ZAMBIA REVENUE AUTHORITY

DOMESTIC TAXES DIVISION

INCOME TAX (AMENDMENT) ACT 2008

MINES AND MINERALS DEVELOPMENT ACT 2008

VALUE ADDED TAX (AMENDMENT) ACT 2008

PRACTICE NOTE NO. 1/2008

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1.0 GENERAL

This **PRACTICE NOTE** describes the various changes introduced by the Income Tax (Amendment) Act 2008, the Value Added Tax (Amendment) Act 2008 and the Mines and Minerals Development Act 2008.

The commentary is for general guidance only and is not to be taken as 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, Domestic Taxes Division or Customer Services Centres, in Lusaka and Kitwe.

Chriticles Mwansa

COMMISSIONER-GENERAL

2.0 SUMMARY OF CHANGES TO THE INCOME TAX ACT

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3.0 COMMENTARY ON AMENDMENTS TO THE INCOME TAX ACT

3.1 SECTION 1: TITLE AND COMMENCEMENT

The amendments to the Income Tax Act shall come into effect on 1st April 2008.

3.2 SECTION 2: INTERPRETATION

3.2.1 **Business** - The definition of "business" has been amended by the inclusion of the term "hedging".

3.2.2 **Finance Lease** – The definition has been amended by insertion of the word "not" after the words "lessor does". This is meant to correct a drafting error, as the word "not" was inadvertently omitted.

3.2.3 **Mining Operations –** The definition has been amended to mean *"any operation carried out under a mining right referred to in section six of the Mines & Minerals Act, but does not include any operations carried out under a prospecting permit, a prospecting licence or any operations involving only mineral processing".* This has been done to restrict mining operations only to extractive activities from the earth. Therefore it means that any operations involving only prospecting or mineral processing shall not be subject to the mining tax regime.

3.2.4 **Operating Lease -** Introduces a new definition of "operating lease", as - *"any lease of implements, machinery or plant, other than a finance lease*". The amendment seeks to distinguish an operating lease from a finance lease.

3.3 SECTION 30: LOSSES

3.3.1 **Deduction of hedging losses –** This measure is intended to recognise any income arising from hedging as a separate source. Therefore, any loss incurred in a charge year on hedging, shall only be deducted from the income from hedging. The loss can only be carried forward for a period not exceeding five years.

3.3.2 **Carry forward of losses (Mining operations) –** The loss arising from mining operations shall be carried forward for a period not exceeding ten years. This measure intends to harmonise the period for carrying forward of losses for any person carrying on mining operations.

3.4 SECTION 43C: DEDUCTION FOR MORTGAGE INTEREST

3.4.1 This amendment re-introduces the deduction for mortgage interest.

3.4.2 Mortgage - is a loan secured by a Property. Interest on such a loan is mortgage interest.

3.4.3 Property – For the purposes of Section 43C, property means immovable residential property within the Republic of Zambia.

3.4.4 Eligibility –

- Any Zambian citizen is entitled to claim mortgage interest.
- The loan should be used for construction, purchase, repair or improvement of a residential property, or for the payment of a premium on a mortgage protection insurance policy of the property.

3.4.5 Conditions –

- There shall be no restriction on the number of residential properties or loans on which an individual can claim interest.
- There shall be no prerequisite for an individual to occupy the residential property in order to claim the deduction.
- Mortgage interest shall only be claimed in respect of the period from the date of commencement of construction, improvement, repair or on purchase of a residential property.
- Only interest accruing from 1^{st} April 2008 and paid within the charge year and subsequent charge years shall be allowed as a deduction.

3.4.6 Amount of deduction to be allowed –

The amount of interest to be allowed shall not exceed:

- the maximum rate of interest that would have been payable on a mortgage provided by a building society in a charge year; or
- the assessable income of an individual for that charge year before allowing deduction for: pension contributions (including NAPSA), premiums on annuities, business expenses incurred after cessation of business, donations to approved charities and losses, including those incurred prior to being declared bankrupt;

whichever is less.

3.4.7 How to Claim.

(i) Step One – Complete an Income Tax return (Form ITF1A) at the end of the charge year.

(ii) Step Two – Submit the completed return together with the following supporting documents to your local tax office:

- Mortgage deed or Title deed.
- Statement of account to show proof of payment of mortgage interest during the charge year.
- Proof of Zambian nationality, i.e., National Registration Card/ Passport.
- Individuals in employment will need to attach the last payslip for the charge year.
- Individuals falling under Turnover Tax should also submit the Turnover Tax Remittance Form.
- Individuals under Presumptive Tax should also provide proof of payment (presumptive tax receipts) and copies of motor vehicle registration certificate(s).

Illustration

Mrs. Musonko earns an annual salary of K120 million in the charge year 2008/09. She obtains a mortgage of K180 million on 1st April 2008 from Mboza Building Society and purchases a house valued at K180 million. The mortgage is at a simple interest rate of twenty per centum (20%) per annum. At the end of the charge year she submits an income tax return for a claim of mortgage interest relief.

Computation:

Interest = P X R X T =	K180m X 20% X 12/12 =	36,000,000

	With Interest Claim	**Without Interest Claim**
Assessable Income	120,000,000	120,000,000
Less: Mortgage Interest	36,000,000	-
	84,000,000	**120,000,000**
Less: NAPSA/Approved pension contributions	1,620,000	1,620,000
Taxable Income	**82,380,000**	**118,380,000**
First K7,200,000 @ 0%	-	-
Next K7,620,000 @ 25%	1,905,000	1,905,000
Next K33,180,000 @ 30%	9,954,000	9,954,000
Balance (K34,380,000/ K70,380,000) @ 35%	12,033,000	24,633,000
Tax Payable	**23,892,000**	**36,492,000**
Net Income	58,488,000	81,888,000
Refund Claim	**12,600,000**	

3.5 SECTION 43D: DEDUCTION FOR EMPLOYING A PERSON WITH A DISABILITY.

The amendment increases the amount allowable to businesses which employ persons with disability from K500,000 to K1,000,000 per charge year per person. This is to encourage the employing of persons with disability.

3.6 SECTION 44: CASE OF NO DEDUCTION

The amendment to paragraph (h)(iii) increases the allowable amount for business gifts from K25,000 to K100,000 per person per charge year. This means all business gifts up to this amount are tax deductible.

3.7 SECTION 45A: DUTY TO PROVIDE TAX PAYER IDENTIFICATION NUMBER (TPIN)

This amendment broadens the definition of a person, for the purposes of this section, to include a partnership with respect to the requirement to obtain a Tax Payer Identification Number. This was done to ease the tax administration.

3.8 SECTION 46: RETURNS GENERALLY

This amendment introduces a requirement for submission of a Windfall Tax Return for any person liable to Windfall Tax. Windfall Tax applies to any person carrying on mining operations of base metals or precious metals. Currently Windfall Tax is only chargeable on copper and cobalt.

This return shall be submitted quarterly and shall contain: –

- Quantities of the minerals sold;
- Quantities of the concentrates or slimes sold;
- Contracts of sale for minerals, slime or concentrates; and
- Any other particulars as determined by the Commissioner-General.

The return shall be designated in Zambian Kwacha. Failure to submit a return within fourteen days after the due date shall attract penalties of 1,000 penalty units (K180, 000) for an individual and 2,000 penalty units (K360, 000) for a company per month.

3.9 SECTION 64: ESTIMATED ASSESSMENT

The amendment has increased Base Tax from K50, 000 to K150, 000.

3.10 SECTION 64A: STANDARD ASSESSMENT

(a) This amendment excludes any person carrying on mining operations from Turnover Tax. The measure is intended to avoid possible double taxation.

(b) This amendment introduces powers for the Minister to make regulations and penalties for the administration of Turnover Tax. The measure is intended to ease the administration of Turnover Tax.

3.11 SECTION 64B: WINDFALL TAX ASSESSMENT

This amendment introduces powers for the Commissioner-General to make a Windfall Tax assessment on any person carrying on mining operations of base or precious metals to pay the tax at rates specified in the Tenth Schedule.

3.12 SECTION 77: WHEN TAX DUE IS PAYABLE

This amendment introduces a new sub-section (1D), providing for due dates for the payment of Windfall Tax as follows:

(a) for the 1^{st} Quarter, 30^{th} June;
(b) for the 2^{nd} Quarter, 30^{th} September;
(c) for the 3^{rd} Quarter, 31^{st} December; and
(d) for the 4^{th} Quarter, 31^{st} March.

3.13 SECTION 78: PENALTY FOR NON-PAYMENT OF TAX

The amendment introduces a new paragraph (c) providing for penalties for failure to pay Windfall Tax within 14 days of the due date.

3.14 SECTION 81C: ADVANCE INCOME TAX

This amendment is meant to correct a drafting error which referred to Section 45 instead of Section 46, which refers to submission of returns.

3.15 SECTION 82A: DEDUCTION OF TAX FROM CERTAIN PAYMENTS

This amendment removes the exempt portion from Withholding Tax on interest earned on individuals' bank or building society savings or deposit accounts. The measure is intended to avoid multiple benefit of the exempt portion in instances where an individual has more than one savings/deposit account.

3.16 SECTION 93: TAX NOT PAYABLE

This amendment increases the non-payable tax amount from K20, 000 to K100, 000. This, therefore, entails that all tax assessments below this amount will not be payable. This will rationalise enforcement costs.

3.17 SECTION 97A: TRANSFER PRICING

This amendment introduces a reference price for any transactions for the sale of base metals, precious metals or any substance containing base metals or precious metals, directly or indirectly, between related or associated parties.

For this purpose, "related or associated parties" include, but are not limited to:

(a) parties connected directly or indirectly through shareholding, equity or partnerships;
(b) any joint venture owned or operated jointly with or an unrelated party;
(c) connected persons; or
(d) parties connected through management and control.

Two persons are "connected" with each other if;

(a) one of them is an individual and the other is that person's spouse, a relative of that person or of that person's spouse or the spouse of such a relative; or
(b) one of them is a trust of a settlement and the other is - :
   (i) a person who, in relation to that settlement, is a settlor; or
   (ii) a person who is connected with a person referred to in (i) above.

"Relative" means a brother, sister, ancestor or lineal descendant.

The applicable sale price of such metals or recoverable metals shall be the reference price. For this purpose, the "reference price" means:

(a) the monthly average London Metal Exchange (LME) cash price;
(b) the monthly average Metal Bulletin cash price to the extent that the base metals or precious metal cash prices are not quoted on the LME;
(c) the monthly average cash price of any other metal exchange market as approved by the Commissioner-General to the extent that the base metal price or precious metal price is not quoted on the LME or Metal Bulletin; or
(d) the average monthly LME cash price, average monthly metal bulletin cash price or any other monthly average metal market exchange cash price approved by the Commissioner-General, less any discounts on account of poor or low quality or grade.

This measure intends to ensure that related or associated parties transact at arms length. Arms length is a relationship which exists between parties who are strangers to each other and who bear no special duty, obligation, or relation to each other.

3.18 SECOND SCHEDULE: Paragraph 5(3)

This amendment increases the threshold of income per member of a co-operative society from K3, 600,000 to K7, 200,000 per annum for the income of a co-operative society to be exempt from income tax. This brings it in line with the PAYE exempt threshold.

3.19 FIFTH SCHEDULE: Paragraph 1(4), 10(5), 19, 21(4), 22(2), 22(3), 23

(i) **Paragraph 1(4)(i) –** this amendment increases the value of low cost housing from K2,000,000 to K20,000,000. This allowance is available to any person who constructs or acquires housing for employees for the purposes of the business.

(ii) **Paragraph 10(5) –** this amendment deletes the word "leasing" and substitutes it with the words "leased out under an operating lease". This means that only the lessor can claim capital allowances for implements, machinery or plant leased under an operating lease.

(iii) **Paragraph 19 –** The following amendments have been made:

- The reference to "section twenty-one" in the definition of "deemed loss" has been deleted and substituted by the words "paragraph 21". This was to correct a drafting error.
- The definition of "production charge year" has been amended to read *"a charge year in which a mine first commences regular production."*
- The definitions of "1953 new mine", "1970 new mine" and "1975 new mine" have been deleted.
- A definition of "existing mine" has been introduced to mean *"any mine that has a production commencement date before 1st April 2008, or that is not in regular production but whose development commenced before 1st April 2008, or the combination of both."*

(iv) **Paragraph 21(4), (5) –** The proviso relating to prospecting expenditure that is deemed to be a loss under sub-paragraph(4) has been deleted. This means that the period of carry forward of losses shall be in accordance with the provisions of section 30.

In sub-paragraph (5) the words "1975 new" after the words "operator of a" have also been deleted.

(v) **Paragraph 22 -** The amendment has deleted sub-paragraphs (2),(3),(4),(5),(6) and (7) and substituted sub-paragraphs (2) and (3) with the following:

Sub-paragraph (2) – *"The deduction to be allowed for a charge year for a mine shall be calculated on a straight line basis at twenty-five per centum of the original expenditure:*

Provided that –

(a) the deduction for pre-production expenditure shall be one hundred per centum of the original expenditure in the production charge year to the extent that such expenditure has not already been allowed as a deduction;
(b) seventy-five per centum of the capital expenditure incurred in the charge year ending 31st March 2009, shall be allowed as a deduction in that charge year and the balance in the subsequent charge year; and
(c) fifty per centum of the capital expenditure incurred in the charge year ending 31st March 2010, shall be allowed as a deduction in that charge year and the balance shall be allowed equally in the subsequent two charge years."

Illustration:

Mugoto Mines Ltd commences production on 1st April 2008. It incurred pre-production expenditure up to 31st March 2008 amounting to K10 billion which has not yet been claimed as a deduction. It incurred capital expenditure as follows:

2008/2009	K5 billion
2009/2010	K3 billion
2010/2011	K2 billion.

The above expenditure will be claimed as follows:

Charge Year	Expenditure	Rate*	Amount Claimed K'000	Amount C/f K'000
2008/2009	Pre - production	100%	10,000,000	-
	Capital	75%	3,750,000	1,250,000
2009/2010	Capital b/d (2008/09)	25%	1,250,000	-
	Capital	50%	1,500,000	1,500,000
2010/2011	Capital b/d (2009/10)	25%	750,000	750,000
	Capital	25%	500,000	1,500,000
2011/2012	Capital b/d (2009/10)	25%	750,000	-
	Capital b/d (2010/11)	25%	500,000	1,000,000

* Note: The rate is applicable on the original expenditure.

Sub-paragraph (3) – *"where separate and distinct mining operations are carried on by a person in mines which are not contiguous, the deduction allowable under sub-paragraph (2) shall be calculated separately according to the respective mines:*

Provided that this sub-paragraph shall not apply to any existing mine."

This means that expenditure for separate and distinct mines owned by a person must not be aggregated. Any existing mine is considered to be a single mine.

(vi) **Paragraph 23 -** The amendment has deleted and substituted the paragraph with the following:

Sub-paragraph (1) – *"where a person is carrying on mining operations in a mine which is in regular production and is also the owner of, or has a right to work a mine which is not contiguous with the producing mine and from which the person has a loss in the charge year, the amount of such loss shall not be deducted in ascertaining the gains or profits from the mining operations:*

Provided that the loss incurred may be allowed as a deduction in ascertaining the gains or profit arising from the same mine when it commences regular production."

Gains or losses from productive and non-productive mines owned by a person must not be aggregated. This means that a loss from a mine which is not in regular production cannot be deducted from the income of a mine which is in regular production.

Sub-paragraph (2) – *"The provisions of sub-paragraph (1) shall not apply to any existing mine."*

Gains or losses from "existing mines" can however, be aggregated.

Illustration

B &H Mining Limited is a copper and cobalt mining company. The company owns the following mines:

i. Kango Mine, a copper producing mine based in Kitwe which commenced production in May 1999.

ii. Zembe Mine, a copper and cobalt mine based in Mufulira still under development. Its development commenced in January 2007.

iii. Mbwili Mine, a copper producing mine based in Chingola. The development of this mine commenced in April 2008 and started production in December the same year.

iv. Yebo Mine, a copper producing mine also based in Chingola about 25kilometres east of Mbwili Mine. The development of this mine commenced in May 2008 and it expected to be completed in December 2009.

The extracts of the company's financial results for the year ended 31st March 2009 broken down by mine were as follows:

	Kango	**Zembe**	**Yebo**	**Mbwili**	**Totals**
Sales	400,000	-	-	10,000	**410,000**
Less Cost of Sales	150,000	-	-	3,000	**153,000**
Gross Profit	250,000			7,000	**257,000**
Less Other Expenses	90,000			12,000	**102,000**
Less Depreciation	10,000	-	-	15,000	**25,000**
Net Profit	**150,000**	**-**	**-**	**(20,000)**	**130,000**
Preproduction expenditure	-	100,000	45,000	30,000	**175,000**
Plant & machinery expenditure	50,000			70,000	**120,000**
Total capital expenditure	**50,000**	**100,000**	**45,000**	**100,000**	**295,000**

Since Kango Mine and Zembe Mine commenced production and development respectively before 1st April 2008, they are considered to be one existing mine. This is despite the fact that they are not contiguous (not nearby, not adjoining).

Mbwili Mine and Yebo Mine are not contiguous and since they commenced their development and mining after 1st April 2008, they are considered to be separate and distinct mines.
Since Yebo Mine is not a producing mine, its tax loss cannot be offset against the income of Mbwili Mine.

The tax computation for the charge year 2008/2009 for the company will be as follows:

	Existing Mine (Zembe & Kango)	**Yebo**	**Mbwili**
Net Profit / Loss	150,000	-	(20,000)
Add Depreciation	10,000	-	15,000
	160,000	-	(5,000)
Less mining deductions	(137,500)	(45,000)	(82,500)
Taxable Profit / (Loss)	**22,500**	**(45,000)**	**(87,500)**
Computation of Mining deduction:			
Preproduction expenditure (100%)	100,000	45,000	30,000
Plant & machinery (75%)	37,500	-	52,500
	137,500	**45,000**	**82,500**

3.20 SIXTH SCHEDULE: Paragraph 1

The amendment increases the farm dwelling allowance from K10, 000,000 to K20, 000,000 per annum.

3.21 TENTH SCHEDULE: WINDFALL TAX

The amendment introduces a schedule for the computation of Windfall Tax. Windfall Tax applies to any person carrying on mining operations of base metals or precious metals. Currently the Windfall Tax has only been provided for copper and cobalt.

Windfall tax shall not apply to any person solely carrying on mineral processing. However, mineral processing done in conjunction with mining constitutes mining operations.

Part I – Copper

3.21.1 Interpretation – In this part, unless the context otherwise requires:

“first trigger price” (FTP) means the copper price of five thousand, five hundred and twelve United States dollars (US$5,512) per metric tonne.

"monthly average price" (MAP) means the weighted average London Metal Exchange (LME) copper price in respect of the calendar month calculated in accordance with the following formula:

$$MAP = \frac{Q_1P_1 + Q_2P_2 + Q_3P_3 \ldots + Q_{n-1}P_{n-1} + Q_nP_n}{Q_n}$$

Where: –

Q_n= the quantity of copper or recoverable copper sales in metric tonnes in a calendar month;
P_n= the corresponding London Metal Exchange daily closing cash seller price in United States dollars per metric tonne for Grade A cathode; and
n= the aggregate number of copper or recoverable copper sales invoiced in the relevant calendar month;

"ruling exchange rate" (RER) means the Bank of Zambia monthly average Kwacha to United States dollar currency exchange rate;

"second trigger price" (STP) means the copper price of six thousand, six hundred and fourteen United States dollars (US$6,614) per metric tonne; and

"third trigger price" (TTP) means the copper price of seven thousand, seven hundred and sixteen United States dollars (US$7,716) per metric tonne.

3.21.2 Computation – Windfall Tax shall be charged as follows:

Where the monthly average price -

(a) does not exceed the FTP, Windfall Tax shall not be payable;
(b) exceeds the FTP but does not exceed the STP, the Windfall Tax shall be calculated in accordance with the following formula:

$WT = (RER*Q_n)[25\%(MAP-FTP)]$

Where –
WT = Windfall Tax payable for the month;

(c) exceeds the STP, but does not exceed the TTP the Windfall Tax shall be calculated in accordance with the following formula:

$WT = (RER*Q_n)\{[25\%(STP-FTP)] + [50\%(MAP-STP)]\}$; and

(d) exceeds the TTP, the Windfall Tax shall be calculated in accordance with the following formula:

$$WT = (RER*Q_n)\{[25\%(STP-FTP)] + [50\%(TTP-STP)] + [75\%(MAP-TTP)\}$$

Illustrations:

(i) Where MAP does not exceed first trigger price.

Solwezi Mining Company Ltd carrying on copper mining operations sold the following quantities of copper for the quarter ended 30th June 2008, at the time when the LME daily closing cash seller prices for Grade A cathode were as indicated in the table below:

	Quantity (Tonnes)	LME Daily Closing Cash Seller Price (Grade A)
April		
4th	800	5,600
10th	1,200	5,550
18th	1,330	5,300
27th	1,500	5,290
May		
5th	1,800	5,100
16th	1,700	4,980
30th	1,900	4,950
June		
7th	2,000	5,300
18th	2,300	5,000

Calculation of the monthly average price for each of the months will be as follows.

April –

$$MAP=\frac{(800x\ 5,600)+(1,200x5,550)+(1,330x5,300)+(1,500x5,290)}{(800+1,200+1,330+1,500)}$$

MAP= US$5,408.70

May –

$$MAP= \frac{(1,800x5,100)+(1,700x4,980)+(1,900x4,950)}{(1,800+1,700+1,900)}$$

MAP= US$5,009.44

June –

$$MAP= \frac{(2,000x5,300)+(2,300x5,000)}{(2,000+2,300)}$$

MAP= US$5,139.53

Since the monthly average price for each of the three months did not exceed the first trigger price of US$5,512 per metric tonne, the company shall not be chargeable to Windfall Tax for the quarter.

(ii) Where the MAP exceeds the first trigger price (FTP) but does not exceed the second trigger price (STP).

Solwezi Mining Company Ltd carrying on copper mining operations sold the following quantities of copper for the quarter ended 30th September 2008, at the time when the LME daily closing cash seller prices for Grade A cathode were as indicated in the table below. During the same period, the company also bought concentrates which it processed for resale:

	Quantity (Tonnes)			LME Daily Closing Cash
	Mined	**Bought**	**Total**	**Seller Price (Grade A)**
July				
4th	600	300	900	5,600
10th	800	400	1,200	5,550
18th	1,100	200	1,300	5,610
27th	1,200	350	1,550	5,700
August				
5th	1,400	400	1,800	5,800
16th	1,450	450	1,900	5,910
30th	1,600	410	2,010	6,000
September				
7th	1,700	300	2,000	6,150
18th	1,500	600	2,100	6,300

The Bank of Zambia monthly mid-rate Kwacha to US dollar was K3,780, K3,700 and K3,650 for July, August and September respectively.

Calculation of the monthly average price for each of the months will be as follows.

July –

$$\text{MAP}=\frac{(900\text{x } 5{,}600)+(1{,}200\text{x}5{,}550)+(1{,}300\text{x}5{,}610)+(1{,}550\text{x}5{,}700)}{(900+1{,}200+1{,}300+1{,}550)}$$

MAP= US$5,621.82

August –

$$\text{MAP}=\frac{(1{,}800\text{x}5{,}800)+(1{,}900\text{x}5{,}910)+(2{,}010\text{x}6{,}000)}{(1{,}800+1{,}900+2{,}010)}$$

MAP= US$5,907.01

September –

$$MAP = \frac{(2{,}000 \times 6{,}150)+(2{,}100 \times 6{,}300)}{(2{,}000+2{,}100)}$$

MAP= US$6,226.83

Computation of Windfall Tax for each of the months will be as follows:

July -

Windfall Tax (WT) = (RERxQn)[25%(MAP-FTP)]
WT = (3,780x4,950)[0.25(5,621.82-5,512)]
WT= K513,710,505.00

August -

Windfall Tax (WT) = (3,700x5,710)[0.25(5,907.01-5,512)]
WT = K2,086,344,067.50

September –

Windfall Tax (WT) = (3,650x4,100)[0.25(6,226.83-5,512)]
WT = K2,674,357,737.50

(iii) Where the MAP exceeds the third trigger price (TTP).

Solwezi Mining Company Ltd carrying on copper mining operations sold the following quantities of copper for the quarter ended 31st December 2008, at the time when the LME daily closing seller cash prices for Grade A cathode were as indicated in the table below. During the same period, the company also bought concentrates which it processed for resale:

	Quantity (Tonnes)			LME Daily Closing Cash
	Mined	**Bought**	**Total**	**Seller Price (Grade A)**
October				
4th	600	300	900	5,550
10th	800	400	1,200	5,620
18th	1,100	200	1,300	5,700
27th	1,200	350	1,550	5,780
November				
5th	1,400	400	1,800	6,750
16th	1,450	450	1,900	6,800
30th	1,600	410	2,010	6,950
December				
7th	1,700	300	2,000	7,812
18th	1,500	600	2,100	7,915

The Bank of Zambia monthly mid-rate Kwacha to US dollar was K3,810, K3,815 and K3,910 for October, November and December respectively.

Calculation of the monthly average price for each of the months will be as follows.

Solwezi Mining Company limited mined copper ore and also bought copper concentrates during the charge year. These activities carried out by Solwezi Mining are considered as mining operations; therefore, the company shall pay windfall taxes on total sales.

October –

$$MAP=\frac{(900x\ 5{,}550)+(1{,}200x5{,}620)+(1{,}300x5{,}700)+(1{,}550x5{,}780)}{(900+1{,}200+1{,}300+1{,}550)}$$

MAP= US$5,678.38

November –

$$MAP= \frac{(1{,}800x6{,}750)+(1{,}900x6{,}800)+(2{,}010x6{,}950)}{(1{,}800+1{,}900+2{,}010)}$$

MAP= US$6,837.04

December –

$$MAP= \frac{(2{,}000x7{,}812)+(2{,}100x7{,}915)}{(2{,}000+2{,}100)}$$

MAP= US$7,864.76

Computation of Windfall Tax for each of the months will be as follows:

October -

Windfall Tax (WT) = (RERxQn)[25%(MAP-FTP)]

WT = (3,810x4,950)[0.25(5,678.38-5,512)]

WT = K784,460,902.50

November -

Windfall Tax (WT)=(RER*Q_n){[25%(STP-FTP)] + [50%(MAP-STP)]}

WT = (3,815x5,710){[0.25(6,614-5,512)]+[0.5(6,837.04-6,614)]}

WT = K8,430,708,223.00

December –

Windfall Tax (WT)=(RER*Q_n){[25%(STP-FTP)]+[50%(TTP-STP)]+ [75%(MAP-TTP)]}

$WT=(3,910x4,100)\{[0.25(6,614-5,512)]+[0.50(7,716-6,614)]+[0.75(7,864.76-7,716)]\}$

$WT=K15,038,200,170$

Part II – Cobalt

3.21.3 Interpretation – In this part, unless the context otherwise requires:

"first trigger price" (FTP) means the cobalt price of fifty-five thousand, one hundred and sixteen United States dollars (US$55,116) per metric tonne.

"monthly average price" (MAP) means the weighted average Metal Bulletin cobalt cash price in respect of a calendar month calculated in accordance with the following formula:

$$MAP= \frac{Q_1P_1 + Q_2P_2 + Q_3P_3....+ Q_{n-1}P_{n-1} + Q_nP_n}{Q_n}$$

Where –

Q_n= the quantity of cobalt or recoverable cobalt sales in metric tonnes in a calendar month;
P_n= the corresponding Metal Bulletin daily closing cash seller price in United States dollars per metric tonne; and
n= the aggregate number of cobalt or recoverable cobalt sales invoiced in the relevant calendar month;

"ruling exchange rate" (RER) means the Bank of Zambia monthly average Kwacha to United States dollar currency exchange rate;

"second trigger price" (STP) means the cobalt price of seventy-seven thousand, one hundred and sixty-two United States dollars (US$77,162) per metric tonne; and

"third trigger price" (TTP) means the cobalt price of eighty-eight thousand, one hundred and eighty-five United States dollars (US$88,185) per metric tonne.

3.21.4 Computation – Windfall tax shall be charged as follows:

Where the monthly average price -

(a) does not exceed the FTP, Windfall Tax shall not be payable;
(b) exceeds the FTP but does not exceed the STP, the Windfall Tax shall be calculated in accordance with the following formula:

$WT = (RER*Q_n)[25\%(MAP-FTP)]$

Where –
WT = Windfall Tax payable for the month;

(c) exceeds the STP, but does not exceed the TTP the Windfall Tax shall be calculated in accordance with the following formula:

$WT = (RER*Q_n)\{[25\%(STP-FTP)] + [50\%(MAP-STP)]\}$; and

(d) exceeds the TTP, the Windfall Tax shall be calculated in accordance with the following formula:

$$WT = (RER*Q_n)\{[25\%(STP-FTP)] + [50\%(TTP-STP)] + [75\%(MAP-TTP)\}$$

Illustration:

(i) Where MAP does not exceed first trigger price.

Solwezi Mining Company Ltd carrying on cobalt mining operations sold the following quantities of cobalt for the quarter ended 30th June 2008, at the time when the Metal Bulletin daily closing cash seller prices in US dollar per metric tonne were as indicated in the table below:

	Quantity (Tonnes)	**Metal Bulletin Daily Closing Cash Seller Price**
April		
4th	80	50,125
10th	82	52,456
18th	65	53,000
27th	70	54,080
May		
5th	55	54,800
16th	60	54,680
30th	65	54,870
June		
7th	70	55,100
18th	72	54,980

Calculation of the monthly average price for each of the months will be as follows:

April –

$$MAP=\frac{(80x50,125)+(82x52,456)+(65x53,000)+(70x54,080)}{(80+82+65+70)}$$

MAP= US$52,329.94

May –

MAP= $\frac{(55x54,800)+(60x54,680)+(65x54,870)}{(55+60+65)}$

MAP= US$54,785.28

June –

MAP= $\frac{(70x55,100)+(72x54,980)}{(70+72)}$

MAP= US$55,039.15

Since the monthly average price for each of the three months did not exceed the first trigger price of US$55,116 per metric tonne, the company shall not be chargeable to windfall tax for the quarter.

(ii) Where the MAP exceeds the first trigger price (FTP) but does not exceed the second trigger price (STP).

Solwezi Mining Company Ltd carrying on cobalt mining operations sold the following quantities of cobalt for the quarter ended 30th September 2008, at the time when the Metal Bulletin daily closing cash seller prices in US dollar per metric tonne were as indicated in the table below. During the same period, the company also bought concentrates which it processed for resale:

	Quantity (Tonnes)			Metal Bulletin Daily
	Mined	**Bought**	**Total**	**Closing Cash Seller Price**
July				
4th	60	15	75	57,205
10th	62	18	80	57,500
18th	58	12	70	58,200
27th	55	10	65	58,350
August				
5th	62	14	76	59,860
16th	61	10	71	62,400
30th	66	18	84	64,680
September				
7th	70	18	88	67,800
18th	72	16	88	73,580

The Bank of Zambia monthly mid-rate Kwacha to US dollar was K3,780, K3,700 and K3,650 for July, August and September respectively.

Calculation of the monthly average price for each of the months will be as follows:

Solwezi Mining Company limited mined copper ore and also bought copper concentrates during the charge year. These activities carried out by Solwezi Mining are considered as mining operations; therefore, the company shall pay windfall taxes on total sales.

July –

$$MAP=\frac{(75x\ 57,205)+(80x57,500)+(70x58,200)+(65x58,350)}{(75+80+70+65)}$$

MAP= US$57,783.19

August –

$$MAP=\frac{(76x59,860)+(71x62,400)+(84x64,680)}{(76+71+84)}$$

MAP= US$62,393.42

September –

$$MAP=\frac{(88x67,800)+(88x73,580)}{(88+88)}$$

MAP= US$70,690.00

Computation of Windfall Tax for each of the months will be as follows:

July -

Windfall Tax (WT) = (RERxQn)[25%(MAP-FTP)]
WT = (3,780x290)[0.25(57,783.19-55,116)]
WT= K730,943,419.50

August -

Windfall Tax (WT) = (3,700x231)[0.25(62,393.42-55,116)]
WT = K1,555,002,718.50

September –

Windfall Tax (WT) = (3,650x176)[0.25(70,690.00-55,116)]
WT = K2,501,184,400.00

(iii) Where the MAP exceeds the third trigger price (TTP).

Solwezi Mining Company Ltd carrying on cobalt mining operations sold the following quantities of cobalt for the quarter ended 31st

December 2008, at the time when the Metal Bulletin daily closing seller cash prices in US dollar per metric tonne were as indicated in the table below. During the same period, the company also bought concentrates which it processed for resale:

	Quantity (Tonnes)			Metal Bulletin Daily
	Mined	**Bought**	**Total**	**Closing Cash Seller Price**
October				
4th	55	12	67	55,700
10th	65	10	75	56,100
18th	62	13	75	56,850
27th	61	11	72	57,200
November				
5th	55	12	67	77,210
16th	53	10	63	77,350
30th	51	-	51	77,400
December				
7th	52	12	64	89,100
18th	54	14	68	88,250

The Bank of Zambia monthly mid-rate Kwacha to US dollar was K3,810, K3,815 and K3,910 for October, November and December respectively.

Calculation of the monthly average price for each of the months will be as follows:

October –

$$\text{MAP}=\frac{(67\text{x}\ 55{,}700)+(75\text{x}56{,}100)+(75\text{x}56{,}850)+(72\text{x}57{,}200)}{(67+75+75+72)}$$

MAP= US$56,475.95

November –

$$\text{MAP}=\frac{(67\text{x}77{,}210)+(63\text{x}77{,}350)+(51\text{x}77{,}400)}{(67+63+51)}$$

MAP= US$77,312.27

December –

$$\text{MAP}=\frac{(64\text{x}89{,}100)+(68\text{x}88{,}250)}{(64+68)}$$

MAP= US$88,662.12

Computation of Windfall tax for each of the months will be as follows:

October -

Windfall Tax (WT) = (RERxQn)[25%(MAP-FTP)]

WT = (3,810x289)[0.25(56,475.95-55,116)]

WT = K374,356,836.37

November -

Windfall Tax (WT)=(RER*Q_n){[25%(STP-FTP)] + [50%(MAP-STP)]}

WT = (3,815x181){[0.25(77,162-55,116)]+[0.5(77,312.27-77,162)]}

WT = K3,857,655,267.03

December –

Windfall Tax (WT)=(RER*Q_n){[25%(STP-FTP)]+[50%(TTP-STP)]+ [75%(MAP-TTP)]}

WT=(3,910x132){[0.25(77,162-55,116)]+[0.50(88,185-77,162)]+[0.75(88,662.12-88,185)]}

WT=K5,873,879,140.80

3.22 CHARGING SCHEDULE

3.22.1 Paragraph 1(1)(b) Tax Credit - The amendment increases the Tax Credit for Persons with Disabilities from K144, 000 to K600, 000 per annum.

3.22.2 Paragraph 2(1)(c)(d)(e)(f) Rates of Tax -

The amendment increases the annual tax-free income threshold for individuals from K6, 000,000 to K7,200,000.

This means that an individual who earns up to K600,000 per month or K7,200,000 per annum shall not pay Income Tax.

The income of an individual is taxed as follows:

Income Bands	**Rates**
First K7, 200,000	@ 0%
Above K7, 200,000 and up to K14, 820,000	@ 25%
Above K14, 820,000 and up to K48, 000,000	@ 30%
Above K48, 000,000	@ 35%

3.22.3 Paragraph 3(1)(e)(f) Rates of Tax - Companies

(i) This amendment deletes the provisions of clause (e) and introduces a tax rate of thirty per centum per annum, where the income from mining operations does not exceed eight per centum of the gross sales.

(ii) This amendment inserts a new clause (f) which provides for a variable profit tax rate, where the income from mining operations exceeds eight per centum of the gross sales at the rate determined in accordance with the following formula:

y=30% + [a-(ab/c)], where;
y= the tax rate to be applied per annum,
a= 15%,
b= 8%, and
c= the percentage ratio of the assessable income to gross sales.

The variable profit tax will not apply on income that has been subjected to windfall tax in that charge year; however such income shall be subject to company tax at the rate of 30%.

For the purposes of determining the income liable to variable profit tax, where a person produces both copper and cobalt, and has only paid windfall tax on one of the metals in a charge year, the Commissioner-General shall only accept turnover as the basis of apportionment. The apportionment shall be arrived at by using the factor of the contribution to gross sales of either of the minerals that was not subjected to windfall tax as a proportion of the company's gross sales.

Illustration: One

D & C Mines Plc had the following results for the year ended 31st March 2009.

	K'000
Turnover	100,000
Cost of Sales	(30,000)
Gross profit	70,000
Other Expenses	(40,000)
Net Profit	30,000

NB: Assume that the net profit is equivalent to the assessable income

y=30% + [a-(ab/c)], where;

y= the tax rate to be applied per annum,
a= 15%,
b= 8%, and
c= the percentage ratio of the assessable income to gross sales
c = 30,000/100,000 = 30%
y = 30% + [15%-(15%x8% /30%)]
y = 30% + (15%-4%)
y = 30% + 11%
y = 41%

Therefore D & C Mines shall pay tax at the rate of 41% on its chargeable income.

Tax payable K30, 000,000 x 41% = K12, 300,000

Illustration: Two

P & C Mining Company Ltd has the following financial results for the year ended 31st March 2009. During the whole year the average quoted sale price of cobalt was US$60,000 per metric tonne on the Metal Bulletin and as such the company paid windfall tax of K244,400,000 for the charge year. The average copper price for the whole year on the London Metal Exchange was not more than US$5,000 per metric tonne and therefore the income arising from copper sales was not subjected to Windfall Tax.

	K'000
Copper Sales	80,000,000
Cobalt Sales	12,000,000
Total Sales	**92,000,000**
Cost of Sales	32,000,000
Gross Profit	**60,000,000**
Less: Expenses	18,000,000
Net Profit	**42,000,000**
Add: Net tax deductions	5,000,000
Taxable Profit	**47,000,000**

Since this company paid Windfall Tax on cobalt only, the variable profit tax shall only apply on income from copper sales. The income to be subjected to Variable Profit Tax shall be ascertained by the ratio of copper sales to the total sales.

Computation of the income subject to variable profit tax:

$\frac{80,000,000,000}{92,000,000,000}$ x K47,000,000,000 = K 40,869,565,217

y=30%+[a-(ab/c)]

$$c = \frac{\underline{40,869,565,217 \times 100}}{80,000,000,000} = 51.09\%$$

$$y = 30\% + [(15\% - (\frac{15\% \times 8\%}{51.09\%})]$$

y=30%+(15%-2.35%)

y= 30%+12.65%

y= 42.65%

Variable Profit Tax on income from copper sales:

= 42.65%xK40,869,565,217
= **K17,430,869,565**

Company Tax on income from cobalt sales:

= 30% x (47,000,000,000 – 40,869,565,217)
= 30% x 6,130,434,783
= **K1,839,130,434.90**

Total income tax paid:

Windfall Tax	K 244,400,000
Variable Profit Tax	K17,430,869,565
Company Tax	K 1,839,130,435
	K19,514,400,000

(iii) The amendment renumbers clause (f) as (g). This provides for the maximum rate of tax for income received by any charitable organisation, body of persons or trust referred to in subparagraph (1) of paragraph 6 of the Second Schedule.

3.22.4 Paragraph 5(e) (f) (g) Rates of Tax – Special Cases

(i) The amendment deletes the word "and" at the end of clause (e) and deletes the full stop at the end of clause (f) and also inserts the word "and" after the semi-colon at the end of clause (f).
(ii) The amendment introduces a tax rate of thirty-five per centum on income from hedging.

3.22.5 Paragraph 6(1)(c) Rates of Tax – Withholding Tax

This amendment introduces the rate of withholding tax on dividends paid by any person carrying on mining operations at zero per centum.

3.22.6 Paragraph 7 Rates of Tax to be Deducted– Withholding Tax

This amendment provides for;

(i) All interest earned by an individual to be taxed at fifteen per centum and shall be the final tax.

(ii) The deletion of clause (iv) that provided for the rate of withholding tax on management or consultancy fees, interest and royalties by a mining entity carrying on the mining of base metals and was a party to a development agreement.

4.0 COMMENTARY ON THE MINES AND MINERALS DEVELOPMENT ACT OF 2008

4.1 SECTION 1: TITLE AND COMMENCEMENT

The Mines and Minerals Development Act shall come into effect on 1st April 2008.

4.2 SECTION 2: INTERPRETATION

4.2.1 Energy Minerals - the Act defines "energy minerals" as *"a naturally occurring substance in the earth's crust used as a source of energy and includes, coal, uranium and any other minerals used to generate energy but does not include petroleum"*.

4.2.2 Industrial Minerals – the Act defines "industrial minerals" as *" a rock or mineral other than gemstones, base metals, energy minerals or precious metals used either in their natural state or after physical or chemical transformation and includes but is not limited to barites, dolomite feldspar, fluorspar, graphite, gypsum, ironstone when used as a fluxing agent, kyanite, limestone, phyllite, magnesite, mica, nitrate, phosphate, pyrophyllite, salt, sands, clay, talc, laterite, gravel and any other minerals when so used"* :

Provided that the Minister may by statutory order classify any other mineral as an industrial mineral.

4.2.3 Mineral – the Act defines "mineral" as *"any substance occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process and includes any mineral occurring in residue stock piles or in residue deposits but excludes-*
(a) water, other than water taken from the land or any water body for the extraction of any mineral from such water; and
(b) petroleum. "

4.2.4 Mineral Royalty - the Act defines "mineral royalty" as *"a payment received as consideration for the extraction of minerals"*

4.2.5 Mining Operations – the Act defines "mining operations" as *"any operation carried out under a mining right referred to in section six but does not include an operation carried out under a prospecting permit, prospecting licence or mineral processing licence"*

4.3 SECTION 133: ROYALTIES ON PRODUCTION OF MINERALS

The Act provides mineral royalty rates as follows:

Subsection (1) – *"A holder of a large-scale mining licence, large-scale gemstone licence, small-scale mining licence, small-scale gemstone licence or an artisan mining right shall pay a mineral royalty at the rate of: –*

(a) three per centum of the norm value of the base metals produced or recoverable under the licence;
(b) three per centum of the gross value of the industrial mineral produced or recoverable under the licence;
(c) three per centum of the gross value of the energy minerals produced or recoverable under the licence;
(d) five per centum of the norm value of the precious metals produced or recoverable under the licence; or
(e) five per centum of the gross value of the gemstones produced under the licence"

Subsection (2) – *"The Commissioner-General shall charge a mineral royalty against a person who extracts minerals or any person in possession of minerals extracted in the Republic, whether extracted under a mining right or not"*

A person found in possession of minerals without a mining right shall be required to pay mineral royalty if it is proved that no mineral royalty was paid on the said minerals.

Subsection (3) – *"In this section –*
"Gross Value" means the realised price for a sale free-on-board, at the point of export from Zambia or point of delivery within Zambia:

Provided that if the Commissioner-General considers that the realised price does not correspond to the price that would have been paid for the minerals if they had been sold on similar terms in a transaction at arms-length, between a willing seller and a willing buyer, a notice may be given to that effect to the licensee, and the amount of the gross value shall be determined in accordance with the mechanism contained in sections ninety-seven A to ninety-seven D of the Income Tax Act;" and

"Norm Value" means –
(a) the monthly average London Metal Exchange Cash price per metric tonne multiplied by the quantity of the metal or recoverable metal sold;

(b) *the monthly average Metal Bulletin cash price per tonne multiplied by the quantity of the metal sold or recoverable metal sold to the extent that the metal price is not quoted on the London Metal Exchange; or*

(c) *the monthly average cash price per metric tonne of any other exchange market approved by the Commissioner-General multiplied by the quantity of the metal or recoverable metal sold to the extent that the metal price is not quoted on the London Metal Exchange or Metal Bulletin."*

4.4 SECTION 142: PROHIBITION OF DISPOSAL OF MINERALS

Subsection (1) – *"where a holder of a mining right fails to pay any royalty or provisional royalty payable by the holder of the mining right on or before the due date or any extension thereof allowed by the Commissioner-General, the Commissioner-General may, by order served on the holder, prohibit the disposal of any mineral from the mining area concerned, or from any other mining area held by that holder, until an arrangement has been made that is acceptable to the Commissioner-General for the payment of the royalties. "*

Subsection (2) – *"any holder of a mining right who contravenes or fails to comply with an order given under subsection (1), and any person who, knowing of such order and contrary thereto, receives any mineral from the area, commits an offence and is liable, upon conviction*

(a) *in the case of an individual, to a fine not exceeding five hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both; or*

(b) *in the case of a body corporate, to a fine not exceeding one million penalty units. "*

4.5 SECTION (159): DEVELOPMENT AGREEMENTS

"from the commencement of this Act, the Minister shall not enter into any agreement relating to the grant of a large-scale mining licence or any other mining right."

4.6 SECTION (160) : EXISTING DEVELOPMENTS AGREEMENTS TO CEASE TO BE BINDING ON THE REPUBLIC

Subsection (1) – *"a development agreement which is in existence before the commencement of this Act shall, not withstanding any provision to the contrary contained in any law or in the development* *agreement cease to be binding on the Republic from the commencement of this Act."*

Subsection (2) – *"for purposes of subsection (1), development agreement means an agreement relating to the grant of a large-scale mining licence entered into between the Government and a mining company under section nine of the repealed Act"*

5.0 COMMENTARY ON AMENDMENTS TO THE VALUE ADDED TAX ACT

5.1 SECTION 1 TITLE AND COMMENCEMENT

All amendments to the Value Added Tax Act shall come into effect on 26th January 2008 with the exception of Statutory Instrument Number 14 of 2008, which comes into effect on 1st April 2008.

5.2 SECTION 2: INTERPRETATION

5.2.1 Finance Lease - introduces a definition of "*finance lease"*, as *"a lease of implements, machinery or plant where –*

i. the term of lease, including any period under an option to renew, is equal to or exceeds seventy-five per centum of the effective life of the leased implements, plant or machinery;
ii. the lessee has an option to purchase the implements, plant or machinery at the expiration of the lease for a fixed or determinable price;
iii. the estimated residual value of the implements, plant or machinery at the expiration of the lease term is less than twenty-five per centum of its fair market value at the commencement of the lease; or
iv. the lessor does not retain the risks and rewards of ownership."

This measure is intended to distinguish a finance lease from an operating lease. Under a finance lease, the interest component is exempt from VAT.

5.2.2 **Operating Lease –** Introduces the definition of "*operating lease*", as "*any lease of implements, plant or machinery, other than a finance lease."*

Under an operating lease, both principle and interest are subject to VAT.

5.3 SECTION 19: PAYMENT OF TAX OR CREDIT

5.3.1 Sub-section 1A - introduces powers for the Minister by Statutory Instrument to remit unrecoverable tax upon recommendation of the Commissioner-General, where:

(a) The taxable supplier has been declared bankrupt under the Bankruptcy Act, or in the case of a company, wound up under the Companies Act;

(b) The debt has been outstanding for a minimum period of five years;
(c) In the case of a privatized company, the debt was incurred before the date of privatization, unless the contract of sale stipulates that the company's liabilities are to be carried over by the new owners;
(d) A certificate of deregistration or notice of VAT registration cancellation is issued by ZRA; and
(e) Such other documentary evidence as the Commissioner-General may require.

5.3.2 Sub-section 3 and 4 – Gazette Notice Number 80 of 2007 provided the eligibility of a diplomat or designated official who has paid VAT in Zambia on eligible goods and services to claim a refund of tax paid. This amendment incorporates these provisions into the Principal Act.

5.4 STATUTORY INSTRUMENT NUMBER 12 OF 2008

This amendment –

(a) Removes books and school exercise books from the First Schedule (Exemption Schedule) so as to place them onto the Second Schedule (Zero-Rating Schedule); and
(b) Exempts infant formula from VAT.

This measure is intended to reduce the cost of infant formula and harmonise the tax treatment with infant cereals.

5.5 STATUTORY INSTRUMENT NUMBER 13 OF 2008

This amendment provides for zero-rating of the following -

(a) Tourist activities:

- Clay pigeon shooting;
- Elephant back safari;
- Fixed wing flights over the falls;
- Gorge swinging or flying fox;
- Paint ball shooting;
- Quad biking safari;
- Steam train excursion; and
- Walking with lions.

This measure is intended to cover new tourist activities.

(b) Books and school exercise books. This measure is intended to reduce the cost of manufacturing books and school exercise books by allowing manufacturers to claim input VAT on their production costs.

5.6 STATUTORY INSTRUMENT NUMBER 14 OF 2008

This amendment reduces the tax rate from seventeen and half per centum to sixteen per centum. This measure is intended to give relief to businesses and consumers.

6.0 OTHER MATTERS

6.1 TAXATION OF BENEFITS

(i) Payment of Employees' Bills

Where an employer, discharges the liability of an employee by paying, his or her rent, electricity, telephones, water bills, school fees, or school association fees, club membership fees and similar payments, the employer is required to add such payments to the employee's emoluments and deduct tax under PAYE.

(ii) Benefits that cannot be converted into Cash

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

(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 employer's tax computation is 30% of the taxable income paid to the employee. Payments for utilities such as electricity, telephones, water bills, security and similar payments are not included in the meaning of free residential accommodation.

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

(i) **Luxury Cars** (2800cc and above) K20, 000,000 per annum.

(ii) **Other Cars**

- Above 1800cc and below 2800cc - K15, 000,000 per annum.
- Below 1800 cc - K9, 000,000 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.

(iii) **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 e.g. for electricity, telephone, and water;
- Commuted car allowance; and
- Settling in allowance.

6.2 EMOLUMENTS THAT ARE NOT SUBJECT TO PAYE

The following emoluments are exempt or otherwise not chargeable to income tax and, consequently, need not be included in the chargeable emoluments from which PAYE tax is to be deducted:

(i) **Ex – Gratia Payments:**
A voluntary, non – contractual, non – obligatory payment made by an employer to the spouse, child or dependant of a deceased employee is exempt (ITA Para. 7 (t), 2^{nd} Schedule).

(ii) **Medical Expenses:**
Medical expenses paid or incurred by an employer on behalf of an employee or refunds of actual medical expenses incurred by an employee are exempt (S.I No. 104 of 1996).

(iii) **Funeral Expenses:**
Funeral expenses paid or incurred by an employer on behalf of an employee are exempt (S.I. No. 104 of 1996).

(iv) **Sitting Allowances for Councillors:**
Payments by Local Authorities to Councillors as Sitting Allowances are exempt (ITA 2^{nd} Schedule Para. 7(s)).

6.3 TAX TREATMENT OF EXPENSES INCURRED ON ENTERTAINMENT, HOSPITALITY AND GIFTS

Expenses incurred in entertainment, hospitality and gifts are not allowable, subject to the following exceptions:

a) Where the business is one whose purpose is to provide entertainment or hospitality, e.g. hotels, restaurants, cinemas and theatres, the cost of providing these services is allowable.
b) Where the entertainment is provided free with the purpose of obtaining publicity to the general public, e.g. free seats for critics at a cinema, this is allowable.

c) Where an employer provides entertainment or hospitality for employees, e.g. meals, accommodation and other such like on business trips or a Christmas party for employees, this is allowable.

d) Where a person gives gifts which bear an advertisement for the donor, e.g. calendars, pens, ashtrays, spirits, food, and other such like, the cost of the gift to any one person does not exceed K100, 000, this is allowable. Costs in excess of K100, 000 to the same person would be disallowable.

e) Employees receiving entertainment allowances would be chargeable and the amount would be disallowable to the employer. Where an employer defrays entertainment expenses directly, the cost would be disallowable to the employer but there would be no charge on the employee unless the normal rules as to benefits apply.

6.4 TAX TREATMENT OF CANTEEN EXPENSES AND REFRESHMENTS.

Where the employer incurs expenditure on the provision of refreshments or canteen meals or any other meals (except on business trips) to employees, the benefit arises in the hands of the employees.

As the benefit cannot be converted into money's worth, it is not taxable on the employee.

Under the provisions of Section 44(L) of the Income Tax Act, the whole expenditure on refreshments, canteen meals, etc. is disallowable on the employer.

6.5 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.

(a) 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 and such like,
- Cash in lieu of leave (leave days due but not taken),
- Salary in lieu of notice,
- Severance pay.

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 K20 million exemption under Section 21(5) of the Income Tax Act.

(b) 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:

▪ Leave pay, repatriation pay and the salary are added and taxed under PAYE with respect to the tax table applicable for the month in which payment is made.

▪ Qualifying gratuity paid is taxed at the graduated rates of tax, as follows;

Qualifying Gratuity Bands	**Rates**
First K7, 200,000	@ 0%
Above K7, 200,000 and up to K14, 820,000	@ 25%
Above K14, 820,000 and up to K48, 000,000	@ 30%
Above K48, 000,000	@ 35%

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.

(c) 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) Refund of pension contributions (from an approved pension scheme);
(v) Salary in lieu of notice;
(vi) Severance pay;
(vii) Accrued service bonuses;
(viii) Compensation for loss of office.
The above payments are taxed as follows:

- Salary, Leave pay and Salary in lieu of Notice are taxed under PAYE in the month in which they are paid;

- Accrued service bonuses, repatriation pay, severance pay and compensation for loss of office are added together and taxed as follows:

  The first K20 million is exempt from tax and the balance is taxed at 10%

- The refund of employee's pension contribution is taxed as a lump sum payment at the rate of 10% (Section 82).

- The refunded employer's pension contribution under a defined contribution scheme will be subjected to tax under the PAYE system.

(d) EARLY OR NORMAL RETIREMENT

Where an employee has been retired early or normally, the following payments may be made:

(i) Salary;
(ii) Leave pay;
(iii) Repatriation pay;
(iv) Pension from an approved pension fund (Fourth Schedule);

(v) Accrued service bonuses;
(vi) Severance pay.

The above payments are taxed as follows:

- Salary and Leave Pay are taxed under PAYE in the month in which payment is made.
- Repatriation Pay, Severance Pay, Accrued Service Bonuses, and compensation for loss of office are added together and taxed as follows:
  -The first K20 million is exempt from tax and the balance is taxed at 10%;
  -Pension is exempt from tax (2^{nd} schedule).

(e) 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;
(v) Accrued service bonuses.

The above payments are taxed as follows:

- The salary up to date of death and leave pay is taxed under PAYE in the month in which payments are made.
- Gratuity is taxed as in paragraph 6.5(b).
- 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 early or normal retirement in 6.5(d) above.

6.6 TAX TREATMENT OF LEAVE PAY AND SALARY IN LIEU OF NOTICE

All employers should take note that Leave Pay and Salary in Lieu of Notice received on resignation, dismissal, expiry of contract, redundancy or retrenchment, early retirement, or on termination of employment due to death, will not be classified as terminal benefits under Section 21(5) of the Income Tax Act. Payments made in such cases should be subjected to tax under PAYE scheme in the normal way.

6.7 LUMPSUM PAYMENTS MADE ON MEDICAL GROUNDS

Where the employer, on medical advice, determines that an employee is permanently incapable of discharging his/her duties through infirmity of mind or body, one may terminate the services of an employee.

With effect from 1st April 2001, a lump sum payment made to an employee on termination of employment on medical grounds is exempt from tax.

6.8 TAX TREATMENT OF SETTLING IN ALLOWANCES

Settling in allowances, or whatever name called, paid to new employees and employees on transfer constitute emoluments and should be subjected to tax under the PAYE scheme.

6.9 SEVERANCE PAY

In most cases employers make payments of “severance pay” upon the dismissal or resignation of an employee. Payments made in such cases should not be classified as terminal benefits under Section 21(5) of the Income Tax Act.

However, where severance pay is paid as part of the package when an employee is retrenched, declared redundant, retires normally or opts for early retirement, the payment should be classified as terminal benefits. The tax treatment is covered under Section 21(5) of the Income Tax Act Cap 323.

6.10 INCOME TAX RATES

(a) Personal Income Tax Rates:

Personal Income tax rates, with effect from 1st April 2008, are as follows:

Income Bands	**Rates**
First K7, 200,000	@ 0%
Above K7, 200,000 and up to K14, 820,000	@ 25%
Above K14, 820,000 and up to K48, 000,000	@ 30%
Above K48, 000,000	@ 35%

(b) Other Tax Rates

Category	Rate (%)
Any Person carrying on mining operations (variable profit tax)	Y=30% + [15%-(ab/c)]
Windfall tax (see page 18 to 29 above)	
Hedging Income	35
Manufacturing & other companies	35
Charitable organisations (on income from business)	15
Farming	15
Non traditional exports	15
Chemical manufacture of fertilizer	15
Trusts, deceased or bankrupt estates	35
Rural enterprises	Tax chargeable reduced by 1/7 for 5 years
Business enterprise operating in a priority sector declared under the Zambia Development Agency Act, 2006	O% for the 1st 5 years
	Rate reduced by 50% from 6-8 years
	Rate reduced by 25% from 9-10 years
Banks: First K250, 000,000 Above K250, 000,000	35 40

(c) Withholding Tax Rates

Category	Rate (%)
Dividends for individuals and companies (Final Tax)	15
Dividends for companies carrying on mining operations	0
Interest on GRZ bonds (Final Tax for Individuals & Exempt Organisations only)	15
Interest for individuals (earned from bank or building societies savings and deposit accounts), (Final Tax)	15
Interest on Treasury Bills for Individuals (Final Tax)	15
Interest on Treasury Bills (Final Tax for Exempt Organisations)	15
Other Interest	15
Royalties, Management and Consultancy Fees	15
Rents	15
Commissions	15

Public Entertainment Fees for Non- Residents (Final Tax)	15
Non -Resident Contractors	15

Notes:

(i) When interest is awarded by Courts of Law it is still regarded as "Interest" and withholding tax is deductible in accordance with the appropriate rates as above.

(ii) The term "Royalty" includes leasing and therefore leasing income is subject to withholding tax.

7.0 DOMESTIC TAXES CONTACT ADDRESSES:

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

1 Advice Centre
New Revenue Hall
Private Bag W136
Lusaka
Tel:021 1 226227/236227
Fax: 021 1 222717

2 Advice Centre
Nchanga House
P. O. Box 20454
Kitwe
Tel: 021 2 229301
Fax: 021 2229301

3 Assistant Director
Design & Monitoring –Audit
P .O .Box 35710
Lusaka
Tel: 021 1 221493
Fax: 021 1 221493

4 Station Manager
Ndola Tax Office
P.O. Box 70181
Ndola
Tel: 021 2 614694
Fax: 021 2 614096

5 Assistant Director
Large Taxpayer Office –
Arrears and Return Filing
Compliance
P .O .Box 35710
Lusaka
Tel: 021 1 221375
Fax: 021 1 2226658

6 Station Manager
Kabwe Tax Office
P.O. Box 80909
Kabwe
Tel: 021 5 223642
Fax: 021 5 223642

7 Assistant Director
Large Taxpayer Office – Audit
P .O .Box 35710
Lusaka
Tel: 021 1 236892
Fax: 021 1 236892

8 Station Manager
Mongu Tax Office
P.O. Box 910110
Mongu
Tel: 021 7 221662
Fax: 021 7 221662

9 Assistant Director
Medium Tax Office – North
P .O .Box 20855
Kitwe
Tel: 021 2 230362
Fax: 021 2 229942

10 Station Manager
Kasama Tax Office
P.O. Box 410728
Kasama
Tel: 021 4 221810
Fax: 021 4 221810

11 Assistant Director
Taxpayer Services
P .O .Box 31926
Lusaka
Tel: 021 1 221497

12 Station Manager
Solwezi Tax Office
P.O. Box 110368
Solwezi
Tel: 021 8 821682
Fax: 021 2 821682

13 Station Manager
Chipata Tax Office
P.O. Box 510632
Chipata
Tel: 021 6 221155
Fax: 021 6 221155

14 Station Manager
Mansa Tax Office
P.O. Box 710112
Mansa
Tel: 021 2 821147
Fax: 021 2 821147

15 Station Manager
Livingstone Tax Office
P.O. Box 60597
Livingstone
Tel: 021 3 320772
Fax: 021 3 320772

Website: http://www.zra.org.zm