall be accompanied by all such balance sheets, trading accounts, profit and loss accounts and other accounts of whatsoever nature, as are necessary to support the information contained in the return, and all such accounts shall be authenticated by the signature of the person rendering the return.

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(2) If any person submits in support of any return furnished by him under this Act any balance sheet, statement of assets and liabilities or account prepared by any other person, he shall, together with such balance sheet, statement or account, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up.

(3) Any person who has prepared any balance sheet, statement of assets and liabilities or account for any other person shall furnish such other person with the certificate or statement required under subsection (2).

(4) Any person who, without just cause, contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the person's conduct was wilful, he shall be liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (4) inserted by the Criminal Penalties Act No. 22 of 2001, from the 10th September, 2002.]

assessment or for any criminal or other proceedings under this Act.

(3) Any person who, in terms of subsection (1), produces any deed, plan, instrument, book, record, account, trade list, stock list or document which is not a ledger, cash-book, journal, paid cheque, bank statement, deposit slip, stock sheet, invoice or other book of account required by this Act to be kept and retained by a person where gross income does not consist of salary, wages or similar compensation for personal services, may be allowed by the Commissioner any reasonable expenses necessarily incurred in producing it or obtaining and producing a copy of it.

(4) The Commissioner may, by reasonable notice in writing, require any person entitled to or in receipt of any income, whether on his own behalf or as the representative of any person, or any person whom the Commissioner may consider able to furnish information to attend at a time and place to be named by the Commissioner for the purpose of being examined on oath or otherwise, at the discretion of the Commissioner, respecting the income or the liability to tax or any matter relating to the collection of tax of any such person, or any transactions or any matters affecting the same, or any of them or any part thereof. Any person so attending may be allowed by the Commissioner any reasonable expenses necessarily incurred by such person in so attending.

(5) Where any statement has been made by any person as a result of his being examined on oath under the provisions of subsection (4), such statement shall be recorded in writing and shall be read over to or by the person making it, who, after making such corrections therein as he may think necessary, may sign it.

(6) Any person required to attend in terms of subsection (4) shall be entitled to be accompanied by a legal practitioner, accountant or other adviser, and any person making a statement in terms of subsections (4) and (5) shall be furnished with a copy thereof.

(7) If any officer engaged in carrying out the provisions of this Act who has, in relation to the affairs of a particular person, been authorized thereto by the Commissioner in writing or by telegram, satisfies a magistrate by statement made on oath that there are reasonable grounds for suspecting that such person has committed an offence under this Act, the magistrate may by warrant authorize such officer and any other officers designated by the

### 44 Production of documents and evidence on oath

(1) For the purpose of obtaining full information in respect of any part of the income of a taxpayer or his liability to tax or any matter relating to the collection of his tax or any matter relating to employees' tax (as defined in paragraph 1 of the *Thirteenth Schedule*), the Commissioner may require any person to produce for examination by the Commissioner, or by any person appointed by him for that purpose, at such time and place and as may be appointed by the Commissioner for that purpose, any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents which the Commissioner may consider necessary for the purposes of this Act.

(2) Any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents which in terms of subsection (1) are produced to the Commissioner, or to the person appointed by him, may be retained by the Commissioner or such person for as long as they may be reasonably required for any

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Commissioner to exercise the following powers—

- (a) without previous notice, at any reasonable time during the day enter any premises whatsoever and on such premises search for any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents;
- (b) in carrying out any such search, open or cause to be removed and opened any article in which he suspects any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents to be contained;
- (c) seize any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents as in his opinion may afford evidence which may be material to assessing the liability of any person for any tax;
- (d) retain any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents for as long as they may be reasonably required for any assessment or for any criminal or other proceedings under this Act.

(8) Any officer engaged in carrying out the provisions of this Act may, if he has reasonable grounds for believing that it is necessary to do so for the enforcement of any tax—

- (a) at any reasonable time during the day enter any business premises;
- (b) require any person to produce for its inspection any—
  - (i) book, record, statement, account, trade list, stock list or other document; or
  - (ii) file, schedule, working paper or calculation relating to the determination of a taxpayer's income, expenses or liability for tax;
- (c) require any person to prepare and additionally, or alternatively, to produce for inspection a **print-out** or other reproduction of any information stored in a computer or other information retrieval system;

[but not the \*laptop itself *Hilmax Engineering (Pvt) Ltd v ZIMRA 22-HH-832*]

(d) take possession of any document or **\*other thing** referred to in paragraph (b) or (c) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry;

(e) require any person reasonably suspected of having committed an offence under this Act

or any person who may be able to supply information in connection with a suspected offence to give his name and address.

(9) Any officer authorized in accordance with subsection (7) when exercising any power under such subsection shall on demand produce the warrant issued to him thereunder.

(10) Any person in whose deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents have been retained in terms of subsection (2) or which have been seized or taken in terms of subsection (7) or (8) shall be entitled to examine and make extracts from them during office hours or such further hours as the Commissioner may in his discretion allow and under such supervision as the Commissioner may determine.

(11) The Commissioner is hereby empowered to administer oaths to persons examined in terms of this section. Any person who, after having been duly sworn, wilfully makes a false statement to the Commissioner on any matter relevant to the inquiry, knowing such statement to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Penalty increased by Act 18/2000 from the 12th January, 2001, amended by the Criminal Penalties Act No. 22 of 2001, from the 10th September, 2002, and confirmed by Act 15/2002 from 30th December, 2002.]

(12) Any person who—

- (a) falsely holds himself out to be an officer carrying out the provisions of this Act; or
- (b) hinders, obstructs or assaults an officer in the exercise of his functions in terms of this Act; or
- (c) wilfully fails to comply with any lawful demand made by an officer in the exercise of his functions in terms of this Act;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Penalty increased by Act 18/2000 from 12th January, 2001, amended by the Criminal Penalties Act No. 22 of 2001, from the 10th September, 2002, and increased by Act 15/2002 from 30th December, 2002.]

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#### 45 Estimated assessments

(1) In every case in which any taxpayer makes default in furnishing any return or information, or in which the Commissioner is not satisfied with the return or information furnished by any taxpayer, or, notwithstanding that a taxpayer may not have been called upon to furnish a return of income under this Act, in which the Commissioner has reason to believe that such taxpayer is about to leave Zimbabwe the Commissioner may make an assessment in which the taxpayer's taxable income or assessed loss is estimated either in whole or in part and thereupon shall give notice thereof to the taxpayer to be charged, and such taxpayer shall be liable to pay the tax upon the same if any tax is chargeable.

(2) If it appears to the \*Commissioner that any person is unable from any cause to furnish an accurate return of his income the Commissioner may \*agree with such person what shall be the amount of his taxable income or assessed loss. Any amount of taxable income or assessed loss so agreed shall not be subject to any objection and appeal:

[\*has no power to delegate his authority to junior officers *PPC v ZIMRA 19-HH-755*]

Provided that if subsequently the Commissioner is of the opinion that the taxpayer, at the time the amount of his taxable income or assessed loss was agreed, withheld information which, had it been known to the Commissioner, would have resulted in his not agreeing to that amount, the Commissioner may, subject to section *forty-seven*, increase such agreed amount of taxable income or decrease such agreed amount of assessed loss in such manner as he may consider to be appropriate.

#### 46 Additional tax in event of default or omission

(1) A taxpayer shall be required to pay, in addition to the tax chargeable in respect of his taxable income—

[provisions (a) to (f) are disjunctive *PL Mines (Pvt) Ltd v ZIMRA 15-HH-466*]

(a) if he makes **default in rendering** a return in respect of any year of assessment—

(i) an amount of tax equal to the tax chargeable in respect of his taxable income for that year of assessment; or

(ii) an amount equal to the maximum fine prescribed in subsection (1) of section *eighty-one* for the offence of failing to submit a return; whichever is the greater;

[Paragraph amended by Act 29 of 1998 from 1 January 1999 after the furnishing of wrong information *Zimbabwe Platinum Mines (Pvt) Ltd v ZIMRA 21-SC-159*]

(b) if he **omits** from his return any amount which ought to have been included therein, an amount of tax equal to the difference between the tax as calculated in respect of the taxable income returned by him and the tax properly chargeable in respect of his taxable income as finally determined after including the amount omitted;

(c) if he makes any **incorrect statement** in any return rendered by him which results or would, if accepted, result in the calculation of the tax at an amount which is less than the tax properly chargeable, an amount of tax equal to the difference between the tax as calculated in accordance with the return made by him and the tax properly chargeable if the incorrect statement had not been made;

[invoking the inapplicable provisions of s 15 (2) (cc). *GFZ Ltd v ZIMRA 19-HH-843*]

(d) if he **fails to disclose** in any return made by him any facts which should be disclosed and the failure to disclose such facts results in the calculation of the tax at an amount which is less than the tax properly chargeable, an amount of tax equal to the difference between the tax as calculated in accordance with the return made by him and the tax properly chargeable if the disclosure had been made;

[*Sommer Ranching (Pvt) Ltd v COT 99-SC-065*]

(e) if he makes any statement which results or would, if accepted, result in the granting of a credit **exceeding the credit** to which he is entitled, an amount equal to the difference between the tax with which he was chargeable as a result of his statement or would have been chargeable as a result of his statement had it been accepted and the tax with which he is properly chargeable;

(f) if he or she fails to disclose in any return made by him or her any particulars as prescribed in terms of section *thirty-seven(5) or (9)* by the Commissioner, and the failure to disclose such particulars results in the **calculation of the tax at an amount which is less** than the tax properly chargeable, an amount of tax equal to the difference between the tax as calculated in accordance with the

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return made by him or her and the tax properly chargeable if the disclosure had been made.

[para (f) inserted by Act 8/2011 w.e.f. the year of assessment beginning on the 1st January, 2012]

(1a) Where a taxpayer, having previously been required to pay any additional tax in terms of subsection (1)(a), (b), (c), (d), (e) or (f) of subsection (1), makes any default or omission or does any act or thing that would again render him or her liable for payment of additional tax in terms of the same or a different paragraph of that subsection, he or she shall be required, in addition to the tax chargeable in respect of his or her taxable income, to pay an amount of tax equal to **2x** the amount payable in terms of subsection (1)(a), (b), (c), (d), (e) or (f) as the case may be.

[subsection (1a) inserted by Act 10/2003 from the 1st January, 2004 and amended by Act 8/2011 w.e.f. the year of assessment beginning on the 1st January, 2012]

*PL Mines (Pvt) Ltd v ZIMRA 15-HH-466]*

(2) The additional amounts for which provision is made under this section shall be chargeable in cases where the taxable income or any part thereof is estimated by the Commissioner in terms of subsection (1) of section *forty-five* or agreed with the taxpayer in terms of subsection (2) of that section as well as in cases where such taxable income or any part thereof is determined from the return rendered by the taxpayer.

[Amended by Act 29 of 1998 from 1st January, 1999.]

(3) The powers conferred upon the Commissioner by this section shall be in addition to any right conferred upon him by this Act to take proceedings for the recovery of any penalties for evading or avoiding assessment or the payment of tax or attempting to do so.

(4) Any taxpayer who, in determining his taxable income as disclosed by his return, deducts any amount the deduction of which is not permissible under the provisions of this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this section to have omitted such amount from his return.

[fatal omissions *GC (Pvt) Ltd v ZIMRA 15-HH-759*  
*CF (Pvt) Ltd v ZIMRA 18-HH-099*]

(5) If, in any year of assessment in which the determination of the taxable income of the taxpayer does not result in an assessed loss, he is entitled to deduct a balance of assessed loss from a previous year of assessment and such balance is less than it would have been

had it been calculated on the basis of the returns rendered by him, he shall be deemed for the purposes of this section to have omitted from his return for the first mentioned year of assessment an amount equal to the difference between the amount at which such balance is finally determined and the amount at which it would have been determined on the said basis.

(6) If the Commissioner considers that the default in rendering the return was not due to any intent either to defraud the revenue or to postpone the payment by the taxpayer of the tax as chargeable, or that any such omission, incorrect statement or failure to disclose facts was not due to any intent to evade tax on the part of the taxpayer, he may remit such part or all of the said additional amount for which provision is made under this section as he may think fit.

[Amended by Act 29 of 1998 from 1st January, 1999.  
*PL Mines (Pvt) Ltd v ZIMRA 15-HH-466*  
acting on professional advice does not lessen its blameworthiness *GC (Pvt) Ltd v ZIMRA 15-HH-759*  
*DNS (Pvt) Ltd v ZIMRA 19-HH-722*  
*PPC v ZIMRA 19-HH-755*  
*MR Bank Ltd v ZIMRA 19-HH-779100%* applied for deliberately invoking the inapplicable provisions of s 15 (2)(cc). *GFZ Ltd v ZIMRA 19-HH-843*]

(7) Notwithstanding subsection (6), the Commissioner may, either before or after an assessment is issued, agree with the taxpayer on the additional amount to be charged and the amount so agreed shall not be subject to any objection and appeal:

Provided that if subsequently the Commissioner is of the opinion that the taxpayer, at the time the additional amount was agreed, withheld information which, had it been known to the Commissioner, would have resulted in his not agreeing to that amount, the Commissioner may, subject to section *forty-seven*, increase such agreed amount of additional tax in such manner as he may consider to be appropriate.

[Amended by Act 29 of 1998 from 1st January, 1999.]

### 47 Additional assessments

(1) If the Commissioner, having made an assessment on any taxpayer, later considers that—

(a) an amount of taxable income which should have been charged to tax has not been charged to tax; or

(b) in the determination of an assessed loss—

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(i) an amount of income which should have been taken into account has not been taken into account; or

(ii) an amount has been allowed as a deduction from income which should not have been allowed;

[*IAB Company v Zimra 22-HH-032*]

or

(c) any sum granted by way of a credit should not have been granted;

he shall adjust such assessment so as to charge to tax such amount of taxable income or to reduce such assessed loss or to withdraw or vary such credit, and if any tax is due either additionally, or alternatively, call upon the taxpayer to pay the correct amount of tax:

[*PPC v ZIMRA 19-HH-755*]

Provided that—

(i) no such adjustments or call upon the taxpayer shall be made if the assessment was made in accordance with the practice generally prevailing at the time the assessment was made;

[XYZ v CoT 77-RLR-001  
*Astra Holdings (Pvt) Ltd v CoT 99-FAC-001*]

(ii) subject to proviso (i), no such adjustment or call upon the taxpayer shall be made **after 6 years** from the end of the relevant year of assessment, unless the Commissioner is satisfied that the adjustment or call is necessary as a result of fraud, misrepresentation or wilful non-disclosure of facts, in which case the adjustment or call may be made at any time thereafter;

[cut off limit was **3 years** '*T M Fee*' v COT 91-ITC-1535

taxpayer under no obligation or duty to point out errors in assessments *A v COT 00-ICT-1691* whether Zimra precluded from issuing further amended assessments *CF (Pvt) Ltd v ZIMRA 18-HH-099*

prescription was stayed by misrepresentation *Deb (Pvt) Ltd v Zimra 19-HH-664*

wilful *Man Ltd v Zimra 20-HH-078*

*SZ (Pvt) Ltd v Zimra 20-HH-142*

*TL v Zimra 20-HH-413*

- does not protect a taxpayer guilty of fraud, misrepresentation or non-disclosure *Bath Ltd v ZIMRA 20-HH-552*

- benefits not disclosed in self-assessment should not be split up into bits and pieces for the purposes of re-opening-*IAB Company v Zimra 22-HH-032*

- evidence of misrepresentation found *Zimbabwe Platinum Mines (Pvt) Ltd v ZIMRA 21-SC-159*

(iii) the powers conferred by this subsection shall not be construed so as to permit the Commissioner to vary any decision made by him in terms of subsection (4) of section **sixty-two**.

(2) Sections **forty-five** and **forty-six** shall apply to any assessments or additional assessments or to a call for the payment of any additional sum in respect of a credit made by the Commissioner under the powers conferred by subsection (1).

### 48 Reduced assessments and refunds

(1) If it is proved to the satisfaction of the Commissioner that any person has been charged with tax in excess of the amount properly chargeable under this Act, the Commissioner shall issue an amended assessment reducing the tax so charged and, if necessary, authorize a refund to such person of any tax overpaid:

Provided that—

(i) any such amended assessment issued by the Commissioner shall not be subject to any objection and appeal;

(ii) any tax payable in accordance with the practice generally prevailing and accepted by such person at the time when any assessment was made shall be deemed to have been properly so chargeable;

(iii) the Commissioner shall not authorize any reduction or refund under this subsection unless the claim thereof is made **within 6 years** after the date of the notice of assessment in question.

(2) In the case of a claim made in respect of any additional tax charged in terms of section **forty-seven**, such claim shall be restricted to such additional tax.

(3) The Commissioner shall pay interest, calculated at a rate to be fixed by the Minister by *statutory instrument*

[See See the Income Tax (**Rate of Interest**) Notice 2022 **SI 212 of 2022** gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

on any amount of tax overpaid that is not refunded by him or her **within 60 days** of the date when the taxpayer claimed the refund or the date of completion of the assessment, whichever is the later date, unless the overpayment was due to an incomplete or defective return or other error on the part of the

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taxpayer, and not to an error on the part of the Commissioner.

[subsection (3) inserted by Act 18 of 2004 from the 5<sup>th</sup> November, 2004  
*Delta Beverages (Pvt) Ltd v ZIMRA 16-HH-378]*

### 49 Amended assessments of loss

If it is proved to the satisfaction of the Commissioner that the assessed loss determined in favour of any person for any year of assessment is less than the amount which should have been determined for that year of assessment under this Act, the Commissioner shall issue an amended assessment increasing such assessed loss:

Provided that—

- (i) any such amended assessment issued by the Commissioner shall not be subject to any objection and appeal;
- (ii) a determination of assessed loss made in accordance with the practice generally prevailing and accepted by such person at the time when any assessment was made shall be deemed to have been properly determined;
- (iii) the Commissioner shall not increase any assessed loss under this section unless the claim thereof is made **within 6 years** after the date of the notice of assessment in which any assessed loss was first determined.

### 50 Adjustment of tax, etc., payable in pursuance of assessments made before date of commencement of charging Act relating to a year or period of assessment

(1) The tax with which a person is chargeable in pursuance of an assessment which is made in respect of a year or period of assessment before the date of commencement of the charging Act relating to that year or period shall be calculated as if the last enacted charging Act were the charging Act relating to that year or period.

(2) After the date of commencement of the charging Act relating to a year or period of assessment, the Commissioner shall adjust the tax with which a person is charged or the tax paid by a person in pursuance of an assessment referred to in subsection (1) if an adjustment is required by reason of the making of provision in that Act which is different from that made in the charging Act by reference to the provisions of which the tax so charged or paid was calculated.

(3) On an adjustment made in terms of subsection (2), any amount over or short paid shall be refundable to or recoverable from the taxpayer.

(4) Notwithstanding subsection (2), the Commissioner shall not make an adjustment such as is referred to in that subsection if the Commissioner is of the opinion that an adjustment would be impracticable or cause undue delay in winding up the affairs of a trust.

### 51 Assessments and recording thereof

(1) [All assessments required to be made under this Act shall, subject to **\*section four**, be made by the Commissioner or under his direction.]

[Editor's note: **\*Section 4 was replaced by the Revenue Authority Act** with effect from '19<sup>th</sup> January, 2001]

(2) Notice of assessment and of the amount of tax payable, where tax is payable, shall be given to the taxpayer assessed.

[provided it complies with the law- *Nestle Zimbabwe (Pvt) Ltd v ZIMRA 20-SC-290 and 23-HH-312* ]

(3) The Commissioner shall, in the notice of assessment, give notice to the taxpayer that any objection to the assessment must be sent to him **within 30 days** after the date of such notice.

[*Barclays Bank of Zimbabwe v Zimra 04-HH-162*]

(4) Complete copies of all notices of assessment shall be filed in the office of the Commissioner or such office as he may designate:

Provided that any copy of a notice of assessment so filed may be destroyed by the Commissioner after the expiration of a **period of 6 years** from the date of issue of such notice of assessment.

(5) Separate assessments shall be made upon partners notwithstanding subsection (15) of section *thirty-seven*.

### 52 Copies of assessments

Notices of assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Commissioner of his own notices of assessment.

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## INCOME TAX ACT

### PART VI REPRESENTATIVE TAXPAYERS

#### 53 Representative taxpayers

(1) For the purposes of this Act—

**“representative taxpayer”—**

(a) in relation to the income of a company **(other than** a company domiciled outside Zimbabwe whose income is taxed by virtue of section *twelve*(6) and (7)), means the public officer of the company;

[*Afritrade International Limited v Zimra* 21-SC-003  
See (g) below- Editor]

(b) in relation to income the subject of a trust, means the trustee;

(c) in relation to income possessed, disposed of, controlled or managed by an agent, including an agent to whom section *fifty-eight* relates, means the agent;

(d) in relation to income remitted or paid by a person in Zimbabwe to a person temporarily or permanently absent from Zimbabwe, means the person remitting or paying the income;

(e) in relation to income paid under a decree or order of a court or judge to a receiver or other person, means the receiver or other person whether or not—

(i) the receiver or other person is entitled to the benefit of income; or

(ii) the income is receivable by or accrues to a beneficiary on a contingency or on the happening of an uncertain event;

(f) in relation to—

(i) the income in any year of assessment of a person whose property becomes the subject of a trust during that year by reason of his death or his becoming subject to a legal disability; or

(ii) the income of that person in any other year of assessment in respect of which a return was not made to the satisfaction of the Commissioner;

means the trustee.

(g) in relation to the income of a company or other entity **domiciled outside Zimbabwe** whose income is taxed by virtue of section *twelve*(6) and (7)), means the person in Zimbabwe appointed by that company or entity

or the Commissioner in terms of section *twelveA*(5).

[para (g) inserted by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019]

(2) Nothing contained in subsection (1) shall be construed as relieving a person of any liability, responsibility or duty imposed upon him by this Act.

#### 54 Liability of representative taxpayer

(1) Every representative taxpayer, in respect of the income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control, shall be subject in all respects to the same duties, responsibilities and liabilities as if such income were received by or accruing to or in favour of him beneficially and shall be liable to assessment in his own name in respect of such income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

[*Afritrade International Limited v Zimra* 21-SC-003]

(2) Every representative taxpayer referred to in paragraph (f) of the definition of **“representative taxpayer”** in subsection (1) of section *fifty-three* shall, as regards the income received by or accrued to any person prior to his death or his becoming subject to a legal disability, be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accrued to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(3) Any credit, deduction, exemption or right to deduct a loss which could be claimed by the person represented by him shall be allowed in the assessment made upon the representative taxpayer in his representative capacity.

(4) Any tax payable in respect of any assessment shall, save in the case of an assessment upon the public officer of a company, be recoverable from the representative taxpayer, but to the extent only of any assets belonging to the person whom he represents which are in his possession or under his management, disposal or control.

(5) Any tax payable in respect of any assessment made upon a **public officer** of a company in his capacity as such shall be

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## INCOME TAX ACT

recoverable from the company of which he is the public officer.

[*Afritrade International Limited v Zimra 21-SC-003*]

### 55 Right of representative taxpayer to indemnity

Every representative taxpayer who as such pays any tax shall be entitled to recover from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, so much as is required to indemnify him for the payment.

### 56 Personal liability of representative taxpayer

Every representative taxpayer shall be liable personally for any tax payable by him in his representative capacity if, while it remains unpaid—

(a) he alienates, charges or disposes of the income in respect of which the tax is chargeable;

or

(b) he disposes of or parts with any fund or money which is in his possession or comes to him after the tax is payable when from or out of such fund or money the tax could lawfully have been paid.

### 57 Company or society regarded as agent for absent shareholder or member

Where a shareholder or member of a company or society is absent from Zimbabwe, such company or society shall, for the purposes of this Act, be deemed to be the agent of such shareholder or member and shall as regards such shareholder or member, and in respect of any income received by or accruing to him or in his favour as shareholder or member, have and exercise all the powers, duties and responsibilities of an agent of a taxpayer absent from Zimbabwe.

### 58 Power to appoint agent

(1) The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent of such other person for the purposes of this Act, and, notwithstanding anything to the contrary contained in any other law, may be required to pay any \*tax due from any moneys in any current account, deposit account, fixed deposit

account or savings account or from any other moneys, including pensions, salary, wages or any other remuneration, which may be held by him for, or due by him to, the person whose agent he has been declared to be.

[*The Endeavour Foundation and UDC Ltd v COT 95-SC-095*

Zimra does not require to issue any notice *Central African Road Svcs (Pvt) Ltd v ZIMRA 17-HH-110*]

(2) For the purpose of subsection (1)—

“person” includes—

[includes an *Embassy Time Security (Pvt) Ltd (in Liquidation) v ZIMRA & 4 Ors 18-HH-248*]

(a) a bank, building society or savings bank; and

(b) a partnership; and

(c) any officer in the Civil Service;

[Civil Service is now referred to as the \*Civil Service i.t.o. PART I of Act 3 of 2016 w.e.f. 1<sup>st</sup> July, 2016]

“tax” includes—

(a) **interest** payable by virtue of subsection (2) of section **seventy-one**, subsection (6) of section **seventy-two** or subsection (3) of section **seventy-three**; and

(b) **provisional tax** referred to in section **seventy-two**;

[*Delta Beverages (Pvt) Ltd v ZIMRA 16-HH-378*]

and

(c) **employees tax** referred to in section **seventy-three**; and

(d) **any additional tax** or other penalty payable **under this Act**;

[competent to garnishee a bank to recover penalties *Triangle Ltd v ZIMRA 11-HB-012*]

[Zimra's decision to garnishee accounts for penalties under the **Customs Act** not permitted *Econet Wireless (Pvt) Ltd v ZIMRA & The Commissioner General 19-SC-017*]

(e) **any levy or sum payable** in terms of the **charging Act**.

[Definition of “tax” substituted by Act 4 of 1996 and Act 13/1996.

Subpara 2(e) substituted by Act 4 of 2012 with effect from the 17<sup>th</sup> September, 2012 *Zimbabwe Platinum Mines (Pvt) Ltd v ZIMRA, Stanbic Bank, Min of Mines and MMCZ 15-HH-169 - are-royalties a “\*tax due “ ?Unki Mines P/L v ZIMRA & Stanbic Bank 22-HH-729*]

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### 59 Remedies of Commissioner against agent and trustee

Against all property of any kind vested in or under the control or management of any agent or trustee the Commissioner shall have the same remedies and in as full and ample a manner as he has against the property of any other person who is liable to pay tax.

### 60 Power to require information

(1) For the purposes of sections *fifty-eight* and *fifty-nine*, the Commissioner may require any person to give him information in respect of any moneys, funds or other assets which may be held by him for, or due by him to, any other person.

(2) For the purpose of subsection (1)—

“**person**” has the same meaning as it has for the purpose of section *fifty-eight*.

### 61 Public officer of companies

(a1) In this section, “**company**” includes \*a private business corporation.

[Definition inserted by Act 2 of 2005 from the 12th September, 2005. Because \* no longer exist, this definition needs amendment to align with the Companies and Other Business Entities Act *Chapter 24:31* -editor]

(1) Every company which carries on a trade or has an office or other established place of business in Zimbabwe shall at all times be represented by an individual residing therein.

(2) Such individual shall be a person approved by the Commissioner and shall be appointed by the company or by an agent or legal practitioner who has authority to appoint such a representative for the purposes of this Act:

Provided that, in the event of any company being placed under \*judicial management or in voluntary or compulsory liquidation, the \*judicial manager or liquidator duly appointed shall be required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under this Act during the continuance of such management or liquidation.

[Because \* judicial managers no longer exist, this proviso needs amendment to align with the Companies and Other Business Entities Act *Chapter 24:31* -editor]

(3) The representative shall be called the public officer of the company and shall be appointed, in the case of a company which

begins to carry on a trade, or establishes an office or other place of business in Zimbabwe, **within 1 month** from the establishment of such office or other place of business.

(4) In default of any such appointment, the public officer of any company shall be such managing director, director, secretary or other officer of the company as the Commissioner may designate for that purpose.

[*MA Limited v Zimra* 16-HH-316  
*Afritrade International Limited v Zimra* 21-SC-003]

(5) Every such company, within the period prescribed by subsection (3), shall also appoint a place within Zimbabwe at which any notices or other documents under this Act affecting the company may be served or delivered, or to which any such notices or documents may be sent.

(6) No appointment shall be deemed to have been made under subsection (3) or (5) until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to the Commissioner.

(7) Every such company shall keep the office of public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with subsection (5), and every change of public officer or of the place for the service or delivery of notices shall be notified to the Commissioner **within 30 days** of such change taking effect.

(8) ....

[Penalty increased by Act 2 of 2005 from the 15th September, 2005, but repealed by section 20 of the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the **1st February 2009**.]

[See para 66 of *Afritrade International Limited v Zimra* 21-SC-003 -editor]

(8a) ....

[penalty repealed by the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the **1st February 2009**.]

(9) Every notice, process or proceeding which under this Act may be given to, served upon or taken against any company may be given to, served upon or taken against its public officer, and if at any time there is no public officer then any such notice, process or proceeding may be given to, served upon or taken against any officer or person acting or appearing to act in the management of the business or affairs of such company or as agent of such company.

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[*MA Limited v Zimra* 16-HH-316]

(10) Every public officer shall be answerable for the doing of all such acts, matters or things as are required to be done under this Act by a taxpayer, and in case of default shall be liable to the penalties provided in respect of defaults by a taxpayer.

(11) Everything done by any public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

(12) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with the provisions of this Act, but the company shall in all respects be subject to and liable to comply with this Act as if there were no requirement to appoint such officer.

### PART VII OBJECTIONS AND APPEALS

#### 62 Time and manner of lodging objections

(1) Any taxpayer who is aggrieved by—

(a) any assessment made upon him under this Act;

[-not against a fixed percentage of withholding tax -  
*FMC Finance (Pvt) Ltd v Zimra* 22-HH-311  
-the assessment must be a valid one *JK Motors v Zimra* 22-HH-762]

or

(b) any decision of the Commissioner mentioned in the *Eleventh Schedule*;

[*M Coy (Pvt) Ltd v Zimra* 16-HH-661  
*SDC Ltd v Zimra* 18-HH-648]

or

(c) the determination of a reduction of tax in terms of section *ninety-two, ninety-three, ninety-four, ninety-five or ninety-six*;

may, unless it is otherwise provided in this Act, object to such assessment, decision or determination **within 30 days** after the date of the notice of assessment or of the written notification of the decision or determination in the manner and under the terms prescribed by this Act:

Provided that nothing herein contained shall give a further right of objection to the amount of

any assessed loss determined in respect of the previous year of assessment.

(2) No objection shall be entertained by the Commissioner which is not delivered at his office or posted to him in sufficient time to reach him on or before the last day appointed for lodging objections, unless the taxpayer satisfies the Commissioner that reasonable grounds exist for delay in lodging his objection.

(3) Every objection shall be in writing and shall specify in detail the grounds upon which it is made.

[*GC (Pvt) Ltd v ZIMRA* 15-HH-759]

(4) On receipt of a notice of objection to an assessment, a decision or the determination of a reduction of tax the Commissioner—

(a) may reduce or alter the assessment, alter the decision or, as the case may be, increase or alter the reduction or may disallow the objection;

[-*except where there is no proper 'assessment'*  
*FMC Finance (Pvt) Ltd v Zimra* 22-HH-311]

and

(b) shall send the person upon whom the assessment has been made or to whom the decision has been conveyed or, as the case may be, to whom the reduction has been allowed, notice of the reduction, increase, alteration or disallowance:

Provided that, if the Commissioner has not notified the person who lodged the objection of his decision on it **within 3 months** after receiving the notice of objection, or within such longer period as the Commissioner and that person may agree, **the objection shall be deemed to have been disallowed**.

[Proviso inserted by Act 22 of 1999, and period reduced to 3 months by the Finance [No.2] Act 8 of 2005 w.e.f. 1<sup>st</sup> January, 2006.  
*D Bank Ltd v ZIMRA* 15-HH-135  
*ZIMRA v Stanbic Bank Zimbabwe Ltd* 19-SC-013]

(5) If—

(a) no objection to an assessment or the determination of a reduction of tax has been made; or

(b) an objection to an assessment or the determination of a reduction of tax has been disallowed or withdrawn;

the assessment or reduction shall, subject to any adjustment made in terms of section *forty-seven* or the decision of a court on an appeal

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determined in pursuance of this Part, be final and conclusive.

[A v COT ICT 1691  
Trek Petroleum Pvt Ltd v ZIMRA 17-SC-056]

(6) If an objection to an assessment or the determination of a reduction of tax has been **\*allowed**, the assessment or reduction as reduced, increased or altered shall, subject to any adjustment made in terms of section *forty-seven* or the decision of a court on appeal determined in pursuance of this Part, be final and conclusive.

[GC (Pvt) Ltd v ZIMRA 15-HH-759  
-letter undertaking to assess tax after an adjustment was made not =“\*allowed” Zimbabwe Platinum Mines (Pvt) Ltd v ZIMRA 21-SC-159]

#### 63 Burden of proof as to exemptions, deductions or abatements

In any objection or appeal under this Act, the burden of proof that any amount is exempt from or not liable to the tax or is subject to any deduction in terms of this Act or credit, shall be upon the person claiming such exemption, non-liability, deduction or credit : and upon the hearing of any appeal the court shall not reverse or alter any decision of the Commissioner unless it is shown by the appellant that the decision is wrong.

[“Amnesty applicant” v COT 86-ITC-1423  
PL Mines (Pvt) Ltd v Zimra 15-HH-466  
C F (Pvt) Ltd v Zimra 18-HH-099  
SDC Ltd v Zimra 18-HH-648  
NYS v Zimra 19-HH-517  
-PPCZ v Zimra 19-HH-755  
Proved was Improper to split payments of expenditure -some deductible/some not NOC (Pvt) Ltd v Zimra 19-HH-765  
E (Pvt) Ltd v Zimra 22-HH-010  
IAB Company v Zimra 22-HH-032  
Zimplats v Zimra 23-SC-016]]

#### 64 Special Court for Income Tax Appeals and proceedings on appeal

(1) For the purpose of hearing and determining appeals in accordance with section *sixty-five* or any proceedings incidental thereto or connected therewith, there is hereby established a court which shall be a court of record and be known as the Special Court for Income Tax Appeals.

[being a **specialised division** of the **High Court**, as declared by section 5(c) of the Judicial Laws Amendment (Ease of Settling Commercial and Other Disputes) Act No.7 of 2017 promulgated on the 23rd June, 2017]

(2) The Special Court shall be presided over by a President, who shall be a person who is qualified in terms of subsection (3) and appointed as President of the Special Court in terms of subsection (1) of section 92 of the Constitution:

Provided that, if no person has been so appointed or if such person is for any reason unable to serve as President of the Special Court, the Chief Justice may, after consulting the Judicial Service Commissioner, appoint a judge or acting judge of the High Court to be President of the Special Court for such period as he may specify.

(3) A person shall not be qualified for appointment in terms of subsection (2) unless—

(a) he is a former judge of the Supreme Court or the High Court; or

(b) he is qualified for appointment as a judge of the Supreme Court or the High Court.

(4) A person appointed in terms of subsection (2) may be appointed—

(a) from time to time to deal with any particular case; or

(b) for a particular period:

Provided that a judge or acting judge appointed by the Chief Justice in terms of the proviso to subsection (2) shall preside over the Special Court for such period as the Chief Justice may specify.

(5) Subject to subsection (2) of section 92 of the Constitution, the conditions of service of a President of the Special Court, and the remuneration and allowances payable to any assessors who may be appointed in terms of section *sixty-seven*, shall be as determined from time to time by the President.

(6) The Special Court shall sit at all times as may be fixed by the President of the Special Court and at such places as may be appointed by the Judge President of the High Court.

(7) The Registrar of the High Court shall be the Registrar of the Special Court and shall ensure the proper functioning of the court.

[Subsection (7) amended by Act 12/2006 from 5<sup>th</sup> January, 2007]

(8) The procedure for the institution and hearing of appeals to the Special Court shall be in accordance with this Part and the rules set out in the *Twelfth Schedule*.

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#### 65 Appeals from decision of Commissioner to High Court or Special Court

(1) Any taxpayer entitled to object and who is dissatisfied with the decision or deemed decision of the Commissioner in terms of subsection (4) of section *sixty-two*, may, in accordance with the rules set out in the *Twelfth Schedule*, appeal therefrom either—

- (a) to the High Court; or
- (b) to the Special Court.

[Since this appeal constitutes a rehearing, the judge is not restricted by the considerations of the Commissioner and may take into account the all the factors raised by both counsel in their respective oral and written submissions.

*PL Mines (Pvt) Ltd v ZIMRA 15-HH-466  
M (Pvt) Ltd v ZIMRA 15-HH-665  
GC (Pvt) Ltd v ZIMRA 15-HH-759  
NYS v Zimra 19-HH-517  
MW (Pvt) Ltd v ZIMRA 22-HH-022*  
illegal and fatal to cite 'The Commissioner General'  
*MGZ (Pvt) Ltd v The Commissioner General Zimra 21-HH-269]*

(2) Every notice of appeal shall be in writing, shall state whether the appellant wishes to appeal to the High Court or to the Special Court and shall be lodged with the Commissioner **within 21 days** after the date of the notice mentioned in subsection (4) of section *sixty-two* or, as the case may be, after the expiry of the period mentioned in the proviso to that subsection. Unless such notice of appeal has been lodged within the period prescribed by this subsection, it shall be of no effect whatsoever and the objection shall not be considered further:

Provided that the High Court or the Special Court to which the appellant wishes to appeal may, on good cause being shown or by agreement of the parties, extend the said period.

*[MA Limited v Zimra 16-HH-316]*

(3) If any person fails to lodge the statement to which rule 5 in the *Twelfth Schedule* relates within the period specified in that rule, the appeal shall be deemed to have lapsed unless the High Court or the Special Court, on good cause being shown, grants relief from the provisions of his subsection.

(4) At the hearing of any such appeal the arguments of the appellant shall be limited to the grounds stated in his notice of objection:

[*A Bank Ltd v ZIMRA 20-HH-270  
no "ambushing" prior to the hearing FMC Finance (Pvt) Ltd v Zimra 22-HH-311*]

Provided that the High Court or the Special Court which hears such appeal may, on good cause being shown or by \*agreement of the parties, grant leave to the appellant to rely on other grounds.

[*XYZ v CoT 77-RLR-001  
no leave sought GC (Pvt) Ltd v ZIMRA 15-HH-759  
M Coy (Pvt) Ltd v ZIMRA 16-HH-661  
CF (Pvt)Ltd v ZIMRA 18-HH-099  
ZIMRA v Stanbic Bank Zimbabwe Ltd 19-SC-013  
\*PPC v ZIMRA 19-HH-755*]

(5) If the assessment has been altered or reduced, the assessment as altered or reduced shall be deemed to be the assessment against which the appeal is made.

(6) The hearing of an appeal under this section may be adjourned by the High Court or the Special Court, as the case may be, from time to time to any time and place that may seem convenient.

(7) Notwithstanding anything to the contrary contained in any other law, the sittings of the High Court and of the Special Court for the hearing of appeals under this section shall not be public, and either the High Court or the Special Court shall at any time, on the application of the appellant, exclude from such sittings, or require to withdraw therefrom, all or any persons whosoever whose attendance is not necessary for the hearing of the appeal under consideration:

Provided that the High Court or the Special Court may authorize the **publication** of the legal considerations on which its judgment in any case is based.

(8) On the hearing and determination of any appeal under this section by the High Court, appearance on behalf of the Commissioner or the appellant or any other person who is interested in such appeal shall be in accordance with the laws and rules of court governing such appearance.

(9) On the hearing and determination of any appeal to the Special Court, the Commissioner or any person authorized by him may appear in support of the assessment, and the appellant may appear in person or represented by a legal practitioner or by an agent authorized by him in writing.

(10) ...

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(a) Subject to this Act, the High Court or the Special Court, whichever hears an appeal under this section, may order any assessment or decision under appeal to be amended, reduced, withdrawn or confirmed or may, if it so thinks fit, refer the assessment or decision back to the Commissioner for further investigation and assessment or decision. Any assessment or decision made by the Commissioner on such reference shall be subject to objection and appeal as provided in this Part.

(b) The power conferred upon the High Court or the Special Court by paragraph (a) shall, in the case of an appeal against any decision of the Commissioner made in the exercise of his discretion under subsection (6) of section *forty-six*, include the power to restore in part or in whole such portion of the additional tax imposed under subsection (1) of that section as may have been remitted by the Commissioner.

(11) The Commissioner shall give effect, by the issue of such assessments as may be necessary, to any decision of the High Court or the Special Court under this section.

(12) The High Court or the Special Court to which an appeal is made under this section shall not make any order as to costs save when the claim of the Commissioner is held to be unreasonable or the grounds of appeal therefrom to be frivolous.

[GC (Pvt) Ltd v ZIMRA 15-HH-759  
MAN LTD v ZIMRA 20-HH-078  
Triangle Ltd & Hippo Valley Estates v ZIMRA & 10  
ors 20-HMA-028 – on appeal 21-SC-082  
FMC Finance (Pvt) Ltd v Zimra 22-HH-311  
BCM (Pvt) Ltd v ZIMRA 23-SC-006]

(13) Subject to section *sixty-six*, any decision of the High Court or the Special Court under this section shall be final and without appeal.

### 66 Appeals from determination of High Court or Special Court to Supreme Court

(1) On the determination by the High Court or the Special Court of an appeal under section *sixty-five* or other proceedings incidental to or connected therewith, the appellant or the Commissioner, if dissatisfied with the determination—

(a) may appeal to the Supreme Court on any ground of appeal which involves a question of law alone;

(b) may, **with the leave** of a judge of the High Court or a President of the Special Court, as the case may be, or, if such judge or President

refuses to grant leave, with the leave of a judge of the Supreme Court, appeal to the Supreme Court on any ground of appeal which involves a question of fact alone or a question of mixed law and fact.

[Ka. v CoT 93-SC-001  
BCM (Pvt) Ltd v ZIMRA 23-SC-006]

(2) Notwithstanding anything to the contrary contained in any other law, the sittings of the Supreme Court for the hearing of appeals under subsection (1) shall not be public and the Supreme Court shall at any time, on the application of the appellant in the court below, exclude from such sittings, or require to withdraw therefrom, all or any persons whomsoever whose attendance is not necessary for the hearing of the appeal under consideration:

Provided that the Supreme Court may authorize the **publication** of the legal considerations on which its judgment in any case is based.

### 67 Assessors

For the hearing of any appeal under the provisions of this Part, the presiding judge or a President of the Special Court may, either of his own motion or on the application of either party, appoint one or two assessors to advise at such hearing. Any assessor appointed in terms of this section shall act in a purely advisory capacity and shall have no right to vote on any decision.

### 68 Decisions not subject to objection or appeal

Save as is provided in paragraph (b) of subsection (1) of section *sixty-two*, no decision of the Commissioner shall be subject to objection or appeal.

### 69 Payment of tax pending decision on objection and appeal

(1) The obligation to pay and the right to receive any tax chargeable under this Act shall not, \*unless the Commissioner otherwise directs and subject to such terms and conditions as he may impose, be suspended pending a decision on any objection or appeal which may be lodged in terms of this Act.

[Ellis N.O. v CoT 92-SC-001]

[Zimra does not require to issue any notice Central African Road Svcs (Pvt) Ltd v Zimra 17-HH-110  
Trek Petroleum Pvt Ltd v ZIMRA(1) 17-HH-477  
Trek Petroleum Pvt Ltd v Zimra(2) 17-SC-056]

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(2) If any assessment or decision is altered on appeal, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded and amounts short paid shall be recoverable.

[competent to garnishee a bank to recover penalties  
*Triangle Ltd v ZIMRA 11-HB-012*  
*Mayor Logistics (Pvt) Ltd v Zimra 14-CC-007*]

### 70 Judge and assessors not disqualified from adjudicating or advising

A judge of the Supreme Court or of the High Court or a President of the Special Court or any assessor of any such courts shall not, solely on account of his liability to tax under this Act, be deemed to be interested in any matter upon which he may be called upon to adjudicate or advise thereunder.

## PART VIII PAYMENT AND RECOVERY OF TAX

### 71 Appointment of day & place for payment of tax

(1) Tax shall become due and payable on such date and shall be paid on or before such days and at such places as are fixed or prescribed by or under this Act or, where no such time or place is so fixed or prescribed, as may be notified by the Commissioner, and may be paid in 1 sum or in instalments of equal or varying amounts as may be determined by the Commissioner, having regard to the circumstances of the case:

Provided that nothing herein contained shall deprive any taxpayer of the right to pay his tax through the post.

[Amended by Act 18/2000 from 12th January, 2001  
*Mayor Logistics (Pvt) Ltd v ZIMRA 14-CC-007*]

(2) If tax is not paid on or before such days and at such places as are fixed or prescribed by or under this Act or, where no such time or place is so fixed or prescribed, as are notified by the Commissioner in terms of subsection (1), **interest**, calculated at a rate to be fixed by the Minister, by *statutory instrument*, shall be payable on so much of the tax or an instalment of the tax, as the case may be, as from time to time remains unpaid by the taxpayer during the period beginning on the date specified by the Commissioner in the notification as the date on which the tax or the instalment of the tax shall

be paid and ending on the date the tax or the instalment of the tax is paid in full:

[*Man Ltd v Zimra 20-HH-078*  
See the Income Tax (**Rate of Interest**) Notice 2022  
**SI 212 of 2022**  
gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

[Amended by Act 10/2003 from the 30<sup>th</sup> December, 2003.

*MR Bank Ltd v Zimra 19-HH-779*]

(3) For the avoidance of doubt it is declared that where any person responsible for the payment of any tax to the Commissioner in terms of the *Ninth, Thirteenth, Fifteenth, Sixteenth, Seventeenth or Eighteenth Schedule* fails, within the time provided by the *Schedule* concerned to pay the tax, **interest** calculated at a rate to be fixed by the Minister by *statutory instrument* shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided in the *Schedule* concerned for its payment and ending on the date the tax is paid in full.

[Inserted by Act 10/2003 from the 30<sup>th</sup> December, 2003.

See the Income Tax (**Rate of Interest**) Notice 2022  
**SI 212 of 2022**

gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

### 72 Payment of provisional tax

(1) In this section—

**“notice of assessment”** means a notice referred to in subsection (2) of section *fifty-one*, stating the amount of tax to be paid by a person;

**“provisional tax”**, in relation to any person, means an amount which he or she estimates will be the amount of tax liable to be paid by him or her after excluding any employees' tax which has been withheld in terms of the *Thirteenth Schedule* from any remuneration paid or payable to him or her in respect of the same year of assessment;

**“quarterly payment date”**, means the day fixed in terms of this section as the day on or before which an instalment of provisional tax shall be paid;

**“relevant year of assessment”**, in relation to any provisional tax, means the year of

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assessment in which the income in respect of which the tax is payable accrued;

**“tax liable to be paid”**, means any tax payable in respect of the relevant year of assessment;

(2) Subject to this section, where a person's taxable income in any year of assessment includes an amount in respect of which employees' tax is not withheld in terms of the *Thirteenth Schedule*, he or she shall pay provisional tax on that amount in 4 quarterly instalments:

Provided that the following persons who would otherwise be liable to pay provisional tax under this section shall pay tax in the manner notified by the Commissioner-General under section *seventy-one*—

(i) persons liable for property or insurance commission tax in terms of section *thirty-six I*, and

(ii) any other class of taxpayer as the Commissioner-General may, by public notice, specify for the purposes of this proviso.

(3) Every provisional taxpayer shall, during every period within which provisional tax is or may be payable, submit to the Commissioner-General, together with a return in the form prescribed by the Commissioner-General, an estimate of the total taxable income which will be derived by the taxpayer in the year of assessment in respect of which provisional tax is or may be payable by the taxpayer.

[Amended by Act 6 of 2006 from the 1<sup>st</sup> September, 2006.]

(4) If any provisional taxpayer fails to submit any estimate or return as required by subsection (3), the Commissioner-General may estimate the taxable income which is required to be estimated, and such estimate shall be final and conclusive.

[Amended by Act 6 of 2006 from the 1<sup>st</sup> September, 2006.]

(5) The Commissioner-General may call upon any provisional taxpayer to justify any estimate made by him or her in terms of subsection (3), or to furnish particulars of his or her income and expenditure or any other particulars that may be required, and, if the Commissioner-General is dissatisfied with the said estimate, he may increase the amount thereof to such amount as he considers reasonable, and the estimate as increased shall be final and conclusive.

(6) Any decision of the Commissioner-General in the exercise of his discretion under

subsection (4) or (5) shall be subject to objection and appeal.

(7) Subject to this section, the instalments of provisional tax payable in terms of subsection (2) shall be paid as follows

(a) the 1<sup>st</sup> quarterly instalment, of 10% of the provisional tax payable, shall be paid on or before the **25th March** in the relevant year of assessment; and

(b) the 2<sup>nd</sup> quarterly instalment, of 25% of the provisional tax payable shall be paid on or before the **25th June** in the relevant year of assessment; and

(c) the 3<sup>rd</sup> quarterly instalment, of 30% of the provisional tax payable shall be paid on or before the **25th September** in the relevant year of assessment; and

(e) the 4<sup>th</sup> quarterly instalment, of 35% of the provisional tax payable, shall be paid on or before the **20th December** in the relevant year of assessment.

Provided if the Commissioner-General has exercised his or her discretion in relation to any taxpayer under section 37(13) to accept some date, **other than** the end of a year of assessment, as the date on which the taxpayer concerned makes up his or her annual accounts, the dates on which the quarterly payments are to be made for the purposes of this subsection shall be adjusted accordingly.

[Proviso inserted by Finance (No. 2) Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022.]

(8) As soon as practicable after the tax payable by a person has been determined, the Commissioner-General shall

(a) set off any amount of provisional tax the person may have paid against, successively

(i) the tax the person is liable to pay; and

(ii) any other tax or amount due and payable to the Commissioner-General

by the person;

and

(b) refund to the person any amount of provisional tax not so credited.

(9) Subsection (2) of section *seventy-one*, other than the proviso thereto, shall, subject to subsections (7) and (8), apply, *mutatis mutandis*, to any amount of provisional tax remaining unpaid after the quarterly payment

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date on or before which the instalment was required to be paid.

(10) For the purposes of subsection (9), if the amount of a quarterly instalment of tax paid by a person is less than the rate prescribed under subsection (7)(a), (b), (c), or (d), as the case may be, of the amount of tax actually due, such deficit shall be deemed to be an amount of provisional tax remaining unpaid by him or her after the quarterly payment date on which the instalment was required to be paid.

[Subsection 10 substituted by Act 4 of 2012 w.e.f. 17<sup>th</sup> September, 2012]

(11) If the Commissioner-General is satisfied that a person required to pay provisional tax under this section

(a) was, through special circumstances, unable to pay the whole or part of an instalment of provisional tax payable by him or her;

[*SZ (Pvt) Ltd v Zimra* 20-HH-142]

or

(b) underestimated the amount of an instalment of provisional tax payable by him or her **by not more than 10%** or through an increase in the rates of tax or for any other sufficient cause;

the Commissioner-General may waive the whole or part of any interest payable under section **seventy-one** (2).

[Subsection 11 substituted by Act 4 of 2012 w.e.f. 17<sup>th</sup> September, 2012]

(12) Section **seventy-four** shall apply to the payment of provisional tax in the same way as it applies to the payment of tax.

(13) Notwithstanding any other provision of this section

(a) this section shall not apply to any person whose taxable income, apart from income in respect of which employees' tax is required to be withheld in terms of the *Thirteenth Schedule*, does not exceed such amount as may be prescribed by the Minister by notice in the *Gazette*;

(b) the Commissioner-General may, by written notice to the person concerned, fix different dates from those specified in paragraphs (a), (b), (c) and (d) of subsection (7) as any person's annual payment dates, and this section shall apply to that person accordingly.

[Substituted by Act 29 of 2004 from the 1<sup>st</sup> January, 2005]

(14) With particular reference to subsection (13)(b), the Commissioner-General, may, on application by a taxpayer who qualifies as a "**small or medium enterprise**" as defined in section 2B of the Charging Act, permit such taxpayer to pay provisional tax under this section on a monthly basis, that is to say, 1 month at a time in advance.

[subsection (14) inserted by the Finance Act of 2017 w.e.f. the 23rd March, 2017]

### 73 Payment of employees' tax

(1) Employees' tax shall be payable in terms of the *Thirteenth Schedule* in respect of the remuneration liable to employees' tax as defined in paragraph 1 of that *Schedule* paid or payable in any year of assessment to an individual who is an employee as defined in that paragraph.

(2) Payments in respect of the amounts withheld under subparagraph (1) of paragraph 3 of the *Thirteenth Schedule* shall be made in accordance with that *Schedule* at such place as may be notified by the Commissioner.

(3) If any amount of employees' tax is not paid in full within the period prescribed for payment thereof by subparagraph (1) of paragraph 3 of the *Thirteenth Schedule*, **interest** shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be paid by the employer at a rate to be fixed by the Minister, by *statutory instrument*.

[See the **Income Tax (Rate of Interest) Notice 2022 SI 212 of 2022** gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

on so much of such amount as from time to time remains unpaid by the employer during the period beginning on the day next following the last day of the period prescribed as aforesaid and ending on the day such amount is paid in full.

### 74 Persons by whom tax is payable

(1) Tax shall, subject to the provisions of this Act, be payable—

(a) in respect of income to which a representative taxpayer is entitled in his representative capacity or of which in that capacity he has the management, receipt, disposal, remittance, payment or control, by the representative taxpayer; and

(b) in respect of income not referred to in paragraph (a) which accrues or is deemed to accrue to or in favour of or is received or

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deemed to be received by a person, by the person to whom or in whose favour the income accrues or is deemed to accrue or by whom the income is received or is deemed to be received.

(2) A taxpayer in whose income there is included an amount which would, but for subsection (3), (4), (5) or (6) of section ten be included in the income of some other person, may recover from that other person so much of the tax paid by the taxpayer as is attributable to the inclusion of that amount in the income of the taxpayer.

### 75 Temporary trade

(1) Where the Commissioner has reason to believe that any person intends carrying on a trade in Zimbabwe for a limited period only he may at any time and from time to time require that person to give security, by bond or deposit or otherwise, to the satisfaction of the Commissioner, for the due return of and payment of tax on the income derived by that person from sources within, or deemed to be within, Zimbabwe.

(2) Any person who, without just cause, fails or refuses to give security when required to do so in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Inserted by the Criminal Penalties Amendment Act No. 22 of 2001, from the 10th September, 2002.]

### 76 No tax payable in certain circumstances

(1) Notwithstanding any other provision of this Act or a charging Act, no tax in respect of a year of assessment shall be payable by a person if his liability for such tax or, if he is liable to pay 2 or more taxes, the aggregate of such taxes in respect of that year, is less than **\$250.00** or such other amount as the Minister may fix in regulations made under section ninety.

[Amended by Act 29 of 1998 from 1 January 1999; further by Act 29 of 2004 from the 1 January 2005; reduced from **\$ 100 000** to the above limit w.e.f. 12/8/06 i.t.o. Act 12/2006 and w.e.f. 1st August, 2008 i.t.o SI 109/2008; amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7 of 2019 w.e.f. 21<sup>st</sup> August, 2019; amount increased by the Finance (No.2) Act 10 of 2020 w.e.f. 31st December, 2020;

increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(2) Notwithstanding anything contained in this Act or any charging Act, no further income tax in respect of a year of assessment shall be payable by an individual if his liability for income tax in respect of that year exceeds by less than **\$250.00** or such other amount as the Minister may fix in regulations made under section ninety the amount credited in payment of that tax in terms of paragraph 18 of the *Thirteenth Schedule*.

[Amended by Act 29 of 1998 from the 1 January 1999; further by Act 29 of 2004 from the 1 January 2005; reduced from **\$ 100 000** to the above limit w.e.f. 12/8/06 i.t.o. Act 12/06 and w.e.f. **1st August, 2008** i.t.o SI 109/2008; amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amount increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

### 77 Recovery of tax

(1) Any tax shall, when it becomes due or is payable, be deemed to be a debt due to the State and shall be payable to the Commissioner in the manner and at the place prescribed, and may be sued for and recovered by action by the Commissioner in any court of competent jurisdiction.

(2) Notwithstanding anything contained in any law relating to magistrates courts, any amount whatsoever due and payable under this Act shall be recoverable by action in the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable under this Act.

(3) If a person by whom tax is due and payable transfers or has transferred any asset to a relation with the intention of avoiding recovery of the tax, the relation shall be deemed to be chargeable with the tax up to an amount equal to the fair market value of the asset—

- (a) when it was so transferred; or
- (b) when the relation is charged with the tax; whichever value is the greater.

[*Trek Petroleum Pvt Ltd v ZIMRA(1) 17-HH-477*]

- (4) If it is proved that—

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(a) after any tax became due and payable by him, or within 1 year before it became due and payable, a person transferred an asset to a relation; and

(b) the transfer was not one which is normally effected between relations in the same financial circumstances as that person and his relation;

it shall be presumed, unless the contrary is proved, that he transferred the asset with the intention of avoiding recovery of the tax.

(5) —

(a) If any tax due and payable by a partner in any business, which is referable to the taxable income derived from the partnership business, is outstanding after his assets in Zimbabwe, other than his interest in the assets of the partnership, have been excused or taken in execution, the partnership shall be deemed to be chargeable with the tax outstanding which shall become due and payable by it on such date as the Commissioner may specify in a notification given to it for that purpose in terms of subsection (1) of section **seventy-one** and that partner shall be released from the payment of so much of the tax outstanding as is recovered by the Commissioner in pursuance of that notification:

Provided that the amount of tax recoverable from the partnership shall not exceed the value of such partner's interest in the assets of the partnership.

(b) The amount of tax referable in terms of paragraph (a) shall be the proportion of the total tax due by the partner determined in accordance with the ratio that the partner's taxable income derived from the partnership business bears to his total taxable income.

(6) So much of any tax payable by any person under this Act as is due to the inclusion in his income of any income deemed to have been received by or accrued to him or to be his income, as the case may be, in terms of subsection (3), (4), (5) or (6) of section **ten**, may be recovered by the Commissioner from the assets by which the income so included was produced.

(7) In subsections (3) and (4),—

**"relation"** in respect of

(a) an individual, means a near relative;

(b) a company, means another company which, in the Commissioner's opinion, is under the same or substantially the same control or is a member of the same group of companies.

(8) If, in Zimbabwe or in its country of formation, incorporation or registration, a company or entity ("the **old company or entity**") is wound up voluntarily, or otherwise in circumstances that give rise to a reasonable suspicion that it was deliberately put into liquidation to avoid any tax liability, and —

[Subsection inserted by Finance Act 1/2019 gazetted 20th February 2019 w.e.f. 1<sup>st</sup> January, 2019.]

(a) the directors (or other persons acting in a similar capacity) of the old company or entity (or any of them)—

(i) incorporate or register another company or other entity (hereinafter called the "**new company or entity**") that carries out substantially the same business as the old company; or

(ii) operate as **sole traders**, whether individually or collectively, carrying on substantially the same business as the old company;

(b) the whole or a substantial part of its business and property wherever situated is transferred to another company or entity which will be or has been formed, incorporated or registered under any law;

the directors of the old company or entity (whether or not any of them become directors of or act in a similar capacity in relation to the new company or entity) shall be jointly and severally liable for the amount of any tax due and payable by the old company or entity.

(9) No person who, by his or her own representations or to all appearances, derives the benefit from any business from which, or property in respect of which, any tax is recoverable in terms of this Act, can avoid liability for paying the tax on the basis or alleged basis that he or she is not the beneficial owner of the business or property in question, unless—

[Subsection (9) inserted by Finance Act 7/2021 w.e.f. 31 December, 2021.]

(a) the fact of such beneficial ownership, and the name or names and other relevant particulars of the beneficial owner or owners, were fully disclosed by the person in any return relating to such business or property that was filed with the Commissioner within a period of not more than 12 months preceding the date when any claim for the recovery of the tax in question was made by or on behalf of the Commissioner; and

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(b) the beneficial owner or any one of them is ordinarily resident in Zimbabwe or is otherwise amenable to being sued for the recovery of the tax in Zimbabwe.

#### 78 Form of proceedings

(1) Proceedings in any court for the recovery of any tax shall be deemed to be proceedings for the recovery of a debt validly acknowledged in writing by the debtor.

(2) In any action or proceedings for the recovery of any tax it shall not be competent for the defendant to question the correctness of any assessment, notwithstanding that an objection or appeal may have been lodged thereto.

#### 79 Evidence as to assessments

The production of any document under the hand of the Commissioner or of any officer duly authorized by him purporting to be a copy of an extract from any notice of assessment shall be \*conclusive evidence of the making of such assessment and, except in the case of proceedings on appeal against the assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such document are correct.

[\**Trek Petroleum Pvt Ltd v Zimra 17-SC-056*]

#### 80 Withholding of amounts payable under contracts with State or statutory corporations

(1) In this section—

[Definition of “contract” amended by the Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; substituted by Finance Act 7/2021 w.e.f. 31 December, 2021; amended further by section 13 of Finance Act 8/2022 gazetted on the 24th October, 2022 by increasing the threshold beyond zwl\$130 000]

“contract” means a contract in terms of which the State or a statutory body, quasi-Governmental institution or registered taxpayer is obliged to pay one or more persons an amount or amounts totalling or aggregating **zwl\$500,000** or more, or where the contract is denominated in **foreign currency, US\$1 000** or more, over the year of assessment, but does not include—

(a) an agreement for the settlement of a **delictual claim** against the State or a statutory corporation; or

(b) an **employment** contract; or

(c) a sale effected in any shop in the ordinary course of the business of such shop, or any other consumer contract for the sale or supply of goods or services or both (**other than** a contract for the sale, letting or hire of immovable property), in which the seller or supplier is dealing in the course of business and the purchaser or user is not;

[Definition amended by Act 29 of 2004 from 1<sup>st</sup> January, 2005, and by Act 2 of 2005 gazetted on the 12<sup>th</sup> September, but with effect from the 1<sup>st</sup> January, 2005.

**Editor's Note:** para (c) caters for sales by retailers or wholesalers to consumers, and for the supply of farm produce and livestock to farmers. Payments for farm produce to persons who buy for resale such as traders, retailers and wholesalers are still subject to the withholding amount requirements.]

(d) a contract for the purchase of auction or contract tobacco in terms of which tobacco levy may be required to be withheld in terms of section *thirty-sixA*.

[para (d) inserted by the Finance Act 1 of 2018 w.e.f. the 1st January, 2018]

“**payee**” means a person to whom any amount is payable in terms of a contract, **but does not include**—

(a) a non-resident person liable to pay the withholding taxes under the *Seventeenth, Eighteenth and Nineteenth Schedules*; or

(b) a non-resident person whose income is taxed by virtue of section *twelve(6)* and (7); or

(c) in relation to a person liable to **non-executive directors fees** withholding tax in terms of the *Thirty-third Schedule*, any such person to the extent of his or her liability for that tax; or

(d) any person making any **delivery of grain** to the Grain Marketing Board established under the Grain Marketing Act [*Chapter 18:14*]; or

(e) any small-scale **gold miner** (as defined in the *Thirty-tenth Schedule*) making any delivery of gold to Fidelity Printers and Refiners (Private) Limited (the agent of the Reserve Bank of Zimbabwe for the purchase of gold from gold producers;

[Definition substituted by the Finance Act 1/2019 w.e.f. 20<sup>th</sup> February, 2019; and substituted by Act 13/2019 w.e.f. 31st December, 2019, which added the following subsection :-]

(f) any grower or contracted **grower of cotton** making a delivery of cotton or cotton seed in accordance with the Agricultural Marketing Authority (Seed Cotton and Seed

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Cotton Products) Regulations, 2009, published in Statutory Instrument 142 of 2009, or any other law that may be substituted for the same).

[Definition (f) inserted by section 12 of Act 8/2020 w.e.f. 28<sup>th</sup> October, 2020.]

(2) The failure by the Grain Marketing Board established under the Grain Marketing Act [Chapter 18:14] to withhold (in terms of section 80 of the Income Tax Act [Chapter 23:06]) tax from payments to persons making grain deliveries to it from the **1st August, 2013**, to the end of the financial year on 31st December, 2019, is hereby condoned.

**“paying officer”** means an officer or employee of the State or a statutory body, a quasi-Governmental institution or registered taxpayer who is responsible for paying a payee any amount due to him in terms of a contract;

[Amended by Act 29 of 2004 from 1<sup>st</sup> January, 2005.]

**“payment”** means payment by cash, barter, set-off, crediting a director’s loan accounts, intercompany debits and credits or by other settlement of obligations whatsoever and in any form;

[Definition inserted by Act 1 of 2014 with effect from the 4th April, 2014.]

**“quasi-Governmental institution”** means any person, whether corporate or unincorporated—

(a) established directly by or under any enactment for special purposes specified in that enactment; or

(b) wholly owned or controlled by the State that discharges statutory functions;

[Definition inserted by Act 29 of 2004 from 1<sup>st</sup> January, 2005.]

**“registered taxpayer”** means a person who is registered—

(a) as an employer in terms of the *Thirteenth Schedule*; or

(b) as a taxpayer in the records of the Commissioner-General otherwise than as an employer; or

(c) as a depositary in terms of section 22FA of the Capital Gains Tax Act [Chapter 23:01]; or

(d) as a registered operator in terms of the Value Added Tax Act [Chapter 23:12].

[Definition inserted by Act 29 of 2004 from 1<sup>st</sup> January, 2005.]

(2) Subject to this section, unless a payee furnishes the paying officer with a tax clearance certificate, the paying officer **shall withhold 30%** of each amount payable to the payee under the contract concerned, and shall remit each amount so withheld to the Commissioner **on or before the 10th day of the month following** that in which the payment was made.

[Amount to be withheld increased from 10% to the above % by Finance Act 7/2021 w.e.f. 31 December, 2021.

Objections shall by a **civil action** for the debt incurred *FMC Finance (Pvt) Ltd v Zimra 22-HH-311*]]

(3) Where a paying officer has withheld any amount in terms of subsection (2) he shall furnish the payee concerned with a **Certificate**, in a \*form approved by the Commissioner, showing the amount so withheld.

[See **SGC** .attached -which is the Self generating certificate that every payer is expected to give to the payee. Without this SGC the payee cannot claim the 10% deducted by the payer and paid to Zimra on behalf of the payee. Remember, practically, Zimra will only offset the 10% withholding tax when the payee produces these certificates and makes his claim after assessments have been raised Editor.- with acknowledgement to **Fiona Farmer** ]

(4) The Commissioner shall retain any amount remitted to him under subsection (2) until the income tax payable by the payee concerned for the year of assessment referred to in that subsection has been assessed, whereupon—

(a) the amount shall be allowed as a credit against the income tax so payable by the payee; or

(b) where the amount exceeds the income tax so payable by the payee, the Commissioner shall forthwith refund the excess to the payee.

(c) where the registered taxpayer is exempt from payment of tax, the Commissioner shall refund the tax so payable to the payee or allow a set-off against other tax payable to the Commissioner.

[Para (c) inserted by the Finance Act 1/2019 w.e.f. 20<sup>th</sup> February, 2019]

(5) No action shall lie against the State, statutory body, quasi-Governmental institution, registered taxpayer or a paying officer in respect of withholding of any amount in terms of this section, nor shall such withholding constitute a breach of the contract concerned.

[Amended by Act 29 of 2004 from 1<sup>st</sup> January, 2005.]

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(6) A person who concludes a contract on behalf of the State, a statutory body, quasi-Governmental institution or registered taxpayer shall take all necessary steps to ensure that the person with whom the contract is concluded is made aware of the provisions of this section:

[Amended by Act 29 of 2004 from 1<sup>st</sup> January, 2005.]

Provided that a failure to comply with this subsection shall not relieve a paying officer of his obligations under this section.

(7) Subject to subsection (9), if a statutory body, quasi-Governmental institution or registered taxpayer fails to withhold or to pay the Commissioner any amount required to be withheld from a payee in terms of this section, the statutory body, quasi-Governmental institution or registered taxpayer shall be liable for the payment to the Commissioner, not later than the date on which payment should have been made if the amount had been withheld in terms of subsection (2), of—

(a) the amount which the statutory body, quasi-Governmental institution or registered taxpayer failed to withhold or to pay to the Commissioner; and

(b) a further amount equal to such amount.

(8) The amounts for the payment of which a statutory body, quasi-Governmental institution or registered taxpayer is liable in terms of subsection (7)—

(a) shall be debts due by the statutory body, quasi-Governmental institution or registered taxpayer to the State; and

(b) may be sued for and recovered by **action** by the Commissioner in any court of competent jurisdiction.

[ *FMC Finance (Pvt) Ltd v Zimra 22-HH-311* ]

(9) The Commissioner may, if he or she is satisfied that a failure to withhold or to pay to him or her any amount required to be withheld from a payee in terms of this section was not due to an intent to evade this section, waive the payment of the whole or such part as he or she thinks fit or repay the whole or such part as he or she thinks fit of any amount referred to in subsection (7)(b).

[Subsections (7),(8) and (9) inserted by Finance Act 2 of 2005 gazetted on 12<sup>th</sup> September, but w.e.f. the 1<sup>st</sup> January, 2005]

(10) . . . . .

[penalty repealed by the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the 1<sup>st</sup> February 2009.]

#### CONDONATIONS FOR NON WITHHOLDING OF TAX

(2) The **failure by the Reserve Bank of Zimbabwe** to withhold (in terms of section *eighty* of the Income Tax Act) tax from payments to payees who are recipients of interest accruing from **Treasury Bills** is hereby **condoned** for the period **1st February, 2009 to 1st December, 2018**.

(3) The **failure by any School** to withhold tax from payments to payees (in terms of section *eighty* of the Income Tax Act) is hereby **condoned** for the period **6 years ending on the 31st December, 2017**.

[Extra Paragraphs (2) and (3) above inserted by the Finance Act 1/2019 gazetted 20<sup>th</sup> February, 2019]

(11) Where a statutory body, quasi-Governmental institution or registered taxpayer pays to the Commissioner an amount referred to in subsection (7)(a) for failure to pay any amount required to be withheld from a payee in terms of this section, it shall have the right, **within 24 months** from the date on which payment should have been made if the amount had been withheld in terms of subsection (2), to recover that amount from the payee:

Provided that —

(a) the period of 24 months specified in this subsection is additional to any period calculated from the date on which any payment referred to in subsection (7)(a) was made between the **1st February, 2009** and the \*date of commencement of this # Act;

[which is the 31<sup>st</sup> December, 2015:- see #hash below -Editor]

(b) the statutory body, quasi-Governmental institution or registered taxpayer concerned shall not be entitled to recover from the payee any amount referred to in subsection (7)(a) or (10):

[subsection (11) inserted by sect 3 of the # Finance (No.2) Act 9 of 2015 backdated with effect from the 1<sup>st</sup> February, 2009 - hence the \*addendum \*Notwithstanding anything in the Prescription Act [Chapter 8:11].]

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#### 80A Valid tax clearance certificate required before certain trades, services or entities licensed or registered

[Inserted by Act 29 of 2004 from 1<sup>st</sup> January, 2005; and substituted by section 10 of the Finance Act 2 of 2005 from 1<sup>st</sup> January, 2006.]

(1) In this section—

“holder”, “mining location” and “tributor” have the meanings assigned to those terms in paragraph 1(2) of the *Twenty-Sixth Schedule*;

“licensing authority” means—

(a) in respect of **Civil Service vehicles**, the Commissioner of Road Transport referred to in section 3 of the Road Motor Transportation Act, [Chapter 13:15] or any Assistant Commissioner of Road Transport;

(b) in respect of **miners**, the mining commissioner as defined in the Mines and Minerals Act [Chapter 21:05] or the Secretary responsible for mines;

(c) in respect of the **trades and business** required to be licensed in terms of the Shop Licences Act [Chapter 14:17], the licensing authority as defined in that Act;

(d) in respect of the persons who own, conduct or operate **designated tourist facilities** as defined in the Tourism Act [Chapter 14:20] or who provide or assist in providing any services which are such designated tourist facilities the licensing authority as defined in that Act;

“miner” means any person who is—

(a) the owner, tributor or option holder of a mining location; or

(b) the holder of a prospecting licence issued or an exclusive prospecting order granted in terms of the Mines and Minerals Act [Chapter 21:05];

“**Public Service Vehicle**” means a motor vehicle in respect of whose operation an operator’s licence is required in terms of the Road Motor Transportation Act [Chapter 13:15].

(2) A licensing authority shall not issue or renew—

(a) any operator’s licence in respect of the operation of any **Public Service Vehicle**; or

(b) a certificate of registration of a mining location under the **Mines and Minerals Act [Chapter 21:05]** to a miner; or

(c) a licence in respect of any trade or business required to be licensed in terms of the **Shop Licences Act [Chapter 14:17]**; or

(d) a licence to any person who owns, conducts or operates a designated tourist facility as defined in the Tourism Act [Chapter 14:20] or who provides or assists in providing any service which is such a designated tourist facility;

unless the operator, miner, person carrying on the trade or business or person referred to in paragraph (d), as the case may be, produces to the licensing authority a valid tax clearance certificate.

(3) A registrar of companies appointed in terms of the Companies and Other Business Entities Act [Chapter 24:31] shall not register a company under the Companies and Other Business Entities Act [Chapter 24:31] unless the person applying for registration or incorporation produces to the registrar (in addition to, and together with, the other documentation required to be lodged with the registrar by the Companies and Other Business Entities Act [Chapter 24:31] a valid tax clearance certificate relating to the appointment of a public officer of the company or \*private business corporation in accordance with section *sixty-one*.

[private business corporations *Chapter 24:11* replaced on the 13th February, 2020- Editor]

#### 80A1 Payments to non-resident artistes or entertainers

[Section inserted by Act 1 of 2014 w.e.f. 4<sup>th</sup> April, 2014

—  
renumbered by the Editor as 80A1 because section 80A was inserted in 2005 and section 80B below was inserted by Act 12/2006. see note below 80B.]

(1) In this section—

“**contractor**” means a contractor of the services of any payee who is a non-resident artiste or entertainer contracted to perform in Zimbabwe;

“**payment**” means payment by cash, barter, set-off, crediting a director’s loan accounts, intercompany debits and credits or by other settlement of obligations whatsoever and in any form;

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**“registered taxpayer”** means a person who is registered—

- (a) as an employer in terms of the *Thirteenth Schedule*; or
- (b) as a taxpayer in the records of the Zimbabwe Revenue Authority, **otherwise than** as an employer; or
- (c) as a registered operator in terms of the Value Added Tax Act [*Chapter 23:12*];

**“withholding agent”** means a person who is employed by the State or by a quasi-Governmental institution or contractor or registered taxpayer and who is responsible for paying a payee any amount due in terms of a contract.

(2) Subject to this section, a withholding agent who is the contractor of the services of any payee who is a non-resident artiste or entertainer contracted to perform in Zimbabwe, shall withhold **15%** of each amount payable to the payee under the contract concerned, and shall pay each amount so withheld to the Commissioner on or before **the 10th day** of the month following that in which payment was made or within such further time as the Commissioner may allow.

(3) The Commissioner shall retain any amount remitted under subsection (2) until the income tax payable by the payee for the year of assessment concerned has been assessed, whereupon—

- (a) the amount shall be allowed as a tax credit against the income tax payable by the payee; or
- (b) where the amount exceeds the income tax payable by the payee, the Commissioner shall forthwith refund the excess to the payee.

(4) No action shall lie against a contractor or withholding agent in respect of the withholding of any amount in terms of this section, nor shall the withholding of the amount constitute a breach of the contract concerned.

(5) A person who concludes a contract on behalf of the contractor shall take all reasonable steps to ensure that the person with whom the contract is concluded is made aware of the provisions of this section:

Provided that a failure to comply with this subsection shall not—

- (a) constitute a ground for cancelling the contract; or

(b) relieve a paying officer of his or her obligations under this section.

(6) Payment to the Commissioner by a withholding agent of any amount as provided in subsection (2) shall be accompanied by a certificate under the hand of the withholding agent showing the amount withheld.

[subsections (6),(7),(8) and (9) inserted by Finance (No.2) Act 8 of 2014 w.e.f. 1st October, 2014]

(7) Subject to subsection (9), a withholding agent who fails to withhold or pay to the Commissioner any amount as provided in subsection (2) shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of subsection (2) of—

- (a) the amount so provided; and
  - (b) a further amount equal to such amount.
- (8) The amounts for the payment of which a withholding agent is liable in terms of subsection (7)—
- (a) shall be debts due by the principal to the State; and
  - (b) may be sued for and recovered by action by the Commissioner in any court of competent jurisdiction.

(9) The Commissioner, if he or she is satisfied in any particular case that the failure to pay to him or her any amount as provided in subsection (2) was not due to any intent to evade the provisions of this section, may waive the payment of the whole or such part as he or she thinks fit of the amount referred to in subsection (7)(b).

### PART VIIIA APPLICATION OF INFORMATION TECHNOLOGY TO ACT

[Part inserted by the Finance Act 12/2006 w.e.f. the 1<sup>st</sup> January, 2007.]

#### 80B Interpretation in Part VIIIA

[This section number was duplicated when inserted by section 9 of the Finance Act 1 of **2014** causing the Editor to renumber the duplicate as section **80A1** repositioned in Part VIII above]

In this Part—

**“access”**, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;

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**“affixing a digital signature”**, in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;

**“computer”** means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;

**“computer network”** means the interconnection of 1 or more computers through—

- (a) the use of satellite, microwave, terrestrial line or other communication media; and
- (b) terminals or a complex consisting of 2 or more inter-connected computers whether or not the inter-connection is continuously maintained ;

**“computer system”**, means a device or collection of devices, including input and output devices capable of being used with external files, which contains computer programmes, electronic instructions, and input and output data, and that performs logic, arithmetical, data storage and retrieval, communication control and other functions;

**“digital signature”** means an electronic signature created by computer that is intended by the registered user using it and by the Commissioner accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in section *eightyG(1)*;

**“electronic data”** means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;

**“electronic record or communication”** means electronic data that is recorded, received or sent in an electronic form or in microfilm or computer-generated microfiche;

**“intermediary”**, with respect to any particular electronic communication, means any person

who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;

**“Internet”** has the meaning given to that word by the Postal and Telecommunications Act [Chapter 12:05];

**“originator”**, means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

**“registered user”** means a person registered in terms of section *eightyF*;

**“user agreement”**, means the agreement between the registered user and the Commissioner referred to in section *eightyE*.

### 80C Use of electronic data generally as evidence

(1) Notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

- (a) on the sole ground that it is electronic data; or
- (b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(2) Information in the form of electronic data shall be given due evidential weight.

(3) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

- (a) the reliability of the manner in which the data was generated, stored and communicated; and
- (b) the reliability of the manner in which the integrity of the data was maintained; and
- (c) the manner in which its originator was identified.

### 80D Establishment of computer systems for tax purposes

The Commissioner may, notwithstanding anything to the contrary in this Act, establish and maintain a computer system for the purpose of applying information technology to

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any process or procedure under this Act, including—

- (a) the despatch and receipt and processing of any return, record, assessment, declaration, form, notice, statement or other document relating to any amount liable to tax; and
- (b) the electronic processing of any register, book, account, record, return, paper, assessment or other document.

### 80DD Virtual Tax Management System

For the purposes of creating an electronic platform to enable the electronic recording by taxpayers of transactions that may be liable to tax under this Act (to be known as the Tax Management System), the Minister shall in regulations made under section *ninety* prescribe the rules to be followed by taxpayers using the Tax Management System.

[Inserted by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March,2018.]

### 80E User agreements

(1) The Commissioner may, for the purpose of regulating communication through a computer system established in terms of section *eighty D*, prescribe the form of a user agreement to be entered between the Zimbabwe Revenue Authority and registered users.

(2) A user agreement shall set out—

(a) the terms and conditions governing communication through a computer system established in terms of section *eightyD*, including—

(i) the use by registered users of computer equipment and facilities of a class or kind specified in the agreement;

(ii) the allocation to a registered user of a digital signature by the Commissioner;

(iii) the requirement that registered users ensure the security of the digital signatures allocated to them in the manner specified in the agreement;

(b) the manner of affixing a digital signature to any electronic communication or record;

(c) the conditions of reasonable access to the computer system of the registered user by the Commissioner for such verification and audit purposes as may be required by this Act;

(d) the manner and period of keeping electronic records that are necessary or convenient to be kept in connection with a computer system established in terms of section *eightyD*.

### 80F Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Commissioner through a computer system established in terms of section *eightyD* unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Commissioner may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Commissioner is satisfied that the applicant—

(a) is a person who will make regular use of the computer system established in terms of section *eightyD*;

(b) will introduce adequate measures to—

(i) prevent disclosure of the digital signature allocated to him or her by the Commissioner to any person not authorised to affix such signature;

(ii) safeguard the integrity of information communicated through a computer system established in terms of section *eightyD* apart from any change which may occur in the normal course of such communication or during storage and display of such information;

(c) will maintain the standard of reliability of his or her own computer system required in accordance with the requirements of the user agreement;

the Commissioner may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (2), the Commissioner is satisfied that a registered user—

(a) has not complied with the requirements of his or her user agreement with any condition or

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obligation imposed by the Commissioner in respect of such registration;

(b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;

(c) fails to make regular use of the computer system established in terms of section *eightyD*;

(d) has contravened or failed to comply with any provision of this Act;

(e) has been convicted of an offence under this Act;

(f) has been convicted of an offence involving dishonesty;

(g) is sequestrated or liquidated;

(h) no longer carries on the business for which the registration was issued;

the Commissioner may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Commissioner shall—

(a) give notice to the registered user of the proposed cancellation or suspension; and

(b) provide the reasons for the proposed cancellation or suspension; and

(c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

#### **80FF Commissioner may require register taxpayers to become registered users**

[Inserted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March,2017 backdated to the 1<sup>st</sup> January,2017]

(1) The Commissioner may, by notice in writing to any taxpayer **who renders a self-assessment return**, require such taxpayer to become a registered user.

(2) On receiving a notice the taxpayer concerned shall make an application in terms of section *eightyF* to become a registered user.

(3) A taxpayer upon whom the Commissioner has served a notice in terms of subsection (1) and who fails without just cause to comply with the notice **within the first 7 days** of the period

of 181 days referred to in paragraph (a) below, shall—

(a) be liable for a civil penalty of **zw\$3 900** or US\$ 30 ( or the maximum monetary figure specified from time to time for level \*four, whichever is the lesser amount) **for each day** the registered taxpayer remains in default, **not exceeding a period of 181 days**:

[Amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; civil penalty increased by the Finance (No.2) Act 10/2020 w.e.f. 31st December,2020. **Note:** the level \*4 criminal penalty was increased to **zw\$10 000** w.e.f.13<sup>th</sup> November,2020 -Editor Figures above substituted by Finance Act of 2021 w.e.f....,2021]

Provided that the Commissioner shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care; and

(b) if the registered taxpayer continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level ten or to imprisonment for a period not exceeding 6 months or to both such fine and such imprisonment.

(4) A civil penalty order that becomes payable by the infringer shall constitute a debt due by the infringer to the Zimbabwe Revenue Authority and shall at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority.

(5) The amount of a civil penalty shall be paid into and form part of the funds of the Zimbabwe Revenue Authority.

#### **80G Digital signatures**

(1) Every digital signature intended for use in connection with a computer system established in terms of section *eightyD* shall comply with the following requirements, namely, it must—

(a) be unique to the registered user and under the sole control of the registered user; and

(b) be capable of verification; and

(c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and

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(d) be in complete conformity with the requirements prescribed by the Commissioner and contained in the user agreement.

(2) The Commissioner shall, on registering a user, allocate to the registered user—

(a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or

(b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

### 80H Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

(a) the information contained therein remains accessible so as to be subsequently usable; and

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and

(c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

### 80I Sending and receipt of electronic communications

(1) An electronic communication through a computer system established in terms of section *eightyD* or the record of such communication shall be attributed to the originator—

(a) if it was sent by the originator; or

(b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or

(c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Commissioner and a registered user have not agreed that an acknowledgment

of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by—

(a) any communication by the Commissioner, electronic or otherwise; or

(b) conduct by the Commissioner or any officer sufficient to indicate to the registered user that the electronic communication has been received.

(3) Where the Commissioner and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(4) As between a computer system established in terms of section *eightyD* and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

(a) where the electronic communication is by a registered user, at any office of the Zimbabwe Revenue Authority, or of the Commissioner, to whichever it was addressed, and such office shall be the place of receipt; or

(b) if the electronic communication is sent by the Zimbabwe Revenue Authority or the Commissioner to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any return, record, assessment, declaration, form, notice, statement or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Zimbabwe Revenue Authority or the Commissioner, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Commissioner and the registered user.

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(7) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically any return, record, assessment, declaration, form, notice, statement or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Commissioner may stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

#### 80J Obligations, indemnities and presumptions with respect to digital signatures

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Commissioner in writing of that fact without delay.

(2) No liability shall attach to the Commissioner, the Zimbabwe Revenue Authority or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Commissioner or the Zimbabwe Revenue Authority—

(a) without the authority of the registered user to whom such signature was allocated; and

(b) before notification to the Commissioner or the Zimbabwe Revenue Authority by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Commissioner or the Zimbabwe Revenue Authority shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Zimbabwe Revenue Authority is a party, the question arises whether a digital signature affixed to any electronic communication to the Commissioner or the Zimbabwe Revenue Authority was used in such communication with or without the consent and authority of the registered user, it shall be presumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

#### 80K Alternatives to electronic communication in certain cases

(1) Whenever a computer system established in terms of section *eighty D* or any other computer system of a registered user is inoperative, the registered user and the Commissioner shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Commissioner may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

#### 80L Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Commissioner or the Zimbabwe Revenue Authority without the authority of such registered user, commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

(a) makes a false electronic record or falsifies an electronic record; or

(b) dishonestly or fraudulently—

(i) makes, affixes any digital signature to, transmits or executes an electronic record or communication;

(ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment

### PART IX GENERAL

#### 81 Offences: general

(1) Any person who, without just cause being shown by him—

(a) fails or neglects to furnish, file or submit any return or document required by the

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Commissioner under the powers conferred by this Act; or

(b) refuses or neglects to furnish any information or reply, or to attend and give evidence as and when required by the Commissioner or any officer duly authorized by him, or to answer truly and fully any question put to him, or to produce any books or papers required of him by the Commissioner or any such officer; or

(c) fails to show in any return made by him any portion of the gross income received by or accrued to or in favour of himself, or fails to disclose to the Commissioner, when making such return, any material facts which should have been disclosed; or

(d) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person, or fails to disclose to the Commissioner, when preparing or making such return, any facts which, if so disclosed, might result in increased tax; or

(e) fails, refuses or neglects to show in any return made by him or her pursuant to section *thirty-nine*(2a) the information required to be furnished in such return or such supplementary information or supporting documentation as the Commissioner may require in connection therewith, or fails to disclose to the Commissioner, when making such return, any material facts which should have been disclosed;

[para (e) repealed by section 16 of Act 3/2009 which then substituted Section *thirty-sevenB* above. para (e) then re-inserted by Finance (No.3) Act 11 of 2014 w.e.f. the 1st January, 2015. Paras

(f) to (n) repealed by the Criminal Penalties Amendment Act 22 of 2001, from the 20th May, 2002.]

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Penalty increased by Act 18/2000 from the 12th January, 2001, amended by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002, and increased by Act 15/2002 from 30th December, 2002.]

(2) A person who retains, in accordance with conditions specified by the Commissioner, photographic reproductions in miniature of a document or book referred to in paragraph (e) of subsection (1), which is not a ledger, cash-

book or journal, shall be deemed to retain that document or book for the purposes of that paragraph.

### 82 Offences: wilful failure to comply with requirements of Commissioner or to keep proper accounts, and obstruction

(1) Any person who—

(a) wilfully fails or neglects to furnish, file or submit any return or document required by the Commissioner under the powers conferred by this Act; or

(b) wilfully refuses or neglects to furnish any information or reply, or to attend and give evidence as and when required by the Commissioner or any officer duly authorized by him, or to answer truly and fully any question put to him, or to produce any books or papers required of him by the Commissioner or any such officer; or

(c) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, wilfully fails to keep or cause to be kept in the English language, proper books and accounts of all his transactions or, unless otherwise authorized by a competent court or by the Commissioner, wilfully fails to retain for a **period of 6 years** from the date of the last entry therein all ledgers, cash-books, journals paid cheques, bank statements and deposit slips, stock sheets, invoices and other books of account relating to any trade carried on by him and recording the details from which his returns for the purposes of this Act were prepared;

(d) obstructs or hinders any officer in the discharge of his duties;

[para (d) repealed by the Criminal Penalties Amendment Act 22/2001 from the 20<sup>th</sup> May, 2002, and reinstated by Act 15/2002 from 30<sup>th</sup> December, 2002]

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Penalty increased by Act 18/2000 from the 12th January, 2001, and amended by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002.]

(2) Where the facts proved in any charge under subsection (1) do not justify a conviction under subsection (1), but prove an offence under section *eighty-one* the person charged

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may be convicted of the corresponding offence under that section and sentenced accordingly.

(3) A person who retains, in accordance with conditions specified by the Commissioner, photographic reproductions in miniature of a document or book referred to in paragraph (c) of subsection (1), which is not a ledger, cash-book or journal, shall be deemed to retain that document or book for the purposes of that paragraph.

(4) Any person who, without just cause, obstructs or hinders an officer in the discharge of his duties under this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subpara (4) inserted by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002.]

### 83 Offences: increased penalty on subsequent conviction

If, upon conviction of any person for an offence under section *eighty-one* or *eighty-two* for—

(a) failing or neglecting to furnish, file or submit any return or document required by the Commissioner; or

(b) refusing or neglecting to furnish any information or reply, or to produce any books or papers required of him by the Commissioner or any other officer;

[*PL Mines (Pvt) Ltd v ZIMRA* 15-HH-466]

within any reasonable period fixed by the Commissioner or any other officer and of which notice has been given to him by the Commissioner, it is proved that that person has been previously convicted of a like failure, neglect or refusal in relation to the same return, document, information, reply, books or papers, then such person shall, in addition to any punishment inflicted under such section, be liable also to a fine not exceeding level one for each day that he is in default, or to imprisonment for a period not exceeding twelve months.

[Penalty increased by Finance Act 18/2000 from the 12<sup>th</sup> January, 2001, amended by the Criminal Penalties Amendment Act 22/2001, from the 10<sup>th</sup> September, 2002 and restated by Act 15/2002 from 30<sup>th</sup> December, 2002.]

### 84 Offences: wilful failure to submit correct returns, information, etc.

(1) Any person who wilfully—

(a) fails to show in any return made by him any portion of the gross income received by or accrued to him or in favour of himself, or fails to disclose to the Commissioner, when making such return, any material facts which should have been disclosed; or

(b) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person, or fails to disclose to the Commissioner, when preparing or making such return, any facts which, if so disclosed, might result in increased tax;

[paras (c) to (j) repealed by the Criminal Penalties Amendment Act 22 of 2001, from the 20th May, 2002.]

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Penalty increased by Act 18/2000 from the 12<sup>th</sup> January, 2001, amended by the Criminal Penalties Amendment Act 22/2001, from 10<sup>th</sup> September, 2002, and restated by Act 15/2002 from 30<sup>th</sup> December, 2002.]

(2) Where the facts proved in any charge under subsection (1) do not justify a conviction under subsection (1), but prove an offence under section *eighty-one*, the person charged may be convicted of the corresponding offence under that section and sentenced accordingly.

### 85 Offences: false statements, etc.

(1) If any person makes any false statement or entry in any return rendered in respect of any year of assessment, or signs any statement or return so rendered, without reasonable grounds for believing the statement or entry to be true, he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Amended by the Criminal Penalties Amendment Act 22 of 2001 from the 10th September, 2002.]

(2) If a person makes a false entry in any ledger, cash-book, journal or other book of account without reasonable grounds for

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believing it to be true, and the false entry, if believed, would be likely to have the effect of reducing the persons' liability for tax, he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[subpara (2) inserted by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002.]

#### 86 Offences: wilful making of false statements, & keeping of false accounts, & fraud

(1) Any person who, with intent to evade or to assist any other person to evade assessment or taxation—

(a) makes or causes or allows to be made any wilfully false statement or entry in any return rendered in terms of this Act, or signs any statement or return so rendered, without reasonable grounds for believing the same to be true; or

(b) gives any wilfully false answer, whether verbally or in writing, to any request for information under this Act made by the Commissioner or any person duly authorized by him; or

(c) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records, or falsifies or authorizes the falsification of any books of account or records; or

(d) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of any such fraud, art or contrivance;

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Penalty increased by Act 18/2000 from the 12th January, 2001, amended by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002, and restated by Act 15/2002 from 30<sup>th</sup> December, 2002.]

(2) Whenever in any proceedings under subsection (1) it is proved that any wilful false statement or entry has been made in any return rendered under this Act by or on behalf of any taxpayer or in any books of account or other records of any taxpayer, that taxpayer shall be presumed, until the contrary is proved, to have made, or to have caused or allowed to be made, that false statement or entry with intent to evade assessment or taxation, and any other person

who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the taxpayer to evade assessment or taxation.

(3) In any proceedings in which a person is charged with an offence under paragraph (c) of subsection (1), where it is proved that any statement, entry or record in any book of account or other record kept by the accused or under his direction or kept by any employee or agent of the accused on his behalf is in conflict with any statement, entry or record in any other book of account or record so kept as aforesaid, it shall not be necessary to allege in the indictment, summons or charge, or to prove, which of the conflicting statements, entries or records is false.

#### 87 Evidence

(1) At the trial of any person charged with any contravention of this Act, any information, statement, entry or record contained in any return furnished by or on behalf of the accused in terms of this Act, and any statement, entry or record contained in any book, account or document kept by the accused or under his direction or kept by any employee or agent of the accused on his behalf and any statement made by the accused to the Commissioner or other officer which is not a confession of the offence with which he is charged, or of an offence which is substantially similar to the offence with which he is charged, shall, notwithstanding that it was required of him in terms of this Act and notwithstanding section five and without order of any competent court of law in terms of that section, be admissible in evidence upon its mere production by any person:

Provided that, except in the case of information, statements, entries or records contained in any return furnished by or on behalf of an accused person, no such statement, entry or record shall be tendered in evidence unless the accused has been given **not less than 10 days' written** notice of the intention to produce such statement, entry or record and an opportunity to inspect the same and make a copy thereof.

(2) Notwithstanding any law, in any proceedings in which a person is charged with an offence under paragraph (c) or (d) of subsection (1) of section eighty-one, paragraph (a) or (b) of subsection (1) of section *eighty four* or paragraph (a) of subsection (1) of section *eighty-six* where any statement, entry or record contained in any book, account or document kept by the accused or under his direction or

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kept by any employee or agent of the accused on his behalf is in conflict with any information, statement, entry or record contained in any return which is the subject of the charge, such first-mentioned statement, entry or record shall be presumed to be true unless the contrary is proved; and this subsection shall apply whether or not any other statement, entry or record contained in such book, account or document or in any other book, account or document so kept as aforesaid is consistent with the information, statement, entry or record contained in such return.

For the purposes of this subsection—

“law” includes the common law of Zimbabwe.

#### 88 Proof of certain facts by affidavit or orally

(1) In any criminal proceedings under this Act concerning the failure of a person to furnish, file or submit any return or other document required by or under this Act, a document purporting to be an affidavit made by a person who alleges therein that—

(a) he is an officer in the department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act;

[Subsection 1(a) amended by s 36 and Third Schedule (Part V 3a) of the Revenue Authority Act [Chapter 23:11]]

and

(b) if the said return or other document had been furnished, filed or submitted, it would in the ordinary course of events have come to the deponent's knowledge, either at the time it was furnished, filed or submitted or subsequently, and a record thereof available to him would have been kept; and

(c) no such return or other document has, to the deponent's knowledge, been furnished, filed or submitted and that he has satisfied himself that there is no record thereof;

shall, subject to this section, on its mere production in those proceedings by any person be *prima facie* proof that such return or document has not been furnished, filed or submitted.

(2) In any criminal proceedings under this Act a document purporting to be an affidavit made by a person who alleges therein that—

(a) he is an officer in the department of the Zimbabwe Revenue Authority responsible for

assessing, collecting and enforcing the payment of taxes under this Act; and

(b) when any return, form, notice, assessment, letter or other document such as is referred to therein has been sent by the Commissioner or an officer in the department referred to in paragraph (a) a record thereof available to the deponent would have been kept; and

(c) the deponent has satisfied himself that there is a record thereof;

shall, subject to this section, on its mere production in those proceedings by any person, be *prima facie* proof that such return, form, notice, assessment, letter or other document has been sent by the Commissioner or officer concerned.

(3) No such affidavit as is mentioned in subsection (1) or (2) shall be tendered in evidence unless the accused has been given **not less than 3 days' notice in writing** of the intention to produce such affidavit or consents to its production.

(4) The court in which any affidavit in terms of subsection (1) or (2) is produced in evidence may in its discretion, of its own motion or at the request of the prosecutor or the accused, cause the person who made it to be summoned to give oral evidence in the proceedings in question.

(5) An officer in the department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act may give evidence referred to in subsection (1) or (2) orally instead of by affidavit, and any such oral evidence shall have the same effect as is provided in subsection (1) or (2), as the case may be.

(6) Nothing in this section contained shall affect any other rule of law under which any certificate or other document is admissible in evidence and the provisions of this section shall be deemed to be additional to, and not in substitution for, any such rule of law.

#### 89 Forms and authentication and service of documents

(1) All forms of returns and other forms required for the administration of this Act shall be in such form as may be prescribed by the Commissioner from time to time.

(2) Notices given by the Commissioner under this Act may be signed by any officer authorized by him on his behalf, and any notice purporting

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to be signed by order of the Commissioner shall be as valid and effectual as if signed by himself.

(3) Every form, notice, demand or other document issued or given by or on behalf of the Commissioner or any other officer under this Act shall be sufficiently authenticated if the name of the Commissioner or officer by whom the same is issued or given is written thereon.

(4) Any notice required or authorized under this Act to be served upon any person shall be sufficiently and effectually served—

- (a) if personally served upon him; or
- (b) if left with some adult person apparently resident at, occupying or employed at his usual or last known abode, office or place of business in Zimbabwe; or
- (c) if sent by post addressed to such usual or last known place of abode, office or place of business, or to any post office box rented in the name of such person or the employer of such person;

and, in the case of a company, shall be sufficiently and effectually served if personally served on the public officer of the company, or sent by post to him at the company's address for service under this Act or, if the company has lodged no address for service as required by this Act, then if the notice is left at or sent by post to any office of the company in Zimbabwe or any premises therein where it carries on business.

(5) For the purposes of subsection (4), the term “post” means registered or unregistered post and, unless the contrary is proved, the service shall be deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.

### 90 Regulations

(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed by regulations or which in his or her opinion is necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

(2) Without derogation from the generality of subsection (1) the Minister may make regulations—

- (a) prescribing the duties of all persons engaged or employed in the administration of this Act;

- (b) defining the limits of areas within which such persons are to act;

(c) prescribing the nature of the accounts to be rendered by any taxpayer in support of any returns rendered under this Act and the manner in which such accounts shall be authenticated;

(d) prescribing the fee payable in respect of an application for an advance tax ruling in terms of section *thirty-sevenB*, or for registration as a registered user of a computer system established in terms of section *eightyD*, or for any other service in respect of which a fee may be prescribed in terms of this Act.

[Inserted by Act 12/2006 from the 1<sup>st</sup> January, 2007.]

(3) The regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine or penalty of level seven.

[Amended by Act 2 of 2005 from the 12<sup>th</sup> September, 2005]

### 91 Relief from double taxation

(1) The President may enter into agreements with the government of any other country or territory with a view to the prevention, mitigation or discontinuance of the levying, under this Act and the laws of such other country or territory, of taxes in respect of the same income, or to the rendering of reciprocal assistance in the administration of, and in the collection of taxes under, this Act and taxes on income levied under the laws of such other country or territory.

[cannot apply the provisions of the DTAs before invoking the relevant charging section in the Income Tax Act *GFZ Ltd v ZIMRA 19-HH-843*]

(2) As soon as may be after the conclusion of any such agreement the terms thereof shall be notified by the President by proclamation in the *Gazette*, whereupon until such proclamation is revoked by the President the agreement shall have effect as if enacted in this Act but only if, and for so long as, the agreement has the effect of law in such country or territory.

[For the list of Countries with which **Double Taxation Agreements** have been proclaimed, see under the REGULATIONS of Chapter 23:06 -Editor Switzerland 'T M Fee' v COT 91-ITC-1535]

(3) The President may at any time revoke any such proclamation by a further proclamation in the *Gazette*, and the agreement shall cease to have effect upon the date fixed in such latter proclamation, but the revocation of any proclamation shall not affect the validity of anything previously done thereunder.

(4) The duty to preserve secrecy imposed by section *five* shall not prevent the disclosure to

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any authorized officer of the country or territory mentioned in any proclamation issued in terms of subsection (4) of—

(a) facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in terms of the agreement; or

(b) information which is necessary for the prevention of fraud, or for the administration of statutory provisions against legal avoidance in relation to taxes which are the subject of agreement.

(5) Notwithstanding proviso (ii) to subsection (1) of section *forty-seven* which deals with the raising of additional assessments or proviso (iii) to subsection (1) of section *forty-eight* which deals with reductions and refunds, the Commissioner shall raise additional assessments or authorize reductions and refunds after the expiry of the **\*period of 3 years** referred to in those provisos if such additional assessments or reductions and refunds result from the carrying out of the provisions of any agreement entered into with the government of any other country or territory in terms of this section.

[Editor's note— The provisos now refer to a **\*period of 6 years** since the Amendments made by sections 10 and 11 of Act 17 of 1997. It is submitted that the drafter's failure to make a consequential amendment to this provision does not affect the Commissioner's powers under this section.]

(6) Any agreement referred to in subsection (1) may be made with retrospective effect if the President considers it expedient so to do.

(7) Any agreement entered into in terms of the similar provisions of a previous law prior to the 1st April, 1967, and valid and subsisting at that date shall be deemed to have been entered into, approved and proclaimed in terms of this Act.

#### 91A Collection of taxes due to another country under arrangements made pursuant to section 91 agreement

[Inserted by Act 6 of 2012 w.e.f. the 28<sup>th</sup> December, 2012]

(1) If the Commissioner has, in accordance with any arrangements made with the government of any other country in an agreement with Zimbabwe in terms of section *ninety-one*, received a request, in such form as

the Commissioner may prescribe, for the collection from any person of an amount alleged to be due by him or her under the tax laws of such other country, the Commissioner may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he or she admits liability for such amount or for any lesser amount.

(2) If such person—

(a) admits liability; or  
(b) fails to respond to the notice; or  
(c) denies liability but the Commissioner, after consultation with the competent authority of such other country, is satisfied that—

(i) the liability for such amount is not disputed in terms of the laws of such other country; or

(ii) although the liability for such amount is disputed in terms of the laws of such other country—

A. such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or

B. there is a risk of dissipation or concealment of assets by such person;

the Commissioner may, by notice in writing, require such person to pay the amount for which he or she has admitted liability or the amount specified, as the case may be, on a date specified, for transmission to the competent authority in such other country.

(3) If such person fails to comply with the notice under subsection (2) the amount in question may be recovered, for transmission to such competent authority, as if it were a tax payable by such person under this Act.

(4) No steps taken in assistance in collection by any other country under any arrangements referred to in subsection (1), for the collection of an amount alleged to be due by any person under the tax laws of Zimbabwe, and no judgment given against any such person in pursuance of such arrangements in such other country for any such amount, shall affect his or her right to have his or her liability for any such amount determined in Zimbabwe in accordance with **Part VII** of this Act or any other relevant law.

(5) If a person to whom this section is applied lodges an objection with the Commissioner in accordance with Part VII of this Act, section 25 ("Foreign law") of the Civil Evidence Act [Chapter 8:01] shall apply to the consideration

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by the Commissioner of any issue as to the tax or other laws of any foreign country or territory concerned as if the Commissioner were a court.

(6) For the avoidance of doubt, it is declared that section 25 ("Foreign law") of the Civil Evidence Act [Chapter 8:01] applies to the consideration by the Special Court or any other court of any issue as to the tax or other laws of any foreign country or territory that may arise from the application of this section.

#### 92 Reduction of tax payable as a result of double taxation agreements

(1) This section shall apply where, under any agreement entered into with any other country or territory in terms of section *ninety-one*, the tax (hereinafter referred to as 'foreign tax') payable to that other country or territory in respect of any income (hereinafter referred to as foreign income) is to be allowed as a credit against tax chargeable in terms of this Act in respect of such foreign income.

(2) Subject to subsection (3), the amount of the tax chargeable under this Act in respect of such foreign income shall be reduced by the amount to be allowed as a credit in terms of any agreement.

(3) Any reduction granted in terms of subsection (2) shall be subject to the provisions set out in this subsection—

(a) a reduction in tax shall not exceed an amount arrived at by applying the following formula—

$$((A-B)C)/(C+D)$$

in which—

**A** represents the tax which would have been payable in terms of this Act had no reduction in respect of any foreign income been granted;

**B** represents the tax which would have been payable in terms of this Act had the foreign income from all sources in respect of which a reduction is to be allowed not been included in the taxable income;

**C** represents the amount of the foreign income in respect of which a reduction is to be allowed which is included in the taxable income;

**D** represents the amount of any other foreign income in respect of which a reduction is to be allowed;

(b) a reduction in tax in respect of any foreign income as is income referred to in provisos (i) and (ii) to subsection (2) of section *twelve* shall

not exceed the amount arrived at by applying the following formula—

$$((E \times F)/(F+G))$$

in which—

**E** represents the tax which would have been payable in terms of this Act in respect of the total of such income had no reduction in respect of such income been granted;

**F** represents the amount of such foreign income in respect of which a reduction is to be allowed which is included in the taxable income;

**G** represents the amount of any other such foreign income in respect of which a reduction is to be allowed;

(c) the total reduction to be allowed to any person for any year of assessment shall not exceed the total tax chargeable in terms of this Act in respect of that year of assessment;

(d) where the amount of any reduction given in terms of any such agreement is rendered excessive or insufficient by reason of any subsequent adjustment of the amount of any foreign tax applicable to such foreign income or to any tax chargeable in terms of this Act in respect of such foreign income, nothing in this Act limiting the time for the raising of additional assessments or the reduction of an assessment or of the granting of refunds shall prevent a subsequent adjustment of the amount of such reduction, and any tax underpaid as a result of such adjustment shall be recoverable and any tax overpaid shall be refundable.

(4) In paragraph (a) of subsection (3), references to tax, tax which would have been payable and foreign income shall be construed as relating to such amounts other than foreign income to which paragraph (b) relates and any tax which would have been payable in respect thereof.

#### 93 Relief from double taxation in cases where no double taxation agreements have been made

If any person—

(a) in Zimbabwe; or

(b) outside Zimbabwe who is deemed to have derived income from a source within Zimbabwe in terms of paragraph (d) of subsection (1) or subsection (4) of section *twelve*;

[*Switzerland 'T M Fee' v COT 91-ITC-1535*]

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who has paid or is liable to pay tax for any year of assessment on income which is derived from a country or territory which has not entered into an agreement with Zimbabwe in terms of section *ninety-one* proves to the satisfaction of the Commissioner that he has paid tax on the same income in the country or territory from which such income was derived and requests relief in respect of that tax, then the tax chargeable under this Act in respect of such income shall be reduced by the amount of foreign tax paid or payable on such income as if subsection (3) of section *ninety-two* was applicable thereto.

For the purposes of this section, tax in respect of such income, which is deducted from such income in such country or territory, shall be deemed to be tax paid by such person.

#### 94 . . . . .

[repealed by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009.]

#### 95 Credit where non-residents' tax on fees has been withheld

(1) If any person who is not ordinarily resident in Zimbabwe and to whom fees as defined in the *Seventeenth Schedule* have accrued during the year of assessment proves to the satisfaction of the Commissioner that non-residents' tax on fees has in terms of that *Schedule* been withheld and paid from such fees, such non-residents' tax on fees shall, subject to subsection (2), be allowed as a credit against income tax chargeable in terms of this Act in respect of those fees and the income tax so chargeable shall be reduced accordingly.

[“fees” includes only money sourced from inside Zimbabwe, not the commissions paid thereon. *Sunfresh Enterprises (Pvt) Ltd v Zimra* 04-HB-078 *Standard Chartered Bank Zim v ZIMRA* 18-SC-023]

(2) Any reduction granted in terms of subsection (1) shall be subject to the provisions set out in this subsection—

(a) a reduction in income tax shall not exceed an amount arrived at by applying the following formula—

#### A – G

in which—

**A** represents the income tax which would have been payable in terms of this Act had no reduction been granted in respect of fees from which non-residents' tax on fees has been withheld and paid;

**B** represents the income tax which would have been payable had the fees from which non-residents' tax on fees has been withheld not been included in taxable income;

(b) the total deduction to be allowed to any person for any year of assessment shall not exceed the total income tax chargeable in terms of this Act in respect of that year of assessment.

#### 96 Credit where non-residents' tax on royalties has been withheld

(1) If any person who is not ordinarily resident in Zimbabwe and to whom royalties as defined in the *Nineteenth Schedule* have accrued during the year of assessment proves to the satisfaction of the Commissioner that non-residents' tax on royalties has in terms of that *Schedule* been withheld and paid from such royalties, such non-residents' tax on royalties shall, subject to subsection (2), be allowed as a credit against income tax chargeable in terms of this Act in respect of those royalties and the income tax so chargeable shall be reduced accordingly.

(2) Any reduction granted in terms of subsection (1) shall be subject to the provisions set out in this subsection—

(a) a reduction in income tax shall not exceed an amount arrived at by applying the following formula—

#### A – B

in which—

**A** represents the income tax that would have been payable in terms of this Act had no reduction been granted in respect of royalties from which non-residents' tax on royalties has been withheld and paid;

**B** represents the income tax that would have been payable had the royalties from which non-residents' tax on royalties has been withheld not been included in taxable income;

(b) the total deduction to be allowed to any person for any year of assessment shall not exceed the total income tax chargeable in terms of this Act in respect of that year of assessment.

#### 97 Credit where presumptive tax has been withheld

If any person proves to the satisfaction of the Commissioner that during a year of assessment he has paid any amount by way of presumptive tax in terms of the *Twenty-Sixth Schedule*, that amount shall be allowed as a credit against

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income tax chargeable in terms of this Act in respect of that person's taxable income from trade or investment, as defined in section 14(1) of the charging Act, in respect of that year of assessment

[substituted by Act 17 of 1997 from 1<sup>st</sup> January 1998 and amended by Act 2 of 2005 from the 1<sup>st</sup> September, 2005]

### 97A Credit where tax on commissions paid by insurers and estate agents to freelance agents has been withheld

If any freelance agent as defined in the *Thirty-Second Schedule* proves to the satisfaction of the Commissioner-General that tax has been withheld from his or her commission in terms of that *Schedule* during the year of assessment and paid in accordance with that *Schedule*, such tax shall be allowed as a credit against income tax chargeable in terms of this Act in respect of that commission, and the income tax so chargeable shall be reduced accordingly and any excess refunded.

[Inserted by Act 29 of 2004 from the 1<sup>st</sup> January, 2005]

### 97B Calculation and fixing of interest payable under this Act

(1) Where—

- (a) any interest is payable under section *forty-eight, seventy-one, seventy-three* or paragraph 3 of the *Thirteenth Schedule*; and
- (b) the rate at which such interest is payable has with effect from any date been altered; and

[See the Income Tax (**Rate of Interest**) Notice 2022  
**SI 212 of 2022**  
gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

- (c) such interest is payable in respect of any period or any number of months or any part of a month which commenced before the said date;

the interest to be determined in respect of that portion of such period which ended immediately before the said date or in respect of any such months or part of a month which commenced before the said date shall be calculated as if the said rate had not been so altered.

[Inserted by Act 18 of 2004 from the 5<sup>th</sup> November, 2004.]

- (2) The Minister may, by *statutory instrument*, alter any rate of interest specified in this Act,

and in doing so may substitute a specific rate by a variable rate applicable to the borrowing of funds in any international money market, such as the LIBOR (London Interbank Offered Rate).

[Inserted by Act 5/2009 with effect from the 30<sup>th</sup> September, 2009.  
See the Income Tax (**Rate of Interest**) Notice 2022  
**SI 212 of 2022**  
gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

(3) Where the Minister substitutes any rate of interest specified in this Act by a variable rate referred to in subsection (2), the Commissioner-General may, in terms of the Fourth Schedule to the Revenue Authority Act [*Chapter 23:11*], issue binding general rulings on the tax consequences of any variation of such rate.

[Inserted by Act 5/2009 with effect from the 30<sup>th</sup> September, 2009.]

### 97C . . . . .

[Inserted by Act 12/2006 from the 1<sup>st</sup> January, 2007; repealed by the Finance (No.2) Act 10/2020 w.e.f. the year of assessment beginning on the 1<sup>st</sup> January, 2020.]

### 98 Tax avoidance generally

Where any transaction, operation or scheme (including a transaction, operation or scheme involving the alienation of property) has been entered into or carried out, which has the effect of avoiding or postponing liability for any tax or of reducing the amount of such liability, and which in the opinion of the Commissioner, having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out—

[“*Farmer*” v COT 86-ITC-1424]

(a) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or

(b) has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question;

and the Commissioner is of \*the opinion that the avoidance or postponement of such liability or the reduction of the amount of such liability was the sole purpose or one of the main purposes of the transaction, operation or scheme, the

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Commissioner shall determine the liability for any tax and the amount thereof as if the transaction, operation or scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he considers appropriate for the prevention or diminution of such avoidance, postponement or reduction.

[Husband & wife directors & shareholders, who tendered no services to their company, received no salary so cannot be said to be attempting to escape from an anticipated liability on their salaries. Zacks.

*E v COT 93-HB-104*  
*D v COT 99-ICT-1669*

-failing to bring to account notional interest on *Nostro* Accounts to gross income *G Bank Ltd v ZIMRA 15-HH-207*

-whether Zimra can tax non-existent income through the deeming provisions *CRS (Pvt) Ltd v ZIMRA 17-HH-728*

*SDC Ltd v Zimra 18-HH-648*

-once Commissioner has formed the above \*opinion, appellant must prove under the 11<sup>th</sup> Schedule the innocence of such purpose failing which 100% penalty justified *SDC Ltd (2) v Zimra 21-HH-338*  
*Delta Beverages (Pvt) Ltd v ZIMRA 22-SC-003*]

### 98A Income splitting

[Sections 98A and 98B inserted by Act 1 of 2014 with effect from 1 January 2014  
**Transfer pricing** *C F (Pvt) Ltd v ZIMRA 18-HH-099*]

(1) Where an individual attempts to split income with an associate, the Commissioner may adjust the taxable income of the taxpayer and the associate to prevent any reduction in tax payable as a result of the splitting.

[*SDC Ltd v Commissioner General Zimra 18-HH-648*]

(2) A taxpayer shall be treated as having attempted to split income where—

(a) the taxpayer transfers income, directly or indirectly, to an associate; or

(b) the taxpayer transfers property, directly or indirectly, to an associate with the result that the associate receives or enjoys the income from that property;

and the sole or main reason for the transfer is to lower the tax payable upon the incomes of the taxpayer and the associate.

(3) In determining whether a taxpayer is seeking to split income, the Commissioner shall consider the value, if any, given by the associate for the transfer of the income or property concerned.

### 98B Transactions between associates

[substituted by the Finance (No.2) Act 9 of 2015 w.e.f. 1<sup>st</sup> January, 2016]

(1) For the purposes of this section, where a person engages directly or indirectly in any transaction, operation or scheme (hereinafter referred to as "**a controlled transaction**"), with an associated person, the amount of taxable income derived by a person that engages in that transaction shall be consistent with the arm's length principle, where the conditions of the controlled transaction do not differ from an uncontrolled transaction, that is to say, from the conditions that would have applied between independent persons, in comparable transactions carried out under comparable circumstances.

(2) Any amount of income that would have accrued to either of the associated persons in a controlled transaction and been taxable in Zimbabwe, shall, in the absence of the arm's length principle in that transaction which resulted in the avoidance, reduction or postponement of the liability to tax of either or both of them for any year of assessment, be included in the taxable income of either or both of them and be liable to be taxed accordingly.

(2a) In addition, where the Commissioner amends an assessment by virtue of subsection (2), the taxpayer or taxpayers concerned shall be liable—

[subsection inserted by Finance Act 1/2019 gazetted 20th February 2019 w.e.f. 1<sup>st</sup> January, 2019 ]

(a) if there is evidence that the avoidance, reduction or postponement of the liability to tax was actuated by the use of fraud or evasion, to a penalty of **100%** of the shortfall amount;

or

(b) in the absence of such evidence as is mentioned in paragraph (a)—

(i) where **contemporaneous transfer pricing** documentation does **not exist** in relation to the transaction giving rise to the amended assessment, or does not comply with the guidelines prescribed in the *Thirty-Fifth Schedule*, to a penalty of **30%** of the shortfall amount; or

(ii) where contemporaneous transfer pricing documentation **exists** in relation to the transaction giving rise to the amended assessment, and complies with the guidelines

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prescribed in the *Thirty-Fifth Schedule*, to a penalty of **10%** of the shortfall amount.

(3) The determination of whether the conditions of a controlled transaction between associated persons are consistent with the arm's length principle, and of the quantum of any tax payable under subsection (2), are prescribed in the *Thirty-Fifth Schedule*.

(4) Subsection (1) also applies where a person (whether or not an associated person) who is resident in Zimbabwe engages in any transaction with a person resident outside Zimbabwe in a jurisdiction considered by the Commissioner-General to provide a taxable benefit in relation to that transaction.

(5) Every person who engages in a transaction to which subsection (1) or (4) applies shall keep the documentation prescribed in the *Thirty-Fifth Schedule* to enable the Commissioner-General to ascertain whether a transaction was conducted in accordance with the arm's length principle.

(6) Every person who engages or will in a transaction to which subsection (1) or (4) applies shall submit a return to the Commissioner in the prescribed form requiring disclosure of the details of the transaction or contemplated transaction.

[subsections (6) and (7) inserted by Finance Act 1/2019 gazetted 20th February 2019 w.e.f. 1<sup>st</sup> January, 2019]

(7) The Commissioner, in the exercise of his or her powers under section *thirty-seven*(10) requires any person to make a return in the prescribed form referred to in subsection (6).]

### 98C Reporting of unprofessional conduct\*

[section inserted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January, 2017]

(1) For the purposes of this section "**controlling body**" means any professional association, body or board which has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation and which has power to take disciplinary action against any person who in the carrying on of such profession, calling or occupation fails to comply with or contravenes any rules or code of conduct laid down by such association, body or board.

(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established

has, in relation to the affairs of any other person, hereinafter referred to as 'a client', done or omitted to do anything which in the opinion of the Commissioner—

(a) was intended to enable or assist the client to evade or unduly postpone the performance of any duty or obligation imposed on such client by or under this Act or to obtain any refund of tax under this Act to which such client is not entitled, or by reason of negligence on the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation or the obtaining of any such refund; and

(b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by the body; the Commissioner may lodge a complaint with the said controlling body.

(3) The Commissioner may in lodging any complaint under subsection (2) disclose such information relating to the client's affairs as in the opinion of the Commissioner it is necessary to lay before the controlling body to which the complaint is made.

(4) Before lodging any such complaint or disclosing any information the Commissioner shall deliver or send to the client and the person against whom the complaint is to be made a written notification of his or her intended action setting forth particulars of the said information.

(5) The client or the said person may **within 30 days** after the date of such written notification lodge in writing with the Commissioner any objection he or she may have to the lodging of the said complaint.

(6) If on the expiry of the said period of 30 days no objection has been lodged as contemplated in subsection (5), or if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may thereupon lodge the complaint as contemplated in subsection (2).

(7) The complaint shall be considered by the controlling body to which it is made and may be dealt with by it in such manner as the controlling body in terms of its rules sees fit:

Provided that any hearing of the matter shall not be public and may only be attended by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.

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(8) The controlling body with which a complaint is lodged and its members shall at all times preserve and aid in preserving secrecy in regard to such information as to the affairs of the client as may be conveyed to them by the Commissioner or as may otherwise come to their notice in the investigation of the Commissioner's complaint and shall not communicate such information to any person whatsoever other than the client concerned or the person against whom the complaint is lodged, unless the disclosure of such information is ordered by a competent court of law.

### 99 Transitional provisions relating to separate taxation of married women

Where in terms of this Act or any previous law, gross income which was received by or accrued to or in favour of a married woman in any year of assessment prior to the year of assessment beginning on the **1st April, 1988**, has been deemed to be income received by or accrued to or in favour of her husband, then, for the purposes of charging, levying and collecting tax in respect of the year of assessment beginning on the 1st April, 1988, and any subsequent year of assessment—

(a) any taxable income accruing to or assessed loss carried forward by the husband from that source; or

(b) any right of election exercised by or allowance or deduction granted to her husband in respect of the taxable income or assessed loss referred to in paragraph (a);

shall be deemed to have accrued to or been carried forward or exercised by or been granted to, as the case may be, the married woman, and the same consequences shall follow and the same rights accrue to the married woman as would have followed or, as the case may be, accrued to her husband in respect of that taxable income, assessed loss, election, allowance or deduction.

## FIRST SCHEDULE

(Section 8)

AMOUNTS RECEIVED OR ACCRUED BY WAY OF **LUMP SUM PAYMENTS** WHICH SHALL NOT BE INCLUDED IN GROSS INCOME

PRELIMINARY  
*Interpretation*

1

(1) In this Schedule—

**"amended pensions law"**, in relation to a Part II beneficiary to whom a pensions law of Zimbabwe applied, means a pensions law of Zimbabwe in force before the 1st July, 1960, the provisions of which were amended or re-enacted on or after that date to provide for an increase in the ordinary contributions made to the Consolidated Revenue Fund by the beneficiary or the State or the beneficiary and the State with the object of increasing the amount of the pension payable to the beneficiary and **"unamended"**, when used in relation to a pensions law, and **"unamended or re-enacted"**, when used in relation to the provisions of a pensions law, shall be construed accordingly;

**"annuity on retirement"**, in relation to—

[Amended in US\$ by Act 5/2009 w.e.f. 30<sup>th</sup> September, 2009.]

(a) a Part I beneficiary, means—

(i) in the case of a male beneficiary, an annuity payable on his attaining an age of not less than **55** years;

(ii) in the case of a female beneficiary, an annuity payable on her attaining an age of not less than **50** years;

the right to which cannot be assigned or pledged and of which no amount in excess of  $\frac{1}{3}$  of the total value of the annuity may be commuted for a single payment except where the annual amount of such annuity does not exceed **\$900 000**;

[Amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019;

amount increased Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(b) a Part II beneficiary, means an annuity payable on or after the date from which a pension or other benefit—

(i) first became payable to the beneficiary on the grounds of superannuation; or

(ii) would, but for the cessation of the employment of the beneficiary or his withdrawal from or the winding up of the pension fund of which he was a member, first have become payable to the beneficiary on the grounds of superannuation;

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the right to which cannot be assigned or pledged and of which no amount in excess of **1/3rd** of the total value of the annuity may be commuted for a single payment except where the annual amount of such annuity does not exceed **\$900 000**;

**“benefit fund”** means a fund as defined in paragraph (b) of the definition of “benefit fund” in subsection (1) of section two;

**“fund with changed rules”**, in relation to a Part I beneficiary or a Part II beneficiary who was a member of a pension fund, means a benefit or pension fund established before the **1st July 1960**, the rules of which were changed on or after that date to provide for an increase in the ordinary contributions made by the beneficiary or the employer of the beneficiary or the beneficiary and the employer of the beneficiary with the object of increasing the amount of the benefit or pension payable to the beneficiary and **“unchanged”**, when used in relation to the rules of a benefit or pension fund, shall be construed accordingly;

**“lump sum payment”**, in relation to—

(a) a Part I or Part II beneficiary who was employed within Zimbabwe throughout the period during which ordinary contributions were made, means an amount equal to the terminal benefit paid to him;

(b) a Part III beneficiary who was employed within Zimbabwe throughout the period during which he was a member of an unapproved fund, means an amount equal to the terminal benefit paid to him;

(c) a Part I or Part II beneficiary who was not employed within Zimbabwe throughout the period during which ordinary contributions were made, means an amount which bears the same proportion to the terminal benefit paid to him as the period of his employment within Zimbabwe during which ordinary contributions were made bears to the period throughout which ordinary contributions were made;

(d) a Part III beneficiary who was not employed within Zimbabwe throughout the period during which he was a member of an unapproved fund, means an amount which bears the same proportion to the terminal benefit paid to him as the period of his employment within Zimbabwe during which he was a member of such fund bears to the period throughout which he was a member of such fund;

**“new fund”** means a benefit or pension fund established on or after **the 1st July, 1960**;

**“ordinary contribution”**, in relation to—

(a) a Part I beneficiary, means a contribution to a benefit fund which—

(i) was not an arrear contribution; and

(ii) was made by or in connection with the beneficiary; and

(iii) was required to be made at intervals fixed by the rules of the fund; and

(iv) was not refundable to the contributor;

(b) a Part II beneficiary, means a contribution to a pension fund or the Consolidated Revenue Fund, as the case may be, which—

(i) was not an arrear contribution; and

(ii) was made by or in connection with the beneficiary; and

(iii) was required to be made at intervals fixed by the rules of the fund or at a rate and at intervals fixed by the pensions law of Zimbabwe, as the case may be; and

(iv) was not refundable to the contributor;

**“Part I beneficiary”** means a person who was a member of a benefit fund;

**“Part II beneficiary”** means—

(a) a person who was a member of a pension fund; or

(b) a person to whom a pensions law of Zimbabwe applied;

**“Part III beneficiary”** means a person who was a member of an unapproved fund;

**“pensions law of Zimbabwe”** means a law of Zimbabwe, the provisions of which require a person to contribute to the Consolidated Revenue Fund for the purpose of securing a pension for himself, his widow or children;

**“terminal benefit”**, in relation to—

(a) a Part I beneficiary, means any amount (other than a payment by way of annuity), which is paid or will be payable to the beneficiary by reason of his withdrawal from or the winding up of a benefit fund;

(b) a Part II beneficiary, means any amount (other than—

(i) an amount referred to in paragraph (a) or (b) of the definition of “gross income” in subsection (1) of section eight; or

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(ii) a payment in commutation of a pension made from a pension fund or the Consolidated Revenue Fund);

which is paid or will be payable to the beneficiary by reason of his withdrawal from or the winding up of a pension fund or which is a benefit (not being a pension or gratuity) which is paid or will be payable by reason of contributions to the Consolidated Revenue Fund;

(c) a Part III beneficiary, means any amount other than a payment by way of an annuity which is paid or will be payable to the beneficiary by reason of his withdrawal from or the winding up of an unapproved fund;

**“unapproved fund”** means a fund or scheme established by an employer for the purpose of providing pensions, annuities, terminal benefits or similar benefits for his employees or the widows, children, dependants or nominees of deceased employees or for all or any of these purposes, which is not a pension fund or a benefit fund.

(2) For the purposes of this *Schedule*—

(a) a Part I or Part II beneficiary who was employed outside Zimbabwe by the State or the Government of the former Federation during any period in which ordinary contributions were made shall, if he was resident outside Zimbabwe solely for the purposes of that employment, be deemed to have been employed within Zimbabwe during that period; and

(b) a lump sum payment from the Federal Provident Fund established in terms of section 4 of the Federal Provident Fund Act, 1960 (No. 29 of 1960), to a Part I beneficiary who, by reason of the provisions or in pursuance of anything done in terms of subsection (4) of section 15 of that Act, became a member of that Fund on ceasing to be a member of the Government Employees’ Provident Fund established in terms of section 3 of \*the Government Provident Fund Act [Chapter 86 of 1963]

[\* no longer in force— Editor]

shall, if he became a member of the Government Employees’ Provident Fund before the 1st July, 1960, be deemed to be a lump sum payment made from a benefit fund established before the **1st July, 1960**, to a Part I beneficiary who became a member of the fund before that date; and

(c) a lump sum payment from the Government Employees’ Provident Fund established in terms of section 3 of the Government Provident Fund \*Act [Chapter 86 of 1963]]

[\*no longer in force— Editor]

to a Part I beneficiary who was a member of that Fund prior to the 1st July, 1960, and who, immediately on ceasing to be a member of that Fund, became a member of the Federal Provident Fund established in terms of section 4 of the Federal Provident Fund \*Act, 1960 (No. 29 of 1960)

[\*no longer in force— Editor]

and who, immediately on ceasing to be a member of the Federal Provident fund, became a member of the first-mentioned Fund, shall be deemed to be a lump sum payment made from a benefit fund established before the 1st July, 1960, to a Part I beneficiary who became a member of the fund before that date; and

(d) a lump sum payment to a Part II beneficiary who was a member of the pension fund of the Government of the former Federation or a statutory corporation before the 1st July, 1960, and who, as a result of the dissolution of the former Federation, is required to contribute to the Consolidated Revenue Fund or to the pension fund of a successor statutory corporation, shall be deemed to be a lump sum payment made from a pension fund established before the **1st July, 1960**, to a Part II beneficiary who became a member of the fund before that date.

### PART I AMOUNTS RECEIVED OR ACCRUED BY WAY OF LUMP SUM PAYMENTS FROM BENEFIT FUNDS WHICH SHALL NOT BE INCLUDED IN GROSS INCOME

*Lump sum payments from funds with unchanged rules to Part I beneficiaries who became members before the 1st July, 1960*

2

If a lump sum payment is made from a fund with unchanged rules to a Part I beneficiary who became a member of the fund before the **1st July, 1960**, the amount of the lump sum payment shall not be included in the gross income of the beneficiary.

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*Lump sum payments from funds with changed rules to Part I beneficiaries who became members before the 1st July, 1960*

3

If a lump sum payment is made from a fund with changed rules to a Part I beneficiary who became a member of the fund before the 1st July, 1960—

(a) so much of the amount of the lump sum payment as—

(i) does not exceed **\$900 000 or US\$ 1 800**;

[Amended in US\$ by Act 5/2009. w.e.f. the 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; substituted by Finance Act 7/2021 w.e.f. 31<sup>st</sup> December, 2021; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

or

(ii) is equal to the lump sum payment the beneficiary would have received had the rules of the fund remained unchanged;

whichever is the greater amount; and

[para (a) amended by section 16 (a) of Act 18/2000 w.e.f. 1st January, 2001.]

(b) so much of the balance of the amount of the lump sum payment, if any, remaining after the amount referred to in subparagraph (a) has been excluded therefrom as is used by the beneficiary to acquire a right to an annuity on retirement; and

(c) so much of the balance of the amount of the lump sum payment, if any, remaining after the amounts referred to in subparagraphs (a) and (b) have been excluded therefrom as is paid by the beneficiary into another benefit fund or into a pension fund as contributions which do not qualify for deduction in terms of paragraph (h) or (i) of subsection (2) of section fifteen;

shall not be included in the gross income of the beneficiary.

*Lump sum payments from new funds to Part I beneficiaries and from funds with changed or unchanged rules to Part I beneficiaries who became members on or after the 1st July, 1960*

4

If a lump sum payment is made from a new fund to a Part I beneficiary or from a fund with changed or unchanged rules to a Part I beneficiary who became a member of the fund on or after the 1st July, 1960—

(a) so much of the amount of the lump sum payment as does not exceed **\$900 000; or US\$ 1 800**, and

[Paragraph (a) amended by section 16 (b) of Act 18/2000 w.e.f. the year of assessment beginning on the 1st January, 2001; amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; substituted by Finance Act 7 of 2021 w.e.f. 31<sup>st</sup> December, 2021; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(b) so much of the balance of the amount of the lump sum payment, if any, remaining after the amount referred to in subparagraph (a) has been excluded therefrom as is used by the beneficiary to acquire a right to an annuity on retirement; and

(c) so much of the balance of the amount of the lump sum payment, if any, remaining after the amounts referred to in subparagraphs (a) and (b) have been excluded therefrom as is paid by the beneficiary into another benefit fund or into a pension fund as contributions which do not qualify for deduction in terms of paragraph (h) or (i) of subsection (2) of section fifteen;

shall not be included in the gross income of the beneficiary.

*Lump sum payments to Part I beneficiaries from new funds, funds with changed rules or funds of which they became members on or after 1st July, 1960, which contain amounts received from other funds*

5

For the purposes of this Part, a lump sum payment received by a Part I beneficiary from a new fund, a fund with changed rules or a fund of which he became a member on or after the 1st July, 1960, shall not include that part of any amount received from such fund as relates to his membership of any other fund and which would not have been subject to tax in terms of this Act or any previous law had it been received from such other fund.

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### PART II AMOUNTS RECEIVED OR ACCRUED BY WAY OF LUMP SUM PAYMENTS FROM PENSION FUNDS OR THE CONSOLIDATED REVENUE FUND WHICH SHALL NOT BE INCLUDED IN GROSS INCOME

*Lump sum payments from funds with unchanged rules to Part II beneficiaries who became members before the 1st July, 1960, and from the Consolidated Revenue Fund to Part II beneficiaries to whom an unamended pensions law applied before the 1st July, 1960*

6

If a lump sum payment is made from a fund with unchanged rules to a Part II beneficiary who became a member of the fund before the 1st July, 1960, or from the Consolidated Fund to a Part II beneficiary to whom an unamended pensions law applied before the 1st July, 1960, the amount of the lump sum payment shall not be included in the gross income of the beneficiary.

*Lump sum payments from funds with changed rules to Part II beneficiaries who became members before the 1st July, 1960, and from the Consolidated Revenue Fund to Part II beneficiaries to whom an amended pensions law applied before the 1st July, 1960*

7

If a lump sum payment is made from a fund with changed rules to a Part II beneficiary who became a member of the fund before the 1st July, 1960, or from the Consolidated Revenue Fund to a Part II beneficiary to whom an amended pensions law applied before the 1st July, 1960—

(a) in the case of a lump sum payment which does not exceed **\$900 000 or US 1 800**, the amount of the lump sum payment; and

[Paragraph (a) amended by Act 18/2000 w.e.f. 1st January, 2001; amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019; amended by Act 13/2019 w.e.f. 31st December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; substituted by Finance Act 7/2021 w.e.f. 31st December, 2021; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(b) in the case of a lump sum payment which exceeds **\$900 000**—

[Paragraph (b) amended by Act 18/2000 from the 1st January, 2001; amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019; amended by Act 13/2019 w.e.f. 31st December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; substituted by Finance Act 7/2021 w.e.f. 31st December, 2021; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(i) so much of the amount of the lump sum payment as is equal to the lump sum payment the beneficiary would have received had the rules of the fund remained unchanged or the amended pensions law not been amended or re-enacted, as the case may be; and

(ii) so much of the balance of the amount of the lump sum payment, if any, remaining after the amount referred to in subparagraph (i) has been excluded therefrom as is used by the beneficiary to acquire a right to an annuity on retirement; and

(iii) so much of the balance of the amount of the lump sum payment, if any, remaining after the amounts referred to in subparagraphs (i) and (ii) have been excluded therefrom as is paid by the beneficiary into another pension fund as contributions which do not qualify for deduction in terms of paragraph (h) or (i) of subsection (2) of section fifteen;

shall not be included in the gross income of the beneficiary.

*Lump sum payments from new funds to Part II beneficiaries, from funds with changed or unchanged rules to Part II beneficiaries who became members on or after the 1st July, 1960, and from the Consolidated Revenue Fund to Part II beneficiaries to whom a pensions law did not apply before the 1st July, 1960*

8

If a lump sum payment is made from a new fund to a Part II beneficiary or from a fund with changed or unchanged rules to a Part II beneficiary who became a member of the fund on or after the 1st July, 1960, or from the Consolidated Revenue Fund to a Part II beneficiary to whom a pensions law of Zimbabwe did not apply before the 1st July, 1960—

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(a) in the case of a lump sum payment which does not exceed **\$900 000 or US\$ 1 800**, the amount of the lump sum payment; and

[Amended Act 18/2000 from the 1st January, 2001; amended in US\$ by Act 5/2009 with effect from the 30<sup>th</sup> September, 2009; further amended duly redesignated in zw\$ terms by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; substituted by Finance Act 7/2021 w.e.f. December, 2021; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(b) in the case of a lump sum payment which exceeds **\$900 000 or US 1 800** —

[Amended by Act 18/2000 from the 1st January, 2001; amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; further amended duly redesignated in zw\$ terms by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(i) so much of the amount of the lump sum payment as is used by the beneficiary to acquire a right to an annuity on retirement; and

(ii) so much of the balance of the amount of the lump sum payment, if any, remaining after the amount referred to in subparagraph (i) has been excluded therefrom as is paid by the beneficiary into another pension fund as contributions which do not qualify for deduction in terms of paragraph (h) or (i) of subsection (2) of section fifteen;

shall not be included in the gross income of the beneficiary.

*Lump sum payments to Part II beneficiaries from new funds, funds with changed rules or funds of which they became members on or after 1st July, 1960, which contain amounts received from other funds*

9

For the purposes of this Part, a lump sum payment received by a Part II beneficiary from a new fund, a fund with changed rules or a fund of which he became a member on or after the 1st July 1960, shall not include that part of any amount received from such fund as relates to his membership of any other fund and which

would not have been subject to tax in terms of this Act or any previous law had it been received from such other fund.

## PART III AMOUNTS RECEIVED OR ACCRUED BY WAY OF LUMP SUM PAYMENTS FROM UNAPPROVED FUNDS WHICH SHALL NOT BE INCLUDED IN GROSS INCOME

10

If a lump sum payment is made to a Part III beneficiary, so much thereof as represents a refund of the beneficiary's contributions to the unapproved fund shall not be included in the gross income of the beneficiary.

## SECOND SCHEDULE

(Section 8)

### VALUATION OF TRADING STOCK

#### PART I PRELIMINARY

*Interpretation of terms relating to trading stock*

1

In the provisions of this Schedule relating to the trading stock of a person—

“**cost price**” includes the freight charges, insurance premium, duty and other costs and expenses incurred by the person in bringing the trading stock to hand;

“**date of valuation**”, in relation to trading stock referred to in subparagraphs (i) to (iv) of paragraph (h) of the definition of “gross income” in subsection (1) of section eight, means—

(a) in the case of trading stock referred to in subparagraphs (i) and (iv) of that paragraph, the last day of the year of assessment; and

(b) in the case of trading stock referred to in subparagraphs (ii) and (iii) of that paragraph, the date on which the trading stock was taken, given, disposed of or sold or vested, as the case may be;

“**farm trading stock**” means—

[“*Farmer*” v COT 86-ITC-1424]

(a) livestock acquired or bred by a farmer for the purposes or in the carrying on of his farming operations; and

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(b) crops and other produce produced or partially produced by a farmer in the carrying on of his farming operations.

### PART II VALUATION OF TRADING STOCK OTHER THAN FARM TRADING STOCK

#### *Interpretation in Part II*

2

(1) In this Part—

“**market value**”, in relation to the trading stock of a person—

(a) means an amount equal to the consideration for which other trading stock of the same kind, quality and condition is disposed of in the ordinary course of trade by other persons carrying on the same trade in like circumstances;

(b) does not include any amount attributable to freight, handling and selling charges and commission incurred in the disposal in the ordinary course of trade of trading stock normally disposed of through an agent.

(2) If in the opinion of the Commissioner there is insufficient evidence of the market value of trading stock at the date of valuation, the market value of the trading stock at that date shall, notwithstanding the definition of “market value” in subparagraph (1), be an amount which he considers to be fair and reasonable.

#### *Application of Part II*

3

This Part shall not apply to the farm trading stock of a farmer.

*Valuation of trading stock referred to in subparagraphs (ii), (iii) and (iv) of paragraph (h) of the definition of “gross income”*

4

Subject to paragraph 7, the value of the trading stock of a person shall, for the purpose of subparagraphs (i), (iii) and (iv) of paragraph (h) of the definition of “gross income” in subsection (1) of section *eight*, be an amount equal to—

[*Delta Beverages (Pvt) Ltd v Zimra 22-SC-003*]

- (a) the cost price to the person; or
- (b) the cost of replacement at the date of valuation; or
- (c) the market value at the date of valuation;

of each item of the trading stock, whichever the person or, as the case may be, his trustee may elect at the time of the return of income of the person in which the trading stock is included:

Provided that—

(i) if the Commissioner is satisfied that it is impossible or impracticable to determine the value of trading stock as in this paragraph is provided he may accept such other method of valuation as he considers the circumstances warrant;

(ii) if trading stock—

(a) has been given by the person to some other person; or

(b) has been disposed of by the person otherwise than by sale or exchange; or

(c) has been disposed of by the person otherwise than in the manner described in subparagraph (ii) or subparagraph A of subparagraph (iii) or subparagraph (iv) or subparagraph (v) of paragraph (h) of the definition of “gross income” in subsection (1) of section *eight*,

and the Commissioner is of the opinion that such trading stock has been given away or disposed of in pursuance of a transaction, operation or scheme which has as its sole purpose or one of its main purposes the avoidance or postponement of liability for or the reduction of any tax, the Commissioner shall determine the amount which he considers such trading stock would have realized had it been disposed of by sale in the ordinary course of trade and such amount shall be included in the gross income of the person so giving away or otherwise disposing of such stock.

*Valuation of trading stock referred to in subparagraph (ii) of paragraph (h) of the definition of “gross income”*

5

Subject to paragraph 7, the value of the trading stock of a person shall, for the purposes of subparagraph (ii) of paragraph (h) of the definition of “gross income” in subsection (1) of section *eight*, be an amount equal to the cost price to the person or the market value of the trading stock, whichever the person may elect.

*Valuation of trading stock referred to in subparagraph (v) of paragraph (h) of the definition of “gross income”*

6

## ICAZ STUDENT LEGISLATION HANDBOOK -

### INCOME TAX ACT

The value of the trading stock of a person shall, for the purposes of subparagraph (v) of paragraph (h) of the definition of "gross income" in subsection (1) of section *eight*, be the amount at which the trading stock was sold or disposed of.

*Valuation of partially manufactured trading stock, etc.*

7

The value of the trading stock of a person which, at the date of valuation is partially manufactured, produced, constructed, improved, consumed or used shall, for the purposes of subparagraphs (i) to (iv) of paragraph (h) of the definition of "gross income" in subsection (1) of section *eight*, be an amount which the Commissioner considers to be the fair and reasonable value of the trading stock at the date of valuation.

### PART III VALUATION OF TRADING STOCK WHICH IS FARM TRADING STOCK

*Interpretation in Part III*

8

In this Part—

**"class of livestock"** means a class of livestock approved by the Commissioner for the purposes of this Part;

**"cost and maintenance value"**, in relation to the ordinary livestock of a farmer, means the sum of—

(a) the amount, as nearly as it can be ascertained, of the cost price to the farmer of the livestock or, as the case may be, the cost incurred by the farmer in breeding the livestock; and

(b) the cost to the farmer of maintaining the livestock in the year of assessment and any preceding year of assessment;

**"fixed standard value"**, in relation to—

[amounts amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009.]

(a) a class of ordinary livestock of a farmer, means the standard value fixed by the farmer in terms of subparagraph (a) of subparagraph (2) of paragraph 10;

(b) a class of stud livestock of a farmer, means—

(i) in the case of an animal in that class the cost price to the farmer of which was less than **\$19 500 or US \$150** the standard value fixed by the farmer in terms of subparagraph (b) of subparagraph (2) of paragraph 10; and

(ii) in the case of an animal in that class the cost price to the farmer of which was **\$19 500** or more—

A. the standard value fixed by the farmer in terms of subparagraph (b) of subparagraph (2) of paragraph 10; or

B. **\$ 75 000**;

[Amended redesignated from US\$ to **zw\$** by Finance (No. 2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by Finance Act 8/2022 w.e.f. 24<sup>th</sup> October,2022.]

whichever the farmer in terms of that subparagraph may elect;

[para (b) amended by Act 18/2000 from the 1st January, 2001.]

**"ordinary livestock"** means livestock which is not stud livestock;

**"purchase price value"**, in relation to the stud livestock of a farmer, means—

[amounts amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009.]

(a) in the case of an animal the cost price to the farmer of which was less than **\$19 500 or US\$ 150** , the cost price of the animal; and

(b) in the case of an animal the cost price to the farmer of which was **\$19 500** or more—

(i) the cost of the animal; or

(ii) **\$75 000 or US\$ 150**;

whichever the farmer may elect;

[Paras (a) and (b) amended by Act 18/2000 from the 1st January, 2001; further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; substituted by Finance Act 7/2021; increased by Finance Act 8/2022 w.e.f.24th October,2022.]

**"stud livestock"** means livestock bought by a farmer for stud purposes.

# ICAZ STUDENT LEGISLATION HANDBOOK -

## INCOME TAX ACT

### *Application of Part III*

9

This Part shall apply to the farm trading stock of a farmer.

[“Farmer” v COT 86-ITC-1424]

### *Methods of valuation of livestock*

10

(1) For the purposes of this Part, the livestock of a farmer shall be valued—

(a) in the case of a class of ordinary livestock, by reference to—

(i) the fixed standard value of the livestock; or

(ii) the cost and maintenance value of the livestock;

whichever the farmer in his first return of income in which that class of livestock is included may elect; and

(b) in the case of a class of stud livestock, by reference to—

(i) the purchase price value of each animal; or

(ii) the fixed standard value of the livestock;

whichever the farmer in his first return of income in which that class of livestock is included may elect:

Provided that a farmer who ceases to carry on farming operations after having made an election in terms of subparagraph (a) or (b) or under the similar provisions of a previous law shall be required to make a new election should he subsequently again commence farming operations and such election shall be made in the first return of income in which ordinary or stud livestock are included after he again commenced farming operations.

(2) If a farmer elects in terms of subparagraph (1) to value a class of livestock by reference to the fixed standard value of that class of livestock, the farmer shall at the time of the election—

(a) in the case of each class of his ordinary livestock, fix, with the approval of the Commissioner, the standard value which shall be applicable to all animals in that class; and

(b) in the case of each class of his stud livestock—

(i) fix, with the approval of the Commissioner, the standard value which shall be applicable—

A. to all animals in that class the cost price to the farmer of each of which was less than **\$75,000**; or US\$ 150; and

B. if the farmer so elects, to any animal in that class the cost price to the farmer of which was **\$75,000** or more;

[Para (b) (i) amended by Act 18/2000 from the 1st January, 2001; amounts amended in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019; amended by Act 13/2019 w.e.f. 31st December, 2019; amounts increased by Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; substituted by Finance Act 7/2021; increased by Finance Act 8/2022 w.e.f. 24th October, 2022.]

and

(ii) make the election referred to in subparagraph B of subparagraph (i):

Provided that in any case where the Commissioner is unable to approve of a standard value fixed by a farmer in terms of subparagraph (a) or (b), the Commissioner shall fix such standard value.

(3) If a farmer elects in terms of subparagraph (b) of subparagraph (1) to value a class of his stud livestock by reference to the purchase price value of each animal, the farmer shall, at the time of the election, make the election to which subparagraph (b) of the definition of “**purchase price value**” in paragraph 8 relates.

### *Alteration in methods of valuation and fixed standard values*

11

(1) With the approval of the Commissioner a farmer may, subject to such conditions as the Commissioner may fix—

(a) change the method of valuation of his livestock; and

(b) alter the standard value of any class of his livestock which was fixed by the farmer in terms of subparagraph (2) of paragraph 10.

(2) Save as is provided in subparagraph (1), an election to which this Part relates shall be irrevocable.

### *Valuation of farm trading stock referred to in subparagraphs (i), (iii) and (iv) of paragraph (h) of the definition of “gross income”*

12

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### INCOME TAX ACT

The value of the farm trading stock of a farmer shall, for the purpose of subparagraphs (i), (iii) and (iv) of paragraph (h) of the definition "gross income" in subsection (1) of section *eight*, be an amount equal to—

(a) in the case of livestock, the value of the livestock at the date of valuation determined in accordance with the method of valuation elected by the farmer in terms of subparagraph (1) of paragraph 10; and

(b) in the case of all other farm trading stock, an amount which the Commissioner considers to be the fair and reasonable value of the farm trading stock at the date of valuation:

Provided that if farm trading stock—

(a) has been given by the farmer to some other person; or

(b) has been disposed of by the farmer otherwise than by sale or exchange; or

(c) has been disposed of by the farmer otherwise than in the manner described in subparagraph (ii) or subparagraph A of subparagraph (iii) or subparagraph (iv) or subparagraph (v) of paragraph (h) of the definition of "gross income" in subsection (1) of section *eight*;

and the Commissioner is of the opinion that such farm trading stock has been given away or disposed of in pursuance of a transaction, operation or scheme which has as its sole purpose or one of its main purposes the avoidance or postponement of liability for or the reduction of any tax, the Commissioner shall determine the amount which he considers such farm trading stock would have realized had it been disposed of by sale in the ordinary course of trade and such amount shall be included in the gross income of the farmer so giving away or otherwise disposing of such farm trading stock.

*Valuation of farm trading stock referred to in subparagraph (ii) of paragraph (h) of the definition of "gross income"*

13

The value of the farm trading stock of a farmer shall, for the purposes of subparagraph (ii) of paragraph (h) of the definition of "gross income" in subsection (1) of section *eight*, be an amount which the Commissioner considers to be the fair and reasonable value of the farm trading stock at the date of valuation.

*Valuation of farm trading stock referred to in subparagraph (v) of paragraph (h) of the definition of "gross income"*

14

The value of the farm trading stock of a farmer shall, for the purposes of subparagraph (v) of paragraph (h) of the definition of "gross income" in subsection (1) of section *eight*, be an amount at which the farm trading stock was sold or disposed of.

### THIRD SCHEDULE

(Section 14)

#### EXEMPTIONS FROM INCOME TAX

1

##### The receipts and accruals of—

(a) Local Authorities;

(b) the Reserve Bank of Zimbabwe;

(c) the Zambezi River Authority;

(d) the Environment Management Board;

[substituted by s. 143 of Act 13 of 2002 *Chapter 20:27*]

(e) the Peoples Own Savings Bank referred to in section 3 of the Post Office Savings Bank Act [*Chapter 24:22*];

[Subpara (e) inserted by Act 17 of 1997 from 1 April 1995, substituted by Act 18 of 1999; amended by Finance Act 8/2022 gazetted on the 24<sup>th</sup> October, 2022 w.e.f. **1<sup>st</sup> April, 2001**.]

(f) the wholly owned company of the Reserve Bank of Zimbabwe called the Zimbabwe Asset Management Corporation (Private) Limited (ZAMCO), incorporated in terms of the \*Companies Act [*Chapter 24:03*] on the **15<sup>th</sup> July, 2014** with effect from that date.

[Sub-paras (f) and (g) deleted by Act 4 of 1996 from 1 April 1995.

Subpara (f) re-inserted by the Finance (No.2) Act 9 of 2015; then substituted without any change in wording by the Finance Act 2 of 2017 gazetted on 23rd March, 2017. *Chapter 24:03* became **CHAPTER 24:31** since **13<sup>th</sup> February, 2020**- Editor]

(g) the **Victoria Falls** Stock Exchange, being a securities exchange licensed under the Securities and Exchange Act [*Chapter 24:25*] under conditions specified under the Exchange Control Act [*Chapter 22:05*] to permit companies incorporated, registered or doing business in Zimbabwe to raise capital through the issuance of and dealing in shares,

# ICAZ STUDENT LEGISLATION HANDBOOK -

## INCOME TAX ACT

debentures and other securities denominated in United States dollars;

[Subpara (g) – not (f) as gazetted - inserted by section 13 of Act 8/2020 gazetted on the 28<sup>th</sup> October,2020 with effect from the year of assessment beginning on the 1st August, 2020.]

(h) with effect from the **1st January, 2021**, any special purpose vehicle (**SPV**) initially wholly owned by the Infrastructure Development Bank of Zimbabwe wherein private sector contractors, in return for a share in the equity of the SPV, undertake to construct on-campus student accommodation at any public institution of higher or tertiary education.

[Subpara (h) -not (g) as gazetted-inserted by section 13 of Act 8/2020 gazetted on the 28th October,2020 with effect from the year of assessment beginning on the 1st August, 2020.- presuming this date is not in conflict with the commencement on the 1/1/21- Editor]

2

### The receipts and accruals of—

(a) agricultural, mining and commercial institutions or societies not operating for the private pecuniary profit or gain of the members;

[*Zimbabwe Revenue Authority v FC Platinum 22-SC-044*]

(b) benefit funds;

(c) building societies, and financial institutions providing mortgage finance, but only to the extent that the receipts or accruals of such financial institutions are attributable to the provision of mortgage finance by them.

[subpara (c) substituted by Act 1/2014 gazetted on the 4<sup>th</sup> April, 2014 with retrospective effect from 1<sup>st</sup> January, 2013: until substituted by Finance (No.2) Act 8 of 2014 w.e.f. the 17th October, 2014]

In this subparagraph—

**“building society”** means a building registered in terms of the Building Societies Act [*Chapter 24:02*];

**“financial institution”** means any banking institution registered in terms of the Banking Act [*Chapter 24:20*];

**“mortgage finance”** means the provision of loans for the acquisition of immovable property for residential purposes, which loans are secured by the collateral of that immovable property.

(d) clubs, societies, institutes and associations organized and operated solely for social welfare, civic improvement, pleasure,

recreation or the advancement or control of any profession or trade or other similar purposes if such receipts or accruals, whether current or accumulated, may not be divided amongst or credited to or enure to the benefit of any member or shareholder other than by way of remuneration for services rendered;

[ as long as they don't register as a Company limited by Guarantee - *Zimbabwe Revenue Authority v FC Platinum 22-SC-044*]

(e) ecclesiastical institutions, charitable and educational institutions of a public character—

[subpara (e) substituted by Finance Act 8/2015 w.e.f. 1st January, 2016]

(i) consisting of donations, tithes, offerings or other contributions by the members or benefactors of the institutions concerned, and any other receipts or accruals that are not receipts and accruals of income from trade or investment carried on by or on behalf of the institutions concerned; or

(ii) that are receipts and accruals of income from trade or investment by any company of which that institution is the sole or principal member, and in respect of which the Minister responsible for the \*Companies and Other Business Entities Act [*\*Chapter 24:31*] has issued a licence in terms of section \*76 of that Act.

[EDITOR's note: -The new Chapter 24:31 has been substituted *in lieu* of Chapter 24:03 without any authority other than section 303 of Chapter 24:31 , so section 76 has been substituted for section 26 under Chapter 24:03  
A company limited by guarantee, once licenced as such, **loses its tax exemption** *Zimbabwe Revenue Authority v FC Platinum 22-SC-044*]

(f) employees saving schemes or funds approved by the Commissioner;

(g) friendly, benefit or medical aid societies;

(h) funds established by the Treasury in terms of the Public Finance Management Act [*Chapter 22:19*];

[subpara (h) inserted by Act 29 of 1998 from 1 January 1998.]

(i) **pension funds**, until such date as the Minister may specify by notice in the *Gazette*;

[subpara (i) repealed by Act 17 of 1997, and a new subpara inserted by Act 22 of 1999, both amendments taking effect from 1 January 1998.]

(j) any statutory corporation which is declared by the Minister, by notice in the *Gazette*, to be exempt from income tax;

# ICAZ STUDENT LEGISLATION HANDBOOK -

## INCOME TAX ACT

Provided that the Minister may limit any such declaration to such of the statutory corporation's receipts and accruals as he may specify in the notice;

[Subpara (j) substituted by Act 4 of 1996 and amended by Act 17 of 1997 w.e.f. 1 January 1998.

Zimbabwe Revenue Authority Notice, 2001 **GN 364/2001**

National Oil Infrastructure Company Notice 2016  
**GN 86/2016**

Rural Electrification Agency Notice 2018 **GN 145/2018**]

(k) trade unions;

(l) trusts of a public character;

[*The Endeavour Foundation and UDC Ltd v COT 95-SC-095*]

(m) the \*Deposit Protection Fund established in terms of section 66 of the Banking Act [*Chapter 24:20*].

[Subpara (m) inserted by Act 10/2003 from 1 January 2004.

**Editor's Note** : This fund was repealed on the 16th March, 2012 by Section 65(m) of Act 7/2011 and replaced by section 13 of the Deposit Protection Corporation Act *Chapter 24:29*]

(n) with effect from the **1st January, 2013**, the \*Investor Protection Fund established (in terms of the Securities Regulations, 2010, published in Statutory Instrument **100/2010**) to protect investors in publicly-quoted securities;

[Subparas (n) and (o) inserted by Act 1 of 2014 gazetted on the 4<sup>th</sup> April, 2014 with retrospective effect from the dates stated.

**Editor's Note** : this \*Fund was established by section 86B of the Securities and Exchange Act *Chapter 24:25*, not by SI 100/2010]

(o) with effect from the **1st January, 2014**, the Insurance and Pensions Housing Company established to secure financing for home seekers that guaranteed by the State, of which the shareholders are the Ministry of Finance, the Insurance and Pensions Commission and associations representing pension funds and life and funeral insurers;

(p) the receipt and accruals of the Agricultural Development Fund (being a fund set up to assist the Government of Zimbabwe in raising funds to compensate former farmers who qualify for compensation under the **Global Compensation Deed**).

[Subpara (p) inserted by Finance Act 7/2021 w.e.f. 31 December, 2021.]

3

**The receipts and accruals of—**

(a) any agency of any government, **other than** the Government of Zimbabwe, approved by the Minister by notice in a *statutory instrument*;

[Income Tax (Exemption from Income Tax) (**Foreign Government Agencies**) Notice, 1981. SI 131/1981 Income Tax (Exemption from Income Tax) (**United Nations Organisation and Agencies**) Notice, 1999. SI 417/1999]

(b) any international organization specified in terms of section 7 of the Privileges and Immunities Act [*Chapter 3:03*] which has been approved by the Minister by notice in a *statutory instrument*;

(c) the organizations referred to in the International Financial Organizations Act [*Chapter 22:09*];

(d) the African Development Bank referred to in the African Development Bank (Membership of Zimbabwe) Act [*Chapter 22:01*];

(e) the African Development Fund referred to in the African Development Fund (Zimbabwe) Act [*Chapter 22:02*];

(e1) the South African Reserve Bank;

[Second subpara (e) renumbered as (e1) bl 18(c)(i) of Act 17 of 1997.]

(f) any foreign organization that provides finance for development in Zimbabwe, to the extent that its receipts and accruals are from a project approved for the purposes of this subparagraph by the Minister;

(g) any person who is entitled to an exemption in respect of such receipts or accruals in terms of any agreement entered into by the Government of Zimbabwe with any other government, which agreement has been adopted by the Government of Zimbabwe on the recommendation of the Public Agreements Advisory Committee in accordance with the International Treaties Act [*Chapter 3:05*] ;

[Paragraph (g) substituted by Finance (No. 2) Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022.]

(h) any bank or other financial institution outside Zimbabwe in connection with a loan or other facility granted to the Reserve Bank of Zimbabwe in terms of paragraph (m) of subsection (1) of section 9 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*];

(i) any qualifying venture capital company or fund (for the purposes of qualifying for the exemption under this provision);

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### INCOME TAX ACT

[Income Tax (Exemption from Income Tax) (Investors in **Africa-Takura Ventures** Private Limited) Notice, 1997. SI 257/1997]

(j) any qualifying real estate investment trust (for the purposes of qualifying for the exemption under this provision, a “**qualifying real estate investment trust REIT** ” means an entity registered as such under the Collective Investment Schemes Act [*Chapter 24:19*] which has as its principal object the owning, managing and investment in real estate and to which or in connection with which the following additional features or conditions must apply—

[subpara (j) – **not (k)** as gazetted - inserted by Finance (No.2) Act 10/2020 w.e.f. **\*31<sup>st</sup> December, 2020**]

**A.** in the case of investors in the REIT other than a pension fund income must accrue from real estate investment projects commenced on or after the **\*date of commencement of the Finance (No. 2) Act, 2020**; and

**B.** the REIT must receive a minimum of **80%** of its taxable income from real estate; and

**C.** the REIT must distribute a minimum of **80%** of its taxable income in the form of shareholder dividends in each financial year of the REIT; and

**D. the REIT—**

I. must have a minimum of **100 shareholders** after the first year of the date when it qualifies in other respects to benefit from the exemption under this subparagraph;

Provided that one or more pension funds may hold all or any proportion of the shares of a REIT;

[proviso inserted by Finance Act 7/2021 w.e.f. 31 December, 2021.]

II. must not have more than **50%** of its shares held by 5 or fewer individuals during a taxable year;

Provided that one or more pension funds may hold up to **50%** the shares of REIT in any taxable year;

**E.** the REIT must be listed on a stock exchange registered in terms of the Securities and Exchange Act [*Chapter 24:25*];

**“qualifying venture capital company or fund”** means a company or fund which has as its principal object the provision of venture capital for development purposes and to which or in connection with which the following additional features or conditions must apply—

A. the venture capital company or fund as well as the recipient of the venture capital (“**the recipient**”) must be residents of or domiciled in Zimbabwe, and must be tax compliant (in proof of which the Commissioner may demand the

production of the relevant tax clearance certificates); and

B. the venture capital company or fund must not (at least in respect of the receipt and accruals for which it claims exemption) invest in any of the following businesses or kinds of businesses—

I. businesses carried on in respect of the sale, leasing or other dealing with immovable property;

II. businesses ordinarily carried on by financial institutions;

III. businesses carried on in respect of financial or advisory services (including legal services, tax advisory services, stock broking services, management consulting services and auditing or accounting services);

IV. businesses carried on in respect of gaming, or games of chance;

and

C. the recipient must not be listed on a stock exchange; and

D. the recipient is or proposes to be active in agriculture, mining, manufacturing, tourism or other aspect of the economy deemed by the Minister by *statutory instrument* to be critical for national development; and

E. the venture capital company or fund must not hold shares in the recipient to the extent of controlling it, nor must it exert control over the recipient directly or indirectly through a related entity; and

F. the predominant mode by which the venture capital company finances recipients is by means of equity rather than debt.

[subpara (i) substituted by Act 13/1996 from 1 April 1996 ; substituted by Act 13/2019 w.e.f. 31st December, 2019]

(j) of financial institutions in the form of income from Treasury Bills, if the **\*terms sheet** subject to which the Treasury Bills in question were issued specified that their income was tax-free.

(2) **applies** as if its provisions took effect from the **\*24th November, 2014**.

# ICAZ STUDENT LEGISLATION HANDBOOK -

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[sub-para (j) inserted by the Finance Act 1/2019 w.e.f. 20<sup>th</sup> February, 2019  
The above qualification of \*the date of **application** was provided by section 13 of The Finance Act (No.3)13/2019 gazetted 31st December, 2019]

4

An amount accruing by way of—

(a) salary and emoluments paid in respect of his office to—

(i) the President;

(ii) a member of the staff of the President in so far as such salary and emoluments are paid by the President;

(iii) any person who is entitled to exemption or relief from income tax in respect of such salary or emoluments in terms of the Privileges and Immunities Act [Chapter 3:03];

(iv) any person who—

A. is entitled to exemption or relief from income tax in respect of such salary or emoluments in terms of any agreement entered into by the Government of Zimbabwe with any other government or international, regional or foreign organization; and

B. is approved by the Minister by notice in a *statutory instrument*;

[Income Tax (Exemption from Income Tax) (**United Nations Organisation and Agencies**) Notice,1999.

SI 417/1999

Income Tax (Expatriate Staff of Exemption from Income Tax) (**Konoike Construction Coy Ltd**) Notice, SI 47/2019]

(a1) any allowance payable to a spouse of the President or a Vice-President in respect of duties the spouse performs for or on behalf of the State;

[Inserted by Act 17 of 1997 from 1 July 1996.]

(a2) any allowance payable by the State to the spouse of a former President;

[Inserted by Act No.27 of 20<sup>01</sup> from 1st November, 2001.]

(b) an allowance granted to a Minister or Deputy Minister, provincial governor, the Speaker, the Deputy Speaker, the Leader of the Opposition, a Chief Whip or a member of Parliament if it is specified for the purposes of this paragraph by the President by notice in a *statutory instrument* with effect from such date, whether before, on or after the date of the notice, as the President may specify therein;

(c) the value of the grant of quarters, a residence, furniture or a motor vehicle to a Minister or Deputy Minister or the Speaker if it is specified for the purposes of this paragraph by the President by notice in a *statutory instrument*;

[Editor's note — The word 'or' is missing from the Revised Edition of this Act, and will be rectified by the Law Reviser when this wording- and that in subpara (b) above referring to **Parliament** instead of **House of Assembly** in SI 458/1980 — is corrected. Income Tax (**Parliamentary Allowances and Benefits**) (Exemption from Income Tax) Notice, 1980.

SI 458/1980

Ombudsman and Deputy Ombudsman (now replaced by the **Zimbabwe Human Rights Commission** i.t.o the Constitution 6th Schedule Part 4 (16) SI 124/1984 (Exemption from Income Tax) (Senior State Employees) Notice, 1988. SI 5/1988]

(c1) any allowance or the value of any benefit which is granted to any person in the full-time employment of the State and which is specified for the purposes of this subparagraph by the President by notice in a statutory instrument with effect from such date, whether before, on or after the date of the notice, as the President may specify therein;

[Income Tax (Exemption from Income Tax) (**Judges**) Notice, 1984. SI 123/1984

Income Tax (Exemption from Income Tax) (Deputy Chairman, **Law Development Commission**) Notice, 1991.SI 252/1991

Income Tax (Exemption from Income Tax) (Presidents of the **Administrative Court**) Notice,1994.SI 70/1994

Income Tax (Exemption from Income Tax) (**Public Servants**) (Travel Allowances) Notice, 1994. SI 153/1994]

(d1) any **gratuity** payable to a judge of the supreme court or the High Court in terms of his conditions of service;

[Subpara (d1) inserted by Act 17 of 1997 from 1 April 1995.]

(e) an allowance payable to a chief or headman in his capacity as chief or headman;

(f) an allowance payable by reason of the overseas service of a member of the Defence Forces which is declared to be active service in terms of any law relating to defence;

(g) one of the following allowances granted to a person who is not in full-time military or police employment, as the case may be—

(i) a quarterly allowance granted to a commissioned officer in the Defence Forces; or

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(ii) a volunteers allowance granted to a member of the Defence Forces; or

(iii) an annual allowance granted to a commissioned officer in the Police Constabulary established in terms of section 27 of the Police Act [*Chapter 11:10*];

(h) a gratuity given in conjunction with the award of—

(i) the Fire Brigades Long Service Medal;

[Amended by Act 10/2009 w.e.f. 1st January, 2010.]

or

(ii) the Medal for Long Service and Good Conduct (Military);

(i) a gratuity given to a member of the Police Force who has become eligible for the award of a medal as a reward for long service;

(j) an allowance payable by the State to a person in its service in respect of—

(i) the expenditure incurred by the person in the discharge of his duties outside Zimbabwe; or

(ii) so much of the expenditure of the person in maintaining himself, his family or establishment whilst employed on duty outside Zimbabwe as exceeds the expenditure he would normally incur if he were employed in Zimbabwe;

(k) the value of the grant of rations to a member of the Defence Forces or the Police Force for any period during which he is in the field engaged on operational military duties;

(l) a gratuity given in conjunction with the grant of any honour or award created in terms of section 3 of the Honours and Awards Act [*Chapter 10:11*];

(m) a scholarship, bursary, payment in respect of tuition fees or other educational allowance to a student receiving instruction at a school, college or university, but not including an amount accruing to the student by way of remuneration for services rendered or to be rendered by the student or a near relative of the student;

(n) a monthly personal allowance payable to a councillor, in his capacity as a councillor, in terms of paragraph 54 of the First Schedule to the Rural District Councils Act [*Chapter 29:13*] or section 112 of the Urban Councils Act [*Chapter 29:15*];

[Subpara (n) amended by Finance Act 7/2021 w.e.f. 31 December, 2021.]

(o) a **bonus or performance-related award** accruing to an employee or agent in respect of his or her employment or agency, to the extent that the bonus does not exceed or, where the employee or agent receives more than 1 bonus in the year of assessment concerned, to the extent that the aggregate of the bonuses **does not exceed zw\$ 500 000** (or US\$ 700 if the recipient is remunerated in foreign currency or is deemed to be so remunerated by virtue of section \*14(2) of the Finance (No. 3) Act, 2019);

[subpara (o) bonuses increased by Finance Act 7/2021 gazetted on the 31 December, 2021 backdated to 1<sup>st</sup> November, 2021. The zw\$ bonus amount was further increased from zw\$100 000 to the above by Finance Act 8/2022 gazetted on the 24th October, 2022 w.e.f. 1st November, 2022. **Editor's Note**:-there is no \*section 14(2) of Finance (No.3) Act 13/2019,. Section 14(1) of that Act amended para1(1) of the 5th SCHEDULE ]

(p) the first **zw\$ 1 300 000** (or **US\$ 10000** if the recipient was remunerated in foreign currency or is deemed to have been so remunerated by virtue of \*section 4(2) of the Finance (No. 3) Act, 2019 or  $\frac{1}{3}$ , whichever is the greater, of the amount of any severance pay, gratuity or similar benefit, other than a pension or cash *in lieu* of leave, which is paid to an employee on the cessation of his employment, where his or her employment has ceased due to retrenchment;

[increased by Act 12/2006 from 1st December, 2006; further by Act 16 of 2007 increasing the limit beyond \$ 25 million w.e.f.1st January, 2008; reduced from \$ 1 billion to \$ 0.10 w.e.f. 1st August, 2008 i.t.o SI 109/2008 ;

increased to \$1.5 million by SI 149 of 2008,

backdated to 1<sup>st</sup> October, 2008,

increased to zw\$10 billion by SI 166 of 2008,

backdated to 1<sup>st</sup> November, 2008;

and then , w.e.f. 1<sup>st</sup> February, 2009 Act 3/2009

substituted the US\$1000 figure which was increased to US\$5000 by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010; and again increased to the above figure by the Finance Act 1

of 2014 gazetted on the 4<sup>th</sup> April,2014 ,with retrospective effect from the **1<sup>st</sup> January, 2013**;

subpara (p) amended by Sect 8(b) of the Finance (No.2) Act 9 of 2015 w.e.f. 31st December, 2015.;

subpara (p) amended by Sect 13(c)(i) of the Finance (No.3) Act 13/2019 backdated to 1<sup>st</sup> November, 2019.; then substituted by Finance Act 7/2021 gazetted on the 31 December, 2021.]

Provided that the exemption provided in this subparagraph shall apply only in respect of the first **zw\$4 875 000** (or **US\$ 37 500** if the

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recipient was remunerated in foreign currency or is deemed to have been so remunerated by virtue of \*section 4(2) of the Finance (No. 3) Act, 2019) of any such pay, gratuity or benefit payable to him in any one year of assessment.

[proviso increased by Act 12/2006 from 1<sup>st</sup> December,2006, further by Act 16 of 2007 increasing the limit beyond \$ 100 million to \$10 billion w.e.f.1st January, 2008;which was reduced to \$ 1.00 w.e.f. 1st August, 2008 i.t.o SI 109/2008, then increased to \$15 million by SI 149 of 2008, 2008 backdated to 1<sup>st</sup> October, 2008 ;then increased to zw\$100 billion by SI 166 of 2008, backdated to 1<sup>st</sup> November, 2008; and then ,w.e.f. 1st February, 2009 Act 3/2009 substituted the US\$9000 ceiling- Finance (No.3) Act 10/2009 w.e.f. 1st January, 2010 ; and again increased to the above figure by the Finance Act 1 of 2014 gazetted on the 4th April, 2014 ,with retrospective effect from the 1st January, 2013; amended by Sect 14(c)(ii) Finance (No.3) Act 13/2019 backdated to 1st November, 2019; then substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f.1st January, 2022..Editor's Note:-there is no \*section 14(2) of Finance (No.3) Act 13/2019]

(q) .....

[repealed by Act 3 of 2010 w.e.f. 17th September,2010]

(r) .....

[repealed by Act 3 of 2010 w.e.f. 17th September,2010]

(s) a reward paid to a person by the Commissioner-General in terms of section 34B of the Revenue Authority Act [Chapter 23:11];

[Inserted by Act 10/2003 from the 31<sup>st</sup> December, 2001.]

(t) the value of an allowance in respect of accommodation and transport, or the value of the grant of quarters or a residence to any member of staff of a mission hospital or rural clinic.

In this subparagraph “**mission hospital or rural clinic**” means a private hospital or rural clinic owned, operated or sponsored by any religious body or a hospital or rural clinic owned or operated by a rural district council.

[Inserted by Act 10/2003 from 1st January, 2004.]

(u) an award paid to a person from the Recovered Foreign Currency Fund in terms of section 10 of the Exchange Control Act [Chapter 22:05];

[Subpara (u) inserted by Act 16 of 2004 to follow the above new subparas, w.e.f. 30<sup>th</sup> January, 2004. The para number has been corrected to “u”– Editor.]

(v) **rental income** to a taxpayer who is of or over the **age of 55** in respect of the first **zw\$750 000 or US\$ 1 500** accruing to the taxpayer in the year of assessment concerned;

[Subpara (v) substituted by Act 8 of 2005 and Act 6 of 2006, both w.e.f.1<sup>st</sup> January, 2006. The limit was increased by Act 12/2006 w.e.f. 1<sup>st</sup> January, 2007. and further by Act 16 of 2007 increasing the limit beyond zw\$ 1 344 000 w.e.f.1st January, 2008which was reduced from zw\$ 3 billion to \$0.30 w.e.f. 1st August, 2008 i.t.o SI 109/2008, then increased to zw1.5 million by SI 149 of 2008, backdated to 1<sup>st</sup> October, 2008 and then ,w.e.f. 1st February, 2009, Act 3/2009 substituted the above US\$ figure- amended by Act 13/2019 w.e.f. 31st December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020.; and by Act 7/2021; and by Act 8/2022 w.e.f.24<sup>th</sup> October,2022.]

(w) fees received by a non-executive director from which tax is withheld in terms of the *Thirty-Third Schedule*.

[subpara (w) inserted by Act 13/2019 31st December, 2019.]

(x) monetary benefits received *in lieu* of a motor vehicle receivable in terms of the conditions of service attaching to the employment of—

(i) a chairperson, vice-chairperson, commissioner and secretary of an independent constitutional Commission

(ii) a member of the Civil Service of the rank of Chief Director and Director;

[Subpara (x) -not (w) as gazetted-inserted by section 13 of Act 8/2020 gazetted on the 28th October,2020 with effect from the year of assessment beginning on the 1st August, 2020.]

(y) risk allowances payable to frontline public sector health personnel involved in combating the **COVID-19** public health State of Disaster declared on 28th March, 2020, for a **period of 12 months** commencing from 1st April, 2020.

[Subpara (y) -not (x) as gazetted-inserted by section 13 of Act 8/2020 gazetted on the 28<sup>th</sup> October,2020 with effect from the year of assessment beginning on the 1st August, 2020]

5

#### An amount accruing by way of—

(a) a pension or allowance payable in terms of the Presidential Pension and Retirement Benefits Act [Chapter 2:05];

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(b) the value of a service or facility provided in terms of the Presidential Pension and Retirement Benefits Act [Chapter 2:05].

6

#### An amount accruing by way of—

(a) a war disability pension;

(b) a war widow's pension:

(i) a pension payable in terms of a scheme established in terms of section 7 of the \*War Veterans Act [Chapter 11:15];

(ii) a gratuity payable to a war veteran in terms of section 4 of the War Veterans (Benefits Scheme) Regulations, 1997, published in terms of section 7 of the \*War Veterans Act [Chapter 11:15];

[Now Replaced by the Veterans of The Liberation Struggle Act [Chapter 17:12- w.e.f. 4th September, 2020-Editor]

(c) a pension in terms of the Old Age Pensions Act [Chapter 332 of 1974];

(d) ....

[Repealed by Act 3 of 2010 w.e.f. 17th September, 2010.]

(e) an award, benefit or compensation, including a pension, to any person or his dependants or heirs under any law in respect of injury, disease, disablement or death suffered in employment;

(f) an award, benefit or compensation, including a pension, to any person or his dependants in respect of personal injury, disablement or death which has been paid or is deemed to have been paid in terms of the War Victims Compensation Act [Chapter 11:16] or any law repealed by that Act;

(g) an award, benefit or compensation, including a pension, to any person or his dependants which has been paid from the Wankie Disaster Relief Fund;

(h) a pension paid from a pension fund or the Consolidated Revenue Fund to a taxpayer who attained the **age of 55 years** before the commencement of the year of assessment;

[Inserted by Act 8 of 2005 from 1st January 2006.]

(h1) an amount referred to in section **eight(1)(r)** that is received by a person who has **not attained the age of 55 years** before the commencement of the year of assessment, to the extent of zw\$5 million or 1/3 of the package (whichever is the greater). This exemption is

applied on a package up to max of zw\$18,750 000 of the amount of any pension commutation or annuity, which is paid to an employee on the cessation of his or her employment, where his or her employment has ceased due to retrenchment:

[amended by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

Provided that the exemption in this subparagraph shall apply only in respect of the **first zw\$ 240 000** of any deemed pension or annuity payable to him or her in any one year of assessment.

[subpara (h1) inserted by Sect 5(c) of the Finance (No.2) Act 9 of 2015 w.e.f. 31st December, 2015; amounts increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

(i) a pension payable in terms of a scheme established in terms of section 7 of the \*War Veterans Act [Chapter 11:15];

(j) a gratuity payable to a war veteran in terms of section 4 of the War Veterans (Benefits Scheme) Regulations, 1997, published in terms of section 7 of the \*War Veterans Act [Chapter 11:15].

[This subpara now reads (j) after correction by s 12(b) of the Finance Act 22 of 1999 of the error when inserted by s. 2 of Act 23 of 1997 from 1 December 1997

Now Replaced by the Veterans of The Liberation Struggle Act [Chapter 17:12- w.e.f. 4th September, 2020-Editor]

7

#### An amount accruing by way of a benefit in respect of the injury, sickness or death of a person which is paid to the person or his dependants or deceased estate—

(a) by a trade union; or

(b) from a benefit fund; or

(c) in terms of a policy of insurance covering accident, sickness or death; or

(d) by a medical aid society.

8

(1) **The value of medical treatment** or of travelling to obtain such treatment which is provided by an employer for an **employee** or the dependant of an employee, whether provided in kind, by direct payment, by refund or in any other manner whatsoever.

[not for a director who is not an employee - editor]

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(2) The amount of any contributions paid to a medical aid society by an employer on behalf of his employees.

(3)  $\frac{1}{2}$  the amount or value of a school benefit referred to in paragraph (f)(a)(vi) of the definition of "*advantage or benefit*" in that section:

Provided that this exemption shall not apply to **more than 3 of the children** of the employee concerned.

[subpara (3) inserted by Act 6 of 2012 w.e.f. the year of assessment beginning on the 1<sup>st</sup> January, 2013]

9

An amount received by or accrued to or in favour of a person by way of a dividend from a company which is incorporated in Zimbabwe and is charged or chargeable to income tax. (This exemption does not, however, apply to any amount received by or accrued to or in favour of a person by way of a dividend deemed to have been paid in terms of section *twenty-six(2) or twenty-eight(2)*).

[para substituted by the Finance Act 2 of 2017 w.e.f. the 23rd March, 2017]

10

(1) An amount accruing by way of interest paid on—

(a) any savings certificate issued in terms of any law;

(b) a sum deposited in the Post Office Savings Bank of Zimbabwe;

(c) any tax reserve certificate issued in terms of the Tax Reserve Certificates Act [Chapter 23:10];

(d) a loan raised by the State subject to the condition that interest on the loan shall be exempt from income tax;

(e) a loan raised by the State which is declared by the Minister, by *statutory instrument*, to be exempt from income tax;

[Interest on 4% Government Bonds by non-residents) Notice, 1984 **SI 160/1984**]

(f) any loan made by the European Investment Bank established by Article 129 of the Treaty establishing the European Economic Community;

(g) any loan to the Infrastructure Development Bank of Zimbabwe established by section 3 of the Infrastructure Development Bank of Zimbabwe Act [Chapter 24:14] made

by an institutional shareholder as defined in that Act who is not ordinarily resident in Zimbabwe;

[Amended by Act 11 of 2005 from 24<sup>th</sup> March , 2006, and then substituted with no change by Act 3 of 2010 w.e.f. 17th September,2010]

and

(h) class "C" permanent shares as defined in the Building Societies (Class "C" Shares) Regulations, 1986, to the extent and subject to the conditions specified in those regulations;

(h1)

[repealed by Act 2 of 2005 from 12th September, 2005.]

(i)

[repealed by Act 13/1996 from 1<sup>st</sup> April 1996.]

(j)

[repealed by Act 3 of 2010 w.e.f. 17th September,2010]

(k) any so called "**agricultural bond**" issued by the Agricultural Finance Corporation and a consortium of commercial banks;

(l) any bond issued by the Reserve Bank of Zimbabwe on behalf of the National Fuel Investments Company (Private ) Limited;

[Inserted by Act 18/2000 from 23rd June, 2000.]

(m) any "**agricultural bond**" issued by a consortium of commercial banks led by Syfrets Corporate and Merchant Bank (Sybank) for the purpose of advancing the proceeds to support the beneficiaries of the resettlement programme which commenced under the terms of the Land Acquisition Act [Chapter 20:10] on the 23rd May, 2000;

[corrected by Act 2 of 2005 from 12<sup>th</sup> November, 2002]

(n) any deposit with a financial institution accruing to a taxpayer who is of or over the age of **55 years**, in respect of the first **U\$\$ 3 000** or **zw\$ 1,500 000** accruing to the taxpayer in the year of assessment concerned;

[age decreased from 59 years limit increased to \$ 144 million by Act 6 of 2006 from 1st January, 2006 , and by Act 12/2006 from 1st January, 2007; and further by Act 16 of 2007 increasing the limit beyond \$ 1 344 000 w.e.f.1st January, 2008. which was reduced from \$ 3 billion to \$0.30 w.e.f. 1st August, 2008 i.t.o SI 109/2008, then increased to the above limit by SI 149 of 2008, backdated to the 1<sup>st</sup> October, 2008 – apparently in breach of Section 3(2) of this Act – then, w.e.f. 1<sup>st</sup> February, 2009 Act 3/2009

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substituted the above US\$ figure :further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August,2019 amended by Act 13/2019 w.e.f. 31st December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020. Further increased by Finance Act 7/2021 w.e.f. 31 December, 2021; and by Act 8/2022 w.e.f.24<sup>th</sup> October, 2022.]

For the purpose of this subparagraph—

**“deposit”** means Banker’s acceptances and other discounted instruments traded by financial institutions and accruing to a taxpayer who is of or over the **age of 55 years**, in respect of the first **US\$ 3000** or **zw\$ 390 000** accruing to the taxpayer in the year of assessment concerned;;

**“financial institution”** means—

- (a) the Reserve Bank of Zimbabwe referred to in section 4 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*]; or
- (b) any banking institution registered in terms of the Banking Act [*Chapter 24:20*]; or
- (c) any building society registered in terms of the Building Societies Act [*Chapter 24:02*]; or
- (d) an asset manager as defined in the Asset Management Act [*Chapter 24:26*]; or
- (e) a collective investment scheme as defined in section 3 of the Collective Investment Schemes Act, [*Chapter 24:19*].

or

(o) banker’s acceptances and other discounted instruments traded by financial institutions and accruing to a taxpayer who is of or over the age of **55 years**, in respect of the first **US\$3000** or **zw\$1,500 000** accruing to the taxpayer in the year of assessment concerned (*provided that b*).

[Further increased by Finance Act 7/2021 w.e.f. 31 December, 2021; & by Act 8/2022 w.e.f.24<sup>th</sup> October, 2022.

**Editor’s Note:** The words in italics are not understood]

(For the purpose of **paragraphs (n) and (o)**, the tax on interest of a person who receives such interest partly in Zimbabwe dollars and partly in United States dollars shall be taxed as if the interest was all denominated in United States dollars, with the Zimbabwe dollar portion of the income being converted to its United States equivalent at the interbank rate prevailing when the interest was received, and aggregated to

the part of the interest denominated in United States dollars.

[Act 6 of 2006 lowered age from 59 years + increased limit to \$144 million backdated to 1st January, 2006; Act 12/2006 increased the limit w.e.f. 1st January, 2007.

Act 16 of 2007 further increased the limit beyond \$ 1 344 000 w.e.f. 1st January, 2008; which was reduced from \$ 3 billion to \$0.30 w.e.f. 1st August, 2008 i.t.o SI 109/2008, but not increased by SI 149/08 and then ,with effect from the **1<sup>st</sup> February, 2009** Act 3/2009 substituted the above US\$ figure and further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August,2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019;; amounts increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December,2020.

**Editor’s Note :** The words underscored may cause difficulty. Section 13(2) of the above Finance Act 2 of 2005 gazetted on the 12th September, 2005 also provides that the exemption from tax on interest on deposits granted by section 17(b) of the Financial Laws Amendment Act No 16 of 2004 [the previous subpara (h) above – now substituted above] shall cease in relation to persons below the age of 59 years and other taxpayers w.e.f. the 1/9/05, and accordingly such persons shall, with effect from that date, become liable to pay **RTI** i.t.o. the **21<sup>st</sup> Schedule** of this Act]]

(p) any **“Diaspora Bond”** issued by the Commercial Bank of Zimbabwe (CBZ);

[paragraph (p) inserted by Act \*5 of 2010 w.e.f. **3rd January, 2011**]

(q) with effect from the **8<sup>th</sup> November, 2011**, any Agricultural Marketing Authority bill issued by the Agricultural Marketing Authority established in terms of the Agricultural Marketing Authority Act [*Chapter 18:24*];

[paragraph (q) inserted by the Finance (No.2) Act 9 of 2011 gazetted on the 31st December, 2011]

(r) any loan made to a **small-scale gold miner** for carrying on mining operations or undertaking prospecting or exploratory works for the purpose of acquiring rights to mine gold as is used by the small-scale gold miner in carrying on or undertaking such operations or works in Zimbabwe;

(s) deposits with a tenure of **more than 12 months**.

[subpara renumbered by the Editor as (s) inserted by Sect 5(d) of the Finance (No.2) Act 9 of 2015 w.e.f. 31st December, 2015

**“small-scale gold miner”** means a miner who, whether working on his/ her own or with the assistance of 1 or more employees, is classifiable as a **“micro-enterprise”** in the mining and quarrying

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sector of the economy by reference to the \*Fourth and \*Fifth Schedules to the Small and Medium Enterprises Act [Chapter 24:12]. Subpara #(r) inserted by Act 1 of 2014 w.e.f. the 1<sup>st</sup> January, 2014.

**Editor's Notes:-**

1.the numbering has been aligned as #(r) because subpara (q) already taken by Act 9 of 2011 ; 2 .the above 4<sup>th</sup> and 5<sup>th</sup> Schedules of Chapter 24:12 came into existence on the 7<sup>th</sup> February, 2014 – [Editor]

(s) interest on any deposit in the **low cost housing savings instrument** as defined in the regulations to be prescribed by the Minister:

Provided that the regulations in question shall be laid before the National Assembly and not come into force **until the lapse of 14 sitting days** after they are so laid, unless the House has earlier passed a resolution annulling the regulations.

[Subpara (s) -re-numbered by the Editor- inserted by Finance (No.2) Act 8 of 2014 w.e.f. the 17<sup>th</sup> October,2014.]

(t) **deposits** with a tenure of **more than 12 months** ;

[Subpara (s1) -re-numbered by the Editor- inserted by Finance (No.2) Act 9 of 2015 w.e.f. the 31<sup>st</sup> December,2014.

]

(u) any **loan to any statutory corporation** approved by the Minister by General Notice in the *Gazette*.

**[Subpara (u) -re-numbered again by the Editor because of the continued confusing duplications in the *Gazetted* copy -inserted by Finance (No.3) Act 2014 w.e.f. 1<sup>st</sup> February, 2009** with a view to augmenting the attractiveness of debt instruments issued by such a statutory corporation. Subpara (s) was already enacted by Act 8 of 2014 and its allocated number was repeated by the later Finance (No.3) Act 11 of 2014 w.e.f. January, 2009 ,renumbered here accordingly -Editor]

(2) In subparagraph (1)—

**“foreign currency account”** means an account held at a bank or other financial institution in Zimbabwe in which the funds are denominated in a foreign currency;

**“loan”** includes any form of indebtedness known as an acceptance or standby credit facility.

10A

An amount accruing by way of interest, as defined in the *Twenty-First Schedule*, from

which residents' tax on interest is required to be withheld in terms of that *Schedule*.

11

(1) Subject to subparagraph (2), an amount by way of interest received by or accrued to or in favour of a person who, at the time the interest accrues, **is not ordinarily resident** and does not carry on business within Zimbabwe—

(a) on so much of any loan made to a person carrying on mining operations or undertaking prospecting or exploratory works for the purpose of acquiring rights to mine minerals as is used by the person in carrying on or undertaking such operations or works in Zimbabwe; and

(b) on any loan to the State or any company all the shares of which are owned by the State; and

(c) on any loan to a local authority; and

(d) on any loan to a statutory corporation; and

(e) ...

[repealed by Act 3 of 2010 w.e.f. 17th September,2010]

(2) In subparagraphs (b) and (d) of subparagraph (1), **“loan”** includes any form of indebtedness known as an acceptance or standby credit facility.

(3) Subparagraph (1) shall not apply to interest received by or accrued to or in favour of—

(a) a person ordinarily resident in a country other than Zimbabwe which would, but for this subparagraph, be liable to tax in that country by reason of its exemption from tax in Zimbabwe; or

(b) a company which, at the time the interest accrues, is under the control of a person who at that time is ordinarily resident or carries on business within Zimbabwe; or

(c) a company incorporated outside Zimbabwe from a company incorporated in Zimbabwe if—

(i) the majority of the voting rights attaching to all classes of shares in the company incorporated within Zimbabwe is controlled, directly or indirectly, by the company incorporated outside Zimbabwe; and

(ii) the interest is liable to tax in a country other than Zimbabwe; and

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(iii) the income tax which would, but for the provisions of this paragraph, be chargeable on the interest, would be allowable as a credit against tax payable in the country referred to in subparagraph (ii).

1

An amount received by way of **alimony**, howsoever paid.

13

An amount accruing by way of the sale of traditional beer in terms of the Traditional Beer Act [*Chapter 14:24*] to the extent that such amount is devoted to the purposes to which a person authorized under that Act to sell such beer is in terms of that Act required to devote such amount.

14

An amount paid by the State to an exporter of goods in terms of a Scheme for the development of export trade, excluding the amount of any duty refunded in terms of the Customs and Excise Act [*Chapter 23:02*].

15

Any amount received by way of an allowance referred to in paragraph (m) of subsection (1) of section *sixteen* to the extent that it is expended on the business of the employer.

16

**With effect from the 1st June, 2016** and every subsequent year of assessment, the amount of the premium paid by the Reserve Bank of Zimbabwe pursuant to the Export and Foreign Remittance Incentive scheme on receipts of earnings by exporters and on remittances from abroad received by individuals resident in Zimbabwe, being receipts or remittances channelled through any authorised dealer in terms of the Exchange Control Act [*Chapter 22:05*].

[Repealed by Act 8 of 2005 from 1st January, 2006. Inserted by the Finance Act 2 of 2017 w.e.f. 23rd March, 2017 and then substituted by the Finance Act 1 of 2018 gazetted on the 14<sup>th</sup> March, 2018 w.e.f. 1 June 2016.]

17

The receipts and accruals of an industrial park developer, to the extent that they accrue directly from the operation of his industrial park, in the year of assessment in which the industrial park is established or is approved by the Minister for the purposes of the definition of "industrial park" in section two, whichever year

is the earlier, and in **each of the next 4 following years** of assessment.

18

An amount received by way of the sale, disposal or transfer of any duty exemption certificate issued by the Reserve Bank of Zimbabwe to an exporter qualifying for a rebate of duty on imports in terms of an export incentive scheme under which such certificates are issued.

[Inserted by Act 18/2000 from 1 January, 2001, and amended by Act 15/2002 from 1 January, 2003.]

19

An amount received by or accrued to or in favour of an employee participating in an **approved employee share ownership trust** from the sale to or redemption by the trust of any stock, shares, debentures, units or other interest of the employee in the scheme or trust of any stock, shares, debentures, units or other interest of the employee in the trust.

[Inserted by Act 27 of 2001 from 1 January, 2002, and amended by Act 15/2002 from 1 January, 2003. *Old Mutual Zimbabwe Ltd v Commissioner-General of Zimra & ZIMRA 16-HH-143*]

20

[Power generation project]

[para 20 inserted by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March, 2018; then repealed by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

### FOURTH SCHEDULE

(Section 15 (2)(c))

DEDUCTIONS TO BE ALLOWED IN RESPECT OF **BUILDINGS, IMPROVEMENTS, MACHINERY & EQUIPMENT** USED FOR COMMERCIAL, INDUSTRIAL & FARMING PURPOSES, & OTHER PROVISIONS RELATING THERETO

*Interpretation*

1

(1) In this Schedule—

"**articles, implements, machinery and utensils**" includes tangible or intangible property in the form of computer software that is acquired, developed to or used by a taxpayer for the purposes of his or her trade, **otherwise** than as trading stock;

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[*U v COT* 80-ITC-1324  
definition inserted by Finance (No.3) Act 11 of 2014  
w.e.f. 1st January, 2015  
ZIMRA v Stanbic Bank Zimbabwe Ltd 19-SC-013]

**“associated company”** means a company which controls, is controlled by or is under common control with a taxpayer;

**“commercial building”** means any building the erection of which was commenced on or after the 1st April, 1975, and which is used to the extent of **at least 90%** of the floor area for the purposes of trade or in the production of income but does not include—

(a) a farm improvement, an industrial building, staff housing or a tobacco barn; or

(b) a building which is occupied to the extent of **10%** or more of the floor area for residential purposes by one or more persons and which is not—

(i) a block of flats, apartments or similar units of residential accommodation; or

(ii) a hotel that is registered under the Tourism Act [*Chapter 14:20*]; or

or

(c) a building which is a block of flats, apartments or similar units of residential accommodation where—

(i) the building is owned by a company, partnership or association of persons; and

(ii) the shareholders of the company, partners or members of the association, as the case may be, have the right, by virtue of or in connection with the ownership of the shares or of their being partners or members, as the case may be, to occupy particular flats, apartments or other units of residential accommodation in the building;

**“computer software”** means any set of machine-readable instructions that directs a computer's processor to perform specific operations;

[definition inserted by Finance (No.3) Act 11 of 2014  
w.e.f. the year of assessment beginning 1<sup>st</sup> January, 2015  
ZIMRA v Stanbic Bank Zimbabwe Ltd 19-SC-013]

**“farm improvement”** means—

[“*Farmer*” v COT 86-ITC-1424]

(a) any building or structure or work of a permanent nature, including any water furrow, which is used in the carrying on of farming operations, but does not include—

(i) any building, structure or work of a permanent nature referred to in paragraph 2 of the *Seventh Schedule*; or

(ii) staff housing or any dwelling—  
A. used by the taxpayer as the homestead of himself and his family; or  
B. purchased or constructed after the year of assessment beginning on the **1st April, 1979**;

or

(iii) a tobacco barn;

(b) any permanent building the erection of which was commenced on or after the **1st April, 1988**, used for the purposes of—

(i) a school; or

(ii) a hospital, nursing home or clinic; in connection with taxpayer's farming operations;

**“industrial building”**—

(a) means—

(i) any building which contains and is used mainly for the purposes of operating machinery worked by steam, electricity, water or other mechanical power;

(ii) any building which is on the same premises as any other building mentioned in subparagraph (i) and which, in the opinion of the Commissioner, suffers depreciation by reason of the operation of machinery installed in such other building;

(iii) any building which, in the opinion of the Commissioner, suffers depreciation by reason of the use of chemicals, corrosives, furnaces of any description or any other agent directly utilized in the particular trade or industry of which the building forms an integral and essential part;

(iv) any building erected and used mainly for the purpose of carrying out industrial research or scientific experiments into improved or new methods of manufacture;

(v) any building used mainly for a hotel business in respect of which a hotel liquor licence or casino licence, not being a temporary licence, has been issued, and includes ancillary buildings, structures and works of a permanent nature which are, in the opinion of the Commissioner, used mainly in connection with such a business;

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(vi) any buildings in use mainly for the storage—

A. of goods or materials which are to be used by the taxpayer in the manufacture of other goods or materials; or

B. of goods or materials which are to be subjected by the taxpayer, in the course of a trade, to any manufacturing process; or

C. of goods or materials which, having been manufactured or subjected by the taxpayer in the course of a trade to any manufacturing process, have not yet been delivered to any purchaser;

(vii) any building in use mainly for the purposes of a trade which consists in the distribution of hydro-carbon oils by pipeline;

(viii) any building in use mainly for the purposes of a trade which consists in the manufacture of goods or materials, including any building used for the welfare of workers employed in the trade but excluding any building used mainly as a dwelling-house, retail shop or showroom or for the storage of goods or materials;

(ix) any works for the prevention of pollution;

(x) any building erected and used mainly for the purpose of international data capture operations and additionally, or alternatively, for the assembly of computers;

(xi) any toll-road or toll-bridge declared in terms of the Toll-roads Act [Chapter 13:13];

and

**(b) includes** any fencing or permanent sealing of the ground area surrounding such building;

**“process of manufacture”** includes the grading, processing and packing of tobacco and **“manufacture”**, **“manufacturer”** and **“manufacturing process”** shall be construed accordingly;

**“railway lines”** means the rails, sleepers and equipment pertaining thereto of any railway track but does not include ballast, embankments, bridges, culverts and other railway constructions;

**“residential unit”** means an apartment, flat, house whether detached, semi-detached or terraced, or similar unit of residential accommodation;

**“staff housing”** means any permanent building used by the taxpayer for the purposes

of his trade wholly or mainly for the housing of his employees, but does not include—

(a) in the case of any such building the erection of which was commenced before the **1st April, 1984**, any building comprising or incorporating any residential unit the cost of which exceeds **\$5000**; or

(b) in the case of any such building the erection of which was commenced on or after the 1st April, 1984, but **before the 1st April, 1986**, any building comprising or incorporating any residential unit the cost of which exceeds **\$8000**;

(c) in the case of any such building the erection of which was commenced on or after the 1st April, 1986, but before the **1st April, 1988**, any building comprising or incorporating any residential unit the cost of which exceeds **\$10 000**;

(d) in the case of any building the erection of which was commenced on or after the 1st April, 1988, but before the **1st April, 1991**, any building comprising or incorporating any residential unit the cost of which exceeds fifteen thousand dollars;

(e) in the case of any such building the erection of which was commenced on or after the 1st April, 1991, but before the 1st April, 1992, any building comprising or incorporating any residential unit the cost of which exceeds **\$65000**;

(f) in the case of any such building the erection of which was commenced on or after the 1st April, 1992, but before the **1st April, 1995**, any building comprising or incorporating any residential unit the cost of which exceeds **\$75 000**;

(g) in the case of any such building the erection of which was commenced on or after the 1st April, 1995, but before the **1st January, 1999**, any building comprising or incorporating any residential unit the cost of which exceeds **\$100 000**; or

(h) in the case of any such building the erection of which was commenced on or after the 1st January 1999, but before the **1st January, 2002**, any building comprising or incorporating any residential unit the cost of which exceeds **\$200 000**.

[Inserted by Act 17 of 1997 from 1st January 1999; amended by Act 29 of 1998 from 1st January 1999, amended by Act 18/2000 from the 1st January, 2001 and further amended by Act 27 of 2001 from the 1st January, 2002.]

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(i) in the case of any such building the erection of which was commenced on or after the 1st January, 2002, but before the **1<sup>st</sup> January, 2003**, any building comprising or incorporating any residential unit the cost of which exceeds **\$ 500 000** ;

[Inserted by Act 27 of 2001 from 1st January, 2002, and amended by Act 15/2002 from 1<sup>st</sup> January, 2003.]

(j) in the case of any such building the erection of which was commenced on or after the 1<sup>st</sup> January, 2003, but before the **1<sup>st</sup> January, 2004**, any building comprising or incorporating any residential unit the cost of which exceeds **\$ 3 million** ;

[Inserted by Act 15/2002, from the 1<sup>st</sup> January, 2003 and amended by Act 10/2003 from the 1<sup>st</sup> January, 2004.]

(k) in the case of any such building the erection of which was commenced on or after the 1<sup>st</sup> January, 2004 but before the **1<sup>st</sup> January, 2005**, any building comprising or incorporating any residential unit the cost of which exceeds **\$ 50 million** ;

[Inserted by Act 10/2003 from 1st January, 2004 and amended by Act 29 of 2004 from 1st January, 2005.]

(l) in the case of any such building the erection of which was commenced on or after the 1<sup>st</sup> January, 2005 but before the **1<sup>st</sup> January, 2006**, any building comprising or incorporating any residential unit the cost of which exceeds **\$ 270 million** ;

[Inserted by Act 29 of 2004 from 1st January, 2005 and amended by Act 8 of 2005 from 1st January, 2006.]

(m) in the case of any such building the erection of which was commenced on or after the 1<sup>st</sup> January, 2006, but before the **1<sup>st</sup> January, 2007**, any building comprising or incorporating any residential unit the cost of which exceeds **\$ 1 500 000 000**.

[Inserted by Act 8 of 2005 from 1st January, 2006, amended by Act 12/2006.]

(n) in the case of any such building the erection of which was commenced on or after the 1<sup>st</sup> January, 2007, but before the **1<sup>st</sup> January, 2008**, any building comprising or incorporating any residential unit the cost of which exceeds **\$ 16 million** ;

[Inserted by Act 12/2006 from 1st January, 2007, amended by Act 16 of 2007.]

(o) in the case of any such building the erection of which was commenced on or after

the 1<sup>st</sup> January, 2007 but **before the 1<sup>st</sup> January, 2009**, any building comprising or incorporating any residential unit the cost of which exceeds **\$10.00** or an amount equivalent to **50%** of the cost of constructing the building, whichever is the lesser amount;

[para (o) inserted by Act 16 of 2007 from 1st January, 2008, only to the **30<sup>th</sup> September, 2008** – see note under the new para (p) below. In terms of SI 109/2008 the amount is reduced w.e.f. 1<sup>st</sup> August, 2008 from \$ 100 billion to the above – Period amended w.e.f. the year of assessment beginning on the **1<sup>st</sup> January, 2009** by Act 3/2009-Editor.]

(p) in the case of any such building the erection of which was commenced on or **after the 1<sup>st</sup> January, 2008**, any building comprising or incorporating any residential unit the cost of which exceeds **?\$7.5 billion** or an amount equivalent to **50%** of the cost of constructing the building, whichever is the lesser amount;

[para (p) inserted by SI 149/08 with effect from the last quarter year of assessment **beginning on the 1<sup>st</sup> October, 2008** and ending on the 31<sup>st</sup> December, 2008 – apparently in conflict with/duplication of para (o) above- subject to the monetary limit]

(?q) in the case of any such building the erection of which was commenced on or **after the 1<sup>st</sup> January, 2009**, any building comprising or incorporating any residential unit the cost of which exceeds **zw\$ 12,500 000**;

[para (?p), inserted with effect from the year of assessment beginning on the **1<sup>st</sup> January, 2009** by Act 3/2009 with the above US\$ figure amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020 & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

**“tobacco barn”** means any building used for the curing of tobacco;

**“trade training”** means any education or training, other than any education or training which is provided as part of the general school education of a pupil, which is intended to train persons to perform work in connection with the trade of the taxpayer or of an associated company or to improve their performance of such work;

“training building” and “training equipment”....

[repealed by Act 18/2000 w.e.f. 1<sup>st</sup> January, 2001.]

(2) ....

[repealed by Act 18/2000 from 1<sup>st</sup> January, 2001.]

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(3) For the purposes of this *Schedule*, a building shall not be deemed to be used for the purposes of—

- (a) a school; or
- (b) a hospital, nursing home or clinic;

in connection with a taxpayer's farming operations, unless it is proved to the satisfaction of the Commissioner that, at the relevant time—

(i) in the case of a school, **more than ½** of the pupils are children of persons employed by the taxpayer in carrying on farming operations;

(ii) in the case of a hospital, nursing home or clinic, **more than ½** of the persons receiving treatment thereat are employed by the taxpayer in carrying on farming operations or are members of the families of persons who are so employed.

#### *Deduction of special initial allowance*

2

If the taxpayer so elects (which election shall be binding) an allowance (hereinafter called "**a special initial allowance**") in respect of capital expenditure incurred by the taxpayer during the year of assessment on—

(a) the construction of new farm improvements, industrial building, railway lines, staff housing or tobacco barns; or

(b) additions or alterations to existing farm improvements, industrial buildings, railway lines, staff housing or tobacco barns; or

(c) the purchase of articles, implements, machinery or utensils;

used by the taxpayer during such year of the purposes of his trade subject to the conditions mentioned in, and calculated in accordance with, paragraphs 9 and 10:

[*PP v COT 81-ITC-1333*]

Provided that—

[special initial allowances on computer software  
*Zimra v Stanbic Bank Zimbabwe Ltd* 19-SC-013]

(i) if farm improvements, industrial buildings, railway lines, staff housing or tobacco barns are constructed or articles, implements, machinery or utensils are purchased in one year of assessment and first put into use in a later year of assessment, then the special initial allowance shall be allowed in the year of assessment in which such asset is first used;

(ii) in the case of articles, implements, machinery or utensils, the special initial allowance shall only be allowed if the Commissioner decides, having regard to the use to which such articles, implements, machinery or utensils were put by the taxpayer in the year of assessment in which they were first put into use or the next following year of assessment, that the articles, implements, machinery or utensils were purchased by the taxpayer wholly or almost wholly for the purposes of his trade;

[*PP v COT 81-ITC-1333*]

(iii) the special initial allowance shall not be allowed in respect of articles, implements, machinery or utensils purchased by the taxpayer and leased to another person for use by him unless the taxpayer establishes to the satisfaction of the Commissioner that—

A. at the termination of the period of the lease, he is entitled to the return of the articles, implements, machinery or utensils concerned and no option to purchase or other right in relation to the acquisition or disposal of the articles, implements, machinery or utensils concerned is or will be given to the lessee or any other person; and

B. the articles, implements, machinery or utensils concerned were not purchased by him for the purpose of being leased to a particular person with the intention of giving that person or any other person an option or other right such as is referred to in paragraph A.

(iv) the special initial allowance shall not be allowed in respect of half of the capital expenditure incurred in the purchase of any fiscalised electronic register whose purchase qualifies for relief in terms of section 15(3)(k) of the Value Added Tax Act [*Chapter 23:12*].

[proviso (iv) inserted by Act 3 of 2010 w.e.f. 1<sup>st</sup> October, 2010]

#### *Deduction of allowance for wear and tear*

3

(1) Subject to subparagraph (2), an allowance in respect of—

(a) commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns acquired or constructed and in both cases used by the taxpayer for the purposes of his trade;

(b) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his trade;

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the value of which, in either case, has been diminished by reason of wear and tear during the year of assessment, and such allowance shall be subject to, and calculated in accordance with, paragraphs 6 and 10 in the case of commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns, and of paragraphs 7 and 10 in the case of articles, implements, machinery and utensils.

(2) Where any commercial building, farm improvement, industrial building, railway line, staff housing, tobacco barn, article, implement, machinery or utensil has been the subject of an allowance in terms of paragraph 2, no allowance shall be made in terms of subparagraph (1) in respect of that commercial building, farm improvement, industrial building, railway line, staff housing, tobacco barn, article, implement, machinery or utensil for the year of assessment in which the commercial building, farm improvement, industrial building, railway line, staff housing, tobacco barn, article, implement, machinery or utensil, as the case may be, was first used.

#### *Deduction for scrapping allowance*

4

An allowance in respect of—

(a) commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns acquired or constructed and in both cases used by the taxpayer for the purposes of his trade;

(b) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his trade;

which have, in either case, been scrapped during the year of assessment and such allowance shall be a sum equivalent to the cost (or, if in any particular case the Commissioner has declared that any lesser amount shall be regarded as the cost for the purposes of this *Schedule* or a similar provision of any previous law, the cost so declared) to the taxpayer of such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing, tobacco barns, articles, implements, machinery and utensils after deducting from that cost the total amount of any allowances which have at any time been made in terms of paragraphs 2 and 3 or under similar provisions of any previous law and any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of any such commercial buildings, farm

improvements, industrial buildings, railway lines, staff housing, tobacco barns, articles, implements, machinery and utensils:

Provided that if articles, implements, machinery or utensils referred to in this paragraph were used by the taxpayer for the purposes of his trade and for other purposes the allowance shall be reduced by an amount determined by applying the formula—

A x B

C

in which—

A. represents the amount of the allowance which would have been allowed if the articles, implements, machinery or utensils had been used wholly for the purposes of the taxpayer's trade;

B. represents the amount by which the Commissioner decides the value of the articles, implements, machinery or utensils was diminished by their use for other purposes;

C. represents the amount by which the value of the articles, implements, machinery or utensils was diminished by their use for purposes of the taxpayer's trade and for other purposes.

#### *Deduction for training investment allowance.*

5

[repealed by Act 18/2000 from 1st January, 2001.]

*Calculation of wear and tear allowances for commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns*

6

(1) Subject to subparagraphs (2) and (3), the allowance in terms of paragraph 3 in respect of wear and tear on commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns which have been acquired or constructed by the taxpayer and used for the purposes of his trade shall be—

(a) in the case of any commercial building, **2.5%** of the cost to the taxpayer of the commercial building allowable in the first year of assessment in which the commercial building is first used and thereafter in subsequent years a sum equal to **2.5%** of such cost;

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(b) in the case of any farm improvement, industrial building, railway line, staff housing or tobacco barn—

[*GC (Pvt) Ltd v ZIMRA 15-HH-759*]

(i) where no allowance has been made in terms of paragraph 2 in respect of the farm improvement, industrial building, railway line, staff housing or tobacco barn concerned, **5%** of the cost to the taxpayer of the farm improvement, industrial building, railway line, staff housing or tobacco barn allowable in the first year of assessment in which the farm improvement, industrial building, railway line, staff housing or tobacco barn, as the case may be, is first used and thereafter in subsequent years a sum equal to **5%** of such cost;

(ii) where an allowance has been made in terms of paragraph 2 in respect of the farm improvement, industrial building, railway line, staff housing or tobacco barn concerned, **25%** of the cost to the taxpayer of such farm improvement, industrial building, railway line, staff housing or tobacco barn allowable in the year of assessment following that in which the farm improvement, industrial building, railway line, staff housing or tobacco barn was first used, and thereafter in subsequent years a sum equal to **25%** of such cost.

(2) The sum of the allowances that may be made in terms of paragraph 3 in respect of commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns shall not exceed an amount determined by applying the formula—

#### A – (B + C)

in which—

A represents the cost to the taxpayer of such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns;

B represents the amount of the allowance made to the taxpayer in terms of paragraph 2 or any similar provision of a previous law in respect of such farm improvements, industrial buildings, railway lines, staff housing or tobacco barns;

C represents the sum of the allowances made to the taxpayer in terms of any provision of a previous law which is similar to paragraph 3 in respect of such farm improvements industrial buildings, railway lines, staff housing or tobacco barns.

(3) The allowance referred to in subparagraph (1) shall be subject to the following provisions—

(a) in the case of buildings, structures or works referred to in subparagraph (v) of paragraph (a) of the definition of "**industrial building**" in paragraph 1 acquired or erected prior to the 1st April, 1964, the sum of the allowances to be made in terms of paragraph 3 shall not exceed an amount determined by applying the formula—

#### D – (E + F)

in which—

D represents the cost to the taxpayer of the buildings, structures or works and if, for any reason, such cost cannot be ascertained, such cost shall be deemed to be such sum as the Commissioner may determine;

E represents the sum of the allowances, similar to the allowance referred to in paragraph 3, which, in terms of the previous law, would have been made each year from the time the buildings, structures or works were acquired or erected by the taxpayer up to and including the year of assessment ended the **31st March, 1964**, had the buildings, structures or works, at the time they were acquired or erected, qualified as industrial buildings under the previous law;

F represents the sum of the allowances, similar to the allowance referred to in paragraph 3, which were made to the taxpayer in terms of a previous law for the 3 years of assessment ended the 31st March, 1965, the 31st March, 1966, and the **31st March, 1967**;

(b) in the case of buildings, structures or works of a permanent nature which have not qualified for the allowance in terms of this Act or a similar allowance in terms of a previous law and which, on or after the date of commencement of this Act, are used by a person for the purposes of his trade as commercial buildings, farm improvements, industrial buildings or railway lines, the sum of the allowances to be made in terms of paragraph 3 shall not exceed an amount determined by applying the formula—

#### G – H

in which—

G represents the cost to the taxpayer of such buildings, structures or works and if, for any reason, such cost cannot be ascertained, such

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cost shall be deemed to be such sum as the Commissioner may determine;

H represents the sum of the allowances, similar to the allowance referred to in paragraph 3, which, in terms of this Act or a previous law, would have been made each year from the time the buildings, structures or works were acquired or erected by the taxpayer, had the buildings, structures or works at the time they were acquired or erected, qualified as commercial buildings, farm improvements, industrial buildings or railway lines.

*Calculation of wear and tear allowance for articles, implements, machinery and utensils used for trade*

7

(1) The allowance in terms of paragraph 3 in respect of wear and tear on articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his trade shall be—

[U v COT 80-ITC-1323]

(a) where no allowance has been made in terms of paragraph 2 in respect of the articles, implements, machinery or utensils concerned, such sum as the Commissioner thinks reasonable as representing the amount by which the value of such articles, implements, machinery or utensils has been diminished by reason of wear and tear during the year of assessment;

(b) where an allowance has been made in terms of paragraph 2 in respect of the articles, implements, machinery or utensils concerned, **25%** of the cost to the taxpayer of such articles, implements, machinery or utensils allowable in the year of assessment following that in which the articles, implements, machinery or utensils were first used, and thereafter in subsequent years a sum equal to **25%** of such cost:

Provided that, where a deduction has been allowed under paragraph (b) of subsection (2) of section *fifteen* in respect of such articles, implements, machinery or utensils, the Commissioner may take into consideration the deduction allowed under that paragraph.

(2) For the purpose of this paragraph, the value of articles, implements, machinery and utensils means the cost thereof to the taxpayer at the time they were acquired, but in the case of articles, implements, machinery or utensils which were acquired before the **1st April, 1967**, and which were the subject of a similar allowance under any previous law, the cost

thereof shall be reduced by the sums allowed under such previous law and by the amount of any special initial allowance or similar allowance which may also have been made under such previous law.

If any articles, implements, machinery or utensils have been—

(a) used elsewhere by the taxpayer and transferred to Zimbabwe for use by him in his trade; or

(b) used by the taxpayer for a purpose other than that of his trade and then used by him in his trade; or

(c) acquired by the taxpayer without payment of any valuable consideration;

their value shall be deemed to be such amount as the Commissioner may determine.

*General provisions relating to calculation of allowances*

8

(1) Whenever a change in the ownership of commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns takes place—

(a) save as otherwise provided in subparagraph (b) or (c), the transferor and the transferee shall provide the Commissioner with a statement in writing, signed by both, setting out the cost to the transferee of such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns and if the Commissioner is not satisfied that such cost represents the fair market price thereof, he shall determine the amount which shall be deemed, for the purposes of calculating any allowance in terms of this *Schedule*, to be the cost of such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns;

(b) where such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns formed part of any property which has been sold for a lump sum, the transferor and the transferee shall furnish the Commissioner with a statement in writing, signed by both, setting out details of the allocation of the purchase price to the various classes of the property transferred as required by the Commissioner and if the Commissioner is not satisfied that the sum so allocated to the purchase price of commercial buildings, farm improvements, industrial

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buildings, railway lines, staff housing or tobacco barns, as the case may be, represents the fair market price thereof, he shall determine the amount which shall be deemed, for the purposes of calculating any allowance in terms of this *Schedule*, to be the cost of such commercial buildings, farm improvement, industrial buildings, railway lines, staff housing or tobacco barns;

(c) where the ownership was acquired by the taxpayer without payment of any valuable consideration, the cost of such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns shall be deemed to be such sum as the Commissioner may determine.

(2) Whenever articles, implements, machinery or utensils which have been used for the purposes of a trade are sold, together with other assets, for a lump sum, the transferor and the transferee shall furnish the Commissioner with a statement in writing, signed by both, setting out details of the allocation of the purchase price to the various classes of the assets transferred as required by the Commissioner and if—

(a) the Commissioner is not satisfied that the sum so allocated to the purchase price of the articles, implements, machinery or utensils, as the case may be, represents the fair market price thereof; or

(b) no such statement is furnished;

the cost of such articles, implements, machinery or utensils for the purposes of calculating any allowance in terms of this *Schedule*, shall be deemed to be such sum as the Commissioner may determine.

(3) If the ownership of assets referred to in subparagraphs (1) and (2) is transferred—

(a) in the circumstances described in paragraphs (a), (b) and (c) of proviso (iii) or proviso (v) to subsection (3) of section *fifteen* from one company, with or without an assessed loss, to another company; or

(b) from a company, in the course of or in furtherance of a scheme of reconstruction of a group of companies or a merger or other business operation which, in the opinion of the Commissioner, is of a similar nature, to another company under the same control;

[GC (Pvt) Ltd v ZIMRA 15-HH-759]

the transferor and the transferee may elect that the selling price of the assets, for all purposes of this Act and notwithstanding the terms of any

agreement of sale or the provisions of subparagraphs (1) and (2), shall be deemed to be the value of the assets, established in the hands of the transferor as a result of the application of this *Schedule*, at the date of the transfer:

Provided that, where any such asset is sold or otherwise disposed of after the transfer other than to another company under the same control, any amount which would have been included in the gross income of any transferor in terms of paragraph (j) of the definition of “gross income” in subsection (1) of section *eight*, had such transferor retained ownership of the asset, shall be included in the gross income of the transferee effecting such sale or disposal.

(4) If the ownership of assets referred to in subparagraphs (1) and (2) is transferred between spouses, the transferor and the transferee may elect that the selling price of the assets for all purposes of this Act and notwithstanding the terms of any agreement of sale or the provisions of subparagraphs (1) and (2), shall be deemed to be the value of the assets, established in the hands of the transferor as a result of the application of this *Schedule*, at the date of the transfer:

Provided that, where any such asset is subsequently sold or otherwise disposed of to a person who is not the spouse of the transferor, any amount which would have been included in the gross income of any transferor in terms of paragraph (j) of the definition of “gross income” in subsection (1) of section *eight*, had such transferor retained ownership of the asset, shall be included in the gross income of the transferee effecting such sale or disposal.

#### *Rates of special initial allowance*

9

The special initial allowance referred to in paragraph 2 shall, if it is allowed in the year of assessment beginning—

(a) on the 1st April, 1975, be a sum equal to **40%**;

(b) on the 1st April, 1976, be a sum equal to **70%**;

(c) on the 1st April, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989 or 1990, be a sum equal to **100%**;

(d) on the 1st April, 1991, or the 1st April 1992, be a sum equal to **50%**;

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(e) on the 1st April, 1993, or any subsequent year of assessment, ending on the 31st December, 2000, be a sum equal to **25%**;

[Amended by Act 18/2000 from 1st January, 2001.]

of the capital expenditure incurred by the taxpayer on the construction, additions, alterations or purchase, as the case may be.

(f) on the 1st January, 2001, or any subsequent year of assessment, be a sum equal to **50%**;

[Inserted by Act 18/2000 from 1st January, 2001.]

(g) on the **1st January, 2011**, or in any subsequent year of assessment, be a sum equal to **100%** in the case of a taxpayer which is a "**small or medium enterprise**" as defined in section 2B of the charging Act:

Provided that 50% shall be allowed in the first year of assessment in which the taxpayer claims the special initial allowance in terms of this subparagraph, and 25% in each of the next 2 years of assessment following that year;

[para (g) substituted by Act 3 of 2010]

(h) on the **1st January, 2010**, or on any subsequent year of assessment, ending on the **31st December, 2013** be a sum equal to **25%**.

[Inserted by the Finance (No.3) Act 10/2009 w.e.f. the year of assessment beginning on the 1st January, 2010.]

(h1) on the 1st January, 2010, or on any subsequent year of assessment, ending on the 31st December, 2013, be a sum equal to **25%**;

(h2) on the **1st January, 2017**, or on any subsequent year of assessment, be a sum equal to **100%**.in the case of a taxpayer which is a "**licensed investor**" as defined in section two,:

Provided that **50%**.shall be allowed in the first year of assessment in which the taxpayer claims the special initial allowance in terms of this subparagraph, and **25%** in each of the next 2 years of assessment following that year.

[paras (h1) and (h2) inserted by the Finance Act 2 of 2017 gazetted on 23rd March,2017 backdated to the 1st January,2017]

(h3) on the **1st January, 2014**, or on any subsequent year of assessment, be a sum equal to **25%**.

[paras (h3) inserted by Finance Act 7/2021 w.e.f. 31 December, 2021. **The Editor** has renumbered it as para (h) already exists]

*Hire-purchase agreements relating to articles, implements, machinery and utensils and sales of property under suspense conditions*

10

(1) A hire-purchase agreement as defined in the law relating to hire-purchase agreements which relates to articles, implements, machinery, utensils or plant referred to in paragraphs 2, 3 and 4 shall, for the purposes of those paragraphs, be deemed to be an agreement for the sale on credit of those articles, implements, machinery, utensils or plant to the party to the agreement who is the buyer as defined in that law at a price equal to the purchase price fixed in the agreement.

(2) Where there takes place a sale of property under a suspensive condition such sale shall, for the purposes of paragraphs 2, 3 and 4, be deemed to have effected a change of ownership of the property from the date of the sale.

*Expenditure on additions or alterations to articles implements, machinery or utensils not owned but used for trade*

11

Where a taxpayer incurs any expenditure which is not allowed as a deduction in terms of paragraph (a) of subsection (2) of section fifteen on additions or alterations to articles, implements, machinery or utensils which are not owned by him but are used by him for the purposes of his trade, the provisions of paragraphs 2, 3, 4, 7 and 9 shall apply, *mutatis mutandis*, as though—

(a) the articles, implements, machinery or utensils belonged to the taxpayer; and

(b) the taxpayer had purchased the articles, implements, machinery or utensils at the time of the additions or alterations for an amount equal to the expenditure incurred by him on such additions or alterations.

*Cases in which no deductions to be made in terms of this Schedule*

12

In no case shall any allowance be deductible in respect of any buildings, structures or works of a permanent nature other than such allowances as are deductible in terms of paragraphs 2, 3 and 4.

*Limitation on cost of farm dwelling*

13

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For the purposes of paragraphs 3 and 4, the cost of a farm improvement which ranked as a farm dwelling prior to the repeal of the definition thereof with effect from the year of assessment beginning on the **1st April, 1980**, and any additions or alterations thereto shall be deemed to be so much of such costs as does not exceed the sum of **zw\$7 500 000**.

[Amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020. & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

#### *Limitation on cost of passenger motor vehicle*

14

(1) In calculating, for the purpose of paragraphs 2, 3, 4, 7, 9 or 11, the cost of a passenger motor vehicle and any additions or alterations thereto, any amount in excess of—

(a) twenty-two thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st April, 1986, but before the 31st March, 1991;

(b) thirty thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st April 1991, but before the 1st April, 1992;

(c) fifty thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st April, 1992, but before the 1st April, 1995;

(d) seventy-five thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st April, 1995, but before the 1st January, 1999;

(e) two hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January 1999, but before the 1st January, 2001.

[Inserted by Act 29 of 1998 from the 1 January 1999, and amended by Act 18/2000 from the 1st January, 2001.]

(f) three hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2001, but before the 1st January, 2002.

[Inserted by Act 18/2000 from the 1st January, 2001 and further amended by Act 27 of 2001 from the 1st January, 2002.]

(g) five hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2002.

[Inserted by Act of 2001 from 1st January, 2002.]

(h) one million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2003 but before the 1st January, 2004.

[Inserted by Act 15/2002 from 1 January, 2003, amended by Act 10/2003 from 1 January, 2004.]

(i) ten million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2004 but before the 1<sup>st</sup> January, 2005.

[(i) inserted by Act 10/2003 from 1st January, 2004, and amended by Act 29 of 2004 from 1st January, 2005.]

(j) fifty million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2005. but before the 1st January, 2006;

[Inserted by Act 29 of 2004 from 1st January, 2005, amended by Act 8 of 2005 from 1st January, 2006.]

(k) one billion dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2006 but before the 1st January, 2007;

[Inserted by Act 8 of 2005 from 1st January, 2006, amended by Act 12/2006 from 1st January, 2007.]

(l) ten million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2007, **but before the 1st January, 2009**;

[Inserted by Act 12/2006 from 1st January, 2007, amended by Act 16 of 2007, and further by Act 3/2009 w.e.f. the year of assessment beginning on the 1<sup>st</sup> January, 2009.]

(m) **50%** of the cost of acquisition of the vehicle, or **zw\$ 5 million**, whichever is the lesser amount, shall be disregarded, where the vehicle was purchased on or after the 1st January, 2008.

[Inserted by Act 16 of 2007 from 1st January, 2008. The amount of \$ 10 billion is reduced to \$ 10.00 w.e.f. **1<sup>st</sup> August, 2008** i.t.o. SI 109/2008 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019-amended by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(n) **50%** of the cost of acquisition of the vehicle, or **\$ 6 billion**, whichever is the lesser amount, shall be disregarded, where the vehicle was purchased on or after the 1st January, 2008.

[para (n) inserted by SI 149/08 with effect from the last quarter year of assessment **beginning on the 1<sup>st</sup> October, 2008** and ending on the 31<sup>st</sup> December, 2008]

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(?o) **zw \$ 800 000,00** shall be disregarded, where the vehicle was purchased on or after the 1st January, 2009.

[new para (to be renumbered ?o) inserted by Act 3/2009 with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2009 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019;- amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.](2)

For the purposes of subsection (1)—

**“passenger motor vehicle”** means any motor vehicle propelled by mechanical or electrical power and intended or adapted for use or capable of being used on roads mainly for the conveyance of passengers, including an estate car, station wagon, van or similar vehicle but excluding any vehicle—

[See definition in Section 18 of the **Value Added Tax** Regulations SI 273/2003 — Editor.]

(a) which is used wholly or almost wholly—

(i) for the conveyance of passengers for gain; or

(ii) by a person operating a hotel for the conveyance of guests; or

(b) which has seating accommodation for **15 or more passengers**, excluding the driver of the vehicle; or

(c) which was purchased by the taxpayer for the purpose of being leased to a particular person and has been so leased and where the taxpayer—

(i) will not be entitled to the return of the vehicle at the expiry of the period of the lease; and

(ii) has given or is required to give an option to purchase or other right in relation to the acquisition or disposal of the vehicle to the lessee or any other person;

(d)

[Repealed by Act 29 of 1998 from the 1<sup>st</sup> January, 1999.]

*Maximum amounts allowable in respect of schools, hospitals, nursing homes and clinics*

15

(1) The following amounts shall be disregarded in calculating, for the purposes of paragraph 2, 3, 4, 6, 8 or 9, the total cost of any buildings which are used for the purposes of a school, hospital, nursing home or clinic and

which rank as farm improvements, and any additions or alterations thereto—

(a) in respect of **any 1 building** used wholly or mainly for the housing of staff employed at the school, hospital, nursing home or clinic, any amount in excess of—

(i) fifteen thousand dollars incurred by the taxpayer, where the expenditure was incurred before the **1st April, 1991**;

(ii) thirty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1<sup>st</sup> April, 1991, but before the **1st April, 1992**;

(iii) thirty-five thousand dollars incurred by the tax payer, where the expenditure was incurred on or after the 1<sup>st</sup> April, 1992, but before the **1st April, 1995**;

(iv) fifty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1<sup>st</sup> April, 1995, but before the **1st January, 1999**;

(v) one hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1<sup>st</sup> January, 1999, but before the **1st January, 2001**.

[Inserted by Act 17 of 1997 from the 1 January 1999; amended by Act 29 of 1998 from the 1<sup>st</sup> January 1999 and amended by the Finance Act 18/2000 from the 1<sup>st</sup> January, 2001]

(vi) one hundred and fifty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1<sup>st</sup> January, 2001 but before the **1st January, 2002**;

[Inserted by Act 18/2000 from 1<sup>st</sup> January, 2001, amended by Finance Act No.27 of 2001 from the 1<sup>st</sup> January, 2002.]

(vii) two hundred and fifty thousand dollars incurred by the taxpayer where the expenditure was incurred on or after the 1<sup>st</sup> January, 2002, but before the **1st January, 2003**.

[subpara (vii) inserted by Act 27 of 2001 from 1<sup>st</sup> January, 2002, and amended by Act 15/2002 from 1<sup>st</sup> January, 2003.]

(viii) one million dollars incurred by the taxpayer where the expenditure was incurred on or after the 1<sup>st</sup> January, 2003 but before the **1st January, 2004**.

[Inserted by Act 15/2002 from 1 January, 2003 and amended by Act 10/2003 from 1 January, 2004.]

(ix) fifteen million dollars incurred by the taxpayer where the expenditure was incurred

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on or after the 1st January, 2004 but before the **1st January, 2005**;

[Inserted by Act 10/2003 from 1st January, 2004, and amended by Act 29 of 2004 from the 1st January, 2005.]

(x) **zw\$5 million.**

[Inserted by Act 5/2009 w.e.f. 30<sup>th</sup> September, 2009 and further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; by Act 7/2021 & amended by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(b) in respect of any one such school, hospital, nursing home or clinic, any amount in excess of—

(i) one hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred before the **1st April, 1993**;

(ii) two hundred and fifty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st April, 1993, but before the **1st April, 1995**;

(iii) five hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st April, 1995, but before the **1st January, 1999**;

(iv) one million five hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January 1999, but before the **1st January, 2001**;

[(iv) inserted by Act 17 of 1997 from 1st January 1999, amended by Act 29 of 1998 from 1st January 1999, and amended by Act 18/2000 from 1st January, 2001.]

(v) two million two hundred and fifty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2001 but before the **1st January, 2002**;

[Inserted by Act 18/2000 from the 1st January, 2001, and amended by Act 27 of 2001 from 1st January, 2002.]

(vi) three million five hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2002, but before the 1st January, 2003.

[Inserted by Act 27 of 2001 from 1st January, 2002, and amended by Act 15/2002 from 1st January, 2003.]

(vii) ten million dollars incurred by the taxpayer where the expenditure was incurred on or after the 1st January, 2003, but before the **1st January, 2004**;

[Inserted by Act 15/2002 from 1 January, 2003 and amended by Act 10/2003 from 1 January, 2004.]

(viii) fifty million dollars incurred by the taxpayer, where the expenditure was incurred on or **after the 1st January, 2004**.

[Inserted by Act 10/2003 from 1 January, 2004.]

(ix) **zw\$5 million.**

[Inserted by Act 5/2009 w.e.f. 30<sup>th</sup> September, 2009 ;and further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; text deleted and amount increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; Increased by Act 7/2021 & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(2) With effect from the year of assessment beginning on the **1st January, 2005**, the total cost to the taxpayer of any school, hospital, nursing home, or clinic shall be allowed in calculating for the purposes of paragraph 2, 3, 4, 6, 8 or 9 the total cost of any buildings which rank as farm improvements, and any additions or alterations thereto.

(3) With effect from the year of assessment beginning on the **1st January, 2005**, the total cost to the taxpayer of any one building used wholly or mainly for the housing of staff employed at a school, hospital, nursing home, or clinic shall be disregarded in calculating for the purposes of paragraph 2, 3, 4, 6, 8 or 9 the total cost of any buildings which are used for the purposes of a school, hospital, nursing home, or clinic and which rank as farm improvements, and any additions or alterations thereto.

[Subparas (2) and (3) inserted by Act 29 of 2004 from 1<sup>st</sup> January, 2005.]

### FIFTH SCHEDULE

(Section 15 (2) (f))

ALLOWANCES & DEDUCTIONS IN RESPECT OF  
INCOME  
FROM **MINING OPERATIONS** & OTHER  
PROVISIONS RELATING THERETO

*Interpretation*

1

(1) In this Schedule—

[*PL Mines (Pvt) Ltd v ZIMRA 15-HH-466*]

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**“approved estimated life”**, in relation to a mine, means the estimate of the life of the mine determined by a company for the purposes of subparagraph (a) of subparagraph (2) of paragraph 2 or, if the Commissioner does not accept the estimate of the life determined by the company, the estimate of the life of the mine determined by the Commissioner;

**“associated company”** means a company which controls, is controlled by or is under common control with a taxpayer;

**“capital expenditure”** means—

(a) expenditure, in relation to **mining operations** (other than expenditure in respect of which a deduction is allowable in terms of subparagraph (ii) of paragraph (f) of subsection (2) of section *fifteen*)—

(i) on buildings, works or equipment, including any premium or consideration in the nature of a premium paid for the use of buildings, works, equipment or land, but excluding—

A. in the case of a **mine** which is owned, tributed or leased by a company which is under the control of not more than 4 individuals, any expenditure in excess of—

[removal of overburden *LCF Zimbabwe Ltd v Zimra* 20-HH-227]

I. fifteen thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the first day of the first year of assessment under this Act but before the 1st April, 1991; or

II. thirty thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the 1st April, 1991, but before the 1st April, 1992; or

III. thirty-five thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the 1st April, 1992, but before the 1st April, 1995; or

IV. fifty thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the 1st April, 1995;

[(IV) amended by Act 17 of 1997 from 1st January 1999.]

V. one hundred thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the

company, where the building was erected on or after the 1st January 1999, but before the 1st January, 2001;

[V inserted by Act 17 of 1997 from 1st January 1999, amended by Act 29 of 1998 from 1st January 1999 and amended by Act 18/2000 from the 1st January, 2001.]

VI. one hundred and fifty thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the 1st January, 2001, but before the 1st January, 2002 .

[VI inserted by Act 18/2000 from the 1st January, 2001, and amended by Act No.27 of 2001 from 1st January, 2002.]

or

VII. two hundred and fifty thousand dollars on a building used mainly as a dwelling by one or more individuals who control the company, where the building was erected on or after the 1st January, 2002, but before the 1st January, 2003.

[Inserted by Act 27 of 2001 from 1st January, 2002, and amended by Act 15/2002 from 1<sup>st</sup> January, 2003.]

or

VIII. one million dollars on a building used mainly as a dwelling by one or more individuals who control the company, where the building was erected on or after the **1st January, 2003**.

[Inserted by Act 15/2002 from 1<sup>st</sup> January, 2003]

IX. **zw\$5 million** on a building used mainly as a dwelling by one or more individuals who control the company, where the building was erected on or after the **1st January, 2009**.

[Inserted by Act 5/2009 with effect from the 30<sup>th</sup> September, 2009 and further amended re-designated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019 amended by Act 13/2019 w.e.f. 31st December, 2019; amount increased by Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

B. in the case of a passenger motor vehicle as defined in subparagraph (2) of paragraph 14 of the Fourth Schedule, any expenditure in excess of—

I. twenty-two thousand dollars, where such motor vehicle was purchased on or after the 1st April, 1986 but before the 1st April, 1991; or

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II. thirty thousand dollars, where such motor vehicle was purchased on or after the 1st April, 1991, but before the 1st April, 1992; or

III. fifty thousand dollars, where such motor vehicle was purchased on or after the 1st April, 1992; but before the 1st April, 1995; or

IV. seventy-five thousand dollars, where such motor vehicle was purchased on or after the 1st April, 1995, but before the 1st January 1999; or

[IV amended by Act 29 of 1998 from 1 January 1999.]

V. two hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January 1999, but before the 1st January, 2001; or

[Inserted by Act 29 of 1998 from 1 January 1999.]

VI. three hundred dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2001, but before the 1st January, 2002; or

[VI inserted by Act 18/2000 from the 1 January 2001, and amended by Act 27 of 2001 from the 1 January, 2002]

VII. five hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2002, but before the 1st January, 2003; or

[VII inserted by Act 27 of 2001 from 1st January, 2002, amended by Act 15/2002 from 1<sup>st</sup> January, 2003.]

VIII. one million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2003, but **before the 1st January, 2007**; or

[VIII inserted by Act 15/2002 from 1st January, 2003 amended by Act 12/2006 from 1st January, 2007.]

IX. one million dollars shall be disregarded, where the vehicle was purchased or after the **1st January, 2007**.

[IX inserted by Act 12/2006 from 1st January, 2007. The amount of \$10 million is reduced to the above i.t.o. SI 109/2008 w.e.f. 1<sup>st</sup> August, 2008 – Editor.]

X. **zw\$5 million** shall be disregarded, where the vehicle was purchased or after the **1st January, 2009**.

[subpara X inserted by Act 5/2009 w.e.f. the 30th September, 2009, and further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st

August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(ii) on shaft sinking;

(iii) incurred prior to the commencement of production or during any period of non-production on **preliminary** surveys, bore-holes, development, general administration and management, including any interest payable on loans utilized for mining purposes;

(b) **expenditure** incurred on or after the **1st April, 1988**, on any **permanent building** used for the purposes of—

(i) a school; or

(ii) a hospital, nursing home or clinic;

in connection with the taxpayer's mining operations, to the extent that the expenditure does not exceed—

A. in respect of any building used mainly as a dwelling by **staff** employed at the school, hospital, nursing home or clinic—

I. fifteen thousand dollars, where the expenditure was incurred before the 1st April, 1991; or

II. thirty thousand dollars, where the expenditure was incurred on or after the 1st April, 1991, but before the 1st April, 1992; or

III. thirty-five thousand dollars, where the expenditure was incurred on or after the 1st April, 1992, but before the 1st April, 1995; or

IV. fifty thousand dollars, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January 1999; or

V. one hundred thousand dollars where the expenditure was incurred on or after 1st January 1999, but before the 1st January, 2001; or

[V inserted by Act 17 of 1997 from 1 January 1999, amended by Act 29 of 1998 from 1st January 1999 and amended by Act 18/2000 from 1st January, 2001]

VI. one hundred and fifty thousand dollars, where the expenditure was incurred on or the 1st January, 2001, but before the 1st January, 2002; or

[VI inserted by Act 18/2000 from the 1st January, 2001, and amended by Act No.27 of 2001 from the 1st January, 2002.]

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VII. two hundred and fifty thousand dollars, where the expenditure was incurred on or after the 1st January, 2002, but before the 1st January, 2003 ; or

[VII inserted by Act 27 of 2001 from 1st January, 2002, amended by Act 15/2002 from 1st January, 2003.]

VIII. one million dollars, where the expenditure was incurred on or after the 1st January, 2003;

[VIII inserted by Act 15/2002 from 1st January, 2003.]

#### IX. **\$25 million.**

[subpara IX inserted by Act 5/2009 with effect from the 30<sup>th</sup> September, 2009 and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; amended by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

**B.** in respect of any 1 such school, hospital, nursing home or clinic—

I. one hundred thousand dollars, where the expenditure was incurred before the 1st April, 1993; or

II. two hundred and fifty thousand dollars, where the expenditure was incurred on or after the 1st April, 1993, but before the 1st April, 1995; or

III. five hundred thousand dollars, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January 1999; or

IV. one million five hundred thousand dollars where the expenditure was incurred on or after the 1st January 1999, but before the 1st January, 2001; or

[IV inserted by Act 17 of 1997 from 1st January 1999, amended by Act 29 of 1998 from 1st January 1999 amended by Act 18/2000 from 1st January, 2001.]

V. two million two hundred and fifty thousand dollars, where the expenditure was incurred on or the 1st January, 2001, but before the 1st January, 2002; or

[V inserted by Act 18/2000 from the 1st January, 2001, amended by Act 27 of 2001 from the 1st January, 2002.]

VI. three million five hundred thousand dollars, where the expenditure was incurred on or after the 1st January, 2002, but before the 1st January, 2003; or

[VI inserted by Act No.27 of 2001 from 1st January, 2002, and Act 15/2002 from 1<sup>st</sup> January, 2003.]

VII. ten million dollars, where the expenditure was incurred on or after the 1st January, 2003.

[VII inserted by Act 15/2002, from 1<sup>st</sup> January, 2003]

#### VIII. **zw\$ 4 millions**

[subpara VIII inserted by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009 and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019 ;increased.] by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

**“estimate of the life of the mine”** means the number of years not exceeding—

(a) in the case of a mine operated for the purpose of producing **lead** or **zinc** or lead and zinc, **10 years**;

(b) in the case of a mine operated for the purpose of producing **iron**, **5 years**;

(c) in the case of any other mine, **20 years**;

during which mining operations at the mine may be expected to continue after the beginning of the year of assessment;

**“expenditure”** means net expenditure after taking into account any refund of, or returns from, expenditure;

**“expenditure on equipment”** includes—

(a) expenditure on renewals or replacements of buildings, works or equipment unless such expenditure has been allowed as a deduction in terms of paragraph 6;

(b) tangible or intangible property in the form of computer software (as defined in paragraph 1 of the *Fourth Schedule*) that is acquired, developed or used by a taxpayer in connection with his or her mining operations;

[definition substituted by Act 13/2019 w.e.f. 31st December, 2019]

**“expenditure on shaft sinking”** includes the expenditure on sumps, pump chambers, stations and ore bins accessory to a shaft;

**“trade training”** means any education or training, other than any education or training which is provided as part of the general school education of a pupil, which is intended to train persons to perform work in connection with the mining operations of the taxpayer or an associated company or to improve their performance of such work;

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**"training building"** means any building the construction of which was commenced on or after the 1st April, 1983, which is erected by the taxpayer and used exclusively for the purpose of providing trade training for persons who are or will be employed by him or an associated company in connection with the taxpayer's mining operations or those of the associated company;

**"training equipment"** means new or unused articles, implements, machinery or utensils purchased on or after the 1st April, 1983, and, in the opinion of the Commissioner, used by the taxpayer exclusively for the purpose of providing trade training for persons who are or will be employed by him or an associated company in connection with the taxpayer's mining operations or those of the associated company.

(2) For the purpose of determining whether the training equipment was used or is being used exclusively by the taxpayer for the purpose of providing trade training for persons who are or will be employed by him or an associated company in connection with the taxpayer's mining operations or those of the associated company, the Commissioner may have regard to the use to which the equipment was or is being put by the taxpayer in the year of assessment in which it was first put into use in the next following year of assessment.

(3) For the purposes of this *Schedule*, a building shall not be deemed to be used for the purposes of—

(a) a school; or

(b) a hospital, nursing home or clinic;

in connection with a **taxpayer's mining operations**, unless it is proved to the satisfaction of the Commissioner that, at the relevant time—

(i) in the case of a school, more than  $\frac{1}{2}$  of the pupils are children of persons employed by the taxpayer in carrying on mining operations;

(ii) in the case of a hospital, nursing home or clinic, more than  $\frac{1}{2}$  of the persons receiving treatment thereat are employed by the taxpayer in carrying on mining operations or are members of the families of persons who are so employed.

*Calculation of redemption allowance and unredeemed balance of capital expenditure in the case of mine-owning companies*

2

(1) Subject to paragraph 4, there shall be deducted in the year of assessment in respect of income derived by a company from the carrying on of mining operations in a mine of which such company is the owner, an allowance for the redemption of capital expenditure ascertained as follows—

(a) the balance of unredeemed capital expenditure in respect of that mine at the commencement of the year of assessment, after subtracting therefrom any recoupments from capital expenditure during such year, shall be added to the amount of capital expenditure incurred on that mine during such year;

(b) the aggregate amount of the sums so added shall be divided by the number of years in the approved estimated life of the mine;

(c) the quotient resulting from the division shall be the amount to be deducted as aforesaid.

(2)

(a) The company shall furnish annually to the Commissioner a statement giving an estimate of the life of the mine based on the certified estimates of ore reserves, supported by calculations showing how the estimate is arrived at.

(b) The annual revision shall not affect any assessment determined or any allowance made or presumed to have been made under this Act or under any previous law.

(3) When separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for redemption of capital expenditure shall be computed separately according to the approved estimated life of each such mine.

(4) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance determined at the end of the immediately preceding year of assessment in terms of the previous law.

*Calculation of redemption allowance in the case of persons other than mine-owning companies*

3

(1) Subject to paragraph 4, there shall be deducted for each year of assessment in respect of income derived by—

(a) a company from the carrying on of mining operations in a mine of which such company is not the owner; or

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(b) any person other than a company from the carrying on of mining operations;

an allowance for the redemption of capital expenditure in such sum as the Commissioner considers to be fair and reasonable:

Provided that where any person referred to in subparagraph (b) who is the owner of a mine furnishes, for any year of assessment, an estimate of the life of the mine, then the amount to be deducted shall be calculated for such year as if paragraph 2 applied to such person.

(2) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance determined at the end of the immediately preceding year of assessment in terms of the previous law.

*Further provisions in regard to capital redemption, allowance*

4

(1) Notwithstanding paragraphs 2 and 3, where any person, at the 1st of April, 1967, carried on mining operations in a mine and had, under any previous law, made an election relating to the deduction of current capital expenditure incurred during any year of assessment, the allowance for redemption of capital expenditure shall continue to be calculated in accordance with the terms of the previous law relating to such election.

(2) Notwithstanding paragraphs 2 and 3, any person who carries on mining operations in a mine may elect that the amount to be deducted for each year of assessment in respect of the allowance for the redemption of capital expenditure shall be the aggregate of the amount of capital expenditure incurred by him during such year of assessment in respect of that mine and a proportion of any balance of unredeemed capital expenditure in respect of that mine at the commencement of such year determined as provided in subparagraph (3).

[*SZ (Pvt) Ltd v Zimra 20-HH-142*]

(3) The proportion of any balance of unredeemed capital expenditure referred to in subparagraph (2) shall—

(a) be determined by dividing the amount of the balance of such unredeemed capital expenditure by the life of the mine concerned, where the person who makes the election in terms of subparagraph (2) is the owner of the mine concerned and—

(i) complies with subparagraph (2) of paragraph 2; or

(ii) furnishes an estimate of the life of the mine in terms of the proviso to subparagraph (1) of paragraph 3;

(b) be fixed by the Commissioner at such sum as may seem to him to be fair and reasonable, in any case not referred to in subparagraph (a).

(4) Notwithstanding subparagraph (2), a person carrying on mining operations in a new mine, as defined in subparagraph (8), may elect that the amount to be deducted in the year of assessment in which production on the new mine first commences shall be the aggregate of the amount of capital expenditure incurred by him during such year of assessment in respect of the mine and the balance of the unredeemed capital expenditure in respect of the mine at the commencement of such year of assessment.

(5) Any election made in terms of subparagraph (2) shall be binding in respect of all subsequent years of assessment.

(6) Where an election is made under subparagraph (2), recoupments from capital expenditure during the year of assessment shall be deducted from the unredeemed balance of capital expenditure at the commencement of such year and, if there is no such unredeemed balance, then from the capital expenditure incurred during such year.

(7) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance determined at the end of the immediately preceding year of assessment in terms of the previous law.

(8) For the purpose of subparagraph (4)—

**“new mine”** means any mining undertaking which, in the opinion of the Commissioner, is an independent workable proposition, whether or not it is operated by a person already carrying on mining operations, and which—

[*SZ (Pvt) Ltd v Zimra 20-HH-142*]

(a) first commenced regular production on or after the 1st April, 1968; or

(b) having previously been in production—

(i) had been closed down and has subsequently been reopened; or

(ii) had changed ownership and has been reorganized with substantially new development and new plant;

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and commenced regular production on or after the **1st April, 1968**.

*Allowance for capital expenditure incurred on non-contiguous mine*

5

[Repealed by Act 18/2000 from the 1 January 2001.]

*Deduction of expenditure incurred on renewal or replacement of buildings, works or equipment*

6

If the taxpayer so elects (which election shall be binding) in respect of income from mining operations, he shall be allowed a deduction of expenditure in relation to those operations, incurred during the year of assessment on any single renewal or replacement of buildings, works or equipment which, together with the accessories thereto, does not exceed in cost **\$5 million**:

[Amended into US\$ by Act 5/2009 with effect from the 30<sup>th</sup> September, 2009 and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019 increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

Provided that in the case of a mine which is owned, tributed or leased by a company under the control of not more than 4 individuals, no expenditure in excess of **\$750 000** on the renewal or replacement of any building shall be allowed as a deduction if such building is used mainly by any such individual or individuals as a dwelling.

[Amended into US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009 and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

*Deduction for training investment allowance*

7

[repealed by Act 18/2000 from 1st January, 2001.]

*Computation of unredeemed balance of capital expenditure on change of ownership of a mine*

8

(1) Whenever there takes place a change of ownership of a mine, the transferor and the

transferee of the mine shall jointly furnish to the Commissioner a statement in writing as to the proportion of the consideration, where consideration is given, or of the value, where no consideration is given, as appertains to such assets the cost of which would rank as capital expenditure.

(2) If the Commissioner is satisfied with such statement, he shall allow the amount so declared to rank as capital expenditure for redemption to the transferee of the mine and such amount shall be deemed to be a recoupment from capital expenditure in the hands of the transferor.

(3) If the Commissioner is not satisfied with the statement furnished by the transferor and transferee, or if no statement has been furnished, the Commissioner may determine the proportion of the consideration given, or of the value where no consideration is given, which shall rank as capital expenditure for redemption in the hands of the transferee. The proportion of the consideration or of the value where no consideration is given so determined shall be deemed to be a recoupment from capital expenditure in the hands of the transferor.

(4) Notwithstanding subparagraphs (1), (2) and (3), where the ownership of a mine is transferred for no valuable consideration from a transferor who has deducted capital expenditure in respect of such mine under subparagraph (1) or (2) of paragraph 4 or the corresponding provisions of any previous law, the amount of capital expenditure to be allowed to rank for redemption in the hands of the transferee shall not exceed the amount of capital expenditure ranking for redemption in the hands of the transferor at the time the transfer is made and such amount shall be deemed to be a recoupment from capital expenditure in the hands of the transferor.

(5) If the ownership of a mine is transferred in the circumstances described in paragraphs (a), (b) and (c) of proviso (iii) to subsection (3) of section fifteen from one company, with or without an assessed loss, to another company, the amount of capital expenditure to be allowed to rank for redemption in the hands of the transferee shall, notwithstanding subparagraphs (1), (2) and (3), be the amount of the capital expenditure ranking for redemption in the hands of the transferor at the time transfer is made which shall be deemed to be a recoupment from capital expenditure in the hands of the transferor.

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(6) If a company, in the course of or furtherance of a scheme of reconstruction of a group of companies or a merger or other business operation which, in the opinion of the Commissioner, is of a similar nature, transfers ownership of a mine to another company, the transferor and transferee may elect, notwithstanding the terms of any agreement of sale or the provisions of subparagraphs (1), (2) and (3), that the amount of capital expenditure ranking for redemption in the hands of the transferor at the time transfer is made shall rank as capital expenditure for redemption in the hands of the transferee and be deemed to be a recoupment from capital expenditure in the hands of the transferor.

(7) If the ownership of a mine is transferred between spouses, the transferor and the transferee may elect, notwithstanding the terms of any agreement of sale or the provisions of subparagraphs (1), (2) and (3), that the amount of capital expenditure ranking for redemption in the hands of the transferor at the time transfer is made shall rank as capital expenditure for redemption in the hands of the transferee and be deemed to be a recoupment from capital expenditure in the hands of the transferor.

*Deduction not admissible in respect of income derived from carrying on of mining operations*

10

No deduction shall, as regards income derived from the carrying on of mining operations, be made in respect of the allowances or deductions referred to in paragraphs (c), (d), (e) and (t) of subsection (2) of section fifteen.

### SIXTH SCHEDULE

(Section 15 (2) (h))

DEDUCTIONS IN RESPECT OF  
CONTRIBUTIONS TO  
BENEFIT & PENSION FUNDS & THE  
CONSOLIDATED REVENUE FUND

#### PART I PRELIMINARY

*Interpretation of terms*

**TREATMENT OF PENSION  
CONTRIBUTIONS FOR THE PURPOSES OF  
THIS SCHEDULE**

If a pension contribution in terms of the Sixth Schedule was paid in each of the deemed years of assessment ending on the 31st August and 31st December, 2006, the pension contributions shall, for the purposes of that

Schedule, be aggregated and treated as if they were a single pension contribution paid in a single year of assessment consisting of 12 months ending on the **31st December, 2006**.

[Inserted by Act 6 of 2006 gazetted on the 1<sup>st</sup> September, 2006.]

1

In this *Schedule*—

**“amended pensions law”**, in relation to an officer, means a pensions law of Zimbabwe in force before the 1st July, 1960, the provisions of which have been amended or re-enacted on or after that date to provide for an increase in the ordinary contributions to be made to the Consolidated Revenue Fund by the officer or the State or the officer and the State with the object of increasing the amount of the pension payable to the officer and **“unamended”**, when used in relation to a pensions law, and **“unamended or re-enacted”**, when used in relation to the provisions of a pensions law, shall be construed accordingly;

**“annual emoluments”**, in relation to a member of a benefit or pension fund, other than a retirement annuity fund, or an officer, means—

(a) so much of the emoluments of the member or officer in the year of assessment as are emoluments for the purposes of calculating the amount of ordinary contributions to the fund or the Consolidated Revenue Fund, as the case may be;

[*EE v COT 77-ITC-1269*]

or

(b) such sum, exceeding the amount of his emoluments referred to in paragraph (a), as the Commissioner may, in the case of the member or officer, fix;

or

(c) where the member is a member of a partnership, the taxable income of the member from the partnership;

**“employer”**, in relation to a member of a benefit or pension fund who is a member of a partnership, means the partnership;

**“fund with changed rules”**, in relation to a member of a pension fund, means a pension fund, other than a retirement annuity fund, established before the 1st July, 1960, the rules of which have been changed on or after that date to provide for an increase in the ordinary contributions to be made by the member or the employer of the member or the member and the

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employer of the member with the object of increasing the amount of the pension or other benefit payable to the member and “**unchanged**”, when used in relation to the rules of the pension fund, shall be construed according;

“**lump sum contribution to a pension fund by an employer**” means a contribution (other than an ordinary contribution) by an employer to a pension fund which, in the opinion of the Commissioner, is made for the purpose of ensuring that the moneys in the fund are sufficient to meet all payments to be made in terms of the rules of the fund;

“**new fund**” means a pension fund, other than a retirement annuity fund, established on or after the 1st July, 1960, but does not include any pension fund established by a statutory corporation which is a successor corporation to a statutory corporation which has been dislodged in pursuance of the dissolution of the former Federation and which had established a fund before 1st July, 1960;

“**officer**” means a person to whom the provisions of a pensions law of Zimbabwe apply;

“**ordinary contribution**”, in relation to—

(a) a member of a pension fund or an officer, means a contribution to the fund or the Consolidated Revenue Fund, as the case may be, which—

- (i) is not an arrear contribution; and
- (ii) is made by or in connection with the member or the officer, as the case may be; and
- (iii) is not refundable to the contributor; and
- (iv) is required to be made at intervals fixed by the rules of the fund or at a rate and at intervals fixed by a pensions law of Zimbabwe, as the case may be; and
- (v) is calculated on annual emoluments of a contributor which are included in his gross income;

(b) a member of a benefit fund, means a contribution to the fund which—

- (i) is not an arrear contribution; and
- (ii) is made by or in connection with the member;

“**pensions law of Zimbabwe**” means a law of Zimbabwe, the provisions of which require a person in the service of the State to contribute to the Consolidated Revenue Fund for the

purpose of securing a pension for himself, his widow or children;

## PART II AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS BY EMPLOYERS OF MEMBERS OF 1 BENEFIT FUND

### *Application of Part II*

2

This Part shall, subject to subparagraph (1) of paragraph 5, not apply to ordinary contributions to a benefit fund by an employer of a member of the fund in connection with whom the employer makes ordinary contributions to some other benefit fund.

*Employers of members of benefit funds who became members before the 1st April, 1958*

3

The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a benefit fund who became a member of the fund before the 1st April, 1958, shall be an amount equal to the amount of those contributions.

*Employers of members of benefit funds who became members on or after the 1st April, 1958*

4

The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a benefit fund who became a member of the fund on or after the **1st April, 1958**, shall be an amount equal to—

- (a) the amount of those contributions; or
- (b) **\$500 000;**

whichever is the lesser amount.

[Amended into US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009 and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019. amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019] ; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]]

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### PART III

#### AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS BY EMPLOYERS OF MEMBERS OF 2 OR MORE BENEFIT FUNDS

5

(1) For the purposes of this paragraph, ordinary contributions to two or more benefit funds by an employer of a member of the fund who became a member of the funds on or after **1st April, 1958**, shall be deemed to be ordinary contributors to one and the same fund.

(2) The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a benefit fund in relation to whom the employer makes ordinary contributions to some other benefit fund shall be an amount equal to the sum of the amounts which, in terms of Part II, would, but for paragraph 2, have been allowable to the employer as a deduction in respect of his ordinary contributions to each of those funds.

### PART IV

#### AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF LUMP SUM CONTRIBUTIONS TO PENSION FUNDS BY EMPLOYERS

6

Any lump sum contribution to a pension fund by an employer shall be allowed as a deduction:

Provided that—

(i) the Commissioner may direct that the lump sum contribution shall be treated as an expense to be spread over such period of years as the Commissioner may determine;

(ii) where the Commissioner has, in terms of any previous law, directed that a lump sum or similar contribution shall be so treated, any balance of the contribution which has not been allowed as a deduction shall be carried forward and allowed as a deduction in terms of this paragraph.

### PART V

#### AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS BY EMPLOYERS OF MEMBERS OF ONE PENSION FUND

#### *Application of Part V*

7

This Part shall, subject to subparagraph (1) of paragraph 11, not apply to ordinary contributions to a pension fund by an employer of a member of the fund in connection with whom the employer makes ordinary contributions to some other pension fund.

*Employers of members of funds with unchanged rules who became members before the 1st July, 1960*

8

The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a fund with unchanged rules who became a member of the fund before the 1st July, 1960, shall be an amount equal to the amount of those ordinary contributions.

*Employers of members of funds with changed rules who became members before the 1st July, 1960*

9

The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a fund with changed rules who became a member of the fund before the **1st July, 1960**, shall—

(a) if the amount of those contributions exceeds—

(i) the amount of the ordinary contributions which would have been allowed as a deduction in the year of assessment had the rules of the fund remained unchanged; or

(ii) the amount of the ordinary contributions which would have been allowed as a deduction in the year of assessment had the member become a member of the fund on or after the 1st July, 1960;

be an amount equal to so much of those contributions as does not exceed the greater of the amounts referred to in subparagraphs (i) and (ii); and

(b) if the amount of those contributions does not exceed one or other of the amounts referred to in subparagraphs (i) and (ii) of subparagraph (a), be an amount equal to the amount of those contributions.

*Employers of members of new funds and members of funds with changed or unchanged*

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rules who became members on or after the 1st July, 1960

10

The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a new fund or a member of a fund with changed or unchanged rules who became a member of the fund on or after the 1st July, 1960, shall be an amount equal to—

- (a) the amount of those contributions; or
- (b) **\$1 500 000,00;**

whichever is the lesser amount.

[Amended by Act 18/2000 from 1<sup>st</sup> January, 2001, by Act 27 of 2001 from 1<sup>st</sup> January, 2002, by Act 15/2002 from 1<sup>st</sup> January, 2003, by Act 10/2003 from 1<sup>st</sup> January, 2004 and by Act 29 of 2004 from 1<sup>st</sup> January, 2005, by Act 6 of 2005 from 1<sup>st</sup> January, 2006, by Act 12/2006 from 1<sup>st</sup> January, 2007, and by Act 16 of 2007 from 1<sup>st</sup> January, 2008. The amount of \$ 11 500 000 was reduced by SI 109/2008 to **\$ 0.001** w.e.f. 1<sup>st</sup> August, 2008: then increased to zw\$ 480 000 by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, *Chapter 23:04* – US\$3600 amount substituted by Act 3/2009 with effect from the **1<sup>st</sup> February, 2009** in the year of assessment beginning on the 1<sup>st</sup> January, 2009; Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010 and further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019, amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

### PART VI AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS BY EMPLOYERS OF MEMBERS OF 2 OR MORE PENSION FUNDS

11

(1) For the purposes of this paragraph, ordinary contributions to 2 or more new funds by an employer of a member of the funds shall be determined to be ordinary contributions to one and the same fund.

(2) The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a pension fund in relation to whom the employer

makes ordinary contributions to some other pension fund shall be an amount equal to the sum of the amounts which, in terms of Part V, would, but for paragraph 7, have been allowable to the employer as a deduction in respect of his ordinary contributions to each of those funds.

### PART VII AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS TO ONE PENSION FUND OR CONSOLIDATED REVENUE FUND BY MEMBERS & OFFICIALS WHO ARE UNMARRIED OR WHOSE SPOUSES ARE NOT MEMBERS OF PENSION FUNDS OR OFFICERS

*Application for Part VII*

12

The provisions of this Part shall not apply to ordinary contributions by—

- (a) a member of a pension fund who is also a member of some other pension fund; or
- (b) an officer who is also a member of a pension fund.

*Members of funds with unchanged rules who became members before the 1st July, 1960: Officers to whom an unamended pensions law applied before the 1st July, 1960*

13

The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment to a fund with unchanged rules by a member of the fund who became a member of the fund before the 1st July, 1960, or to the Consolidated Revenue Fund by an officer to whom an unamended pensions law of Zimbabwe applied before the 1st July, 1960, shall be an amount equal to the amount of those contributions.

*Members of funds with changed rules who became members before the 1st July, 1960: Officers to whom an amended pensions law applied before the 1st July, 1960*

14

The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment to a fund with changed rules by a member of the fund who became a member of the fund before the 1st July, 1960, or to the

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Consolidated Revenue Fund by an officer to whom an amended pensions law of Zimbabwe applied before the 1st July, 1960, shall be—

(a) if the amount in respect of ordinary contributions which would have been allowed as a deduction had the rules of the fund remained unchanged or the provisions of the amended pensions law not been amended or re-enacted, as the case may be, exceeds **\$1 500 000**, be an amount equal to the amount in respect of ordinary contributions which would have been so allowed as a deduction;

[Amended by Act 15/2002 from 1<sup>st</sup> January, 2003, by Act 10/2003 from 1<sup>st</sup> January, 2004, by Act 29 of 2004 from 1<sup>st</sup> January, 2005, by Act 8 of 2005 from 1<sup>st</sup> January, 2006, by Act 12/2006 from 1<sup>st</sup> January, 2007, and by Act 16 of 2006 from 1<sup>st</sup> January, 2008. The amount of \$ 11 500 000 was reduced by SI 109/2008 to **\$ 0.001** w.e.f. 1<sup>st</sup> August, 2008, and then increased to the above amount by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, US\$3600 amount substituted by Act 3/2009 w.e.f. the **1<sup>st</sup> February, 2009** in the year of assessment beginning on the 1<sup>st</sup> January, 2009.

Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. from the year of assessment beginning on the 1<sup>st</sup> January, 2010. and further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(b) if the amount in respect of ordinary contributions which would have been allowed as a deduction had the rules of the fund remained unchanged or the amended pensions law not been amended or re-enacted, as the case may be, does not exceed **US\$5400**, be an amount equal to so much of his ordinary contributions as does not exceed **\$1 500 000**.

[Amended by Act 15/2002 from 1<sup>st</sup> January, 2003, by Act 10/2003 from 1<sup>st</sup> January, 2004, by Act 29 of 2004 from 1<sup>st</sup> January, 2005, by Act 8 of 2005 from 1<sup>st</sup> January, 2006, by Act 12/2006 from 1<sup>st</sup> January, 2007, and by Act 16 of 2006 from 1<sup>st</sup> January, 2008. The amount of \$ 11 500 000 was reduced by SI 109/2008 to **\$ 0.001** w.e.f. 1<sup>st</sup> August, 2008, and then increased to the above amount by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, US\$3600 amount substituted by Act 3/2009 with effect from the **1<sup>st</sup> February, 2009** in the year of assessment beginning on the 1<sup>st</sup> January, 2009– Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010. and further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019 ; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

**Members of new funds:** *Members of funds with changed or unchanged rules who became members on or after the 1<sup>st</sup> July, 1960: Officers to whom a pensions law did not apply before the 1<sup>st</sup> July, 1960*

15

The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment to a new fund by a member of the fund or to a fund with changed or unchanged rules by a member of the fund who became a member of the fund on or after 1<sup>st</sup> July, 1960, or to the Consolidated Revenue Fund by an officer to whom a pensions law of Zimbabwe did not apply before the **1<sup>st</sup> July, 1960**, shall be an amount equal to—

(a) so much of those contributions as do not exceed **7.5%** of the member's annual emoluments; or

(b) **\$1 500 000;**

whichever is the lesser amount.

[Amended by Act 15/2002 from 1<sup>st</sup> January, 2003, by Act 10/2003 from 1<sup>st</sup> January, 2004, by Act 29 of 2004 from 1<sup>st</sup> January, 2005, by Act 8 of 2005 from 1<sup>st</sup> January, 2006, by Act 12/2006 from 1<sup>st</sup> January, 2007, and by Act 16 of 2006 from 1<sup>st</sup> January, 2008. The amount of \$ 11 500 000 was reduced by SI 109/2008 to **\$ 0.001** w.e.f. 1<sup>st</sup> August, 2008, and then increased to the above amount by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, *Chapter 23:04*. US\$3600 amount substituted by Act 3/2009 w.e.f. the **1<sup>st</sup> February, 2009** 1<sup>st</sup> January, 2009 – Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010 and further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019. amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019 ; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

**Members of retirement annuity funds**

16

The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment to a retirement annuity fund by a member of the fund shall be an amount equal to—

(a) so much of those contributions as do not exceed **7.5%** of the member's annual emoluments; or

(b) **\$1 500 000;**

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whichever is the lesser amount.

[Amended by Act 15/2002 from 1 January,2003 by Act 10/2003 from 1st January,2004, by Act 29 of 2004 from 1st January,2005, by Act 8 of 2005 from 1st January, 2006 by Act 12/2006 from 1st January, 2007, and by Act 16 of 2006 from 1st January, 2008. The amount of \$ 11 500 000 was reduced by SI 109/2008 to **\$ 0.001** w.e.f. 1<sup>st</sup> August,2008 , and then increased to the above amount by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, US\$3600 amount substituted by Act 3/2009 with effect from the **1<sup>st</sup> February, 2009** in the year of assessment beginning on the 1<sup>st</sup> January, 2009– Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010 and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August,2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f.24<sup>th</sup> October, 2022.]

### PART VIII

#### AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS TO TWO OR MORE PENSION FUNDS OR ONE OR MORE PENSION FUNDS AND CONSOLIDATED REVENUE FUND BY MEMBERS AND OFFICERS WHO ARE UNMARRIED OR WHOSE SPOUSES ARE NOT MEMBERS OF PENSION FUNDS OR OFFICERS

**Members of two or more pension funds** who became members of the funds or one or more of the funds **before the 1<sup>st</sup> July, 1960**, and who are unmarried or whose spouses are not members of pension funds or officers: Officers who are members of one or more pension funds who became officers or members of the fund or funds before the 1<sup>st</sup> July, 1960, and who are unmarried or whose spouses are not members of pension funds

17

(1) For the purposes of this paragraph, the Consolidated Revenue Fund to which ordinary contributions are made shall be deemed to be a pension fund of which—

(a) an officer to whom a pensions law of Zimbabwe applied before the 1<sup>st</sup> July, 1960, shall be deemed to have become a member before the 1<sup>st</sup> July, 1960; and

(b) an officer to whom a pensions law of Zimbabwe did not apply before the 1<sup>st</sup> July, 1960, shall be deemed to have become a member on or after the 1<sup>st</sup> July, 1960.

(2) The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by a member of 2 or more pension funds who became a member of the funds or one or more of the funds before the 1<sup>st</sup> July, 1960, shall—

(a) if the sum of the amounts or the amount which, in terms of paragraphs 13 and 14 or, as the case may be, paragraph 13 or 14, would, but for paragraph 12, have been allowable as a deduction in respect of ordinary contributions to the funds or fund, of which became a member before the 1<sup>st</sup> July, 1960, exceeds **\$1 500 000** be an amount equal to the sum of the amounts or the amount referred to in this subparagraph;

[Amended by Act 27 of 2001 from 1<sup>st</sup> January, 2002,by Act 15/2002 from 1 January,2003 , by Act 10/2003 from 1<sup>st</sup> January, 2004, by Act 29 of 2004 from 1<sup>st</sup> January, 2005, by Act 8 of 2005 from 1<sup>st</sup> January, 2006, by Act 12/2006 from 1st January, 2007, and by Act 16 of 2006 from 1st January, 2008. The amount of \$ 11 500 000 was reduced by SI 109/2008 to **\$ 0.001** w.e.f. 1<sup>st</sup> August,2008 , and then increased to the above amount by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, US\$3600 amount substituted by Act 3/2009 with effect from the **1<sup>st</sup> February, 2009** 1<sup>st</sup> January, 2009 –

Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010. and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August,2019. amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f.24<sup>th</sup> October, 2022.]

(b) if the sum of the amounts or the amount referred to in subparagraph (a) does not exceed **zw \$1 200 000** be an amount equal to—

[Amended by Act 15/2002 from 1 January,2003, by Act 10/2003 from 1 January,2004, by Act 8 of 2005 from 1st January,2006 ,by Act 12/2006 from 1st January, 2007, and by Act 16 of 2006 from 1st January, 2008. The amount of \$ 11 500 000 was reduced by SI 109/2008 to **\$ 0.001** w.e.f. 1<sup>st</sup> August,2008 , and then increased to the above amount by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, **– US\$3600** amount substituted by Act 3/2009 with effect from the **1<sup>st</sup> February, 2009** 1<sup>st</sup> January, 2009– Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010 increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup>

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December, 2020; & by Act 8/2022 w.e.f.24<sup>th</sup> October, 2022.]

(i) the sum of the amounts or the amount referred to in subparagraph (a); and

(ii) so much of the sum of the amounts, if any, or the amount, if any, which, in terms of paragraphs 15 and 16 or, as the case may be, paragraph 15 or 16, would, but for paragraph 12, have been allowable as a deduction in respect of ordinary contributions to the funds or fund of which he became a member on or after the 1st July, 1960, as does not exceed the difference between—

A. **zw\$1 200 000**; and

B. the sum of the amounts or the amount referred to in subparagraph (a):

[A. amended by Act 27 of 2001 from 1st January, 2002, by Act 15/2002 from 1 January, 2003 and by Act 10/2003 from 1 January, 2004 - by Act 10/2003 from 1st January, 2004 by Act 29 of 2004 from 1st January, 2005 - corrected by the Law Reviser 2004, by Act 8 of 2005 from 1st January, 2006, by Act 12/2006 from 1st January, 2007, and by Act 16 of 2006 from 1st January, 2008. The amount of \$ 5 750 000 was reduced by SI 109/2008 to **\$ 0.0005** w.e.f. 1<sup>st</sup> August, 2008, and then increased to the above amount by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, US\$1800 amount substituted by Act 3/2009 with effect from the 1<sup>st</sup> February, 2009 in the year of assessment beginning on the 1<sup>st</sup> January, 2009. Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. 1st January, 2010 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

Provided that if all the pension funds of which he is a member are retirement annuity funds, the amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment shall be an amount equal to—

(a) the sum of the amounts of those contributions; or

(b) **\$1 500 000**;

whichever is the lesser amount.

[Subpara (b) amended by Act 27 of 2001 from 1st January, 2002 by Act 15/2002 from 1 January, 2003, by Act 10/2003 from 1st January, 2004, by Act 29 of 2004 from 1st January, 2005, by Act 8 of 2005 from 1st January, 2006, by Act 12/2006 from 1st January, 2007, and by Act 16 of 2006 from 1st January, 2008. The amount of \$ 11 500 000 was reduced by SI 109/2008 to **\$ 0.001** w.e.f. 1<sup>st</sup> August, 2008, and then increased to the above amount by SI 149/08 w.e.f.

1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, US\$3600 amount substituted by Act 3/2009 w.e.f. the 1<sup>st</sup> February, 2009 1<sup>st</sup> January, 2009. Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. 1st January, 2010, and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019, amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

**Members of two or more pension funds who did not become members of the funds before the 1st July, 1960, and who are unmarried or whose spouses are not members of pension funds or officers: Officers who are members of one or more pension funds who did not become officers or members of the fund or funds before the 1st July, 1960, and who are unmarried or whose spouses are not members of pension funds**

18

(1) For the purposes of this paragraph, the Consolidated Revenue Fund to which ordinary contributions are made shall be deemed to be a pension fund of which an officer to whom a pensions law of Zimbabwe did not apply before the 1st July, 1960, shall be deemed to have become a member on or after the 1st July, 1960.

(2) The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by a member of 2 or more pension funds who became a member of the funds on or after the 1<sup>st</sup> July, 1960, shall be an amount equal to so much as does not exceed **zw\$1 500 000** of the sum of the amounts which, in terms of paragraphs 15 and 16 or, as the case may be, paragraph 15 or 16 would, but for the provisions of paragraph 12, have been allowable as a deduction in respect of his ordinary contributions to the funds:

[amount increased by Act 15/2002 from 1st January, 2003, by Act 10/2003 from 1 January, 2004, by Act 8 of 2005 from 1 January, 2006 by Act 12/2006 from 1st January, 2007, and by Act 16 of 2006 from 1st January, 2008.

The amount of \$ 11 500 000 was reduced by SI 109/2008 to **\$ 0.001** w.e.f. 1<sup>st</sup> August, 2008, and then increased to the above amount by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, US\$3600 amount substituted by Act 3/2009 with effect from the 1<sup>st</sup> February, 2009 in the year of assessment beginning on the 1<sup>st</sup> January, 2009. Increased to the above amount by the Finance

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(No.3) Act 10/2009 w.e.f. 1st January, 2010; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

Provided that if all the pension funds of which he is a member are retirement annuity funds, the amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment shall be an amount equal to—

- (a) the sum of the amounts of those contributions; or
- (b) **\$312 000;**

whichever is the lesser amount.

[Subpara (b) amended by Act 15/2002 from 1st January, 2003, by Act 15/2002 from 1 January, 2003, by Act 10/2003 from 1st January, 2004, by Act 8 of 2005 from 1 January, 2006 by Act 12/2006 from 1st January, 2007, and by Act 16 of 2006 from 1st January, 2008.

The amount of \$ 5 750 000 was reduced by SI 109/2008 to **\$ 0.0005** w.e.f. 1<sup>st</sup> August, 2008, and then increased to the above amount by SI 149/08 w.e.f. 1<sup>st</sup> October, 2008 – in apparent contravention of Section 3(2) of the Finance Act, US\$1800 amount substituted by Act 3/2009 with effect from the **1<sup>st</sup> February, 2009** in the year of assessment beginning on the 1<sup>st</sup> January, 2009 Increased to the above amount by the Finance (No.3) Act 10/2009 w.e.f. 1st January, 2010, and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

If a pension or other benefit in terms of the *Sixth Schedule* to this Act was paid in each of the years of assessment ending on the 31st August and 31st December, 2005, the pensions or benefits shall, for the purposes of this Schedule, be aggregated and treated as if they were a single pension or benefit paid in a single year of assessment consisting of 12 months ending on the **31st December, 2005**.

[Inserted by section 13 of Act 8 of 2005 from 30th December, 2005, and adapted by the Editor.]

### PART IX CHANGE OF MEMBERSHIP OF A PENSION FUND AS A RESULT OF DISSOLUTION OF FORMER FEDERATION

19

For the purposes of Parts VII, VIII and IX of this *Schedule*, any person who before the 1st July, 1960, was a member of the pension fund of the

Government of the former Federation and who as a result of the dissolution of the former Federation is required to contribute to the Consolidated Revenue Fund, or any person who before the **1<sup>st</sup> July, 1960**, was a member of the pension fund of a statutory corporation and who as a result of the dissolution of the former Federation has become a member of the pension fund of a successor corporation, shall be deemed to have commenced contributions to the Consolidated Revenue Fund or to the pension fund of the successor corporation, as the case may be, before the 1st July, 1960.

### SEVENTH SCHEDULE

(Section 15 (2) (z))

#### DEDUCTIONS IN RESPECT OF INCOME DERIVED FROM **FARMING OPERATIONS & OTHER** PROVISIONS RELATING THERETO

##### *Interpretation*

[“Farmer” v COT 86-ITC-1424]

1

In this Schedule—

“**drought-stricken area**” means any area of Zimbabwe which is seriously affected by drought and which the Minister declares in a statutory instrument shall be treated as a drought-stricken area for the purposes of this *Schedule*;

“**epidemic area**” means any area of Zimbabwe which is affected by an epidemic disease of livestock and which the Minister declares in a statutory instrument shall be treated as an epidemic area for the purposes of this *Schedule*;

[Epidemic-stricken Areas and Period of Epidemic) Notice, 2019. SI 164/2019]

“**expenditure incurred**”, in relation to the cost of any work done by any other person for which a farmer has become liable in terms of the \*Natural Resources Act

[\*replaced by the Environmental Management Act [Chapter 20:27] – Editor]

means the amounts actually paid by him during the year of assessment in respect of such costs;

“**fencing**” means—

(a) fencing erected by the taxpayer and used in the carrying on of farming operations; and

(b) fencing erected by any other person for part of the cost of which a farmer has become

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liable in terms of the Fencing Act [Chapter 20:06], and which is used in the carrying on of farming operations;

**“grazer”** means any livestock which a farmer, in terms of a contract with the owner of the livestock, has in his possession and for which he has assumed responsibility for the grazing and management thereof;

**“livestock”** includes cattle, sheep, goats, pigs, crocodiles, ostriches, fowls and any other animals or birds that are raised or possessed by a farmer as livestock in the course of his farming operations;

**“period”**, in relation to—

(a) a drought, means the period specified by the Minister in the statutory instrument referred to in the definition of “drought-stricken area”; or

(b) an epidemic disease of livestock, means the period specified by the Minister in the statutory instrument referred to in the definition of “epidemic area”;

as the period during which the area concerned shall be treated as a drought-stricken area or an epidemic area, as the case may be, for the purposes of this *Schedule*;

**“water conservation work”** means any reservoir, weir, dam or embankment constructed for the impounding of water.

*Special deductions applicable to farmers*

2

Notwithstanding anything contained in this Act, a farmer shall be entitled to deduct any expenditure incurred by him during the year of assessment on—

[“*Farmer*” v COT 86-ITC-1424]

(a) the stumping and clearing of lands;  
(b) works for the prevention of soil erosion;  
(c) the sinking of boreholes and wells;  
(d) aerial and geophysical surveys;  
(e) any water conservation work and any amounts paid by him towards the cost of any water conservation work done by any other person for which such farmer has become liable in terms of the Natural Resources Act [Chapter 20:13];

[Editor’s Note – This Act was repealed by Section 143 of the Environmental Management Act [Chapter 20:27] with savings, from the 17th March, 2003]

(f) fencing.

*Determination of taxable income or assessed loss from growing of timber*

3

(1) Any farmer who grows timber for the purpose of deriving income therefrom may elect that the following rules shall apply in the determination of the taxable income or the assessed loss, as the case may be, in respect of such operation—

(a) the cost of planting the timber shall be carried forward until such time as the timber has reached maturity;

(b) to the cost of planting mentioned in subparagraph (a) there shall be added annually until the timber has reached maturity an amount (hereinafter called ‘the fixed percentage’) equal to 5% of such cost;

(c) whenever timber which has been grown by such farmer is sold, there shall be deducted from the proceeds of such sale a proportionate part of the sum of the cost of planting and the total of the fixed percentage added annually, and the remaining amount shall be included in the taxable income or the assessed loss, as the case may be, of such farmer;

(d) there shall be added to the taxable income or deduction from the assessed loss, as the case may be, of such farmer in each year of assessment the amount of the annual fixed percentage determined under subparagraph (b);

(e) there shall be deducted from the taxable income or added to the assessed loss, as the case may be, of such farmer all expenditure (including deductions made under paragraphs (c), (d) and (e) of subsection (2) of section fifteen) incurred on the maintenance and upkeep of such timber;

(f) any election made in terms of this paragraph shall be binding in respect of all subsequent years of assessment and may be made only in respect of timber planted after the **1st April, 1950**:

Provided that an election made in terms of the similar provisions of a previous law shall be deemed to have been made in terms of this Act.

(2) For the purposes of the first year of assessment under this Act, the opening value of any timber to which this paragraph applies shall be deemed to be the closing value in the last year of assessment under the previous law.

*Determination of taxable income or assessed loss from orchards or vineyards*

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4

(1) Any farmer who is engaged in fruit-growing or viticulture for the purpose of deriving income therefrom may elect that the following rules shall apply in the determination of the taxable income or the assessed loss, as the case may be, in respect of such operations—

(a) expenditure incurred in connection with orchards or vineyards such as is referred to in paragraph 2 and any allowance in respect of orchards or vineyards which are deductible in terms of paragraph (c) of subsection (2) of section *fifteen* shall be deducted from the taxable income or added to the assessed loss, as the case may be, of such farmer;

(b) all other expenditure or allowances deductible in terms of subsection (2) of section *fifteen* and expenditure incurred in the planting and upkeep of orchards and vineyards shall be carried forward until such time as they become productive;

(c) the farmer shall submit to the Commissioner in the year of assessment in which an orchard or vineyard becomes productive an estimate of the number of years during which the orchard or vineyard may be expected to remain productive and the Commissioner may either accept that estimate or himself determine the number of years during which the orchard or vineyard may be expected to remain productive;

(d) after an orchard or vineyard becomes productive the total amount of expenditure carried forward in terms of subparagraph (b) shall be divided by the number of years accepted or, as the case may be, determined by the Commissioner in terms of years accepted or, as the case may be, determined by the Commissioner in terms of subparagraph (c) and a sum equal to the amount resulting shall be deducted in equal annual instalments from the taxable income or added to the assessed loss, as the case may be, until the total amount of the expenditure carried forward in terms of subparagraph (b) has been allowed as a deduction;

(e) no deduction from taxable income or addition to an assessed loss shall be made after the farmer has, in the opinion of the Commissioner, ceased to keep up an orchard or vineyard in respect of which expenditure carried forward in terms of subparagraph (b) was incurred;

(f) if part of an orchard or vineyard is uprooted and replanted, whether before or after the orchard or vineyard has become productive—

(i) the amount of the balance of expenditure in respect of that part of the orchard or vineyard carried forward in terms of subparagraph (b), which is still to be deducted or added in terms of subparagraph (d), may be deducted or added in the year of assessment in which the uprooting takes place; and

(ii) the part so uprooted and replanted shall be treated as a new orchard or vineyard for the purposes of the provisions of this paragraph relating to expenditure incurred in the planting and upkeep of orchards and vineyards;

(g) if—

(i) the ownership of an orchard or vineyard is transferred for valuable consideration; and

(ii) the transferor has elected that this paragraph shall apply;

the transferor and transferee shall jointly submit to the Commissioner a statement in writing showing the amount of the consideration and the proportion of that amount which is attributable to the cost of planting and upkeep referred to in subparagraph (b);

(h) if no statement is submitted in terms of subparagraph (g) or if the Commissioner is not satisfied with a statement submitted in terms of that subparagraph, the Commissioner may determine the proportion of the consideration for the transfer of an orchard or vineyard which is attributable to the cost of planting and upkeep referred to in subparagraph (b);

(i) the amount by which the proportion of the consideration for the transfer of an orchard or vineyard shown in a statement referred to in subparagraph (g) or, as the case may be, determined in terms of subparagraph (h) exceeds the amount of the balance of expenditure carried forward in terms of subparagraph (b) which is still to be deducted or added in terms of subparagraph (d) shall, subject to subparagraph (j)—

(i) be deemed to be a recoupment in the hands of the transferor; and

(ii) be added to the taxable income or, as the case may be, deducted from the assessed loss of the transferor;

(j) the amount to be deducted from the assessed loss or added to the taxable income of a transferor in terms of subparagraph (i) shall not exceed the total amount of the sums

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deducted or added in terms of subparagraph (d);

(k) an election made by a farmer in terms of his paragraph shall be irrevocable:

Provided that an election made in terms of the similar provisions of a previous law shall be deemed to have been made in terms of this Act.

(2) Subparagraph (1) shall not apply to orchards or vineyards established before the **1st April, 1956.**

*Assessment of income when drought conditions or epidemic disease enforce sales of livestock*

5

(1) If a farmer who raises or possesses livestock in a drought-stricken area or an epidemic area is driven by stress of the drought conditions or the epidemic disease, as the case may be, to dispose of his livestock during the period of the drought or the epidemic disease, he may elect to allocate the taxable income derived from the disposal of the livestock equally between the year of assessment in which he disposes of the livestock and each of the next 2 following years of assessment, and if he so elects he shall be assessed to tax accordingly:

Provided that if, in the year of assessment in which he so disposes of the livestock, his taxable income derived from the disposal exceeds his total taxable income determined in accordance with this Act before the provisions of this paragraph are applied, he may elect that his total taxable income, determined in accordance with this Act before the provisions of this paragraph are applied, shall be allocated equally between that year of assessment and each of the next 2 following years of assessment, and if he so elects he shall be assessed to tax accordingly.

(2) An election made in terms of subparagraph (1) shall be irrevocable.

(3) For the purposes of subparagraph (1), where a farmer returns grazers to their owner, he shall be deemed to have disposed of them.

*Assessment of income when compulsory acquisition of farm necessitates sale of livestock.*

5A

(1) If it becomes necessary for a farmer to dispose of his livestock because any farm or part of a farm belonging to the farmer has been

compulsorily acquired for resettlement purposes in terms of the Land Acquisition Act [Chapter 20:10], he may elect to allocate the taxable income derived from the disposal of the livestock equally between the year of assessment in which he disposes of the livestock and each of the next 2 following years of assessment, and if he so elects he shall be assessed to tax accordingly:

Provided that if, in the year of assessment in which he so disposes of the livestock, his taxable income derived from the disposal exceeds his total taxable income determined in accordance with this Act before the provisions of this paragraph are applied, he may elect that his total taxable income, determined in accordance with this Act before the provisions of this paragraph are applied, shall be allocated equally between that year of assessment and each of the next 2 following years of assessment, and if he so elects he shall be assessed to tax accordingly.

(2) An election made in terms of subparagraph (1) shall be irrevocable.

(3) For the purposes of subparagraph (1), where a farmer returns grazers to their owner, he shall be deemed to have disposed of them.

[Section 5A inserted by section 22 of Act 18/2000 from the 1st January, 2001]

*Additional allowance in respect of cost of restocking herd depleted by drought*

6

There shall be admissible as a deduction in the determination of the taxable income or the assessed loss of any farmer who raises or possesses livestock in a drought-stricken area or an epidemic area during any year of assessment an allowance of an amount equal to **50%** of the cost to him of any livestock purchased in that year of assessment in order to restock a herd depleted during the period of the drought or the epidemic disease, as the case may be, by death or enforced disposal as a result of the drought or the epidemic disease:

Provided that if the number of livestock so purchased exceeds the difference between the assessed carrying capacity of the land on which the farmer engaged in raising livestock carried on such occupation, as determined by the Department of Agricultural Technical and Extension Services, and the number of livestock on hand, immediately prior to the date of such purchase, then the allowance shall not exceed an amount determined by applying the formula—

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(A/2) x (B/C)

in which—

A represents the cost of the livestock purchased;

B represents such difference as aforesaid;

C represents the number of livestock purchased.

### EIGHTH SCHEDULE

(Section 20)

#### DETERMINATION OF TAXABLE INCOME OR ASSESSED LOSS ATTRIBUTABLE TO THE BUSINESS OF INSURANCE

##### *Interpretation*

1

(1) In this Schedule—

**“assessed loss attributable to the business of insurance”** means any deficiency determined after applying paragraphs 4, 5 and 6 and includes any assessed loss attributable to the business of insurance determined in respect of the previous year of assessment;

**“assets in Zimbabwe”** means such of the assets of an insurer as—

(a) relate to his life insurance business; and

(b) are required to be shown as assets in Zimbabwe in balance sheets furnished by the insurer in terms of any law relating to insurance;

**“insurance business”** means insurance business as defined in any law relating to insurance;

**“insurer”** means a person carrying on insurance business;

**“investments in Zimbabwe”** means such of the securities of an insurer as form part of his assets in Zimbabwe;

**“life insurance business”** means the business of assuming the obligations of an insurer under life policies;

**“life policy”** means a life, industrial, funeral or sinking fund policy as defined in any law relating to insurance;

**“local life insurance business”** means a business of assuming the obligations of an insurer under local life policies;

**“local life policy”** means a life policy which is a local policy as defined in any law relating to insurance;

**“productive assets in Zimbabwe”** means such assets in Zimbabwe of an insurer as are securities are not—

(a) outstanding premiums, cash in hand or in current account; or

(b) ordinary stocks or shares; or

(c) property wholly occupied by the insurer in connection with his local life insurance business; or

(d) such part of any other property of the insurer as, in the opinion of the Commissioner, is occupied by him in connection with his local life insurance business; or

(e) such other assets as, in the opinion of the Commissioner, did no produce investment income during the year of assessment;

**“public securities”** mean—

(a) bonds, stocks, Treasury bills or other like securities issued by the State, a local authority or a statutory corporation; or

(b) loans made to any fund established in terms of the Housing and Building Act [Chapter 22:07];

**“short term insurance business”** means insurance business in Zimbabwe which is not life insurance business;

**“taxable income attributable to the business of insurance”** means any surplus determined after applying paragraphs 4, 5 and 6 and after deducting any assessed loss attributable to the business of insurance determined in respect of the previous year of assessment.

(2) For the purposes of this *Schedule*, the actuarial liabilities of an insurer shall be determined on the basis used by him from time to time to value the liabilities in respect of his life insurance business in Zimbabwe for the purposes of any law relating to insurance.

##### *Returns and liability to tax*

2

Nothing in this Schedule shall be construed as relieving an insurer from—

(a) the obligation of rendering returns of income which is not derived from insurance business; or

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(b) any liability to tax in respect of income referred to in subparagraph (a).

### *Information in returns*

3

An insurer shall specify separately in a return rendered in respect of his insurance business in Zimbabwe the gross income derived by the insurer from—

- (a) local life insurance business; and
- (b) fire insurance business; and
- (c) accident insurance business, including employers' insurance business; and
- (d) marine insurance business; and
- (e) fidelity or guarantee insurance business; and
- (f) all classes of insurance business other than those specified in subparagraphs (a) to (e).

### *Determination of taxable income or assessed loss of an insurer attributable to short term insurance business*

4

The part of the taxable income or the assessed loss of an insurer attributable to short term insurance business shall be determined by charging the losses, expenses and deductions in respect of his short term insurance business which are specified in paragraph 5 against the sum of—

- (a) premiums received in the course of carrying on his short term insurance business; and
- (b) amounts, other than premiums but including commissions in re-insurance, received from the carrying on of his short term insurance business:

Provided that commission on re-insurance shall include all commission on re-insurance applicable to premiums mentioned in subparagraph (a) notwithstanding that any of the operations by which such re-insurance has been effected have been performed outside Zimbabwe; and

- (c) the amount of a reserve allowed as a deduction in the previous year of assessment for unexpired risks at the percentage for such risks adopted by the insurer in relation to his short term insurance operations as a whole:

Provided that the amount to be added in terms of this subparagraph for the first year of assessment under this Act shall be the amount of the reserve allowed as a deduction under the similar provisions of the previous law for the immediately preceding year of assessment; and

- (d) amounts allowed to be deducted under the provisions of subparagraphs (a), (b), (c) and (d) of paragraph 5 or the corresponding provisions of any previous law, whether in the current or any previous year of assessment, which have been recovered or recouped during the year of assessment.

### *Deductions in respect of short term insurance business*

5

The losses, expenses and deductions in respect of short term insurance business of an insurer to which the provisions of paragraph 4 relate shall be—

- (a) premiums paid on re-insurance; and
- (b) actual losses less losses recoverable on re-insurance; and
- (c) expenditure and losses (other than those referred to in subparagraphs (a) and (b)) to the extent to which they are incurred for the purposes of the short term insurance business of the insurer or in the production of the amounts referred to in subparagraph (b) of paragraph 4, except to the extent to which they are expenditure or losses of a capital nature; and
- (d) the allowances and deductions for which provision is made in paragraphs (b), (c), (d), (e), (h), (j), (m), (o), (p), (q), (r), (s), (t), (aa) and (bb) of subsection (2) of section fifteen in so far as such allowances and deductions relate to the short term insurance business of the insurer and in so far as they have not been deducted in terms of Part III of this Act; and
- (e) the amount of a reserve for unexpired risks at the percentage adopted for such risks by the insurer in relation to his insurance operations as a whole which is set aside by the insurer at the end of the year of assessment.

### *Determination of taxable income or assessed loss of an insurer attributable to local life insurance business*

6

The part of the taxable income or the assessed loss of an insurer attributable to his local life

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insurance business shall, subject to the provisions of this *Schedule*, be determined by applying the formula—

$$((A-B)+(C-D)/2) \times (E \times 2)-7/200)-(F-G)-H$$

in which—

A represents the amount of the actuarial liabilities in respect of all local life policies of the insurer which were in force at the end of the previous year of assessment;

B represents the amount of the actuarial liabilities in respect of all local life policies of the insurer entered into in connection with pension and benefit funds and with purchased immediate annuities which were in force at the end of the previous year of assessment;

C represents the amount of the actuarial liabilities in respect of all local life policies of the insurer which were in force at the end of the year of assessment;

D represents the amount of the actuarial liabilities in respect of all local life policies of the insurer entered into in connection with pension and benefit funds and with purchased immediate annuities which were in force at the end of the year of assessment;

E represents the average rate of interest *per centum* derived by the insurer during the year of assessment from his productive assets in Zimbabwe;

F represents the profit arising from the realization by the insurer of his investment in Zimbabwe computed in accordance with paragraph 7;

G represents the loss arising from the realization by the insurer of his investments in Zimbabwe computed in accordance with paragraph 8;

H represents the allowance, if any, to be deducted in accordance with paragraph 9.

#### *Determination of factor F*

7

- (1) The profit arising from the realization by an insurer of his investments in Zimbabwe shall be computed by applying whichever of the following formulae produces the lesser amount—

$$1 \times ((A-B)+(C-D))/(A+C)$$

or

$$1 \times ((A-B)+(C-D))/(J+K)$$

in which—

A, B, C and D are the same factors as those employed in the formula contained in paragraph 6;

I represents the total profit arising during the year of assessment from the realization by the insurer of any of his investments in Zimbabwe, which are not public securities but including such securities issued outside Zimbabwe as have been purchased by the insurer after 31st March, 1964;

J represents the total amount of the assets in Zimbabwe of the insurer at the beginning of the year of assessment;

K represents the total amount of the assets in Zimbabwe of the insurer at the end of the year of assessment.

(2) If—

(a) an insurer's investments in Zimbabwe are transferred to another insurer in the course of or in furtherance of a scheme of reconstruction of a group of insurers or a merger or other business operation which, in the opinion of the Commissioner, is of a similar nature; and

(b) the Commissioner is satisfied that, as a condition of the transfer, the transferee is to assume the liabilities of the transferor in respect of all local life policies issued by the transferor;

the transferor and the transferee may elect that, notwithstanding the terms of any agreement under which the transfer was effected, for the purposes of subparagraph (1) the consideration at which the investments in Zimbabwe are transferred shall be the cost of such investments to the transferor:

Provided that, if the transferee subsequently realises or disposes of any of the investments so transferred, otherwise than in the circumstances referred to in this subparagraph, the cost at which he acquired the investments shall be deemed, for the purpose of determining factor I, to have been the cost at which they were acquired by the first transferor who made an election in terms of this subparagraph.

#### *Determination of factor G*

8

The loss arising from the realization by an insurer of his investments in Zimbabwe shall be computed by applying whichever of the following formulae produces the lesser amount—

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$L \times ((A-B)+(C-D))/(A+C)$

Or

$L \times ((A-B)+(C-D))/(J+K)$

in which—

A, B, C and D are the same factors as those employed in the formula contained in paragraph 6;

J and K are the same factors as those employed in the formulae contained in paragraph 7;

L represents the total loss arising during the year of assessment from the realization by the insurer of any of his investments in Zimbabwe which are not public securities but including such securities issued outside Zimbabwe as have been purchased by the insurer after the 31st March, 1964.

*Determination of factor H*

9

(1) A deduction in respect of the taxable income of an insurer shall, subject to the provisions of this paragraph, be made of an amount computed by applying the formula—

$(M-N) - ((O \times 7)/2000) \times ((A-B)+(C-D)/2$

in which—

A, B, C and D are the same factors as those employed in the formula contained in paragraph 6;

M represents the interest derived by the insurer during the year of assessment from such of his public securities as are assets in Zimbabwe, excluding such securities issued outside Zimbabwe as have been purchased by the insurer after the 31st March, 1964;

N represents the interest, computed in accordance with paragraph 10, derived by the insurer during the year of assessment from such of his public securities as are directly related to that part of his local life insurance business which is attributable to local life policies entered into in connection with pension and benefit funds and with purchased immediate annuities;

O represents the average rate of interest *per centum* derived by the insurer during the year of assessment from such of his public securities as are assets in Zimbabwe excluding any such securities issued outside Zimbabwe as have

been purchased by the insurer after the 31st March, 1964.

(2) No deduction shall be made in terms of this paragraph if, by applying the formula contained in paragraph 6 without the factor H, the insurer would have a loss.

(3) No allowance referred to in subparagraph (1) shall exceed an amount equal to the amount computed by applying the formula contained in paragraph 6 without the factor H.

*Determination of factor N*

10

The interest derived by an insurer during the year of assessment from such of his public securities as are directly related to that part of his local life insurance business which is attributable to local life policies entered into in connection with pension and benefit funds and with purchased immediate annuities shall be computed by applying the formula—

$(M/2) \times ((B/A) \times (D/C))$

in which—

A, B, C and D are the same factors as those employed in the formula contained in paragraph 6;

M is the same factor as is employed in the formula contained in paragraph 9.

### NINTH SCHEDULE

(Section 26)

#### NON-RESIDENT SHAREHOLDERS' TAX

*Interpretation*

1

(1) In this Schedule—

**“company”** means any company which is ordinarily resident in Zimbabwe;

**“dividend”** means any amount which is distributed by a company to its shareholders, but excluding—

(a) any amount so distributed by a building society which is not distributed as a dividend in respect of—

(i) in the case of the Central African Building Society, a paid-up permanent share—class “A”; and

(ii) in the case of the Founders Building Society, an ordinary permanent fully paid-up share; and

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(iii) in the case of the Beverley Building Society, a foundation fully paid-up share or class "A" share;

and

(b) any bonus shares; and

(c) any amount so distributed which, in the opinion of the Commissioner, is a return of the amount received by the company for its shares; and

(d) any amount so distributed by the Industrial Development Corporation of Zimbabwe, Limited, in respect of its issued share capital; and

(e) .....

[repealed by Act 29 of 1998 from 1 January 1999.]

(f) any amount so distributed by the Infrastructure Development Bank of Zimbabwe established by section 3 of the Infrastructure Development Bank of Zimbabwe Act [Chapter 24:14]

[Amended by Act 11 of 2005 from 24<sup>th</sup> March, 2006.]

and

(g) any amount so distributed to the International Finance Corporation referred to in the International Financial Organizations Act [Chapter 22:09]; and

(h) any amount so distributed by a licensed investor having a qualifying degree of export orientation which arises from its operations in a special economic zone; and

[para (h) inserted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January, 2017]

(i) any amount so distributed which, in the opinion of the Commissioner, is a return of an amount contributed to the capital of a private business corporation by a member;

(j) any amount so distributed by an industrial park developer which arises from the operation of his industrial park;

less any income tax which has been deducted from such amount in terms of section twenty-five;

(k) any amount so distributed by the operator of BOT or BOOT project approved in terms of the Zimbabwe Investment and Development Agency Act, [Chapter 14:38] (No. 10 of 2019) which arises from its operations of the project;

[Para (k) inserted by the Finance (No.2) Act 10/2020 backdated w.e.f. the year of assessment beginning on the 1st January, 2017]

**"foreign company"** means a body corporate which is ordinarily resident in a state or territory other than Zimbabwe;

[*BAT & Ors v Commissioner of Taxes 94-HH-001*]

**"person"**, in addition to the meaning given to the term in section two, includes, in relation to income the subject of a trust to which a beneficiary is entitled, the trust;

**"relevant accounting year"** means the year or period whose end coincided with the end of the year of assessment or on the date which was accepted by the Commissioner in terms of subparagraph (ii) or paragraph (b) of subsection (13) of section *thirty-seven*, immediately prior to the date of distribution of a dividend;

**"shareholder"** includes a member of a private business corporation.

(2) For the purposes of this *Schedule*, a dividend shall be deemed to be distributed when it is paid to the shareholder, credited to his account or so dealt with that he becomes entitled to it, whichever occurs first.

(3) For the purposes of this *Schedule*, a company and a foreign company shall be deemed to be ordinarily resident in the state or territory in which its central management and control is situated.

#### *Companies to withhold the tax*

2

(1) Every company which distributes a dividend to—

(a) a person, **other than** a pension fund, a benefit fund or a medical aid society, who is not ordinarily resident in Zimbabwe;

[Amended by s12(a) of the Finance Act (No.2) of 1999 by the deletion of "**company**" from 'other than' w.e.f. the 30<sup>th</sup> December, 1999.]

or

(b) a partnership which is not ordinarily resident in Zimbabwe; or

(c) a foreign company;

[*BAT & Ors v Commissioner of Taxes 94-HH-001*]

or

(d) a foreign life insurance company, in respect of any shareholding determined by the

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Commissioner as having been acquired from funds other than those arising from the life insurance business in Zimbabwe of that foreign life insurance company;

shall withhold non-resident shareholders' tax from that dividend and shall pay the amount withheld to the Commissioner **within 30 days** of the date of distribution or within such further time as the Commissioner may for good cause allow:

Provided that where a company establishes to the satisfaction of the Commissioner that, during the relevant accounting year, its receipts from sources outside Zimbabwe exceeded **15%** of its total receipts, the amount of any dividend shall be deemed to be the amount determined in accordance with the formula—

**(A x B)/C**

in which—

A represents the amount of the dividend;

B represents the aggregate of the receipts of the company from sources within Zimbabwe during the relevant accounting years;

C represents the aggregate of the total receipts of the company during the relevant accounting year.

For the purposes of this proviso—

**"receipts"** means gross receipts on both income and capital account other than sums received by the company for its shares, debentures or similar capitalizations or from borrowings.

(2) Notwithstanding subparagraph (1), where a company distributes a dividend to the Commonwealth Development Corporation the company shall not be required to withhold and pay non-resident shareholders' tax in respect of so much of the dividend as in the opinion of the Commissioner relates to operations of the company which are connected with any project approved for the purposes of this subparagraph by the Minister.

(3) The non-resident shareholders' tax shall be withheld in terms of subparagraph (1) notwithstanding any objection that may be lodged to any decision made by the Commissioner in terms of the proviso to subparagraph (1) or the definition of "dividend" in subparagraph (1) of paragraph 1.

(4) Where non-resident shareholders' tax is withheld in terms of subparagraph (1), the company shall provide the shareholder with a

certificate, in the form approved by the Commissioner, showing—

- (a) the gross amount of the dividend; and
- (b) the amount, if any, of income tax deducted in terms of section **twenty-five**; and
- (c) any reduction made in terms of the proviso to subparagraph (1); and
- (d) the amount of the non-resident shareholders' tax withheld.

(5) Any company which fails to provide a shareholder with a certificate in terms of subparagraph (4), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Provided that, if it is proved that the company's conduct was wilful, it shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (5) inserted by the Criminal Penalties Act No. 22 of 2001, from the 10th September, 2002.]

*Payment of tax where dividend deemed to have been paid in terms of section 26 (2)*

2A

Where a dividend is deemed to have been paid in terms of section **twenty-six(2)**, the company which is deemed to have paid the dividend shall pay non-resident shareholders' tax for that dividend upon written notification by the Commissioner of the tax due for that deemed dividend in accordance with the provisions on self-assessment as provided for in section **thirty-sevenA**.

[para 2A inserted by Act 18/2000 from the 1 January 2001 and amended by the Finance Act No.2 of 2017 gazetted on 23rd March,2017 backdated to the 1st January,2017]

*Agents to withhold the tax not deducted by company*

3

(1) Every **agent** who receives on behalf of a shareholder who is—

- (a) a person, **other than** a pension fund, a benefit fund or a medical aid society, who is not ordinarily resident in Zimbabwe;

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[Amended by s12(b) of the Finance Act (No.2) of 1999 by the deletion of "company" from 'other than' w.e.f. the 30<sup>th</sup> December, 1999.]

or

(b) a partnership which is not ordinarily resident in Zimbabwe; or

(c) a foreign company; or

(d) a foreign life insurance company, in respect of any shareholding determined by the Commissioner as having been acquired from funds other than those arising from the life insurance business in Zimbabwe of that foreign life insurance company;

a dividend from which non-resident shareholders' tax has not been withheld by the company distributing the dividend, shall withhold non-resident shareholders' tax from that dividend and shall pay the amount withheld to the Commissioner within **30** days of the date of receipt of the dividend:

Provided that, subject to the approval of the Commissioner, the proviso to subparagraph (1) of paragraph 2 may be applied to the dividend received by the agent for the purpose of calculating the amount in respect of which the non-resident shareholders' tax shall be withheld in terms of this subparagraph.

(2) Where non-resident shareholders' tax is withheld in terms of subparagraph (1) the agent shall provide the shareholder with a certificate, in the form approved by the Commissioner, showing—

(a) the name of the company distributing the dividend; and

(b) the gross amount of the dividend; and

(c) the amount, if any, of income tax deducted in terms of section *twenty-five*; and

(d) any reduction made in terms of the proviso to subparagraph (1); and

(e) the amount of the non-resident shareholders' tax withheld.

(2a) Any agent who fails to provide a shareholder with a certificate in terms of subparagraph(2), or furnishes an incorrect certificate under that subparagraph shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Provided that, if it is proved that the agent's conduct was wilful, he shall be liable to a fine

not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (4) inserted by the Criminal Penalties Act No. 22 of 2001, from the 10th September, 2002.]

(3) For the purposes of this paragraph, a person shall be deemed to be the agent of a shareholder and to have received a dividend on behalf of that shareholder if—

(a) that person's address appears in the share register of the company as the registered address of the shareholder; and

(b) the warrant or cheque in payment of the dividend distributable to the shareholder is delivered at that person's address:

Provided that any person so deemed to be the agent of a shareholder shall, as regards such shareholder and in respect of any income received by or accruing to or in favour of the shareholder, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Zimbabwe.

*Shareholder to pay the tax not withheld by company or agent*

4

A shareholder to whom a dividend has been distributed from which non-resident shareholders' tax has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section *seventy-seven* shall pay to the Commissioner **within 30 days** of the date of distribution of the dividend the tax that should have been withheld:

Provided that, subject to the approval of the Commissioner, the proviso to subparagraph (1) of paragraph 2 may be applied to the dividend received by the shareholder for the purpose of calculating the amount in respect of which the non-resident shareholders' tax shall be paid in terms of this paragraph.

*Returns to be furnished*

5

Payment of the non-resident shareholders' tax by a company or an agent shall be accompanied by a return in the form prescribed.

*Penalty for non-payment of the tax*

6

(1) Subject to subparagraph (2), a company or an agent in Zimbabwe who fails to withhold or to pay the Commissioner any amount of non-

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resident shareholders' tax as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

(a) the amount of non-resident shareholders' tax which the company or the agent, as the case may be, failed to pay to the Commissioner; and

(b) a further amount equal to **100%** of such non-resident shareholders' tax.

[Penalty increased by Section 61 and the Schedule to the Finance Act 18/2000 w.e.f. the 12th January, 2001]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him non-resident shareholders' tax was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of the amount referred to in subparagraph (b) of subparagraph (1).

(3) If a defaulting company or agent referred to in subparagraph (1) does not pay the penalty in full on the date on which the default has ceased, interest, calculated at a rate to be fixed by the Minister by statutory instrument, shall be payable on so much of the penalty as remains unpaid by the company or agent during the period beginning on the date the default has ceased and ending on the date the penalty is paid in full, and such interest shall be recoverable by the Commissioner by action in any court of competent jurisdiction:

Provided that in special circumstances the Commissioner may extend the time for payment of the penalty without charging interest.

[whether ZIMRA entitled to charge interest - *Air Zimbabwe Corporation & 10 others v ZIMRA* 03-HH-096

Para (3) inserted by Act 8 of 2005 from the **1<sup>st</sup> January 2006**,

See the Income Tax (**Rate of Interest**) Notice 2022

**SI 212 of 2022**

gazetted on the 19<sup>th</sup> December, 2022 backdated to the **1<sup>st</sup> DECEMBER, 2022**]

*Refund of non-resident shareholders' tax*

7

If it is proved to the satisfaction of the Commissioner that any person has been charged with non-resident shareholders' tax—

(a) in excess of the amount properly chargeable in terms of this *Schedule*; or

(b)

[Subparagraph (b) repealed by Act 29 of 1998 from 1 January 1999.]

(c) in respect of any dividend which has subsequently been rescinded with the approval of the Minister in order to comply with any conditions attaching to the payment of any dividend outside Zimbabwe in terms of the law relating to exchange control; or

(d) in respect of any dividend to the extent that it has subsequently been utilized to import essential goods into Zimbabwe in accordance with concessions allowed or permission granted by the Minister in terms of any enactment;

the Commissioner shall authorize a refund in so far as it has been overpaid or is in respect of any such dividend:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim thereof is made **within 6 years** of the date of payment of such tax.

### TENTH SCHEDULE

#### BRANCH PROFITS TAX

[Repealed by Act 29 of 1998 from the 1 January 1999.]

### ELEVENTH SCHEDULE

[SCHEDULE substituted by the Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

(Section 62 (1)(b))

The decisions of the Commissioner to which any person may object under section 62(1)(b) are those made in terms of—

(a) paragraph (c) of the definition of "mining operations" in section 2(1);

[*SZ (Pvt) Ltd v Zimra* 20-HH-142]

(b) paragraphs (a), (d), (e), (f), (g), (j) and (l) of the definition of "gross income" in section 8 (1);

(c) section 12(4);

(d) section 13;

(e) the following provisions of section 15—

(i) paragraphs (d), (e), (f), (g), (i), (k), (p), (v), (w), (x) and (y) of subsection (2);

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(ii) proviso (ii) to subsection (3):

Provided that in any objection made in terms of this subparagraph and in any subsequent appeal lodged in terms of section *sixty-five* against the decision of the Commissioner thereon, the burden of proof that the change in the shareholding of a company was not effected solely or mainly in pursuance of or in connection with any scheme to take advantage of the assessed loss of that company, shall be upon the company claiming such assessed loss as a deduction under section 15(3);

(iii) proviso (iii) to subsection (3);

(f) section 16(2);

(g) section 17;

(h) section 18;

(i) section 19;

(j) section 23;

(k) section 24;

(l) section 37A(12);

(m) section 45(1) and the proviso to section 45(2);

(n) section 46(6) and the proviso to section 46(7);

(o) section 47(1);

(p) section 98:

Provided that in any objection made in terms of this paragraph and in any subsequent appeal lodged in terms of section *sixty-five* against the decision of the Commissioner thereon, the burden of proof that the avoidance or postponement of liability for any tax or the reduction of the amount thereof was neither the sole purpose nor one of the main purposes of any transaction, operation or scheme, shall be upon the taxpayer;

[*SDC Ltd v Zimra* 18-HH-648]

(q) section 98A(3);

(r) section 98B(2)(a);

(s) the following provisions of the **Second Schedule**—

(i) subparagraph (2) of paragraph 2;

(ii) proviso (ii) to paragraph 4;

Provided that in any objection made in terms of this subparagraph and in any subsequent appeal lodged in terms of section *sixty-five*

against the decision of the Commissioner thereon, the burden of proof that any transaction, operation or scheme did not have as its sole purpose or one of its main purposes the avoidance or postponement of liability for or reduction of tax, shall be upon the taxpayer;

(iii) paragraph 7;

(iv) the proviso to paragraph 10(2);

(v) paragraph 11(1);

(vi) paragraph 12(b);

(vii) the proviso to paragraph 12:

Provided that in any objection made in terms of this subparagraph and in any subsequent appeal lodged in terms of section *sixty-five* against the decision of the Commissioner thereon, the burden of proof that any transaction, operation or scheme did not have as its sole purpose or one of its main purposes the avoidance or postponement of liability for or reduction of tax, shall be upon the taxpayer;

(viii) paragraph 13;

(t) the following provisions of the **Fourth Schedule**—

(i) subparagraphs (ii), (iii) and (v) of paragraph (a) of the definition of “industrial building” in paragraph 1;

(ii) the definition of “training equipment” in paragraph 1;

(iii) provisos (ii) and (iii) to paragraph 2;

(iv) paragraph 4;

(v) paragraph 8;

(u) the following provisions of the **Fifth Schedule**—

(i) the definition of “approved estimated life” in paragraph 1;

(ii) the definition of “training equipment” in paragraph 1;

(iii) the definition of “new mine” in paragraph 4(8);

(iv) paragraph 8(3) and (6); (v) paragraph 4(1) (c), (e) and (h) of the **Seventh Schedule**;

(w) paragraph 7(2) of the **Eighth Schedule**;

(x) the following provisions of the **Ninth Schedule**—

(i) the definition of “dividend” in paragraph 1(1);

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- (ii) paragraph 2(1)(d);
  - (iii) the proviso to paragraph 2(1);
  - (iv) paragraph 2(2); (v) paragraph 3(1)(d);
  - (vi) paragraph 6(2);
  - (y) paragraph 11 of the **Thirteenth** Schedule;
- [*M Coy (Pvt) Ltd v Zimra 21-SC-098]*
- (z) the following provisions of the **Fifteenth** Schedule—
    - (i) the definition of “dividend” in paragraph 1(1);
    - (ii) paragraph 6(2);
    - (aa) the provisions of the **Seventeenth** Schedule, where the determination relates to—
      - (i) whether or not any amounts are fees for the purposes of that Schedule; or
      - (ii) whether or not a payee is ordinarily resident in Zimbabwe; or
      - (iii) the waiver or repayment of any amount referred to in paragraph 6(1);
    - (bb) the provisions of the **Eighteenth** Schedule, where the determination relates to—
      - (i) whether or not a remittance was in respect of allowable expenditure; or
      - (ii) whether or not a person or partnership is a non-resident person; or
      - (iii) the waiver or repayment of any amount referred to in paragraph 4(1);
    - (cc) the provisions of the **Nineteenth** Schedule, where the determination relates to—
      - (i) whether or not any amounts are royalties for the purposes of that Schedule; or
      - (ii) whether or not a payee is a non-resident person; or
      - (iii) the waiver or repayment of any amount referred to in paragraph 6(1);
    - (dd) the provisions of the **Twenty-First** Schedule, where the determination relates to—
      - (i) whether or not any amount is interest for the purposes of that Schedule; or

- (ii) whether or not an amount of interest is from a source in Zimbabwe; or
- (iii) the waiver or repayment of any amount referred to in paragraph 6(1).
- (ee) the provisions of the **Twenty-Seventh** Schedule, where the determination relates to—
  - (i) the residence of a member or former member of a mutual society; or
  - (ii) the waiver or repayment of any amount in terms of paragraph 8(3); or
  - (iii) the refund of an overpayment in terms of paragraph 10;
- (ff) the provisions of the **Twenty-Eighth** Schedule, where the determination relates to—
  - (i) whether a person has entered Zimbabwe; or
  - (ii) whether a visitor to Zimbabwe has stayed in Zimbabwe for a longer period than the period for which he or she originally paid carbon tax;
- (gg) the provisions of the **Thirtieth** Schedule, where the determination relates to—
  - (i) whether or not an institution is a financial institution; or
  - (ii) whether or not a financial institution has mediated the transfer of money;
- (hh) the provisions of the **Thirty-First** Schedule, where the determination relates to—
  - (i) whether an oil company and any other person or entity (other than the State) has purchased any petroleum product from NOCZIM or imported any petroleum product; or
  - (ii) whether the required NOCZIM debt redemption and strategic reserve levy has been paid to the Zimbabwe Revenue Authority;
- (jj) the provisions of the **Thirty-Second** Schedule, where the determination relates to—
  - (i) the definition of a “freelance agent; or
  - (ii) whether property or insurance commission tax was paid on commission paid to a freelance agent; or
  - (iii) the refund of a payment in terms of paragraph 6;
- (kk) the provisions of the **Thirty-Third** Schedule, where the determination relates to—
  - (i) whether director’s fees were paid to a director; or

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- (ii) whether tax was withheld and paid by the payer
- (iii) the refund of a payment in terms of paragraph 7;
- (II) the provisions of the **Thirty-Fourth** Schedule, where the determination relates to—
- (i) whether a petroleum operator has imported petroleum products; or
  - (ii) whether petroleum levy was paid; or
  - (iii) the refund of a payment in terms of paragraph 3;
- (mm) the provisions of the **Thirty-Fifth** Schedule, where the determination relates to—
- (i) whether or not the conditions of a controlled transaction are consistent with the arm's length principle; or
  - (ii) whether or not the transaction is comparable to a controlled transaction; or
  - (iii) whether or not the selected transfer pricing method is the most appropriate one; or
  - (iv) whether or not the corresponding adjustment made by the Commissioner to the taxable income of the taxpayer in relation to the domestic transaction is appropriate;
- (nn) the provisions of the **Thirty-Sixth** Schedule, where the determination relates to—
- (i) whether or not the person is a bookmaker; or
  - (ii) whether or not an amount is gross takings for the purposes of the Schedule.

### TWELFTH SCHEDULE

(Sections 64, 65 and 66)

#### RULES FOR REGULATING APPEALS

##### PART I

The rules in this Part shall apply in the determination of appeals under section *sixty-five* or any proceedings incidental thereto or connected therewith—

1

The Special Court shall have all the powers of the High Court as in civil actions, and the general procedure and practice, save as specially provided for by these rules, shall be that prevailing in the High Court, in so far as the same is applicable, and if any matter should arise which is not contemplated by either such procedure and practice or these rules, the

Special Court shall give instructions regarding the course to be pursued, which instructions shall be binding on the parties.

[Compare **Special Case** in Rules 199 and 204 of the High Court Rules RGN 1047/1971 *M (Pvt) Ltd v ZIMRA* 15-HH-665 *SDC Ltd v Commissioner General Zimra* 18-HH-648]

2

In any case in which the Special Court makes an order **as to costs**, the bill of such costs shall be taxed by the registrar of the High Court:

Provided that either the Commissioner or the appellant may apply to the Special Court for reconsideration of any items or portions of items in such bill, and the Special Court's decision as to whether such items or portions of items shall be allowed, reduced or disallowed shall be final.

3

The fees, charges and rates to be allowed in such bill of costs shall be as far as applicable those fixed by the tariff of fees and charges in cases heard before the High Court.

4

The Special Court may enlarge any of the times and periods set out in these rules on good cause being shown or by agreement of the parties.

5

When any taxpayer has given notice of an appeal he shall state the grounds of his appeal and set forth in writing all the facts which he considers material and relevant and the contentions in law based thereon. Such statement shall be called the "**appellant's case**" and shall be lodged with the Commissioner in duplicate **within 60 days** of the date on which notice of appeal is given to the Commissioner.

6

Should the statement of facts in the appellant's case be admitted by the Commissioner to be sufficient and correct, he shall **within 60 days** of the lodging of the appellant's case draw up and submit to the appellant a document embodying the admitted statement of facts, the contentions in law of the appellant and the contentions in law of the Commissioner.

Such document shall be called an "**agreed case**".

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[Compare **Special Case** in Rule 199 and 204 of the High Court Rules RGN 1047/1971 *M (Pvt) Ltd v ZIMRA 15-HH-665*]

7

The appellant and the Commissioner may agree to a statement of facts, each setting out his respective contention in law based on such facts, in the form of an agreed case.

8

The agreed case shall be transmitted to the Special Court by the Commissioner **within 14 days** of submitting the agreed case to the appellant in terms of rule 6, and the arguments on appeal and the decision of the Special Court shall be confined to the facts admitted.

[*M (Pvt) Ltd v ZIMRA 15-HH-665*]

9

Should the Commissioner not admit the statement of facts in the appellant's case to be correct or sufficient, or should he not come to an agreement with the appellant on a statement of facts, he shall **within 60 days** of the receipt of the appellant's case lodge with the taxpayer a statement setting out which of the allegations he admits as correct and which he denies, and shall set out all such other facts which he considers relevant and material to the determination of the appeal. The Commissioner shall also state his contentions in law. Such statement shall be called the "**Commissioner's case**".

10

Should the appellant and the Commissioner not agree in regard to the statement of facts, the Commissioner shall transmit to the Special Court the appellant's case and the Commissioner's case **within 30 days** of the lodgement of the Commissioner's case with the taxpayer.

11

The Commissioner shall transmit to the Special Court, together with the agreed case, or with the appellant's case and the Commissioner's case, a certified copy or extract of the assessment in so far as it relates to the assessment made upon the appellant, and also the notice of objection lodged and the notice of appeal, together with any material correspondence related thereto, unless the same have already been included in the statement of facts. A copy of the decision appealed from and of the reasons for the same shall accompany the documents above mentioned.

12

The Special Court shall, after consultation with the parties, notify them of a day, time and place for the hearing of the appeal, such day being **not less than 30 days** after the receipt of the agreed case or of the appellant's and Commissioner's cases, and shall give notice to the Commissioner of the appointed day.

13

If any facts are in dispute either the appellant or the Commissioner may call such evidence and produce such documents at the hearing of the appeal as may be deemed material and relevant.

14

If neither the appellant nor anyone authorized to appear on his behalf appears before the Special Court at the time and place appointed for the purpose then the Special Court, upon the request of the Commissioner and upon proof that the prescribed notice of the sitting of the Special Court has been given to the appellant, shall confirm the assessment objected to, unless any question of law arises, in which case the Special Court may, before giving its decision, call upon the Commissioner for argument in support of the assessment.

[*Insured v COT 85-ITC-1422*]

### THIRTEENTH SCHEDULE

(Sections 71, 72, and 73)

#### EMPLOYEES' TAX

#### PART I PRELIMINARY

##### *Interpretation*

1

(1) In this Schedule—

“**auction rate**”

[Definition inserted by Act 2 of 2005 from the 1<sup>st</sup> September, 2005, and repealed by Act 8 of 2007 w.e.f. the period beginning on the 1<sup>st</sup> September, 2007 and ending on the 31<sup>st</sup> December, 2007 of the year of assessment beginning on the 1<sup>st</sup> January, 2007.]

“**employee**” means an individual to whom remuneration is paid or payable at an annual rate that is more than the amount specified in subparagraph (i) of paragraph (a) of subsection (2) of section 14 of the Finance Act [Chapter

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23:04] in respect of the year of assessment concerned;

**“employees’ tax”** means any amount required to be withheld by an employer in terms of paragraph 3;

**“employees’ tax certificate”** means a certificate required to be issued by an employer in terms of paragraph 14;

**“employer”**—

- (a) means any person (excluding any person not acting as a principal or any person or class of persons specified by the Commissioner, but including any person acting in a fiduciary capacity or in his capacity as a trustee of an insolvent or deceased estate or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any employee any amount by way of remuneration, and any person responsible for the payment of any amount by way of remuneration to any employee under any law or out of public funds (including the funds of any statutory corporation or undertaking of the State) or out of moneys appropriated by Act of Parliament;

and

(b) includes a **representative** of the employer;

**“Exchange Control (Exchange Rate) Direction”** . . . . .

[Definition inserted by Act 8 of 2007 w.e.f. 1<sup>st</sup> September, 2007 and ending on the 31<sup>st</sup> December, 2007 of the year of assessment beginning on the 1<sup>st</sup> January, 2007; and repealed by Act 3/2009 w.e.f. the year of assessment beginning on the 1<sup>st</sup>. January, 2009.]

**“Exchange Control (General) Order”** means the Exchange Control (General) Order, 1996, published in *Statutory Instrument 110 of 1996*, or any other enactment that may be substituted for the same;

[Inserted by Act 2 of 2005 with effect from the 1<sup>st</sup> September, 2005]

**“non-resident employer”** means—

- (a) an individual who is not ordinarily resident in Zimbabwe; or

(b) a company, partnership or organisation which does not have its head office or principal place of business within Zimbabwe;

[Inserted by Act 29 of 2004 from 1<sup>st</sup> January, 2005.]

**“principal”**, in relation to an employer who or which is a subordinate person, means any company, partnership, organisation or other person referred to in paragraph (a), (b) or (c) of the definition of “subordinate person”;

[Inserted by Act 8/2011 w.e.f. the 16th September, 2011]

**“remuneration”** means any amount of income which is paid or payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance, stipend or commutation of a pension or an annuity, whether in cash or otherwise and whether or not in respect of services rendered, including any amount referred to in paragraph (a), (b), (c) or (f) of the definition of “gross income” in subsection (1) of section eight, but not including—

- (a) any amount paid or payable to any person in respect of services rendered or to be rendered by that person in the course of any trade conducted by him independently of the person by whom such amount is paid or payable:

Provided that where any such amount is paid or payable to—

(i) an **insurance agent** in respect of any act done by him or her on behalf of a person who is a registered insurer in terms of the Insurance Act [Chapter 24:07] in relation to the initiating of insurance business, the receiving of proposals for insurance, the issuing of policies or the collection of premia; or

(ii) a person in respect of any act done by him or her on behalf of a person who is a registered **estate agent** in terms of the Estate Agents Act [Chapter 27:17] in relation to introducing parties to the sale or lease of immovable property to each other or negotiating or concluding such sale or lease;

such amounts shall constitute remuneration for the purposes of this *Schedule*;

[Proviso substituted by Act 29 of 2004 from 1st January, 2005.]

or

(b) any amount of non-executive **director’s fees** paid or payable to any individual by any

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company in respect of services rendered or to be rendered by such individual to such company; or

[paras (b) and (c) substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2022.]

(c) any amount of fees paid or payable to the chairman or a member of a board of any **statutory corporation** in respect of services rendered or to be rendered by such chairman or member on such board; or

(d) any amount exempt from income tax by virtue of the *Third Schedule*; or

(e) any amount paid or payable out of moneys of a partnership to a person who is a member of that partnership; or

(f) any amount paid or payable to an employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment; or

(g) any amount which is paid or payable to a person by way of a commutation of a pension or annuity and which does not form part of that person's gross income as defined in section *eight*; or

(h)

[para (h) substituted by Act 2 of 2005 from the 1<sup>st</sup> September, 2005; then repealed by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009.]

(i) the **COVID-19 Civil Servants' allowance**, that is to say—

(i) that part of the salary of a civil servant or of a civil service pension that is denominated in United States dollars;

or

(ii) an allowance of the same amount and for the same purpose as that paid to civil servants referred to in paragraph (a), that was paid by the State to employees who are not civil servants.

(j) fees received by a **non-executive director** from which tax is withheld in terms of the *Thirty-Third Schedule*;

[paras (j) and (k) substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2022.]

(k) any amount which the Commissioner-General directs or prescribes shall not be remuneration for the purposes of this *Schedule*; “**remuneration liable to employees' tax**” means so much of the

remuneration payable to an employee as remains after the deduction of any amount in respect of ordinary contributions as defined in paragraph 1 of the *Sixth Schedule* excluding contributions to a benefit fund;

“**remuneration paid in foreign currency**” means remuneration paid in United States dollars or Euros or in any currency denominated under the Exchange Control (General) Order;

[Inserted by Act 2 of 2005 with effect from the 1<sup>st</sup> September, 2005]

“**representative of the employer**” means—

(a) in the case of any company, the public officer of the company or any other officer of the company who controls the payment of remuneration and who has been appointed by the company and approved by the Commissioner or, in the event of the company being placed in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;

(b) in the case of an association of persons, other than a company, a member of the association of persons appointed by its governing body;

(c) in the case of a local or like authority, an officer of the local or like authority appointed by the local or like authority;

(d) in the case of a person under legal disability, the trustee;

(e) in the case of an employer who is not ordinarily resident in Zimbabwe, any agent of such employer who is authorized to pay remuneration on behalf of such employer;

(f) in the case of an individual, other than a person referred to in subparagraph (a), (b), (c), (d) or (e), that individual or any other individual authorized to pay remuneration on behalf of that individual;

but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this *Schedule*.

“**subordinate person**”, in relation to any company, partnership, organisation or other person, means—

(a) a company that is the subsidiary of another company, as defined in section 186 of Companies and Other Business Entities Act [Chapter 24:31]; or

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(b) a branch or division of a company, partnership or organisation which has its head office or principal place of business within Zimbabwe; or

(c) any person whose management or policies are directly or indirectly controlled by any company, partnership, organisation or other person.

[Definition inserted by Act 8/2011 w.e.f. the 16th September, 2011]

(2) Any trustee shall, as regards any amounts paid or payable by the deceased prior to his death or by the person under a legal disability prior to his becoming subject to such legal disability by way of remuneration to any employee, be subject, in his representative capacity, in all respects to the same duties, responsibilities and liabilities under this *Schedule* as if the amounts had been paid or payable by him.

## PART II RIGHTS AND DUTIES OF EMPLOYERS

### Registration of employers

2

(1) *Subject to paragraph 2A, every person who becomes an employer shall apply to the Commissioner in such form as may be prescribed for registration as an employer, within 14 days of his becoming an employer.*

[Amended by Act 8/2011- corrected by Act 9 of 2011- w.e.f. the **16th September, 2011**, by inserting the words in italics.]

(2) Every person who has registered as an employer under subparagraph (1) shall, **within 14 days** after changing his address or ceasing to be an employer, notify the Commissioner in such manner and form as may be prescribed of his new address or of the fact of his having ceased to be an employer, as the case may be.

(3) The Commissioner may, at such times as he may decide, issue public notices drawing attention to the provisions of this paragraph.

(4) Every non-resident employer shall appoint a resident representative to secure registration on its behalf under this paragraph and otherwise to act as its agent for all purposes of this *Schedule*.

(5) A non-resident employer shall give notice in writing to the Commissioner-General of the appointment of a resident representative under paragraph (4).

(6) If a non-resident employer fails, when required in writing to do so by the Commissioner-General, to furnish the Commissioner-General with particulars of the appointment of a resident representative under paragraph (4) within such period as the Commissioner-General shall specify, the Commissioner-General may—

(a) appoint a person to be the non-resident employer's resident representative, and such person shall secure registration on the employer's behalf under this paragraph and otherwise act as the employer's agent for all purposes of this *Schedule*;

and additionally or alternatively,

(b) cause any work permit held by the employer or any director or employee of the employer to be forthwith cancelled upon the written request of the Commissioner-General to the Chief Immigration Officer.

[Subpara (6) substituted by Act 2 of 2005 w.e.f. the 1<sup>st</sup> September, 2005]

### *Principals to register as employers in lieu of subordinate persons*

2A

(1) With effect from the \*date of commencement of the Finance Act, 2011, where an employer is a subordinate person, the principal of that employer must, for the purposes of this Schedule, register as the employer instead of the first-mentioned employer.

(2) Every principal shall, on or before the 1<sup>st</sup> January, 2012, apply to the Commissioner in such form as may be prescribed for registration as the employer in place of every entity—

(a) that is its subordinate person; and

(b) which, on the \*date of commencement of the Finance Act, 2011, is registered as an employer.

[Paragraph inserted by Act 8/2011 whose \*date of commencement is the **16th September, 2011**]

### *Employers to withhold tax*

3

(1) Every employer (whether or not he has registered as an employer in terms of subparagraph (1) of paragraph 2) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, withhold from that amount by way of

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employees' tax an amount which shall be determined in accordance with such tax deduction tables as may be prescribed or as is provided in subparagraph (2), (3) or (4) of this paragraph or in subparagraph (2) of paragraph 20, whichever is applicable, in respect of the liability for income tax of that employee, and shall pay the amount so withheld to the Commissioner on the **10th day** of the month following, or within such longer period **not exceeding 7 days** as the Commissioner may for good cause allow, after the end of the month during which the amount was withheld or, in the case of a person who ceases to be an employer before the end of such month, on the following day after the day on which he or she ceases to be an employer.

[Amended by Act 3/2009 w.e.f. the **1<sup>st</sup> February, 2009** in the year of assessment beginning on the **1<sup>st</sup> January, 2009**.  
With effect from the **1<sup>st</sup> September, 2010** the deadlines were amended by Act 3 of 2010 gazetted late on the **20th September, 2010**. See the Income Tax (**Rate of Interest**) Notice 2022 **SI 212 of 2022** gazetted on the **19<sup>th</sup> December, 2022** backdated to the **1<sup>st</sup> DECEMBER, 2022**]

(1a) ...

[repealed by Act 3/2009 w.e.f. the **1<sup>st</sup> February, 2009** in the year of assessment beginning on the **1<sup>st</sup> January, 2009**.]

(1b) Where part of the remuneration from which employees' tax is required to be withheld under subparagraph (1) is remuneration paid **in foreign currency**, the employer shall determine the amount of employees' tax to be withheld from that part of the remuneration that is paid in foreign currency separately from the other remuneration, and shall pay to the Commissioner-General within the period specified in subparagraph (1) the appropriate amounts of employees' tax.

[Subparas (1a) and (1b) inserted by Act 2 of 2005 from **1<sup>st</sup> September, 2005**.]

(2) The amount to be withheld in respect of employees' tax from any payment to which paragraph (c) of the definition of "gross income" in subsection (1) of section *eight* apply shall be ascertained by the employer from the Commissioner before making such payment, and the Commissioner's determination of the amount to be so withheld shall be final.

(3) If an employer has not at any time received any tax code declaration from an employee as required by subparagraph (1) or (3) of paragraph 16 and has not in respect of that employee received a directive from the

Commissioner as provided in subparagraph (2) of paragraph 16 or subparagraph (2) of paragraph 20 he shall, until such declaration or directive is received, withhold employee's tax in accordance with the prescribed tax deduction tables.

(4) An employer shall, at the request of an employee in the manner and form prescribed, withhold from any amount of remuneration an amount by way of employees' tax greater than that required to be withheld in terms of subparagraph (1), (1a) or (1b) as read with subparagraph (5), (6), (7), (8), (9), (10), (11) or (12), as the case may be, and shall pay such amount to the Commissioner, and the provisions of this *Schedule* relating to employees' tax shall apply, *mutatis mutandis*, in respect of such amount:

[Subpara (4) amended by Act 2 of 2005 from **1<sup>st</sup> September, 2005**.]

Provided that the Commissioner, having regard to the circumstances of the case, may direct that the amount withheld shall be reduced to an amount not being less than that required to be withheld in terms of subparagraph (1) as read with subparagraph (5), (6), (7), (8), (9), (10), (11) or (12), as the case may be.

(5) For the year of assessment beginning on the **1<sup>st</sup> April, 1979**, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deductible tables, the said subparagraph shall apply as if it required the employer to withhold, in respect of the period beginning on the **1<sup>st</sup> October, 1979**, and ending on the **31<sup>st</sup> March, 1980**, in addition to any amount so determined, a sum equal to **10%** of that amount.

(6) For the year of assessment beginning on the **1<sup>st</sup> April, 1980**, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold, in addition to any amount so determined, a sum equal to **10%** of that amount.

(7) For the years of assessment beginning on the **1<sup>st</sup> April, 1981**, and the **1<sup>st</sup> April, 1982**, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold, in addition to any amount so

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determined, a sum equal to **15%** of that amount.

(8) For the year of assessment beginning on the **1st April, 1983**, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold—

(a) in respect of the period beginning on the **1st April, 1983**, and ending on the **30th September, 1983**, in addition to any amount so determined, a sum equal to **15%** of that amount; and

(b) in respect of the period beginning on the **1st October, 1983**, and ending on the **31st March, 1984**, in addition to any amount so determined, a sum equal to **25%** of that amount.

(9) For the year of assessment beginning on the **1st April, 1984**, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold in respect of the period beginning on the **1st October, 1984**, and ending on the **31st March, 1985**, a sum equal to **5%** of the amount so determined, which sum shall be in addition to that amount and to any amount to be withheld in terms of subparagraph (10).

(10) For the terms of assessment beginning on the **1st April, 1985, 1986 and 1987**, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction table, the said subparagraph shall apply as if it required the employer to withhold, in addition to any amount so determined, a sum equal to **15%** of that amount.

(11) For the year of assessment beginning on the **1st April, 1985**, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold in respect of the period beginning on the **1st April, 1985**, and ending on the **30th September, 1985**, a sum equal to **5%** of the amount so determined, which sum shall be in addition to that amount and to any amount to be withheld in terms of subparagraph (10).

(12) For the year of assessment beginning on the **1st April, 1992**, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold, in respect of the period beginning on the **1st October, 1992**, and ending on the **31st March, 1993**, in addition to any amount so determined, a sum equal to **10%** of that amount.

(13) For the years of assessment beginning on the **1st April, 1995**, and the **1st April, 1996** where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said paragraph shall apply as if it required the employer to withhold, in addition to any amount so determined, a sum equal to **5%** of that amount.

*Employers to keep records and to furnish returns*

4

(1) Every employer shall, in respect of each employee, maintain a record showing the amounts of remuneration paid or payable by him to such employee and the amount of employee's tax withheld from each such amount of remuneration in respect of the year of assessment, and such record shall be retained by the employer and shall be available for scrutiny by the Commissioner.

(2) Every employer shall, in respect of the year of assessment concerned, furnish to the Commissioner—

(a) returns in such form as may be prescribed showing—

(i) the name and address of each employee to whom he paid or was liable to pay remuneration during such year; and

(ii) the total remuneration paid or payable to each employee in respect of such year; and

(iii) the total amount of employees' tax withheld by him from such remuneration in respect of such year;

and

(b) a copy of each employee's tax certificate in respect of such year delivered by such employer under paragraph 14.

(3) The returns referred to in subparagraph (2) shall be submitted to the Commissioner **within 30 days**, or within such longer period as

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the Commissioner may approve, after the end of the year of assessment:

Provided that if the employer ceases to carry on any business or other undertaking in respect of which he has paid or become liable to pay remuneration or otherwise ceases to be an employer, the returns shall be in respect of the period from the 1st April immediately preceding the date on which he ceased to carry on such business or other undertaking or otherwise ceased to be an employer, as the case may be, to the date of such cessation and shall be furnished **within 14 days** of such cessation or within such longer period as the Commissioner may approve.

#### *Accrual of amounts withheld*

5

An amount which has been withheld by way of employees' tax in terms of this Part by an employer from the remuneration paid or payable to an employee shall be deemed, for the purposes of this Act, to have accrued to the employee on the date such amount was withheld.

#### *No actions to be maintained in connection with the withholding of amounts in terms of this Part*

6

No action shall lie against an employer who withholds any amount of employees' tax in compliance or intended compliance with this Part by reason only of his withholding of that amount.

#### *Agreement to avoid the provisions of this Part*

7

An agreement between an employer and an employee whereby the employer undertakes not to withhold employees' tax shall be void.

#### *Paragraph 3 to be in derogation of any other law, instrument or agreement*

8

(1) The provisions of paragraph 3 shall be in derogation of any law, instrument or agreement which empowers, requires, authorizes, prohibits or regulates the deduction, withholding, reduction or attachment of any amount payable by way of remuneration.

(2) A law, instrument or agreement referred to in subparagraph (1) shall be deemed for all purposes to apply only to so much of any remuneration payable to an employee as

remains after the withholding of any employees' tax.

#### *Remuneration payable to deceased estates*

9

Immediately upon the death of an employee the employer shall apply to the Commissioner for a directive in respect of the amount of employees' tax to be withheld from remuneration payable by the employer to the deceased estate of the employee or to any other person, and no such remuneration shall be paid by the employer to the deceased estate of the employee or to such other person otherwise than in accordance with such directive.

#### *Failure or refusal of employers to withhold or to remit employee' tax*

10

(1) Subject to the provisions of paragraph 11, an employer who fails to withhold or to pay to the Commissioner any amount of employees' tax as provided in paragraph 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made if the employees' tax had been withheld in terms of paragraph 3, of—

(a) the amount of employees' tax which he failed to withhold or to pay to the Commissioner; and

(b) a further amount equal to such employees' tax.

[*The Endeavour Foundation and UDC Ltd v COT 95-SC-095*]

(2) The amounts for the payment of which an employer is liable in terms of subparagraph (1)—

(a) shall be debts due by the employer to the State; and

(b) may be sued for and recovered by action by the Commissioner in any court of competent jurisdiction.

(3) For the purposes of this paragraph the Commissioner may make an assessment in which the amount of employees' tax for which an employer is personally liable by virtue of subparagraph (1) is estimated, and section forty-five shall, with necessary modifications, apply to such assessment.

[Inserted by Act 10/2003 from the 1st January , 2004]

(4)

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[Inserted by Act 8 of 2005 from the 1st January, 2006. Penalty repealed by the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the **1st February 2009**.]

*Remission of penalties for failure to withhold or to remit employees' tax*

11

The Commissioner may, if he is satisfied that a failure to withhold or to pay to him employees' tax was not due to an intent to evade the provisions of this *Schedule*, waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of any amount referred to in subparagraph (b) of subparagraph (1) of paragraph 10.

*Recovery by employers of employees' tax not withheld or remitted*

12

(1) Where an employer has failed to withhold an amount of employees' tax in terms of paragraph 3 and subsequently pays that amount in terms of paragraph 10, he may recover that amount from the employee from whose remuneration that amount should have been withheld.

(2) An amount recoverable by an employer in terms of subparagraph (1) shall be a debt due by the employee to the employer and may be recovered from the remuneration liable to employees' tax payable by the employer in the future in accordance with the direction of the Commissioner.

(3) Until such time as an employee pays to his employer any amount which is due to the employer in terms of this paragraph, such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

(4) An employer shall not be entitled to recover from an employee any amount referred to in subparagraph (b) of subparagraph (1) of paragraph 10.

*Insolvency of employers*

13

(1) A claim by the Commissioner against an estate of an employer under sequestration for the payment of an amount referred to in subparagraph (a) of subparagraph (1) of paragraph 10 shall have the same priority as is accorded to a claim for any tax due and payable by the insolvent otherwise than in terms of section *forty-six*.

(2) A claim by the Commissioner against an estate of an employer under sequestration for the payment for an amount referred to in subparagraph (b) of subparagraph (1) of paragraph 10 shall have the same priority as is accorded to a claim for any tax due and payable by the insolvent in terms of section *forty-six*.

*Furnishing of employees' tax certificates by employer*

14

(1) Subject to paragraphs 10 and 18, every employer who withholds any amount by way of employees' tax as required by paragraph 3 shall, within the time allowed by subparagraph (3), deliver to each employee or former employee or the trustee of such employee or former employee to whom remuneration has been paid or becomes payable by the employer during the year of assessment in question, an employees' tax certificate in such form as the Commissioner may prescribe or approve.

(2) The employees' tax certificate shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax withheld by such employer from such remuneration during the said year, excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in subparagraph (9) of paragraph 15.

(3) The employees' tax certificate referred to in subparagraph (1) shall be delivered—

(a) if the employer who is required to deliver the certificate has not ceased to be an employer in relation to the employee concerned, **within 30 days** after the end of the period to which the certificate relates; or

(b) if the employer has ceased to be an employer in relation to the employee concerned but has continued to be an employer in relation to other employees, **within 30 days** of the date on which he has so ceased; or

(c) if the employer has ceased to be an employer, **within 14 days** of the date on which he has so ceased; or

(d) at any other time specified by the Commissioner.

(4) A copy of the employees' tax certificate referred to in subparagraphs (a) and (b) of

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subparagraph (3) shall be furnished by the employer to the Commissioner **within 30 days** of the end of the year of assessment in question and a copy of the employees' tax certificate referred to in subparagraph (c) of subparagraph (3) shall be furnished by the employer to the Commissioner **within 14 days** of the date on which the employer ceased to be an employer.

(5) For the purposes of subparagraph (3), an employer shall, if the Commissioner having regard to the circumstances of the case so directs, be deemed not to have ceased to be an employer in relation to any of his casual employees who are likely from time to time to be re-employed by such employer.

#### *Employees' tax certificate forms*

15

(1) Employees' tax certificate forms and duplicate employees' tax certificate forms shall be produced by the employer in such form as the Commissioner may prescribe or approve for general use.

(2) In the case of an employer who has a **mechanised accounting system** the Commissioner may, subject to such conditions as he or she may impose, approve the use by such employer of employee's tax certificates in a form other than the form prescribed for general use, and if such employer fails to comply with the conditions imposed by the Commissioner, the Commissioner may withdraw his or her consent for the use of such certificates and the employer shall forthwith or from any date specified by the Commissioner cease to use such certificates and shall, within such period as the Commissioner may prescribe comply with any condition which may have been imposed by the Commissioner providing for the surrender to the Commissioner of all unused stocks of such certificates upon the employer so ceased to use such certificates.

[substituted by Act 10/2003 from the 1st January, 2004.]

(3) Subject to subparagraph (4), an employer shall not use for the purpose of furnishing an employee with an employees' tax certificate or duplicate employees' tax certificate any form other than the appropriate form supplied to him by the Commissioner.

(4) In the case of an employer who has a **mechanized accounting system** the Commissioner may, subject to such conditions as he may impose, approve the use by such employer of employee's tax certificates in a

form other than the form prescribed for general use and if such employer fails to comply with the conditions imposed by the Commissioner, the Commissioner may withdraw his consent for the use of such certificates and the employer shall forthwith or from any date specified by the Commissioner cease to use such certificates and shall, within such period as the Commissioner may prescribe comply with any condition which may have been imposed by the Commissioner providing for the surrender to the Commissioner of all unused stocks of such certificates upon the employer so ceased to use such certificates.

(5) An employer may, at the request of the employee or former employee, issue a duplicate employees' tax certificate but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate.

(6) Unless authorized thereto by the Commissioner, no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in subparagraph (5).

(7) Every person who ceases to be an employer shall, unless the Commissioner otherwise directs, **within 14 days** of so ceasing, surrender to the Commissioner all unused employees' tax certificate form and duplicate employees' tax certificate forms supplied for the purposes of performing his duties as an employer under this Part.

(8) For the purposes of this Schedule, any employees' tax certificate on which appears the name or any trade name of any employer shall, until the contrary is proved, be deemed to have been issued by such employer if such certificate is in a form prescribed by the Commissioner for general use and was supplied by the Commissioner to such employer for use by him or is in a form approved by the Commissioner under subparagraph (4) for use by such employer.

(9) An employer shall not destroy but shall, until the Commissioner requires it to be surrendered to him, retain—

(a) in the case of a completed employees' tax certificate, any such certificate or copy thereof which has not been furnished to the Commissioner or an employee or former employee in terms of this *Schedule*; and

(b) any cancelled or spoiled employees' tax certificate and any copy thereof;

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Provided that if at the **expiry of 6 years** from the end of the year of assessment in which any such certificate was completed, cancelled or spoiled, as the case may be, the Commissioner has not required it to be surrendered to him, the employer may destroy any such certificate and any such copy.

### PART III RIGHTS AND DUTIES OF EMPLOYEES

#### *Statements to be furnished by employees*

16

(1) Subject to subparagraph (2), every individual who becomes an employee shall, **within 7 days** after he becomes an employee, furnish his employer with a tax code declaration in such form and in such manner as may be prescribed, and every individual who is an employee shall furnish a fresh declaration **within 7 days** after the date on which any change in the particulars previously furnished, whether under this Act or the previous law, occurs or, if he falls within the terms of the public notice referred to in subparagraph (3), within 7 days after the date of publication in the *Gazette* of such notice:

Provided that until a fresh declaration is received or a directive is received from the Commissioner in terms of subparagraph (2) of paragraph 20 the employer shall regard the latest declaration submitted to him by the employee concerned as correct and shall continue to determine the amounts to be withheld by way of employees' tax in accordance with the particulars disclosed therein.

(2) If for any reason an employee does not wish to furnish the declaration referred to in subparagraph (1), he may instead apply to the Commissioner in such form as may be prescribed for the issue of a directive to his employer and in such case the Commissioner may issue a directive to the employer as provided in subparagraph (2) of paragraph 20.

(3) Subject to subparagraph (2) and notwithstanding any tax code declaration furnished in terms of subparagraph (1), the Commissioner may, by notice in the *Gazette*, require every person who falls within a classification specified in that notice to furnish his employer with a fresh declaration **within 7 days** after the date of publication of that notice.

#### *Employees to furnish employees' tax certificate to the commissioner*

17

(1) An employees' tax certificate furnished in terms of paragraph 14 shall be forwarded with any return for assessment required to be furnished by or on behalf of the employee in terms of Part V of this Act.

(2) No employees' tax withheld from the remuneration paid or payable to an employee in respect of any year of assessment shall be credited in terms of subparagraph (1) of paragraph 18 in payment of any tax payable by the employee in respect of that year unless an employees' tax certificate or a duplicate employees' tax certificate is forwarded to the Commissioner.

(3) It shall be the duty of any employee or former employee who has not received an employee's tax certificate within the time allowed by paragraph 14 forthwith to apply to the employer for such certificate.

### PART IV GENERAL PROVISIONS

#### *Crediting of employees' tax*

18

(1) On the determination of the income tax payable by an employee in respect of any year of assessment—

(a) the Commissioner shall—

(i) credit the amount of the employees' tax which is shown in the employees' tax certificate or in the duplicate employees' tax certificate as withheld in payment successively of—

A. the income tax payable by the employee in respect of that year; and

B. any other tax or amount due and payable to the Commissioner by the employee;

(ii) if the employee's tax withheld exceeds the amount of the employee's liability for income tax by **\$250,00** or more, refund the whole of such excess to the employee;

[Amended into US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009 and further amended redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(b) if the amount of the employee's liability for income tax exceeds by **\$20, 000** or more the sum of employees' tax withheld, the whole of

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such excess shall be payable by the employee to the Commissioner.

[Amended into US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; further amended redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(2) The burden of proof that any amount of employees' tax has been withheld by his employer shall be upon the employee and any employees' tax certificate shall be *prima facie* evidence that the amount of employees' tax reflected therein has been withheld by the employer.

(3) If the Commissioner is satisfied that the amount or any portion of the amount of employees' tax shown in any employees' tax certificate has not been withheld by the employer and the amount of the employees' tax shown in the employees' tax certificate has been applied as provided in subparagraph (1), the employer and the employee shall be jointly and severally liable to pay to the Commissioner the amount which should not have been so applied and such amount shall be recoverable under this Act as if it were a tax.

(4) An employer who has under subparagraph (3) paid to the Commissioner an amount which has, but should not have been, applied under subparagraph (1), may, if the amount was shown or included in the certificate because of a *bona fide* error, recover the amount so paid from the employee concerned, and in that case subparagraph (2) of paragraph 12 shall apply, *mutatis mutandis*.

(5) No employees' tax certificate shall be issued by the employer in respect of any amount recovered by him from the employee in terms of subparagraph (4), nor shall any such amount be included in any return rendered in terms of subparagraph (2) of paragraph 4.

(6) If the Commissioner is satisfied that the employee to whom an employees' tax certificate refers was directly or indirectly responsible for an incorrect amount being shown in such certificate, he shall absolve the employer from the liability imposed upon him by subparagraph (3), and in that case the employee shall be solely liable under that subparagraph.

#### Refunds

19

No refund of any amount of employees' tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 18.

#### *Directives of the Commissioner*

20

(1) In giving a directive or prescribing any person, matter or thing for the purposes of this *Schedule* the Commissioner may make different provision for different classes of employers, employees and other persons and for different classes of remuneration.

(2) In order to alleviate hardship to an employee due to illness or other circumstances or to correct any error in regard to the calculation of employees' tax, whether arising from the furnishing to an employer by an employee of a false or incorrect tax code declaration or otherwise, or where the employee has, in terms of subparagraph (2) of paragraph 16, applied to the Commissioner for the issue of a directive to his employer to enable the employer to withhold the correct amount by way of employees' tax, the Commissioner may, having regard to the circumstances of the case, issue a directive to the employer concerned authorizing the employer to refrain from withholding any amount under paragraph 3 by way of employees' tax from any remuneration due to the employee or to withhold by way of employees' tax a specified amount or an amount to be determined in accordance with a specified rate or scale, and the employer shall comply with such directive.

#### *Directives regarding final deduction system*

20A

(1) The Commissioner may direct any employer to withhold employees' tax from the remuneration of his employees in such a way as to ensure that the amount withheld in any year of assessment is as nearly as possible the same as the income tax payable by the employees concerned for that year of assessment.

(2) A directive in terms of subparagraph (1) may provide for—

(a) adjustments of the amount of employees' tax to be withheld from the remuneration of any employees to take account of—

(i) any credits referred to in paragraph (c) of section seven to which the employees may be entitled; and

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(ii) any circumstances of the employees, including any additional income accruing to them, which affects their liability to income tax;

and

(iii) any alteration of the level of taxable income of employees, the rates of income tax with which employees are chargeable and the credits to which employees may be entitled, made by the charging Act during the year of assessment;

[subpara (2)(a)(iii) inserted by Act 18 of 2004 from the 1st January, 2004.]

(b) refunds by the employer of amounts withheld by way of employees' tax;

(c) information to be furnished to the employer by his employees in regard to their liability for income tax.

(3) Directives in terms of subparagraph (1) shall have effect notwithstanding any other provision of this Schedule.

(4) An employer to whom a directive has been issued in terms of subparagraph (1) shall ensure that a document setting out the terms of the directive is available for inspection at all reasonable times by any employee who may be affected by it.

(5) The Commissioner shall not be liable to make any refund of income tax overpaid on account of any failure by an employer to make an appropriate adjustment of the amounts of employees' tax to be withheld or refunded in accordance with a directive issued in terms of subparagraph (1).

[subpara (5) inserted by Act 18 of 2004 from 1 January, 2004.]

#### *Application of this Schedule to remuneration payable by the State*

21

This Schedule shall, subject to such modifications and exceptions as the Commissioner may direct or prescribe, apply in relation to remuneration liable to employees' tax paid by the State and any individual to whom it is paid and to any officer responsible for its payment as if that officer were a person liable to pay remuneration or any employer, as the case may be.

#### *Commissioner and Chief Immigration Officer to share data*

21A

[Paragraph 21A inserted by the section 15 of Finance Act 8/2022 gazetted on the 24th October, 2022.]

(1) In this paragraph—

**"non-resident"**, in relation to an employee, means a person who is not a citizen or permanent resident of Zimbabwe, who comes or has come to take up employment in Zimbabwe

(2) For all purposes in connection with this *Schedule*, the Commissioner-General may seek and be given within the time specified (or within such extension of that time as the Chief Immigration Officer may request)—

(a) all particulars of the immigration status of any named employers non-resident employee;

(b) any data available to the Chief Immigration Officer concerning the number of work permits issued over any specified period to persons employed by named employers or any class of employers;

(c) such other particulars in the possession of the Chief Immigration Officer as the Commissioner-General may request, if it is reasonable pertinent to the particulars or data furnished under paragraph (a) or (b).

#### *Offences and penalties*

22

(1) Any person who—

(a) pays or becomes liable to pay any amount by way of remuneration and who fails to withhold therefrom any amount of employees' tax or to pay such amount to the Commissioner as is provided in paragraph 3; or

(b) uses or applies any amount withheld by him by way of employees' tax for purposes other than the payment of such amount to the Commissioner; or

(c) makes or issues or causes or allows to be made or issued or knowingly possesses or uses or causes or allows to be used any employees' tax certificate which is false; or

(d) without just cause shown by him, fails to comply with any directive issued to him by the Commissioner in terms of subparagraph (2) of paragraph 20; or

[Amended by Act No.27 of 2001 from the 1st January, 2002, and substituted by Act 15/2002 from 30th December, 2002.]

(e) furnishes to his employer or to the Commissioner a false or misleading tax code

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declaration or gives any false information or misleads his employer in relation to any matter affecting the amount of employees' tax to be withheld in his case; or

(f) fails or neglects to deliver to any employee or former employee an employees' tax certificate as required by paragraph 14; or

(g) fails to comply with any condition imposed by the Commissioner in terms of paragraph 15 in regard to the manner in which employees' tax certificates or duplicate employees' tax certificates may be used or as to the surrender of unused stocks of such certificates or to account for used, unused or spoiled certificates when required by the Commissioner under that paragraph or on ceasing to be an employer fails to surrender unused certificates in his possession as required by that paragraph; or

(h) fails or neglects to maintain any record as required by paragraph 4 or to retain such record for a period of **6 years** from the date of the last entry therein or to furnish to the Commissioner any return or any copy of any employees' tax certificate as required by that paragraph; or

(i) fails or neglects to apply to the Commissioner for registration as an employer as required by subparagraph (1) of paragraph 2 or, having so applied, fails or neglects to notify the Commissioner of any change of his address or of the fact of his having ceased to be an employer as required by subparagraph (2) of that paragraph; or

(j) alters any employees' tax certificate made or issued by any other person or falsely pretends to be the employee named in any employees' tax certificate or, for his own advantage or benefit, obtains credit with respect to or payment of the whole or any part of any amount of employees' tax withheld from remuneration paid or payable to another person; or

(k) not being an employer and without being duly authorized by any person who is an employer, issues or causes to be issued any document purporting to be an employees' tax certificate;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Penalty increased by Act 18/2000 from the 12th January, 2001, and by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002, and further by Act 15/2002 from 30th December, 2002.]

(2) For the purposes of subparagraph (b) of subparagraph (1), an amount which has been withheld by any person from remuneration shall, until the contrary is proved, be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Commissioner if such amount is not paid to the Commissioner within the period allowed for payment under paragraph 3.

*Commissioner deemed to be employer in certain circumstances*

[paragraph repealed by the Criminal Penalties Amendment Act 22 of 2001 w.e.f. 20th May, 2002:and then re-inserted by Finance (No.2) Act 8 of 2014 w.e.f.17<sup>th</sup> October,2014]

23

(1) In this section—

**"public entity"** means —

(a) any corporate body established by or in terms of any Act for special purposes;

(b) any company in which the State has a controlling interest, whether by virtue of holding or controlling shares therein or by virtue of a right of appointment of members to the controlling body thereof or otherwise, and includes any company which is a subsidiary, as determined in accordance with section 186 of the Companies and Other Business Entities Act [Chapter 24:31] of such a body;

(c) a local authority;

(d) any partnership or joint venture between the State and any person and which is prescribed by the Minister for the purposes of the application of this Act to be a partnership or joint venture.

(2) Where —

(a) in terms of paragraph 10(3) the Commissioner makes an assessment in which the amount of employees' tax for which an employer is personally liable by virtue of paragraph 10(1) is estimated (whether that assessment is made before or after the \*date of commencement of the Finance (No. 2) Act, 2014)

[the 17<sup>th</sup> October, 2014];

and

(b) the employer concerned is —

(i) a public entity; or

(ii) any body or association of persons, whether incorporated or unincorporated, the

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majority of whose members are employees of the State who contribute to the funds of such body or association by means of deductions from their remuneration made by the State as their employer on behalf of such body or association;

and

(c) the public entity or body or association referred to in paragraph (b)—

(i) fails, as an employer, to withhold an amount of employees' tax in terms of paragraph 3 and subsequently pays that amount in terms of paragraph 10; and

(ii) having paid that amount in terms of paragraph 10 fails subsequently to recover that amount in terms of paragraph 12 from the employee from whose remuneration that amount should have been withheld;

the Commissioner shall be deemed to be the employer instead of the public entity or body or association referred to in paragraph (b) and —

(d) may recover that amount from the employee from whose remuneration that amount should have been withheld; and

(e) shall, for the purposes of subparagraph (d), have all the rights and powers that he or she has under this Act for recovering outstanding tax.

(3) Notwithstanding subparagraph (b) of the definition of "**remuneration**" in paragraph 1(1), if a public entity or body or association referred to in subparagraph (2)(b)—

(a) fails, as a payer, to withhold an amount of tax on non-executive directors' fees in accordance with the *Thirty-Third Schedule*; and

(b) subsequently purports to pay that amount in terms of paragraph 10 as if the non-executive director's fees in question was "remuneration" for the purposes of this *Schedule*;

the non-executive director's fees in question shall be deemed to be "**remuneration**" and the director to whom such fees were paid shall be deemed to be an "**employee**" for the purposes of this *Schedule*.

(4) Accordingly, where a public entity or body or association referred to in subparagraph (2) fails subsequently to recover from the director from whose non-executive directors' fees an amount of tax on non-executive director's fees should have been withheld, subsection (2) shall apply as if the Commissioner is the employer

and the amount in question is an amount of employees' tax.

## FOURTEENTH SCHEDULE

(Section 15 (2) (dd))

[**Editor's Note:** 'Growth Point Area' was deleted from the definition section 14(1) of the Finance Act by section 3 of the Finance (No.3) Act of 2009 w.e.f. the 8<sup>th</sup> January, 2010. This Schedule was finally **repealed** by Act 3 of 2010 w.e.f. 17th September, 2010]

## FIFTEENTH SCHEDULE

(Section 28)

### RESIDENT SHAREHOLDERS' TAX

#### *Interpretation*

1

(1) In this *Schedule*—

"**company**" means any company which is ordinarily resident in Zimbabwe;

"**company limited by shares**" means a company incorporated in Zimbabwe which is not a company limited by guarantee as described in paragraph (b) of section 76 of the \*Companies and Other Business Entities Act [24:31]

[since 13<sup>th</sup> February, 2019-editor] "**dividend**" means any amount which is distributed by a company to its shareholders, but **excluding**—

(a) any amount so distributed by a building society which is not distributed as a dividend in respect of—

(i) in the case of the Central African Building Society, a paid-up permanent share — class "A"; and

(ii) in the case of the Founders Building Society, an ordinary permanent fully paid-up share; and

(iii) in the case of the Beverly Building Society, a foundation fully paid-up share or class "A" share

and

(b) any bonus shares;

[what are – see *Delta Corporation Ltd v ZIMRA* 15-HH-621]

and

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(c) any amount so distributed which, in the opinion of the Commissioner, is a return of the amount received by the company for its shares; and

(d) any amount so distributed by the **Industrial Development Corporation** of Zimbabwe Limited, in respect of its issued share capital; and

(e) any amount so distributed to the **Development Trust of Zimbabwe**, a body corporate established by notarial deed of trust on the 12th June, 1989; and

(f) any amount so distributed by a **licensed investor** having a qualifying degree of export orientation which arises from its operations in a **special economic zone**;

[para (f) substituted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January, 2017]

and

(g) any amount so distributed which in the opinion of the Commissioner, is a return of an amount contributed to the capital of a private business corporation by a member;

(h) any amount so distributed by an **industrial park developer** which arises from the operation of his industrial park;

(i) any amount deemed under this Act to be a dividend by virtue of the company in question exceeding the prescribed debt to equity ratio, if the company is one that the Minister certifies in writing has advanced **loans for the benefit of the State**;

[subpara (i) inserted by Finance (No.3) Act 11 of 2014 with retrospective effect from the 1<sup>st</sup> November, 2013]

less any income tax which has been deducted from such amount in terms of section *twenty-five*;

**“nominee”** means a person who holds the shares on which a dividend is paid directly or indirectly on behalf of another person;

**“person”**, in addition to the meaning given to the term in section *two*, includes, in relation to income the subject of a trust to which a beneficiary is entitled, the trust;

**“shareholder”** includes a member of a private business corporation.

(2) For the purpose of this *Schedule*, a dividend shall be deemed to be distributed when it is paid to the shareholder, credited to

his account or so dealt with that he becomes entitled to it, whichever occurs first.

[what happens thereafter is irrelevant see *Delta Corporation Ltd v ZIMRA 15-HH-621*]

(3) For the purposes of this *Schedule*, a company shall be deemed to be ordinarily resident in the state or territory in which its central management and control is situated.

#### *Companies to withhold the tax*

2

(1) Every company which distributes a dividend to—

(a) a person, other than a statutory corporation, a company limited by shares, a private business corporation, a pension fund, a benefit fund or a medical aid society, who is ordinarily resident in Zimbabwe; or

(b) a partnership which is ordinarily resident in Zimbabwe;

shall withhold resident shareholders' tax from that dividend and shall pay the amount withheld to the Commissioner **within 10 days** of the date of distribution or within such further time as the Commissioner may for good cause allow.

[Payment period shortened by Act 12/2006 from the 1<sup>st</sup> January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. 8<sup>th</sup> January, 2010.]

(2) The resident shareholders' tax shall be withheld in terms of subparagraph (1) notwithstanding any objection that may be lodged to any decision made by the Commissioner in terms of the definition of **“dividend”** in subparagraph (1) of paragraph 1.

(3) Where resident shareholders' tax is withheld in terms of subparagraph (1), the company shall provide the shareholder with a certificate, in the form approved by the Commissioner, showing—

(a) the gross amount of the dividend; and

(b) the amount, if any, of income tax deducted in terms of section *twenty-five*; and

(c) the amount of the resident shareholders' tax withheld.

#### *Nominees to withhold the tax not deducted by company*

(4) Any company which fails to provide a shareholder with a certificate in terms of subparagraph (3), or furnishes an incorrect certificate under that subparagraph, shall be

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guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the company's conduct was wilful, it shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (4) inserted by the Criminal Penalties Amendment Act 22 of 2001, w.e.f. 10th September, 2002 - to be amended to delete the imprisonment option - Editor.]

*Payment of tax where dividend deemed to have been paid in terms of section 28(2)*

2A. Where a dividend is deemed to have been paid in terms of subsection (2) of section *twenty-eight*, the company which is deemed to have paid the dividend shall pay resident shareholders' tax for that dividend upon written notification by the Commissioner of the tax due for that deemed dividend in accordance with the provisions on self-assessment as provided for in section *thirty-sevenA*.

[Para 2A inserted by section 24 of Act 18/2000 w.e.f. 1st January, 2001: and amended by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the **1<sup>st</sup> January, 2017**]

3

(1) Every nominee who receives on behalf of a shareholder who is—

(a) a person, other than a statutory corporation, a company limited by shares, a pension fund, a benefit fund or a medical aid society, who is ordinarily resident in Zimbabwe; or

(b) a partnership which is ordinarily resident in Zimbabwe;

a dividend from which resident shareholders' tax has not been withheld by the company distributing the dividend, shall withhold resident shareholders' tax from that dividend and shall pay the amount withheld to the Commissioner **within 10 days** of receipt of that dividend.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

(2) Where resident shareholders' tax is withheld in terms of subparagraph (1), the nominee shall provide the shareholder with a certificate, in the form approved by the Commissioner, showing—

- (a) the gross amount of the dividend; and
- (b) the amount, if any, of income tax deducted in terms of section *twenty-five*; and
- (c) the amount of the resident shareholders' tax withheld.

(3) Any nominee who fails to provide a shareholder with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the nominee's conduct was wilful, he shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and

[Subpara (3) inserted by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002.]

*Shareholders to pay the tax not withheld by company or nominee*

4

A shareholder to whom a dividend has been distributed from which resident shareholders' tax has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section *seventy-seven* shall pay to the Commissioner **within 10 days** of the date of distribution of the dividend the tax that should have been withheld.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 with effect from the 8<sup>th</sup> January, 2010.]

*Returns to be furnished*

5

Payment of the resident shareholders' tax by a company or nominee shall be accompanied by a return in the form prescribed.

*Penalty for non-payment of the tax*

6

- (1) Subject to subparagraph (2), a company or a nominee in Zimbabwe who fails to withhold or to pay to the Commissioner any amount of resident shareholders' tax as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

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(a) the amount of resident shareholders' tax which the company or nominee, as the case may be, failed to pay to the Commissioner; and

(b) a further amount equal to **100%** of such resident shareholders' tax.

[Penalty increased by Section 61 and the Schedule to the Finance Act 18/2000 from the 12th January, 2001]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him resident shareholders' tax was not due to any intent to evade the provisions of this *Schedule*, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of the amount referred to in subparagraph (b) of subparagraph (1).

(3) If a defaulting company or a nominee or agent referred to in subparagraph (1) does not pay the penalty in full on the date on which the default has ceased, interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the penalty as remains unpaid by the company or nominee during the period beginning on the date the default has ceased and ending on the date the penalty is paid in full, and such interest shall be recoverable by the Commissioner by action in any court of competent jurisdiction:

[See the Income Tax (**Rate of Interest**) Notice 2022  
**SI 212 of 2022**  
gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

Provided that in special circumstances the Commissioner may extend the time for payment of the penalty without charging interest.

[Subpara (3) inserted by Act 8 of 2005 from the 1st January, 2006.]

#### *Refund of the tax*

7

(1) If it is proved to the satisfaction of the Commissioner that any person has been charged with resident shareholders' tax—

(a) in excess of the amount properly chargeable in terms of this *Schedule*; or

(b) in respect of any dividend which has subsequently been rescinded with the approval of the Minister in order to comply with any conditions attaching to the payment of any dividend outside Zimbabwe in terms of the law relating to exchange control;

the Commissioner shall authorize a refund in so far as it has been overpaid or is in respect of any such dividend.

(2) If it is proved to the satisfaction of the Commissioner that the taxable income of any shareholder who is an individual and who had attained the age of **55** years prior to the commencement of the year of assessment, when aggregated with any dividends distributed to him and any interest as defined in the *Twenty-First Schedule* paid to him during the year of assessment—

[age reduced from 59 years and amounts below stated in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009.]

- (a) does not exceed **\$300 000**; or
- (b) exceeds US\$48 000 but does not exceed **\$300 000**; or
- (c) exceeds US\$57 600 but does not exceed **\$360 000**; or
- (d) exceeds US\$67 200 but does not exceed **\$480,000**;

[amounts redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.-query **page 157** of this Act -Editor ]

the Commissioner shall authorize a refund of a percentage of resident shareholders' tax withheld or paid, as follows—

- (i) in the case of an aggregate amount referred to in subparagraph (a), **100%** ;
- (ii) in the case of an aggregate amount referred to in subparagraph (b), **75%** ;
- (iii) in the case of an aggregate amount referred to in subparagraph (c), **50%** ;
- (iv) in the case of an aggregate amount referred to in subparagraph (d), **25%** ;

Provided that, if the period of assessment is less than 12 months, the amounts specified in subparagraphs (a), (b), (c) and (d) shall be reduced proportionately.

(3) If it is proved to the satisfaction of the Commissioner that the taxable income of any shareholder who is an individual and who had not attained the age of **55** years prior to the commencement of the year of assessment, when aggregated with any dividends distributed to him and any interest as defined in the

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Twenty-First Schedule paid to him during the year of assessment—

[age reduced from 59 years and amounts below stated in US\$ by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009.]

- (a) does not exceed **\$390 000**; or
- (b) exceeds US\$38 400 but does not exceed **\$240 000**; or
- (c) exceeds US\$48 000 but does not exceed **\$360 000**; or
- (d) exceeds US\$57 600 but does not exceed **\$420 000**;

[amounts redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.-query page 157/8 of this Act -Editor.]

the Commissioner shall authorize a refund of a percentage of resident shareholders' tax withheld or paid, as follows—

- (i) in the case of an aggregate amount referred to in subparagraph (a), **100%**;
- (ii) in the case of an aggregate amount referred to in subparagraph (b), **75%**;
- (iii) in the case of an aggregate amount referred to in subparagraph (c), **50%**;
- (iv) in the case of an aggregate amount referred to in subparagraph (d), **25%**:

Provided that, if the period of assessment is **less than 12 months**, the amounts specified in subparagraphs (a), (b), (c) and (d) shall be reduced proportionately.

(4) The Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made **within 6 years** of the date of payment of the tax.

[prescription not to apply to claim not made with 3 years before period extended by legislation *Honda Sales (Pvt) Ltd v COT 00-HH-077*]

### SIXTEENTH SCHEDULE

(Repealed Sections 29 and 94)

### NON-RESIDENTS' TAX ON INTEREST

[Repealed by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009.]

### SEVENTEENTH SCHEDULE

(Sections 30 and 95)

### NON-RESIDENTS' TAX ON FEES

#### *Interpretation*

[*Mota Engenharie Construction SA v Zimra 22-SC-115*]

1

- (1) In this *Schedule*, subject to subparagraph (2)—

**"export market services"** means services rendered wholly or exclusively for the purpose of seeking and exploiting opportunities for the **export of goods** from Zimbabwe or of creating, sustaining or increasing the demand for such exports and, without derogation from the generality of the foregoing, includes any of the **following services**—

- (a) research into, or the obtaining of information relating to, markets outside Zimbabwe;
- (b) research into the packaging or presentation of goods for sale outside Zimbabwe;
- (c) advertising goods outside Zimbabwe or otherwise securing publicity outside Zimbabwe for goods;
- (d) soliciting business outside Zimbabwe;
- (e) investigating or preparing information, designs, estimates or other material for the purpose of submitting tenders for the sale or supply of goods outside Zimbabwe;

[See Income Tax (Non- resident's Tax on Fees) (**Shanghai** Construction Group Ltd) Regulations, 2019. SI 38/2019 and Income Tax (Exemption from Non-resident Tax on Fees) (**Konoike** Construction Coy Ltd) Notice, 2019. SI 47/2019]

- (f) bringing prospective buyers to Zimbabwe from outside Zimbabwe;
- (g) providing samples of goods to persons outside Zimbabwe;

[definition inserted by Finance (No.3) Act 11 of 2014 w.e.f. the year of assessment beginning 1st January, 2015  
*M Coy (Pvt) Ltd v Zimra 21-SC-098*]

**"fees"** means any amount from a source within Zimbabwe payable in respect of any services of a technical, managerial, administrative or consultative nature, but does not include any such amount payable in respect of—

[“any amount” *Zimasco v ZIMRA 16-HH-149* commissions paid to agents *M Coy (Pvt) Ltd v Zimra 16-HH-66* – on appeal **21-SC-098**

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-services of a managerial or administrative nature  
*Standard Chartered Bank Zimbabwe Ltd v Zimra 18-SC-023*  
*E (Pvt) Ltd v Zimra 22-HH-010]*

- (a) services rendered to an individual unconnected with his business affairs; or
- (b) services rendered by any person in his capacity as an employee, other than a director, of the payer; or
- (c) education or technical training; or
- (d) the repair of goods outside Zimbabwe; or
- (e) any project which is specified for the purposes of this subparagraph by the Minister by notice in a *statutory instrument*;

[the exemption Zambezi River Authority (ZRA)-Kariba Dam project specified in **GN 122/2015** (Non-Residents Tax on Fees **Hwange Electricity Supply Coy**(Pvt) Ltd Notice, 2019 SI 141/2019 ]

or

(f) any project which is the subject of any agreement entered into by the Government of Zimbabwe with any other government or international organization in terms of which any person is entitled to exemption from tax in respect of such amount; or

(g) services rendered to a licensed investor in respect of its operations in a **special economic zone**;

[para (g) amended by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March,2017 backdated to the 1<sup>st</sup> January,2017]

or

(h) services rendered to an industrial park developer in respect of the operation of his industrial park;

(i) export market services rendered by an agent of a company that exports goods from Zimbabwe:

Provided, however, that the fees payable to the agent must **not exceed 5%** of the "**free on board value**" (as that phrase is defined in the Customs and Excise Act [*Chapter 23:02*]) of the exports of the company for the year of assessment concerned, as confirmed on acquittance by the company of the export documentation relating to its exports in that year;

[para (i) inserted by Finance (No.3) Act 11 of 2014 w.e.f. 1st January, 2015-]

(j) **non-executive fees** subject to tax in terms of the *Thirty-Third Schedule*;

[para (j) inserted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January,2017]

**"foreign company"** means a body corporate that is incorporated in a state or territory other than Zimbabwe under the laws of that state or territory;

**"non-resident person"** means—

- (a) a person, other than a company, who; or
- (b) a partnership or foreign company which;

is not ordinarily resident in Zimbabwe, but **does not include** a person, partnership or foreign company operating in a **special economic zone**;

[definition substituted by the Finance Act No. of 2016 w.e.f. the 1<sup>st</sup> January,2017]

**"payee"** means a non-resident person to whom fees are payable or paid;

**"payer"** means any person who or partnership which pays or is responsible for the payment of fees, including the State or a statutory corporation or any person who or partnership which pays or is responsible for the payment of fees for or on behalf of the State or any statutory corporation.

(2) For the purposes of this *Schedule*—

(a) fees shall be deemed to be from a source within Zimbabwe if the payer is a person who or partnership which is ordinarily resident in Zimbabwe;

(b) in determining whether or not non-residents' tax on fees should be withheld, the question as to whether or not—

(i) the payer is a person or partnership ordinarily resident in Zimbabwe; or

(ii) the payee is a non-resident person;

shall be decided by reference to the date on which the fees are paid by the payer;

(c) fees shall be deemed to be paid to the payee if they are credited to his account or so dealt with that \*the conditions under which he is entitled to them are fulfilled, whichever occurs first;

[\*do not refer to the granting of exchange control authority for the payment. *Barclays Bank of Zimbabwe v Zimra 04-HH-162*  
*Standard Chartered Bank Zimbabwe Ltd v Zimra 18-SC-023*  
*SW (Pvt)Ltd v ZIMRA 19-HH-499*]

(d) a partnership shall—

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(i) in relation to fees for services rendered by such partnership in the carrying on of any trade in Zimbabwe, be deemed to be ordinarily resident in Zimbabwe if at least 1 member of such partnership is ordinarily resident in Zimbabwe;

(ii) in relation to fees payable to a non-resident person, be deemed to be ordinarily resident in Zimbabwe if at least 1 member of such partnership is ordinarily resident in Zimbabwe.

#### *Payers to withhold tax*

2

(1) Every payer of fees to a non-resident person shall withhold non-residents' tax on fees from those fees and shall pay the amount withheld to the Commissioner **within 10 days** of the date of payment or within such further time as the Commissioner may for good cause allow.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January,2010.  
-whether the bank charges automatically raised by offshore banks holding appellant's Nostro accounts constituted fees income  
*G Bank Zimbabwe Ltd v ZIMRA 15-HH-207]*

(2) Where non-residents' tax on fees is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

- (a) the amount of the fees; and
- (b) the amount of the non-residents' tax on fees withheld.

(3) Any payer who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (3) inserted by the Criminal Penalties Amendment Act 22 of 2001, w.e.f. the 10th September, 2002.]

#### *Agents to withhold tax not deducted by payer*

3

(1) Every agent who receives on behalf of a payee fees from which non-residents' tax on fees has not been withheld by the payer, shall withhold non-residents' tax on fees from those fees and shall pay the amount withheld to the Commissioner **within 10 days** of the date of the receipt of the fees.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 with effect from the 8<sup>th</sup> January,2010.  
- "fees" includes only money sourced from inside Zimbabwe, not the commissions paid thereon.  
*Sunfresh Enterprises (Pvt) Ltd v Zimra 04-HB-078*  
*Standard Chartered Bank Zimbabwe Ltd v Zimra 18-SC-023*  
commissions paid to agents *M Coy (Pvt) Ltd v Zimra 16-HH-661*]

(2) Where non-residents' tax on fees is withheld in terms of subparagraph (1), the agent shall provide the payee with a certificate in a form approved by the Commissioner, showing—

- (a) the name of the payer; and
- (b) the amount of the fees; and
- (c) the amount of non-residents' tax on fees withheld.

(2a) Any agent who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (2a) inserted by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002.]

(3) For the purposes of this paragraph, a person shall be deemed to be the agent of a payee and to have received fees on behalf of that payee if—

- (a) that person's address appears in the payer's records as the address of the payee; and
- (b) the warrant or cheque in payment of the fees is delivered at that person's address.

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(4) Any person deemed to be the agent of a payee in terms of subparagraph (3) shall, as regards the payee and in respect of any income received by or accruing to or in favour of the payee, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Zimbabwe.

*Payee to pay tax not withheld by payer or agent*

4

A payee to whom fees have been paid from which non-residents' tax on fees has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section **seventy-seven** shall pay to the Commissioner **within 10 days** of the date of payment of the fees the tax that should have been withheld.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

*Returns to be furnished*

5

Payment of the non-residents' tax on fees by a payer or an agent shall be accompanied by a return in the form prescribed.

*Penalty for non-payment of tax*

6

(1) Subject to subparagraph (2), a payer or an agent in Zimbabwe who fails to withhold or pay to the Commissioner any amount of non-residents' tax on fees as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

(a) the amount of non-residents' tax on fees which the payer or the agent, as the case may be, failed to pay to the Commissioner; and

(b) a further amount equal to **100%** of such non-residents' tax on fees.

[Penalty increased by Section 61 and the Schedule to the Finance Act 18/2000 from the 12th January, 2001.

*LFCZ Ltd v ZIMRA 19-HH-164  
E (Pvt) Ltd v Zimra 22-HH-010]*

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him non-residents' tax on fees was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as

he thinks fit of the amount referred to in subparagraph (b) of subparagraph (1).

(3) ....

[Subpara (3) inserted by Act 8 of 2005 from 1<sup>st</sup> January, 2006. Penalty repealed by the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the **1st February 2009**. - whether ZIMRA were entitled to charge interest - *Air Zimbabwe Corporation & 10 others v ZIMRA 03-HH-096*]

*Refund of tax on fees*

7

If it is proved to the satisfaction of the Commissioner that any person or partnership has been charged with non-residents' tax on fees in excess of the amount properly chargeable in terms of this *Schedule*, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made **within 6 years** of the date of payment of such tax.

### EIGHTEENTH SCHEDULE

(Section 31)

#### NON-RESIDENTS' TAX ON REMITTANCES

*Interpretation*

1

(1) In this *Schedule*, subject to subparagraph (2)—

**"allocable expenditure"** means expenditure of a technical, managerial, administrative or consultative nature incurred outside Zimbabwe by a non-resident person in connection with or allocable to the carrying on by him of any trade within Zimbabwe;

**"non-resident person"** means a person who, or partnership which, is not ordinarily resident in Zimbabwe, but **does not include** a licensed investor;

**"remittance"** means the transfer of any amount from Zimbabwe to another country.

(2) For the purpose of this *Schedule*, in determining whether or not non-residents' tax on remittances should be paid, the question as to whether or not a person or a partnership is a non-resident person shall be decided by reference to the date on which the remittance is effected by such person or partnership.

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#### *Non-resident persons to pay tax*

2

Any non-resident person who effects any remittance in respect of allocable expenditure shall in relation to such remittance pay non-residents' tax on remittances to the Commissioner **within 10 days** of the date of remittance or within such further time as the Commissioner may for good cause allow.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 with effect from the 8<sup>th</sup> January, 2010.] Returns to be furnished]

3

Payment of non-residents' tax on remittances by a non-resident person shall be accompanied by a return in the form prescribed.

#### *Penalty for non-payment of tax*

4

(1) Subject to the provisions of subparagraph (2), a non-resident person who fails to pay to the Commissioner any amount of non-residents' tax on remittances as provided in paragraph 2 shall be liable for the payment to the Commissioner of a further amount equal to **100%** of such non-residents' tax on remittances.

[Penalty increased by Section 61 and the Schedule to the Finance Act 18/2000 from the 12th January, 2001]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him non-residents' tax on remittances was not due to any intent to evade the provisions of this *Schedule*, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of the amount referred to in subparagraph (1).

(3)

[Subpara (3) inserted by Act 8 of 2005 from 1st January, 2006. Penalty repealed by the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the **1st February 2009**. whether ZIMRA were entitled to charge interest - *Air Zimbabwe Corporation & 10 others v ZIMRA 03-HH-096.*]

#### *Refund of tax on remittances*

5

If it is proved to the satisfaction of the Commissioner that any non-resident person has paid non-residents' tax on remittances in

excess of the amount properly payable in terms of this *Schedule*, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made **within 6 years** of the date of payment of such tax.

### NINETEENTH SCHEDULE

(Sections 32 and 96)

#### NON-RESIDENTS' TAX ON ROYALTIES

##### *Interpretation*

1

(1) In this Schedule, subject to subparagraph (2)—

**"foreign company"** means a body corporate that is incorporated in a state or territory other than Zimbabwe under the law of that state or territory;

**"non-resident person"** means—

(a) a person, **other than** a company, who; or  
(b) a partnership or foreign company which;

is not ordinarily resident in Zimbabwe, but does **not include** a person, partnership or foreign company that is a licensed investor having a qualifying degree of export orientation ;

[definition amended by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the **1<sup>st</sup> January, 2017**]

**"payee"** means a non-resident person to whom royalties are payable or paid;

**"payer"** means any person who or partnership which pays or is responsible for the payment of royalties, including the State or a statutory corporation or any person who pays or is responsible for the payment of royalties for or on behalf of the State or any statutory corporation, but not including a licensed investor or any person acting on his behalf;

**"royalties"** means any amount from a source within Zimbabwe payable as a consideration for the use of, or the right to use, any literary, dramatic, musical, artistic, scientific or other work whatsoever (including cinematograph films or recordings) in which any copyright exists, any patented article, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial

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or scientific experience, but does not include any such amount payable in respect of—

(a) any project which is specified for the purposes of this subparagraph by the Minister of notice in a *statutory instrument*;

[see Exemption (Non-resident's Tax on Royalties) (Andalusia Investments (Pvt) Ltd, trading as Zimborders) Notice, 2019. SI 45/2019 **Hwange Electricity Supply Coy(Pvt) Ltd** Notice, 2019 SI 141/2019]

or

(b) any project which is the subject of any agreement entered into by the Government of Zimbabwe with any other government or international organization in terms of which any person is entitled to exemption from tax in respect of such amount;

**"use"**, in relation to any work in which any copyright exists or any patented article, means the doing of any thing which would infringe the copyright or patent concerned if it were done without the permission or authority of the holder of the copyright or patent or his agent or assignee.

(2) For the purposes of this *Schedule*—

(a) royalties shall be deemed to be from a source within Zimbabwe if—

(i) the payer is a person who or a partnership which is ordinarily resident in Zimbabwe; or

(ii) they are payable by virtue of the use in Zimbabwe or the grant of permission to use in Zimbabwe any property referred to in the definition of "royalties" in subsection (1);

(b) in determining whether or not non-residents' tax on royalties should be withheld, the question as to whether or not—

(i) the payer is a person or partnership ordinarily resident in Zimbabwe; or

(ii) the payee is a non-resident person;

shall be decided by reference to the date on which the royalties are paid by the payer;

(c) royalties shall be deemed to be paid to the payee if they are credited to his account or so dealt with that the conditions under which he is entitled to them are fulfilled, whichever occurs first;

(d) a partnership shall—

(i) in relation to royalties payable to such partnership in the carrying on by it of any trade in Zimbabwe, be deemed to be ordinarily

resident in Zimbabwe if at least one member of such partnership is ordinarily resident in Zimbabwe;

(ii) in relation to royalties payable to a non-resident person, be deemed to be ordinarily resident in Zimbabwe if at least 1 member of such partnership is ordinarily resident in Zimbabwe.

#### *Payers to withhold tax*

2

(1) Every payer of royalties to a non-resident person shall withhold non-residents' tax on royalties from those royalties and shall pay the amount withheld to the Commissioner **within 10 days** of the date of payment or within such further time as the Commissioner may for good cause allow.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

(2) Where non-residents' tax on royalties is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

(a) the amount of the royalties; and

(b) the amount of the non-residents' tax on royalties withheld.

#### *Agents to withhold tax not deducted by payer*

(3) Any payer who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (3) inserted by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002.]

3

(1) Every agent who receives on behalf of a payee royalties from which non-residents' tax on royalties has not been withheld by the payer, shall withhold non-residents' tax on royalties

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from those royalties and shall pay the amount withheld to the Commissioner **within 10 days** of the date of receipt of the royalties.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January,2010.]

(2) Where non-residents' tax on royalties is withheld in terms of subparagraph (1), the agent shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

- (a) the name of the payer; and
- (b) the amount of the royalties; and
- (c) the amount of the non-residents' tax on royalties withheld.

(2a) Any agent who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the agent's conduct was wilful, he shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (2a) inserted by the Criminal Penalties Amendment Act 22 of 2001, t from the 10th September, 2002.]

(3) For the purposes of this paragraph, a person shall be deemed to be the agent of a payee and to have received royalties on behalf of that payee if—

- (a) that person's address appears in the payer's records as the address of the payee; and
- (b) the warrant or cheque in payment of the royalties is delivered at that person's address.

(4) Any person deemed to be the agent of a payee in terms of subparagraph (3) shall, as regards the payee and in respect of any income received by or accruing to or in favour of the payee, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Zimbabwe.

*Payee to pay tax not withheld by payer or agent*

4

A payee to whom royalties have been paid from which non-residents' tax on royalties has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section **seventy-seven** shall pay to the Commissioner **within 10 days** of the date of payment of the royalties the tax that should have been withheld.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January,2010.]

#### *Returns to be furnished*

5

Payment of the non-residents' tax on royalties by a payer or an agent shall be accompanied by a return in the form prescribed.

#### *Penalty for non-payment of tax*

6

(1) Subject to subparagraph (2), a payer or an agent in Zimbabwe who fails to withhold or pay to the Commissioner any amount of non-residents' tax on royalties as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

- (a) the amount of non-residents' tax on royalties which the payer or the agent, as the case may be, failed to pay to the Commissioner; and
- (b) a further amount equal to **100%** of such non-residents' tax on royalties.

[Penalty increased by Section 61 and the Schedule to the Finance Act 18/2000 from the 12th January, 2001]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him non-residents' tax on royalties was not due to any intent to evade the provisions of this *Schedule*, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of the amount referred to in subparagraph (b) of subparagraph (1).

(3)

[Subpara (3) inserted by Act 8 of 2005 from 1st January, 2006. Penalty repealed by the Finance Act 1 of 2018 gazetted on the 14th March,2018 with deemed effect from the **1st February 2009**. whether ZIMRA were entitled to charge interest - *Air Zimbabwe Corporation & 10 others v ZIMRA 03-HH-096*]

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*Refund of tax on royalties*

7

If it is proved to the satisfaction of the Commissioner that any person or partnership has been charged with non-residents' tax on royalties in excess of the amount properly chargeable in terms of this *Schedule*, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made **within 6 years** of the date of payment of such tax.

## TWENTIETH SCHEDULE

(Sections 8 (1) (p) and 15 (2) (ee))

### DETERMINATION OF GROSS INCOME & TAXABLE INCOME OR ASSESSED LOSS FROM PETROLEUM OPERATIONS

#### *Interpretation*

1

(1) In this Schedule—

**“allowable deduction”** means a deduction allowable under this *Schedule*;

**“asset”** includes any part or share of an asset or interest in an asset;

**“assessed loss attributable to petroleum operations”** means any such loss determined by applying the provisions of paragraph 2;

**“capital expenditure”** has the meaning given by subparagraph (2);

**“chargeable petroleum”**, in relation to a petroleum operator, means petroleum obtained by the operator from petroleum operations carried on by the operator;

**“disposed of”**, in relation to petroleum, has the meaning given by subparagraph (3) of paragraph 3;

**“income attributable to petroleum operations”** means the aggregate of the amounts referred to in subparagraph (1) of paragraph 3;

**“petroleum information”** means geological, geophysical and technical information, being information that relates to the presence, absence or extent of deposits of petroleum in any area in Zimbabwe;

**“residential unit”** means an apartment, flat, house whether detached, semi-detached or

terraced, or similar unit of residential accommodation;

**“taxable income attributable to petroleum operations”** means any such income determined by applying the provisions of paragraph 2.

(2) Capital expenditure of a petroleum operator in relation to a petroleum special grant is expenditure incurred by the petroleum operator in relation to that special grant—

(a) in exploring for petroleum and ascertaining and testing the extent and characteristics of any such discovery, including such costs of—

(i) geological, geophysical, geochemical, aerial, magnetic, gravity, seismic and other surveys and all processing analyses, interpretations and studies related thereto;

(ii) drilling of shot holes, core holes, bore holes, water holes and holes for the discovery and delineation of petroleum reservoirs;

(iii) appraisal of surveys and drilling, including the drilling and testing of exploration and appraisal wells and all reservoir studies;

(b) in preparing for drilling or drilling and maintaining development or production wells, including all costs of labour, fuel, repairs, hauling and supplies and materials without salvage value;

(c) in the acquisition of petroleum information or on reservoir studies;

(d) on the provision of plant, machinery and equipment for the exploration for, and the development and production of, petroleum;

(e) on the construction of any buildings, structures or works for the purpose of petroleum operations, including the provision of residential accommodation and associated facilities for employees of the petroleum operator and their dependants, and including any premium or consideration in the nature of a premium paid for the use of buildings, structures, works or land required for petroleum operations;

(f) on the provision of any transportation or communication facilities required for the conduct of petroleum operations;

(g) on the provision of office equipment and furniture in any building required for petroleum operations;

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(h) on the preparation of sites for production, including studies on the environmental impact of petroleum operations, engineering and design studies, delineation work and feasibility studies, done to determine the best means of conducting petroleum operations; and

(i) prior to the year of assessment in which the petroleum operator first produces petroleum under a programme of continuous production and sale—

(i) on general administration and management for the purposes of petroleum operations;

(ii) on the education and training of citizens of Zimbabwe at an educational or technical institution, approved by the Commissioner, on attachment with a petroleum operator or an affiliate of a petroleum operator, in any aspect of operations for the discovery or recovery of petroleum;

(j) in pursuance of a plan approved by the Minister responsible for the administration of the Mines and Minerals Act [Chapter 21:05], in relation to the closing down of an oil field or any part of it;

(k) on any permanent building used for the purposes of—

(i) a school; or

(ii) a hospital, nursing home or clinic.

#### *Determination of taxable income or assessed loss*

2

The taxable income or, as the case may be, the assessed loss, attributable to petroleum operations, accruing to a petroleum operator in any year of assessment, shall be the difference, if any, between the income so attributable accruing to the petroleum operator in the year of assessment and the sum of the allowable deductions of the petroleum operator for the year of assessment; and that difference, if any, is a taxable income if the income so attributable is greater than the sum of those allowable deductions, and is otherwise an assessed loss.

#### *Income from petroleum operations*

3

(1) For the purposes of paragraph (p) of the definition of "gross income" in subsection (1) of section *eight*, the amounts received by or accruing to, or deemed to have been received

by or accrued to, a petroleum operator in a year of assessment include—

(a) the fair market value, established as provided in subparagraph (2), of so much of the petroleum operator's chargeable petroleum as was disposed of in the year of assessment; and

(b) any amount received or receivable in the year of assessment by the petroleum operator under a policy of insurance or otherwise in respect of the loss or destruction of any of the petroleum operator's chargeable petroleum; and

(c) any interest or other amount derived by the petroleum operator in the year of assessment from or in connection with petroleum operations carried on by the petroleum operator; and

(d) any amount to be included in the gross income of the petroleum operator in the year of assessment pursuant to subparagraph (2) of paragraph 8; and

(e) any amount allowed to be deducted under paragraph 4, whether in the current or in any previous year of assessment, which has been recovered or recouped; and

(f) any amount or value referred to in paragraph (d), (e), (h), (k), (l) or (m) of the definition of "gross income" in subsection (1) of section *eight*.

(2) The fair market value, in relation to a disposal of petroleum, is—

(a) the value established in relation to the disposal by reference to criteria for the determination of that value specified in the petroleum special grant under the authority of which the petroleum was won; or

(b) where there are no criteria, such as are referred to in subparagraph (a), the value established in relation to the disposal under and in accordance with such rules as are prescribed.

(3) Petroleum is disposed of if it is—

(a) sold, donated or bartered; or

(b) appropriated to refining or other processing in Zimbabwe without having been sold, donated or bartered prior to appropriation; or

(c) exported without having been sold or bartered prior to export.

(4) Except as is provided in subparagraph (1), the amounts referred to in paragraphs (a) to (o)

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of the definition of "gross income" in subsection (1) of section *eight* shall not, in the case of the petroleum operations of a petroleum operator, constitute income attributable to petroleum operations.

*Deductions allowed in determining taxable income from petroleum operations*

4

(1) Subject to subsection (1) of section *sixteen* and paragraph 5, for the purpose of determining the taxable income attributable to the petroleum operations of any petroleum operator, there shall be deducted from the income so attributable of the petroleum operator the amounts allowed to be deducted in terms of this paragraph.

(2) The deductions allowed shall be—

(a) expenditure and losses incurred wholly and exclusively for the purposes of petroleum operations, including expenditure so incurred—

(i) for repairs to any building structure, works, plant, machinery, implements, utensils or articles held, occupied or used for the purpose of carrying on petroleum operations; and

(ii) in respect of rent for land or buildings in Zimbabwe occupied for the purpose of carrying on petroleum operations; and

(iii) in respect of interest on, or in borrowing or obtaining, a loan or other form of credit;

but does not include expenditure or losses of a capital nature;

(b) expenditure and losses incurred wholly and exclusively for the purpose of petroleum operations in respect of any matter for which—

(i) a deduction is allowable in terms of paragraph (g), (h), (j), (m), (o), (q), (r), (u), (aa) or (bb) of subsection (2) of section *fifteen*; or

(ii) an allowance is provided for in paragraph 6.

(3) Where any expenditure or losses referred to in subparagraph (2) are incurred as part of or in conjunction with any other expenditure, only that proportion of the total expenditure or losses, as the case may be, which is wholly and exclusively incurred for the purposes of petroleum operations shall be allowed as a deduction in terms of this paragraph.

(4) For the purpose of determining the taxable income attributable to petroleum operations of any petroleum operator in a year of assessment, there shall be deducted any

assessed loss, determined under this *Schedule* for the previous year of assessment, from the income remaining after the deductions referred to in subparagraph (2) and sections *seventeen* and *eighteen* have been made.

(5) The provisos to subsection (3) of section *fifteen* shall apply in relation to subparagraph (3) as they apply in relation to that subsection.

(6) Where—

(a) a petroleum special grant ceases to have effect, otherwise than by reason of cancellation, and, at the date thereof, the petroleum operator is not then a petroleum operator in relation to any other petroleum special grant; and

(b) an assessed loss, determined under this *Schedule*, of the petroleum operator remains undischarged after that date; and

(c) the petroleum operator becomes, **within 5 years** after that date, a grantee of a petroleum special grant;

that assessed loss, to the extent that it remains undischarged when the petroleum operator becomes such a grantee, shall be deemed to be the assessed loss or part of the assessed loss, as the case may be, of the petroleum operator determined for the year of assessment in which the petroleum operator became such a grantee, and subsection (3) of section *fifteen* shall apply accordingly.

(7) Subsection (4) of section *fifteen* shall have effect for the purposes of this Schedule as it has effect for the purposes of that section.

#### *Limitations on allowable deductions*

5

(1) No deduction shall be allowed under paragraph 4 in respect of—

(a) any expenditure, other than payments to the Government in the nature of royalty payments, wholly or partly depending on, or determined by reference to, the quantity or value of, or the profits from, petroleum won by a petroleum operator; or

(b) any amount which—

(i) is payable to the government in terms of any provision in a petroleum special grant under which the amount is calculated by reference to the profitability of the petroleum operator's petroleum operations or on the rate of return on the operator's investment in those operations or in any similar manner; and

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(ii) by the terms and conditions of the petroleum special grant is calculated on an after-tax basis;

or

(c) any expenditure to the extent that it is incurred to produce income which is not attributable to petroleum operations; or

(d) any expenditure such as is referred to in subparagraph (iii) of subparagraph (a) of subparagraph (2) of paragraph 4—

(i) unless the Commissioner is satisfied that the loan or credit has been or is being used for the purpose of petroleum operations; or

(ii) to the extent that the interest concerned exceeds the commercial rate payable by a borrower dealing at arms' length with the lender; or

(iii) to the extent that any expenditure incurred exceeds the amount that would have been agreed upon by a person dealing at arm's length with the person providing the loan or credit concerned;

or

(e) any expenditure on a residential unit used for housing employees of the petroleum operator, to the extent that the expenditure exceeds—

(i) fifteen thousand dollars, where it was incurred before the 1st April, 1991; or

(ii) thirty thousand dollars, where it was incurred in the year of assessment beginning on the 1st April, 1991; or

(iii) thirty-five thousand dollars, where it was incurred on or after the 1st April, 1992, but before the 1st April, 1995; or

(iv) fifty thousand dollars, where it was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or

(v) one hundred thousand dollars, where it was incurred on or after the 1st January, 1999; or

(vi) **zw\$5 million** incurred by the taxpayer, where the expenditure was incurred on or after the 1st January 2009;

[subpara (vi) inserted by Act 5/2009 w.e.f. the 30<sup>th</sup> September, 2009; amount in (vi) redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019. amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020

w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022]

(f) any expenditure on a passenger motor vehicle as defined in subparagraph (2) of paragraph 13 of the *Fourth Schedule*, to the extent that the expenditure exceeds—

(i) twenty-two thousand dollars, where it was incurred before the 1st April, 1991; or

(ii) thirty thousand dollars, where it was incurred in the year of assessment beginning on the 1st April, 1991; or

(iii) fifty thousand dollars, where it was incurred on or after the 1st April, 1992, but before the 1st April, 1995; or

(iv) seventy-five thousand dollars, where it was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or

(v) two hundred thousand dollars, where it was incurred on or after 1st January, 1999;

(vi) **zw\$5 million** incurred by the taxpayer, where the expenditure was incurred on or after the **1<sup>st</sup> January 2009**:

[subpara (vi) inserted by Act 5/2009 w.e.f. 30<sup>th</sup> September, 2009; amount in (vi) redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(g) any expenditure on any permanent building used for purposes of a school, hospital, nursing home or clinic—

(i) unless it is proved to the satisfaction of the Commissioner that, at the relevant time—

A. in the case of a **school**, more than  $\frac{1}{2}$  of the pupils are children of persons employed by the petroleum operator in carrying on petroleum operations; or

B. in the case of a **hospital**, nursing home or clinic, more than  $\frac{1}{2}$  of the persons receiving treatment thereat are employed by the petroleum operator in carrying on petroleum operations or are members of the families of persons who are so employed;

or

(ii) to the extent that the expenditure exceeds—

A. in respect of any residential unit used by staff employed at the school, hospital, nursing home or clinic—

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- I. fifteen thousand dollars, where the expenditure was incurred before the 1st April, 1991; or
- II. thirty thousand dollars, where the expenditure was incurred in the year of assessment beginning on the 1st April, 1991; or
- III. thirty-five thousand dollars, where the expenditure was incurred on or after the 1st April, 1992, but before the 1st April, 1995; or
- IV. fifty thousand dollars, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or
- V. **zw\$12,5 million**, where the expenditure was incurred on or after the 1st January, 1999;

[Subpara V amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019. increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022 ]

or

- B. in respect of any one such school, hospital, nursing home or clinic—
  - I. one hundred thousand dollars, where the expenditure was incurred before the 1st April, 1993;
  - II. two hundred and fifty thousand dollars, where the expenditure was incurred on or after the 1st April, 1993, but before the 1st April, 1995; or
  - III. five hundred thousand dollars, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or
  - IV. **zw\$3 250 million**, where the expenditure was incurred on or after the 1st January, 1999.

[Subpara IV amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019.]

(2) Where petroleum is disposed of, no deduction shall be allowed in respect of any cost of the transportation of the petroleum—

- (a) outside Zimbabwe; or
- (b) if applicable, within Zimbabwe, beyond the point of disposal as defined in the petroleum special grant under which the petroleum was won.
- (3) Except as provided in paragraph 4, no deduction shall, as regards income attributable to petroleum operations, be made in respect of allowances or deductions referred to in subsection (2) of section fifteen.

- (4) No deduction shall be made in regard to any bonus payment made by a petroleum operator or taxpayer in respect of the signing of a petroleum agreement.

#### *Allowances in respect of capital expenditure*

##### 6

Where in any year of assessment a petroleum operator incurs capital expenditure for the purpose of petroleum operations, that expenditure shall be allowed as a deduction for the purpose of determining the taxable income or assessed loss, as the case may be, of the petroleum operator in the year of assessment.

#### *Assignment of petroleum special grant*

##### 7

(1) Where a petroleum special grant is assigned in any year of assessment under Part XX of the Mines and Minerals Act [Chapter 21:05] by a petroleum operator, the petroleum operator and the assignee shall jointly furnish to the Commissioner a statement in writing—

- (a) identifying any asset to which this paragraph applies which passed to the assignee on the assignment; and
- (b) stating the proportion of the consideration given for the assignment which appertains to that asset or, where no consideration was given, the value of that asset.

#### (2) Where—

(a) a statement is furnished in terms of subparagraph (1) and the Commissioner is satisfied with it, the proportion of the consideration or, as the case may be, the value, stated in the statement shall, for the purposes of paragraph 6, rank as capital expenditure incurred by the assignee, and shall, for the purposes of paragraph 8, rank as a recovery of capital expenditure by the assignor, in respect of the asset; or

(b) the Commissioner is not satisfied with a statement furnished in terms of subparagraph (1) or if no such statement is furnished, the Commissioner may determine the amount which appertains to the asset and that amount shall rank as provided in subparagraph (a).

(3) This paragraph applies to any asset, used for carrying on petroleum operations, in respect of which a deduction has been allowed under paragraph 6 for the purpose of determining the taxable income of the petroleum operator making the assignment.

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*Disposal, loss, etc., of asset*

8

(1) This paragraph applies where, in a year of assessment, any asset of a petroleum operator—

(a) in respect of which a deduction under paragraph 6 has been allowed for the purpose of determining the taxable income of the petroleum operator, is disposed of, lost or destroyed;

or

(b) to which paragraph 7 applies, passes to an assignee in circumstances such as are referred to in that paragraph.

(2) Where this paragraph applies, the income of the petroleum operator in the year of assessment shall include the amount of the deduction allowed in respect of the asset concerned, to the extent that the deduction has been recovered or recouped as a result of the disposal, loss, destruction or passing of that asset, for the purpose of determining the taxable income of the petroleum operator.

*Returns and liability to tax*

9

Nothing in this *Schedule* shall be construed as relieving a petroleum operator from—

(a) the obligation of rendering returns of income in respect of income, other than income attributable to petroleum operations, derived by the petroleum operator, and

(b) any liability to tax in respect of income, not so attributable, referred to in subparagraph (a).

*Information in returns*

10

A petroleum operator shall specify separately in a return rendered in respect of the petroleum operator's petroleum operations the income attributable to those operations and shall furnish information with respect to the following matters—

(a) the quantity of the petroleum operator's chargeable petroleum won and saved;

(b) the total quantity of that petroleum disposed of, the manner of each disposal making up that total and the fair market value in relation to each disposal;

(c) in the case of petroleum won and saved that is lost or destroyed, the quantity lost or

destroyed and the amount received or receivable under a policy of insurance or otherwise in respect of the petroleum;

(d) any amount included in the income of the petroleum operator pursuant to subparagraph (2) of paragraph 8;

(e) any interest or other amount derived by the petroleum operator from petroleum operations;

(f) the amount of all the allowable deductions claimed;

(g) the amount of each allowable deduction claimed and particulars of that amount;

(g1) any asset in relation to which paragraph 7 or subparagraph (1) of paragraph 8 applies;

[para (h) is not in the Revised Edition of 1996 – Editor.]

(i) the amount of the taxable income, if any, or the assessed loss;

(j) the amount, if any, of tax payable;

(k) such other information as the Commissioner may require.

*Maintenance of books in foreign currency, etc.*

11

Where a taxpayer that is a petroleum operator elects, which election shall be final, to maintain all books and records relating to petroleum operations in the currency of the United States of America—

(a) the Commissioner shall determine the taxable income or assessed loss attributable to petroleum operations for any year of assessment in that currency; and

(b) notice of assessment and of any amount of tax payable shall be given to the taxpayer in that currency; and

(c) payment of tax shall be effected in that currency.

### TWENTY-FIRST SCHEDULE

(Section 34)

#### RESIDENTS' TAX ON INTEREST

*Interpretation*

1

(1) In this Schedule—

“**financial institution**” means—

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(a) any banking institution registered or required to be registered in terms of the Banking Act [Chapter 24:20]; or

[Para (a) amended by s 82 of, and schedule to, the Banking Act [Chapter 24:20], and further amended by section 25 of Act 18/2000 from the 1st January, 2001.]

(b) any building society registered or required to be registered in terms of the Building Societies Act [Chapter 24:02]; or

(c) the Reserve Bank of Zimbabwe;

[Para (c) inserted by s 28(a)(i) of Act 17 of 1997.]

(d) a company acting as trustee or manager of a unit trust scheme registered in terms of the Collective Investment Schemes Act, [Chapter 24:19], the Infrastructure Development Bank of Zimbabwe established in terms of the Infrastructure Development Bank of Zimbabwe Act [Chapter 24:14] and the successor company to the Agricultural Finance Corporation formed under the Agricultural Finance Act [Chapter 18:02]; or

[para (d) inserted by Act 18/2000 w.e.f. the 1st January, 2001 and amended by Act 11 of 2005 from 24th March , 2006.]

(e) an asset manager as defined in the Asset Management Act [Chapter 24:26]; or

(f) a collective investment scheme as defined in section 3 of the Collective Investment Schemes Act [Chapter 24:19];

[(paras (e) and (f) were inserted by S.I.14/ 2004 w.e.f. 30th January,2004,confirmed by Act 16 of 2004. Paras (c) & (d) were overlooked, so these new subparas are renumbered, with "or" added by the Editor for sense's sake. Para (f) duplicates para (d) re: Chap 24:19.]

**"foreign currency account"** means an account held at a bank or other financial institution in Zimbabwe in which the funds are denominated in a foreign currency;

**"interest"** means interest from a source in Zimbabwe payable **by a financial institution** on any loan or deposit, and—

(a) includes—

(i) a dividend distributed by a building society in respect of any share other than a share referred to in subparagraph (i), (ii) or (iii) of the definition of "dividend" in subparagraph (1) of paragraph 1 of the *Ninth Schedule*; and

(ii) income from Treasury bills;

[Editor's Note: therefore the **definition of Interest** only applies to payment for RTI purposes- but the date of accrual would remain where the interest was not subject to RTI but income tax (e.g. discount on treasury bills accruing to financial institutions) where the income would be taxable on accrual not on payment.]

(iii) income from banker's acceptances and other discounted instruments traded by financial institutions

[Subparagraph (a) substituted by s 28(a)(ii) of Act 17 of 1997, and (iii)inserted by section 25 of Act 18/2000 w.e.f. the year of assessment beginning on the 1st January, 2001.]

(b) does not include—

(i) interest paid on class "C" shares as defined in the Building Societies (Class "C" Shares) Regulations, 1986 (Statutory Instrument 308 of 1986), to the extent and subject to the conditions specified in those regulations; or

(ii) ....

[deleted by Act 13/1996.]

(iii) interest payable to any other financial institution; or

(iv) interest payable to the holder of a moneylender's licence granted in terms of the Moneylending and Rates of Interest Act [Chapter 14:14];

[*DD v COT 77-ITC-1270*]

or

(v) interest payable to any person whose receipts and accruals are exempt from income tax in terms of paragraph 1, 2 or 3 of the *Third Schedule*; or

(vi) interest payable to an insurer registered in terms of the Insurance Act [Chapter 24:07]; or

(vii) interest payable on a foreign currency account held by a taxpayer other than a company or trust; or

(viii) interest which is exempt from income tax in terms of paragraph 10 of the *Third Schedule*;

[Inserted by Act 4 of 1996 , amended by SI 14 /2004 from 30<sup>th</sup> January,2005- confirmed by Act 16 of 2004.]

(ix) interest on the amount payable by the Reserve Bank of Zimbabwe for the export proceeds of a business organisation engaging in the export of goods and services upon the acquittance by that organisation of the export documentation relating to that amount;

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[Inserted by Act 16 of 2007, from 1st January, 2008.]

“**person**”, in addition to the meaning given to the term in section two, includes, in relation to income the subject of a trust to which a beneficiary is entitled, the trust.

(2) For the purposes of this *Schedule*—

(a) in determining whether or not residents' tax on interest should be withheld, the question as to whether or not the payee is ordinarily resident in Zimbabwe shall be decided by reference to the date on which the interest is paid by the financial institution;

(b) interest shall be deemed to be paid to the payee if it is credited to his account or so dealt with that the conditions under which he is entitled to it are fulfilled, whichever occurs first.

#### *Financial institutions to withhold tax*

2

(1) Every financial institution that pays interest to—

(a) a person, other than a company or trust, who is ordinarily resident in Zimbabwe; or

(b) a partnership, company or trust which is ordinarily resident in Zimbabwe;

shall withhold residents' tax on interest from that interest and shall pay the amount withheld to the Commissioner on or before the **10th** day of the month following the month in which the payment was made or within such further time as the Commissioner may for good cause allow:

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8th January, 2010.]

Provided that in the case of interest referred to in paragraph (a)(ii) and (iii) of the definition of “**interest**” in paragraph 1(1), payment of the interest shall be deemed to have been made on the date of maturity of the Treasury bill, banker's acceptance or other discounted instrument concerned.

[Proviso originally inserted by Act 2 of 2005, gazetted on 12<sup>th</sup> September 2005 w.e.f. 1<sup>st</sup> September, 2005 (deeming payment of the interest to have been made at the time of purchase of the instrument concerned).]

The proviso was then repealed by Section 21(1) of the Finance (No.2) Act 8 of 2005 gazetted on the 30th Dec 2015, which substituted the above wording to take effect from 1<sup>st</sup> December, 2005. Meaning the **interest** on the instruments was taxable during the period —

·1-11<sup>th</sup> September 2005 deeming payment of the interest to have been made at the time of purchase of the instrument concerned;  
·12<sup>th</sup> September 2005 -30<sup>th</sup> November 2005 -ditto  
·1<sup>st</sup> December, 2005 to date deeming payment of the interest to have been made on the date of maturity of the instrument concerned;]

(2) Where residents' tax on interest is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

- (a) the amount of the interest; and
- (b) the amount of the residents' tax on interest withheld.

(3) Any payer who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (3) inserted by the Criminal Penalties Amendment Act 22 of 2001, w.e.f. the 10th September, 2002.]

#### *Agents to withhold tax not deducted by financial institutions*

3

(1) Every agent who, on behalf of a payee who is—

(a) a person, other than a company or trust, who is ordinarily resident in Zimbabwe; or

(b) a partnership, company or trust which is ordinarily resident in Zimbabwe;

receives interest from which residents' tax on interest has not been withheld by the financial institution shall withhold residents' tax on interest from that interest and shall pay the amount withheld to the Commissioner on or before the **10th** day of the month following the month in which the interest was received.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

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(2) Where residents' tax on interest is withheld in terms of subparagraph (1), the agent shall provide the payee with a certificate in a form approved by the Commissioner, showing—

- (a) the name of the financial institution that paid the interest; and
- (b) the amount of the interest; and
- (c) the amount of the residents' tax on interest withheld.

(2a) Any agent who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the agent's conduct was wilful, he shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subpara (2a) inserted by the Criminal Penalties Amendment Act 22 of 2001, from the 10th September, 2002.]

(3) For the purpose of this paragraph, a person shall be deemed to be the agent of a payee and to have received interest on behalf of that payee if—

(a) that person's address appears as the address of the payee in the records of the financial institution that paid the interest; and

(b) the warrant or cheque in payment of the interest is delivered at that person's address.

(4) For the purposes of this paragraph, where a trust receives interest—

(a) to the whole or part of which a beneficiary is entitled in terms of the trust; or

(b) which in terms of section ten is deemed to accrue to a person;

then—

(i) a trustee of that trust shall be deemed to be an agent in respect of such interest or part thereof; and

(ii) any such beneficiary or person shall be deemed to be a payee in respect of such interest or part thereof.

(5) Any person deemed to be the agent of a payee in terms of subparagraph (3) or (4) shall,

as regards the payee and in respect of any income received by or accruing to or in favour of the payee, have and exercise all the powers, duties and responsibilities of a person declared to be the agent of the payee in terms of section fifty-eight.

*Payee to pay tax not withheld by financial institution or agent*

4

A payee to whom interest is paid from which residents' tax on interest has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section seventy-seven shall pay to the Commissioner, **on or before the 10<sup>th</sup> day** of the month following the month in which the payment was made, the tax that should have been withheld.

[Payment period shortened by Act 12/2006 from the 1st January, 2007, and further from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

*Returns to be furnished*

5

Payment of residents' tax on interest by a financial institution or an agent shall be accompanied by a return in the form prescribed.

*Penalty for non-payment of tax*

6

(1) Subject to subparagraph (2), a financial institution or an agent in Zimbabwe that fails to withhold or pay to the Commissioner any amount of residents' tax on interest as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

(a) the amount of residents' tax on interest which the financial institution or the agent, as the case may be, failed to pay to the Commissioner; and

(b) a further amount equal to **100%** of such residents' tax on interest.

[Penalty increased by Section 61 and the Schedule to the Finance Act 18/2000 with effect from the 12th January, 2001]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him residents' tax on interest was not due to any intent to evade the provisions of this *Schedule*, may waive the payment of the whole or such

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part as he thinks fit of the amount referred to in subparagraph (b) of subparagraph (1).

(3)

[Para (3) inserted by Act 8 of 2005 from the 1st January, 2006. Penalty repealed by the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the **1st February 2009**.]

#### *Refund of overpayments*

7

If it is proved to the satisfaction of the Commissioner that any person has been charged with residents' tax on interest in excess of the amount properly chargeable to him in terms of this Schedule, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made **within 6 years** of the date of payment of such tax.

### **TWENTY-SECOND SCHEDULE**

(Sections 2 (1), 8 (1), 15 (2)(ff) and 22)

#### DETERMINATION OF GROSS INCOME & TAXABLE INCOME OR ASSESSED LOSS FROM SPECIAL MINING LEASE OPERATIONS

##### *Interpretation*

1

In this Schedule—

**“allowable deduction”** means any deduction allowable under this *Schedule*;

**“assessed loss”** means an assessed loss determined by applying the provisions of paragraph 2;

**“asset”** includes any part or share of an asset or interest in an asset;

**“capital expenditure”** means exploration expenditure or development expenditure or both, as the context requires;

**“chargeable minerals”** means minerals obtained by the holder of a special mining lease from special mining lease operations carried out by him;

**“development expenditure”** means expenditure actually incurred, whether directly or indirectly, in or in connection with development operations, including expenditure incurred in respect of —

(a) the acquisition of motor vehicles, machinery, implements, utensils and other articles used for the purpose of development operations, including pipes, units for the purpose of production and treatment, and drilling equipment; and

(b) the acquisition of furniture, tools and equipment used in offices, residential units, schools, hospitals, nursing homes or clinics such as are referred to in subparagraph (ii) of paragraph (c) of the definition of “development operations”, and in warehouses, vehicles, motorized rolling equipment, aircraft, fire and security stations, water and sewerage plants and power plants; and

(c) labour, fuel, haulage, supplies, materials and repairs in connection with development operations; and

(d) charges, fees or rent for or in respect of land or buildings occupied for the purpose of development operations; and

(e) general administration and management directly connected with development operations in such verifiable amount as may be agreed in or pursuant to the special mining lease agreement or, where there is no such agreement, in such amount as may be determined by the Commissioner to be fair and reasonable; and

(f) measures to prevent, minimize or remedy environmental damage caused by development operations, where such measures are taken pursuant to a mining development plan approved by the Minister responsible for the administration of the Mines and Minerals Act [Chapter 21:05];

**“development operations”** means operations carried out in Zimbabwe for or in connection with the development of a special mining lease area, and includes —

(a) the sinking of shafts; and

(b) the installation of machinery, implements, utensils and other articles required for special mining lease operations; and

(c) the construction and erection of—

(i) facilities for the production, treatment, storage, gathering and conveyance of minerals; and

(ii) offices, residential units, schools, hospitals, nursing homes or clinics for use by persons employed in or in connection with mining operations and by their families; and

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(d) the construction of roads in or to the special mining lease area;

**“disposed of”**, in relation to minerals, has the meaning given by subparagraph (3) of paragraph 3;

**“exploration expenditure”** means expenditure actually incurred, whether directly or indirectly, in or in connection with exploration operations, including expenditure incurred in respect of—

(a) the acquisition of motor vehicles, machinery, implements, utensils and other articles employed for the purpose of exploration operations, including pipes and drilling equipment; and

(b) labour, fuel, haulage, supplies, materials, and repairs in connection with exploration operations; and

(c) charges, fees or rent for or in respect of land or buildings occupied for the purposes of exploration operations; and

(d) general administration and management directly connected with exploration operations in such verifiable amount as may be agreed in or pursuant to the special mining lease agreement or, where there is no such agreement, in such amount as may be determined by the Commissioner to be fair and reasonable;

**“exploration operations”** means any operations carried out in Zimbabwe for or in connection with exploration for minerals, and includes—

(a) geological, geophysical, geochemical, paleontological, aerial, magnetic, gravity or seismic surveys; and

(b) the study of the feasibility of any special mining lease operations or development operations to be carried out or of the environmental impact of such operations;

**“income attributable to special mining lease operations”** means the aggregate of amounts referred to in subparagraph (1) of paragraph 3;

**“Minerals Marketing Corporation of Zimbabwe”** means the corporation established by section 3 of the Minerals Marketing Corporation of Zimbabwe Act [Chapter 21:04];

**“residential unit”** means an apartment, flat, house, whether detached, semi-detached or terraced, or any similar unit of residential accommodation;

**“taxable income”** means any taxable income determined by applying paragraph 2;

**“trade training”** means any education or training, other than education or training which is provided as part of the general education of a pupil, which is intended to train persons to perform work in connection with the special mining lease operations of the taxpayer or to improve the performance of such work;

**“training building”** means any building the construction of which was commenced on or after the 1st April, 1994 which is erected by the taxpayer and used exclusively for the purpose of providing trade training for persons who are or will be employed by him in connection with his special mining lease operations;

**“training equipment”** means new or unused articles, implements or utensils purchased on or after **1st April, 1994**, and, in the opinion of the Commissioner, used by the taxpayer exclusively for the purpose of providing trade training for persons who are or will be employed by the taxpayer in connection with the taxpayer's special mining lease operations;

**“year of production”**, in relation to a special mining lease area means the year of assessment in which minerals from the area are first sold or otherwise disposed of.

*Determination of taxable income or assessed loss*

2

The taxable income or, as the case may be, the assessed loss accruing to the holder of a special mining lease in a year of assessment shall be the difference, if any, between the income attributable to special mining lease operations accruing to him in that year and the sum of his allowable deductions for that year; and that difference, if any, is a taxable income if the income so attributable is greater than the sum of those allowable deductions, and is otherwise an assessed loss.

*Income from special mining lease operations*

3

(1) For the purposes of paragraph (s) of the definition of “gross income” in subsection (1) of section **eight**, the amounts received by or accruing to, or deemed to have been received by or accrued to, the holder of a special mining lease in a year of assessment shall include—

(a) the fair market value, established as provided in subparagraph (2), of so much of the

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holder's chargeable minerals as were disposed of in the year of assessment; and

(b) any amount received or receivable in the year of assessment by the holder, under a policy of insurance or otherwise, in respect of the loss or destruction of any of the holder's chargeable minerals; and

(c) any—

(i) interest or amount in the nature of interest;

(ii) other amount;

received or receivable by the holder in the year of assessment from or in connection with his special mining lease operations; and

(d) any amount to be included in the income attributable to special mining lease operations of the holder in the year of assessment pursuant to subparagraph (2) of paragraph 8; and

(e) any amount allowed to be deducted under paragraph 4 or 5, whether in the current or any previous year of assessment, which has been recovered or recouped; and

(f) any amount or value referred to in paragraph (d), (e), (h), (k), (l) or (m) of the definition of "gross income" in subsection (1) of section *eight*.

(2) The fair market value, in relation to a disposal of minerals by the holder of a special mining lease, is—

(a) the value established by the Commissioner by reference to criteria for the determination of that value specified in the special mining lease agreement; or

(b) where there is no special mining lease agreement or there are no criteria such as are referred to in subparagraph (a), the value established by the Commissioner under and in accordance with such rules as are prescribed.

(3) Minerals are disposed of by the holder of a special mining lease if they are—

(a) sold, donated or bartered or used for repayment of loans or any form of consumer credit; or

(b) appropriated to refining or other processing in Zimbabwe without having been sold, donated or bartered prior to appropriation; or

(c) exported without having been sold, donated or bartered prior to export.

(4) Except as provided in subparagraph (1), the amounts referred to in paragraphs (a) to (s) of the definition of "gross income" in subsection (1) of section *eight* shall not, in the case of the holder of a special mining lease, constitute income attributable to his special mining lease operations.

*General deductions allowed in determining taxable income*

4

(1) Subject to subsection (1) of section *sixteen* and paragraph 6, for the purpose of determining the taxable income of the holder of a **special mining lease** for a year of assessment, there shall be deducted from income attributable to his special mining lease operations in that year the amount of any—

(a) expenditure and losses, other than of a capital nature, incurred in that year wholly and exclusively for the purpose of special mining lease operations carried out by him;

[*Unki Mine (Pvt) Ltd v ZIMRA 22-SC-015*]

and

(b) expenditure incurred in that year in respect of interest on, or in borrowing or obtaining, a loan or other form of credit or financial accommodation; and

(c) expenditure incurred in that year in respect of royalty payable to the Government on minerals won; and

(d) expenditure incurred in that year in respect of commission payable to the Minerals Marketing Corporation of Zimbabwe; and

(e) expenditure and losses incurred in that year wholly and exclusively for the purpose of special mining lease operations carried out by him, in respect of any matter for which a deduction is allowable in terms of paragraph (b), (g), (h), (l), (m), (o), (q), (r), (u), (aa) or (bb) of subsection (2) of section *fifteen* or in terms of paragraph 5; and

(f) a training investment allowance which shall be equal to **50%** of the cost to the holder of—

(i) any training building; or

(ii) any addition or alteration to any training building; or

(iii) any training equipment;

which is brought into use in that year.

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(2) Where any expenditure or losses referred to in subparagraph (1) are incurred as part of or in conjunction with any other expenditure, only that portion of the total expenditure or losses, as the case may be, which is wholly and exclusively incurred for the purpose of special mining lease operations shall be allowed as a deduction in terms of this paragraph.

(3) The provisos to subsection (3) of section *fifteen* shall apply in relation to subparagraph (2).

(4) Subsection (4) of section *fifteen* shall have effect for the purpose of this Schedule as it has effect for the purposes of that section.

(5) For the purpose of determining the taxable income of the holder of a special mining lease for a year of assessment, any assessed loss incurred by him for the previous year of assessment shall be deducted from the income remaining after the deductions referred to in this paragraph have been made.

#### *Capital redemption allowances*

5

(1) Subject to this paragraph and paragraph 6, capital expenditure incurred by the holder of a special mining lease may be deducted only in accordance with this paragraph for the purpose of determining the holder's taxable income attributable to special mining lease operations in any year of assessment.

(2) Expenditure which the holder of a special mining lease incurs in or before the year of production of his special mining lease area, in respect of—

(a) exploration operations carried out in the special mining lease area, whether before or after the issue of the special mining lease; or

(b) exploration operations carried out **not more than 6 years** before the issue of the special mining lease, where—

(i) the area in which the operations were carried out and the special mining lease area were embraced by the same exclusive prospecting order made in terms of Part VI of the Mines and Minerals Act [Chapter 21:05]; and

(ii) the operations were carried out as part of a programme of operations approved by the Mining Affairs Board in terms of that Part;

or

(c) exploration operations carried out **not more than 6 years** before the issue of the special mining lease, where—

(i) the area in which the operations were carried out was embraced by an exclusive prospecting order made in terms of Part VI of the Mines and Minerals Act [Chapter 21:05], which order did not embrace the special mining lease area and has ceased to have effect; and

(ii) the operations were carried out as part of a programme of operations approved by the Mining Affairs Board in terms of Part VI of the Mines and Minerals Act [Chapter 21:05]; and

(iii) no mining operations have resulted from the exclusive prospecting order referred to in subparagraph (i); and

(iv) the expenditure on the exploration operations has not been deducted against any other income accruing to the holder concerned;

or

(d) development operations;

shall be deemed to have been incurred in the year of production and may, in the case of exploration expenditure, be deducted in full in that year or, in the case of development expenditure, be deducted as to  $\frac{1}{4}$  of the expenditure in that year and as to a further  $\frac{1}{4}$  in each of the 3 immediately succeeding years of assessment.

(3) Expenditure which the holder of a special mining lease incurs in a year of assessment after the year of production of his special mining lease area, in respect of—

(a) exploration operations in respect of the special mining lease area, may be deducted in full in that year of assessment; or

(b) development operations, may be deducted as to  $\frac{1}{4}$  of the expenditure in that year of assessment and as to  $\frac{1}{4}$  in each of the 3 immediately succeeding years of assessment.

(4) Expenditure which the holder of a special mining lease incurs on exploration operations **not more than 6 years** before a year of assessment subsequent to the year of production of his special mining lease area may be deducted in full in that year of assessment, if—

(a) the area in which the exploration operations were carried out was embraced by an exclusive prospecting order made in terms of Part VI of the Mines and Minerals Act [Chapter 21:05], which order ceased to have

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effect before the year assessment concerned; and

(b) the exploration operations were carried out as part of a programme of operations approved by the Mining Affairs Board in terms of Part VI of the Mines and Minerals Act [Chapter 21:05]; and

(c) no mining operations have resulted from the exclusive prospecting order referred to in subparagraph (a); and

(d) the expenditure on the exploration operations has not been deducted against any other income accruing to the hold concerned.

(5) Where, in or before the year of production of the special mining lease area concerned, an amount has been received by or accrued to or in favour of the holder of a special mining lease in respect of the disposal, loss or destruction of any asset used in connection with his exploratic operations or development operations, any capital expenditure incurred in respect of the asset shall, if otherwise allowable as a deduction under this paragraph, be allowable only to the extent that the capital expenditure exceeds the amount so received or accrued.

(6) For the purposes of subparagraph (5), the amount received or accrued to or in favour of the holder of the special mining lease concerned shall be—

(a) if the asset was disposed of by way of sale for a separate price, the price for which it was sold, less the expenses of sale; or

(b) if the asset was disposed of together with other property by way of sale and a separate price was not determined in respect of the asset, such part of the price for which the asset and the other property were sold as may be determined by the Commissioner, less such part of the expenses of the sale as he may determine; or

(c) if the asset was disposed of otherwise than by way of sale the value of the asset as at the date of disposal; or

(d) if the asset was lost or destroyed, such amount as may be received by or have accrued to or in favour of the holder, under a policy of insurance or otherwise, in respect of the loss or destruction.

(7) Any capital expenditure incurred by the holder of a special mining lease in or before the year of production of his special mining lease area, other than capital expenditure incurred in respect of an asset, shall, if otherwise allowable

as a deduction under this paragraph, be reduced by any amount received by or accrued to or in favour of the holder in or before the year of production from a recovery or recoupment of any of that capital expenditure.

#### *Limitations on allowable deductions*

6

(1) In this paragraph—

**“equity capital”**, in relation to the holder of a special mining lease, means the sum of the holder's issued and paid-up share capital, reserves, un-appropriated profits and loans from shareholders;

Provided that such loans bear no interest and are not repayable on or by a certain date.

(2) The holder of a special mining lease shall **not be allowed** any deduction under this *Schedule* in respect of—

(a) any expenditure, other than payments to the Government in the nature of royalty payments, or commission payable to the Minerals Marketing Corporation of Zimbabwe, wholly or partly depending on, or determined by reference to, the quantity or value of, or the profits from, his chargeable minerals; or

(b) any amount payable to the Government which is calculated by reference to the profitability of his special mining lease operations, or on the rate of return on his investment in those operations, or on an after-tax basis or in any similar manner; or

(c) any expenditure to the extent that it is incurred to produce income which is not income attributable to special mining lease operations; or

(d) any expenditure such as is referred to in subparagraph (b) of subparagraph (1) of paragraph 4—

(i) unless the Commissioner is satisfied that the loan or credit has been or is being used for the purpose of special mining lease operations; or

(ii) to the extent that the interest concerned exceeds the commercial rate payable for the type and currency of the loan by a borrower dealing at arm's length with the lender; or

(iii) to the extent that any expenditure incurred exceeds the amount that would have been agreed upon by 3 persons dealing at arm's length with the person providing the loan or credit concerned; or

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(e) any expenditure, in the case of a loan for development operations—

(i) unless the expenditure was incurred in accordance with the provisions of a financing plan approved in terms of a special mining lease agreement; or

(ii) to the extent that the expenditure relates to a part of the debt exceeding, in any year of assessment, **3 times** the holder's equity capital, or such other multiple of his equity capital as may be fixed by or in terms of a special mining lease agreement;

or

(f) any expenditure on any residential unit which is used for housing the holder's employees and their families, to the extent that the expenditure exceeds—

(i) thirty-five thousand dollars, where the residential unit was erected in the year of assessment beginning on the 1st April 1994; or

(ii) fifty thousand dollars, where the residential unit was erected on or after the 1st April, 1995, but before the 1st January, 1999; or

(iii) zw\$100 000, where the residential unit was erected on or after the 1st January, 1999;

(iv) US\$10 000 where the residential unit was erected on or after the 1st January 2009;

[subpara (iv) inserted by Finance (No.3) Act 11 of 2014 w.e.f. 6th January, 2015]

(v) **zw\$12,5 million**, where the residential unit was erected on or after the **1st January 2018**;

[subpara (v) inserted by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March, 2018; amount in (v) redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 ; amended by Act 13/2019; increased Act 10/2020 w.e.f. 31st December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022 ]

or

(g) any expenditure on any passenger motor vehicle as defined in subparagraph (2) of paragraph 14 of the *Fourth Schedule*, to the extent that the expenditure exceeds—

(i) fifty thousand dollars, where the motor vehicle was purchased in the year of assessment beginning the 1st April, 1994; or

(ii) seventy-five thousand dollars, where the motor vehicle was purchased on or after the 1st April 1995, but before the 1st January, 1999; or

(iii) zw\$ 200 000, where the motor vehicle was purchased on or after the 1st January, 1999;

(iv) **zw\$5 million** where the motor vehicle was purchased on or after the **1st January 2009**;

[subpara (iv) inserted by Finance (No.3) Act 11 of 2014 w.e.f. the 6th January, 2015; amount in (iv) redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

or

(h) any expenditure on any permanent building used for the purpose of a **school, hospital, nursing home or clinic**—

(i) unless it is proved to the satisfaction of the Commissioner that, at the relevant time—

A. in the case of a school, **more than ½** of the pupils are children of persons employed by the holder in carrying out special mining lease operations; or

B. in the case of a hospital, nursing home or clinic, **more than ½** of the persons receiving treatment thereat are employed by the holder in carrying out special mining lease operations or are members of their families;

or

(ii) to the extent that the expenditure exceeds—

A. in respect of any residential unit used by staff employed at the school, hospital, nursing home or clinic—

I. thirty-five thousand dollars, where the expenditure was incurred in the year of assessment beginning on the 1st April, 1994; or

II. fifty thousand dollars, where the expenditure was incurred on or after 1st April, 1995, but before the 1st January, 1999; or

[Amended by Act 29 of 1998 from 1 January 1999.]

III. one hundred thousand dollars, where the expenditure was incurred on or after the 1st January, 1999; or

[Inserted by Act 29 of 1998 from 1 January 1999.]

IV. **zw\$5 million**, where the expenditure was incurred \*on or after the **1st January 2009**;

[subpara IV substituted by Finance (No.3) Act 11 of 2014 - (omitting \*the words "incurred by the taxpayer": which were originally enacted by Act 5/2009)- still w.e.f. the 1st January 2009;

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amount redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019 amended by Act 13/2019 w.e.f. 31st December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31st December, 2020; & by Act 8/2022 w.e.f. 24th October, 2022.]

or

**B.** in respect of any one such school, hospital, nursing home or clinic—

I. zw\$ 250 000, where the expenditure was incurred in the year of assessment beginning the 1st April, 1994; or

II. zw\$ 500 000, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or

[Amended by Act 29 of 1998 from 1 January 1999.]

III. zw\$ 1 500 000, where the expenditure was incurred on or after the 1st January, 1999; or

[Inserted by Act 29 of 1998 from 1 January 1999.]

**IV. zw\$75 million**, where the expenditure was incurred on or after the **1st January, 2018**;

[subpara (IV) inserted by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March, 2018; corrected by SI 188/2018; amount redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019. amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(iii) any additional profits tax, or interest payable thereon, charged in terms of this Act, or any similar tax charged in any country other than Zimbabwe.

(3) Where the holder of a special mining lease disposes of any of his chargeable minerals, he shall not be allowed any deduction under this *Schedule* in respect of the transportation of the minerals—

(a) outside Zimbabwe; or

(b) if applicable, within Zimbabwe beyond the delivery point as defined in his special mining lease.

[*U M (Pvt) Ltd v ZIMRA* 20-HH-437]

(4) Except as provided in paragraph 4, no deduction shall, as regards income attributable to special mining lease operations, be made in respect of allowances or deductions referred to in subsection (2) of section *fifteen*.

[*PL Mines (Pvt) Ltd v ZIMRA* 15-HH-466]

(5) No deduction shall be allowed in respect of any bonus payment made by any person in respect of the signing of a special mining lease agreement or the issue of a special mining lease.

*Deductions allowed on transfer of special mining lease*

7

(1) Where in any year of assessment the holder of a special mining lease transfers his lease, wholly or partially, to another person under the Mines and Minerals Act [Chapter 21:05], he and the transferee shall jointly, **within 30 days** after the date of the transfer, furnish to the Commissioner a statement in writing—

(a) identifying any asset to which this paragraph applies which passed to the transferee; and

(b) stating the proportion of the consideration given for the transfer which appertains to the asset or, where no consideration was so given, the value of the asset.

(2) If the Commissioner is satisfied with a statement furnished to him in terms of subparagraph (1), the proportion of the consideration which appertains to the asset or, as the case may be, the value of the asset shall—

(a) for the purposes of paragraph 5, rank as—

(i) exploration expenditure if the deduction allowed as provided in subparagraph (4) was in respect of exploration expenditure; or

(ii) development expenditure if that deduction was in respect of development expenditure; and

(b) for the purpose of paragraph 8, rank as a recovery of the transferor's capital expenditure.

(3) If the Commissioner is not satisfied with a statement furnished to him in terms of subparagraph (1) or if no such statement has been furnished to him, he shall determine the value of the asset which shall then rank as exploration expenditure or development expenditure, as provided in subparagraph (a) of subparagraph (2), or as capital expenditure as provided in subparagraph (b) of subparagraph (2).

(4) This paragraph applies in relation to any asset in respect of which a deduction has been allowed under paragraph 5 for the purposes of determining the transferor's taxable income.

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#### *Disposal, loss etc. of asset*

8

(1) This paragraph applies where, in a year of assessment, an asset of the holder of a special mining lease—

(a) in respect of which a deduction under subparagraph (3) of paragraph 5 has been allowed for the purpose of determining the holder's taxable income, is disposed of, lost or destroyed; or

(b) to which paragraph 7 applies, passes to a transferee in circumstances such as are referred to in that paragraph.

(2) Where this paragraph applies, the income attributable to special mining lease operations of the holder of the special mining lease in the year of assessment concerned shall include the amount of the deduction allowed in respect of the asset concerned, to the extent that the deduction has been recovered or recouped as a result of the disposal, loss, destruction or passing of that asset.

(3) Subparagraph (6) of paragraph 5 shall apply, *mutatis mutandis*, for the purpose of determining the amount received or recouped as a result of the disposal, loss or destruction of any asset.

#### *Returns and liability to tax*

9

Nothing in this Schedule shall be construed as relieving the holder of a special mining lease from—

(a) the obligation to render returns of income in respect of income, other than income attributable to special mining lease operations, derived by or accruing to him; or

(b) any liability to tax in respect of income, not attributable to his special mining lease operations, referred to in subparagraph (a).

#### *Information in returns*

10

The holder of a special mining lease shall specify separately, in a return rendered in respect of his special mining lease operations, the income attributable to those operations and shall furnish information with respect to the following matters—

(a) the quantity of chargeable minerals won by him; and

(b) the total quantity of those minerals disposed of, the manner of each disposal making up that total and the fair market value in relation to each disposal; and

(c) in the case of minerals won that are lost or destroyed, the quantity lost or destroyed and the amount received or receivable under a policy of insurance or otherwise in respect of the minerals; and

(d) any amount included in the holder's income pursuant to subparagraph (2) of paragraph 8; and

(e) any interest or other amount derived by the holder from special mining lease operations; and

(f) the amount of all allowable deductions claimed; and

(g) the amount of each allowable deduction claimed and particulars of that amount; and

(h) any asset in relation to which subparagraph (5) of paragraph 5, paragraph 7 or paragraph 8 applies; and

(i) the amount, if any, of tax payable; and

(j) such other information as the Commissioner may require.

#### *Maintenance of books in foreign currency*

11

(1) The holder of a special mining lease may, in the first year of assessment after the issue of his special mining lease, elect to maintain all books and records relating to his special mining lease operations in the currency of the United States of America, and any such election shall be final.

[*Zimbabwe Platinum Mines (Pvt) Ltd v ZIMRA* 21-SC-159]

(2) Where the holder of a special mining lease has made an election referred to in subparagraph (1)—

(a) any—

(i) income accruing to the holder and attributable to his special mining lease operations; or

(ii) expenditure incurred by the holder and constituting an allowable deduction;

in a currency other than that of the United States of America shall be shown in all books and records relating to his special mining lease

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operations in that other currency and in the currency of the United States of America; and

(b) the Commissioner shall determine the holder's taxable income or, as the case may be, his assessed loss, for any year of assessment in the currency of the United States of America; and

(c) notice of assessment and of any tax payable shall be given to the holder in the currency of the United States of America; and

(d) payment of tax shall be effected in the currency of the United States of America; and

(e) the provisions of the special mining lease shall apply in relation to the conversion of any other currency into the currency of the United States of America for the purposes of this paragraph:

Provided that, if there are no such provisions in the special mining lease, the conversion shall be made in accordance with such procedure as the Commissioner may direct either generally or in any particular case.

### TWENTY-THIRD SCHEDULE

(Section 33)

#### DETERMINATION OF ADDITIONAL PROFITS TAX IN RESPECT OF **SPECIAL MINING LEASE AREA**

##### *Interpretation*

1

(1) In this Schedule—

**“allowable deduction”** means, subject to subparagraph (2), a deduction allowable under the *Twenty-Second Schedule* in respect of expenditure incurred;

**“first accumulated net cash position”** means an amount determined in accordance with subparagraphs (2), (4) and (5) of paragraph 3;

**“first year of assessment”**, in relation to a special mining lease area, means the year of assessment in which the special mining lease is issued in respect of that area;

**“net cash receipts”**, in relation to a special mining lease area, means such receipts determined by applying the provision of paragraph 2;

**“Price Index”** means—

(a) the monthly level of the United States Industrial Goods Producer Price Index, as reported for the first time for the year of

assessment concerned in the publication of the International Monetary Fund known as the *“International Financial Statistics”* in the section title “Prices, Production, Employment”; or

(b) such other monthly index as the Minister may prescribe by notice in the *Gazette*;

**“second accumulated net cash position”** means an amount determined in accordance with subparagraphs (3), (4) and (5) of paragraph 3;

**“taxable income”** means any taxable income determined by applying paragraph 2 of the *Twenty-Second Schedule*;

**“year of production”**, in relation to a special mining lease area, means the year of assessment in which minerals from the area are first sold or otherwise disposed of.

(2) For the purposes of this *Schedule*, a deduction made in respect of—

(a) expenditure of the kind referred to in subparagraph (b) subparagraph (1) of paragraph 4 of the *Twenty-Second Schedule*; or

(b) a training investment allowance referred to in subparagraph (f) of subparagraph (1) of paragraph 4 of the *Twenty-Second Schedule*; or

(c) any capital redemption allowance referred to in paragraph 5 of the *Twenty-Second Schedule*;

shall not be treated as an allowable deduction.

##### *Net cash receipts*

2

(1) For the purpose of this *Schedule*, the net cash receipts from a special mining lease area in a year of assessment shall be the result, which may be a positive or negative figure, of deducting from the income referred to in subparagraph (2) the deductions referred to in subparagraph (3).

(2) The income to which subparagraph (1) relates is the aggregate of the following amounts—

(a) amounts referred to in subparagraph (1) of paragraph 3 of the *Twenty-Second Schedule*, other than any amount referred to in subparagraph (i) of subparagraph (c) of subparagraph (1) of that paragraph, accruing in the year of assessment concerned to the holder of the special mining lease or, in the case of

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joint holders, to each of the holders, from special mining lease operations carried on—

- (i) in the special mining lease area; or
- (ii) subject to subparagraph (4), in any other special mining lease area, in the case of an amount referred to in subparagraph (ii) of subparagraph (c) of subparagraph (1) of paragraph 3 of the *Twenty-Second Schedule*;

and

(b) any amounts not covered by subparagraph (a), which are the proceeds of sales of material, equipment, plant, facilities, data, information, intellectual property or rights, the acquisition costs of which have previously been deducted in calculating net cash receipts from a special mining lease area; and

(c) any amounts of a capital nature received, or any contribution, from any person for the use of facilities, to the extent that they are not included in the amounts referred to in subparagraph (a) or (b).

(3) The deductions to which subparagraph (1) relates are the aggregate of—

(a) allowable deductions in respect of expenditure which—

(i) has been incurred or is deemed to have been incurred in the year of assessment concerned by the holder of the special mining lease or, in the case of joint holders, by each of the holders; and

(ii) the Commissioner determines is attributable to the special mining lease area for the purpose of calculating the holder's liability for income tax;

and

(b) income tax paid for the year of assessment concerned in respect of the taxable income of the holder of the special mining lease or, in the case of joint holders, of each of the holders, which the Commissioner determines is attributable to the special mining lease area; and

(c) capital expenditure incurred solely in relation to a special mining lease area which is allowable as a deduction under paragraph 5 of the *Twenty-Second Schedule*:

Provided that—

(i) any capital expenditure in respect of exploration operations which is so allowable and which is incurred prior to the first year of assessment shall be deemed to have been

incurred in the first year of assessment for special mining lease operations;

(ii) such capital expenditure shall be deducted in full in the year in which it is incurred or deemed to have been incurred.

(4) Where a person is the holder of more than one special mining lease in any year of assessment, an amount accruing to him in that year of assessment as provided in subparagraph (b) of subparagraph (2) shall, for the purposes of this paragraph, be treated as accruing to him in equal parts from each of the special mining lease areas.

(5) Where a person is the holder of more than one special mining lease in any year of assessment and there are deductions pursuant to subparagraphs (a) and (c) of subparagraph (3) in respect of expenditure not incurred exclusively in respect of any one of the special mining lease areas, the deductions shall be apportioned between the special mining leases, for the purposes of calculating the holder's net cash receipts, in the same proportions as the income from each special mining lease are determined in accordance with subparagraph (2) of paragraph 2, bears the holder's total income determined from all the special mining lease areas held by him.

*Determination of first and second accumulated net cash position*

3

(1) For the first year of assessment of a special mining lease area, and for every subsequent year of assessment, there shall be established the first accumulated net cash position and the second accumulated net cash position.

(2) The first accumulated net cash position shall be determined accordance with the formula—

$$A (100 \% + R_1) (100 \% + P) + B,$$

where—

**A** represents, subject to subparagraphs (4) and (5), the first accumulated net cash position in relation to the special mining lease area concerned at the end of the year of assessment immediately preceding the year of assessment for which the determination is being made;

**B** represents the net cash receipts from the special mining lease area concerned in the year of assessment;

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**P** represents the change, expressed as a percentage, in the level of the Price Index between—

(a) the last month of the year of assessment immediately preceding the year of assessment for which the determination is being made; and

(b) the last month of the year of assessment for which the determination is being made;

**R<sub>1</sub>** represents 15% or such other percentage as may be specified for this purpose in the special mining lease agreement relating to the special mining lease concerned.

(3) The second accumulated net cash position shall be determined in accordance with the formula—

$$A (100 \% + R_2) (100 \% + P) + B - C,$$

where—

**A** represents, subject to subparagraphs (4) and (5), the second accumulated net cash position in relation to the special mining lease area concerned at the end of the year of assessment immediately preceding the year of assessment for which the determination is being made;

**B** represents the net cash receipts from the special mining lease area concerned in the year of assessment;

**C** represents the amount of additional profits tax, if any, determined in accordance with this *Schedule* in relation to the first accumulated net cash position for the special mining lease area concerned;

**P** represents the change, expressed as a percentage, in the level of the Price Index between—

(a) the last month of the year of assessment immediately preceding the year of assessment for which the determination is being made; and

(b) the last month of the year of assessment for which the determination is being made;

**R<sub>2</sub>** represents 20% or such other percentage as may be specified for this purpose in the special mining lease agreement relating to the special mining lease concerned.

(4) Where the first accumulated net cash position or the second accumulated net cash position, established in respect of a special mining lease area for a year of assessment, is a positive amount, that accumulated net cash position shall be deemed to be nil for the purpose of determining the equivalent net cash

position for the immediately succeeding year of assessment.

(5) For the purpose of determining the amount of factor "A" of the formulae referred to in subparagraphs (2) and (3), the year immediately preceding the first year of assessment for a special mining lease area shall be deemed to be a year of assessment for the area and, for that purpose, the first or second accumulated net cash position at the end of that preceding year shall be deemed to be nil.

#### *Computation of additional profits tax*

4

(1) If the first accumulated net cash position in respect of a special mining lease area for any year of assessment is expressed as a positive amount, the additional profits tax payable by the holder of the special mining lease shall be computed at such percentage of that positive amount as may be determined in accordance with the formula—

where—

**U** represents the rate of additional profits tax, expressed as a decimal, determined in relation to the first accumulated net cash position;

**T** represents the rate at which income tax is levied upon holders of special mining leases in terms of the charging Act relating to the year of assessment concerned.

(2) If the second accumulated net cash position in respect of a special mining lease area for any year of assessment is expressed as a positive amount, the additional profits tax payable by the holder of the special mining lease shall be the aggregate of—

(a) the additional profits tax determined in accordance with subparagraph (1); and

(b) 27,778% of the positive amount in which the second accumulated net cash position is expressed.

#### *Information in returns*

5

The holder of a special mining lease shall specify separately, in a return rendered in respect of his special mining lease operations, the net cash receipts from his special mining lease area for the year of assessment to which the return relates, and shall furnish information with respect to the following matters—

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- (a) the amount of all income and deductions taken into account in determining the net cash receipts; and
- (b) the appropriate change, expressed as a percentage, in the level of the Price Index between the last month of the preceding year of assessment and the last month of the year of assessment to which the return relates; and
- (c) the values of the first accumulated net cash position and the second accumulated net cash position for the year of assessment for which the return is made and for the immediately preceding year of assessment; and
- (d) the amount, if any, of additional profits tax computed with reference to the first accumulated net cash position and with reference to the second accumulated net cash position; and
- (e) the total amount, if any, of additional profits tax payable;

[where initially wrong information was furnished *Zimbabwe Platinum Mines (Pvt) Ltd v ZIMRA 21-SC-159*]

and

- (f) such other information as the Commissioner may require.

*Administration and collection of additional profits tax*

6

Where the holder of a special mining lease has elected, in terms of paragraph 11 of the *Twenty-Second Schedule*, to maintain his books and records in the currency of the United States of America—

- (a) the Commissioner shall determine the holder's accumulated net cash position and his second accumulated net cash in that currency; and
- (b) notice of assessment and of any additional profits payable shall be given in that currency; and
- (c) payment of additional profits tax shall be effected in that currency; and
- (d) the provisions of that paragraph shall apply to the conversion into that currency of amounts expressed in any other currency.

### TWENTY-FOURTH SCHEDULE

(Section 36A)

[Inserted by Act 4 of 1996; substituted by Finance Act 8/2015 gazetted on the 13<sup>th</sup> November, 2015 w.e.f. 1<sup>st</sup> February, 2009]

### TOBACCO LEVY

*Interpretation*

1

In this *Schedule*—

“**auction floor**” means premises for the sale of auction tobacco;

“**auction tobacco**” means tobacco which is declared in terms of the Tobacco Marketing and Levy Act to be auction tobacco;

“**auctioneer**” means the holder of an auction floor license issued in terms of the Tobacco Marketing and Levy Act;

“**buyer**” means a person who is—

- a) licensed or required to be licensed under the Tobacco Marketing and Levy Act as a buyer of auction tobacco; or
- b) registered or required to be registered under the Tobacco Marketing and Levy Act as an authorized buyer of auction tobacco; or
- c) is a contractor.

“**contract tobacco**” means tobacco which is subject to a tobacco contract;

“**contractor**” means a buyer who is a party to a tobacco contract;

“**price**”, in relation to auction tobacco that has been sold, means the total amount payable by the purchaser under the agreement of sale;

“**sell**” means sell by auction or sell to a contractor;

“**tobacco contract**” means a contractual arrangement between a contractor and a grower of tobacco, under which the contractor provides or finances the purchase of inputs for the benefit of the grower in return for the grower selling his or her tobacco to the contractor;

“**tobacco levy**” means the levy required to be withheld or recovered in terms of subparagraph (1) of paragraph 2;

“**Tobacco Marketing and Levy Act**” means the Tobacco Marketing and Levy Act [Chapter 18:20].

*Auctioneer or contractor to withhold tobacco levy*

## ICAZ STUDENT LEGISLATION HANDBOOK -

### INCOME TAX ACT

2

- (1) Every auctioneer and contractor shall—  
(a) withhold from the price payable for—  
(i) auction tobacco sold on his or her auction floor; or  
(ii) contract tobacco;  
a levy at the rate fixed from time to time in the charging Act; and  
(b) in the case of an **auctioneer**, before relinquishing possession of any auction tobacco sold to a buyer on his or her auction floor, recover from the buyer a levy at the rate fixed from time to time in the charging Act;

and shall pay the amount so withheld or recovered to the Commissioner within the prescribed period after—

- (i) the date of the sale, in the case of an amount withheld in terms of subparagraph (a); or  
(ii) his or her relinquishing of possession of the auction tobacco concerned, in the case of an amount withheld in terms of subparagraph (b);

or within such further time as the Commissioner may for good cause allow.

(2) The tobacco levy shall be withheld in terms of subparagraph (1)(a) notwithstanding any writ of execution or attachment or other process that may have been issued in respect of the auction or contract tobacco concerned, and the levy shall be withheld before any other amounts are withheld or deducted from the price of the auction or contract tobacco in terms of any other law.

#### *Certificates to be provided to seller*

3

(1) Whenever he or she has withheld any tobacco levy in terms of paragraph 2(a) or recovered any tobacco levy in terms of subparagraph (b) of that paragraph, an auctioneer or contractor shall provide the seller or buyer, as the case may be, of the auction tobacco concerned with a certificate in a form approved by the Commissioner showing—

- (a) the price at which the auction or contract tobacco was sold; and  
(b) the amount of tobacco levy withheld.

(2) Any payer who fails to provide a payee with a certificate in terms of subparagraph (1), or

furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

#### *Returns to be furnished to Commissioner*

4

Payment of the tobacco levy by an auctioneer in terms of paragraph 2 shall be accompanied by a return in the form prescribed:

Provided that the auctioneer may render the return separately **no later than the 10th** day of the month following the month in which he or she paid the tobacco levy.

[Para substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2022.]

#### *Penalty for non-payment of tobacco levy*

5

(1) Subject to subparagraph (2), an auctioneer or contractor who fails to withhold, recover or pay to the Commissioner any tobacco levy as provided in paragraph 2 shall be personally liable for the payment to the Commissioner, not later than the date on which the payment should have been made in terms of paragraph 2, of—

- (a) the amount of the tobacco levy which he or she failed to pay; and  
(b) a **further amount equal to 15%** of the amount referred to in subparagraph (a).

(2) If the Commissioner is satisfied in any particular case that a failure to pay any tobacco levy was not due to an intent to evade the provisions of this *Schedule*, he or she may waive the payment of the whole or such part as he or she thinks fit of the amount referred to in subparagraph (1)(b).

(3) ...

[Penalty repealed by the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the **1st February 2009**.]

#### *Refund of tobacco levy*

6

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### INCOME TAX ACT

If it is proved to the satisfaction of the Commissioner that any person has paid any amount by way of tobacco levy in excess of the amount properly payable in terms of this *Schedule*, the Commissioner shall authorize a refund of the amount overpaid:

Provided that the Commissioner shall not authorize a refund in terms of this paragraph unless the claim therefor is made **within 6 years** of the date of the overpayment.

### TWENTY-FIFTH SCHEDULE

(Section 36B)

[Inserted by Act 13/1996 with effect from 1 September 1996.]

#### AUTOMATED FINANCIAL TRANSACTIONS TAX

##### *Interpretation*

1

In this Schedule—

**“automated teller machine”** means an electronic device which enables a customer of a financial institution to perform transactions, including the withdrawal of cash from his account with the institution, directly and without the intervention of a teller or other officer of the financial institution concerned;

**“financial institution”** means

- (a) a bank, discount house or finance house registered or required to be registered under the Banking Act [Chapter 24:20]; or
- (b) a building society registered or required to be registered in terms of the Building Societies Act [Chapter 24:02].

##### *Liability for automated financial transactions tax*

2

Whenever a customer of a financial institution—

- (a) withdraws cash from his account with the institution; or
- (b) effects any debit on his account with the institution;

by means of an automated teller machine, the financial institution concerned shall pay to the Commissioner an automated financial transactions tax on each such transaction.

##### *Period within which automated financial transactions tax to be paid*

3

Automated financial transactions tax shall be paid in terms of paragraph 2 **not later than the 10<sup>th</sup> day** of the month following the month in which the transaction in respect of which the tax is payable was effected:

Provided that the Commissioner may for good cause allow the tax to be paid within a further time.

[Payment period shortened from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

##### *Returns to be furnished to Commissioner*

4

Payment of the automated financial transactions tax in terms of paragraph 2 shall be accompanied by a return in the form prescribed.

##### *Recovery of automated financial transactions tax from customer*

5

Notwithstanding any other law, a financial institution that has paid automated financial transactions tax on any transaction may recover the tax from the customer on whose account the transaction was effected, either by debiting the customer's account or in any other manner, in all respects as if the amount of the tax were a fee or charge levied by the financial institution in the ordinary course of its business.

##### *Penalty for nonpayment of automated financial transactions tax*

6

(1) Subject to subparagraph (2), a financial institution that fails to pay to the Commissioner any automated financial transactions tax as provided in paragraph 2 shall be liable to pay, in addition to the tax, a further amount equal to **100%** of the unpaid tax.

[Amended by Section 61 of Act 18/2000 with effect from the 12<sup>th</sup> January, 2001.]

(2) If the Commissioner is satisfied in any particular case that a failure to pay an automated financial transactions tax was not due to an intent to evade the provisions of this *Schedule*, he may waive the payment of the whole or such part as he thinks fit of the additional amount referred to in subparagraph (1).

(3)

[Subpara (3) inserted by Act 8 of 2005 w.e.f. 1st January, 2006. Penalty repealed by the Finance Act

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## INCOME TAX ACT

1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the **1st February 2009.**]

*Refund of automated financial transactions tax*  
7

If it is proved to the satisfaction of the Commissioner that any person has paid any amount by way of automated financial transactions tax in excess of the amount properly payable in terms of this *Schedule*, the Commissioner shall authorize a refund of the amount overpaid:

Provided that the Commissioner shall not authorize a refund in terms of this paragraph unless the claim therefor is made **within 6 years** of the date of overpayment.

[Proviso amended by Act 17 of 1997.]

## TWENTY-SIXTH SCHEDULE

(Section 36C)

[Inserted by Act 17 of 1997 from the 1<sup>st</sup> January 1998, substituted by Act 2 of 2005 from 1<sup>st</sup> September, 2005; and amended by Act 8 of 2005 from 1<sup>st</sup> January, 2006 where indicated.]

### PRESUMPTIVE TAX

#### PART I PRELIMINARY

*Interpretation*

1

In this Schedule—

**“appropriate presumptive tax”** means the tax payable under this *Schedule* by an informal trader, a small-scale miner, an operator of a taxicab or an operator of an omnibus, as the case may be;

**“commercial goods”** means goods which are used mainly for the generation of income or the making of profits;

[Definition inserted by Act 16 of 2007 from 1st January, 2008.]

**“commercial waterborne vessel”** means—

- (a) any ship, cruiser, boat, houseboat, speedboat, canoe or any other waterborne vessel of whatever description that is employed for the carriage of passengers for profit on inland waters; or
- (b) a fishing rig;

[Definition inserted by the Finance (No.2) Act 9 of 2011 w.e.f. the 1<sup>st</sup> January, 2012.]

**“cottage industry”** means any of the following trades or industries, whether or not they are based in or conducted from the residential premises of the operators thereof, and whether or not the operators use their own tools or equipment—

- (a) furniture-making or upholstery;
- (b) metal fabrication;
- (c) any other cottage industry that the Minister may, by notice in a *statutory instrument*, prescribe;

[Definition inserted by the Finance (No.3) Act 10/2009 with effect from the 1<sup>st</sup> January, 2010.]

**“cross-border trader”** means a person who imports commercial goods into Zimbabwe with the intention of carrying on any trade in those goods, but does not, **subject to paragraph 13C**, include any person registered as an operator in terms of the Value Added Tax Act [Chapter 23:12];

[Definition inserted by Act 16 of 2007 from 1st January, 2008, and amended by the Finance (No.3) Act 10/2009 w.e.f. the 1<sup>st</sup> January, 2010.]

**“driving school”** means a person registered or required to be registered in terms of the Road Traffic (Driving Schools) Regulations, 1985, published in *Statutory Instrument 309/ 1985*, or any other law substituted for the same;

[Definition inserted by Act 8 of 2005 from 1st January, 2006.]

**“furniture-making industry”** means the manufacture for profit of furniture or the fitting of furniture with padding, springs, webbing or covering for profit;

[Definition inserted by the Finance (No.3) Act 10/2009 w.e.f. the 1<sup>st</sup> January, 2010.]

**“goods vehicle”, “omnibus” and “taxicab”** have the meanings given to those terms by section 2 (1) of the Road Motor Transportation Act [Chapter 13:15];

[Definitions inserted by Act 8 of 2005 from 1st January, 2006.]

**“hairdressing salon”** means a commercial establishment in which any one or hairdressers carry on their occupation or business;

[Definition inserted by Act 16 of 2007 from 1st January, 2008.]

**“holder”**, in relation to—

- (a) a registered mining location, means the person in whose name such location is

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registered with the mining commissioner or with the Secretary responsible for mines; and

(b) an unregistered mining location, any person who, on his or her own behalf, works the location for mining purposes;

and, in the case of a **deceased person** or of a **company in liquidation** or of any person under a **legal disability**, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration or control of the property of the person in whose name such location is registered or was worked;

**“informal cross-border trader”** means a cross-border trader who does not furnish to an officer in accordance with paragraph 13C(1)(a) or (b) a tax clearance certificate or proof of registration as a taxpayer in terms of the Income Tax Act [*Chapter 23:06*];

[Definition inserted by Act 16 of 2007 from 1st January, 2008.]

**“informal trader”** means an individual who—

[definition substituted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January, 2017; **substituted** by Finance (No.2) Act 10/2020 w.e.f. 1<sup>st</sup> January, 2021.]

(a) carries on a trade for his own account from which he derives a gross income of less than **zw\$3 million** or such other amount as the Minister may prescribe by notice in the *Gazette*;

[amount redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019 amended to \$60 000 by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance (No.2) Act 10/2020 w.e.f. 1<sup>st</sup> January, 2021; & by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022]

and

(b) has not, in the most recent year of assessment for which he could have done so, furnished a return in terms of Part V for the assessment of the income referred to in paragraph (a);

**“inland waters”** has the meaning given to it in section 2(1) of the Inland Waters Shipping Act [*Chapter 13:06*];

[Definition inserted by the Finance (No.2) Act 9 of 2011 w.e.f. the 1<sup>st</sup> January, 2012.]

**“intermediary”**, in relation to a small-scale miner, means any person who purchases precious metals or precious stones from the

small-scale miner and sells them to an agent referred to in paragraph 7(1);

**“lessor”** means—

(a) a local authority to which an informal trader pays rent in respect of residential accommodation; or

(b) any person, including a local authority, to whom an informal trader pays rent in respect of premises or a place in or from which he or she carries on his or her trade as such;

**“metal fabrication”** means the fabrication of articles from metal for profit or any beneficiation of metal whatsoever for profit;

[Definition inserted by the Finance (No.3) Act 10/2009 with effect from the 1<sup>st</sup> January, 2010.]

**“mining location”** means any location that is worked for mining purposes, whether or not such location is registered with the Mining Commissioner or with the Secretary responsible for mines;

**“mining purposes”** means the purpose of obtaining or extracting any precious metal or precious stone by any mode or method or any purpose directly or indirectly connected therewith or incidental thereto;

**“officer”**, for the purposes of Part IVB, means an officer of the department of the Zimbabwe Revenue Authority who is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of duties in terms of the Customs and Excise Act [*Chapter 23:02*]

[Definition inserted by Act 16 of 2007 from 1st January, 2008 – the Editor has substituted “which” for “who”.]

**“operator”**, in relation to—

(a) the operation of a **goods vehicle, omnibus or taxicab for the carriage of goods or passengers for hire or reward**, means the person in whose name the goods vehicle, omnibus or taxicab is or is required to be registered in terms of the Road Motor Transportation Act [*Chapter 13:15*];

(b) the operation of a **driving school**, means the person to whom a certificate of registration has been issued in terms of the Road Traffic (Driving Schools) Regulations, 1985, published in *Statutory Instrument 309/1985*, or any other law substituted for the same;

[Definitions (a) and (b) substituted by Act 8 of 2005 from 1<sup>st</sup> January, 2006.]

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(c) the operation of a hairdressing salon, means the person who owns or is in charge of the salon, whether or not the salon or any hairdresser therein is licensed as such in terms of the Shop Licences Act [Chapter 14:17] or under the by-laws of the local authority in which the salon is located;

[Definition (c) inserted by Act 16 of 2007 from 1st January, 2008.]

(d) the operation of a restaurant or bottle store, means the person who owns or is in charge of the restaurant or bottle store, whether or not the restaurant or bottle store is licensed as such in terms of the Shop Licences Act [Chapter 14:17] or under the by-laws of the local authority in which the restaurant or bottle store is located, but does not include any such person in possession of—

(i) a tax clearance certificate to the effect that he or she has furnished a return under section *thirty-seven* for the last year of assessment for which such a return is due; or

(ii) proof that he or she is as a registered operator in terms of the Value Added Tax Act [Chapter 23:12];

[Definition (d) inserted by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010.]

(e) the operation of a **cottage industry**, means the person who owns or is in charge of the cottage industry, whether or not the cottage industry is licensed as such in terms of the Shop Licences Act [Chapter 14:17] or under the by-laws of the local authority in which the cottage industry is located, but does not include any such person in possession of—

(i) a tax clearance certificate to the effect that he or she has furnished a return under section *thirty-seven* for the last year of assessment for which such a return is due; or

(ii) proof that he or she is as a registered operator in terms of the Value Added Tax Act [Chapter 23:12];

[Definition (e) inserted by the Finance (No.3) Act 10/2009 w.e.f. 1<sup>st</sup> January, 2010.]

(f) the operation of a **commercial waterborne vessel**, means the person who owns or is in control of the commercial waterborne vessel, whether or not such vessel is registered in terms of the Inland Waters Shipping Act [Chapter 13:06], but does **not include** any such person in possession of—

(i) a tax clearance certificate to the effect that he or she has furnished a return under section

*thirty-seven* for the last year of assessment for which such a return is due; or

(ii) proof that he or she is as a registered operator in terms of the Value Added Tax Act [Chapter 23:12];

[Definition (f) inserted by the Finance (No.2) Act 9 of 2011 w.e.f. the 1<sup>st</sup> January, 2012.]

**“precious metals”** means gold, silver, platinum, platinoid metals, chrome and tantalite in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings, residues and amalgams as are valuable and contain such precious metals;

[Definition substituted by Act 8 of 2005 from 1st January, 2006.]

**“precious stones”** means rough or uncut diamonds or emeralds or any substances which may be declared by the Minister by notice in the *Gazette* to be precious stones for the purposes of this *Schedule*;

**“quarter”** means a period of 3 months ending on the 31st March, 30th June, 30th September and 31st December in each year;

**“restaurant or bottle store”** includes any bar or beer-hall and any other place where food or drink is served to members of the public for payment, whether consumed on or off the premises of the restaurant or bottle store;

[Definition inserted by the Finance (No.3) Act 10/2009 with effect from the 1<sup>st</sup> January, 2010.]

**“self-employed professional”** means an individual who, on his or her own account or as a member of a partnership, earns income as—

[Definition inserted by the Finance (No.2) Act 10/2020 w.e.f. 1<sup>st</sup> January, 2021.]

a) an **architect** registered or required to be registered under the Architects Act [Chapter 27:01], or

b) an **engineer or technician** registered or required to be registered under the Engineering Council Act [Chapter 27:22]; or

c) a **legal practitioner** registered or required to be registered under the Legal Practitioners Act [Chapter 27:07]; or

d) a **health practitioner** registered or required to be registered under the Health Professions Act [Chapter 27:19]; or

e) **real estate agents** registered or required to be registered under the Estate Agents Act [Chapter 27:17];

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but does **not include** any such individual in possession of a **tax clearance certificate** to the effect that he or she has furnished a return under section *thirty-seven* for the last year of assessment for which such a return is due;

or

**“small-scale miner”** means a holder or tributor of a mining location whose output of precious metals or precious stones from his or her mining operations do not exceed such level for such period as the Minister shall, by notice in the *Gazette* prescribe, and includes any intermediary:

Provided that, notwithstanding any such prescription, a miner shall be presumed to be a small-scale miner if he or she—

(a) does not produce a valid tax clearance certificate to an agent in terms of paragraph 8(1); or

(b) produces a valid tax clearance certificate to an agent in terms of paragraph 8(1) relating only to the payment of presumptive tax in terms of this *Schedule*;

**“tributor”** means the lessee or assignee of the rights of a holder.

## PART II INFORMAL TRADERS' PRESUMPTIVE TAX

*Informal traders to notify status*

2

(1) Every informal trader who pays rent to a lessor in respect of residential accommodation, premises or a place referred to in paragraph (a) or (b) of the definition of **“lessor”** in paragraph 1 shall notify that lessor of his or her status as an informal trader.

(2) A lessor who has been notified by an informal trader of his or her status as provided in subparagraph (1) shall record the notification, together with the informal trader's name, address and such other particulars as may be prescribed, and shall forthwith send the Commissioner written notification thereof in a form approved by the Commissioner.

(3) The failure by an informal trader or a lessor to comply with this paragraph shall not affect such trader's or lessor's liability for any presumptive tax in terms of this *Schedule*.

[Subpara (3) inserted by the Finance (No.2) Act 10/2020 w.e.f. 1<sup>st</sup> January, 2021.]

*Collection of presumptive tax from informal trader*

3

(1) Whenever an informal trader pays a lessor, the lessor shall recover from him or her an additional amount by way of presumptive tax, equal to the amount fixed from time to time in the Charging Act:

[Substituted by the Finance (No.2) Act 10/2020 w.e.f. 1<sup>st</sup> January, 2021.]

Provided that the lessor shall not recover any such amount where the informal trader produces to the lessor a valid tax clearance certificate in respect of the income received by or accruing to him or her from his or her trade.

(2) A lessor who has recovered an amount by way of presumptive tax in terms of subparagraph (1) shall pay the amount to the Commissioner **within 30 days** of the date on which he or she recovers it or within such further time as the Commissioner may for good cause allow.

(3) Payment of presumptive tax in terms of subparagraph (2) shall be accompanied by a return in the form prescribed.

*Certificates to be provided to informal traders who pay presumptive tax*

4

(1) Whenever he or she has recovered any amount by way of presumptive tax in terms of paragraph 3, a lessor shall provide the informal trader with a certificate in a form approved by the Commissioner showing—

(a) the amount of rent paid by the informal trader; and

(b) the amount of presumptive tax recovered from him or her.

(2) For the purposes of section *eightyA* or any other purpose, the Commissioner shall, on production to him or her by an informal trader of a certificate referred to in subparagraph (1), furnish the informal trader with a tax clearance certificate in respect of the presumptive tax shown on the first-mentioned certificate to have been paid.

*Penalty for non-payment of presumptive tax payable in respect of informal traders*

5

(1) Subject to subparagraph (2), a lessor who, having been notified by an informal trader of his

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or her status in terms of paragraph 2, fails to recover presumptive tax in terms of paragraph 3(1) and additionally, or alternatively, fails to pay any such tax to the Commissioner in terms of paragraph 3(2) shall be personally liable for the payment to the Commissioner, not later than the date on which the payment should have been made in terms of subparagraph (2) of that paragraph, of—

- (a) the amount of presumptive tax which he or she failed to pay; and
- (b) a further amount equal to the amount referred to in subparagraph (a).

(2) If the Commissioner is satisfied in any particular case that a failure to pay any presumptive tax under this Part was not due to an intent to evade the provisions of this Part, he or she may waive the payment of the whole or such part as he or she thinks fit of the amount referred to in paragraph (1)(b).

*Effect on lease of failure to pay presumptive tax in respect of informal traders*

6

Notwithstanding any other law or any provision of a lease between a lessor and an informal trader—

- (a) payment by an informal trader of rent for any premises or place referred to in paragraph (a) or (b) of the definition of “**lessor**” in paragraph 1 shall not constitute a valid payment under the lease concerned unless the payment is accompanied by any presumptive tax required to be paid in terms of this Part;
- (b) a failure or refusal on the part of an informal trader to pay presumptive tax required to be paid in terms of this Part shall constitute a breach of a fundamental term of the lease concerned, entitling the lessor to terminate it without notice.

### \*PART III SMALL-SCALE MINERS' PRESUMPTIVE TAX

*Agents for collection of presumptive tax from small-scale miners*

[The operation of this \*Part is **suspended** by section 7 of the Finance (No.2) Act 8 of 2014 w.e.f. **1st October, 2014**]

7

- (1) The following shall be agents for the collection of presumptive tax from small-scale miners under this Part—

(a) the Minerals Marketing Corporation of Zimbabwe, established by the Minerals Marketing Corporation of Zimbabwe Act [Chapter 21:04]; and

(b) the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [Chapter 22:15], in its capacity as a buyer of precious metals; and

(c) Fidelity Printers and Refiners (Pvt) Ltd; and

(d) any holder of a gold-buying permit granted in terms of section 5 of the Gold Trade (Gold-buying Permits for Concession Areas) Regulations, 2002, published in *Statutory Instrument 328 of 2002*, or the agent of such a permit-holder appointed in terms of section 8 of those regulations; and

(e) such other person as the Commissioner may in writing appoint for the purposes of this Part.

(2) Every agent who buys any precious metals or precious stones from a small-scale miner shall, **no later than 30 days** from the date of commencement of this *Schedule*, or, in the case of a small-scale miner from whom he or she has not, before that date, bought any precious metals or precious stones, **30 days** from the date when he or she buys precious metals or precious stones from a small-scale miner for the first time, as the case may be, notify the Commissioner in writing of the name, home address and address of the mining location of the small-scale miner concerned.

(3) An agent shall maintain such records of any small-scale miner from whom he buys any precious metals or precious stones as the Commissioner may require from time to time.

*Withholding of presumptive tax from amounts payable to small-scale miners*

8

- (1) Subject to this paragraph, unless a small-scale miner produces to the agent to whom he or she sells any precious metals or precious stones a valid tax clearance certificate in respect the income earned or to be earned from the sale of the precious metals or precious stones in question, the agent shall withhold from the gross amount payable to the small-scale miner for the sale of the precious metals or precious stones in question an amount equal to such percentage of the amount so paid as is fixed from time to time in the charging Act, and shall remit each amount so withheld to the Commissioner **on or before the 10th day** of

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the month following that in which the payment was made:

[deadline for the remittance of the amount withheld shortened from the 20<sup>th</sup> day of the following month, by the Finance (No.3) Act 10/2009 w.e.f. the 1<sup>st</sup> January, 2010.]

Provided that the Commissioner may, for good cause shown, allow the tax to be remitted at a later date.

(2) The amounts of tax withheld in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act.

(3) Where an agent has withheld any amount in terms of subparagraph (1) he shall furnish the small-scale miner concerned with a certificate, in a form approved by the Commissioner, showing the amount so withheld.

(4) For the purposes of section *eighty A* or any other purpose, the Commissioner shall, on production to him or her by a small-scale miner of a certificate referred to in subparagraph (2), furnish the small-scale miner with a tax clearance certificate in respect of the presumptive tax shown on the first-mentioned certificate to have been paid.

*Interest on overdue presumptive tax payable in respect of small-scale miners*

9

If presumptive tax is not paid timeously in terms of paragraph 8, interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

*Penalty for non-payment of presumptive tax payable in respect of small-scale miners*

10

(1) Subject to subparagraph (2), an agent who fails to recover presumptive tax in terms of paragraph 8(1) and additionally, or alternatively, fails to pay any such tax to the Commissioner in terms of that paragraph shall be personally liable for the payment to the Commissioner, not later than the date on which

the payment should have been made in terms of that paragraph, of—

(a) the amount of presumptive tax which he failed to pay; and

(b) a further amount equal to the amount referred to in subparagraph (a).

[“of” omitted by the Editor for sense sake. The words “or she” is missing from these sections.]

(2) If the Commissioner is satisfied in any particular case that a failure to pay any presumptive tax under this Part was not due to an intent to evade the provisions of this Part, he may waive the payment of the whole or such part as he thinks fit of the amount referred to in paragraph (1)(b).

### PART IV TRANSPORT AND DRIVING SCHOOL OPERATORS' PRESUMPTIVE TAX

*Payment of presumptive tax by operators of driving schools and transport services*

11

(1) Subject to this paragraph, **no later than 20 days** after the end of each quarter, every operator of—

(a) a taxicab for the carriage of passengers for hire or reward having seating accommodation for **not more than 7** passengers, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; or

(b) an omnibus for the carriage of passengers for hire or reward having seating accommodation for not less than 8 or **more than 14** passengers, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; or

(c) an omnibus for the carriage of passengers for hire or reward having seating accommodation for not less than 15 or **more than 24** passengers, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; or

(d) an omnibus for the carriage of passengers for hire or reward having seating accommodation for not less than 25 or **more than 36** passengers, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; or

(e) an omnibus for the carriage of passengers for hire or reward having seating

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accommodation for **not less than 37 passengers**, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act:

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date; or

(f) a goods vehicle for the carriage of goods for hire or reward having a carrying capacity—

(i) of more than 10 tonnes but less than 20 tonnes; or

(ii) of 10 tonnes or less but which is driving one or more trailers resulting in a combined carrying capacity of more than 15 tonnes but less than 20 tonnes; or

(iii) of 20 tonnes or more;

shall pay the amount of presumptive tax that is fixed from time to time in the charging Act;

[Subparas (f) and (g) inserted by Act 8 of 2005 from 1<sup>st</sup> January, 2006.]

or

(g) a driving school providing driving tuition—

(i) for class 4 vehicles only; or

(ii) for class 1 and 2 vehicles (whether or not in addition to providing driving tuition for other classes of vehicles);

shall pay the amount of presumptive tax that is fixed from time to time in the charging Act.

(2) The amounts of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act.

(3) When an operator has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator concerned with the appropriate tax clearance certificate.

*Interest on overdue presumptive tax payable in respect of operators of passenger transport services*

12

If presumptive tax is not paid timeously in terms of paragraph 12, interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for

its payment and ending on the date the tax is paid in full:

[See the Income Tax (**Rate of Interest**) Notice 2022 **SI 212 of 2022** gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

*Taxicab and omnibus operators to carry tax clearance certificates in vehicles*

[Paragraph 12A inserted by Act 6 of 2006 from 1st September, 2006.]

12A

(1) Every tax clearance certificate issued to the operator of an omnibus or taxicab shall be carried in the omnibus or taxicab to which it relates.

(2) If any tax clearance certificate is lost or destroyed or any essential particulars thereon have been defaced or if the certificate is dilapidated, the Commissioner-General, on application by the holder thereof and on payment of the fee, if any, prescribed, shall issue a duplicate tax clearance certificate.

(3) A police officer may demand that any operator or person in charge of an omnibus or taxicab produce a tax clearance certificate as proof that he or she has paid the presumptive tax payable in respect of the omnibus or taxicab.

(4) Subject to subsection (5), any person in charge of an omnibus or taxicab who does not carry a tax clearance certificate as required by subparagraph (1) or who fails to produce it as required by subparagraph (3) shall, whether or not he or she is the operator of the omnibus or taxicab, be guilty of an offence and liable to a fine equal to the amount of the presumptive tax payable for the omnibus or taxicab or, in default of payment, to imprisonment for a period not exceeding six months:

Provided that if the failure to carry a tax clearance certificate was due to its loss or destruction and not to non-payment of presumptive tax, a police officer may require the person in charge of the omnibus or taxicab concerned or, if he or she is not the operator of the omnibus or taxicab, the operator thereof, to produce a duplicate certificate **within 7 days** at such place as the police officer shall specify.

(5) A person referred to in subparagraph (4) may sign and deliver to the police officer

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referred to in that subparagraph a document admitting that he or she is guilty of the said offence and deposit with such officer a fine equal to the amount of the presumptive tax payable for the omnibus or taxicab, and such person shall thereupon, subject to subparagraph (6), not be required to appear in court to answer the charge of having committed the said offence.

(6) Section 356 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply to the procedure to be followed in relation to an admission of guilt made under subparagraph (4).

(7) The Zimbabwe Republic Police shall furnish to the Commissioner-General the name of every person who has compounded or been convicted of an offence in terms of this paragraph.

#### PART IVA HAIRDRESSING SALON OPERATORS' PRESUMPTIVE TAX

[Part IVA inserted by Act 16 of 2007 from 1st January, 2008.]

*Payment of presumptive tax by hairdressing salon operators*

13A

(1) Subject to this paragraph, **no later than 20 days** after the end of each quarter, every operator of a hairdressing salon, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act:

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amount of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner.

(3) Where an operator of a hairdressing salon has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator with the appropriate tax clearance certificate.

*Interest on overdue hairdressing salon operators' presumptive tax*

13B

If presumptive tax is not paid timeously in terms of paragraph 13A, interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

[See the Income Tax (**Rate of Interest**) Notice 2022 SI 212 of 2022 gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

#### PART IVB INFORMAL CROSS-BORDER TRADERS' PRESUMPTIVE TAX

[Part IVB inserted by Act 16 of 2007 from 1st January, 2008.]

*Payment of presumptive tax by informal cross-border traders*

13C

(1) Whenever a cross-border trader imports any commercial goods into Zimbabwe, he or she shall pay to the officer concerned a presumptive tax of such percentage of the value for duty purposes of the commercial goods concerned as is fixed from time to time in the charging Act, unless cross-border trader produces to the officer—

(a) a tax clearance certificate to the effect that he or she has furnished a return under section *thirty-seven* for the last year of assessment for which such a return is due; or

(b) proof that he or she is as a registered taxpayer in terms of the Income Tax Act [*Chapter 23:06*]:

Provided that, where a person produces a tax clearance certificate or proof of registration as a taxpayer referred to in paragraph (a) or (b), but he or she is in arrears of any tax or duty payable under this Act, the Value Added Tax Act [*Chapter 23:12*] or the Customs and Excise Act [*Chapter 23:02*], this Part shall apply to such person as if he or she was an informal cross-border trader.

[proviso inserted by the Finance (No.3) Act 10/2009 w.e.f. the 1<sup>st</sup> January, 2010.]

(2) Where an informal cross-border trader has paid any amount of presumptive tax in terms of subparagraph (1), the officer

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concerned shall furnish the informal cross-border trader concerned with the appropriate tax clearance certificate.

(3) Where no payment of presumptive tax is made in terms of this paragraph the officer concerned shall treat the commercial goods in question as if they are goods in respect of which no due entry has been made in terms of the Customs and Excise Act [Chapter 23:02], and the appropriate provisions of that Act shall apply accordingly to those goods.

#### PART IVC RESTAURANT OR BOTTLE-STORE OPERATORS' PRESUMPTIVE TAX

[Part IVC inserted by the Finance (No.3) Act 10/2009 w.e.f. the 1<sup>st</sup> January, 2010.]

*Payment of presumptive tax by restaurant or bottle-store operators*

13D

(1) Subject to this paragraph, **no later than 10 days** after the end of each quarter, every operator of a restaurant or bottle-store shall pay the amount of presumptive tax that is fixed from time to time in the Charging Act.

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amount of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner.

(3) Where an operator of restaurant or bottle-store has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator with the appropriate tax clearance certificate.

*Interest on overdue restaurant or bottle-store operators' presumptive tax*

13E

If presumptive tax is not paid timeously in terms of paragraph 13D, interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

[See the Income Tax (**Rate of Interest**) Notice 2022  
**SI 212 of 2022**  
gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

#### PART IVD COTTAGE INDUSTRY OPERATORS' PRESUMPTIVE TAX

[Part IVD inserted by the Finance (No.3) Act 10/2009 w.e.f. the 1<sup>st</sup> January, 2010.]

*Payment of presumptive tax by cottage industry operators*

13F

(1) Subject to this paragraph, **no later than 10 days** after the end of each quarter, every operator of a cottage industry operators shall pay the amount of presumptive tax that is fixed from time to time in the Charging Act:

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amount of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner.

(3) Where an operator of a cottage industry has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator with the appropriate tax clearance certificate.

*Interest on overdue cottage industry operators' presumptive tax*

13G

If presumptive tax is not paid timeously in terms of paragraph 13F, interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

[See the Income Tax (**Rate of Interest**) Notice 2022  
**SI 212 of 2022**  
gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

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Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

#### PART IVE COMMERCIAL WATERBORNE VESSEL OPERATORS' PRESUMPTIVE TAX

[Inserted -with incorrect numbering as Part IVF- by the Finance (No.2) Act 9 of 2011 w.e.f. the 1<sup>st</sup> January, 2012.]

*Payment of presumptive tax by operators of commercial waterborne vessels*

[Editor has renumbered the para below, as 13G already appears above]

13H

(1) Subject to this paragraph, **no later than 10 days** after the end of each quarter, every operator of a commercial waterborne vessel shall pay the amount of presumptive tax that is fixed from time to time in the Charging Act:

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amount of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner.

(3) Where an operator of commercial waterborne vessel has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator with the appropriate tax clearance certificate.

#### PART IVG SELF-EMPLOYED PROFESSIONALS' PRESUMPTIVE TAX

[Inserted with incorrect numbering, as this should be Part IVF by the Finance (No.2) Act 10 of 2020 w.e.f. the year of assessment beginning on the 1<sup>st</sup> January, 2021.]

*Payment of presumptive tax by self-employed professionals*

13I

(1) Subject to this paragraph, no later than 30 days after the end of each quarter, every self-employed professional shall pay the amount of

presumptive tax that is fixed from time to time in the Charging Act.

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amount of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner.

(3) Where a self-employed professional has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the self-employed professional with the appropriate tax clearance certificate.

*Interest on overdue self-employed professionals' presumptive tax*

13J

If presumptive tax is not paid timeously in terms of paragraph 13I, interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

#### PART V GENERAL

*When presumptive taxpayers exempt from submitting returns*

13

(1) For the avoidance of doubt, but subject to subparagraphs (2) and (3), it is declared that the payment of any amount by way of presumptive tax in terms of this *Schedule* does not exempt the presumptive taxpayer concerned from the provisions of this Act relating to the furnishing of returns and the payment of tax:

Provided that, without prejudice to the obligation of the presumptive taxpayer to render the return or make the arrangements mentioned in paragraphs (a) and (b) below, a presumptive taxpayer shall be entitled to be issued with a tax clearance certificate in respect of his or her payment of presumptive tax in

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terms of this Schedule, notwithstanding that he or she has not—

(a) furnished a return under section *thirty-seven* for the last year of assessment for which such a return is due; or

(b) made arrangements satisfactory to the Commissioner-General for the furnishing of a return referred to in paragraph (a).

(2) Where the Minister prescribes a level of output of precious metals or precious stones for the purposes of the definition of “**small-scale miner**” contained in paragraph 1, and a holder or tributor of any mining location is deemed to be a small-scale miner because his or her output of precious metals or precious stones is below the level prescribed, such small-scale miner shall, if his or her investment in any such mining location is the sole source of his or her income, be exempt from furnishing a return under section *thirty-seven*.

(3) The Minister may, by notice in the *Gazette*, prescribe the level turnover for any period specified in that notice below which the operator of an omnibus or taxicab for the carriage of passengers for hire or reward shall be exempt from furnishing a return under section *thirty-seven*.

#### *Refund of excess payment of presumptive tax*

14

If it is proved to the satisfaction of the Commissioner that any person has paid an amount by way of presumptive tax under this *Schedule* in excess of the amount properly payable in terms of this Part, the Commissioner shall authorise a refund of the amount overpaid;

Provided that the Commissioner shall not authorise a refund in terms of this paragraph unless the claim therefore is made **within 6 years** of the date of the overpayment.

#### *Interest on unpaid penalties*

15

[Paragraph 15 inserted by Act 8 of 2005 from 1st January, 2006. Penalty repealed by the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the **1st February 2009**.]

### **TWENTY-SEVENTH SCHEDULE**

(Section 36D)

[Inserted by Act 22 of 1999 from 1 January 1999.]

#### **DEMUTUALISATION LEVY**

##### *Interpretation*

1

(1) In this Schedule—

“**affected company**” means an insurance company which carries on insurance business in Zimbabwe consequent upon a demutualisation scheme effected by a mutual society;

“**Commissioner of Insurance**” means the person referred to in paragraph (a) of subsection (1) of section 4 of the Insurance Act [Chapter 24:07];

“**demutualisation levy**” means the levy required to be paid in terms of paragraph 2;

“**demutualisation scheme**” means a scheme which—

(a) is sanctioned by the Minister in accordance with section 33 of the Insurance Act [Chapter 24:07]; and

(b) results in—

(i) all or most of the insurance business of a mutual society being transferred to an insurance company; or

(ii) the conversion of a mutual society into an insurance company, to the extent that such a conversion may be permitted in terms of the Insurance Act [Chapter 24:07];

by combination of the results referred to in subparagraph (i) and (ii);

“**free reserve**” means funds accumulated by a mutual society which represent the excess of assets over liabilities, the value of which is determined in accordance with paragraph 3;

“**free share**” means a share allotted and issued in terms of a demutualisation scheme to a member of the affected company concerned, but does not include a share issued for the purposes of raising capital for the affected company;

“**insurance business**” has the meaning assigned to it in section 3 of the Insurance Act [Chapter 24:07];

“**insurance company**” has the meaning assigned to it in subsection (1) of section 11 of the Insurance Act [Chapter 24:07];

“**mutual society**” means—

(a) a mutual insurance society as defined in subsection (2) of section 11 of the Insurance Act [Chapter 24:07]; or

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(b) an existing society as defined in subsection (1) of section II or subsection (1) of section 90 of the Insurance Act [Chapter 24:07];

**“share”** includes any share, stock, security, debenture or other interest capable of being sold in a stock exchange, share market or otherwise;

**“Zimbabwean member”** means a member or former member of a mutual society—

(a) to whom free shares are allotted in terms of a demutualisation scheme concluded by the mutual society; and

(b) who is regarded as being resident in Zimbabwe in accordance with subparagraph (2).

(2) A member or former member of a mutual society shall be regarded as being resident in Zimbabwe for the purposes of this Schedule if—

(a) in the case of an individual, he is ordinarily resident in Zimbabwe; or

(b) in the case of a company or a trust, it is effectively managed in Zimbabwe; or

(c) in the case of any person whose place of residence or control cannot, in the Commissioner’s opinion, be determined by the affected company concerned, his last address recorded in the mutual society’s records is in Zimbabwe.

### *Demutualisation Levy*

2

Subject to this Schedule, a demutualisation levy shall be paid, at the rate fixed from time to time in the charging Act, upon an amount calculated according to the following formula in respect of each Zimbabwean member of a mutual society who is allotted free shares pursuant to a demutualisation scheme—

where—

**A** represents the total free reserves of the mutual society concerned, calculated in accordance with paragraph 3;

**B** represents the value of the free shares allotted to the Zimbabwean member concerned;

**C** represents the total value of the free shares allotted to all members of the mutual society concerned.

### *Determination of free reserve*

3

(1) Subject to subparagraph (3), the value of the free reserve of a mutual society shall be determined for the purposes of paragraph 2 from the statements deposited with the Commissioner of Insurance by the affected company concerned in terms of paragraph (a) of section 34 of the Insurance Act [Chapter 24:07].

(2) The date as at which the free reserve of a mutual society shall be determined for the purposes of paragraph 2 shall be—

(a) the date on which the mutual society’s insurance business is transferred to the affected company or, where the business is transferred on different dates, such of those dates as the Commissioner of Insurance may approve; or

(b) the date on which the mutual society is convened into an insurance company;

as the case may be.

(3) The value of the free reserve of a mutual society, as determined in accordance with subparagraphs (1) and (2), shall be increased by **15% per annum** from the date referred to in subparagraph (2) until the date on which free shares are issued to the Zimbabwe member concerned.

### *Responsibility for paying demutualisation levy*

4

Subject to paragraph 9, the affected company concerned shall be responsible for paying the demutualisation levy on behalf of its Zimbabwe members.

### *Payment of demutualisation levy*

5

(1) An affected company that is responsible for paying any demutualisation levy shall pay the levy to the Commissioner **within 3 months** after issuing to the Zimbabwean member concerned the free shares on which the levy is calculated, or within such further time as the Commissioner may for good cause allow.

(2) Payment of any demutualisation levy in terms of subparagraph (1) shall be accompanied by a return in the form prescribed.

### *Recoupment of levy paid by affected company*

6

(1) An affected company that has paid any demutualisation levy on behalf of a

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Zimbabwean member shall be entitled to recover the amount paid from the member concerned.

(2) Without derogation from the generality of subparagraph (1), an affected company may effect a recovery in terms of that subparagraph by withholding from the free shares issued to the Zimbabwean member concerned such number of shares as is equal in value to the amount of demutualisation levy paid on that member's behalf:

Provided that —

(i) the affected company shall hold and dispose of any shares so withheld in accordance with the Insurance Act [Chapter 24:07];

(ii) any shares so withheld shall be counted for the purposes of assessing the Zimbabwean member's liability for demutualisation levy.

*Assessment by Commissioner*

7

Where—

(a) the full amount of demutualisation levy has not been paid within the period referred to in paragraph 5; or

(b) an affected company is unable to assess the amount of demutualisation levy payable by any of its Zimbabwean members

the Commissioner may make an assessment of the amount payable and give notice thereof to the affected company concerned, and the affected company shall be liable to pay that amount accordingly.

*Interest and penalties for late payment or non-payment of demutualisation levy*

8

(1) Interest shall be payable at the prescribed rate on any amount of demutualisation levy that is not paid within the period referred to in paragraph 5.

(2) Without derogation from paragraph 7 or subparagraph (1), an affected company that fails to pay any amount of demutualisation levy within the period referred to in paragraph 5 shall become **personally** liable for the payment to the Commissioner, by not later than three months after the date on which the levy should have been paid, of—

(a) the demutualisation levy which should have been paid; and

(b) a further amount equal to **15%** of the demutualisation levy that should have been paid.

(3) If the Commissioner is satisfied in any particular case that a delay in paying any amount of demutualisation levy, or a failure to pay such an amount, was not due to any intent to evade the provisions of this *Schedule*, he may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of any interest or amount referred to in subparagraph (1) or (2).

*Liability of Zimbabwean member for payment of demutualisation levy*

9

(1) Without derogation from paragraphs 7 and 8, if an affected company has failed to pay any amount of demutualisation levy on behalf of a Zimbabwean member to whom the company has issued free shares, the Commissioner may, by written notice to the Zimbabwean member concerned, require him to pay the amount within such reasonable period, being **not less than 3 months**, as the Commissioner may specify in the notice, and the Zimbabwean member shall thereupon become liable to pay the amount accordingly.

(2) Subparagraph (2) of paragraph 5 and paragraphs 7 and 8 shall apply, *mutatis mutandis*, in respect if a Zimbabwean member who becomes liable to pay any amount in terms of subparagraph (1).

*Refund of overpayments*

10

(1) If it is proved to the satisfaction of the Commissioner that any person has been charged with demutualisation levy in excess of the amount properly chargeable in terms of this *Schedule*, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorise a refund in terms of this paragraph unless a claim for it is made **within 6 years** of the date of payment of the levy.

### TWENTY-EIGHTH SCHEDULE

(Section 36E)

[Substituted by Act 8 of 2005 from 1st January, 2006  
See *Gonese I v Minister of Finance and Economic Development* 22-HH-265 declaring this Schedule illegal Editor]

CARBON TAX

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### Interpretation

1

### In this Schedule

**“carbon tax certificate”** means a certificate of payment of carbon tax issued in terms of paragraph 4;

**“liable person”** means a person liable to pay carbon tax in terms of paragraph 3, but does not, for the purposes of this *Schedule*, include—

(a) a diplomatic mission which, or any person connected with that mission who, enjoys the privileges and immunities provided under the Privileges and Immunities Act [*Chapter 3:03*];

(b) any international or regional organization upon which the President has conferred any of the privileges and immunities set out in the Third Schedule to the Privileges and Immunities Act [*Chapter 3:03*];

**“motor vehicle”** has the meaning given to that term in section 2(1) of the Vehicle Registration and Licensing Act [*Chapter 13:14*];

**“NOCZIM”** means the National Oil Company of Zimbabwe (Private) Limited;

**“oil company or other person or entity engaged in oil procurement”** means a company, person or entity licensed or authorised by the Ministry responsible for energy to import petroleum products in bulk or purchase or import them for resale;

**“petroleum product”** means

(a) leaded or unleaded petrol; or

(b) the fuel designed for use in a compression-ignition engine, commonly known as diesel fuel; or

(c) any refined petroleum capable of being used as a motor-spirit; or

but does not include aviation fuel, illuminating paraffin or power paraffin;

**“State oil procurement entity”** means NOCZIM or any other oil procurement entity formed by the State in addition to or substitution for NOCZIM.

### Payment of carbon tax under section 22E(1)

2

Whenever an oil company or other person or entity engaged in oil procurement or wishing to use the petroleum product for his or her own

consumption imports any petroleum product, he or she shall pay the required carbon tax to the Zimbabwe Revenue Authority at the port of entry of the petroleum product.

[Amended by Act 6 of 2006 backdated to the 1st January, 2006.]

Provided that the Minister may, by notice in the *Gazette*, exempt any power generation project (as defined in section 14(1) of the Finance Act [*Chapter 23:04*] from liability for carbon tax under this period for a temporary or indefinite period, and may backdate such exemption.

[proviso inserted by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March, 2018.]

### Liability for and payment of carbon tax by visitors to Zimbabwe

3

(1) A visitor to Zimbabwe who uses within Zimbabwe a motor vehicle registered outside Zimbabwe shall

(a) upon entering Zimbabwe; and

(b) for each month or part of a month during which he or she visits Zimbabwe;

pay the required carbon tax in respect of such vehicle to the Zimbabwe Revenue Authority, in United States dollars, Euros or any other currency denominated under the Exchange Control (**General**) Order, 1996 (*Statutory Instrument 110 of 1996*), at the rate of exchange specified in the Exchange Control (**Exchange Rate**) Direction, 2002 (*Statutory Instrument 223 of 2002*) or the equivalent international cross rate of exchange if the tax is paid otherwise than in United States dollars.

(2) Carbon tax shall be payable at any port of entry or branch or division department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act:

Provided that if a visitor to Zimbabwe stays in Zimbabwe for a longer period than the period for which he originally paid carbon tax he or she shall, at any time before leaving Zimbabwe, pay the additional carbon tax in respect of such vehicle to the Zimbabwe Revenue Authority in foreign currency as provided in this paragraph.

(3) Any person who fails to comply with subparagraph (1) or (2) shall incur a penalty of **2%** of the carbon tax due for every week or part of a week during which the default continues, and every such penalty shall be recoverable by

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the Commissioner by action in any court of competent jurisdiction.

### *Carbon tax receipt*

4

(1) A liable person shall, when paying over any carbon tax in terms of this Schedule, complete a prescribed form.

(2) Upon completion of the prescribed form and payment of the required carbon tax, the certifying authority shall issue him or her with a carbon tax receipt.

(3) A police officer may demand that any liable person produce a carbon tax receipt as proof that he or she has paid the carbon tax.

(4) If any carbon tax receipt is lost or destroyed or any essential particulars thereon have been defaced or if the receipt is dilapidated, the issuing authority, on application by the holder thereof and on payment of the fee, if any, prescribed, shall issue a duplicate carbon tax receipt.

### *Offence of failing to produce carbon tax receipt and compromise thereof*

5

(1) Subject to subparagraph (2), any person in charge of a motor vehicle liable for carbon tax which does not produce a carbon tax receipt when required to do so under paragraph 4, shall, whether or not he or she is the liable person, be guilty of an offence and liable to a fine equal to the amount of the carbon tax payable for the vehicle or, in default of payment, to imprisonment for a period not exceeding six months:

Provided that if the failure to produce the carbon tax receipt was due to its loss or destruction and not to non-payment of carbon tax, a police officer or officer of the Authority may require the person in charge of the motor vehicle concerned or, if he or she is not the owner of the vehicle, the owner thereof, to produce a duplicate receipt **within 7 days** at such place as the police officer shall specify.

(2) A person referred to in subparagraph (1) may sign and deliver to the police officer referred to in that subparagraph a document admitting that he or she is guilty of the said offence and deposit with such officer a fine equal to the amount of the carbon tax payable for the vehicle, and such person shall thereupon, subject to subparagraph (3), not be required to appear in court to answer the charge of having committed the said offence.

(3) Section 356 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply to the procedure to be followed in relation to an admission of guilt made under subparagraph (2).

(4) The Zimbabwe Republic Police shall furnish to the Commissioner particulars of every person who has compounded or been convicted of an offence in terms of this paragraph.

## TWENTY-NINTH SCHEDULE

(Section 36F)

### BANKING INSTITUTION LEVY

[Inserted by Act 27 of 2001, from the 1 January 2001. Repealed by the Finance (No.3) Act 10/2009 w.e.f. the 1<sup>st</sup> January, 2010.]

## THIRTIETH SCHEDULE

(Section 36G)

[Inserted by Act 15/2002 with effect from 1st January, 2003.]

## INTERMEDIATED MONEY TRANSFER TAX

[**Editor's Notes:** The Minister of Finance purported to amend this Tax by newspaper on the 5th October, 2018; and later published his increase by **SI 205/2018** gazetted on the **12 October 2018** : - which Regulations were - challenged on the 12<sup>th</sup> February, 2019 in the High Court; "validated" the following week on the 20<sup>th</sup> February by Act 1/2019 backdated to the 13<sup>th</sup> October 2018; "re-validated" another 6 months later Act 7 of 2019 promulgated on the 21<sup>st</sup> August backdated to the **1<sup>st</sup> August 2019**.

The High Court Judgment was handed down 4 weeks later by ZHOU J on the 18<sup>th</sup> September, 2019 **M.Milo v Minister of Finance 19-HH-605** declaring these **Regulations ergo the affected sections of this Schedule ultra vires** ZimLive.com reported legal sources saying **Justice Zhou** was in the running to become one of seven members of the International Tribunal for the Law of the Sea when his nomination was withdrawn without his knowledge. A source is quoted as having said: "Just a month after his bond note judgement, the government surreptitiously withdrew his candidature. He was never consulted." Is this an attack on judicial independence? - Editor.]

### *Interpretation*

1

(1) In this *Schedule*—

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“**auction floor**”, “**auction tobacco**” have the meanings assigned to them in the *Twenty-Fourth Schedule*;

[Definitions inserted by SI 80/2019 gazetted on the 29<sup>th</sup> March, 2019.]

“**auction floor**”, “**auction tobacco**”, “**buyer**”, “**contractor**”, and “**contract tobacco**” referred to in paragraphs (q1) and (q2) of the definition of “*transaction on which the tax is payable*” have the meanings assigned to them in the *Twenty-Fourth Schedule*;

[Redefinitions inserted by Finance (No.2) Act 7/2019 w.e.f. **21st August, 2019**.]

“**automated teller machine**” has the meaning given to that term in paragraph 1 of the *Twenty-Fifth Schedule*;

“**buyer**” has the meaning assigned to it in the *Twenty-Fourth Schedule*;

[Definition inserted by SI 80/2019 gazetted on the 29<sup>th</sup> March, 2019.]

“**buyer**”, “**contracted grower**”, “**cotton**”, “**cotton seed**” and “**grower**” referred to in paragraphs (q2) and (q3) of the definition of “*transaction on which the tax is payable*” have the meanings assigned to them in the Agricultural Marketing Authority (Seed Cotton and Seed Cotton Products) Regulations, 2009; SI 142/2009;

[Redefinitions inserted by Finance (No.2) Act 7/2019 w.e.f. **21st August, 2019**.]

“**company**” means a company or private business corporation registered or incorporated under the enactment providing for the registration or incorporation of such entities;

[Definition inserted by Finance Act 1/2019 gazetted 20th February 2019 w.e.f. the **13th OCTOBER 2018** or the **\*22nd NOVEMBER 2018**. It is not understood why the **\*2<sup>nd</sup>** effective date should be so.- Editor.]

“**contractor**” and “**contract tobacco**” have the meanings assigned to them in the *Twenty-Fourth Schedule*;

[Definitions inserted by SI 80/2019 gazetted on the 29<sup>th</sup> March, 2019.]

“**financial institution**” means—

(a) any banking institution registered or required to be registered in terms of the Banking Act [Chapter 24:20]; or

(b) any building society registered or required to be registered in terms of the Building Societies Act [Chapter 24:02]; or

(c) the Reserve Bank of Zimbabwe [Chapter 22:15]; or

(d) the People’s Own Savings Bank of Zimbabwe established in terms of the People’s Own Savings Bank of Zimbabwe Act [Chapter 24:22]; or

(e) the Infrastructure Development Bank of Zimbabwe established in terms of the Infrastructure Development Bank of Zimbabwe Act [Chapter 24:14]

[Amended by Act 11 of 2005 from 24th March , 2006.];]

or

(f) the successor company to the Agricultural Finance Corporation formed under the Agricultural Finance Act [Chapter 18:02];

[Now called the Agricultural **Banking** Corporation Zimbabwe Limited - Editor.]

or

(g) the postal company licensed in terms of section 113 of the Postal and Telecommunications Act [Chapter 12:05] to provide the postal services previously carried on by the Posts and Telecommunications Corporation established by the repealed Posts and Telecommunications Corporation Act [Chapter 12:02], or any person licensed in terms of the Postal and Telecommunications Act [Chapter 12:05] to provide postal services;

(h) any provider of a mobile banking service;

[para (h) inserted by Act No.1/2014 w.e.f. 1<sup>st</sup> January, 2014, and amended by Finance (No.2) Act 8 of 2014 w.e.f. 1<sup>st</sup> January, 2014]

(i) the operator of a mobile money transfer platform (whether or not he or she or it is permitted or licensed to operate such a platform by a financial institution or cellular telecommunication or telecommunication service operator licensed or required to be licensed under the Postal and Telecommunications Act [Chapter 12:05]), who carries on the business of facilitating the receipt of cash by any person (“**the customer**”) by hosting on such platform the customer and the financial institution or cellular telecommunication or telecommunication service operator or any combination of them;

[para (i) inserted by Finance (No.2) Act 7/2019 w.e.f. **21st August, 2019**]

(j) a money transfer service registered or required to be registered as such or as an “*authorised dealer with limited authority*” under

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the Exchange Control Act [Chapter 22:05], to the extent that, in addition to its core business of transferring inbound foreign currency remittances to recipients in Zimbabwe, or transferring outbound foreign currency for the payment of goods and services to be consumed within Zimbabwe (both of which are not transactions on which the tax is payable), it acts as an intermediary for the transfer of funds within or outside Zimbabwe;

[Para (j) inserted by section 16 of Finance Act 8/2022 gazetted on the 24th October, 2022.]

**“marketable security”** has the meaning given to it by section 2 of the Capital Gains Tax Act [Chapter 23:01];

[definition inserted by Finance Act 1/2019 gazetted 20<sup>th</sup> February 2019 w.e.f. either of the \*dates referred to above- Editor]

**“mobile banking service”** means a service that allows customers of a financial institution or cellular telecommunication or telecommunication service operator licensed or required to be licensed under the Postal and Telecommunications Act [Chapter 12:05] or other intermediary to conduct any number of financial transactions involving the transfer of money through a mobile device such as a mobile telephone or personal digital assistant, and for which the financial institution, operator or intermediary involved receives a fee, commission, premium, interest or other reward;

[definition inserted by Act No.1/2014 w.e.f. 1<sup>st</sup> January, 2014]

**“money”**—

(a) coins of current mass or bank notes which the Reserve Bank of Zimbabwe has issued in Zimbabwe in accordance with Part VI of the Reserve Bank of Zimbabwe Act [Chapter 22:15] and which have not been demonetized.

(b) any—

(i) coin, other than a coin made wholly or mainly from a precious metal, or bank note which is the currency of any country, other than Zimbabwe, and which is used or circulated or is intended for use or circulation as currency;

(ii) bill of exchange, promissory note, bank draft, postal order or money order;

except when disposed of or imported as a collector's piece, investment article or item of numismatic interest;

**“money market instrument”** means any—

(a) Treasury Bill, Treasury Bond, Reserve Bank of Zimbabwe Bill or Reserve Bank of Zimbabwe Bond;

(b) corporate bill or bond, that is, any bill or bond issued in the name of a company;

® negotiable certificate of deposit or fixed deposit instrument;

[definition inserted by Finance Act 1/2019 gazetted 20<sup>th</sup> February 2019 w.e.f. either of the \*dates referred to above- Editor]

**“nostro foreign currency account”** means any account designated in terms of Exchange Control Directive **RT/120 of 2018**, held with a financial institution in Zimbabwe, in which money in the form of foreign currency is deposited from offshore or domestic sources;

[definition inserted by Finance Act 1/2019 gazetted 20<sup>th</sup> February 2019 w.e.f. either of the \*dates referred to above- Editor. See the new definitions in **SI 32/2019** and **SI 33/2019** emergency Regulations gazetted by the President on the 22<sup>nd</sup> February 2019 – now incorporated in their respective Acts.- Editor.]

**“pension fund”** means—

(a) the National Social Security Authority established by the National Social Security Authority Act [Chapter 17:04];

(b) any pension fund registered as such in terms of the Pension and Provident Funds Act [Chapter 24:32];

[Definition inserted by Finance Act 1/2019 gazetted 20<sup>th</sup> February 2019 — Chapter 24:09 substituted on the 2<sup>nd</sup> September, 2022-Editor]

**“remuneration”** has the meaning given to it by paragraph 1(1) of the Thirteenth Schedule of the Act (whether or not such remuneration is subject to employees' tax);

[Definition inserted by Finance Act 1/2019 gazetted 20<sup>th</sup> February 2019 w.e.f. either of the \*dates referred to above- Editor]

**“specified trust account”** means any trust account required to be opened and operated in terms of the Insurance Act [Chapter 24:07], The Legal Practitioners Act [Chapter 27:07], the Estate Agents Act [Chapter 27:17] or the Estate Administrators and Insolvency Practitioners Act [Chapter 27:20];

**“transaction on which the tax is payable”** does not include any of the following transactions —

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[Definition inserted by Finance Act 1/2019 gazetted 20th February 2019 w.e.f. either of the \*dates referred to above- Editor]

- (a) the transfer of money for the purchase or sale of **marketable securities**;
- (b) the transfer of money for the purchase or redemption of **money market** instrument;
- (bb) transfers from Designated Special Purpose Accounts created for the delivery of projects by **Implementing Partners of organisations** covered under the Privileges and Immunities Act [*Chapter 3:03*];

[Paragraph (bb) inserted by Finance Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022 backdated to the **21<sup>st</sup> March, 2021**.]

- (c) the transfer of money on payment of **remuneration**;
- (cc) the transfers of money to **wheat growers** for the purchase of wheat by the Grain Marketing Board or persons who have been approved as buyers of wheat by the Agricultural Marketing Authority and prescribed as such for the purpose of this exemption;

[Paragraph (cc) inserted temporarily by Finance Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022 during the period between **1<sup>st</sup> September, 2022 to 31<sup>st</sup> March, 2023**.]

- (d) the transfer of money to or from the Zimbabwe Revenue Authority for the payment or refund of any **tax**, duty or other charges;
- (e) the **intra-corporate** transfer of money, that is to say, transfer of money between the treasury account and any trading account held in the name of the same company;
- (f) the transfer of money from (but not into) **specified trust** accounts;
- (g) ...[the transfer of money into and from **\*nostro** foreign currency accounts];

[Subpara **(g) repealed** by section 15 of Act 8/2020 gazetted on the 28<sup>th</sup> October, 2020 w.e.f. from the 1<sup>st</sup> August, 2020.]

- (h) the transfer of money by Government from the Consolidated Revenue Fund or from funds established in terms of section 18 of the Public Finance Management Act [*Chapter 22:19*];
- (i) the transfer of money to any **pension fund** or to beneficiaries of such a fund;
- (j) the transfer of money for the procurement, production or sale (wholesale or retail) of a petroleum product by a **petroleum company**

licensed in terms of Part VI of the Petroleum Act [*Chapter 13:22*];

- (k) the transfer of money between an individual's **mobile wallet** account and his or her bank account;
- (l) the transfer of money from a **medical aid society** registered in terms of the Medical Services Act to a medical service provider in settlement of a claim for services rendered by that provider;
- (m) the transfer of money in the form of **insurance premiums**—
  - (i) by insurance **brokers** to insurance companies; and
  - (ii) by insurance companies to reinsurers, retrocessionnaires and asset managers registered in terms of the Asset Management Act [*Chapter 24:06*];
- (n) the transfer of money to producers, sellers or exporters of **minerals** by the Minerals Marketing Corporation of Zimbabwe pursuant to the Minerals Marketing Corporation Act [*Chapter 21:04*];
- (o) the transfer of money to producers or sellers of gold **Fidelity Printers and Refiners (Private) Limited**;
- (p) the transfer of money to a successor company of the Zimbabwe Electricity Supply Authority (referred to in section 75 of the Electricity Act [*Chapter 13:19*]) from a trust fund credited with prepayments for electricity made by a mobile banking service provider;
- (q) the transfer of money by **travel agents** to airlines on the purchase and administration of air tickets;
  - (q1) the transfer of funds for the purchase of auction or contract **tobacco** from buyers or contractors to auction floors;
- [redefinition inserted by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019, This Effective date is backdated by sect 16 of Finance (No.3) Act 13/2019 gazetted on the 31st December, 2019 ,<sup>to</sup> the **29<sup>th</sup> March, 2019** ]
  - (q2) the transfer of funds by contractors and auction floors to growers of **tobacco** for deliveries of tobacco;
- [redefinition inserted by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019, This Effective date is backdated by sect 16 of Finance (No.3) Act 13/2019 gazetted on the 31st December, 2019 ,<sup>to</sup> the **29<sup>th</sup> March, 2019** ]

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(q3) the transfer of funds to buyers to enable them to purchase **cotton** or cotton seed from growers or contracted growers;

[redefinition inserted by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019, This Effective date is backdated by sect 16 of Finance (No.3) Act 13/2019 gazetted on the 31st December, 2019 ,to the **29th March, 2019** ]

(q4) the transfer of funds by buyers to purchase of **cotton** or cotton seed from growers or contracted growers;

[redefinition inserted by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019, This Effective date is backdated by sect 16 of Finance (No.3) Act 13/2019 gazetted on the 31st December, 2019 ,to the **29th March, 2019** ]

(q5) social transfers by anyorganisation or body designated as a “development partner” in virtue of a notice in the Gazette published pursuant to Part IV of the Privileges and Immunities Act [Chapter 3:03]

(in this paragraph, a-

**“social transfer”** means social assistance in the form of money paid to those living in poverty or in danger of falling into poverty);

[new definition inserted by Finance (No.3) Act 13/2019 w.e.f. 31st December, 2019]

(q6) the transfer of money from the African Export-Import Bank (“Afreximbank”) established by the Bank Agreement;

(in this paragraph the-

**“Bank Agreement”** means the Agreement for the Establishment of the African Export-Import Bank (“Afreximbank”) signed in Abidjan, Ivory Coast, by African States and certain International Organisations on the 8th of May, 1993);

[new definition inserted by Finance (No.3) Act 13/2019 gazetted on the 31st December, 2019 back dated to take effect from the w.e.f. 13th October,2018]

(q7) the transfer of funds from the Carbon Tax Sinking Fund account, to which a portion of the carbon tax revenues are dedicated in repayment of investors in the **100 million United States dollar bond** underwritten by Afreximbank to finance road building, irrigation works and health infrastructure;

[paras (q7) and (q8) inserted Finance Act 7/2021 w.e.f. 31 December, 2021.]

(q8) the transfer of funds from the Agricultural Development Fund (being a fund set up to

assist the Government of Zimbabwe in raising funds to compensate former farmers who qualify for compensation under the Global Compensation Deed);

**“auction floor”, “auction tobacco”, “buyer”, “contractor”, and “contract tobacco”** referred to in paragraphs (q1) and (q2) of the definition of “transaction on which the tax is payable” have the meanings assigned to them in the *Twenty-Fourth Schedule*;

[additional definitions inserted by Finance (No.2) Act 7/2019 w.e.f. 21st August 2019]

(r) .....

[**Para (r)** definition substituted by Finance (No.2) Act 7/2019; - substituted by section 15 of Act 13/2019 gazetted on 31<sup>st</sup> December, 2019 w.e.f. 1st January, 2020 increasing the value ceiling to zw100 or below; then it was substituted by section 15 of Act 8/2020 gazetted on 28<sup>th</sup> October,2020 backdated to 1st August, 2020;]

[then it was repealed by SI 261A/2020 gazetted on the 3<sup>rd</sup> November,2020 which repeated it as para (y) and added it back into the following paras (t) to (y) *in lieu* , still with effect from the 1st August, 2020;-**repealed** again by section 16 of Finance Act 8/2022 gazetted on the 24th October, 2022.]

(t) the transfer of foreign currency awarded to any bidder on the Foreign Currency Auction System operated by the Reserve Bank of Zimbabwe to the foreign currency account of any authorised dealer;

[**Paras (t), (u), (v), (w), (x) and (y)** substituted by the above SI 261A/2020 gazetted on 3<sup>rd</sup> November,2020- until re-enacted with corrections by the Finance (No.2) **Act 10/2020** w.e.f. the **1st January, 2021**.]

(u) the transfer of Zimbabwe dollars by an authorised dealer to the Reserve Bank of Zimbabwe in settlement of foreign currency awarded to any bidder on the Foreign Currency Auction System operated by the Reserve Bank of Zimbabwe;

(v) the transfer of foreign currency by authorised dealers in settlement of international obligations for the importation of goods and services;

(w) the transfer of foreign currency by traders to the Reserve Bank of Zimbabwe for sale on the Foreign Currency Auction System operated by the Reserve Bank of Zimbabwe;

(x) the transfer of Zimbabwe dollars by the Reserve Bank of Zimbabwe to traders or authorised dealers as settlement of foreign

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currency sold on the Foreign Currency Auction System operated by the Reserve Bank of Zimbabwe;

(y) the transfer of money from a *nostro* foreign currency account in the name of a person exempted in terms of the Privileges and Immunities Act [Chapter 3:03];

(z) the transfer of the levy chargeable in terms of section 53 of the Manpower Planning and Development Act [Chapter 28:02];

[Subpara (z) added by the Finance (No.2) **Act 10/2020** w.e.f. the **1st January, 2021**.]

**(aa)** the transfer of money involving a transaction other than one mentioned in the **foregoing** paragraphs, if the value of transaction is **\*zwl\$2 500 or below or US\$5 or below;**

**[Editors Note:** this subpara (aa) is a repeat of subpara (r) replaced by SI 261A/20, published now as the replacement of the former subpara (y). Substituted by Finance Act of 2021; zw\$ threshold increased from zwl\$ 1000 to the above by section 16(b) of the Finance Act 8/2022 gazetted on the **24th October, 2022**.

**Editor's note :** the Schedule of this amending Act on page 158 prescribes a higher figure of zwl\$ 4000.]

**(bb)** the transfers from Designated Special Purpose Accounts created for the delivery of projects by **\*Implementing Partners** of organizations covered under the Privileges and Immunities Act [Chapter 3:03].

[Subpara (bb) added by the Finance (Rate of Incidence of Intermediated Money Transfer Tax) Regulations, 2021. **SI 80 of 2021** w.e.f. the **19th March, 2021** **\*Implementing Partners** are **not** mentioned within this Act -editor.]

**"transfer"** means transfer physically, electronically or by any other means.

(2) Where a customer of a financial institution effects a transfer of money to another person by means of an automated teller machine belonging to or leased by or under the control of the financial institution, the financial institution shall be deemed to have mediated the transfer of that money.

(2a) The collection of intermediated money transfer tax in terms of *Statutory Instrument 205 of 2018* is hereby validated to the date of commencement of this Act.

(3) For the avoidance of doubt it is declared that the transfer of money **from a *nostro* foreign currency account is** a transaction on which **tax is payable** in terms of this *Schedule*.

[Para (3) was inserted by section 15 of **Act 8/2020** gazetted on the 28th October, 2020- compare those under subpara (y) above.]

### *Liability for intermediated money transfer tax*

2

(1) Whenever a financial institution mediates the transfer of money otherwise than by cheque—

(a) between 2 persons; or

(b) from 1 person to 2 or more persons; or

(c) from 2 or more persons to 1 person;

the financial institution concerned shall pay to the Commissioner an intermediated money transfer tax on each such transaction.

(2) Where a financial institution mediates the transfer of money to another financial institution on behalf of any of the persons for whom it acts as intermediary, the other financial institution shall not be liable for intermediated money transfer tax.

### *Period within which intermediated money transfer tax to be paid*

3

Intermediated money transfer tax shall be paid in terms of paragraph 2 **not later than the 10th day** of the month following the month in which the transaction respect of which the tax is payable was effected

[Payment period shortened from 15 days to the above by the Finance (No.3) Act 10/2009 with effect from the 8<sup>th</sup> January, 2010.]

Provided that the Commissioner may for good cause allow the tax to be paid within any further time.

### *Returns to be furnished to Commissioner*

4

Payment of the intermediated money transfer tax in terms of paragraph 2 shall be accompanied by a return in the form prescribed.

### *Recovery of intermediated money transfer tax from customer*

5

Notwithstanding any other law, a financial institution that has paid intermediated money transfer tax may recover the tax from either of the persons on whose account the transaction was effected, or from both or any of them in such proportions as it may determine, either by

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debiting the person's account operated with it or in any other manner in all respects as if the amount of the tax were a fee, or charge levied by the financial institution in the ordinary course of its business.

*Penalty for non-payment of intermediated money transfer tax*

6

(1) Subject to subparagraph (2), a financial institution that fails to pay to the Commissioner any intermediated money transfer tax as provided in paragraph 2 shall be liable to pay, in addition to the tax, a further amount equal to **15%** of the unpaid tax.

(2) If the Commissioner is satisfied in any particular case that a failure to pay any intermediated money transfer tax was not due to an intent to evade the provisions of this Schedule, he may waive the payment of the whole or such part as he thinks fit of the additional amount referred to in subparagraph (1).

(3) If a defaulting financial institution referred to in subparagraph (1) does not pay the penalty in full on the date on which the default has ceased, interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the penalty as remains unpaid by the financial institution during the period beginning on the date the default has ceased and ending on the date the penalty is paid in full, and such interest shall be recoverable by the Commissioner by action in any court of competent jurisdiction:

[See the Income Tax (**Rate of Interest**) Notice 2022  
**SI 212 of 2022**  
gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

Provided that in special circumstances the Commissioner may extend the time for payment of the penalty without charging interest.

[Subpara (3) inserted by Act 8 of 2005 from 1<sup>st</sup> January, 2006.]

*Refund of intermediated money transfer tax*

7

If it is proved to the satisfaction of the Commissioner that any person has paid any amount by way of intermediated money transfer tax in excess of the amount properly payable in terms of this Schedule, the Commissioner shall authorise a refund of the amount overpaid.

Provided that the Commissioner shall not authorise a refund in terms of this paragraph unless the claim therefore is made **within 3 years** of the date of the overpayment.

## THIRTY-FIRST SCHEDULE

(Section 36H)

[Inserted by Act 10/2003 with effect from the year of assessment beginning on the 1<sup>st</sup> December, 2003.- an error in clause 21 thereof – Editor. Amended by Act 8/2011 w.e.f. the 1<sup>st</sup> September, 2011]

**NOCZIM DEBT REDEMPTION & STRATEGIC RESERVE LEVY**

*Interpretation*

1

(1) In this Schedule

**“NOCZIM”** means the National Oil Company of Zimbabwe (Private) Limited;

**“NOCZIM Debt Redemption Sinking Fund”** means the sinking fund established in terms of the Public Finance Management Act [Chapter 22:19] for the purposes referred to in subparagraph (1) of paragraph 3, and administered by the Minister responsible for energy;

“oil company” means

- (a) BP and Shell Marketing (Private) Limited; or
- (b) Caltex Oil Zimbabwe (Private) Limited; or
- (c) Mobil Oil Zimbabwe (Private Limited; or
- (d) Total Zimbabwe (Private) Limited; or
- (e) Country Petroleum Services; or
- (f) Engen Petroleum Services; or
- (g) Jovenna Energy Services; or
- (h) Royal Oil Services group; or
- (i) Kadoma Haulage; or
- (j) Atrax Commodities (Private) Limited; or
- (k) Exor Enterprises (Private) Limited; or
- (l) Migdale Investments (Private) Limited; or
- (m) FSI Trading; or
- (n) Wedzera Investments; or
- (o) any other person permitted by the Minister responsible for energy to import petroleum products;

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**“petroleum product”** means

- (a) leaded or unleaded petrol; or
- (b) the fuel designed for use in a compression-ignition engine, commonly known as diesel fuel; or
- (c) any refined petroleum capable of being used as a motor-spirit;

but does not include aviation fuel, illuminating paraffin or power paraffin;

**“Reserve Bank”** means the Reserve Bank of Zimbabwe.

*Liability for Noczim debt redemption and strategic reserve levy*

2

(1) With effect from the year of assessment beginning on the 1st December, 2003, every oil company and other person or entity (**other than the State**) that

[para 2(1) amended by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January, 2017]

(a) purchases any petroleum product from NOCZIM, shall deduct from the purchase price it pays to NOCZIM the required NOCZIM debt redemption levy and strategic reserve levy and without delay pay the amount so deducted to the Zimbabwe Revenue Authority:

Provided that the Minister may, by notice in the *Gazette*, exempt any power generation project (as defined in section 14(1) of the Finance Act [Chapter 23:04]) from liability for NOCZIM debt redemption levy and strategic reserve levy for a temporary or indefinite period, and may backdate such exemption.

[proviso inserted by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March, 2018.]

or

(b) imports any petroleum product, shall pay the required NOCZIM debt redemption levy any strategic reserve levy to the Zimbabwe Revenue Authority at the port of entry of the petroleum product.

[A comma is inserted after “product” for ease of reference. The commencement date was stated as 1st January, 2004 in the Departmental Draft of the Bill to this Act – Editor. Amended by Act 8/2011 w.e.f. the 1st September, 2011]

(2) If required to do so by the Zimbabwe Revenue Authority an oil company or other

person or entity referred to in subsection (1) shall supply the Zimbabwe Revenue Authority with such accounts, reports, documents and information as may reasonably be required to ascertain whether or not the oil company, person or entity concerned is complying with subsection (1).

*Application of moneys received in terms of this Schedule*

3

(1) The Minister responsible for energy, in consultation with the Minister responsible for finance shall ensure that all moneys received from the Zimbabwe Revenue Authority in terms of this Schedule are deposited in the NOCZIM Debt Redemption Sinking Fund and applied towards the settlement of debts incurred by NOCZIM in the procurement of petroleum products, whether such debts are incurred before or after the 1st January, 2004, and, in so doing, the Minister, in consultation with the Minister responsible for finance, may direct the order and manner in which NOCZIM is to settle its debts.

(2) NOCZIM shall take all necessary steps to comply with any direction referred to in subsection (1).

### THIRTY-SECOND SCHEDULE

*(Section 36I)*

[Inserted by Act 29 of 2004 from 1st January, 2005.]

**PROPERTY OR INSURANCE COMMISSION TAX**

*Interpretation*

1

(1) In this Schedule

**“commission”** means an amount paid or payable by an insurer or estate agent to a freelance agent in respect of any act done by that agent on its behalf as an insurance agent, insurance broker or property negotiator;

**“estate agent”** means a person who is a registered estate agent in terms of the Estate Agents Act [Chapter 27:17];

**“freelance agent”** means

(a) an insurance agent who is not registered as an employee by an insurer in terms of the *Thirteenth Schedule*; or

(b) an insurance broker who is not registered as an employee by an insurer in terms of the

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*Thirteenth Schedule*, to the extent that any commission earned by the broker is payable by the insurer; or

(c) a property negotiator who is not registered as an employee by an estate agent in terms of the *Thirteenth Schedule* and to whom a commission is paid by an estate agent, whether on its own account or on behalf of any party to the sale or lease of immovable property;

**“Insurance agent”** means a person who, on behalf of a registered insurer or registered insurers—

- (a) initiates insurance business; or
- (b) does any act in relation to the receiving of proposals for insurance, the issue of policies or the collection of premiums;

**“Insurance broker”** means a person who, on behalf of any other person, negotiates insurance business with insurers, and includes a person who negotiates reinsurance business on behalf of any other person;

**“insurer”** means a person registered as an insurer in terms of the Insurance Act [Chapter 24:07];

**“principal”** means an estate agent or an insurer;

**“property negotiator”** means a person by whatever title designated who, on behalf of an estate agent or estate agents—

- (a) introduces parties to the sale or lease of immovable property to each other or to the estate agent; or
- (b) negotiates or concludes the sale or lease of immovable property.

#### *Principals to withhold tax*

2

(1) Every principal who pays a commission to a freelance agent shall withhold property or insurance commission tax from that commission and shall pay the amount withheld to the Commissioner-General **on or before the 10th day** of the month following the month in which the payment was made or within such further time as the Commissioner-General may for good cause allow.

[Payment period shortened from the last day to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

(2) Where property or insurance commission tax is withheld in terms of subparagraph (1), the

payer shall provide the payee with a certificate, in a form approved by the Commissioner-General, showing—

- (a) the amount of the commission; and
- (b) the amount of the property or insurance commission tax withheld.

#### *Payee to pay tax not withheld by principal*

3

A freelance agent to whom a commission is paid from which property or insurance commission tax has not been withheld in terms of paragraph 2 or recovered in terms of section *seventy-seven* shall pay to the Commissioner-General, **on or before the 10<sup>th</sup> day** of the month following the month in which the payment was made, the tax that should have been withheld.

[Payment period shortened from the last day to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

#### *Returns to be furnished*

4

Payment of property or insurance commission tax by a principal shall be accompanied by a return in the form prescribed.

#### *Penalty for non-payment of tax*

5

(1) Subject to subparagraph (2), a principal who fails to withhold or pay to the Commissioner-General any amount of property or insurance commission tax as provided in paragraph 2 shall be personally liable for the payment to the Commissioner-General, not later than the date on which payment should have been made in terms of paragraph 2 of—

(a) the amount of property or insurance commission tax which the principal failed to pay to the Commissioner-General; and

(b) a further amount equal to such property or insurance commission tax.

(2) The amounts for the payment of which a principal is liable in terms of subsection (1)—

(a) shall be debts due by the principal to the State; and

(b) may be sued for and recovered by action by the Commissioner-General in any court of competent jurisdiction.

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(3) The Commissioner-General, if he or she is satisfied in any particular case that the failure to pay to him or her property or insurance commission tax was not due to any intent to evade the provisions of this *Schedule*, may waive the payment of the whole or such part as he or she thinks fit of the amount referred to in subparagraph (b) of subparagraph (1).

(4) If a defaulting principal referred to in subparagraph (1) does not pay the penalty referred to in subparagraph (1)(b) in full on the date on which the default has ceased, interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the penalty as remains unpaid by the principal during the period beginning on the date the default has ceased and ending on the date the penalty is paid in full, and such interest shall be recoverable by the Commissioner by action in any court of competent jurisdiction:

[See the Income Tax (**Rate of Interest**) Notice 2022  
**SI 212 of 2022**  
gazetted on the 19<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> DECEMBER, 2022]

Provided that in special circumstances the Commissioner may extend the time for payment of the penalty without charging interest.

[Inserted by Act 8 of 2005 with effect from 1<sup>st</sup> January, 2006.]

#### *Refund of overpayments*

6

If it is proved to the satisfaction of the Commissioner-General that any person has been charged with property or insurance commission tax in excess of the amount properly chargeable to him or her in terms of this *Schedule*, the Commissioner-General shall authorise a refund in so far as it has been overpaid:

Provided that the Commissioner-General shall not authorise any refund in terms of this paragraph unless the claim therefor is made **within 6 years** of the date of payment of such tax.

### THIRTY-THIRD SCHEDULE

[Inserted by Act 12/2006 from 1st January, 2007.]

(*Sections 36J and 97C*)

#### TAX ON NON-EXECUTIVE DIRECTOR'S FEES

##### *Interpretation*

1

(1) In this Schedule, subject to subparagraph (2)—

**"corporate body"** means any body or association incorporated or registered under any law relating to asset managers, banks, building societies, unit trust schemes, companies, financial institutions, insurers or pension funds or under a special law;

**"director"**, in relation to a corporate body, means a person, by whatever name he or she may be called, who

(a) controls or governs that corporate body; or

(b) is a member of a body or group of persons which controls or governs that corporate body; or

and includes any person occupying the position of director or alternate director of a body corporate;

**"non-executive director's fees"** means any remuneration of a director paid by the corporate body of which he or she is a director

(a) that is excluded for the purposes of employees' tax by virtue of paragraph (b) of the definition of "remuneration" in paragraph 1(1) of the *Thirteenth Schedule*; or

(b) from which employees' tax is not withheld in terms of the *Thirteenth Schedule* for any reason;

**"tax"** means tax on non-executive director's fees.

#### *Payers to withhold tax*

2

(1) Every payer of non-executive director's fees to a director shall withhold tax from those fees and shall pay the amount withheld to the Commissioner **within 10 days** of the date of payment or within such further time as the Commissioner may for good cause allow.

[Payment period shortened from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

(2) Where tax is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

(a) the amount of the non-executive director's fees; and

(b) the amount of tax withheld.

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*Agents to withhold tax not deducted by payer*

3

(1) Every agent who receives on behalf of a payee non-executive director's fees from which tax has not been withheld by the payer, shall withhold tax from those fees and shall pay the amount withheld to the Commissioner **within 10 days** of the date of the receipt of the fees.

[Payment period shortened from 15 days to the above by the Finance (No.3) Act 10/2009 w.e.f. the 8<sup>th</sup> January, 2010.]

(2) Where tax is withheld in terms of subparagraph (1), the agent shall provide the payee with a certificate in a form approved by the Commissioner, showing—

- (a) the name of the payer; and
- (b) the amount of the non-executive director's fees; and
- (c) the amount of tax withheld.

(3) For the purposes of this paragraph, a person shall be deemed to be the agent of a payee and to have received non-executive director's fees on behalf of that payee if—

- (a) that person's address appears in the payer's records as the address of the payee; and
- (b) the warrant or cheque in payment of the fees is delivered at that person's address.

*Payee to pay tax not withheld by payer or agent*

4

A payee to whom non-executive director's fees have been paid from which tax has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section **seventy-seven** shall pay to the Commissioner **within 15 days** of the date of payment of the fees the tax that should have been withheld.

*Returns to be furnished*

5

Payment of tax on fees by a payer or an agent shall be accompanied by a return in the form prescribed.

*Penalty for non-payment of tax*

6

(1) Subject to subparagraph (2), a payer or an agent in Zimbabwe who fails to withhold or pay to the Commissioner any amount of tax as provided in paragraph 2 or 3 shall be personally

liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

- (a) the amount of the tax which the payer or the agent, as the case may be, failed to pay to the Commissioner; and
- (b) a further amount equal to such tax.

(2) The Commissioner, if he or she is satisfied in any particular case that the failure to pay to him or her tax was not due to any intent to evade the provisions of this *Schedule*, may waive the payment of the whole or such part as he or she thinks fit or repay the whole or such part as he or she thinks fit of the amount referred to in subparagraph (1)(b).

*Refund of tax*

7

If it is proved to the satisfaction of the Commissioner that any person has been charged with tax fees in excess of the amount properly chargeable in terms of this Schedule, the Commissioner shall authorise a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorise any refund in terms of this paragraph unless the claim therefor is made **within 3 years** of the date of payment of such tax.

### THIRTY-FOURTH SCHEDULE

(Section 36K)

[Inserted by Act \*5 of 2010 w.e.f. the year of assessment beginning on the 1st January, 2011.]

#### PETROLEUM IMPORTERS LEVY

*Interpretation*

1

- (1) In this Schedule—

**"petroleum importer"** means a company or other person holding a procurement licence to import petroleum products in bulk into Zimbabwe;

(2) Any term to which a meaning has been assigned in the Petroleum Act [Chapter 13:22] shall bear the same meaning when used in this *Schedule*.

*Liability for petroleum importers levy*

2

- (1) Every petroleum importer who transports petroleum products by road shall, at any

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designated port of entry into Zimbabwe, pay to the Zimbabwe Revenue Authority a petroleum importers levy at the rate fixed by the Charging Act.

[Subpara (1) substituted by Act 8/2011 with effect from the **1st September, 2011** from which date the distinction of route taken is removed- Editor]

(2) If required to do so by the Zimbabwe Revenue Authority a petroleum importer referred to in subparagraph (1) shall supply the Zimbabwe Revenue Authority with such accounts, reports, documents and information as may reasonably be required to ascertain whether or not the petroleum importer concerned is complying with subparagraph (1).

*Penalty for failure to pay petroleum importers levy timeously*

3

(1) In any petroleum importer referred to in paragraph 2 fails timeously to pay any amount of petroleum importers levy due, the Zimbabwe Revenue Authority may by notice in writing to the petroleum importer concerned levy a civil penalty of **US\$30** for **each day** during which the petroleum importer fails to pay the levy in full, which penalty shall not continue to be levied beyond the **181st day** calculated from the first day on which such levy is due:

Provided that the Authority shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if it is satisfied that the contravention was not wilful, or not due to the want of reasonable care.

(2) A civil penalty levied under subparagraph (1) shall constitute a debt due to the Zimbabwe Revenue Authority by the person against whom it is levied, and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority.

### THIRTY-FIFTH SCHEDULE

(Section 98B)

[Inserted by Sect 6 of the Finance (No.2) Act 9 of 2015 with effect from the year of assessment beginning 1st January, 2016.]

#### TRANSFER PRICING

*Interpretation*

1

(1) In this *Schedule*—

“**comparable transaction**” means a transaction that is comparable by reference to paragraph 3;

“**uncontrolled transaction**” means any transaction between independent persons;

*Arm's length principle*

2

The determination of whether the conditions of a controlled transaction are consistent with the arm's length principle for the purposes of section **ninety-eightB** shall be made by the Commissioner-General in accordance with this *Schedule*.

*Comparability*

3

(1) An uncontrolled transaction is comparable to a controlled transaction within the meaning of section **ninety-eightB(1)** —

(a) when there are **no differences** between them that could materially affect the financial indicator being examined under the appropriate transfer pricing method; or

(b) when such **differences exist**, if a reasonably accurate comparability adjustment is made to the relevant financial indicator of the uncontrolled transaction in order to eliminate the effects of such differences on the comparison.

(2) To determine whether 2 or more transactions are comparable, the following factors shall be considered to the extent that they are economically relevant to the facts and circumstances of the transactions —

(a) the characteristics of the property or services transferred; and

(b) the functions undertaken by each person with respect to the transactions, taking into account assets used and risks assumed; and

(c) the contractual terms of the transactions; and

(d) the economic circumstances in which the transactions take place; and

(e) the business strategies pursued by each of the associated persons in relation to the transactions.

*Transfer pricing*

4

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(1) The arm's length remuneration of a controlled transaction shall be determined by applying the most appropriate transfer pricing method to the circumstances of the case.

(2) The most appropriate transfer pricing method shall be selected from among the approved transfer pricing methods set out in paragraph 5(5), taking into consideration the following criteria—

(a) the respective strengths and weaknesses of the approved methods; and

(b) the appropriateness of an approved method in view of the nature of the controlled transaction, determined in particular through an analysis of the functions undertaken by each person in the controlled transaction, taking into account assets used and risks assumed; and

(c) the availability of reliable information needed to apply the selected transfer pricing method or other methods; and

(d) the degree of comparability between the controlled and uncontrolled transactions, including the reliability of comparability adjustments, if any, that may be required to eliminate differences between them.

(3) It shall not be necessary to apply more than one method to determine whether the conditions of a given controlled transaction are consistent with the arm's length principle.

(4) Where a taxpayer has used an approved transfer pricing method and the selection of that method is consistent with this regulation, the examination by the Commissioner of whether the conditions of the taxpayer's controlled transactions are consistent with the arm's length principle shall be based on that transfer pricing method applied by the taxpayer.

(5) The following shall be the approved transfer pricing methods for purposes of subparagraph (2)—

(a) the **Comparable Uncontrolled Price Method**, which is the comparable uncontrolled price method consisting of comparing the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction; and

(b) the **Resale Price Method**, which is the resale price method consisting of comparing the resale margin that a purchaser of property in a controlled transaction earns from reselling that property in an uncontrolled transaction with the resale margin that is earned in comparable

uncontrolled purchase and resale transactions; and

(c) the **Cost Plus Method**, which is the cost plus method consisting of comparing the mark up on those costs directly and indirectly incurred in the supply of property or services in a controlled transaction with the mark up on those costs directly and indirectly incurred in the supply of property or services in a comparable uncontrolled transaction; and

(d) the **Transactional Net Margin Method**, which is the transactional net margin method consisting of comparing the net profit margin relative to an appropriate base, such as costs, sales or assets, that a person achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions; and

(e) the **Transactional Profit Split Method**, which is the transactional profit split method consisting of allocating to each associated person participating in a controlled transaction the portion of common profit (or loss) derived from such transaction that an independent person would expect to earn from engaging in a comparable uncontrolled transaction. When it is possible to determine an arm's length remuneration for some of the functions performed by the associated persons in connection with the transaction using one of the approved methods described in subparagraphs (a) to (d) above, the transactional profit split method shall be applied based on the common residual profit that results once such functions are so remunerated.

(6) Where, taking account of the criteria described in subparagraph (3), a comparable uncontrolled price method described in subparagraph (5)(a) and an approved method described in subparagraph (5)(b) to (e) can be applied with equal reliability, the determination of arm's length conditions shall be made using the **comparable uncontrolled price method**.

(7) Where, taking account of the criteria described in subparagraph (2), an approved method described in paragraph 5(5)(a) to (c) and an approved method described in subparagraph (5)(a) to (c) can be applied with equal reliability, the determination of arm's length conditions shall be made using the method described in subparagraph (5)(a) to (c).

(8) It shall not be necessary to apply more than one method to determine the arm's length remuneration for a given controlled transaction.

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(9) A transfer pricing method other than the approved methods contained in subparagraph (5) may be applied where the Commissioner is satisfied that —

(a) none of the approved methods can be reasonably applied to determine arm's length conditions for the controlled transaction; and

(b) such other method yields a result consistent with that which would be achieved by independent persons engaging in comparable uncontrolled transactions under comparable circumstances.

(10) When a method other than the approved methods contained in subparagraph (5) is used it shall establish that the requirements of subparagraph (9) have been satisfied.

(11) When applying a **cost plus, resale price or transactional net margin method**, provided under subparagraph (5), it shall be necessary to select the party( hereinafter referred to as the "**tested party**") to the transaction for which a financial indicator, mark-up on costs, gross margin, or net profit indicator, is tested under the applicable transfer pricing method.

(12) The selection of the tested party should be consistent with the functional analysis of the transaction.

(13) Where a taxpayer has used a transfer pricing method to establish the remuneration of its controlled transactions and that transfer pricing method is consistent with the provisions of this paragraph, then the Commissioner's examination of whether the conditions of the taxpayer's controlled transactions are consistent with the arm's length principle shall be based on the transfer pricing method applied by the taxpayer.

### *Evaluation of taxpayer's combined controlled transactions*

5

If a taxpayer carries out, under the same or similar circumstances, 2 or more controlled transactions that are economically closely linked to one another or that form a continuum such that they cannot reliably be analysed separately, those transactions may be combined to

(i) perform the comparability analysis set out in paragraph 3 and

(ii) apply the transfer pricing methods set out in paragraph 5.

### *Arm's length range*

6

(1) An arm's length range is a range of relevant financial indicator figures (e.g. prices, margins or profit shares) produced by the application of the most appropriate transfer pricing method as set out in paragraph 4 to a number of uncontrolled transactions, each of which is relatively equally comparable to the controlled transaction based on a comparability analysis conducted in accordance with paragraph 3.

(2) A controlled transaction, or a set of transactions that are combined according to paragraph 5 shall not be subject to an adjustment under section *ninety-eightB* where the relevant financial indicator derived from the controlled transaction or set of transactions and being tested under the appropriate transfer pricing method is within the arm's length range.

(3) Where the relevant financial indicator derived from a controlled transaction, or from a set of transactions that are combined according to paragraph 5, falls outside the arm's length range, the Commissioner may adjust it pursuant to section *ninety-eightB* (1), and any such adjustment shall be to the median in the arm's length range.

(4) For the purposes of subparagraph (3), the median of the arm's length range shall be the **50th percentile** of the financial indicator figures derived from the comparable uncontrolled transactions forming the arm's length range. For this purpose, the **50th percentile** is the lowest financial indicator figure such that **at least 50 %** of the financial indicator figure are at or below the value of that figure. However, if exactly 50 % of the results are at or below a financial indicator figure, then the 50th percentile is equal to the arithmetic mean of that figure and the next highest figure.

### *Sources of information on comparable uncontrolled transactions*

7

(1) Possible sources of information on comparable uncontrolled transactions that may include —

(a) **internal** uncontrolled transactions, which are uncontrolled transactions where one of the parties to the controlled transaction is also a party to the uncontrolled transaction; and

(b) **external** uncontrolled transactions, which are uncontrolled transactions to which **neither**

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of the parties to the controlled transaction is a party

(2) Information concerning a comparable external uncontrolled transaction may not be relied upon by the Commissioner for the purposes of making an adjustment under section *ninety-eightB* if the information concerning the transaction is not available to the taxpayer.

(3) Information concerning a comparable uncontrolled transaction may not be relied upon by the taxpayer for the purposes of demonstrating the consistency (\*of) a transaction with section *ninety-eightB* if the information on the transaction is not available to the Commissioner.

[\*inserted by the Editor]

(4) In the absence of information on uncontrolled transactions from the same geographic market as the controlled transaction, comparable uncontrolled transactions from other geographic markets may be accepted by the Commissioner.

(5) A determination of whether comparables from other geographic markets are reliable has to be made on a case-by-case basis, and by reference to the extent to which they satisfy paragraph 3 of this *Schedule*.

(6) Taxpayers using such comparables would be expected to assess the expected impact of geographic differences and other factors on the price and profitability.

#### *Services between associated enterprises*

8

(1) A service charge between a taxpayer and an associated person shall be considered consistent with the arm's length principle where—

(a) it is charged for a service that is actually rendered; and

(b) the service provides, or when rendered was expected to provide, the recipient with economic or commercial value to enhance its commercial position; and

(c) it is charged for a service that an independent enterprise in comparable circumstances would have been willing to pay for if performed for it by an independent enterprise, or would have performed in-house for itself; and

(d) its amount corresponds to that which would have been agreed between independent

enterprises for comparable services in comparable circumstances.

(2) A service charge made to a person shall not be consistent with the arm's length principle where it is made by an associated person solely because of the shareholder's ownership interest in 1 or more other group members, including for any of the following— costs incurred or activities undertaken by such associated person —

(a) costs or activities relating to the juridical structure of the parent company of the first-mentioned person, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the parent company's supervisory board; and

(b) costs or activities relating to reporting requirements of the parent company of the first-mentioned person, including the consolidation of reports; and

(c) costs or activities related to raising funds for the acquisition of participations, unless those participations are directly or indirectly acquired by the first-mentioned person and the acquisition benefits or is expected to benefit that first-mentioned person.

(3) Where it is possible to identify specific services provided by a taxpayer to an associated person, the determination whether the service charge is consistent with the arm's length principle shall be made for each specific service, subject to the provisions of subparagraph (4).

(4) Where services are rendered by a taxpayer jointly to various associated persons and it is not possible to identify specific services provided to each of them, the total service charge shall be allocated among the associated persons that benefit or expect to benefit from the services according to reasonable allocation criteria.

(5) For the purpose of this paragraph, allocation criteria shall be viewed as reasonable where they are based on a variable or variables that —

(a) take into account the nature of the services, the circumstances under which they are provided and the benefits obtained or that were expected to be obtained by the persons for which the services are intended; and

(b) relate exclusively to uncontrolled, rather than controlled transactions; and

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(c) are capable of being measured in a reasonably reliable manner.

*Transactions involving intangible property*

9

(1) The determination of arm's length conditions for **controlled transactions** involving licenses, sales or other transfers of intangible property between associated persons shall take into account both the perspective of the transferor of the property and the perspective of the transferee, including in particular the pricing at which a comparable independent enterprise would be willing to transfer the property and the value and usefulness of the intangible property to the transferee in its business.

(2) In applying the provisions of paragraph 3 to a transaction involving the license, sale or other transfer of intangible property, consideration shall be given to any special factors relevant to the comparability of the controlled and uncontrolled transactions, including —

- (a) the expected benefits from the intangible property; and
- (b) any geographic limitations on the exercise of rights to the intangible property; and
- (c) the exclusive or non-exclusive character of the rights transferred; and
- (d) whether the transferee has the right to participate in further developments of the intangible property by the transferor.

*Corresponding adjustments for domestic transactions*

10

(1) The determination of arm's length conditions for **controlled transactions** involving licenses, sales or other transfers of intangible property between associated persons shall take into account both the perspective of the transferor of the property and the perspective of the transferee, including in particular the pricing at which a comparable independent enterprise would be willing to transfer the property and the value and usefulness of the intangible property to the transferee in its business.

(2) In applying the provisions of paragraph 3 to a transaction involving the license, sale or other transfer of intangible property, consideration shall be given to any special factors relevant to the comparability of the

controlled and uncontrolled transactions, including —

- (a) the expected benefits from the intangible property; and
- (b) any geographic limitations on the exercise of rights to the intangible property; and
- (c) the exclusive or non-exclusive character of the rights transferred; and
- (d) whether the transferee has the right to participate in further developments of the intangible property by the transferor.

*Corresponding adjustments for domestic transactions*

11

Where an adjustment is made by the Commissioner under section *ninety-eightB* to the taxable income of a taxpayer in relation to domestic transaction, then, the Commissioner shall make an appropriate adjustment to the taxable income of the other party to the transaction.

*Corresponding adjustments for international transactions*

12

(1) A service charge between a taxpayer and an associated person shall be considered consistent with the arm's length principle where—

(a) an adjustment to the conditions of transactions between a person resident in Zimbabwe and an associated person is made or proposed by a tax administration in a country other than Zimbabwe; and

(b) this adjustment results in the taxation in that other country of an amount of income on which the person resident in Zimbabwe has already been charged to tax in Zimbabwe; and

(c) the country making or proposing the adjustment has a treaty with Zimbabwe that reflects an intention to provide for the relief of economic double taxation.

(3) The Commissioner, shall after a request is made by the person resident in Zimbabwe, examine the consistency of that adjustment with the arm's length principle provided for under section *ninety-eightB*, consulting as necessary with the competent authority of the other country.

(4) If the adjustment proposed or made by the other country is consistent with the arm's length

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principle both in principle and as regards the amount, the Commissioner shall make a corresponding adjustment to the amount of the tax charged in Zimbabwe to that person on those profits, in order to eliminate the economic double taxation that would result from the inclusion of the same profits in the taxable income of both that person and the associated person.

(5) A request under paragraph (2) must include the information necessary for the Commissioner to examine the consistency of the adjustment made by the tax administration of the other country with the arm's length principle, including—

- (a) the name, registered address and, where applicable, trading name(s) of the related person; and
- (b) evidence of the tax residence of the related person;
- (c) the year(s) in which the adjusted controlled transaction(s) took place;
- (d) the amount of the requested corresponding adjustment and the amounts of the adjustment made by the tax administration of the other country;
- (e) evidence of the adjustment made by the tax administration of the other country and the basis for the adjustment, including details of comparability analysis relied upon and the transfer pricing method applied;
- (f) confirmation that the related person party will not, or is unable to, pursue any further recourse under the domestic law of the other country that may result in the adjustment made by the tax administration of the other country being reduced or reversed;
- (g) any other information that may be relevant for examining the consistency of the adjustment with the arm's length principle.

(6) The request must be made within the applicable time period for making a request for the case to be resolved by way of mutual agreement procedure under the applicable tax treaty.

*Relevance of OECD Transfer Pricing Guidelines*

13

The Organization for Economic Cooperation and Development (OECD) "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations" and the UN Manual on the

interpretation of transfer pricing are relevant sources of interpretation for this *Schedule*. There may also be other relevant sources such as the 'United Nations Practical Manual on Transfer Pricing for developing countries'.

## THIRTY-SIXTH SCHEDULE

(Section 36M)

[Schedule inserted by the Finance Act 1 of 2018 w.e.f. the year of assessment beginning 1<sup>st</sup> January 2018.]

### BOOKMAKERS TAX

#### *Interpretation*

1

(1) In this *Schedule*—

"bookmaker" means a person licensed or required to be licensed as such in terms of the Betting and Totalizator Control Act [Chapter 10:02];

"gross takings", in relation to a bookmaker, means the total money earned by the bookmaker from betting with members of the public before paying out on any bet.

(2) Any term defined in the Betting and Totalizator Control Act [Chapter 10:02] shall bear the same meaning when used in this *Schedule*.

#### *Bookmakers to pay bookmakers tax*

2

(1) Every bookmaker shall pay 3% of his or her gross takings in every month to the Commissioner-General no later than the last day of the month following the month in which the bookmaker collected those takings, or within such further time as the Commissioner-General may for good cause allow.

(2) Together with the payment of bookmakers tax the bookmaker shall provide the Commissioner-General with a return, in a form approved by the Commissioner-General, showing—

- (a) the amount of bookmakers tax; and
- (b) the amount of the gross takings from which the tax is paid.

#### *Penalty for non-payment of tax*

3

(1) Subject to subparagraph (2), a bookmaker who fails to pay to the Commissioner-General any amount of bookmakers tax as provided in

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paragraph 2 shall be liable for the payment to the Commissioner-General, not later than the

(a) the amount of bookmakers tax which he or she failed to pay to the Commissioner-General; and

(b) a further amount equal to such bookmakers tax.

(2) The amounts for the payment of which a bookmaker is liable in terms of subparagraph (1) —

(a) shall be debts due by the principal to the State; and

(b) may be sued for and recovered by action by the Commissioner-General in any court of competent jurisdiction.

(3) The Commissioner-General, if he or she is satisfied in any particular case that the failure to

date on which payment should have been made in terms of paragraph 2 of —

pay to him or her bookmakers tax was not due to any intent to evade the provisions of this *Schedule*, may waive the payment of the whole or such part as he or she thinks fit of the amount referred to in subparagraph (1)(b).

#### *Refund of overpayments*

4

If it is proved to the satisfaction of the Commissioner-General that any bookmaker has been charged with bookmakers tax in excess of the amount properly chargeable to him or her in terms of this *Schedule*, the Commissioner-General shall authorise a refund in so far as it has been overpaid:

Provided that the Commissioner-General shall not authorise any refund in terms of this paragraph unless the claim therefor is made **within 6 years** of the date of payment of such tax

## **VALUE ADDED TAX ACT**

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# **Chapter 23:12**

# **VALUE ADDED TAX ACT**

*Acts 12/2002; 10/2003; 18/04, 29/2004; 2/05, 8/2005; 6/06, 12/2006; 16/2007; 3/09, 5/09, 10/2009; 3/2010, \*5/2010; 8/11, 9/2011; 4/12, 6/2012; 1/14, 5/14, 8/14, 11/2014; 8/15, 9/2015; 3/2016; 2/2017; 1/2018; 1/19, 4/19, 13/2019; 10/2020; 7/2021, 8/22 and 10/2022.*

[Suspended for 12 months beginning on the 1<sup>st</sup> January, 2022.]

[Repealed.]

[Repealed w.e.f. 1<sup>st</sup> January, 2010.]

[Repealed]

## **ACT**

**To provide for taxation in respect of the supply of goods and services and the importation and exportation of goods; to provide for the repeal of the Sales Tax Act [Chapter 23:08]; and to provide for matters connected therewith.**

ENACTED by the President and the Parliament of Zimbabwe.

[\*Date of Commencement: 1st January 2004.]

## PART I PRELIMINARY

### 1 Short title and date of commencement

(1) This Act may be cited as the Value Added Tax Act [*Chapter 23:12*].

(2) This Act shall come into operation on a date to be fixed by the President by *statutory instrument*.

[SI 284/2003 – Editor.]

### 2 Interpretation

(1) In this Act—

**“ancillary transport services”** means cargo inspection services, preparation of customs documentation and storage of transported goods or goods to be transported;

**“association not for gain”** means—

(a) any religious institution of a public character; or

(b) any other society, association, organisation or educational institution of a public character, whether incorporated or not, which—

(i) is carried on otherwise than for the purposes of profit or gain to any proprietor, member or shareholder;

[*GTO Association v The Commissioner General of ZIMRA 19-HH-464*]

and

(ii) is, in terms of its memorandum, articles of association, written rules or other document constituting or governing the activities of that society, association or organisation—

A. required to utilise any property or income solely in the furtherance of its aims and objects; and;

B. prohibited from transferring any portion thereof directly or indirectly in any manner whatsoever so as to profit any person other than by way of the payment in good faith of reasonable remuneration to any officer or employee of the society, association or organisation for any services rendered to such society, association or organisation; and

C. upon the winding-up or liquidation of such society, association or organisation, obliged to

give or transfer its assets remaining after the satisfaction of its liabilities to some other society, association or organisation with objects similar to those of the said society, association or organisation;

**“Authority”** means the Zimbabwe Revenue Authority established by section 3 of *Chapter 23:11*;

**“business day”** means any day which is not a Saturday, Sunday or public holiday;

**“capital goods”** means any asset, or any component of any asset, which is of a character subject to a deduction of expenditures incurred as provided in terms of paragraphs (c) and (f) of subsection (2) of section 15 of the Taxes Act;

**“cash value”**, in relation to the supply of goods supplied under an instalment credit agreement, means—

(a) where the seller or lessor is a banker or financier, an amount equal to or exceeding the sum of the cost to the banker or financier of the goods, including any cost of erection, construction, assembly or installation of the goods borne by the banker or financier and the tax leviable in terms of paragraph (a) of subsection (1) of section six in respect of such supply by the banker or financier;

or

(b) where the seller or lessor is a dealer, an amount equal to or exceeding the price, including tax, at which the goods are normally sold by him for cash or may normally be acquired from him for cash, including tax and any charge, including tax, made by the seller or lessor in respect of the erection, construction, assembly or installation of the goods if such charge is financed by the seller or lessor under the instalment credit agreement;

**“Charging Act”** means the Finance Act [*Chapter 23:04*] or any other enactment by which credits and rates of tax are fixed;

**“clearing agent”** means a person licenced or required to be licenced in terms of section 216A of the Customs and Excise Act [*Chapter 23:02*];

[Definition inserted by the Finance Act 8/2015 w.e.f. 13<sup>th</sup> November, 2015.]

**“commercial rental establishment”** means—

(a) accommodation in any hotel, motel, inn, boarding house, hostel or similar establishment in which lodging is regularly or normally provided to 5 or more persons at a daily, weekly, monthly or other periodic charge; or

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(b) accommodation in any house, flat, apartment or room, other than accommodation in respect of which paragraph (a) or (c) apply which is regularly or systematically let or held for letting as residential accommodation for continuous periods **not exceeding 45 days** in the case of each occupant of such house, flat, apartment or room, if the total annual receipts and accruals from the letting of all thereof have exceeded the prescribed amount or there are reasonable grounds for believing that such total annual receipts and accruals will exceed that amount; or

(c) accommodation in any house, flat, apartment, room, caravan, houseboat, caravan or camping site which constitutes an asset, including a leased asset, of a business undertaking or a separately identifiable part of a business undertaking carried on by any person who—

(i) lets or holds for letting as residential accommodation **5 or more** houses, flats, apartments, rooms, caravans, houseboats, camping or caravan sites in the course of such business undertaking;

(ii) derives total annual receipts and accruals from the letting of all such houses, flats, apartments, rooms, caravans, houseboats, camping and caravan sites which exceed the prescribed amount or there are reasonable grounds for believing that such total annual receipts and accruals will exceed that amount; and

(iii) regularly or normally lets or holds for letting as residential accommodation such houses, flats, apartments, rooms, caravans, houseboats, caravans or camping sites for continuous periods **not exceeding 45 days** in the case of each occupant; or

(d) ...

[Repealed by the Finance Act 10 of 2003 from the 1st January, 2004.]

**“connected persons”** means—

(a) any natural person, including the estate of a natural person if such person is deceased or insolvent, and—

(i) any near relative of that natural person, being a near relative as defined in section 2 of the Taxes Act or the estate of any such relative if the relative is deceased or insolvent; or

(ii) any trust fund in respect of which any such near relative or such estate of such near relative is or may be a beneficiary; or

(b) any trust fund and any person who is or may be a beneficiary in respect of that fund; or

(c) any partnership or business registered in terms of the Corporations Act; and—

(i) any member thereof; or

(ii) any other person where that person and a member of such partnership or business registered in terms of the Corporations Act, as the case may be, are connected persons in terms of this definition; or

(d) any company **other than** a business registered in terms of the Corporations Act, and—

(i) any person, other than a company, where that person, his spouse or minor child or any trust fund in respect of which that person, his spouse or minor child is or may be a beneficiary, is separately interested or 2 or more of them are in the aggregate interested in **5%** or more of the company's paid-up capital or **5%** or more of the company's equity share capital or **5%** or more of the voting rights of the shareholders of the company, whether directly or indirectly; or

(ii) any other company the shareholders in which are mainly the same persons as the shareholders in the first-mentioned company, or which is controlled by the same persons who control the first-mentioned company; or

(iii) any person where that person and the person referred to in subparagraph (i) or his spouse or minor child or the trust fund referred to in that subparagraph or the other company referred to in subparagraph (ii) are connected persons in terms of this definition; or

(e) any separate trade, branch or division of a registered operator which is separately registered as a registered operator under section **fifty-one** and any other such trade, branch or division of the registered operator; or

(f) any branch, division or separate trade of an association not for gain which is deemed by subsection (5) of section **twenty-three** to be a separate person for the purposes of that section and any other branch, division or separate trade of that association, whether or not such other branch, division or separate trade is a registered operator; or

(g) any person and any superannuation scheme referred to in the definition of **“financial services”** the members of which are mainly the employees or office holders or former employees or office holders of that person;

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**“consideration”**, in relation to the supply of goods or services to any person, includes any payment made or to be made, including any deposit on any returnable container and tax, whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as an unconditional gift to any association not for gain:

[*Law Society of Zimbabwe v ZIMRA 18-HH-409*]

Provided that a deposit, other than a deposit on a returnable container, whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;

**“consideration in money”** includes consideration expressed as an amount of money;

“Corporations Act” means the \*Private Business Corporations Act [*Chapter 24:11*];

[Now \*replaced by the Companies and Other Business Entities Act [*Chapter 24:31*] w.e.f. 13<sup>th</sup> February, 2020 – Editor.]

**“Customs Act”** means the Customs and Excise Act [*Chapter 23:02*];

**“domestic goods and services”** means the provision to a natural person of the right to occupy for residential purposes the whole or part of the accommodation provided in any commercial rental establishment, including, where it is provided as part of the right of occupation, the provision of—

- (a) cleaning and maintenance;
- (b) electricity, gas, air conditioning or heating;
- (c) a telephone, television set, radio, satellite dish, decoder or other similar article;

**“donated goods or services”** means goods or services which are donated to an association not for gain and are intended for use in the carrying on or carrying out of the purposes of that association;

**“dwelling”** means any building, premises, structure or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person or which is intended for use as a place of residence or abode of any natural person, together with any appurtenances or structure belonging thereto

and enjoyed therewith, but does not include a commercial rental establishment;

**“electronic commerce operator”** means an operator selling, providing or delivering services **from outside Zimbabwe** by the use of a telecommunications network or electronic means (and whether mediated by computers, mobile telephones or other devices) to customers or users in Zimbabwe;

[Definition inserted by section 17 of Finance Act 8/2022 gazetted on the 24th October, 2022.]

**“employee organisation”** means an organisation in which a number of employees in any particular undertaking, industry, trade, occupation or profession are associated together for the purpose of regulating relations between themselves or some of them and their employers or some of their employers or mainly for that purpose, disregarding the provision of sickness, accident or unemployment benefits for the members of the organisation or for the widows, children, dependants or nominees of deceased members;

**“entertainment”** means the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a registered operator whether directly or indirectly to anyone in connection with a trade carried on by him;

**“exempt supply”** means a supply that is exempt from tax under section *eleven*;

[*Water- GTO Association v The Commissioner General of ZIMRA 19-HH-464*]

**“export country”** means any country other than Zimbabwe and includes any part of Zimbabwe declared in terms of subsection (1) of section 20 of the Export Processing Zones \*Act [*Chapter 14:07*], to be an export processing zone;

[**Editor’s note:** this \*EPA Chapter 14:07 was eventually replaced by the Zimbabwe Investment and Development Agency Act [*Chapter 14:38*] on the 7<sup>th</sup> February 2020 which makes reference to this definition. -Editor  
*S.T (Pvt) Ltd v Zimra 16-HH-696* argued in the 20 May 2015.]

**“exported”**, in relation to any movable goods supplied by any registered operator under a sale or an instalment credit agreement, means—

[*A.T. International Ltd v ZIMRA 15-HH-823*]

- (a) consigned or delivered by the registered operator to the recipient at an address in an

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export country as evidenced by documentary proof acceptable to the Commissioner; or

(b) delivered by the registered operator to the owner or charterer of any foreign-going aircraft when such aircraft is going to a destination in an export country and such goods are for use or consumption in such aircraft; or

(c) removed from Zimbabwe by the recipient, who is a resident of Zimbabwe, for conveyance to an export country in accordance with an export incentive scheme approved by the Minister;

[S.T. (Pvt) Ltd v ZIMRA 16-HH-696 status of EPZ lost by repealing Act AMD Services (Pvt) Ltd v ZIMRA 20-HH-344]

(d) removed from Zimbabwe by the recipient, who is not a resident of Zimbabwe, for conveyance to an export country, subject to such conditions as may be set by the Commissioner by notice in a *statutory instrument*;

**“farm land”** means land used for agricultural and pastoral activities but does not include—

(a) land referred to as Communal Land in terms of section 3 of the Communal Land Act [Chapter 20:04];

(b) land which is a municipal area, town area or local government area as defined in the Urban Councils Act [Chapter 29:15];

(c) a town ward of a rural district council or an area that has been declared a specified area in terms of the Rural District Councils Act [Chapter 29:13]; or

(d) land in the area of any township as defined in the Land Survey Act [Chapter 20:12]; or

(e) State land the layout of which has been approved in terms of section 43 of the Regional, Town and Country Planning Act [Chapter 29:12];

**“financial lease”** means a written agreement for the letting and hiring of capital goods to be used by the purchaser for the purposes of his trade, where the seller is —

(a) a banking institution registered or required to be registered in terms of the Banking Act [Chapter 24:20]; or

(b) a building society registered or required to be registered in terms of the Building Societies Act [Chapter 24:02];

[inserted by the Finance Act 10 of 2003]

**“financial services”** means—

(1a) any service provided by a banking institution registered or required to be registered in terms of the Banking Act [Chapter 24:20];

[Definition inserted by the Finance Act 1 of 2018 gazetted on the 14th March, 2018 with deemed effect from the year of assessment beginning on the **1st January, 2017**.]

or

(a) any service provided by or on behalf of a banking or other institution that is a participant in a payment system registered in terms of the National Payment Systems Act [Chapter 24:23];

[Substituted by the Finance Act 2 of 2017 with effect from the 23rd March, 2017.]

or

(b) any service provided by a building society registered or required to be registered in terms of the Building Societies Act [Chapter 24:02]; or

(c) the exchange of banknotes or other currency of any country, except where they are to be used as collectors’ items; or

(d) the provision of any deposit, loan or credit, including the provision of any guarantee, indemnity, security or bond in respect of the performance of obligations related to a deposit, loan or credit; or

(e) the issue or transfer of ownership of any share in a company or interest in a private business corporation; or

(f) services rendered by an insurer registered in terms of the Insurance Act [Chapter 24:07]; or

(g) the services of an actuary, insurance agent, insurance broker as defined in the Insurance Act [Chapter 24:07] or fund administrator as defined in the Pension and Provident Funds Act [Chapter 24:09], to the extent that those services are rendered to or on behalf of an insurer registered in terms of the Insurance Act [Chapter 24:07] or to or on behalf of a pension fund registered in terms of the Pension and Provident Funds Act [Chapter 24:09].

[Substituted by the Finance Act 12 of 2006 w.e.f. 5<sup>th</sup> January, 2007.]

**“fiscalised electronic register”** means an electronic sales register having such features as may be prescribed;

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[Definition substituted by the Finance (No.2) Act 8 of 2014 w.e.f. 17<sup>th</sup> October, 2014.]

“fiscalised recording regulations”

[Definition repealed by the Finance (No.2) Act 8 of 2014 w.e.f. 17<sup>th</sup> October, 2014.]

“fixed date” means the date fixed in terms of subsection (2) of section one as the date of commencement of this Act;

“fixed property” means land other than farm land, together with improvements affixed thereto, and includes any share or unit in a company which confers a right to or an interest in the use of immovable property, and, in relation to a property time-sharing scheme, any time-sharing interest, and any real right in any such land, unit, share or time-sharing interest;

“foreign-going aircraft” means any aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between airports in Zimbabwe and airports in export countries or between airports in export countries;

“goods” means corporeal movable things, fixed property and any real right in any such thing or fixed property,

[a defunct carpet factory *TG v ZIMRA* 19-HH-578 personal or real right - *MMI (Pvt) Ltd v The Commissioner General Zimra* 19-HH-700]

but excluding—

(a) money;

(b) any right under a mortgage bond or pledge of any such thing or fixed property; and

(c) any stamp, form or card which has a **money value** and has been sold or issued by the State for the payment of any tax or duty levied under any Act of Parliament, except when subsequent to its original sale or issue it is disposed of or imported as a collector’s piece or investment article;

“imported services” means a supply of services that is made by a supplier who is not resident in Zimbabwe or carries on business outside Zimbabwe to a recipient who is a resident of Zimbabwe to the extent that such services are utilised or consumed in Zimbabwe;

[Definition substituted by Finance Act 1 of 2019 gazetted 20th February 2019 w.e.f. 1<sup>st</sup> January, 2019.]

“input tax”, in relation to a registered operator, means—

(a) tax charged under section six and payable in terms of that section by—

(i) a supplier on the **supply** of goods or services made by that supplier to the registered operator; or

(ii) the registered operator on the importation of **goods** by him; or

(iii) the registered operator on the importation of **services** by him or her; or

[Subpara (iii) inserted by Finance Act (No.3) 13/2019 w.e.f. 1st January, 2020.]

(b) an amount equal to the tax fraction, being the tax fraction applicable at the time the supply is deemed to have taken place, of the lesser of any consideration in money given by the registered operator for or the open market value of the supply, not being a taxable supply, to him by way of a sale on or after the fixed date by a resident of Zimbabwe of fixed property in respect of the acquisition of which stamp duty is, in terms of Stamp Duties Act [Chapter 23:09] payable or would have been payable had an exemption from stamp duty, whether in terms of the Stamp Duties Act [Chapter 23:09] or any other Act of Parliament, not been applicable:

Provided that such amount shall not exceed the amount of stamp duty, which is or would have been payable in respect of such acquisition; or

[Editor has substituted the word “**or**” in lieu of “and” at the end of this proviso]

(c) an amount equal to the tax fraction of the consideration in money deemed by subsection 9(13) to be for the supply, not being a taxable supply, by a debtor to the registered operator of goods repossessed under an instalment credit agreement:

[para (c) amended by Finance Act (No.3) 13/2019 w.e.f. 1st January, 2020.]

Provided that the tax fraction applicable under this paragraph shall be the tax fraction applicable \*at the time of supply of the goods to the debtor under such agreement as contemplated in paragraph (c) of subsection (3) of section eight, where the goods or services concerned are acquired by the registered operator wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the registered operator partly for such purpose, to the extent, as determined in accordance with section sixteen, that the goods or services concerned are acquired by the registered operator for such purpose;

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[\**Jinda, B & M v Viewbit Investments (Pvt) Ltd & Registrar of Deeds 17-HH-014*]

**“instalment credit agreement”** means any agreement entered into on or after the fixed date whereby any goods consisting of corporeal movable goods or of any machinery or plant, whether movable or immovable—

- (a) are supplied under a sale under which—
  - (i) the goods are sold by the seller to the purchaser against payment by the purchaser to the seller of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future; and
  - (ii) such sum of money includes finance charges stipulated in the agreement of sale; and
  - (iii) the aggregate of the amounts payable by the purchaser to the seller under such agreement exceeds the cash value of the supply; and
  - (iv) the—

A purchaser does not become the owner of those goods merely by virtue of the delivery to or the use, possession or enjoyment by him thereof; or

B seller is entitled to the return of those goods if the purchaser fails to comply with any term of that agreement; or

- (b) are supplied under a lease under which—
  - (i) the rent consists of a stated or determinable sum of money payable at a stated or determinable future date or periodically in whole or in part in instalments over a period in the future; and
  - (ii) such sum of money includes finance charges stipulated in the lease; and
  - (iii) the aggregate of the amounts payable under such lease by the lessee to the lessor for the period of such lease, disregarding the right of any party thereto to terminate the lease before the end of such period, and any residual value of the leased goods on termination of the lease, as stipulated in the lease, exceeds the cash value of the supply; and
  - (iv) the lessee accepts the full risk of destruction or loss of, or other disadvantage to, those goods and assumes all obligations of whatever nature arising in connection with the insurance, maintenance and repair of those goods while the agreement remains in force;

**“insurance”** means insurance or guarantee against loss, damage, injury or risk of any kind whatever, whether pursuant to any contract or law, and includes reinsurance; and **“contract of insurance”** includes a policy of insurance, an insurance cover, and a renewal of a contract of insurance:

Provided that nothing in this definition shall apply to any insurance specified in the definition of “financial services”;

**“invoice”** means a document notifying an obligation to make payment;

**“local authority”** means—

- (a) any rural district council, municipal council or town council;
- (b) any other body, council, board, committee or institution established or deemed to be established by or under any law which has functions similar to those of the councils referred to in paragraph (a) and which may levy rates on the value of immovable property within its area of jurisdiction or receive payments for services rendered or to be rendered as approved by the Minister responsible for local government; and
- (c) any catchment or sub-catchment council constituted in terms of the Water Act [Chapter 20:24] or any other institution which has powers similar to those of a local authority;

**“Minister”** means the Minister of Finance and Economic Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

[Administration assigned to the Minister of Finance, Economic Development and Investment Promotion by SI 197/2023 w.e.f. 20<sup>th</sup> October, 2023.]

**“money”** means—

- (a) coins of current mass or bank notes which the Reserve Bank of Zimbabwe has issued in Zimbabwe in accordance with Part VI of the Reserve Bank of Zimbabwe Act [Chapter 22:15] and which have not been demonetized;

- (b) any—

- (i) coin, other than a coin made wholly or mainly from a precious metal, or bank note which is the currency of any country, other than Zimbabwe, and which is used or circulated or is intended for use or circulation as currency;

- (ii) bill of exchange, promissory note, bank draft, postal order or money order; except when disposed of or imported as a collector’s piece,

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investment article or item of numismatic interest;

**“motor dealer”** means a registered operator who makes a taxable supply of any motor vehicle in the ordinary course of trade which continuously or regularly supplies motor vehicles, whether such supply is made by way or solely under an instalment credit agreement or by way of rental agreement at an economic rental consideration;

[inserted by the Finance Act 10 of 2003]

**“motor vehicle”**

[repealed by Act 8 of 2005 w.e.f. 31st December, 2005.]

**“non-governmental organisation”**

[repealed by Act 2 of 2005 w.e.f. 12 September, 2005.]

**“open market value”** in relation to the supply of goods or services, means the open market value thereof determined in accordance with section *three*;

**“output tax”**, in relation to any registered operator, means the tax charged under paragraph (a) of subsection (1) of section *six*, in respect of the supply of goods and services by the registered operator;

**“person”** includes any public authority, local authority, company or body of persons, whether corporate or unincorporated, the estate of any deceased or insolvent person and any trust fund;

**“postal licensee”** means any person, other than the successor postal company, licensed in terms of the Postal and Telecommunications Act [*Chapter 12:05*] to provide the postal services;

**“precious metal”** means gold, silver, platinum, iridium and other metal of the platinum group, and any other metal which the Minister, after consultation with the Minister responsible for mines, may by notice in the *Gazette* declare to be a precious metal for the purpose of this Act;

**“prescribed amount”** means any amount prescribed by the Charging Act or in regulations made in terms of section *seventy-eight*,

**“prescribed rate”** in relation to any interest payable in terms of this Act, means the prescribed rate of interest fixed in terms of section *seventy-eight* or, where such rate has not been so prescribed, at the rate fixed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*];

**“private voluntary organisation”** means an organisation registered in terms of the Private Voluntary Organisations Act [*Chapter 17:05*] and approved by the Commissioner-General by notice in a *statutory instrument*;

[Inserted by Act 2 of 2005 with effect from 12 September, 2005.]

**“public authority”** means any department or division of the \*Civil Service, and includes the Zimbabwean Defence Force, the Zimbabwean Republic Police and the Zimbabwean Prisons and Correctional Service Commission;

[Public Service is now referred to as the **\*Civil Service** i.t.o. PART I of Act 3 of 2016 w.e.f. 1<sup>st</sup> July, 2016 - Editor.]

**“recipient”**, in relation to any supply of goods or services, means the person to whom the supply is made;

**“registered operator”** means any person who is or is required to be registered under this Act:

Provided that where the Commissioner has under section *twenty-three* or *fifty-three* determined the date from which a person is a registered operator that person shall be deemed to be a registered operator from that date;

**“registration number”**, with respect to any registered operator, means the number allocated to him by the Commissioner for the purposes of this Act;

**“rental agreement”** means any agreement entered into before, on or after the fixed date for the letting of goods, other than a lease referred to in paragraph (b) of the definition of “instalment credit agreement” in this section or a “financial lease” as defined in the repealed Act;

**“repealed Act”** means the Sales Tax Act [*Chapter 23:08*];

**“Reserve Bank”** means the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [*Chapter 22:15*];

**“resident of Zimbabwe”** means a person, other than a company, who is ordinarily resident in Zimbabwe or a company which is incorporated in Zimbabwe:

Provided that any other person or any other company shall be deemed to be a resident of Zimbabwe to the extent that such person or company carries on in Zimbabwe any trade or other activity and has a fixed or permanent place in Zimbabwe relating to such trade or other activity;

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[Foreign organisations deemed to be resident G (Pvt) Ltd v Zimra 22-HH-011]

**“residential rental establishment”** means any commercial rental establishment contemplated in paragraph (a) or (c) of the definition of “commercial rental establishment” in which **not less than 70%** of the persons to whom domestic goods and services are supplied reside, or are expected to reside, for a **period of 45 days** or longer;

**“returnable container”** means any container belonging to a class of containers in relation to which, at the time of delivery of the contents thereof, ownership of that container is not transferred to the recipient of the contents and a specifically identified amount is usually charged as a deposit by the supplier of the contents upon the express undertaking of the supplier that upon the return of that container such deposit will be refunded or allowed as a credit to such recipient or any other person returning such container;

**“Revenue Act”** means the Revenue Authority Act [Chapter 23:11];

**“sale”** means an agreement of purchase and sale and includes any transaction or act whereby or in consequence of which ownership of goods passes or is to pass from one person to another;

**“second-hand goods”** means goods which were previously owned and used but does not include—

(a) animals; and

(b) gold coins as contemplated in paragraph (i) of subsection (1) of section *ten*;

**“services”** means anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but **excludes** the supply of goods, money or any stamp, as contemplated in paragraph (c) of the definition of “goods”;

[Travel agents purchasing a ticket on behalf of passengers from a chosen airline through the central reservation system constitute ‘a valuable service’ T(Pvt) Ltd v ZIMRA 15-HH-285]

**“short term insurance”** means any insurance other than life insurance, whether provided pursuant to any contract or law, including any policy of insurance, an insurance cover, and a renewal of a contract of insurance, and includes reinsurance;

[Definition inserted by the Finance Act 8/2015 w.e.f. 13<sup>th</sup> November,2015.]

**“Stamp Act”** means the Stamp Duties Act [Chapter 23:09];

**“successor postal company”** means the company licensed in terms of section 113 of the Postal and Telecommunications Act [Chapter 12:05] to provide the postal services previously carried on by the Posts and Telecommunications Corporation established by the repealed Posts and Telecommunications Corporation Act [Chapter 12:02];

**“supplier”**, in relation to any supply of goods or services, means the person supplying the goods or services;

**“supply”** includes all forms of supply, irrespective of where the supply is effected, and any **derivative of “supply”** shall be construed accordingly;

[To fulfil any want or any deficiency suffered by a third party *Mylo (Pvt) Ltd v Zimra 16-HH-717*]

**“tax”** means any tax imposed by this Act;

**“tax fraction”** means the fraction calculated in accordance with the formula—

**R/(100+R)**

in which formula “r” represents the rate of tax applicable under subsection (1) of section *six*;

**“tax invoice”** means a **fiscal tax invoice** provided by a registered operator, and printed by a fiscalised electronic register or fiscal memory device used by a registered operator for the purpose of section *twenty*;

[Substituted by Act 4 of 2012 w.e.f. 17<sup>th</sup> September, 2012;  
substituted further by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2022.]

**“tax period”**, in relation to a registered operator, means a tax period determined in terms of section *twenty-seven*;

**“taxable supply”** means any supply of goods or services which is chargeable with tax under paragraph (a) of subsection (1) of section *six*, including tax chargeable at the rate of **zero %** under section *ten*;

**“Taxes Act”** means the Income Tax Act [Chapter 23:06];

**“trade”** means—

(a) in the case of any registered operator, **other than** a local authority, any trade or activity which is carried on continuously or regularly by any person in Zimbabwe or partly in Zimbabwe and in the course or furtherance of which goods or services are supplied to any

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other person for a consideration, **whether or not for profit**, including any trade or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern **or any other concern of a continuing nature** or in the form of an association or club;

[*A.T. International Ltd v ZIMRA* 15-HH-823  
*GTO Association v The Commissioner General of ZIMRA* 19-HH-464]

(b) without limiting the applicability of paragraph (a) in respect of any activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern—

(i) the making of supplies by any **public authority** of goods or services which the Minister, having regard to the circumstances of the case, is satisfied are of the same kind or are similar to taxable supplies of goods or services which are or might be made by any person other than such public authority in the course or furtherance of any trade, if the Commissioner, in pursuance of a decision of the Minister under this subparagraph, has notified such public authority that its supplies of such goods or services are to be treated as supplies made in the course or furtherance of a trade;

(ii) the activities of any **private voluntary organisation** referred to in the definition of “private voluntary organisation” in section 2(1) of the Private Voluntary Organisations Act [Chapter 17:05];

[Substituted by Act 2 of 2005 from 12th September, 2005.]

(c) in the case of a registered operator which is a **local authority**—

(i) the supply of **water**;

(ii) the supply of **services** consisting of the drainage, removal or disposal of sewage or garbage;

(iii) the supply of goods or services incidental to or necessary for the supply of goods or services in respect of which sub-paragraph (i) or (ii) apply;

(iv) the making of supplies of goods or services in the course of any business carried on by such local authority, **if**—

A. such supplies are of the same kind or are similar to taxable supplies of goods or services which are or might be made by any person **other than** such local authority in the course or furtherance of any trade; and

B. the revenue normally derived by such **local authority for its own benefit** from making such supplies, together with any grant or subsidy paid to that local authority by the State or any person for the purposes of such business, is, or may reasonably be expected to be, sufficient to fund the expenditure, excluding expenditure of a capital nature but including a reasonable provision for depreciation in the value of the assets of the business by reason of wear and tear and obsolescence, incurred by that local authority in the production of such revenue:

Provided that—

I. anything done in connection with the commencement or termination of any such trade or activity shall be deemed to be done in the course or furtherance of that trade or activity;

[trading in renting and disposing of properties *E.J (Pvt) Ltd v ZIMRA* 19-HH-528  
sale in liquidation of defunct carpet factory *TG v ZIMRA* 19-HH-578]

II. the supply **outside Zimbabwe** of goods or services by any concern from any branch or main business thereof where such branch or main business is permanently located at premises outside Zimbabwe, if—

(a) the branch or main business can be separately identified; and

(b) an independent system of accounting is maintained by the concern in respect of the branch or main business,

**shall be deemed not to be effected** in the course or furtherance of any trade or activity carried on by such concern;

III. the rendering of services by an **employee** to his employer in the course of his employment or the rendering of services by the holder of any office in performing the duties of his office, shall not be deemed to be the carrying on of a trade to the extent that any amount constituting remuneration as contemplated in the definition of “**remuneration**” in paragraph 1 of the Thirteenth Schedule to the Taxes Act is paid or is payable to such employee or office holder, as the case may be, and shall not apply in relation to any employment or office accepted by any person in carrying on any trade carried on by him independently of the employer or concern by whom the amount of remuneration is paid or payable;

IV. any activity carried on by a natural person essentially as a private or **recreational pursuit or hobby** or any activity carried on by a person

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other than a natural person which would, if it were carried on by a natural person, be carried on essentially as a private or recreational pursuit or hobby shall not be deemed to be the carrying on of a trade;

V. any activity, shall to the extent to which it involves the making of **exempt supplies**, be deemed **not** to be the carrying on of a trade;

**“trust fund”** means any fund consisting of cash or other assets, the administration and control of which is entrusted to any person acting in a fiduciary capacity by any person, whether under a deed of trust or by agreement, or by a deceased person under a will made by that person;

**“unconditional gift”** means a payment voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment or in the form of a supply of goods or services to any other person who is a connected person in relation to the person making the payment, but does not include any payment made by a public authority or a local authority.

(2) For the purposes of subsection (1)—

(a) **“cheque”** means a cheque as defined in section 72 of the Bills of Exchange Act [Chapter 14:02], a postal order, a money order, a traveller’s cheque, or any order or authorisation, whether in writing, by electronic means, or otherwise, to a financial institution to credit or debit any account;

(b) **“currency”** means any banknote or other currency of any country, other than when used as a collector’s piece, investment article, item of numismatic interest, or otherwise than as a medium of exchange;

(c) **“debt security”** means any interest in or right to be paid money that is, or is to be, owing by any person, but does not include a cheque;

(d) **“equity security”** means any interest in or right to a share in the capital of a juristic person or the interest of a member in a private business corporation incorporated in terms of the Corporations Act;

(e) **“life insurance policy”** means any policy of insurance issued in the ordinary course of carrying on life insurance business as defined in section 3 of the Insurance Act [Chapter 24:07];

(f) **“participatory security”** includes a unit in a unit trust scheme but does not include an equity security, a debt security, money or a cheque;

(g) **“superannuation scheme”** means a scheme whereby provision is made for the payment or granting of benefits by a benefit fund or pension fund, as defined in section 2 of the Taxes Act;

(3) Notwithstanding subsection (2), the terms **“debt security”**, **“equity security”** and **“participatory security”** shall not include any of the following—

(a) a life insurance policy or any other policy of insurance;

(b) any ownership or interest in land, other than an interest as mortgagee;

(c) an interest in a superannuation scheme.

(4) Notwithstanding anything in this section, the term **“financial services”** **does not include**—

(a) the cession, assignment, transfer or other supply of any right to receive payment in relation to any taxable supply where, as a result of any such cession, assignment, transfer or supply, output tax in relation to that taxable supply would not be or become attributable to any tax period for the purposes of subsection (3) of section fifteen; or

(b) the transfer of any interest in or a right to be paid money that is, or is to be, owing by any person under a rental agreement.

## 3 Determination of “open market value”

(1) For the purposes of this section—

(a) **“similar supply”**, in relation to a supply of goods or services, means any other supply of goods or services that, in respect of the characteristics, quality, quantity, functional components, materials and reputation of the first mentioned goods or services, is the same as, or closely or substantially resembles, that supply of goods or services;

(b) the open market value of a supply shall include any tax charged under paragraph (a) of subsection (1) section six on that supply.

(2) For the purposes of this Act, the open market value of any supply of goods or services at any date shall be the consideration in money which the supply of those goods or services would generally fetch if supplied in similar

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circumstances at that date in Zimbabwe, being a supply freely offered and made between persons who are not connected persons.

[*R (Pvt) Ltd v Zimra* 19-HH-792]

(3) For the purposes of this Act the open market value of any consideration, not being consideration in money, for a supply of goods or services shall be ascertained in the same manner, with any necessary modifications, as the open market value of any supply of goods or services is ascertained under this section.

[*R (Pvt) Ltd v Zimra* 19-HH-792]

(4) Where the open market value of any supply of goods or services cannot be determined under subsection (2), the open market value shall be the consideration in money which a similar supply would generally fetch if supplied in similar circumstances at that date in Zimbabwe, being a supply freely offered and made between persons who are not connected persons.

[*ZS (Pvt) Ltd v Zimra* 20-FAC-113]

(5) Where the open market value of any supply of goods or services cannot be determined in terms of subsections (2) or (4), the open market value shall be determined in accordance with a method approved by the Commissioner which provides a sufficiently objective approximation of the consideration in money which could be obtained for that supply of those goods or services.

## PART II ADMINISTRATION

### 4 Act to be administered by Commissioner

The Commissioner shall be responsible for carrying out the provisions of this Act.

### 5 Delegation of functions by Commissioner

(1) Subject to the Revenue Act, the Commissioner may delegate to any officer employed in the Authority any function that is conferred or imposed upon him by this Act, other than this power of delegation.

(2) An officer to whom a function has been delegated in terms of subsection (1) shall

exercise it subject to the Commissioner's directions.

(3) A delegation in terms of subsection (1)—

(a) may be revoked or modified by the Commissioner at any time; and

(b) shall not preclude the exercise by the Commissioner of the function so delegated.

(4) Anything done by an officer in the exercise of a function delegated to him by the Commissioner in terms of subsection (1)—

(a) may be set aside or revised, subject to this Act, by that officer or by the Commissioner; and

(b) shall be deemed, until set aside, to have been done by the Commissioner

(5) This section shall be construed as being additional to, and not as derogating from, the Commissioner's powers of delegation under any other law.

## PART III VALUE-ADDED TAX

### 6 Value-added tax

(1) Subject to this Act, there shall be charged, levied and collected, for the benefit of the Consolidated Revenue Fund a tax at such rate as may be fixed by the Charging Act on the value of—

[ just 'a tax' *Delta Beverages (Pvt) Ltd v ZIMRA* 23-HH-577]

(a) the supply by any registered operator of goods or services supplied by him on or after the fixed date in the course or furtherance of any trade carried on by him:

[*Travel agents T(Pvt) Ltd v ZIMRA* 15-HH-285  
*A.T. International Ltd v ZIMRA* 15-HH-823  
to fulfil any want or any deficiency suffered by a third party, as in a barter transaction *Mylo (Pvt) Ltd v Zimra* 16-HH-717]

*Law Society of Zimbabwe v ZIMRA* 18-HH-409  
*GTO Association v The Commissioner General of ZIMRA* 19-HH-464  
trading in renting and disposing of properties *E.J (Pvt) Ltd v ZIMRA* 19-HH-528]

[*NRM (Pvt) Ltd & 2 Ors v ZIMRA* 19-HH-566  
-sale by liquidator of defunct carpet factory *TG v ZIMRA* 19-HH-578]

-rights to mining claims and mining sites *MMI (Pvt) Ltd v Zimra* 19-HH-700

*Afritrade International Limited v Zimra* 21-SC-003

*Triangle Ltd & Hippo Valley Estates v ZIMRA and 10 ors* 21-SC-082]

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Provided that this paragraph shall not apply to the supply of **second-hand motor vehicles** that are subject to special excise duty on sales or disposals of second-hand motor vehicles referred to in section 172B of the Customs and Excise Act [Chapter 23:02].

[proviso inserted by Act 6 of 2006 w.e.f. 1<sup>st</sup> January, 2006.]

and

(b) the **importation** of any goods into Zimbabwe by any person on or after the fixed date;

[Goods manufactured in an Export Processing Zone disposed of in Zimbabwe S.T (Pvt) Ltd v Zimra 16-HH-696  
EPZ status lost by repeal of enabling Act *AMD Services (Pvt)Ltd v Zimra* 20-HH-344  
*Afritrade International Limited v Zimra* 21-SC-003]

and

(c) the supply of any **imported services** by any person on or after the fixed date; and

(d) goods and services sold through an **auctioneer** (as defined in section fifty-six(6)) by persons who are not registered operators:

[*Auction City (Pvt) Ltd v El Elion Investments (Pvt) Ltd* 15-HH-315]

Provided that this paragraph shall not apply to the supply of **second-hand motor vehicles** that are subject to special excise duty on sales or disposals of second-hand motor vehicles referred to in section 172B of the Customs and Excise Act [Chapter 23:02];

[Para (d) repealed by Act 8 of 2005 w.e.f. 31st December, 2005; inserted by Act 16 of 2007 w.e.f. 4<sup>th</sup> January, 2008; proviso inserted by the Finance (No.3) Act 10 of 2009 with effect from the 1<sup>st</sup> January, 2010.]

(2) Except as otherwise provided in this Act, the tax payable in terms of—

(a) paragraph (a) of subsection (1) shall be paid by the **registered operator** referred to in that paragraph; and

(b) paragraph (b) of subsection (1) shall be paid by the **person** referred to in that paragraph;

[amended by the Finance Act 10 of 2003 S.T. (Pvt) Ltd v ZIMRA 16-HH-696]

and

(c) paragraph (c) of subsection (1) shall be paid by the **recipient** of the imported services ;

[amended by the Finance Act 10 of 2003  
*A.T. International Ltd v ZIMRA* 15-HH-823]

and

(d) paragraph (d) of subsection (1) shall be paid by the **auctioneer**.

[Para (d) inserted by Act 10 of 2003; repealed by Act 8 of 2005 w.e.f. 31st December, 2005;  
inserted by Act 16 of 2007 w.e.f. 4<sup>th</sup> January, 2008.]

(3) Where any goods manufactured in Zimbabwe, being of a class or kind subject to **excise duty** under Part II of the Second Schedule of the Customs Act, have been supplied at a price which does not include such excise duty and tax has become payable in respect of such supply in terms of paragraph (a) of subsection (1), a tax shall be levied and paid on a value which is the sum of the value for excise purposes plus the excise duty, or such other value as may be determined by the Minister by notice in a **statutory instrument**.

(4) The tax payable in terms of subsection (3) shall be paid by the person liable in terms of the Customs Act for the payment of the said excise duty.

(5) Subject to this Act, any provision of the Customs Act relating to the **clearance of goods** which are subject to the payment of excise duty and payment thereof shall, *mutatis mutandis*, be effected as if enacted in terms of this Act.

## 7 Certain supplies of goods or services deemed to be made or not made

(1) For the purposes of this Act, where—

(a) goods acquired, manufactured, assembled, constructed or produced by a person are sold, under a power exercisable by another person, in or towards satisfaction of a debt owed by the person whose goods are sold; and

(b) the person whose goods are sold has not furnished, to the person exercising the power of sale, a statement in writing that the supply of those goods would not be a taxable supply if those goods were sold by the person whose goods are sold, and stating fully the reasons why that supply would not be a taxable supply;

those goods shall be deemed to be supplied in the course of a trade.

(2) For the purposes of this Act, **where a person ceases to be a registered operator**,

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any goods (other than any goods in respect of the acquisition of which by the registered operator a deduction of input tax under subsection (3) of section *fifteen* was denied in terms of subsection (2) of section *sixteen* or would have been denied if those sections had been applicable prior to the fixed date) or right capable of assignment, cession or surrender which in either case then forms part of the assets of his trade, shall be deemed to be supplied by him in the course of his trade immediately before he ceased to be a registered operator, unless the trade is carried on by another person who in terms of section *fifty-five* is deemed to be a registered operator:

Provided that—

(a) where such right is so deemed to be supplied that supply shall be deemed to be a supply of a service;

(b) this subsection shall not apply to any such goods or right in respect of the acquisition of which by such registered operator a deduction in terms of subsection (3) of section *fifteen* has not been allowed or will not be allowed, where such registered operator was registered pursuant to an application for registration under section *twenty-three* due to a *bona fide* error on the part of any person.

(3) For the purposes of this Act, **any door to door sale**, whereby credit is granted at a place other than the creditor's normal place of business and the agreement of sale is subject to a "cooling-off" period within which the purchaser may cancel the agreement without prejudice to himself, shall be deemed not to be a supply of goods or services unless the credit receiver has failed to exercise the right to terminate the agreement within the period available to him under the agreement.

(4) For the purposes of this Act—

(a) any **lay-by agreement**, whereby goods are sold for a consideration not exceeding **zw\$12,500** or **US\$ 25** or the **prescribed amount** and are reserved by deposit for delivery when the purchase price or a determined portion thereof is paid, shall not be deemed to be a supply of goods or services unless and until the goods are delivered to the purchaser;

[Threshold increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021 – see Interpretation section 2 above – Editor.]

(b) where such agreement is cancelled or terminates for any other reason and the seller retains any amount paid by the purchaser or recovers any amount owing by the purchaser under such agreement, the seller shall be deemed to have supplied a service in respect of such agreement.

(5) For the purposes of this Act, a registered operator shall be deemed to supply services to any public authority or local authority to the extent of any payment made by the authority concerned to or on behalf of the registered operator in respect of the taxable supply of goods or services by the registered operator to any person.

(6) For the purposes of this Act, the disposal of a trade as a going concern, or a part thereof which is capable of separate operation, shall be deemed to be a supply of goods made in the course or furtherance of such trade.

[Trading in renting and disposing of properties *E.J (Pvt) Ltd v ZIMRA* 19-HH-528]

(7) For the purposes of this Act, except subsection (3) of section *fifteen*, where a registered operator receives any **indemnity payment under a contract of insurance** or is indemnified under a contract of insurance by the payment of an amount of money to another person, that payment or indemnification, as the case may be, shall, to the extent that it relates to a loss incurred in the course of carrying on a trade, be deemed to be consideration received for a supply of services performed on the day of receipt of that payment or on the date of payment to such other person, as the case may be, by that registered operator in the course or furtherance of his trade:

Provided that—

(a) this subsection shall **not apply** in respect of any indemnity payment received or indemnification under a contract of insurance where the supply of services contemplated by that contract is not a supply subject to tax under paragraph (a) of subsection (1) of section *six*;

(b) this subsection shall **not apply** in respect of any indemnity payment received by a registered operator under a contract of insurance to the extent that such payment relates to the total reinstatement of goods, stolen or damaged beyond economic repair, in respect of the acquisition of which by the registered operator a deduction of input tax under subsection (3) of section *fifteen* was denied in terms of subsection (2) of section *sixteen* or would have been denied if these

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sections had been applicable prior to the fixed date.

(8) For the purposes of this Act, where any registered operator in carrying on a trade in Zimbabwe transfers goods or provides any service to or for the purposes of his **branch** or main business in respect of which paragraph II of the proviso to the definition of "**trade**" in section two are applicable, the registered operator shall be deemed to supply such goods or service in the course or furtherance of his trade.

(9) For the purposes of this Act, where any goods are **repossessed** under an **instalment credit agreement**, a supply of such goods shall be deemed to be made by the debtor under such instalment credit agreement to the person exercising his right of possession, and where such debtor is a registered operator the supply shall be deemed to be made in the course or furtherance of his trade unless such goods did not form part of the assets held or used by him for the purposes of his trade.

(10) For the purposes of this Act, a **supply of the use or right to use** or the grant of permission to use any goods, whether with or without a driver, pilot, crew or operator, under any rental agreement, instalment credit agreement, charter party, agreement for charter or any other agreement under which such use or permission to use is granted, shall be deemed to be a supply of goods.

(11) For the purposes of this Act, where any person **bets an amount** on the outcome of a race or on any other event or occurrence, the person with whom the bet is placed shall be deemed to supply a service to such first-mentioned person.

(12) For the purposes of this Act, except subsection (3) of section fifteen, where any registered operator who makes taxable supplies of services contemplated in subsection (11), receives any amount paid by any other registered operator as a **prize or winnings** in consequence of a supply of such services made by the last-mentioned registered operator to the first-mentioned registered operator, the first-mentioned registered operator shall be deemed to supply a service to the last-mentioned registered operator.

(13) For the purposes of this Act, where a single supply of goods or services would, if separate considerations had been payable, have been charged with tax in part at the rate applicable under paragraph (a) of subsection (1) of section six and in part at the rate

applicable under section ten, each part of the supply concerned shall be deemed to be a **separate supply**.

[*MMI (Pvt) Ltd v The Commissioner General Zimra* 19-HH-700]

(14) The supply by a registered operator of—  
(a) any goods (**other than fixed property** acquired prior to the fixed date by a registered operator who is a natural person if such property was used by him mainly as his private residence and no deduction of any amount has been made by him under subsection (3) of section fifteen in respect of such property) or services, where such goods or services were acquired or imported by him partly for the purpose of consumption, use or supply in the course of making taxable supplies, including supplies which would have been taxable supplies if section six of this Act had been applicable prior to the fixed date, and were held or utilised by him partly for the said purpose \*immediately prior to the supply by him of such goods or services, shall be \*deemed to be made wholly in the course or furtherance of his trade;

[trading in renting and disposing of properties *E.J (Pvt) Ltd v ZIMRA* 19-HH-528  
\*sale in liquidation 4 years after closure of defunct carpet factory *TG v ZIMRA* 19-HH-578]

(b) **fixed property** acquired prior to the fixed date by such registered operator, being a natural person, shall be deemed to be made otherwise than in the course or furtherance of his trade:

Provided that—

(a) such property was used by him prior to such supply mainly as his private residence; and  
(b) no deduction of any amount has been made by him under subsection (3) of section fifteen in respect of such property.

(15) For the purposes of this Act, where, together with the supply of a share coupled with an exclusive right of occupation as defined in section 27 of the Deeds Registries Act [Chapter 20:05] referred to in the interpretation of "**fixed property**" in subsection (1) of section two, any amount of the total loan obligation of the company or association administering the property concerned is allocated or any amount of the loan obligation thus allocated is delegated, or any interest in or right to be paid money that is, or is to be, owing by the company or association under its loan obligation is transferred to any person who is or will be a shareholder of such company or association,

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such allocation, delegation or transfer, as the case may be, shall be deemed to form part of the supply of such share.

(16) For the purposes of the definition of “**input tax**” in subsection (1) of section two and subsections (4) and (5) of section seventeen, as applicable to any company or association referred to in subsection (15), any taxable supply of a share referred to in subsection (15) made on or after a date fixed by the Minister by notice in the *Gazette* by a developer who registers a notarial deed referred to in section 27 of the Deeds Registries Act [Chapter 20:05], shall be deemed to have been made by the company or association created by or under such deed, to the extent that—

(a) the supply of such share to such developer was not a taxable supply by such company or association to such developer; or

(b) such developer was not or will not in terms of subsection (3) of section fifteen be entitled to make a deduction of “**input tax**” in section two in respect of the supply of such share to him.

(17) For the purposes of this Act, where an importation of goods is deemed to have been made by an agent in the circumstances contemplated in subsection (4) of section fifty-six, such agent shall be deemed to make a supply of goods to the recipient of the supply by the principal.

[Subsection (17) amended by the Finance Act 10 of 2003.]

## 8 Time of supply

(1) For the purposes of this Act, a supply of goods or services shall, except as is otherwise provided for in this Act, be deemed to take place—

[Subsection (1) substituted by Finance Act 1 of 2019 gazetted 20th February 2019 w.e.f. 1<sup>st</sup> January, 2019.]

(a) at the time an **invoice** is issued by the supplier or the recipient in respect of that supply; or

(b) the time any payment of consideration is **received** by the supplier in respect of that supply; or

(c) in the case of a supply of a **moveable** good, at the time of its removal from the place of sale; or

(d) in the case of a supply of an **immoveable** goods, at the time the recipient takes possession of it; or

(e) in the case of a supply of a **service** at the time the service is performed; whichever time is earlier.

(2) A supply of goods or services shall be deemed to take place—

(a) where the supplier and the recipient are connected persons—

(i) in the case of a supply of goods which are to be removed, at the **time of the removal**; and

(ii) in the case of a supply of goods which are not to be removed, at the time when they are **made available to the recipient**;

[*Jinda. B & M v Viewbit Investments (Pvt) Ltd & Registrar of Deeds 17-HH-014*]

and

(iii) in the case of a supply of services, at the time the **services are performed**:

Provided that this paragraph **shall not apply** in any case where an invoice is issued in respect of that supply or any payment is made in respect of that supply on or before—

(i) the day on which the return is furnished for the tax period during which that supply would, but for this proviso, have been made; or

(ii) the last day prescribed by this Act for furnishing the return for the tax period during which that supply would, but for this proviso, have been made;

(b) where that supply is a supply to which subsection (3) of section seven refers, on the day after the last day of the period during which the recipient may **exercise the right to terminate** the agreement;

(c) where that supply is a supply to which subsection (4) of section seven refers, at the time at which the **goods are delivered to the recipient**:

Provided that in any case in which a supply of services is deemed to take place under paragraph (b) of subsection (4) of section seven, that supply of services shall be deemed to take place at the time that the agreement of sale is cancelled or terminates;

(d) where the supply is for a consideration in money received by the supplier by means of any machine, meter or other device operated by a coin or token—

(i) in the case of such **supplier**, at the time any such coin or token is taken from that

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machine, meter or other device by or on behalf of the supplier; and

(ii) in the case of the **recipient** of such supply, at the time the coin or token is inserted into that machine, meter or other device by or on behalf of the recipient;

(e) where subsection (8) of section seven applies in respect of a transfer of goods or the provision of any service by a registered operator to his **branch** at the time the goods are delivered to such branch or the service is performed, as the case may be.

(3) Notwithstanding anything in subsection (1) or (2)—

(a) where goods are supplied under any rental agreement or where services are supplied under any agreement or law which provides for **periodic payments**, they shall be deemed to be successively supplied for successive parts of the period of the agreement or as determined by such law, and each of the successive supplies shall be deemed to take place when a payment becomes due or is received, whichever is the earlier;

(b) where and to the extent that—

(i) goods are supplied progressively or periodically under any agreement or law which provides for the consideration for that supply to be **paid in instalments or periodically** and in relation to the progressive or periodic supply of those goods; or

(ii) goods or services supplied directly in the construction, repair, improvement, erection, manufacture, assembly or alteration of goods are supplied under any agreement or law which provides for the consideration for that supply to become due and payable in instalments or periodically in relation to the progressive nature of the work;

those goods or services shall be deemed to be **successively supplied**, and each such successive supply shall be deemed to take place whenever any payment in respect of any supply becomes due, is received, or any invoice relating only to that payment is issued, whichever is the earliest;

(c) where goods are supplied under an instalment credit agreement, that supply shall, subject to paragraph (b) of subsection (2), be deemed to take place at the time the goods are delivered or the time any payment of consideration is received by the supplier in respect of that supply, whichever time is earlier;

(d) where goods consisting of fixed property or any real right therein are supplied under a sale, that supply shall be deemed to take place—

[*Jinda. B & M v Viewbit Investments (Pvt) Ltd & Registrar of Deeds 17-HH-014*]

(i) where registration of transfer of the goods is effected in a deeds registry, on the date of such registration; or

(ii) on the date on which any payment is made in respect of the consideration for such supply; whichever date is earlier;

(e) where goods consisting of fixed property or any real right therein are supplied under a sale, that supply shall be deemed to take place, where no transfer has occurred and no payment is made in consideration, on the **date of the agreement**;

(f) where any supply of a service is deemed to be made as contemplated in subsection (11) of section seven, the service shall be deemed to be supplied to the extent that payment of any amount of the **bet** is made, and each such supply shall be deemed to take place whenever any payment in respect of such supply is received by the supplier;

(g) where any supply of a service is deemed to be made as contemplated in subsection (12) of section seven, the supply shall be deemed to take place whenever any amount is paid out as a **prize** or winnings by the supplier of the services contemplated in subsection (11) of section seven.

(4) Subject to paragraph (a) of subsection (2) and subsection (6), where goods are supplied under an agreement, **other than** an instalment credit agreement or rental agreement, and the goods or part of them are appropriated under that agreement by the recipient in circumstances where the whole of the consideration is not determined at the time they are appropriated, that supply shall be deemed to take place when and to the extent that any payment in terms of the agreement is due or is received or an invoice relating to the supply is issued by the supplier or the recipient, whichever is the earliest.

(5) Where any goods or any right capable of **assignment, cession or surrender** is deemed to be supplied by a registered operator in the course of his trade as contemplated in subsection (2) of section seven the time of supply shall be deemed to be the time contemplated in that section.

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(6) Where any supply of goods or services is deemed to be made as contemplated in subsection (1) of section *seventeen* the time of supply shall be deemed to be the time that the goods or services are applied as contemplated in the said subsection.

(7) The supply of goods or services which is deemed to be made by any registered operator as contemplated in subsection (3) of section *seventeen* shall be deemed to take place at the end of the month in respect of which the cash equivalent of the benefit or advantage concerned, as determined under paragraph (f) of subsection (1) of section 8 of the Taxes Act, or a portion of such cash equivalent, is in terms of the Thirteenth Schedule to that Act required to be included in the remuneration of the employee or office holder to whom the benefit or advantage is granted or, where such cash equivalent is not required to be included in the remuneration of the employee or office holder in terms of the said Thirteenth Schedule, on the last day of the year of assessment in terms of the said Act, as applicable to that employee or office holder, during which the benefit or advantage was granted to him.

(8) Where a supply of repossessed goods is deemed by subsection (9) of section *seven* to be made by a debtor under an instalment credit agreement, the time of that supply shall be deemed to be the day on which the goods are repossessed or, where the debtor may under any law be reinstated in his rights and obligations under such agreement, the day after the last day of any period during which the debtor may under such law be so reinstated.

(9) Where any supply of goods is deemed to be made as contemplated in subsection (17) of section *seven*, that supply shall be deemed to take place at the time the tax payable on importation of the goods is **paid by the agent**.

## 9 Value of supply of goods or services

(1) For the purposes of this Act this section shall apply for determining the value of any supply of goods or services.

(2) The value to be placed on any supply of goods or services shall, save as is otherwise provided in this section, be the value of the consideration for such supply, as determined in accordance with subsection (3), less so much of such value as represents tax:

Provided that—

(a) there shall be excluded from such consideration the value of any **postage stamp**

as defined in section 2 of the Postal and Telecommunications Act [*Chapter 12:05*], when used in the payment of consideration for any service supplied by the successor postal company or any postal licensee;

(b) where the portion of the value of the said consideration which represents tax is not accounted for separately by the registered operator, the said portion shall be deemed to be an amount equal to the **tax fraction** of that consideration.

[the tax fraction is to be calculated from that consideration: **not** in addition to that consideration. *Triangle Ltd & Hippo Valley Estates v ZIMRA & 10* ors 20-HMA-028 -on appeal 21-SC-082]

3) For the purposes of this Act the value of any consideration referred to in this section shall be—

(a) to the extent that such consideration is a **consideration in money**, the amount of the money; and

(b) to the extent that such consideration is **not a consideration in money**, the open market value of that consideration.

(4) Where—

(a) a supply is made by a person for no consideration or for a consideration in money which is less than the open market value of the supply; and

(b) the supplier and recipient are connected persons in relation to each other; and

(c) if a consideration for the supply equal to the open market value of the supply had been paid by the recipient, he would not have been entitled under subsection (3) of section *fifteen* to make a deduction of the full amount of tax in respect of that supply,

[*ZS (Pvt) Ltd v ZIMRA 20-FAC-113*]]

the consideration in money for the supply shall be deemed to be the open market value of the supply:

[*R (Pvt) Ltd v Zimra 19-HH-792*]

Provided that this subsection shall not apply to the supply of a benefit or advantage of **employment** contemplated in subsection (3) of section *seventeen*.

(5) Where goods or services are deemed to be supplied by a registered operator in terms of subsection (2) or (8) of section *seven*, the supply shall be deemed to be made for a consideration in money **equal to the lesser** of—

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[a method aimed at assisting in the computation of the consideration of the **deemed** supply of goods or services *Triangle Ltd & Hippo Valley Estates v ZIMRA & 10 ors 20-HMA-028 – on appeal 21-SC-082*]

(a) the cost to the registered operator of the acquisition, manufacture, assembly, construction or production of such goods or services, including—

(i) any tax charged in respect of the supply to the registered operator of such goods or services or of any components, materials or services utilised by him in such manufacture, assembly, construction or production;

(ii) where such goods or any right referred to in subsection (2) of section *seven*, when held by the registered operator, constituted trading stock as defined in section 2 of the Taxes Act, any further costs, including tax, incurred by him in respect of such goods or right;

(iii) any costs, including tax, incurred by the registered operator in respect of the transportation or delivery of such goods or the provision of such services in connection with the transfer of such goods or the provision of such services as contemplated in subsection (8) of section *seven*; and

(iv) where such goods or services were acquired under a supply in respect of which the consideration in money was in terms of subsection (4) of this section deemed to be the open market value of the supply or would in terms of that provision have been deemed to be the open market value of the supply were it not for the fact that the recipient would have been entitled under subsection (3) of section *fifteen* to make a deduction of the full amount of tax in respect of that supply, such open market value to the extent that it exceeds the consideration in money for that supply;

or

(b) the open market value of such supply.

(6) For the purposes of this Act, where goods are supplied under an instalment credit agreement, the consideration in money for the supply shall be deemed to be the cash value of that supply.

(7) Where goods or services are deemed by subsection (1) of section *seventeen* to be supplied by a registered operator, the supply shall, subject to subsection (8), be deemed to be made for a consideration in money equal to the open market value of such supply.

(8) Where goods or services are deemed by subsection (2) of section *seventeen* to be supplied by a registered operator, the supply shall be deemed to be made for a consideration in money determined in accordance with the formula— **A x (B-C)**

in which formula—

“A” represents the lesser of—

(a) the cost, including any tax forming part of such cost, to the registered operator of the acquisition, manufacture, assembly, construction or production of those goods or services:

Provided that—

(i) where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of subsection (4) deemed to be the open market value of the supply or would in terms of that section have been deemed to be the open market value of the supply were it not for the fact that the recipient would have been entitled under subsection (3) of section *fifteen* to make a deduction of the full amount of tax in respect of that supply, the cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or

(ii) where the registered operator was at some time after the acquisition of such goods or services deemed by subsection (4) of section *seventeen* to have been supplied with such goods or services, the amount which was represented by “B” in the formula contemplated in subsection (4) of section *seventeen* when such goods or services were deemed to be supplied to the registered operator; or

(iii) where the registered operator was at some time after the acquisition of the goods or services required to make an adjustment contemplated in subsections (2) or (5) of section *seventeen*, the amounts then represented by “A” in the said formula or by “B” in the formula contemplated in subsection (5) of section *seventeen* respectively, in the most recent adjustment made under subsections (2) or (5) of section *seventeen* by the registered operator prior to such deemed supply of goods or services;

and

(b) the open market value of the supply of those goods or services at the time any reduction in the extent of the consumption or

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use of the goods is deemed by subsection (6) of section seventeen to take place;

“B” represents the percentage that the use or application of the goods or services for the purposes of making taxable supplies was of the total use or application of such goods or services determined under subsection (1) of section sixteen, subsections (4) or (5) of section seventeen or this subsection, whichever was applicable in the period immediately preceding the 12 month period contemplated in “C”; and

“C” represents the percentage that, during the 12 month period during which the decrease in use or application of the goods or services is deemed to take place, the use or application of the goods or services for the purposes of making taxable supplies, in respect of which, if such goods or services had been acquired at the time of such use or application, a deduction of input tax would not have been denied in terms of paragraph (a) of subsection (2) of section sixteen, was of the total use or application of the goods:

Provided that where the percentage contemplated in “B” does not exceed the said percentage **by more than 10%** of the total use or application, the said percentage shall be deemed to be the percentage determined in “B”.

(9) Where a service is under paragraph (b) of subsection (4) of section seven deemed to be supplied, the consideration in money for the supply shall be deemed to be an amount equal to the amount retained or recovered as contemplated in that section.

(10) Where any supply of goods is a supply which would, but for the proviso to subsection (1) of section ten, be charged with tax at the rate of **zero%**, the consideration in money for that supply shall be deemed to be an amount equal to the purchase price of those goods to the supplier:

Provided that—

(a) in any case where the deduction of input tax referred to in that proviso has been made by any other person, where that supplier and that other person are connected persons, the consideration in money for that supply shall be deemed to be an amount equal to the greater of the purchase price of those goods to that supplier and the purchase price of those goods to that other person;

(b) for the purposes of this subsection, the purchase price of any goods shall not be reduced by any amount of input tax deducted

under subsection (3) of section fifteen by the supplier or, as the case may be, any other person where the supplier and that other person are connected persons.

(11) Where goods or services are deemed to be supplied by a registered operator under subsection (3) of section seventeen, the consideration in money for the supply shall be deemed to be an amount equal to the cash equivalent of the benefit or advantage granted to the employee or office holder, as contemplated in subsection (7) of section eight.

(12) Where services are or are deemed by subsection (5) of section seven to be supplied to any public authority or local authority by any registered operator the consideration in money for such supply shall be deemed to be the amount of any payment made from time to time by the authority concerned to or on behalf of the registered operator as contemplated in the said section.

(13) Where by reason of the repossession of goods from a debtor under an instalment credit agreement a supply of such goods is deemed by subsection (9) of section seven to be made by that debtor, the consideration in money for that supply shall be deemed to be an amount equal to the balance of the cash value of the goods, being the cash value thereof applied under subsection (6) in respect of the supply of the goods to the debtor under the said agreement, which has not been recovered on the date on which the supply of the goods by the debtor is deemed by subsection (8) of section eight to be made:

Provided that the said balance shall be deemed to be the amount remaining after deducting from the cash value so much of the sum of the payments made by the debtor under the said agreement as, on the basis of an apportionment in accordance with the rights and obligations of the parties to the said instalment credit agreement, may properly be regarded as having been made in respect of the cash value.

(14) Where a service is deemed by subsection (11) of section seven to be supplied to any person, the consideration in money for such supply shall be deemed to be the amount that is received in respect of the bet.

(15) Where a service is deemed by subsection (12) of section seven to be supplied to any registered operator, the consideration in money for such supply shall be deemed to be the amount that is received as a prize or winnings.

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(16) Where a right to receive goods or services to the extent of a monetary value stated on any token, voucher or stamp, other than a postage stamp as defined in section 2 of the Postal and Telecommunications Act [Chapter 12:05], and any token, voucher or stamp contemplated in subsection (17) is granted for a consideration in money, the supply of such token, voucher or stamp shall be disregarded for the purposes of this Act, except to the extent, if any, that such consideration exceeds such monetary value.

(17) Where any token, voucher or stamp, other than a postage stamp as defined in section 2 of the Postal and Telecommunications Act [Chapter 12:05], is issued for a consideration in money and the holder thereof is entitled on the surrender thereof to receive goods or services specified on such token, voucher or stamp or which by usage or arrangement entitles the holder to specified goods or services, without any further charge, the value of the supply of the goods or services made upon the surrender of such token, voucher or stamp shall be deemed to be nil.

(18) Where any token, voucher or stamp is issued by any registered operator for no consideration and the holder thereof is entitled on surrender thereof to another person, being the supplier of goods or services, to a discount on the price of goods or services supplied to the holder, the consideration in money for the supply of such goods or services shall be deemed to include the monetary value stated on such token, voucher or stamp:

Provided that such monetary value shall be deemed to include tax.

(19) Where any supply of entertainment is made by a registered operator and in terms of section *sixteen* no deduction of input tax was made in terms of subsection (3) of section *fifteen* in respect of the acquisition by the registered operator of goods or services for the purpose of such entertainment, the value of such supply shall be deemed to be nil.

(20) Where any supply of medical or dental services or other goods or services is made as contemplated in paragraph (c) of subsection (2) of section *sixteen* by a scheme referred to in that section, the value of such supply shall be deemed to be nil.

(21) Where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of

the consideration as is properly attributable to it.

(22) Where any supply of goods is deemed to be made as contemplated in subsection (17) of section *seven*, the consideration in money for such supply shall be deemed to be the total amount of the value placed on the importation of the goods in terms of subsection (2) of section *twelve* and the amount of tax levied on the importation in terms of paragraph (b) of subsection (1) of section *six*.

(23) Save as otherwise provided in this section, where any supply is made for no consideration the value of that supply shall be deemed to be **nil**.

(23a) Every **clearing agent** shall be deemed to charge a clearance fee of **at least zwl\$ 25 000** (or other prescribed amount) on each bill of entry.

[Subsection inserted by the Finance Act 8/2015 gazetted on the 13<sup>th</sup> November w.e.f. 1<sup>st</sup> September,2015;

fee increased by Finance Act 8/2022 to w.e.f. 24<sup>th</sup> October, 2022; PRESUMABLY ZWL-; not **US\$ 25 000** as gazetted?? - Editor.]

## 10 Zero rating

(1) Where, but for this section, a supply of **goods** would be charged with tax at the rate referred to in subsection (1) of section *six*, such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of **zero %** if—

(a) the supplier has supplied the goods, being movable goods, in terms of a sale or instalment credit agreement and has exported the goods; or

(b) the goods have been supplied in the course of repairing, renovating, modifying or treating any goods to which subparagraphs (ii) or (iv) of paragraph (g) of subsection (2) refers and the goods supplied—

(i) are wrought into, affixed to, attached to or otherwise form part of those other goods; or

(ii) being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification or treatment process;

or

(c) the goods are supplied to a lessee or other person under a **rental agreement, charter party or agreement for chartering**, if the

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goods are used exclusively in an export country; or

(d) the goods are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if such goods are used by such lessee or other person exclusively in any commercial, financial, industrial, mining, farming, fishing or professional concern conducted in an export country and payment of rent or other consideration under such agreement is effected from such export country; or

(e) the supply is **to a registered operator** of a trade or of a part of a trade which is capable of separate operation, where the supplier and the recipient have agreed in writing that such trade or part, as the case may be, is disposed of as a going concern:

[trading in renting and disposing of properties who are registered Operator at the time *E.J (Pvt) Ltd v ZIMRA* 19-HH-528 *MMI (Pvt) Ltd v The Commissioner General Zimra* 19-HH-700]

Provided that—

(i) such trade or part of a trade, as the case may be, shall not be disposed of as a going concern unless—

**A.** such supplier and such recipient have, at the time of the conclusion of the agreement for the disposal of the trade or part of a trade, as the case may be, agreed in writing that such trade or part of a trade, as the case may be, will be an income-earning activity on the date of transfer thereof; and

**B.** the assets which are necessary for carrying on such trade or part of a trade, as the case may be, are disposed of by such supplier to such recipient;

(ii) where the trade or part of a trade, as the case may be, disposed of as a going concern has been carried on in, on or in relation to goods or services applied mainly for purposes of such trade or part of a trade, as the case may be, and partly for other purposes, such goods or services shall, where disposed of to such recipient, for the purposes of this paragraph and section eighteen be deemed to form part of such trade or part of a trade, as the case may be, notwithstanding paragraph (e) of the proviso to the definition of "trade" in section two; or

(f) the supply is to the Reserve Bank, or **any bank registered under the Banking Act [Chapter 24:20]**, of gold in the form of bars,

blank coins, ingots, buttons, wire, plate or granules or in solution, which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of such bars, blank coins, ingots, buttons, wire, plate, granules or solution; or

(g) the supply is of such goods or services as are prescribed in regulations made in terms of section *seventy-eight*, but subject to such conditions as may be prescribed therein;

[amended by the Finance Act 10 of 2003] ;]

or

(h) the goods are supplied, as contemplated in subsection (8) of section *seven*, by a registered operator to or for the purposes of his branch or main business situated in an export country in respect of which paragraph (b) of the proviso to the definition of "**trade**" in section *two* are applicable; or

(i) the goods are gold coins supplied as such and which the Reserve Bank has issued in Zimbabwe in accordance with Part VI of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*], or which remain in circulation:

(j) the goods consist of medicines or allied substances within the meaning of the Medicines and Allied Substances Control Act [*Chapter 15:03*] which are prescribed for the purposes of this subsection;

[repealed and substituted by Act 29 of 2004 with effect from the 1<sup>st</sup> January, 2005.]

Provided that paragraphs (a), (b) (c) and (d) of this section shall **not apply** in respect of any supply of goods by a registered operator if in respect of such goods input tax contemplated in paragraph (b) of the definition of "**input tax**" in section *two* has been deducted in terms of subsection (3) of section *sixteen* by that registered operator or any other person where that registered operator and that other person are connected persons.

(2) Where, but for this section, a supply of **services** would be charged with tax at the rate referred to in subsection (1) of section *six*, such supply of services shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero *per centum* where—

(a) the services, **not being ancillary transport services**, comprise the transport of passengers or goods—

(i) from a place outside Zimbabwe to another place outside Zimbabwe; or

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(ii) from a place in Zimbabwe to a place in an export country;

[*Travel agents T(Pvt) Ltd v ZIMRA 15-HH-285*]

or

(iii) from a place in an export country to a place in Zimbabwe;

or

(b) the services comprise the transport of passengers from a place in Zimbabwe to another place in Zimbabwe to the extent that that transport is by aircraft and constitutes "international carriage" as defined in Article 1 of the Convention set out in the First Schedule to the Carriage by Air Act [*Chapter 13:04*]; or

(c) the services, including any ancillary transport services, comprise the transport of goods from a place in Zimbabwe to another place in Zimbabwe to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies; or

(d) ...

[repealed by the Finance Act 10 of 2003]

(e) the services comprise the **transport of goods** or any **ancillary transport services** supplied directly in connection with the exportation from or the importation into Zimbabwe of goods or the movement of goods through Zimbabwe from one export country to another export country, where such services are supplied directly to a person who is not a resident of Zimbabwe and is not a registered operator, otherwise than through an agent or other person; or

(f) the services are supplied directly in connection with **land**, or any improvement thereto, situated in any **export country**; or

(g) the services are supplied directly in respect of—

(i) movable property situated in any export country at the time the services are rendered; or

(ii) goods temporarily admitted into Zimbabwe which are exempt from tax on importation in terms of regulations made in terms of section **seventy-eight**;

[amended by the Finance Act 10 of 2003]

or

(iii) goods in respect of which paragraph (b) or (c) of the definition of "**exported**" in section two apply; or

(iv) the repair, maintenance, cleaning or reconditioning of a **foreign-going aircraft**; or

(h) the services comprise—

(i) the handling, pilotage, salvage or towage of any foreign-going aircraft while situated in Zimbabwe; or;

(ii) services provided in connection with the operation or management of any foreign-going aircraft; or

(iii) services which are prescribed in regulations made in terms of section **seventy-eight**;

[amended by the Finance Act 10 of 2003];]

or

(i) the services of arranging—

(i) the supply of goods as contemplated in paragraph (b) or (c) of the definition of "**exported**"; or

(ii) the supply of services referred to in subparagraph (iv) of (g) or (h); or

(iii) the transport of goods, including ancillary transport services, within Zimbabwe;

for a person who is **not a resident of Zimbabwe** and is not a registered operator; or

(j) the services comprise the repair, maintenance, cleaning or reconditioning of a **railway train** operated by a person who is not a resident of Zimbabwe and is not a registered operator; or

(k) the services, **not being telecommunication services**, are physically rendered elsewhere than in Zimbabwe, supplied to any person who utilises such services in Zimbabwe; or

(l) the services are supplied for the benefit of and contractually to a person who is **not a resident of Zimbabwe** and who is outside Zimbabwe at the time the services are rendered, not being services which are supplied directly in connection with—

[ requirements are cumulative *G (Pvt) Ltd v Zimra 22-HH-011*]

(i) land or any improvement thereto situated inside Zimbabwe; or

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(ii) movable property situated inside Zimbabwe at the time the services are rendered, **except movable property** which—

**A** is exported to the said person subsequent to the supply of such services; or

**B** forms part of a supply by the said person to a registered operator and such services are supplied to the said person for purposes of such supply to the registered operator;

and not being services which are the acceptance by any person of an obligation to refrain from carrying on any trade, to the extent that the carrying on of that trade would have occurred within Zimbabwe; or

(m) the services comprise—

(i) the filing, prosecution, granting, maintenance, transfer, assignment, licensing or enforcement, including the incidental supply by the supplier of such services of any other services which are necessary for the supply of such services, of intellectual property rights, including patents, designs, trade marks, copyrights, know-how, confidential information, trade secrets or similar rights; or

(ii) the acceptance by any person of an obligation to refrain from pursuing or exercising in whole or in part any such rights;

where and to the extent that those rights are for use outside Zimbabwe; or

(n) the services comprise the carrying on by a private voluntary organisation of the activities referred to in the definition of “*private voluntary organisation*” in section 2 of the Private Voluntary Organizations Act [*Chapter 17:05*] and those services are in terms of subsection (5) of section *seven*, deemed to be supplied by that organisation to a public authority or local authority; or

(o) the services are supplied, as contemplated in subsection (8) of section *seven*, by a registered operator to or for the purposes of his branch or main business situated in an export country in respect of which paragraph II of the proviso to the definition of “**trade**” in section *two* are applicable; or

(p) the services are in terms of subsection (5) of section *seven*, deemed to be supplied to a public authority to the extent that the payment contemplated in that section consists of a transfer payment.

(q) the services are supplied by—

(i) the operator of a facility designated in terms of the Tourism Act [*Chapter 14:20*] as a tourist facility of a class specified in the First Schedule to the Tourism (Designated Tourist Facilities) (Declaration and Requirements for Registration) Regulations, 1996, published in SI 106/1996 (as amended or replaced from time to time);

[*VSL (Pvt) Ltd & 3 ors v ZIMRA 19-HH-023*]

(ii) the owner of any place (other than a place wherein the owner ordinarily resides) where persons are provided to persons not resident in Zimbabwe, on the payment of a charge, with residential accommodation, whether with or without meals, commonly known as, but not limited to, a “**boarding house**” or “**back-packers’ lodge**”;

(iii) the operator of a **hunting safari**:

Provided that regulations made in terms of section *seventy-eight* may specify that any such class of services shall not be charged with tax at the rate of **zero%** but be charged with tax at the rate referred to in section *six*(1).

[**Editor’s note** : - The above paragraph (q) was initially **not** part of this Act yet its **subpara (i)** was drafted into the Finance Bill of **2003**: until it was inserted and amended late by Finance Act (No.3) 11 of **2014** to validate- with retrospective effect- these regulations to the commencement of VAT on the 1st January **2004**.

Section 15 of the VAT Regulations SI 273/2003 was nevertheless gazetted on the 12th December, **2003** w/o mention hereof.]

(3) Where a rate of **zero%** has been applied by any registered operator under a provision of this section, the registered operator shall obtain and retain such documentary proof substantiating the registered operator’s entitlement to apply the said rate under that provision as is acceptable to the Commissioner.

[*VSL (Pvt) Ltd & 3 ors v ZIMRA 19-HH-023 para 238 E.J (Pvt) Ltd v ZIMRA 19-HH-528*]]

## 11 Exempt supplies

The supply of any of the following goods or services shall be exempt from the tax imposed in terms of paragraph (a) of subsection (1) of section *six*—

(a) the supply of any **financial services**, but excluding —

[engaged in *vatable banc assurance* business-courts not to declare a lawful conduct unlawful *Ice Class Properties (Pvt) Ltd v NMB Bank and ZIMRA 19-HH-028*]

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(i) the supply of short-term insurance by insurance agents or brokers liable to property and insurance commission tax under section 36H of the Income Tax Act [Chapter 23:06]:

For the purpose of this subparagraph the short-term insurance in question shall be deemed to be a supply of financial services by the agents or brokers in question, and not by the insurance company or reinsurance company on behalf of which the brokers or agents buy or sell any policy of insurance:

Provided tax shall be payable on the amount of the commission earned by such agents or brokers and not on the value of the policy of insurance:

[subpara (i) substituted by Sect 8 of the Finance (No.2) Act 9 of 2015 w.e.f. 1st January, 2016.]

and

(ii) the supply of financial services other than the supply of short-term insurance which, but for this paragraph, would be charged with tax at the rate of zero% under section ten;

[para (a) substituted by the Finance Act 8/2015 gazetted on the 13<sup>th</sup> November w.e.f. 1<sup>st</sup> September,2015]

(b) the supply by any association not for gain of any **donated goods** or services or any other goods made or manufactured by such association if **at least 80%** of the value of the materials used in making or manufacturing such other goods consists of donated goods;

(c) the supply of any accommodation in a dwelling—

(i) under an agreement for the letting and hiring of the accommodation; or

(ii) where the supplier is the employer of the recipient, including any employer as defined in paragraph 1 of the Thirteenth Schedule to the Taxes Act, the recipient is entitled to occupy the accommodation as a benefit of his office or employment and his right thereto is limited to the period of his employment or the term of his office or a period agreed upon by the supplier and the recipient;

(d) the supply of **leasehold land** by way of letting, not being a grant or sale of the lease of that land, to the extent that that land is used or is to be used for the principal purpose of accommodation in a dwelling erected or to be erected on that land;

(e) the supply of land, together with any improvements to such land existing on the date on which the supplier became contractually

obliged to supply such land and such existing improvements to the recipient, where such **land is situated outside Zimbabwe** and such supply is made by way of sale or by way of letting;

(f) the supply by any person in the course of a **transport business** of any service comprising the transport by that person in a vehicle operated by him of fare-paying passengers and their personal effects by railway or road not being a supply of any such service which, but for this paragraph, would be charged with tax at the rate of **zero%** in terms of paragraph (a) of subsection (2) of section ten;

(g) the supply of any **educational** or training services in respect of pre-school, primary, secondary, university or technical education, including the education or training of physically or mentally handicapped persons, in any institution which is registered under any law administered by the Ministry responsible for education or higher education;

For the purposes of this paragraph "**educational or training services**" do not include —

(i) the provision of sporting facilities to persons other than students of any institution which is registered under any law administered by the Ministry responsible for education or higher education;

(ii) the supply of accommodation to persons other than to students referred to in subparagraph (i);

(iii) hostel or canteen services supplied to students referred to in subparagraph (i), if such services are provided independently under a contract or other arrangement with an institution referred to in subparagraph (i);

(iv) hostel or canteen services supplied by an institution referred to in subparagraph (i) to persons other than students referred to in subparagraph (i);

(v) other services supplied by an institution referred to in subparagraph (i) to persons other than students referred to in subparagraph (i).

[substituted by the Finance Act 10 of 2003.]

(h) the supply of any **medical services** by any person or institution;

(i) the supply of any goods or services by an employee organisation to any of its members to the extent that the consideration for such supply consists of **membership contributions**;

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(j) the supply of such goods or services as are prescribed in \*Regulations made in terms of section **seventy-eight**.

[amended by the Finance Act 10 of 2003 *GTO Association v The Commissioner General of ZIMRA* 19-HH-464

See **PART 1 of the FIRST SCHEDULE of the Regulations SI 273 of 2003** *Zimudzi E v ZIMRA, Minister of Finance & AG 21-HH-713*]

(k) ....

[inserted by Act 9 of 2004 w.e.f. 1st January, 2005, substituted by Act 2 of 2005 w.e.f. 12<sup>th</sup> September, 2005, and then repealed by Act 8 of 2005 w.e.f. 30<sup>th</sup> December, 2005.]

## 12 Collection of tax on importation of goods, determination of value thereof and exemptions from tax

(1) For the purposes of this Act goods shall be deemed to be imported into Zimbabwe on the date on which the goods are, in terms of section 36 of the Customs Act, deemed to be imported:

Provided that—

(a) goods which are entered for **home consumption** in terms of the Customs Act shall be deemed to have been imported on the date on which they are so entered;

(b) where any goods have been imported and entered in a warehouse licensed in terms of the Customs Act, but have **not been entered for home consumption**, any supply of such goods before they are entered for home consumption shall be disregarded for the purposes of this Act.

(2) For the purposes of this Act the value to be placed on the importation of goods into Zimbabwe which are entered for home consumption in terms of the Customs Act shall be deemed to be the value thereof for customs duty purposes, plus any duty, **excluding surtax**, levied in terms of the said Act in respect of the importation of such goods.

[amended by s.10 of Act 18 of 2004 with effect from the 5th November, 2004. Duty included in the valuation by the Finance (No.3) Act 10 of 2009 with effect from the 1<sup>st</sup> January, 2010.]

(3) The **importation** of such goods as are prescribed in regulations made in terms of section **seventy-eight** shall be **exempt** from the tax imposed in terms of paragraph (b) of subsection (1) of section **six**:

[amended by the Finance Act 10 of 2003  
See section 10 of **SI 273/2003**-editor]

(4) The Commissioner and the successor postal company and any other postal licensee may make such arrangements as they may deem necessary—

(a) for the collection, in such manner as they may determine, by the company or licensee on behalf of the Commissioner of the value-added tax payable in terms of this Act in respect of the importation of any goods into Zimbabwe; and

(b) for the exchange of such information as is necessary for the carrying out of such arrangements.

(5) Subject to paragraph (b) of subsection (1) of section **six** and this section, any provision of the Customs Act relating to the importation, transit and clearance of any goods and the payment and recovery of duty shall apply, *mutatis mutandis*, as if enacted in terms of this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs Act.

## 12A Deferment of collection of tax on capital goods

(1) Subject to this section and to such conditions as may be prescribed, where a person produces proof to the satisfaction of the Commissioner that he or she has imported goods of a capital nature for his or her own use, the Commissioner shall authorise a deferment of payment of tax on such goods for a prescribed period **not exceeding 180 days** from the date on which the goods are, in terms of section 36 of the Customs Act [Chapter 23:02], deemed to have been imported:

Provided that the Minister may prescribe different periods for different classes or values of goods of a capital nature.

[Subsection (1) substituted by Finance (No.3) Act 11 of 2014 w.e.f. 1<sup>st</sup> January, 2015 to enable the Minister to extend the period of deferment for higher-value capital goods.]

(2) Where any person in favour of whom a deferment has been authorised in terms of subsection (1) —

(a) sells, re-exports or otherwise disposes of such goods before or after the expiry of the period of the deferment, **without having used them** in the manner that qualified them for deferment of payment of tax in terms of subsection (1); or

(b) **fails to pay the deferred tax** by the date which the Commissioner fixes in terms of subsection (1) as the date on which payment of the deferred tax is due;

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such person shall become liable, in addition to any tax for which he or she is liable on such disposal, to an **additional amount of tax** equal to the tax paid or payable by him or her on the expiry of the period of the deferment, together with interest thereon calculated in accordance with section *forty-six*:

Provided that if the Commissioner is satisfied that the disposal of the goods in question or the delay in paying the deferred tax was not due to an intent to evade the provisions of this section, the Commissioner may waive the payment of the whole or such part of the additional amount of tax payable as the Commissioner thinks fit.

[subsection (2) substituted by Act 6 of 2012 w.e.f. 1<sup>st</sup> January, 2013]

(3) The correct amount of tax and additional tax payable in respect of any goods in terms of this section shall, from the time when it should have been paid, constitute a debt due to the State by the person concerned and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Commissioner, and any goods in a bonded warehouse or in the custody of the Authority and belonging to that person, and any goods afterwards imported or entered for export by the person by whom the tax or additional tax is due, shall, while still under control of the Authority, be subject to a lien for such debt and may be detained by the Authority until such debt is paid, and the claims of the State shall have priority over the claims of all persons upon the said goods of whatever nature and may be enforced by sale or other proceedings if the debt is not paid **within 3 months** after the date upon which it became due.

(4) For the purposes of this section—

**“goods of a capital nature”** means—

(a) such plant or machinery as the Minister may, in consultation with the Minister responsible for administering the Mines and Minerals Act [*Chapter 21:05*], prescribe, which is used exclusively for mining purposes on a registered mining location as defined in the Mines and Minerals Act [*Chapter 21:05*]; or

(b) such plant, equipment or machinery as the Minister may, in consultation with the Minister responsible for industry, prescribe, which is or will be used exclusively for manufacturing or industrial purposes in, on or in connection with a factory (including spare parts required for the purpose of maintaining or refurbishing such plant, equipment or machinery) other than

motor vehicles intended or adapted for use on roads or capable of being so used;

[subpara (b) substituted by Act 2 of 2005 w.e.f. 1<sup>st</sup> September, 2005]

(c) such plant, equipment or machinery as the Minister may, in consultation with the Minister responsible for agriculture, prescribe, which is or will be used exclusively for agricultural purposes (including spare parts required for the purpose of maintaining or refurbishing such plant, equipment or machinery) other than motor vehicles intended or adapted for use on roads or capable of being so used;

[subparas (c) and (d) inserted by Act 2 of 2005 w.e.f. 1<sup>st</sup> September, 2005]

(d) such plant, equipment or machinery as the Minister may, in consultation with the Minister responsible for transportation, prescribe, which is or will be used exclusively for the aviation industry (including spare parts required for the purpose of maintaining or refurbishing aircraft and such plant, equipment or machinery) other than motor vehicles intended or adapted for use on roads or capable of being so used.

[Section 12A inserted by s.11 of Act 18 of 2004 - gazetted on the 5<sup>th</sup> November, 2004 w.e.f. 1<sup>st</sup> September, 2004.-which also enacts that: –  
(2) An importer of goods as defined above which are held in bond at the date of commencement thereof, may, within 14 days thereof, apply to the Commissioner to authorise a deferment in terms hereof; in which event, if the authority is granted, the period of deferment shall be calculated from the date when such goods are released from bond – **Editor.**]

(e) such **medical equipment** as the Minister may, in consultation with the Minister responsible for health, prescribe.

[para (e) inserted by Act \*5 of 2010 w.e.f. 1<sup>st</sup> January, 2011]

## 12B Collection of tax on exportation of unbeficiated lithium, determination of value thereof

[section repealed by the Finance Act 8/2015. Substituted by the Finance Act 1 of 2018 w.e.f. 1 January 2018.]

(1) Notwithstanding section *ten*(1), tax at the rate of **5%** on the gross fair market value of unbeficiated lithium or unbeficiated lithium petalite shall be levied on a supplier of such lithium for export from Zimbabwe.

In this section—

**“unbeficiated lithium”**, in relation to its exportation from Zimbabwe, means lithium

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exported for use in automotive or other batteries manufactured outside Zimbabwe, or for the manufacture of lithium carbonate, or for any beneficiation whatsoever outside Zimbabwe;

[see Base Minerals Export Control (Unbeneficiated Lithium Bearing Ores) Order, 2022.SI 213/2022]

**“unbeneficiated lithium petalite”** means petalite ore that has not been crushed and separated by means of dense media separation, flotation or other appropriate technique, and ground into powder or concentrate.

[Second definition inserted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2022.]

(2) For the purposes of this Act unbeneficiated lithium shall be deemed to be exported from Zimbabwe on the date on which the lithium is, in terms of section 60 of the Customs Act [Chapter 23:02], deemed to be exported.

(3) For the purposes of this Act the value to be placed on the exportation of unbeneficiated lithium from Zimbabwe shall be deemed to be—

(a) the market value thereof on the date of exportation as determined by reference to a reputable metals exchange; or

(b) the value as reflected on the bill of entry or other document required in terms of section 54 of the Customs and Excise Act [Chapter 23:02] is delivered to an officer under that Act;

whichever is the higher value.

(4) Subject to section six(1)(b) and this section, any provision of the Customs Act relating to the exportation, transit and clearance of any goods and the payment and recovery of duty shall apply, with such changes as may be necessary, as if enacted in terms of this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs Act.

(5) No tax under this section is payable with effect from the 1<sup>st</sup> January, 2020, to the 1<sup>st</sup> January, 2025, on the value of **unbeneficiated lithium** exported in the form of spodumene and chemical grade petalite concentrate by a supplier of such lithium who, by the 1<sup>st</sup> January, 2020, commences or has commenced operations as a lithium producer in a special economic zone declared under the \*Special Economic Zones Act [Chapter 14:34].

[subsection (5) inserted by Finance Act (No.3) 13/2019 w.e.f. 1<sup>st</sup> January, 2020

This Chapter 14:34 was eventually replaced by the Zimbabwe Investment and Development Agency Act [Chapter 14:38] on the 7<sup>th</sup> February 2020 -Editor]

## 12C Collection of tax on exportation of unbeneficiated hides, determination of value thereof

[Section 12C inserted by Act No.1/2014 w.e.f. 1<sup>st</sup> January, 2014. Section 10(2) of the Finance (No.2) Act 8 of 2014 brought forward the effective date of this Section from 1/1/2014 to the 1/1/2015 : which was reversed by Sect 6 of the Finance (No.2) Act 9 of 2015 to take effect from the above back date of 1<sup>st</sup> January, 2014. See the Unbeneficiated Hides Export Regulations, 2015 SI 16/2015 gazetted on the 30<sup>th</sup> January, 2015 granting relief w.e.f. 1<sup>st</sup> January, 2015 from this export tax to approved merchants : as complemented by the **Unbeneficiated Hides Export Regulations, 2016 SI 129/2016** -Editor.]

(1) In this section, “**unbeneficiated hide**” means any raw or untanned animal hide, but does not include crocodile skin, goat or sheep skin or any hide, skin or hair that is or forms part of a trophy as defined by or under the Parks and Wild Life Act [Chapter 20:14].

[subsection (1) substituted by the Finance (No.2) Act 8 of 2014 w.e.f. 1/1/2015.]

(2) Notwithstanding section ten(1), tax at the rate of **US\$0.75c per kg** of unbeneficiated hides shall be levied on a supplier of such raw hides for export from Zimbabwe or **15%** of the export consignment of hides in question, whichever figure results in the higher tax yield .

[substituted by the Finance Act 8/2015 gazetted on the 13<sup>th</sup> November w.e.f. 1<sup>st</sup> October, 2015]

(3) For the purposes of this Act unbeneficiated hides shall be deemed to be exported from Zimbabwe on the date on which the unbeneficiated hides are, in terms of section 60 of the Customs Act [Chapter 23:02], deemed to be exported.

(4) For the purposes of this Act the value to be placed on the exportation of unbeneficiated hides from Zimbabwe shall be deemed to be—

(a) the highest price which the hides in question fetched in the country to which they are to be exported for beneficiation in the **period of 6 months before** the date of exportation, as notified from time to time by the Authority by notice in the *Gazette*:

Provided that if no such notice was published **within** the period of 6 months before the date of exportation, reference may be made to the last such published notice;

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or

(b) the value as reflected on the bill of entry or other document required in terms of section 54 of the Customs and Excise Act [Chapter 23:02] delivered to an officer under that Act;

whichever is the higher value.

(5) Subject to section six(1)(b), and this section, any provision of the Customs Act relating to the exportation, transit and clearance of any goods and the payment and recovery of duty shall apply, with such changes as may be necessary, as if enacted in terms of this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs Act.

(6) Notwithstanding this section, the Minister is hereby authorised by notice in a *statutory instrument* to prescribe a maximum quota of unbeneficiated hides by weight at or below which no tax in terms of this section shall be chargeable:

Provided that the *statutory instrument* in question shall be laid before the National Assembly and not come into force until the **\*lapse of 14 sitting days** after they are so laid, unless the House has earlier passed a resolution annulling the *statutory instrument*.

[subsection (6) inserted by the Finance (No.2) Act 8 of 2014 with effect from 1/1/2015. See the Unbeneficiated Hides Export Regulations, 2015 SI 16/2015 gazetted on the 30th January, 2015 granting relief w.e.f. 1st January, 2015 from this export tax to approved merchants. Quaere – when in terms of this proviso was this SI laid before the National Assembly, which only sat on the 27<sup>th</sup> January, 2015 ? Editor-].]

## 12D Collection of tax on exportation of unbeneficiated platinum, determination of value thereof

[Section 12D was inserted by s14(1) as read with s 14(2) of No.1/2014 w.e.f. 1st January, 2015: which was brought forward by sect 15 of the Finance (No.2) Act 9 of 2015 to take effect from the 1st January, 2017 : which date was further brought forward by section 26 of the Finance Act No.2 of 2017 as read with section 26 of the Finance Act 2 of 2017.

Amended by section 16 of the Finance Act 1 of 2019 gazetted 20th February 2019; That #section did also take effect from the 1st January 2017 – as confirmed by section 15 of the Finance (No.2) Act of 2015; This section WAS **suspended** by section 18 of Finance Act 8 of 2022 gazetted on the 24th October, 2022 for a period of 12 months beginning on the 1st January, 2022; THIS YEAR 2023 this section reverts back to being **IN FORCE** – Editor]

In its place, on the 24<sup>th</sup> October 2022 the following provisions were enacted:-]

*"(2) The Minister, in consultation with the Minister responsible for mines, shall, \*within 3 months of the promulgation of this Act [24<sup>th</sup> October 2022] (during which the suspension of section 12D shall be in force), prescribe criteria (additional to those specified in paragraphs (a) to (d) of this subsection) in regulations made under this provision on the basis of which the suspension of tax referred in subsection (1) shall not apply to the following extent in respect of a supplier of **unbeneficiated platinum** for export from Zimbabwe—*

*(a) if the supplier has built plant in Zimbabwe capable of producing platinum group concentrates, tax at the rate of **5%** on the value of unbeneficiated platinum shall be levied on a supplier of such platinum for export from Zimbabwe;*

*(b) if, additionally to the plant referred to in paragraph (a), the supplier has built plant in Zimbabwe capable of smelting to produce matte, tax at the rate of **2.5%** on the value of unbeneficiated platinum shall be levied on a supplier of such platinum for export from Zimbabwe;*

*(c) if, additionally to the plant referred to in paragraph (a) and (b), the supplier has built in Zimbabwe a base metal refinery capable of recovering base metals, tax at the rate of **1%** on the value of unbeneficiated platinum shall be levied on a supplier of such platinum for export from Zimbabwe;*

*(d) if, additionally to the plant referred to in paragraph (a), (b) and (c), the supplier has built in Zimbabwe a precious metal refinery capable of recovering precious metals, no tax on the value of unbeneficiated platinum shall be levied on a supplier of such platinum for export from Zimbabwe.*

[i] In this section—

**"unbeneficiated platinum"** means platinum ore which has not been subjected to the following processes—

- (a) crushing, milling and washing to remove waste material; and
- (b) the smelting of the resulting platinum concentrate into pellet or ingot form.

[ii] Notwithstanding section ten (1), tax at the rate specified in the table below on the value of unbeneficiated platinum shall be levied on a

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supplier of such platinum for export from Zimbabwe —

[subsection (2) substituted by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March,2018.]

(a) if the supplier has built plant in Zimbabwe capable of producing platinum group concentrates, tax at the rate of 5% on the value of unbeneficiated platinum shall be levied on a supplier of such platinum for export from Zimbabwe;

(b) if, additionally to the plant referred to in paragraph (a), the supplier has built plant in Zimbabwe capable of smelting to produce matte, tax at the rate of 2.5% on the value of unbeneficiated platinum shall be levied on a supplier of such platinum for export from Zimbabwe;

(c) if, additionally to the plant referred to in paragraph (a) and (b), the supplier has built in Zimbabwe a base metal refinery capable of recovering base metals, tax at the rate of 1% on the value of unbeneficiated platinum shall be levied on a supplier of such platinum for export from Zimbabwe;

(d) at the rate 0% on the value of unbeneficiated platinum in the case of a supplier who begins operations as such on or after the 1st January, 2018, and for a period of 5 years after that;

\*whichever is the higher value.

[The Editor has retained \*these italicised words from the repealed section for sense's sake, which appear omitted in error on page 11 of the amending Act 1 of 2018]

(iii) For the purposes of this Act unbeneficiated platinum shall be deemed to be exported from Zimbabwe on the date on which the unbeneficiated platinum is, in terms of section 60 of the Customs Act [Chapter 23:02], deemed to be exported.

(iv) For the purposes of this Act the value to be placed on the exportation of unbeneficiated platinum from Zimbabwe shall be deemed to be—

(a) the market value thereof on the date of exportation as determined by reference to a reputable metals exchange; or

(b) the value as reflected on the bill of entry or other document required in terms of section 54 of the Customs and Excise Act [Chapter 23:02] delivered to an officer under that Act;

whichever is the higher value.

(v) Subject to section six(1)(b), and this section, any provision of the Customs Act relating to the exportation, transit and clearance of any goods and the payment and recovery of duty shall apply, with such changes as may be necessary, as if enacted in terms of this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs Act.]

## 12E Collection of tax on exportation of uncut and cut dimensional stone, determination of value thereof

[section repealed by the Finance Act 8/2015 w.e.f. 1st January, 2015. Substituted by the Finance Act 1 of 2018 w.e.f. 1st January 2018.]

(1) Notwithstanding section ten(1), tax at the rate of—

(a) 5% on the gross fair market value of uncut dimensional stone (that is to say marble or black granite hewn on location at the quarry with no or minimal trimming, drilling, cutting or grinding) shall be levied on a supplier of such stone for export from Zimbabwe;

(b) 2.5% on the gross fair market value of cut dimensional stone (that is to say- marble or black granite sawn into sheets not exceeding a thickness of five (5) centimetres) shall be levied on a supplier of such stone for export from Zimbabwe:

Provided that no tax shall be payable if the sheets of cut dimensional stone are smoothed at the edges and polished in Zimbabwe.

(2) For the purposes of this Act uncut or cut dimensional stone shall be deemed to be exported from Zimbabwe on the date on which such stone is, in terms of section 60 of the Customs Act [Chapter 23:02], deemed to be exported.

(3) For the purposes of this Act the value to be placed on the exportation of uncut or cut dimensional stone from Zimbabwe shall be deemed to be—

(a) the market value thereof on the date of exportation as determined by reference to a reputable exchange; or

(b) the value as reflected on the bill of entry or other document required in of section 54 of the Customs and Excise Act [Chapter 23.02] is delivered to an officer under that Act;

whichever is the higher value.

(4) Subject to section six(1)(b), and this section, any provision of the Customs Act

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relating to the exportation, transit and clearance of any goods and the and recovery of duty shall apply, with such changes as may be necessary, as if enacted in terms of this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs Act.

## 12F Collection of tax on exportation of medicinal cannabis, determination of value thereof

[Section inserted by Act 10 of 2020 w.e.f. 1<sup>st</sup> January, 2021.]

(1) In this section—

“**medicinal cannabis**”, means—

(a) the plant *cannabis sativa* and any part of the plant including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, with a delta-9 tetrahydrocannabinoid concentration of **not more than 0,3%** on a dry weight basis;

and

(b) in respect of the cultivation or other dealing of or in which a permit has been issued in terms of the Agricultural Marketing Authority (Industrial Hemp) Regulations, 2020 (Statutory Instrument **218/2020**), or any other law that may be substituted for the same;

“**medicinal cannabis product**”, means medicinal cannabis for export as described in subsection (2)(a), (b) or (c).

(2) Notwithstanding section *ten*(1), tax at the rate of—

(a) **10%** on the export sale value of finished packaged medicinal cannabis oils that are ready for resale shall be levied on a supplier of such product for export from Zimbabwe;

(b) **15%** on the export sale value of bulk extracted medicinal cannabis oils that require further processing or packaging shall be levied on a supplier of such product for export from Zimbabwe;

(c) **20%** on the export sale value of dried medicinal cannabis flowers shall be levied on a supplier of such product for export from Zimbabwe;

(3) For the purposes of this Act a medicinal cannabis product shall be deemed to be exported from Zimbabwe on the date on which such product is, in terms of section 60 of the Customs Act [*Chapter 23:02*], deemed to be exported.

(4) For the purposes of this Act the export sale value to be placed on the exportation of a medicinal cannabis product shall be deemed to be—

(a) the market value thereof on the date of exportation as determined by reference to a reputable exchange;

or

(b) the value as reflected on the bill of entry or other document required in terms of section 54 of the Customs and Excise Act [*Chapter 23:02*] is delivered to an officer under that Act;

whichever is the higher value.

(5) Subject to section *six*(1)(b), and this section, any provision of the Customs Act relating to the exportation, transit and clearance of any goods and the payment and recovery of duty shall apply, with such changes as may be necessary, as if enacted in terms of this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs Act.

## 13 Collection of value-added tax on imported services, determination of value thereof & exemptions from tax

(1) Where tax is payable in terms of paragraph (c) of subsection (1) of section *six* in respect of the supply of imported services the recipient shall within the period ending on the 25th day of the first month commencing after the month of the date of supply referred to in subsection (2)—

[Amended by Act 6 of 2006 w e f 1st January, 2006, and further amended by Finance Act 10/2020 w.e.f. 1st January, 2021.]

(a) furnish the Commissioner with a declaration, in such form as the Commissioner may prescribe, containing such information as may be required; and

(b) calculate the tax payable on the value of the imported services at the rate of tax in force on the date of supply of the imported services and pay such tax to the Commissioner.

(2) For the purposes of this Act, a supply of imported services shall be deemed to take place at the time an invoice is issued by the supplier or recipient in respect of that supply or the time any payment is made by the recipient in respect of that supply, whichever time is the earlier.

(2a)....

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[subsection (2a) inserted by Act 8 of 2005 w.e.f. 30<sup>th</sup> December, 2005 and deleted by Act 6 of 2006 w.e.f. 1<sup>st</sup> January, 2006.]

(3) For the purposes of this Act, the value to be placed on the supply of imported services shall, save as otherwise provided in this section, be the value of the consideration for the supply, as determined in terms of subsection (3) of section *nine*, or the open market value of the supply, whichever is the greater.

(4) Where a person carries on activities **outside Zimbabwe** which do not form part of the activities of any trade carried on by him and, in the course of such first-mentioned activities, services are rendered for the purposes of such trade which, if rendered by anybody other than the said person, would be imported services, such services shall for the purposes of paragraph (c) of subsection (1) of section *six*, be deemed to be imported services supplied and received by that person in respect of such trade.

(5) The tax chargeable in terms of paragraph (c) of subsection (1) of section *six*, shall not be payable in respect of—

(a) a supply which is chargeable with tax in terms of paragraph (a) of subsection (1) of section *six* at the rate provided in section *six*; or

(b) a supply which, if **made in Zimbabwe**, would be charged with tax at the rate of **0%** applicable in terms of section *ten* or would be exempt from tax in terms of section *eleven*.

## 13A Certain imported services deemed to be locally supplied

[section inserted by section 20 pf the Finance (No.3) Act 13/2019 w.e.f. 1<sup>st</sup> January, 2020.]

(1) Despite section *thirteen*, the supply of **radio and television services** from outside Zimbabwe to an address in Zimbabwe or of electronic services by an **electronic commerce** operator domiciled outside Zimbabwe to a person resident in Zimbabwe shall be deemed to be a supply made in Zimbabwe.

(2) The obligation to charge and account for tax shall be that of the supplier or his or her duly appointed representative in Zimbabwe.

## 14 Accounting basis

(1) In this section—

**“payment”** shall mean payment of consideration which reduces or discharges any obligation, whether an existing obligation or an

obligation which will arise in future, in respect of or consequent upon, whether directly or indirectly, the purchase price.

(2) Every registered operator shall account for tax payable on an invoice basis for the purposes of section *fifteen*:

Provided that regulations made under section *seventy-eight* may provide for circumstances where, upon a written application to the Commissioner, a registered operator may account for tax payable on a payments basis.

[*GTO Association v The Commissioner General of ZIMRA 19-HH-464*]

## 15 Calculation of tax payable

(1) The tax payable by a registered operator shall be calculated by him in accordance with this section in respect of each tax period during which he has carried on a trade in respect of which he is registered or is required to be registered in terms of section *twenty-three*.

(2) No deduction of input tax shall be made in terms of this Act in respect of a supply or the importation of any goods or services into Zimbabwe, unless—

[Amended by Act 13 /2019 w.e.f. 31st December, 2019;

See amendment inserted by **section 23 of Act /2022** regarding **time span** - Editor.]

(a) a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with sections *twenty* or *twenty-one* within the period the registered operator is required furnish a return in terms of sections *twenty-seven* and *twenty-eight* or 12 months whichever is the longer period and is held by the registered operator making that deduction at the time that any return in respect of that supply is furnished:

[Amended by Act 29 of 2004 w.e.f. 1st January, 2005; further by Act 2 of 2005 w.e.f. 12th September, 2005; proviso inserted by the Finance Act 1 of 2019 w.e.f. 20th February, 2019; proviso thereafter repealed by section 19 Finance Act 8/2022 w.e.f. 24th October, 2022; Maximum time frame was 12 months *PIL (Pvt) Ltd v ZIMRA 17-HH-213*.]

or

(b) a **tax invoice** is, in terms of subsection (5) or (6) of section 20, not required to be issued; or a debit or credit note is, in terms of section 21 not required to be issued;

**Use of tax invoices generated before 1/1/22 for purposes of section 15 of Cap. 23:12**

## ICAZ STUDENT LEGISLATION HANDBOOK - VALUE ADDED TAX ACT

[Inserted here by the Editor for awareness of this new section 19 of the Finance Act 8/2022 gazetted on the 24th October, 2022.]

“(i) Value Added Tax invoices that were generated before the 31st December, 2021 (inclusive), may be used to claim input tax for the purposes of section 15 (Calculation of tax payable”) of the Value Added Tax Act [Chapter 23:12] **no later than the 31st March, 2022**, and the twelve months period mentioned in subsection (2) of that section shall not apply to tax invoices generated before the 31st December, 2021.

(ii) The adjustments required in terms of section 17 (“Adjustments) of the Value Added Tax Act [Chapter 23:12] shall be effected in terms of that section without regard to the provisions of subsection (i).”.

or

(c) sufficient records are maintained as required by subsection (7) of section 20 where the supply is a supply of second-hand goods or a supply of goods as contemplated in subsection (9) of section seven and in either case is a supply to which that section relates; or

(d) a **bill of entry** or other document prescribed in terms of the Customs Act in relation to the said importation has been delivered in accordance with that Act and is held by the registered operator making that deduction, or by his agent as contemplated in subsection (6) of section *fifty-six*, at the time that any return in respect of that importation is furnished:

Provided that—

(i) no bill of entry or other document prescribed in terms of the Customs Act may be used for the purposes of this paragraph by a registered operator **after a period of 12 months** from the date on which it was delivered to the registered operator or his or her agent;

(ii) where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this Act, or a bill of entry or other document has been delivered in accordance with the Customs Act, as the case may be, the Commissioner may determine that no deduction for input tax in relation to that supply or importation shall be made unless that tax invoice or debit note or credit note or that bill of entry or other document is retained in accordance with section *fifty-seven* (3).

[proviso repealed and substituted by Act 1/2014 w.e.f. 4<sup>th</sup> April, 2014]

(e) an **invoice** is held in terms of section *thirteen* (2) and payment of the tax has been made in terms of section *thirteen*(1).

[para (e) inserted by Act 13/2019 w.e.f. 31st December,2019]

(3) Subject to subsection (2) of this section and sections *fourteen* and *sixteen*, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the registered operator which are attributable to that period, as determined under subsection (4), and the amounts, if any, received by the registered operator during that period by way of refunds of tax charged in terms of paragraphs (b) and (c) of subsection (1) and subsection (3) of section *six*, the following amounts, namely—

[NRM (Pvt) Ltd & 2 Ors v ZIMRA 19-HH-566 ZS (Pvt) Ltd v ZIMRA 20-FAC-113]]

(a) the amounts of input tax—

(i) in respect of supplies of goods and services, not being supplies of second-hand goods to which paragraph (b) of the definition of “**input tax**” in section *two* applies, and supplies referred to in subparagraph (iii) made to the registered operator during that tax period;

(ii) in respect of supplies of **second-hand goods** to which paragraph (b) of the definition of “**input tax**” in section *two* applies—

A. other than supplies in respect of which subparagraph B applies, to the extent that payment of any consideration which has the effect of reducing or discharging any obligation, whether an existing obligation or an obligation which will arise in the future, relating to the purchase price for those supplies has been made during that tax period;

B. which consist of fixed property in respect of the acquisition of which stamp duty is, in terms of the Stamp Duties Act [Chapter 23:09] payable, if the full or final amount of such stamp duty has been paid during that tax period;

(iii) in respect of taxable supplies made to the registered operator in respect of which paragraph (d) of subsection (3) of section *eight*, apply, other than supplies in respect of which subsection (4) of section *nine* apply, to the extent that payment of any consideration which has the effect of reducing or discharging any obligation, whether an existing obligation or an obligation which will arise in the future, relating to the purchase price for those supplies has been made during that tax period;

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(iv) charged in terms of paragraph (b) of subsection (1) of section *six* in respect of goods imported into Zimbabwe by the registered operator and invoiced or paid, whichever is the earlier, during that tax period;

(v) calculated in accordance with paragraph (b) of subsection (2) or (7) of section *twenty-one* or subsection (1), (2) or (5) of section *twenty-two*, as applicable to the registered operator;

(b) an amount equal to the tax fraction of any payment made during the tax period by the registered operator to indemnify another person in terms of any contract of insurance:

Provided that this paragraph shall—

(i) only apply where the supply of that **contract of insurance** is a taxable supply or where the supply of that contract of insurance would have been a taxable supply if the time of performance of that supply had been on or after the fixed date;

(ii) not apply where that payment is in respect of the supply of goods or services to the registered operator or the importation of any goods by the registered operator;

(iii) not apply where the supply of that contract of insurance is a supply charged with tax at the rate of **zero%** under section *ten* and that other person is, at the time that that payment is made, not a registered operator and not a resident of Zimbabwe;

(iv) not apply where that payment results from a supply of goods or services to that other person where those goods are situated outside Zimbabwe or those services are physically performed elsewhere than in Zimbabwe at the time of that supply;

(c) an amount equal to the tax fraction of any amount paid by the supplier of the services contemplated in subsection (11) of section *seven* as a prize or winnings to the recipient of such services;

(d) an amount equal to the tax fraction of any amount of tax on totalizator transactions or tax on betting levied and paid for the benefit of the Consolidated Revenue Fund by the supplier of the services contemplated in subsection (11) of section *seven*;

(e) the amounts calculated in accordance with subsection (4) or (5) of section *seventeen* in relation to any goods or services applied during the tax period as contemplated in that section;

(f) any amount of input tax in relation to any supply in respect of which paragraph (a) of, or the proviso to, subsection (2) of this section has operated to deny a deduction of input tax and the registered operator has obtained, during the tax period, a tax invoice in relation to that supply;

(g) in the case of a registered operator who has supplied goods or services during that tax period **otherwise than** in terms of subsection (2) of section *seventeen*, an amount determined in accordance with the formula—

## A x B x C

in which formula—

[NO SET-OFF is applicable to the payment of output and input taxes in different currencies *Prosperous Days Investments v Zimra* 21-HH-024]

“A” represents the tax fraction;

“B” represents the lesser of—

(i) any of the following amounts—

A. the cost, including any tax forming part of such cost, to the registered operator of the acquisition, manufacture, assembly, construction or production of those goods or services:

Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of subsection (4) of section *nine* deemed to be the open market value of the supply or would in terms of that section have been deemed to be the open market value of the supply, the cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or

B. the amount which was represented by “B” in the formula contemplated in subsection (4) of section *seventeen* when such goods or services were deemed to be supplied to the registered operator, where the registered operator was at some time after the acquisition of such goods or services deemed by subsection (4) of section *seventeen* to have been supplied with such goods or services; or

C. the amounts then represented by “A” in the said formula or by “B” in the formula contemplated in subsection (5) of section *seventeen* respectively, in the most recent adjustment made under subsections (2) or (5) of section *seventeen* by the registered operator prior to such deemed supply of goods or services where the registered operator was at

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some time after the acquisition of the goods or services required to make an adjustment contemplated in subsections (2) or (5) of section seventeen; and

(ii) the open market value of the supply of those goods or services at the time those goods or services are deemed to be supplied;

[amended by the Finance Act 10 of 2003]

“C” represents the percentage that, immediately before the time of the supply, the use or application of the goods or services for the purpose other than that of making taxable supplies was of the total use or application of the goods or services;

[amended by the Finance Act 10 of 2003]

(h) an amount equal to the tax fraction of any payment made by the registered operator during the tax period in respect of the redemption with him, or his agent, of the monetary value of any token, voucher or stamp contemplated in subsection (18) of section nine, to a supplier of goods or services who has granted a discount on the surrender to him of such token, voucher or stamp by a recipient of a supply of goods or services;

(i) in the case of a registered operator who has, during the tax period, supplied a property in possession in the course or furtherance of his trade under a sale, an amount equal to the tax fraction of the lesser of—

(i) the amount, excluding any amount of tax, received in respect of the sale of such property in possession less any amount paid by the registered operator in respect of the acquisition of such property in possession; and

(ii) the amount of the unrecovered loan balance less any amount paid by the registered operator in respect of the acquisition of such property in possession:

Provided that no deduction shall be made in terms of this paragraph where the person in default is or will be held liable for payment of such lesser amount.

For the purposes of this subparagraph—

“property in possession” means fixed property acquired by any registered operator—

(a) at a sale in execution as a result of default by any person (other than a person who held or applied such fixed property for the purpose of making taxable supplies in the course or furtherance of his trade immediately before such sale in execution) in respect of an unrecovered loan balance due to that

registered operator in terms of a credit agreement; or

(b) as a result of an abandonment authorised by the Master of the High Court where such person has defaulted in respect of an unrecovered loan balance due to that registered operator in terms of a credit agreement or gone insolvent;

“unrecovered loan balance” means the amount of capital, interest and administrative holding costs outstanding in terms of a credit agreement at the date of sale in execution or the date of authorisation of abandonment by the Master of the High Court.

\* (j) an amount equivalent to 50% of the cost of the acquisition of fiscalised electronic registers by a registered operator.

For the purposes of this subparagraph, “fiscalised electronic register” means an electronic sales register having certain prescribed features.

[subpara\*\*“(k)” was originally inserted by section 11 of Act 3 of 2010 with effect from the 17th September, 2010.

This subpara now being substituted by Act 1/2014 w.e.f. 4<sup>th</sup> April, 2014 has exactly the same wording as that inserted by Act 3/2010.. The Editor has renumbered this subpara as “(j)” because there appears to be no previous subpara (j)]

(4) For the purposes of subsection (3)—

(a) where any registered operator is entitled under subsection (3) to deduct any amount in respect of any tax period from the sum of the amounts of output tax of the registered operator which are attributable to that period, the registered operator may deduct that amount from the amount of output tax attributable to any later tax period but not later than the end of the longer period referred to in subsection (2)(a) to the extent that it has not previously been deducted by the registered operator under that subsection;

[amended by Act 2 of 2005 with effect from the 12th September, 2005  
PIL (Pvt) Ltd v ZIMRA 17-HH-213]

(b) the amount of input tax which, in relation to any supply of goods or services is to a registered operator, the registered operator may deduct in respect of any payment referred to in subparagraph (ii) of paragraph (a) or subparagraph (i) of paragraph (b) of subsection (3), shall be an amount which bears to the full amount of the input tax relating to that supply the same ratio as the amount of the payment

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bears to the full value on which tax was payable in respect of the supply.

(5) For the purposes of subsection (3), output tax in relation to a supply made by a registered operator shall be attributable to a tax period—

(a) subject to paragraph (b), where a supply is made or is deemed to be made by him during that tax period; or

(b) where a supply is made under a sale in respect of which paragraph (d) of subsection (3) of section *eight* applies, other than a supply in respect of which subsection (4) of section *nine* applies, to the extent that payment of any consideration which has the effect of reducing or discharging any obligation, whether an existing obligation or an obligation which will arise in the future, relating to the purchase price for that supply has been made during that tax period.

(6) If, in relation to any tax period of any registered operator, the aggregate of the amounts that may be deducted under subsection (3) from the sum referred to in that subsection, the amount, if any, brought forward from the tax period preceding the first-mentioned tax period as provided in paragraph (b) of the proviso to subsection (1) of section *forty-four* and the amount, if any, credited under subsection (4) of section *forty-four* to the registered operator's account during the first-mentioned tax period, exceeds the said sum, the amount of the excess shall, subject to this Act, be refundable to the registered operator by the Commissioner as provided in subsection (1) of section *forty-four*.

## 16 Permissible deductions in respect of input tax

(1) Where goods or services are acquired or imported by a registered operator partly for consumption, use or supply (hereinafter referred to as "**the intended use**") in the course of making taxable supplies and partly for another intended use and tax has become payable in respect of the supply to him or the importation by him, as the case may be, of such goods or services or in respect of such goods under subsection (3) of section *six* or where tax is the tax fraction of an amount or consideration in respect of a supply contemplated in paragraph (b) or (c) of the definition of "**input tax**" in section *two*, the extent to which the tax concerned is input tax, as contemplated in the definition of "**input tax**" in section *two*, shall be an amount which bears to the full amount of such tax the same ratio as the intended use of such goods or services in the course of making

taxable supplies bears to the total intended use of such goods or services:

Provided that—

(a) where the intended use of goods or services in the course of making taxable supplies is equal to **not less than 90%** of the total intended use of such goods or services, the goods or services concerned may for the purposes of this Act be regarded as having been acquired wholly for the purpose of making taxable supplies; and

(b) where goods or services are deemed by paragraph (b) of subsection (3) of section *eight* to be successively supplied, the extent to which the tax relating to any payment referred to in that section is input tax may be estimated where the calculation cannot be made accurately until the completion of the supply of the goods or services, and in such case such estimate shall be adjusted on completion of the supply, any amount of input tax which has been overestimated being accounted for as output tax in the tax period during which the completion occurs and any amount of input tax which has been underestimated being accounted for as input tax in that period.

(2) Notwithstanding anything to the contrary in this Act, a registered operator shall **not be entitled to deduct** from the sum of the amounts of output tax and refunds contemplated in subsection (3) of section *fifteen*, any amount of input tax—

(a) in respect of goods or services acquired by such registered operator to the extent that such goods or services are acquired for the purposes of **entertainment**:

Provided that this paragraph shall **not apply** where—

(i) such goods or services are acquired by the registered operator for making taxable supplies of entertainment in the ordinary course of a trade which—

A. continuously or regularly supplies entertainment to clients or customers, other than in the circumstances contemplated in paragraph (b), for a consideration to the extent that such taxable supplies of entertainment are made for a charge which covers all direct and indirect costs of such entertainment or is equal to the open market value of such supply of entertainment, unless—

I. such costs or open market value is for *bona fide* promotion purposes not charged by the registered operator in respect of the supply to

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recipients who are clients or customers in the ordinary course of the trade, of entertainment which is in all respects similar to the entertainment continuously or regularly supplied to clients or customers for consideration; or

II. the goods or services were acquired by the registered operator for purposes of making taxable supplies to such clients or customers of entertainment which consists of the provision of any food and a supply of any portion of such food is subsequently made to any employee of the registered operator or to any private voluntary organisation as all such food was not consumed in the course of making such taxable supplies;

B. supplies entertainment to any employee or office holder of the registered operator or any connected person in relation to the registered operator, to the extent that such taxable supplies of entertainment are made for a charge which covers all direct and indirect costs of such entertainment;

(ii) such goods or services are acquired by the registered operator for consumption or enjoyment by that registered operator, including, where the registered operator is a partnership, a member of such partnership, or an employee or office holder of such registered operator for personal subsistence in respect of **any night** that such registered operator or member is by reason of the registered operator's trade or, in the case of such employee or office holder, he is by reason of the duties of his employment or office, obliged to spend away from his usual place of residence:

Provided that this provision shall not extend to expenditure for **amusement or recreation**;

(iii) such goods or services consist of a meal or refreshment supplied by the registered operator as operator of any conveyance to a passenger in such conveyance during a journey, if such meal or refreshment is supplied as part of or in conjunction with the transport service supplied by the registered operator and the supply of such service is a taxable supply;

(iv) such goods or services consist of a meal or refreshment supplied by the registered operator as organiser of a seminar or similar event to a participant in such seminar or similar event, if the supply of such meal or refreshment is made during the course of or immediately before or after such seminar or similar event and a charge which covers the cost of such meal or refreshment is made by the registered operator to the recipient;

(v) such goods or services are acquired by a local authority for the purpose of providing sporting or recreational facilities or public amenities to the public in the circumstances referred to in subsection (5) of section seven or for the purposes of the provision of the goods or services referred to in subparagraph (iv) of paragraph (c) of the definition of "**trade**" in section two;

(vi) such goods or services are acquired by a private voluntary organisation, for the purpose of making supplies in the furtherance of its aims and objects; or

(b) in respect of any fees or **subscriptions** paid by the registered operator in respect of membership of any club, association or society of a sporting, social or recreational nature; or

(c) in respect of any goods or services acquired by a **superannuation scheme** referred to in section two, for the purposes of the supply by such scheme of any medical or dental services or services directly connected with such medical or dental services or of any goods necessary for or subordinate or incidental to the supply of any such services; or

(d) in respect of any **motor vehicle** supplied to or imported by the registered operator:

Provided that this paragraph shall not apply where such motor vehicle is acquired by the registered operator—

(i) exclusively for the purposes of the trade or in the production of income of the registered operator and of a type specified in the Charging Act or in regulations made in terms of section **seventy-eight**;

[See Section 18 of the VAT Regulations **SI 273 of 2003** - Editor.]

(ii) in the ordinary course of his or her trade as a motor dealer.

(iii) ...

[amended by the Finance Act 10 of 2003]

For the purposes of this paragraph a **motor vehicle** acquired by such registered operator for **demonstration purposes** or for **temporary use prior** to a taxable supply by such registered operator shall be deemed to be acquired exclusively for the purpose of making a taxable supply.

(d1) ...

[Para (d1) inserted by Act No 1/2014 w.e.f. 4th April,2014;

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then repealed by Finance (No. 2) Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022.]

(e) in respect of any amount of tax on the exportation of unbeneficiated lithium, unbeneficiated hides, unbeneficiated platinum, uncut and cut dimensional stone, or medicinal cannabis paid by the registered operator in terms of section 12B, 12C, 12D, 12E or 12F, or any other export tax of a like nature that may be enacted under this Act;

[Paragraph (e) substituted by Finance (No. 2) Act 10 of 2022 gazetted on 30th December, 2022.]

(3) Notwithstanding anything in subsection (5) of section *fifteen*, where a registered operator has made a supply of goods as contemplated in subsection (9) of section *seven* and in respect of the acquisition thereof by the registered operator a deduction of input tax under subsection (3) of section *fifteen* was denied in terms of subsection (2) of this section, the registered operator shall not be required to account for output tax in relation to such supply.

(4) Where, but for this subsection, an amount qualifies or has qualified for a deduction under more than one provision of this Act, a deduction of such amount, or any portion thereof, shall not be made more than once in the calculation of the amount of tax payable by any person.

## 17 Adjustments

[to be made without regard to the provisions of Section 15(2)(ii) above -editor]

(1) Subject to subsection (2) of section *seven*, where—

(a) goods or services have been supplied to or imported by a registered operator; or

(b) goods have been manufactured, assembled, constructed or produced by him; or

(c) goods or services were deemed by subsection (4) to have been supplied to him;

**(excluding** goods or services in respect of the acquisition of which by the registered operator a deduction of input tax was denied by subsection (2) of section *sixteen* or would have been denied if that section had been applicable prior to the fixed date) and such goods or services were acquired, manufactured, assembled, constructed or produced by such registered operator wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies or such goods were held or applied for that purpose,

such goods or services shall if they are subsequently applied by him—

(i) otherwise than in the circumstances contemplated in subsection (8) of section *seven*, wholly for a purpose other than the said purpose; or

(ii) wholly for a purpose in respect of which, if such goods or services had been acquired by him at the time of such application, a deduction of input tax would have been denied in terms of subsection (2) of section *sixteen*;

[amended by the Finance Act 10 of 2003]

be deemed to have been supplied by him by way of a taxable supply by him in the course of his trade:

**Provided that** this subsection shall not apply where taxable supplies produced by the registered operator become **exempt** supplies by virtue of any amendment of this Act.

[Proviso inserted by sect.26 of the Finance Act 1 of 2018 gazetted 14th March 2018; **backdated** by section 21 of Finance Act (No.3) Act 13/2019 gazetted on the 31<sup>st</sup> December,2019 with effect deemed from the 1<sup>st</sup> January, 2017; substituted in this proviso by s 38 of Finance Act (No.2) Act 10/2020 gazetted on 31<sup>st</sup> December,2020; increased to **Zw\$ 6,5 million or US\$50 000** by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021; which the Editor cannot place herein? increased by Finance Act 8/2022 to **zwl 25 million** w.e.f. 24th October, 2022?.]

(2) Where—

(a) capital goods or services have been supplied to or imported by a registered operator; or

(b) capital goods have been manufactured, assembled, constructed or produced by him; or

(c) capital goods or services were deemed by subsection (4) to have been supplied to him;

**(excluding** goods or services in respect of the acquisition of which by the registered operator a deduction of input tax was denied by subsection (2) of section *sixteen* or would have been denied if that section had been applicable prior to the fixed date) and such goods or services were acquired, manufactured, assembled, constructed or produced by such registered operator wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies or such goods were held or applied for that purpose, such goods or services shall, if the extent of the

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application or use of such goods or services in the course of making taxable supplies, in respect of which, if such goods or services had been acquired at the time of such application or use, a deduction of input tax would not have been denied in terms of paragraph (a) of subsection (2) of section *sixteen*, is subsequently reduced in relation to their total application or use, be deemed to have been supplied by him by way of a taxable supply by him in the course of his trade at the time at which such reduction is deemed by subsection (6) to take place:

**Provided that** this subsection shall **not apply**—

[Proviso substituted by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March, 2018]

(a) to any capital goods or services which cost **less than zw\$30 00 or US\$ 60** or the prescribed amount, excluding tax; or

[Increased by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021; increased by Finance Act 8/2022 to **zwl 25 million** w.e.f. 24th October, 2022.]

(b) where such goods or services were deemed to be supplied to the registered operator by subsection (4) if the amount which was represented by “B” in the formula contemplated in that subsection was **less than zwi\$4 800** when such goods or services were deemed to be supplied to such registered operator; or

(c) where taxable supplies produced by the registered operator become exempt supplies by virtue of any amendment of this Act.

(3) Notwithstanding anything in this section, to the extent that any registered operator has or is deemed to have granted a benefit or advantage to an employee or the holder of any office as contemplated in paragraph (f) of the definition of “**gross income**” in subsection (1) of section 8 of the Taxes Act, as read with the Thirteenth Schedule to that Act, and such benefit or advantage consists of a supply of goods or services, the granting of that benefit or advantage shall be deemed to be a supply of goods or services made by the registered operator in the course of a trade carried on by the registered operator:

**Provided that this subsection shall not apply to** any such benefit or advantage to the extent that it—

(a) has arisen by virtue of any supply of goods or services which is an exempt supply in terms of section *eleven* or is a supply which is charged

with tax at the rate of **zero %** in terms of section *ten* or is a supply of entertainment;

(b) is granted by the registered operator in the course of making exempt supplies.

(4) Where—

(a) prior to the fixed date—

(i) goods or services have been supplied to or imported by a person; or

(ii) goods have been manufactured, assembled, constructed or produced by him;

and such goods or services were acquired, manufactured, assembled, constructed or produced or applied by such person wholly for purposes other than that of consumption, use or supply in the course of making supplies in the course of an activity which was a trade or would have been a trade if section *two* had been applicable prior to the fixed date or for a purpose in respect of which a deduction of input tax in respect of such goods or services would have been denied in terms of subsection (2) of section *sixteen* if that section had been applicable prior to the fixed date;

[amended by the Finance Act 10 of 2003]

or

(b) after the fixed date—

(i) goods or services have been supplied to or imported by a person and tax has been charged in respect of such supply or importation; or

(ii) goods have been manufactured, assembled, constructed or produced by him and tax has been charged in respect of the supply of goods or services acquired by him for the purpose of such manufacturing, assembling, construction or production; or

(iii) goods or services are deemed by subsection (1) or subsection (2) of section *seven* to have been supplied by him;

and no deduction has been made in terms of subsection (3) of section *fifteen* in respect of or in relation to such goods or services; or

(c) second-hand goods situated in Zimbabwe have been supplied, otherwise than under a taxable supply, to a person under a sale on or after the fixed date by a resident of Zimbabwe and no deduction has been made in terms of subsection (3) of section *fifteen* in respect of such second-hand goods;

and such goods or services are subsequent to the fixed date applied in any tax period by that person or, where he is a member of a

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partnership, by the partnership, wholly or partly for consumption, use or supply in the course of making taxable supplies, other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of subsection (2) of section *sixteen*, those goods or services shall be deemed to be supplied in that tax period to that person or the partnership, as the case may be, and the Commissioner shall allow that person or the partnership, as the case may be, to make a deduction in terms of subsection (3) of section *fifteen* of an amount determined in accordance with the formula— **A x B x C x D**

in which formula—

“A” represents the tax fraction;

“B” represents the lesser of—

(a) the cost, including any tax forming part of such cost, to the registered operator of the acquisition, manufacture, assembly, construction or production of those goods or services:

Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of subsection (4) of section *nine* deemed to be the open market value of the supply, the cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply;

or

(b) the open market value of the supply of those goods or services at the time when the supply is deemed to be made;

“C” represents the ratio that, immediately after the supply so deemed to be made, the intended use of the goods or services, as contemplated in subsection (1) of section *sixteen*, in the course of making taxable supplies, other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of subsection (2) of section *sixteen*, bears to the total intended use of those goods or services, expressed as a percentage:

Provided that where the intended use of goods or services in the course of making taxable supplies, other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a

deduction of input tax would have been denied in terms of subsection (2) of section *sixteen*, is equal to **not less than 90%** of the total intended use of such goods or services, such percentage shall be deemed to be **100%** ;

“D” represents, where paragraph (c) of this subsection applies, the ratio that the amount paid, which payment reduces or discharges any obligation (whether an existing obligation or an obligation which will arise in the future) in respect of or consequent upon, whether directly or indirectly, the consideration in money for the supply of second-hand goods, bears to the total consideration in money, expressed as a percentage:

Provided that—

(a) paragraph (b) of this subsection shall not apply where a registered operator has, only as a result of not complying with subsection (2) of section *fifteen*, not been entitled to make a deduction of input tax in terms of subsection (3) of section *fifteen*;

(b) where the second-hand goods referred to in paragraph (c) of this subsection consist of **fixed property** in respect of the acquisition of which stamp duty is, in terms of the Stamp Act, payable or would have been payable had an exemption from stamp duty, whether in terms of the Stamp Act or any other Act of Parliament, **not been applicable**, the amount determined in terms of this subsection shall not exceed the amount of stamp duty, which is or would have been payable in respect of such acquisition;

(c) where the second-hand goods referred to in paragraph (c) of this subsection consist of **fixed property** in respect of the acquisition of which stamp duty is, in terms of the Stamp Act payable, the deduction in terms of subsection (3) of section *fifteen* shall be made only after such stamp duty has been paid.

(5) Where—

(a) capital goods or services have been supplied to or imported by a registered operator; or

(b) capital goods have been manufactured, assembled, constructed or produced by him; or

(c) capital goods or services were deemed by subsection (4) to have been supplied to him;

and such goods or services were acquired, manufactured, assembled, constructed or produced or applied by such registered operator partly for the purpose of consumption, use or supply in the course of making taxable supplies, other than taxable supplies in respect

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of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of subsection (2) of section *sixteen*, or of making supplies in the course of an activity which was a trade or would have been a trade if section *two* had been applicable prior to the fixed date, other than supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of subsection (2) of section *sixteen* if that section had been applicable prior to the fixed date, such goods or services shall, if the extent of the application or use of such goods or services in the course of making taxable supplies, other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of subsection (2) of section *sixteen*, is subsequent to the fixed date increased in relation to their total application or use, be deemed to be supplied to him, and the Commissioner shall allow the registered operator to make a deduction in terms of subsection (3) of section *fifteen*, in the tax period during which such increase is deemed by subsection (6) to take place, of an amount determined in accordance with the formula—

in which formula—

“A” represents the tax fraction;

“B” represents the lesser of—

(a) the—

(i) **cost**, including any tax forming part of such cost, to the registered operator of the acquisition, manufacture, assembly, construction or production of those goods or services:

Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of subsection (4) of section *nine* deemed to be the open market value of the supply the cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or

(iv) amount, where goods or services were deemed by subsection (4) to have been supplied to the registered operator, which was represented by “B” in the formula contemplated in that subsection when such goods or services were deemed to be supplied to the registered operator; or

(v) amounts, where the registered operator was at some time after the acquisition of the goods or services required to make an adjustment contemplated in subsection (2) or this subsection, represented by “A” in the formula contemplated in subsection (8) of section *nine* or by “B” in the formula contemplated in this subsection respectively, in the most recent adjustment made under subsection (2) or this subsection by the registered operator prior to such supply of goods or services so deemed to be made;

and

(b) the open market value of the supply of those goods or services at the time any increase in the extent of the use or application of the goods or services is deemed by subsection (6) to take place;

“C” represents the percentage that, during the 12 month period during which the increase in use or application of the goods or services is deemed to take place, the use or application of the goods or services for the purposes of making taxable supplies, other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of subsection (2) of section *sixteen*, was of the total use or application of the goods:

Provided that where the said percentage does not exceed the percentage contemplated in “D” by more than **10%** of the total use or application, the said percentage shall be deemed to be the percentage determined in “D”;

“D” represents the percentage that the use or application of the goods or services for the purposes of making taxable supplies, other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of subsection (2) of section *sixteen*, was of the total use or application of such goods or services determined in terms of subsection (1) of section *sixteen*, subsection (8) of section *nine*, or subsection (4) of this section or this subsection, whichever was applicable in the period immediately preceding the 12 month period contemplated in “C”:

Provided that—

(a) this subsection shall not apply to any capital goods or services which cost less than zw\$ 50 000 or the prescribed amount, excluding tax, or where such goods or services

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were deemed to be supplied to the person by subsection (4) if the amount which was represented by "B" in the formula contemplated in that subsection was less than zw\$ 50 000 or the **prescribed amount** when such goods or services were deemed to be supplied to such person;

(al) this subsection does not apply where taxable supplies produced by the registered operator become exempt supplies by virtue of any amendment of this Act:

or

(b) where such goods or services consist of second-hand goods contemplated in the proviso to paragraph (b) of the definition of "**input tax**" in section two, the amount determined in terms of this subsection shall not exceed the amount of stamp duty which is or would have been payable, less any amount which has previously been deducted in terms of in terms of subparagraph (ii) of paragraph (a) of subsection (3), or subparagraph (i) of paragraph (b) of subsection (3) of section *fifteen*, or subsection (4) of this section, in respect of such acquisition, original issue or registration of transfer, as the case may be.

[Proviso inserted by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March, 2018.]

(6) For the purposes of subsections (2) and (5), any reduction or increase in the extent of the application or use of goods or services shall be deemed to take place on the last day of the registered operator's year of assessment as defined in section 2 of the Taxes Act or, if the registered operator is not an income tax payer, on the last day of December:

Provided that where a registered operator who is not an income tax payer draws up annual financial statements in respect of a year or other period ending on a date other than the last day of December any reduction or increase in the extent of the application or use of goods or services shall be deemed to take place on such first-mentioned date.

(7) For the purposes of subsections (2) and (5) of this section, the extent of the application or use of any goods or services for the purpose of making taxable supplies shall be determined with reference to the application or use of such goods or services during the 12 month period ending on the day any reduction or increase in the extent of the application or use of such goods or services is deemed by subsection (6) to have taken place:

Provided that—

(a) where any goods or services are acquired, manufactured, assembled, constructed or produced by a registered operator or are deemed under subsection (4) to have been supplied to that registered operator during such 12 month period, the extent of the application or use of such goods or services shall be determined with reference to the period ending on the day contemplated in subsection (6) and commencing on the date such goods or services are acquired, manufactured, assembled, constructed or produced by the registered operator or are deemed to be supplied to the registered operator under subsection (4);

(b) where the period between the fixed date and the date contemplated in subsection (6) is less than a 12 month period it shall, for the purposes of this section, be deemed to be a 12 month period.

(8) Where a deduction of an amount contemplated in paragraph (b) of the definition of "**input tax**" in section two has been made by any registered operator in respect of the sale to him of any second-hand goods and subsequently—

(a) that sale is cancelled; or

(b) the nature of that sale is fundamentally varied or altered; or

(c) the previously agreed consideration for that sale is reduced; or

(d) the second-hand goods or part of the second-hand goods sold are returned to the supplier;

and, as a result of the occurrence of one or more of the above mentioned events, the input tax actually deducted in relation to such sale exceeds the input tax properly deductible by the registered operator, either the amount of that excess shall be deemed to be tax charged in relation to a taxable supply made by that registered operator in the tax period during which the said event has occurred, at the rate of tax which applied when the said deduction was made, or the amount of input tax deducted in terms of subsection (3) of section *fifteen* in the said tax period shall be reduced by the amount of the said excess.

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## 18 Adjustments in consequence of acquisition of going concern wholly or partly for purposes other than making taxable supplies

(1) Where—

(a) a trade or part of a trade has been supplied to any registered operator; and

(b) the supply of such trade or part was charged with tax at the rate of **0 %** in terms of paragraph (e) of subsection (1) of section *ten*; and

(c) such trade or part, as the case may be, or any goods or services which formed part of such trade or part are acquired by such registered operator wholly or partly for a purpose other than for consumption, use or supply in the course of making taxable supplies;

such trade, part, goods or services, as the case may be, shall be deemed to have been supplied by him by way of a taxable supply by him in the course of his trade:

Provided that where the intended use of such trade, part, goods or services, as the case may be, in the course of making taxable supplies is equal to **not less than 90%** of the total intended use of such trade, part, goods or services, as the case may be, the trade, part, goods or services concerned may for the purposes of this Act be regarded as having been acquired wholly for the purpose of consumption, use or supply in the course of making taxable supplies.

(2) Notwithstanding anything in this Act, the value of the supply deemed by subsection (1) to have been made by the registered operator, shall be the full cost to such registered operator of acquiring such trade, part, goods or services, as the case may be, reduced by an amount which bears to the amount of such full cost the same ratio as the intended use or application of the trade, part, goods or services in the course of making taxable supplies bears to the total intended use or application of the trade, part, goods or services:

Provided that—

(a) the cost to such registered operator of acquiring such trade, part, goods or services may be reduced by any amount which represents an appropriate allocation of such full cost to the acquisition of any goods or services which form part of such trade or part of a trade and in respect of the acquisition of which by the registered operator a deduction of input tax would be denied by section subsection (2) of section *sixteen*; or

(b) where such trade, part, goods or services were acquired—

(i) by means of a supply made by a registered operator for no consideration or for a consideration in money which is less than the open market value of the supply; and

(ii) in circumstances where the supplier and the recipient are connected persons;

the cost of such trade, part, goods or services shall be deemed to be the open market value of the supply of such trade, part, goods or services.

(3) Notwithstanding anything in this Act, the supply deemed by subsection (1) to have been made by the registered operator shall be deemed to be made in the tax period in which the supply of the trade or part of a trade is made.

(4) For the purposes of this section and subsection (9) of section *nine* and subsections (4) and (5) of section *seventeen*, the cost to the registered operator of any goods or services acquired by a registered operator in the circumstances contemplated in subsection (1) shall be deemed to be an amount equal to the aggregate of an amount which represents an appropriate allocation of the full cost to the registered operator of the trade or part of a trade to those specific goods or services and an amount determined by applying the rate of tax applicable \*at the time of supply contemplated in subsection (3) to the amount of such appropriate allocation.

[\**Jinda, B & M v Viewbit Investments (Pvt) Ltd & Registrar of Deeds 17-HH-014*]

## 19 Goods or services acquired before incorporation

Any company, being a registered operator, shall, where any amount of tax has been charged in terms of section *six* in relation to the acquisition of goods or services for or on behalf of that company or in connection with the incorporation of that company, and those goods or services were acquired prior to incorporation by a person who—

(a) was reimbursed by the company for the whole amount of the consideration paid for the goods or services; and

(b) acquired those goods or services for the purpose of a trade to be carried on by the company and has not used those goods or services for any purpose other than carrying on such trade;

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be deemed to be the recipient of the goods or services and to have paid the tax so charged as if the supply or the payment of the tax had been made during the tax period in which the reimbursement referred to in paragraph (a) is made:

Provided that this section shall **not apply** in relation to any goods or services where—

(a) the supply of those goods or services by that person to the company is a taxable supply, or is a supply of second-hand goods not being a taxable supply; or

(b) those goods or services were so acquired **more than 6 months** prior to the date of incorporation of the company; or

(c) the company does not hold sufficient records to establish the particulars relating to the deduction to be made.

## 20 Tax invoices

(1) Except as otherwise provided in this section, a supplier, being a registered operator, making a taxable supply, other than a supply contemplated in subsection (9) of section seven, to a recipient shall provide that recipient **within 30 days** from the date of supply with a tax invoice containing such particulars as are specified in this section:

[amended by the Finance Act 10 of 2003]

Provided that—

(a) it shall not be lawful to issue more than 1 tax invoice for each taxable supply;

(b) if a registered operator claims to have **lost** the original tax invoice, the supplier or the recipient, as the case may be, may provide a copy clearly marked "copy".

(2) Where a recipient, being a registered operator, creates a document containing the particulars specified in this section and purporting to be a tax invoice in respect of a taxable supply of goods or services made to the recipient by a supplier, being a registered operator, that document shall be deemed to be a tax invoice provided by the supplier under subsection (1) of this section where—

(a) the Commissioner has granted prior approval for the issue of such documents by a recipient or recipients of a specified class in relation to the taxable supplies or taxable supplies of a specified category to which the documents relate; and

(b) the supplier and the recipient agree that the supplier shall not issue a tax invoice in

respect of any taxable supply to which this subsection applies; and

(c) such document is provided to the supplier and a copy thereof is retained by the recipient:

Provided that where a tax invoice is issued in accordance with this subsection, any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of this Act.

(3) Where a supply of goods is **deemed** by subsection (9) of section seven to be made and both the recipient and the supplier in relation to that supply are registered operators, the recipient shall, **within 30 days** after the day on which such supply is deemed by subsection (9) of section seven to be made, create and furnish to the supplier a document which contains the particulars specified in this section, and such document shall for the purposes of this Act be deemed to be a tax invoice provided by the supplier under subsection (1) of this section.

(4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice shall contain the following particulars—

(a) the words "*Fiscal Tax Invoice*" in a prominent place;

[Para (s) substituted by Act 4 of 2012 w.e.f. 17<sup>th</sup> September, 2012; amended by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2022.]

(b) the name, address and registration number of the supplier;

(c) the name and address of the recipient and, if the recipient is a registered operator, the registration number of the **recipient**;

[Amended by Act 29 of 2004 with effect from the 1<sup>st</sup> January, 2005.]

(d) an individual serialised number and the date upon which the tax invoice is issued;

(e) a description of the goods or services supplied;

[*IAB Company v Zimra* 22-HH-032]

(f) the quantity or volume of the goods or services supplied;

(g) either—

(i) the value of the supply, the amount of tax charged and the consideration for the supply; or

(ii) where the amount of tax charged is calculated by applying the **tax fraction** to the

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consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged.

(5) Notwithstanding any other provision of this Act, a supplier shall not be required to provide a tax invoice if the total consideration for a supply is in money and does **not exceed zw\$ 5 000 or US\$10 or the prescribed amount**.

[Money increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021; increased by Finance Act 8/2022 to **zw\$ 25 million** w.e.f. 24th October, 2022.]

(6) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies, and that it would be impractical to require that a full tax invoice be issued in terms of this section, the Commissioner may, subject to such conditions as he may consider necessary, direct that—

(a) any 1 or more of the particulars specified in subsection (4) shall not be contained in a tax invoice; or

(b) a tax invoice is not required to be issued.

(7) Notwithstanding anything in this section, where a supplier makes a supply, **not being a taxable supply**, of **second-hand goods** or of goods as contemplated in subsection (9) of section seven, to a recipient, being a registered operator, the recipient shall maintain sufficient records to enable the following particulars to be ascertained—

(a) the name and address of the supplier, and where the supplier is—

(i) a natural person, his identity number; or  
(ii) not a natural person, the name and identity number of the natural person representing the supplier in respect of the supply and any legally allocated registration number of the supplier:

Provided that the recipient—

A. shall verify such name and identity number of any such natural person with reference to his identity document, including any duplicate identity document, issued in terms of section 7 of the National Registration Act [Chapter 10:17], and, where the value of the supply is **zw\$5 000 or US\$ 10 (or the prescribed amount)** or more, retain a photocopy of such identity document; or

[Value increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by section 56 of Finance Act 7/2021 w.e.f. 31 December, 2021; increased by Finance Act 8/2022 w.e.f. 24th October, 2022.]

B. shall verify such name and registration number of any supplier, other than a natural person, with reference to its business letterhead or other similar document and, where the value of the supply is **\*zw\$ 5 000 (or the prescribed amount)** or more, retain a photocopy of such name and registration number appearing on such letterhead or document;

[Query whether the \*value was increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by Finance Act 8/2022 to w.e.f. 24th October, 2022? - Editor.]

and

(b) the date upon which the second-hand goods were acquired or the goods were repossessed, as the case may be;

(c) a description of the goods;

(d) the quantity or volume of the goods;

(e) the consideration for the supply:

Provided that this subsection shall not require that recipient to keep such records where the total consideration for that supply is in money and does not exceed zw\$100 or the **prescribed amount**.

## 20A Use of tax invoices generated before 1/1/22 for purposes of section 15

Value added tax invoices that were generated before the 31st December, 2021 (inclusive), may be used to claim **input tax** for the purpose of section 15 (“Calculation of tax payable”) of this Act **no later than the 31st March, 2022 and the 12 months period mentioned in subsection (2) of that section 15 shall not apply to tax invoices generated before the 31st December 2021.**

[Additional Section inserted by section 26 of Finance Act 7/2021 gazetted on the 31 December, 2021: which the **Editor** has taken the liberty of inserting here for ease of reference.]

## 21 Credit and debit notes

(1) This section shall apply where, in relation to the supply of goods or services by any registered operator—

- (a) that supply has been cancelled; or
- (b) the nature of that supply has been fundamentally varied or altered; or
- (c) the previously agreed consideration for that supply has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason; or
- (d) the goods or services or part of the goods or services supplied have been returned to the supplier, including the return to a registered operator of a returnable container, the registered operator in such case being deemed for the purposes of this Act to have made the supply of the container in respect of which the deposit was charged, whether the supply was made by him or any other person;

and the supplier has—

(i) provided a tax invoice in relation to that supply and the amount shown therein as tax charged on that supply is incorrect in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or more of the above-mentioned events; or

(ii) furnished a return in relation to the tax period in respect of which output tax on that supply is attributable, and has accounted for an incorrect amount of output tax on that supply in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or more of the above mentioned events.

(2) Where a supplier has accounted for an incorrect amount of output tax as contemplated in subsection (1), that supplier shall make an adjustment in calculating the tax payable by the supplier in the return for the tax period during which it has become apparent that the output tax is incorrect, and if—

(a) the output tax properly chargeable in relation to that supply exceeds the output tax actually accounted for by the supplier, the amount of that excess shall be deemed to be tax charged by that supplier in relation to a taxable supply attributable to the tax period in which the adjustment is to be made, and shall not be attributable to any prior tax period; or

(b) the output tax actually accounted for exceeds the output tax properly chargeable in relation to that supply, that supplier shall either make a deduction in terms of subsection (3) of

section *fifteen*, in respect of the amount of that excess, such amount being deemed for the purposes of that section to be input tax, or reduce the amount of output tax attributable to the said tax period in terms of subsection (4) of section *fifteen*, by the amount of that excess:

Provided that the said deduction shall not be made where the excess tax has been borne by a recipient of goods or services supplied by the supplier and the recipient is not a registered operator, unless the amount of the excess tax has been repaid by the supplier to the recipient, whether in cash or by way of a credit against any amount owing to the supplier by the recipient.

(3) Subject to this section, where a tax invoice has been provided as contemplated in subparagraph (i) of paragraph (d) of subsection (1), and—

(a) the amount shown as tax charged in that tax invoice exceeds the actual tax charged in respect of the supply concerned, the supplier shall provide the recipient with a credit note, containing the following particulars—

(i) the words “*credit note*” in a prominent place;

(ii) the name, address and registration number of the registered operator;

(iii) the name and address of the recipient, except where the credit note relates to a supply in respect of which a tax invoice contemplated in subsection (4) of section *twenty*, was issued;

(iv) the date on which the credit note was issued;

(v) either—

A. the amount by which the value of the said supply shown on the tax invoice has been reduced and the amount of the excess tax; or

B. where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been reduced and either the amount of the excess tax or a statement that the reduction includes an amount of tax and the rate of the tax included;

(vi) a brief explanation of the circumstances giving rise to the issuing of the credit note;

(vii) information sufficient to identify the transaction to which the credit note refers;

(b) the actual tax charged in respect of the supply concerned exceeds the tax shown in the tax invoice as charged, the supplier shall

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provide the recipient with a debit note, containing the following particulars—

- (i) the words “debit note” in a prominent place;
- (ii) the name, address and registration number of the registered operator;
- (iii) the name and address of the recipient, except where the debit note relates to a supply in respect of which a tax invoice contemplated in subsection (4) of section *twenty-three*, was issued;
- (iv) the date on which the debit note was issued;
- (v) either—

A. the amount by which the value of the said supply shown on the tax invoice has been increased and the amount of the additional tax; or

B. where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been increased and either the amount of the additional tax or a statement that the increase includes an amount of tax and the rate of the tax included;

(vi) a brief explanation of the circumstances giving rise to the issuing of the debit note;

(vii) information sufficient to identify the transaction to which the debit note refers:

Provided that—

A. it shall not be lawful to issue more than one credit note or debit note for the amount of the excess;

B. if any registered operator claims to have lost the original credit note or debit note, the supplier or recipient, as the case may be, may provide a copy clearly marked “copy”;

C. a supplier shall not be required to provide a recipient with a credit note contemplated in paragraph (a) of this subsection in any case where and to the extent that the amount of the excess referred to in that paragraph arises as a result of, the recipient taking up a prompt payment discount offered by the supplier, if the terms of the prompt payment discount offer are clearly stated on the face of the tax invoice.

(4) Where a recipient, being a registered operator, creates a document containing the particulars specified in this section and purporting to be a credit note or a debit note in respect of a supply of goods or services made to the recipient by a supplier, being a registered

operator, the document shall be deemed to be a credit note or, as the case may be, a debit note provided by the supplier under subsection (3) where—

(a) the Commissioner has granted prior approval for the issue of such documents by a recipient or recipients of a specified class in relation to the supplies or supplies of a specified category to which the documents relate; and

(b) the supplier and the recipient agree that the supplier shall not issue a credit note or, as the case may be, a debit note in respect of any supply to which this subsection applies; and

(c) a copy of any such document is provided to the supplier and another copy is retained by the recipient:

Provided that—

(i) where a credit note is issued in accordance with this subsection, any credit note issued by the supplier in respect of that supply shall be deemed not to be a credit note for the purposes of this Act;

(ii) where a debit note is issued in accordance with this subsection, any debit note issued by the supplier in respect of that supply shall be deemed not to be a debit note for the purposes of this Act.

(5) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies and that it would be impractical to require that a full credit note or debit note be issued in terms of this section, the Commissioner may, subject to any conditions that the Commissioner may consider necessary, direct—

(a) that any one or more of the particulars specified in paragraph (a) or, as the case may be, paragraph (b) of subsection (3) shall not be contained in a credit note or, as the case may be, a debit note; or

(b) that a credit note or, as the case may be, a debit note is not required to be issued.

(6) Where any recipient, being a registered operator, has been issued with a credit note in terms of paragraph (a) of subsection (3), or has written or other notice or otherwise knows that any tax invoice which the registered operator holds is incorrect as a result of any one or more of the events specified in any of paragraphs (a), (b), (c) or (d) of subsection (1) and has made a deduction of any amount of input tax in any tax period in respect of the supply of goods or services to which the credit note or that notice

or other knowledge, as the case may be, relates, either the amount of the excess referred to in paragraph (a) of subsection (3) shall be deemed to be tax charged in relation to a taxable supply made by the recipient attributable to the tax period in which the credit note was issued, or that notice or, as the case may be, other knowledge was received, or the amount of input tax deducted in terms of subsection (3) of section *fifteen* in the last-mentioned tax period shall be reduced by the amount of the said excess, to the extent that the input tax deducted in the first-mentioned tax period exceeds the output tax properly charged.

[NRM (Pvt) Ltd & 2 Ors v ZIMRA 19-HH-566]

(7) Where any recipient, being a registered operator, has been issued with a debit note in terms of paragraph (b) of subsection (3) and has made a deduction of any amount of input tax in any tax period in respect of the supply of goods or services to which that debit note relates, the recipient may, subject to section *sixteen*, make a deduction of input tax in terms of subsection (3) of section *fifteen* in respect of the amount of the excess referred to in paragraph (b) of subsection (3) in the tax period in which the debit note is issued, to the extent that the output tax properly charged exceeds the input tax deducted.

## 22 Irrecoverable debts

(1) Where a registered operator—

- (a) has made a taxable supply for consideration in money; and
- (b) has furnished a return in respect of the tax period for which the output tax on the supply was payable and has properly accounted for the output tax on that supply as required under this Act; and
- (c) has written off so much of the said consideration as has become irrecoverable;

the registered operator may make a deduction in terms of subsection (3) of section *fifteen*, of that portion of the amount of tax charged in relation to that supply as bears to the full amount of such tax the same ratio as the amount of consideration so written off as irrecoverable bears to the total consideration for the supply, the deduction so made being deemed for the purposes of the said section to be input tax:

Provided that—

- (i) where tax charged in respect of a supply of goods under an instalment credit agreement has become irrecoverable, any deduction in

terms of subsection (3) of section *fifteen* as provided for in this section, shall be restricted to the tax content of the amount which has become irrecoverable in respect of the cash value of such supply, as applicable in respect of that agreement in terms of subsection (6) of section *nine*;

(ii) the amount which has become irrecoverable in respect of such cash value shall be deemed to be an amount equal to the balance of the cash value remaining after deducting therefrom so much of the sum of the payments made by the debtor in terms of the said agreement as, on the basis of an apportionment in accordance with the rights and obligations of the parties to the said instalment credit agreement, may properly be regarded as having been made in respect of the cash value;

(iii) the said tax content shall be an amount calculated by applying the tax fraction, as applicable at the time the supply under the said instalment credit agreement was in terms of in terms of paragraph (c) of subsection (3) of section *eight* deemed to have taken place, to the amount deemed as aforesaid to be irrecoverable in respect of such cash value;

(iv) a registered operator who has transferred an account receivable at face value on a—

A. non-recourse basis to any other person, shall not make any deduction in respect of such transfer in terms of this subsection; or

B. recourse basis to any other person, may make a deduction in terms of this subsection only when such account is receivable and is transferred back to him and he has written off so much of the consideration as has become irrecoverable;

(v) the deduction provided for in this subsection shall not be made in terms of subsection (3) of section *fifteen* in respect of any amount which has become irrecoverable in respect of an instalment credit agreement if the registered operator has repossessed the goods supplied in terms of that agreement.

(2) Where a registered operator—

- (a) has made a taxable supply for consideration in money; and

(b) has furnished a return in respect of the tax period for which the output tax on the supply was payable at the rate of tax referred to in subsection (1) of section *six*, and has properly accounted for the output tax on that supply as required in terms of this Act; and

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(c) has transferred the account receivable relating to such taxable supply at face value to another registered operator, hereinafter referred to as "*the recipient*", on a non-recourse basis and any amount of the face value, excluding any amount of finance charges or collection costs, of such account receivable has been written off as irrecoverable by the recipient;

the recipient may make a deduction in terms of subsection (3) of section *fifteen*, of an amount equal to the tax fraction, being the tax fraction applicable at the time such taxable supply is deemed to have been made, of such face value, limited to the amount paid by the recipient in respect of such face value, written off by him, the deduction so made being deemed for the purposes of the said section to be input tax.

(3) Where any amount in respect of which a deduction has been made in accordance with subsection (1) is at any time wholly or partly recovered by the registered operator, or becomes recoverable by him by virtue of the reassignment to him of the underlying debt, that portion of the amount of such deduction as bears to the full amount of such deduction the same ratio as the amount of the irrecoverable debt recovered or reassigned bears to the debt written off shall be deemed to be tax charged in relation to a taxable supply made during the tax period in which the debt is wholly or partly recovered or assigned to such registered operator.

(4) Where a registered operator who is required to account for tax payable on an invoice basis in terms of section *fourteen*—

(a) has made a deduction of input tax in terms of subsection (3) of section *fifteen* in respect of a taxable supply of goods or services made to him; and

(b) has, **within a period of 12 months** after the expiry of the tax period within which such deduction was made, not paid the full consideration in respect of such supply;

an amount equal to the **tax fraction**, as applicable at the time of such deduction, of that portion of the consideration which has not been paid shall be deemed to be tax charged in respect of a taxable supply made in the next following tax period after the **expiry of the period of 12 months**:

Provided that the period of 12 months shall, if any contract in writing in terms of which such supply was made provides for the payment of consideration or any portion thereof to take

place after the expiry of the tax period within which such deduction was made, in respect of such consideration or portion be calculated as from the end of the month within which such consideration or portion was payable in terms of that contract.

(5) If a registered operator who has accounted for tax payable in accordance with subsection (4) at any time thereafter pays any portion of the consideration in respect of the supply in question, he may in terms of subsection (3) of section *fifteen* make a deduction of input tax of an amount equal to the tax fraction, as applicable at the time of the deduction contemplated in paragraph (a) of subsection (4), of that portion of the consideration so paid.

## PART IV REGISTRATION

### 23 Registration of persons making supplies in the course of trades

(1) Every person who, on or after the fixed date, carries on any trade and is not registered, becomes liable to be registered—

[see the **Moratorium** in the section below marked # - Editor

*Afritrade International Limited v Zimra 21-SC-003]*

(a) at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on of business, has exceeded **zw\$4 800 000** or US\$ 40 000 or the\* **prescribed amount**;

[**Threshold** increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021; **decreased** by Finance Act 8/2022 w.e.f. 24th October, 2022; \* Editor's Note- Reference the threshold prescribed in the Fourth Schedule of the Value Added Tax (General) Regulations **SI 273/03**.]

(b) at the commencement of any month where there are reasonable grounds for believing that the total value of the taxable supplies to be made by that person in the period of 12 months reckoned from the commencement of the said month will exceed the above mentioned amount:

[*S.T (Pvt) Ltd v Zimra 16-HH-696*]

Provided that —

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[proviso substituted by the Finance Act 8/2015 gazetted on the 13<sup>th</sup> November w.e.f. 1st September, 2015]

(a) the total value of the taxable supplies of the registered operator within the period of 12 months referred to in subparagraph (a) or the period of 12 months referred to in subparagraph (b) shall not be deemed to have exceeded or be likely to exceed the amount of zw\$ 500 000 or \* the **prescribed amount**, where the Commissioner is satisfied that the said total value will exceed or is likely to exceed such amount solely as a consequence of—

(i) any cessation of, or any substantial and permanent reduction in the size or scale of, any trade carried on by that person; or

(ii) the replacement of any plant or other capital asset used in any trade carried on by that person; or

(iii) abnormal circumstances of a temporary nature;

(b) in calculating the total value of the taxable supplies of a **clearing agent**, it shall be deemed ( notwithstanding anything to the contrary ) that, on every bill of entry in the preceding period of 12 months the clearing agent charged a clearance fee of **at least US\$ 50** ( or other prescribed amount ).

(2) Every person who, in terms of subsection (1) or section **fifty-two**, becomes liable to be registered shall **not later than 30 days** after becoming so liable apply to the Commissioner for registration in such application form as may be prescribed or as the Commissioner may direct and provide the Commissioner with such further particulars and any documentation as the Commissioner may require in such application form for the purpose of registering that person:

[ *Afritrade International Limited v Zimra 21-SC-003* ]

Provided that where—

(a) a person who applies for registration under this subsection has not provided all particulars and documentation as required by the Commissioner, that person shall be deemed not to have applied for registration until he has provided all such particulars and documentation to the Commissioner;

(b) such person is not a resident of Zimbabwe, such person shall be deemed not to have applied for registration until he has—

(i) appointed a representative registered operator as contemplated in paragraph (f) of subsection (1) of section **forty-seven** in Zimbabwe and furnished the Commissioner with the particulars of such representative registered operator;

(ii) opened a banking account with any bank, building society or other similar institution for the purposes of his trade carried on in Zimbabwe and furnished the Commissioner with the particulars of such banking account.

(3) Notwithstanding subsections (1) and (2), every person who satisfies the Commissioner that, on or after the fixed date—

(a) that person is carrying on any trade; or

(b) that person intends to carry on any trade from a specified date;

may apply to the Commissioner in the prescribed form for registration under this Act and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person.

Provided that any person holding a special mining lease in terms of the Mines and Minerals Act [Chapter 21:05] who commences development for mining purposes in the year of assessment for income tax purposes beginning on the 1st January, 2020, shall be deemed for the purpose of this subsection to qualify for registration under this Act with effect from the 1st January, 2020.

[Proviso inserted by Act 10 of 2020 w.e.f. 1<sup>st</sup> January, 2021.]

(4) Where any person has—

(a) applied for registration in accordance with subsection (2) or (3) and the Commissioner is satisfied that that person is eligible to be registered in terms of this Act, that person shall be a registered operator for the purposes of this Act with effect from such date as the Commissioner may determine;

[retrospectively *Ice Class Properties (Pvt) Ltd v NMB Bank and ZIMRA* 19-HH-028 *Afritrade International Limited v Zimra 21-SC-003* ]

or

(b) not applied for registration in terms of subsection (2) and the Commissioner is satisfied that that person is liable to be registered in terms of this Act, that person shall be a registered operator for the purposes of this Act with effect from the date on which that person first became liable to be registered in terms of this Act:

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[GTO Association v The Commissioner General of ZIMRA 19-HH-464]

Provided that the Commissioner may, having regard to the circumstances of the case, determine that person to be a registered operator **from such later date** as the Commissioner may consider equitable.

[S.T (Pvt) Ltd v Zimra 16-HH-696  
Afritrade International Limited v Zimra 21-SC-003  
Triangle Ltd & Hippo Valley Estates v ZIMRA & 10  
ors – on appeal 21-SC-082]

(5) Notwithstanding anything to the contrary in this Act, where any trade is carried on by any association not for gain in branches or divisions, or separate trades are carried on by that association, that association may apply in writing to the Commissioner for any such branch, division or separate trade to be deemed to be a separate person for the purposes of this section, and if every such branch, division or separate trade maintains an independent system of accounting and can be separately identified by reference to the nature of the activities carried on or the location of that branch, division or separate trade, every such branch, division or separate trade shall be deemed to be a separate person, and not a part of the association, and, where any such branch, division or separate trade is deemed to be a separate person under this subsection, any trade carried on by that branch or division or any separate trade carried on by the association shall, to that extent, be deemed not to be carried on by the association concerned.

(6) The provisions of this Act relating to the determination of the value of any supply of goods or services, whether such supply is made before or on or after the fixed date, shall apply for the purposes of this section, but no regard shall be had to any tax charged in respect of any such supply:

Provided that any supply of services contemplated in terms of paragraph (n) of subsection (2) of section ten shall for the purposes of this section be deemed not to be a taxable supply.

(7) Where the Commissioner is satisfied that any person who has applied for registration in terms of subsection (3) is not eligible to be registered in terms of this Act or should not be registered by reason of the fact that such person—

- (a) has no fixed place of abode or business; or
- (b) does not keep proper accounting records relating to any trade carried on by him; or

(c) has not opened a banking account with any bank, building society or other similar institution for the purposes of any trade carried on by him; or

(d) has previously been registered as a registered operator in respect of any trade, whether in terms of this Act or in terms of the repealed Act, but failed to perform his duties under either of the said Acts in relation to such trade;

the Commissioner may refuse to register the said person as a registered operator in terms of this Act and shall give written notice to that person of such refusal.

## # Moratorium on punitive application of section 23 of Chapter 23:12 to certain persons required to register thereunder

[This section appears as **section 27 of the Finance Act 2 of 2017** gazetted on the 23<sup>rd</sup> March, 2017. It is inserted here for ease of reference to section 23 above-Editor]

(1) Subject to subsection (2), with effect from the 1st January, 2017, and for a period of 6 months thereafter **ending on the 30th June, 2017**, any person carrying on any trade who is liable to be registered in terms of section **twenty-three** ("Registration of persons making supplies in the course of trades") of the Value Added Tax Act [Chapter 23:12] but who failed to apply timeously for registration in terms of that section before the 1st January, 2017, **shall not be subject to any penalties for failure to do so**, including the charging of tax deemed to be payable from the date when the Commissioner deems the person to have become liable for registration .

(2) The moratorium referred to in subsection (1) **applies only to persons** carrying on any trade—

(a) whose turnover before the date of registration was or is deemed to be **between US\$60 000 and US\$ 240 000 per annum**; and

(b) who voluntarily apply for registration within the period specified in subsection (1).

## 24 Cancellation of registration

(1) Subject to subsection (2), every registered operator shall cease to be liable to be registered where the Commissioner is satisfied that the total value of the registered operator's taxable supplies in the period of 12 months

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commencing at the beginning of any tax period of the registered operator will be not more than the amounts referred to in subsection (1) of section *twenty-three*.

(2) Every registered operator who wishes to have his registration cancelled in the circumstances contemplated in subsection (1), may request the Commissioner in writing to cancel his registration, and if the Commissioner is satisfied as contemplated in subsection (1), the Commissioner shall cancel the registered operator's registration with effect from the last day of the tax period during which the Commissioner was so satisfied, or from such other date as may be determined by the Commissioner, and shall notify the registered operator of the date on which the cancellation of the registration takes effect.

(3) Every registered operator who ceases to carry on all trades shall notify the Commissioner of that fact **within 21 days** of the date of such cessation and the Commissioner shall cancel the registration of such registered operator with effect from the last day of the tax period during which all such trades ceased, or from such other date as may be determined by the Commissioner:

Provided that the Commissioner shall not at any time cancel the registration of any such registered operator if there are reasonable grounds for believing that the registered operator will carry on any trade at any time **within 12 months** from the date of such cessation.

(4) Any notification by a registered operator in terms of subsection (3) shall be made in writing to the Commissioner and shall state the date upon which that registered operator ceased to carry on all trades and whether or not that registered operator intends to carry on any trade **within 12 months** from that date.

(5) Where the Commissioner is satisfied that a registered operator is not carrying on any trade the Commissioner may cancel such registered operator's registration with effect from the last day of the tax period during which the Commissioner is so satisfied, or from such other date as may be determined by the Commissioner.

(6) Where any person has been registered as a registered operator in consequence of an application made by him under subsection (3) of section *twenty-three* and subsequent to the registration of that person as a registered operator it appears to the Commissioner that such person's registration should be cancelled

by reason of any of the circumstances referred to in subsection (7) of section *twenty-three*, the Commissioner may cancel such person's registration with effect from a date determined by the Commissioner:

Provided that where such person lodges an objection against the Commissioner's decision under this subsection the cancellation of that person's registration shall not take effect until such time as the Commissioner's decision becomes final and conclusive.

(7) The Commissioner shall give written notice to the person concerned of his decision to cancel such person's registration in terms of this section or of his refusal to cancel such registration.

## 25 Registered operator to notify change of status

Subject to this Act, every registered operator shall **within 21 days** and in the prescribed form notify the Commissioner in writing of—

(a) any change in the name, address, constitution or nature of the principal trade or trades of that registered operator;

(b) any change of address at or from which, or the name in which, any trade is carried on by that registered operator;

(c) any change whereby that registered operator ceases to satisfy the circumstances contemplated in the proviso to subsection (2) of section *fourteen*;

(d) any change whereby paragraph (a) of subsection (5) of section *twenty-seven* becomes applicable in the case of that registered operator:

Provided that this section shall not apply to the notification of any changes in the ownership of any company.

## 26 Liabilities not affected by person ceasing to be a registered operator

The obligations and liabilities under this Act of any person in respect of anything done, or omitted to be done, by that person while that person is a registered operator shall not be affected by the fact that that person ceases to be a registered operator, or by the fact that, being registered as a registered operator, the Commissioner cancels that person's registration as a registered operator.

## PART V RETURNS, PAYMENTS AND ASSESSMENTS

### 27 Tax period

(1) For the purposes of this section—

**“Category A”** means the category of registered operators whose tax periods are periods of **2** months ending on the last day of the months of January, March, May, July, September and November of the calendar year;

**“Category B”** means the category of registered operators whose tax periods are periods of **2** months ending on the last day of the months of February, April, June, August, October and December of the calendar year;

**“Category C”** means the category of registered operators whose tax periods are periods of **1** month ending on the last day of each of the 12 months of the calendar year;

**“Category D”** means the category of registered operators who have made written applications for tax periods other than those of Category A, B or C, and whose tax periods end on the last day of such other months as the Commissioner may approve.

(2) For the purposes of paragraph (a) of subsection (5) and paragraph (c) of subsection (6)—

(a) any provision of this Act relating to the determination of the value of any supply of goods or services, whether such supply is made before or on or after the fixed date, shall apply for the purposes of this paragraph, but no regard shall be had to any tax charged in respect of such supply; and

(b) the total value of the taxable supplies of a registered operator within any period of 12 months referred to in paragraph (a) of subsection (5) and paragraph (c) of subsection (6) shall not be deemed to have exceeded or be likely to exceed **\*zw\$110 million or US\$ 240 00** or the **prescribed amount** or where that total value exceeds or is likely to exceed that amount solely as a consequence of—

[Threshold increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021; increased by Finance Act 8/2022 w.e.f. 24th October, 2022.]

(i) any cessation of, or any substantial or permanent reduction in the size or scale of, any trade carried on by the registered operator; or

(ii) the replacement of any plant or other capital asset used in any trade carried on by the registered operator; or

(iii) abnormal circumstances of a temporary nature.

(3) Every registered operator, not being a registered operator who falls within Category C or D as contemplated in subsection (5) or (6), shall fall within Category A or Category B.

(4) The Commissioner—

(a) shall determine whether such registered operator falls within **Category A** or **Category B** and notify the registered operator accordingly:

Provided that the determinations made by the Commissioner, in terms of this subsection, shall be made so as to ensure that approximately equal numbers of registered operators fall within Category A and Category B;

(b) may from time to time direct that any registered operator falling within Category A shall, with effect from the commencement of a future period, fall within Category B, or vice versa.

(5) A registered operator shall fall within **Category C** if—

(a) the total value of the taxable supplies of the registered operator, including the taxable supplies of any branches, divisions or separate trades of the registered operator registered as separate registered operators under subsection (2) of section **five-one**—

(i) has in the period of 12 months ending on the last day of any month of the calendar year exceeded **zw\$110 million** or the \* prescribed amount;

[Threshold increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by Finance Act 8/2022 w.e.f. 24th October, 2022.]

**Editor’s Note** :Compare the threshold prescribed in the Fourth Schedule of the Value Added Tax(General) Regulations **SI 273/2003**.]

or

(ii) is likely to exceed that amount in the period of 12 months beginning on the first day of any such month; or

(b) the registered operator has applied in writing for the tax periods in his case to be on a monthly basis; or

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(c) the registered operator has repeatedly made default in performing any of his obligations in terms of this Act;

and the Commissioner has directed that, with effect from the fixed date or such later date as may be appropriate, the registered operator shall fall within Category **C**:

Provided that a registered operator falling within Category **C** shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if the registered operator has applied in writing to be placed within Category **A**, **B** or **D** and the Commissioner is satisfied that by reason of a change in the registered operator's circumstances he satisfies the requirements of this section for placement within Category **A**, **B** or **D**.

(6) A registered operator shall fall within Category **D** if—

(a) the registered operator's trade consists solely of agricultural, pastoral or other farming activities or the registered operator is a branch, division or separate trade which is deemed by subsection (5) of section *twenty-three* to be a separate person for the purposes of that section and is as such registered under that section, or the registered operator is a branch, division or separate trade registered as a separate registered operator under subsection (2) of section *fifty-one*; and

(b) the activities of any such branch, division or separate trade consist solely of agricultural, pastoral or other farming activities and activities of that kind are not carried on in any other branch, division or separate trade of the registered operator or the association not for gain, as the case may be, by whom a written application referred to in paragraph (e) is made; and

(c) the total value of the taxable supplies of the registered operator from agricultural, pastoral or other farming activities—

(i) has in the period of 12 months ending on the last day of any month of the calendar year not exceeded **zw\$50 million or US\$ 120 000** or \* the prescribed amount;

[Threshold increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021; increased by Finance Act 8/2022 w.e.f. 24th October, 2022.

Editor's Note : \* Compare the threshold prescribed in the Fourth Schedule of the Value Added Tax(General) Regulations **SI 273/2003**.]

and

(ii) is not likely to exceed that amount in the period of 12 months commencing at the end of the period referred to in subparagraph (i);

(d) the registered operator does not fall within Category **C**; and

(e) the registered operator whose trade consists solely of agricultural, pastoral or other farming activities or the registered operator referred to in subsection (2) of section *fifty-one* or the association not for gain referred to in subsection (5) of section *twenty-three*, as the case may be, has made a written application to the Commissioner, in such form as the Commissioner may prescribe, for such first-mentioned registered operator or the branch, division or separate trade in question, as the case may be, to be placed within Category **D**;

and the Commissioner has directed that, with effect from the fixed date or such later date as may be appropriate, the registered operator shall fall within Category **D**:

Provided that a registered operator falling within **Category D** shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if written application is made by the person who made the application referred to in paragraph (e) for the registered operator to be placed within Category **A**, **B** or **C** or the Commissioner is satisfied that by reason of a change in circumstances that registered operator should be placed within Category **A**, **B** or **C**.

(7) The tax periods applicable under this Act to any registered operator shall be the tax periods applicable to the category within which the registered operator falls as contemplated in this section:

Provided that—

(a) the 1<sup>st</sup> such period shall commence on the fixed date or, where any person becomes a registered operator on a later date, such later date;

(b) any tax period ending on the last day of a month, as applicable in respect of the relevant Category, may, instead of ending on such last day, end **within 10 days** before or after such last day;

(c) the 1<sup>st</sup> day of any tax period of the registered operator subsequent to the registered operator's first tax period shall be the 1<sup>st</sup> day following the last day of the registered operator's preceding tax period.

## 28 Returns and payments of tax

(1) Every registered operator shall, within the \*period **ending on the 25<sup>th</sup> day** of the first month commencing after the end of a tax period relating to such registered operator or, where such tax period ends on or after the first day and before the last day of a month, within the period ending on such last day—

[Subsections (1) and (1a) were repealed and substituted by Act 5 of 2009 w.e.f. 1<sup>st</sup> August, 2009. The \*period was extended from 5 to 10 days by section 26 of the Finance (No.3) Act 10 of 2009 w.e.f. 1<sup>st</sup> January, 2010; again extended from 10 to 15 days by Act 3 of 2010 w.e.f. 1<sup>st</sup> September, 2010; and again extended to 20 days by Act 5 of 2010 w.e.f. 1<sup>st</sup> January, 2011; and yet again extended to the above deadline by the Finance (No.2) Act 9 of 2011 with effect from the 1<sup>st</sup> January, 2012]

(a) furnish the Commissioner with a return in the prescribed form reflecting such information as may be required for the purpose of the calculation of tax in terms of section *fifteen*; and

(b) calculate the amounts of such tax in accordance with the said section and pay the tax payable to the Commissioner or calculate the amount of any refund due to the registered operator.

(2) Every registered operator who is registered in terms of Part IV shall within the period allowed by subsection (1) of this section furnish the return referred to in that subsection in respect of each tax period relating to such registered operator, whether or not tax is payable or a refund is due in respect of such period.

[*Zimra v Packers International (Pvt) Ltd* 16-SC-028]

(3) The Commissioner may, having regard to the circumstances of any case but subject to section *thirty-eight*, extend the period within which such return is to be furnished or such tax is to be paid.

## 29 Special returns

Where goods are deemed by subsection (1) of section *seven* to be supplied in the course of a trade the person selling the goods, hereinafter referred to as “**the seller**”, whether or not the seller is a registered operator, shall, within the period of **30 days** after the date on which the sale was made—

(a) furnish the Commissioner with a return in the prescribed form reflecting—

(i) the name and address of the seller and, if registered as a registered operator, his registration number; and

(ii) the name and address of the person whose goods are sold, hereinafter referred to as “**the owner**”, and, if the owner is registered under this Act, the registration number of the owner; and

(iii) the date of the sale; and

(iv) the description and quantity of the goods sold; and

(v) the selling price of the goods and the amount of tax charged in respect of the supply of goods under the sale, being the tax leviable in respect of such supply in terms of paragraph (a) of subsection (1) of section *six*; and

(vi) such other particulars as may be required; and

(b) pay to the Commissioner the amount of tax so charged; and

(c) send or deliver to the owner a copy of the return referred to in paragraph (a),

and the seller and the owner shall exclude from any return which the seller or owner is required to furnish under section *twenty-eight* the tax charged on the supply of goods under the sale in respect of which the return is furnished under this section.

## 30 Other returns

In addition to any return required under any other provision of this Act, the Commissioner may require any person, whether or not that person is a registered operator, to furnish on his own behalf or as an agent or trustee, to the Commissioner such further or other return, in the prescribed form as and when required by the Commissioner for the purposes of this Act.

## 31 Assessments

(1) For the purposes of this section, Part III, Part VII and sections *sixty-three*, *sixty-five*, *sixty-six* and *sixty-seven*—

(a) the person referred to in paragraph (d) of subsection (3) shall be deemed to be a registered operator; and

(b) any tax represented to be charged on any supply referred to in paragraph (d) of subsection (3) or paragraph (e) of subsection (3) shall be deemed to be tax payable by the registered operator concerned and the amount thereof as assessed under this section shall be

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paid within the period allowed by the Commissioner.

(2) For the purposes of subsection (3), the person liable for the payment of any amount of tax assessable by the Commissioner shall be—

(a) the person liable for the payment of such tax in terms of section *six*; or

(b) where section *twenty-nine* is applicable—

(i) the seller referred to in that section, unless subparagraph (ii) is applicable; or

(ii) the owner referred to in that section, if the said seller holds a written statement contemplated in paragraph (b) of subsection (1) of section *seven* furnished by the said owner and that written statement is incorrect; or

(c) where paragraph (a) of subsection (3) is applicable, the person referred to in that provision; or

(d) where paragraph (e) of subsection (3) is applicable, the registered operator referred to in that provision.

(3) Where—

(a) any person fails to furnish any return as required by sections *twenty-eight*, *twenty-nine* or *thirty* or fails to furnish any declaration as required by section *thirteen*; or

(b) the Commissioner is not satisfied with any return or declaration which any person is required to furnish under a section referred to in paragraph (a); or

(c) the Commissioner has reason to believe that any person has become liable for the payment of any amount of tax but has not paid such amount; or

(d) any person, not being a registered operator, supplies goods or services and represents that tax is charged on that supply; or

(e) any registered operator supplies goods or services and such supply is not a taxable supply or such supply is a taxable supply in respect of which tax is chargeable at a rate of **zero%** and in either case that registered operator represents that tax is charged on such supply at a rate in excess of **zero%**;

the Commissioner may make an assessment of the amount of tax payable by the person liable for the payment of such amount of tax, and the amount of tax so assessed shall be paid by the person concerned to the Commissioner.

[ what is an assessment *Delta Beverages (Pvt) Ltd v ZIMRA 23-HH-577*]

(4) In making such assessment the Commissioner may estimate the amount upon which the tax is payable.

[*PIL (Pvt) Ltd v ZIMRA 17-HH-213*  
*VSL (Pvt) Ltd & 3 ors v ZIMRA 19-HH-023*  
*Linda Shoes (Pvt) Ltd v ZIMRA 21-HH-356*]

(5) The Commissioner shall give the person concerned a written notice of such assessment, stating the amount upon which tax is payable, the amount of tax payable, the amount of any additional tax payable in terms of section *sixty-six* and the tax period, if any, in relation to which the assessment is made, and—

(a) where the assessment is made on a seller referred to in subparagraph (i) of paragraph (b) of subsection (2), send a copy of that notice of assessment to the owner referred to in that subsection; or

(b) where the assessment is made on an owner referred to in subparagraph (ii) of paragraph (b) of subsection (2), send a copy of that notice of assessment to the seller referred to in that subsection.

(6) The Commissioner shall, in the notice of assessment referred to in subsection (5), give notice to the person upon whom it has been made that any objection to such assessment shall be lodged or be sent so as to reach the Commissioner **within 30 days** after the date of such notice.

[see Sections 66(2) and Section 67 - *VSL (Pvt) Ltd & 3 ors v ZIMRA 19-HH-023*]

## PART VI OBJECTIONS AND APPEALS

### 32 Objections to certain decisions or assessments

(1) Any person who is dissatisfied with—

(a) any decision given in writing by the Commissioner—

(i) in terms of subsection (7) of section *twenty-three* notifying that person of the Commissioner's refusal to register that person in terms of this Act; or

(ii) in terms of subsections (6) or (7) of section *twenty-four* notifying that person of the Commissioner's decision to cancel any registration of that person in terms of this Act or of the Commissioner's refusal to cancel such registration; or

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(iii) in terms of subsection (8) of section *forty-four* of the Commissioner's refusal to make a refund; or

(b) any assessment made upon him under sections *thirty-one*, *sixty-six* or *sixty-seven*;

[VSL (Pvt) Ltd & 3 ors v ZIMRA 19-HH-023]

[If a proper one *Linda Shoes (Pvt) Ltd v ZIMRA 21-HH-356*]

or

(c) any direction or supplementary direction made by the Commissioner and served on that person in terms of subsections (3) or (4) of section *fifty-two*;

(d) any decision of the Commissioner implementing or interpreting regulations made under section *seventy-eight* in connection with **fiscalised electronic registers**, and any assessments of amounts of tax due arising from the operation of such registers;

[para (d) inserted by Act 1/2014 w.e.f. 4<sup>th</sup> April, 2014]

may lodge an objection thereto with the Commissioner.

[While the decision to garnishee not appealable in terms of section 14 of the Fiscal Appeal Court Act *Chapter 23:05*, the imposition of a garnishee is not a bar to the raising of an objection. The garnishee order is not the substantive tax assessment, it is merely a collecting mechanism. *Zimra v Packers International (Pvt) Ltd 16-SC-028* only If a proper one *Linda Shoes (Pvt) Ltd v ZIMRA 21-HH-356* – otherwise is premature]

(2) Every objection shall be in writing and shall specify in detail the grounds upon which it is made.

(3) No objection shall be considered by the Commissioner which is not delivered at his office or posted to him in sufficient time to reach him **within 30 days** after the date on which notice of any decision or assessment against which such objection is lodged was given by the Commissioner, unless the Commissioner is satisfied that reasonable grounds exist for delay in lodging the objection:

[VSL (Pvt) Ltd & 3 ors v ZIMRA 19-HH-023]

Provided that any decision of the Commissioner in the exercise of his discretion under this subsection shall be subject to objection and appeal.

(4) After having considered the objection, the Commissioner may—

(a) alter any decision pursuant thereto;

[ZS (Pvt) Ltd v ZIMRA 20-FAC-113]]

or

(b) alter or reduce any assessment pursuant thereto; or

(c) disallow the objection;

and shall send to the person upon whom the assessment has been made or to whom the decision has been conveyed or, as the case may be, to whom the reduction has been allowed, notice of the reduction, increase, alteration or disallowance:

Provided that if the Commissioner has not notified the person who lodged the objection of his decision **within 3 months** after receiving the notice of objection or within such longer period as the Commissioner and the person may agree, the objection shall be **deemed to have been disallowed**.

[period shortened by Act 12 of 2006 w.e.f. 1<sup>st</sup> January, 2007  
Commissioner failed to respond for 6 months, so waived penalty *GTO Association v The Commissioner General of ZIMRA 19-HH-464*]

(5) Where no objection is lodged against any decision or assessment by the Commissioner as contemplated in subsection (1), or where any objection has been disallowed or withdrawn or any decision has been altered or any assessment has been altered or reduced, as the case may be, such decision or altered decision or such assessment or altered or reduced assessment, as the case may be, shall, subject to the right of appeal hereinafter provided, be final and conclusive.

## 33 Appeals to Fiscal Appeal Court

(1) An appeal against any decision or assessment of the Commissioner, as notified in terms of subsection (4) of section *thirty-two*, shall lie to the Fiscal Appeal Court in terms of the Fiscal Appeal Court Act [*Chapter 23:05*].

[VSL (Pvt) Ltd & 3 ors v ZIMRA 19-HH-023  
V v ZIMRA 19-HH-643  
ZS (Pvt) Ltd v ZIMRA 20-FAC-113]]

(2) Every appeal shall be by way of a notice in writing and shall be lodged with the Commissioner **within 30 days** after the date of the notice mentioned in subsection (4) of section *thirty-two* or, if the Commissioner has under subsection (4) of section *seventy-five* withdrawn the last-mentioned notice and sent it anew, the date of the notice so sent anew:

Provided that—

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(a) the Commissioner may, on good cause shown, condone any delay in the lodging of any such notice of appeal within the said period;

(b) any decision of the Commissioner in the exercise of his discretion under this subsection shall be subject to objection and appeal.

(3) At the hearing by the Fiscal Appeal Court of any appeal to that court—

(a) the appellant shall be **limited to the grounds of objection** stated in the notice of objection referred to in subsection (2) of section *thirty-two* unless the Commissioner agrees to the amendment of such grounds or the appellant, on good cause shown prior to or at such hearing, is given leave by the court to amend such grounds of objection within a reasonable period and on such terms as to any postponement of such hearing and costs which may result from such postponement as the court may order;

[*PIL (Pvt) Ltd v ZIMRA 17-HH-213  
NRM (Pvt) Ltd & 2 Ors v ZIMRA 19-HH-566  
MMI (Pvt) Ltd v The Commissioner General Zimra 19-HH-700  
ZS (Pvt) Ltd v ZIMRA 20-FAC-113*  
-error vitiates the proceedings of the court *Zimra v Conwal Chemicals Stationery & Hardware 22-SC-033*]

(b) the Fiscal Appeal Court may inquire into and consider the matter before it and may confirm, cancel or vary any decision of the Commissioner under appeal or make any other decision which the Commissioner was empowered to make at the time the Commissioner made the decision under appeal or, in the case of any assessment, order that assessment to be altered, reduced or confirmed or, if it thinks fit, refer such matter back to the Commissioner for further investigation and reconsideration in the light of principles laid down by the court.

## 34 Appeals against decisions of Fiscal Appeal Court

The appellant in proceedings before the Fiscal Appeal Court referred to in section *thirty-three* or the Commissioner may appeal to the Supreme Court in the manner provided in the Fiscal Appeal Court Act [*Chapter 23:05*] against any decision of the Fiscal Appeal Court.

## 35 Members of Fiscal Appeal Court not disqualified from adjudicating

A member of the Fiscal Appeal Court referred to in section *thirty-three* shall not solely on account of any liability imposed upon him under

this Act be deemed to be interested in any matter upon which he may be called upon to adjudicate thereunder.

## 36 Payment of tax pending decision on objection and appeal

[Section substituted by Finance Act 8/2022 gazetted on the 24th October, 2022.]

The obligation to pay and the right to receive and recover any tax, additional tax, penalty or interest chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any objection, appeal or pending the decision of a court of law, but if any assessment is altered on objection, appeal or in conformity with any such decision or a decision by the Commissioner to concede the objection or appeal to the Fiscal Appeal Court or such court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate (but subject to section *forty-six*) and calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received, and amounts underpaid being recoverable with penalty and interest calculated as provided in subsection of section *thirty-nine*(1).

[*Mayor Logistics (Pvt) Ltd v Zimra 14-CC-007*]

[*Zimra v Packers International (Pvt) Ltd 16-SC-028  
Trek Petroleum Pvt Ltd v Zimra 17-SC-056*]

## 37 Burden of proof

The burden of proof that any supply or importation is exempt from or not liable to any tax chargeable under this Act or is subject to tax at the rate of **zero%** or that any value upon which tax is chargeable under this Act or any amount of tax chargeable under this Act is subject to any deduction or set-off or that any amount should be deducted as input tax, shall be upon the person claiming such exemption, non-liability, rate of **zero%**, deduction or set-off, and upon the hearing of any appeal from any decision of the Commissioner, the decision shall not be reversed or altered unless it is shown by the **appellant** that the decision is wrong.

[lies on the appellant *PIL (Pvt) Ltd v ZIMRA 17-HH-213*]

[*VSL (Pvt) Ltd & 3 ors v ZIMRA 19-HH-023  
GTO Association v The Commissioner General of ZIMRA 19-HH-464  
R. Investments (Pvt) Ltd Enterprises v ZIMRA 19-HH-768*]

## PART VII PAYMENT, RECOVERY AND REFUND OF TAX

### 38 Manner in which tax shall be paid

(1) Subject to this section and sections *six* (3) and *twelve* (4) and (5), the tax payable under this Act shall be paid in full within the time allowed by section *thirteen* or section *twenty-eight* or section *twenty-nine*, whichever is applicable.

[amended by Act 6 of 2006 with effect from 1<sup>st</sup> January, 2006.]

(2) Where the Commissioner is satisfied that due to circumstances beyond the control of the person liable for the payment of the tax the amount of tax due cannot be accurately calculated within the time allowed by section *thirteen* or section *twenty-eight* or section *twenty-nine*, whichever is applicable, the Commissioner may in his discretion and subject to such conditions as he may impose, agree to accept a payment of a deposit by such person of an amount equal to the estimated liability of such person for such tax.

(3) The payment made in terms of subsection (2) shall be deemed to be a provisional payment in respect of the liability of the said person for such tax, as finally determined, and when such liability is so determined any amount paid in excess shall be refundable to such person and any amount short-paid shall be recoverable from him.

(4)

[Subsection (4) inserted by Act 6 of 2006 with effect from 1<sup>st</sup> January, 2006, and substituted by Act 3 of 2009 with effect from the 30th January, 2009. SI 142 of 2019 gazetted on 19th June, 2019, does not override an express statutory provision of an Act of Parliament contrary to its provisions, yet it entrenched the ZWL as legal tender. Accordingly this section 38 cannot be construed in a manner that—

(a) puts into question the lawfulness of the receipt by a registered operator of foreign currency in payment for goods and services supplied by the operator; or  
(b) relieves a registered operator of liability to pay in foreign currency for goods and services paid for in foreign currency that were supplied by the operator, as required by this section . : which was substituted by 21 of Finance Act 8/2022 gazetted on the 24th October, 2022 **with effect from the 22<sup>nd</sup> FEBRUARY,2019**, by the addition of “ and section 44C -Editor]

Notwithstanding section 41 and 44C of the Reserve Bank of Zimbabwe Act [Chapter 22:15] and the Exchange Control Act [Chapter 22:05], where a registered operator—

(a) receives payment of any amount of tax **in foreign currency** in respect of the supply of goods or services, that operator shall pay that amount to the Commissioner in foreign currency;

[**Travel agents** as permitted by section 3(2) of SI 142/2019 *T(Pvt) Ltd v ZIMRA 15-HH-285 Delta Beverages (Pvt) Ltd v ZIMRA 23-HH-577*]

(b) imports or is deemed in terms of section *twelve*(1) to have imported goods into Zimbabwe, that operator shall pay any tax thereon to the Commissioner in foreign currency.

[*Prosperous Days Investments v Zimra 21-HH-024*]

In this subsection “**foreign currency**” means the Euro, British pound, United States dollar, South African rand, Botswana pula or any other currency denominated under the Exchange Control (General) Order, 1996, published in SI 110 of 1996, or any other enactment that may be substituted for the same.

(4a) For the purposes of subsection (4)—

[subsection (4a) inserted by the Finance Act 1 of 2019 gazetted on the 20<sup>th</sup> February,2019 w.e.f. 1<sup>st</sup> January, 2019]

(a) if the price for the taxable supplies in question is paid for **in a foreign currency**, then the registered operator shall pay the amount of the tax to the Commissioner in that foreign currency;

(b) if the price for the taxable supplies in question is paid for in legal tender **other than** foreign currency, then the registered operator may pay the amount of the tax to the Commissioner in that legal tender or in a foreign currency.

[But see the new definitions of “**unit of a bond note**” and “**electronic currency**” and “**RTGS Dollars**” in SI 33/2019 gazetted by the President on the 22<sup>nd</sup> February 2019, now amended in **Chapter 22:15-Editor**]

(5) Where a registered operator does not receive payment of any amount of tax in respect of the supply of goods or services directly in the form of currency, whether Zimbabwean or foreign, but in the form of a coupon or any instrument or token that, in the opinion of the Commissioner, is exchangeable, whether directly or indirectly, for foreign currency, that operator shall pay an amount of tax to the

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Commissioner in foreign currency calculated on a valuation of that coupon, document or token which, in the opinion of the Commissioner, represents a fair valuation of that coupon, document or token in foreign currency.

(6) For the purposes of subsection (5) the Commissioner may, in the case of any coupon, instrument or token denominated in units of weight, volume or other measure of a specified commodity, specify from time to time by notice in the *Gazette* that a unit by weight, volume or other measure of that commodity shall be deemed to be worth a specified amount of a foreign currency.

(7) If the Commissioner has reasonable grounds to believe that a registered operator receives payment of any amount of tax in **foreign currency** in respect of the supply of goods or services, and that the registered operator—

(a) has prepared or maintained or authorised the preparation or maintenance of any false books of account or other records, or falsified or authorised the falsification of any books of account or records; or

(b) has furnished a false return or information; with the effect that payment to the Commissioner of any amount of tax in foreign currency is avoided or postponed, the Commissioner may deem that all tax received by that operator in respect of the supply of goods or services is received in foreign currency unless, in respect of any particular transaction, such operator proves to the satisfaction of the Commissioner that the tax received in respect of that transaction was received in Zimbabwean currency.

(8) The Commissioner may require that any registered operator who tenders payment of tax in a foreign currency **other than the United States dollar**, to tender instead the equivalent amount of that tax in United States dollars, being an amount obtained by applying the international cross rate of exchange of the first-mentioned currency for the United States dollar prevailing on the day the tax concerned becomes due.

(9) For the avoidance of doubt it is declared that all the provisions of this Act shall apply, with such changes as may be necessary, to the payment in foreign currency of tax in terms of subsection (4) in the same way as they apply to the payment of tax in Zimbabwean currency.

In particular, section *forty-four* ("Refunds") shall apply so that any part of tax paid in foreign

currency that is required to be refunded shall be refunded in **foreign currency**.

[Subsections (5) to (9) inserted by Act 3 of 2009 with effect from the 30th January, 2009. *Inamo Investments (Pvt) Ltd v ZIMRA 22-HH-672*]

(\*10) In subsections (4) and (4a)—

[subsection (10) - \*renumbered by the Editor because subsection (9) already exists- is inserted by the Finance Act 1 of 2019 gazetted on the 20<sup>th</sup> February, 2019 w.e.f. 1<sup>st</sup> January, 2019]

**"bond note"** means a unit of legal tender whose par value in relation to the United States dollar is backed by a guarantee extended to the Reserve Bank by one or more international financial institutions, and

**"bond coins"** shall be construed accordingly;

**"legal tender other than foreign currency"** means bond notes and coins, or money paid by means of an electronic transfer of funds through an account (other than a *nostro* foreign currency account) with a banking institution;

**"nostro foreign currency account"** means any account designated in terms of Exchange Control Directive **RT/120 of 2018**, held with a financial institution in Zimbabwe, in which money in the form of foreign currency is deposited from offshore or domestic sources.

[But see the new definitions of "**unit of a bond note**" and "**electronic currency**" and "**RTGS Dollars**" in SI 33/2019

gazetted by the President on the 22<sup>nd</sup> February 2019, now amended in **Chapter 22:15**-Editor]

## 38A Civil penalty for breach of section 38(4a)

[section inserted by the Finance Act 1 of 2019 w.e.f. 1<sup>st</sup> January, 2019]

(1) As soon as it comes to the notice of the Commissioner that a registered operator has failed to comply with section *thirty-eight*(4a), the Commissioner shall, having given the operator a prior right of reply **at least seven (7) days** before the service of the order, serve upon the operator notice of an assessment in terms of section *thirty-one* of **double** the amount of tax payable in the foreign currency concerned, which shall be payable in the foreign currency concerned (hereinafter called "**the primary Civil Penalty**"):

Provided that if the amount assessed is in a foreign currency **other than** the United States dollar, the registered operator may tender instead the equivalent amount of that tax in United States dollars, being an amount

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obtained by applying the international cross rate of exchange of the first-mentioned currency for the United States dollar prevailing on the day the tax concerned becomes due.

[But see the new definitions of “**unit of a bond note**” and “**electronic currency**” and “**RTGS Dollars**” in SI 33/2019 gazetted by the President on the 22<sup>nd</sup> February 2019, now amended in **Chapter 22:15**-Editor]

(2) A registered operator upon whom the Commissioner has served a notice of assessment in terms of subsection (1) and who fails without just cause to comply with the notice **within the first 7 days** of the period of 181 days shall, if the registered operator continues to be in default, be guilty of an offence and liable on conviction to a fine not exceeding level 10 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) The primary and secondary civil penalty shall be paid into and form part of the funds of the Consolidated Revenue Fund.

## 39 Penalty and interest for failure to pay tax when due

(1) For the purposes of this section “**month**” means any of the 12 portions into which any calendar year is divided.

(2) Where—

(a) a person who is liable for the payment of tax and is required to make such payment in the manner prescribed in subsection (1) of section **twenty-eight**, fails to pay any amount of such tax within the period for the payment of such tax specified in the said provision, he shall, in addition to such amount of tax, pay—

(i) penalty of an amount equal to the said amount of tax;

[VSL (Pvt)Ltd & 3 ors v ZIMRA 19-HH-023  
V v ZIMRA 19-HH-643  
E.J (Pvt) Ltd v ZIMRA 19-HH-528]

(ii) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated **at the prescribed rate** \*(but subject to section **forty-six**) for each month or part of a month in the period reckoned from the said first day;

**[Editor's Note : \*** See the Value Added Tax (General) Regulations SI 273/03 Schedule 5, prescribing the

**1-Rate of Interest to be paid by the Commissioner**, with effect from the 24<sup>th</sup> April, 2009;

and  
2-new **Rate of Interest to be paid IN FOREIGN CURRENCY** with effect from the 26th FEBRUARY, 2021 -SI 53/2021.]

(b) an amount of tax has in relation to any tax period of any registered operator been refunded to the registered operator in terms of subsection (1) of section **forty-four**, as read with subsection (6) of section **fifteen**, or has in relation to that period been set off against unpaid tax in terms of subsection (6) of section **forty-four**, and such amount was in whole or in part not properly refundable to the registered operator under subsection (6) of section **fifteen**, so much of such amount as was not properly so refundable shall for the purposes of subparagraph (i) of paragraph (a) be deemed to be an amount of tax required to be paid by the registered operator within the said period and for the purposes of subparagraph (ii) of paragraph (a), an amount of tax required to be paid by the registered operator during the period in which the refund was made.

(3) If any person who is liable for the payment of tax in accordance with section **twenty-nine** fails to pay any amount of such tax within the period allowed for the payment of such tax in terms of that section, he shall, in addition to such amount of tax, pay—

(a) a penalty of a prescribed amount not exceeding an amount equal to the said amount of tax; and

(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to section **forty-six**) for each month or part of a month in the period reckoned from the said first day.

**[Editor's Note : \*** See the Fifth Schedule to the Value Added Tax (General) Regulations SI 273/03 prescribing the **Rate of Interest to be paid by the Commissioner**, with effect from the 24<sup>th</sup> April, 2009.]

(4) If any person who is liable for the payment of additional tax in accordance with section **sixty-six** fails to pay any amount of such tax on or before the last business day of the month in which the last day of the period allowed for the payment of such tax in terms of that section falls, he shall, in addition to such amount of tax, pay interest on the said amount of tax, calculated **at the prescribed rate**\* (but subject to section **forty-six**) for each month or part of a month during which the said tax is not paid.

**[Editor's Note : \*** See the Fifth Schedule to the Value Added Tax (General) Regulations SI 273/03

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prescribing the new **Rate of Interest to be paid by the Commissioner**, with effect from the 24<sup>th</sup> April, 2009.]

(5) Where the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to make payment of the tax within the period for payment contemplated in paragraph (a) of subsection (2), or subsection (3) or (4)—

(a) did not, having regard to the output tax and input tax relating to the supply in respect of which interest is payable, result in any financial loss, including any loss of interest payable, to the State; or

(b) such person did not benefit financially, taking interest payable into account, by not making such payment within the said period or on the said date;

was not due to an intent to avoid or postpone liability for the payment of the tax, he may remit in whole or in part any penalty or interest payable in terms of this section.

[VSL (Pvt)Ltd & 3 ors v ZIMRA 19-HH-023  
E.J (Pvt) Ltd v ZIMRA 19-HH-528  
R (Pvt) Ltd v Zimra 19-HH-792  
G (Pvt) Ltd v Zimra 22-HH-011]

(6) For the avoidance of doubt, a person by whom no tax is found to be payable but who, being under a duty to do so, fails to comply with section *thirteen, twenty-three, twenty-five, twenty-eight, twenty-nine or thirty*, shall be liable for contravening subsection (2) of section *sixty-two*, and accordingly may agree with the Commissioner to compromise the offence as provided in section *sixty-five*.

[Compliance with section 13 included by the Finance (No.3) Act 10 of 2009 with effect from the 1<sup>st</sup> January, 2010.]

## 39A Criminal penalty for delay in paying tax

[inserted by section .. of Act /2022 gazetted on ...., 2022 w.e.f. ...., 2022 ]

(1) Any person liable for the payment of any amount of tax that is payable under this Act who—

(a) fails to pay it in full within the time allowed by section 13, or section 28 or 29 (whichever is applicable); or

(b) having satisfied the Commissioner under section 38(2) that due to circumstances beyond

the person's control the amount of tax due cannot be accurately calculated within the time allowed by section 13, 28 or 29, whichever is applicable, and having been allowed to make a payment of provisional tax, fails to make such payment within the time allowed by the Commissioner;

shall be guilty of an offence and liable on conviction to a fine not exceeding level 11 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) A court convicting a person of an offence under subsection (2) may, on the application of the prosecutor and in addition to any penalty which it may impose, do either or both of the following give summary judgment in favour of the Commissioner for the tax due from the convicted person, plus an amount equivalent to the penalty and interest thereon imposed under section 39(2) (a) and (b).

(3) On the hearing of an application referred to in subsection (2) a court shall, for the purpose of determining the amount payable under subsection (2) and the liability of the accused to pay the same, refer to the proceedings and evidence at the trial and consider such further evidence, whether oral or documentary, as may be tendered by the prosecutor and the accused.

(4) A judgment given by a court in terms of subsection (3) shall have the same force and effect and may be executed in the same manner as if the judgment had been given in a civil action instituted—

(a) in the case of the court of a regional magistrate, in the court of a magistrate other than a regional magistrate; or

(b) in the case of a court other than the court of a regional magistrate, in the first-mentioned court.

## 40 .....

[Section repealed by the Finance Act 1 of 2019 w.e.f. 20<sup>th</sup> February, 2019]

## 41 Liability for tax in respect of certain past supplies or importations

Notwithstanding anything to the contrary in this Act—

(a) no amount of tax otherwise properly chargeable and payable by any person or deductible by him under this Act, shall be recoverable by the Commissioner in respect of any past supply of goods or services or any past importation of goods if, in terms of a general

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written ruling by the Commissioner given by him previously, which had not been withdrawn by him at the time at which the said person became contractually obliged to supply or receive such goods or services, as the case may be, no tax was payable in respect of such supply or importation;

(b) no further amount of tax shall be recoverable by the Commissioner in respect of or in relation to any past supply of goods or services or any past importation of goods if, in terms of a general written ruling by the Commissioner which had not been withdrawn by him at the time of such supply or importation, the tax payable or deductible in respect of such supply or importation had been calculated and paid or had been deducted in accordance with such ruling, as the case may be;

(c) where any written decision has been given by the Commissioner—

(i) to the effect that any person is required or not required to be registered as a registered operator in terms of this Act; or

(ii) as to the taxable or non-taxable nature of any supply of goods or services by any person or of the importation of goods by any person, including any decision as to the applicability of any exemption or rate of **zero%**, or as to the deductibility or non-deductibility in terms of subsection (3) of section *fifteen* of tax in respect of the supply to any person of goods or services or the importation by any person of goods;

and such decision is subsequently withdrawn, such withdrawal shall, as respects any contractual obligation incurred by the person concerned before such withdrawal to supply or receive the goods or services concerned, not affect the liability or non-liability of that person for the payment of tax in accordance with such decision or his entitlement or otherwise to a deduction of tax, as determined in accordance with such decision, as the case may be, provided such decision was accepted by the said person and all the material facts were known to the Commissioner when the decision was given;

(d) where—

(i) any amount of tax chargeable under this Act in respect of a supply of goods or services has not been returned in any return required to be furnished under section *twenty-eight* or *twenty-nine* and in which the said amount is required to be returned;

[ZS (Pvt) Ltd v ZIMRA 20-FAC-113]]

or

(ii) excise duties are imposed in terms of the Customs Act; or

(iii) any amount of tax chargeable under this Act in respect of a supply of imported services has not been accounted for and paid as required by subsection (1) of section *thirteen*; or

(iv) any amount of tax has been incorrectly deducted in terms of paragraph (3) of section *fifteen* in any return required to be furnished under section *twenty-eight*;

and in consequence thereof an amount of tax which should have been paid to the Commissioner, or the successor postal company or other postal licensee in terms of this Act has not been paid, that amount **shall not be recoverable** by the Commissioner after the expiration of a **period of 6 years** reckoned from the date on which that amount became payable in terms of this Act, if it is shown—

[Appellants failed to take advantage of this point for assessments made **outside the 6 years** *Triangle Ltd & Hippo Valley Estates v ZIMRA & 10 ors* – on appeal 21-SC-082]

A. that the failure to pay the amount which should have been paid was not due to an intent of the person concerned or any other person under the control or acting on behalf of that person not to make payment of tax; and

B. that the person responsible for the payment of the amount which should have been paid acted in good faith and on an assumption that an exemption or a rate of **zero %** was in fact applicable in respect of the supply referred to in subparagraph (i) or subparagraph (iii) or that any such supply was not subject to tax under this Act, or that the amount of tax referred to in subparagraph (iii) was not payable, or that a deduction in respect of the amount referred to in subparagraph (iv) was in fact applicable, as the case may be; and

C. that the said assumption was based on reasonable grounds and not due to negligence on the part of the said person:

Provided that this paragraph shall not apply if the Commissioner has not later than the end of the said period issued an assessment in respect of the unpaid tax.

## 42 Evidence as to assessments

The production of any document issued by the Commissioner purporting to be a copy of or an extract from any notice of assessment shall be conclusive evidence of the making of an

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assessment, and shall, except in the case of proceedings on appeal against the assessment, be conclusive evidence that the amount and all the particulars of such assessment appearing in such document are correct.

## 43 Security for tax

(1) The Commissioner may, in the case of any registered operator who has been convicted of any offence under this Act or who has repeatedly failed to pay amounts of tax due to him or to carry out other obligations imposed upon him by this Act, by written notice to such registered operator require him, within such period as the Commissioner may allow, to furnish to or deposit with the Commissioner security for the payment of any tax, additional tax, penalty or interest which has or may become payable by the registered operator in terms of this Act.

(2) Such security shall be of such nature, for such amount and in such form as the Commissioner may direct.

(3) Where the Commissioner has directed that such security shall be in the form of a cash deposit and the registered operator fails to make such deposit within the period allowed by the Commissioner, the amount of such deposit shall be recoverable from the registered operator in terms of section *forty* as though such amount were an amount of tax due by the registered operator.

(4) Where such security is in the form of a cash deposit, the amount deposited may be set off in whole or in part by the Commissioner against any liability of the registered operator for any tax, additional tax, penalty or interest in terms of this Act, or such amount (or the balance thereof remaining after deducting any portion thereof which has been so set off) may be repaid by the Commissioner to the registered operator when the Commissioner is satisfied that the security is no longer required.

## 44 Refunds

(1) Any amount of tax which is refundable to any registered operator in terms of subsection (4) of section *fifteen* in respect of any tax period shall, to the extent that such amount has not been set off against unpaid tax in terms of subsection (6) of this section, be refunded to the registered operator by the Commissioner:

Provided that—

(a) the Commissioner shall not make a refund under this subsection unless the claim for the

refund is made **within 6 years** after the end of the said tax period; or

(b) where the amount that would be so refunded to the registered operator is determined to be **zw\$30 00** or **US\$ 60** or the **prescribed amount** or less, the amount so determined shall not be refunded in respect of the said tax period but shall be carried forward to the next succeeding tax period of the registered operator and be accounted for as provided in subsection (6) of section *fifteen*.

[Threshold increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021; increased by Finance Act 8/2022 w.e.f. 24th October, 2022.]

(2) Subject to subsection (3), where—

(a) any amount of tax, additional tax, penalty or interest paid by any person in terms of this Act to the Commissioner was in excess of the amount of tax, additional tax, penalty or interest, as the case may be, that should properly have been charged under this Act; or

(b) any amount refunded to a registered operator in terms of subsection (1) was less than the amount properly refundable under that subsection;

(c) the Commissioner shall, on application by the person concerned, refund the amount of tax, additional tax, penalty or interest paid in excess or the amount by which the amount refunded was less than the amount properly refundable, as the case may be.

(3) The Commissioner shall not make a refund under subsection (2), unless—

(a) the claim for the refund of such excess amount of tax, additional tax, penalty or interest is received by the Commissioner **within 6 years** after the date upon which payment of the amount claimed to be refundable was made:

Provided that if the Commissioner is satisfied that such payment was made in accordance with the practice generally prevailing at the said date, no refund shall be made unless the claim for any refund is received by the Commissioner **within 6 months** after that date; or

(b) the amount to be refunded is **zw\$30 00** or **US\$ 60** or \* the prescribed amount or more;

[Threshold increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021; increased by Finance Act 8/2022 w.e.f. 24th October,

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2022;

Editor's Note : \* compare the amount prescribed in the Fourth Schedule of the VAT (General) Regulations SI 273/2003.]

or

(c) the Commissioner is satisfied that any amount of output tax claimed to be refundable to a registered operator will, if such amount has been borne by any other person, in turn be refunded by the registered operator to such other person.

(4) Where the amount that would be refunded under subsection (2) is determined to be **zw\$30 000** or the prescribed amount or less, the amount so determined shall not be refunded but shall be credited to the registered operator's account and be accounted for as provided in subsection (6) of section *fifteen*.

[Threshold increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; increased by Finance Act 8/2022 w.e.f. 24th October, 2022.]

(5) Notwithstanding paragraph (b) of the proviso to subsection (1) and subsection (4) any amount determined to be refundable to a registered operator in respect of his final tax period on the cancellation of his registration as a registered operator shall be refundable to him in full.

(6) Where any registered operator—

(a) has failed to pay to the Commissioner within the period prescribed for payment any amount of tax, additional tax, penalty or interest payable by the registered operator under this Act; or

(b) owes any amount of tax, interest or penalty levied under any Act of Parliament administered on behalf of the Minister responsible for finance by the Commissioner and the registered operator is in default in respect of the payment of such amount;

the Commissioner may set off against the amounts referred to in paragraphs (a) and (b) any amount or part thereof which has become refundable to the registered operator under this section or any interest which has become payable to the registered operator in terms of section *forty-five*.

(7) Where the registered operator has failed to furnish a return for any tax period as required by this Act, the Commissioner may withhold payment of any amount refundable to the registered operator under subsection (1) until

the registered operator has furnished such return as so required.

(8) If the Commissioner refuses to make or authorise a refund in terms of this section he shall, at the request of the registered operator concerned, give the registered operator written notice of such refusal.

(9) The Commissioner may make or authorise a refund of any amount of tax which has become refundable to any person under an export incentive scheme referred to in paragraph (c) of the definition of 'exported' in section two.

[*S.T. (Pvt) Ltd v Zimra 16-HH-696*  
*AMD Services (Pvt)Ltd v Zimra 20-HH-344*]

## 45 Interest on delayed refunds

The Minister may direct that interest at the rate prescribed by regulations made in terms of section *seventy-eight* may, subject to section *forty-six*, be paid on any amount refundable in terms subsection (1) of section *forty-four* if the Commissioner fails to refund such amount within the period so prescribed.

[Editor's Note : \* See the 5<sup>th</sup> Schedule to the VAT (General) Regulations SI 273/03, prescribing the **Rate of Interest**, with effect from the 24<sup>th</sup> April, 2009. See the 1. Income Tax (**Rate of Interest**) Notice, 2010 SI 7 of 2010 2-new **Rate of Interest to be paid IN FOREIGN CURRENCY** backdated w.e.f. 1<sup>st</sup> JANUARY, 2020 - SI 53/2021.]

## 45A Refunds of tax to exempted persons

[Inserted by the Finance Act 2 of 2005 w.e.f. the 12<sup>th</sup> September, 2005.]

(1) The Commissioner may, on compliance by the person concerned with such terms and conditions as may be prescribed, refund to that person any tax paid by him or her on—

(a) such goods or services as may be prescribed which are purchased by or supplied to a person who—

(i) is not a citizen of Zimbabwe; and  
(ii) is not permanently resident in Zimbabwe; and

(iii) is a person specified in the list published in terms of section 10 of the Privileges and Immunities Act [Chapter 3:03], or is a representative or official of an international or regional organization or agency specified in a notice published in terms of section 7 of that Act;

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or

(b) such goods or services as may be prescribed which are purchased by or supplied to a prescribed person.

[Value Added Tax (**African Development Bank**) (Refunds) Regulations, 2012. SI 167/2012  
Value Added Tax (**European Commission**) (Refunds) Regulations, 2014. SI 73/2014  
Value Added Tax (**Global Fund**) (Refunds) Regulations, 2016. SI 51/2016  
Value Added Tax (**World Bank-Zimbabwe National Water Authority**) (Refunds) Regulations, 2016. SI 17/2017  
Value Added Tax (**World Bank**) (Refunds) Regulations, 2016. SI 22/2017  
Value Added Tax **China State Construction Corporation** (Private) Limited (Refunds) Regulations, 2017 SI 31/2017  
Value Added Tax (**Development Partners**) (Refunds) Regulations, 2018 SI 79/2018]

(2) Subject to this section, if the Commissioner is satisfied that any person has paid any tax which he or she was not liable to pay in terms of this Act, he or she shall authorize a refund of such tax to be made to such person.

(3) Where a refund is made in terms of subsection (2) the Commissioner may deduct from the amount to be refunded, as an administrative charge, a prescribed amount.

(4) No refund shall be granted in terms of this section unless an application therefor is received by the Commissioner **within a period of 3 years** from the date when such tax was paid.

## 46 Calculation of interest payable under this Act

Where—

- (a) any interest is payable under sections *thirty-six, thirty-nine or forty-five*;
- (b) the rate at which such interest is payable has with effect from any date been altered; and
- (c) such interest is payable in respect of any period or any number of months or any part of a month which commenced before the said date;

the interest to be determined in respect of that portion of such period which ended immediately before the said date or in respect of any such months or part of a month which commenced before the said date shall be calculated as if the said rate had not been so altered.

**[Editor's Note :** \* See the 5<sup>th</sup> Schedule to the Value Added Tax (General) Regulations 2003. SI 273/03

Income Tax (Rate of Interest) Notice, 2010. SI 7/2010]

## PART VIII REPRESENTATIVE REGISTERED OPERATORS

### 47 Persons acting in a representative capacity

The person responsible for performing the duties imposed by this Act on—

(a) any **company** shall be the **public officer** thereof contemplated in section 53 of the Taxes Act or, in the case of any company which is placed in liquidation, the liquidator thereof;

[winding up a defunct carpet factory company *TG v ZIMRA* 19-HH-578  
*Afritrade International Limited v Zimra* 21-SC-003-  
See Section 53 of Chapter 23:06]

(b) any **public authority** shall be any person responsible for accounting for the receipt and payment of moneys under any law or for the receipt and payment of moneys or funds on behalf of such public authority;

(c) a **local authority** shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such local authority;

(d) any corporate or unincorporated body, other than a company, shall be any person who is the **treasurer** of that body or whose functions are similar to those of a treasurer of that body;

(e) a person under **legal disability** shall be his guardian, curator or administrator or the other person having the management or control of his affairs;

(f) any person who is **not a resident of Zimbabwe** or any person, other than a company, who is for the time being out of Zimbabwe, shall be any agent of such person controlling such person's affairs in Zimbabwe or any manager of any trade of such person in Zimbabwe;

(g) a **deceased** person or his estate shall be the **executor** or administrator of such estate;

(h) an **insolvent** person or his estate shall be the **trustee** or administrator of such estate;

[sale in liquidation 4 years after closure of defunct carpet factory *TG v ZIMRA* 19-HH-578]

(i) any **trust fund** shall be the person administering the fund in a fiduciary capacity:

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Provided that nothing herein contained shall be construed as relieving any such company, public authority, local authority, body or person or any member of a partnership referred to in subsection (3) of section *fifty-three* from having to perform any duties imposed by this Act upon such company, public authority, local authority, body or person which the first-mentioned person has failed to perform.

## 48 Power to appoint agent

(1) For the purpose of subsection (2)—

“**person**” includes—

[*Zimra v Packers International (Pvt) Ltd* 16-SC-028 includes an *Embassy Time Security (Pvt) Ltd (in Liquidation) v ZIMRA & 4 Ors* 18-HH-248]

- (a) a bank, building society or savings bank; and
- (b) a partnership; and
- (c) any officer in the \*Civil Service;

[Public Service is now referred to as the \***Civil Service** i.t.o. PART I of Act 3 of 2016 w.e.f. 1<sup>st</sup> July, 2016]

(d) any prescribed person in relation to a prescribed service.

(2) The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent of such other person for the purposes of this Act, and, notwithstanding anything to the contrary contained in any other law, may be required to pay any amount of tax, additional tax, penalty, or interest due from any moneys in any current account, deposit account, fixed deposit account or savings account or any other moneys—

[*Afritrade International Limited v Zimra* 21-SC-003]

(a) including pensions, salary, wages or any other remuneration, which may be held by him for, or due by him to, the person whose agent he has been declared to be; or

(b) that the person so declared an agent receives as an intermediary from the other person.

[Substituted by Act 2 of 2005 w.e.f. 12th September, 2005.]

## 49 Liability of representative registered operators

(1) For the purposes of this section “**representative registered operator**” means, in relation to—

(a) any company, public authority, local authority, body, trust fund or person referred to in section *forty-seven*, the person who is, in terms of that section, responsible for performing the duties imposed under this Act on such company, public authority, local authority, body, trust fund or person; and

(b) the other person referred to in section *forty-eight*, any person declared by the Commissioner under that section to be the agent of that other person.

(2) Every representative registered operator shall as respects moneys controlled or transactions concluded or anything done by him in his representative capacity be liable for the payment of any tax, additional tax, penalty or interest chargeable under this Act in relation to such moneys or transactions as though such liability had been incurred by him personally, but such liability shall be deemed to have been incurred by him in his representative capacity only.

[*liquidator of a defunct carpet factory company TG v ZIMRA* 19-HH-578  
*Afritrade International Limited v Zimra* 21-SC-003]

(3) Any tax, additional tax, penalty or interest payable by any representative registered operator in his representative capacity shall be recoverable from him, but to the extent only of any assets belonging to the person whom he represents which may be in his possession or under his management, disposal or control:

Provided that any tax, additional tax, penalty or interest payable by a company shall not be recoverable from the public officer of the company but shall be recoverable from the company.

(4) Every representative registered operator who, as such, pays any tax, additional tax, penalty or interest due under this Act shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid.

(5) Every representative registered operator referred to in paragraph (g) of section *forty-seven* who, as such, pays any tax, additional

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tax, penalty or interest due under this Act by any deceased person shall be entitled to recover the amount so paid from the estate of such deceased person or to retain out of any moneys of the estate of such deceased person that may be in his possession or that may come to him as executor or administrator of such estate, an amount equal to the amounts so paid.

(6) Every representative registered operator shall be personally liable for the payment of any tax, additional tax, penalty or interest payable by him in his representative capacity, if, while the amount thereof remains unpaid—

(a) he alienates, charges or disposes of any money received or accrued in respect of which the tax is chargeable; or

(b) he disposes of or parts with any fund or money belonging to the person whom he represents which is in his possession or comes to him after the tax, additional tax, penalty or interest has become payable, if such tax, additional tax, penalty or interest could legally have been paid from or out of such fund or money.

(7) Every person who becomes a representative registered operator, other than a person representing a company, public authority or local authority as contemplated in paragraphs (a), (b) or (c) of section *forty-seven*, or a person appointed as an agent under section *forty-eight* shall **within 30 days** after becoming responsible for performing duties under this Act on behalf of any other person notify the Commissioner in such form as the Commissioner may prescribe, of the fact that he has become a representative registered operator of that other person.

## 50 Remedies of Commissioner against agent or trustee

The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as he would have against the property of any person liable to pay any tax, additional tax, penalty or interest chargeable under this Act and in as full and ample a manner.

## 50A Commissioner may appoint value added withholding tax agents

[inserted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March,2017 backdated to the 1<sup>st</sup> January,2017.]

(1) If the Commissioner reasonably believes that any registered operator or significant

number of registered operators in any sector of the economy have not been regularly submitting returns of output tax charged and input tax paid in terms of this Act, or not submitting truthful returns ,the Commissioner may by notice in writing appoint any registered operator who purchases goods and services from the first-mentioned registered operator or class of registered operators (hereinafter referred to as "**specified operators**") to be a value added tax withholding agent in relation to that specified operator or class of specified operators for the period specified in the notice or until the Commissioner revokes the notice, whichever is the earlier.

(2) Every value added withholding tax agent shall —

[Substituted by Finance Act 10/2020 w.e.f. the 1<sup>st</sup> January, 2021.]

a) withhold the portion of the full amount of output tax specified in the Charging Act from each amount to be paid to a specified operator, in the currency in which the goods and services concerned were purchased;

and

b) remit each amount so withheld to the Commissioner **on or before the 15<sup>th</sup>** of the following month or any other date that Commissioner may fix in the specifying notice or prescribe (and if the amount so remitted is not remitted in the currency in which the goods and services concerned were purchased, the value added withholding tax agent shall be deemed, for the purposes of subsection (6), not to have withheld and remitted the amount of value added withholding tax due in terms of this subsection).

(3) When submitting a return in terms of section *twenty-eight*, every specified operator shall, for the purposes of subsection (4), indicate the amount of any value added withholding tax withheld by the value added withholding tax agent.

(4) The Commissioner shall in determining tax payable in terms of section *fifteen*, credit the account of the specified operator with the value added withholding tax withheld in terms of subsection (2).

(5) For the avoidance of doubt, it is declared that the withholding of tax under subsection (2) shall not relieve the supplier of taxable supplies of the obligation to account for tax in accordance with this Act.

(6) Any value added withholding tax agent who fails to withhold or pay to the

Commissioner any amount of value added withholding tax in terms of subsection (2) shall be personally liable for the payment, not later than the date on which payment should have been made if value added withholding tax had been withheld in terms of section (2), of the amount of value added withholding tax which he or she failed to withhold or pay to the Commissioner and a further amount equal to such value added withholding tax.

(7) In addition, a value added withholding tax agent who fails to comply with subsection (2) shall be guilty of an offence and liable on conviction to a fine not exceeding level seven or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

## PART IX SPECIAL PROVISIONS

### 51 .....

[Repealed by the Finance (No.3) Act 10 of 2009 with effect from the year of assessment beginning on the 1st January, 2010.]

### 52 Separate persons carrying on same trade under certain circumstances deemed to be single person

(1) For the purposes of this Act, where a directive is made under this section—

(a) the person carrying on the trade specified in the directive shall be registered in such name as the members may jointly nominate upon compliance with subsection (2) of section twenty-three; and

(b) any supply of goods or services by or to one of the members in the course of the activities of such single person shall be deemed to be a supply by or to such single person; and

(c) each of the members shall be jointly and severally liable for any tax due by such single person; and

(d) notwithstanding paragraph (c), any failure by such single person to comply with any requirement imposed upon him by or under this Act shall be deemed to be a failure by each of the members severally; and

(e) subject to paragraphs (a) to (d) of this subsection, the members shall be deemed to be a body of persons carrying on the trade of such single person and any question as to the

scope of the activities of that trade at any time shall be determined accordingly.

(2) Notwithstanding section *twenty-three*, if the Commissioner makes a directive under this section, the persons named in the directive shall be deemed to be a single person carrying on the activities of a trade described in the directive and that person shall be liable to be registered in terms of section *twenty-three* with effect from the date of the directive or, if the directive so provides, from such date as may be specified therein.

(3) The Commissioner shall not make a directive under this section naming any person unless he is satisfied that—

(a) such person is making or has made taxable supplies; and

(b) the activities in the course of which he makes or made those taxable supplies form only part of certain activities which should properly be regarded as those of the trade described in the directive, the other activities of that trade being carried on at that time or previously by one or more other persons; and

(c) if all the taxable supplies of that trade were taken into account, a person carrying on that trade should at that time be liable to be registered in terms of subsection (2); and

(d) the main reason or one of the main reasons for the person concerned carrying on the activities first referred to in paragraph (b) in the way he does is the avoidance of a liability to be so registered, whether that liability would be his, another person's or that of 2 or more persons jointly.

(4) A directive made under this section shall be served on each of the persons named in it.

(5) Where, after a directive has been given under this section specifying a description of the trade, it appears to the Commissioner that a person who was not named in that directive is making taxable supplies in the course or furtherance of activities which should properly be regarded as part of the activities of that trade, the Commissioner may make and serve on him a supplementary directive referring to the earlier directive and the description of the trade specified in it and adding that person's name to those of the persons named in the earlier directive with effect from—

(a) the date on which he began to make those taxable supplies; or

(b) if it was later, the date with effect from which the single person referred to in the earlier

directive became liable to be registered in terms of this section.

(6) If, immediately before a directive, including a supplementary directive, is made under this section, any person named in the directive is registered in respect of the taxable supplies made by him as contemplated in subsection (3) or (5), he shall cease to be liable to be so registered with effect from—

(a) the date with effect from which the single person concerned became liable to be registered; or

(b) the date of the directive;

whichever date is the later.

(7) In relation to a trade specified in a directive, including a supplementary directive, under this section, the persons named in such directive, who together are deemed to be the liable person, are in subsections (1) and (8) referred to as the members.

(8) If the Commissioner is of the opinion that any person who is one of the members should no longer be regarded as such for the purposes of paragraphs (c) and (d) of subsection (1) and the Commissioner gives notice to that effect, that person shall no longer be liable in terms of that subsection for anything done after the date specified in that notice and shall be deemed to have ceased to be a member of the body of persons referred to in paragraph (e) of subsection (1).

## 53 Bodies of persons, corporate or unincorporated, other than companies

(1) Subject to section *forty-seven*, where any body of persons, whether corporate or unincorporated, other than a company, carries on or is to carry on any trade—

(a) such body shall be deemed to carry on such trade as a person separate from the members of such body; and

(b) registration of that body as a registered operator shall be effected separately from any registration of any of its members in respect of any other trade; and

(c) liability for tax in respect of supplies by the body shall be determined and calculated in respect of the trade carried on by it as a trade carried on independently of any trade carried on by any of its members, and any refund relating to the body's trade which is payable in terms of

section *forty-four* shall be made to that body; and

(d) the duties and obligations imposed by this Act on any registered operator or other person shall, as respects the trade carried on by that body, be performed by it separately from the duties and obligations imposed on any of its members.

(2) Where any such body is a partnership or other unincorporated body and is dissolved in consequence of the retirement or withdrawal of 1 or more, but not all, of its members or the admission of a new member, and a new partnership or unincorporated body comes into being consisting of the remaining members of the dissolved partnership or body, as the case may be, or such remaining members and 1 or more new members, and the new partnership or body continues to carry on the trade of the dissolved partnership or body as a going concern, the dissolved partnership or body and the new partnership or body, as the case may be, shall, unless the Commissioner, having regard to the circumstances of the case, otherwise directs, for the purposes of this Act be deemed to be one and the same partnership or body, as the case may be.

(3) Subject to section *forty-seven*, every member of a **partnership** shall be liable jointly and severally with other members of the partnership for performing the duties of the partnership in terms of this Act and paying the tax imposed by this Act on the partnership in respect of supplies made by the partnership while such member was a member of the partnership:

Provided that this subsection shall not apply to any such member of a partnership who in relation to that partnership is a partner who has not held himself out as an ordinary or general partner of the partnership concerned.

## 54 Pooling arrangements

(1) Any pool managed by any board or body for the sale of agricultural, pastoral or other farming products, may, on written application by such board or body, for the purposes of this Act be deemed to be a trade or part of a trade carried on by that board or body separately from the members of such board or body:

[ZS (Pvt) Ltd v Zimra 20-FAC-113]

Provided that such board or body may—

(a) elect in writing that the pool be treated as a separate trade for the purposes of this Act and

may apply for such pool to be registered separately in terms of section *fifty-one*;

(b) notwithstanding subsections (1) and (2) of section *fifty-six*, if it makes an election in writing, be treated for the purposes of this Act as a principal and not as an agent of its members.

(2) Notwithstanding section *fifty-six*, any rental pool scheme operated and managed by any person for the benefit of some or all of the owners of time-sharing interests in a property time-sharing scheme shall be deemed for the purposes of this Act to be a separate trade carried on by such person separately from the owners and shall be registered separately under section *fifty-one*:

Provided that such a rental pool scheme shall, notwithstanding subsections (1) and (2) of section *fifty-six*, be treated for the purposes of this Act as a principal and not as an agent of the owners.

## 55 Death or insolvency of registered operator

(1) Where—

(a) after the death of any registered operator or the sequestration of his estate, any trade previously carried on by the registered operator continues to be carried on by or on behalf of the executor or trustee of his estate or anything is done in connection with the termination of the trade, the estate of the registered operator, as represented by the executor or trustee, as the case may be, shall for the purposes of this Act be deemed to be a registered operator in respect of the trade;

(b) paragraph (a) is applicable, the deceased registered operator and his estate or the registered operator whose estate is sequestrated and his estate, as the case may be, shall, as respects the trade in question, be deemed for the purposes of this Act to be one and the same person.

(2) Where a mortgagee is in possession of any land or other property previously mortgaged by the mortgagor, being a registered operator, and the mortgagee carries on any trade of the mortgagor in relation to such land or other property, the mortgagee shall, from the date on which the mortgagee took possession of that land or other property, until such time as the mortgagee ceases to be in possession of that land or other property, be deemed, to the extent that the mortgagee carries on such trade, to be a registered operator.

## 56 Agents and auctioneers

(1) For the purposes of this Act, where an agent makes a supply of goods or services for and on behalf of any other person who is the principal of that agent, that supply shall be deemed to be made by that principal and not by that agent:

Provided that, where that supply is a taxable supply and that agent is a registered operator, the agent may, notwithstanding anything to the contrary in this Act, issue a tax invoice or a credit note or a debit note in relation to such supply as if the agent had made a taxable supply, and to the extent that that tax invoice or credit note or debit note relates to that supply, the principal shall not also issue a tax invoice or a credit note or a debit note, as the case may be.

[*ZS (Pvt) Ltd v Zimra* 20-FAC-113 double invoicing the export orders. *KT (Pvt) Ltd V Zimra* 20-HH-280]

(2) For the purposes of this Act, where any registered operator makes a taxable supply of goods or services to an agent who is acting on behalf of another person who is the principal for the purposes of that supply, that supply shall be deemed to be made to that principal and not to such agent:

Provided that such agent may nevertheless request that he be provided with a tax invoice and the registered operator may issue a tax invoice or a credit note or debit note as if the supply were made to such agent.

(3) For the purposes of this Act, where any goods are imported into Zimbabwe by an agent who is acting on behalf of another person who is the principal for the purposes of that importation, that importation shall be deemed to be made by that principal and not by such agent:

Provided that a **bill of entry** or other document prescribed in terms of the Customs Act in relation to that importation may nevertheless be held by such agent.

[*A.T. International Ltd v ZIMRA* 15-HH-823]

(4) Notwithstanding subsection (3), where any goods are imported into Zimbabwe by an agent who is acting on behalf of another person who is the principal for the purposes of that importation, and—

- (a) the agent is a registered operator; and
- (b) the principal is not a resident of Zimbabwe and is not a registered operator; and

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(c) the goods are imported by the principal for the purposes of a supply made or to be made by him to a person in Zimbabwe; and

(d) the agent obtains and retains such documentary proof as is acceptable to the Commissioner that—

(i) he paid the tax on importation on behalf of that principal; and

(ii) such agent and that principal agree in writing that the said tax has not and will not be reimbursed to such agent by that principal;

that importation shall for the purposes of this Act be deemed to be made by such agent and not by that principal.

(5) Where—

(a) a tax invoice or a credit note or debit note in relation to a supply has been issued—

(i) by an agent as contemplated in subsection (1); or

(ii) to an agent as contemplated in subsection (2); or

(b) a bill of entry or other document prescribed in terms of the Customs Act in relation to the importation of goods is held by an agent as contemplated in subsection(3);

the agent shall maintain sufficient records to enable the name and address and registration number of the principal to be ascertained.

(6) For the purposes of subsection (7), the expression "**auctioneer**" means a registered operator carrying on a trade which comprises or includes the supply by him by auction or by sale, of goods and services as an auctioneer or agent for or on behalf of another person, hereinafter in this section referred to as "**the principal**".

(7) Notwithstanding anything in the preceding provisions of this section, where the principal and the auctioneer agree to have a supply by auction of any goods and services, other than a taxable supply, treated as if that supply were made by the auctioneer and not by the principal, the supply shall be charged with tax as if it were made by the auctioneer in the course or furtherance of the auctioneer's trade and the auctioneer may—

(a) recover the amount of tax charged on that supply from that principal as a debt together with the costs of recovery in any court of competent jurisdiction; or

(b) retain or deduct such amount and costs out of any money in the auctioneer's hands belonging or payable to the principal.

(8) Notwithstanding anything in subsection (2), where any registered operator makes a taxable supply, other than a supply that is charged with tax at the rate of zero *per centum* under section *ten*, of goods or services to an agent who is a registered operator and is acting for or on behalf of another person who is the principal for the purposes of that supply, and—

(a) the principal is not a resident of Zimbabwe and is not a registered operator; and

(b) the supply is—

(i) directly in connection with either the exportation, or the arranging of the exportation, of goods from Zimbabwe to any country or place outside Zimbabwe, or the importation, or the arranging of the importation, of goods to Zimbabwe from any country or place outside Zimbabwe, including, in either case, the transportation of those goods within Zimbabwe as part of such exportation or importation, as the case may be; or

(ii) the supply is of services which comprise the handling, pilotage, salvage or towage of any foreign-going aircraft while present in Zimbabwe or is of services provided in connection with the operation or management of any foreign-going aircraft;

this Act shall, where such agent and such principal agree, apply as if the supply were made to that agent and not to the principal.

## PART IXA SPECIAL PROVISIONS APPLICABLE TO SALES OF MOTOR VEHICLES

[Repealed by the Finance Act 8 of 2005 with effect from the 31<sup>st</sup> December, 2005.]

## PART X COMPLIANCE

### 57 Records

(1) Every registered operator shall keep such books of account (which books of account, where generated by means of a computer, shall be retained in the form of a computer print-out) or other records as may enable him to observe the requirements of this Act and enable the Commissioner to satisfy himself that the registered operator has observed such

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requirements, and every registered operator shall, in particular, keep the following records and documents—

- (a) a record of all goods and services supplied by or to the registered operator showing the goods and services, and the suppliers or their agents, in sufficient detail to enable the goods and services, and the suppliers or the agents to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes, debit notes, bank statements, deposit slips, stock lists and paid cheques relating thereto; and
- (b) a record of all importations of goods and documents relating thereto as contemplated in paragraph (d) of subsection (2) of section fifteen; and
- (c) the charts and codes of account, the accounting instruction manuals and the system and programme documentation which describe the accounting system used in each tax period in the supply of goods and services; and
- (d) any documentary proof required to be obtained and retained in accordance with subsection (3) of section ten.

(2) Such books of account, records and documents referred to in subsection (1), whether in their original form or in a form authorised by the Commissioner in terms of subsection (4), shall at all reasonable times during the relevant period referred to in subsection (3) be open for inspection by any person acting under the authority of the Commissioner.

(3) All such books of account, records and documents, whether in their original form or in a form authorised by the Commissioner in terms of subsection (4) shall—

(a) where kept in book form, be retained and carefully preserved by the registered operator for a **period of 6 years** from the date of the last entry in any book; or

(b) where not kept in book form, be retained and carefully preserved by the registered operator for a **period of 6 years** after the completion of the transactions, acts or operations to which they relate.

(4) The Commissioner may, subject to such conditions as he may determine, authorise the retention of the information contained in any records or documents referred to in subsection (3), other than ledgers, cash books, journals and paid cheques, in a form acceptable to him,

*in lieu* of the retention of the originals of such records or documents.

[*Failure PIL (Pvt) Ltd v ZIMRA 17-HH-213*]

## 58 General provisions with regard to information, documents or items

- (1) For the purposes of this Part—  
**“administration of this Act”** includes—
  - (a) obtaining full information in relation to the—  
[*PIL (Pvt) Ltd v ZIMRA 17-HH-213*]
    - (i) supply by any registered operator of goods and services supplied by him in the course or furtherance of any trade carried on by him;
    - (ii) importation of any goods into Zimbabwe by any person; and
    - (iii) supply of any imported services by any person;
  - (b) ascertaining the correctness of any return, financial statement, document, declaration of facts or valuation;
  - (c) determining the liability of any person for any tax and any interest or penalty in relation thereto leviable under this Act;
  - (d) collecting any such liability;
  - (e) ascertaining whether an offence in terms of this Act has been committed;
  - (f) ascertaining whether a person has, other than in relation to a matter contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with this Act;
  - (g) enforcing any of the Commissioner’s powers under this Act to ensure that any obligation imposed upon any person by or under this Act is complied with;
  - (h) performing any other administrative function which is necessary for the carrying out of any provision of this Act;

[*PIL (Pvt) Ltd v ZIMRA 17-HH-213*]

**“authorisation document”** means a written authorisation granted by the Commissioner to an officer to inspect, audit, examine or obtain, any information, documents or items for the purposes of this Part;

**“documents”** include any document as defined in section 2 of the Civil Evidence Act [Chapter 8:01];

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**“information”** includes any data stored by means of a computer;

**“items”** include any corporeal or incorporeal thing and any document relating thereto

**“judge”** means a judge of the High Court;

**“officer”** means an officer referred to in subsection (1) of section five;

**“premises”** include any building, premises, aircraft, vehicle, vessel or place.

(2) Where any information, documents or items are submitted to the Commissioner in a language other than in English, the Commissioner or any officer may by notice in writing require the registered operator or, on the registered operator's default, any other person, to produce, within a reasonable period, a translation of the information, documents or items, which translation shall be made, at the expense of the registered operator, by such person or body as the Commissioner may approve.

(3) Any translation referred to in subsection (2) shall be—

(a) produced at such time and premises as may be specified by the Commissioner or any officer; and

(b) prepared and certified by a sworn translator or another person approved by the Commissioner or such officer.

## 59 Furnishing of information, documents or items by any person

The Commissioner or any officer may, for the purposes of the administration of this Act in relation to any registered operator, require such registered operator or any other person to furnish such information, whether orally or in writing, documents or items as the Commissioner or such officer may require.

[*PIL (Pvt) Ltd v ZIMRA 17-HH-213*]

## 60 Obtaining of information, documents or items at certain premises

(1) The Commissioner, or an officer named in an authorisation document, may, for the purposes of the administration of this Act in relation to any registered operator, require such registered operator or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or items as the Commissioner or

such officer may require to inspect, audit, examine or obtain.

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or items, the Commissioner or an officer contemplated in subsection (1), may call on any person—

(a) at any premises; and

(b) at any time during such person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1) shall not enter any dwelling-house or domestic premises, except any part thereof as may be occupied or used for the purposes of trade, without the consent of the occupant.

(4) Any officer exercising any power under this section shall on demand produce the authorisation document issued to him.

[*PIL (Pvt) Ltd v ZIMRA 17-HH-213*]

## 61 Powers of entry, search, etc.

(1) The Commissioner or an officer may, if he has reasonable grounds for believing that it is necessary to do so for the enforcement of any tax in terms of this Act—

(a) at any reasonable time enter into any place of business of a trader;

(b) require any person to produce for inspection any—

(i) book, record, statement, account, trade list or other document; or

(ii) file, schedule, working paper or calculation relating to the determination of a taxpayer's income, expenses or liability for tax;

(c) require any person to prepare and additionally, or alternatively, to produce for inspection a print-out or other reproduction of any information stored in a computer or other information retrieval system;

[does not authorize the seizure of computers or other information retrieval systems *PIL (Pvt) Ltd v ZIMRA 17-HH-213*]

(d) take possession of any document or **other thing** referred to in paragraph (b) or (c) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry:

[but not the laptop itself *Hilmax Engineering (Pvt) Ltd v ZIMRA 22-HH-832*]

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Provided that the Commissioner, who shall take reasonable care to ensure that the information, documents or items are preserved, may retain them until the conclusion of any investigation into the non-compliance or offence in relation to which the information, documents or things were seized or until they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last;

(e) require any person reasonably suspected of having committed an offence under this Act or any person who may be able to supply information in connection with a suspected offence to give his name and address;

(f) pursue any inquiry which may be deemed by him to be necessary to ascertain whether any provision of this Act is being complied with.

(2) Any person to whose affairs any information or documents taken or seized in terms of this section shall be entitled to examine and make extracts from them during office hours or such further hours as the Commissioner may in his directive allow and under such supervision as the Commissioner may determine.

## 62 Offences

(1) Any person who—

(a) falsely holds himself out as an officer engaged in the administration of this Act; or

(b) fails to comply with section *thirteen*; or

(c) without just cause shown by him, refuses or neglects to do the following when so required by the Commissioner or an officer for the purpose of the administration of this Act—

(i) furnish, produce or make available any information, documents or items;

(ii) reply to or answer truly and fully, any questions put to him; or

(iii) attend and give evidence as and when required; or

(d) hinders or obstructs or assaults any officer engaged in carrying out his duties under this Part; or

(e) fails to notify the Commissioner upon becoming a representative registered operator, as required by subsection (7) of section *forty-seven* to notify the Commissioner; or

(f) being an auctioneer or a supplier of goods or services—

(i) declares to any person to whom goods or services are supplied by such auctioneer or supplier that tax has been included in or will be added to the price or amount chargeable in respect of such supply, where in fact no tax is payable in terms of this Act; or

(ii) without reasonable cause, the proof whereof shall be on him, includes in or adds to the price or amount charged to the recipient in relation to such supply any tax, where in fact no tax is payable in terms of this Act; or

(iii) without reasonable cause, the proof whereof shall be on him, includes in or adds to the price or amount charged to the recipient in relation to such supply any tax in excess of the tax properly leviable under this Act in respect of the value of such supply; or

(g) without reasonable cause, the proof whereof shall be on him or her—

(i) contravenes the proviso to section *twenty*(1)(a), or section *twenty* (4), or subparagraph A of the proviso to section *twenty-one* (3); or

(ii) fails to comply with section *twenty-one*(3);

[para (g) repealed and substituted by Act.1/2014 w.e.f. 4<sup>th</sup> April, 2014]

(h) being a registered operator, fails to provide another registered operator with a tax invoice, credit note or debit note as required by this Act;

(i)

[repealed by Act 8 of 2011 with effect from the 1st January, 2012]

(j) contravenes section *seventy*;

(k) contravenes any provision of any regulations made in terms of section *seventy-eight* with which it is his or her duty to comply;

[inserted by Act 29 of 2004 with effect from the 1<sup>st</sup> January, 2005.]

shall be guilty of an offence and liable on conviction to a fine not exceeding level seven or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

[amended by the Finance Act 10 of 2003]

(2) Any person who, being under a duty to do so, fails without reasonable cause (the proof whereof shall be on him or her) to apply for registration as required by section *twenty-three*, or fails to comply with section *twenty-five*, *twenty-eight* or *thirty*, shall —

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(a) be liable for a civil penalty of **US\$30 for each day** the person remains in default, **not exceeding a period of 181 days**:

Provided that the Commissioner shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care;

and

(b) if the person continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level seven or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

[subsection (2) repealed and substituted by Act 1/2014 w.e.f. 4<sup>th</sup> April, 2014]

(2a) Any person who fails to comply with any of the requirements of section *fifty-seven* shall be guilty of an offence and liable to—

(a) a fine not exceeding level seven; or  
(b) a fine equivalent to **10%** of the person's taxable supplies for the tax period appropriate to the category to which that person belongs in terms of section twenty-seven as a registered operator;

whichever is the greater amount, or to imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

[section inserted by Act 8 of 2011 with effect from the 1st January, 2012]

(3) If, upon conviction of any person for an offence under subsection (1) or (2), it is proved that that person has been previously convicted under either of those subsections, then such person shall be liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

[inserted by the Finance Act 10 of 2003]

## 63 Offences and penalties in regard to tax evasion

[*PIL (Pvt) Ltd v ZIMRA 17-HH-213*]

(1) Any person who with intent to evade the payment of tax levied under this Act or to obtain any refund of tax under this Act to which such person is not entitled or with intent to assist any other person to evade the payment of tax

payable by such other person under this Act or to obtain any refund of tax under this Act to which such other person is not entitled—

- (a) makes or causes or allows to be made any false statement or entry in any return rendered in terms of this Act, or signs any statement or return so rendered without reasonable grounds for believing the same to be true; or
- (b) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Commissioner or any person duly authorised by the Commissioner or any officer; or
- (c) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or authorises the falsifications of any books of account or other records; or
- (d) makes use of any fraud, art or contrivance whatsoever, or authorises the use of such fraud, art or contrivance; or
- (e) makes any false statement for the purposes of obtaining any refund of or exemption from tax; or
- (f) receives, acquires possession of or deals with any goods or accepts the supply of any service, knowing or having reason to believe that the tax on the supply of the goods or services has been or will be evaded; or
- (g) knowingly issues any tax invoice, credit note or debit note required under this Act which is in any material respect erroneous or incomplete; or
- (h) knowingly issues any tax invoice showing an amount charged as tax where the supply in respect of which the tax is charged will not take place; or
- (i) for the purposes of subsection (2) of section *fifteen*, fabricates, produces, furnishes or makes use of any tax invoice, debit note, credit note, bill of entry or other document contemplated in that section knowing the same to be false;

shall be guilty of an offence and liable on conviction to a fine not exceeding level twelve or to imprisonment for a period not exceeding twenty-four months or to both such fine and such imprisonment.

[amended by the Finance Act]

(2) Wherever in any proceedings under this section it is proved that any false statement or entry has been made in any return rendered

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under this Act by or on behalf of any person or in any books of account or other records of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry or to have caused that false statement or entry to be made or to have allowed it to be made with intent to evade the payment of tax or to obtain a refund of tax to which that person is not entitled, as the case may be, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the first-mentioned person to evade the payment of tax or to obtain a refund of tax to which he is not entitled.

(3) A conviction for an offence in terms of this Act shall not exempt the person convicted from the payment of any tax, additional tax, penalty or interest payable in accordance with any provision of this Act.

(4) If, upon conviction of any person for an offence under subsection (1) it is proved that that person has been previously convicted under that subsection, then such person shall be liable to a fine not exceeding twice the maximum amount for level twelve or to imprisonment for a period not exceeding twenty-four months or to both such fine and such imprisonment.

[inserted by the Finance Act 10 of 2003]

## 64 Offences: increased penalty on subsequent conviction

If, upon conviction of any person for an offence under section *sixty-two* for—

(a) failing or neglecting to furnish, file or submit any return or document required by the Commissioner; or

(b) refusing or neglecting to furnish any information or reply, or to produce any books or papers required of him by the Commissioner or any other officer;

within any reasonable period fixed by the Commissioner or any other officer and of which notice has been given to him by the Commissioner, it is proved that that person has been previously convicted of a like failure, neglect or refusal in relation to the same return, document, information, reply, books or papers, then such person shall, in addition to any punishment inflicted under such section, be liable also to a \*fine not exceeding zw\$50 for each day that he is in default, or to imprisonment for a period not exceeding 12 months.

[from this \*fine 25 zeros to be deducted - Editor]

## 65 Imposition of fine by Commissioner

(1) If a person alleged to be an offender under this Act, hereinafter called the alleged offender, agrees to pay a specified fine proposed by the Commissioner, which does not exceed the maximum penalty provided by this Act for the offence in question, the Commissioner may impose such fine on the alleged offender:

Provided that, if criminal proceedings have been instituted against the alleged offender for such offence, the power conferred by this subsection shall not be exercised without the prior approval of the Prosecutor-General.

[proviso amended by Act 5 of 2014 with effect from the 2nd January,2015]

(2) The Commissioner shall, at the request of the alleged offender, furnish him with a written statement setting out the nature of the offence, the date of its occurrence and the fine imposed under subsection (1), and such written statement may be used as *prima facie* proof of the facts stated therein.

[amended by the Finance Act 10 of 2003]

(3) If a fine imposed in terms of subsection (1) is not paid on demand, the Commissioner may institute civil action in a court of competent jurisdiction for the recovery of such fine.

(4) The imposition of a fine under subsection (1) shall not be treated as a conviction of an alleged offender of a criminal offence and no prosecution for the offence in question shall thereafter be competent.

(5) A fine imposed in terms of this section shall not exempt the person concerned from the payment of any tax or penalties payable in terms of this Act.

## 66 Additional tax in case of evasion

(1) Where any registered operator or any person under the control or acting on behalf of the registered operator fails to perform any duty imposed upon him by this Act or does or omits to do anything, with intent—

(a) to evade the payment of any amount of tax payable by him; or

(b) to cause a refund to him by the Commissioner in terms of subsection (1) of section *forty-four* of any amount of tax, such amount being referred to hereunder as 'the excess', which is in excess of the amount properly refundable to him under the said

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section, read with subsection (6) of section *fifteen*, before applying subsection (6) of section *forty-four*;

such registered operator shall be chargeable with additional tax not exceeding an amount equal to the amount of tax referred to in paragraph (a) or the excess referred to in paragraph (b), as the case may be.

(2) The amount of the said additional tax shall be assessed by the Commissioner and shall be paid by the registered operator within such period as the Commissioner may allow.

(3) The power conferred upon the Commissioner by this section shall be in addition to any right conferred upon him by this Act to institute or take other proceedings under this Act.

## 67 Recovery of tax from recipient

(1) Where in respect of any supply made by a registered operator the registered operator has, in consequence of any fraudulent action or any misrepresentation by the recipient of the supply, incorrectly applied a rate of **zero 0%** or treated such supply as being exempt from tax, the Commissioner may, notwithstanding anything to the contrary contained in this Act, raise an assessment upon the recipient for the amount of tax payable, together with any penalty or interest that has become payable in terms of section *thirty-nine* in respect of such amount, and, in raising such assessment, the Commissioner may estimate the amount on which the tax is payable.

(2) The amounts payable under such assessment shall be paid by the recipient within such period as the Commissioner may allow and shall be recoverable from the recipient in the manner provided in section *forty*.

(3) This section shall not be construed as preventing the Commissioner from recovering the amounts of unpaid tax, penalty and interest from the registered operator, but in the event of such amounts being recovered from the recipient the registered operator shall be absolved from liability for the payment of the amounts due.

## 68 Reporting of unprofessional conduct

(1) For the purposes of this section "**controlling body**" means any professional association, body or board which has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling

or occupation and which has power to take disciplinary action against any person who in the carrying on of such profession, calling or occupation fails to comply with or contravenes any rules or code of conduct laid down by such association, body or board.

(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any other person, hereinafter referred to as a client, done or omitted to do anything which in the opinion of the Commissioner—

(a) was intended to enable or assist the client to evade or unduly postpone the performance of any duty or obligation imposed on such client by or under this Act or to obtain any refund of tax under this Act to which such client is not entitled, or by reason of negligence on the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation or the obtaining of any such refund;

[amended by the Finance Act 10 of 2003]

and

(b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by the body;

the Commissioner may lodge a complaint with the said controlling body.

(3) The Commissioner may in lodging any complaint under subsection (2) disclose such information relating to the client's affairs as in the opinion of the Commissioner it is necessary to lay before the controlling body to which the complaint is made.

(4) Before lodging any such complaint or disclosing any information the Commissioner shall deliver or send to the client and the person against whom the complaint is to be made a written notification of his intended action setting forth particulars of the said information.

(5) The client or the said person may **within 30 days** after the date of such written notification lodge in writing with the Commissioner any objection he may have to the lodging of the said complaint.

(6) If on the expiry of the said **period of 30 days** no objection has been lodged as contemplated in subsection (5), or if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may

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thereupon lodge the complaint as contemplated in subsection (2).

(7) The complaint shall be considered by the controlling body to which it is made and may be dealt with by it in such manner as the controlling body in terms of its rules sees fit:

Provided that any hearing of the matter shall not be public and may only be attended by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.

(8) The controlling body with which a complaint is lodged and its members shall at all times preserve and aid in preserving secrecy in regard to such information as to the affairs of the client as may be conveyed to them by the Commissioner or as may otherwise come to their notice in the investigation of the Commissioner's complaint and shall not communicate such information to any person whatsoever other than the client concerned or the person against whom the complaint is lodged, unless the disclosure of such information is ordered by a competent court of law.

## PART XA APPLICATION OF INFORMATION TECHNOLOGY TO ACT

[Inserted by Act 12 of 2006 with effect from the 1<sup>st</sup> January, 2007.]

### 68A Interpretation in Part XA

In this Part—

**“access”**, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;

**“affixing a digital signature”**, in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;

**“computer”** means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetical and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;

**“computer network”** means the interconnection of 1 or more computers through—

(a) the use of satellite, microwave, terrestrial line or other communication media; and

(b) terminals or a complex consisting of 2 or more interconnected computers whether or not the interconnection is continuously maintained;

**“computer system”**, means a device or collection of devices, including input and output devices capable of being used with external files, which contains computer programmes, electronic instructions and input and output data, and that performs logic, arithmetical, data storage and retrieval, communication control and other functions;

**“digital signature”** means an electronic signature created by computer that is intended by the registered user using it and by the Commissioner accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in section *sixty-eight F(1)*;

**“electronic data”** means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;

**“electronic record or communication”** means electronic data that is recorded, received or sent in an electronic form or in microfilm or computer-generated microfiche;

**“intermediary”**, with respect to any particular electronic communication, means any person who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;

**“Internet”** has the meaning given to that word by the Postal and Telecommunications Act [Chapter 12:05];

**“originator”**, means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

**“registered user”** means a person registered in terms of section *sixty-eight E*;

**“user agreement”** means the agreement between the registered user and the Commissioner referred to in section *sixty-eight D*.

## 68B Use of electronic data generally as evidence

(1) Notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

(a) on the sole ground that it is electronic data; or

(b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(2) Information in the form of electronic data shall be given due evidential weight.

[Such information is admissible *PIL (Pvt) Ltd v ZIMRA 17-HH-213*]

(3) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

(a) the reliability of the manner in which the data was generated, stored and communicated; and

(b) the reliability of the manner in which the integrity of the data was maintained; and

(c) the manner in which its originator was identified.

## 68C Establishment of computer systems for tax purposes

The Commissioner may, notwithstanding anything to the contrary in this Act, establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including—

(a) the despatch and receipt and processing of any return, record, assessment, receipt, invoice, bill of entry, credit or debit note, declaration, form, notice, statement or other document relating to any amount liable to tax; and

(b) the electronic processing of any return, record, assessment, receipt, invoice, bill of entry, credit or debit note, declaration, form, notice, statement or other document.

## 68CC Virtual Fiscalisation System

[Section inserted by Finance (No. 2) Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022.]

For the purposes of creating an electronic platform to enable the electronic recording by taxpayers of transactions that may be liable to tax under this Act (to be known as the Virtual Fiscalisation System), the Minister shall in regulations made under section 78 prescribe the rules to be followed by taxpayers using the Virtual Fiscalisation System.

## 68D User agreements

(1) The Commissioner may, for the purpose of regulating communication through a computer system established in terms of section *sixty-eight C*, prescribe the form of a user agreement to be entered between the Zimbabwe Revenue Authority and registered users.

(2) A user agreement shall set out—

(a) the terms and conditions governing communication through a computer system established in terms of section *sixty-eight C*, including—

(i) the use by registered users of computer equipment and facilities of a class or kind specified in the agreement;

(ii) the allocation to a registered user of a digital signature by the Commissioner;

(iii) the requirement that registered users ensure the security of the digital signatures allocated to them in the manner specified in the agreement;

(b) the manner of affixing a digital signature to any electronic communication or record;

(c) the conditions of reasonable access to the computer system of the registered user by the Commissioner for such verification and audit purposes as may be required by this Act;

(d) the manner and period of keeping electronic records that are necessary or convenient to be kept in connection with a computer system established in terms of section *sixty-eight C*.

## 68E Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Commissioner through a computer system

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established in terms of section *sixty-eight C* unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Commissioner may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Commissioner is satisfied that the applicant—

(a) is a registered operator or other person who will make regular use of the computer system established in terms of section *sixty-eight C*;

(b) will introduce adequate measures to—

(i) prevent disclosure of the digital signature allocated to him or her by the Commissioner to any person not authorised to affix such signature;

(ii) safeguard the integrity of information communicated through a computer system established in terms of section *sixty-eight C*, apart from any change which may occur in the normal course of such communication or during storage and display of such information;

(c) will maintain the standard of reliability of his or her own computer system required in accordance with the requirements of the user agreement;

the Commissioner may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (3), the Commissioner is satisfied that a registered user—

(a) has not complied with the requirements of his or her user agreement or with any condition or obligation imposed by the Commissioner in respect of such registration;

(b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;

(c) fails to make regular use of the computer system established in terms of section *sixty-eight C*;

(d) has contravened or failed to comply with any provision of this Act;

(e) has been convicted of an offence under this Act;

(f) has been convicted of an offence involving dishonesty;

(g) is sequestrated or liquidated;

(h) ceases to be a registered operator;

the Commissioner may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Commissioner shall—

(a) give notice to the registered user of the proposed cancellation or suspension; and

(b) provide the reasons for the proposed cancellation or suspension; and

(c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

## 68EE Commissioner may require registered operators to become registered users

[inserted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March,2017 backdated to the 1<sup>st</sup> January,2017.]

(1) The Commissioner may, by notice in writing to any registered operator, require such taxpayer to become a registered user.

(2) On receiving a notice the registered operator concerned shall make an application in terms of section *sixty-eight E* to become a registered user.

(3) A registered operator upon whom the Commissioner has served a notice in terms of subsection (1) and who fails without just cause to comply with the notice **within the first 7 days** of the period of 181 days referred to in paragraph (a) below, shall —

(a) be liable for a **civil penalty of US\$30** (or the maximum monetary figure specified from time to time for level four, whichever is the lesser amount) for each day the registered operator remains in default, **not exceeding a period of 181 days**:

Provided that the Commissioner shall have power to waive the payment or refund the whole

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or part of any penalty prescribed under this paragraph if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care;

and

(b) if the registered operator continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) A civil penalty order that becomes payable by the infringer shall constitute a debt due by the infringer to the Zimbabwe Revenue Authority and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority.

(5) The amount of a civil penalty shall be paid into and form part of the funds of the Zimbabwe Revenue Authority.

## 68F Digital signatures

(1) Every digital signature intended for use in connection with a computer system established in terms of section *sixty-eight C* shall comply with the following requirements, namely, it must—

- (a) be unique to the registered user and under the sole control of the registered user; and
- (b) be capable of verification; and
- (c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and
- (d) be in complete conformity with the requirements prescribed by the Commissioner and contained in the user agreement.

(2) The Commissioner shall, on registering a user, allocate to the registered user—

- (a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or
- (b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

## 68G Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

- (a) the information contained therein remains accessible so as to be subsequently usable; and
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
- (c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

## 68H Sending and receipt of electronic communications

(1) An electronic communication through a computer system established in terms of \*section *sixty-eight C* or the record of such communication shall be attributed to the originator—

[This section \*number referred to has been corrected by the Editor for sense's sake from the "section 80D" if gazetted ,as there is no such number with a D attached-.]

- (a) if it was sent by the originator; or
- (b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or
- (c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Commissioner and a registered user have not agreed that an acknowledgement of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by—

- (a) any communication by the Commissioner, electronic or otherwise; or
- (b) conduct by the Commissioner or any officer sufficient to indicate to the registered

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user that the electronic communication has been received.

(3) Where the Commissioner and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, *then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.*

[The words in italics have been inserted by the Editor -they are missing from section 42 of the Finance (No.2) Act No.12 of 20-06 inserting PART XA of this Act.]

(4) As between a computer system established in terms of section *sixty-eight C* and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

(a) where the electronic communication is by a registered user, at any office of the Zimbabwe Revenue Authority, or of the Commissioner, to whichever it was addressed, and such office shall be the place of receipt; or

(b) if the electronic communication is sent by the Zimbabwe Revenue Authority or the Commissioner to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any return, record, assessment, receipt, invoice, bill of entry, credit or debit note, declaration, form, notice, statement or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Zimbabwe Revenue Authority or the Commissioner, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Commissioner and the registered user.

(7) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically any return, record, assessment, receipt, invoice, bill of entry, credit or debit note,

declaration, form, notice, statement or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Commissioner may stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

## 68I Obligations, indemnities and presumptions with respect to digital signatures

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Commissioner in writing of that fact without delay.

(2) No liability shall attach to the Commissioner, the Zimbabwe Revenue Authority or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Commissioner or the Zimbabwe Revenue Authority—

(a) without the authority of the registered user to whom such signature was allocated; and

(b) before notification to the Commissioner or the Zimbabwe Revenue Authority by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Commissioner or the Zimbabwe Revenue Authority shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(1) Where in any proceedings or prosecution under this Act or in any dispute to which the Zimbabwe Revenue Authority is a party, the question arises whether a digital signature affixed to any electronic communication to the Commissioner or the Zimbabwe Revenue Authority was used in such communication with or without the consent and authority of the registered user, it shall be presumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

(2)

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## 68J Alternatives to electronic communication in certain cases

(1) Whenever a computer system established in terms of section *sixty-eight* C or any other computer system of a registered user is inoperative, the registered user and the Commissioner shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Commissioner may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

## 68K Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Commissioner or the Zimbabwe Revenue Authority without the authority of such registered user, commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

(a) makes a false electronic record or falsifies an electronic record; or

(b) dishonestly or fraudulently—

(i) makes, affixes any digital signature to, transmits or executes an electronic record or communication; or

(ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

## PART XI MISCELLANEOUS

## 69 Prices deemed to include tax

(1) Any price charged by any registered operator in respect of any taxable supply of goods or services shall for the purposes of this Act be deemed to include any tax payable in

terms of paragraph (a) of subsection (1) of section six in respect of such supply, \*whether or not the registered operator has included tax in such price.

[A challenge to the constitutionality of these deeming provisions was dismissed in *Mayor Logistics (Pvt) Ltd v ZIMRA* 14-CC-007

*Travel agents T(Pvt) Ltd v ZIMRA* 15-HH-285

*A.T. International Ltd v ZIMRA* 15-HH-823

*S.T. (Pvt) Ltd v Zimra* 16-HH-696

sale price of a defunct carpet factory in liquidation *TG v ZIMRA* 19-HH-578

*R (Pvt) Ltd v Zimra* 19-HH-792

\*operates a twin blow to the registered operator who must include VAT *Triangle Ltd & Hippo Valley Estates v ZIMRA & 10 ors* 20-HMA-028 “on appeal

**21-SC-082** which **HELD** a seller who had failed to account for the VAT can no longer demand it from the purchaser ]

(2) The amount of any deposit payable to or refundable by a registered operator in respect of a returnable container shall be deemed to include tax.

## 70 Prices advertised or quoted to include tax

Any price advertised or quoted by any registered operator in respect of any taxable supply of goods or services shall include tax and the registered operator shall in his advertisement or quotation state that the price includes tax:

Provided that—

(i) price tickets on goods need not state that the prices include tax if this is stated by way of a notice prominently displayed at all entrances to the premises in which the trade is carried on and at all points in such premises where payments are effected;

(ii) the Commissioner may in the case of any registered operator or class of registered operators approve any other method of displaying prices of goods or services by such registered operator or class of registered operators during a period approved by the Commissioner which commences before and ends after the fixed date or, where the rate of tax is increased or reduced, the date on which the increased or reduced rate of tax takes effect.

## 71 Rounding-off tables

Any amount of tax determinable under this Act shall be calculated, to the nearest cent giving advantage to the taxpayer, as the Commissioner may from time to time prescribe.

## 72 Contract price or consideration may be varied according to rate of value-added tax

(1) Whenever the value-added tax is imposed or increased in respect of any supply of goods or services in relation to which any **agreement** was entered into by the acceptance of an offer made before the tax was imposed or increased, as the case may be, the registered operator may, unless agreed to the contrary in any agreement in writing and notwithstanding anything to the contrary contained in any law, recover from the recipient, as an addition to the amounts payable by the recipient to the registered operator, a sum equal to any amount payable by the registered operator by way of the said tax or increase, as the case may be, and any amount so recoverable by the registered operator shall, whether it is recovered or not, be accounted for by the registered operator under this Act as part of the consideration in respect of the said supply.

[As their **Agreements** are silent on VAT the Appellants had no right to recover the Vat in retrospect from their milling partners. -*Triangle Ltd & Hippo Valley Estates v ZIMRA & 10 ors 20-HMA-028* – on appeal **21-SC-082**]

(2) Whenever the value-added tax is withdrawn or decreased in respect of any supply of goods or services in relation to which any **agreement** was entered into by the acceptance of an offer made before the tax was withdrawn or decreased, as the case may be, the registered operator shall, notwithstanding anything to the contrary in any agreement or law, reduce the amount payable to him by the recipient by way of any consideration in which the amount of such tax was included, by a sum equal to the amount of the tax withdrawn or the amount by which the tax was decreased, as the case may be.

(3) Whenever the value-added tax is imposed or increased, or withdrawn or decreased, as the case may be, in respect of any supply of goods or services subject to any fee, charge or other amount, whether it is a fixed, maximum or minimum fee, charge or other amount, prescribed by, or determined pursuant to, any enactment or measure having the force of law, that fee, charge or other amount may be increased or shall be decreased, as the case may be, by the amount of tax or additional tax charged or chargeable or the amount of tax no longer charged or chargeable, as the case may be:

[in the first instance, there must be **no tax** on such a supply and the law steps in to impose a tax.

In the second instance, there would have been a tax on the supply but there was a subsequent move to increase the rate of Vat -*Triangle Ltd & Hippo Valley Estates v ZIMRA & 10 ors 20-HMA-028 – on appeal 21-SC-082*]

Provided that this subsection shall not—

(a) apply to any fee, charge or other amount if such fee, charge or other amount has been altered in any Act, regulation or measure prescribing or determining such fee, charge or other amount to take account of any imposition, increase, decrease or withdrawal of such tax;

(b) be construed so as to permit any further increase or require a further decrease, as the case may be, in a fee, charge or other amount referred to in this subsection, where such fee, charge or other amount is calculated as a percentage or fraction of another amount which represents the consideration in money for a taxable supply of goods or services, other than a taxable supply charged with tax at the rate of **0%** or a supply which is an exempt supply.

[amended by the Finance Act 10 of 2003  
**Upon change** of the law, section 72(1) comes in to vary the terms of a **pre-existing** Agreement to either impose or increase the tax. -*Triangle Ltd & Hippo Valley Estates v ZIMRA & 10 ors 20-HMA-028 – on appeal 21-SC-082*]

## 73 Application of increased or reduced tax rate

(1) For the purposes of subsections (2) and (3) goods shall be deemed to be provided by the supplier thereof when such goods are delivered to the recipient and goods supplied under a rental agreement shall be deemed to be provided to the recipient when he takes possession or occupation thereof:

Provided that where goods consist of fixed property supplied by way of a sale and transfer thereof is effected by registration in a deeds registry, that property shall for the purposes of this subsection be deemed to be delivered to the recipient when such registration is effected.

(2) Subject to subsection (1), where—

(a) goods are provided before the date on which an increase or decrease in the rate of tax leviable under paragraph (a) of subsection (1) of section **six** becomes effective in respect of the supply of such goods or the date on which the tax is imposed or withdrawn in respect of the supply of such goods; or

(b) goods are provided in respect of a supply contemplated in terms of paragraphs (a) and (b) of subsection (3) of section **eight** during a

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period beginning before and ending before, on or after the said date; or

(c) services are performed during a period beginning before and ending before, on or after the date on which an increase or decrease in the rate of tax leviable under paragraph (a) of subsection (1) of section six becomes effective in respect of the supply of such services or the date on which the tax is imposed or withdrawn in respect of the supply of such services;

and the supply of such goods or services, as the case may be, is in terms of section eight deemed to be made on or after the said date, then—

(i) in the case of the increase or decrease in the rate of the tax on the said date, the tax payable in respect of the supply of the goods referred to in paragraph (a) or the supply of the goods referred to in paragraph (b) which are provided during a period referred to in that paragraph which ends before the said date or the supply of services referred to in paragraph (c) which are performed during a period referred to in that paragraph which expires before the said date, shall be determined at the rate applicable on the day before the said date or, in the case of the imposition of the tax on the said date, any such supply of goods or services, as the case may be, shall be deemed not to be subject to such tax or, in the case of the withdrawal of the tax on the said date, any such supply of goods or services, as the case may be, shall be deemed to be subject to such tax as if such tax had not been withdrawn; and

(ii) where the period referred to in paragraph (b) or the period referred to in paragraph (c) ends on or after the said date, the value of the supply in respect of the period in question shall, on the basis of a fair and reasonable apportionment, be deemed to consist of a part, hereinafter referred to as the first part, relating to the provision of the goods or the performance of the services, as the case may be, before the said date and a part, hereinafter referred to as the second part, relating to the provision of the goods or the performance of the services, as the case may be, on or after the said date, and, in the case of the increase or decrease in the rate of the tax on the said date, the tax payable in respect of each part shall be separately determined, the tax in respect of the first part being determined at the rate applicable on the day before the said date and the tax in respect of the second part at the rate applicable on the said date or, in the case of the imposition of the tax on the said date, the first part shall be deemed not to be subject to such tax or, in the case of the withdrawal of the tax on the said

date, the first part shall be deemed not to be subject to such tax or, in the case of the withdrawal of the tax on the said date, the first part shall be deemed to be subject to such tax as if such tax had not been withdrawn:

Provided that this subsection shall **not apply** in respect of any **sale of fixed property**.

(3) Subject to subsection (1), where goods or services would in terms of section eight be deemed to be supplied at a time within the period commencing on the date of the announcement of an increase in the rate of tax leviable in terms of paragraph (a) of subsection (1) of section six and ending on the day before the date on which the increase in the rate of tax becomes effective, that supply shall, to the extent to which it consists of the provision of goods on or after the day following the last day of the **period of 30 days** after the date on which the increase of the rate becomes effective, or the performance of services on or after the date on which the increase of the rate becomes effective, be deemed not to take place at the said time, but on the date on which the increase in the rate becomes effective:

Provided that this subsection shall **not apply** where the supply takes place—

(a) in consequence of any payments customarily made or becoming due or invoices customarily issued, when made, becoming due or issued at regular intervals for the provision of goods or the performance of services still to be provided or performed; or

(b) under any written agreement referred to in subsection (4).

(4) Where—

(a) goods are sold in terms of a lay-by agreement as contemplated in paragraph (a) of subsection (4) of section seven; or

(b) a service is supplied in relation to the said agreement as contemplated in paragraph (b) of subsection (4) of section seven;

and such agreement is concluded before the date on which an increase of the rate of tax leviable in terms of paragraph (a) of subsection (1) of section six becomes effective, and the deposit referred to in the said paragraph (a) of subsection (4) of section seven was paid before that date, the rate at which tax is in terms of the said paragraph (a) of subsection (1) of section six leviable in respect of that supply, shall be the rate at which tax would have been levied had the supply taken place on the date on which such agreement was concluded.

## 74 Tax relief allowable to certain diplomats and diplomatic and consular missions

(1) The Minister may, with the concurrence of the Minister responsible for foreign affairs, authorise the granting of relief, by way of a refund, in respect of value-added tax paid or borne—

(a) by any person enjoying full or limited immunity, rights or privileges under section 3 of the Privileges and Immunities Act [Chapter 3:03], or is specified in a notice or list published in terms of sections 7 and 10 of that Act, or otherwise as contemplated under the recognised principles of international law; or

(b) by any diplomatic or consular mission of a foreign country established in Zimbabwe, relating to transactions concluded for the official purposes of such mission.

(2) The relief contemplated in paragraph (a) of subsection (1) shall not be granted to—

(a) a citizen; or

(b) any permanent resident; of Zimbabwe.

(3) The Minister may authorise any relief under this section on such conditions and subject to such restrictions as he may deem fit.

(4) Any claim for a refund of tax under this section shall be made in such form and at such time as the Commissioner may prescribe and shall be accompanied by such proof of payment of tax or certification as the Commissioner may require.

## 75 Forms and authentication and service of documents

(1) Any form, notice, demand or other document issued or given or made by or on behalf of the Commissioner or any other officer in terms of this Act shall be sufficiently authenticated if the name or official designation of the Commissioner or officer by whom the same is issued or given or made is stamped or printed thereon.

(2) Any form, notice, demand, document or other communication required or authorised under this Act to be issued, given or sent to or served upon any person by the Commissioner or any other officer in terms of this Act shall, except where otherwise provided in this Act, be deemed to have been effectively issued, given, sent or served—

(a) if delivered to him;

[*PIL (Pvt) Ltd v ZIMRA 17-HH-213*]

or

(b) if left with some adult person apparently residing at or occupying or employed at his last known abode or office or place of business in Zimbabwe; or

(c) if despatched by registered or any other kind of post addressed to him at his last known address, which may be any such place or office as is referred to in paragraph (b) or his last known post office box number or that of his employer; or

(d) in the case of a company—

(i) if delivered to the public officer of the company contemplated in section 61 of the Taxes Act; or

(ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company as its registered office in Zimbabwe or, where no such place has been appointed by the company, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company in Zimbabwe; or

(iii) if despatched by registered or any other kind of post addressed to the company or its public officer at its or his last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his last known post office box number or that of his employer.

(3) Any form, notice, demand, document or other communication referred to in subsection (2) which has been issued, given, sent or served in the manner contemplated in paragraph (c) or subparagraph (iii) of paragraph (d) of that subsection shall be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the place to which it was addressed, unless the Commissioner is satisfied that it was not so received or was received at some other time or, where the time at which it was received or the fact that it was received is in dispute in proceedings under this Act in any court having jurisdiction to decide the matter, the court is so satisfied:

Provided that the preceding provisions of this subsection shall not apply where any person is in criminal proceedings charged with the commission of an offence under this Act by reason of his failure, refusal or neglect to do

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anything which he is required to do in terms of the said form, notice, demand, document or other communication, unless it was despatched to such person by registered or certified post.

(4) If the Commissioner is satisfied that any form, notice, demand, document or other communication, other than a notice of assessment, issued, given sent or served in a manner contemplated in paragraphs (b), (c) or subparagraphs (ii) or (iii) of paragraph (d) of subsection (2) or, has not been received by the person to whom it was addressed or has been received by such person considerably later than it should have been received by him and that such person has in consequence been placed at a disadvantage, the Commissioner may, if he is satisfied that the circumstances warrant such action, direct that such form, notice, demand, document or other communication be withdrawn and be issued, given, sent or served anew.

## 76 Arrangements and directions to overcome difficulties, anomalies or incongruities

If in any case the Commissioner is satisfied that in consequence of the manner in which any registered operator or class of registered operators conducts his or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of any provisions of this Act, the Commissioner may make an arrangement or give a direction as to—

- (a) the manner in which such provisions shall be applied; or
- (b) the calculation or payment of tax or the application of any rate of **zero%** or any exemption from tax provided in this Act;

in the case of such registered operator or class of registered operators or any person transacting with such registered operator or class of registered operators as appears to overcome such difficulties, anomalies or incongruities:

Provided that such direction or arrangement shall not have the effect of substantially reducing or increasing the ultimate liability for tax levied under this Act.

## 77 Schemes for obtaining undue tax benefits

- (1) For the purposes of this section—

**“scheme”** includes any transaction, operation, scheme or understanding, whether enforceable

or not, including all steps and transactions by which it is carried into effect;

**“tax benefit”** includes—

- (a) any reduction in the liability of any person to pay tax; or
- (b) any increase in the entitlement of any registered operator to a refund of tax; or
- (c) any reduction in the consideration payable by any person in respect of any supply of goods or services; or
- (d) any other avoidance or postponement of liability for the payment of any tax, duty or levy imposed by this Act or by any other law administered by the Commissioner.

(2) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any scheme, whether entered into or carried out before or after the fixed date, and including a scheme involving the alienation of property—

- (a) has been entered into or carried out which has the effect of granting a tax benefit to any person; and
- (b) having regard to the substance of the scheme—
  - (i) was entered into or carried out by means or in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a tax benefit; or
  - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and
- (c) was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit;

the Commissioner shall 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 such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such tax benefit.

(3) Any decision of the Commissioner under this section shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the scheme concerned does or would result in a tax benefit, it shall be presumed, until the contrary is proved that such scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

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## 78 Regulations

(1) Subject to subsection (3), the Minister may make regulations prescribing anything which under this Act is to be prescribed or which in his opinion is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Value Added Tax (Development Partners) (Refunds) Regulations, 2018  
See in the Regulations Library under this Chapter number  
-Editor  
VSL (Pvt) Ltd & 3 ors v ZIMRA 19-HH-023 para 252]

(2) Without derogating from the generality of subsection (1) regulations made under that provision may provide for—

(a) the registration application form referred to in subsection (2) and (3) of section *twenty-three*;

(b) the form by a registered operator notifying the Commissioner of any changes referred to in section *twenty-five*;

(c) the form of a return referred to in paragraph (a) of subsection (1) of section *twenty-eight*;

(d) the form of a return referred to in section *thirty*;

(3) Regulations in terms of subsection (1) may provide for the manner in which sales of goods which are rated at **zero%** in terms of section *ten*, or on which no tax is payable in terms of subsection (1) of section *eleven* are to be dealt with.

[amended by the Finance Act 10 of 2003]

(4) Where any amount referred to in—

(a) paragraph (b) or subparagraph (ii) of paragraph (c) of the definition of "**commercial rental establishment**" in section *two*;

[amended by the Finance Act 10 of 2003]

(b) subsection (4) of section *seven*; or

(c) the proviso to subsection (2) or paragraph (a) of the proviso to (5) of section *seventeen*; or

(d) subsection (5) or (7) of section *twenty*; or

(e) paragraph (a) of, and the proviso to, subsection (1) of section *twenty-three*; or

(f) paragraph (b) of subsection (2), or subparagraph (i) of paragraph (a) of subsection (5), or subparagraph (i) of paragraph (c) of subsection (6) of section *twenty-seven*; or

(g) paragraph (a) of subsection (3) of section *thirty-nine*; or

(h) paragraph (b) of the proviso to subsection (1), or paragraph (b) of subsection (3) or (4), of section *forty-four*,

is prescribed in regulations made in terms of this section instead of being prescribed by the Charging Act, section 30 of the Charging Act shall apply to such regulations in the same way that it applies to a statutory instrument amending or replacing the rate of value-added tax or tax on imports mentioned in section 29 of the Charging Act.

(5) Regulations made under this section may prescribe for any contraventions thereof **civil penalties** of a prescribed amount leviable by the Commissioner on behalf of the Zimbabwe Revenue Authority for each day during which a contravention continues, not exceeding a prescribed number of days:

Provided that the Commissioner shall have power to waive the payment or refund the whole or part of any penalty prescribed under this subsection if he or she is satisfied that the contravention was not wilful, or not due to the want of reasonable care.

[*Edgars Stores Ltd v Minister of Finance & ZIMRA* 14-HH-462]

(6) A civil penalty prescribed under subsection (5) shall constitute a debt due to the Commissioner by the person against whom it is levied, and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Commissioner or the Zimbabwe Revenue Authority.

(7) The amount of any penalty prescribed under subsection (5) that is received or recovered by the Commissioner will form part of the funds of the Zimbabwe Revenue Authority.

[above subsections (5),(6) and (7) inserted by the Finance (No.2) Act 9 of 2011 with effect from the **1<sup>st</sup> January, 2012**]

## PART XII AGREEMENTS

## 79 Tax agreements

(1) Without derogation from the powers conferred on the President in terms of any other law, the President may conclude conventions, treaties, agreements or other arrangements with the government of any country, under such

## ICAZ STUDENT LEGISLATION HANDBOOK - VALUE ADDED TAX ACT

conditions as he may consider necessary, providing for any or all of the following matters—

- (a) the prevention, mitigation or discontinuance of the levying, under the laws of Zimbabwe and such other country, of value-added tax or any similar tax where the supply of goods or services is subject to such tax in either Zimbabwe or such other country and such supply or the importation of such goods or services is also subject to such tax in the other country which is a party to the agreement;
- (b) the refunding of value-added tax or any similar tax, or any portion of such value-added tax or similar tax, levied under the laws of Zimbabwe and such other country in respect of the supply of goods or services in Zimbabwe or such other country, as the case may be, where such goods or services are imported into such other country or Zimbabwe, as the case may be;
- (c) regulating or co-ordinating any matter with regard to the levying and collection, under the laws of Zimbabwe and such other country, of value-added tax or any similar tax; or
- (d) the rendering of reciprocal assistance in the administration of and the collection of value-added tax or any similar tax under the laws of Zimbabwe and such other country, or in respect of the execution of the arrangements provided for in any agreement entered into in terms of this section;
- (e) concessions as to, or exemptions from, the tax normally payable in respect of supply of services or goods grown, produced or manufactured in, or imported from, the territory of that government, in consideration of the extension by that government of privileges in respect of supply of services or goods grown, produced or manufactured in, or imported into the territory of that government from, Zimbabwe;
- (f) payments to compensate for the extension of privileges by either of the parties in respect of supply of services or goods grown, produced or manufactured in, or imported from, the territory of the other party;
- (g) the importation, removal and exportation of goods, including the collection by the one party on behalf of the other party of the value added tax imposed in respect of goods which, having been imported into the territory of the one party, are removed into the territory of the other party, the payment of such tax or of an amount in commutation thereof, and the charges for the collection of such tax.

(2) Any concession as to, or exemption from, tax referred to in paragraph (e) of subsection (1) and any payment in compensation referred to in paragraph (f) of subsection (1) may be made or granted with retrospective effect if the President considers it expedient to do so.

(3) Any convention, treaty, agreement or other arrangement concluded by the President in terms of subsection (1) shall, as soon as may be possible after it is concluded, be published by notice in a statutory instrument, and thereupon the arrangements so notified shall, subject to subsection (5), have effect as if enacted by this Act.

(4) The Minister shall lay a copy of every convention, treaty, agreement or other arrangement referred to in subsections (1) before Parliament on one of the 30 days on which it next sits after the date on which the convention, treaty, agreement or other arrangement was published in terms of subsection (3).

(5) If Parliament, on one of the 30 days on which it next sits after a copy of a convention, treaty, agreement or other arrangement has been laid before it in terms of subsection (4), does not by resolution approve such convention, treaty, agreement or other arrangement, it shall cease to be of force or effect at the end of the thirtieth sitting day.

(6) Any convention, treaty, agreement or other arrangement referred to in subsection (1) or any regulations relative to thereto shall have force and effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law or instrument having effect by virtue of any law.

(7) The President may at any time by notice in a *statutory instrument* withdraw any notice made in terms of subsection (3), and the arrangements notified in such earlier notice shall cease to have effect upon a date fixed in such latter notice, but the withdrawal of any notice shall not affect the validity of anything previously done thereunder.

(8) The duty imposed by this Act to preserve secrecy with regard to such tax shall not prevent the disclosure to any authorised officer of the country contemplated in subsection (1) of any information necessary for the proper execution of the convention, treaty, agreement or other arrangement notified in terms of subsection (3).

## 80 President may suspend tax payable under agreement

Any suspension of tax granted in terms of this Part in respect of any tax may be extended in whole or in part by the President, by notice in the *Gazette*, to any corresponding special rate of tax which may be applicable under an agreement to the supply of services or goods grown, produced or manufactured in any particular country and such suspension of tax may in like manner be amended or repealed.

## PART XIII GENERAL

## 81 Notice of variation of rate of tax

(1) The Minister may by notice in the *Gazette* make known for general information—

(a) that in terms of a taxation proposal tabled by him in Parliament, the rate of tax specified in section six is to be increased to a rate set forth in that proposal and in that notice; or

(b) that it is proposed to decrease the rate of tax so mentioned to a rate set forth in that notice;

and the increased or decreased rate of tax so set forth shall, until an Act of Parliament is promulgated **within 6 calendar months** after the publication of the notice in the *Gazette*, by which effect is given to the proposal or other provision is made, apply for the purpose of determining amounts of tax in respect of supplies of goods and services made by registered operators on any date falling on or after the date which the Minister has specified in the said notice for the coming into operation of such increased or decreased rate of tax, as the case may be, or in respect of importations of goods made on such date.

(2) When in any legal proceedings the question arises whether the Minister has tabled a taxation proposal referred to in subsection (1), or as to the particulars contained in that proposal, a copy of a document purporting to be printed by order of the Speaker of Parliament and to contain such proposal, shall be accepted as sufficient evidence that such proposal was tabled and of the particulars contained therein.

## 82 Transitional matters

(1) For the purposes of this Act, where—

(a) goods are provided under a rental agreement for a period which commences before and ends on or after the fixed date; or

(b) the performance of any services is commenced before and is completed on or after that date; or

(c) domestic goods and services are provided for a period which commences before and ends on or after that date;

the value of the supply, as determined under this Act, shall not be reduced to take account of any portion thereof made before the said date:

Provided that—

(i) where the goods referred to in paragraph (a) consist of fixed property, there shall be excluded from the rental consideration of the supply so much of such consideration as is attributable to the portion of the period referred to in that paragraph which ends before the said date;

(ii) where the services referred to in paragraph (b) were not taxable services for the purposes of the repealed Act—

A. any progress payment in respect of that portion of the services performed before the said date shall for the purposes of this Act be ignored; and

B. where any payment becomes due or is received in respect of services which were not taxable services for the purposes of the repealed Act and which are commenced before and completed on or after the said date, that portion of the payment which, on the basis of a fair and reasonable apportionment, is attributable to the portion of the services performed before the said date shall be excluded from the consideration for the supply.

(2) For the purposes of this section—

**"sales tax"** means the sales tax levied under the repealed Act.

(3) For the purposes of subsection (14) where an option to purchase fixed property or a right of pre-emption in respect of fixed property is granted, the agreement for the sale of the property shall be deemed to be concluded when the option or right of pre-emption is exercised

(4) Where any leased property has been leased by a registered operator under the repealed Act who is on the fixed date a registered operator under this Act, to a lessee under a financial lease, as defined in section 2

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of the repealed Act, and such property is delivered to the lessee on or after that date, such property shall, notwithstanding section *eight*, be deemed for the purposes of this Act to have been supplied to the lessee under an instalment credit agreement at the time of delivery of such property.

(5) Where, on or after the fixed date, any amount accrues to a registered operator who was a registered operator for the purposes of the repealed Act and the amount so accruing, or a portion thereof, would, but for the repeal of that Act, have been taken into account in the determination of a taxable value chargeable with sales tax, value-added tax shall, notwithstanding anything in this Act to the contrary, be chargeable under this Act in respect of that amount as though such amount were consideration for a supply of goods or services supplied by the registered operator on the date on which that amount accrued.

(6) This Act shall not be construed as imposing value-added tax under paragraph (a) of subsection (1) of section *six* in respect of—

(a) a provision of goods under a rental agreement entered into before the fixed date for a period which ended before that date where such goods did not constitute goods as defined in section 2 of the repealed Act; or

(b) a performance of services under an agreement entered into before the fixed date where the performance of such services is completed before that date or such services were performed during and in respect of a period which ended before that date, if in either case such services were not taxable services as contemplated in the definition of “**sale value**” in section 2 of the repealed Act.

(7) Where the value of any supply of goods or services, as determined under section *nine*, includes any amount which has been taken into account by a registered operator in the determination of a taxable value under the repealed Act, and sales tax was chargeable in respect of such taxable value under section 4 of that Act or would have been so chargeable but for section 8 of that Act, the value in respect of such supply shall for the purposes of the value-added tax be reduced by the said amount, but excluding so much of that amount as represents sales tax.

(8) Where any payment is made or an invoice is issued on or after the date of promulgation of this Act and before the fixed date in respect of consideration for the supply of any goods or services, not being a transaction in respect of

which a sale value is subject to sales tax, a supply of such goods or services shall be deemed to have been made on the fixed date to the extent to which such payment or invoice relates to the provision of goods or the performance of services on or after the fixed date:

Provided that this subsection shall not apply in respect of any payments customarily made or invoices customarily issued, when made or issued at regular intervals for the provision of goods or performance of services still to be provided or performed.

(9) In the case of a registered operator who was on the day before the fixed date a registered operator for the purposes of the repealed Act an adjustment shall be made in the manner provided in subsections (11) and (12) in respect of sales tax attributable to an amount of bad debts previously written off but now recovered which would, but for the repeal of that Act, have been accounted for under that Act.

(10) The sales tax attributable to an amount due in terms of subsection (9) shall be determined by applying the formula—

in which formula “*r*” is the rate of sales tax, expressed as a percentage, which was in force on the day before the fixed date and “*t*” is the said amount.

(11) The adjustment in terms of subsection (9) shall be made in the tax period of the registered operator under this Act which, as nearly as possible, corresponds with the tax period of the registered operator which would, but for the repeal of the repealed Act, have applied under that Act.

(12) The adjustment in terms of subsection (9) shall be made by including in the amounts of output tax accounted for in terms of subsection (3) of section *fifteen* in respect of the relevant tax period under this Act the amount of sales tax attributable to the amount that would have been accounted for under the repealed Act and by including in the amounts of input tax accounted for under subsection (3) of section *fifteen* such amount as would have been accounted for under section 28A of that Act.

[amended by the Finance Act 10 of 2003]

(13) Notwithstanding subsection (8), where fixed property has been disposed of under an agreement for the sale of such property concluded before the fixed date, the disposal of such property under such sale shall be deemed

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not to be a supply of goods for the purposes of this Act:

Provided that where an agreement for the construction of improvements on such property has been concluded before the said date and the consideration payable under such agreement is in terms of the Stamp Act, required for the purpose of the payment of stamp duty to be added to the consideration payable in respect of the acquisition of such property, such agreement and the agreement for the sale of the property shall for the purposes of this paragraph be deemed to be one agreement for the sale of the property.

(14) Where any registered operator who is on or with effect from the fixed date registered under section *twenty-three* and on that date—

[amended by the Finance Act 10 of 2003]

(a) carries on a construction, civil engineering or similar trade and has on hand a stock of materials acquired by him prior to that date in order to be used by him for the purpose of incorporation in any building or other structure or work of a permanent nature to be erected, constructed, assembled, installed, extended or embellished by him in the course of such trade, and sales tax has been borne by him in respect of such materials; or

(b) has on hand a stock of consumable goods or maintenance spares acquired under sales concluded by him or the importation by him prior to the fixed date for the purpose of consumption or use in the course of his trade, and sales tax has been borne by him in respect of such sales or importation;

and on or after that date any item of such stock is withdrawn by him for the purpose referred to in paragraph (a) or the purpose referred to in paragraph (b), as the case may be, the registered operator may, provided he has taken stock of such materials, consumable goods or maintenance spares, as the case may be, and he retains properly prepared stock lists in respect of such stocktaking, include in the amounts of input tax deducted by him under subsection (3) of section *fifteen* in respect of the tax period during which such item is withdrawn, the amount of sales tax borne by him in respect of that item:

Provided that where the registered operator does not maintain records which are adequate enough to determine when items are withdrawn from such stocks or the sales tax so borne thereon in respect of sales to him of such items, the Commissioner may, on application by the registered operator, authorise him to deduct the

actual sales tax borne by him in respect of such sales or an amount of sales tax which on the basis of a reasonable calculation represents the amount of sales tax so borne by him on the stocks in equal instalments by way of inclusions in the input tax deducted by the registered operator in his tax returns over a **period of 2 years** or such shorter period as the Commissioner may allow.

(15) Where sales tax has been borne by any registered operator, being a person who is on or with effect from the fixed date registered under section *twenty-three* in respect of the acquisition of goods, other than fixed property or goods incorporated therein, under a sale or the importation of goods and such goods are held by him on the fixed date as trading stock as defined in section 2 of the Taxes Act, whether or not the registered operator is liable for normal tax under that Act, the registered operator may, provided he has taken stock of such goods and he retains properly prepared stock lists in respect of such stocktaking, include the amount of that tax in the amount of input tax deducted by him under subsection (3) of section *fifteen* in respect of the tax period during which such goods are supplied by him in the course or furtherance of his trade:

[amended by the Finance Act 10 of 2003]

Provided that where it appears to the Commissioner that the keeping of records for the purposes of subsection (14) can be dispensed with without prejudice to revenue collections, the Commissioner may, on application by the registered operator, authorise him to deduct the sales tax on stocks of such goods so held by the registered operator in equal instalments by way of inclusions in the input tax deducted by the registered operator in his tax returns over a **period of 6 months** or such shorter period as the Commissioner may allow.

(16) Where any person—

(a) is on the day before the fixed date registered as a registered operator under the repealed Act;

(b) at the end of that day has in his possession goods, as defined in the repealed Act, which he has not disposed of or which he has disposed of under a sale but for which he has not received full payment and in either case sales tax was not borne by him on acquisition; and

(c) on the fixed date is not a registered operator for the purposes of this Act;

he shall for the purposes of the repealed Act be deemed to have applied such goods on the day referred to in paragraph (a) to a use or consumption contemplated in section 16 of that Act.

(17) Any sales tax payable under the repealed Act in respect of the taxable value of such goods as are referred to subsection (16) shall be payable at the rate specified in the Charging Act and shall be paid to the Commissioner within the **period of 3 months** reckoned from the day after the fixed date, without penalty.

(18) Every person who on the fixed date is a registered operator under the repealed Act shall be deemed to be a registered operator under this Act if, on that date, he is liable to be registered in terms of Part IV of this Act.

## 83 Act binding on State, and effect of certain exemptions from taxes

(1) This Act shall bind the State.

(2) No provision contained in any other law providing for an exemption from any tax or duty shall be construed as applying or referring, as the case may be, to the tax leviable under this Act unless such tax is specifically mentioned in such provision.

[amended by the Finance Act 2 of 2005 with effect from the 12<sup>th</sup> September, 2005.]

## 84 Repeal of Cap. 23:08 and savings

(1) Subject to subsection (2), the Sales Tax Act [Chapter 23:08] is repealed.

(2) Notwithstanding the repeal of the repealed Act—

(a) anything done or commenced or any decision made in terms of the repealed Act which, immediately before the fixed date had or was capable of acquiring effect shall continue to have or be capable of acquiring, as the case may be, effect as if it had been done, commenced or made in terms of this Act;

(b) any provision of the repealed Act shall remain in force for the purposes of the levying, payment, assessment and recovery of sales tax levied under that Act which is in terms of that Act deemed to have become payable on a date falling before the fixed date and matters connected therewith.

## 85 Amendment of Acts

The Act specified in each Part of the *Second Schedule* is amended to the extent set out in that Part.

### FIRST SCHEDULE

[repealed by the Finance Act 10 of 2003]

### SECOND SCHEDULE

(Section 85)

#### PART I Insolvency Act [Chapter 6:04]

In section 106 by the deletion—

- (a) from the heading of “Sales tax” and the substitution of “Value added tax”;
- (b) of “Sales Tax Act [Chapter 23:08]” and the substitution of “Value Added Tax Act [Chapter 23:12]”.

#### PART II Hire-Purchase Act [Chapter 14:09]

In the Schedule in—

- (a) item A 1. by the deletion of “sales tax” and the substitution of “value added tax”;
- (b) item B 1. by the deletion of “sales tax” and the substitution of “value added tax”.

#### PART III Customs and Excise Act [Chapter 23:02]

1

In section 34 in subsection (4) by the deletion of “Sales Tax Act [Chapter 23:08]” and the substitution of “Value Added Tax Act [Chapter 23:12]”.

2

In section 46 in subsection (3) by the deletion of “Sales Tax Act [Chapter 23:08]” and the substitution of “Value Added Tax Act [Chapter 23:12]”.

#### PART IV Finance Act [Chapter 23:04]

1

In section 28—

- (a) by the repeal of the definition of “principal Act” and the substitution of—

.amendment Start

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““principal Act” means the Value Added Tax Act [Chapter 23:12];”

.amendment End

(b) by the repeal of the definition of “sales tax” and the substitution of—

.amendment Start

““value added tax”. means the tax imposed in terms of Part III of the principal Act;”.

.amendment End

2

By the repeal of section 29 and the substitution of—

.amendment Start

## “29 Rates of value added tax and tax on imports

The rate of value added tax and tax on imports shall be as set out in the Schedule.”

.amendment End

## PART V Fiscal Appeal Court Act [Chapter 23:05]

1.

In section 12—

(a) by the deletion in the definition of “tax” of “(a) the Sales Tax Act [Chapter 23:08],” and the substitution of “(a) the Value Added Tax Act [Chapter 23:12],”;

(b) by the deletion in the definition of “tax Act” of “(a) the Sales Tax Act [Chapter 23:08],” and the substitution of “(a) the Value Added Tax Act [Chapter 23:12],”.

## PART VI Revenue Authority Act [Chapter 23:11]

1.

In the long title by the repeal of “the Sales Tax Act [Chapter 23:08],”

2.

In section 46, in subparagraph (i) of paragraph (c) by the deletion of—

(a) “sales tax” and the substitution of “value-added tax”;

(b) “sales tax leviable under the Sales Tax Act [Chapter 23:08]” and the substitution of “the

value-added tax leviable under the Value Added Tax Act [Chapter 23:12].”

3.

By the repeal of the First Schedule and the substitution of

.amendment Start

## FIRST SCHEDULE

(Sections 2, 21, 34A, 34B and 38)

Specified Acts

1. Betting and Totalizator Control Act [Chapter 10:02]
2. Capital Gains Tax Act [Chapter 23:01]
3. Customs and Excise Act [Chapter 23:02]
4. Income Tax Act [Chapter 23:06]
5. Income Tax (Transitional Period Provisions) Act [Chapter 23:07]
6. Stamp Duties Act [Chapter 23:09]
7. Tax Reserve Certificates Act [Chapter 23:10]
8. Value Added Tax Act, 2002.”

.amendment End

4

In the Third Schedule by the repeal of Part VII.

## PART VII BANKING Act [Chapter 24:20]

In the Schedule by the repeal of Part IX.

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**CHAPTER 23:01  
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**Acts 54/1981, 29/1998; 21/99, 22/1999; 18/2000; 22/01, 27/2001; 15/2002; 10/2003; 17/04, 18/04,  
29/2004; 2/05, 8/05, 11/2005; 6/06, 12/2006; 16/2007; 3/09, 5/2009; 1/2014; 2/2017; 1/19, 7/19,  
13/2019; 8/20, 10/2020; 7/2021 and 8/2022  
SI 211/2022.**

[Repealed by the Revenue Authority Act.]

[Repealed by the Finance Act 27/2001.]

**ACT**

**AN ACT to provide for the raising of a tax on capital gains, and to make provision for matters ancillary or incidental thereto.**

[Date of Commencement: **1st August, 1981.**]

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## CAPITAL GAINS TAX ACT

### PART I PRELIMINARY

#### 1 Short title

This Act may be cited as the Capital Gains Tax Act [Chapter 23:01].

#### 2 Interpretation

[Section 57 of the Finance Act 2009 gazetted on the 23<sup>rd</sup> April, 2009, is published below for ease of reference: -

“References to old currency system in enactments”  
**Every amount in an enactment** expressed in terms of the old currency system shall, on and after the 31st January, 2009, be construed in accordance with the new currency system.

In this section “**new currency system**” and “old currency system” have the meanings given to those terms in section 2(1) of the Presidential Powers (Temporary Measures) (Currency Revaluation and Issue of New Currency) Regulations, 2009, published in the since -lapsed Statutory Instrument 6 of 2009.- SI 6/2009.]

##### (1) In this Act—

[Administration assigned to the Minister of Finance, Economic Development and Investment Promotion by SI 197/2023 w.e.f. 20<sup>th</sup> October, 2023.]

**“approved employee housing trust fund”** means an arrangement embodied in a notarised trust deed which satisfies the Commissioner-General that its dominant purpose or effect is to enable a company or group of companies to finance and construct housing for its employees on terms that will eventually allow the employees to acquire ownership of their homes from the trust;

[Inserted by Act 6 of 2006 with effect from the 1<sup>st</sup> September, 2006.]

**“assessed capital loss”** means the amount by which the sum of the deductions to be made under subsections (2) and (3) of section eleven from the capital amount (as defined in Part III) of any taxpayer exceeds such capital amount:

Provided that where the total amount of the assessed capital loss of a person in respect of sales in any year of assessment is zw\$50 000 or US\$ 100 or less the assessed capital loss arising from such sales shall be reduced by such amount;

[This amount was amended into US\$ by Act 5 of 2009; redesignated from US\$ to zw\$ by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019; amended by Act 13/2019 w.e.f. 31st December,

2019; increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020. amended by Finance Act 7/2021 w.e.f. 31 December, 2021; total increased by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

“**deed of sale**” means an agreement in respect of a specified asset the effect of which is that ownership of the specified asset shall pass to a person upon or after payment by him of the whole or a certain portion of the amount payable under the agreement;

“**marketable security**” means—

- (a) any bond capable of being sold in a share market or exchange; or
- (b) any—
  - (i) debenture, share or stock; or
  - (ii) right possessed by reason of a person’s participation in any unit trust;

whether or not capable of being sold in a share market or exchange;

“**share**” includes a member’s interest in a private business corporation;

“**specified asset**” means—

- (a) immovable property; or
- (b) any marketable security; or
- (c) any right or title to property whether tangible or intangible that is registered or required to be registered in—
  - (i) the Mines and Minerals Act [Chapter 21:05]. or
  - (ii) the Patents Act [Chapter 26:03]; or
  - (iii) the Trade Marks Act [Chapter 26:04]; or
  - (iv) the Industrial Designs Act [Chapter 26:02]; or
  - (v) the Copyright and Neighbouring Rights Act [Chapter 26:05]; or
  - (vi) the Brands Act [Chapter 19:03]; or
  - (vii) the Geographical Indications Act [Chapter 26:06]; or
  - (viii) the Integrated Circuit Layout-Designs Act [Chapter 26:07];

[Para (c) substituted by Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to 1<sup>st</sup> January, 2017.]

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**“tax”** means tax leviable in terms of this Act;

**“Taxes Act”** means the Income Tax Act [Chapter 23:06].

(2) For the purposes of this Act—

(a) an expression to which a meaning is assigned in section (2)(1), 2A and 2B of the Taxes Act in relation to the gross income, income or taxable income of a person or the making of any assessment or the furnishing of any return shall, unless the expression is otherwise defined in this Act, have the same meaning in this Act in relation to the gross capital amount, capital amount or capital gain, respectively, of a person or to the making of any assessment or the furnishing of any return under this Act;

[Amended by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(b) an expression to which a meaning is otherwise assigned in subsection (1) of section 2 of the Taxes Act shall, unless the expression is otherwise defined in this Act, have the same meaning in this Act.

(3) For the purposes of this Act—

(a) a company shall be deemed to be under the control of an individual if the majority of voting rights attaching to all classes of shares in the company is controlled, directly or indirectly, by the individual;

(b) an individual and his nominee shall be deemed to be 1 individual.

(4) Any expression defined for the purposes of **Part IIIA** shall bear the same meaning when used elsewhere in this Act.

[Subsection 2(4) inserted by Act 1/2014 with effect from the 1<sup>st</sup> January, 2014.]

## PART II ADMINISTRATION

### 3 Delegation of functions by Commissioner

[The Minister of Finance and Economic Development was assigned by SI 218/2018 w.e.f. 19<sup>th</sup> October, 2018.]

Section 3 of the Taxes Act relating to the delegation of functions shall apply, *mutatis mutandis*, in relation to this Act for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

[Sections 3 and 4 repealed and this section 3 substituted by the Revenue Authority Act [Chapter 23:11] with effect from the 19th January, 2001.]

4 . . . . .

5 . . . . .

[Sections 4 and 5 repealed by the Finance Act No.27 of 2001 from the 1<sup>st</sup> January, 2002.]

## PART III CAPITAL GAINS TAX

### 6 Charging of capital gains tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a capital gains tax in respect of the capital gains, as defined in this Part, received by or accrued to or in favour of any person during any year of assessment, other than a capital gain so received or accrued prior to the 1<sup>st</sup> August, 1981.

### 7 Calculation of capital gains tax

Subject to section *twenty-one*, the capital gains tax with which a person is chargeable shall be calculated in accordance with the Finance Act [Chapter 23:04] by reference to—

(a) the capital gains of the person in the year of assessment; and

(b) the rate of capital gains tax fixed from time to time in that Act.

[Zimra not permitted to refuse to assess and issue a CGT certificate once tax is paid *Sabeta. M v Commissioner General: Zimra 12-HH-079.*]

### 8 Interpretation of terms relating to capital gains tax

(1) For the purpose of this Part—

(a) **“gross capital amount”** means the total amount received by or accrued to or in favour of a person or deemed to have been received by or to have accrued to or in favour of a person in any year of assessment from a source within Zimbabwe from the sale on or after the **1st August, 1981**, of specified assets excluding any amount so received or accrued which is proved by the taxpayer to constitute “gross income” as defined in subsection (1) of section 8 of the Taxes Act and includes any amount allowed to be deducted in terms of subsection (2) of section *eleven* which has been recovered or recouped;

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Provided that in the case of bodies referred to in subparagraphs (a), (c) and (f) of paragraph 2 of the Third Schedule to the Taxes Act an amount so received or accrued shall, notwithstanding that it is so proved to constitute "gross income" as so defined, constitute a gross capital amount;

[Proceeds of shares sold by employees to meet PAYE obligations from an Indigenisation Employees Share Trust scheme constitutes an amount liable for CGT- *Old Mutual Zimbabwe Ltd v Commissioner-General of Zimra & ZIMRA* 16-HH-143.]

(b) "capital amount" means the amount remaining of the gross capital amount of any person, after deducting therefrom any amounts exempt from capital gains tax under this Act;

(c) "capital gain" means the amount remaining, after deducting from the capital amount of any person all the amounts allowed to be deducted from a capital amount under this Act.

(2) For the purposes of the definition of "gross capital amount" in subsection (1)—

(a) when owing to a variation in the rate of exchange of currency between Zimbabwe and any other country, the amount received, expressed in Zimbabwean currency, differs from the amount that had accrued prior to the variation in the rate of exchange—

(i) the amount to be included in the gross capital amount shall be the said amount received, expressed in Zimbabwean currency; and

(ii) if the receipt and the accrual occur in different years of assessment, effect shall be given to the increase or reduction in the gross capital amount in the year of assessment in which the amount accrued;

(b) where a person disposes of a specified asset otherwise than by way of sale such disposal shall be deemed to be a sale and an amount which, in the opinion of the Commissioner, is equal to the fair market price of such asset at the time of disposal shall be deemed to have accrued to such person at such time;

[*R (Pvt) Ltd v Zimra* 19-HH-792]

Provided that this paragraph does not apply to the **donation** by a company or group of companies of immovable property to an approved employee housing trust fund;

[Proviso inserted by section 20 of the Finance Act No.6 of 2006 w.e.f. the 1<sup>st</sup> September, 2006.]

(c) where a specified asset is expropriated such specified asset shall be deemed to have been sold for an amount equal to the amount paid by way of compensation for the expropriation of such specified asset;

(d) where a specified asset is sold in execution of the order of a court, the amount for which it was sold shall be deemed to have accrued to the person on whose behalf it was sold;

(e) where an amount accrues to a person by reason of the maturity or redemption of a specified asset, or in circumstances which in the opinion of the Commissioner are of a similar nature, such asset shall at the date of such accrual be deemed to have been sold by such person for such amount;

(f) where a person transfers to another person his rights under a deed of sale in respect of the passing of ownership of the specified asset which is the subject of the deed of sale, he shall be deemed to have sold the specified asset to that other person for an amount equal to the whole amount received by or accruing to him as a result of the transfer;

(g) where a person transfers to another person his or her rights in a residential, commercial or industrial stand, whether or not the stand is serviced and whether or not his or her title to the stand is registered under the Deeds Registries Act [Chapter 20:05], he or she shall be deemed to have sold a specified asset to that other person for an amount to equal to the whole amount received by or accruing to him or her as a result of the transfer;

(h) where a person relinquishes a membership interest in a **condominium** in favour of another person, he or she shall be deemed to have sold a specified asset to that other person for an amount equal to the whole amount received by or accruing to him or her as a result of the relinquishment.

[Paras (g) and (h) inserted by Act 1/2014 w.e.f. 1<sup>st</sup> January, 2014.]

### 9 When capital amount deemed to have accrued

A capital amount shall be deemed to have accrued to a person in the circumstances set out in subsections (1) and (2) of section 10 of the Taxes Act, the provisions of which shall, for the purposes concerned, apply *mutatis mutandis* in relation to this Act.

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## CAPITAL GAINS TAX ACT

### 10 Exemptions from capital gains tax

There shall be exempt from capital gains tax—

(a) the receipts and accruals of bodies referred to in paragraphs 1, 2 and 3 of the **Third Schedule** to the Taxes Act, other than those referred to in subparagraphs (a), (c) and (f) of paragraph 2;

(b) amounts received or accrued on the realization or distribution by the executor of a **deceased estate** of a specified asset forming part of such estate;

(c) amounts received or accrued on the sale of any **marketable security** being any bond or stock in respect of any loan to—

(i) the State or any company all the shares of which are owned by the State;

(ii) a local authority;

(iii) a statutory corporation;

[*Commissioner of Taxes v C W (Pvt) Ltd 89-ZLR-361*  
*Ellis N.O. v CoT 92-SC-001*]

(d) amounts received or accrued on the sale, by a person carrying on **life insurance business** as defined in subparagraph (1) of paragraph 1 of the Eighth Schedule to the Taxes Act, of specified assets which are investments in Zimbabwe for the purposes of factor F or G in the formula in paragraph 6 of that Schedule;

(e) amounts received or accrued on the sale of any shares in the **Infrastructure Development Bank** of Zimbabwe established by section 3 of the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*]. where such sale is by an institutional shareholder as defined in that Act who is not ordinarily resident in Zimbabwe;

[amended by Act 11 of 2005 from 24<sup>th</sup> March, 2006.]

(f) amounts received or accrued on the sale by a **petroleum operator**, approved by the Minister by notice in the *Gazette*, of immovable property used for the purposes of petroleum operations, to another petroleum operator, if the Commissioner is satisfied that the property is to be used for such purposes by the purchaser;

(g) the receipts and accruals of a **licensed investor** from the sale of a specified asset forming the whole or part of the investment to which his investment licence relates.

(h) the receipts and accruals of an **industrial park developer** from the sale of a specified asset that forms part of or is connected with his industrial park.

[inserted by the Finance Act 22 of 1999 with effect from 7 July 1999.]

(i) amounts received or accrued on the sale or disposal of any shares withheld by an **insurance company** in the circumstances described in subparagraph (2) of paragraph 6 of the Twenty-Seventh Schedule to the Income Tax Act [*Chapter 23:06*].

[inserted by Act 18 of 2000 from 1st January, 1999.]

(j)

[inserted by Act 27 of 2001 from 1st January, 2002 and repealed by Act 2 of 2005 with effect from the 1st September, 2005.]

(k) amounts received by or accruing to an employee from the sale or disposal of his shares or interest in an **approved employee share ownership trust** where such sale or disposal is to the trust.

[inserted by Act 15 of 2002 with effect from 1st January, 2003.]

(l) amounts received by a person on the sale of his or her **principal private residence** as defined in subsection (1) of section **twenty-one** if such person was, on the date of the sale, of or over the age of **\*55 years**;

[inserted by section 32 of Act 29 of 2004 w.e.f. **1<sup>st</sup> December, 2004** –

containing 2 errors corrected by the Editor as to the effective date and the reference to the definition of **principal private residence**.

Age reduced from **\*59 years** by section 18 of Act 5 of 2009.]

(m) amounts received by or accruing to a person who is of or over the age of **\*55 years** on the sale of any marketable security, other than a marketable security referred to in paragraph (j), in respect of the first **zw\$2340 000 or US\$ 1 800** received by or accruing to him or her in the year of assessment concerned.

[Inserted by Act 29 of 2004 from the **1<sup>st</sup> December, 2004** corrected by the Editor; amended into US\$ at the same time as the age was reduced from **\*59 years** by section 18 of Act 5 of 2009;]

Amount redesignated from US\$ to **zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019; amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019; increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020; Amended by Finance Act 7/2021

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w.e.f. 31 December, 2021.

]

(n) amounts received by or accruing to a person on the sale of any marketable security which was subjected to withholding tax in terms of section 39(c) of the Charging Act;

Provided that this exemption does **not apply** in the case of a **sale of a marketable security** referred to in **section 38 (“Rates of capital gains tax”)(b)(iii)** of the Charging Act.

[Inserted by section 14 of Act 5 of 2009 with deemed effect from **1<sup>st</sup> February, 2009**; amended by Finance Act 7/2021 w.e.f. 31 December, 2021; proviso inserted by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(o) the amount by which the fair market price of **shares sold** to an indigenisation partner or community share ownership trust or scheme exceeds the actual price at which those shares were sold ;

For the purposes of this paragraph—

**“community share ownership trust or scheme”** means such a scheme approved in terms of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in SI 21/2010;

**“indigenisation partner”** means an indigenous person who benefits (whether as an employee or in any other capacity) under an indigenisation implementation plan approved in terms of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in SI 21/2010.

[Para (o) inserted by Act 1/2014 with retrospective effect from **1<sup>st</sup> January, 2013**.]

(p) the disposal by way of **donation of immoveable property** consisting of one or more housing units to any local authority, approved employee share ownership trust or community share ownership trust or scheme.

For the purposes of this paragraph—

**“community share ownership trust or scheme”** means such a scheme approved in terms of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in SI 21/2010, or any other law that may be substituted for the same.

[Para (p) inserted by the corrected Finance Act No.2 of 2017 gazetted on 23<sup>rd</sup> March,2017 backdated to the **1<sup>st</sup> January, 2017**.]

(q) amounts received or accrued on the sale or disposal of any shares or other marketable securities to the Sovereign Wealth Fund established by the Sovereign Wealth Fund of Zimbabwe [**Chapter 22:20**].

[Para (q) inserted by the Finance (No.2) Act 7/2019 w.e.f. **1<sup>st</sup> January, 2019**.]

(r) amounts received or accrued on the sale or disposal of any shares or other marketable securities listed on the **Victoria Falls** Stock Exchange as defined in paragraph 4(f) of the Third Schedule to the Taxes Act.

[Para (r) inserted by section 16 of Act 8 of 2020 gazetted on the 28<sup>th</sup> October,2020 w.e.f. beginning the **1<sup>st</sup> August, 2020**.]

### 11 Deductions allowed in determination of capital gain

(1) For the purposes of determining the capital gain of any person there shall be deducted from the capital amount of such person the amounts allowed to be deducted in terms of this section:

Provided that when, owing to a variation in the rate of exchange of currency between Zimbabwe and any other country, the amount actually paid in Zimbabwean currency differs from the amount of the liability that had been incurred prior to the variation in the rate of exchange—

(a) the amount to be deducted shall be the amount actually paid in Zimbabwean currency;

(b) if the incurring of the liability and the payment therefor occur in different years of assessment, effect shall be given to the increase or reduction in the amount in the year of assessment in which the liability was incurred.

(2) The **deductions** which shall be allowed for the purposes of subsection (1) shall be—

[See the inflationary allowance deductible in terms of Section 39A Para 9(b) of the Finance Act [**Chapter 23:04**] since 30<sup>th</sup> January,2009 – Editor.]

(a) expenditure to the extent to which it is incurred on the acquisition or construction of such specified assets as are sold during the year of assessment other than expenditure in respect of which a deduction is allowable in the determination of the seller's taxable income as defined in subsection (1) of section 8 of the Taxes Act.

For the purposes of this paragraph where a person has acquired a specified asset—

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(i) by way of **inheritance**, he shall be deemed to have incurred expenditure on such acquisition to an amount which is equal to the amount at which the specified asset was valued in the deceased estate concerned;

(ii) otherwise than by way of purchase or inheritance—

A. prior to the 1st August, 1981, he shall be deemed to have incurred expenditure on such acquisition to an amount which is equal to an amount proved to the satisfaction of the Commissioner to be the fair market value of the specified asset at the time it was so acquired;

B. on or **after the 1st August, 1981**, he shall be deemed to have incurred expenditure on such acquisition to an amount equal to the amount, if any, included in respect of the specified asset—

I. for the purposes of this Act, in the gross capital amount of the person disposing of the specified asset; or

II. for the purposes of the Taxes Act, in the gross income, as defined in subsection (1) of section 8 of that Act, of the person disposing of the specified asset;

(b) expenditure to the extent to which it is incurred on additions, alterations or improvements to specified assets referred to in paragraph (a) other than expenditure in respect of which a deduction is allowable in the determination of the seller's taxable income as defined in subsection (1) of section 8 of the Taxes Act.

For the purposes of this paragraph, in the case of a capital amount arising from the sale of shares in a company which owns immovable property, any expenditure incurred by the seller on additions or alterations to the property shall be deemed to be expenditure incurred on additions to the shares;

(c) in respect of the year of assessment, an amount determined in accordance with the following formula: **((A-B)/C) x C**

[substituted by Act 29 of 2004 w.e.f. 1<sup>st</sup> January, 2005 and further substituted by Act 12 of 2006 w.e.f. the 1<sup>st</sup> January, 2007.

Repealed & substituted by Finance Act 7/2021 w.e.f. 31 December, 2021.]

where

**A** represents the figure for the All Items Consumer Price Index issued by the Central

Statistics Office at the time of disposal of the property;

**B** represents the figure for the All Items Consumer Price Index issued by the Central Statistics Office in the month of effecting improvements or month of purchase of the property;

**C** represents the **purchase price of the property** or revalued amount after including cost of improvements or alterations or improvements.

(d) any **expenditure** to the extent that it is directly incurred for the purposes of or in connection with the **sale** of a specified asset;

(e) the amount of any **debts** due to the taxpayer to the extent to which they are proved to the satisfaction of the Commissioner to be **bad**, if such amount is included in the current year of assessment or was included in any previous year of assessment in the taxpayer's capital amount in terms of this Act;

(f) the amount of any **costs**, taxed by the Registrar of the High Court during the year of assessment and not recovered from any source whatsoever, incurred by the taxpayer in connection with an appeal to the High Court or the Special Court in terms of Part VI, if—

(i) the appeal is allowed in full; or

(ii) the appeal is allowed to a substantial degree and the High Court or the Special Court, as the case may be, directs that such costs shall be allowed as a deduction in terms of this paragraph:

Provided that—

(i) if any determination of the High Court or the Special Court is reversed, affirmed or amended by the Supreme Court, no deduction shall be made in terms of this paragraph unless the decision of the Supreme Court is wholly or substantially favourable to the taxpayer and the Supreme Court directs that such costs shall be allowed as a deduction in terms of this paragraph;

(ii) no deduction shall be made in terms of this paragraph until the time for noting an appeal against the determination to the Supreme Court has lapsed or any appeal so noted has been heard and determined, and any costs shall be deemed not to have taxed until such lapse or determination

(g) the amount of any **costs**, taxed by the Registrar of the Supreme Court during the year of assessment and not recovered from any

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source whatsoever, incurred by the taxpayer in connection with an appeal to the Supreme Court in terms of Part VI, if—

(i) the decision of the Supreme Court is wholly or substantially favourable to the taxpayer; and

(ii) the Supreme Court directs that such costs shall be allowed as a deduction in terms of this paragraph;

(h) where, after the application of the above paragraphs, the total amount of the capital gains of a person in any year of assessment is **zw\$25 000** or US\$ 50 or less, an amount equal to such total amount.

[Amount amended into US\$ by Act 5 of 2009; further amended; then redesignated from US\$ to

**zw\$** by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August, 2019;

amended by Act 13/2019 w.e.f. 31<sup>st</sup> December, 2019;

increased by Finance Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020;

amended by Finance Act 7/2021 w.e.f. 31 December, 2021;

zw\$ amount increased by Act 8/2022 w.e.f. 24<sup>th</sup> October, 2022.]

(3) From the amount of the capital amount remaining after the deductions referred to in subsection (2) have been made there shall be deducted any assessed capital loss determined in respect of the previous year of assessment:

Provided that—

(i) if during any year of assessment there is a change in the shareholding of a company with an assessed capital loss or in the shareholding of any company which directly or indirectly controls any company with an assessed capital loss and the Commissioner is satisfied that such change has been effected solely or mainly in pursuance of or in connection with any scheme for taking advantage of such assessed capital loss, no assessed capital loss incurred prior to that change shall be deductible.

For the purposes of this subparagraph a company shall be deemed to be controlled by another company if the majority of the voting rights attaching to all classes of its shares are held directly or indirectly by such other company;

(ii) no taxpayer who—

(a) has been adjudged or otherwise declared or become insolvent; or

(b) has made an assignment of his property or estate for the benefit of his creditors;

shall be entitled to carry forward an assessed capital loss incurred before the date he was adjudged or otherwise declared or became insolvent or made the assignment, as the case may be;

(iii) where—

(a) a company which is incorporated under the Companies and Other Business Entities Act [*Chapter 24:31*] and which has an assessed capital loss is converted into a private business corporation; or

(b) a private business corporation with an assessed capital loss is converted into a company in terms of the Companies and Other Business Entities Act [*Chapter 24:31*];

the new private business corporation or the new company, as the case may be, shall be allowed the assessed capital loss as a deduction after the conversion.

(4) Where, in respect of any amount, a deduction would, but for this subsection, be allowable under more than 1 provision of this Act and whether it would be so allowable in respect of the same or different years of assessment, the taxpayer shall not be entitled to claim that such amount shall be deducted more than once and, where the deduction would, but for this subsection, be allowable under more than 1 provision of this Act in respect of the same year of assessment, the taxpayer shall elect under which one of those provisions he wishes to claim such amount as a deduction.

(5) Where the owner of immovable property has, as the lessor of such property, been charged to income tax in terms of paragraph (e) of the definition of "gross income" in subsection (1) of section 8 of the Taxes Act, he shall be deemed to have incurred expenditure in terms of paragraph (a) or (b) of subsection (2) in relation to such immovable property equal to the amount so included in his taxable income at the time of such inclusion.

(6) Where a person transfers to another person his rights under a deed of sale in respect of the passing of ownership of the specified asset which is the subject of the deed of sale, he shall be deemed for the purposes of this section to have acquired the specified asset from the person with whom he entered into the deed of sale for an amount equal to the amount payable by him under the deed of sale.

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#### 12 Circumstances in which no deductions may be made

Notwithstanding the provisions of section eleven, no deduction shall be made in respect of expenditure on or in relation to specified assets the sale of which is exempt from tax.

#### 13 Damage to or destruction of specified asset

(1) Subject to subsections (2) and (3), where a specified asset is damaged or destroyed it shall for the purposes of the definition of "gross capital amount" in subsection (1) of section eight be deemed to have been sold for an amount equal to the amount of any receipt or accrual in respect of such damage or destruction.

(2) Where the amount referred to in subsection (1) does not exceed the total of the amounts referred to in paragraphs (a) and (b) of subsection (2) of section eleven in respect of that asset—

(a) such asset shall not be deemed to have been sold; and

(b) such total amount shall be deemed to be reduced accordingly with effect from the commencement of the year of assessment in which the receipt or accrual occurs; and

(c) the amount of any subsequent deductions in terms of paragraph (c) of that subsection shall be calculated in relation to such reduced total amount.

(3) Where a specified asset is damaged or destroyed and the Commissioner is satisfied that the whole or part of any receipt or accrual in respect of such damage or destruction has been or will be expended, **within 2 years** from the date on which the specified asset was damaged or destroyed, on—

(a) the purchase or construction of a further specified asset of a like nature in replacement of the damaged or destroyed specified asset; or

(b) the repair of the specified asset, where the specified asset was damaged;

the provisions of subsections (1) and (2)—

(i) shall not apply in relation to the amount so expended;

(ii) shall apply, with effect from the year of assessment in which the damage or destruction occurred or such later year of assessment as the Commissioner may determine, in relation to

any part of the receipt or accrual not so expended.

(4) Expenditure to which subsection (3) relates shall not be allowable as a deduction in terms of section eleven upon the subsequent sale of the specified asset concerned.

#### 14 Determination of fair market price of specified assets

Where a person purchases a specified asset from any other person at a price in excess of the fair market price or where he sells a specified asset to any other person at a price less than the fair market price the Commissioner may, for the purpose of determining the capital gain or assessed capital loss, as the case may be, of such first-mentioned person, determine the fair market price at which such purchase or sale shall be taken into his accounts or returns for assessment.

[*Sommer Ranching (Pvt) Ltd v COT 99-SC-065*  
*Zimra refused to issued CGT clearance because price too low Masanga L v Sibanda G 21-HH-702*]

#### 15 Transfers of specified assets between companies under the same control

(1) If the ownership of any specified asset is transferred from one company to another in any of the following circumstances—

(a) where the Commissioner is satisfied that—

(i) the company that transfers the specified asset—

A. is incorporated outside Zimbabwe; and

B. has carried on its principal business inside Zimbabwe; and

C. is about to be wound up voluntarily in its country of incorporation for the purpose of the transfer of the whole of its business and property wherever situate to the company to which the specified asset is transferred;

and

(ii) the sole consideration for the transfer will be the issue, to the members of the company transferring the specified asset, of shares in the company to which the specified asset is transferred, in proportion to their holdings in the first-mentioned company; and

(iii) no shares in the company to which the specified asset is transferred will be available

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for issue to any persons other than members of the company transferring the specified asset;

or

(b) the transfer is effected from one company to another under the same control, in the course of or in furtherance of a scheme of reconstruction of a group of companies or a merger or other business operation which, in the opinion of the Commissioner, is of a similar nature;

or

(c) the transfer is effected—

(i) from a company incorporated under the Companies and Other Business Entities Act [Chapter 24:31] to a private business corporation into which the company has been converted in terms of the Companies and Other Business Entities Act [Chapter 24:31] or

(ii) from a private business corporation to a company into which the private business corporation has been converted in terms of the Companies and Other Business Entities Act [Chapter 24:31] in the course of or in furtherance of that conversion;

the transferor and the transferee may elect that, notwithstanding the terms of any agreement of sale, the selling price of the asset shall, in relation to the transferor, be deemed, for the purposes of this Act, to be an amount equal to the sum of the deductions allowable to the transferor in respect of the specified asset in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section eleven at the date of the transfer:

Provided that, if the specified asset is subsequently sold, otherwise than to a company under the same control, the capital gain or capital loss in the hands of the seller shall be calculated as if the asset had at all times remained in the ownership of the first transferor in respect of whom the election was made in terms of this section.

(2) Where in the circumstances referred to in paragraph (a) or (b) of subsection (1), a marketable security issued by a company involved in the scheme, merger or operation is transferred from one person to another for no cash consideration, in exchange for a marketable security issued by another such company, the transferor may elect that, notwithstanding the terms of any agreement of sale, the marketable security transferred by him shall be deemed to have been sold for an amount equal to the sum of the deductions

allowable to him at the date of transfer in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section eleven in respect of the marketable security transferred by him.

(3) An election in terms of subsection (2) shall be made not later than the date on which the person making the election submits a return for the assessment of his capital gain for the purposes of this Act.

### 16 Transfers of specified assets between spouses

(1) In this section—

“principal private residence” has the meaning given to it in section twenty-one.

(2) Where—

(a) the ownership of any specified asset is transferred from a person to his or her spouse; or

(b) a person transfers the ownership of a specified asset which is his principal private residence to his former spouse in compliance with an order of a court providing for the maintenance of the former spouse or dividing, apportioning or distributing the assets of the former spouses on or after the dissolution of their marriage;

the transferor and the transferee may elect that, notwithstanding the terms of any agreement of sale, the selling price of the specified asset shall in relation to the transferor be deemed, for the purposes of this Act, to be an amount equal to the sum of the deductions allowable to the transferor in respect of the specified asset in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section eleven at the date of transfer:

Provided that, if after the transfer such asset is sold to a person who is not the spouse of the seller, the capital gain or assessed capital loss in the hands of the seller shall be calculated as if the asset had at all times remained in the ownership of the first transferor to whom this section applies.

(3) An election in terms of subsection (2) shall be made not later than the date on which the person making the election submits a return for the assessment of his capital gain for the purposes of this Act.

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#### 17 Transfer of business property by individual to company under his control

If the ownership of any immovable property is transferred on or after the **1st April, 1991**, from an individual to a company in circumstances where the Commissioner is satisfied that—

- (a) the immovable property was previously used by the individual for the purposes of his trade; and
- (b) the company will continue to use the immovable property for the purposes of its trade; and
- (c) the individual controls the company, whether through holding a majority of the company's shares or otherwise;

the transferor and the transferee may elect that, notwithstanding the terms of any agreement of sale, the selling price of the immovable property shall, in relation to the transferor, be deemed, for the purposes of this Act, to be an amount equal to the sum of the deductions allowable to the transferor in respect of the immovable property in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section eleven at the date of the transfer:

Provided that, if after the transfer the immovable property is sold, otherwise than to a company under the same control, the capital gain or assessed capital loss in the hands of the seller shall be calculated as if the property had at all times remained in the hands of the first transferor to whom this section applies.

(2) An election in terms of subsection (1) shall be made not later than the date on which the person making the election submits a return for the assessment of his capital gain for the purposes of this Act.

#### 18 Provisions for sales of immovable property under suspensive conditions

(1) If any taxpayer has entered into any agreement with any other person in respect of any specified asset the effect of which is that ownership shall pass from the taxpayer to that other person upon or after receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of the amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer on the date on which the agreement was entered into:

Provided that—

- (i) the Commissioner shall deduct an allowance determined by applying the formula—

$$((A \times (B-C))/D)$$

in which—

A represents that portion of the amount deemed to have accrued under the agreement which is not receivable at the end of the year of assessment;

B represents the capital amount deemed to have accrued under the agreement;

C represents the aggregate of the sums deductible in respect of such specified asset in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section eleven;

D represents the amount deemed to have accrued under the agreement;

(ii) any allowance so deducted shall be included by the taxpayer as a capital amount in his return for the following year of assessment and shall form part of the capital amount of the said taxpayer;

(iii) if any such agreement is ceded or otherwise disposed of by the taxpayer no such allowance shall be made by the Commissioner in the year of assessment in which such cession or disposal takes place.

(2) Where any agreement referred to in subsection (1) is cancelled there shall be included in the capital amount or assessed capital loss, as the case may be, of the seller in the year of assessment in which such cancellation takes place an amount equal to the difference between the total of the amounts received by the seller in terms of the agreement and the total of the amounts included in the capital gains of the seller in terms of that subsection, and that subsection shall cease to have effect after that year of assessment.

(3) Where the capital amount of a person for any year of assessment includes any amount to which this section relates no deduction shall be allowed in respect of the amount referred to in paragraph (h) of subsection (2) of section eleven.

(4) Where a person transfers to another person his rights under a deed of sale in respect of the passing of ownership of the specified asset which is the subject of the deed of sale, he shall be deemed for the purposes of this section to have entered into an agreement in

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respect of the specified asset the effect of which is that ownership shall pass from him to the other person concerned, and this section shall apply, *mutatis mutandis*, accordingly.

### 19 Provisions relating to credit sales where ownership passes

(1) If any taxpayer has entered into any agreement with any other person in respect of any specified asset the effect of which is that—

- (a) the ownership shall pass to that other person on delivery of the specified asset; and
- (b) the amount payable to the taxpayer under the agreement shall be paid in instalments;

the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer on the date on which the agreement was entered into:

Provided that—

(i) the Commissioner, taking into consideration any deduction under paragraph (e) of subsection (2) of section *eleven*, may deduct such further allowance as seems to him reasonable in respect of all amounts which are deemed to have accrued under such agreement but are not receivable at the end of the year of assessment;

(ii) any allowance so deducted shall be included by the taxpayer as a capital amount in his return for the following year of assessment and shall form part of the capital amount of the taxpayer.

(2) Where the capital amount of a person for any year of assessment includes any amount to which this section relates, no deduction shall be allowed in respect of the amount referred to in paragraph (h) of subsection (2) of section *eleven*.

### 20 Provisions for the reductions in costs of specified assets

Where an amount is received or accrues, whether by way of recovery or of recoupment or otherwise, relating to the cost or deemed cost of a specified asset which has not been sold—

(a) if such amount exceeds the total of the amounts referred to in paragraphs (a) and (b) of subsection (2) of section *eleven* in respect of that asset, such asset shall be deemed to have been sold for an amount equal to the amount so received or accrued;

(b) if such amount does not exceed the total of the amounts referred to in paragraphs (a)

and (b) of subsection (2) of section *eleven* in respect of that asset—

(i) such total amount shall be deemed to be reduced accordingly with effect from the commencement of the year of assessment in which the receipt or accrual occurs; and

(ii) the amount of any subsequent deductions in terms of paragraph (c) of that subsection shall be calculated in relation to such reduced total amount;

and the asset shall be deemed to have been sold on the date of the final such receipt or accrual.

### 21 Provision for sales of principal private residences

(1) In this section—

**“dwelling”** means a building, or any part of a building, which is used wholly or mainly for the purpose of residential accommodation;

**“principal private residence”**, in relation to an individual, means—

(a) a dwelling which is proved to the satisfaction of the Commissioner—

(i) to have been that individual’s sole or main residence throughout the period that he owned it; or

(ii) to have been that individual’s sole or main residence **for a period of 4 years** or more immediately before the date of its sale, or for such shorter period immediately before the date of its sale as the Commissioner considers reasonable in all the circumstances; or

(iii) to have been regarded by that individual as his sole or main residence, even though he was prevented from residing in it as provided in subparagraph (i) or (ii) in consequence of his employment or for such other cause as the Commissioner considers reasonable in all the circumstances;

and

(b) subject to subsection (5), any land, whether or not it is a piece of land registered as a separate entity in a Deeds Registry, which—

(i) is owned by the individual concerned; and

(ii) surrounds or is adjacent to the dwelling referred to in paragraph (a); and

(iii) is used by the individual concerned primarily for private or domestic purposes in

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association with the dwelling referred to in paragraph (a);

(iv) **does not exceed 2 hectares** or such larger area as the Commissioner having regard to the size and character of the dwelling referred to in (a), is satisfied for the reasonable enjoyment of the dwelling as a principal private residence:

and

(c) subject to subsection (5), any garage, storeroom or other building or structure which—

(i) is owned by the individual concerned; and  
(ii) forms part of or is attached to or otherwise associated with the dwelling referred to in paragraph (a); and

(iii) is used by the individual concerned primarily for private or domestic purposes in association with the dwelling referred to in paragraph (a).

**“residential stand”**, in relation to an individual, any land, whether or not it is a piece of land registered as a separate entity in a Deeds Registry,

[Definition inserted by Act 12 of 2006 with effect from the 1<sup>st</sup> January, 2007.]

which—

(a) is owned by the individual concerned; and  
(b) is proved to the satisfaction of the Commissioner to be intended for the building of a principal private residence thereon;

(2) An individual may elect that, where a capital gain has been received by or has accrued to him or her **on or after the 1st April, 1988**, in respect of the sale by him or her of his or her principal private residence or residential stand (hereinafter in this section called the **“old principal private residence or old residential stand”**) and the Commissioner is satisfied that, before the end of the year of assessment next following the sale, an amount equal to the whole or part of the consideration received or accrued in respect of the sale has been or will be expended on the purchase or construction, on land owned by him or her in Zimbabwe, of another principal private residence or residential stand (hereinafter in this section called the **“new principal private residence or new residential stand”**) for the individual concerned—

[subsection (2) substituted by the **Finance Act 1 of 2019** gazetted on the 20<sup>th</sup> February 2019 backdated to the 1<sup>st</sup> January, 2007.]

(a) capital gains tax shall **not be** chargeable, if the amount of the consideration so received or accrued is equal to or less than the amount so expended; and

(b) capital gains tax **shall be** chargeable, if the amount of the consideration so received or accrued exceeds the amount so expended, on a proportion of the capital gain determined by applying the following formula— **(A x C)/B**

in which—

**A** represents that portion of the amount of the consideration received or accrued on the sale of the old principal private residence or old residential stand not so expended on the purchase or construction of the new principal private residence or new residential stand;

**B** represents the total amount of the consideration received or accrued on the sale of the old principal private residence or old residential stand;

**C** represents the capital gain in respect of the sale of the old principal private residence or old residential stand.

(2a) An election in terms of subsection (2) shall be made not later than the date on which the individual making the election submits a return for the assessment of his capital gain for the purposes of this Act.

[Subsection (2a) inserted by Finance Act (No. 2) 21 of 1999 w.e.f. 1 January 2000. Not affected by Act 1 of 2019 ?- Editor ]

(3) Where an amount is not chargeable to capital gains tax in terms of subsection (2), such amount shall be deducted from the amount referred to in section eleven(2)(a) when determining the capital gain in respect of the new principal private residence or new residential stand, with effect from the year of assessment in which the new principal private residence or new residential stand was acquired.

[subsection (3) substituted by the Finance Act 1 of 2019 gazetted on the 20<sup>th</sup> February 2019 w.e.f. the 1<sup>st</sup> January, 2007.]

(4) For the purposes of this section, where—

(a) a building owned by a company, partnership or other association of persons consists of or contains 1 or more flats, apartments or other units of residential accommodation; and

(b) the members of the company, partnership or association, as the case may be, have the right, by virtue of their membership, to occupy

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particular flats, apartments or units of residential accommodation in the building;

an individual who, by becoming or ceasing to be a member of the company, partnership or association concerned, acquires or relinquishes such a right of occupation, shall be deemed to have purchased or sold, as the case may be, the flat, apartment or unit of residential accommodation concerned.

(5) Where—

(a) land referred to in paragraph (b) of the definition of “**principal private residence**” in subsection (1); or

(b) a garage, storeroom or other structure referred to in paragraph (c) of the definition of “**principal private residence**” in subsection (1);

is disposed of separately from the dwelling in association with which it was used, this section shall not apply in relation to its disposal.

(6) Where a principal private residence is sold together with or as part of other immovable property which is not used wholly or mainly for the purposes of residential accommodation, the proportion of—

(a) the gross capital amount in the hands of the transferor; or

(b) the cost of acquisition in the hands of the transferee;

received or accruing in respect of the sale of the principal private residence shall be deemed to be—

(i) such proportion as may be specified by both the parties to the sale in a joint written statement which is submitted to the Commissioner and which is accepted by him; or

(ii) where no statement has been submitted to the Commissioner in terms of paragraph (i) or where the Commissioner has not accepted such a statement, such proportion as may be determined by the Commissioner to be fair and reasonable.

### 22 Substitution of business property

(1) A taxpayer may elect that, where a capital gain has been received by or accrued to him on or after the 1st April, 1991, in respect of the sale by him of immovable property previously used for the purposes of his trade (hereinafter in this section called the “**old property**”) and the Commissioner is satisfied that, before the end

of the year of assessment next following the sale, an amount equal to the whole or part of the consideration received or accrued in respect of the sale has been or will be expended on the purchase or construction of other immovable property (hereinafter in this section called the “**new property**”) to be used for the purposes of his trade—

(a) capital gains tax shall not be chargeable, if the amount of the consideration so received or accrued is equal to or less than the amount so expended; and

(b) capital gains tax shall be chargeable, if the amount of the consideration so received or accrued exceeds the amount so expended, on a proportion of the capital gain determined by applying the following formula— **(A x C)/B**

in which—

**A** represents that portion of the amount of the consideration received or accrued on the sale of the old property not so expended on the purchase or construction of the new property;

**B** represents the total amount of the consideration received or accrued on the sale of the old property;

**C** represents the capital gain in respect of the sale of the old property.

(1a) An election in terms of subsection (1) shall be made not later than the date on which the taxpayer making the election submits a return for the assessment of his capital gain for the purposes of this Act.

[inserted by Finance Act (No. 2) 21 of 1999 from 1 January 2000]

(2) Where an amount is not chargeable to capital gains tax in terms of subsection (1), such amount shall be deducted from the amount referred to in paragraph (a) of subsection (2) of section eleven when determining the capital gain in respect of the new property, with effect from the year of assessment in which the new property was acquired.

### PART IIIA CAPITAL GAINS WITHHOLDING TAX

#### 22A Interpretation in Part IIIA

In this Part—

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[all definitions, (except "payee" and "depository" which was amended also ), inserted by Act 1/2014 w.e.f. 1<sup>st</sup> January, 2014]

**"business of a land developer"** means the business of doing any one or more of the following things for profit—

- (a) the acquisition of land for subdivision **into more than 3 stands** for residential, commercial or industrial purposes; or
- (b) the acquisition of stands for servicing for residential, commercial or industrial purposes; or
- (c) the selling of stands serviced by the land developer; or
- (d) the servicing of stands acquired by another person for residential, commercial, or industrial purposes;

**"cession of a stand"** in relation to a stand that is part of a **land development scheme**, means the transfer to another person ("the cessionary") for money or other valuable consideration of all rights in respect of the stand (including rights of possession, occupation and, ultimately, of registration of title over the stand in the name of the cedent upon fulfilment of the agreed conditions) acquired by the cedent under the agreement by which he or she took possession of the stand from the local authority or the land developer (whether or not the cedent is an original beneficiary under a land development scheme or is himself or herself a cessionary of a previous cession of the stand);

**"condominium"** means any company, partnership or other association of persons —

- (a) that owns any immovable property consisting of **1 or more flats**, apartments or other units of residential accommodation; and

(b) the members of which have **the right, by virtue** of their membership—

(i) to occupy particular flats, apartments or units of residential accommodation comprising the immovable property; or

(ii) to a time-sharing interest in particular flats, apartments

(iii) or units of residential accommodation pursuant to a property time-sharing scheme;

**"depository"** means—

- (a) a conveyancer, legal practitioner, estate agent or other person who

(i) on behalf of any party to a sale of **immovable property**, holds the whole or any part of the price paid or payable in respect of the sale; and

(ii) is required, on completion of the sale or on transfer of the property, to pay the whole or any part of the amount he holds to the seller of the **immovable property** or to some other person for the seller's credit; or

(b) a **building society** registered in terms of the Building Societies Act [Chapter 24:02]; or

(c) the Sheriff or Master of the **High Court**; or

(d) a **stockbroker**, financial institution or other person who

(i) on behalf of any party to a sale of a marketable security, holds the whole or any part of the price paid or payable in respect of the sale; and

(ii) is required, on completion of the sale or on transfer of the marketable security, to pay the whole or any part of the amount he holds to the seller of the marketable security or to some other person for the seller's credit;

[amended by Finance Act 10 of 2003 with effect from the year of assessment beginning 1 January 2004]

(e) in relation to a **cession of a stand**

(i) the **cedent**, whether or not he or she is liable to pay the whole or any part of the amount he or she holds to the land developer; or

(ii) the **local authority** which, or land developer who, on behalf of a cedent or cessionary, holds the whole or any part of the price paid or payable in respect of the cession; or

(iii) any person referred to in paragraph (a), (b), (c) or (d) who mediates a cession of a stand;

[para (e) inserted by Act 1/2014 w.e.f. 1<sup>st</sup> January, 2014]

or

(f) in relation to the acquisition or relinquishment of a **membership interest in a condominium**

(i) the owner of the condominium; or

(ii) the custodian of the register of membership interests in the condominium; or

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(iii) any person referred to in paragraph (a), (b), (c) or (d) who mediates such acquisition or relinquishment.

[para (f) inserted by Act 1/2014 w.e.f. 1<sup>st</sup> January, 2014]

(g) the registrar or other registering official by whatever name called responsible for registering rights, titles and transfers or amendments thereof in terms of any of the following Acts

(i) the Mines and Minerals Act [Chapter 21:05]. or

(ii) the Patents Act [Chapter 26:03]; or

(iii) the Trade Marks Act [Chapter 26:04]; or

(iv) the Industrial Designs Act [Chapter 26:02]; or

(v) the Copyright and Neighbouring Rights [Chapter 26:05]; or

(vi) the Brands Act [Chapter 19:03]; or

(vii) the Geographical Indications Act [Chapter 26:06]; or

(viii) the Integrated Circuit Layout-Designs Act [Chapter 26:07] Act (No. 18 of 2001);

[para (g)-not (e) inserted in sequence by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March,2017 backdated to the 1<sup>st</sup> January,2017]

**“land developer”** means a person who carries on the business of a land developer;

**“land development scheme”** means any scheme whereunder —

(a) land is subdivided into stands for servicing by a local authority or a land developer; and

(b) beneficiaries of the scheme receive rights of possession, occupation and, ultimately, of registration of title over the stands in their names upon fulfilment of agreed conditions;

**“local authority”** means —

(a) a city or municipal council, town council, local board or rural district council; or

(b) any body declared by the President to be a local authority for the purposes of the Interpretation Act [Chapter 1:01] which is not a body or authority referred to in paragraph (a);

**“membership interest in a condominium”** means an interest or share in a condominium that confers on the holder thereof any of the rights referred to in paragraph (b) of the definition of “condominium”, however such

membership, interest or share is evidenced, whether by the holding or transfer of shares in a condominium that is a company, or in the form of a partnership interest, or by registration of sectional title in terms of section 27 of the Deeds Registries Act [Chapter 20:05];

**“payee”** means a person to whom a depositary pays or is required to pay an amount held by him as depositary in respect of the sale of a specified asset.

**“service”**, in relation to a stand, means to clear the land constituting the stand and to drain, dredge, pave, excavate, grade, landscape, construct buildings upon or otherwise develop such stand in every way that will render it suitable for residential, commercial or industrial purposes, and **“unserviced”** shall be construed accordingly;

**“stand”** means any unserviced or partly unserviced piece of land whether or not registered as a stand in terms of the Deeds Registries Act [Chapter 20:05];

### 22B Capital gains withholding tax

There shall be charged, levied and collected throughout Zimbabwe in accordance with this Part, for the benefit of the Consolidated Revenue Fund, a capital gains withholding tax calculated in accordance with the Finance Act [Chapter 23:04].

[Zimra not permitted to refuse to assess and issue a CGT certificate once tax is paid Sabeta. M v Commissioner General: Zimra 12-HH-079]

### 22C Depositaries to withhold tax

(1) Subject to subsections (5) and (7), every depositary who, in consequence of the sale or transfer of a specified asset, pays any amount held by him as depositary to or for the credit of the seller of the specified asset shall withhold capital gains withholding tax from that amount and shall pay the amount withheld to the Commissioner no later than **the 3<sup>rd</sup> working day** from the date when the payment was made or within such further time as the Commissioner may for good cause allow.

[amended by the Finance Act 22 of 1999 with effect from 7 July 1999, and by the Finance Act 16 of 2007 which shortened the period for payment with effect from the 1<sup>st</sup> January, 2008.

Limit shortened further by Act 3 of 2009 with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2009.]

(2) If the capital gains withholding tax payable in respect of any sale or transfer exceeds the amount held by a depositary, the depositary

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shall pay the full amount held by him to the Commissioner in accordance with subsection (1).

(3) Where capital gains withholding tax is withheld in accordance with subsection (1), the depositary shall provide the payee with a certificate, in a form approved by the Commissioner, showing the following particulars—

- (a) the depositary's name and address; and
- (b) the payee's name and address; and
- (c) particulars of the property sold; and
- (d) the amount of capital gains withholding tax that has been withheld.

(4) Where 2 or more depositaries hold the whole or any part of the price paid or payable in respect of any one sale of a specified asset<sup>3/4</sup>

(a) they shall be severally liable for payment of the full amount of capital gains withholding tax in respect of that sale, up to the amount held by them; and

(b) payment by any 1 of them of any amount of capital gains withholding tax in terms of this section shall absolve the others or reduce their liability *pro tanto*, as the case may be.

(5) A depositary need not withhold capital gains withholding tax in terms of subsection (1) if, before he pays any amount to or for the credit of the seller of the specified asset concerned<sup>3/4</sup>

(a) he or the seller applies to the Commissioner for a clearance certificate in respect of the sale of that specified asset, and provides the Commissioner with such information regarding the sale as the Commissioner may reasonably require; and

(b) the Commissioner, being satisfied that<sup>3/4</sup>

(i) no capital gains tax is likely to be payable in respect of the sale or that any capital gains tax so payable is likely to be less than the capital gains withholding tax required to be withheld in terms of subsection (1); and

(ii) adequate arrangements have been or will be made for the payment of any capital gains tax payable in respect of the sale;

has issued a clearance certificate in respect of the sale.

[Law Society of Zimbabwe and Mollat P.M. v Minister of Finance with AG intervening 99-SC-092]

(6) A clearance certificate may be issued in terms of subsection (5) on such terms and

conditions as the Commissioner may fix, including terms and conditions relating to the furnishing of a return or interim return for the assessment of capital gains tax.

(7) Where the amount held by a depositary represents the whole or part of an instalment payable in a sale by instalments, the amount of capital gains withholding tax to be withheld from that amount and paid to the Commissioner in terms of subsection (1) shall be calculated as if the instalment were the full price at which the specified asset concerned was sold.

### 22D Agents to withhold tax not withheld by depositaries

(1) Subject to subsections (7) and (9) where—

(a) an agent, on behalf of a payee, receives from a depositary an amount which represents the whole or part of the price of a specified asset; and

(b) capital gains withholding tax has not been withheld from that amount in terms of section twenty-two C, nor has a clearance certificate been issued in terms of that section in respect of the sale of the specified asset concerned;

the agent shall withhold capital gains withholding tax from that amount and shall pay the tax withheld to the Commissioner no later than **the 3<sup>rd</sup> working day** from the date on which he or she received the amount or within such further time as the Commissioner may for good cause allow.

[Amended by the Finance Act 16 of 2007 which shortened the period for payment with effect from the 1<sup>st</sup> January, 2008.

Limit shortened further by Act 3 of 2009 with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2009.]

(2) Where capital gains withholding tax is withheld in accordance with subsection (1), the agent shall provide the payee with a certificate, in a form approved by the Commissioner, showing the following particulars, to the extent that the agent knows them—

- (a) the depositary's name and address; and
- (b) the payee's name and address; and
- (c) particulars of the property sold; and
- (d) the amount of capital gains withholding tax that has been withheld.

(3) For the purpose of this section, a person shall be deemed to be the agent of a payee and

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to have received an amount on behalf of that payee if—

(a) that person's address appears as the address of the payee in the records of the depositary who paid the amount; and

(b) the warrant, cheque or draft in payment of the amount is delivered at that person's address.

(4) Where a trust receives from a depositary an amount—

(a) to the whole or part of which a beneficiary is entitled in terms of the trust; or

(b) which in terms of section *nine* is deemed to accrue to a person as a capital gain;

then—

(i) a trustee of that trust shall be deemed for the purpose of this section to be an agent in respect of that amount; and

(ii) any such beneficiary shall be deemed for the purpose of this section to be a payee in respect of that amount.

(5) Any person deemed to be the agent of a payee in terms of subsection (3) or (4) shall, as regards the payee and in respect of any capital gain accruing to or in favour of the payee, have and exercise all the powers, duties and responsibilities of a person declared to be the agent of a taxpayer in terms of section 58 of the Taxes Act.

(6) Where 2 or more agents hold the whole or any part of the price paid in respect of any 1 sale of a specified asset—

(a) they shall be severally liable for payment of the full amount of capital gains withholding tax in respect of that sale, up to the amount held by them; and

(b) payment by any 1 of them of any amount of capital gains withholding tax in terms of this section shall absolve the others or reduce their liability *pro tanto*, as the case may be.

(7) An agent need not withhold capital gains withholding tax in terms of subsection (1) if, before he pays any amount to or for the credit of the seller of the specified asset concerned—

(a) he or the seller applies to the Commissioner for a clearance certificate in respect of the sale of that specified asset, and provides the Commissioner with such information regarding the sale as the Commissioner may reasonably require; and

(b) the Commissioner, being satisfied that—

(i) no capital gains tax is likely to be payable in respect of the sale or that any capital gains tax so payable is likely to be less than the capital gains withholding tax required to be withheld in terms of subsection (1); and

(ii) adequate arrangements have been or will be made for the payment of any capital gains tax payable in respect of the sale;

has issued a clearance certificate in respect of the sale.

[*Law Society of Zimbabwe and Mollat P.M. v Minister of Finance with AG intervening 99-SC-092*]

(8) A clearance certificate may be issued in terms of subsection (7) on such terms and conditions as the Commissioner may fix, including terms and conditions relating to the furnishing of a return or interim return for the assessment of capital gains tax.

(9) Where the amount received by an agent represents the whole or part of an instalment payable in a sale by instalments, the amount of capital gains withholding tax to be withheld from that amount and paid to the Commissioner in terms of subsection (1) shall be calculated as if the instalment were the full price at which the specified asset concerned was sold.

### 22E Payee to pay tax not withheld by depositary or agent

(1) Subject to subsections (2) and (4), where—

(a) a payee receives an amount which represents the whole or part of the price of a specified asset; and

(b) capital gains withholding tax has not been withheld from that amount in terms of section *twenty-two C* or *twenty-two D*, nor has a clearance certificate been issued in terms of either of those sections in respect of the sale of the specified asset concerned;

the payee shall pay to the Commissioner, no later than the **3<sup>rd</sup> working day** from the date on which the amount was received or within such further time as the Commissioner may for good cause allow, the amount of capital gains withholding tax that should have been withheld.

[Amended by the Finance Act 16 of 2007 which shortened the period for payment with effect from the 1<sup>st</sup> January, 2008.

Limit shortened further by Act 3 of 2009 with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2009.]

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(2) A payee need not pay capital gains withholding tax in terms of subsection (1) if, before end of the period within which it is required to be paid in terms of that subsection—

(a) he applies to the Commissioner for a clearance certificate in respect of the sale of that specified asset, and provides the Commissioner with such information regarding the sale as the Commissioner may reasonably require; and

(b) the Commissioner, being satisfied that—

(i) no capital gains tax is likely to be payable in respect of the sale or that any capital gains tax so payable is likely to be less than the capital gains withholding tax required to be withheld in terms of subsection (1); and

(ii) adequate arrangements have been or will be made for the payment of any capital gains tax payable in respect of the sale;

has issued a clearance certificate in respect of the sale.

[ultra vires Constitution ? *Law Society of Zimbabwe and Mollat P.M. v Minister of Finance with AG intervening 99-SC-092*]

(3) A clearance certificate may be issued in terms of subsection (2) on such terms and conditions as the Commissioner may fix, including terms and conditions relating to the furnishing of a return or interim return for the assessment of capital gains tax.

(4) Where the amount received by a payee represents the whole or part of an instalment payable in a sale by instalments, the amount of capital gains withholding tax to be withheld from that amount and paid to the Commissioner in terms of subsection (1) shall be calculated as if the instalment were the full price at which the specified asset concerned was sold.

### 22F Exemptions

Notwithstanding section *twenty-two C, twenty-two D or twenty-two E*, capital gains withholding tax

(a) need not be withheld or paid where the amount concerned is exempt from capital gains tax in terms of section *ten*;

(b) shall not be withheld or paid on the sale of marketable securities by a unit trust registered as an internal scheme under the Collective Investment Schemes Act [*Chapter 24:19*], or as an asset manager under the Asset Management Act [*Chapter 24:26*] but shall be

withheld and paid on the redemption of any unit by an investor in the unit trust.

[Substituted by Act 8 of 2005 with effect from the 1<sup>st</sup> January, 2006.]

### 22FA Registration of depositaries

(1) Every person who acts as a depositary in the ordinary course of his business shall apply to the Commissioner for a registration certificate—

(a) **within 30 days** after he commences that business; or

(b) in the case of a person who was carrying on that business before the date of commencement of the Finance (No. 2) Act, 1999, **within 30 days** after that date.

(2) An application in terms of subsection (1) shall be made in writing and shall be accompanied by such information as the Commissioner may reasonably require to ascertain the applicant's identity, the place where he conducts his business and the nature and extent of his business as a depositary.

(3) On a receipt of an application in terms of subsection (1) and any information he may have required in terms of subsection (2), the Commissioner shall promptly issue the applicant with a registration certificate in the form prescribed.

(4) Any one who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Section inserted by Finance Act (No. 2) 21 of 1999 from the 1<sup>st</sup> January 2000, and subs (4) amended by the Criminal Penalties Amendment Act 22 of 2001 with effect from the 10th September , 2002.]

### 22G Depositaries to furnish returns

(1) Subject to subsection (4), every conveyancer, legal practitioner, estate agent, stockbroker, financial institution and other person that performs the functions of a depositary in the ordinary course of business shall, on or before the last day of every month or at such other intervals as the Commissioner may permit, submit to the Commissioner a statement in the form prescribed giving such particulars as may be prescribed of<sup>3/4</sup>

(a) all sales of specified assets which the person has concluded or negotiated on behalf of any other person; and

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(b) all amounts of capital gains withholding tax the person has withheld in terms of section *twenty-two C*;

during the preceding month.

(2) A return submitted in terms of subsection (1) shall be accompanied by the amount of capital gains withholding tax payable in respect of the sales to which the return relates.

(3) Subject to subsection (4), payment of capital gains withholding tax by a depositary, other than a depositary referred to in subsection (1), shall be accompanied by a return in the form prescribed.

(4) Where a person performs the functions of a depositary<sup>3/4</sup>

(a) in **partnership** or association with any other person, the Commissioner may permit a joint return to be submitted in respect of sales concluded or negotiated, and capital gains withholding tax withheld, by the partnership or association;

(b) as an **employee**, the Commissioner may permit his employer to submit a return of sales the employee has concluded or negotiated and capital gains withholding tax the employee has withheld, whether such return is submitted individually or as part of a joint return referred to in paragraph (a);

and any return submitted in terms of this subsection shall be a sufficient discharge of the person's obligations under subsection (1) or (3).

[Section substituted by the Finance Act 22 of 1999 with effect from 7 July 1999.]

### 22H Penalty for non-payment of tax

(1) Subject to subsection (2), a depositary or an agent who fails to withhold or pay to the Commissioner any capital gains withholding tax as provided in section *twenty-two C* or *twenty-two D* shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of section *twenty-two C* or *twenty-two D*, as the case may be, of—

(a) the amount of capital gains withholding tax which should have been withheld; and

(b) a further amount equal to **15%** of the capital gains withholding tax which should have been withheld.

(2) If the Commissioner is satisfied in any particular case that a failure to pay capital gains withholding tax was not due to any intent to

evade the provisions of this Part, he may waive the payment of the whole or such part as he thinks fit of the amount referred to in paragraph (b) of subsection (1).

### 22I Refund of overpayments

(1) If it is proved to the satisfaction of the Commissioner that any person has been charged with capital gains withholding tax in excess of the amount properly chargeable to him in terms of this Part, the Commissioner shall authorise a refund in so far as it has been overpaid:

[*Law Society of Zimbabwe and Mollat P.M. v Minister of Finance with AG intervening 99-SC-092*]

Provided that the Commissioner shall not authorise any such refund unless a claim for it is made **within 6 years** of the date on which the tax was paid.

(2) The Commissioner shall pay interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, on any amount of capital gains withholding tax overpaid that is not refunded by him or her **within 60 days** of the date when the taxpayer claimed the refund or the date of completion of the assessment, whichever is the later date, unless the overpayment was due to an incomplete or defective return or other error on the part of the taxpayer, and not to an error on the part of the Commissioner.

[Subsection (2) inserted by Act 18 of 2004 from the 5<sup>th</sup> November, 2004;  
See the Capital Gains Tax (**Rate of Interest**) Notice SI 33/2009;  
substituted by **SI 211/2022** w.e.f. 1<sup>st</sup> DECEMBER, 2022 – Editor.]

### 22J Credit where tax has been withheld

If a person to whom a capital gain has accrued proves to the Commissioner's satisfaction that capital gains withholding tax has been paid in respect of that capital gain, the capital gains withholding tax shall be allowed as a credit against any capital gains tax chargeable in terms of this Act in respect of that capital gain, and any excess shall be refunded.

### 22K Application of Part IIIA to sales concluded before 1.1.1999

(1) This Part shall not apply in respect of any sale of a specified asset which was concluded before the 1<sup>st</sup> January, 1999, even if a depositary pays any amount after that date to

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or for the credit of a seller as a consequence of that sale.

(2) Notwithstanding subsection (1), any amount paid purportedly by way of capital gains withholding tax in respect of a sale referred to in subsection (1) shall be regarded in all respects as if it had been validly paid in terms of this Part.

[Section 36 in part IV of the Finance Act 29 of 1998 was, prior to its amendment by SI 222E of 7 July 1999, *ultra vires* s 16 of the Constitution of Zimbabwe and therefore of no force and effect **between the dates 1 January 1999 and 7 July 1999-**

*Law Society of Zimbabwe and Mollat P.M. v Minister of Finance with AG intervening 99-SC-092]*

### 22L Suspension of provisions of Part IIIA relating to marketable securities

[Lifted with effect from 17<sup>th</sup> October, 2005 by S.I. 188/05 gazetted on 16 September, 2005.]

Notwithstanding sections twenty-two A to twenty-two H, this Part shall be suspended in respect of—

(a) the charging, levying and collecting of capital gains withholding tax on the sale of marketable securities; and

(b) the submission of returns by depositaries, to the extent that they hold moneys representing the price paid or payable in respect of the sale of marketable securities;

until such date as the Minister may specify by notice in the *Gazette*:

Provided that the date so specified shall not be earlier than 1 month after the date of publication of the notice.

## PART IV RETURNS AND ASSESSMENTS

### 23 Application of provisions of Taxes Act relating to returns and assessments

For the purposes of providing for and giving effect to the matters concerned in relation to this Act, the following provisions of the Taxes Act—

(a) section 37 relating to the publication of notices regarding, and the furnishing of, returns and interim returns;

[amended by s 24 of the Finance Act 22 of 1999 from 1st January 1999.]

(b) section 38 relating to the income of minor children;

(c) section 39 relating to the furnishing of further returns and information;

(d) section 40 relating to the Commissioner having access to public records;

(e) sections 41 and 42 relating to shareholdings;

(f) section 43 relating to the submission of returns and the preparation of accounts;

(g) section 44 relating to the production of documents and evidence on oath;

(h) section 45 relating to estimated assessments;

(i) section 46 relating to additional tax in the event of default or omission;

(j) section 47 relating to additional assessments;

(k) section 48 relating to reduced assessments and refunds;

(l) section 49 relating to amended assessments of loss;

(m) section 50 relating to adjustments of tax;

(n) section 51 relating to assessments and the recording thereof; and

(o) section 52 relating to copies of assessments;

(o1) Part VIIIA relating to application of information technology for the purposes of the Taxes Act;

[Para (o1) inserted by Act 12 of 2006 with effect from the 1st January, 2007.]

(p) section 97B relating to calculation of interest payable,

[Para (p) inserted by Act 18 of 2004 w.e.f. 5<sup>th</sup> November, 2004; changed by s.16 of Act 29 of 2004 w.e.f. 31<sup>st</sup> December, 2004 to read 97B.]

shall apply, *mutatis mutandis*, in relation to this Act.

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### PART V REPRESENTATIVE TAXPAYERS

#### 24 Application of provisions of Taxes Act relating to representative taxpayer

For the purposes of providing for and giving effect to the matters concerned in relation to this Act, the following provisions of the Taxes Act—

- (a) section 53 relating to representative taxpayers;
- (b) section 54 relating to the liability of representative taxpayers;
- (c) section 55 relating to the right of representative taxpayers to indemnity;
- (d) section 56 relating to the personal liability of representative taxpayers;
- (e) section 58 relating to the power to appoint an agent;
- (f) section 59 relating to the remedies of the Commissioner against an agent or trustee;
- (g) section 60 relating to the Commissioner's power to require information; and
- (h) section 61 relating to public officers of companies;

shall apply, *mutatis mutandis*, in relation to this Act.

### PART VI OBJECTIONS AND APPEALS

#### 25 Objections and appeals

- (1) Any taxpayer who is aggrieved by—
  - (a) any assessment made upon him under this Act; or
  - (b) any decision of the Commissioner mentioned in—
    - (i) paragraphs (b) and (e) of subsection (2) of section eight;
    - (ii) subparagraph A of subparagraph (ii) of paragraph (a) of subsection (2) of section eleven;
    - (iii) proviso (i) to subsection (3) of section eleven;

- (iv) subsection (3) of section *thirteen*;
  - (v) section *fourteen*;
  - (vi) section *fifteen*;
  - (vii) proviso (i) to subsection (1) of section *nineteen*;
  - (viii) the definition of “principal private residence” in subsection (1) of section *twenty-one*;
  - (ix) subsection (2) of section *twenty-one*;
  - (x) subsection (6) of section *twenty-one*;
- may, unless it is otherwise provided in this Act, object to such assessment or decision **within 30 days** after the date of the notice of assessment or of the written notification of the decision in the manner and under the terms prescribed by this Act:

Provided that nothing herein contained shall give a further right of objection to the amount of any assessed capital loss determined in respect of the previous year of assessment.

#### (2) The provisions of—

- (a) subsections (2), (3), (4), (5) and (6) of section 62 of the Taxes Act, relating to objections; and
- (b) sections 63 to 70 of the Taxes Act, relating to objections and appeals;

[Sommer Ranching (Pvt) Ltd v COT 99-SC-065]

shall apply, *mutatis mutandis*, in relation to this Act for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

### PART VII PAYMENT AND RECOVERY OF TAX

#### 26 Day and place for payment of tax

[Substituted by Act 16 of 2007 w.e.f. 1st January, 2008.]

##### (1) Tax shall become due and payable—

[Interest BACKDATED TO 1<sup>ST</sup> JANUARY 2020 – if IN FOREIGN CURRENCY – See CGT (**Rate of Interest**) Notice gazetted 26<sup>th</sup> February, 2021 SI 54/2021; replaced by **SI 211/2022** gazetted on 16<sup>th</sup> December w.e.f. 1<sup>st</sup> DECEMBER, 2022 – Editor.]

- (a) **no later than 30 days** from the date when a specified asset referred to in section

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eighteen(1) or nineteen(1) accrues to the taxpayer in terms of those provisions;

[It would appear that a “specified asset” would not accrue to taxpayers but the capital amount on disposal of such specified asset will be what accrues to the taxpayer.-Editor]

or

(b) in any case other than one referred to in paragraph (a), **no later than 30 days** from the date when title to the specified asset in question is formally transferred to the taxpayer; or

(c) no later than the last date specified in terms of section *twenty-twoC*, *twenty-twoD* and *twenty-twoE*, if that date is earlier than the last date referred to in paragraph (a) or (b):

Provided that nothing herein contained shall deprive any taxpayer of the right to pay his tax through the post.

(2) Tax shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act, or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner.

(3) If tax is not paid on or before the date specified in terms of subsection (1)(a) or (b), **interest**, calculated at a rate to be fixed by the Minister, by *statutory instrument*, shall be payable on so much of the tax as from time to time remains unpaid by the taxpayer during the period beginning on the date specified by the Commissioner in the notification as the date on which the tax shall be paid and ending on the date the tax is paid in full:

[See the CGT (**Rate of Interest**) Notice SI 281/2019  
see CGT in **forex** backdated SI 54/2021-to 1<sup>ST</sup> JANUARY 2020: ; replaced by **SI 211/2022** gazetted 16<sup>th</sup> December w.e.f. 1<sup>st</sup> DECEMBER, 2022 – Editor.]

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

(3) For the purposes of collecting the tax and any interest payable in terms of subsection (1) and (3) the Commissioner shall have the same powers as are conferred by the Taxes Act for the collection of income tax and the provisions of the Taxes Act shall apply accordingly with any necessary changes.

(4)

## PART VIII GENERAL

### 27 Application of provisions of Taxes Act relating to offences, evidence, forms and regulations

The provisions of—

- (a) sections 81 to 86, relating to offences;
- (b) sections 87 and 88, relating to evidence and proof;
- (c) section 89, relating to forms and authentication and service of documents;
- (d) section 90, relating to regulations;

of the Taxes Act shall apply, *mutatis mutandis*, in relation to this Act, for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

### 28 Application of provisions of Taxes Act relating to relief from double taxation

The provisions of section 91 of the Taxes Act relating to relief from double taxation shall apply, *mutatis mutandis*, in relation to this Act, for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

### 29 Application of provisions of Taxes Act relating to tax avoidance

The provisions of section 98 of the Taxes Act relating to tax avoidance shall apply, *mutatis mutandis*, in relation to this Act, for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

### 30 Transitional provision re capital gains and losses of married women

Where in terms of this Act a gross capital amount which was received by or accrued to or in favour of a married woman in any year of assessment prior to the year of assessment beginning on the **1st April, 1988**, has been deemed to be a capital amount received by or accrued to or in favour of her husband, then, for the purposes of charging, levying and collecting tax in respect of the year of assessment beginning on the 1st April, 1988, and any subsequent year of assessment—

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(a) any capital gain accruing to or assessed capital loss carried forward by her husband from that source; or

(b) any right of election exercised by or allowance or deduction granted to her husband in respect of the capital gain or assessed capital loss referred to in paragraph (a);

shall be deemed to have accrued to or been carried forward or exercised by or been granted to, as the case may be, the married woman, and the same consequences shall follow and the same rights accrue to the married woman as would have followed or, as the case may be, accrued to her husband in respect of that capital gain, assessed capital loss, election, allowance or deduction.

#### 30A Capital gains tax not withheld in terms of Part IIIA to be paid before transfer of specified asset

(1) No registration of the acquisition of a specified asset in respect of which capital gains tax is not withheld in terms of Part IIIA shall be executed, attested or registered by—

(a) the Registrar of Deeds in terms of the Deeds Registries Act [*Chapter 20:05*];

(b) the person responsible for registering the transfer of shares of any company registered or incorporated in terms of the Companies and Other Business Entities Act [*Chapter 24:31*]

unless there is submitted to the Registrar of Deeds or the person concerned by either of the parties or their agents concerned in the transaction a certificate issued by the Zimbabwe Revenue Authority stating that any capital gains tax payable on the acquisition of the specified asset has been paid.

[Section inserted by Act 15 of 2002 w.e.f. 1st January, 2003 and renumbered by Act 10 of 2003.]

(2) No registration of the acquisition of—

(a) a **stand** that originated from a land development scheme and was subsequently ceded by the original beneficiary of the scheme to a cessionary (or, where further or more cessions of the stand occurred after that, by the cessionary seeking the registration of the stand); or

(b) a **membership interest** in a condominium that is evidenced by the registration of sectional title in terms of section 27 of the Deeds Registries Act [*Chapter 20:05*];

shall be executed, attested or registered by the Registrar of Deeds in terms of the Deeds

Registries Act [*Chapter 20:05*] unless the cessionary or acquirer of the membership interest in condominium submits to the Registrar of Deeds a certificate issued by the Zimbabwe Revenue Authority stating that any capital gains tax payable on the cession of the stand or acquisition of the membership interest has been paid.

[subsection (2) inserted by Act 1 /2014 w.e.f. 1<sup>st</sup> January 2014.]

#### 31 Returns by Registrar of Deeds, financial institutions and other persons

(1) At such intervals as the Commissioner may require, the Registrar of Deeds shall notify the Commissioner in the form prescribed of—

(a) all transfers of immovable property registered in the Deeds Registry during the period covered by the notification; and

(b) the name and address of the transferor and the transferee in each transfer referred to in paragraph (a); and

(c) the price, if any, at which each property referred to in paragraph (a) was transferred.

(2) Subject to subsection (3), whenever any marketable security is sold by or through the agency of—

(a) a bank or other institution registered or required to be registered under the Banking Act [*Chapter 24:01*]; or

(b) a building society registered or required to be registered under the Building Societies Act [*Chapter 23:02*]; or

(c) a broker licensed or required to be licensed under the Securities Act [*Chapter 24:25*];

[amended by the Securities Act w.e.f. 1<sup>st</sup> June, 2008]

the institution, society or broker, as the case may be, shall forthwith notify the Commissioner in the form prescribed of—

[amended by the Securities Act w.e.f. 1<sup>st</sup> June, 2008]

(i) the name and address of the seller and the purchaser; and

(ii) the nature of the marketable security; and

(iii) the price, if any, at which the marketable security was transferred:

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Provided that, with the Commissioner's consent, such notification may be made at such intervals as the Commissioner may require.

(3) Subsection (2) shall be suspended until such date as the Minister may specify by notice in the *Gazette*:

Provided that the date so specified shall **not be earlier than 1 month** after the date of publication of the notice.

Section 31 inserted by the Finance Act 22 of 1999  
from 1 January 1999.]

### **32 Capital gains tax not withheld in terms of Part IIIA to be paid before transfer of specified asset**

No registration of the acquisition of a specified asset in respect of which capital gains tax is not withheld in terms of Part IIIA shall be executed, attested or registered by—

- (a) the Registrar of Deeds in terms of the Deeds Registries Act [*Chapter 20:05*];
- (b) the person responsible for registering the transfer of shares of any company registered or incorporated in terms of the Companies and Other Business Entities Act [*Chapter 24:31*];

unless there is submitted to the Registrar of Deeds or the person concerned by either of the parties or their agents concerned in the transaction a certificate issued by the Zimbabwe Revenue Authority stating that any capital gains tax payable on the acquisition of the specified asset has been paid.

[inserted by Act 15 of 2002 w.e.f. 1st January, 2003.  
Section wrongly numbered - Editor.]

# **FINANCE ACT**

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# Chapter 23:04

## FINANCE ACT

Acts 30/1965; 4/96, 10/96, 13/1996; 17/97, 23/1997; 29/1998; 9/99, 21/99, 22/1999; 18/2000; 27/2001; 12/02, 14/02, 15/2002; 10/2003; 16/04, 17/04, 18/04, 29/2004; 2/05, 8/2005; 6/06, 12/2006; 8/07, 16/2007; 3/09, 5/09, 10/2009; 3/10, 5/2010; 8/11, 9/2011; 6/2012; 1/14, 8/14, 11/2014; 8/15, 9/2015; 2/2017; 1/2018; 1/19, 7/19, 13/2019; 8/20, 10/2020; 7/2021; 8/22; and 10/2022.

**Amended by SI's 36/21, 83/21, 227/21, 254A/2021, 31/22, 96/22, 97/22(expired), 120/2022, 88/23 and 149/2023.**

**[Editor's Notes:** The Minister of Finance purported to amend this ACT by newspaper on the 5th October, 2018: and later published his amendment to section 22G by SI 205/2018 gazetted on the 12 October 2018 – which Regulations were -

1. challenged on the 12<sup>th</sup> February, 2019 in the High Court;
2. "validated" the following week on the 20<sup>th</sup> February by Act 1 of 2019 backdated to the 13<sup>th</sup> October 2018;
3. "re-validated" another 6 months later Act 7 of 2019 promulgated on the 21<sup>st</sup> August backdated to the 1<sup>st</sup> August 2019.

The High Court Judgment was handed down 4 weeks later on the 18<sup>th</sup> September, 2019 *M. Mlilo v Minister of Finance* 19-HH-605 declaring SI 205/2018 ergo Section 22G *ultra vires*.

-Parliament has since overruled this finding by passing the misworded section 32 of Act 13 of 2019 gazetted on the 31<sup>st</sup> December, 2019

The latest SI's 96 and 97 of 2022 are probably also *ultra vires* the powers of the Minister, so will have to be validated by an Act of Parliament before they can be enforced: subject to the recent decision in the case of *Gonese I v Minister of Finance and Economic Development* 22-HH-265-which again declared that the Finance Minister cannot make law.

The Constitutional Court has yet to confirm this order of invalidity.

*Quaere:* why has the above *Mlilo* judgment taken on appeal to the Supreme Court on 4 October 2019 under SC 543/19, not yet been set down for argument ? - Editor.]

### PRELIMINARY

[Repealed]

[Repealed]

[Repealed]

[Repealed]

[Repealed by Act 29/1998.]

[Repealed by Act 5/2009.]

[See section 39A of CHAPTER 22:15 interpretation in Part V.]

[See section 44C of CHAPTER 22:15 Legal tender of electronic currency.]

[See section 44D of CHAPTER 22:15 issuance & legal tender of RTGS.]

[Repealed by Act 10/2009.]

[See section 44F of CHAPTER 22:15 Adjustment of statutory issues.]

[Repealed by Act 16 of 2004 with effect from 30<sup>th</sup> January, 2004.]

[Inserted as 48 but renumbered as 47A.]

**[N.B.** The section numbers allocated to this new CHAPTER XIII have been re-allocated by the Editor to follow consecutively after section 49 above simply to avoid hyperlink duplication in this electronic version of this Finance Act.]

### AN ACT to make provision for the revenues and public funds of Zimbabwe and to provide for matters connected therewith or incidental thereto

[Dates of commencement: Chapter I, 1st April, 1988; Chapter II, 5th July, 1965; Chapter III, 23rd February, 1966; Chapter IV, 1st April, 1967; Chapter VI, 1st February, 1968; Chapter VII, 6th September, 1968; Chapter VIII, 1st August, 1981; Chapter XII & Chapter XIII 1<sup>st</sup> October, 2014]

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

## PRELIMINARY

### 1 Short title

This Act may be cited as the Finance Act [Chapter 23:04].

[The Minister of Finance and Economic Development was re-assigned by SI 218/2018 to administer this Act w.e.f. 19<sup>th</sup> October, 2018.]

### 2 Interpretation

[Dollarisation switch 23<sup>rd</sup> April, 2009

**Section 57** of the **Finance Act 2009** gazetted on above date is published below for ease of reference

“References to old currency system in enactments” **Every amount in an enactment** expressed in terms of the old currency system shall, on and after the 31st January, 2009, be construed in accordance with the new currency system. In this section “new currency system” and “old currency system” have the meanings given to those terms in section 2(1) of the Presidential Powers (Temporary Measures) (Currency Revaluation and Issue of New Currency) Regulations, published in SI 6 of 2009.

**Section 58** of the Finance Act 2009 is also published below.

Click on the hyperlink to read the full text of the lapsed SI 6/09. The bold and underlining is the Editor’s.]

“Saving of powers exercised under SI 109 of 2008 and SI 6 of 2009

Every

(a) order or direction made; and  
(b) action or decision taken or thing done by the Minister of Finance or the Governor of the Reserve Bank of Zimbabwe or any officer or employee of the **Ministry of Finance** or **Reserve Bank**

in the valid exercise of any power in terms of the Presidential Powers (Temporary Measures) (Currency Revaluation and Issue of New Currency) Regulations, 2008, published in Statutory Instrument 109 of 2008, and the Presidential Powers (Temporary Measures) (Currency Revaluation and Issue of New Currency) Regulations, published in Statutory Instrument 6 of 2009, shall, notwithstanding the lapsing of those regulations, be deemed to have been validly made, taken or done, as the case may be, in terms of this Act.”

(1) In this Act—

[Administration assigned to the Minister of Finance, Economic Development and Investment Promotion by SI 197/2023 w.e.f. 20<sup>th</sup> October, 2023.]

(a) any reference to a **Chapter** shall be construed as a reference to a Chapter of this Act;

(b) any reference to a **Schedule** shall be construed as a reference to a Schedule to the Chapter in which the reference appears.

(2) Subsection (4) of section 10 of the Interpretation Act [Chapter 1:01] shall apply in construing this Act as if the definition of “division” in that subsection included a Chapter of this Act.

(3) With effect from the **1st August, 2019**, every reference in this Act (and in any Act amended by virtue of this Act as the Charging Act) to the “dollar” or “cent” or any symbolic representation thereof shall (unless explicitly or implicitly otherwise provided) be construed as a reference to the **Zimbabwe dollar** and the **Zimbabwe cent** as defined in **Section \*23C** of the Finance (No.2) Act 7/2019 [formerly Statutory Instrument 142 of 2019]

[Subsection (3) inserted by Finance (No.2) Act 7/2019 gazetted on the 21st August, 2019, This Section \*23 is published below as section 23C to avoid duplication within Optima – Editor.]

### 2A Meaning of small or medium enterprise or business

[Inserted by Act 3 of 2010 w.e.f. 17th September, 2010. Corrected and substituted by Act 8 of 2011 - corrected by the Editor- w.e.f. the 16th September, 2011]

(1) In this section, a “**Scheduled Act**” means this Act or any of the other Acts specified in the First Schedule (“**specified Acts**”) to the Revenue Authority Act [Chapter 23:11].

(2) For the purposes of any Scheduled Act, a reference to a “small enterprise”, “small business”, “medium-sized enterprise”, “medium-sized business”, “small or medium enterprise”, “small or medium sized enterprise”, or “small or medium sized business” shall bear the meaning assigned to any identical or related term in the **Small and Medium Enterprises Act** [Chapter 24:12] or any other law that may be substituted for the same.

### 3 Regulations

(1) The Minister responsible for finance may make such regulations as he or she may consider necessary or expedient for the

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

administration of this Act and the better carrying out of its purposes.

[See the Finance Act (Tax Amnesty) Regulations, 2014, **SI 163/2014** made in terms of section **\*23** of the Finance (No.2) Act 8 of 2014.

Quaere: whether the constrictions of subsections (2) and (3) below apply thereto ?

The Editor has re-numbered section \*23 thereof as section **58** below in order to avoid duplication of the existing section 2 *Chapter 23:04* in place long before **Act 8 of 2014** was promulgated – Electronic hyperlink protocols cannot accommodate duplicate section numbers in legislation published on internet platforms.]

(2) Regulations made in terms of subsection (1) may amend or replace any rate of tax, duty, levy or other charge that is charged or levied in terms of any Chapter of this Act, and the rate as so amended or replaced shall, subject to subsection (3), accordingly be charged, levied and with effect from the date specified in such regulations, which date shall not be earlier than the date the regulations are published in the Gazette.

[Editor's Note : **SI 149/08** and its predecessors - now confirmed by section 60 of Act 3 of 2009 - breached this prohibition, in that the effective dates of some rates so amended or replaced **were backdated** to take effect : thus changing the rate from a date earlier than the Gazetting date . **SI 205/2018** is probably *ultra vires* because the Minister does not have the power to repeal any existing section of any Act - **section 22G** hereof *M.Milo v Minister of Finance 19-HH-605* **SI 123A/20** is also *ultra vires* because the Minister does not have the power to enact any section of any Act - **section 22E(3) and 22H** hereof – overruled on review *Gonese I. v Minister of Finance & Economic Development 23-CC-011*]

[Finance (Rate of Intermediated Money Transfer Tax) Regulations, 2023]

(3) If any provision contained in regulations referred to in subsection (2) is not confirmed by a Bill which—

(a) passes its second reading stage in Parliament on one of the 28 days on which Parliament sits next after the coming into operation of the *instrument*; and

(b) becomes law **not later than 6 months** after the date of such second reading;

that provision shall become void as from the date specified in the instrument as that on which the rate of tax, duty, levy or other charge shall be amended or replaced, and so much of the rate of tax, duty, levy or other charge as was amended or replaced, as the case may be, by that provision shall be deemed not to have been so amended or replaced.

[Subsections (2) and (3) were inserted by Act 8 of 2007 with effect from the 19<sup>th</sup> October, 2007, giving the Minister additional power to change Rates of tax, duties and levies “*to make it a lot easier to manage our financial provisions through various Statutory Instruments and the market forces change from time to time*” - Hansard Page 481 on the 6th September, 2007.- which hyperinflationary forces were then exceeding **700 000 %** -Hansard Page 461; PROVIDED those powers were confirmed by Parliament.

Hence the avoidance of the 3 SI's in the notes below the Title to this Act. -

The above SI 149/08 was gazetted by a Minister who had lost his seat in Parliament and, in terms of section 31E (2) of the Constitution, was no longer empowered to make Regulations. The above SI 209/18 was gazetted by a Minister who also tried to backdate his intentions to the take effect on the 1<sup>st</sup> October, 2018  
See *Gonese I v Minister of Finance and Economic Development 22-HH-265* which again declared this subsection to be illegal – overruled on review *Gonese I. v Minister of Finance & Economic Development 23-CC-011* -Editor]

## CHAPTER I INCOME TAX & OTHER TAXES LEVIED IN TERMS OF THE INCOME TAX ACT

### PART I PRELIMINARY

#### 4 Interpretation in Chapter I

(1) In this Chapter—

“**blind person**” means a person whose eyesight is so defective during more than half of the period of assessment that he is unable to perform any work for which eyesight is essential;

“**Exchange Control (General) Order**” means the Exchange Control (General) Order, 1996, published in Statutory Instrument 110 of 1996, or any other enactment that may be substituted for the same;

[Definition inserted by Act 3 of 2009 w.e.f. 1<sup>st</sup> January, 2009.]

“**family taxpayer**” . . .

[Definition repealed by Act 13 of 1996 with effect from the 1 April 1997.]

“**foreign currency**” means the Euro, United States dollar, British pound, South African rand, Botswana pula and any other foreign currency

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

denominated under the Exchange Control (General) Order;

[Definition inserted by Act 3 of 2009 w.e.f. 1st January, 2009.]

**“period of assessment”** means—

(a) the **year** of assessment; or

(b) the **period** within or deemed by the Taxes Act to be within the year of assessment in respect of which an assessment is made in terms of the Taxes Act;

as the case may be;

**“specified amount”** means the appropriate amount specified in Part I of the *Schedule* in respect of the year of assessment concerned;

**“specified percentage”** means the appropriate percentage specified in Part II of the *Schedule* in respect of the year of assessment concerned;

**“taxable income from employment earned in foreign currency”** means taxable income from employment earned in United States dollars or, if such income is denominated in a foreign currency other than the United States dollar, the equivalent amount in United States dollars, being an amount obtained by applying the international cross rate of exchange of that currency for the United States dollar prevailing on the day the income is earned;

[Definition inserted by Act 3 of 2009 w.e.f. 1st January, 2009.]

**“taxable income from trade or investment received or accrued in foreign currency”** means taxable income from trade or investment is received or accrued in United States dollars or, if such income is denominated in a foreign currency other than the United States dollar, the equivalent amount in United States dollars, being an amount obtained by applying the international cross rate of exchange of that currency for the United States dollar prevailing on the day the income is received or accrued;

[Definition inserted by Act 3 of 2009 w.e.f. 1st January, 2009.]

**“Taxes Act”** means the Income Tax Act [Chapter 23:06];

**“taxpayer”** means any person in respect of whom an assessment is made in terms of the Taxes Act.

(2) For the purposes of this Chapter—

(a) an expression to which a meaning is assigned in subsection (1) of section 2 or in

subsection (1) of section 8 of the Taxes Act shall have the same meaning in this Chapter, unless the expression is otherwise defined in this Chapter;

(b) subsections (2) and (3) of section 2 and section 4 of the Taxes Act shall be deemed to be contained in this Chapter.

## 4A Payment of certain taxes in foreign currency

[This new Section—**except** (1)(a)- inserted by the Finance Act 3 of 2009 takes effect from the **1<sup>st</sup> January, 2009**.]

(1) Notwithstanding section 41 of the Reserve Bank of Zimbabwe Act [Chapter 22:15] and the Exchange Control Act [Chapter 22:05]—

(a) a person **other than** a company, a trust or a pension fund whose taxable income **from employment** is earned in whole or in part in a foreign currency shall pay tax in the same or another specified foreign currency on so much of that income as is earned in that currency;

[This subsection takes effect from the 1st February, 2009 per Section 3(2) of Act 3 of 2009. - payment of Customs Duties not affected *Bencorn (Pvt) Ltd t/a Two Keys Transport v ZIMRA 10-HH-042*]

(b) a person other than a company, a trust or a pension fund whose taxable income **from trade or investment** is received or accrued in whole or in part in a foreign currency shall pay tax in the same or another specified foreign currency on so much of that income as is received or accrued in that currency;

(c) a company, trust, pension fund or other **juridic person** whose taxable income is earned, received or accrued in whole or in part in a foreign currency shall pay tax in the same or another specified foreign currency on so much of that income as is earned, received or accrued in that currency;

[*Unki Mines P/L v ZIMRA & Stanbic Bank 22-HH-729*]

(d) a person who is liable to **presumptive tax** as a small scale miner, an operator of a taxicab, omnibus, goods vehicle, driving school or hairdressing salon, or as an informal cross-border trader, in terms of section **twenty-twoC** (b) and (c),(d),(e),(f),(g),(h),(i),(j) or (k), shall pay that presumptive tax in a foreign currency;

[Amended by Act 5 of 2009 with effect from the 30th September, 2009.]

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

(e) the persons specified in section *twenty-twoE* and *twenty-twoH* shall pay the **taxes** there mentioned in a foreign currency;

(f) the persons specified in section *\*thirty-seven* shall pay the **royalties** there mentioned in a foreign currency to the extent that the amounts from which the royalties are withheld are foreign currency amounts;

[Para (f) amended by Act 13/2019 w.e.f. 22nd February, 2019; and substituted by Act 8 of 2020 gazetted on the 28th October, 2020 **w.e.f. 22nd February, 2019.**

**Editor's note:** compare the new section *\*37A(2a)* gazetted by Finance Act 8/2022 on the 24<sup>th</sup> October, 2022; which permits the remittal of royalties  $\frac{1}{2}$  in **ZWL** **backdated to the 1<sup>st</sup> February, 2022:** *Unki Mines P/L v ZIMRA & Stanbic Bank 22-HH-729*]

(g) the persons who in the Thirtieth Schedule to the Taxes Act are liable to pay intermediated money transfer tax in foreign currency shall pay that tax in the same foreign currency;

[Para (g) inserted by Act 8 of 2020 gazetted on the 28th October, 2020 **w.e.f. 22nd February, 2019.**]

(2) Where only part of the taxable income from employment of a person referred to in subsection (1)(a) is paid in a foreign currency, the amounts of any tax due on both parts of such income in terms of section *fourteen* shall be calculated separately and paid in the appropriate currency relative to each part.

(3) Where a person referred to in subsection (1)(a) earns any part of his or her taxable income in the form of a coupon or any instrument or token that, in the opinion of the Commissioner, is exchangeable, whether directly or indirectly, for foreign currency, that person shall pay an amount of tax to the Commissioner in foreign currency calculated on a valuation of that coupon, instrument or token which, in the opinion of the Commissioner, represents a fair valuation of that coupon, instrument or token in foreign currency.

[*GC (Pvt) Ltd v ZIMRA 15-HH-759*]

(4) For the purposes of subsection (3) the Commissioner may, in the case of any coupon, instrument or token denominated in units of weight, volume or other measure of a specified commodity, specify from time to time by notice in the *Gazette* that a unit by weight, volume or other measure of that commodity shall be deemed to be worth a specified amount of a foreign currency.

(5) If the Commissioner has reasonable grounds to believe that the whole or any part of

the income of a person referred to in subsection (1)(b) or (c) was received or accrued in the form of foreign currency, or that any amount referred to in subsection (1)(f) from which a person withholds tax is a foreign currency amount, and that the person—

(a) has prepared or maintained or authorised the preparation or maintenance of any false books of account or other records, or falsified or authorised the falsification of any books of account or records; or

(b) has furnished a false return or information; with the effect that liability for payment of any tax in foreign currency is avoided or postponed, the Commissioner may deem that—

(c) the whole of such person's income from trade or investment is received or accrued in foreign currency; or

(d) the whole of the amount from which the person withholds tax is a foreign currency amount;

as the case may be, unless, in respect of any particular transaction, such person proves to the satisfaction of the Commissioner that the income received or accrued in respect of that transaction was received or accrued in Zimbabwean currency, or that the amount in question is a Zimbabwean currency amount.

(6) The liability of a person referred to in subsection (1)(b) or (c) to pay any tax in foreign currency is not affected by that person's failure to comply with any law (including but not limited to the Shop Licences Act [*Chapter 14:17*] and the Exchange Control Act [*Chapter 22:05*]) requiring the registration or licensing of the trade, investment or other activity by means of which his or her income is received or accrued.

(7) For the avoidance of doubt it is declared that all the provisions of the Taxes Act shall apply, with such changes as may be necessary, to the payment in foreign currency of the taxes referred to in subsection (1)(a), (b), (c), (d), (e) and (f) in the same way as they apply to the payment of such taxes in Zimbabwean currency.

[*Zimplats v ZIMRA 22-HH-845*]

In particular—

(a) section *thirty-sevenB*, relating to the duty to keep records, shall apply so that records of those transactions involving payments in foreign currency—

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

(i) are clearly distinguished from records of transactions involving Zimbabwean currency; and

(ii) employ the foreign currency concerned as the unit of account in relation to those transactions involving payments in that foreign currency;

(b) section 48 of the Taxes Act, relating to reduced assessments and refunds, shall apply so that any part of a tax paid in foreign currency that is required to be refunded shall be refunded in foreign currency;

(c) section **seventy-one**, providing (among other things) for the payment of interest on unpaid tax, shall apply so that any interest due on any part of a tax payable in foreign currency that is unpaid, shall be paid in foreign currency.

(8) The Commissioner may require any person referred to in subsection (1)(c), (d), (e) or (f) who tenders payment of any tax in a foreign currency other than the United States dollar, to tender instead the equivalent amount of that tax or duty in United States dollars, being an amount obtained by applying the international cross rate of exchange of the first-mentioned currency for the United States dollar prevailing on the day the tax concerned becomes due.

(9) It shall be presumed that every transaction to which the provisions of this section apply was conducted using the United States dollar only, unless the taxpayer or registered operator (in the case of the payment of **valued added tax**) provides documentary proof in the form of an invoice or other documentary proof satisfactory to the Commissioner that the transaction in question was conducted using the Zimbabwe dollar or a foreign currency other than the United States dollar.

[Subsection (9) inserted by Act 8 of 2020 gazetted on the 28th October, 2020 w.e.f. **22nd February, 2019.**]

(10) Where any person liable to pay tax on **income** from trade or investment—

(a) earns any part of such income in foreign currency; and

(b) has any part of such income liquidated and paid in local currency upon transfer to a *nostro* account, pursuant to a retention scheme operated by the Reserve Bank of Zimbabwe;

any tax due on such part that is liquidated shall be calculated on the basis that it was earned in local currency.

[Subsections (10) and (11) inserted by Finance (No. 2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020 *Zimplats v ZIMRA* 22-HH-845 with reference to section 15(2)(a) of Chapter 23:06]]

(11) If, in relation to **capital allowances** claimed (in any year of assessment before the year of assessment beginning on the 1<sup>st</sup> January, 2021) in terms of paragraphs 2, 3 and 4 of the Fourth Schedule to the Taxes Act, any balance of such allowances remains unredeemed as at the 1<sup>st</sup> January, 2021, any such unredeemed balance shall rebased to the local currency equivalent of the outstanding foreign currency invoice value using the exchange rate prevailing on the **1<sup>st</sup> January, 2021.**

(12) If, in relation to capital allowances claimed (in any year of assessment before the year of assessment beginning on the 1<sup>st</sup> January, 2023) in terms of paragraphs 2, 3 and 4 of the Fourth Schedule to the Taxes Act, any balance of such allowances remains unredeemed as at the 1<sup>st</sup> January, 2023, any such unredeemed balance shall be rebased to the local currency equivalent of the outstanding foreign currency invoice value using the Reserve Bank auction rate prevailing on the **1<sup>st</sup> January, 2023.**

[Subsection (12) inserted by Finance (No. 2) Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022. Editor's Note :

Published below appear the 2 Subsections initially inserted by the Finance Act 3 of 2009: which are now substituted by the **Finance (No.2) Act 5 of 2009** gazetted on the 30<sup>th</sup> September, 2009 with retrospective effect from the **1<sup>st</sup> January, 2009** , governing the following : -]

[(3) For all accounting and taxation purposes, where—

(a) an individual or partnership whose taxable income from trade or investment was received or accrued in whole or in part in **Zimbabwean currency**; or

(b) a company, trust, pension fund or other juristic person whose taxable income is earned, received or accrued in whole or in part in **Zimbabwean currency**;

then—

(c) the final balances denominated in Zimbabwean currency determined in financial statements prepared in respect of the previous financial year of the individual, partnership, company, trust, pension fund or other juristic person shall be expressed in United States dollars at such rate of exchange as the Commissioner may approve:

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Provided that the Commissioner-General shall, in terms of the Fourth Schedule to the Revenue Authority Act [Chapter 23:11], issue a \*binding general ruling on the manner in which he or she shall exercise his or her discretion for the purposes of this paragraph;

[See \* **GN 274/2010** gazetted on the 1st October, 2010 under ZIMRA RULINGS - Editor]

(d) the final balances determined in accordance with paragraph (c) **shall be regarded as initial balances** for financial statements prepared in respect of the new financial year;

(4) An individual, partnership, company, trust, pension fund or other juristic person referred to in subsection (3) shall, to the extent that such individual, partnership, company, trust, pension fund or other juristic person satisfies the Commissioner that its taxable income was, **before the 1<sup>st</sup> January, 2009**, received or accrued **in a foreign currency**, express any final balances relating to that income in the foreign currency concerned.]

## 4B Prompt remittance of revenues paid through financial intermediaries

[Section inserted by Finance (No. 2) Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022.]

(1) In this section—

**“financial intermediary”** means any banking or other financial institution registered in terms of the Banking Act [Chapter 24:20];

**“revenue”** means an amount paid by a taxpayer through an approved financial intermediary in terms of subsection (2);

**“revenue Act”** means any of the Acts specified in the First Schedule to the Revenue Authority Act [Chapter 23:11].

(2) If the Commissioner-General has an account with a financial intermediary (“approved financial intermediary”), a taxpayer may use that intermediary to make payment of any taxes, duties, fees, levies, charges, penalties, fines or any other moneys due from the taxpayer in terms of any revenue Act.

(3) An approved financial intermediary must remit the full amount of revenue paid by a taxpayer so that **no later than 48 hours** from the time of such payment the Consolidated Revenue Fund is credited with that amount.

(4) An approved financial intermediary that delays to comply with subsection (3) without a

valid reason as determined by the Zimbabwe Revenue Authority becomes liable to the Commissioner-General to pay interest of **15%** (in the case of United States dollar amounts) or **200%** (in the case of Zimbabwe dollar amounts) on any amount it has failed to remit timeously in accordance with subsection (3):

Provided that the Minister may by notice in a *statutory instrument* prescribe different rates of penalty for the purposes of this subsection that do not exceed the monetary policy rate specified in terms of section 46 (“Statements of monetary policy”) of the Reserve Bank of Zimbabwe Act [Chapter 22:15] that is in force on the date of the making of the statutory instrument.

## PART II CREDITS TO BE DEDUCTED FROM INCOME TAX

### 5 Credits to which section 7 of Taxes Act relates

(1) Subject to this Part and to section 50 of the Taxes Act, the credits to be deducted from the income tax with which a person is chargeable in pursuance of section 7 of that Act shall—

(a) if the period of assessment is 12 months, be the credits for which provision is made in this Part;

(b) if the period of assessment is less than 12 months, be—

(i) the credit for which provision is made in section *ten*, reduced proportionately; and

(ii) the credits for which provision is made in sections *eleven*, *twelve* and *thirteen*.

(2) Notwithstanding any other provision of this Act, the total amount of credits to be deducted in terms of—

(a) ...

[Para (a) repealed by Act 13 of 1996 with effect from 1 April, 1997.]

(b) ...

(c) ...

[Subparas (b) and (c) repealed by Act 17 of 1997, with effect from 1 April 1996]

(d) any provision of this Part from the income tax with which any person is chargeable in any year of assessment shall not exceed the total

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

income tax with which that person is chargeable in respect of that year of assessment.

(3) Notwithstanding any other provision of this Act, no credit shall be deducted from the income tax with which a company or trust is chargeable in any year of assessment, **except** for the credit referred to in section *thirteenA* ("Youth employment credit") and section *thirteenB* ("Credit for employment of physically challenged persons").

[Subsection (3) substituted by Finance (No. 2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020;  
Repealed & substituted by Finance Act 7/2021 w.e.f. 31 December, 2021.]

(4) The credits to be deducted from the tax with which a person is chargeable in pursuance of section 7 of the Taxes Act shall be expressed as amounts in **Zimbabwean currency**:

Provided that where the tax with which a person is chargeable in pursuance of section 7 of the Taxes Act is not payable wholly or in part in Zimbabwean currency but in a **foreign currency**, the amount of the appropriate credit shall be the equivalent in United States dollars that is obtained **by dividing** the Zimbabwean dollar credits on the **22<sup>nd</sup> February, 2019** (when the rate of exchange of the RTGS dollar to the United States dollar **was 1:1** **by 10**).

[Subsection (4) inserted by Act 3 of 2009 w.e.f. 23rd April, 2009; substituted by Finance (No.2) Act 7/2019 gazetted on the 21st August, 2019 with effect from the **1<sup>st</sup> August, 2019**, until further amended by Finance (No.2) Act 7/2019 gazetted on the 21<sup>st</sup> August, 2019 with deemed effect from the **1<sup>st</sup> August, 2019** to the **31<sup>st</sup> December, 2019**.]

## 6 ...

[repealed by Act 13 of 1996 with effect from 1 April 1997.]

## 7 ...

[repealed by Act 17 of 1995 with effect from 1 April 1996.]

## 8 ...

[repealed by Act 17 of 1995 with effect from 1 April 1996.]

## 9 ...

[repealed by Act 17 of 1995 with effect from 1 April 1996.]

## 10 Taxpayers over 55 years of age

A credit of the specified amount shall be deducted from the income tax with which a taxpayer is chargeable, where he had attained the age of **55 years** prior to the commencement of the year of assessment:

[**Editor's Note** : This age limit was reduced from 59 to 55 years by the Finance (No.3) Act 10 of 2009 w.e.f. the 8<sup>th</sup> January, 2010: without clarifying the 2 years of uncertainty caused by section 6 of the Finance (No.2) Act 16 of 2007 which purported to reduce this age limit to 55 years when it increased the specified amounts of this Credit in \*Part 1 of the **Schedule** to Chapter 1.]

Provided that, if the period of assessment is **less than 12 months**, the amount referred to in this paragraph shall be reduced proportionately.

[Credit increased to zwl\$ 450 000 by Finance Act 8/2022 gazetted on the 24th October, 2022.]

## 11 Blind persons

A credit of the specified amount shall be deducted from the income tax with which a taxpayer who is a blind person is chargeable:

Provided that any portion of such credit which is not applied in reduction of the income tax with which a blind person who is married is chargeable shall be allowed as a deduction from the income tax with which his or her spouse is chargeable.

## 12 Invalid appliances and medical expenses

(1) In this section—

**"invalid appliance or fitting"** includes—

(a) a wheelchair or any mechanically propelled vehicle which is specially designed and constructed for the carriage of 1 person, being a person suffering from a physical defect or disability; or

(b) any artificial limb, leg calipers or crutch; or

(c) any special fitting for the modification or adaptation of a motor vehicle, bed, bathroom or toilet to enable its use by a person suffering from a physical defect or disability; or

(d) spectacles or contact lenses;

**"medical expenses"** means—

(a) the sum of any payments made for the purchase, hire, repair, modification or maintenance of any invalid appliance or fitting which the Commissioner is satisfied is

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necessary for use by a taxpayer or his spouse or **any child** of the taxpayer as a consequence of any mental or physical defect or disability;

[of any age – see section 2 definition, includes a step and adopted 'child' – editor]

and

(b) the sum of any payments made for—

(i) services rendered to a taxpayer, his spouse and minor children or 1 or more of them by a medical or dental practitioner; and

(ii) drugs and medicines supplied to a taxpayer, his spouse and minor children or 1 or more of them on the prescription of a medical or dental practitioner; and

(iii) the accommodation, maintenance, nursing and treatment, including blood transfusions and X-ray and laboratory examinations, tests and the like, of a taxpayer, his spouse and minor children or 1 or more of them in or at a hospital, maternity-home, nursing-home, sanatorium, surgery, clinic or similar institution; and

(iv) the conveyance by ambulance, including an air ambulance, of a taxpayer, his spouse and minor children or 1 or more of them;

and

(c) the amount of any contributions paid to a medical aid society in respect of the taxpayer or his spouse or any **minor** children.

(2) Subject to subsection (4), a credit to be determined in accordance with subsection (3) shall be deducted from the income tax with which a taxpayer is chargeable in respect of payments which the taxpayer made in the period of assessment by way of medical expenses.

(3) The amount of the credit deductible in terms of subsection (2) shall be calculated at the rate of **zw\$1** for every **zw\$2** paid by way of medical expenses.

(4) No credit shall be deducted in terms of subsection (2) in respect of any payment such as is referred to in paragraph (a) or (b) of the definition of "**medical expenses**" in subsection (1) if the taxpayer is not at any time during the period of assessment ordinarily resident in Zimbabwe.

(5) For the purposes of this section—

(a) a payment made from the deceased estate of a taxpayer by way of medical expenses which are incurred before the death

of the deceased shall be treated as having been made immediately before the death of the deceased; and

(b) a taxpayer shall not be treated as having made a payment by way of medical expenses to the extent that the taxpayer, his spouse or dependant is entitled to a refund or payment from any source whatsoever in connection with the medical expenses to meet which the payment was made.

(6) The provisions of the Taxes Act relating to objections or appeals shall apply, *mutatis mutandis*, in respect of any decision made by the Commissioner in terms of this section.

## 13 Mentally or physically disabled persons

(1) Subject to this section, a credit of the specified amount shall be deducted from the income tax with which a taxpayer is chargeable, where it is proved to the satisfaction of the Commissioner that the taxpayer is mentally or physically disabled to a substantial degree, but is not blind.

(2) Subject to this section, a credit of the specified amount shall be deducted from the income tax with which a taxpayer, **other than a married woman**, is chargeable in respect of each child of the taxpayer who is proved to the satisfaction of the Commissioner to be mentally or physically disabled to a substantial degree.

(3) Any portion of a credit deductible in terms of subsection (1) or (2) which is not applied in reduction of the income tax with which a married person is chargeable shall be allowed as a deduction from the income tax with which his or her spouse is chargeable.

(4) No credit shall be deductible in terms of subsection (1) or (2) if the taxpayer is not at any time in the period of assessment ordinarily resident in Zimbabwe.

(5) A person shall not be regarded for the purposes of subsection (1) or (2) as being mentally or physically disabled if his disablement is of a temporary or transitional nature.

(6) The provisions of the Taxes Act providing for objections or appeals shall apply, *mutatis mutandis*, in respect of any decision made by the Commissioner in terms of this section.

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## 13A Youth employment credit

[section inserted by Act 13/2019 w.e.f 31st December, 2019]

(1) In this section —

**“employee”** excludes a trainee, intern and apprentice and a managerial employee (as that latter term is defined in the Labour Act);

**“qualifying taxpayer”** means a company or trust or individual taxpayer engaged in trade or investment who qualifies for a credit in terms of this section.

(2) Subject to subsection (4), a credit to be determined in accordance with subsection (3) shall be deducted from the income tax payable by a qualifying taxpayer who employs any additional employee aged **30 years** or less during the year of assessment.

[table inserted by section 56 of the Finance Act 7/2021 w.e.f. 31 December, 2021.]

Current amount 2021	2022 Monetary Amount (ZWL)	2022 Monetary Amount (USD)
The amount of the credit deductible in terms of subsection (2) shall be calculated at the rate of <b>\$1 500 per month</b> for each additional employee up to a maximum aggregate amount of <b>\$ 180 000</b> in any year of assessment	6,500 292,500	50 2 250

(3) The amount of the credit deductible in terms of subsection (2) shall be calculated at the rate of **zwl 1 500 per month** for each additional employee up to a maximum aggregate amount of **zwl 180 000** in any year of assessment.

[Subsection (3) substituted by Finance (No. 2) Act 10/2020 w.e.f. 31<sup>st</sup> December, 2020.]

(4) For the purposes of this section —

(a) the qualifying taxpayer must be a registered taxpayer and tax compliant for the preceding year of assessment; and

(b) the credit may not be claimed before the additional employee concerned has completed 12 consecutive months' employment with the claimant at a wage not less than zwl 2000 per month; and

(c) the credit may not be claimed by companies or trusts or individual taxpayers engaged in trade or investment having an annual turnover equal to or exceeding the equivalent of US\$ 1,000,000; and

(d) to the extent that any credit under this section exceeds the tax payable by the qualifying taxpayer claiming it, the Commissioner shall not refund such excess to the taxpayer but such excess shall be capable of being carried over to the next year of assessment;

[para (d) repealed & substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2020]

and

(e) where a qualifying taxpayer entitled to a credit under this section has an assessed loss in the year of assessment in which such entitlement accrued, the amount of the credit shall be added to the assessed loss for the purpose of carrying it over to the next year of assessment.

## 13B Credit for employment of physically challenged persons

[Inserted by Finance Act 7/2021 w.e.f. 31 December, 2021.]

(1) In this section—

**“employee”** excludes a trainee, intern and apprentice and a managerial employee (as that latter term is defined in the Labour Act [Chapter 28:01]);

**“physically challenged person”** means an individual having a medically ascertainable physical condition or impairment that makes it difficult for him or her to do things that other individuals without the same physical condition or impairment can do easily;

**“qualifying taxpayer”** means a company or trust or individual taxpayer engaged in trade or investment who qualifies for a credit in terms of this section;

**“valid medical report”** means a report that truthfully describes the condition of the

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individual in respect of whom it is issued at the time a credit under this section relating to his or her employment is claimed.

(2) Subject to subsection (4), a credit to be determined in accordance with subsection (3) shall be deducted from the income tax payable by a qualifying taxpayer who employs any physically challenged person during the year of assessment.

(3) The amount of the credit deductible in terms of subsection (2) shall be calculated at the rate of **US\$50 per month** (or the equivalent thereof in Zimbabwe dollars) for each additional employee up to a maximum aggregate amount of **US\$2 250** (or the equivalent thereof in Zimbabwe dollars) in any year of assessment.

(4) For the purposes of this section—

(a) the qualifying taxpayer must be—

(i) a registered taxpayer and tax compliant for the preceding year of assessment; and

(ii) be compliant in every respect with the applicable requirements of the National Social Security Act [*Chapter 17:04*];

and

(b) proof satisfactory to the Commissioner must be furnished that the person in respect of whom the credit is claimed is a physically challenged person, in the form of a valid medical report by a medical practitioner employed in a Government hospital; and

(c) the credit may not be claimed before the additional employee concerned has completed **12 consecutive months' employment** with the claimant; and

(d) to the extent that any credit under this section exceeds the tax payable by the qualifying taxpayer claiming it, the Commissioner shall not refund such excess to the taxpayer, but such excess shall be capable of being carried over to the next year of assessment; and

(e) where a qualifying taxpayer entitled to a credit under this section has an assessed loss in the year of assessment in which such entitlement accrued, the amount of the credit shall be added to the assessed loss for the purpose of carrying it over to the next year of assessment.

## PART III RATES OF INCOME TAX & OTHER TAXES LEVIED IN TERMS OF THE INCOME TAX ACT

### 14 Income tax for periods of assessment after 1.1.14

[The whole section 14 substituted by the Finance (No.3) Act 10 of 2009 with effect from the above date. The tax for repealed periods are published below subsection (2) for research purposes – Editor.]

(1) In this section—

**“approved BOOT or BOT arrangement”** means a contract or other arrangement approved by the Commissioner, under which a person undertakes to construct an item of infrastructure for the State or a statutory corporation in consideration for the right to operate or control it for a specified period, after which period he will transfer or restore ownership or control of the item to the State or the statutory corporation concerned;

[Definition inserted by Act 17 of 1997 from 1 January 1999, and amended by Act 27 of 2001 with effect from the 1 January 2002.]

**“approved tourist development zone”** means a tourist development zone declared under regulations made in terms of paragraph (k) of subsection (2) of section 57 of the Tourism Act [*Chapter 14:20*] and approved by the Commissioner;

[Definition inserted by Act 27 of 2001 from the 1 January 2002.]

**“Authority”** means the Zimbabwe Tourism Authority established in terms of the Tourism Act [*Chapter 14:20*].

[Definition inserted by Act 27 of 2001 from the 1 January 2002.]

**“company”** or **“trust”**, is deemed to include a reference to any ecclesiastical, charitable or educational institution to the extent that any part of the income of such institution is derived from trade or investment, not being income from trade or investment that is exempt from tax in terms of paragraph 2(e) of the Third Schedule to the Taxes Act;

[Definition inserted by Finance Act 8/2015 w.e.f. 13th November, 2015]

**“contractor”**, in relation to an approved BOOT or BOT arrangement, means the person who

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enters into the arrangement with the State or the statutory corporation concerned;

[Definition inserted by Act 17 of 1997 from 1 January 1999, and amended by Act 27 of 2001 from the 1 January 2002.]

“growth point area”

[Definition repealed by the Finance (No.3) Act 10 of 2009 with effect from the 8th January, 2010.]

“licensed investor” means a person licensed under the Export Processing Zones Act [Chapter 14:07] before its repeal by the Zimbabwe Investment Authority Act [Chapter 14:30] on the 1st January, 2007;

[Definition inserted by Act 3 of 2010 with effect from the 17th September, 2010. This act now replaced by the Zimbabwe Investment and Development Agency Act [Chapter 14:38] with effect from the 7th February, 2020]

“manufacturing operations” means any process of production which substantially changes the original form of, or substantially adds value to, the thing or things constituting the product;

[Definition inserted by Act 15 of 2002 from 1 January, 2003

who actually conducts, or orchestrates the operations? *C.T.(Pvt) Ltd v ZIMRA 19-HH-761*]

“new project”

[Definition repealed by the Finance (No.3) Act 10 of 2009 with effect from the 8th January, 2010.]

“operator” and “tourist facility” have meanings given to those terms in section 2 of the Tourism Act [Chapter 14:20];

[Definition inserted by Act 27 of 2001 from 1 January 2002.]

“power generation project” means any electricity generation project that commences on or after the 1st January, 2018, or is not completed at that date, and is licensed in terms of Part III of the Energy Regulatory Authority Act [Chapter 13:23];

[Definition inserted by the Finance Act 1 of 2018 w.e.f 14th March, 2018.]

“taxable income from employment” means any part of the taxable income of a person, other than a company, a trust or a pension fund, which consists of remuneration as defined in the Thirteenth Schedule to the Taxes Act;

“taxable income from trade or investment” means any part of the taxable income of a person, other than a company or a trust, which is received by or accrues to him from any trade,

investment or other activity, but does not include taxable income from employment;

“trust” does not include a deceased or insolvent estate or the estate of an individual under a legal disability.

(2) Subject to this section and section 50 of the Taxes Act, the income tax with which a person is chargeable **in the year of assessment beginning** on the \*1st January, 2012 or any subsequent year of assessment shall be calculated —

(a) in the case of a person **other than a company, a trust or a pension fund**, at the specified percentage of each dollar of each of the following parts of his or her taxable income from employment earned from employment —

**[PERIOD from 1<sup>ST</sup> AUGUST 2023;**  
[Inserted by SI 149/2023 gazetted on the 11<sup>th</sup> August, 2023 w.e.f. year of assessment beginning 1<sup>st</sup> January, 2023.]

(i) so much as does not exceed **zwl\$ 2.5 million**;

(ii) so much as exceeds **zwl\$ 2.5 million** but does not exceed **zwl\$ 7.5 million**;

(iii) so much as exceeds **zwl\$ 7.5 million** but does not exceed **zwl\$ 25 million**;

(iv) so much as exceeds **zwl\$ 25 million** but does not exceed **zwl\$ 50 million**;

(v) so much as exceeds **zwl\$ 50 million** but does not exceed **zwl\$ 75 million**;

(vi) so much as exceeds **zwl\$ 75 million**.

**[PERIOD from 1<sup>ST</sup> JANUARY 2023 – 31<sup>ST</sup> JULY,2023]**

[Substituted by SI 149/2023 gazetted on the 11<sup>th</sup> August, 2023 w.e.f. year of assessment beginning 1<sup>st</sup> January, 2023.]

(i) so much as does not exceed **zwl\$ 641 662**;

(ii) so much as exceeds **zwl\$ 641 662** but does not exceed **zwl\$ 2,240 000**;

(iii) so much as exceeds **zwl\$ 2,240 000** but does not exceed **zwl\$ 3,836 000**;

(iv) so much as exceeds **zwl\$ 3,836 000** but does not exceed **zwl\$ 5,432 000**;

(v) so much as exceeds **zwl\$ 5,432 000** but does not exceed **zwl\$ 7 million**;

(vi) so much as exceeds **zwl\$ 7 million**.

**[PERIOD from 1<sup>ST</sup> JANUARY 2023;**  
Inserted by section 4 of Finance (No. 2) Act 10 of

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2022 gazetted on the 30<sup>th</sup> December, 2022 w.e.f. year of assessment beginning 1<sup>st</sup> January, 2023.]

- (i) so much as does not exceed zwl\$ 1,100 000;
- (ii) so much as exceeds zwl\$ 1,100 000 but does not exceed zwl\$ 3,840 000;
- (iii) so much as exceeds zwl\$ 3,840 000 but does not exceed zwl\$ 6,576 000;
- (iv) so much as exceeds zwl\$ 6,576 000 but does not exceed zwl\$ 9,312, 000;
- (v) so much as exceeds zwl\$ 9,312, 000 but does not exceed zwl\$ 12million;
- (vi) so much as exceeds zwl\$ 12 million;

**[PERIOD from 1<sup>ST</sup> AUGUST 2022;**  
Inserted by section 2 of Finance Act 8/2022 gazetted on the 24th October, 2022 w.e.f. year of assessment beginning 1<sup>st</sup> January, 2022.]

- (i) so much as does not exceed zwl\$ 375 000;
- (ii) so much as exceeds zwl\$ 375 000 but does not exceed zwl\$ 715 000;
- (iii) so much as exceeds \*zwl\$ 1,716,000 but does not exceed zwl\$ 1,300 000;
- (iv) so much as exceeds zwl\$ 1,300 000 but does not exceed zwl\$ 2 400 000;
- (v) so much as exceeds zwl\$ 2 400 000 but does not exceed zwl\$ 5 million;
- (vi) so much as exceeds zwl\$ 5 million.

**[PERIOD from 1<sup>ST</sup> JANUARY to 31<sup>ST</sup> JULY 2022;**  
Subparas (i) to (vi) of subsect (2)(a) repealed & substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2022.]

- (i) so much as does not exceed zwl\$ 300 000;
- (ii) so much as exceeds zwl\$ 300 000 but does not exceed zwl\$ 720 000;
- (iii) so much as exceeds zwl\$ 720 000 but does not exceed zwl\$ 1,440 000;
- (iv) so much as exceeds zwl\$ 1,440 000 but does not exceed zwl\$ 2 880 000;
- (v) so much as exceeds zwl\$ 2 880 000 but does not exceed zwl\$ 6 000 000;
- (vi) so much as exceeds zwl\$ 6 000 000.

Provided that where a person earns any part of his or her taxable income from employment in a **foreign currency**, there shall be substituted for

the figures referred to in subparagraphs (i) to (vi) the following figures—

(and, if such income is denominated in a foreign currency **other than the United States dollar**, the equivalent amount in United States dollars shall be calculated, being an amount obtained by applying the international cross rate of exchange of that currency for the United States dollar prevailing on the day the income is received or accrued.

(2A) For the purpose of section 14(2)(a) of the Finance Act, the taxable income from employment of a person who receives such income **partly** in Zimbabwe dollars and **partly** in United States dollars shall be taxed as if the income was all denominated in United States dollars, with the Zimbabwe dollar portion of the income being converted to its United States equivalent at the interbank rate prevailing when the income was received, and aggregated to the part of the income denominated in United States dollars.

**[Section 2 (a) PRIOR TO 31<sup>ST</sup> DECEMBER 2021**

[Subparas **(i) to (vi)** of subsect (2)(a) substituted by Finance (No. 2) Act 10/2020 w.e.f. year beginning on the 1<sup>st</sup> January, 2021.]

- (i) so much as does not exceed **zwl\$ 120 000**;
- (ii) so much as exceeds zwl\$ 120 000 but does not exceed **zwl\$ 360 000**;
- (iii) so much as exceeds zwl\$ 360 000 but does not exceed **zwl\$ 720 000**;
- (iv) so much as exceeds zwl\$ 720 000 but does not exceed **zwl\$ 1 440 000**;
- (v) so much as exceeds zwl\$ 1 440 000 but does not exceed **zwl\$ 3 000 000**;
- (vi) so much as exceeds **zwl\$ 3 000 000**.

Provided that where a person earns any part of his or her taxable income from employment in a **foreign currency**, there shall be substituted for the figures referred to in subparagraphs (i) to (vi) the following figures —

[Proviso inserted by **SI 36/2021** gazetted on the 29<sup>th</sup> January, 2021 w.e.f. year beginning the 1<sup>st</sup> January, 2021.]

- A. in subparagraph (i), “US\$840”;
- B. in subparagraph (ii), “US\$840” and “US\$3 600”, respectively;
- C. in subparagraph (iii), “US\$3 600”, and “US\$12 000”, respectively;

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D. in subparagraph (iv), "US\$12 000", and "US\$24 000", respectively;

E. in subparagraph (v), "\*US\$24 000", and "US\$36 000", respectively;

F. in subparagraph (vi), "US\$36 000",

(and, if such income is denominated in a foreign currency **other than the United States dollar**, the equivalent amount in United States dollars shall be calculated, being an amount obtained by applying the international cross rate of exchange of that currency for the United States dollar prevailing on the day the income is received or accrued.123A

## [Section 2 (a) PRIOR TO 31<sup>ST</sup> DECEMBER 2020

[Subsection (2)(a) amended by Finance (No.3) Act 13/2019 with effect from previous year—]

(a) in the case of a person **other than a company, a trust or a pension fund**, at the specified percentage of each dollar of each of the following parts of his or her taxable income from employment earned from employment —

- (i) so much as does not exceed zw\$ 24 000;
- (ii) so much as exceeds zw\$ 24 000 but does not exceed zw\$ 90 000;
- (iii) so much as exceeds zw\$ 90 000 but does not exceed zw\$ 180 000;
- (iv) so much as exceeds zw\$ 180 000 but does not exceed zw\$ 360 000;
- (v) so much as exceeds zw\$ 360 000 but does not exceed zw\$ 600 000;
- (vi) so much as exceeds zw\$ 600 000

Provided that where a person earns any part of his or her taxable income from employment in a **foreign currency**, there shall be substituted for the figures referred to in subparagraphs (i) to (vi) the following figures —

- A. in subparagraph (i), "US\$840";
- B. in subparagraph (ii), "US\$840" and "US\$3 600", respectively;
- C. in subparagraph (iii), "US\$3 600", and "US\$12 000", respectively;
- D. in subparagraph (iv), "US\$12 000", and "US\$24 000", respectively;
- E. in subparagraph (v), "\*US\$24 008", and "US\$36 000", respectively;

[this \*figure is gazetted as "twenty-four thousand eight United States dollars"- Editor]

F. in subparagraph (vi), "US\$36 000",

(and, if such income is denominated in a foreign currency **other than the United States dollar**, the equivalent amount in United States dollars shall be calculated, being an amount obtained by applying the international cross rate of exchange of that currency for the United States dollar prevailing on the day the income is received or accrued);

(a1) in the case of a person **other than a company, a trust or a pension fund**, at the specified percentage of each dollar of each of the following parts of his or her taxable income from employment—

[Para (a1) inserted by **Act 8 of 2020** gazetted on the 28<sup>th</sup> October, 2020 w.e.f. the period beginning on the **1<sup>st</sup> AUGUST, 2020**, and ending the 31<sup>st</sup> December, of the year of assessment beginning on the **1<sup>st</sup> January, 2020**.]

- (b) so much as does not exceed zw\$ 25 000;
- (ii) so much as exceeds zw\$ 25 000 but does not exceed zw\$ 75 000;
- (iii) so much as exceeds zw\$ 75 000 but does not exceed zw\$ 150 000;
- (iv) so much as exceeds zw\$ 150 000 but does not exceed zw\$ 300 000;
- (v) so much as exceeds zw\$ 300 000 but does not exceed zw\$ 500 000;
- (vi) so much as exceeds zw\$ 500 000

Provided that where a person earns any part of his or her taxable income from employment in a **foreign currency**, there shall be substituted for the figures referred to in subparagraphs (i) to (vi) the following figures —

- A. in subparagraph (i), "US\$350";
- B. in subparagraph (ii), "US\$351" and "US\$1 500", respectively;
- C. in subparagraph (iii), "US\$1 501", and "US\$5 000", respectively;
- D. in subparagraph (iv), "US\$5 001", and "US\$10 000", respectively;
- E. in subparagraph (v), "\*US\$10 001", and "US\$15 000", respectively;
- F. in subparagraph (vi), "US\$15 001";

(and, if such income is denominated in a foreign currency **other than the United States dollar**, the equivalent amount in United States dollars shall be calculated, being an amount obtained by applying the international cross rate of

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exchange of that currency for the United States dollar prevailing on the day the income is received or accrued);

(2) For the purpose of section **14(2)(a)** of the Finance Act, the taxable income from employment of a person who receives such income **partly** in Zimbabwe dollars and partly in United States dollars shall be taxed as if the income was all denominated in United States dollars, with the Zimbabwe dollar portion of the income being converted to its United States equivalent at the interbank rate prevailing when the income was received.

## Section 2 (a) PRIOR TO 31<sup>ST</sup> DECEMBER 2019

[Subsection (2)(a) amended by Finance (No.2) Act 7/2019 and by **SI 205/2019** with effect from the period beginning on the **1<sup>st</sup> August, 2019**, and **ending the 31<sup>st</sup> December**, of the year of assessment beginning on the **1<sup>st</sup> January, 2019** —]

2 (a) in the case of a person **other than a company, a trust or a pension fund**, at the specified percentage of each dollar of each of the following parts of his or her taxable income from employment earned in foreign currency—

- (vii) so much as does not exceed zw\$ 3 500;
- (viii) so much as exceeds zw\$ 3 500 but does not exceed zw\$ 15 000;
- (ix) so much as exceeds zw\$ 15 000 but does not exceed zw\$ 50 000;
- (x) so much as exceeds zw\$ 50 000 but does not exceed zw\$ 100 000;
- (xi) so much as exceeds zw\$ 100 000 but does not exceed zw\$ 150 000;
- (xii) so much as exceeds zw\$ 150 000

Provided that where a person earns any part of his or her taxable income from employment in a foreign currency, there shall be substituted for the figures referred to in subparagraphs (i) to \*(vii) the following figures—

[\*This should be (vi) Editor]

- G. in subparagraph (i), “ US\$ 350;
- H. in subparagraph (ii), “US\$ 350” and “US\$ 1500 “ respectively;
- I. in subparagraph (iii), US\$ 1500 “ and “ US\$ 5 000 “ respectively;
- J. in subparagraph (iv), “ US\$ 5 000 “ and “ US\$ 10 000” respectively;

K. in subparagraph (v), “ US\$ 10 000 “ “ and “ US\$ 15 000 “ respectively;

L. in subparagraph (vi), “ US\$ 15 000 “;

(and, if such income is denominated in a foreign currency other than the United States dollar, the equivalent amount in United States dollars shall be calculated, being an amount obtained by applying the international cross rate of exchange of that currency for the United States dollar prevailing on the day the income is received or accrued);

## Section 2 (a) PRIOR TO 1<sup>ST</sup> AUGUST 2019

2 (a) in the case of a person **other than a company, a trust or a pension fund**, at the specified percentage of each dollar of each of the following parts of his or her taxable income from employment earned in foreign currency—

- (c) so much as does not exceed US\$ 4200;
- (ii) so much as exceeds US\$ 4201 but does not exceed US\$ 18 000;
- (iii) so much as exceeds US\$ 18 001 but does not exceed US\$ 60 000;
- (iv) so much as exceeds US\$ 60 001 but does not exceed US\$ 120 000;
- (v) so much as exceeds US\$ 120 001 but does not exceed US\$ 180 000;
- (vi) so much as exceeds US\$ 180 001 but does not exceed US\$ 240 000;
- (vii) so much as exceeds US\$ 240 000;

[para (a) substituted by Finance Act 1 of 2019 gazetted 20<sup>th</sup> February 2019 w.e.f 1<sup>st</sup> January, 2019. The Editor has added a 1 digit in sync with the corresponding figures enacted in the Schedule hereto ]

Thereafter..... 2 (b) in the case of a person **other than** a company, a trust or a pension fund, at the specified percentage of each United States dollar of his or her taxable income from trade or investment earned in foreign currency, other than income referred to in paragraph ©, (f), (h), (i) or (j);

(b1) in the case of a person other than a company, a trust or a pension fund, who is the holder of a **temporary employment permit** issued in terms of the Immigration Act [*Chapter 4:02*] in respect of his or her employment with a licensed investor having a **qualifying degree of export-orientation** as defined in section 2 of the Taxes Act *Chapter 23:06* at the specified percentage of each United States dollar of his or her taxable income from that employment;

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[para (b1) inserted by the Finance Act 2 of 2017 w.e.f<sup>2</sup>3rd March, 2017.]

(d) **c)** in the case of a company or a trust, **other than a pension fund**, at the specified percentage of each United States dollar of its taxable income earned in foreign currency, **other than** income referred to in para<sup>2</sup>(e), (h) or (i);

[<sup>2</sup>para (c) substituted by Finance No. (3) Act 11/2014 w.e.f. 1st January, 2015]

(d) in the case of a **pension fund**, at the specified percentage of each United States dollar of its taxable income earned in foreign currency from trade or investment:

Provided that this paragraph shall not apply in respect of any period before the date specified in terms of paragraph 2(i) of the Third Schedule to the Ta<sup>2</sup> Act;

(e) in respect of that part of the taxable income of a **licensed investor** having a qualifying degree of **export-orientation** as defined in section 2 of the Taxes Act *Chapter 23:06* which is attributable to the operations to which its investment licence relates, for the first 5 years after the commencement of the operation, at the percentage of each dollar of that income specified in Part II of the *Schedule* in respect of those ye<sup>2</sup>;

[<sup>2</sup>para (e) substituted by section 2 of the Finance Act 2 of 2017 w.e.f 23rd March, 2017]

(e1) in respect of that part of the taxable income of a power generation project which is attributable to its operations as such, for the first 5 years after the 1st January, 2018, at the percentage of each dollar of that income specified in Part II of the *Schedule* in respect of those years, and thereafter at the rate specified therein.

[para (e1) inserted by the Finance Act 1 of 2018 w.e.f 14th March, 2018.]

(f) in respect of that part of the taxable income earned in foreign currency of the **holder of a special mining lease** which is attributable to special mining lease operations as defined in the Taxes Act, determined in accordance with the Twenty-Second Schedule to that Act, at the specified percentage of each United States dollar of that income;

(g) in respect of that part of the taxable income earned in foreign currency of a company or a trust **derived from mining operations**, at the specified percentage of each United States dollar of such part of its taxable income;

(h) in respect of that part of the taxable income earned in foreign currency of a **contractor under an approved BOOT or BOT arrangement** which is attributable to his or her operations under the arrangement—

(i) for the **first 5 years** after the commencement of the arrangement, at the percentage of each United States dollar of that income specified in Part II of the *Schedule* in respect of those years;

(ii) for the second 5-year period after the commencement of the arrangement, at the percentage of each United States dollar of that income specified in Part II of the *Schedule* in respect of that period;

(iii) thereafter, at the specified percentage applicable to persons referred to in paragraph (b) or (c),

as these may be;

(e) (i) in respect of that part of the income earned in foreign currency of an **industrial park developer** which is attributable to the operations of his or her industrial park, at the specified percentage of each United States dollar of that income in the year of assessment in which he or she commences such **operations before the year of assessment beginning on the 1st January, 2010**, and in each of the 4 years of assessment next following that year of assessment, and thereafter at the higher specified percentage;

[substituted by Act 3 of 2010 with effect from 17th September, 2010]

(j) in respect of that part of the taxable income earned in foreign currency of the **operator of a tourist facility** in an approved tourist development zone which is attributable to his or her operation of that facility, at the specified percentage of each United States dollar of that income in the year of assessment in which he or she commences such operation **before the year of assessment beginning on the 1st January, 2010**, and in each of the 4 years of assessment next following that year of assessment, and thereafter at the higher specified percentage;

[substituted by Act 3 of 2010 with effect from 17th September, 2010]

(k) in respect of amounts receivable by or on behalf of a **service domiciled broadcasting service domiciled outside Zimbabwe**, or an **electronic commerce operator** domiciled outside Zimbabwe, that are deemed by virtue of section 12(6) and (7) of the Taxes Act to be income derived from a source **within**

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**Zimbabwe**, at the specified percentage of each United States dollar of that income.

[para (k) inserted by Finance Act 1 of 2019 gazetted 20th February 2019 w.e.f 1<sup>st</sup> January, 2019 ; and amended by Finance (No.2) Act 7/2019 gazetted on the 21st August, 2019 with effect from the **1st September, 2019** in the year of assessment beginning on the 1st January, 2019,.]

**(3)** Where a company conducts manufacturing operations and, in any year of assessment, the following percentages of its total manufacturing output is exported from Zimbabwe—

- (a) more than **30%** but less than 41%; or
- (b) more than **41%** but less than 51%; or
- (c) more than **51%**;

the income tax with which the company is chargeable, in respect of so much of its taxable income as, in the opinion of the Commissioner, is derived from manufacturing operations conducted in Zimbabwe during that year of assessment, shall be at the specified percentage of each United States dollar of the taxable income derived from such manufacturing.

[Subsection (3) substituted by Finance No.(3) Act 11/2014 with effect from the 1st January, 2015 who actually conducts, or orchestrates the operations? C.T.(Pvt) Ltd v ZIMRA 19-HH-761]

**(4)** For the purposes of subsection (3) percentages of a company's manufacturing output shall be calculated by quantity or volume rather than according to value.

**(5)** Subject to subsection (6) and to section 50 of the Taxes Act, if in the year of assessment beginning on the **1st April, 1988**, or any subsequent year of assessment, the taxable income of a person, other than a company or a trust, includes—

- (a) any amount referred to in proviso (iv) to paragraph (b) of the definition of "gross income" in section 8(1) of the Taxes Act; or
- (b) any amount included by virtue of paragraph (c) of the definition of "gross income" in section 8(1) of the Taxes Act; or
- (c) any amount referred to in paragraph 5 of the Seventh Schedule to the Taxes Act;

the income tax with which that person is chargeable in respect of that year of assessment shall be calculated—

(d) in respect of so much of the taxable income as would remain had the amount specified in paragraph (a), (b) or (c), as the case may be, not been included (hereinafter called "**the first amount**"), at the appropriate rates referred to in subsection (2)(a); and

(e) in respect of each dollar of so much of the taxable income as would remain were the first amount deducted, at the highest rate at which any part of the first amount is chargeable:

Provided that, if the first amount consists of taxable income **from employment** and does not exceed the amount referred to in paragraph (a) of subsection (2)(a)(i), then so much of the person's taxable income as exceeds that second-mentioned amount shall be chargeable at the rate applicable to the amounts referred to in subparagraph (ii) of that paragraph.

**(6)** If in the year of assessment **beginning on the 1st January, 2010**, or any subsequent year of assessment, the taxable income of a person includes any amount by way of dividends from a company incorporated outside Zimbabwe, that amount—

- (a) shall be charged to tax at the specified percentage; and
- (b) shall be deducted from the person's taxable income prior to the application of subsections (2), (3), (4) and (8) to that income:

**(7)** In respect of the year of assessment beginning on the **1st January, 2010**, and any subsequent year of assessment, there shall be charged, in the case of a person **other than** a company or trust, **an AIDS levy** equal to **3%** of the amount of income tax with which he or she is chargeable in terms of subsection (2) (a) or (b) in respect of that year of assessment, after the deduction of any credits that are to be deducted under Part II of this Chapter, and the levy shall be payable in addition to the income tax with which the person is chargeable under this section.

**(8)** In respect of the year of assessment beginning on the **1st January, 2010**, and any subsequent year of assessment, there shall be charged, in the **case of a company or trust**, **an AIDS levy** equal to **3%** of the amount of income tax with which the company or trust is chargeable in terms of subsection (2) (c) in respect of that year of assessment, and the levy shall be payable in addition to the income tax with which the company or trust is chargeable under this section.

In the REPEALED section providing for Income tax

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for the **historical periods of assessment 1.1.2009 to 31.12.2014** —

...was calculated —

[Section (2) substituted by Finance (No.2) Act 9 of 2011]

(a) in the case of a person **other than** a company, a trust or a pension fund, at the specified percentage of each dollar of each of the following parts of his or her taxable **income from employment**—

- (i) so much as does not exceed US\$3 000;
- (ii) so much as exceeds US\$3 000 but does not exceed US\$12 000;
- (iii) so much as exceeds US\$ 12 000 but does not exceed US\$ 24 000;
- (iv) so much as exceeds US\$ 24 000 but does not exceed US\$ 60 000;
- (v) so much as exceeds US\$ 60 000 but does not exceed US\$ 90 000;
- (vi) so much as exceeds US\$ 120 000 but does not exceed US\$240 000;
- (vii) so much as exceeds US\$240 000.

[subparas (vi) and (vii) substituted by Act N°.1/2014 with efffrom 1st January,2014]

(f) (1) In the REPEALED section providing for Income tax for the historical periods of assessment 1.11.2008 to 31.12.2009 —

...was calculated —

[with effect from the period beginning on the 1<sup>st</sup> November, 2008, and **ending the 30th November, 2008**,—]

(a) in the case of a person other than a company, a trust or a pension fund, at the specified percentage of each dollar of each of the following parts of his or her taxable **income from employment**—

- (i) so much as does not exceed zw\$35 million;
- (ii) so much as exceeds zw\$35 million but does not exceed zw\$100 million;
- (iii) so much as exceeds zw\$100 million but does not exceed zw\$200 million;
- (iv) so much as exceeds zw\$200 million but does not exceed zw\$400 million;
- (v) so much as exceeds zw\$400 million but does not exceed zw\$700 million;

(vi) so much as exceeds zw\$700 million but does not exceed zw\$1 billion;

(vii) so much as exceeds zw\$1 billion;

...was calculated —

with effect from the period beginning on the 1<sup>st</sup> December, 2008, and **ending the 31<sup>st</sup> December, 2008**,

(a) in the case of a person other than a company, a trust or a pension fund, at the specified percentage of each dollar of each of the following parts of his or her **taxable income from employment**—

- (i) so much as does not exceed zw\$6,5 billion;
- (ii) so much as exceeds zw\$6,5 billion but does not exceed zw\$20 billion;
- (iii) so much as exceeds zw\$20 billion but does not exceed zw\$40 billion;
- (iv) so much as exceeds zw\$40 billion but does not exceed zw\$80 billion;
- (v) so much as exceeds zw\$80 billion but does not exceed zw\$140 billion;
- (vi) so much as exceeds zw\$140 billion but does not exceed zw\$220 billion;
- (vii) so much as exceeds zw\$220 billion;

with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2009, and ending on the 31<sup>st</sup> January, 2009—

...was calculated —

(a) in the case of a person other than a company, a trust or a pension fund, at the specified percentage of each dollar of each of the following parts of his or her **taxable income from employment**—

- (i) so much as does not exceed zw\$7,5 trillion;
- (ii) so much as exceeds zw\$7,5 trillion but does not exceed zw\$25 trillion;
- (iii) so much as exceeds zw\$25trillion but does not exceed zw\$50 trillion;
- (iv) so much as exceeds zw\$50 trillion but does not exceed zw\$100 trillion;
- (v) so much as exceeds zw\$100 trillion but does not exceed zw\$160 trillion;
- (vi) so much as exceeds zw\$160 trillion but does not exceed zw\$250 trillion;

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(vii) so much as exceeds zw\$250 trillion;

with effect from the **year of assessment beginning on the 1st February, 2009**, and ending on the 31<sup>st</sup> December, 2009—

...was calculated (as denominated in the new currency as defined in Statutory Instrument 6 of 2009) —

(a) in the case of a person other than a company, a trust or a pension fund, at the specified percentage of each dollar of each of the following parts of his or her **taxable income from employment**—

(i) so much as does not exceed zw\$1 980;

(ii) so much as exceeds zw\$1 980 but does not exceed zw\$ 6 600;

(iii) so much as exceeds zw\$ 6 600 but does not exceed zw\$ 13 200;

(iv) so much as exceeds zw\$13 200 but does not exceed zw\$ 26 400;

(v) so much as exceeds zw\$ 26 400 but does not exceed zw\$ 41 800;

(vi) so much as exceeds zw\$41 800 but does not exceed zw\$ 66 000;

(vii) so much as exceeds zw\$ 66 000;

with effect from the 1<sup>st</sup> February, 2009, in the year of assessment beginning on the 1<sup>st</sup> January, 2009,

...was calculated —

**(a1)** in the case of a **person** other than a company, a trust or a pension fund, at the specified percentage of each dollar of each of the following parts of his or her taxable income from **employment ea in foreign currency** —

(g) (i) so much as does not exceed US \$1 650;

(ii) so much as exceeds US \$1 650 but does not exceed US \$5 500;

(iii) so much as exceeds US \$5 500 but does not exceed US \$11 000;

(iv) so much as exceeds US \$11 000 but does not exceed US \$16 500;

(v) so much as exceeds US \$16 500 but does not exceed US \$33 000;

(vi) so much as exceeds US \$33 000;

## 15 Non-resident shareholders' tax

[Section substituted by Act 8 of 2020 gazetted on the 28th October, 2020 with effect from the year of assessment beginning on the **1st August, 2020**.]

The non-resident shareholders' tax chargeable in terms of section 26 of the Taxes Act shall be calculated—

(a) in the case of a dividend distributed from a security which, on the date of distribution, is listed in the official list kept by a registered securities exchange (**other than** the securities exchange referred to in paragraph (b)) in terms of the Securities and Exchange Act [*Chapter 24:25*], at the rate of **10%**;

(b) in the case of a dividend distributed from a security which, on the date of distribution, is listed in the official list kept by the **Victoria Falls** Stock Exchange as defined in paragraph 4(f) of the Third Schedule to the Tax©Act, at the rate of **5%**;

(c) in the case of any other dividend, at the rate of **15%**;

of each dollar of the dividend from which the tax is to be withheld and paid in terms of the Ninth Schedule to the Taxes Act.

## 16 ...

[Section 16 repealed by Act 29 of 1998 with effect from 1 January 1999.]

## 17 Resident shareholders' tax

The resident shareholders' tax chargeable in terms of section 28 of the T Act shall be calculated—

(h) (a) in the case of a dividend distributed from a security which, on the date of distribution, is listed in the official list kept by a registered securities exchange in terms of the Securities and Exchange Act [*Chapter 24:25*] at the rate of **10%**;

[amended by the Securities Act with effect from the 1<sup>st</sup> June, 2008.

Rate reduced from 15% by the Finance (No.3) Act 10 of 2009 with effect from the year of assessment beginnnin the 1<sup>st</sup> January, 2010.]

(i) (b) in the case of any other dividend, at the rate of **15%**;

[Rate reduced from 20% by the Finance (No.3) Act 10 of 2009 with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2010.]

of each dollar of the dividend from which the tax is to be withheld and paid in terms of the Fifteenth Schedule to the Taxes Act.

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## 18 ...

[Repealed by Act 5 of 2009 with effect from the 30<sup>th</sup> September, 2009.]

## 19 Non-residents' tax on fees

The non-residents' tax on fees chargeable in terms of section 30 of the Taxes Act shall be calculated at the rate of **15%** of each dollar of the fees from which such tax is to be withheld and paid in terms of the Seventeenth Schedule to that Act.

[Rate reduced from 20% by the Finance (No.3) Act 10 of 2009 with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2010]

## 20 Non-residents' tax on remittances

**[Editor's request:-** find sec **39A** of CHAPTER **22:15** to see "*Interpretation in Part V*" enacted by the Finance (No.2) Act 7 of 2017, using this duplicate section number which can't be replicated here].]

The non-residents' tax on remittances chargeable in terms of section 31 of the Taxes Act shall be calculated at the rate of **15%** of each dollar of the remittance from which such tax is to be paid in terms of the Eighteenth Schedule to that Act.

[Rate reduced from 20% by Act 3 of 2010 with effect from the 17th September, 2010.]

## 21 Non-residents' tax on royalties

**[Editor's request:-** find sec **44C** of CHAPTER **22:15** to see "*Issuance of electronic currency*" enacted by the Finance (No.2) Act 7 of 2017, using this duplicate section number which can't be replicated here].]

The non-residents' tax on royalties chargeable in terms of section 32 of the Taxes Act shall be calculated at the rate of **15%** of each dollar of the royalty from which such tax is to be withheld and paid in terms of the Nineteenth Schedule to that Act.

[Rate reduced from 20% by the Finance (No.3) Act 10 of 2009 with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2010.]

## 22 Residents' tax on interest

**[Editor's request:-** find sec **44D** of CHAPTER **22:15** to see "*Issuance of RTGS..*" enacted by the Finance (No.2) Act 7 of 2017, using this duplicate section number which can't be replicated here].]

The residents' tax on interest chargeable in terms of section 34 of the Taxes Act shall be calculated at the rate of —

(a) **5%** of each dollar of the interest from which such tax is to be withheld and paid in terms of the Twenty-First Schedule to the Taxes Act, in the case where the interest is earned on a **fixed-term deposit** with a tenure of at least **90 days** ; or

(b) **15%** of each dollar of the interest from which such tax is to be withheld and paid in terms of the Twenty-First Schedule to the Taxes Act, in every other case.

[Section substituted by Act 18 of 2000 with effect from 1 January, 2001. Rate reduced from 20% by the Finance (No.3) Act 10 of 2009 with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2010. Rate further reduced from 15% to the above rate in terms of subsection (a) above by the Finance (No.2) Act 6 of 2012 with effect from the year of assessment beginning on the 1<sup>st</sup> January, 2013 in respect of a **90 day fixed deposit**. In every other case, the rate remains at 15% -Editor]

## 22A Tobacco levy

The tobacco levy chargeable in terms of section 36A of the Taxes Act shall be calculated in respect of —

(a) **buyers** of auction and contract tobacco at the rate of **1.50c** of each dollar;

(b) **sellers** of auction and contract tobacco at the rate of **0.75c** of each dollar;

[rate in para (b) reduced by FINANCE (No.2) ACT 9 of 2015 with effect from the 1st January, 2016]

of the price from which the levy is to be withheld and paid in terms of the Twenty-Fourth Schedule to that Act.

[section substituted by Finance Act /2005 w.e.f. 1<sup>st</sup> March, 2005 relieving **sellers** from the **1½%** levy, until re-instated by the Finance No. (3) Act 11/2014 with effect from the 1st January, 2015. Amended by Finance Act 8/2015 w.e.f. 13<sup>th</sup> November, 2015]

## 22B Automated financial transactions tax

[Section substituted by section 4 of Finance Act 8/2022 gazetted on the 24th October, 2022 w.e.f. 24<sup>th</sup> October, 2022.]

The automated financial transactions tax chargeable in terms of section 36B of the Taxes Act shall be calculated at the rate of—

(a) for each withdrawal of **ZWL1000** or above, ZWL 0.05;

(b) for each withdrawal of **US\$1 000 or less**, US\$ 0.05;

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(c) for each withdrawal above **US\$1 000**, 1% of the value of the withdrawal.

[Section substituted by **SI 96/2022** gazetted on the 13<sup>th</sup> May, 2022: Subsequently validated w.e.f. **13<sup>th</sup> May, 2022** by section 4(2) of the Finance Act 8/2022 gazetted on the 24<sup>th</sup> October, 2022, which also amended the rate for Transactions below :?.]

The automated financial transactions tax chargeable in terms of section 36B of the Taxes Act shall be calculated at the rate of—

(a) for each withdrawal of **ZWL1000** or above, ZWL 0.05;

(b) for each withdrawal **below US\$1 000**, US\$ 0.05;

(c) for each withdrawal of **US\$1 000** or above, 2% of the value of the withdrawal.

[Inserted by Act 13 of 1996 from 1<sup>st</sup> September 1996. Rate increased by Act 8 of 2007 from \$ 50 from the 1<sup>st</sup> October, 2007; increased from \$ 2 500 by Act 16 of 2007 from the 1<sup>st</sup> January, 2008. Rate adjusted from \$ 25 000 and further substituted by SI 149 of 2008, gazetted on the 23<sup>rd</sup> October, 2008 backdated to the 1<sup>st</sup> October, 2008; Enacted into US\$ currency by Act 5 of 2009 w.e.f. 30<sup>th</sup> September, 2009; Amended by the Finance Act 1 of 2018 w.e.f. 14<sup>th</sup> March,2018.]

## 22C Presumptive tax

[Section 22C substituted by Act 2 of 2005 w.e.f. 1<sup>st</sup> September, 2005; amended by Act 8 of 2005 so as to backdate the first payments from the 31<sup>st</sup> December, 2005 to the 20<sup>th</sup> October, 2005; subsection (1) was substituted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March,2017 backdated to the 1<sup>st</sup> January, 2017; Again repealed & substituted by Finance (No. 2) Act 10/2020 w.e.f. year beginning on 1<sup>st</sup> January, 2021 Again repealed & substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. the year of assessment beginning on the 1<sup>st</sup> January, 2022.]

(1) The presumptive tax chargeable in terms of section 36C of the Taxes Act shall be in the case of—

(a) **informal traders** (other than those referred to in paragraph (j), (m) and (l)), calculated at the rate of **zwl\$3 250** per month; or

(b) **small-scale miners**, calculated at the rate of **0%** of each dollar of the purchase price of precious metals or precious stones upon which the tax is chargeable in terms of the Twenty-Sixth Schedule to the Taxes Act; or

(c) operators of **taxicabs** for the carriage of passengers for hire or reward having seating accommodation for **not more than 7 passengers**, **zwl\$4 065** per month for each such taxicab so operated; or

(d) operators of **omnibuses** for the carriage of passengers for hire or reward having seating accommodation for **not less than 8 or more than 14 passengers** **zwl\$4 065** per month for each such omnibus so operated; or

(e) operators of **omnibuses** for the carriage of passengers for hire or reward having seating accommodation for **not less than 15 or more than 24 passengers**, **zwl\$4 875** per month for each such omnibus so operated; or

(f) operators of **omnibuses** for the carriage of passengers for hire or reward having seating accommodation for **not less than 25 or more than 36 passengers**, **zwl\$6500** per month for each such omnibus so operated; or

(g) operators of **omnibuses** for the carriage of passengers for hire or reward having seating accommodation for **not less than 37 passengers**, **zwl\$8 125** per month for each such omnibus so operated; or

(h) operators of **goods vehicles** having a carrying capacity—

(i) of more than 10 tonnes but less than 20 tonnes **zwl\$48 850** per month;

(ii) of 10 tonnes or less but which is driving one or more trailers resulting in a combined carrying capacity of more than 15 tonnes but less than 20 tonnes, **zwl\$65 000** per month;

(iii) of 20 tonnes or more, **zwl\$81 250** per month;

(i) operators of **driving schools** providing driving tuition—

(i) for class 4 vehicles only, **zwl\$48 750** per month;

(ii) for class 1 and 2 vehicles (whether or not in addition to providing driving tuition for other classes of vehicles), **zwl\$65 000** per month;

(j) operators of **hairdressing salons**, **zwl\$4 065 per chair** per month; or

(k) **informal cross-border traders**, 20% of the value for duty purposes of the commercial goods being imported by the traders concerned;

[Para (k) substituted by section 5 of Finance Act 8/2022 gazetted on the 24th October, 2022 :doubling the %.]

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or

- (l) operators of **restaurants or bottle-stores**, **zwl\$16 250** per month; or
- (m) **cottage** industry operators, **zwl\$16 250** per month; or
- (n) operators of **commercial waterborne vessels** of a description referred to in paragraph 2(a) of the definition of “*commercial waterborne vessel*” in the Twenty-Sixth Schedule of the Taxes Act, having a carrying capacity (inclusive of cabin crew)—
  - (i) of **not more than 5** passengers, **zwl\$16 250** per month per vessel;
  - (ii) of **6** passengers but less than 16 passengers, **zwl\$24 375** per month per vessel;
  - (iii) of **16** passengers but less than 26 passengers, **zwl\$32 500** per month per vessel;
  - (iv) of **than 26** passengers but less than 50 passengers, **zwl\$40 625** per month per vessel;
  - (v) of **50** or more passengers, **zwl\$48 750** per month per vessel;

or

- (o) operators of **commercial waterborne vessels** of a description referred to in paragraph 2(b) of the definition of “*commercial waterborne vessel*” in the Twenty-Sixth Schedule of the Taxes Act (that is to say, operators of **fishing rigs**), **zwl\$16 250** per month; or
- (p) **self-employed** persons—
  - (i) **architects** registered or required to be registered under the Architects Act [*Chapter 27:01*], **zwl\$406 000** per month; or
  - (ii) **engineers** or technicians registered or required to be registered under the Engineering Council [*Chapter 27:22*], **zwl\$812 500** per month; or
  - (iii) **legal practitioners** registered or required to be registered under the Legal Practitioners Act [*Chapter 27:07*], **zwl\$812 500** per month; or
  - (iv) **health practitioners** registered or required to be registered under the Health Professions Act [*Chapter 27:19*], **zwl\$812 500** per month; or
  - (v) **real estate agents** registered or required to be registered under the Estate Agents Act [*Chapter 27:17*], **zwl\$1 625 000** per month;

(2) Every person liable for presumptive tax has the option to pay the amount of the tax due in United States dollars at the applicable foreign currency auction rate prevailing on the date of payment.

## 22D Demutualisation levy

The demutualisation levy chargeable in terms of section 36D of the Taxes Act shall be calculated, in respect of each Zimbabwean member of the mutual society concerned, at the rate of **2.5%** of the amount upon which the levy is payable in terms of paragraph 2 of the Twenty-Seventh Schedule to the Taxes Act.

## 22E Carbon Tax

[Section 22E inserted by Act 18 of 2000 w.e.f 1<sup>st</sup> January, 2001: then substituted by Act 8 of 2005 w.e.f 1<sup>st</sup> January, 2006

**Editor's Note:** See *Gonese I v Minister of Finance and Economic Development 22-HH-265* which again declared this section to be illegal.]

(1) The carbon tax chargeable in terms of section 36E of the Taxes Act shall be paid at the rate of **ZWL\$ 2.29** or **US\$0,04** per litre of petroleum product, or **5%** of the cost, insurance, freight value (as defined in the Customs and Excise Act [*Chapter 23:02*]) of petroleum product, whichever is the greater amount, imported by —

[Subsection (1) amended by **SI 123A/2020** gazetted on the 5<sup>th</sup> June 2020; which is now declared **ultra vires** because the Minister does not have the power to enact any section of any Act- **see section 134(a) a.r.w. s 117(2)(c ) of the Constitution 2013 – Judgment to follow in next update;- editor then substituted by Finance (No. 2) Act 10/2020 w.e.f. 5<sup>th</sup> December 2020.]**

(a) the State oil procurement entity or other person or entity importing petroleum product for his or her own consumption;

or

(b) any person licensed by the Minister responsible for Energy to import the petroleum product in bulk.

[Subsection (1) was substituted by the Finance Act 3 of 2009 backdated to the **30th January, 2009**. The Minister purported to amend it by SI 45 of 2009 (w.e.f. 24<sup>th</sup> April, 2009 being the day after the Act was gazetted) by the deletion of “US \$0.03 per litre of petroleum product”, and the substitution of the below rates, corrected by SI 91/09 gazetted on the 19<sup>th</sup> June, 2009; and increased by SI 149/09 gazetted on the 11<sup>th</sup> September, 2009. This SI purported to delete the 2% or 6% respectively, without substitution of any \* percentage of CIF \* in either case- leaving a rate in US cents only: -.

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US \$0.013 per litre of **diesel**, or \*2% CIF ; and US \$0.040 per litre of **petrol**, or \*6%. For the reason stated under the Title to this Act, **these SI's are void**, and the rates revert to (a) and (b) above with retrospective effect, **being the 30<sup>th</sup> January, 2009**.- Editor]

(1a) The carbon tax chargeable in terms of section 36E of the Taxes Act shall be paid at the rate of 32.5 Zimbabwe cents per litre of **diesel** and 100 Zimbabwe cents per litre of **petrol** of the cost, insurance, freight value (as defined in the Customs and Excise Act [Chapter 23:02]) of petroleum product, imported **otherwise than by the use of "free funds"** by—

(a) the State oil procurement entity or other person or entity importing petroleum product for his or her own consumption; or

(b) any person licensed by the Minister responsible for energy to import the petroleum product in bulk.

[Section (1a) inserted by **SI 123A/2020** gazetted on the 5th June 2020. As was determined in September 2019 by the High Court in *M.Milo v Minister of Finance 19-HH-605* the Minister cannot amend an Act. The explicit constitutional entrenchment of the principle of Separation of Powers had been violated.]

[Parliament overruled that finding by passing the misworded section 32 of Act 13 of 2019. Awaiting appeal]

(1b) The carbon tax chargeable in terms of section 36E of the Taxes Act shall be paid at the rate of **74.6** Zimbabwe cents per litre of diesel and **229.4** Zimbabwe cents per litre of petrol of the cost, insurance, freight value (as defined in the Customs and Excise Act [Chapter 23:02]) of petroleum product, imported **otherwise than by the use of "free funds"** (as defined in section 2 of the Exchange Control Regulations, 1996 **SI 109/1996**) by—

(a) the State oil procurement entity or other person or entity importing petroleum product for his or her own consumption;

or

(b) any person licensed by the Minister responsible for energy to import the petroleum product in bulk.

[Section (1b) inserted by SI 145/2020 gazetted on the 23rd June, 2020 **w.e.f. 24th June 2020**; and confirmed by section 6 of **Act 8 of 2020** gazetted on the 28th October, 2020.]

(2) In addition, a visitor to Zimbabwe who uses within Zimbabwe a motor vehicle registered outside Zimbabwe shall, upon entering Zimbabwe, and for each month or part

of a month during which he or she visits Zimbabwe, pay carbon tax in respect of such vehicle to the Zimbabwe Revenue Authority in United States dollars (or the equivalent in Euros or in any other currency denominated under the Exchange Control (General) Order, 1966 **SI 110/1996** at the prevailing international cross rate of exchange), at the of **US\$10** per vehicle.

[Subsection (2) substituted by the Finance Act 2 of 2017 gazetted on 23rd March, 2017 backdated to the 1st January, 2017.]

## 22F ...

[Inserted by Act 27 of 2001 from 1 January 2001. Repealed by the Finance (No.3) Act 10 of 2009 w.e.f. 1<sup>st</sup> January, 2010.]

## 22G Intermediated Money Transfer Tax

**[Caveat:** The Minister of Finance initially purported to amend this Tax by newspaper on the 5th October, 2018; and later published his increase by SI 205/2018 gazetted on the 12 October 2018 : - which Regulations were -

4. challenged on the 12<sup>th</sup> February, 2019 in the High Court;
5. "validated" the following week on the 20<sup>th</sup> February by Act 1 of 2019 backdated to the 13<sup>th</sup> October 2018;
6. "re-validated" another 6 months later Act 7 of 2019 promulgated on the 21<sup>st</sup> August backdated to the 1<sup>st</sup> August 2019.

The High Court Judgment was handed down 4 weeks later on the 18<sup>th</sup> September, 2019 *M.Milo v Minister of Finance 19-HH-605* declaring these Regulations ergo this Section *ultra vires*. The Minister immediately appealed. Parliament thereafter, by section 32 of its Finance (No.3) Act 13 of 2019 "validated SI 295 of 2019" backdated to a different date, namely the 20<sup>th</sup> SEPTEMBER 2019. This is a probably a bad typographical error, as the SI in question is 205 of 2018 -effectively overruling the above High Court Order of Justice Zhou.

SI 295 of 2019 does not exist . By February 2023 no Supreme Court appeal has yet been heard. Section substituted by SI 96/2022 gazetted on the 13<sup>th</sup> May, 2022; duly validated by section 6 of Finance Act 8/2022 gazetted on the 24th October, 2022 w.e.f. 13<sup>th</sup> May, 2022.]

The intermediated money transfer tax chargeable in terms of section **36G** of the Taxes Act shall be calculated at the rate of —

- (a) **ZWL\$0.02** on every Zimbabwe dollar or part thereof transacted for each transaction on which the tax is payable;

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Provided that if a single transaction on which the tax is payable is equivalent to or exceeds ZWL165 million, a flat intermediated money transfer tax of **ZWL 3,300 000** shall be chargeable on such transaction;

(b) **US\$ 0,01** or part thereof on every United States dollar transacted for each transaction on which the tax is payable.

[Para (b) substituted by Finance (No. 2) Act 10 of 2022 by halving the rate from **US\$0,04** w.e.f. 1<sup>st</sup> January, 2023 substituted by Finance (Rate of Intermediated Money Transfer Tax) Regulations, 2023 **SI 88/2023** by halving the rate from **US\$0,02** w.e.f. 1<sup>st</sup> June, 2023.]

Provided that if a single transaction on which the tax is payable is equivalent to or exceeds USD500 000, a flat intermediated money transfer tax of **USD20 000** shall be chargeable on such transaction.

## 22H Strategic reserve levy

The strategic reserve levy chargeable in terms of section 36H of the Taxes Act shall be calculated at the rate of **0,1270** United States cents per litre of petroleum product, and at the rate of **0,1270** United States cents per litre of diesel.

[Section substituted by **SI 123A/2020** gazetted on the 5th June 2020: **ULTRA VIRES see section 134(a) a.r.w. s 117(2)(c) of the Constitution 2013;**

-further substituted by SI 145/2020 gazetted on the 23rd June, 2020;

-further substituted by Section 8 of Act 8 of 2020 gazetted on the 28th October, 2020 w.e.f. 24th June 2020 until the 4<sup>TH</sup> DECEMBER, 2020, whereafter Paragraphs (a) and (b) were thereby amended until the 1<sup>st</sup> January, 2021 when SI 227/2021 was gazetted on the 3<sup>rd</sup> September, 2021 again backdated to 1<sup>st</sup> January, 2021;

further substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 backdated w.e.f. 1<sup>st</sup> January, 2021

.Further repealed and substituted by Finance (No. 2) Act 10 of 2022 gazetted on the 30th December, 2022 **backdated to the 30<sup>th</sup> November, 2022: which also validated all the SI's of 2022 which were collected or foregone-Editor ]**

REPEALED SECTION “22H NOCZIM debt redemption and strategic reserve levy” with all its amendments are published in *italics* below for past reference: -

“(1) *The NOCZIM debt redemption and strategic reserve levy chargeable in terms of section 36H of the Taxes Act shall—*

(a) *in relation to the NOCZIM debt redemption levy, where diesel or petrol is*

*purchased or imported through the use of “free funds” (as defined in section 2 of the Exchange Control Regulations, SI 109/1996) by—*

- (i) *an oil company from NOCZIM or its subsidiaries or successors; or*
- (ii) *any person licensed by the Minister responsible for energy to import the petroleum product in bulk;*

*be calculated at the rate of zero (0.000) United States dollars per litre of diesel or petrol;*

(b) *in relation to the NOCZIM debt redemption levy, where diesel or petrol is purchased or imported through the use of “free funds” (as defined in section 2 of the Exchange Control Regulations, SI 109/1996) by—*

- (i) *an oil company from NOCZIM or its subsidiaries or successors; or*
- (ii) *any person licensed by the Minister responsible for energy to import the petroleum product in bulk;*

*be calculated at the rate of zero (0.000) Zimbabwe dollars per litre of diesel or petrol;*

(c) *in relation to the strategic reserve levy, where diesel or petrol is purchased or imported through the use of “free funds” (as defined in section 2 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996), by—*

[Paragraph (c) substituted by SI 31/2022 gazetted on 18<sup>th</sup> February, 2022 w.e.f. 1<sup>st</sup> February, 2022 for a period of 30 days;

further substituted by SI 110/2022 gazetted on 10<sup>th</sup> June, 2022 w.e.f. 16<sup>th</sup> May, 2022 for a period of 22 days;

further substituted by SI 120/2022 gazetted on 1<sup>st</sup> July, 2022;

para (c) again amended by SI 120/2022 gazetted on the 1<sup>st</sup> JULY, 2022 replacing the below \*amendment now expired.]

(b) *NOCZIM or its subsidiaries or successors; or*

(ii) *any person licensed by the Minister responsible for energy to import the petroleum product in bulk;*

*shall be calculated at the rate of zero (0,000) United States dollars per litre of diesel and zero comma four seven (0,047) United States dollars per litre of petrol.*

(c) *NOCZIM or its subsidiaries or successors; or*

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(ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;

shall be calculated at the rate of zero comma zero (0,000) United States dollars per litre of diesel and zero comma zero four seven (0,047) United States dollars per litre of petrol.

(d) in relation to the strategic reserve levy, where diesel or petrol is purchased or imported otherwise than through the use of "free funds" (as defined in section 2 of the Exchange Control Regulations, 1996) by—

(i) an oil company from NOCZIM or its subsidiaries or successors; or

(ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;

be calculated at the rate of eleven (11) Zimbabwe dollars per litre of diesel or eight (8) Zimbabwe dollars per litre of petrol.

[The temporary reduction for the period 5 July, 2022, to the 12th July, 2022, in the rate of strategic reserve levy referred to above to the rate of (US\$ 0,077) per litre of diesel and (US\$ 0,1070) per litre of petrol, is validated by section 7(1) Finance Act 8/2022 gazetted on the 24th October, 2022.

Likewise SIs 31 of 2022, 58 of 2022, 97 of 2022, 110 of 2022 and 120 of 2022, are hereby validated with effect from the effective dates specified in each of them.]

## 22H. NOCZIM debt redemption and strategic reserve levy (previous)

The NOCZIM debt redemption and strategic reserve levy chargeable in terms of section 36H of the Taxes Act shall—

[Section substituted by **SI 123A/2020** gazetted on the 5th June 2020: declared **ultra vires** because the Minister does not have the power to enact any section of any Act – Judgment to follow in next update;

further substituted by **SI 145/2020** gazetted on the 23rd June, 2020;

further substituted by Section 8 of Act 8 of 2020 gazetted on the 28th October, 2020 w.e.f. 24th June 2020 until the 4<sup>TH</sup> DECEMBER, 2020, whereafter Paragraphs (a) and (b) were thereby amended **UNTIL THE 1st JANUARY, 2021** when **SI 227/2021** was gazetted on the 3<sup>rd</sup> September, 2021 when, again backdated to 1<sup>st</sup> January, 2021.]

(a) in relation to the NOCZIM debt redemption levy, where diesel or petrol is purchased or imported through the use of "free funds" (as defined in section 2 of the Exchange Control Regulations, SI 109/1996) by—

(i) an oil company from NOCZIM or its subsidiaries or successors; or

(ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;

be calculated at the rate of zero (0.000) United States dollars per litre of diesel or petrol;

(b) in relation to the NOCZIM debt redemption levy, where diesel or petrol is purchased or imported otherwise than through the use of "free funds" (as defined in section 2 of the Exchange Control Regulations, SI 109/1996) by—

(i) an oil company from NOCZIM or its subsidiaries or successors; or

(ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk be calculated at the rate of zero (0.000) Zimbabwe dollars per litre of diesel or petrol;

[Para (b) substituted by SI 210A/2021 w.e.f. 5<sup>th</sup> August, 2021, up to 3<sup>rd</sup> September, 2021 gazetted on 5<sup>th</sup> August, 2021; then substituted **now** as paras (c) and (d) below by **SI 22720/21** gazetted on the 3<sup>rd</sup> September, 2021 backdated to the 1<sup>st</sup> January, 2021.]

(c) in relation to the strategic reserve levy, where diesel or petrol is purchased or imported through the use of "free funds" (as defined in section 2 of the Exchange Control Regulations, SI 109/1996) by—

[Para(c) substituted by SI 31/2022, and again by SI 58/2022 w.e.f. 28th March, 2022 for 30 days;

further, by SI 97/2022 gazetted on the 13<sup>th</sup> May 2022 – EXPIRED 3<sup>RD</sup> MAY 2022.

*Editor's Note: See Gonese I v Minister of Finance and Economic Development 22-HH-265 which again declared this subsection to be illegal.]*

(i) NOCZIM or its subsidiaries or successors; or

(ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;

shall be calculated at the rate of zero (0,000) United States dollars per litre of diesel .

[Further, by SI 97/2022 gazetted on the 13<sup>th</sup> May 2022 – EXPIRED 15<sup>th</sup> May 2022.]

(i) NOCZIM or its subsidiaries or successor

(ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;

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shall be calculated at the rate of zero comma zero four seven (0,047) United States dollars per litre of diesel .

(c) in relation to the strategic reserve levy, where diesel or petrol is purchased or imported **otherwise than** through the use of "free funds" (as defined in section 2 of the Exchange Control Regulations, 1996) by—

- (i) an oil company from NOCZIM or its subsidiaries or successors; or
- (ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;

be calculated at the rate of eleven (11) Zimbabwe dollars per litre of diesel or eight (8) Zimbabwe dollars per litre of petrol.

[On the 4<sup>th</sup> November, 2022, the following SI 188/2022 was gazetted, now validated. It is published below in full.

— Editor.]

## Title

1.

These regulations may be cited as the Finance (Amendment of Section 22H of Finance Act) (Suspension) Regulations, 2022.

Amendment of section 22H of Cap. 23:04

2.

Section 22H ("NOCZIM Debt Redemption and Strategic Reserve Levy") (1) of the Finance Act [Chapter 23:04] is amended by the repeal of paragraph (c) and the substitution of—

.amendmentStart

"(c) with effect from 31st July, 2022, and for a period of 21 days, in relation to the strategic reserve levy, where diesel or petrol is purchased or imported through the use of "free funds" (as defined in section 2 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996) by—

- (i) NOCZIM or its subsidiaries or successors; or
- (ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;

shall be calculated at the rate of zero comma zero one zero seven United States dollars (US\$0,0107) per litre of diesel and zero comma one two seven United States dollars (US\$0,127) per litre of petrol."

.amendmentEnd

3.

Section 22H ("NOCZIM Debt Redemption and Strategic Reserve Levy") (1) of the Finance Act [Chapter 23:04] is amended by the repeal of paragraph (c) and the substitution of—

.amendmentStart

"(c) with effect from 21st September, 2022, and for a period of 7 days, in relation to the strategic reserve levy, where diesel or petrol is purchased or imported through the use of "free funds" (as defined in section 2 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996) by—

- (i) NOCZIM or its subsidiaries or successors; or

- (ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;

shall be calculated at the rate of zero comma one zero seven United States dollars (US\$0,107) per litre of diesel and zero comma one two seven United States dollars (US\$0,127) per litre of petrol.".

.amendmentEnd

4.

Section 22H ("NOCZIM Debt Redemption and Strategic Reserve Levy") (1) of the Finance Act [Chapter 23:04] is amended by the repeal of paragraph (c) and the substitution of—

.amendmentStart

"(c) with effect from 28th September, 2022, and for a period of 14 days, in relation to the strategic reserve levy, where diesel or petrol is purchased or imported through the use of "free funds" (as defined in section 2 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996) by—

- (i) NOCZIM or its subsidiaries or successors; or

- (ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;

shall be calculated at the rate of zero comma one two seven United States dollars (US\$0,127) per litre of diesel and zero comma one two seven United States dollars (US\$0,127) per litre of petrol.".

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.amendmentEnd

5.

*Section 22H (“NOCZIM Debt Redemption and Strategic Reserve Levy”) (1) of the Finance Act [Chapter 23:04] is amended by the repeal of paragraph (c) and the substitution of—*

.amendmentStart

*“(c) with effect from 12th October, 2022, in relation to the strategic reserve levy, where diesel or petrol is purchased or imported through the use of “free funds” (as defined in section 2 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996) by—*

*(i) NOCZIM or its subsidiaries or successors; or*

*(ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;*

*shall be calculated at the rate of zero comma zero nine seven United States dollars (US\$0,097) per litre of diesel and zero comma one two seven United States dollars (US\$0,127) per litre of petrol.”.*

.amendmentEnd

6.

*Section 22H (“NOCZIM Debt Redemption and Strategic Reserve Levy”) (1) of the Finance Act [Chapter 23:04] is amended by the repeal of paragraph (c) and the substitution of—*

.amendmentStart

*“(c) with effect from 19th October, 2022, in relation to the strategic reserve levy, where diesel or petrol is purchased or imported through the use of “free funds” (as defined in section 2 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996) by—*

*(i) NOCZIM or its subsidiaries or successors; or*

*(ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;*

*shall be calculated at the rate of zero comma zero two seven United States dollars (US\$0,027) per litre of diesel and zero comma one two seven United States dollars (US\$0,127) per litre of petrol.”.*

.amendmentEnd

7.

*Section 22H (“NOCZIM Debt Redemption and Strategic Reserve Levy”) (1) of the Finance Act [Chapter 23:04] is amended by the repeal of paragraph (c) and the substitution of—*

.amendmentStart

*“(c) with effect from 26th October, 2022, in relation to the strategic reserve levy, where diesel or petrol is purchased or imported through the use of “free funds” (as defined in section 2 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996) by—*

*(i) NOCZIM or its subsidiaries or successors; or*

*(ii) any person licensed by the Minister responsible for energy to import the petroleum product in bulk;*

*shall be calculated at the rate of zero comma zero four seven United States dollars (US\$0,047) per litre of diesel and zero comma one two seven United States dollars (US\$0,127) per litre of petrol.”.*

.amendmentEnd

## **22I Property or insurance commission tax**

The property or insurance commission tax chargeable in terms of section 36 I of the Taxes Act shall be calculated at the rate of **20%** of each dollar of the commission from which such tax is to be paid in terms of the Thirty-Second Schedule to that Act.

[Section inserted by Act 29 of 2004 from 1<sup>st</sup> January, 2005.]

## **22J Tax on non-executive directors’ fees**

The tax on non-executive directors’ fees chargeable in terms of section 36J of the Taxes Act shall be calculated at the rate of **20%** of each dollar of the fees from which such tax is to be paid in terms of the Thirty-Third Schedule to that Act.

[Section inserted by Act 12 of 2006 from 1<sup>st</sup> January, 2007.]

## **22K Tax on exercise of share options granted before 1st February, 2009**

Notwithstanding paragraph (t) of the definition of “gross income” in section 8(1) of the Taxes

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Act, where an employee was, before the 1st February, 2009, offered shares pursuant to a share option scheme operated by his or her employer, there shall be charged on the sale of any of those shares after that date a tax of **5%** of each United States dollar on the market value of those shares prevailing on the date of the exercise of the option.

[Section inserted by Act 5 of 2009 with effect from the 30<sup>th</sup> September, 2009.]

## 22L Petroleum importers levy

The petroleum importers levy chargeable in terms of section 36 K of the Taxes Act shall be calculated at the rate of **US\$0,05** per litre of petroleum product transported by a petroleum importer by road.

[Section inserted by Act 5 of 2010 w.e.f. 1st January, 2011 and substituted by Act 8 of 2011 from 1st September, 2011; then increased by Finance (No. 2) Act 10/2020 from the year of assessment beginning on the 1st January, 2021.]

## 22M Bookmakers tax

The bookmakers tax chargeable in terms of section 36L of the Taxes Act shall be calculated at the rate of **3%** of each dollar of the gross monthly takings of the bookmaker in terms of the Thirty-Sixth Schedule to that Act.

[Inserted by the Finance Act 1 of 2018 w.e.f 1<sup>st</sup> January, 2018; corrected by SI 188/2018.]

## PART IV EMPLOYEES TAX

## 23 Matters to be regarded by Commissioner in relation to employees tax

[Editor's request:- find sec 44E of CHAPTER 22:15 to see "Zim dollar to be the sole currency ..." enacted by the Finance (No.2) Act 7 of 2017, using this duplicate section number which can't be replicated here].

The Commissioner, in exercising the powers conferred on him by paragraph 3 of the Thirteenth Schedule to the Taxes Act—

- (a) shall have regard to the rates of income tax referred to in section *fourteen*; and
- (b) may have regard to the credits referred to in section *twelve*, in so far as they relate to payments referred to in paragraph (c) of the definition of "**medical expenses**" in subsection (1) of that section;

(c) in the case of directives, may have regard to the credits referred to in sections *ten* to *thirteen*.

[substituted by s 8 of Act 13 of 1996 from 1 April 1997.]

## PART V RESERVE BANK OF ZIMBABWE

[Initially this PART was substituted by s 8 of Act 13 of 1996 from 1 April 1997]

## SCHEDULE TO CHAPTER I

(Section 4)

### CREDITS & RATES OF INCOME TAX

## PART I CURRENT CREDITS FOR THE YEAR 2022

[Part I amended by Finance Act 8/2022 gazetted on the 24th October, 2022 w.e.f. 24<sup>th</sup> October, 2022.]

Provision	Current amount w.e.f 24 <sup>th</sup> October 2022	2022 Monetary Amount zwl	2022 Monetary Amount US\$
10	Credit for taxpayers over <b>55</b> years of age	\$450 000	\$ 900
11	Blind persons credit	\$450 000	\$ 900
13	Mentally or physically <b>disabled</b> persons credit	\$450 000	\$ 900
13A Youth Employment Tax Initiative	The amount of the credit deductible in terms of subsection (2) shall be calculated at the rate of <b>\$ 1 500 per month</b> for each additional employee up to a maximum aggregate amount of <b>zwl\$ 1,120 000</b> in any year of	Zwl\$ 25 000 for each additional employee up to a maximum aggregate amount of <b>zwl\$ 1,120 000</b> in any year of	Zwl\$ 25 000 for each additional employee up to a maximum aggregate amount of <b>zwl\$ 1,120 000</b> in any year of

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up to a maximum aggregate amount of \$ 180 000 in any year of assessment			Section	<i>Nature of credit</i>	<i>Specified amount zw\$</i>					
[Part I amended by section 56 of the Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1 <sup>st</sup> January, 2022.]			*10	Credit for taxpayers over <b>*55 years</b> of age [See Editor's note under the parent *Section 10]	\$9 000					
			11	<b>Blind</b> persons credit	\$9 000					
			13	Mentally or physically <b>disabled</b> persons credit	\$9 000					
			CREDITS for the year 2019							
			[Part I substituted by *Finance (No.2) Act 16 of 2007 w.e.f. 1/1/2008; substituted into US\$ by Act 3 of 2009 w.e.f 1 <sup>st</sup> February, 2009 Then substituted by Finance (No.2) Act 7/2019 w.e.f. 21 <sup>st</sup> August, 2019.]							
<i>Provision</i>	<i>Current amount</i>	<i>2022 Monetary Amount zwl</i>	<i>Section</i>	<i>Nature of credit</i>	<i>Specified amount</i>					
					\$					
10	Credit for taxpayers over <b>55 years</b> of age	\$117 000	\$ 900	*10	Credit for taxpayers over <b>*55 years</b> of age [See Editor's note under the parent *Section 10]					
11	<b>Blind</b> persons credit	\$117 000	\$ 900	11	Blind persons credit					
13	Mentally or physically <b>disabled</b> persons credit	\$117 000	\$ 900	13	Mentally or physically disabled persons credit					
<i>CURRENT CREDITS for the year 2021</i>										
[Part I substituted by Finance (No. 2) Act 10/2020 w.e.f. 31 <sup>st</sup> December, 2020.]										
<i>Section</i>	<i>Nature of credit</i>	<i>Specified amount zw\$</i>	[Above 3 items redesignated by the Finance (No.2) Act 7/2019 w.e.f. 21 August, 2019.]							
			<b>PART II</b> CURRENT RATES OF INCOME TAX ON TAXABLE INCOME YEAR 2023							
			<b>[PERIOD from 1<sup>ST</sup> AUGUST 2023;</b> Inserted by SI 149/2023 gazetted on the 11 <sup>th</sup> August, 2023 w.e.f. year of assessment beginning 1 <sup>st</sup> January, 2023.]							
<b>PART I</b> CURRENT CREDITS for the year 2020										
[Part I substituted by Finance (No.3) Act 13 of 2019 w.e.f. 1 <sup>st</sup> January, 2020.]										

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		<i>Specified percentage</i>
<i>Section</i>	<i>Level of taxable income 1/8/2023- 31/12/2023</i>	%
14(2)(a)(i)	Up to \$2 500 000	0
14(2)(a)(ii)	\$2 500 001 to \$7 500 000	20
14(2)(a)(iii)	\$7 500 001 to \$25 000 000	25
14(2)(a)(iv)	\$25 000 001 to \$50 000 000	30
14(2)(a)(v)	\$50 000 001 to \$75 000 000	35
14(2)(a)(vi)	\$75 000 001 and above	40

[PERIOD from 1<sup>ST</sup> JANUARY 2023;

Substituted by **SI 149/2023** gazetted on the 11<sup>th</sup> August, 2023 w.e.f. year of assessment beginning 1<sup>st</sup> January, 2023.]

		<i>Specified percentage</i>
<i>Section</i>	<i>Level of taxable income 1/1/2023- 31/7/2023</i>	%
14(2)(a)(i)	Up to \$641 662	0
14(2)(a)(ii)	\$641 663 to \$2 240 000	20
14(2)(a)(iii)	\$2 240 001 to \$3 836 000	25
14(2)(a)(iv)	\$3 836 001 to \$5 432 000	30
14(2)(a)(v)	\$5 432 001 to \$7 000 000	35
14(2)(a)(vi)	\$7 000 001 and above	40

[Substituted by Finance (No. 2) Act 10 of 2022 w.e.f. 1<sup>st</sup> January, 2023.]

<i>Section</i>	<i>Level of taxable income</i>	<i>Specified percentage %</i>
14(2)(a)(i)	Up to \$1 100 000	0
14(2)(a)(ii)	\$1 100 001 to \$3 840 000	20
14(2)(a)(iii)	\$3 840 001 to \$6 576 000	25
14(2)(a)(iv)	\$6 576 001 to \$9 312 000	30
14(2)(a)(v)	\$9 312 001 to \$12 000 000	35
14(2)(a)(vi)	\$12 000 001 and more	40

## YEAR 2022

[Level of taxable income earned in Zimbabwe dollars from EMPLOYMENT; substituted by section 2 of Finance Act 8/2022 gazetted on the 24th October, 2022 w.e.f. 1<sup>st</sup> AUGUST 2022 in the year of assessment beginning on the 1st January, 2022.]

<i>Section</i>	<i>Level of taxable income in local currency 1/8/2022 - 31/12/2022</i>	<i>Specified percentage %</i>
14(2)(a)(i)	Up to \$375 000	0
14(2)(a)(ii)	\$375 001 to \$715 000	20
14(2)(a)(iii)	\$715 001 to \$1 300 000	25
14(2)(a)(iv)	\$1 300 001 to \$2 400 000	30
14(2)(a)(v)	\$2 400 001 to \$5 000 000	35
14(2)(a)(vi)	\$5 000 001 and more	40

[Items applied in the year 2020/2021 and 2022]

14(2)(b1)	Taxable income of individual (holding temporary employment permit) with a <b>licensed investor</b> having	15
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# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

	qualifying degree of export-orientation as defined in section 2 of the Taxes Act <i>Chapter 23:06</i>		
	[item 14(2)(b1) inserted by the Finance Act 2 of 2017 gazetted on 23 <sup>rd</sup> March, 2017 backdated to the <b>1<sup>st</sup> January, 2017.</b> ]		
14(2)(d)	Taxable income of <b>pension fund</b> from trade or investment	15	
14(2)(e)	Taxable income of a <b>licensed investor</b> having a qualifying degree of export-orientation as defined in section 2 of the Taxes Act <i>Chapter 23:06</i> :-		
	(before the end of the 5th year of its operations as such)	0	
	Taxable income of licensed investor <b>(after</b> the 5th year of his or her operations as such) [(e) % substituted by Finance (No. 2) Act 10/2020 w.e.f. <b>31<sup>st</sup> December, 2020.</b> ]	24	
14(2)(e1)	Taxable income of <b>power generation project before</b> the end of the fifth year of its operations as such	0	
	Taxable income of power generation project <b>after</b> the fifth year of its operations as such	15	
	[item (e1) inserted by the Finance Act 1 of 2018 w.e.f 1st January 2018.]		
14(2)(f)	Taxable income of holder of <b>special mining lease</b>	15	
14(2)(g)	Taxable income of company or trust derived from <b>mining operations</b> [(g) % substituted by Finance (No. 2) Act 10/2020 w.e.f. 31st December, 2020.]	24	
14(2)(h)	Taxable income of person engaged in approved <b>BOOT</b> or BOT arrangement :-		
	First 5 years of the arrangement	0	
	Second 5 years of the arrangement	15	
14(2)(i)	Taxable income of <b>industrial park developer</b> :-		
	-(before the 5th year of his or her operation as such)	0	
	- <b>(after</b> the 5 <sup>th</sup> year of his or her operation as such) [(i) % substituted by Finance (No. 2) Act 10/2020 w.e.f. 31st December, 2020.]	24	
14(2)(j)	Taxable income of <b>operator of a tourist facility</b> in approved tourist development zone:-		
	-(before the 5 <sup>th</sup> year of his or her operation as such)	0	
	- <b>(after</b> the 5 <sup>th</sup> year of his or her operation as such) [(j) % substituted by Finance (No. 2) Act 10/2020 w.e.f. 31st December, 2020.]	24	

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14(2)(k)	Income of foreign domiciled <b>satellite broadcasting service</b> or electronic commerce <b>operator</b> deemed in terms of section 12(6) and (7) of the Taxes Act to be income derived from a source within Zimbabwe	5
	[item (14(2)(k) inserted by Finance Act 1 of 2019 w.e.f 1st January 2019.]	
14(3)	<b>Taxable income from manufacturing</b> by a company:-	
	[substituted by Finance (No.3) Act 11/2014 w.e.f 1st January, 2015]	
14(3)(a)	<b>- which exports more than 30% or more of its output but less than 41%</b>	20
14(3)(b)	<b>- which exports more than 41% or more of its output but less than 51%</b>	17,5
14(3)(c)	<b>- which exports more than 51% or more of its output</b>	15
14(4)	[appears to be missing - Editor]	
14(5)	Dividends from company incorporated <b>outside Zimbabwe</b>	20
	[Inserted by Act 5 of 2010 w.e.f 1st January, 2011]	

[Level of taxable income earned from **EMPLOYMENT**, substituted by section 6 by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. year of assessment beginning on the 1st January, 2022.]

Section	<i>Level of taxable income in local currency 1/1/2022 - 31/12/2022</i>	<i>Specified percentage %</i>
14(2)(a)(i)	Up to \$300 000	0
14(2)(a)(ii)	\$300 001 to \$720 000	20
14(2)(a)(iii)	\$720 001 to \$1 440 000	25
14(2)(a)(iv)	\$1 440 000 to \$2 880 000	30
14(2)(a)(v)	\$2 880 001 to \$6 000 000	35
14(2)(a)(vi) [not (vii)-editor]	<b>\$6 000 001 and more</b>	<b>40</b>

[Where a person earns any part of his or her taxable income from **EMPLOYMENT IN FOREIGN CURRENCY**.]

Section	<i>Taxable income from employment in Foreign Currency 1/1/2022- 31/12/2022</i>	<i>Specified percentage %</i>
	<i>Level of taxable income</i>	
14(2)(a1)(i)	Up to US\$ 1 200	0
14(2)(a1)(ii)	US\$ 1 201 to US\$ 3 600	20
14(2)(a1)(iii)	US\$ 3 601 to US\$ 12 000	25
14(2)(a1)(iv)	US\$ 12 001 to US\$ 24 000	30
14(2)(a1)(v)	US\$ 24 001 to US\$ 36 000	35
14(2)(a1)(vi) [not (vii)-editor]	<b>US\$ 36 001 and more</b>	<b>40</b>

YEAR 2021

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

[Level of taxable income earned from EMPLOYMENT, substituted by section 6 of the Finance Act 10/2020 with effect from the part of the year of assessment beginning on the 1st January, 2021.]

Section	Level of taxable income in local currency 1/1/2021 - 31/12/2021	Specified percentage %
14(2)(a)(i)	Up to \$120 000	0
14(2)(a)(ii)	\$120 001 to \$360 000	20
14(2)(a)(iii)	\$360 001 to \$720 000	25
14(2)(a)(iv)	\$720 001 to \$1 440 000	30
14(2)(a)(v)	\$1 440 001 to \$3 000 000	35
14(2)(a)(vi)	\$3 000 001 and more	40

[Where a person earns any part of his or her taxable income from EMPLOYMENT IN FOREIGN CURRENCY, the Schedule is amended by the insertion of **SI 36/2021** gazetted on the 29<sup>th</sup> January, 2021 with effect from the 1st January, 2021.]

Section	Taxable income from employment in Foreign Currency 1/1/2021- 31/12/2021 Level of taxable income	Specified percentage %
14(2)(a1)(i)	Up to US\$ 840	0
14(2)(a1)(ii)	US\$ 841 to US\$ 3 600	20
14(2)(a1)(iii)	US\$ 3 601 to US\$ 12 000	25
14(2)(a1)(iv)	US\$ 12 001 to US\$ 24 000	30
14(2)(a1)(v)	US\$ 24 001 to US\$ 36 000	35

14(2)(a1)(vi)	US\$ 36 001 and more	40
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[Level of taxable income earned from EMPLOYMENT, substituted by section 4 of the Finance Act 8 of 2020 with effect from the part of the year of assessment beginning on the 1st AUGUST, 2020.]

Section	Level of taxable income in local currency 1/8/2020 - 31/12/2020	Specified percentage %
14(2)(a1)(i)	Up to \$25 000	0
14(2)(a1)(ii)	\$25 001 to \$75 000	20
14(2)(a1)(iii)	\$75 001 to \$150 000	25
14(2)(a1)(iv)	\$150 001 to \$300 000	30
14(2)(a1)(v)	\$300 001 to \$500 000	35
14(2)(a1)(vii)	\$500 001 and more	40

Section	Taxable income from employment in Foreign Currency 1/8/2020 -31/12/2020 Level of taxable income	Specified percentage %
14(2)(a1)(i)	Up to US\$ 350	0
14(2)(a1)(ii)	US\$\$ 351 to US\$1 500	20
14(2)(a1)(iii)	US\$3 1 501 to US\$5 000	25
14(2)(a1)(iv)	US\$1 501 to US\$10 000	30
14(2)(a1)(v)	US\$10 001 to US\$15 000	35
14(2)(a1)(vii)	US\$15 001 and more	40

[Items substituted by Finance (No.3) Act 13/2019 with effect from the year of assessment beginning on the 1st January, 2020 to 31<sup>st</sup> JULY, 2020.]

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Section	Level of taxable income 1/1/2020 - 31/07/2020	Specified percentage %
14(2)(a)(i)	Up to \$24 000	0
14(2)(a)(ii)	\$24 001 to \$90 000	20
14(2)(a)(iii)	\$90 001 to \$180 00	25
14(2)(a)(iv)	\$180 001 to \$360 000	30
14(2)(a)(v)	\$360 001 to \$600 000	35
14(2)(a)(vi)	\$600 001 and more	40
14(2)(b)	Taxable income of individuals from <b>trade or investment</b>	24
14(2)(c)	Taxable income of a <b>company or trust</b>	24

[related Items inserted by Finance (No.3) Act 13/2019 with effect from the year of assessment beginning on the **1st January, 2020 ending 31<sup>st</sup> July 2020.**]

Section	Taxable income from employment in FOREIGN CURRENCY 1/1/2020 - 31/07/2020	Specified percentage %
14(2)(a)(i)	Up to US\$840	0
14(2)(a)(ii)	US\$841 to US\$3 600	20
14(2)(a)(iii)	US\$3 601 to US\$12 000	25
14(2)(a)(iv)	US\$12 001 to US\$24 000	30
14(2)(a)(v)	US\$24 001 to US\$36 000	35
14(2)(a)(vii)	US\$36 001 and more	40

[Items applied in the year 2020]

14(2)(b1)	Taxable income of individual (holding temporary employment permit) with a <b>licensed investor</b> having qualifying degree of export-orientation as defined in section 2 of the Taxes Act <i>Chapter 23:06</i>	15
	[item 14(2)(b1) inserted by the Finance Act 2 of 2017 gazetted on 23 <sup>rd</sup> March, 2017 backdated to the <b>1<sup>st</sup> January, 2017.</b> ]	
14(2)(d)	Taxable income of <b>pension fund</b> from trade or investment	15
14(2)(e)	Taxable income of a <b>licensed investor</b> having a qualifying degree of export-orientation as defined in section 2 of the Taxes Act <i>Chapter 23:06</i> :-	
	(before the end of the 5th year of its operations as such)	0
	Taxable income of licensed investor ( <b>after</b> the 5th year of his or her operations as such) [(e) % substituted by Finance (No. 2) Act 10/2020 w.e.f. <b>31<sup>st</sup> December, 2020.</b> ]	24
14(2)(e1)	Taxable income of <b>power generation project before</b> the end of the fifth year of its operations as such	0
	Taxable income of power generation project <b>after</b> the fifth year of its operations as such	15

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	[item (e1) inserted by the Finance Act 1 of 2018 w.e.f 1st January 2018.]	
14(2)(f)	Taxable income of holder of <b>special mining lease</b>	15
14(2)(g)	Taxable income of company or trust derived from <b>mining operations</b> [(g) % substituted by Finance (No. 2) Act 10/2020 w.e.f. 31st December, 2020.]	24
14(2)(h)	Taxable income of person engaged in approved <b>BOOT</b> or <b>BOT</b> arrangement :-	
	First 5 years of the arrangement	0
	Second 5 years of the arrangement	15
14(2)(i)	Taxable income of <b>industrial park developer</b> :-	
	-(before the 5th year of his or her operation as such)	0
	- (after the 5 <sup>th</sup> year of his or her operation as such) [(i) % substituted by Finance (No. 2) Act 10/2020 w.e.f. 31st December, 2020.]	24
14(2)(j)	Taxable income of <b>operator of a tourist facility</b> in approved tourist development zone:-	
	-(before the 5 <sup>th</sup> year of his or her operation as such)	0
	- (after the 5 <sup>th</sup> year of his or her operation as such)	24
	[i(j) % substituted by Finance (No. 2) Act 10/2020 w.e.f. 31st December, 2020.]	
14(2)(k)	Income of foreign domiciled <b>satellite broadcasting service</b> or electronic commerce <b>operator</b> deemed in terms of section 12(6) and (7) of the Taxes Act to be income derived from a source within Zimbabwe	5
	[item (14(2)(k) inserted by Finance Act 1 of 2019 w.e.f 1st January 2019.]	
14(3)	Taxable <b>income from manufacturing</b> by a company:-	
	[substituted by Finance (No.3) Act 11/2014 w.e.f 1st January, 2015]	
14(3)(a)	- <b>which exports more than 30% or more of its output but less than 41%</b>	20
14(3)(b)	- which exports more than 41% or more of its output but less than 51%	17,5
14(3)(c)	- which exports more than 51% or more of its output	15
14(4)	[appears to be missing - Editor]	
14(5)	Dividends from company incorporated <b>outside Zimbabwe</b>	20
	[Inserted by Act 5 of 2010 w.e.f 1st January, 2011]	

## PREVIOUS RATES OF INCOME TAX ON TAXABLE INCOME EARNED in previous year 2019

[Table substituted by Finance (No.2) Act 7/2019  
with effect from the period beginning on the **1st August, 2019**, and ending the **31st December**, of

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the year of assessment beginning on the 1st January, 2019; and further amended by **SI 205/19** gazetted on the 20<sup>th</sup> September, 2019. This SI was duly confirmed by section 32 of Finance (No.3) Act 13/2019]

Section	Level of taxable income 1/8/19 - 31/12/19	Specified percentage %
14(2)(a)(i)	Up to \$3 500	<b>0</b>
14(2)(a)(ii)	\$3 501 to \$15 000	<b>20</b>
14(2)(a)(iii)	\$15 001 to \$50 00)	<b>25</b>
14(2)(a)(iv)	\$50 001 to \$100 000	<b>30</b>
14(2)(a)(v)	\$100 001 to \$150 000	<b>35</b>
14(2)(a)(vi)	\$150 001 and more	<b>40</b>

[Editor's Note: (vi) amended by **SI 205/2019** w.e.f. 1<sup>st</sup> August 2019 ending on the 31<sup>st</sup> December 2019.

Further increased by Finance Act 1 of 2019 gazetted 20th February 2019 w.e.f 1<sup>st</sup> January, 2019 **ending 31st JULY 2019**]

Section	Level of taxable income 1/1/19 - 31/7/19	Specified percentage %
14(2)(a)(i)	Up to US\$4 200	<b>0</b>
14(2)(a)(ii)	US\$4201 to US\$18 000	20
14(2)(a)(iii)	US\$18 001 to US\$60 000	25
14(2)(a)(iv)	US\$60 001 to US\$120 000	30
14(2)(a)(v)	US\$120 001 to US\$1800 000	35
14(2)(a)(vi)	US\$180 001 to US\$240 000	40
14(2)(a)(vii)	US\$240 501 and more.	45
14(2)(b)	Taxable income of <b>individual</b> from trade or investment	25

14(2)(b1)	Taxable income of individual (holding temporary employment permit) with a <b>licensed investor</b> having qualifying degree of export-orientation as defined in section 2 of the Taxes Act <i>Chapter 23:06</i>	<b>15</b>
	[part 14(2)(b1) inserted by the Finance Act 2 of 2017 gazetted on 23 <sup>rd</sup> March, 2017 backdated to the 1 <sup>st</sup> January, 2017.]	
14(2)(c)	Taxable income of <b>company</b> or trust	<b>25</b>
14(2)(d)	Taxable income of <b>pension fund</b> from trade or investment	<b>15</b>
14(2)(e)	Taxable income of a <b>licensed investor</b> having a qualifying degree of export-orientation as defined in section 2 of the Taxes Act <i>Chapter 23:06</i> :-	
	(before the end of the 5th year of its operations as such)	<b>0</b>
	(after the 5th year of its operations as such)	<b>15</b>
14(2)(e1)	Taxable income of <b>power generation project before</b> the end of the fifth year of its operations as such	<b>0</b>
	Taxable income of power generation project <b>after</b> the	<b>15</b>

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	fifth year of its operations as such		
	[item (e1) inserted by the Finance Act 1 of 2018 w.e.f 1st January 2018.]		
14(2)(f)	Taxable income of holder of <b>special mining lease</b>	15	
14(2)(g)	Taxable income of company or trust derived from <b>mining operations</b>	25	
14(2)(h)	Taxable income of person engaged in approved <b>BOOT</b> or BOT arrangement :-		
	First 5 years of the arrangement	0	
	Second 5 years of the arrangement	15	
14(2)(i)	Taxable income of <b>industrial park developer</b> :-		
	-(before the 5th year of his or her operation as such)	0	
	- (after the 5 <sup>th</sup> year of his or her operation as such)	25	
14(2)(j)	Taxable income of <b>operator of a tourist facility</b> in approved tourist development zone:-		
	-(before the 5 <sup>th</sup> year of his or her operation as such)	0	
	- (after the 5 <sup>th</sup> year of his or her operation as such)	25	
14(2)(k)	Income of foreign domiciled <b>satellite broadcasting</b>	5	
	<b>service or electronic commerce operator</b> deemed in terms of section 12(6) and (7) of the Taxes Act to be income derived from a source within Zimbabwe		
	[item (14(2)(k) inserted by the Finance Act 1 of 2019 w.e.f 1st January 2019.]		
14(3)	Taxable <b>income from manufacturing</b> by a company:-		
	[substituted by Finance (No.3) Act 11/2014 w.e.f 1st January, 2015]		
14(3)(a)	- which exports more than <b>30%</b> or <b>more of its output</b> but <b>less than 41%</b>	20	
14(3)(b)	- which exports more than <b>41%</b> or <b>more of its output</b> but <b>less than 51%</b>	17,5	
14(3)(c)	- which exports more than <b>51%</b> or <b>more of its output</b>	15	
14(4)	[appears to be missing -Editor]		
14(5)	Dividends from company incorporated <b>outside Zimbabwe</b>	20	
	[Inserted by Act 5 of 2010 w.e.f 1st January, 2011]		

## REPEALED CREDITS

[Parts II and III substituted by the Finance (No.3) Act 10 of 2009 w.e.f. the year of assessment beginning on the 1st January, 2010. Increases made below by Act 3 of 2010 w.e.f. 1<sup>st</sup> September, 2010. Further increases made below by

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Act \*5 of 2010 w.e.f. the year of assessment beginning on the 1st January, 2011.  
 Further increases made below by the Finance (No.2) Act 9 of 2011 with effect from the year of assessment beginning on the 1st January, 2012.  
 Further increases made below by **Finance Act 1 of 2014** with effect from the year of assessment beginning on the **1st January, 2014**  
**PREVIOUS RATES OF INCOME TAX ON TAXABLE INCOME EARNED]**

<b>Section</b>	<b>Level of taxable income,</b>	<b>Specified percentage %</b>
14(2)(a)(i)	Up to US\$ 3 000	0
14(2)(a)(ii)	US\$ 3 001 to US\$12 000	20
14(2)(a)(iii)	US\$12 001 to US\$24 000	25
14(2)(a)(iv)	US\$24 001 to US\$60 000	30
14(2)(a)(v)	US\$60 001 to US\$90 000	35
14(2)(a)(vi)	US\$90 001 to US\$120 000	40
14(2)(a)(vii)	US\$ 240 001 and more	45
14(2)(a)(viii)	US\$ 240 001 and more	50
	[Part 14(2)(a)(viii) inserted by Finance Act 1/2014.]	
14(2)(b)	Taxable income of <b>individual</b> from trade or investment	25
14(2)(c)	Taxable income of <b>company</b> or trust	25
14(2)(d)	Taxable income of <b>pension fund</b> from trade or investment	15

	<b>Taxable income of licensed investor</b>	
14(2)(e)	( <u>before</u> the end of the 5 <sup>th</sup> year of his or her operations as such)	<b>0</b>
	( <u>after</u> the 5 <sup>th</sup> year of his or her operations as such)	25
14(2)(f)	Taxable income of holder of <b>special mining lease</b>	15
14(2)(g)	Taxable income of company or trust derived from <b>mining operations</b>	25
14(2)(h)	Taxable income of person engaged in approved <b>BOOT</b> or <b>BOT</b> arrangement:	<b>0</b>
	First 5 years of the arrangement	
	Second 5 years of the arrangement	15
	Taxable income of <b>industrial park developer</b>	
14(2)(i)	(before the 5 <sup>th</sup> year of his or her operations as such)	<b>0</b>
	( <u>after</u> the 5 <sup>th</sup> year of his or her operations as such)	25
14(2)(j)	Taxable income of <b>operator of a tourist facility</b> in approved tourist development zone	
	( <u>before</u> the 5 <sup>th</sup> year of his or her operation as such)	<b>0</b>
	( <u>after</u> the 5 <sup>th</sup> year of his or her operation as such)	25

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	Taxable income from manufacturing by a company <b>which exports 50% or more of its output</b>	20	1/10/08 to 31/12/08	\$ - new currency
14(3)	Dividends from company incorporated outside Zimbabwe	20	10 Credit for taxpayers over 55 years of age	37 500
14(5)			11 Blind persons credit	37 500

[substituted by Act 16 of 2007 **from 1st January, 2008**—  
reduced into the new currency –see section 2 below—  
for credits accruing after the 1<sup>st</sup> August, 2008\* until  
**31<sup>st</sup> January, 2009** shown in italics –]

Section	Nature of credit	Specified amounts \$
10	Credit for taxpayers over 55 years of age	(300 000 000) <b>0.03 *</b>
11	Blind persons credit	(300 000 000) <b>0.03 *</b>
13	Mentally or physically disabled persons credit	(300 000 000) <b>0.03 *</b>

[Following rates increased by **SI 149 of 2008**, gazetted on the 23<sup>rd</sup> October, 2008 backdated to the 1<sup>st</sup> October, 2008,  
– apparently in breach of Section 3(2) of its enabling Act – See **Note** thereunder prohibiting this – Editor]

Section	Nature of credit	Specified amounts \$ - old currency
10	Credit for taxpayers over 55 years of age	225 000 000
11	Blind persons credit	225 000 000
13	Mentally or physically disabled persons credit	225 000 000

[Following rates increased by **SI 149 of 2008**, gazetted on the 23<sup>rd</sup> October, 2008 backdated to the 1<sup>st</sup> October, 2008,  
– apparently in breach of Section 3(2) of its enabling Act – See **Note** thereunder prohibiting this – Editor]

Section	Nature of credit	Specified amounts
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10	Credit for taxpayers over 55 years of age	37 500
11	Blind persons credit	37 500
13	Mentally or physically disabled persons credit	37 500

## **REPEALED RATES OF INCOME TAX**

[for the repealed amendments made from the **1<sup>st</sup> January, 2007**, please scroll beyond these current rates for the **tax year beginning 1<sup>st</sup> January, 2008** which were substituted by SI 149 of 2008 gazetted on the 23<sup>rd</sup> October, 2008

with the following backdates – See note below –  
Editor.]

## **REPEALED PART II**

[**RATES OF INCOME TAX ON TAXABLE INCOME EARNED IN FOREIGN CURRENCY**  
With effect from the year of assessment beginning on the 1<sup>st</sup> January, 2010]

Section	Level of taxable income,	Specified percentage %
14(2)(a)(i)	Up to US\$ 1920	0
	Up to US\$ 1980 w.e.f. 1 <sup>st</sup> September, 2010	0
	Up to US\$ 2700 w.e.f. 1 <sup>st</sup> January, 2011	0
14(2)(a)(ii)	US\$ 1 921. to US\$6000	20
	US\$ 1 981. to US\$6000 w.e.f. 1 <sup>st</sup> September, 2010	20
	US\$ 2 701. to US\$6000 w.e.f. 1 <sup>st</sup> January, 2011	20
14(2)(a)(iii)	US\$6001 to US\$12000	25
14(2)(a)(iv)	US\$12001 to US\$18000	30
14(2)(a)(v)	US\$18001 and more	35

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

[Part II substituted by Act 3 of 2009 with effect from the 1<sup>st</sup> February, 2009.]

## Previous CURRENT RATES OF INCOME TAX

Section	<i>Level of taxable income, 1/11/08 – 30/11/08</i>	<i>Specified percentage %</i>
14(2)(a)(i)	Up to \$ 35 million	0
14(2)(a)(ii)	\$35 million +1 to \$100 million	25
14(2)(a)(iii)	\$100 million+1 to \$200 million	30
14(2)(a)(iv)	\$200 million+1 to \$400 million	35
14(2)(a)(v)	\$400 million+1 to \$700 million	40
14(2)(a)(vi)	\$700 million +1 to \$1 billion	45
14(2)(a)(vii)	\$1 billion +1 and more	47,5

Section	<i>Level of taxable income, 1/1/09 – 31/1/09</i>	<i>Specified percentage %</i>
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14(2)(a)(i)	Up to \$ 7,5 trillion	0
14(2)(a)(ii)	\$ 7,5 trillion +1 to \$25 trillion	25
14(2)(a)(iii)	\$25 trillion+1 to \$50 trillion	30
14(2)(a)(iv)	\$50 trillion+1 to \$100 trillion	35
14(2)(a)(v)	\$100 trillion +1 to \$160 trillion	40
14(2)(a)(vi)	\$160 trillion +1 to \$250 trillion	45
14(2)(a)(vii)	\$250 trillion +1 and more	47,5

Section	<i>Level of taxable income, 1/2/09 – 31/12/09</i>	<i>Specified percentage %</i>
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## **"New Currency "**

Section	<i>Level of taxable income, 1/12/08 – 31/11/08</i>	<i>Specified percentage %</i>
14(2)(a)(i)	Up to \$ 6,5 billion	0
14(2)(a)(ii)	\$ 6,5 billion +1 to \$20 billion	25
14(2)(a)(iii)	\$20 billion+1 to \$40 billion	30
14(2)(a)(iv)	\$40 billion+1 to \$80 billion	35
14(2)(a)(v)	\$80 billion+1 to \$140 billion	40
14(2)(a)(vi)	\$140 billion +1 to \$220 billion	45
14(2)(a)(vii)	\$220 billion +1 and more	47,5

14(2)(a)(i)	Up to \$ 1 980	0
14(2)(a)(ii)	\$ 1 981 to \$ 6 600	25
14(2)(a)(iii)	\$ 6 601 to \$13 200	30
14(2)(a)(iv)	\$13 201 to \$26 400	35
14(2)(a)(v)	\$26 401 to \$41 800	40
14(2)(a)(vi)	\$41 801 to \$66 000	45
14(2)(a)(vii)	\$66 0001 and more	47,5

## **REPEALED PART III**

[Part III inserted by Act 3 of 2009 with effect from the 1<sup>st</sup> February, 2009.]

## Previous RATES OF INCOME TAX ON TAXABLE INCOME EARNED IN FOREIGN CURRENCY

<i>"Section</i>	<i>Level of taxable income</i>	<i>Specified percentage</i>
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# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

	<b>1/2/09- 31/12/09</b>	<b>e %</b>			
14(2)(a1)(i)	Up to US \$1 650	0		holder of <b>special mining lease</b>	
14(2)(a1)(ii)	US \$1 651 to US \$5 500	20	14(2)(f3)	Taxable income of company or trust derived from <b>mining operations</b>	15
14(2)(a1)(iii)	US \$5 501 to US \$11 000	25			
	US \$11 001				
14(2)(a1)(iv)	to US \$16 500	30		Taxable income of person engaged in approved <b>BOOT or BOT</b> arrangement :	
	US \$16 501		14(2)(g1)		0
14(2)(a1)(v)	to US \$33 000	35			
14(2)(a1)(vi)	US \$33 001 and more	37,5		<b>First 5 years</b> of the arrangement	
14(2)(b1)	Taxable income of <b>individual</b> from trade or investment	30		<b>Second 5</b> years of the arrangement	15
14(2)(c1)	Taxable income of <b>company</b> or trust	30	14(2)(h1)	Taxable income of <b>industrial park developer</b> (after the 5th year of his operations as such)	15
14(2)(d1)	Taxable income of <b>pension fund</b> from trade or investment	15			
14(2)(*e1)	Taxable income of <b>licensed investor</b> (before the end of the fifth year of his or her operations as such)	0	14(2)(i1)	Taxable income of <b>operator of a tourist facility</b> in approved tourist development zone (after the 5 <sup>th</sup> year of his operation as such)	15
	Taxable income of licensed investor (after the fifth year of his or her operations as such)	15	14(3a)	Taxable income of approved manufacturing company in <b>growth point area</b>	10.
14(2)(f2)	Taxable income of	15			

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

Section	Level of taxable income <u>1/1/08 – 31/3/08</u>	Specified percentage %	Section	Up to \$2 billion (\$600 million)	Specified percentage %
14(2)(a)(i)	Up to \$ 90 million \$ 90 000 001 to \$ 240 million \$ 240 000 001 to \$ 555 million \$ 555 000 001 to \$ 870 million \$ 870 000 001 to \$ 1 185 million \$ 1 850 000 001 to \$1 500 million \$1 500 000 001 and more	0 25 30 35 40 45 47,5	14(2)(a)(i)	\$ 2 billion +1 to \$4 billion (\$1,6 billion)	0
14(2)(a)(ii)			14(2)(a)(ii)	\$ 4 billion +1 to \$6 billion (\$2,6 billion)	25
14(2)(a)(iii)			14(2)(a)(iii)	\$6 billion +1 to \$8 billion (\$3,6 billion)	30
14(2)(a)(iv)			14(2)(a)(iv)	\$8 billion +1 to \$10 billion (\$4,6 billion)	35
14(2)(a)(v)			14(2)(a)(v)	\$10 billion +1 to \$12 billion (\$5,6 billion)	40
14(2)(a)(vi)			14(2)(a)(vi)	\$12 billion+1 and more (\$5,6 billion)	45
14(2)(a)(vii)			14(2)(a)(vii)		47,5
	<i>Level of taxable income <u>1/4/08 – 31/5/08</u> [previous levels per repealed SI 90/08 repeated in bracketed italics- Editor]</i>			[rates substituted by SI 111 of 2008 gazetted on the 30 <sup>th</sup> July, 2008 with the following backdate, again substituted by SI 149 of 2008 gazetted on the 23 <sup>rd</sup> October, 2008 with the following backdates – See note below - Editor]	

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

Section	<i>Level of taxable income stated in old currency for the new period 1/6/08 – 31/7/08</i>		14(2)(a)(i) Up to \$ 500 (\$2 500) 14(2)(a)(ii) \$ 500 +1 to \$ 1000 (\$ 5 000) 14(2)(a)(iii) \$ 2 000+1 to \$ 2000 (\$10 000) 14(2)(a)(iv) \$ 2 000+1 to \$ 4000 (\$20 000) 14(2)(a)(v) \$ 4 000+1 to \$7 000 (\$35 000) 14(2)(a)(vi) \$ 7 000+1 to \$10 000 (\$50 000) 14(2)(a)(vii) \$ 10 000+1 and more (\$50 000+1)	0 25 30 35 40 45 47,5
	[previous levels per repealed SI 90/08 repeated in bracketed italics for the previous 7 month period - Editor]	Specified percentage %		
14(2)(a)(i)	Up to \$50 billion (\$175 billion)	0		
14(2)(a)(ii)	\$50 billion +1 to \$100 billion (\$350 billion)	25		
14(2)(a)(iii)	\$100 billion +1 to \$200 billion (\$700 billion)	30		
14(2)(a)(iv)	\$200 billion +1 to \$300 billion (\$1,050 trillion)	35		
14(2)(a)(v)	\$300 billion +1 to \$450 billion (\$1,575 trillion)	40		
14(2)(a)(vi)	\$450 billion +1 to \$600 billion (\$2,1 trillion)	45		
14(2)(a)(vii)	\$600 billion +1 and more (\$2,1 trillion)	47,5		
[mini period below substituted by SI 132 of 2008 gazetted on the 23 <sup>rd</sup> September, 2008, and substituted by SI 149 of 2008 gazetted on the 23 <sup>rd</sup> October, 2008 with the following backdates – See note below - Editor]				
Section	<i>Level of taxable income, converted in the new currency enacted by SI 109/2008- see Sec. 2(1) of this Act</i>		1/9/08 –30/9/08	Specified percentage %
	[previous levels per repealed SI 132/08 repeated in bracketed italics for the previous 3 month period - Editor]	Specified percentage %		
14(2)(a)(i)	Up to \$ 15 000 (\$ 60 000)	0		
14(2)(a)(ii)	\$ 15 001 to \$ 30 000 (\$ 120 000)	25		
14(2)(a)(iii)	\$ 30 001 to \$ 60 000 (\$ 240 000)	30		
14(2)(a)(iv)	\$ 60 001 to \$ 120 000 (\$ 480 000)	35		
14(2)(a)(v)	\$120 001 to \$ 210 000 (\$ 840 000)	40		
14(2)(a)(vi)	\$210 001 to \$ 300 000 (\$ 1,200 000)	45		
[previous levels per repealed SI 111/08 repeated in bracketed italics for the previous 5 month period - Editor]				

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14(2)(a)(vii)	\$300 001 and more (\$ 1,200 001)	47.5
[new 4 month period below created by SI 132 of 2008 gazetted on 23 <sup>rd</sup> September, 2008 substituted for a 3 month period by SI 149 of 2008 gazetted on the 23 <sup>rd</sup> October, 2008 backdated to the 1 <sup>st</sup> October, 2008 – apparently in breach of Section 3(2) of its enabling Act]		
<i>Level of taxable income, converted in the new currency enacted by SI 109/2008- see Sec. 2(1) of this Act</i>		
<b>Section 1/10/08 – 31/10/08 Specified percentage %</b>		
	[previous levels per repealed SI 149/08 repeated in bracketed italics for the repealed 3 month period - Editor]	
14(2)(a)(i)	Up to \$ \$200 000 (600 000)	0
14(2)(a)(ii)	\$ 200 001 to \$ 400 000 ( 1,2 million)	25
14(2)(a)(iii)	\$ 400 001 to \$ 800 000 ( 2,4 million)	30
14(2)(a)(iv)	\$ 800 001 to \$ 1 600 000 ( 4,8 million)	35
14(2)(a)(v)	\$ 1 600 001 to \$ 2 800 000 ( 8,4 million)	40
14(2)(a)(vi)	\$ 2 800 001 to \$ 4 000 000 ( 12 million)	45
14(2)(a)(vii)	\$ 4 000 001 and more ( 12 million +1)	47.5

[2 month period below created by SI 166 of 2008 gazetted on 19<sup>th</sup> November, 2008 backdated to the 1<sup>st</sup> November, 2008  
– apparently in breach of Section 3(2) of its enabling Act –  
See Note thereunder prohibiting this – Editor]

## REPEALED PART I CREDITS

Section	Former Nature of credit	Specified amount \$
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10	Credit for taxpayers over 59 years of age	120 000
11	Blind persons credit	120 000
13	Mentally or physically disabled persons credit	120 000

[amended by Act 12 of 2006 from 1<sup>st</sup> January, 2007.]

## REPEALED PART II FORMER RATES OF INCOME TAX

[SI 136 of 2007 replaced by Act 8 of 2007 for the period **beginning the 1<sup>st</sup> January, 2007** and ending the 30<sup>th</sup> June, 2007 of the year of assessment beginning on the 1<sup>st</sup> January, 2007—Editor.]

Section	Former Level of taxable income 1/1/07 – 30/6/07	Specified percentage %
14(2)(a)(i)	Up to \$ 600 000	0
14(2)(a)(ii)	\$ 600 001 to \$ 1 200 000	25
14(2)(a)(iii)	\$ 1 200 001 to \$ 1 800 000	30
14(2)(a)(iv)	\$ 1 800 001 to \$ 6 000 000	35
14(2)(a)(v)	\$ 6 000 001 to \$ 18 000 000	40
14(2)(a)(vi)	\$ 18 000 001 to \$ 30 000 000	45
14(2)(a)(vii)	\$ 30 000 001 and more	47.5

[Inserted by SI 136 of 2007 and replaced by Act 8 of 2007 for the period beginning the 1<sup>st</sup> July, 2007 and ending the 31<sup>st</sup> August, 2007—]

Section	Former Level of taxable income 1/7/07 – 31/8/07	Specified percentage %
14(2)(a)(i)	Up to \$ 3 000 000	0
14(2)(a)(ii)	\$ 3 000 001 to \$ 6 000 000	25
14(2)(a)(iii)	\$ 6 000 001 to \$ 10 000 000	30
14(2)(a)(iv)	\$ 10 000 001 to \$ 22 000 000	35

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14(2)(a)(v)	\$22000 001 to \$36 000 000	40	14(2)(a)(vi)	\$ 4 740 000 001 to \$ 6 000 000 000	45
14(2)(a)(vi)	\$36 000 001 to \$ 50 000 000	45	14(2)(a)(vii)	\$6 000 000 001 and above	47.5
14(2)(a)(vii)	\$50 000 001 and above	47.5	[until substituted by the Minister of Finance exercising his powers under section 3 of the Finance Act to gazette <b>SI 46A of 2008</b> on the 1 <sup>st</sup> April, 2008 creating 2 'mini' tax periods ended on the 31 <sup>st</sup> March and December, 2008, substituting the following rates - for 10 days —]		
[Inserted by Act 8 of 2007 for the period beginning the 1 <sup>st</sup> September, 2007 and ending the 31 <sup>st</sup> December, 2007 —]					
<i>Section</i>	<i>Former Level of taxable income</i> <b><u>1/9/07 – 31/12/07</u></b>	<i>Specified percentage %</i>	<i>Section</i>	<i>Former Level of taxable income</i> <b><u>1/1/08 – 31/3/08</u></b>	<i>Specified percentage %</i>
14(2)(a)(i)	Up to \$ 16 000 000	0	14(2)(a)(i)	Up to \$ 90 million	0
14(2)(a)(ii)	\$ 16 000 001 to \$32 000 000	25	14(2)(a)(ii)	\$ 90 000 001 to \$ 240 000 000	25
14(2)(a)(iii)	\$32 000 001 to \$48 000 000	30	14(2)(a)(iii)	\$ 240 000 001 to \$ 555 000 000	30
14(2)(a)(iv)	\$48 000 001 to \$120 000 000	35	14(2)(a)(iv)	\$ 555 000 001 to \$ 870 000 000	35
14(2)(a)(v)	\$120 000 001 to \$200 000 000	40	14(2)(a)(v)	\$ 870 000 001 to \$ 1 185 000 000	40
14(2)(a)(vi)	\$200 000 001 to \$280 000 000	45	14(2)(a)(vi)	\$ 1 850 000 001 to \$ 1 500 000 000	45
14(2)(a)(vii)	\$280 000 001 and above	47.5	14(2)(a)(vii)	\$ 1 500 000 001 and more	47.5
[substituted by Act 16 of 2007 with effect from the year of assessment beginning on the <b>1<sup>st</sup> January, 2008</b> —]					
<i>Section</i>	<i>Former Level of taxable income</i> <b><u>1/1/08</u></b>	<i>Specified percentage %</i>	<i>Section</i>	<i>Former Level of taxable income</i> <b><u>1/4/08 – 31/12/08</u></b>	<i>Specified percentage %</i>
14(2)(a)(i)	Up to \$ 360 000 000	0	14(2)(a)(i)	Up to \$ 2,7 billion	0
14(2)(a)(ii)	\$ 360 000 001 to \$ 960 000 000	25	14(2)(a)(ii)	\$ 2 700 000 001 to \$ 7 200 000 000	25
14(2)(a)(iii)	\$ 960 000 001 to \$ 2 220 000 000	30	14(2)(a)(iii)	\$ 7 200 000 001 to \$ 11 700 000 000	30
14(2)(a)(iv)	\$ 2 220 000 001 to \$ 3 480 000 000	35	14(2)(a)(iv)	\$ 11 700 000 001 to \$ 16 200 000 000	35
14(2)(a)(v)	\$ 3 480 000 001 to \$ 4 740 000 000	40	14(2)(a)(v)	\$ 16 200 000 001 to \$ 20 700 000 000	40
			14(2)(a)(vi)	\$ 20 700 000 001 to \$ 25 200 000 000	45

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Section	Former Level of taxable income <u>1/4/08 – 31/12/08</u>	Specified percentage %
14(2)(a)(vii)	\$ 25 200 000 001 to \$ 45 000 000 000	47,5
14(2)(a) (viii)	\$ 45 200 000 001 to \$ 90 000 000 000	50
14(2)(a) (ix)	\$ 90 000 000 001 to \$ 135 000 000 000	52,5
14(2)(a) (x)	\$ 135 000 000 001 to \$ 180 000 000 000	55
14(2)(a) (xi)	\$ 180 000 000 001 and above	60
<p>[until on the 11<sup>th</sup> April, 2008, <b>SI 63/08</b> was gazetted by the Minister – exercising the same powers and keeping the rates for the above period 1/1/08 – 31/3/08 but repealing the increased rates for the new mini-period 1/4/08 – 31/12/08 by removing levels (viii) to (xi) and substituting the following lower rates, backdated to the 1<sup>st</sup> April, 2008 to correspond with Section 14(2) of the Act —]</p>		
Section	Former Level of taxable income <u>1/4/08 – 31/12/08</u>	Specified percentage %
14(2)(a)(i)	Up to \$ 9 billion	0
14(2)(a)(ii)	\$ 9 000 000 001 to \$ 18 000 000 000	25
14(2)(a)(iii)	\$ 18 000 000 001 to \$ 27 000 000 000	30
14(2)(a)(iv)	\$ 27 000 000 001 to \$ 36 000 000 000	35
14(2)(a)(v)	\$ 36 000 000 001 to \$ 45 000 000 000	40
14(2)(a)(vi)	\$ 45 000 000 001 to \$ 54 000 000 000	45
14(2)(a)(vii)	\$ 54 000 000 001 and above	47,5
<p>[Herebelow continue the remaining ITEMS of the <b>Schedule to Chapter I</b> - Editor]</p>		
Section	Nature of current taxable income	Specified percentage %
14(2)(b)	Taxable income of individual from trade or investment	30
14(2)(c)	Taxable income of company or trust	30
14(2)(d)	Taxable income of pension fund from trade or investment	15
<p>[But see the proviso to s 14(2)(d) - Editor]</p>		
14(2)(e)	Taxable income of licensed investor (before the fifth year)	0
14(2)(f)	Taxable income of holder of special mining lease	15
<p>[rate reduced from 25% by Act 16 of 2007 with back-dated effect from the 1<sup>st</sup> January, 2004]</p>		
<p>[..until on the 11<sup>th</sup> April, 2008, <b>SI 63/08</b> was gazetted by the Minister – exercising the same powers and keeping the rates for the above period 1/1/08 – 31/3/08 but repealing the increased rates for the new mini-period 1/4/08 – 31/12/08 by removing levels (viii) to (xi) and substituting the following lower rates, backdated to the 1<sup>st</sup> April, 2008 to correspond with Section 14(2) of the Act —]</p>		

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14(2)(f1)	Taxable income of company or trust derived from mining operations  [Inserted by Act 18 of 2004 with effect from the year of assessment beginning 1 <sup>st</sup> January, 2004.]	15	section 30(b)(iii) of the General Laws Amendment (No.2 ) Act 14 <u>with effect from</u> the year of assessment beginning 1 January 2002.]
14(2)(g)	Taxable income of person engaged in approved BOOT or BOT arrangement:-  [amended by section 30(b) of the General Laws Amendment (No.2) Act 14 of 2002 from 1 January 2002.]	14(3a)	Taxable income from manufacturing or processing of company which exports 50% or more of its output  [amended by section 30(b) of the General Laws Amendment (No.2) Act 14 of 2002 by deleting .."or processing.." with effect from 1 January 2002 and amended by Act 15 of 2002 by reinstating the phrase, but reducing the % from 60 to 50, from 1 January, 2003.]
	First 5 years of the arrangement: 0		
	Second 5 years of the arrangement: 15		
	Third 5 years of the arrangement: 20	14(3c)	Taxable income from operation of tourist facility 60% or more of whose turnover consists in foreign currency receipts.  [Inserted by Act 27 of 2001 and amended by section 30(b) of the General Laws Amendment (No.2) Act 14 of 2002 with effect from 1 January 2002.]
14(2)(h)	Taxable income of industrial park developer (after the fifth year of his operations a such) 10	14(5)	Dividends from company incorporated outside Zimbabwe 20
14(2)(i)	Taxable income of operator of a tourist facility in approved tourist development zone (after the fifth year of his operation as such) 15  [Inserted by Act 27 of 2001 and amended by s. 30(b) of the General Laws Amendment (No.2) Act 14 of 2002 from 1 January 2002.]		
14(3) ?	Taxable income of person engaged in new project manufacturing in growth point area 10 ?  [repealed ?- Editor.]		
14(3a1)	Taxable income of person engaged in new project providing infrastructure in growth point 15  [Repealed by Act 27 of 2001, then reinstated by		

## CHAPTER II STAMP DUTIES

### 24 Interpretation in Chapter II

[Editor's request:- find sec 44E of CHAPTER 22:15 to see "Adjustment after commencement of this Act to references to ..issues ..." enacted by the Finance (No.2) Act 7 of 2017, using this duplicate section number which can't be replicated here].]

(1) In this Chapter—

**"African Development Bank"** means the bank referred to in the African Development Bank (Membership of Zimbabwe) Act [Chapter 22:01];

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**“African Export-Import Bank”** means the bank referred to in the African Export-Import Bank (Membership of Zimbabwe and Branch Office Agreement) Act [Chapter 22:17];

[Definitions above inserted by Finance Act 8/2015 gazetted on the 13<sup>th</sup> November, 2015 w.e.f. 1<sup>st</sup> February,2009.]

**“mortgage finance”** means the provision of loans for the acquisition of immovable property for residential purposes, which loans are secured by the collateral of that immovable property;

[Definition inserted by Finance Act (No.3) of 2014 with effect from the 1st January, 2014]

**“principal Act”** means the Stamp Duties Act [Chapter 23:09];

**“this Act”** includes the principal Act.

(2) Any expression to which a meaning has been or may be construed as having been assigned in the principal Act shall, when used in this Chapter, have the same meaning.

## 24A Payment of certain stamp duties in foreign currency

[Section inserted by Act 3 of 2009 with effect from the 30th January, 2009.]

(1) Notwithstanding section 41 of the Reserve Bank Act [Chapter 22:15] and the Exchange Control Act [Chapter 22:05], the stamp duty payable on—

- (a) the registration in a Deeds Registry of the acquisition of immovable property that was acquired in foreign currency;
  - (b) any mortgage bond or notarial bond, or any cession or substitution of debtor in respect thereof referred to in Item 1 of the *Schedule*, that is denominated in a foreign currency;
  - (c) any broker's note referred to in Item 2 of the *Schedule* that is denominated in a foreign currency;
  - (d) any off-market share transfer instrument referred to in item 2A of the *Schedule* that is denominated in a foreign currency;
  - (e) any cheque referred to in Item 3 of the *Schedule*;
  - (f) any policy of insurance referred to in Item 4 that is denominated in a foreign currency;
- shall be payable in the same or another specified foreign currency.

(2) If the Registrar of Deeds has reasonable grounds to believe that—

(a) the whole or any part of the consideration payable by the person who has acquired immovable property is payable in the form of foreign currency; or

(b) the transaction underlying any of the following instruments, namely—

(i) a mortgage bond or notarial bond, or any cession or substitution of debtor in respect thereof; or

(ii) a broker's note; or

(iii) an off-market share transfer instrument; or

(iv) a policy of insurance;

involved the payment of a foreign currency, whether in whole or in part;

and the person, in supplying information, producing documents or making a declaration, required under or by virtue of the principal Act—

(c) fails to disclose any material fact relevant to the nature of the transaction by which property has been acquired or to the consideration payable in respect of any property or to the value on which duty is payable; or

(d) makes a false statement; or

(e) falsifies or authorises the falsification of any document;

with the effect that liability for payment of any stamp duty in foreign currency is avoided or postponed, the Registrar of Deeds may determine the fair value of the immovable or other property in question in United States dollars, and thereupon the duty shall be calculated in accordance with the fair value as so determined.

(3) For the avoidance of doubt it is declared that all the provisions of the principal Act shall apply, with such changes as may be necessary, to the payment in foreign currency of stamp duty, in the same way as they apply to the payment of such duty in Zimbabwean currency.

(4) The Registrar of Deeds may require any person who tenders payment of stamp duty in a foreign currency other than the United States dollar, to tender instead the equivalent amount of that duty in United States dollars, being an amount obtained by applying the international cross rate of exchange of the first-mentioned currency for the United States dollar prevailing

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on the day the stamp duty concerned becomes due.

## 25 Duties prescribed

(1) For the purposes of section 5 of the principal Act, the duties payable on instruments and other matters shall be as prescribed in the *Schedule*.

(2) Where the transaction underlying any of the following instruments, namely—

[Subsection (2) inserted by Act 3 of 2009 w.e.f. 30th January, 2009.]

(a) a mortgage bond or notarial bond, or any cession or substitution of debtor in respect thereof; or

(b) a broker's note; or

(c) an off-market share transfer instrument; or

(d) a policy of insurance;

involves the payment of Zimbabwean currency, whether in whole or in part, the stamp duty prescribed in the *Schedule* that is payable on the Zimbabwe dollar component of that transaction shall be converted from United States dollars at the rate of 20 Zimbabwe dollars to US \$1, or at such other rate as the Minister may, by notice in a *statutory instrument*, prescribe.

## SCHEDULE TO CHAPTER II

(Section 25)

[SCHEDULE substituted by Act 3 of 2009 with effect from the 1<sup>st</sup> January, 2009.]

### STAMP DUTY ON INSTRUMENTS & OTHER MATTERS

#### ARRANGEMENT OF ITEMS

*Item*

1. Bonds.
2. Brokers' Notes.
3. Off-Market share transfer instruments.
4. Cheques.
5. Policies of Insurance.
6. Registration in the Deeds Registry of the Acquisition of Immovable Property.

Item 1.

### BONDS

US  
\$ c

Any mortgage bond or notarial bond—

for every \$100 or part thereof of the debt secured or to be secured 0 40

Exemptions to Item:-

(a) Any sum separately secured by a bond to cover any costs incurred in connection with the debt;

(b) Any bond which is auxiliary or collateral to, or substituted for, a previously made and duly stamped bond executed by the same person and for the same debt or obligation;

(c) Any bond which is executed by way of suretyship only, where there exists a duly stamped bond for the same debt or obligation executed by the principal debtor or obligor;

(d) Any cession or substitution of debtor in respect of a bond mentioned in exemption (b), not being a substituted bond;

(e) Any cession or substitution of debtor in respect of a bond mentioned in exemption (c);

(f) Any cession by a creditor of a mortgage bond for valuable consideration if the ceding creditor certifies in writing to the Registrar that the valuable consideration therefor will be used for mortgage finance.

[para (f) inserted by Finance (No.3) Act 11 of 2014 with effect from the 1<sup>st</sup> January, 2015.]

The Editor has re-numbered it to follow (e) which is already enacted above.]

(g) any registration of a bond at the instance of the African Development Bank or African Export-Import Bank to secure a loan or other credit facility advanced by it to any person in Zimbabwe in pursuance of the objects of either of those institutions.

[para (g) inserted by Finance Act 8/2015 gazetted on the 13<sup>th</sup> November, 2015 w.e.f. 1<sup>st</sup> February, 2009.]

The Editor has re-numbered it to follow (f) which is already enacted above.]

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Item 2.

## BROKERS' NOTES

US \$ c

(1) In respect of the purchase of any **marketable security** —  
for every \$100 or part thereof of the consideration 0 25

[Editor's Note : See the inconsistency between the rates in the Finance (No.2) Act –reduced more from US \$2,00 by section 10 of Act 5 of 2009 with effect from the 30th September, 2009.]

(1) In respect of the purchase of any **marketable security** —  
for every \$100 or part thereof of the consideration 0 50

[reduced less from US \$2,00 by **section 18** of Act 5 of 2009 with effect from the 30<sup>th</sup> September, 2009.]

(2) In respect of the purchase or sale of any **movable property other than a marketable security** —  
for every \$100 or part thereof of the consideration 0 10

(3) In respect of the purchase or sale of any immovable property 1 00

### Exemptions to Item:

- (a) A broker's note where the value of the consideration does not exceed \$20.
- (b) A broker's note in respect of any public loan raised by the State or a local authority.
- (c) A broker's note in respect of any marketable security issued by a statutory body as defined in the \*Public Finance Management Act [Chapter 22:19] or by a local authority or building society.

[Editor's Note : This \*Act replaced the Audit and Exchequer Act [Chapter 22:03] with effect from the 2nd April, 2010]

Item 3.

## OFF-MARKET SHARE TRANSFER INSTRUMENTS

US \$ c

Any off-market share transfer instrument referred to in section 17A of the principal Act 2 0

[Inserted by Act 10 of 2003 from 1<sup>st</sup> January, 2004.]

Item 4.

## CHEQUES

US \$ c

Any cheque as defined in section 72 of the Bills of Exchange Act [Chapter 14:02] 0 05

### Exemptions to Item:

- (a) A cheque drawn by any employee of the State for the purpose of the State.
- (b) A draft or order by any banker on another banker which is not available for payment or credit to any third person and is used solely for settling or clearing accounts between such bankers.

Item 5.

## POLICIES OF INSURANCE

\*7 Condonation of underpayment of stamp duty on policies or certificates of insurance, etc,

[Explanation inserted by section \*7 of Act 9 of 2015 w.e.f. 31<sup>st</sup> December, 2015]

- (1) The underpayment between the 1st February, 2009, to the 30th July, 2015, of the stamp duty referred to in subsection (2) in the circumstances referred to in subsection (3) is **hereby condoned**.
- (2) The stamp duty in question is payable under item 5 ("Policy of Insurance") of the Schedule ("Stamp Duty on Instruments and other Matters") to Chapter II of the Finance Act [Chapter 23:04].
- (3) The underpayment resulted from the erroneous application by insurance companies and insurance brokers (on the basis of mistaken advice communicated to insurance companies and insurance brokers collectively) of stamp duty at the rate of US\$0,0,1 instead of US\$0,05 for every dollar worth of premiums payable on policies or certificates of insurance or renewals thereof or on other documents which are in the form of guarantee, fidelity, security or surety bonds and which are signed by an insurance company or by any person transacting business on behalf of brokers or underwriters at Lloyd's.]

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US \$      c	(3) Any policy or certificate of insurance of any crop in respect of damage or destruction by hail	5      00
<p>(1) Any policy or certificate of insurance or renewal thereof or any other document which is in the form of a guarantee, fidelity, security or surety bond and is signed by an insurance company or by any person transacting business on behalf of brokers or underwriters at Lloyd's (in this paragraph called '<i>a policy</i>'), where such policy is not otherwise provided for in this Item—</p> <p>for every dollar or part thereof of the premium payable for the period for which the policy is issued or renewed or, if the policy is not renewable, of each and every premium payable.</p>	<p style="text-align: right;">0      05</p> <p>[Reduced from US\$5 by Act 5 of 2009 with effect from the 30th September, 2009.]</p>	<p>(3) Any policy or certificate of insurance of any crop in respect of damage or destruction by hail</p> <p>(4) Any policy or certificate of marine insurance executed outside Zimbabwe, or any renewal thereof</p> <p>(5) Any interim policy of insurance the currency of which does not exceed 4 calendar months</p> <p>Provided that the duty on any such interim policy shall not exceed that payable upon a final policy covering a like risk.</p> <p>(6) Any endorsement made after the issue of a policy shall be stamped as a new policy if the effect of such endorsement is—</p> <p>(a) to substitute some other person for the person insured; or</p> <p>(b) to substitute some other matter or thing for the matter or thing which is the subject of the policy; or</p> <p>(c) to increase the amount of the insurance; or</p> <p>(d) to make a material alteration to the subject matter of the policy:</p> <p>Provided that in the case of a policy such as is described in paragraph (1), duty shall be payable in terms of this paragraph only in respect of any increase in the premium payable in terms of such endorsement.</p> <p><b>Exemptions to Item:</b></p> <p>(a) A policy of life insurance, including a funeral policy.</p> <p>(b) A policy, bond or document which assures an annuity or a pension on retirement</p> <p>(c) An interim cover note issued in respect of a policy of insurance to be issued within Zimbabwe.</p>
<p>Maximum</p> <p>Minimum—</p> <p>(a) if the policy is <b>not renewable</b> and the period of the policy—</p> <p>(i) does not exceed 31 days</p> <p>(ii) exceeds 31 days</p> <p>(b) if the policy is renewable and the period of the policy or the renewal thereof—</p> <p>(i) does not exceed 31 days</p> <p>(ii) exceeds 31 days, for every year or part of a year for which the policy is issued or renewed</p> <p>(2) Any ticket, coupon, notice, bill or other document purporting to be an insurance or to entitle a person to insurance in the event of death, accident, sickness or the like</p>	<p>100 000 00</p> <p>0      50</p> <p>2      00</p> <p>0      50</p> <p>2      00</p> <p>5% of the annual receipts from the sale or issue for valuable consideration of any such documents</p>	

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(d) A policy or instrument issued solely for the purpose of effecting re-insurance by 1 insurance company or association in respect of another insurance company or association.		(a) in respect of so much of the value of the property as does not exceed <b>US \$5 000</b> —	
(e) A certificate of insurance relating to a duly stamped policy of insurance.		for every \$100 or part thereof of the value	1 00
(f) A policy or instrument issued solely for the purpose of a bond or guarantee executed in terms of the Customs and Excise Act [Chapter 23:02].		(b) in respect of so much of the value of the property as exceeds US \$5 000 but does not exceed <b>US \$20 000</b> —	
Item 6.		for every \$100 or part thereof of the value	2 00
<b>REGISTRATION IN THE DEEDS REGISTRY OF THE ACQUISITION OF IMMOVABLE PROPERTY</b>	<b>US \$ c</b>	(c) in respect of so much of the value of the property as exceeds \$20 000 but does not exceed <b>US \$100 000</b> —	
(1) For the registration in the Deeds Registry of any acquisition of property—		for every \$100 or part thereof of the value	3 00
(a) in respect of so much of the value of the property as does not exceed \$5 000—		(d) in respect of so much of the value of the property as exceeds <b>US \$100 000</b> —	
for every \$100 or part thereof of the value	0 70	for every \$100 or part thereof of the value	4 00
(b) in respect of so much of the value of the property as exceeds \$5 000 but does not exceed \$15 000—		Exemptions to Item:	
for every \$100 or part thereof of the value	3 00	(a) An acquisition of property whereby <b>no change of beneficial interest</b> in the property acquired is effected:	
(c) in respect of so much of the value of the property as exceeds \$15 000 but does not exceed \$100 000—		Provided that this exemption shall not apply where property which has been transferred to an administrator in circumstances mentioned in exemption (i) is subsequently transferred to the person on whose behalf it has been held by the administrator, <b>except where</b> that person is an heir or legatee referred to in exemption (c).	
for every \$100 or part thereof of the value	5 00	(b) An <b>ecclesiastical, charitable or educational institution</b> which is recognized in Zimbabwe as being of a public character and is approved by the Minister, in respect of property or any portion thereof acquired for a purpose which does not consist in the main of the acquisition of gain by the institution or any other person:	
(d) in respect of so much of the value of the property as exceeds \$100 000—		Provided that—	
for every \$100 or part thereof of the value	6 00	(i) if, <b>within 10 years</b> after the date of acquisition of the property, the property or any portion thereof is used for a purpose which consists in the main of the acquisition of gain by the institution or any other person, duty shall become due and payable on the fair value of such property or such portion thereof as determined by the Registrar of Deeds in terms	
(2) For the registration in the Deeds Registry of any acquisition of property that has been acquired with foreign currency —			

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of subsections (4) and (5) of section 23 of the principal Act, taking the date when the property or portion thereof was first so used as being the date of acquisition of the property. If, after that date, the duty is still unpaid, the Registrar of Deeds shall make a note on the title deeds to the property and in his register stating that transfer of the property is prohibited until the duty has been paid; and until the duty has been paid no transfer of the property shall be passed;

(ii) where the acquisition of immovable property by an ecclesiastical, charitable or educational institution was registered in the Deeds Registry prior to the **1st October, 1972**, and that institution was exempted from the duty payable in terms of the Item then in force, proviso (i) shall apply in determining whether any duty shall become due and payable after the date of the registration of the acquisition of the immovable property.

(c) An **heir or legatee**, or a tutor, curator or trustee acquiring for and in the name of an heir or legatee, in respect of property acquired by intestate or testamentary succession or as a result of a redistribution of the assets of a deceased estate in the process of liquidation.

For the purposes of this paragraph—

(i) “**heir or legatee**” does not include a person who is not—

A. a blood relation of either the deceased or his spouse; or

B. a legally adopted child of either the deceased or his spouse; or

C. the spouse of any relation or child referred to in subparagraph A or B;

(ii) the heir *ab intestato* of a person to whom customary law applies shall be determined in accordance with customary law;

(d) A **surviving spouse** in respect of property acquired in any manner from the estate of the deceased spouse.

(e) A **joint owner** of property in respect of the acquisition of a defined portion of the property allotted to him upon partition of the property, but not in respect of any consideration payable by him in order to equalize the partition or for any other reason.

(f) A **joint owner** of property who acquires the sole ownership in the whole or a portion of the property, in respect of so much of the value of the property in which sole ownership is acquired as represents his share in the joint ownership of that property.

(g) A registration to **correct an error** in the registration of the acquisition of any property, if the duty payable in respect of that acquisition has been duly paid.

(h) A **divorced spouse** in respect of property awarded to such spouse by the divorce order.

(i) A transfer of property in a deceased estate **to an administrator** where such property has, by will or by an order of court, been placed under the administration of such administrator.

(j) A registration of property required as a result of the **termination of the appointment** of an administrator of a trust under a will or other written instrument or of a trustee of an insolvent estate.

(k) A **vesting** of the property in an insolvent estate in the trustee of such estate or a **restoration** of such property by the trustee to the insolvent.

(l) A vesting of the property on the liquidation of a company in the liquidator of such company or a restoration of such property by the liquidator to the company.

(m) An acquisition of property in respect of which transfer duty is payable in terms of section 275 of the **Mines and Minerals Act** [Chapter 21:05].

(n) An acquisition of property—

(i) by a company from the wholly owned subsidiary of the company; or

(ii) by the wholly owned subsidiary of a company from the company; or

(iii) by the wholly owned subsidiary of a company from another wholly owned subsidiary of the company;

if the Registrar of Deeds is satisfied that the company and its wholly owned subsidiary or the company and its wholly owned subsidiaries, as the case may be, are registered in terms of the Companies and Other Business Entities Act [Chapter 24:31] or the Insurance Act [Chapter 24:07], as the case may be:

Provided that if, **within 10 years** after the date of acquisition of the property by the wholly owned subsidiary of a company and whilst the property is registered in the name of the wholly owned subsidiary of the company, the wholly owned subsidiary of the company ceases to be wholly owned by the company, duty shall become due and payable on the fair value of such property as determined by the Registrar of Deeds in terms of subsections (4) and (5) of

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section 23 of the principal Act, taking the date when the wholly owned subsidiary of the company ceased to be wholly owned by the company as being the date of acquisition of the property. If after that date the duty is still unpaid, the Registrar of Deeds shall make a note on the title deeds to the property and in his register stating that transfer of the property is prohibited until the duty has been paid; and until the duty has been paid no transfer of the property shall be passed.

In this exemption—

“company” includes—

(a) a company as defined in the Companies and Other Business Entities Act [*Chapter 24:31*]; and

(b) an insurer registered in terms of the Insurance Act [*Chapter 24:07*];

“wholly owned subsidiary” has the meaning assigned to it in the Companies and Other Business Entities Act [*Chapter 24:31*].

(o) An acquisition of property **by a local authority** from the State by way of a transaction not involving purchase and sale where—

(i) the Secretary of the Ministry responsible for transferring the property certifies to the Commissioner that the property is to be used for public purposes; or

(ii) the property has been reserved by the State for the inhabitants of the area of the local authority.

(p) An acquisition of property **by a local authority** in terms of the Regional, Town and Country Planning Act [*Chapter 29:12*], where the property—

(i) is acquired for public purposes; or

(ii) consists of a road, the ownership of which vests in the local authority in terms of the said Act.

(q) An acquisition of property—

(i) by a pension or provident fund from a company all the shares of which are owned by that fund; or

(ii) by a company all the shares of which are owned by a pension or provident fund from that fund; or

(iii) by a company all the shares of which are owned by a pension or provident fund from another company all the shares of which are owned by that same fund;

Provided that if in the case of property acquired by such a company, **within 10 years** after the date of acquisition of such property by that company and whilst such property is registered in the name of that company, the shares of that company cease to be wholly owned by the pension or provident fund concerned, duty shall become due and payable on the fair value of such property as determined by the Registrar of Deeds in terms of subsections (4) and (5) of section 23 of the principal Act, taking the date when all the shares of the company ceased to be wholly owned by the pension or provident fund as being the date of acquisition of the property. If, after that date, the duty is still unpaid, the Registrar of Deeds shall make a note on the title deeds to the property and in his register stating that transfer of the property is prohibited until the duty has been paid, and until the duty has been paid no transfer of the property shall be passed.

In this exemption—

“pension or provident fund” means a pension fund or provident fund which is registered or provisionally registered in terms of the Pension and Provident Funds Act [*Chapter 24:32*];

“company” has the meaning assigned to it in the Companies and Other Business Entities Act [*Chapter 24:31*].

(r) An acquisition of property by a petroleum operator, approved by the Minister by notice in the *Gazette*, where the property is acquired for the purposes of petroleum operations.

In this exemption, “petroleum operations” and “petroleum operator” have the respective meanings given them by subsection (1) of section 2 of the Income Tax Act [*Chapter 23:06*].

(s) An acquisition of property in respect of which **an election** has been made in terms of subparagraph (2) of paragraph 7 of the Eighth Schedule to the Income Tax Act [*Chapter 23:06*].

(t) An acquisition of property in the circumstances described in paragraph (a) of subsection (1) of section 15 of the Capital Gains Tax Act [*Chapter 23:01*].

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## CHAPTER III LICENCES TARIFF

### 26 Interpretation in Chapter III

Any expression to which a meaning has been or may be construed as having been assigned in any enactment referred to in section twenty-seven shall, when used in this Chapter, have the same meaning.

### 27 Imposition of fees for certain licences

There shall be charged, levied and collected for the benefit of the Consolidated Revenue Fund the fees set out in the *Schedule* in respect of the licences therein mentioned, subject to any enactment for the time being in force relating thereto:

Provided that, where any such fees are collected by a revenue officer who is not an employee of the State, there may be paid to the employer of that revenue officer in respect of the collection of the fee such administration fee as the Minister responsible for finance may determine, and for that purpose the revenue officer concerned—

- (a) may, before paying the fees collected by him to the Consolidated Revenue Fund, deduct therefrom the amount of the administration fee as determined by the Minister responsible for finance; and
- (b) shall pay to the Consolidated Revenue Fund the balance of the fees so collected.

## SCHEDULE TO CHAPTER III

(Section 27)

### LICENCE FEES

[to be adjusted in terms of SI 109/08 w.e.f. 1/8/08 – See Section 2 above - Editor]

LICENCES MISCELLANEOUS ACTS	ISSUED BY THE MINISTER FOR FINANCE	UNDER THE LICENCE TARIFF	Fee for licence not requiring renewal and other fees
<i>Licence or permit</i>	<i>Yearly licence fee</i>		

	\$    c    \$    c
1. Pool promoter of a pool betting business promoted within Zimbabwe	100 00
2. Representative of the promoter of a pool betting business promoted outside Zimbabwe	100 00
3. Copper dealer	10 00
4. Casino licence, other than a temporary casino licence	2000 00
5. Temporary casino licence	500 00

## CHAPTER IV VALUE ADDED TAX

### 28 Interpretation in Chapter IV

(1) In this Chapter—

“principal Act” means the Value Added Tax Act [Chapter 23:12];

[Substituted by Act 12 of 2002 with effect from 1<sup>st</sup>January, 2004.]

“value added tax” means the tax imposed in terms of Part III of the principal Act;

[Substituted by Act 12 of 2002 with effect from 1<sup>st</sup>January, 2004.]

(2) Any expression to which a meaning has been or may be construed as having been assigned in the principal Act shall, when used in this Chapter, have the same meaning.

### 29 Rates of value added tax

(1) The rate of value added tax shall be as set out in the *Schedule*.

[Subsection (1) substituted by Act 12 of 2002 w.e.f. 1<sup>st</sup>January, 2004]

(2) The rate of value added **withholding tax** shall be as set out in **Part IV**.

[Subsection (2) inserted by SI 149/2016 gazetted on the 2<sup>nd</sup> December, 2016; then substituted by the Finance Act 2 of 2017 gazetted on 23rd March, 2017 backdated only to the 1<sup>st</sup> January, 2017]

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## 30 Amendment of rates imposed by section 29

(1) The Minister responsible for finance may, by *statutory instrument*, amend or replace the rate mentioned in section *twenty-nine*, and the rate as so amended or replaced shall, subject to subsection (2), accordingly be charged, levied and collected with effect from the date specified in such instrument, which shall not be earlier than the date the *statutory instrument* is published in the *Gazette*.

[amended by Act.27 of 2001 with effect from 31<sup>st</sup> December, 2001.]

(2) If any provision contained in a *statutory instrument* made in terms of subsection (1) is not confirmed by a Bill which—

(a) passes its second reading stage in Parliament on one of the 28 days on which Parliament sits next after the coming into operation of the instrument; and

(b) becomes law **not later than 6 months** after the date of such second reading;

that provision shall become **void** as from the date specified in the instrument as that on which the rate of tax shall be amended or replaced, and so much of the rate of tax as was amended or replaced, as the case may be, by that provision shall be deemed not to have been so amended or replaced.

## 31 Adjustments of tax

(1) If Parliament does not enact any increase of tax imposed in terms of subsection (1) of section *thirty* or enacts a lower increase of any tax so imposed, any registered operator or importer, as the case may be, who has paid such tax shall on application be entitled to a refund—

(a) in the case of an increase of tax not being enacted, of an amount equal to the difference between the tax paid by him and the existing tax; and

(b) in the case of a lower increase of tax being enacted, of an amount equal to the difference between the tax paid by him and the new increased tax.

(2) If Parliament—

(a) does not enact a reduction in a rate of tax made in terms of subsection (1) of section *thirty*; or

(b) enacts a less reduction in the rate of tax referred to in paragraph (a) than that made in terms of subsection (1) of section *thirty*; or

(c) does not enact a withdrawal of tax made in terms of subsection (1) of section *thirty*; or

(d) enacts the tax referred to in paragraph (c) at a reduced rate;

no payment by way of tax under-collected or tax not collected shall be required from any person in respect of the tax paid at the reduced rate or, as the case may be, in respect of tax payable during the period when, in terms of subsection (1) of section *thirty*, the rate of tax was reduced or, as the case may be, the tax was withdrawn.

## SCHEDULE TO CHAPTER IV

[Schedule substituted by Finance (No. 2) Act 10 of 2022 w.e.f. 1<sup>st</sup> January, 2023 increasing the rate from 14.5% to **15%**.]

(Section 29)

## PART I GENERAL RATE OF VALUE ADDED TAX

The rate of value added tax in respect of—

(a) goods or services supplied by any registered operator in the course or furtherance of any trade carried on by the registered operator; and

(b) the importation of any goods into Zimbabwe by any person; and

(c) the supply of any imported services by any person; and

(d) goods and services sold through an auctioneer (as defined in section 56(6)) of the Value Added Tax Act [Chapter 23:12] by persons who are not registered operators;

shall be **15%**.

## PART II VALUE ADDED TAX ON BETTING AND GAMING

The rate of value added tax in respect of the transactions or receipts mentioned in the first column of the following table shall be that specified in the second column opposite thereto.

Any expression to which a meaning has been or may be construed as having been assigned in any enactment mentioned in the table shall,

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when used in this Part, have the same meaning.

<b>Transactions or receipts</b>	<b>Rate of tax</b>	
1. Any bet made at any place other than a racecourse by any person with a bookmaker licensed in terms of the Betting and Totalizator Control Act [Chapter 10:02] on a horse race.	<p>1. (a) <b>15%</b>on the amount payable by the bookmaker to such person in respect of such bet excluding the amount representing the amount staked.</p> <p>(b) <b>15%</b>on the amount of the net winnings of such bookmaker in respect of each period of six months commencing on the 1st April and the 1st October each year.</p>	<p>betting by any person with a licensed pool promoter or with a licensed representative, licensed in terms of the Pools Control Act [Chapter 10:19].</p> <p>5. Any bet made by way of fixed odds betting by any person with a bookmaker licensed in terms of the Betting and Totalizator Control Act [Chapter 10:02].</p>
2. Any bet made on a horse race at a racecourse on a race day by any person with a bookmaker licensed in terms of the Betting and Totalizator Control Act [Chapter 10:02].	<p>2. (a) <b>15%</b>on the amount payable by the bookmaker to such person in respect of such bet excluding the amount representing the amount staked.</p> <p>(b) <b>15%</b>on the amount of the net winnings of such bookmaker in respect of each period of six months commencing on the 1st April and the 1st October each year.</p>	<p>6. Any bet or stake made by any person through the medium of a totalizator licensed in terms of the Betting and Totalizator Control Act [Chapter 10:02].</p> <p>7. Gaming revenue received by the holder of a casino licence in terms of the *Casino Act [Chapter 10:03] other than a temporary casino licence in terms of that Act.</p> <p>[This Act was replaced by the Lotteries and Gaming Act [Chapter 10:26]. on the 1<sup>st</sup> October,2000- Editor]</p>
3. Any bet made at any place, other than a racecourse on a race day, by any person with a bookmaker licensed in terms of the Betting and Totalizator Control Act [Chapter 10:02] on any sporting event other than a horse race.	<p>3. (a) <b>15%</b>on the amount payable by the bookmaker to such person in respect of such bet excluding the amount representing the amount staked.</p> <p>(b) <b>15%</b>on the amount of the net winnings of such bookmaker.</p>	<p>8. Banker's revenue received by a banker in terms of the *Casino Act [Chapter 10:03], other than a banker referred to in item 10.</p> <p>[This Act was replaced by the Lotteries and Gaming Act [Chapter 10:26]. on the 1<sup>st</sup> October,2000- Editor]</p>
4. Any bet or stake made by way of pool	<b>4. 15%</b> on the aggregate total bets	<p>9. Gaming revenue received by the holder of a temporary casino licence in terms of the *Casino Act [Chapter 10:03].</p> <p>9. <b>15%</b>of the gaming revenue received during the validity of the licence.</p>

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[This Act was replaced by the Lotteries and Gaming Act [Chapter 10:26]. on the 1 <sup>st</sup> October,2000- Editor]	
10. Banker's revenue received by a banker in terms of the *Casino Act [Chapter 10:03] under an agreement with the holder of a temporary casino licence in terms of that Act.  [This Act was replaced by the Lotteries and Gaming Act [Chapter 10:26]. on the 1 <sup>st</sup> October,2000- Editor]	10. <b>15%</b> of the banker's revenue received in terms of the agreement with the holder of the temporary casino licence.

## PART III GENERAL RATE OF VALUE ADDED TAX ON SUPPLY OF CELLULAR TELECOMMUNICATIONS SERVICE

The rate of value added tax in respect of the supply of cellular telecommunications services in the course of furtherance of the supply of such service by a registered operator shall be **15%**.

## CHAPTER V BETTING AND GAMING TAX

[Chapter V **repealed** by Act 16 of 2004 with effect from the 30th January, 2004.]

## CHAPTER VI ESTATE DUTY

### 34 Interpretation in Chapter VI

- (1) In this Chapter—
  - (a) “**principal Act**” means the Estate Duty Act [Chapter 23:03];
  - (b) every expression has the same meaning it would have when used in the principal Act.
- (2) The expression “**this Act**” when used in the principal Act shall be construed as including a reference to this Chapter.

### 35 Rate of estate duty

For the purposes of section 3 of the principal Act the rate of estate duty shall be as set out in the *Schedule*.

### SCHEDULE TO CHAPTER VI

(Section 35)

#### RATE OF ESTATE DUTY

1

In the case of the estate of a person who died **before the 1<sup>st</sup> August, 1981**, the rate of estate duty chargeable upon each dollar of the dutiable amount shall be arrived at by multiplying fifteen thousandths (0,015) of a cent by a number equal to the number of complete \$100 contained in the dutiable amount, any part of zw\$100 being regarded as a complete zw\$100:

Provided that—

- (i) the maximum rate upon each dollar of the dutiable amount shall be **12 ½ cents**;
- (ii) there shall be deducted from the amount of duty determined at the rate so calculated a rebate—
  - (a) in the case of the estate of a person who died before the 1<sup>st</sup> October, 1972, of \$ 1350;
  - (b) in the case of the estate of a person who died on or after the 1<sup>st</sup> October, 1972, but before the **1<sup>st</sup> August, 1981**, of \$5 400;

and from the remaining amount there shall be deducted a sum equal to 20% of such remaining amount.

2

In the case of the estate of a person who died **on or after the 1<sup>st</sup> August, 1981**, but before the 1<sup>st</sup> August, 1982, the rate of estate duty chargeable on each dollar of the dutiable amount shall be arrived at by multiplying two hundredths (0,02) of a cent by a number equal to the number of complete \$100 contained in the dutiable amount, any part of \$100 being regarded as a complete zw\$100:

Provided that—

- (i) the maximum rate of duty shall be **\$0.20**;
- (ii) there shall be deducted from the amount of the duty so determined a rebate of \$1 800, which rebate shall be reduced by \$100 for every complete \$1 000 by which the dutiable amount exceeds \$30 000.

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In the case of the estate of a person who died on or after the 1st August, 1982 but before the 1st April, 1989, the rate of estate duty chargeable on each dollar of the dutiable amount shall be arrived at by multiplying two hundredths (0,02) of a cent by a number equal to the number of complete \$100 contained in the dutiable amount, any part of \$100 being regarded as a complete zw\$100:

Provided that—

- (i) the maximum rate of duty shall be **\$0.20**;
- (ii) there shall be deducted from the amount of duty so determined—
  - (a) in the case of the estate of a person who died leaving no spouse, a rebate of \$1 800, which rebate shall be reduced by \$100 for every complete \$1 000 by which the dutiable amount exceeds \$30 000;
  - (b) in the case of the estate of a person who died leaving a spouse, a rebate of \$7 200, which rebate shall be reduced by \$400 for every complete \$1 000 by which the dutiable amount exceeds \$60 000.

4

In the case of the estate of a person who died on or after the 1st April, 1989, but before the **1st April, 1993**, the rate of estate duty chargeable on each dollar of the dutiable amount shall be arrived at by multiplying two hundredths (0,02) of a cent by a number equal to the number of complete \$100 contained in the dutiable amount, any part of one hundred dollars being regarded as a complete zw\$100:

Provided that—

- (i) the maximum rate of duty shall be **\$0.20**;
- (ii) there shall be deducted from the amount of duty so determined—
  - (a) in the case of the estate of a person who died leaving no spouse, a rebate of \$5 000, which rebate shall be reduced by \$100 for every complete \$1 000 by which the dutiable amount exceeds zw\$50 000;
  - (b) in the case of the estate of a person who died leaving a spouse, a rebate of \$20 000, which rebate shall be reduced by \$400 for every complete \$1 000 by which the dutiable amount exceeds zw\$100 000.

5

In the case of the estate of a person who died on or after the **1st April, 1993**, but before the 1st April, 1994, the rate of estate duty chargeable on each dollar of the dutiable amount shall be arrived at by multiplying two-hundredths (0,02) of a cent by a number equal to the number of complete \$100 contained in the dutiable amount, any part of \$100 being regarded as a complete zw\$100:

Provided that—

- (i) the maximum rate of duty shall be **\$0.20**;
- (ii) there shall be deducted from the amount of duty so determined—
  - (a) in the case of the estate of a person who died leaving no spouse, a rebate of \$5 000, which rebate shall be reduced by \$100 for every complete \$1 000 by which the dutiable amount exceeds zw\$125 000;
  - (b) in the case of the estate of a person who died leaving a spouse, a rebate of \$20 000, which rebate shall be reduced by \$400 for every complete \$1 000 by which the dutiable amount exceeds zw\$250 000.

6

In the case of the estate of a person who died on or after the 1st April, 1994, but before the **1st January, 2000**, the rate of estate duty chargeable on each dollar of the dutiable amount shall be arrived at by multiplying two-hundredths (0,02) of a cent by a number equal to the number of complete \$100 contained in the dutiable amount, any part of \$100 being regarded as a complete zw\$100:

Provided that—

- (i) the maximum rate of duty shall be **\$0.20**;
- (ii) there shall be deducted from the amount of duty so determined—
  - (a) in case of the estate of a person who died leaving no spouse, a rebate of \$25 000, which rebate shall be reduced by \$100 for every complete \$1 000 by which the dutiable amount exceeds zw\$125 000.
  - (b) in case of the estate of a person who died leaving a spouse, a rebate of \$50 000, which rebate shall be reduced by \$400 for every complete \$1 000 by which the dutiable amount exceeds zw\$250 000.

6A

In the case of the estate of a person who died on or after the 1st January, 2000 but before the **1st January, 2003**, the rate of estate duty

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chargeable on each dollar of the dutiable amount shall be arrived at by multiplying two-hundredths (**0,02**) of a cent by a number equal to the number of complete \$100 contained in the dutiable amount, any part of \$100 being regarded as a complete zw\$100:

[Amended by Act 15 of 2002 from 1 January, 2003.]

Provided that—

- (i) the maximum rate of duty shall be **\$0.20**;
- (ii) there shall be deducted from the amount of duty so determined—
  - (a) in case of the estate of a person who died leaving no spouse, a rebate of \$50 000, which rebate shall be reduced by \$100 for every complete \$1 000 by which the dutiable amount exceeds zw\$250 000.
  - (b) in case of the estate of a person who died leaving a spouse, a rebate of \$80 000, which rebate shall be reduced by \$400 for every complete \$1000 by which the dutiable amount exceeds zw\$400 000.

6B

In the case of the estate of a person who died on or after the 1st January, 2003, but before the **1<sup>st</sup> January, 2005**, the rate of estate duty chargeable on each dollar of the dutiable amount shall be arrived at by multiplying two-hundredths (**0,02**) of a cent by a number equal to the number of complete \$100 contained in the dutiable amount, any part of \$100 being regarded as a complete zw\$100:

Provided that—

- (i) the maximum rate of duty shall be **\$0.20**;
- (ii) there shall be deducted from the amount of duty so determined—
  - (a) in case of the estate of a person who died leaving a spouse or any minor child or both a spouse and any minor child, a rebate of \$5 million , which rebate shall be reduced by \$400 for every complete \$1 000 by which the dutiable amount exceeds \$10 million;
  - (b) in case of the estate of a person who died leaving no spouse or minor children, a rebate of \$50 000, which rebate shall be reduced by \$100 for every complete \$1 000 by which the dutiable amount exceeds zw\$250 000.

[Inserted by Act 15 of 2002 from 1 January, 2003, amended by Act 29 of 2004 from 1 January, 2005.]

6C

In the case of the estate of a person whose estate, regardless of when he or she died, is not finally and completely liquidated to the satisfaction of the Master on the **1<sup>st</sup> January, 2005**, the rate of estate duty chargeable on each dollar of the dutiable amount shall be arrived at by multiplying two-hundredths (0,02) of a cent by a number equal to the number of complete \$100 contained in the dutiable amount, any part of \$100 being regarded as a complete zw\$100:

Provided that—

- (i) the maximum rate of duty shall be **\$0.20**;
- (ii) there shall be deducted from the amount of duty so determined a rebate of \$80 million, which rebate shall be reduced by \$400 for every complete \$1 000 by which the dutiable amount exceeds zw\$400 million.

[Inserted by Act 29 of 2004 from 1 January, 2005.]

6E

In the case of the estate of a person whose estate, regardless of when he or she died, is not finally and completely liquidated to the satisfaction of the Master on the **2<sup>nd</sup> December, 2005**, the rate of estate duty chargeable on each dollar of the dutiable amount shall be arrived at by multiplying two-hundredths (**0,02**) of a cent by a number equal to the number of \$100 contained in the dutiable amount, any part of \$100 being regarded as a complete zw\$100:

Provided that—

- (i) the maximum rate of duty shall be **\$0.05**;
- (ii) only such portion of the value of the property included in the estate as **exceeds US \$100 000** (or the equivalent thereof in Zimbabwe dollars) shall be deemed to be the dutiable amount.

[Inserted by Act 8 of 2005 w.e.f. 2nd December, 2005, amended by Act 12 of 2006 w.e.f. 1st January, 2007; increased from \$100 million by Act 16 of 2007 to zw\$ 25 billion w.e.f. 1st January, 2008, and to the above threshold by Act 3 of 2009 with effect from 1st February, 2009.]  
Proviso (ii) repealed & substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1st January, 2022.]

7

Where estate duty becomes payable upon the value of any movable or immovable property or on a value determined by reference to the value of any movable or immovable property and duty

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has, upon the death of any person (hereinafter referred to as 'the *first-dying person*'), who died **within 5 years** prior to the death of the deceased, become payable upon the value of that movable or immovable property or upon a value determined by reference to the value of that movable or immovable property (or any movable or immovable property for which the Master is satisfied that that movable or immovable property has been substituted), the duty attributable to the value of that movable or immovable property or, as the case may be, the value determined by reference to the value of that movable or immovable property, but not exceeding (in either case) an amount equal to the value on which duty has become payable on the death of the *first-dying person*, shall be reduced by a percentage according to the following scale—

- (a) if the deceased dies within 1 year of the death of *the first-dying person*, **100%**;
- (b) if the deceased dies more than 1 year but not more than 2 years after the death of *the first-dying person*, **80%**;
- (c) if the deceased dies more than 2 years but not more than 3 years after the death of *the first-dying person*, **60%**;
- (d) if the deceased dies more than 3 years but not more than 4 years after the death of *the first-dying person*, **40%**;
- (e) if the deceased dies more than 4 years but not more than 5 years after the death of *the first-dying person*, **20%**;

## subject to

a maximum reduction equal to so much of the duty previously payable upon the death of *the first-dying person* as is attributable to the value of that movable or immovable property or, as the case may be, to an amount equal to the value determined by reference to the value of that movable or immovable property and as is proved to the satisfaction of the Master to have been borne by the deceased or by the estate of *the first-dying person*.

8

In the case of any amount which—

- (a) is due and recoverable **under an insurance policy** referred to in paragraph (f) of the proviso to paragraph (a) of subsection (3) of section 4 of the principal Act; and
- (b) is deemed to be property of the deceased;

estate duty shall be charged at the same rate per dollar as is chargeable on the remainder of the deceased's estate excluding such amount.

## CHAPTER VII

### MINING ROYALTIES, DUTY & FEES

[Substituted by the Finance (No.3) Act 10 of 2009 with effect from the year of assessment beginning on the 1st January, 2010.]

#### 36 Interpretation in Chapter VII

- (1) In this Chapter—
  - (a) "**principal Act**" means the Mines and Minerals Act [Chapter 21:05];
  - (b) every expression has the same meaning it would have when used in the principal Act;
  - (c) "**financial institution**" means—
    - (i) any banking institution registered or required to be registered in terms of the Banking Act [Chapter 24:20]; or
    - (ii) the Reserve Bank of Zimbabwe and any of its agents or subsidiaries, such as Fidelity Printers and Refiners (Private) Limited.
- [para (c) inserted by the Finance (No.3) Act 10 of 2009 with effect from the year of assessment beginning on the 1st January, 2010.]
- (d) "**small-scale gold miner**" means a miner who, whether working on his or her own or with the assistance of 1 or more employees, is classifiable as a "**micro-enterprise**" in the mining and quarrying sector of the economy by reference to the \*Fourth and \*Fifth Schedules to the Small and Medium Enterprises \*Act [Chapter 24:12].

[para (d) inserted by the Finance Act 1 of 2014 gazetted on the 4<sup>th</sup> April, 2014, but with effect from the year of assessment beginning on the 1st January, 2014.]

**Notes:** the above 2 \* Schedules of Chapter 24:12 came into existence on the 7<sup>th</sup> February, 2014

(2) The expression "this Act" when used in the principal Act shall be construed as including a reference to this Chapter —**Editor.**

- (e) "**local diamond manufacturer**" means a person who, in Zimbabwe —
  - (i) cuts, polishes, crushes or otherwise processes rough diamonds for gain or reward; and
  - (ii) is licensed as an authorised dealer in terms of the Precious Stones Trade Act [Chapter 21:06]; and

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(iii) has successfully applied to the General Manager of the Minerals Marketing Corporation appointed in terms of section 24 of the Minerals Marketing Corporation of Zimbabwe Act [Chapter 21:04] to buy rough diamonds in terms of the Minerals Marketing Corporation of Zimbabwe (Diamond Sales to Local Diamond Manufacturers) Regulations, 2010, SI 157/2010 or any other law that may be substituted for the same.

[para (e) inserted by Finance (No.3) Act 11 of 2014 with effect from the 1<sup>st</sup> January, 2015]

- (5) The expression "**this Act**" when used in the principal Act shall be construed as including a reference to this Chapter.

## 37 Rates of mining royalties, duty and fees and collection thereof

[Section substituted by Section 17 of Act 8 of 2020 gazetted on the 28th October, 2020.]

(1) For the purposes of the provisions of the principal Act specified in the *Schedule* the rates of royalties, duty and fees shall be as therein shown.

(2) **With effect from the 1<sup>st</sup> January, 2010**, and every subsequent year of assessment, the following persons shall, as agents for and on behalf of the Commissioner-General of the Zimbabwe Revenue Authority, deduct royalty on the following minerals at source, based on the face value of the invoice therefor—

(a) in respect of precious stones, precious metals (**other than gold**), base metals, industrial metals, coalbed methane and coal, the Minerals Marketing Corporation established in terms of the Minerals Marketing Corporation Act [Chapter 21:04], any person authorised by the Minerals Marketing Corporation to export such minerals in its own right;

(b) in respect of **gold**, the Minerals Marketing Corporation established in terms of the Minerals Marketing Corporation Act [Chapter 21:04], any person authorised by the Minerals Marketing Corporation to export gold in its own right and every financial institution;

(3) Royalties deducted in terms of subsection (1) shall be remitted by the person deducting them to the Zimbabwe Revenue Authority **no later than the 10th day** of the month following the month in which the proceeds from which the royalties were deducted are received;

(4) If royalties are not remitted timeously in terms of subsection (2), interest, calculated at a

rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the royalties as remain unpaid during the period beginning on the day next following the last day provided for its remittance and ending on the date the royalties are remitted in full:

Provided that, in special circumstances, the Commissioner-General of the Zimbabwe Revenue Authority may extend the time for the remittance of royalties without charging interest.

(5) As soon as it comes to the notice of the Commissioner that any person responsible for remitting royalties timeously in terms of subsection (3) has failed to do so, the Commissioner shall serve upon that person notice to pay double the amount of the royalties payable (hereinafter called the "**primary civil penalty**").

(6) A person upon whom the Commissioner has served notice in terms of subsection (1) who fails without just cause to comply with the notice **within the first 7 days** of the period of one hundred and eighty-one (**181**) days referred to in paragraph (a) below—

(a) be liable for a **secondary civil penalty** of **US\$30** (or the maximum monetary figure specified from time to time for level 4, whichever is the lesser amount) **for each day** the person remains in default, **not exceeding a period of 181 days**;

(b) if the person continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level 10 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(7) A primary and secondary civil penalty that becomes payable by the infringer shall constitute a debt due by the infringer to the Zimbabwe Revenue Authority and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority.

(8) The primary and secondary civil penalty shall be paid into and form part of the Consolidated Revenue Fund.

(9) For the avoidance of doubt it is declared that, in calculating the gross fair market value of a mineral on the basis of which royalty is deducted for the purposes of this Chapter, no deduction shall be made of beneficiation, processing or other costs whatsoever incurred in the production of the mineral concerned.

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## 37A Collection of mining royalties

[*Zimbabwe Platinum Mines (Pvt) Ltd v ZIMRA, Stanbic Bank, Min.of Mines and MMCZ 15-HH-169*]

(1) With effect from the **1<sup>st</sup> January, 2010**, and every subsequent year of assessment, the following persons shall, as agents for and on behalf of Commissioner-General of the Zimbabwe Revenue Authority, deduct royalty on the following minerals at source, based on the face value of the invoice therefor—

a) in respect of precious stones, precious metals (**other than gold**), base metals, industrial metals, coalbed methane and coal, the financial institution with which any part of the moneys from which such royalties are deductible are deposited by the producer of such minerals or person authorised to export such minerals in its own right;

[para (a) repealed & substituted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2022.]

(b) in respect of **gold**, the Minerals Marketing Corporation established in terms of the Minerals Marketing Corporation Act [Chapter 21:04] any person authorised by the Minerals Marketing Corporation to export gold in its own right and every financial institution.

(2) Royalties deducted in terms of subsection (1) shall be remitted by the person deducting them to the Zimbabwe Revenue Authority **no later than the 10th day** of the month following the month in which the proceeds from which the royalties were deducted are received.

[For historical research into the previous parent Act charging royalties, see Mining (**Repealed**) Fixing of the Rate) Royalty Notice 2004. GN 1/2003 Mining (**Repealed**) Collection of Royalty on Minerals Notice. GN 16/2004. -Editor.]

(2a) Royalties remitted to the Zimbabwe Revenue Authority in terms of subsection (2) shall—

(a) in respect of gold, diamonds, platinum, palladium and lithium, be paid—

(i) **50% in kind**, that is to say, in the form of the mineral concerned, and in the form and of a purity or of a quality of the mineral concerned as may be prescribed by the Bank by notice in a statutory instrument:

Provided that at any time after such prescription is promulgated (and in any event no later than 6 months thereafter), the Commissioner-General reserves the right to substitute any quantity of the mineral originally proffered in

payment of royalty under this paragraph by another quantity of equivalent value of the same mineral in the prescribed form, purity and quality; and

(ii) **10%** in foreign currency (cash); and

(iii) **40%** in Zimbabwe dollars;

(b) in respect of those minerals **other than** any mentioned in paragraph (a), be paid (by reference to the face value of the invoice on the basis of which the royalty is calculated) half in foreign currency and half in Zimbabwe dollars.

[Section (2a) inserted by section 30 of the Finance Act 8/2022 gazetted on the 24th October, 2022 backdated to the 1<sup>st</sup> February, 2022.

See *Unki Mines P/L v ZIMRA & Stanbic Bank 22-HH-729*

### Editor's note:-

11 days later, on the 4th November, 2022, this subsection was repealed and the following substituted the Presidential Powers (Temporary Measures) (Amendment of Finance Act) Regulations, SI 189/2022 w.e.f. the 1<sup>st</sup> October, 2022.

**As Veritas advises, this SI is most probably invalid, because –**

The President did not engage in public consultation before publishing this SI ?

s 282(2) of the Constitution provides “ *No taxes may be levied except under the specific authority of this Constitution or an Act of Parliament.*”

Collection of minerals retrospectively after they have already been delivered to the purchaser ? The Banks i.t.o. s 37A are responsible for collecting royalties, so who now ?

How will ZIMRA transfer minerals to the Reserve Bank ? taxes must be paid into the Consolidated Revenue Fund.

Substituted further by Finance (No. 2) Act 10 of 2022 gazetted on the 30<sup>th</sup> December, 2022 backdated to the 1<sup>st</sup> October, 2022.]

(3) If royalties are not remitted timeously in terms of subsection (2), interest, calculated at a rate to be fixed by the Minister by *statutory instrument*, shall be payable on so much of the royalties as remain unpaid during the period beginning on the day next following the last day provided for its remittance and ending on the date the royalties are remitted in full:

Provided that in special circumstances the Commissioner General of the Zimbabwe Revenue Authority may extend the time for the remittance of royalties without charging interest.

[Section inserted by the Finance (No.3) Act 10 of 2009 w.e.f. 1<sup>st</sup> January, 2010.

This Act also repealed the **Royalties Notices** referred to under (2) above.

**Editor's Note :** This \*Section 37B was allocated

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the number 37A by the above Act – which was the number already allocated by section 31 of Finance Act 3 of 2009 when **Chapter VIII** was amended.

**This re-numbering awaits correction by the Chief Law Reviser** who has acknowledged this error in his version of this Chapter.]

(4) As soon as it comes to the notice of the Commissioner that any person responsible for remitting royalties timeously in terms of subsection (2) has failed to do so, the Commissioner shall serve upon that person notice to pay the amount of the royalties payable (hereinafter called "**the primary civil penalty**").

[Sub-sections (4)-(7) inserted by the Finance Act 1 of 2019 w.e.f. 20<sup>th</sup> February, 2019.]

(5) A person upon whom the Commissioner has served a notice in terms of subsection (1) and who fails without just cause to comply with the notice **within the first 7 days** of the period of 181 days referred to in paragraph (a) below, shall—

(a) be liable for a **secondary civil penalty** of **US\$30** (or the maximum monetary figure specified from time to time for **level 4**, whichever is the lesser amount) for each day the person remains in default, **not exceeding a period of 181 days**:

and

(b) if the person continues to be in default after the period specified in paragraph (a), be guilty of an offence and liable on conviction to a fine not exceeding level 10 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) A primary and secondary civil penalty that becomes payable by the infringer shall constitute a debt due by the infringer to the Zimbabwe Revenue Authority and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority.

(7) The amount of a primary and secondary civil penalty shall be paid into and form part of the funds of the Consolidated Revenue Fund.

## 37B Methodology for determination of rates of royalty

[Inserted by Finance Act 7/2021 gazetted on the 31 December, 2021 w.e.f. 1<sup>st</sup> January, 2022.]

Rates of royalty for specific minerals or mineral bearing ore shall be calculated by using the following criteria—

(a) In the case of platinum group metals—

(i) **concentrate** - **85%** of the international price of the refined mineral contained therein by reference to the price on the London Metal Exchange on the date of the transaction on which royalties will be paid; and

(ii) **matte**- **90%** of the international price of the refined mineral contained therein by reference to the price on the London Metal Exchange on the date of the transaction on which royalties will be paid;

(b) in the case of **gold**, invoice value as determined from time to time by Fidelity Printers and Refineries;

(c) in the case of **diamonds and all other minerals**, the invoice value as determined by the Minerals Marketing Corporation of Zimbabwe.

## SCHEDULE TO CHAPTER VII

(Section 37)

### RATES OF MINING ROYALTIES, DUTY & FEES

[Substituted by Act 10 of 2009 w.e.f. the year of assessment beginning on the 1st January, 2010. Amended by Act 3 of 2010 w.e.f. 1st October, 2010 when the **Precious** metals rate was increased from 3,5% to 4%.

Act 5 of 2010 repealed & substituted this Schedule, splitting the **Precious metals** category into 'Gold', 'Platinum' and 'Other', & allocated the new % rates below w.e.f. 1st January, 2011 : which rates for \*Gold & # Platinum were increased by the Finance (No.2) Act 9 of 2011 with effect from the **1st January, 2012** from 4,5% for \*Gold and from 5% for # Platinum.]

*Provision of principal Act -*

[was the Mines & Minerals Act Chapter 21:01 until 1st January, 2010- Editor]

1

### Section 245 (Royalties)

[% for **small-scale gold miners** inserted by the Finance Act 1 of 2014 w.e.f. the year of assessment beginning on the 1st January, 2014, and the % for **other gold miners** reduced from 7% by Finance (No.2) Act 8 of 2014 w.e.f. #1st October, 2014: and the % for diamond sales **exempted** for sales to any **local** manufacturers inserted by Finance (No.3) Act 11 of 2014 w.e.f. the 1<sup>st</sup> January, 2015]

### Application of paragraph 1 of Schedule to Chapter VII of Cap. 23:04

For the purpose of arriving at the value of the reduced royalty on incremental output of gold

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as provided in paragraph 1 of the Schedule to Chapter VII of the Finance Act [Chapter 23:04] (which fixes the rates of royalties for the purposes of section 245 of the Mines and Minerals Act [Chapter 21:05]), the value of the gold output in question shall be based on the average prices realised for the gold in the year of assessment in which the reduced royalty is claimed.

This provision has effect from the year of assessment **ending on the 31st December, 2014**, and applies to every subsequent year of assessment.

[Above Sub-section inserted by Section 25 of the Finance Act 1 of 2019 gazetted on the 20<sup>th</sup> February ,2019 w.e.f the above 2014 date.]

	<b>Provision of principal Act -</b>	<b>Percentage of gross fair market value of mineral produced</b>
*1.	<b>Section 245</b> (Royalties)  [See application of this para *1 above – Editor.]	
	<b>Diamonds</b>  (but no royalty is payable in respect of diamonds sold <b>at a discount</b> equivalent the value of the royalty otherwise payable to any local diamond manufacturer).	10 %
	[Item substituted by the Finance ( No.3) Act 13/2019 w.e.f. 1st January, 2020.]	
	Diamonds  (but no royalty is payable in respect of diamonds sold to local diamond manufacturers at a discount equivalent to the value of the royalty that would otherwise payable)	15

	[OLD Item substituted by the Finance Act 1 of 2018 w.e.f.1/1/2018 to <b>31/12/19</b> ]	
	Other Precious stones	<b>10 %</b>
	<b>Gold</b>  produced by <b>small scale gold</b> miners:-	<b>2 %</b>
	[Item substituted by Act 1 of 2014 @ 3% w.e.f.1/1/2014 until reduced to the above % by Act 8 of 2014 w.e.f. 1/9/2015  And then doubled from 1% to the above rate by Finance (No.2) Act 7/2019 w.e.f. <b>1st Aug 2019.</b> ]	
	[Item substituted by SI 83/ 2021 gazetted on the 26th March, 2021 backdated w.e.f the <b>1st February, 2021.</b> ]	<b>1%</b>  (for the first <b>0.5kgs</b> of gold delivered to a holder of a gold dealing licence in a calendar month)
	[Item substituted by SI 83/2021 gazetted on the 26th March, 2021 backdated w.e.f the <b>1st February, 2021.</b> ]	<b>1%</b>  (if the gold is delivered by a holder of a gold buying agency <b>permit</b> to a holder of a gold dealing licence in a calendar month)
	[Item substituted by SI 83/2021 gazetted on the 26th March, 2021 backdated w.e.f the <b>1st February, 2021.</b> ]	<b>2%</b>  (if the gold delivered to a holder of a gold dealing licence in a calendar month <b>exceeds 0.5 kgs</b> ).
	<b>Gold</b> produced by <b>other miners:</b>	

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	[Items substituted by Finance (No.2) Act 7/2019 w.e.f. 1 <sup>st</sup> August, 2019.]	
	(if the gold produced by them is sold at a time when its price is <b>below US\$1 200</b> per ounce)	3 %
	(if the gold produced by them is sold at a time when its price is <b>above US\$1 200</b> per ounce)	5 %
	[Item repealed by Finance (No.2) Act 7/2019 w.e.f. 21 <sup>st</sup> August, 2019.]	
	<b>Platinum</b>	7 %
	[Item substituted by the Finance Act 1 of 2018 gazetted on 14 <sup>th</sup> March, 2018 reducing the above % from 10% w.e.f. 1 <sup>st</sup> April, 2017; substituted further by section 31 of Finance Act 8/2022 gazetted on the 24th October, 2022 increasing the above % from 2.5% to <b>7% w.e.f. the 1<sup>st</sup> JANUARY, 2023.</b> ]	
	Other precious metals	4 %
	Base metals * <b>other than chrome</b>	2 %
	[Item substituted by the Finance Act 8 of 2015 w.e.f. 1 <sup>st</sup> September, 2015.]	
	<b>#Chrome</b>	5 %
	[substituted by the Finance Act 8 of 2015 increasing #	

	from 2% w.e.f. 1 <sup>st</sup> September, 2015.]	
	Industrial metals	2 %
	Coalbed methane	2 %
	<b>Coal</b>	1 %
	<b>Black granite</b> and other cut or uncut dimensional stone	2 %
	[Item inserted by the Finance (No.3) Act 13/2019 gazetted 31 <sup>st</sup> December, 2019 w.e.f. <b>23<sup>rd</sup> February, 2019.</b> ]	
	Lithium	7%
	[Item inserted by section 31 of Finance Act 8/2022 gazetted on the 24th October, 2022 w.e.f. <b>the 1<sup>st</sup> JANUARY, 2023.</b> ]	

*Provision of principal Act*

2

## Section 275 (Transfer Duty)

### **Rate of duty or fee**

**US \$1** for each \$100 or part thereof of the consideration.

*Provision of principal Act*

## 3. Section 276

*(Fee for the registration of hypothecation of mining locations)*

- (1) **Hypothecations** passed before Secretary—

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<i>Amount secured</i>		<i>Rate of duty or fee</i>		<i>Provision of principal Act</i>
<i>Exceeding</i>	<i>but not exceeding</i>		<i>of US\$</i>	
<b>US \$</b>	<b>US \$</b>		<b>and cents</b>	
0	20	0	20	
20	40	0	30	
40	60	0	50	
60	100	0	75	
100	200	1	00	
200	300	1	50	
300	400	2	00	
400	600	2	50	
600	800	3	00	
800	1000	4	00	
1000	1200	5	00	
1200	1400	6	00	
1400	1600	7	00	
1600	1800	8	00	
1800	2000	9	00	
and for every <b>additional US \$200</b> or part thereof		0	50	
(2) For the <b>registration</b> of every deed of hypothecation		2	00	
<i>Provision of principal Act</i>				
<b>4. Section 278</b>				
<i>(Fee for the registration of <b>options on mining locations</b>)</i>				
A primary fee of		2	00	
and				
(a) where consideration is given, for every \$100 or part thereof of the consideration		1	00	
(b) where no consideration is given		2	00	
<b>5. Section 280</b>				
<i>(Fee for the registration of <b>tribute agreements</b>)</i>				
				2 00
<b>CHAPTER VIII</b>				
<b>CAPITAL GAINS TAX</b>				
<b>37A Interpretation in Chapter VIII</b>				
[Section substituted by Act 3 of 2009 with effect from the 30th January, 2009.]				
(1) In this Chapter and the Capital Gains Tax Act [ <i>Chapter 23:01</i> ]—				
<p><b>“capital gains received by or accrued to or in favour of a person in a foreign currency”</b> means capital gains so received or accrued in United States dollars or, if such gains are denominated in a foreign currency other than the United States dollar, the equivalent amount in United States dollars, being an amount obtained by applying the international cross rate of exchange of that currency for the United States dollar prevailing on the day <b>the gains are received or accrued</b>;</p>				
<p><b>“Exchange Control (General) Order”</b> means the Exchange Control (General) Order, 1996, published in Statutory Instrument 110 of 1996, or any other enactment that may be substituted for the same;</p>				
<p><b>“foreign currency”</b> means the Euro, British pound, United States dollar, South African rand, Botswana pula and any other foreign currency denominated under the Exchange Control (General) Order.</p>				
(2) Any word or expression to which a meaning has been assigned in the Capital Gains Tax Act [ <i>Chapter 23:01</i> ] shall bear the same meaning when used in this Chapter.				
<b>38 Rates of capital gains tax</b>				
[Substituted by Act 5 of 2009 gazetted on the 30 <sup>th</sup> September, 2009 with <u>deemed</u> effect from the 1 <sup>st</sup> February, 2009; then substituted by Finance (No.2) Act 7/2019 with effect from the 21 <sup>st</sup> August, 2019 Then substituted by Finance Act 7/2021 gazetted on 31 December, 2021 <b>backdated to the 22nd February, 2019</b> ]				

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The capital gains tax chargeable in terms of Section 6 of the Capital Gains Tax Act [Chapter 23:01], shall be calculated —

(a) in respect of a specified asset acquired **before the 22<sup>nd</sup> February, 2019**, at the rate of —

(i) **\$ 0.05** for each dollar of the gross capital amount determined in accordance with the Capital Gains Tax Act [Chapter 23:01], in the case referred to in section *thirty-nineA(9)(a)*:

(ii) **US\$ 0.05** for each United States dollar of the gross capital amount determined in accordance with the Capital Gains Tax Act [Chapter 23:01], in the case referred to in section *thirty-nineA(9)(b)*;

(b) in respect of a specified asset acquired **after the 22<sup>nd</sup> February, 2019**, at the rate of —

(i) **\$ 0.20** for each dollar of the capital gain determined in accordance with the Capital Gains Tax Act [Chapter 23:01], in a case referred to in section *thirty-nineA(9)(a)*;

(ii) **US\$ 0.20** for each **United States** dollar of the capital gain determined in accordance with the Capital Gains Tax Act [Chapter 23:01], in a case referred to in section *thirty-nineA(9)(b)*;

(iii) in the case of a sale of a **marketable security** that is a listed security, **4% of the capital gain** determined in accordance with the Capital Gains Tax Act, if such security was held for **less than 180 days** on the date of its sale.

[Subpara (iii) inserted by 24 of Finance Act 8/2022 gazetted on the 24th October, 2022.]

## 39 Rates of capital gains tax withholding tax

[Substituted by Finance (No.2) Act 7/2019 w.e.f. 21st August, 2019]

(1) The rates of capital gains withholding tax chargeable in terms of Part IIIA of the Capital Gains Tax Act [Chapter 23:01] shall be as follows—

(a) in the case of a sale of a marketable security that is a **listed security**, **1.5%** of the price at which the security was sold if such security was held for at least 180 days on the date of its sale, or **40%** of the price at which the security was sold if such security was held for **less than 180 days** on the date of its sale;

[Para (a) substituted by section 25 of Finance Act 8/2022 gazetted on the 24th October, 2022 **w.e.f. 13<sup>th</sup> MAY, 2022**.]

(b) **15%** of the price at which the property was sold, in respect of the sale of an **immovable property** that was acquired **after** the 22nd February, 2019, that is to say—

(i) **\$0.15** for **each dollar** of the capital gain determined in accordance with the Capital Gains Tax Act [Chapter 23:01], shall be provisionally withheld, in a case referred to in section 39A(9)(a), subject to a final assessment rate of **\$0.20** for **each dollar** of the capital gain so determined

(ii) **US\$0.05** for **each United States dollar** of the capital gain determined in accordance with the Capital Gains Tax Act [Chapter 23:01], shall be provisionally withheld, in a case referred to in section 39A(9)(b) subject to a final assessment rate of **US\$0.20** for **each United States** dollar of the capital gain so determined;

(c) in the case of a sale of a marketable security that is a listed security, one **1.5%** of the price at which the security was sold if such security was held for **at least** 270 days on the date of its sale, or **4%** of the price at which the security was sold if such security was held for **less than** 270 days on the date of its sale;

[Paragraph (c) substituted by Finance Act 7/2021 w.e.f. 1<sup>st</sup> January, 2022.

Further substituted by SI 96/2022 gazetted on the 13th May, 2022. This SI is *ultra vires* the powers of the Minister,]

(d) in the case of a sale of a marketable security **other than** a security referred to in paragraph (c), **5%** of the price at which the security was sold.

[Para (d) substituted by section 25 of Finance Act 8/2022 gazetted on the 24th October, 2022 **w.e.f. 13<sup>th</sup> MAY, 2022**.]

## EXPLANATORY NOTE

*(This note does not form part of the regulations, but explains its purpose)*

For the avoidance of doubt, all transfers of marketable securities as defined in the Capital Gains Tax are liable to capital gains tax, including transfers not liable to the withholding tax because they are not mediated through a depositary or agent. Where no depositaries or agents are involved, a corporate secretary or other person responsible for the share register should not register any transfer of shares until proof of payment of any capital gains tax due on the transfer is exhibited to him or her.

(d) in the case of a sale of a marketable security **other than a security** referred to in

paragraph (c), 5% of the price at which the security was sold.

(2) It shall be presumed that a marketable security referred to in subsection (1)(c) or (d) was paid for in a foreign currency at the United States dollar market valuation of the security on the date of the sale, and that the capital gains tax thereon shall be paid in United States dollars accordingly, unless the seller provides documentary proof issued by—

(a) a registered stockbroker who mediated the transaction; or

(b) a financial institution through which the sale was effected;

showing that the security in question was sold for Zimbabwe dollars.

[Subsection (2) inserted by Act 13/2019 w.e.f. 1st January, 2020.]

## 39A Payment of capital gains tax in foreign currency in certain circumstances

[Section inserted by Act 3 of 2009 with effect from the 30th January, 2009.]

(1) Notwithstanding section 41 of the Reserve Bank of Zimbabwe Act [Chapter 22:15] and the Exchange Control Act [Chapter 22:05], where capital gains are received by or accrued to or in favour of a person in whole or in part in a foreign currency, the capital gains tax thereon shall be paid in the same or another foreign currency on so much of those gains as are received or accrued in a foreign currency.

(2) Where only part of the capital gains are received by or accrued to or in favour of a person in a foreign currency, the amounts of any tax due on both parts of such capital gains in terms of sections *thirty-eight* and *thirty-nine* shall be calculated separately and paid in the appropriate currency relative to each part.

(3) Where any part of the capital gains received by or accrued to or in favour of a person are so received or accrued in the form of a coupon or any instrument or token that, in the opinion of the Commissioner, is exchangeable, whether directly or indirectly, for a foreign currency, that person shall pay the requisite amount of capital gains tax to the Commissioner in a foreign currency calculated on a valuation of that coupon, instrument or token which, in the opinion of the Commissioner, represents a fair valuation of that coupon, instrument or token in the foreign currency in question.

(4) For the purposes of subsection (3) the Commissioner may, in the case of any coupon, instrument or token denominated in units of weight, volume or other measure of a specified commodity, specify from time to time by notice in the *Gazette* that a unit by weight, volume or other measure of that commodity shall be deemed to be worth a specified amount of a foreign currency.

(5) The Commissioner may require that any person referred to in subsection (1) who tenders payment of capital gains tax in a foreign currency other than the United States dollar, to tender instead the equivalent amount of that tax in United States dollars, being an amount obtained by applying the international cross rate of exchange of the first-mentioned currency for the United States dollar prevailing on the day the capital gains tax concerned becomes due.

(8) Subject to subsection (9), for the avoidance of doubt it is declared that all the provisions of the Capital Gains Tax Act [Chapter 23:01] shall apply, with such changes as may be necessary, to the payment in foreign currency of capital gains tax in the same way as they apply to the payment of such tax in Zimbabwean currency.

(9) Despite section **\*23C** ("Zimbabwean dollar to be the sole currency for legal tender purpose from second effective date") of the Finance (No. 2) Act, 2019 (No.7/2019 as \*renumbered by the Editor), it shall not be deemed for the purpose of the Capital Gains Tax Act [Chapter 23:01] that all transactions involving the sale or other disposal of a specified asset are in Zimbabwean currency, rather —

[Subsection (9) substituted by Finance (No.2) Act 7/2019 w.e.f. 21<sup>st</sup> August 2019.]

(a) where any such transaction results in a capital gain being received by or to accruing to or in favour of a person in whole or in part in Zimbabwean currency, capital gains tax at the rate specified in section *thirty-eight(a)* shall be paid in **Zimbabwean currency** on the capital gain or on such portion of it that is equivalent to the portion of the total transaction denominated in Zimbabwean currency;

(b) where any such transaction results in a capital gain being received by or accruing to or in favour of a person in whole or in part in a **foreign currency**, capital gains tax at the rate specified in section *thirty-eight (b)* shall be paid in **foreign currency** on the capital gain or on such portion of it that is equivalent to the portion

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of the total transaction denominated in foreign currency;

(9a) For the purposes of determining the capital gain received by or accrued to or in favour of any person **in a foreign currency**, no amounts shall be deducted therefrom that are allowed to be deducted in terms of section 11 of the Capital Gains Tax Act [*Chapter 23:01*], **other than**—

[Subsection (9a) inserted by Finance Act 7/2021 gazetted on the 31 December, 2021 backdated **w.e.f. 22<sup>nd</sup> February, 2019**.]

(a) the amount referred to in **section 11(2) (a)**, (b), (d), (e), (f) and (g); and

(b) in respect of each year or part of a year of assessment from—

(i) the date of acquisition of the specified asset to the date of sale, an amount of **2½%** of the purchase price of the specified asset; and

(ii) where any additions, alterations or improvements to the specified asset were made, an amount of **2½%** of the cost of the additions, alterations or improvements to the date of sale of the specified asset:

Provided that where the expenditure referred to in paragraph (b)(i) or (ii) was incurred in **Zimbabwean currency**, the expenditure shall be converted to United States dollars in accordance with a formula prescribed by the Minister by notice in a \*statutory instrument.

(10) For the purposes of determining the capital gain received by or accrued to or in favour of any person in respect of a **specified asset acquired** on or after the 1st February, 2009, but before the **22nd February, 2019**, and disposed of after that date, no amounts shall be deducted therefrom that are allowed to be deducted in terms of section 11 of the Capital Gains Tax Act [*Chapter 23:01*].

[Subsection (10) inserted by Finance (No.2) Act 7/2019 w.e.f. 21st August 2019]

(11) In respect of any **sale of a specified asset** that is purported to have been sold for Zimbabwe dollars, it shall be presumed that the specified asset was paid for in a foreign currency at the United States dollar market valuation of the specified asset on the date of the sale, and that the capital gains tax thereon shall be paid in United States dollars accordingly, unless the seller provides documentary proof satisfactory to the Commissioner that the specified asset in question was sold for Zimbabwe dollars.

[Subsection (11) inserted by Finance (No.3) Act 13/2019 w.e.f. 31st December, 2019]

## CHAPTER IX CUSTOMS AND EXCISE

[Inserted by Act 8 of 2005 from the 1<sup>st</sup> January 2006.]

### RATE OF SPECIAL EXCISE DUTY ON SALES OF SECOND-HAND MOTOR VEHICLES

#### 40 Interpretation in Chapter IX

Any word or expression to which a meaning has been assigned in Part XIIA of the Customs and Excise Act [*Chapter 23:02*] shall bear the same meaning when used in this Chapter.

#### 41 Rate of Special Excise Duty

The rate of special excise duty shall be **5%** of the value of the **second-hand motor vehicle** liable for the duty in terms of Part XIIA of the Customs and Excise Act [*Chapter 23:02*].

#### 41A Levy on imported dairy products

[Inserted by Finance Act 7/2021 w.e.f. 31 December, 2021.]

(1) In this section **“dairy products”** means any commodity identified in regulations made under subsection (2) by its commodity code under tariff headings 04.01, 04.02, 04.03, 04.04, 04.05 and 04.06.

(2) The Minister may, in consultation with the Minister responsible for agriculture, make regulations imposing a levy at a rate **not exceeding 5%** on the value of imported dairy products payable at the point of importation.

(3) Regulations made under subsection (2) may apply and adapt any of the provisions of the Customs and Excise Act [*Chapter 23:02*] for the purpose of ensuing the smooth administration of the collection of the levy on imported dairy products.

#### 41B Levy on new cellular telephone handsets

[Inserted by Finance Act 7/2021 w.e.f. 31 December, 2021.]

(1) In this section **“new cellular telephone handset”** means any such handset imported into Zimbabwe that has not been registered on a mobile network operator’s system.

(2) The Minister may, in consultation with mobile network operators, make regulations imposing a levy at a rate **not exceeding US\$50,00** on the registration by a mobile network provider of new cellular telephone handset at the instance of a customer ("the registrant") where such registrant fails at the time of registration to furnish proof satisfactory to the operator that customs duty has been paid on the new cellular telephone handset:

Provided that the registrant shall be entitled to a full refund of the levy by the Zimbabwe Revenue Authority if, **no later than thirty (30) days** from the date when the Authority receives payments of the levy from the operator, the registrant produces to the operator the required proof.

## CHAPTER X RENTALS AND DEVELOPMENT LEVIES FOR STATE LAND ALLOCATED FOR AGRICULTURAL PURPOSES

[Inserted by Act 8 of 2007 w.e.f. 1<sup>st</sup> October, 2007; amended by Act 3 of 2009 w.e.f. 1<sup>st</sup> January, 2009 substituted by **Finance Act 8/2015** gazetted on 13<sup>th</sup> November, 2015 with effect from the **1<sup>st</sup> January, 2015**.

The use of the word 'Model' seems inconsistent -  
Editor]

### 42 Interpretation in Chapter X

(1) In this Chapter—

**"A1 farm"** means a farm held under a permit allocated under the Model A1 scheme (villagised, self-contained and 3-tier land-use plans with minimum plots of 3 hectares) described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2), published in April, 2001 (as re-issued and amended from time to time);

**"A2 farm"** means a farm allocated under a 99 year lease allocated under the Model A2 scheme (the Commercial Farm Settlement Scheme, not exceeding the maximum farm sizes prescribed under *Statutory Instrument 419 of 1999* or any other law substituted for the same) described in the Land Reform and Resettlement Programme and Implementation Plan (Phase 2), published in April, 2001 (as re-issued and amended from time to time);

**"Gazetted land"** means agricultural land acquired pursuant to the land reform programme under section 72(2) of the Constitution of Zimbabwe Act 1 of 2013;

**"holder"**, in relation to—

(a) **an offer letter**, means the holder of an offer letter who has indicated that he or she has accepted the offer of an A2 farm described in the letter but who is not yet a party to a land settlement lease;

(b) **a permit**, means any person who is a signatory of the permit or any person who, in terms of the Permit Regulations, is entitled to succeed to such signatory as the holder of such a permit;

**"land settlement lease"** means a 99 year lease of a Model A2 farm;

**"lessee"** means the lessee under a land settlement lease;

**"Minister of Lands"** means the Minister of Lands and Rural Resettlement or any other Minister to whom the President may, from time to time, assign the administration of land settlement leases and permits and the issuance of offer letters;

**"Natural Region"** means a Natural Region specified in section 3 of the Rural Land (Farm Sizes) Regulations, 1999, published in *Statutory Instrument 419 of 1999*, or any other law that may be substituted for those regulations;

**"offer letter"** means a letter issued by or on behalf of the Minister responsible for the Gazetted Land (Consequential Provisions) Act [Chapter 20:28] that offers to allocate an A2 farm to the person to whom the letter is addressed;

**"permit"** means a permit to hold any portion of Gazetted land as an A1 farm;

**"Permit Regulations"** means the Agricultural Land Settlement (Permit Terms and Conditions) Regulations, 2014 (*Statutory Instrument 53 of 2014*) or any other law that may be substituted for the same;

**"quarter"** means a period of 3 months ending on the 31st March, 30th June, 30th September and 31st December in each year;

**"rental"** means a rental payable in terms of this Chapter.

(2) References to an **"offer letter"** in this Chapter are deemed to include references to a **"securitised A2 permit"**, that is to say, a permit issued by the Minister responsible for land resettlement and incorporating the security features prescribed by the Minister, giving the holder authority to occupy A2 land pending the future issuance of a 99-year lease of

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agricultural land upon fulfilment of the conditions prescribed by or under the permit.

[First subsection renumbered as (1), and subsection (2) inserted by Finance (No. 2) Act 10 of 2022 gazetted on 30<sup>th</sup> December, 2022.]

## 43 Rentals payable in respect of A1 and A2 farms

- (1) Every —
  - (a) lessee; and
  - (b) holder of a permit in respect of an A1 farm; and
  - (c) holder of an offer letter in respect of an A2 farm;

located in the Natural Region shown in the first column of the *Schedule* shall pay to the State on a quarterly basis the rental indicated opposite thereto in the second column.

(2) Subsection (1)(c) **does not apply** to the holder of an offer-letter who has not obtained vacant possession of the A2 farm to which the offer letter relates:

Provided that such holder shall be deemed to have obtained vacant possession of the farm concerned if the previous owner or occupier of the farm has vacated it or no longer occupies it, whether or not the holder of the offer-letter actually occupies the farm himself or herself.

(3) For the purpose of calculating the amount of rental due in any quarter, the appropriate amount indicated in the second column of the *Schedule* shall be divided by 4 and multiplied by the hectarage of the A2 farm as indicated in the land settlement lease or offer letter:

Provided that in applying this subsection, any fraction of a hectare that is **less than ½ a hectare** shall be disregarded, and any fraction of a hectare that is more than **½ a hectare** shall count as 1 hectare.

(4) In the case of a **lessee**, the rental specified in the *Schedule* and applicable to an A2 farm located in the Natural Region in which the lessee's farm is located shall be substituted for the rental specified in the lessee's land settlement lease, or, where the rental consists of 2 components, one relating to the rental for the farm and another to the purchase of any improvements thereon, the rental specified in the *Schedule* shall be substituted for the first-mentioned component of the rental specified in the land settlement lease.

(5) If the holder of an Offer-letter

(a) obtains the Offer letter after the \*date of commencement of the Finance Act, 2015;

[i.e. the \*13th November, 2015 – Editor]

or

(b) is not, on or at any time after the \*date of commencement of the Finance Act, 2015, liable to pay rentals because he or she has not obtained vacant possession of the A2 farm to which the offer letter relates;

the full rental shall be payable in respect of the quarter during which he or she obtains such letter or obtains vacant possession of the A2 farm, as the case may be.

(6) The Minister responsible for the Gazetted Land (Consequential Provisions) Act [Chapter 20:28] shall cancel the offer letter of any holder thereof who fails to pay rentals for **3 consecutive quarters**:

Provided that if the holder of the offer-letter tenders payment of the full amount of rentals due **within 30 days** after receiving written notice of cancellation of his or her offer letter, the offer letter shall be deemed not to have been cancelled.

(7) The provisions of a land settlement lease concerning the cancellation of the lease or of the Permit Regulations concerning the cancellation of the permit shall apply in the case of the failure by a lessee to pay any rentals.

(8) The amount of all rentals paid by the holder of an offer-letter who becomes a lessee shall be deducted from any amount required to be paid by him or her in terms of the land settlement lease as arrear rentals from the time the holder occupied the A2 farm to which the lease relates.

## 44 Rentals and Development Levies for State Land Allocated for Agricultural Purposes

(1) The development levy that, but for this section, would have been imposed, payable and collected in terms of section 96 of the Rural District Councils Act [Chapter 29:13] shall, as concerns the persons specified in subsection (2)(a),(b) and (c), be imposed, payable and collected in terms of this Chapter.

- (2) Every —

- (a) lessee; and

- (b) holder of a **permit** in respect of a Model A1 farm; and

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(c) holder of an **offer letter** in respect of a Model A2 farm;

located in the Natural Region shown in the first column of the *Schedule* shall, on a quarterly basis, pay to the Rural District Council in which such lessee or holder is resident or uses the land subject to the lease, permit or offer letter, the development levy indicated opposite thereto in the second column.

[Subsection (2) substituted by the Finance Act 1 of 2018 w.e.f 1 January 2018.]

(3) Section *forty-three* applies (with such changes as may be necessary) to the payment of the development levy in terms of this section as it applies to rentals.

(4) The proceeds of the development levy shall be used to meet expenditure on the following projects within the Rural District Council area from which the levy was collected—

- (a) gully reclamation and other works related to soil conservation and the prevention of soil erosion; and
- (b) the provision, operation and maintenance of—
  - (i) hospitals, clinics and dispensaries; and
  - (ii) schools and other educational institutions and facilities and amenities connected therewith;
- (c) the provision and maintenance of dipping tanks; and
- (d) the provision, development and maintenance of roads.

## 44A Collection of rentals and use of rentals and development levy

[Section substituted by the Finance Act 1 of 2018 w.e.f. 1 January 2018.]

(1) The Minister of Lands shall, through the officers of the Ministry of Lands specially designated by the Secretary of the Ministry, be responsible for collecting on behalf of the State every—

- (a) lessee; and
- (b) holder of a permit in respect of a Model A1 farm; and
- (c) holder of an offer letter in respect of a Model A2 farm;

resident on or using the relevant land the rentals due from them in terms of this Chapter.

(2) For the avoidance of doubt—

(a) the development levies collected in terms of this Chapter shall be retained by the Rural District Council concerned for application as specified in section *forty-four*(4); and

(b) the rentals collected in terms of this Chapter shall form part of the Consolidated Revenue Fund but be retained by the Ministry of Lands (for which purpose the Ministry of Lands shall establish a fund pursuant to section 18(1)(b) of the Public Finance Management Act [Chapter 22:19].

## 44B Public Assistance to Model A1 and A2 farmers conditional on full payment of rentals and development levies

[amended by the Finance Act 1 of 2018 w.e.f. 1st January 2018.]

(1) No —

- (a) lessee; and
- (b) holder of a **permit** in respect of an A1 farm; and
- (c) holder of an **offer letter** in respect of an A2 farm;

who is in arrears in paying any rental or portion thereof shall receive any financial assistance that is payable directly or indirectly from public funds for any purpose connected with his or her farming operations.

## SCHEDULE TO CHAPTER X

(Sections 43 and 44)

### RENTALS AND DEVELOPMENT LEVIES PAYABLE

<b>Natural Regions</b>	<b>Rental and Development Levy</b>
1, 2, 2a, 2b ,3 ,4 and 5	Model A1 Farmers : <b>\$10 per annum</b> (rental)
	Model A2 Farmers: <b>\$3 per hectare per annum</b> (rental)
	Model A1 Farmers: <b>\$5 per annum</b> (development levy )
	Model A2 Farmers: <b>\$2 per hectare per annum</b> (development levy )

## CHAPTER XI STATUTORY FEES AND CHARGES

[CHAPTER inserted by section 11 of Act 3 of 2009 with effect from the 1st January, 2009.]

### 45 Interpretation in Chapter XI

In this Chapter—

**“charging enactment”** means an enactment by or under which a statutory fee or charge is levied;

**“Exchange Control (General) Order”** means the Exchange Control (General) Order, 1996, published in Statutory Instrument 110 of 1996, or any other enactment that may be substituted for the same;

**“foreign currency”** means the euro, United States dollar, South African rand, Botswana pula and any other foreign currency denominated under the Exchange Control (General) Order;

**“Minister”** means the Minister responsible for Finance;

**“port of entry”** means a port of entry designated as such in terms of section 14 of the Customs and Excise Act [Chapter 23:02];

[Definition inserted by Finance (No.3) Act 11 of 2014 with effect from the 1<sup>st</sup> January, 2015]

**“statutory fee or charge”** means a fee or charge levied by or under a charging enactment for any service provided by the Government or a department of the Government, whether such fee or charge is notified by means of a *statutory instrument* or otherwise.

### 46 Revision of statutory fees and charges initiated by Minister

(1) Notwithstanding section 41 of the Reserve Bank of Zimbabwe Act [Chapter 22:15], or anything contained in the Exchange Control Act [Chapter 22:05] and any charging enactment, but subject to this section, statutory fees or charges may be levied in whole or in part in foreign currency, or may give the option to the payer to pay such fees or charges in Zimbabwean currency or foreign currency.

(2) Notwithstanding anything contained in any charging enactment, the Minister may—

(a) not more frequently than once in every calendar month, by notice in writing to every Head of Ministry responsible for any charging enactment, require that, by a specified date,

being **not less than 7 days** from the date of the Minister’s notice, each Head of Ministry—

(i) reviews every statutory charge or fee for the levy of which he or she is responsible; and

(ii) submits the result of such review to the Minister in writing, containing the relevant Ministry’s recommendations for any amendment of the statutory fees or charges for which it is responsible;

and

(b) after considering the reviews submitted in terms of paragraph (a)(ii), determine which statutory fees or charges are to be amended and the nature or extent of such amendment:

Provided that if—

(i) a responsible Ministry fails to submit a review of its statutory fees and charges within the period specified under subsection (2)(a), the Minister may proceed to determine which of its statutory fees or charges are to be amended and the nature or extent of such amendment;

(ii) the amendment of any statutory fee or charge proposed by the Minister departs from the recommendations of the responsible Ministry contained in its review, the Minister shall inform the responsible Head of Ministry accordingly, giving his or her reasons for the departure and affording the Head of Ministry an opportunity to make written representations on the matter **within 48 hours**;

and

(c) after considering any representations, if any, made in terms of the proviso to paragraph (b), issue a *statutory instrument* in terms of this Part containing a Schedule in 2 columns and specifying—

(i) in the first column, every charging enactment by or under which a statutory fee or charge is to be amended, and the provision by or under which such statutory fee or charge is levied;

(ii) in the second column opposite thereto, the corresponding amendment of the statutory fee or charge in question.

(3) In conducting a review in terms of subsection (2)(a) or making a determination in terms of subsection (2)(b), the responsible Ministry or the Minister, as the case may be, shall balance the need of the responsible Ministry to recover its costs in providing the service in question and the affordability of the

proposed statutory fee or charge to the general public.

## 47 Revision of statutory fees and charges initiated by Heads of Ministries

The Head of a Ministry responsible for any charging enactment may at any time request the Minister to initiate a review of the relevant statutory fee or charge, and section *forty-six* shall, with such changes as may be necessary, apply to a review thus initiated.

## 47A Electronic Single Window Facility

[Section inserted by Act 11 of 2014 w.e.f. 1st January, 2015 and numbered 48 instead of 47A in error – Editor.]

(1) Notwithstanding anything to the contrary in any enactment, if any arm or organ of the State or any statutory body or statutory agency is empowered to charge and collect any statutory fee or charge or any penalty payable in connection with such fee or charge it shall, where such fee, charge or penalty is payable or collectible at any port of entry, be deemed to have appointed the Zimbabwe Revenue Authority as its sole agent for the purpose of collecting any statutory fee, charge or penalty in question with effect from the date of publication of the regulations referred to in subsection (2).

(2) The Minister may make regulations for the operation by the Zimbabwe Revenue Authority of an Electronic Single Window Facility or other electronic facility by whatsoever name designated for the processing and distribution of payments of the fees, charges or penalties referred to in subsection (1).

(3) With effect from the date of publication of the regulations referred to in subsection (2), no fees, charges or penalties referred to in subsection (1) shall be levied, charged, processed, collected or accounted for otherwise than in the manner prescribed by the regulations, except for good cause shown to the Commissioner-General of the Zimbabwe Revenue Authority.

(4) The responsible authority of the arm or organ of the State or statutory body or agency referred to in sub-section (1) shall comply with any written directions issued by or on behalf of the Commissioner-General of the Zimbabwe Revenue Authority to secure compliance with the regulations referred to in subsection (2) or ensure the smooth operation of the Electronic Single Window Facility generally.

## CHAPTER XII SPECIAL EXCISE DUTY ON AIR TIME AND HEALTH SERVICE LEVY

[Inserted by section 11 of the Finance Act 8 of 2014 w.e.f. 1st October, 2014. Then substituted by the Finance Act 2 of 2017 gazetted on 23<sup>rd</sup> March, 2017 backdated to the 1<sup>st</sup> January, 2017.]

## 48 Interpretation in Chapter XII

Any word or expression to which a meaning has been assigned in **Part XIIB** of the Customs and Excise Act [*Chapter 23:02*] shall bear the same meaning when used in this Chapter.

## 49 Rate of special excise duty on airtime

(1) The rate of special excise duty on airtime shall be **10%** of the sale value of the airtime: **5%** of which shall be designated as a **Health Fund levy** and be credited to a fund established under section 18 of the Public Finance Management Act [*Chapter 22:19*] for the purchase of drugs and equipment for Government hospitals, provincial hospitals and district or general hospitals as defined in the Health Service Act [*Chapter 15:16*].

(2) The Health Fund levy is payable with effect from the **23rd March, 2017**.

[Subsection (2) inserted by the Finance Act 1 of 2018 gazetted on the 14<sup>th</sup> March, 2018.]

## CHAPTER XIII BLOCKED FUNDS RESOLUTION

[See Important Notes below ACT Title – **RE-NUMBERING of this** new Chapter by the EDITOR.

This RESOLUTION was implanted by section 50 of the **Finance Act 7/2021** w.e.f. **31 December, 2021** as a separate PART XIII of **that Finance Act** which is easily read in hard copy as a separate Part of the enabling Act *Chapter 23:04* but unfortunately cannot belong to Optima's ELECTRONIC hyperlinked Table of Contents (computers can't understand duplicates!)

CHAPTER XIII already exists, so Optima has re-positioned the RESOLUTION here, allocating to it CHAPTER XIII (in place of PART XIII AS GAZETTED ON PAGE 139 at the end of Chapter 23:04 allocating **numberings** commencing with the "new" section 50 and following chronologically the NEXT 5 numbers.

Please e-mail [Editorial@otimalaw.online](mailto:Editorial@otimalaw.online) if still confused – **Editor.**]

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## 50 Interpretation in Part XIII/CHAPTER XIII

(1) In this Part—

“**blocked funds**” means a liability of the Republic of Zimbabwe provided for in terms of section *forty-one* of this Part as read with the Annexes to this Act;

“**creditor**” means a person (or such person’s successor in title) who, being a foreign counterparty, provided a loan or advance or goods or services to a person resident in Zimbabwe and was entitled to such payment for goods and services or dividend or return on investment in foreign currency (which foreign currency, however, **could not be repatriated from Zimbabwe**);

“**Debt Management Office**” means the Office established in terms of the Public Debt Management Act [*Chapter 22:21*];

“**Minister**” means the Minister of Finance and Economic Development;

“**reconcile**”, in relation to reconciling a claim arising from blocked funds, means to establish the amount of such claim by comparing and harmonising the amounts reflected in the records of the Reserve Bank and in those of the creditor;

“**Reserve Bank of Zimbabwe**” means the Reserve Bank of Zimbabwe established in terms of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*];

“**settle**”, in relation to the settling of prior debts by the State, includes to liquidate such debts in accordance with \*section 4(3);

[query: which \*section is being referred to ? -Editor]

“**validate**”, in relation to validating a claim arising from blocked funds, means to establish the existence of such claim.

## 51 Qualifying blocked funds

(1) Subject to subsection (2), any liability payable in foreign currency that was incurred by any of the persons specified in the Annexes to this Act (“**Scheduled person**”) **before the 22nd February, 2019**, and in respect of which such foreign currency could not be repatriated from Zimbabwe shall constitute blocked funds qualifying for relief in terms of this Part.

(2) For the purposes of subsection (1)—

(a) Scheduled persons must have submit[ed] their claims on or **before the 30th April, 2020**,

for validation of their claims by the Reserve Bank of Zimbabwe; and

(b) the equivalent, in Zimbabwe dollars, of the blocked funds forming the basis of the claim must have been remitted to the Reserve Bank of Zimbabwe.

## 52 Assumption of obligations by the State

(1) Subject to the validation and reconciliation of the relevant claims under section *forty*, the Minister shall, on behalf of the State, assume responsibility for the discharge of the outstanding blocked funds.

(2) The terms and conditions under which the Minister assumes responsibility in terms of subsection (1) for the discharge of any obligation with respect to the blocked funds shall be fixed by the Minister.

(3) Outstanding blocked funds may be liquidated through the issuance of Government-backed zero coupon or non-interest-bearing foreign exchange savings bonds or such other debt instruments denominated in foreign currency.

(4) No action or proceeding shall be commenced or continued against the Reserve Bank or any other banking institution in respect of liabilities arising from blocked funds assumed by the Minister on behalf of the State, or any other obligation or claim in connection therewith or arising therefrom.

## 53 Proof of claims arising from prior debts and notification of validated and reconciled claims

(1) No claim arising from blocked funds shall be assumed by the State and settled under section *forty-nine* unless it is validated and reconciled in accordance with this section.

(2) All claims arising from blocked funds shall be validated and reconciled by the Debt Management Office, for which purpose the Office may demand from the creditor concerned the following as may be appropriate---

(a) authenticated copies of the relevant loan agreement or contract or declaration in the case of dividends;

(b) any other documentation in support of the creditor’s claim, including—

(i) shipment schedules showing commodities supplied and quantity and price per shipment; and

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- (ii) creditor statements indicating—
- A. initial balances, disbursements made, payments effected and the dates of the foregoing;
- B. the principal amount of the claim and the interest thereon;
- (iii) a court judgment.

(3) For the avoidance of doubt it is declared that any claim arising from blocked funds that is not validated and reconciled by the Debt Management Office in accordance with this section shall not be assumed by the State in terms of section *forty-seven*.

## 54 Application of Part VI of Cap. 22:19

\* **Part VI** of the Public Finance Management Act [Chapter 22:19] shall apply, with the necessary changes, in respect of any obligation assumed in terms of #section 4 [ is this **#section fifty-two** ? -Editor] as if the obligation was a State loan borrowed in terms of that Act.

**[EDITOR'S NOTE :** This \*Part was **repealed by** the Public Debt Management Act [Chapter 22:21] w.e.f. the 4<sup>th</sup> September,2015 And applied to the **now repealed RESERVE BANK OF ZIMBABWE (DEBT ASSUMPTION) ACT, No.2 of 2015]**

## 55 Exemption from stamp duty

No stamp duty or other duty or tax and no fees or other charges shall be payable in respect of anything done under this Act.

## ANNEX 1

(Section 51)

### BLOCKED FUNDS ON RBZ BALANCE SHEET AS AT 31 DECEMBER 2020

Name of creditor	Debt Source	Date Signed	Initial Amount	Outstanding Balance
<b>FUEL SUPPLIERS</b>				
Trafigura	Trafigura	Dec-17	390,000,000.00	193,734,273.88

Total Zimbabwe	South Africa	Oct-19	45,951,030.78	36,241,436.95
Glencore /Zuva	UK	Dec-18	51,283,600.13	30,996,413.57
IPG	Kuwait	Oct-18	23,450,320.00	20,906,142.59
Praise Petroleum	Zambia	Mar-19	27,196,508.99	14,509,552.29
Transoil – JK Motors	Transoil -JK Motors	Feb-19	5,834,436.94	529,442.45
Engen	South Africa	Jul-20	62,580,585.88	62,580,585.88
Redan	Puma Energy (Pvt) Ltd	Jul-20	27,711,502.62	27,711,502.62
Pickglow	South Africa	Jul-20	2,874,509.00	2,674,509.00
ZX Fuel	USA	Jul-20	7,404,925.86	7,404,925.86
Strauss Logistics	United Kingdom	Jul-20	12,637,202.48	3,243,618.00
Storm Energy	Storm Energy S.A	Jul-20	1,099,292.17	1,099,292.17
ZUVA		Jul-20	30,000,000.00	26,984,722.25
GREENFUELS		Jul-20	38,800,000.00	38,800,000.00
XTREME OILS		Jul-20	2,277,614.67	2,277,614.67
JK Motors		Jul-20	172,760.00	172,760.00
SAKUND A		Jul-20	43,637,826.05	43,637,826.05
Sub-Total			827,957,783.07	513,504,618.23
<b>MAIZE</b>				

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<b>SUPPLIERS</b>				
Afgrain	Mauritius	19-Oct-18	100,000,000.00	33,299,167.91
ASP Marketing	South Africa	2008 & 2016	36,705,187.78	23,700,000.00
Holbud	UK	2004 & 2016	100,185,184.26	71,276,472.49
Cloudburst	South Africa	2015-16	11,941,957.97	8,537,466.09
IETC	Agri Commodities	2015-16	8,701,288.00	8,701,288.00
<b>Sub-Total</b>			257,533,618.01	145,514,394.49
<b>AIRLINES</b>				
IATA	International	13 July, 2020	80,183,048.87	79,183,048.87
Emirates	UAE	13 July, 2020	62,779,852.11	51,242,965.01
Fastjet	Kenya	13 July, 2020	25,241,113.60	16,973,668.00
Rwand Air Limited	Rwanda	13 July, 2020	17,730,483.00	14,987,765.06
Kenya Airways	Kenya	13 July, 2020	7,901,791.40	-
KLM Royal Dutch	Kenya	13 July, 2020	145,214.25	-

British Airways	UK	14 July, 2020	53,135.00	-
South African Airways	South Africa	13 July, 2020	18,714,382.50	7,060,346.10
Ethiopian	Ethiopia	13 July, 2020	11,766,012.70	6,634,440.71
Airlink	South Africa	13 July, 2020	975,000.00	975,000.00
LAM Mozambique Airways	Mozambique	13 July, 2020	317,775.38	317,775.38
Air Namibia	Namibia	13 July, 2020	518,791.90	165,000.00
TAAG Angolan Airlines	Angola	13 July, 2020	147,311.16	71,479.66
<b>Sub-Total</b>			226,473,911.87	177,611,488.79
<b>GRAND TOTAL</b>				<b>836,630,501.51</b>

## ANNEX 2

(Section 51)

### PRIVATE SECTOR BLOCKED FUNDS AS AT 25 SEPTEMBER 2021

<b>Applicant</b>	<b>Nature of Transaction</b>	<b>Approved Amount (US\$)</b>	<b>Balance Outstanding as at 25 September</b>
Aayu Packaging Private Limited	Machine Spares	12,993.40	-

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ABB Company	Equipment	604,237.00	
ABC Money Lenders	Micro - Finance	613,635.62	-
AC DC Dynamics Pl Ta Natural Air	Equipment	44,499.25	
AC DC Dynamics	Import of Goods	334,970.21	379,469.46
Ace foam	Raw materials	814,900.96	
Ace Foam	Raw materials	93,697.99	908,598.95
Acol Chemical Holdings	Raw materials	261,384.85	
Acol Chemical Holdings	Raw materials	771,974.59	
Acol Chemical Holdings (Pvt) Ltd	Dividend	850,000.00	
Acol Chemical Pvt Ltd	Activated carbon (Mining), caustic soda flakes, sulphuric acid, chemicals for rubber industry	67,972.11	
Acol Chemicals	Raw Materials	94,508.14	
Acol Chemicals	Chemicals	260,133.67	
Acol Chemicals	Chemicals (polyethers)	10,493.00	2,316,466.36
ACT Investments	Dividends	653,140.00	653,140.00
Afgr Zimbabwe	Tractors, Combine harvesters	985,027.02	985,027.02

Africa Enterprise Network Trust	Dividends	8,014,326.00	8,014,326.67
Africa Group Lubricants	Mining Lubricants	55,000.00	55,000.00
Africa Steel	Goods Import	614,247.86	614,247.86
African Banking Corporation	Money market investments	1,750,000.00	
African Banking Corporation	Money market investments	1,500,000.00	
African Banking Corporation	Money market investments	1,000,000.00	
African Banking Corporation	Money market investments	3,068,750.00	
African Banking Corporation	Money market investments	1,750,000.00	
African Banking Corporation	Money market investments	1,691,545.05	
African Banking Corporation	Money market investments	900,000.00	-
African Century Limited	Loan	1,315,267.00	
African Century Limited	Promissory note	910,833.33	
African Century Limited	Dividend	527,144.00	
African Century Limited (ACL)	Offshore loan - Promissory Note	1,855,417.90	
African Century Limited (ACL)	Offshore loan - Promissory Note	1,221,517.38	

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African Century Limited (ACL)	Offshore loan - Promissory Note	1,171,388.90	
African Century Limited (ACL)	Offshore loan - Promissory Note	608,888.88	
African Century Limited	Offshore loan	5,214,763.00	
African Century Limited	Offshore loan	937,193.41	
African Century Limited	Offshore loan	527,144.00	
African Century Limited	Offshore loan	3,282,624.00	
African Century Limited (ACL)	Offshore loan - Promissory Note	565,138.88	13,751,778.79
African Distillers Ltd	Equipment/ Machinery	33,012.52	33,012.52
African Vehicle Clearing Services (AVECS)	Non-Resident Corporate Account balance	77,583.00	-
Aggreko International	Residual Rental/Lease Charges for Electricity Generation	6,237,411.00	6,237,411.00
Agribank	Loan	1,483,808.00	-
Agribank	Loan	25,582,920.27	23,841,727.95
Agricon Equipment	Machine Spares	1,517,473.91	1,517,473.91
Agricon Equipment	Tractors and Spares	215,565.86	-

Agricon Equipment	Agriculture and Construction	579,398.34	794,964.20
Agriquest	Offshore loan	12,658.87	12,658.87
Agriswiss Zimbabwe (Pvt) Ltd	Maize grits, Soya Bean Meal, Wheat, Sugar Beans, Popcorn	26,967.79	-
AgriSwiss Zimbabwe (Pvt) Ltd	Maize grits, Wheat, Sugar Beans	315,068.45	340,261.93
Alex Stewart International LLC	Non-Resident Account	537,177.24	-
All Commodity Exports (Pvt) Ltd	Wheat	104,518.37	-
All Commodity Exports	Wheat imports & Management consultant	136,432.00	240,950.57
Alliance Media	Importation of Street poles	1,721,905.06	656,305.06
Alpha Packaging	Raw materials	145,174.00	-
Ambassador Investments	Offshore loan	277,345.59	-
Amitas Solution (Pvt) Ltd	Software licence fees	7,256.31	7,212.79
Anglican Diocese of Harare	Loan	2,619.18	2,632.00
Annapolis INVESTMENTS	Direct Loan	352,950.00	-
Annunaki	Dividend	540,000.00	540,000.00

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Annunaki Investments	Offshore loan	1,097,26 5.49	1,097,2 65.50
Annunaki Investments	Offshore loan	2,232,14 0.55	2,232,1 40.55
Arenel (Pvt) Ltd	Freight, Finished Products	358,055. 21	-
Arenel	Offshore loan	254,437. 00	612,493 .17
Assa Abloy Chubb Locks Union	Lock sets, Smoke detectors,	1,381,91 8.65	1,381,9 18.65
Associated Foods Zimbabwe	Loan	2,000,00 0.00	-
Associated Foods Zimbabwe	External Loan	349,005. 56	2,299,0 05.56
Associated Newspapers	Softwares	23,001.0 0	23,001. 00
Astra Paints	Raw materials	367,463. 22	-
Astra Chemicals	Enzymes	918,303. 00	-
Atherstone & Cook/Wind Mill	Offshore debt	1,457,50 0.00	1,457,5 00.00
At The Ready Wholesalers	Clothes and groceries	1,973,49 0.17	-
Auto Tyre Zimbabwe	Tyres	217,380. 33	217,380 .33
Automotive Distributors	Motor Vehicles	1,008,47 0.00	1,008,4 70.00
AVM Africa (Pvt) Ltd	Importation of buses	421,000. 00	421,000 .00
Axia	Dividends	2,946.63	2,946.6 3
Axis Solutions	Software licence fees	279,822. 70	39,558. 39
Ayan Trading	Thai White Rice, Pasta Spaghetti	7,544,74 2.75	5,976,9 21.75

Ayestock Investments	Knapsack Sprayers	368,094. 00	-
Ayrton Investments	Fuel	449,040. 00	449,040 .00
AZBO Investments	Fabrics	1,528,88 8.28	1,528,5 88.28
B Braun Zimbabwe	Pharmaceuticals	215,927. 71	-
B Braun Zimbabwe	Pharmaceuticals	1,088,32 1.00	1,088,3 21.00
Baines Imaging Group	Equipment	335,000. 00	-
Baines Imaging Group	Equipment/ Machinery	10,075.2 8	335,000 .00
Baketech Zimbabwe	Flour additives and improvers	37,880.0 0	37,880. 02
Balcair Investments (Pvt) Ltd	Offshore loan	996,059. 00	996,059 .00
African Banking Corporation	Offshore loan	2,225,22 6.43	-
Bannadeer Investments	Aluminium profiles, bars, rods	10,234.7 7	10,234. 77
Barco Chemicals	Cleaning chemicals raw materials	179,844. 40	179,844 .40
Barwon Downs (Pvt) Ltd	Royalties	14,430.0 0	14,430. 00
Barzem	Spares	591,714. 00	591,714 .44
Battery Centre (Pvt) Ltd	Motor vehicle oils	40,259.0 9	40,259. 00
BEIQI Zimbabwe	Motor Vehicle and Spares.	460,865. 26	-

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Beiqi Zimbabwe	Motor Vehicles	793,397.23	-
BEIQI Zimbabwe (Pvt) Ltd	Loan	881,708.78	2,127,482.10
Beitbridge Bulawayo Railway Private Limited	Locomotive, Spares, Fuel and Hiring Services	7,033,267.55	-
Beitbridge Bulawayo Railway	Dividends	3,187,501.00	9,045,768.55
Bertech P/L T/A Motortorque	Tyres	43,333.33	-
Bertech P/L T/A Motortorque	Tyres	18,831.69	-
Best food processors	Machinery spares	24,824.50	24,824.80
Bitumen World	Zambezi Bulk RSA	52,486.82	52,486.32
Blackbox Investments	Raw Materials	1,887,616.86	1,887,616.86
Blackwood Hodge Zimbabwe	Trucks and vehicle spares	796,470.19	796,470.19
Blue Ribbon Foods	Wheat	3,771,567.00	3,771,567.00
Blue Ribbon	Offshore loan	2,821,031.00	2,821,031.00
Blue Track Investments	Intermediate goods	230,352.00	-
Blue Track Investments	Duplex, core paper, Resin, Fibre, spare parts	1,915,611.88	1,915,611.88
BOC Gases	Dividends	3,188,585.70	-
BOC Zimbabwe (Pvt) Ltd t/a BOC Gases	Manufactured goods	1,355,593.76	4,544,179.46

Boc Gases	Gas and gas equipment	2,036,263.59	-
BOC Gases	Gas	10,637.29	2,036,263.59
Boka Tobacco Floors	Machinery	2,830,298.88	2,630,298.88
Borealis L.A.T GMBH	Non-Resident Corporate account balance	2,300,000.00	2,299,842.40
Brands Africa	groceries, personal care products and beverages	1,215,002.00	357,501.20
Brands Fresh	Food	373,143.76	186,571.85
Breastplate Services	Cleaning equipment	2,421,102.61	1,521,102.61
Brian Rodney Broom	Investment funds	1,465,347.90	1,265,347.90
Bridge Shipping Zimbabwe	Freight on Board	66,013.50	-
British American Tobacco	Machine Spare Parts	41,563.52	
British American Tobacco Zimbabwe Pl	Technical Fees & Spares	543,451.92	
British American Tobacco (Pvt) Ltd	Tobacco and cigarette	616,145.71	
British American Tobacco	Dividends	14,826,079.00	
British American Tobacco	Dividends	324,898.99	16,352,138.92

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British American Tobacco	Spare Parts and Raw Materials	2,854.08	2,854.08
British American Tobacco Zimbabwe Pl	Machine spares, Wrapping materials	10,009.05	10,009.05
Browns Wholesale	Stationery, Newsprint	24,859.00	-
Browns Wholesale	Stationery and Newsprint	17,298.00	15,262.76
BullRed Farming	Inventory	9,420.00	9,419.82
CABS	Offshore loan	16,554.672.43	
CABS	offshore	1,302.061.92	
CABS	Offshore loan	7,236.580.68	
CABS	Offshore loan	2,540.809.68	10,004,822.75
Cadco	Manufactured goods	51,560.59	51,560.59
Cairns Foods Limited	Equipment and food	139,667.70	-
Cairns	Flavours	92,361.46	
Cairns Foods Limited	Palm Oilen	29,203.81	
Cairns Foods Limited	Food stuff	2,598.49	
Cairns Foods Limited	Spares	415.13	-
Cairns Food Limited	Manufactured goods	182,005.32	
Cairns Foods Ltd	Bearings	1,238.54	-
Cambria Africa Plc Harare	Loan	900,000.00	

Cambria Africa Plc Harare	Loan	75,642.46	75,642.00
Cangrow Trading (Pvt) Ltd	Offshore loan	250,000.00	
Cangrow Trading (Pvt) Ltd	Offshore loan	2,450,000.00	
Cangrow Trading (Pvt) Ltd	Machinery Spares and Crude Soya Oil	2,277,981.31	-
Cape Island Construction	Dividends	220,700.00	220,700.00
Capmore Investments	Machinery, Software Licences	308,682.20	308,682.20
Carnaud Metalbox	Goods and Services	7,559,457.05	-
Carnaudmet albox	Offshore loan	713,250.77	-
Carnaud Metalbox	Goods and Services	368,826.93	-
Carnaudmet albox	Offshore loan	8,700,969.36	3,283,687.93
Casadella Biscuits	Baking materials	60,753.87	60,753.87
CBZ Bank	Offshore loan	259,847,180.00	230,366,288.02
CBZ Bank	Offshore loan	40,433.517.21	-
CBZ Bank	Offshore loan	8,165,204.00	-
CBZ Bank	Offshore loan	6,002,825.91	-
CBZ Bank	Offshore loan	5,366,667.00	-
CBZ Bank	Offshore loan	5,288,717.66	-
CBZ Bank	Offshore loan	2,795,444.43	-

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CBZ Bank	Offshore loan	2,795,44 4.43	-
CBZ Bank	Offshore loan	1,608,87 1.00	-
CBZ Bank		1,000,00 0.00	-
CBZ Bank	Offshore loan	1,428,08 9.65	-
CBZ Bank	Loan facility	2,959,35 0.00	56,844, 467.08
Central Millers	Wheat	181,677. 92	181,677 .92
CFAO Motors	Motor Vehicles	721,488. 00	-
CFAO Motors Zimbabwe	Vehicles	123,228. 22	-
CFAO Motors	Motor vehicles	238,541. 37	960,028 .95
CFI Holding T/A Farm And City	Mixed Medicaments and Supergrain Bags	47,963.3 7	47,963. 37
Chaco Trading	Potato Sorting Machine, Aspirator Pre-Cleaner & Loan	896,989. 54	896,989 .54
Champions Insurance Company	Insurance reinsurance	24,334.3 6	24,334. 36
Chapman Chartered Accountants	Subscription fees	3,087.72	3,087.7 2
Charles Stewart Day Old Chicks	Offshore loan	50,000.0 0	-
Charles Stewart Day Old Chicks Pvt Ltd	Hatching Eggs	12,598.6 2	62,598. 62

Chem Source	PVC Granules	26,180.0 0	26,180. 00
Chicago Cosmetics	Goods	224,238. 37	-
China Jiangxi Corporation	Equipment	1,600,69 2.81	1,600,6 92.81
China Nanchang Engineering Pvt	Treasury Bills	18,829,0 77.26	-
China Nanchang Engineering Pvt	Offshore loan	4,978,87 5.00	23,607, 952.26
Chips Enterprise Solutions	Software Licence Fees	32,161.1 0	-
Chips Enterprise Solutions	Software license fees	1,215,68 9.83	-
Chips Enterprise	Software licence and maintenance fees	177,682. 75	1,425,5 33.68
CIMAS	Software Licence Fees	1,301,17 8.18	-
CIMAS Medilab	Software licences	18,407.4 0	-
Classic Tobacco Company (Pvt)	Offshore loan	10,800,0 00.00	10,313, 021.40
Coghlan Welsh And Guest O/A Icejay Investments (Pvt) Ltd	Offshore loan	4,843,78 5.95	-
Colonel Lionel Dyke	Money Market Investment	119,117. 18	119,117 .18
Colovane Services (Pvt) Ltd T/A	Oil, Lubricants, Engine	122,820. 53	-

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Fuchs Lubricants	Cleaner, brake fluid,		
Commercial Refrigeration (Pvt) Ltd	Cabinet assembly, plastic cables ties	100,909.80	100,909.80
Complink Systems	Computer Equipment	39,484.89	39,484.89
Comridge Trading (Pvt) Ltd	Loan	625,000.00	625,000.00
Comtex Trading	Offshore Offshore loan	1,000,000.00	-
Comtex Trading	Offshore Offshore loan	650,000.00	-
Comtex Trading	Offshore loan	200,000.00	-
Comtex Trading	Offshore loan	80,000.00	-
Connick Investments	Mobile handsets	985,757.90	-
Consultus Publishing Services	Education textbooks	417,463.15	417,463.15
Continental Marketing	Medical equipment	95,029.00	90,756.90
COOPERS ZIMBABWE	Intermediate goods, Services	538,220.83	538,220.83
Copier Parts Company	Offshore loan	220,413.17	-
Copier Parts Company	Printing equipment and accessories	499,927.00	-
Copier Parts	Computer consumables and accessories	1,111,534.93	1,262,338.59
Coram Mushuta	Property sale proceeds	140,000.00	-

Corpserve Registrars Pvt Ltd	Dividends	234,311.97	-
Corpserve Registrars Pvt Ltd	Dividends	7,967.42	257,606.39
Corpserve Registrars Pvt Ltd	Dividends	4,453.44	4,453.00
Corpserve Registrars Pvt Ltd	Dividends	42,478.54	42,478.54
Corpserve Registrars Pvt Ltd	Dividends	10,557.45	10,557.00
Corpserve Registrars Pvt Ltd	Dividends	46,915.57	-
Corpserve Registrars Pvt Ltd	Dividends	5,323.24	-
Corpserve Registrars Pvt Ltd	Dividends	28,695.00	-
Corpserve Registrars Pvt Ltd	Dividends	3,758.99	-
Corpserve Registrars Pvt Ltd	Dividends	1,997.48	-
Corpserve Registrars Pvt Ltd	Dividends	1841.76	-
Corpserve Registrars (Pvt) Limited	Dividends	495,901.00	-
Corpserve Registrars Pvt Ltd	Dividend	15,327.00	-
Corpserve Registrars Pvt Ltd	Dividends	1773.24	580,565.53
Cortech Solutions	Electric devices	38,648.95	38,648.95

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Courseview Investments (Pvt) Ltd	Offshore loan	847,062.40	197,062.00
CP Chemicals	Agro Chemicals	11,724,095.00	11,724,095.40
CPS Africa Pvt Ltd	Dark chocolates & Palm Olein	195,669.39	195,669.39
Credfin	Offshore loan	861,685.26	-
Credfin	Offshore loan	364,321.02	-
Credfin Pvt Ltd	Offshore loan	2,795,664.13	17,999.98
Crispy Chicken Restaurants	Offshore loan	3,309,062.72	3,309,062.72
Croco Holdings	Guarantee	400,000.00	-
Croco Motors	Motor vehicles	1,971,275.88	200,000.88
Cummings Zimbabwe	Importation of diesel engine generators	4,238,861.97	-
CZI	Workshop fees	12,953.10	11,663.26
Dairibord Holdings	Offshore loan	321,257.65	-
Dairibord Holdings	Offshore loan	531,138.72	1,841.76
Dasapa Trading	Offshore loan	215,116.67	-
Datlabs	Pharmaceutical goods	108,471.00	74,644.12
DCC Tapson and Sons PL	Offshore loan	63,078.00	-
DCC Tapson and Sons PL	Offshore loan	54,946.00	118,024.00
Debshan (Pvt) Ltd	Offshore loan	4,739,518.00	-

Delta Beverages	Dividends	104,420,879.72	-
Delta Beverages	Import of Goods & Services	48,543,125.59	-
Delta Beverages	Offshore loan	3,900,000.00	-
Delta Beverages	Goods & Services	3,459,804.72	-
Delta Beverages	Offshore loan	23,869,205.25	142,298,700.57
Dendairy Limited	Raw materials	609,670.16	-
Dendairy (Pvt) Ltd	Offshore loan	3,036,136.70	-
Dendairy (Pvt) Ltd		500,000.00	-
Dendairy Zimbabwe	Raw materials, Freight and labour services	434,938.34	-
Dendairy Pvt Ltd	Offshore loan	95,994.08	-
Dendairy	Raw materials	1,877,478.52	29,788.48
Devetail Consultancy	Crude Palm Oil	32,399.31	-
Dieftracmack Marketing Pvt Ltd	Offshore loan	176,510.52	176,510.52
Directory Publishers	Repairs and Maintenance,	122,513.00	122,513.00
Distell Limited	NRTA	22,857,263.08	-
DMD Health Care	Medical goods/pharmaceuticals	201,244.00	-
DMD Healthcare	Medical goods	14,117.00	-

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DMD Healthcare	Pharmaceuticals	333,767.10	-
Dmd Healthcare	Medical goods/pharmaceuticals	800.08	549,928.18
Dorota Trading	Offshore loan	2,256,097.69	2,048,00.00
Douglas St Ledger	Equipment	171,359.76	171,359.76
Drummond Ranching (Pvt) Ltd	Offshore loan	375,000.00	375,000.00
Duzzit Clothiers	Fabric, Freight charges	17,568.82	17,568.82
Eagle Italian	construction	179,000.00	-
ECOBANK ZIMBABWE	group shared services for ICT systems and support service	4,145,883.00	-
Ecobank		5,420,000.00	-
Ecobank Zimbabwe	Money Market Investments	17,000,00.00	8,769,053.50
Econet Wireless	Rights issue, Debenture proceeds	24,329,966.00	-
Econet Wireless	Dividends	48,304,401.65	-
Econet Wireless (Pvt) Ltd	Network Equipment	71,319,863.71	-
Econet Wireless (Pvt) Ltd	Core Network Equipment & Support Services	2,411,214.39	-
Econet Wireless (Pvt) Ltd	Car tracking platform	610,084.68	-

Econet Wireless (Pvt) Ltd	Revenue Assurance, Fraud mgnt Services	486,229.22	-
Econet Wireless Pvt Ltd	Software Licence fees and	1,161,121.69	-
Econet Wireless (Pvt) Ltd	Communication and network	1,788,526.15	-
Econet Wireless (Pvt) Ltd	Sim Packs	292,830.20	68,796,533.28
Edgars Store Ltd	Franchisee fees	540,000.00	540,000.00
Eduloan Zimbabwe	Offshore loan	757,581.09	757,581.09
Edurate Investments	Grain import	7,951,072.35	1,955,080.74
Edward C. Walton	Disinvestments from portfolio	95,000.00	-
EFT Corporation Zimbabwe (Pvt)	Offshore loan	318,330.00	318,330.00
Elimobil Enterprises Pvt Ltd	Earthmoving, Motorbike, Tractors	947,311.00	947,311.00
Emeritus Re-insurance	Insurance claims and premiums	574,940.36	-
Emeritus Reinsurance Pvt Ltd	Software License fees and premiums	209,255.64	-
Engen Petroleum	Offshore loan	21,696,847.11	-
Engen Petroleum Zimbabwe (Pvt)	Fuel & Late Payment Penalty Interest	22,694,444.00	-
Engen Petroleum	Offshore loan	10,674,508.80	-

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Engen Petroleum Zimbabwe (Pvt) Ltd		390,007.00	-
Engen Petroleum Zimbabwe Pvt	Lubricants	474,503.58	-
Engen Petroleum Zimbabwe (Pvt)	Fuel	6,650,275.39	30,809,229.00
Enterpro Pvt Ltd	Equipment and Software Licence	43,140.00	-
EOH Mthombo (Pty) Ltd	Non-Resident Transferable Account	3,709,312.35	3,707,300.35
Epiroc Zimbabwe	Machinery and Spares	195,856.00	-
Epiroc Zimbabwe	Offshore loan	3,120,660.00	-
Epiroc Zimbabwe (Formerly Atlas Corp)	Equipment/ Machinery and spares	579,058.00	-
EPIROC ZIMBABWE	Equipment	159,686.00	3,476,202.15
Ethiopian Airways	Corporate Non-Resident (Transitory) Account	12,095,209.97	-
Evans Shepherd (Pvt) Ltd	Importation of text books	18,550.00	18,550.00
Eversharp	Exercise book making machine	431,718.91	-
Eversharp	Various items	25,840.00	385,840.90
Extreme Oils	Offshore loan	2,277,614.67	2,277,614.67

Fastjet Zimbabwe Limited	Aircraft lease, and South Africa Home Affairs penalty	2,716,375.60	-
Fastjet Zimbabwe Ltd	Offshore loan	22,524,738.00	6,932,635.57
FBC Bank	Offshore loan	90,000,000.00	10,000,000.00
FBC Bank	Offshore loan	10,000,000.00	887,188.00
FBC Building Society	Loan	2,185,585.39	316,274.84
Fert - Map Pvt Ltd	Fertiliser	4,017,804.17	-
Fert-Map Pvt Ltd	Polywoven bag machine, Fertiliser	579,171.35	4,196,975.50
First Instrumentation	Factory spares, and Biometric System	45,427.52	45,427.82
First Mutual Reinsurance	Reinsurance	846,351.94	828,959.94
First Transfer Secretaries	Dividends	260,105.00	-
First Transfer Secretaries	Dividends	2,462,823.53	-
First Transfer Secretaries	Dividend	4,118,303.88	6,431,127.41
Flame Lily Venture Capital	Dividend	960,000.00	260,000.00
Fliknik Enterprises	Groceries	4,451,708.24	3,451,708.24
Flooktex Enterprises Pl	Raw materials and Spares	296,236.51	-
Flooktex Enterprises	Polyester Yarn and Fabrics	84,608.58	-

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Folkton Enterprises	Offshore loan	288,288.00	-
Folkton Enterprises	Offshore loan	143,025.00	-
Folkton Enterprises	Offshore loan	122,834.00	554,147.00
Food And Industrial Processors	Intermediate goods	35,250.00	-
Food and Industrial Processors	Importation of raw materials	1,860,385.87	1,895,635.87
Forever Living Products	Cosmetic Products	92,559.00	92,558.58
Fossil Agro (Pvt) Ltd	Agrochemicals	1,281,413.25	-
Fossil Agro (Pvt) Ltd	Agro Chemicals	4,866,340.00	-
Fourex Pvt Ltd	Equipment & machinery	17,446.50	-
Fourex	Equipment/ machinery	160,502.66	119,944.61
Frenkel Textiles Private Limited	Hotel bed linen and towels	244,240.66	244,240.06
Frolgate Technology (Pty) Ltd	Equipment and Machinery	289,074.88	-
Frugiparus (Pvt) Ltd T/a Food	Franchise Fees	79,135.71	79,135.00
GEC Zimbabwe	Transformers, income feeder, installation and commissioning of income feeder	265,464.13	240,728.22
Gill Godlonton & Gerrans	Debt Collection	446,000.00	-

Legal Practitioners			
Gill, Godlonton & Gerrans	Disinvestments proceeds	1,605,502.99	1,847,188.00
Gladmill Investments (Pvt) Ltd	Offshore loan	4,168,737.93	-
Gloworm Investments	Offshore loan	200,000.00	-
Golden Beams Developments(Pvt)Ltd	Offshore loan	750,000.00	-
Golden Horizon International Holding Ltd	Consumables and Spares	2,341,390.58	-
Golden Horizon International Holding Ltd Zimbabwe	Offshore loan	2,810,000.00	5,151,390.58
Gold Leaf Tobacco		324,301.64	-
Gonvil Investments	Loan	153,770.00	153,770.00
Grant Thornton	Offshore loan	272,936.11	272,936.11
Green Fuel	Offshore loan	800,000.00	-
Green Fuel	Offshore loan	38,000,000.00	33,750,000.00
Greenwood Parke Eye Centre	Medical Supplies	1,651.59	-
Gripton Investments	Mobile handsets	595,000.00	595,000.00
Guild Of Spar Grocers	Retainer: supply, support & maintenance	16,780.09	-
Guild of Spars	Services	15,120.20	15,117.20

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H&H Microfinance (Pvt) Ltd formerly Litreton Investments	Offshore loan	194,781.37	-
Halsman Enterprises (Pvt) Ltd	Floor polish	21,789.05	21,789.05
Hang-Up (Pvt) Ltd	Manufactured goods	228,916.63	-
Heliflex Investments (Pvt) Ltd	equipment	168,964.65	-
Heritage Park	Offshore loan	186,668.00	-
Holbud Ltd	Treasury Bills	34,378,296	-
Holbud Ltd	NRTA	304,000.00	39,574,158.07
Honda Centre	Offshore loan	768,334.14	-
Horizon Healthcare Services	Patient monitors	31,876.44	-
Hunyani Paper and Packaging Ltd	Paper reels and board, interest on overdue amounts	6,650,712.16	-
Hunyani Paper & Packaging	Paper reels, IT consultancy ,	2,100,912.08	-
Hunyani Paper & Packaging	Paper reels, IT consultancy ,	426,521.66	6,070,163.33
Hyderry Ltd	Loan	1,389,000.00	1,389,000.00
I Pack Zimbabwe Limited	Machinery and Equipment	193,925.00	-
Icecash International Limited	Software license fees	61,135.56	-

Ichthus Cranes Pvt Ltd	Grove Terrain Crane and accessories	1,085,150.00	1,085,150.00
IETC	Offshore loan	7,799,480.00	-
IETC Zimbabwe	Offshore loan	665,000.00	-
IETC Zimbabwe	Offshore loan	665,000.00	-
IETC	Offshore loan	2,415,000.00	-
IETC	Offshore loan	901,808.00	-
IETC	Offshore loan-repayable grant	386,666.67	3,701,288.00
Imara Capital	Dividends	783,049.43	783,049.43
Imperial Plastics (Pvt) Ltd	Machinery	52,000.00	52,000.00
Inamo Agriculture	Offshore loan	762,782.92	-
Inamo Investments	Offshore loan	1,321,956.52	-
Indale Truck And Trailer	Intermediate Goods	13,778.72	13,778.72
Indigo Plastics (Pvt) Ltd	Offshore loan	63,355.50	63,355.50
Indigovision Trading	LP Gas	448,122.17	314,587.81
Inductoserve (Pvt) Ltd	Earth Moving equipment	251,045.20	-
Inductoserve Private Limited	Tractors, Front end loaders, Tipper trucks	252,686.02	22,971.46

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Innovent Zimbabwe	Computers and accessories	808,680.00	808,679.70
Innscor Appliance Manufacturing	Offshore loan	173,862.00	-
Innscor Appliance Manufacturing	Packaging material and Freight	372,506.54	-
Innscor Appliance Manufacturing	Compressors and refrigerating	210,353.00	-
Innscor Appliance Manufacturing (Capri)	Compressors for refrigeration	105,106.90	-
Innscor Africa Limited	Baking ingredients	177,635.00	-
Innscor Africa Limited	Importation of baking aids	288,853.99	-
Innscor Africa Limited	Manufactured Goods	24,728.30	-
Innscor Africa Ltd T/A Baker'S Inn Bakeries	Machinery / Equipment	38,905.81	-
Innscor	Offshore loan	674,864.00	1,415,340.10
Institute Of Chartered Secretaries And Administrators In Zimbabwe.	Affiliation membership fees	52,761.00	52,761.47
Intaba Trading	Manufactured Goods	386,696.86	-
Intaba trading	Crop Care Chemicals,	145,162.40	-

	Grain Protectant		
Intaba Trading Pvt Ltd	Insecticides	93,056.86	145,162.40
Interroll Trading Private Limited	Bitumen	314,112.23	-
Intertoll Zimbabwe		137,511.32	137,920.82
Intertoll Zimbabwe		1,125,000.00	-
Edurate Investments Pvt Ltd	Offshore loan	15,098,192.21	-
Irvines Zimbabwe (Pvt) Ltd	Loan facility	3,136,164.00	1,786,164.00
Jiangxi International Zimbabwe	Second hand tipper trucks, loaders and excavator, and parts.	567,575.51	567,575.51
JK Motors	Fuel	172,760.00	172,760.00
Jin En International Zimbabwe	Offshore loan	4,557,750.00	4,557,750.00
Jonkershoek Trading T/A Tyre Chain Services Zimbabwe	Equipment-electric motor and crusher spares	38,853.24	-
Jonkershoek Trading T/A Tyre Chain Services Zimbabwe	Electric motor and crusher spares	349,338.41	388,191.65
JSS National Holdings	Manufactured goods and motor Vehicles	126,123.11	126,123.11

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July Twenty Eight	Software Fees	285,831.48	285,831.48
Kaltrade Private Limited	Manufactured Goods	232,940.82	-
Kamoso Investments	Fuel	555,615.29	555,615.29
Kanokanga And Partners	Immovable property proceeds	77,359.17	-
Kanokanga And Partners	Debt collection	24,714.07	-
Kanokanga And Partners	Debt collection	24,312.28	-
Kanokanga And Partners	Debt collected	18,813.50	-
Kanokanga And Partners	Debt collection	11,000.00	125,313.87
Kantor and Immerman	Funds collected on behalf of client	59,000.00	59,000.00
Kanu Equipment Zimbabwe	Equipment	46,231.10	-
Kanu Equipment Zimbabwe Pvt Ltd	Spares	199,474.63	-
Kanu Equipment	Offshore loan	263,010.00	502,663.94
Katundu Trading (Pvt) Ltd	Offshore loan	543,311.67	-
Koala Park	Raw Materials	58,964.00	58,964.00
KPMG Zimbabwe	Membership fees, IT share devices, marketing services, Professional and technical	926,804.49	-

KPMG ZIMBABWE	Services	293,257.58	1,220,62.07
Lafarge Cement Zimbabwe	Cement	1,114,981.94	-
Lafarge Cement Zimbabwe	Offshore loan	14,064,00.00	-
Lafarge Cement Zimbabwe	Loan Facility	1,005,882.00	13,233,860.23
Lake Harvest	Loan Facility	1,500,000.00	-
Larkcon Enterprises	Motor Vehicles & Freight Charges	227,673.00	227,673.00
Lazenbury Engineers (Pvt) Ltd T/A Toptech Computers	IT equipment	301,250.00	301,250.00
Lemonseed Investments	Assorted Goods	93,240.00	93,240.12
Le Sel Brands	Freight Charges	38,347.73	-
Le Sel Brands	Freight Charges for imported	159,451.24	-
Lesaffre Zimbabwe Pl	Factory Equipment	4,996,889.00	-
Lesaffre Zimbabwe	Offshore loan	45,190.49	5,042,079.49
Lethram Investments (Pvt) Ltd	Loan facility	44,368.79	44,368.29
Lilfordia School	Irrigation Equipment	12,550.00	12,550.00
Lion Stores	Household plastic ware	64,549.82	64,549.82
Livetouch Investments	Equipment/ Machinery, spares	6,931,426.12	6,381,426.12

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Lobels Bread	Raw materials	891,623.99	-
Lobels Bread Ltd	Raw Materials	788,875.51	301,904.43
Longman Zimbabwe	StanChart	91,373.31	91,373.31
Losave Investments	Materials	1,067,901.22	-
Losave Investments (Pvt) Ltd T/A Union Hardware	Building Materials	388,260.97	-
Losave (Pvt) Ltd t/a Investments Union	Building materials	23,679.40	-
Losave Investments (Pvt) Ltd T/A Union Hardware	Lamp Lights And Lamp Holders	19,321.00	-
Losave Investments (Pvt) Ltd t/a Union Hardware	Manufactured goods	1,486.19	443,960.65
Lospen Farming	Blueberry Plants	94,727.72	-
Lospen Farming	Pruning containers	52,155.00	-
Lospen Farming	Blueberry substrate	27,617.47	5,069.19
Lotus Stationery Manufacturers	Manufactured Goods	285,347.59	-
Lydon Properties	Rice and Popcorn	169,801.09	169,801.00
Ma Auto Suppliers	Motor Spares	55,953.59	55,953.59
Mac Brothers	Offshore loan	108,992.44	-

MAC Brothers Zimbabwe	Catering Supplies	22,873.13	-
Macoil Gas	Fuel	2,831,467.66	2,323,854.00
Mafuro farming	Loan	486,996.16	-
Major Meats Butchery	Offshore loan	96,775.00	-
Major Meats Butchery	Offshore loan	250,000.00	346,775.00
Malitech Holdings	Equipment	136,588.94	-
Mall Route Group	Importation of Bitumen	31,958.00	31,958.00
Mark Manolios Sports	Sports Apparel	13,996.92	13,996.62
Marsh Insurance Brokers Zimbabwe	Dividends	442,500.50	442,500.50
Masimba Industries Pvt Ltd T/A Masimba Holdings	Steel Products	461,146.62	-
Masimba Holdings	Directors Fees, Formwork, Tipper trucks	26,855.03	488,001.65
Matabeleland Clothing Manufacturers Pvt Ltd	Clothing Material	91,384.71	-
Matsa Energy Pvt Ltd	Gas	683,067.83	-
Mawere Sibanda Commercial Lawyers	Debt collection	802,444.00	685,344.00

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Mbudzi Peoples Market	Offshore loan	860,000.00	-
Medent (Pvt) Ltd	Respiratory wear/personal protective equipment	170,147.07	-
Mediwise Medical	Medical consumables	212,688.00	212,688.00
Medsure Healthcare PI	Health Equipment and	203,018.20	-
Medsure Diagnostics	Health Products	744,996.73	948,104.93
Medtech Education and Laboratory	Goods	61,215.18	-
Mega Market	Goods	467,667.07	-
Mega Market	Groceries and spare parts	12,521,608.00	-
Mega Pak Zimbabwe	Manufactured goods	27,065,793.16	-
Mega Pak Zimbabwe Pvt Ltd	Technical fees, Royalty, materials, closures, mould rentals, seal kit. machine spares	2,650,390.48	8,585,470.81
Mezzotin	Offshore loan	250,000.00	-
Mhishi Nkomo Legal Practice	Property sale proceeds	51,609.54	51,609.54
Microhub Financial Services	Offshore loan	562,345.00	-
Microhub Financial Services	Offshore loan	110,829.66	673,174.66

Microred Zimbabwe	Loan facility	898,233.43	-
Millchem Zimbabwe T/A Gardoserve (Pvt) Ltd	Loan facility	416,396.22	416,396.22
Minch Structures T/A Unifit	Offshore loan	348,000.00	348,000.00
Mining Industry Pension Fund	Pension benefits	884,073.04	884,073.04
Mota-Engil Engenharia	Offshore loan	11,686,146.00	-
Mota Engil Zimbabwe	Soares and explosives	2,438,542.64	-
Mota -Engil Zimbabwe	Offshore loans	9,811,146.00	23,635,835.53
Mountain King Investments	Air and oil filters	24,657.41	24,657.41
Mtetwa and Nyambirai	Property sale proceeds	204,740.22	204,720.00
Munella Enterprise	Fertiliser	95,355.00	-
Munella Enterprises	Maize and Soya	273,191.56	-
Munella Enterprises	Soya cake	128,274.00	-
Munella Enterprises	Import of Sulphate of Potash	58,252.68	496,820.56
Mutare Bottling Company (Pvt) Ltd	Coca Cola Soft Drinks Pet & Cans	58,505.40	-
Mutare Bottling Company	Concentrates & soft drinks	54,768.00	-
Mutare Bottling	Beverages	1,035,470.10	-

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Mutare Mart & Exchange (Pvt) Ltd	Household goods	136,998.00	136,998.00
N Bhadhela & Sons Wholesalers PI	Cosmetics And Lion Matches	232,162.95	-
N. Bhadella	Offshore loan	126,718.76	358,881.71
Naklon Trading	Splash car shampoo, Leather Care,	180,487.00	180,487.00
Nanavac Investments	Consumer goods	28,048.38	-
Nanavac T/A Choppies		23,443.71	-
Nanavac Investments T/A Choppies	Assorted Groceries	2,742,002.00	2,685,877.43
National Dairy Cooperative	Molasses	7,689.00	7,688.70
National Foods	Food additives	219,986.16	-
National Foods	Dividend	6,564,990.14	-
National Foods	Dividends	5,378,770.54	-
National Foods	Dividends	2,995,952.44	-
National Foods	Food	1,389,750.00	7,101,443.93
Natprint Zimbabwe	Importation of paper	240,259.06	-
Natprint Zimbabwe	Paper	353,275.72	-
Navro Investments T/A ArizaLTYRES	Imports of tyres	189,633.44	-

NEC Africa Pty	Non Resident Corporate Account balance	51,048.33	-
NEC Africa Pty	NRTA	611,540.00	462,588.33
Nedbank	Nostro-Gap	6,065,108.92	-
Nedbank Zimbabwe	Services and software licences	2,037,128.14	-
Nedbank Zimbabwe Limited	Management Services & Project Fees	4,356,684.69	5,942,945.79
Nestle Zimbabwe	Offshore loan	24,000,000.00	-
Nestle Zimbabwe	Goods and services	10,191,791.51	-
Nestle Zimbabwe (Pvt) Ltd	Various commodities, various fee types, machinery, salaries, laboratory charges	4,319,135.70	28,319,135.70
Nestorville Trading	Offshore loan	1,466,250.00	1,316,250.00
New Avakash	Pharmaceuticals	579,337.36	-
New Avakash	Medical Equipment and supplies	238,358.20	-
New Avakash International	Pharmaceuticals	3,509,361.21	-
New Avakash International	Pharmaceuticals	879,650.84	-
New Avakash International	Pharmaceuticals	487,772.00	-

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New Avakash International	Pharmaceuticals	554,122.90	-
New Avakash International	Pharmaceuticals	30,030.00	-
New Avakash International	Pharmaceuticals	249,754.13	-
New Avakash International	Pharmaceuticals	306,866.00	6,835,252.83
New Health 263	Software License fees	103,679.76	103,679.76
Nexus Open Systems	Computer Accessories	210,687.58	-
Nice Sky Development	Offshore loan	1,000,000.00	-
Nicozdiamond Insurance	Maintenance fees and Reinsurance premiums	33,507.70	33,507.70
NMB Bank	Loan facility	8,244,148.10	8,244,148.12
NMB Bank	Dividend	259,022.86	259,022.86
NMB Bank	Loan facility	4,196,263.94	4,196,263.94
NMB Bank	DSTV Subscriptions	2,373,511.10	2,373,511.00
NMB Bank	Offshore loan	1,400,000.00	1,400,000.00
Olam Zimbabwe	Rice	1,331,810.45	-
OLAM Zimbabwe	Rice	1,480,190.45	-
Olam Zimbabwe (Pvt) Ltd	Rice	1,031,188.45	-
Old Mutual	Disinvestment proceeds	50,000,000.00	-

Old Mutual Investment Group	Software fees	156,958.21	-
Old Mutual Zimbabwe Limited	Dividends	14,250,000.00	-
Old Mutual Zimbabwe Limited	Dividends	5,343,750.00	-
Old Mutual Zimbabwe Limited	Dividends	5,343,750.00	-
Old Mutual Zimbabwe Limited	Dividends	3,562,500.00	-
Old Mutual Life Assurance Company (Pvt) Ltd	Consultancy Fees	676,573.27	-
Old Mutual Shared Services	Services	1,752,957.02	-
Old Mutual Zimbabwe Limited	Dividends	3,562,500.00	84,380,697.05
Olivine Industries	Loan facility	208,000.03	-
Olivine Industries	Loan facility	3,405,536.59	-
Olivine Industries	Offshore loan	4,000,000.00	-
Olivine Industries (Pvt) Ltd	Raw Materials & Service Fees	10,726,444.00	11,601,042.33
Omnia Fertilisers	Raw Materials	35,700.00	-
Omnia Fertilizer (Pvt) Ltd	Raw Materials	9,050,950.84	-
Omnia Fertiliser	Raw materials	1,022,488.74	10,073,439.58
Origen Corporation	Fertiliser	372,558.48	372,558.48

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

Papyrus (Pvt) Ltd	Stationary	322,275.19	322,275.19		Piglow Investments	Paraffin, Petrol and diesel	2,874,509.00	2,674,509.00
Parrogate Investments	Amount erroneously deducted as interest on account	210,908.42		-	Pioneer Hi-Bred Zimbabwe	Goods and Services	1,275,728.16	1,275,728.16
Parrogate Zimbabwe	Maize	1,541,939.00		-	Pivotal Agro Services	Agro Chemicals	273,633.55	-
Parrogate Zimbabwe (Pvt) Ltd	Offshore loan	635,000.00	1,452,847.73		Pivotal Agro Services Pvt Ltd	Agro Chemicals	222,673.00	-
Partspanel T/A Motovac	Spares	614,996.23		-	Pivotal Agro-Services	Agrochemicals	40,258.85	536,565.40
Paulos Construction	Importation of earthmoving	2,828,000.00		-	Polyoak Packaging Private Limited	Packaging Material & Hire	1,121,46.26	1,121,486.26
Paynet	Service payments	770,298.38	684,962.52		PPC Limited	Offshore loan	23,989,593.52	-
Paynet Zimbabwe (Previously)	Loan facility	264,058.00	227,608.91		PPC Limited	Stanbic	431,621.92	-
Pedstock	Horticulture Material	10,564.00	10,564.00		PPC Zimbabwe Ltd	Rights issue proceeds	5,864,022.00	-
Pelgin Consultancy Services (Pvt) Ltd	Earthmoving Equipment and Machinery	2,039,659.97	2,039,659.97		PPC Zimbabwe Ltd	Outstanding Dividends	16,115,404.49	19,042,642.61
Peterhouse School	Loan facility	3,147.30	12,623.96		Premeier ServicesMedical	Loan facility	70,194.70	-
Pharmaceutical & Chemical	Pharmaceuticals	1,782,729.43		-	Premier Service Medical Aid Society	Medical services	1,221.17	895,051.71
Pharmaceutical and Chemical	Medical goods	3,306,144.12	3,306,144.12		Prime Seed Co (Pvt) Ltd	Vegetable seed, vehicle, royalties, laptop, and medical aid	300,500.93	-
Phoenix Consolidated Industries	Textile fabrics	14,403.55		-	Primtrim Enterprises	Rice and Wheat	4,719,605.65	4,219,605.65
Picktalk investments	Offshore loan	2,000,000.00		-	Probottlers	Royalty Fees	123,547.00	123,547.00
Picktalk investments	Offshore loan	1,472,000.00		-				

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Proclassic Trading	Tyres	896,909.36	896,909.36
Prof Cakana T/A The Haematology Centre	Equipment	130,880.25	115,615.05
Profeeds	Intermediate Goods	159,364.00	117,653.58
Proglo t/a Frowane Engineering	Mining laboratory consumables	105,831.98	105,831.98
Prosperous Day Investments	Chemicals	857,595.12	857,595.12
Provalley	Raw materials and spares	555,516.00	-
Provalley	Corn starch	1,441,013.00	-
Provalley Zimbabwe	Hardware products	1,006,549.94	-
Provalley Zimbabwe	Hardware Products	12,051,349.17	-
Pulse Medical	Pharmaceutical goods	640,109.99	-
Pure Oil	Offshore loan	1,438,157.75	-
Pure Oil	Offshore loan	1,284,847.96	-
Pure Oil (NMB Bank)	Agri Commodities and Finance	1,395,585.45	-
Pure Oil	Offshore loan	1,110,589.59	-
Pure Oil (NMB Bank)	Agri Commodities and Finance	538,905.00	-
Pure Oil	Offshore Loan	1,069,070.60	-

Pure Oil	Offshore loan	900,000.00	-
Pure Oil	Offshore loan	258,210.51	2,095,366.86
Qbic Corrugated Packaging	Test Liner	60,509.19	-
Quton Seed Company	Raw materials and Management services	314,824.00	-
Quton Seed Company	Raw materials and Management services	647,275.00	-
Quton Seed Company Pvt Ltd	Dividends	1,594,421.50	2,074,070.50
R & S Diesel Pro Pvt Ltd	Excavator, Engine rebuild spares, Diesel Generating set Software licence fees and technical fees,	255,929.57	200,000.00
Radar Holdings	Dividends	27,081.08	-
Ram Petroleum	Fuel	3,770,033.25	3,770,033.25
Rana Brothers	Crude Palm Oil	51,948.21	-
Rawfert	Transitory account	8,454,214.63	1,692,010.86
Real Gain Investments	Offshore loan	9,891,594.78	-
Redan Petroleum	Fuel and machinery	25,410,722.62	-

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

Redan Petroleum	Loan	2,300,78 0.00	27,711, 502.62		Romwe Farming	Loan	141,481. 37	185,000 .00
Refiloe	Fertilizers	38,184.8 7	38,184. 87		Rundale Investments	Mining Equipment	143,565. 36	10,911. 61
	Lubricants	833,141. 46	833,141 .46		S. A Airlink	Airfares	1,022,22 3.36	114,501 .00
Reinforced	Steel Contractors	Raw	Material s,		SADC Finance Resource Centre	Non-Resident Corporate Account Balance	19,443.3 0	19,443. 30
Regional Data Solutions	ICT Goods	15,100.1 2	15,100. 12		Saiwit Holdings	Services	14,792.0 0	-
Rema Tip Top (Pvt) Ltd	Equipment and spares	1,280,21 4.32	1,280,2 14.32		Saiwit Technology	Fertilizer	391,582. 00	14,792. 36
Remoggo Mauritius Pcc	Offshore loan	10,167,1 66.00	8,667,1 65.00		Sakunda Holdings	Hire Fees	9,314,13 5.28	-
	Investments T/A Exclusive	CADAC Gas stoves, cylinders and accessories, Warehousing rental, Transportation services	343,560 .03		Sakunda Holdings	Lease Ch arges for Electricity Generation	34,323,6 90.77	43,637, 826.05
Restinered Investments	CADAC Inventory	33,700.0 0	377,259 .85		Saltis Consulting	Offshore loan	389,760. 00	-
Retvic Pvt Ltd/Tiger Wheel	Tyres	2,298,22 0.00	-		Saltis Consulting (Pvt) Ltd	Offshore loan	301,103. 09	-
Rex Madamombe	Loan	20,000.0 0	20,000. 00		SAMZIM	Cell phone accessories and electronic gadgets	664,520. 14	664,520 .14
Ribitiger T/A Triangle Tyres	Importation of Household goods and Tyres	187,855. 15	187,855 .15		Sandvik Mining And Construction	Dividends	9,653,02 2.00	-
Riteon Investments	Greenhous e plastics,	432,966. 69	432,966 .00		Sandvik Mining Zimbabwe	Mining Equipment	315,007. 07	9,968,0 29.07
Romwe Farming	Offshore loan	43,518.6 3	-		Scanlen & Holderness	Computer hardware	213,479. 63	-
					Scanlen and Holderness	Computer Hardware	224,268. 51	-
					Scanlen And Holderness	Debt Collected from Trojan	459,448. 07	-

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

Scanlen and Holderness	Remittances of amount collected from debtor	83,304.67	-
Scanlen and Holderness Solicitors	Debt recovery	4,182.00	984,682.88
Scanlink Group	Offshore trade credit facility	1,149,029.00	-
Schweppes Zimbabwe	Spares and annual audit fees	31,752.00	-
Schweppes Ltd	Raw materials	4,662,962.02	-
Schweppes Ltd	Spares	95,886.09	-
Schweppes Ltd	Raw materials	1,048,337.32	-
Schweppes Zimbabwe Limited	Concentrates	717,696.00	-
Schweppes Zimbabwe Limited	Purchase of preforms, juice, shrink wrap and juice	1,485,841.59	5,830,931.02
Sedan Chair Trading	Steel	38,595.08	-
Sedan Chair Trading	Raw Materials	45,392.00	-
Sedan Chair Trading (Pvt) Ltd	Iron, steel	65,442.04	97,922.04
SEEDCO LTD	Loan	2,239,991.00	-
Seed Co Limited	Reimbursement of payment	1,282,138.13	-
Seedco Zimbabwe Limited	Valley Irrigation, Agrico and Seedco International Botswana	867,334.92	-

Seedco Zimbabwe Limited	Importation of goods	7,319,179.87	2,187,915.93
Senja Zimbabwe	Offshore loan	1,518,500.00	1,518,500.00
Serviettes (Pvt) Ltd	Imports - serviettes rolls	11,962.92	11,962.92
SF Musiiwa	Medical Treatment	17,223.19	17,223.19
Shamid Trading (Pvt)Ltd	Imports - stamp material	8,490.38	8,490.38
Sinharaja Trading Private Limited	Parallel shaft electric starter	5,023.46	-
Sinharaja Trading (Pvt) Ltd	Irrigation machinery parts andapparatus	20,166.53	25,189.99
Sky Pharmaceuticals	Medical Goods/Pharmaceuticals	211,911.59	-
Sky Pharmaceuticals	Intermediat e goods	116,121.09	-
Sky Pharmacetic al	Medical goods	114,186.00	-
SMM Instruments	Spares	322,825.35	-
Solar Farming	Stock Feed additives	10,308.00	10,308.00
Solutions For Africa (Pvt) Ltd	Prepaid Electricity Meters	240,945.21	-
Sondelani Ranching	Poultry Equipment	38,000.00	-
Sondelani Ranching (Pvt) Ltd	Loan facility	350,000.00	-

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

Sondelani Ranching (Pvt)	Loan facility	199,562.00	-
Sondelani Ranching (Pvt)	Loan facility	68,458.94	38,000.00
South African Airways	Corporate Non-Resident (Transitory Account)	9,300,000.00	-
Southern Sunshine Link	Offshore loan	802,000.00	500,000.00
Southsea Investments	Live birds	76,594.88	76,594.88
Sparkle Beverages	Preforms And Labels	151,616.50	151,616.50
Stanbic Bank	Nostro Funding Gap	55,978,659.45	1,810,631.20
Stand Five Four Nought	Offshore loan	169,407.00	-
Standfast Contractors	Water purification filters	21,120.71	21,120.71
Steel Brands	Plant/machinery and raw materials	288,025.18	288,025.18
SteelForce Holdings	Soap bars	607,616.95	-
Steelforce Holdings Pvt Ltd	Raw Materials	1,544,617.83	-
Steelforce Holdings (Pvt) Ltd	Raw materials	167,688.07	2,319,922.85
Steelbase Private Limited	Steel products	258,231.09	-
StenHop Investments	Raw Materials	1,673,543.56	1,641,143.56
Stoneark Investment	Tyres	1,238,929.66	1,238,929.66

Storm Energy	Fuel	118,492.42	-
Storm Energy	Offshore loan	685,125.75	-
Storm Energy Ltd	Non-Resident Transitory Account	248,873.52	1,099,292.17
Strauss Zimbabwe	Fuel	3,243,618.00	3,243,618.00
Sullivans Engineering	Offshore loan	29,161.68	29,161.68
Surface Wilmar	Raw Materials	11,673,569.05	-
Surface Wilmar	Offshore Loan	9,630,509.26	-
Surface Wilmar	Offshore Loan	5,569,357.31	6,973,711.39
Sustainable Afforestation	Fertiliser and Herbicides	153,792.00	153,792.00
Swiss Agri	Treasury Bills	5,573,547.59	4,873,547.59
Taita Trading	Tyres	155,430.00	-
Taita Trading	Tyres	96,991.91	252,422.91
Takura Capital	Disinvestment proceeds	754,600.00	-
Takura Capital	Disinvestment proceeds	489,040.00	-
Takura Capital	NMB	590,239.00	1,733,879.00
Tamba Tamba Zimbabwe	Offshore loan	136,501.74	136,501.74
Tanmac Trading (Pvt) Ltd	Offshore loan	487,761.11	-

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Tanmac Trading (Pvt) Ltd	Offshore loan	442,404.59	-
Tarcon (Pvt) Ltd	Offshore loan	1,567,891.00	-
Tarcon	Offshore loan	1,693,079.36	-
Tazchem Zimbabwe	Mining and Water Treatment Chemicals	100,165.00	-
Technosphere Energy Services	Technical Support	74,979.00	-
Texcolour	Equipment/ Machinery	48,480.00	48,480.00
Thankful Toddlers	Diapers	51,852.53	51,852.53
The Cotton Company of Zimbabwe	Offshore loan	12,000,00.00	11,850,000.00
The Estate Manager PVL	loan	2,031,687.00	-
The Jupiter Drawing	Marketing and Advertising	320,463.88	-
The Zimbabwe Bata Shoe Company	Footwear And Services	1,767,533.29	-
The Zimbabwe Bata Shoe Company	Goods and services	3,433,143.29	1,767,533.29
The Zimbabwe Hosiery Company	Yarn natural and Tex poly-viscose yarn	3,148.76	-
Thumpmark Investment	Offshore loan	1,271,434.85	-
Thumpmark Investment	Offshore loan	1,225,179.09	-

Thumpmark Investment	Offshore loan	1,208,312.20	-
Tineo Enterprises	Manufactured Goods	2,946,016.62	-
Tineo Enterprises	Importation of truck spares, equipment	148,967.75	-
Tineo Enterprises	Passenger and truck tyres	101,663.39	-
TM Supermarkets	Dividends	1,629,250.00	-
Tobereau Investments T/A Food Lovers Market	Franchise Fees	55,630.45	-
Toipaz Investments (Pvt) Ltd	Chemicals	2,759.19	-
TOIPAZ Investments	Offshore loan	23,232.45	25,991.64
Tokionet	Machinery and equipment	161,260.91	135,359.72
Total Zimbabwe	Fuel and services	3,390,669.29	-
Total Zimbabwe	General Support services	193,842.56	-
Total Zimbabwe (Pvt) Ltd	Dividends	11,168,850.11	-
Total Zimbabwe Pvt Ltd	Fuel and Services	26,776,742.90	-
Total Zimbabwe Pvt Ltd	Lubricants	58,208.05	-
Total Zimbabwe Pvt Ltd	Lubricants	1,741,306.23	-

# ICAZ STUDENT LEGISLATION HANDBOOK - FINANCE ACT

Total Zimbabwe	Insurance claims and premiums	42,717.87	-
Total Zimbabwe (Pvt) Ltd	Dividends	4,320,000.00	36,834,427.46
Toyota Zimbabwe	Motor vehicle, spares, software licence fees and dividends	4,969,030.79	-
Toyota Zimbabwe	Motor vehicle, spares, software licence fees and dividends	2,148,540.89	-
Toyota Zimbabwe	Dividends	343,912.41	7,461,484.09
Trade Kings Zimbabwe	Importation of Beverages	2,768,970.82	-
Trade Kings Zimbabwe	Raw materials and equipment	31,747.85	-
Tradekings Properties (Pvt) Limited	Offshore loan	24,745.00	-
Tradekings Zimbabwe Pvt Ltd	Construction materials and equipment	159,113.44	-
Tradekings Zimbabwe	Offshore loan	443,546.55	832,051.98
Tredcor Zimbabwe	Offshore loan	326,924.04	0.04
Tregers Holdings	raw materials	3,150,711.90	-
Tunsgate Properties	Offshore loan	1,108,673.23	-
Tunsgate Properties	Offshore loan	1,173,507.92	-

TRIOMF Fertilisers	Offshore loan	203,000.00	-
Turbo Mining	Offshore loan	1,475,622.00	1,125,206.71
Unicorn Trading	Goods Import	847,707.69	-
Unicorn Trading (PVT) Ltd	Loan facility	253,384.18	-
Unicorn Trading (PVT) Ltd		1,370,679.00	-
Unicorn Trading (PVT) Ltd	Loan facility	157,494.75	-
Unicorn Trading (PVT) Ltd	Loan facility	134,166.65	-
Unicorn Trading (PVT) Ltd	Loan facility	53,666.66	-
Unilever	Intermediate Goods	1,306,970.64	-
Unilever Zimbabwe	Raw Materials	85,887.92	1,392,858.56
UNISTREAM S Properties (Pvt) Ltd	Offshore loan	41,144.00	41,144.00
United Refineries Limited	Raw Materials	677,316.00	-
United Refineries Limited	Crude degummed Soya Bean Oil	145,331.20	-
United Refineries Ltd	Offshore loan	6,292,927.54	-
United Refineries Limited	Raw Materials	30,786.00	-
United Refineries Ltd	Offshore loan	1,818,304.60	8,933,879.80

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Unitrans Passengers	NRTA	456,515.35	456,515.35		Warehouse Trading	Offshore loan	67,687.35	168,138.37
Uniturtle Industries Zambia Limited	Non-Resident Transitory Account	117,190.00	116,910.12		Washrock investments	Equipment	13,492,089.00	13,492,089.00
Univern Enterprises t/a Southern Region Trading	Systems	18,301,226.20	17,451,226.20		Waterwright Irrigation Pvt Ltd	Importation of pivots and accessories	131,047.48	131,047.48
Untu Capital	Financial Services Guarantee	51,598.54	-		Well-Dent Warehouse	Importation of Dental Milling machine	32,514.08	-
Untu Microfinance	Software Setup and installation	9,075.00	60,673.54		Well-Dent warehouse	Dental Equipment	5,007.00	5,800.00
Uppertrans	Offshore loan	1,266,667.00	-		Wepta Engineering	Spares	5,458.13	-
Vakayi Capital	Loan	263,166.80	263,166.89		Whirlwyn Trading	Manufactured Goods	231,629.55	-
Varichem Pharmaceuticals	Offshore loan	3,840,747.27	-		Willowton Group Zimbabwe (Pvt) Ltd	Raw Materials & Royalties	2,565,693.59	-
Veritran Pvt Ltd	Software Licence Fees	18,716.12	-		Willowton Zimbabwe	Raw Materials	13,248,764.00	13,214,458.52
Vilmorin & CIE	Dividends	1,302,794.80	1,302,794.80		Windmill Pvt Ltd	Port Clearance charges	346,484.15	-
Vita Nova	Machinery and equipment	4,474.91	4,474.91		Windmill (Pvt) Ltd	Ammonium Nitrate fertilizer	5,980,554.36	-
W and M Enterprises Pvt Ltd	Sulphuric acid and oleum	15,133.91	13,352.84		Windmill (Pvt) Ltd	Loan facility	15,013,167.11	-
Wardstore Enterprises T/A Taita Trading	Import of tyres	91,180.36	91,180.36		Windmill (Pvt) Ltd	Urea	3,529,367.50	-
Warehouse Trading	Offshore loan	75,244.56	-		Windmill (Pvt) Ltd	Fertilizers	148,123.26	-
Warehouse Trading	Beverages	25,506.46	-		Windmill (Pvt) Ltd	Urea	4,186,586.00	-
					Windmill (Pvt) Ltd	Intermediate goods	16,626.00	5,071,455.47
					Woble	Offshore loan	4,710,477.00	4,710,477.00

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World Bicycle Relief	Loan facility	558,220.75	558,220.75
Xcmg Zimbabwe Pvt Ltd		5,637,593.06	5,360,437.00
Yatakala Trading	Goods importation	15,394.54	-
Yatakala Trading (Pvt) Limited T/A Viking Hardware	Backhoe loader	57,350.00	-
Yatakala Trading (Pvt) Limited T/A Viking Hardware	Mining Compressors	29,067.81	-
Yatakala Trading (Pvt) Ltd	Freight charges	59,900.00	159,265.28
Yellyn Pvt Ltd	V-Belts	44,120.00	44,120.00
Zada Construction	Construction Vehicles	840,984.00	840,984.00
Zambezi River Authority	Loan Facility	2,983,800.00	2,983,800.00
ZARNET	Loan	21,360,718.00	18,700,914.00
ZB Bank Limited	Software Licence Fees	8,600.00	-
ZB Bank Limited	Software Licence Fees	56,046.00	-
ZB Bank Limited	Software Support Fees	39,956.25	-
ZB Bank Limited	Software Support Fees	10,195.70	-
ZB Bank Limited	Prepaid VISA cards	94,483.76	-

Zb Bank Ltd	Software license fees	137,350.29	-
ZB Bank	Services	514,000.00	514,000.00
ZFC Limited	Raw Materials	530,313.20	2,590.00
Zimbabwe Agricultural Development Trust	Grant	8,000,000.00	7,320,00.00
Zimbabwe Microfinance Fund	Offshore loan	3,000,000.00	-
Zimbabwe Online (ZOL)	Fibre Optic, Cable 2 Core, Travel Recharge, Consultancy Training	31,480.00	31,480.00
Zimbabwe Pharmaceuticals	Silver Sulphadiazine	8,825.00	-
Zimbabwe Pharmaceuticals	Organic compounds and mouth fresheners strips	44,070.00	52,895.00
Zimbabwe Shipping Services	Remittance of funds collected – Freight Charges	3,384,623.00	3,384,623.00
Zimbabwe Trade Exchange	Raw Materials	46,163.00	-
Zimbabwe Trade Exchange	Loan	88,671.00	134,833.85
ZIMBO Tools	Hardware	54,110.00	54,110.14
Zimind Publishers	Offshore loan	201,858.54	201,858.54
Zimkings Trading	Imports of Beverages	17,365,299.76	13,737,503.23

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Zundine Trading	Medical equipment	1,000,59 7.36	107,641 .46
Zurea Investments	Packaging Material	53,000.0 0	-
Zurea Investments PVT LTD	Packaging Material	166,350. 00	219,350 .00
Zuva Petroleum	Loan and Loan guarantee fee	30,695,4 94.44	-
Zuva Petroleum	Petroleum Products	20,588,1 05.69	20,584, 722.25
Zvemvura Trading	Cosmetic Products	1,540,68 8.88	851,539 .91
ZX Fuels (Pvt) Ltd	Petroleum products	7,404,92 5.86	-
Procomm pvt ltd		734,314. 42	734,314 .42
FIRST CAPITAL GAP	FIRST CAPITAL GAP	15,723,7 59.02	10,511, 834.93
STANDARD CHARTERED	STANDARD CHARTERED GAP	18,132,1 29.65	8,121,1 80.98
CBZ GAP	CBZ GAP	137,917, 784.21	127,444 ,838.17
CANNON MOTORS/AMC	CANNON MOTORS/AMC NISSAN	180,031. 00	-
MICHAEL MUTSAGO	MICHAEL MUTSAGO	550,100. 56	-
CERES FOODS	CERES FOODS	374,624. 11	-
CURVERID TOBACCO	CURVERID TOBACCO	7,373,20 4.38	-
EAGLE ITALIAN	EAGLE ITALIAN	1,600,18 0.00	50,000. 00
MUPINDU LEGAL PRACTITIONER	MUPINDU LEGAL PRACTITIONER	95,000.0 0	-

RS/ MAPFUMO	ERS/ MAPFUMO		
TIAN ZE	TIANZE	7,467,45 9.22	-
VARUN BEVERAGE S	VARUN BEVERAGES	11,929,8 12.81	-
ZIMPAPERS /KALIYUGA	ZIMPAPERS /KALIYUGA INVESTMENTS	442,674. 89	-
PROFERT ZIM	PROFERT ZIM (litigation reimbursed)		-
AFREXIMBANK	AFREXIMBANK	190,354, 906.55	-
CAAZ AIR NAMIBIA KENYA AIRWAYS SOUTH AFRICAN AIRWAYS NHS FGN		184,707, 936.34	108,563 ,628.12
ASP MARKETING	ASP MARKETING	30,200,0 00	17,300, 000.00
NAMPACK INTERNATIONAL	NAMPACK INTERNATIONAL	56,988,0 88,24	52,988, 088.24
HAUWEI	HAUWEI	123,062, 597,20	123,062 ,597.17
SAVINGS BOND	SAVINGS BOND	4,040,43 9.10	4,040,4 39.10
TRADE & DEVELOPMENT	TRADE & DEVELOPMENT	510,174 ,906.33	510,174, 906.33
<b>TOTAL</b>		<b>3,770,6 07,621. 18</b>	<b>2,501,81 2,439,77</b>

## **ESTATE DUTY ACT**

# ICAZ STUDENT LEGISLATION HANDBOOK - ESTATE DUTY ACT

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# **Chapter 23:03**

## **ESTATE DUTY ACT**

*Acts 4/1967, 22/2001, 17/2004, 29/2004, 8/2005 and 16/2007.*

**AN ACT to impose an estate duty upon the estates of deceased persons; and to provide for matters incidental thereto.**

[Date of commencement: 1st February, 1968.]

## PART I PRELIMINARY

### 1 Short title

This Act may be cited as the Estate Duty Act [Chapter 23:03].

### 2 Interpretation

(1) In this Act—

[Administration assigned to the Minister of Finance, Economic Development and Investment Promotion by SI 197/2023 w.e.f. 20<sup>th</sup> October, 2023.]

**“acquire”**, in relation to property, includes any acquisition of that property which is subject to a condition that it shall not take effect except upon the happening of some future event, certain or uncertain;

**“administration and distribution account”** means the account required to be rendered by the executor to the Master or the Assistant Master in accordance with the Administration of Estates Act [Chapter 6:01] in respect of the administration of the estate of which he is the executor;

**“child”**, in relation to any person, includes any person adopted by him—

(a) under any enactment; or

(b) under the law of any country other than Zimbabwe, if the adopted person is under such law accorded the status of a legitimate child of the adoptive parent and the adoption was made at a time when the adoptive parent was ordinarily resident in such country;

**“company”** means any body or association incorporated or registered under any law relating to companies or insurance or under a special law;

**“duty”** means estate duty payable under and in accordance with this Act and includes for the purposes of proviso (iii) to the Schedule to Chapter VI of the Finance Act [Chapter 23:04], in relation to the estate of any first-dying person referred to in that proviso who died **before the 1st February, 1968**, any estate duty payable under the Death Duties Act [Chapter 146 of 1963];

**“dwelling”** means a building or any part of a building, which is used wholly or mainly for the purpose of residential accommodation;

**“executor”** means any person to whom letters of administration have been granted by the

Master or the Assistant Master in respect of the estate of a deceased person under any law relating to the administration of estates, and includes a person acting or authorized to act under letters of administration granted outside Zimbabwe but signed and sealed by the Master or the Assistant Master for use within Zimbabwe, and, in any case where the estate is not required to be administered under the supervision of the Master or the Assistant Master, the person administering the estate;

**“family company”**, in relation to a deceased person, means any company (other than a company whose shares are quoted on a recognized stock exchange) which at any relevant time was controlled, or capable of being controlled, directly or indirectly, whether through a majority of the shares thereof or any other interest therein or in any other manner whatsoever, by the deceased or by the deceased and 1 or more of his relatives;

**“family home”** subject to subsection (2), means in relation to a deceased person—

(a) a dwelling which is proved to the satisfaction of the Master—

(i) to have been the sole or main residence of that person and additionally, or alternatively, his spouse, throughout the period that he owned it; or

(ii) to have been the sole or main residence of that person and additionally, or alternatively, his spouse, for a period of **4 years** or more immediately before the date of his death, or such shorter period immediately before the date of his death as the Master considers reasonable in all circumstances; or

(iii) to have been registered by that person as the sole or main residence of himself and additionally, or alternatively, his spouse even though he was prevented from residing in it as provided in subparagraph (i) or (ii) in consequence of his employment or for such other cause as the Master considers reasonable in all the circumstances;

and

(b) any **land**, whether or not it is a piece of land registered as a separate entity in a Deeds Registry, which—

(i) was the property of the person concerned at the date of his death; and

(ii) surrounds or is adjacent to the dwelling referred to in paragraph (a); and

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(iii) at the date of the person's death was used primarily for private or domestic purposes in association with the dwelling referred to in paragraph (a); and

(iv) does not exceed 2 hectares or such larger area as the Master, having regard to the size and character of the dwelling referred to in paragraph (a), is satisfied is required for the reasonable enjoyment of the dwelling as a family home;

and

(c) any garage, storeroom or other building or structure which—

(i) was the property of the person concerned at the date of his death; and

(ii) forms part of or is attached to or otherwise associated with the dwelling referred to in paragraph (a); and

(iii) at the date of the person's death was used primarily for private or domestic purposes in association with the dwelling referred to in paragraph (a);

**"Master"** and **"Assistant Master"** have the meaning given by the Administration of Estates Act [Chapter 6:01];

**"relative"**, in relation to any person, means the spouse of such person or anybody related to him or his spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child referred to in the definition of **"child"** and any other person, such child shall be deemed to be related to its adoptive parent in the first degree of consanguinity;

**"stocks or shares"**, in relation to any company, means any part of the share capital of that company and includes any debenture or debenture stock or any other like form of marketable security.

(2) For the purpose of the definition of **"family home"** in subsection (1), where a deceased person was a member of a company, partnership or other association and, by virtue of his membership, had a right to occupy a particular flat, apartment or unit of residential accommodation in a building owned by the company, partnership, or association, that flat, apartment or unit of residential accommodation shall be deemed to have been his property for so long as he had the right to occupy it.

## PART II ESTATE DUTY

### 3 Levy of estate duty

(1) There shall be charged, levied and collected in respect of the estate of every person who dies on or **after the 1st February, 1968**, a duty to be known as estate duty:

Provided that no such duty shall be charged, levied or collected in respect of the estate of a person who dies on or after the **18th April, 1980**, and who is designated as a **hero** in terms of section 3 of the National Heroes Act [Chapter 10:16].

(2) Estate duty shall be charged upon the dutiable amount of the estate calculated in accordance with this Act, and shall be levied at the rate fixed by Chapter VI of the Finance Act [Chapter 23:04].

### 4 What constitutes an estate

(1) For the purposes of this Act, the estate of any person shall consist of—

(a) all property of that person as at the date of his death which is defined in subsection (2) and which was acquired by that person on or **after the 1st January, 1967**; and

(b) all property which, in accordance with subsection (3), is deemed to be property of that person at the date of his death; and

(c) all property of that person as at the date of his death which is defined in subsection (6) and which was acquired by that person **before** the 1st January, 1967.

(2) For the purposes of this section, except subsection (6)—

**"property"** means any right in or to property, movable or immovable, corporeal or incorporeal, and includes—

(a) any fiduciary, usufructuary or other like interest in property (including a right to an annuity charged upon property) held by the deceased immediately prior to his death; and

(b) any right to an annuity (other than a right to an annuity charged upon any property) enjoyed by the deceased immediately prior to his death which accrued to some other person on the death of the deceased;

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but, where the deceased was not ordinarily resident in Zimbabwe at the date of his death, does not include—

- (i) any right in immovable property situate outside Zimbabwe; or
- (ii) any right in movable property physically situate outside Zimbabwe; or
- (iii) any debt not recoverable or right of action not enforceable in the courts of Zimbabwe; or
- (iv) any goodwill, licence, patent, design, trade mark, service mark, copyright or other similar right not registered or enforceable in Zimbabwe or attaching to any trade, business or profession in Zimbabwe; or
- (v) any stocks or shares held by him in a body corporate which is not a company; or
- (vi) any rights to any income derived from any property referred to in subparagraphs (iii) to (v).

(3) Property which is deemed to be property of the deceased includes—

(a) so much of any amount due and recoverable under any policy of insurance which is a “**local policy**” as defined in the law for the time being in force relating to insurance, or, in the case of a deceased who was ordinarily resident in Zimbabwe at the date of his death, under any other policy of insurance, upon the life of the deceased, as exceeds the aggregate amount of any premiums or consideration proved to the satisfaction of the Master to have been paid by any person who is entitled to the amount due under the policy, together with interest at **9% per annum** calculated upon such premiums or consideration from the respective dates of payment to the date of death:

Provided that this paragraph shall not apply in respect of—

- (a) a policy the amount due under which is recoverable by the surviving spouse or child of the deceased under a duly registered antenuptial or postnuptial contract; or
- (b) so much of any amount due and recoverable under a policy which is owned by a person other than the deceased as is used to meet an obligation of the owner of the policy arising as a result of the death of the deceased; or
- (c) any amount due and recoverable under a policy which has been ceded by the deceased in his lifetime *bona fide* and for full consideration, otherwise than as security for

payment of any sum of money or the fulfilment of any other obligation; or

(d) any amount due and recoverable under a policy effected **before the 1st January, 1967**, by a person other than the deceased; or

(e) so much of any amount due and recoverable under a policy effected **before the 1st January, 1967**, as bears the same proportion to the total amount so due and recoverable as the amount of the premiums paid by some person other than the deceased bears to the total amount of the premiums paid in respect of that policy; or

(f) any amount due and recoverable under a policy which, in the opinion of the Master, was taken out by the deceased for the purposes of paying duty in terms of this Act, to the extent that such amount does not exceed the duty payable;

(b) any property donated by the deceased under a *donatio mortis causa*;

(c) any property **exceeding \$0.000000000000000000000002** in value donated under a donation *inter vivos* made before the 1st January, 1967, unless such donation was made and took effect more than 2 years before the date of the death of the deceased;

[donation adjusted from \$200 to the above figure by the removal of 25 zeros in terms of Acts 12/06 and 3/09-Editor.]

(d) any property exceeding **\$0.000000000000000000000000** in value in any 1 calendar year donated under a donation (other than a donation to a spouse under a duly registered antenuptial or postnuptial contract or a *donatio mortis causa*) made on or after the 1st January, 1967—

[amended by Act 8 of 2005 with effect from the 1<sup>st</sup> January, 2006, and adjusted from \$10 million to the above figure by the removal of 25 zeros in terms of Acts 12/06 and 3/09-Editor.]

(i) in the case of a deceased not referred to in subparagraph (ii), by the deceased; or

(ii) in the case of a deceased who was married in community of property, by the deceased or by a spouse who was so married to the deceased to the extent to which the property would, if it had not been donated, have formed part of the estate of the deceased; or

(iii) by a body corporate, if such property was disposed of under any donation made by it at the instance of the deceased and if, having

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regard to the circumstances under which that donation was made by such body corporate, the Master is of the opinion—

A. that it was not made in the ordinary course of the normal incomeearning operations of that body corporate; and

B. that the selection of the donee who benefited by the donation was made at the instance of the deceased;

unless—

I. such donation is deemed to have been made more than 5 years before the date of death of the deceased donor; or

II. such donation is deemed to have been made to a person who predeceased the donor;

(e) property (being property not otherwise chargeable under this Act or the full value of which is not otherwise required to be taken into account in the determination of the dutiable amount of the estate) which the deceased was, immediately prior to his death, competent to dispose of for his own benefit or for the benefit of his estate other than property which is not included in subsection (6) and which was acquired by the deceased before the 1st January, 1967.

(4) For the purposes of paragraph (d) of subsection (3)—

(a) any disposition (other than a disposition made before the 1st January, 1967) whereby any person becomes entitled to receive or acquire any property for a consideration which, in the opinion of the Master, is not a full consideration for that property shall, to the extent to which the fair market value of the property at the date upon which the disposition took effect exceeds the said consideration, be deemed to be a donation;

(b) any disposition of property to a trustee to be administered by him for the benefit of any beneficiary mentioned in the trust deed, shall be deemed to be a donation of that property to the trustee;

(c) a donation shall only be deemed to have been made on the date and to the extent that the donee became entitled absolutely to enjoy any rights under the donation without any control or reservation of rights (including the right to revoke or vary any rights conferred by the donation) by the donor or any person acting on the instructions of the donor and such rights have in fact been continuously enjoyed by the donee from such date up to the date of death of the donor;

Provided that, in the case of a donation between spouses, the donor shall not, merely by reason of the existence of the rule of law which provides that donations between spouses are revocable until the death of the donor, be deemed to have reserved any rights under the donation;

(d) any consideration, whether in cash or otherwise and whether or not described as a premium, paid or given by the deceased on or **after the 1st January, 1967**, in respect of shares issued to him by any family company shall, to the extent that it exceeds the nominal value of such shares, be deemed to be property donated by the deceased to such company.

(5) For the purposes of paragraph (e) of subsection (3)—

(a) the term "**property**" shall be deemed to include the profits of any property;

(b) a person shall be deemed to have been competent to dispose of any property if—

(i) he had such power as would have enabled him, if he were *sui juris*, to appropriate or dispose of such property as he saw fit, whether exercisable by will or power of appointment or in any other manner; or

(ii) under any deed of donation, settlement, trust or other disposition made by him he retained the power to revoke or vary the provisions thereof relating to such property;

and the power to appropriate, dispose of, revoke or vary as aforesaid shall be deemed to exist if the deceased could have obtained such power directly or indirectly by the exercise, either with or without notice, of power exercisable by him or with his consent;

(c) the expression "**property which the deceased was immediately prior to his death competent to dispose of**" shall not include the share of a spouse of a deceased in any property held in community of property between the deceased and such spouse immediately prior to his death.

(6) For the purposes of paragraph (c) of subsection (1)—

**"property"** means—

(a) any immovable property situate in Zimbabwe;

(b) any movable property physically situate in Zimbabwe;

(c) any limited interest in any such immovable or movable property;

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(d) any debt which is secured upon immovable property by bond registered in Zimbabwe;

(e) any debt recoverable or right of action enforceable in the courts of Zimbabwe;

(f) any stocks or shares in any company and any stocks of the Government or of any corporation or local authority within Zimbabwe, if any transfer whereby any change of ownership in such stocks or shares is effected is required to be registered in Zimbabwe;

(g) where the deceased was ordinarily resident in Zimbabwe at the date of his death, any stocks or shares in any company and any stocks of the Government or of any corporation or local authority within Zimbabwe, whether those stocks or shares are transferable by delivery or by registration, and wheresoever such registration may be required to be effected;

other than any of the foregoing which, by will or deed made by the deceased, are or will be vested in trustees for use by them for purposes which, before or after the making of such will or deed and **before the 1st January, 1967**, have been approved by the Governor of Southern Rhodesia or the Officer Administering the Government, as the case may be, as purposes of a national or public character.

For the purpose of this subsection—

**“company”**—

(a) shall be construed without regard to the definition thereof in section *two*; and

(b) includes any association incorporated or registered under any law relating to companies, banking or insurance, or under a special law, and further includes any association which, though incorporated or registered outside Zimbabwe, carries on business or has an office or place of business therein.

## 5 Dutiable amount of estate

The dutiable amount of any estate shall be determined by making the following deductions from the total value of all property included therein in accordance with section *four*, that is to say—

(a) so much of the funeral and deathbed expenses of the deceased as the Master considers to be fair and reasonable;

(b) all debts due by the deceased to persons ordinarily resident within Zimbabwe which it is proved to the satisfaction of the Master have

been discharged from property included in the estate except any debt due to a company whose shares have been valued in accordance with proviso (ii) to paragraph (g) of subsection (1) of section *six* where such debt was incurred on or after the **1st January, 1967**;

(c) all costs which have been allowed by the Master in the administration and liquidation of the estate, other than expenses—

(i) relating to any property which is not included in the estate; or

(ii) incurred in the management and control of any income accruing to the estate after the date of death;

(d) all expenditure incurred in carrying out the requirements of the Master in pursuance of this Act and which have been allowed by him;

(e) the amount included in the total value of all property of the deceased as representing the value of any right in or to property situate outside Zimbabwe acquired by the deceased—

(i) before he became ordinarily resident in Zimbabwe for the first time; or

(ii) after he became ordinarily resident in Zimbabwe for the first time, by inheritance or by a donation if at the date of the donation the donor was a person (other than a company) not ordinarily resident in Zimbabwe; or

(iii) out of the profits and proceeds of any such property proved to the satisfaction of the Master to have been so acquired;

(f) any debts due by the deceased to persons ordinarily resident outside Zimbabwe which have been discharged from property included in the estate to the extent that the amount of such debts is proved to the satisfaction of the Master to exceed the value of any assets of the deceased outside Zimbabwe and not so included;

(g) the value of any interest included as property of the deceased under paragraph (a) of subsection (2) of section *four* where such interest was held by the deceased by virtue of a donation to him by the person to whom the right of enjoyment of the property in which the deceased held the interest accrues or, where the interest consists of a right to an annuity charged upon property, by the person who is the owner of that property;

(h) any amount which, in terms of the will of the deceased, or the value of any property included in the estate which, or the value of any fiduciary, usufructuary or other like interest

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where the benefit arising by reason of the cessation of such interest upon the death of the deceased, accrues or accrued to—

(i) any person or public institution within Zimbabwe under conditions requiring such amount or value to be devoted wholly to charitable, educational or ecclesiastical purposes of a public nature within Zimbabwe;

[for a Scholarship -*Hendrie N.O. v The Assistant Master 82-HH-001*]

or

(ii) any public institution within Zimbabwe for the advancement of science or art, or of a charitable, educational or ecclesiastical nature, if such public institution devotes such amount or value to purposes of such a nature within Zimbabwe; or

(iii) the State or any local authority or any rural district council established under the Rural District Councils Act [Chapter 29:13]:

Provided that where the property which accrues (or accrued) to the State or any local authority or rural district council or to any 1 person or institution referred to in subparagraph (i) or (ii) consists of a fixed sum of money bequeathed in terms of the will of the deceased and exceeds an amount of **\$0.0000000000000000000000000000001** the deduction to be allowed in respect of the amount so accruing or having accrued shall be an amount which bears the same ratio to the amount so accruing or having accrued as the value of the property included in the estate bears to the aggregate of the said value and the value of the property of the deceased falling under subparagraphs (i) to (vi) of the definition of “**property**” in subsection (6) of section four, if any;

[adjusted from \$1000 to the above figure by the removal of 25 zeros in terms of Acts 12/06 and 3/09-Editor.]

(i) the amount by which the value of any property included in the estate or by which the value of any fiduciary, usufructuary or other like interest which ceased upon the death of the deceased has been enhanced by any improvements made to the property concerned—

(i) at the expense of the person who is the owner of the property or to whom the benefit arising by reason of the cessation of such interest upon the death of the deceased accrues; and

(ii) during the lifetime of the deceased and with his consent;

(j) so much of any amount which, as a result of the grant to any person of a right (other than a fiduciary, usufructuary or other like interest) to the use or occupation of property for no consideration or for a consideration which in the opinion of the Master is not an adequate consideration, is deemed to be property of the deceased under paragraph (d) of subsection (3) of section four;

(k) any amount included in the estate in respect of—

(i) the value of books, pictures, statuary or other objects of art; or

(ii) so much of the value of any shares in a body corporate as is attributable to such body's ownership of books, pictures, statuary or other objects of art: if such books, pictures, statuary or other objects of art have been lent under a notarial deed to the State or any local authority or to any institution referred to in subparagraph (ii) of paragraph (h) for a period of not less than **50 years**, and the deceased died during such period;

(l) so much of the value of any property deemed to be property of the deceased by virtue of subsection (3) of section four as has not been deducted under any of the other provisions of this section and as the Master is satisfied has been taken into account under paragraph (g) of subsection (1) of section six in the determination of the value of any company shares included as property in the estate;

(m) so much of any amount included in the estate as is payable on the death of the deceased, either by way of a lump sum or as a pension, from the Consolidated Revenue Fund or by any fund which, in the year of assessment in which the deceased dies—

(i) is approved by the Commissioner of Taxes as a benefit fund; or

(ii) is registered or provisionally registered under the Pension and Provident Funds Act [Chapter 24:09];

(n) where the deceased is survived by his or her spouse, so much of the dutiable proceeds of insurance policies as does not exceed **\$0.0000000000000000000000000000001**:

[amended by Act 8 of 2005 with effect from the 1st January, 2006, and adjusted from \$100 thousand to the above figure by the removal of 25 zeros in terms of Acts 12/06 and 3/09-Editor.]

Provided that any deduction under this paragraph shall be made first from so much of the dutiable proceeds as is recoverable by the

surviving spouse and thereafter *pro rata* from any other dutiable proceeds;

For the purposes of this paragraph—

**dutiable proceeds**, in relation to an insurance policy, means so much of the amount due and recoverable under that policy as is included in the estate under paragraph (a) of subsection (3) of section *four*;

(o) the value of the family home of the deceased;

[substituted by Act 29 of 2004 with effect from the 1st January, 2005.]

(p) the value of 1 motor vehicle of the deceased which is accepted by the Master as the family motor vehicle.

[inserted by Act 16 of 2007 with effect from the 1st January, 2008.]

## 6 Value of property in estate

(1) The value of any property included in the estate of any person shall be—

(a) in the case of property, other than such property as is referred to in paragraph (g) or the proviso to paragraph (i), disposed of by a purchase and sale which in the opinion of the Master is a *bona fide* purchase and sale in the course of the liquidation of the estate of the deceased, the price realized by such sale;

(b) in the case of any such fiduciary, usufructuary or other like interest in property as is referred to in paragraph (a) of the definition of **“property”** in subsection (2) of section *four*, an amount determined by capitalizing at 9% the annual value of the right of enjoyment of the property in which such interest was held, to the extent to which the person who upon the cessation of the said interest of the deceased becomes entitled to such right of enjoyment, over the expectation of life of such person or, if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period:

Provided that—

(i) in any case in which it is proved to the satisfaction of the Master that such person paid any consideration for the right of ownership in the property whereby he became entitled to the right of enjoyment of the property upon the death of the deceased, the value shall be so much of the value so arrived at as exceeds the amount of such consideration together with interest thereon calculated at 9% **per annum** from the date of payment of such consideration to the date of death of the deceased;

(ii) where upon the cessation of the interest of the deceased in any property there accrues to the holder of the bare *dominium* therein the full ownership in that property, the value of the advantage or benefit so accruing by reason of the cessation of the interest held by the deceased shall not exceed the difference between the fair market value of that property as at the date of such cessation and the value of the bare *dominium* as at the date when such bare *dominium* was first acquired under the disposition creating the said interest held by the deceased;

(iii) if upon the cessation of the interest held by the deceased it is not possible to ascertain until some future date the person or some or all of the persons who will become entitled to the right of enjoyment of the property, the value shall be determined by capitalizing at 9% over a period of **50 years** the annual value of the right of enjoyment of the property in which such interest was held, unless the Master and the executor agree that, having regard to the circumstances of the case, it would be reasonable to adopt a lesser period than **50 years**, in which event such lesser period as agreed may be adopted accordingly;

(c) in the case of any right to any annuity referred to in paragraph (a) of the definition of **“property”** in subsection (2) of section *four*, an amount equal to the value of the annuity capitalized at 9% —

(i) in the case where the said right accrues to some other person on the death of the deceased, over the expectation of life of the person to whom the said right accrues on the death of the deceased or, if it is to be held for a lesser period than the life of such person, over such lesser period;

(ii) in the case where the said right does not so accrue to some other person, over the expectation of life of the person who on the death of the deceased is the owner of the property upon which such annuity was charged;

(d) in the case of any right to any annuity referred to in paragraph (b) of the definition of **“property”** in subsection (2) of section *four*, an amount equal to the value of the annuity capitalized at 9% over the expectation of life of the person to whom the right to such annuity accrues on the death of the deceased or, if it is to be held for a lesser period than the life of such person, over such lesser period;

(e) in the case of any property referred to in paragraph (b) or (d) of subsection (3) of section *four*, an amount determined as if the subject of

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the donation were property as defined in subsection (2) of that section and valued in accordance with the other provisions of this section after deduction of any expenditure made by the donee which is proved to have enhanced the value of such property:

Provided that if the subject of the donation has been disposed of by the donee before the date of death of the donor for a consideration which, in the opinion of the Master, is a full consideration, such consideration shall be taken as the value of the subject of the donation;

(f) in the case of a right of ownership in any movable or immovable property which is subject to a usufructuary or other like interest in favour of any person, the amount by which the fair market value of the full ownership of such property determined, subject to section *nine*, by sworn valuation by some impartial person appointed by the Master, exceeds the value of such interest, determined—

(i) in the case of a usufructuary interest, by capitalizing at **9%** the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life of the person entitled to such interest or, if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;

(ii) in the case of an annuity charged upon the property, by capitalizing at **9%** the amount of the annuity over the expectation of life of the person entitled to such annuity or, if it is to be held for a lesser period than the life of such person, over such lesser period;

(iii) in the case of any other interest, by capitalizing at **9%** such amount as the Master may consider reasonable as representing the annual net yield of such interest over the expectation of life of the person entitled to such interest or, if such interest is to be held for a lesser period than the life of such person, over such lesser period;

(g) in the case of shares in any company not quoted in the official list of a securities exchange registered under \*the Securities Exchange Act [*Chapter 24:25*] or on any securities exchange outside Zimbabwe, the value of such shares in the hands of the deceased at the date of his death as determined, subject to section *nine*, by sworn valuation by some impartial person appointed by the Master, subject to the following provisions, that is to say—

[replaced by the above Act with effect from the 1<sup>st</sup> June, 2008 -Editor]

(i) no regard shall be had to any provision in the memorandum and articles of association or rules of the company restricting the transferability of the shares therein, but it shall be assumed that such shares were freely transferable;

(ii) no regard shall be had to any provision in the memorandum and articles of association or rules of the company whereby or whereunder the value of the shares of the deceased or any other member is to be determined;

(iii) if upon a winding-up of the company the deceased would have been entitled to share in the assets of the company to a greater extent *pro rata* to shareholding than other shareholders, no lesser value shall be placed on the shares held by the deceased than the amount to which he would have been so entitled if the company had been in the course of winding-up and the said amount had been determined as at the date of his death;

(iv) no regard shall be had to any provision or arrangement resulting in any variation in the rights attaching to any shares through or on account of the death of the deceased;

(v) there shall be taken into account any power of control exercisable by the deceased and the company whereunder he was entitled or empowered to vary or cancel any rights attaching to any class of shares therein, including by way of redemption of preference shares, if by the exercise of such power he could have conferred upon himself any benefit or advantage in respect of the assets or profits of the company:

Provided that—

(i) where the Master is satisfied that any shares (other than shares in a family company) were acquired by the deceased in a *bona fide* commercial transaction and conditions were, at the time of the acquisition, imposed by the person from whom they were acquired or by the memorandum or articles of association or rules of the company, having the effect of reducing the value of such shares, then such conditions may be taken into account in assessing the value of the shares;

(ii) this paragraph shall not apply in relation to any shares which were acquired before the **1st January, 1967**, and in respect of which—

(a) the provision or arrangement referred to in subparagraph (i), (ii) or (iv); or

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(b) the right referred to in subparagraph (iii) or (v);

as the case may be, was in effect immediately **before the 1st January, 1967;**

(h) in the case of any property referred to in paragraph (e) of subsection (3) of section *four* which consists only of profits, an amount determined by capitalizing at 9% such amount as the Master may consider reasonable as representing the annual value of such profits over the expectation of life of the deceased immediately prior to the date of his death, and in the case of any other property referred to in the said paragraph (e), the amount remaining after deducting from the fair market value of that property as at the date of death of the deceased the expenses and liabilities which the deceased would have had to bear or assume if he had at that date exercised his power of disposition;

(i) in the case of any other property, the fair market value of such property as at the date of death of the deceased person as determined, subject to section *nine*, by sworn valuation by some impartial person appointed by the Master:

Provided that in any case in which, as a result of conditions imposed on or after the 1st January, 1967, by any person whomsoever, the value of any property could or would be reduced for any reason at or after the moment of death of the deceased, the value of such property shall, unless the Master otherwise directs, be determined as though those conditions had not been imposed.

(2) For the purposes of paragraphs (b) and (f) of subsection (1) the annual value of the right of enjoyment of a property means an amount equal to **6%** of the fair market value determined, subject to section *nine*, by sworn valuation by some impartial person appointed by the Master, of the full ownership of the property which is subject to any fiduciary, usufructuary or other like interest:

Provided that—

(i) where it is established to the satisfaction of the Master that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to **6%** of such value of the property, the Master may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed shall, for the purposes of paragraph (b) of subsection (1), be deemed to be the annual value of the right of enjoyment of such property;

(ii) where the property which is subject to any such interest consists of books, pictures, statuary or other objects of art, the annual value of the right of enjoyment thereof shall, for the purposes of paragraph (b) of subsection (1), be deemed to be the average net receipts, if any, derived by the person entitled to such right of enjoyment of such property during the **3 years** immediately preceding the date of death of the deceased.

(3) Where for the purposes of subsection (1) any calculation is required to be made over the expectation of life of any person, such calculation shall, in the case of a person who is not a natural person, be made over a period of **50 years**.

(4) Whenever the value of any property included in the estate of a deceased is reduced as a result of the continuance after the death of that person of any right in respect of which a deduction has been allowed under paragraph (j) of section *five*, the value of such property shall, for the purposes of subsection (1), be determined as though the said right had not been granted.

(5) For the purposes of paragraph (g) of subsection (1)—

**“company”** means any company incorporated in Zimbabwe or elsewhere;

**“Zimbabwe Stock Exchange”**

[repealed by the Securities Exchange Act with effect from the 1<sup>st</sup> June, 2008 - Editor]

**“shares”** includes any class of shares, stock, debenture stock, debentures or right to subscribe for or purchase shares stocks or debentures.

## PART III ADMINISTRATION

### 7 Administration of Act

(1) The Master shall be responsible for the administration of this Act.

[The Minister of Finance and Economic Development was assigned by SI 218/2018 w.e.f.19<sup>th</sup> October,2018.]

(2) The functions imposed upon the Master by this Act may be exercised or performed by the Master personally or by any officer acting under a delegation from or under the control or direction of the Master.

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(3) Any decision made and any notice or communication issued or signed by any such officer may be withdrawn or amended by the Master or by the officer concerned, and shall, until it has been so withdrawn, be deemed to have been made, issued or signed by the Master.

## 8 Rendering of returns

(1) Every executor or, if he is called upon by the Master to do so, any person having the control of or any interest in any property included in the estate shall submit to the Master a return in the form prescribed by the Master disclosing the amount claimed by the person submitting the return to represent the dutiable amount of the estate together with full particulars regarding—

- (a) the property of the deceased as at the date of his death;
- (b) property which, in accordance with subsection (3) of section *four*, is deemed to be property of the deceased as at that date;
- (c) any deduction claimed in terms of section *five*.

(1a) Any person who fails to submit any return in terms of subsection (1) within the period specified by the Master, or who knowingly omits from such a return any particulars required by this Act to be included therein shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from 10<sup>th</sup> September, 2002]

(2) If, after having been called upon to do so by the Master, any person referred to in subsection (1) fails to submit to the Master the return referred to in that subsection within the period specified by the Master, the Master may estimate the dutiable amount of the estate of the deceased in such sum as he may consider to be fair and reasonable, and thereupon duty shall be assessed upon the dutiable amount of the estate as so estimated.

## 9 Determination of dutiable amount

(1) If the Master on receipt of any return referred to in section *eight* or any sworn valuation of any property—

- (a) is dissatisfied with any value at which any property is shown in any such return or sworn valuation; or

(b) is of the opinion that the amount claimed to represent the dutiable amount as disclosed in the return does not represent the correct dutiable amount;

he shall adjust such value or amount and determine the dutiable amount accordingly.

(2) Any dutiable amount determined by the Master under subsection (1) shall, subject to section *twenty-eight*, be the amount upon which duty shall be assessed.

## 10 Supply of information to Master

(1) For the purposes of the administration of this Act, the Master may call upon any person to furnish him with such information as he may require and to produce for examination by the Master or by any person appointed by him for that purpose, at such time and place as may be appointed by the Master for that purpose, any deeds, plans, instruments, books, accounts, trade lists, stock lists or documents which the Master may deem necessary, and if any such deeds, plans, instruments, books, accounts, lists or documents are not in the English language, the Master may by notice in writing require the executor of the estate concerned to produce at such time and place as may be appointed, at the expense of the estate, a translation in the English language prepared and certified under oath by some person approved by the Master.

(2) The Master may, by notice in writing, require any person whom the Master may deem able to supply information, to attend at a time and place to be named by the Master for the purpose of being examined on oath respecting any transactions or matters affecting any estate; and any person so attending may be allowed by the Master any reasonable expenses necessarily incurred by such person in so attending.

(3) If any officer engaged in carrying out the provisions of this Act who has, in relation to the affairs of a particular estate, been authorised thereto by the Master in writing or by telegram, satisfies a magistrate by statement made on oath that there are reasonable grounds for suspecting that any person has committed an offence under this Act, the magistrate may by warrant authorize such officer and any other officers designated by the Master to exercise the following powers—

- (a) without previous notice, at any reasonable time during the day enter any premises whatsoever and on such premises search for any moneys, valuables, deeds, plans,

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instruments, books, records, accounts, trade lists, stock lists or documents;

(b) in carrying out any such search, open or cause to be removed and opened, any article in which he suspects any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents to be contained;

(c) seize any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for duty;

(d) retain any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents for as long as they may be reasonably required for any assessment or for any criminal or other proceedings under this Act.

(4) Any officer authorised in accordance with subsection (3), when exercising any power under such subsection, shall on demand produce the warrant issued to him thereunder.

(5) The executor of the estate in relation to the affairs of which any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents have been seized under subsection (3) shall be entitled to examine and make extracts from them during office hours under such supervision as the Master may determine.

## 11 Assessment of duty by Master

(1) The Master shall assess the duty payable under this Act and shall in respect of every estate liable for the duty issue a notice of assessment to the executor or, if there is no executor, to any person liable for the duty.

(2) The duty assessed shall be paid on such date and at such place as may be specified in the notice of assessment, and may be paid in one sum or in such instalments as may be determined by the Master having regard to the circumstances of the case.

(3) A notice of assessment shall be issued in respect of each return submitted in respect of any estate in which liability for duty is disclosed, due regard being had in the calculation of the duty to any duty chargeable on any previous returns submitted in respect of the same estate, or any duty chargeable in terms of section *eight* or *nine*.

## 12 Payment of interest

(1) If any duty remains unpaid at the expiration of a period of 30 days from the date of payment notified in accordance with subsection (2) of section *eleven*, there shall be payable, in addition to the unpaid duty, interest on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment:

Provided that, where the assessment of duty is delayed beyond a period of 12 months from the date of death, interest shall be payable as from a date **12 months** after the date of death on the difference, if any, between the duty assessed and any deposit made on account of the duty payable within the said period of 12 months.

(2) Whenever the Master is satisfied that the delay in the payment of duty within the period of **30 days** from the date of payment notified in accordance with subsection (2) of section *eleven*, or within the period of 12 months from the date of death, as the case may be, has not been occasioned either by the executor or by any person liable for the duty, he may allow an extension of time within which the duty may be paid without interest if, before the expiration of the said period of 30 days or the said period of 12 months, as the case may be, or such further period as the Master may allow—

(a) a deposit on account of the duty payable is made of an amount which, in the opinion of the Master, is reasonable, regard being had to the amount of the duty payable; and

(b) application is made in writing to the Master for such extension of time.

(3) The interest payable in terms of subsection (1) shall be at such rate, as may be fixed from time to time by the Minister responsible for finance by notice in a statutory instrument.

[See the Estate Duty (**Rate of Interest**) Notice, 1976 – RGN 789/76.-Editor.]

## 13 Person liable for duty

The person liable for the duty shall be—

(a) where duty is levied on property of the deceased which falls under subsection (2) of section *four*—

(i) as to any property referred to in paragraph (a) or (b) of the definition of "**property**" in that subsection, the person to whom any advantage accrues by the death of the deceased;

(ii) as to any other property, the executor;

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(b) where duty is levied on property which, in accordance with subsection (3) of section *four*, is deemed to be property of the deceased—

(i) as to property referred to in paragraph (a) of that subsection, the executor:

Provided that where the amount due under the policy is recoverable by any person other than the executor, the person liable for the duty shall be the person entitled to recover the amount due under the policy;

(ii) as to any property referred to in paragraph (b), (c) or (d) of that subsection, the donee;

(iii) as to any property referred to in paragraph (e) of that subsection, the executor.

## 14 Duty payable by executor

Notwithstanding anything to the contrary contained in section *thirteen*, any duty payable under this Act shall be payable by and recoverable from the executor of the estate subject to the duty:

Provided that the liability under this section of any executor shall be a liability in his capacity as executor only and for an amount not exceeding the available assets in the estate.

## 15 Right of recovery by executor

(1) Every executor who is required to pay duty in respect of any property referred to in subparagraph (i) of paragraph (a), the proviso to subparagraph (i) of paragraph (b) or subparagraph (ii) of paragraph (b) of section *thirteen* shall be entitled to recover from the person liable therefor the duty attributable to such property.

(2) The duty attributable to any such property shall be a sum which bears to the full duty payable in respect of the estate before the deduction of any amount in accordance with section *eighteen* the same ratio as the value of the said property, as determined for the purposes of this Act, bears to the total value of the estate as so determined, reduced, in any case in which there is, in accordance with section *eighteen*, deducted from the duty payable in respect of the estate any amount paid in respect of any property included in the estate which has accrued to the person liable for the duty attributable to that property, by the amount so paid.

## 16 Right to mortgage property

To provide for the payment of any duty, the person liable therefor may, with the consent of

the Master, borrow any moneys or mortgage any property in respect of which the liability for duty arises, notwithstanding any provision to the contrary contained in any deed or testamentary disposition or in any law.

## 17 Recovery of duty paid in certain cases

Any person who has disposed of property in respect of which a liability for duty in accordance with subparagraph (ii) of paragraph (b) of section *thirteen* thereafter arises, without having received full consideration therefor, may recover from the person to whom he has disposed of such property the amount of duty payable by him in respect thereof:

Provided that the amount so recoverable shall not exceed the amount by which the full consideration for such property would have exceeded the amount of consideration actually received by him.

## 18 Deduction of duties payable to other governments

There shall be deducted from any duty payable under this Act, without in any way modifying or adding to the rights of any person under an agreement entered into by the State with the government of any other country or territory relating to the prevention of or relief from double taxation in respect of estate duty, any amount of any death duties proved to the satisfaction of the Master to have been paid to any other country or territory in respect of any property situate outside Zimbabwe and included in the estate of any person who at the date of his death was ordinarily resident in Zimbabwe:

Provided that the deduction under this section shall not exceed the duty imposed on such property by this Act.

## 19 Deduction of capital gains tax

There shall be deducted from any duty payable under this Act the amount of any tax paid by the deceased or his estate in terms of the Capital Gains Tax Act [Chapter 23:01], in respect of any property that is deemed to be the property of the deceased in terms of paragraph (d) of subsection (3) of section *four*.

## PART IV GENERAL

### 20 No account to be filed by Master before duty paid or secured

The Master shall not file any administration and distribution account in his office or grant a discharge to any executor until he is satisfied that the duty payable under this Act has been paid or secured to his satisfaction.

### 21 No property to be delivered by executor before duty provided for

Before delivering or transferring any property of the deceased to any heir or legatee the executor shall satisfy the Master that due provision has been made for the payment of any duty payable under this Act.

### 22 Personal liability of executor

Every executor who pays over or parts with the possession or control of any property under his administration without first paying any duties payable under this Act shall be personally and jointly and severally liable with any other person to whom he has paid over or to whom he has delivered any such property for the amount of the duty ascertained by the Master to be payable in respect thereof.

### 23 Expenditure incurred by executor

Every executor who is required to incur any expenditure in respect of any property which falls under paragraph (a) or (b) of the definition of "**property**" in subsection (2) or under subsection (3) of section *four* shall be entitled to recover such expenditure from the person liable, in accordance with section *thirteen*, for the duty payable in respect of such property.

### 24 No transfer of stocks or shares to be registered before duty paid

- (1) A company shall not permit the transfer—
  - (a) of any stocks or shares in such company registered in a deceased person's name; or
  - (b) of any stocks or shares in such company registered in the name of any person who has been notified to such company by the Master as being a person in whose name stocks or shares belonging to a deceased person are held;

without the prior written consent of the Master.

- (1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from 10<sup>th</sup> September, 2002]

- (2) The person holding the position of secretary of such company shall be responsible for the carrying out of the provisions of subsection (1).

### 25 No transfer of property to be registered in Deeds Registry until duty paid

No grant, transfer, endorsement or other registration shall be recorded in the Deeds Registry in connexion with any property or interest in property forming part of a deceased estate or which was held by a deceased person, unless there is produced to the Registrar of Deeds a certificate issued by the Master that all necessary provision has been made for the payment of any duties payable under this Act.

### 26 Returns by insurers and certificate required before payment made

- (1) Every person who carries on in Zimbabwe any insurance business shall, on the death of any person, before he makes payment of any claim under any policy of insurance upon the life of that person, advise the Master, in such form as the Master may require, of any amount of which he intends to make payment.

- (2) No person carrying on an insurance business as aforesaid shall, except to a duly appointed executor, make any payment under any such policy of insurance as is mentioned in subsection (1) without the written consent of the Master given either generally or for any particular case.

- (2a) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from 10<sup>th</sup> September, 2002]

- (3) Contravention of this section shall, in addition to the penalty prescribed in subsection

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(2a), render the person so carrying on insurance business liable for the payment of all such duty.

[amended by Act 22 of 2001 with effect from 10<sup>th</sup> September, 2002]

(4) The principal officer of a registered insurer, as appointed in terms of the law for the time being in force relating to insurance, shall be responsible for the carrying out of the provisions of subsections (1) and (2).

## 27 Burden of proof

(1) In any objection or appeal under this Act the burden of proof that any amount is exempt from or not liable to duty or is subject to any deduction or other reduction under this Act shall be upon the person claiming such exemption, non-liability, deduction or reduction.

(2) Upon the hearing of any appeal by any court that court shall not vary or set aside any decision of the Master or refer any assessment back to the Master for further assessment or make any determination or order which has any such effect, unless the person aggrieved by the decision or assessment of the Master shows that such decision or assessment is wrong.

## 28 Objections

(1) Every executor or other person liable for duty under this Act who is aggrieved by any assessment of such duty in terms of section *eleven*, including any valuation on which such assessment is made, may, **within 30 days** after the date of the assessment notice or within such further period as the Master may on good cause approve, lodge with the Master an objection in writing which shall specify in detail the grounds upon which it is made.

(2) The Master may allow such objection or disallow it, or allow it in part and disallow it in part.

(3) The Master shall give written notice to the objector of his decision on such objection.

## 29 Appeals

(1) If the objector is dissatisfied with a decision of the Master made under subsection (2) of section *twentyeight*, he may appeal therefrom to either the Fiscal Appeal Court or the High Court, which shall inquire into and consider the matter and confirm, vary or set aside the decision of the Master or, if it deems fit, refer the relevant assessment back to the Master for further investigation and assessment; and such further assessment shall

be subject to objection and appeal in terms of this Act.

[See the Estate Duty (Fiscal Appeal Court)(Appeal) Rules,1968 – **RGN 146/68** – Editor.]

(2) On the determination by the Fiscal Appeal Court of an appeal under subsection (1) or, as the case may be, paragraph (a) of subsection (3), the appellant or the Master, if dissatisfied with such determination, may appeal therefrom to the High Court on any ground of appeal which involves a question of fact alone or a question of mixed fact and law, and the High Court shall consider the matter and confirm, vary or reverse the determination appealed from or make such order as it considers the Fiscal Appeal Court should have made.

[See the Estate Duty (High Court and Supreme Court)(Appeal) Rules,1968 – **RGN 145/68** – Editor.]

(3) Notwithstanding anything to the contrary in any other enactment, the High Court in any appeal under this section shall not take oral evidence, but if in the hearing of such an appeal it considers that the just determination of the matter requires the taking of oral evidence on any question it shall—

(a) in the case of an appeal from a decision of the Master, transfer the case to the Fiscal Appeal Court, where upon the case shall be dealt with in all respects by that Court as if it were an appeal to that Court under subsection (1);

(b) in the case of an appeal from a determination of the Fiscal Appeal Court, set aside the determination and remit the case to that Court for further hearing, with such instructions regarding the taking of further evidence as the High Court deems fit.

(4) On the determination by the High Court or the Fiscal Appeal Court of any appeal under this section, the appellant or the Master, if dissatisfied with such determination, may appeal therefrom to the Supreme Court on any ground of appeal which involves a question of law alone, but on no other ground, and the Supreme Court shall consider and determine any question or questions of law arising on the case, and accordingly shall reverse, confirm or vary the determination appealed from or remit the matter to the High Court or the Fiscal Appeal Court, as the case may be, with the opinion of the Supreme Court thereon, or make such other order in the matter as the Supreme Court deems fit.

(5) The—

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- (a) the Chief Justice, in relation to appeals to the Supreme Court;
- (b) the Chief Justice and the Judge President of the High Court, in relation to appeals to the High Court;
- (c) President of the Fiscal Appeal Court, in relation to appeals to that Court;

may make such rules as may be deemed by the Chief Justice and the Judge President or, as the case may be, the President of the Fiscal Appeal Court, to be necessary or expedient for giving effect to the provisions of this section. No such rule shall have effect until approved by the Minister responsible for justice and published in a statutory instrument.

(6) For the purposes of this section, a question as to whether a matter is a question of fact, of mixed fact and law or of law shall be treated as a question of law, and an appeal shall lie accordingly, but only with the leave of the court appealed from or, failing such leave, with the leave of a judge of the court to which the appeal is to be made.

(7) For the purposes of this section, subject to this section and of any rules made thereunder—

- (a) the Supreme Court shall have all the appropriate powers conferred on it by the Supreme Court Act [Chapter 7:13]; and
- (b) the High Court shall have all the appropriate powers conferred on it by the High Court Act [Chapter 7:06]; and
- (c) the Fiscal Appeal Court shall have all the powers conferred by Part II of the Fiscal Appeal Court Act [Chapter 23:05].

## 30 Recovery of duty

(1) Any duty or interest or any other sum whatsoever due under this Act shall be a debt due to the State and shall be recoverable by action instituted in the name of the Master in any competent court.

(2) Any such action may be instituted against any person liable under any provision of this Act, notwithstanding that the obligation to pay the amount of duty is also imposed by this Act on any other person.

(3) In any such action it shall not be competent for the defendant to raise as a defence any matter which could be the subject of an appeal in terms of section *twentyeight* and which has not been determined in terms of that section, but the court hearing such an action

may, if it is satisfied that such an appeal is pending and that there are reasonable grounds for such appeal, postpone the action until such appeal has been determined.

## 31 Prevention of or relief from double taxation

(1) The President may enter into an agreement with the government of any other country or territory, whereby arrangements are made with such government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of Zimbabwe and of such other country or territory, of estate duty in respect of the same property.

(2) As soon as may be after the conclusion of any such agreement, the arrangements thereby made shall be notified by the President, by proclamation in a statutory instrument, whereupon the arrangements notified therein shall, so far as they relate to immunity, exemption or relief in respect of estate duties levied or leivable in Zimbabwe, have effect as if enacted in this Act, but only if and for so long as such arrangements, so far as they relate to immunity, exemption or relief in respect of estate duties levied or leivable in such other country or territory, have the effect of law in such other country or territory.

(3) Where the President revokes any such proclamation, the arrangements notified therein shall cease to have effect.

(4) The Minister shall lay a copy of every agreement referred to in subsection (1) before Parliament on one of the 60 days on which Parliament next sits after the conclusion of the agreement, and if Parliament does not by resolution approve such agreement on one of the 60 days on which Parliament next sits after the date when the agreement is so laid before it, the agreement shall cease to be of force on the **day next following the 60th day** on which Parliament next sits after the said date.

## PART V OFFENCES, REGULATIONS, FORMS AND SAVINGS

## 32 Offences and Penalties

(1) Any person who, in relation to any matter dealt with in this Act, makes a statement which is false in a material respect and which he knows to be false or does not have reasonable grounds to believe to be true shall be guilty of an offence and liable to a fine not exceeding

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level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who, without lawful cause, obstructs or hinders the Master in carrying out any provision of this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) Any person who, without just cause, fails to comply with any reasonable requirement of the Master made for the purpose of carrying out any provision of this Act shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[substituted by Act 22 of 2001 with effect from 10<sup>th</sup> September, 2002]

## 33 Regulations

The Minister may make regulations for the better carrying out of the objects and purposes of this Act, including regulations for the valuation of annuities or of fiduciary, usufructuary or other limited interests in property and the payment of fees to executors and other persons required to render returns under this Act in respect of property with regard to which no remuneration is payable under the provisions of section 56 of the Administration of Estates Act [*Chapter 6:01*].

[See the Estate Duty (Valuation of Limited Interest) Regulation, 1988 – **SI 144/88** – Editor.]

## 34 Forms to be prescribed

The Master may prescribe such forms as he may consider necessary for the proper carrying out of any provision of this Act.

## 35 Savings

Notwithstanding anything to the contrary contained in this Act, section 35 of the Death Duties Act [*Chapter 146 of 1963*] and all the provisions of the Southern Rhodesia and Republic of South Africa Death Duties Act [*Chapter 158 of 1963*] shall be applied as if such provisions had been contained in an agreement entered into, approved and proclaimed in terms of section *thirty-one*.