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GENERAL

This PRACTICE NOTE describes the various changes introduced by the Income Tax (Amendment) Act 2001.

The commentary is for general guidance only and is not to be taken as an authority in any particular case.

The commentary is not exhaustive and does not, therefore, affect any person's right of appeal on any point concerning their liability to tax, nor does it preclude any discretionary treatment which may be allowed under the Act.

Inquiries may be made at the nearest office of the Zambia Revenue Authority, Direct Taxes Division Offices or Advice Center, Lusaka.

SUMMARY OF PRINCIPAL CHANGES

AMENDMENT ACT SECTION	ITA SECTION	SUBJECT	EFFECTIVE DATE
1	1	Title and Commencement	01-04-01
2	4	Strengthens the residence test for Legal persons.	01-04-01
3	7	Empowers the Commissioner-General to confer on any person any of his functions under the Act.	01-04-01
4(a)	37(1)(a)	Deletes reference to Zambia National Provident Fund and replaces with National Pensions Authority	01-04-01
4(b)	37(1)(ii) (c)(d)(3)(b) (4)	Increases deductible amount for pension contributions to K180,000 per annum.	01-04-01
5	43A	Corrects drafting error by substituting “Part of all” for “part or all”.	01 -04-01
6(a)	46A(1)	Increases the threshold for submitting a provisional tax return by an individual from K1,200,000 to K1,440,000 per annum.	01-04-01
6(b)	46A(3)	Reintroduces the proviso to subsection (3).	01-04-01
6(c)	46A(4)	Reduces the period in which to make a revised Provisional return from 28 days to 14 days.	01-04-01
6(d)	46A(5)	Introduces a penalty for the underestimation of Provisional tax by more than one-third	01-04-01

6(e)	46A(6)	Deleted	01-04-01
6(f)	46A(2A) (5),(6),(7) (8),(9)	Subsections renumbered	01-04-01
7	78(3),(4) (10)	Subsections deleted	01-04-01
7	78(2A),(5) (6),(7),(8) (9)	Subsections renumbered	01-04-01
8(a)	81B(1)	Removes the requirement for a tax clearance certificate except in the case of transfer of property.	01-04-01
8(b)	81B(3),(6)	Subsections deleted	01-04-01
8(c)	81B(4),(5) (7)	Subsections renumbered	01-04-01
9(a)(i)	82A(1)(b)	Proviso to paragraph (b) has been redrafted so as to tidy up the section	01-04-01
9(b)	82A(9)	Subsection (9) deleted	01-04-01
10	97A(1)	Definition of "arm's length conditions" broadened.	01-04-01
11	97AA	Strengthens and broadens the thin capitalisation provisions	01-04-01
12(a)	2nd Schedule Paragraph 5(3)	Increases the threshold at which cooperatives are taxed from K800 to K3.6 million	01-04-01
12(b)	2nd Schedule Paragraph 7(v)	Exempts lumpsum payment made on employee's loss of office or employment on medical grounds.	01-04-01

13	3rd Schedule:	Excess of management expenses over an insurance company's investment income to be treated as loss.	01-04-01
14	5th Schedule Paragraph 10	Introduces the restriction that only assets that are exclusively used in a qualifying sector should qualify for increased wear and tear rate of capital allowances.	01-04-01
15(a)(i)	Charging Schedule Paragraph 1(1)(a)	Increases the tax credit for individuals from K120,000 K144,000 per annum.	01-04-01
15(a)(ii)	Charging Schedule Paragraph 1(1)(b)	Increases the tax credit for persons with disability from K121 200 to K145 200 per annum.	01-04-01
15(b)(i)	Charging Paragraph 2(1)	Corrects a drafting omission by insertion of the words "under section 82"	01-04-01
15(b)(ii)	Charging Schedule Paragraph 2(1	Tax bands broadened	01-04-01

3. COMMENTARY

3.1 SECTION 4(3): RESIDENCE:

The subsection has been amended by adding the word “central” to “management and control”. The effect of this amendment is to strengthen the rule for determining the residency of legal persons such as companies and trusts.

The subsection now re affirms that the legal person will be resident for tax purposes if:

(i) that person is incorporated or formed in Zambia; or

(ii) the central, management and control of the person’s business or affairs are exercised in Zambia.

3.2 SECTION 7: DELEGATION OF FUNCTIONS:

The amendment empowers the Commissioner – General to confer upon any person the functions of the Commissioner – General under the Income Tax Act. The functions shall be performed under his direction.

3. SECTION 37: APPROVED FUND DEDUCTIONS:

The amount allowed as a deduction for contributions made to an approved pension fund has been increased from K120,000 to K180,000 or fifteen percent of an individual’s taxable emoluments whichever is the less. The increase also applies to contributions made to an approved annuity contract.

3.4 SECTION 43A(2) DEDUCTION FOR BAD AND DOUBTFUL DEBTS:

The amendment corrects a drafting error which occurred in the Income Tax (Amendment) Act 1999 and does not alter the law.

3.5 SECTION 46A: PROVISIONAL INCOME

(a) Proviso to subsection (1):

The threshold for making a provisional return has been raised from K1,200,000 to K1,440,000 per annum. This means that only individuals (other than individuals whose income consists entirely of emoluments which are subject to PAYE) earning income above K1,440,000 in a year will now be required to submit a provisional return.

(b) Proviso to Subsection(3):

The amendment introduces the new proviso which is the rewrite of the repealed subsection (4) .

The new proviso provides for the submission of revised returns if at any time during the charge year the taxpayer discovers that his estimate of provisional income is incorrect because of changed circumstances

(c) Subsection (4):
Subsection (4) has been repealed and replaced by the new subsection (6) except that the return will now have to be filed within 14 days.

The new subsection provides that where a taxpayer who was earning below K1,440,000 per annum, and during the charge year, he starts earning above K1,440,000 he will be required to file a provisional return. The return is to be filed within 14 days from the date he started to earn above K1,440,000 per annum.

(d) Subsection (5):
Subsection (5) has been deleted and replaced by a new subsection which introduces a penalty where provisional tax has been understated.

The new subsection provides that a penalty will be charged, where it is discovered that the taxpayer has understated his income whereby tax on such an estimate has been under paid by a third. The penalty will be calculated at the rate of twenty five percent of the tax under paid.

(e) Subsection (6):
Subsection (6) has been deleted as it is now redundant.

(f) Subsections (7),(8),(9) and (10):
As a tidying up measure, subsections (7),(8),(9) and (10) have been renumbered as (6), (7), (8) and (9).

3.6 **SECTION 78: PENALTIES FOR NON PAYMENT OF TAX:**

(a) Subsections (3),(4) and (10):
Subsections (3),(4) and (10) have been deleted as they are superfluous.

(b) Subsections (2A),(5),(6),(7),(8) and (9):
As a tidying up measure, subsections (2A),(5),(6),(7),(8) and (9) have been renumbered as (3),(4),(5),(6),(7) and (8)

3.7 SECTION 81B: TAX CLEARANCE CERTIFICATE:

(a) Subsection(1):
The law requiring the production of the tax clearance certificate on issuance of retail and wholesale trade, liquor, bar, restaurant, canteen, manufacturing (including assembly activities), export, tax, bus or minibus operator licenses and permits, professional practitioner certificates (i.e. lawyers, doctors, accountants, surveyors) has been repealed.

However, the requirement for tax clearance certificate for Property Transfer Tax purposes remains unchanged.

It should also be noted that the provisions of the income tax Act which deal with the tax clearance for registration or change of motor vehicles, are not repealed. Taxpayers are still required to apply for tax clearance certificate for registration or change of ownership of motor vehicles.

(b) Subsection(3) and (6):
Subsection(3) and (6) have been deleted as they are no longer needed.

(c) **Subsections(4),(5) and (7):**
As a tidying up measure, subsections(4),(5) and (7) have been renumbered as subsections (2), (3) and (4).

(d) Subsections(4),(5) and (7):

As a tidying up measure, subsection(4),(5) and (7) have been renumbered as subsections (2) (3) and (4)

3.8 SECTION 82A: DEDUCTION OF TAX FROM CERTAIN PAYMENTS:

(a)(i) Proviso to paragraph(b) of subsection(1):

The proviso to paragraph(b) has been repealed and replaced by a new proviso. The new proviso is simpler and the layout has been improved. There is no change in law or practice. The new proviso provides for amongst other things the following:

(i) Interest up to K25000 per month on any sum deposited with a commercial bank in Zambia or Building Society , received by an individual, is exempt from the deduction of withholding tax;

(ii) Interest on a bill of exchange drawn for one hundred and eighty days or less is exempt from the deduction of withholding tax;

(iii) Discount income earned on all sums invested in Treasury Bills or any other similar financial instruments, is deemed to be interest.

(a) (ii) Proviso to paragraph(c) of subsection(1):

The Proviso has been deleted as it is no longer needed. It has been inserted after paragraph(e).

(b) Insertion of the proviso after paragraph(e):

The proviso provides that the Commissioner General may direct in certain cases that tax be deducted from payments at reduced rates or zero rates. This may only be effected if the provisions of Section 74 or Second Schedule apply.

3.9 SECTION 97A: TRANSFER PRICING:

The amendment clarifies the definition of arms length conditions.

3.10 SECTION 97AA: SPECIAL PROVISIONS WHERE ACTUAL CONDITIONS INCLUDE ISSUING SECURITY:

Thin capitalisation is, broadly, the use of debt capitalisation between associated enterprises so as to reduce unreasonably the taxable profits of the debtor company and thus have a substantial effect on tax liabilities.

The amendment broadens and strengthens the thin capitalization provisions which were introduced by Income Tax (Amendment) Act 1999. A separate Practice Note, giving guidance on the interpretation of the transfer pricing and thin capitalization provisions will be issued soon.

3.11 SECOND SCHEDULE: EXEMPTIONS:

(a) Sub-paragraph(3) of Paragraph(5):

Currently, the income of the cooperative which is registered under the Cooperative Societies Act, is exempt from tax if its gross income, before the deduction of any expenditure, when divided by the number of its members on the last day of the accounting period does not exceed K800 for the year concerned.

This implies that where the result of dividing the society's gross income by the number of its members is K800 or less, the income of the society for the particular charge year is exempt from tax regardless of how large the net profit or income might be. Where the result is more than K800, then the society's income is liable to tax for the charge year concerned.

The amendment increases the threshold to K3,600,000 per annum from K800 per annum which is no longer realistic.

(b) New subparagraph(v) of paragraph(7):
The new subparagraph exempts lumpsum payment paid to an employee on loss of office or employment on medical grounds.

3.12 THIRD SCHEDULE: INSURANCE BUSINESS:
The amendment provides that the excess of management expenses over an insurance company's investment income should be treated as a loss.

3.13 FIFTH SCHEDULE: CAPITAL ALLOWANCES FOR BUILDING IMPLEMENTS, MACHINERY AND PLANT AND PREMIUMS:

Sub paragraph(5) of Paragraph 10:
The amendment removes the ambiguity in the interpretation and operation of this provision. The amendment now requires that the claimant must prove to the satisfaction of the Commissioner General that implements, machinery or plant inrespect of which wear and tear allowances are claimed, are used exclusively and directly in farming, manufacturing, tourism or leasing business.

This means that implements, machinery or plant which are not used exclusively and directly in farming, manufacturing, tourism or leasing, will not qualify for the enhanced wear and rate. The wear and tear rate is 50% and is calculated on straight line basis.

It should be noted that the amendment will only apply to expenditure incurred as from 1st April 2001.

3.14 CHARGING SCHEDULE

(a) Sub-paragraph(1) of Paragraph(1):
The amendment increases tax credit from K120,000 per annum to K144,000 per annum and for a person with disability from K121 ,200 per annum to K145,200 per annum. The tax credit is given as a deduction from tax payable
.

(b) Sub-paragraph(1) of Paragraph(2):

(i) Lumpsum payments under Section 82:
The amendment inserts the words "under Section 82" which were omitted in the Income Tax (Amendment) Act 1999. There is no change in law or practice.

(ii) Personal income tax rates:
With effect from 1st April 2001, the annual tax bands have been adjusted as follows:

Old:	**New:**
First K1,200,000 @ 10%	First K1,600,000 @ 10%
Next K600,000 @ 20%	Nest K600,000 @ 20%
Balance over K1,800,000 @ 30%	Balance over K2,200,000 @ 30%

4 OTHER MATTERS

4.0 TAXATION OF BENEFITS

4.1 Payment of employees bills

Where an employer, discharges the liability of an employee by paying, for example, his or her rent electricity, telephones, or water bills, school fees or association and club membership fees etc, the employer is required to add such payments to the employee's emoluments and deduct tax under PAYE. As the payment by the employer forms part of the employees emoluments the employer may include the payment in tax allowable wages and salaries.

4.2 Benefits that cannot be converted into Cash:

Benefits which cannot be converted into cash are not taxable on employees but no deduction in respect of the cost of providing the benefit may be claimed by the employer (section 44(1)).

(a) In the case of free residential accommodation provided by an employer in a house owned or leased by the employer the cost to be disallowed in the employers tax computation is 30% of the taxable income paid to the employee.

(b) In the case of the provision of motor vehicles to employees on a personal-holder basis, the benefit to be disallowed in the employers tax computation is as follows:

(i) Luxury cars (1800cc and above)
K200,000 per month or K2.4 million per annum.

(ii) Other cars (below 1800cc):
K120,000 per month or K1,440,000 per annum.

N.B. A personal-to holder vehicle means a vehicle provided for an employee's personal use and usually involves payment by the employer of all the expenses associated with running and maintaining the vehicle.

4.3 Cash Benefits paid in the form of Allowances:

All cash benefits, paid in the form of allowances are taxable on the employee under PAYE. Examples of such cash benefits are:

- education allowance;
- housing allowance;
- transport allowance
- domestic utility allowances eg. electricity, telephone, and water allowances.

4.4 PAYMENTS ON CESSATION OF EMPLOYMENT

Payments on cessation of employment fall into the following categories;

(a) Payments made on dismissal or resignation;
(b) Payments made to an employee at the end of a contract;
(c) Payments made to an employee on being made redundant;
(d) Payments made to an employee on retirement; and
(e) Payments made on termination of employment due to death.

4.5 DISMISSAL OR RESIGNATION OF AN EMPLOYEE

Where an employee has been dismissed or resigns, he may receive the following payments:-

- Emolument (i.e. salary, wage, overtime, leave pay, commission, bonus, fee etc)
- Cash in lieu of leave days due but not taken).

These payments are taxable by reference to the PAYE Tax Tables applicable for the month in which the payment is made and do not qualify for the K3million exemption under S.21(5).

4.6 EXPIRY OF EMPLOYMENT CONTRACT

Where employment ceases on the expiry of a contract, the following payments are usually made to the employee:-

(i) final salary
(ii) Gratuity
(iii) Leave pay
(iv) Repatriation pay

These payments are taxed as follows:-

(i) The final salary is an emolument and should be taxed under PAYE in the month of payment.

(ii) Gratuity paid is taxed at the graduated rates of tax, without giving tax credit, as follows;

- Qualifying gratuity is taxed at the graduated rates of tax, without giving tax credit, as credit;
  - the fist K1,600,000 @ 10%)
  - the next K600,000 @ 20%)As from 1st April 2001
  - the balance @ 30%)

- Non-qualifying gratuity is added to the salary for the month in which it is paid and taxed with reference to the appropriate P.A.Y.E tax table.

- Gratuity paid to permanent and pensionable staff is taxed as follows:-
  - the first K3 million is exempt from tax
  - the balance is taxed at 10%

Refer to our Leaflet No.3 on Taxation of Gratuities Under PAYE for more details.

(iii) Leave pay and repatriation pay will be added to the salary and taxed with respect to the tax table applicable for the month in which payment is made.

4.7 REDUNDANCY/RETRENCHMENT

The following payments may be made to an employee who has either been declared redundant or has been retrenched:

(i) Salary
(ii) Leave pay
(iii) Repatriation pay
(iv) Pension

The above payments are taxes as follows:-

(i) Salary is taxed under PAYE in the month in which it is paid;
(ii)-(v) Leave pay, accrued service bonuses, repatriation pay and compensation for loss of office are added together and taxed as follows:-
- the first K3 million is exempt from tax
- the balance is taxed at 10%

4.8 EARLY OR NORMAL RETIREMENT

Where an employee opts for early retirement or is retired at the normal age, the following payments may be made:

(i) Salary
(ii) Leave pay
(iii) Repatriation pay
(iv) Pension

The above payments are taxed as follows:-

(i) Salary is taxed under PAYE in the month in which payment is made.
(ii)+(iii) Leave pay is added to repatriation pay and taxed as follows:-
- the first K3 million is exempt from tax
- the balance is taxed at 10%

(v) Pension is exempt from tax

4.9 TERMINATION OF EMPLOYMENT DUE TO DEATH

The following payments may be made upon the death of an employee:-

(i) Salary
(ii) Leave pay
(iii) Gratuity
(iv) Ex-gratia payment

The above payments are taxed as follows:-

(i) the salary up to date of death is taxed under PAYE in the month in which payment is made
(ii) Leave pay is follows:-
- the first K3 million is exempt from tax.
- the balance is taxed at 10%

(iii) Gratuity is taxed as in 2(b)(1) above.
(iv) Ex-gratia payments are exempt from tax.

Where an employee dies when he is eligible for retirement, the tax treatment of payments made is the same as above.

Note that with effect from 1st April 1999 the maximum exemption per individual is K3 million (previously K2million).

4.10 INCOME TAX RATES

(a) Personal Income Tax rates:
Personal Income Tax rates with effect from 1st April 2001 are as follows:

Chargeable Income per annum		**Tax rate**
First K1,600,000	@	10%
The next K600,000	@	20%
Balance over K2,200,000	@	30%

(b) Company Tax rates

On income from LUSE listed companies	@	30%
On income from manufacturing & other	@	35%
On income from banks registered under the Banking and Financial Institutions Act		
Income up to K2250,000,000	@	35%

Income in excess of K250,000,000	@	45%
On income from farming	@	15%
On income from non-traditional exports	@	15%
In income from the Chemical Manufacture of fertilisers	@	15%
On income of Trusts, Deceased or Bankrupt Estates	@	35%

On income from rural enterprise (The tax chargeable is reduced by one seventh for a period of five years)

(c) Withholding Tax rates

(i) Individuals:

Dividends (final tax)	@	15%
Interest (final tax)	@	25%
Royalties, Management and Consultancy Fees	@	15%
Rents	@	15%
Commissions	@	15%

(ii) Persons other than Individuals:

Dividends (finals tax)	@	15%
Interest (not final)	@	15%
Royalties, Management and Consultancy	@	
Fees	@	15%
Commissions	@	15%

(iii) Other payments:

Non resident contractors	@	15%
Public entertainment fees (non-residents only)	@	15%

5. DIRECT TAXES:

If you have any problems concerning your taxes, please contact the Advice Centre or your nearest Direct Tax Office at the following addresses:-

1. **Advice Centre**
   2nd Floor Revenue House
   Private Bag W136
   LUSAKA

   Tel: 226227/236227
   Fax 222717

2. **Assistant Commissioner**
   Lusaka A Tax Office
   P.O. Box 31026
   LUSAKA

3. **Assistant Commissioner**
   Lusaka B Tax Office
   P.O. Box 31936
   LUSAKA

4. **Assistant Commissioner**
   Lusaka C Tax Office
   P.O. Box 31988
   LUSAKA

5. **Assistant Commissioner**
   Ndola Tax Office
   P.O. Box 70181
   NDOLA

6. **Assistant Commissioner**
   Kitwe Tax Office
   P.O. Box 20855
   KITWE

7. **Assistant Commissioner**
   Kabwe tax Office
   P.O. Box 80909
   KABWE

8. **Assistant Commissioner**
   Central Investigation Unit
   P.O. Box 35710
   LUSAKA

9. **Assistant Commissioner**
   Debt Management Unit
   P.O. Box 35710
   LUSAKA

10. **Assistant Commissioner**
    Lusaka Taxes Central Unit
    P.O. Box 34567
    LUSAKA

11. **Senior Inspector**
    Chipata Tax Office
    P.O. Box 510632
    CHIPATA

12. **Senior Inspector**
    Mongu Tax Office
    P.O. Box 910110
    MONGU

13. **Senior Inspector**
    Kasama Tax Office
    P.O. Box 410728
    KASAMA

14. **Senior Inspector**
    Mansa Tax Office
    P.O. Box 710112
    MANSA

15. **Senior Inspector**
    Solwezi Tax Office
    P.O. Box 110368
    SOLWEZI

16 **Senior Inspector**
   Livingstone Tax Office
   P.O. Box 60597
   LIVINGSTONE