

2020 BUDGET HIGHLIGHTS



OVERVIEW OF TAX CHANGES

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INTRODUCTION

I am pleased to present an overview of the major changes in the tax legislation and other relevant information as announced by the Minister of Finance in his annual National Budget Address to the National Assembly for the fiscal year 1st January, 2020 to 31st December, 2020.

The overview gives a guide on the measures announced in the Budget as reflected in the various Bills, Statutory Instruments and Commissioner General's Rules that contain the enabling legislation. The details are contained in the published legislation. It is important to note that some measures in this pamphlet are subject to Parliamentary approval.

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COMMISSIONER GENERAL

1.0 DIRECT TAXES

1.1 HOUSEKEEPING MEASURES

1.1.1 Amend Section 2 of the Income Tax Act by redefining the word “farming” in order to exclude ancillary activities to agriculture.

The measure intends to exclude ancillary business activities to farming from the definition of agriculture. The current definition makes reference to the term agricultural activity which is broad and has been construed to include activities that are ancillary to farming. For example, activities ancillary to agriculture such as marketing, technical or management services or any other varying degrees of involvement in the agricultural process are not part of farming but are being misconstrued to be agricultural activities and thus enabling businesses to claim the accelerated capital expenditure deductions and preferential Company Tax rate of 10 percent under farming income.

1.1.2 Amend the Transfer Pricing provisions under Section 97A (13) and (14) of the Income Tax Act to:

- (i) provide for price premium adjustments;**
- (ii) empower the Commissioner General to issue specific guidelines on pricing of minerals;**
- (iii) empower the Commissioner General to request a resident or non - resident person to provide, upon request third party Sales Agreements and third party invoices relating to the sale under Subsections (13) and (14) of Section 97A;**
- (iv) extend the use of the reference pricing to adjust the pricing of purchases between Related or Associated Persons(Parties).**
- (v) Deem the Agreed Sale Price between a resident person or non-resident person with an unrelated person to be the reference sales price for tax purposes of the Zambian person where the agreed price is higher than the reference price and the sale to the unrelated person of the base or precious metal does not involve further milling, blending, treatment, refinement or transformation.**

Currently, Section 97A provides for adjusting the price used in the sale of base and precious metals between Related or Associated parties to be adjusted using a reference price obtained from recognised commodity exchange markets such as the London Metal Exchange for Income tax purposes. The law also provides for adjusting the reference price to provide discounts on account of poor quality or low grade. Despite these provisions, the law has not provided mechanism for determining the discounts and

additionally the law has not provided for adjusting the price upwards where the mineral being sold attracts a premium such as Copper Cathode Grade A for purposes of invoking the Sixth Method for transfer pricing purposes hence rendering the provision inadequate as mining companies do transact at prices that include premiums.

The measure is therefore intended to ensure that premium adjustments are captured and that the Commissioner General can also issue specific guidance on pricing of base metals and precious metals where appropriate and provide guidelines on determining discounts.

1.1.3 Amend Section 2 of the Income Tax Act by replacing the term “Lusaka Stock Exchange” with “Lusaka Securities Exchange” and wherever else it appears in the Act.

This measure is intended to align the Income Tax Act with the change of the name from Lusaka Stock Exchange to Lusaka Securities Exchange as per Securities and Exchange Act No. 41 of 2016.

1.1.4 Amend Section 77(4) of the Income Tax Act to include the words “Section Sixty-Four A” after the words ‘Section Sixty-Four’ in order for the penalties and interest, under Section (78), to apply to Standard Assessments under Section Sixty-Four A as well.

This measure is intended to provide for charging of penalties for non-payment of tax and interest on overdue payments of the standard assessments under Section 64A.

1.1.5 Amend Section 78(1) of the Income Tax Act to provide for the charging of penalties and interest on the taxes payable under Sections 81, 81A, 82 and 82 A.

This measure is intended to provide for the charging of penalties and interest on overdue payments of the taxes provided for under the aforementioned sections, that is, Withholding Tax on dividends, payments to non-resident contractors, interest, royalties, rent, commissions, management and consultancy fees, and public entertainment fees.

1.1.6 Amend Section 81 of the Income Tax Act by introducing a provision for the imposition of penalties for the late submission of returns in relation to dividends and payments to non-resident contractors.

This measure is intended to provide for the charging of specific penalties on the late submission of returns with respect to dividends payments to non-resident contractors.

1.1.7 Amend Section 82A(1) of the Income Tax Act to exempt from Withholding Tax, the interest payable to Banks and financial institutions.

The measure is meant to exempt any person from withholding tax on interest payments to local banks and financial institutions because a person is not in a position to withhold tax on interest on a loan from a local bank.

1.1.8 Amend Transfer Pricing Provisions in Section 97A(1) of the Income Tax Act by:

- a) re-defining the terms “Actual conditions”, “Arm's length conditions” and “Related or associated persons”;
- b) reinstating selected definitions that were in the revoked Section 97AA; and
- c) introducing a definition for “Taxpayer”.

The measure intends to include definitions that are key to transfer pricing in light of the evolution of international trade where multinational enterprises are exploring and developing new means of dealing with related parties.

1.1.9 Amend the Transfer Pricing Provisions of the Income Tax Act Dealing with Corresponding Adjustments to clarify that a Taxpayer is Eligible to make a claim for tax credit in relation to Transactions with both Resident and Non – Resident Related Persons. The Proposal also Seeks to , provide for the application of Transfer Pricing provisions in Double Taxation Agreements that Zambia has with other Countries.

The measure is intended to clarify that a Zambian taxpayer is eligible for a corresponding adjustment claim arising from a transaction with both a resident and non-resident related person.

The measure further clarifies that corresponding adjustments are only applicable to transactions between a taxpayer and a non-resident where the non-resident is resident in a country where Zambia has a Double Taxation Agreement.

1.1.10 Amend paragraph 5(l) of the Second Schedule to the Income Tax Act to insert the word 'approved' before the words 'collective investment scheme' and provide for a definition of "approved collective investment scheme".

This measure is intended to provide for approval of a Collective Investment Scheme; to provide for exemption of the income of a Collective Investment

Scheme only if it is approved by the Commissioner-General; and to provide further clarity on the taxation of income of an **approved** Collective Investment Scheme.

1.1.11 Amend the Fourth Schedule to the Income Tax Act to provide for the procedure for the administration, approval and compliance of a Collective Investment Scheme.

This measure is intended to provide for the procedure for administration, approval and compliance of the Collective Investment Schemes.

1.1.12 Amend the Income Tax Act to reduce the Withholding Tax rate on interest payment on Government securities to non-residents to 15 percent from 20 percent.

Under the 2019 National Budget, the withholding tax on dividends, branch profits and interest was increased from 15 percent to 20 percent. However, a Statutory Instrument was issued to suspend the rate on Government securities from 20 percent to 15 percent but this Statutory Instrument has a sunset clause of 31st December 2019. Therefore, this measure is intended to reduce the rate on Government securities to 15 percent in the Principal Act.

2.0 PROPERTY TRANSFER

2.1 HOUSEKEEPING MEASURES

2.1.1 Amend the definition of “Shares” in the Property Transfer Tax Act by expanding the definition of 'Share' to include 'Equivalent Rights'.

This measure is intended to broaden the definition of “share” to include the transfer of rights that are equivalent to shares. Some jurisdictions use the term 'Rights' in their tax codes which covers all shares and rights.

2.1.2 Broaden the term of Realised Value provided under Section 5(2A) of the Property Transfer Tax Act that is used in computing the value of shares in cases involving indirect transfer of shares for companies incorporated outside Zambia so as to include the:

- i. Nominal value; and**
- ii. The direct consideration of the shares being transferred, in addition to the current computation based on formula, whichever is higher of the three.**

The measure is intended to broaden the basis for computing the realised value of the indirect transfer of shares by providing two more options and providing for selecting the option that gives a higher value as the base on which tax will be charged.

2.1.3 Introduce a provision in the Property Transfer Tax Act to allow the Commissioner General to determine a nil realised value for certain transfers of property within group of companies in respect of indirect share transfers which do not result in a change to the effective shareholding by the company owning directly or indirectly at least 10 percent of shares in a company incorporated in Zambia.

This measure will ensure that transfers of shares that do not lead to a transfer of economic value where the effective shareholding does not change are excluded from the scope of Property Transfer Tax.

2.1.4 Introduce an anti-avoidance provision in Section 5 of the Property Transfer Tax Act to exclude from exemption, transfers between Group Companies that have only been members of a Group for a limited period of 3 years.

This measure is intended to prevent tax planning schemes by excluding

companies that have been members of a group for less than 3 years from being considered by the Commissioner General for any relief for Property Transfer Tax purposes. The 3 year threshold is in line with the anti-avoidance provisions in the Income Tax Act.

2.1.5 Amend the Property Transfer Tax Act by removing the reference to revoked provisions of the Income Tax Act namely Section 97AA and Paragraph 22(A) of the Fifth Schedule to the Income Tax Act.

The measure seeks to remove reference to the provisions of the Income Tax Act which have since been repealed. Section 97AA (Arm's Length test for thin capitalisation) and paragraph 22A of the Fifth Schedule (specific thin capitalisation ratio to Mining Companies) to the Income Tax Act were repealed under the 2018 amendments of the Income Tax Act. Therefore, these references are no longer relevant.

3.0 VALUE ADDED TAX

3.1 REVENUE CONCESSIONS

3.1.1 Zero rate capital equipment and machinery for the mining sector.

This measure is intended to improve cash flow for the mining sector and also reduce VAT refund claims.

3.1.2 Zero rate Copper cathodes for VAT purposes.

This measure is intended to improve cash flow for local manufacturers who use the product as an input. In addition, this will reduce the VAT refund claims.

3.1.3 Zero rate Liquefied Petroleum Gas (LPG) for VAT purposes. The zero-rated products are specified as HS Codes 2711.11.00, 2711.12.00, 2711.13.00, 2711.14.00 and 2711.19.00.

This measure is intended to promote the use of alternative sources of energy and thereby mitigate the effects of climate change.

3.1.4 Zero rate gas stoves and other appliances that use gas of HS Codes 7321.11.00 and 7321.81.00 for VAT purposes.

This measure is intended to promote the use of alternative sources of energy and thereby mitigate the effects of climate change.

3.2 COMPENSATING MEASURES

3.2.1 Limit input VAT claims by mining and mineral processing companies on diesel to 70 percent from 90 percent.

The measure is intended to generate revenue for the Government.

3.2.2 Limit input VAT claims by mining and mineral processing companies on electricity to 80 percent from 100 percent.

The measure is intended to generate revenue for the Government.

3.2.3 Disallow input VAT claims on consumables such as stationery, lubricants and spare parts for all entities, except where these products are stock in trade.

This measure is intended to generate revenue for the Government by disallowing input VAT credits on consumables. This measure will not apply to businesses for which these consumables are stock in trade.

3.3 HOUSEKEEPING MEASURES

3.3.1 Make it mandatory to use Electronic Fiscal Devices (EFD) for VAT and other tax types and facilitate accreditation of EFD manufacturers, distributors and virtual EFD software suppliers and vendors.

The measure is intended to extend the mandatory use of EFDs to other tax types and provide for accreditation of manufacturers, distributors and vendors of EFDs.

3.3.2 Make it mandatory for all taxable suppliers to use Point Of Sale (POS) machines (swiping machines).

The measure is intended to make it mandatory for all taxable suppliers to have a Point Of Sale (POS) machine as one of the payment options. .

3.3.3 Make it mandatory to capture on the invoice, the Taxpayer Identification Number (TPIN) and Name of both the buyer and seller of goods and services in all Business to Business (B2B) and Business to Government (B2G) transactions.

The measure is intended to enhance tax compliance.

3.3.4 Amend the VAT Act by standard rating ancillary services to transits.

This measure is intended to standard rate ancillary services that are directly linked to the transit of goods through Zambia to destinations outside Zambia.

3.3.5 Delete the supply of an inclusive tour to a tourist by a tour operator or travel agent licensed as such under the Tourism and Hospitality Act, 2007, if the contract was entered into before 1st January, 2014, subject to such conditions as the Commissioner-General may require.

The measure is intended to remove the redundant provision.

3.3.6 Amend paragraph D of Group 2 to empower the Commissioner General to be the sole issuer of Local Purchase Order (LPO) for zero rating.

The measure is intended to restrict the issuance of Local Purchase Orders to the Commissioner General only so as to curb the abuse of VAT zero-rating relief.

4.0 CUSTOMS AND EXCISE

4.1 REVENUE CONCESSIONS

4.1.1 Remove customs duty on Liquefied Petroleum Gas (LPG) under HS Codes 2711.11.00, 2711.12.00, 2711.13.00, 2711.14.00 and 2711.19.00.

This measure is intended to promote the use of alternative sources of energy and thereby mitigate the effects of climate change.

4.1.2 Amend the Customs and Excise Act to suspend customs duty for a period of three years, on selected equipment used in the aquaculture industry.

This measure is intended to promote the growth of the aquaculture industry in Zambia and thereby contribute to the economic diversification efforts of the country.

4.1.3 Suspend customs duty for a period of three years, on machinery for processing of solid waste to generate electricity and produce organic fertilizers.

This measure is intended to promote the generation of electricity through alternative means. The measure is also intended to promote the local manufacturing of organic fertilisers.

4.2 COMPENSATING MEASURES

4.2.1 Introduce customs duty at the rate of 10 percent on specified capital equipment and machinery imported by mining and mineral processing companies which are currently duty free or attract customs duty at the rate of 5 percent.

This measure is intended to raise revenue for the Government.

4.2.2 Impose surtax on Flexible Intermediate Bulk Containers (FIBC) of HS Code 6305.32.00.

This measure is intended to encourage local production of FIBC (jumbo bags).

4.2.3 Amend the Duty Draw Back Regulations to limit the duty refunds to import duty paid by a claimant and remove refunds of implied duties on locally sourced inputs.

The measure is intended to streamline the refund scheme.

4.2.4 Increase the specific excise duty rate on cigarettes to K265 per mille from K240 per mille.

The measure is intended to maintain competitiveness of domestic producers of cigarettes and increase revenue collection for the Government.

4.2.5 Increase the carbon emission surtax on all motor vehicles entering Zambia by 20 percent.

This measure is intended to mitigate the effects of climate change and air pollution.

4.3 HOUSEKEEPING MEASURES

4.3.1 Insert regulation 82A to the Customs and Excise (General) Regulations, 2000 to provide for the remission of duty on Publicity Materials imported by Tourism Agencies.

This measure is intended to align the customs legislation to the Istanbul Convention on temporary admission. .

4.3.2 Insert regulation 88C to the Customs and Excise (General) Regulations, 2000 to provide for the remission of duty on goods imported for humanitarian purposes forwarded as aid to persons affected by natural disasters and similar catastrophes.

Currently, Zambia does not have specific provisions that allow for importation of duty-free materials for humanitarian cases even though remission of duty may be granted on importations by approved organisations on a case by case basis. Implementing this measure will align the Customs legislation to the Istanbul Convention.

4.3.3 Repeal and replace the Second Schedule (Excise schedule) to correct a drafting error arising from the Customs Amendment Act 19 of 2018.

The measure is intended to include new motor vehicles that were inadvertently omitted from the Second Schedule of the Customs and Excise Amendment Act No. 19 of 2018. The measure therefore will correct the observed omissions in the amendment Act.

4.3.4 Amend Section 93(2) to include a provision for a single (excise) licence to cover the manufacture of all types of non-alcoholic beverages.

The measure is intended to reduce the number of licenses that can be obtained by non-alcoholic beverages manufacturers. This will help to reduce

the cost of doing business for local manufacturers of non-alcoholic beverages.

4.3.5 Amend Section 108(3) and Section 139D(2) of Customs and Excise Act to provide for the same due date for both the payment and the return; and to remove the words '*and entry*' from '*the return and entry*'.

This measure is intended to harmonise the law with current practice by removing the words '*and entry*'. This will further align local excise payments with other domestic taxes whose payment due dates are tied to the return due dates.

4.3.6 Amend Regulation 47 of the Customs and Excise (General) Regulations, SI No. 54 of 2000 to:

- a) replace the words '*Customs Division*' with '*Commissioner General*' under sub-regulation (2);
- b) insert the words '*and the licensed manufacturer*' between '*carrier*' and '*shall*'; and
- c) introduce sub-regulation (4) to provide for the requirements relating to claims by taxable suppliers, in relation to exported supplies by reason of exportation.

This measure is intended to update the law to be in line with current practices as well as safeguard revenue by ensuring that all the goods exported from bond exit the Republic.

4.3.7 Amend Regulation 52(2) and 52(3) of the Customs and Excise (General) Regulations, SI No. 54 of 2000 to:

- a) insert the words '*by both the Oil Marketing Company and the bonded warehouse operator*' to clarify that filing of the return referred to shall be done by both parties; and
- b) increase the penalty for late return submission from one hundred to one thousand penalty units for each day that the return is not lodged.

This measure is intended to provide clarity in the law and enhance compliance.

4.3.8 Insert a sub-regulation under Regulation 52 of the Customs and Excise (General) Regulations, SI No. 54 of 2000 to provide for the appointment of withholding tax agents for excise duty on manufactured oil products.

This measure is intended to empower the Commissioner-General to appoint withholding tax agents for excise duty on manufactured oil products.

4.3.9 Amend the Second Schedule (Excise Schedule) to the Principal Act in heading 1 of the Schedule on the description of the goods column of tariff subheading 2009.31.00 by the addition of the figure 20 immediately after the word “exceeding”.

The measure is intended to correct the anomaly and align it to the Harmonized Commodity Description and Coding System.

4.3.10 Amend Section 168(4) of the Customs and Excise Act to correct the omission of the word “Not” in the text of this section by including the word “Not” after the word “shall”.

Section 168(4) was amended through the Customs and Excise (Amendment) Act No. 4 of 1999 with the sole intention of giving powers to the Commissioner General to impose a fine on a person alleged to be an offender in lieu of conviction but the word “**Not**” was omitted in the text of this provision just after the word “shall” thereby changing the meaning and the policy intentions of the amendment. The provision, in its current form, suggests that the acceptance of the fine by the Commissioner General shall be treated as a conviction for a criminal offence.

4.3.11 Amend section 13 of the Principal Act to allow the Commissioner General, subject to such conditions as he may specify by rule, to prescribe certain category of goods that can exit through particular ports prescribed by the Minister by Statutory Instrument.

The measure is intended to enhance compliance.

4.3.12 Amend Regulation 69 to explicitly provide for a COMESA Simplified Certificate of Origin (STR) for goods imported by small scale traders.

Currently, Regulation 69 generally provides for a certificate of origin without making a distinction between the certificate of origin for goods imported by small scale traders whose value is less than USD\$1,000 and the one used for goods with a value above USD\$1,000. This measure is intended to explicitly provide for a Simplified Certificate of Origin as provided in the COMESA Protocol on the Rules of Origin.

4.3.13 Amend section 17 of the Customs and Excise Act by opening up the licensing of Customs Areas to persons other than Licensed Clearing agents.

This measure is intended to extend the licensing of customs areas to persons other than licensed clearing agents. These persons will be licensed based on an approved criteria which will require them to obtain bonding (security) among other requirements.

4.3.14 Introduce Section 184A in the Customs & Excise Act to empower the Commissioner General to approve persons that meet defined compliance standards/requirements and wish to enter into the Customs Accredited Client Programme (CACP) with defined benefits.

This measure is intended to align the Customs legislation to the World Customs Organisation Framework of Standards, Kyoto Convention and World Trade Organisation Trade Facilitation Agreement..

4.3.15 Amend the Ports of Entry and Routes Order (SI 60 of 2014) to extend the operating hours at Kenneth Kaunda International Airport Commercial Terminal.

This measure is intended to extend the working hours and facilitate trade.

4.3.16 Amend Regulation 127 of the Customs and Excise (General) Regulations, 2000 in order to empower the Commissioner General to prescribe the manner in which certain category of goods in transit shall be conveyed across Zambia.

This measure is intended to enhance compliance.

4.3.17 Amend Section 139D(3)(b) of the Customs and Excise Act to increase the penalty units applicable for each day the return is not lodged from *one hundred to one thousand penalty units*.

This is intended to align the penalty regime of service providers with that of licensed manufacturers.

4.3.18 Delete Paragraph 1(2) of the Sixth Schedule to the Customs and Excise Act which currently provides the basis for the determination of the value of an undenatured alcohol of an alcoholic strength by volume of less than eighty percent, spirits, liqueurs and other spirituous beverages (which is, the value of the imported input alcohol, where such imported input alcohol is of an alcoholic strength by volume of eighty percent volume or higher).

The measure is intended to provide for an equal valuation system for neutral

spirits manufactured in Zambia and the imported spirits. It will also assist to streamline the valuation process of spirituous beverages when the 'input neutral spirits' are imported.

4.3.19 Amend Section 72A of the Customs and Excise Act to provide for an exemption of export duty on goods that are imported into Zambia and bonded, and when the same goods are exported in bond attract export duty at the rates specified in the ninth schedule of the Act.

The measure will ensure that goods that are imported into Zambia and exported in bond are not subject to any export duty if the same goods are subject to export duty.

4.3.20 Repeal and replace the Ninth Schedule of the Customs and Excise Act in order impose export duty on all precious metals.

The measure is intended to include the HS Codes for precious metals which were inadvertently omitted..

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