

FINANCE (No. 2) 2014**ARRANGEMENT OF SECTIONS****PART I****PRELIMINARY***Section*

1. Short title.

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ZIMBABWE

ACT

To make further provision for the revenues and public funds of Zimbabwe; to provide for an amnesty in respect of taxes and duties administered by the Zimbabwe Revenue Authority; and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Finance (No. 2) Act, 2014.

PART II

INCOME TAX

Amendments to Chapter I of Finance Act [Chapter 23:04]

2 Amendment of section 22C of Cap. 23:04

With effect from the year of assessment beginning on the 1st October, 2014, section 22C ("Presumptive tax") of the Finance Act [Chapter 23:04] is amended by the repeal of paragraph (b) and the substitution of—

- "(b) small-scale miners, calculated at the rate of zero *per centum* 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;"

*Amendments to Income Tax Act [Chapter 23:06]***3 Amendment of section 80 of Cap. 23:06**

With effect from the 1st October, 2014, section 80 ("Withholding of amounts payable under contracts with State or statutory corporations") (1) of the Income Tax Act [Chapter 23:06] is amended in the definition of "contract" by the deletion of "five hundred thousand dollars or more or, where the contract is denominated in foreign currency, two hundred and fifty United States dollars or more" and the substitution of "an aggregate amount of two hundred and fifty United States dollars or more over the year of assessment".

4 Amendment of section 80B of Cap. 23:06

With effect from the 1st October, 2014, section 80B ("Payments to non-resident artists or entertainers") of the Income Tax Act [Chapter 23:06] is amended

- (a) by the deletion of "artists" and "artist" wherever it occurs and the substitution of "artistes" and "artiste" respectively;
- (b) by the insertion of the following subsection after subsection (5)—

"(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.

(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)."

5 Amendment of Third Schedule to Cap. 23:06

The Third Schedule ("Exemptions from Income Tax") to the Income Tax Act [Chapter 23:06] is amended—

- (a) in paragraph 2 by the repeal of subparagraph (c) and the substitution of—
 - "(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.

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.”;

(b) in paragraph 10 by the insertion of the following subparagraph—

“(r) 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 fourteen sitting days after they are so laid, unless the House has earlier passed a resolution annulling the regulations.”.

6 Amendment of Thirteenth Schedule to Cap. 23:06

The Thirteenth Schedule (“Employees’ Tax”) to the Income Tax Act [Chapter 23:06] is amended by the insertion of the following paragraph after paragraph 22—

“*Commissioner deemed to be employer in certain circumstances*

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 143 of the Companies Act [Chapter 24:03], 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); and
- (b) the employer concerned is—
 - (i) a public entity; or
 - (ii) any body or association of persons, whether incorporated or unincorporated, the 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.”

7 Suspension of operation of Part III of Twenty-Sixth Schedule to Cap. 23:06

The operation of Part III (“Small-Scale Miners Presumptive Tax”) of the Twenty-Sixth Schedule (“Presumptive Tax”) to the Income Tax Act [*Chapter 23:06*] is suspended with effect from the 1st October, 2014.

8 Amendment of Thirtieth Schedule to Cap. 23:06

With effect from the 1st January, 2014, the Thirtieth Schedule (“Intermediated Money Transfer Tax”) to the Income Tax Act [*Chapter 23:06*] is amended in paragraph 1 (“Interpretation”) (1), in the definition of “financial institution” by the repeal of paragraph (h) and the substitution of—

- “(h) any provider of a mobile banking service;”.

PART III

VALUE ADDED TAX

9 Amendment of section 2 of Cap. 23:12

Section 2 (“Interpretation”)(1) of the Value Added Tax Act [*Chapter 23:12*] is amended by the repeal of the definitions of “fiscalised electronic register” (where they occur twice) and “fiscalised recording regulations” and the substitution of the following definition—

- ““fiscalised electronic register” means an electronic sales register having such features as may be prescribed;”.

10 Amendment of section 12C of Cap. 23:12

(1) The Value Added Tax Act [*Chapter 23:12*] is amended in section 12C (“Collection of tax on exportation of unbeneficiated hides, determination of value thereof”)—

(a) by the repeal of subsection (1) and the substitution of—

“(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*]”;

(b) by the insertion of the following subsection after subsection (5)—

“(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 fourteen sitting days after they are so laid, unless the House has earlier passed a resolution annulling the statutory instrument.”

(2) Despite section 14(2) of the Finance Act, 2014, section 12C (“Collection of tax on exportation of unbeneficiated hides, determination of value thereof”) of the Value Added Tax Act has effect from the year of assessment beginning on the 1st January, 2015.

PART IV

CUSTOMS AND EXCISE

Amendments to Finance Act [Chapter 23:04]

11 New Chapter inserted in Cap. 23:04

With effect from the 1st October, 2014, the Finance Act [*Chapter 23:04*] is amended by the insertion of the following Chapter after Chapter XI (“Statutory Fees and Charges”)—

“CHAPTER XII

SPECIAL EXCISE DUTY ON AIRTIME

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

The rate of special excise duty on airtime shall be five *per centum* of the sale value of the airtime.”

Amendments to Customs and Excise Act [Chapter 23:02]

12 New Part inserted in Cap. 23:02

(1) With effect from the 1st October, 2014, the Customs and Excise Act [*Chapter 23:02*] is amended by the insertion after Part XIIA of the following Part—

"PART XIIB**SPECIAL EXCISE DUTY ON AIRTIME****172E Interpretation in Part XIIB**

In this Part—

"airtime" means the minutes of voice calls, short message service (sms), multimedia service (mms), internet band width or such other service as a subscriber may consume through a cellular telecommunication system or any other electronic communications service;

"cellular telecommunication system" has the meaning given to it by the Postal and Telecommunications Act [Chapter 12:05];

"licence" means a licence issued under the Postal and Telecommunications Act [Chapter 12:05], and "licensed" shall be construed accordingly;

"operator" means the operator of a licensed service to which this Part applies;

"rendering a service" means operating a licensed service for the benefit of the public.

172F Special excise duty on airtime

Subject to this Part, there shall be charged, levied and collected, for the benefit of the Consolidated Revenue Fund, a special excise duty on the sale value of the airtime.

172G Rendering of services liable to special excise duty on airtime

(1) A person shall not render a service liable to special excise duty on airtime except in accordance with this Part.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

172H Commissioner may authorise operator to render services without payment of special excise duty on airtime

(1) Notwithstanding section 172G, the Commissioner may, subject to the provisions of this Part and any rules made hereunder, authorise an operator to render services liable to special excise on airtime on an experimental or trial basis:

Provided that the services so rendered shall not be for sale or disposal for profit and shall be rendered without the payment of special excise duty on airtime.

(2) An operator who, being authorised by the Commissioner to provide services in terms of subsection (1), sells or disposes of such services for profit commits an offence and is liable, upon conviction, to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

172I Duties of operator

(1) Every operator shall—

- (a) maintain in such form and manner as may be required by or under, this Act, a record of—
 - (i) all airtime sold; and
 - (ii) all air time consumed, lost or otherwise disposed of, during any process of rendering the service; and
 - (iii) all special excise duty on airtime paid or payable; and
- (b) submit in such form and manner as may be determined by the Commissioner, a return of all airtime consumed, lost or otherwise disposed of, in the preceding month; and
- (c) provide any other information as the Commissioner may reasonably require for the purposes of this Part.

(2) The return required under this section shall be submitted together with the payment of special excise duty on or before the tenth day of the month following the month to which the return relates.

(3) An operator who fails to lodge a return within the time allowed by, or under, this Act shall pay the penalty prescribed in regulations made under section 35 of the Revenue Authority Act [*Chapter 23:11*] (No. 17 of 1999).

(4) Where a return has not been lodged within the time allowed by, or under, this Act, the Commissioner may assess the amount of special excise duty that is due and may, by written notice to an operator, require payment of the duty specified in the assessment.

(5) An assessment made by the Commissioner under subsection (4) shall be deemed to be the correct assessment for the purposes of this section and shall be due and payable within the time specified by the Commissioner.

(6) Where an operator fails to make payment as required under subsection (5) the special excise duty specified in the assessment made under subsection (4) shall constitute a debt due to Government which debt shall be dealt with in accordance with the provisions of this Act.

172J Duty payable to constitute debt to State

The special excise duty on airtime payable in respect of any service shall, from the time when it is due, constitute a debt due to the State from the operator concerned, and shall, any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority.

172K Records to be kept on licensed premises and powers of officers

(1) The records maintained pursuant to section 172I shall be kept on the operator's licensed premises, whether or not in electronic or written form.

(2) An officer may, at any time, enter and search the premises of an operator or the premises of any person who renders services liable to special excise duty on airtime and who is suspected of providing such services in contravention of, or without complying with, this Part, and may—

- (a) take extracts from, or make copies of, any book or document found on the premises that has a bearing on the investigation; or
- (b) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—
 - (i) search any data contained in, or available to the computer system; or
 - (ii) reproduce any record from the data; or
 - (iii) seize any output from the computer for examination and copying.

(3) An officer may remove all the machinery, equipment and materials used in rendering services in contravention of, or without complying with this Part or, pending removal, seal the premises in which the services are so rendered.

(4) An operator shall, at the premises specified in his or her licence, provide free of charge, such accommodation and other facilities as the Commissioner may determine to enable officers to exercise their powers of inspection and supervision under this Act.

172L Operator ceasing business

(1) Where an operator intends to cease the provision of the service liable to special excise duty on airtime, the operator shall give to the Commissioner not less than one month's prior written notice of that intention and shall within twenty days from the date of ceasing to provide the service, lodge with the Authority a true and complete return of all airtime disposed of in whatever manner and business activity since the last monthly return, together with a payment for the amount of special excise duty payable.

(2) Nothing contained in this section shall be deemed to deprive the State of any right it may have against the property or estate of the operator or those of its sureties in respect of any duty which may remain unpaid after cessation of business activity and shall not relieve the operator of liability to prosecution under this Act."

13 Validation of collection of special excise duty on airtime before promulgation of Part XIIB of Cap. 23:02

Any collection of special excise duty on airtime under Part XIIB of the Customs and Excise Act [Chapter 23:02] that is effected before this Act is promulgated is hereby validated.

PART V

MINES AND MINERALS

*Amendments to Chapter VII of Finance Act [Chapter 23:04]***14 Amendment of Schedule to Chapter VII of Cap. 23:04**

With effect from the 1st October, 2014, the Schedule to Chapter VII of the Finance Act [Chapter 23:04] is amended by the repeal in paragraph 1 (which fixes the rates of royalties for the purposes of section 245 of the Mines and Minerals Act [Chapter 21:05]) of the item on gold produced by miners other than small-scale gold miners, and the substitution of the following item—

“Gold produced by other miners 5”.

PART VI

TAX AMNESTY

15 Interpretation in Part VII

In this Part, unless the context otherwise requires—

“amnesty” or “tax amnesty” means the relief contemplated in section 17;

“amnesty period” means the period beginning 1st February, 2009, and ending 30th September, 2014;

“Authority” means the Zimbabwe Revenue Authority as established by the Zimbabwe Revenue Authority Act [Chapter 23:11];

“Commissioner-General” means the Commissioner General appointed under the Zimbabwe Revenue Authority Act [Chapter 23:11];

“covered tax” means a tax or duty administered by the Zimbabwe Revenue Authority under the Zimbabwe Revenue Authority Act [Chapter 23:11];

“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;

“payment schedule form” means the payment schedule form referred to in section 20;

“tax irregularity” means any transgression of any covered tax.

16 Non-application of certain criminal and other laws in respect of amnestied conduct

(1) Subject to section 21, for the purpose of this amnesty, any provision of the criminal law of Zimbabwe for which an amnestied person would, but for this Part, be liable to be prosecuted by the National Prosecuting Authority shall not, to the extent of the amnestied conduct, be deemed to be criminal conduct.

(2) Section 34B (“Reward for information”) of the Revenue Authority Act [Chapter 23:11] (No. 17 of 1999) shall not apply to any information provided or measure taken which relates to an offence for which an amnestied person is not liable by virtue of this Part to be prosecuted by the National Prosecuting Authority.

17 Scope of amnesty

(1) A tax amnesty may be applied for in respect of any unpaid tax or tax irregularities in connection with any covered tax.

(2) Under the amnesty, taxpayers are absolved of the obligation to pay or incur—

- (a) interest relating to unpaid taxes and tax irregularities described in subsection (1); and
 - (b) penalties relating to covered tax.
- (3) The amnesty shall not extend to the principal amount of any covered tax due.
- (4) Subject to the conditions set out in this Act, when an amnesty is granted for any covered tax, it shall preclude the Authority and the National Prosecuting Authority from prosecuting any offender or imposing administrative penalties for—
- (a) false declarations or evasion of covered tax;
 - (b) not having made the returns or payments of covered tax in due time;
 - (c) non-payment of covered tax or non-submission of returns of covered tax;
 - (d) fraud, negligence or wilful default with respect to covered tax.

18 Application for and granting of amnesty

- (1) A person who, but for this Part, would be liable—
- (a) to any civil or administrative penalty; and
 - (b) to be prosecuted by the National Prosecuting Authority;
- for non-payment of tax or other tax irregularity in connection with any covered tax committed or occurring during the amnesty period may, no later than the 31st March, 2015, apply for amnesty in terms of this Part.
- (2) An application for amnesty shall be in writing and in a form as shall be prescribed by the Minister.
- (3) An application for amnesty shall only be considered if it is lodged with any office of the Authority by the 31st March, 2015.
- (4) An amnesty shall be granted only upon the applicant having made full disclosure in conformity with such conditions as may be prescribed by the Minister, in respect of unpaid taxes and tax irregularities, and upon having provided such supporting documents in connection with the application for the amnesty as may be required,
- (5) Unless the Commissioner-General requires further information from the applicant in connection with his or her application, the Commissioner-General shall determine every application for an amnesty within ten days from the date of receiving the application.

19 Eligibility for amnesty

- Any application for amnesty shall be invalid—
- (a) in respect of covered tax, penalties, and interest for tax periods with respect to which a tax audit or investigation had commenced before the 1st October, 2014:
- Provided that, for the avoidance of doubt, if any such audit or investigation—
- (i) had commenced before the 1st October, 2014, and had been completed before that date; or
 - (ii) had commenced before the 1st October, 2014, but had not been completed before the 31st March, 2015;
- without uncovering any non-payment of tax or other tax irregularity which, to the knowledge of the investigated or audited person, had in fact been committed or had occurred during the amnesty period, such person may validly apply for amnesty in accordance with this Part;

- (b) in respect of any action resulting in the detention, seizure or forfeiture of any property or goods, which action commenced on or before the 1st October, 2014;
- (c) in respect of any other tax irregularities which had both been identified and the taxpayer notified of them, on or before the 1st October, 2014.

20 Payment conditions

(1) When an amnesty is granted, the covered taxes due shall be payable as set out on the payment schedule form as determined by the Commissioner-General, and, save as may otherwise be allowed or directed by the Commissioner-General under subsection (2), is to be paid no later than the 31st March, 2015.

(2) Despite subsection (1), the Commissioner-General may extend the payment period beyond the 31st March, 2015, in cases where there was any delay—

- (a) in the processing of applications submitted within the period commencing on the 1st October, 2014, and ending on the 31st March, 2015; or
- (b) occasioned by the settlement of disputes in connection with this Part that arose but were not settled within the foregoing period.

21 Withdrawal of amnesty

The amnesty granted to any applicant shall be withdrawn and thereby nullified if—

- (a) the applicant makes any false declaration to the Authority in applying for the amnesty; or
- (b) the applicant fails to pay the covered tax liabilities in full and by the due dates set out in the payment schedule form.

22 Powers of Commissioner-General

(1) The Commissioner-General shall have the authority to do anything necessary for the efficient and effective application or implementation of this Part.

(2) Without prejudice to the generality of subsection (1), the Commissioner-General may delegate his or her functions under this Part to a task force, division or unit within the Authority, existing or set up specifically to implement the provisions of this Part.

23 Regulatory powers of Minister

(1) The Minister may make regulations prescribing all matters which by this Part are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) Without derogating from the generality of subsection (1) regulations may provide for—

- (a) such forms as may be necessary for the application or implementation of this Part;
- (b) the manner in which applications for amnesty shall be made and what supporting documents must be produced in support of such applications.