

## **THE INCOME TAX (AMENDMENT) BILL, 2019**

### **MEMORANDUM**

The object of this Bill is to amend the Income Tax Act so as to—

- (a) revise the definition of farming;
- (b) introduce penalties on late payments of presumptive and withholding taxes;
- (c) exempt interest payable to banks and financial institutions from withholding tax;
- (d) reduce withholding tax on interest payment on Government securities to non residents from twenty percent to fifteen percent;
- (e) extend the determination of actual conditions for transactions relating to two or more associated persons on their commercial or financial relations;
- (f) broaden the scope of related or associated persons to capture other related transactions;
- (g) clarify in relation to transfer pricing that a tax credit claim may be made on transactions involving both resident and non resident taxpayers;
- (h) provide for the adjustment of the reference price to take into account premium prices for the purposes of the determination of taxable income;
- (i) reduce the capital allowances claimed by mining companies from twenty-five percent to twenty percent; and
- (j) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,  
*Attorney-General*

GOVERNMENT OF ZAMBIA

**A BILL**

ENTITLED

**An Act to amend the Income Tax Act.**

ENACTED by the Parliament of Zambia

Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2019, and shall be read as one with the Income Tax Act, in this Act referred to as the principal Act.

Title and  
commencement  
Cap. 323

5 (2) This Act shall come into operation on 1st January, 2020.

2. Section 2(1) of the principal Act is amended by the—

Amendment  
of section 2

(a) deletion of the definition of “ farming ” and the substitution therefor of the following definition:

10 “ farming ” means the cultivation of crops and plants,  
raising of livestock or poultry, beekeeping and  
rearing fish but excludes the letting of any  
property or provision of a service ancillary to  
farming; and

15 “ livestock ” has the meaning assigned to the word  
under the Animal Health Act, 2010;; and

Act No. 27  
of 2010

(b) insertion of the following definition in the appropriate place in alphabetical order:

20 “ approved collective investment scheme ” means a  
collective investment scheme approved under  
the Securities Act, 2016;.

Act No. 41  
of 2016

**N.A.B. 20, 2019**

- Amendment of section 77      **3.** Section 77(4) of the principal Act is amended by the deletion of the words “ or section *sixty-four* ” and the substitution therefor of the words “ section *sixty-four* or section *sixty-four* ”.
- Amendment of section 78      **4.** Section 78 of the principal Act is amended—  
     (a) in subsection (1), by the deletion of the words “ section *seventy-seven* ” and the substitution therefor of the word “ sections seventy-seven, eighty-one, eighty-one A, eighty-two and eighty-two A ”; and  
     (b) in subsection (2), by the deletion of the words “ section *seventy-seven* ” and the substitution therefor of the words “ sections seventy-seven, eighty-one, eighty-one A, eighty-two and eighty-two A. ”
- Amendment of section 81      **5.** Section 81 of the principal Act is amended by the insertion of the following new subsection immediately after subsection (1A):  
     (1B) A person who fails to submit a return in accordance with subsection (1A) is liable to pay a penalty of three hundred and forty penalty units for each month or part thereof during which that failure continues.
- Amendment of section 81A      **6.** Section 81A of the principal Act is amended by the insertion of the following new subsection immediately after subsection (1A):  
     (1B) A person or partnership that fails to submit a return under subsection (1A) is liable to pay a penalty of three hundred and forty penalty units for each month or part thereof during which that failure continues.
- Amendment of section 82A      **7.** Section 82A (1)(b) of the principal Act is amended by the insertion of the words “ other than interest payable to a bank or financial institution licensed under the Banking and Financial Services Act, 2017 ” immediately after the word “ Republic ”.
- Act No. 7 of 2017
- Amendment of section 97A      **8.** Section 97 A of the principal Act is amended by the—  
     (a) deletion of subsection (1) and the substitution therefor of the following:  
     (1) In this section —  
         “actual conditions” means conditions which are made or imposed between any two or more associated persons on their commercial or financial relations;  
         “arm’s length conditions” means conditions or no conditions which would have been

made or imposed if persons were not associated with each other;

“equity holder ” means a person who—

5 (a) holds ordinary shares in the company; or

(b) is a loan creditor of the company in respect of a loan other than a normal commercial loan;

10 “ fixed rate preference shares ” for the purposes of this Act and despite the Companies Act, 2017, means shares which—

Act No. 10  
of 2017

15 (a) do not carry any conversion right or rights to acquire any additional shares or securities;

(b) do not carry any right to dividends other than dividends which—

20 (i) are of a fixed amount or at a fixed rate per centum of the nominal value of the shares; and

25 (ii) represent no more than reasonable commercial return on the consideration received by the company in respect of the issue of shares; and

30 (c) on payment, do not carry any rights to an amount exceeding the consideration;

35 “ loan creditor ” in relation to a company means a creditor in respect of any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company; or

(b) in respect of any redeemable loan capital issued by the company; except that a person carrying on the business of banking is not for the purposes 5 of this Part, a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by that person in the ordinary course of 10 that business;

“normal commercial loan ” means a loan—

(a) which does not carry any conversion rights or rights to acquire any additional shares or 15 securities;

(b) which does not entitle the loan creditor to any amount by way of interest which depends to any extent on the results of the 20 company’s business or which exceeds a reasonable commercial return on the loan; and

(c) in respect of which the loan 25 creditor is entitled, on repayment, to an amount which does not exceed the loan;

“ordinary share ” means a share other than a fixed rate preference share; 30

“reference price ” means—

(a) the monthly average London Metal Exchange cash price;

(b) the monthly average Metal Bulletin cash price to the extent 35 that the base metal or precious metal price is not quoted on the London Metal Exchange; or

(c) the monthly average cash price of any other metal exchange 40 market as approved by the