

CHAPTER 323
THE INCOME TAX ACT
ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY AND INTERPRETATION

Section

1. Short title
2. Interpretation
3. Repealed by Act No. 7 of 1996
4. Resident
5. Receipt of income

PART II
ADMINISTRATION

6. Appointment of staff
7. Officers and delegation of functions
8. Secrecy
9. Regulations
10. Records of assessment
11. Forms and notices
12. Notices and service
13. Repealed by Act No. 7 of 1996

PART III
CHARGE OF TAX

14. Charge of Tax
15. Exemptions from tax
- 15A. Suspension and rebate of Income Tax
16. Chargeability of income that cannot be remitted on accrual
17. Classification of income
18. Income deemed within the Republic
19. Income deemed received
20. Repealed by Act No. 7 of 1996
21. Apportionment of gratuities and compensation for loss of office
22. Apportionment of income
23. Provisions relating to income from business
24. Provisions relating to income after cessation of business
25. Insurance business
26. Income of partner
27. Special provisions relating to deceased's estate and trusts
28. Income of non-resident air, sea or land transport business

PART IV
DEDUCTIONS

29. Deductions generally
- 29A. Foreign currency exchange gains and losses
30. Losses
- 30A. Indexation of losses

31. Transfer of losses
32. Losses prior to bankruptcy, etc
33. Capital allowances
34. Investment allowances
- 34A. Development allowance
35. Preliminary business expenses
36. Amount paid after cessation of business
37. Approved fund deductions
- 37A Deduction for share option
38. Technical education
39. Subscriptions
40. Repealed by Act No. 3 of 1997
41. Charities
42. Repealed by Act No. 3 of 1997
43. Deduction for research
- 43A. Deduction for bad and doubtful debts
- 43B. Repealed by Act No. 17 of 1988
- 43C. Repealed by Act No.3 of 2002
- 43D. Deduction for employing a handicapped person
- 43E. Repealed by Act No. 7 of 1996
44. Case of no deduction

PART V

RETURNS AND ASSESSMENTS

Section

45. Notice to Commissioner-General
- 45A. Duty to provide taxpayer identification number
- 45B. Taxpayer identification number required for certain transactions
46. Returns generally
- 46A. Provisional Income
- 46B. Estimated provisional tax returns
47. Further provisions as to returns
48. Information generally
49. Statement of bank accounts, assets, etc.
50. Return of lodgers and inmates
51. Information as to business matters
52. Repealed by Act No. 3 of 1997
53. Public documents
54. Information as to companies
55. Accounts and records
56. Documents in support of returns
57. Examination by Commissioner-General
58. Production and preservation of books and documents
59. Repealed by Act No. 7 of 1996
60. Amount of dividends, interest or royalties to be included in income

- 61. Partnership returns
- 62. Business accounts
- 62A. Averaging of farming and fishing income
- 63. Commissioner-General's power to assess
- 64. Estimated assessments
- 64A Standard Assessment
- 65. Assessment rules
- 66. Taxpaying agents
- 67. Assessment of taxpaying agent
- 68. Right of taxpaying agent
- 69. Company's taxpaying agent
- 70. Errors in form

PART VI

PAY AS YOU EARN

Section

- 71. Assessment, charge, collection and recovery
- 72. Assessment not always necessary
- 73. Priority on insolvency

PART VII

DOUBLE TAXATION RELIEF

- 74. Double taxation agreements
- 75. Double taxation relief
- 76. Unilateral double taxation relief

PART VIII

COLLECTION, RECOVERY, REFUND AND RELIEFS

- 77. When tax due and payable
- 78. Penalty for non-payment of tax
- 78A. Interest on overdue payments
- 79. Recovery and proceedings
- 79A. Recovery by distress
- 79B. Recovery through court
- 79C. Charge on land
- 79D. Recovery of partner's tax from partnership
- 80. Deduction of tax from interest and royalties
- 81. Deduction of tax from dividends
- 81A. Repealed by Act No. 7 of 1996
- 81AA Definition of permanent establishment.
- 81B. Tax clearance certificate
- 81C. Deduction of tax for use of patent, design, trade mark etc
- 82. Deduction on tax from lump sum payments
- 82A. Deduction of tax from certain payments
- 82B. Definition of property
- 83. Property not in possession
- 84. Agent for payment of tax
- 85. Repealed by Act No. 7 of 1996
- 86. Liability where property alienated

- 87. Refunds in general
- 88. Refunds in cases of accumulated income
- 89. Refund or set-off of tax chargeable on a beneficiary
- 90. Refund or set-off of tax deducted from dividends, etc
- 90A. Job credits
- 90B. Repealed by Act No. 9 of 1977
- 91. Error or mistake relief
- 92. Remission of Tax
- 92A. Reduction in Tax for Tax free Zones
- 93. Tax less than three thousand kwacha not payable

PART IX AVOIDANCE

- 94. No set-off or refund where that is the object of change of ownership of shares in company
- 95. Transactions designed to avoid tax liability
- 95A. Repealed by Act No. 12 of 1982
- 95B. Inter-company shareholdings
- 95C. Repealed by Act No. 7 of 1996
- 95D. Loans to effective shareholders
- 96. Incurred loss not deductible in certain cases
- 97. Commissioner-General may avoid trust
- 97A. Transfer pricing
- 97AA Special provisions where actual conditions include issuing security
- 97B Non application of section 97A
- 97C Provisions supplementary to 97A
- 97D Objections and appeals involving transfer pricing

PART X OFFENCES AND PENALTIES

- 98. General penalty
- 99. Penalty for failure to comply with notice, etc.
- 100. Penalty for incorrect returns, etc.
- 101. Time limit
- 102. Penalty for fraudulent returns, etc.
- 103. Bodies corporate
- 104. Power to search and seize
- 105. Documents in evidence

PART XI OBJECTIONS AND APPEALS

Section

- 106. Assessments good until disproved
- 107. Establishment of Tax Appeal Court, its composition and powers
- 108. Objection to assessment
- 109. Appeal against assessment
- 110. Determination of appeals

- 111. Appeal to High Court and Supreme Court
- 112. Privacy of proceedings
- 113. Adjustment on successful objection or appeal
- 114. Appeals from Commissioner-General's discretion and determinations
- 115. Repealed by Act No.9 of 1998
- 115A. Repealed by Act No. 7 of 1996

PART XII

REPEALS AND TRANSITIONAL PROVISIONS

- 116. Repeals

ARRANGEMENT OF SCHEDULES

FIRST SCHEDULE-Further Classification of Income

Paragraph

- 1. Maintenance
- 2. Improvements
- 3. Commencement and cessation of employment
- 4. Lump sum payments
- 5. Capital recoveries
- 6. Exotic timber
- 7. Farm stock
- 8. Shares or options

SECOND SCHEDULE-Exemptions

PART I

- 1.-2. EXEMPT OFFICE HOLDERS

PART II

- 3.-4. FOREIGN EXEMPTIONS

PART III

EXEMPT ORGANISATIONS

- 5. Various organisations
- 6. Charities

PART IV

EXEMPT INCOME

- 7. Various exemptions
- 8. Passages
- 9. Interest
- 10. Annuities
- 11.

- 12. Repealed by Act No. 11 of 1992

- 13. Repealed by Act No. 11 of 1992

THIRD SCHEDULE-Insurance Business

- 1. Insurance other than life
- 2. Life insurance
- 3. Insurance and other business
- 4. Mutual and proprietary companies

FOURTH SCHEDULE-Approved Funds

Paragraph

1. Definition of "trustees"
2. Approval of pension funds
3. Procedural provisions relating to approval of fund and withdrawal of approval
4. Approval of annuity contracts and withdrawal of approval
5. Approval of foreign fund or scheme established by law
6. Appeals
7. Remoteness

FIFTH SCHEDULE-Capital Allowances for Buildings, Implements, Machinery and Plant, and Premiums

PART I

BUILDINGS

1. Definition of industrial building
2. Definition of commercial building
3. Initial allowance for industrial buildings
4. Wear and tear allowance for buildings
5. Balancing allowance for buildings
6. Divided use

PART II

IMPLEMENTS, MACHINERY AND PLANT

7. Business to include employment in this Part
8. Frequently replaceable articles not within this Part
9. Repealed by Act No. 11 of 1974
10. Wear and tear allowance for implements, machinery and plant
11. Capital recoveries for implements, machinery and plant
12. Divided use
13. Valuation in exceptional circumstances

PART III

PREMIUM ALLOWANCE

14. Deduction of premium allowance

PART IV

GENERAL PROVISIONS

15. Successions
16. Subsidies
17. Controlled sales

PART V

RATES OF INITIAL AND WEAR AND TEAR ALLOWANCES

18. Rates of initial and wear and tear allowances

PART VI

MINING DEDUCTIONS

19. Interpretation of terms
20. Capital expenditure deductions
21. Prospecting expenditure deductions
22. Mining expenditure deductions
- 22A Dissallowance of interest in certain areas
23. Deductions for mining expenditure on non-producing and

non-contiguous mine

24. Deductions on cessation of mining operations

25. Change of ownership of mine

26. Controlled sales

27. Petroleum operations

SIXTH SCHEDULE-Farming-Improvement and Works Allowances,
and Livestock Valuation

PART I

FARM IMPROVEMENT ALLOWANCE

Paragraph

1. Definitions

2. Farm improvement allowance

3. Divided use

4. Repealed by Act No. 3 of 1997

PART II

FARM WORKS ALLOWANCE

5. Nature of farm works

6. Farm works allowance

PART III

VALUATION OF LIVESTOCK

7. Standard value

8. Repealed by Act No. 14 of 1987

SEVENTH SCHEDULE-*Repealed by Act No. 2 of 1995*

NINTH SCHEDULE

Presumptive Tax

CHARGING SCHEDULE

PART I

TAX CREDITS

Paragraph

1. Tax Credit

PART II

RATES OF TAX

2. Individuals

3. Companies etc.

4. Trust

5. Special cases

6. Withholding tax

7. Rate of tax to be deducted

8. Interpretation

CHAPTER 323

INCOME TAX

An Act to provide for the taxation of incomes and
Act No.

32 of 1967

23 of 1968

11 of 1969

26 of 1970

matters connected therewith. 27 of 1970

17 of 1971

16 of 1972

11 of 1973

14 of 1973

46 of 1973

11 of 1974

11 of 1975

14 of 1976

9 of 1977

9 of 1978

10 of 1979

19 of 1979

6 of 1980

10 of 1981

13 of 1981

12 of 1982

21 of 1982

11 of 1984

11 of 1985

8 of 1986

14 of 1987

17 of 1988

28 of 1988

33 of 1989

15 of 1990

29 of 1990

12 of 1991

11 of 1992

4 of 1993

13 of 1994

14 of 1994

2 of 1995

27 of 1995

7 of 1996

3 of 1997

9 of 1998

6 of 1999

4 of 2000

1 of 2001

8 of 2001

3 of 2002

3 of 2003

1 of 2004

1 of 2005

7 of 2006

PART I

PRELIMINARY AND INTERPRETATION

1. (1) This Act may be cited as the Income Tax Act *

(2) This Act shall come into operation on the 1st April, 2006, and subject to any provisions to the contrary, shall have effect in relation to the charge of tax for the charge year which ends on 31st March, 2007,

and in relation to each subsequent charge year.

(As amended by Act No.6 of 1999, Act No. 4 of 2000, No. 1 of 2001, No. 8 of 2001, No.3 of 2002, No. 1 of 2004, No. 1 of 2005 and No. 7 of 2006)

Short title and commencement.

Cap. 323

2. (1) In this Act, unless the context otherwise requires-

"approved annuity contract" means a contract providing for the payment to an individual of a life annuity which has been approved by the Commissioner-General under the Fourth Schedule;

"approved fund" means-

(a) an approved pension fund;

(b) an approved annuity contract;

(c) any superannuation, pension, provident, widows' or orphans' fund established by law in the Republic;**

(d) a pension fund approved before the enactment of this Act under either subsection (1) or (2) of section *eleven* of the former Act;

* This Act came into operation on the 1st April, 1966.

** shall be deemed to have come into operation on the first February, 2000, and subject to any provisions to the contrary shall have effect in relation to the assessments for the charge year which ends on 31st March, 2000 and in relation to each subsequent charge year.

"approved pension fund" means a pension fund or scheme which has been approved by the Commissioner-General under the Fourth Schedule;

"approved share option scheme" means a scheme that has been

approved by the Commissioner-General, under the Eighth Schedule;

"assessable income" means the amount of a person's income liable to tax which may be included in an assessment and which remains after allowing the deductions, to which that person is entitled under the provisions of this Act;

"assessment" means the determination of an amount of tax which a person shall be liable to pay under the provisions of this Act;

"Authority" means the Zambia Revenue Authority established under the Interpretation

Zambia Revenue Authority Act;

"Bank" means a company that holds a banking licence granted under section four of the Banking and Financial Services Act;

"bankrupt's estate" means the property of a bankrupt vested by law in and under the control of the trustee in bankruptcy;

"bank subsidiary" means a company where more than fifty per centum of the voting shares of the company (except any qualifying director's shares) are owned directly or indirectly by a bank;

"base metals" means a non-precious metal that is either common or more chemically active, or both common and chemically active and includes iron, copper, nickel, aluminium, lead, zinc, tin, magnesium, cobalt, manganese, scandium, vanadium and chromium;

"basic salary" means the gross amount payable to an employee without any allowances;

"beneficiary", in relation to a terminal benefit, means the individual to whom such benefit is payable;

"business" includes-

(a) any profession, vocation or trade;

(b) any adventure or concern in the nature of trade whether singular or otherwise;

(c) manufacturing; and

(d) farming;

"charge year" means the year for which tax is charged, that is, the period of twelve months ending on the 31st March, and each succeeding such year;

"Charging Schedule" means the last Schedule to this Act, by which, tax credits and rates of tax are fixed;

"child" includes a step-child, a lawfully adopted child, an illegitimate child and any child to whom an individual stands in place of a parent;

"Commissioner-General" means the Commissioner-General appointed under the Zambia Revenue Authority Act;

"company" means any company incorporated or registered under any law in force in the Republic or elsewhere;

"date of enactment of this Act" means the 20th May, 1967, and

"enactment of this Act" shall be construed accordingly;

"deceased's estate" means the estate of a deceased individual;

"dividend" means any amount distributed or credited (as construed in subsection (3) by a company to its shareholders or any amount deemed

Cap. 321

Cap. 387

Cap. 321

to have been distributed pursuant to the provisions of section *ninety-five*;

"effective shareholder", in relation to a company, means a person who is the beneficial owner of or able to control, either alone or the nominees of that person, five per centum or more of the issued share capital of or voting powers in such a company;

"emolument" means any salary, wage, overtime or leave pay, commission, fee, bonus, gratuity, benefit, advantage (whether or not that advantage is capable of being turned into money or money's worth), allowance, including inducement allowance, pension or annuity, paid, given, or granted in respect of any employment or office, wherever engaged in or held;

"employee", in relation to an employer, means any individual who is paid, given or granted any emolument by that employer;

"employer", in relation to an employee, means any person who or any partnership which pays, gives or grants any emoluments to that employee;

"farming" means any husbandry, pastoral, poultry, fish rearing, or agricultural activity and but excludes the letting of any property for any

such purpose;

"financial institution" means a person that holds a financial institution's licence granted under section *ten* of the Banking and Financial Services Act;

"incapacitated person" means any child who has not attained the age of twenty-one years, person of unsound mind, lunatic, idiot or insane person;

"individual" means a natural person;

"local authority" means a City Council, District Council, Municipal Council or any other authority recognised as such under the Local Government Act.

"loss", in relation to gains or profits, means the loss computed in like manner as gains or profits;

"lump sum payment" means-

(a) in relation to a beneficiary who was employed within the Republic through out the period during which contributions were made, an amount equal to the terminal benefit received by him;

(b) in relation to a beneficiary who was not so employed, an amount that bears the same proportion to the terminal benefit received by him as the period of his employment within the Republic for which contributions were made bears to the total period of his employment for which contributions were made; and

Cap. 387

Cap. 281

(c) in relation to a beneficiary who is employed on pensionable terms, any amount received or accrued which is paid or payable by an employer upon cessation of employment, by way of compensation for leave due but not taken.

"management or consultant fee" means a payment in any form other than an emolument for or in respect of any managerial, administrative, technical or consultative service or any service of a like nature;

"manufacturer" means a person carrying on the business of manufacturing;

"manufacturing" means subjecting any physical matter to any process which materially changes such material in substance, character or appearance, thereby making it an article after such process, and includes the assembly of motor vehicles and such other processes as the Commissioner-General may determine to be of a similar nature;

"mineral" includes any valuable crystalline or earthy substance forming part of or found within the earth's surface and produced or deposited there by natural agencies, but does not include any clay (other than fireclay), gravel, sand, stone (other than limestone) or other like substance ordinarily won by the method of surface working known as quarrying;

"mining operations" means-

(a) any operations for the purpose of winning a mineral from the earth; and

(b) any operations for the purpose of winning a mineral from any substance or constituent of the earth which are carried on in conjunction with operations referred to in paragraph (a) by the persons carrying on those operations;

and "mine", whether used as a noun or a verb, is construed accordingly;

"minister" means the minister responsible for financial matters;

"nominee", in relation to an individual, means-

(a) the spouse of the individual; or

(b) the child of the individual; or

(c) a person who holds shares in a company directly or indirectly on behalf of the individual; or

(d) a person who can be required to exercise or a person who can require the exercise of voting powers in the affairs of a company in accordance with directions of the individual;

unless the Commissioner-General determines that the spouse, child or other person is a person who can at all times exercise or require the Act No. 33 of 1996

exercise of voting powers in the affairs of the company otherwise than in accordance with the directions of the individual;

"non-traditional product" means anything, other than minerals and electricity, produced or manufactured in the Republic but excludes services;

"pensionable terms" means terms and conditions of employment under which an employee belongs to any approved pension fund operated by an employer for the benefit of his employee;

"person" includes any body of persons, corporate or otherwise, a corporation sole, a local or like authority, a deceased's estate, a bankrupt's estate and a trust, but does not include a partnership;

"person with disability" has the meaning assigned to it under section *two* of the Persons with Disabilities Act, 1996;

"prospecting and exploration operations" means-

(a) any operations for the purpose of searching for mineral deposits; or

(b) any operations for the purpose of defining the extent and determining the value of a mineral deposit;

"public entertainment fee" means a payment in any form other than an emolument to, on behalf of, or in respect of, any person or persons in partnership, including theatre, motion picture, radio or television artists, musicians, athletes or sports persons, in respect of those persons' personal activities in any entertainment, competition or similar activity within the Republic;

"registered insurer" means an insurer registered under Part II of the Insurance Act;

"retirement age" means the age specified in the rules of an approved fund as the age of retirement or, if no age is specified in the rules, fifty-five years of age;

"royalty" means a payment in any form received as a consideration for the use of, or the right to use, any copyright of literary, artistic or

scientific work (including cinematograph films and films and tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience;

"rural area" means any area which is not an area declared or deemed to have been declared an area of any city or municipality or township under the Local Government Act;

"rural enterprise" means-

(a) a manufacturing business which commenced on or after the 1st April, 1976;

(b) a hotel, motel or lodge which commenced on or after the 1st April, 1981;

and which is located in a rural area.

"services" means any services provided in the normal course of business by a person engaged in any business activity specified in the Third Schedule;

"share option scheme" means a scheme that provides an option to an employee to acquire shares in the company that employs that employee or otherwise.

"tax" means the income tax charged by this Act;

"taxpayer identification number" means the National Registration Card Number or such other number as may be designated and issued by Commissioner-Genreal to a taxpayer;

"terminal benefit" means the amount payable from a fund or scheme, approved as an approved fund or as a benefit fund or pension fund at any time under the law relating to the taxation of income in the Republic prior to the enactment of this Act to an individual who is or was a member of that fund or scheme, on cessation of employment, withdrawal from or the winding up of the fund or scheme, but does not include an amount received-

(a) by way of annuity;

(b) in respect of services; or

(c) on account of sickness or disability;

"whole time service director" means a director of a company who is required to devote substantially the whole of his time to the service of such company in a managerial or technical capacity and is not the beneficial owner of, or able to control alone or with his nominees, five per centum or more of the issued share capital of or voting powers in such company;

(As amended by Act No. 3 of 1997, Act No.9 of 1998, Act No.6 of 1999, Act No. 4 of 2000, No. 3 of 2002 and no. 7 of 2006)

(1A) Subject to subsection (1B) where a provision of the Act refers, expressly or by implication, to a payment of a specified amount which is denominated in kwachc and the payment is made in another currency the amount of the payment, for purposes of that provision, shall be converted into kwach at the appropriated rate published by the Bank of

Zambia as at the end of the day on which the payment is due, irrespective of when the payment is actually made.

(1B) Where the payment referred to in subsection (1A) is a payment of interest and the borrower has borrowed the principal in the course of a business carried on by the borrower, the conversion required by subsection (1A) shall, subject to any direction by the Commissioner-General, be calculated as at the end of each day on which the interest accrues, irrespective of when payment of the interest is due.

(2) For the purposes of this Act, a beneficiary who was employed outside the Republic by the Government, or the Government of the former Federation, or a local authority or statutory corporation, during any period in which ordinary contributions were made, is, if he was resident outside the Republic only for the purpose of that employment, deemed to have been employed within the Republic during that period.

(3) The reference in the definition of "dividend" to "amount distributed or credited" shall be read and construed-

(a) so as to include-

(i) in relation to a company that is being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than those of a capital nature, earned before or during the winding up or liquidation;

(ii) in relation to a company that is not being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than those of a capital nature, including the value of that element of any shares awarded to its shareholders which is redeemable or capable of redemption by conversion and any debentures or securities awarded to its shareholders by a company;

(iii) in the event of the partial reduction of the capital of a company, any cash or the value of any asset which is given to the shareholder in excess of the cash equivalent of the nominal value by which the shares of that shareholder are reduced; and

(iv) in the event of the reconstruction of a company, any cash or the value of any asset which is given to the shareholder in excess of the nominal value of the shares held by him before reconstruction;

(b) so as not to include any cash or the value of any asset given to a shareholder, to the extent to which the cash or the value of the said asset represents a reduction of the share premium account of the company.

(4) Any reference in this Act to bankruptcy shall be construed in accordance with the provisions of the Bankruptcy Act, and "bankruptcy" shall be construed accordingly.

Cap. 82

(As amended by Acts No. 23 of 1968, No. 11 of 1969, No. 26 of 1970, No. 17 of 1971, No. 16 of 1972, No. 11 of 1973, No. 11 of 1975, No. 14 of 1976, No. 9 of 1977, No. 10 of 1979, No. 10 of 1981, No. 12 of 1982, No. 11 of 1984, No. 11 of 1985, No. 8 of 1986, No. 14 of 1987, No. 15 of 1990, No. 12 of 1991, No. 11 of 1992, No. 4 of 1993, No. 12 of 1994, No. 2 of 1995,

No. 7 of 1996, No. 3 of 1977 and Act No.6 of 1999)

3. Repealed by Act No. 7 of 1996.

4. (1) An individual is, for the purposes of this Act, not treated as a resident in the Republic who is in the Republic for some temporary purpose only and not with any view or intent of establishing his residence therein, and who has not actually resided in the Republic at one time or several times for a period equal in the whole to one hundred and eighty-three days in any charge year, but if any such individual resides in the Republic for the aforesaid period he shall be treated as resident for that year.

Resident

(2) Repealed by Act No. 4 of 2000

(3) In this Act, a person other than an individual is resident in the Republic for any charge year

(a) if the person is incorporated or formed under the laws of the Republic; or

(b) central management and control of the person's business or affairs are exercised in the Republic for that year.

(As amended by Act No. 11 of 1969 and No. 4 of 2000 and No. 1 of 2001)

5. (1) In this Act, income is received by a person when, in money or money's worth, or in the form of any advantage, whether or not that advantage is capable of being turned into money or money's worth, it is paid, given or granted to him, or it accrues to him or in his favour, or it is in any way due to him or held to his order or on his behalf, or it is in any way disposed of according to his order or in his favour, and the word "recipient" is construed accordingly.

Receipt of income

(2) For the purposes of this Act-

(a) a dividend shall be deemed to accrue to share or stock holders, in the case of a dividend paid by a company which is being wound up or liquidated, on the day the dividend is received as provided in subsection (1), and in the case of a dividend paid by a company which is not being wound up or liquidated, on the day of the resolution declaring the dividend:

Provided that where the resolution states that the dividend is to be paid to share or stock holders registered on a day in the future, the dividend shall be deemed to accrue to the share or stock holders on that day in the future; and

(b) a dividend accruing to a person which is deemed by virtue of any provision of this Act to be income of some other person shall be deemed to accrue to that other person on the day the dividend is by virtue of the provisions of paragraph (a) deemed to accrue.

(As amended by Acts No. 23 of 1968, No. 11 of 1973, and No. 10 of 1979 and Act No.6 of 1999)

PART II ADMINISTRATION

6. (1) The Commissioner-General shall be responsible for carrying out the provisions of this Act.

Appointment of staff

(2) The Commissioner-General shall appoint staff of the Direct Taxes Division of the Authority.

(As amended by Act No. 7 of 1996)

7. (1) The Commissioner-General may delegate to any officer in the Direct Taxes Division any power or duty by this Act conferred or imposed upon him, other than those conferred on him by section *one hundred and four* and this power of delegation, and, save as especially provided by this Act, any decision made or any notice or communication issued or signed by any such officer may be amended or withdrawn by the Commissioner-General, or by the officer concerned, and shall, for the purposes of this Act, until it has been so withdrawn, be treated as having been made, issued or signed by the Commissioner-General.

officers and
delegation of
functions

(2) Every officer appointed for the purposes of carrying out the provisions of this Act is under the Commissioner-General's direction and control, and shall perform such duties as may be required by the Commissioner-General.

(3) The Commissioner-General may confer any of the functions of the Commissioner-General under this Act upon any person if that person consents; and that person shall perform those functions under the direction of the Commissioner-General.**

(As amended by Acts No. 2 of 1995 and No. 7 of 1996 and No. 4 of 2000 and No. 1 of 2001)

8. (1) Any individual who- Secrecy

(a) is, or at any time has been, an officer appointed for the purpose of carrying out the provisions of this Act; or

(b) has at any time been given official access to documents or matters arising under this Act; or

(c) *Repealed by Act No. 7 of 1996;*

(d) is, or at any time has been, the Chairman, Deputy Chairman, Special Chairman, or an employee of the Tax Appeal Court or its successor; shall preserve and aid in preserving secrecy concerning the affairs of any person under this Act, save as the duty under this Act of that individual requires:

Provided that-

(i) the Commissioner-General may disclose any information, record or document to the Minister or to any public officer authorised by the Minister in writing and to the Director of Public Prosecutions when acting in exercise of his powers under the Anti-Corruption Commission Act;

Cap. 91

(ii) any individual appointed for carrying out the provisions of this Act may disclose any information, record or document to the

Auditor-General and any officer authorised by the Auditor-General;
(iii) no individual who is, or at any time has been, an officer appointed for the purpose of carrying out the provisions of this Act shall be required to produce in any court any document or to communicate to any court any information which has come into his possession or to his knowledge in the performance of his duties under this Act, except as may be necessary for the purpose of carrying out the provisions of this Act.

(2) Any individual who is in contravention of subsection (1) who uses or reveals any information, record or document disclosed to him in accordance with the proviso to subsection (1) save as his official duties require shall be guilty of an offence punishable with imprisonment for a term not exceeding two years or with a fine not exceeding two hundred penalty units, or to both.

(Amended by Acts No. 17 of 1971, No. 14 of 1973, No. 14 of 1976, No. 8 of 1986, No. 13 of 1994, No. 14 of 1994 and No. 7 of 1996 and No. 4 of 2000)

9. The Minister may make regulations by statutory instrument in furtherance of and incidental to the provisions of this Act.

Regulations

10. The Commissioner-General shall cause a record to be kept of every assessment made under this Act.**

Record of assessment

** shall be deemed to have come into operation on the first February, 2000, and subject to any provisions to the contrary shall have effect in relation to the assessments for the charge year which ends on 31st March, 2000 and in relation to each subsequent charge year.

11. (1) All forms required for the administration of this Act shall be as prescribed by the Commissioner-General from time to time.

Forms and notices

(2) Notices, forms, demands or other documents issued or given by the Commissioner-General under this Act may be signed by any officer authorised by the Commissioner-General in that behalf, and any such notice, form, demand or other document purporting to be signed by order of the Commissioner-General shall be as valid as if signed by the Commissioner-General.

(As amended by Acts No. 26 of 1970 and No. 7 of 1996)

12. (1) References in this section to the giving of notice include any service of process under this Act.

Notices and service

(2) Notice to any individual under this Act is given to him-

(a) at the time it is served on him personally or electronically; or

(b) at the time it is left with some adult individual apparently living or occupying or employed at his last known abode, office or place of business; or

(c) unless the addressee proves to the contrary, ten days after it has been sent by post to his last known abode, or office, or to his postal address as notified by him to the Commissioner-General, or in care of his last

known employer.

(3) Notice is given to any company at the time it is given to that company's taxpaying agent (as determined in section *sixty-six*) in the manner provided by subsection (2), or at the time it is sent, in the case of a company incorporated in the Republic, to the registered office of the company, and in the case of a company incorporated outside the Republic, either to the individual authorised to accept service of process

Cap. 388
under the Companies Act at the address filed with the Registrar of Companies, or to the registered office of the company wherever it may be situated, or, in either case, to any premises in the Republic where the company is carrying on business.

(4) Notice is given to any body corporate, other than a company, at the time it is given to the principal officer, secretary, accountant or manager in the Republic of such body corporate in a manner provided by subsection (2), or at the time it is sent to the registered address, if any, of the said body corporate, or to any premises in the Republic where the said body corporate exercises any of its functions or powers.

(5) Notice to the Commissioner-General under this Act is given to him-
(a) at the time it is served upon him personally, electronically or upon any officer of the Direct Taxes Division duly authorised by the Commissioner-General to receive such notice; or

(b) unless the Commissioner-General proves to the contrary, ten days after it has been sent by post addressed to the Commissioner-General or any officer of the Direct Taxes Division duly authorised by the Commissioner-General to receive such notice.

(As amended by Acts No. 11 of 1975, No. 7 of 1996 and No. 1 of 2004)

(6) In this section, the term "post" means registered or unregistered post.

(7) Notice of any change in the place of abode or the postal address of any person receiving income assessable to tax shall be delivered in writing by that person to the Commissioner-General within thirty days of such change.

(As amended by Acts No. 26 of 1970 and No. 11 of 1975)

13. *Repealed by Act No. 7 of 1996.*

PART III

CHARGE OF TAX

14. (1) Subject to the provisions of this Act, tax shall be charged at the rates set out in the Charging Schedule for each charge year on the income received in that charge year-

Charge of tax

(a) by every person from a source within or deemed to be within the Republic; and

(b) by any individual ordinarily resident in the Republic, or by every person, not being an individual, who is resident in the Republic, by way of interest and dividends from a source outside the Republic.

(2) Subject to the other provisions of the Act, in the case of an

individual, the amount of tax which, apart from this subsection, would be charged in respect of any income received by that person in that charge year shall be reduced by the amount of the tax credit appropriate to such person for that charge year as specified in the Charging Schedule and that person shall be liable to pay tax for that charge year an amount equal to that reduced amount:

Provided that any assessment of that income shall-

- (a) be for the whole amount of tax due before any tax credit; and
 - (b) show the amount due and payable after reduction by the amount of any credit due.
- (3) Any amount of tax payable before the application of a tax credit shall not be reduced below zero by the tax credit and the tax credit shall not give rise to a repayment of tax.
- (4) The amount of a tax credit to which a person is entitled for any charge year shall not be allowed more than once against that person's income for that year.
- (5) An individual shall not be entitled to a tax credit except-
- (a) against income provided for under section *seventy-one* and if the tax credit is allowable in accordance with Regulations made under section; or
 - (b) against income declared in a return under section *forty-six*;
- (6) The provisions of this Part, and of the First Schedule, relating to particular forms of income, are without prejudice to the generality of the charge of subsection (1).

(As amended by Acts No. 11 of 1969, No. 17 of 1971, No. 12 of 1982, No. 11 of 1992, No. 4 of 1993, No. 9 of 1998 and Act No. 6 of 1999)

15. (1) There shall be exempt from tax the persons, funds, charities and income declared to be exempt in the Second Schedule to the extent specified therein.

Exemptions from tax

(2) The Minister may, by statutory order, approve, for the purposes of exemption from tax, any person, agency, organisation or foundation, which may be so approved by him by order in the *Gazette* pursuant to the Second Schedule, and may, by like order, exempt from tax the income or emoluments of any person, agency, organisation or foundation which may be so exempted by him by order in the *Gazette* pursuant to the said Schedule, and may, at any time, by like order, revoke any such order:

Provided that the Minister shall have the power to make or revoke such orders retrospectively.

(As amended by Acts No. 11 of 1969 and No. 11 of 1973)

15A. (1) The Minister may by regulation- Suspension and rebate of income tax

- (a) suspend or provide for the suspension of the whole or part of any income tax due and payable under this Act;
- (b) grant or provide for the grant of a refund of the whole or any part of

income tax payable under this act;
in such circumstances, subject to such conditions and to such extent, as may be provided by or determined under the regulation.

(2) Regulations under this section suspending any payment of income tax or granting a rebate or refund may, if the Minister considers it expedient, be made with retrospective effect.

(As amended by Act No. 12 of 1991)

16. Where the Commissioner-General is satisfied that any income cannot be remitted to the Republic in the charge year in which it accrues, then he may, if the person chargeable to tax in respect of that income so requests, determine that income shall not be chargeable to tax in the charge year in which it accrues but that it shall be chargeable to tax in the charge year in which it may first be remitted to the Republic:

Chargeability of
income that cannot be
remitted on accrual

Provided that the tax chargeable on such income shall not exceed the tax that would have been charged on the income if it had been charged to tax in the charge year or years in which it accrued.

(As amended by Act No. 26 of 1970)

17. For the purposes of this Act, income includes, for any charge year-

(a) gains or profits from any business for whatever period of time carried on;

(b) emoluments;

(c) annuities;

Classification of
income

(d) dividends;

(e) interest, charges and discounts;

(f) royalties, premiums or any like consideration for the use or occupation of any property;

(g) income from the letting of property; and

(h) the income as further classified in the First Schedule.

*(As amended by Acts No. 23 of 1968, No. 12 of 1982
and No. 14 of 1987)*

18. (1) Income is deemed to be from a source within the Republic if that income-

Income deemed
within the Republic

(a) arises under any agreement made in the Republic for the sale of goods, irrespective of whether those goods have been or are to be delivered in the Republic;

(b) is remuneration from employment exercised or office held in the Republic or if it is received by virtue of any service rendered or work or labour done by a person or partnership in the carrying on in the Republic of any business, irrespective of whether payment is made outside the Republic, or by a person resident outside the Republic;

(c) is remuneration for services rendered outside the Republic to the Government or any statutory corporation if the person rendering the services is resident outside the Republic solely for that purpose;

(d) is a pension granted by a person wherever resident, irrespective of where the funds from which it is paid are situated, or where payment is made, except where the employment or office for which the pension is granted was wholly outside the Republic, and the emoluments were never charged to tax in the Republic;

(e) arises from interest incurred in the production of income or in the carrying on of a business in the Republic or paid directly or indirectly out of funds derived from within the Republic;

(f) arises from a royalty incurred in the production of income or in the carrying on of a business in the Republic or paid directly or indirectly out of funds derived from within the Republic;

(g) arises from the carriage, by a person who is not resident in the Republic, of passengers, mails, livestock or goods embarked, shipped or loaded in the Republic other than passengers embarking in transit through the Republic or mails, livestock or goods shipped or loaded on transshipment through the Republic; or

(h) arises from a management or consultant fee incurred in the production of income or in the carrying on of a business in the Republic and is received by a person or persons in partnership for a service other than such part thereof as is rendered by the person or persons in partnership in the carrying on of a business in the Republic.

(2) Where a business is carried on partly within and partly outside the Republic by a person to whom this subsection applies receives a share of the profits of a business carried on in partnership partly within and partly outside the Republic, the whole of the person's share of the profits of the business or partnership is deemed to have been received from a source within the Republic.

(3) Subsection (3) shall apply to-

- (a) any individual who is ordinarily resident in the Republic; and
- (b) to any person, not being an individual, who is resident in the Republic.

(As amended by Acts No. 23 of 1968, No. 26 of 1970, No. 17 of 1971, No. 16 of 1972, No. 3 of 1997 and Act No.9 of 1998)

19. (1) Where under the terms of any settlement and during the life of the settlor any income, or assets representing it, will or may become payable or applicable to or for the benefit of any child of the settlor and at the commencement of the charge year the child is unmarried and has not attained the age of twenty-one years, the income or assets representing it shall be deemed to be income of the settlor and, not income of any other person.

Income deemed
received

(2) If and so long as the terms of any settlement are such that-

- (a) any person has or may have power, whether immediately or in the

future, and whether with or without the consent of any other person, to revoke or otherwise determine the settlement or any provision thereof; and

(b) in the event of the exercise of the power, the settlor or the wife or husband of the settlor will or may become beneficially entitled to the whole or any part of the property then comprised in the settlement, or of the income arising from the whole or any part of the property so comprised;

all income arising under the settlement from the property comprised in the settlement shall be deemed to be income of the settlor and, subject to the provisions of subsection (1), not income of any other person:

Provided that this subsection shall not apply by reason only that the settlor or the wife or husband of the settlor will or may become beneficially entitled to any income or property relating to the interest of any beneficiary under the settlement in the event that such beneficiary should pre-decease him.

(3) Where in any charge year the settlor or any relative of the settlor or any person under the direct or indirect control of the settlor or of any of his relatives, whether by borrowing or otherwise, makes use of any income arising or of any accumulated income which has arisen under a settlement to which he is not entitled thereunder, then the amount of such income or accumulated income so made use of shall be deemed to be income of the settlor for the charge year and not income of any other person.

(4) Where under the terms of any settlement to which this section applies any tax is charged on and paid by the person by whom the settlement is made, that person shall be entitled to recover from any trustee or other person to whom income is paid under the settlement the amount of the tax so paid, and for that purpose to require the Commissioner-General to furnish a certificate specifying the amount of tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing therein.

(5) If any question arises as to the amount of any payment of income or as to any apportionment of income under this section, that question shall be decided by the Commissioner-General, whose direction thereon shall be final.

(6) This section applies to every settlement wheresoever it was made or entered into and whether it was made or entered into before or after the commencement of this Act and shall (where there is more than one settlor or more than one person who made the settlement) have effect in relation to each settlor as if he were the only settlor.

(7) In this section-

"settlement" includes any disposition, trust, covenant, agreement, whether reciprocal or collateral, arrangement or transfer of assets or income, but does not include-

(i) a settlement which in the opinion of the Commissioner-General is

made for valuable and adequate consideration;
(ii) a settlement resulting from an order of a court;
(iii) any agreement made by an employer to pay to an employee or to the widow or any relative or dependant of such employee after his death such remuneration or pension or lump sum as the Commissioner-General may determine;

"settlor", in relation to a settlement, includes any person by whom the settlement was made or entered into directly or indirectly, and any person who has provided or undertaken to provide funds or credit directly or indirectly for the purposes of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(As amended by Acts No. 11 of 1969, No. 7 of 1996 and Act No.9 of 1998)

20. *Repealed by Act No. 7 of 1996.*

21. (1) Where, upon the termination of a written contract of employment after minimum period of two years completed service thereunder or such lesser period as the Commissioner-General may, in his discretion, deem reasonable, income is received under the terms of the contract by any individual by way of gratuity, then such income shall be charged in the charge year in which it is received at the appropriate rates applicable thereto pursuant to the Charging Schedule:

Appointment of
gratuities and
compensation for
loss office

Provided however that-

(i) any income received by way of gratuity in excess of twenty-five per centum of the basic salary earned during the period of employment to which such gratuity is related, shall, to the extent of such excess, be regarded and dealt with, for the purposes of this Act, as income received other than by way of gratuity;

(ii) any emoluments paid by way of gratuity by any company to any individual who is, or was at any time during the period of employment to which such gratuity is related, an effective shareholder of such company or who is, or was at any time a director of such company during the period of employment to which such gratuity is related, other than a whole time service director thereof, shall, for the purposes of this Act, be regarded and dealt with as income received by such individual other than by way of gratuity;

(iii) any emoluments paid by way of gratuity by an employer to an individual where the spouse of the individual, either alone or in partnership, is the employer of the individual shall, for the purposes of this Act, be regarded and dealt with as income received other than by way of gratuity;

(iv) any emoluments paid by way of gratuity by a company to an individual who or whose spouse is carrying on a business alone or in

partnership and the services of the individual are provided to such a business by such company, shall for the purposes of this Act, be regarded and dealt with as income received other than by way of gratuity; and

(v) where the conditions of this subsection are not complied with in respect of any emoluments paid to any individual by way of gratuity, such emoluments shall for the purposes of this Act, be regarded and dealt with as income received by such individual other than by way of gratuity.

(2) Where, upon the termination of a contract of employment, income is received by an individual by way of compensation for leave due but not taken, such income, if the individual irrevocably so elects, shall be regarded as accruing, and as being paid, proportionately on the last day of each month over the period during which the leave would have been taken, commencing with the first day after the date of termination of contract.

(3) Where, during the continuance of any employment, income by way of payment in advance for a leave period, is received by an individual proceeding on leave with the intention of resuming his employment at the termination of such leave period, such income shall be regarded as accruing and being paid proportionately on the last day of each month during the continuance of the period of leave.

(4) Where, as the result of any law, judicial order or judgement or the acceptance by an employer of any independent award or of representations by recognised association of employees, income is received by an individual by way of arrears of income in respect of present or past employment, such income shall be regarded as having accrued and as having been paid during the years to which such arrears relate, whether charge years under this Act or years of assessment under any previous law.

(5) Where, upon the termination of the services of any individual in any office or employment, income is received by such individual by way of compensation for loss of office or employment, including termination for reason of redundancy or early retirement, normal retirement or death, the first ten million kwacha of such income shall be exempt from income tax.

(As amended by Acts No. 11 of 1969, No. 16 of 1972, No. 14 of 1974, No. 14 of 1976, No. 14 of 1987, No. 29 of 1990, No. 11 of 1992, No. 4 of 1993, No. 14 of 1994, No. 7 of 1996, Act No.6 of 1999, No. 3 of 2002 and No. 1 of 2005)

22. Where in the case of any business it is necessary in order to arrive at the income of the business for any charge year or other period to divide and apportion to specific periods the income for any period for which accounts have been made up or to aggregate such income or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation, and any apportionment under this

Apportionment of

income

section shall be made in proportion to the number of days in the respective period, unless the Commissioner-General, having regard to any special circumstances, otherwise determines.

23. (1) Where in computing gains or profits for any charge year any expenditure or loss has been deducted or a deduction in respect of any reserve or provision to meet any liability has been made, and in a later charge year the whole or part of the expenditure or loss is recovered, or the whole or part of the liability is released, or the retention in whole or in part of the reserve or provision has become unnecessary, then any amount so recovered or released or no longer required as a reserve or provision shall be deemed to be gains or profits of the charge year in which it is recovered or released or no longer required:

Provisions relating to
income from business

(2) Any amount received under any insurance against loss of profits, or received by way of damages or compensation for loss of profits, shall be deemed to be gains or profits of the charge year in which it is received.

(As amended by Act No. 27 of 1970 and Act No.9 of 1998)

24. Where any amount is received by any person after the cessation of his business which, if it had been received prior to the cessation, would have been included in the gains or profits from the business, then, to the extent to which that amount has not already been included in the gains or profits, that amount shall be income of such person for the charge year in which it is received.**

** shall be deemed to have come into operation on the first February, 2000, and subject to any provisions to the contrary shall have effect in relation to the assessments for the charge year which ends on 31st March, 2000 and in relation to each subsequent charge year.

(As amended by Act No. 4 of 2000)

Provisions relating to
income after cessation
of business

25. The gains or profits of an insurance business are ascertained in accordance with the provisions of the Third Schedule.

Insurance business

26. Where a business is carried on by two or more persons in partnership, the income of any partner from the partnership for any period is the share to which he was entitled in that period, such income being ascertained in accordance with the provisions of this Act and that share shall be assessed and charged on him accordingly.

Income of partner

27. (1) This section applies to the income of a trust or of a deceased's estate.

Special provisions
relating to deceased's
estate and trusts

(2) For the purposes of this Act, an amount received or forming part of the assets of a deceased's estate which became due and payable before

the death of the deceased person and which the deceased person had a right to claim in his lifetime shall be treated as income received by the deceased person on the date the amount became due and payable if the amount would have been income of the deceased person had it been received by him in his lifetime.

(3) An amount received by a deceased's estate which did not become payable before the death of the deceased person shall be income of the deceased's estate for the purposes of this Act if the amount would have been income of the deceased person had it been received or been deemed to have been received by him in his lifetime:

Provided that any income received by way of emoluments earned by the deceased person during his lifetime shall be deemed to be income received by the deceased person on the date of his death.

(4) Where a beneficiary is entitled to the whole or part of the income of a trust or deceased's estate, the Commissioner-General may, instead of assessing and charging the whole or part of the income on the trustees or executor or administrator, determine that the income of the trust or deceased's estate attributable to the beneficiary's interest for any charge year or any amount paid out of the income of the trust or deceased's estate on behalf of the beneficiary in any charge year shall, for the purposes of this Act, be assessed and charged on the beneficiary as if it were his income.

(As amended by Acts No. 23 of 1968 and No. 14 of 1976)

28. (1) The income that is deemed under paragraph (g) of subsection (1) of section *eighteen* to be from a source within the Republic for any period shall be an amount bearing the same proportion to the amounts received in respect of the carriage of passengers, mails, livestock or goods embarked, shipped or loaded in the Republic as the total gains or profits of such business for the period bear to the total amount received for the period for the carriage of passengers, mails, livestock or goods.

Income of
non-resident air, sea
or land transport
business

(2) The Commissioner-General may accept as evidence of the total gains or profits and total amount mentioned in subsection (1), a certificate of such gains or profits and amount issued by or on behalf of any income tax authority which the Commissioner-General is satisfied computes the gains or profits of the business on a basis not materially different from that provided in this Act.

(3) Where at the time of assessment, the provisions of subsection (1) cannot for any reason be satisfactorily applied, the income from the Republic may be computed at such percentage of the full amount received which is attributable to the carriage of passengers, mails, livestock or goods embarked, shipped or loaded in the Republic as the Commissioner-General may determine.

(4) Any person assessed under the terms of subsection (3) in respect of

any charge year may claim at any time within six years after the end of the charge year that his liability to tax be recomputed on the basis provided by subsection (1).

(As amended by Acts No. 11 of 1975, No. 14 of 1976, No. 9 of 1977, No. 10 of 1981 and No. 11 of 1984)

PART IV DEDUCTIONS

29. (1) Subject to the provisions of this Part- Deductions generally

(a) in ascertaining business gains or profits in any charge year, there shall be deducted the losses and expenditure, other than of a capital nature, incurred in that year wholly and exclusively for the purposes of the business; and

(b) in ascertaining income from a source other than business, only such expenditure, other than expenditure of a capital nature, is allowed as a deduction for any charge year as was incurred wholly and exclusively in the production of the income from that source.

Provided that on the amount payable by way of interest upon money borrowed by any person where the Commissioner General is satisfied that the loan or advance was obtained for capital employed wholly and exclusively for business purposes or in the production of income, a deduction shall be allowed.

(2) Only one deduction is allowed under this Act in respect of the same matter in any charge year.

(As amended by Act No. 26 of 1970 and No. 3 of 2003)

29A. (1) Notwithstanding the provisions of section *twenty-nine* or any other provisions of this Act, any foreign currency exchange gains or losses, other than those of a capital nature, shall be assessable or deductible, as the case may be, in the charge year in which such gains or losses are realised, that is to say, in the charge year in which the person or partnership concerned is required to pay the additional kwacha or is allowed a rebate or a reduction in settlement of a foreign of a foreign debt or liability.

Foreign currency
exchange gains and
losses

Provided that foreign exchange losses of a capital nature incurred on borrowing used for the building and construction of an industrial or commercial building shall be deductible.

(2) Subsection (1) shall not apply in case of a bank.

Provided that any foreign currency exchange gains or losses of a bank of a capital nature shall not be assessable or deductible as the case may be in the charge year in which they are translated.

(3) Where the accounts of a bank made up for the bank's accounting period ending in the charge year ending 31st March, 1999 recognise any foreign currency exchange gain or loss but that gain or loss is not realised within the meaning of subsection (1) in that charge year, then the amount of that gain or loss shall be deemed to be a gain or loss of the

business carried on by the bank assessable or deductible, as the case may be, in the charge year ending 31st March, 2000.

(4) In this section “industrial building” and “commercial building” have the meaning assigned to them in the fifteen schedule.

(As amended by Act No. 14 of 1987, Act No.6 of 1999, Act No.6 of 2000, No.3 of 2002 and No. 3 Of 2003)

30. (1) Subject to the other provisions of this section, any loss incurred in a charge year on a source by a person, shall be deducted only from the income of the person from the same source as that in which the loss was incurred.

Losses

(2) Subject to the other provisions of this section, where a loss referred to in subsection (1) exceeds the income of a person for the charge year in which the loss was incurred, the excess shall, as far as possible, be deducted from the income of the person from the same source as that in which the loss was incurred for the following charge year;

Provided that:

(i) in the case of any loss incurred by any mining company holding a large-scale, mining licence issued under section *twenty-three* of the Mines and Minerals Act and carrying on the mining of base metals, the loss shall not be carried forward beyond ten subsequent years after the charge year in which the loss was incurred;

Cap. 13

(ii) in any other case, the loss shall not be carried forward beyond five subsequent years after the charge year in which the loss was incurred; and

(iii) losses brought forward as at 31st March, 1997, shall be deemed to have been incurred in the charge year ending 31st March, 1997

(3) Where on the death of an individual his interest in a business passes to his spouse, any undeducted loss attributable to such interest shall be deducted from the spouse's income from that business in accordance with the provisions of sub-section (2).

(4) *Repealed by Act No. 7 of 1996.*

(As amended by Acts No. 11 of 1969, No. 11 of 1975,

No. 14 of 1976, No. 9 of 1977, No. 10 of 1981, No. 11 of 1984,

No. 7 of 1996, No. 3 of 1997, No.9 of 1998, No. 4 of 2000 and No. 7 of 2006)

30A. (1) The losses to be deducted by any mining company holding a large-scale mining licence pursuant to section *twenty-three* of the Mines and Minerals Act and carrying on the mining of base metals shall be indexed losses.

(2) For the purposes of this section indexed losses shall be computed as follows:

$[1 + (R^2R^1)] \times$ loss brought forward

R^1

Where:

R^1 is the Kwacha against the United States Dollar at the exchange rate ruling on the last day of the preceding accounting year in which the loss

is being claimed; and

R² is the Kwacha against the United States Dollar exchange rate to be used for this purpose on the last day of the accounting year in which the loss is being claimed.

The Kwacha against the United States Dollar exchange rate to be used for this purpose is the Bank of Zambia mid-rate at the end of the accounting period.

(As amended by Act No. 7 of 2006)

Indexation of

losses

Cap 213

31. If a company has incurred a loss on a source for the purposes of this Act and that company in this section called the old company)-

(a) was incorporated outside the Republic; and

(b) carried on its principal business within the Republic; and

(c) is about to be wound up voluntarily in its country of incorporation for the purposes of transferring the whole of its business and property

Transfer of losses

wherever situate, to a company which has been or will be incorporated in the Republic (in this section called the new company) for the purposes of acquiring that trade and property and the only consideration for the transfer will be the issue to the members of the old company of shares in the new company in proportion to their shareholdings in the old company;

the new company after the transfer referred to in paragraph (c) shall be allowed the old company's loss as deduction from income from the same source as that in which the old company's loss was incurred to the extent that the loss has not been allowed as a deduction under this Act for any charge year and such loss shall be allowed in accordance with the provisions of section *thirty*.

Provided that the combined period of loss carried forward for both the old and new companies shall not exceed five years.

(As amended by Acts No. 14 of 1976, No. 14 of 1987 and No. 3 of 1997)

32. (1) Subject to the provisions of subsection (2), no person may carry forward any loss incurred before he had been adjudged bankrupt.

Losses prior to

bankruptcy, etc

(2) Where any person has made a conveyance or assignment of his property for the benefit of his creditors, or has made an arrangement with them, or has entered into a composition with them which has been approved by the High Court pursuant to any Bankruptcy Act in force in the Republic, whereby the said person is released from his debts or from any proportion or part thereof, any loss incurred by him prior to his making of such conveyance, or assignment, or arrangement, or his entering into such composition, may be carried forward, reduced, however, *pro tanto*, by the amount of the debts released by or under the said conveyance, assignment, arrangement, or composition, as the case

may be, and such loss shall be allowed in accordance with the provisions of section *thirty*.

(As amended by Acts No. 11 of 1969 and No. 14 of 1976)

33. (1) Capital allowances are deducted in ascertaining the gains or profits of a business and the emoluments of any employment or office for each charge year-

(a) for buildings, implements, machinery and plant, and premiums, according to the provisions of Parts I to V inclusive of the Fifth Schedule;

(b) for capital expenditure in relation to mining operations, according to the provisions of Parts I to VI inclusive of the Fifth Schedule; and

(c) for farm improvements and works, according to the provisions of the Capital allowances

Sixth Schedule.

(2) The capital allowances to be claimed by any mining company holding a large-scale mining licence pursuant to section *twenty-three* of the Mines and Minerals Act and carrying on the mining of base metals shall be indexed capital allowances.

(3) For the purposes of this section indexed capital allowances shall be computed as follows:

$[1 + (R^2R^1)] \times \text{Capital allowance}$

R^1

Where:

R^1 is the Kwacha against the United States Dollar at the exchange rate ruling on the last day of the preceding accounting year in which the loss is being claimed; and

R^2 is the Kwacha against the United States Dollar at the exchange rate ruling on the last day of the accounting year in which the loss is being claimed.

The Kwacha against the United States Dollar exchange rate to be used for this purposes is the Bank of Zambia mid-rate at the end of the accounting period.

(As amended by Acts No. 11 of 1969, No. 26 of 1970,

No. 46 of 1973, No. 11 of 1975, No. 3 of 1997 and No. 7 of 2006)

34. Where a person incurs capital expenditure on the construction of, addition to, or alteration of any industrial building, as defined in paragraph 1 of the Fifth Schedule, to be used by him for the purposes of his business as a manufacturer, an investment allowance of ten per centum of such expenditure shall be deducted in ascertaining the gains or profits of that business for the year in which the said building, addition or alteration is first used for the said purposes.

(As amended by Acts No. 11 of 1969, No. 26 of 1970, No. 11 of 1985 and No. 14 of 1987 and No. 4 of 1993)

Investment
allowances

34A. (1) Where a person incurs expenditure on the growing of rose flowers, tea, coffee, or banana plant or citrus fruit trees, or other similar

plants or trees, an allowance (in this Act referred to as a development allowance) of ten per centum of such expenditure shall be deducted in ascertaining the gains or profits of that business for the charge year.

Development allowance

(2) The development allowance referred to in subsection (1) may, in the case of a person growing for the first time plants or trees referred to therein, be carried forward to the following charge years up to the first year of production, but in no case shall the development allowance in respect of more than three consecutive years be carried forward.

(As amended by Act No. 10 of 1981, No. 3 of 2002 and No. 3 of 2003)

35. A deduction is allowed in ascertaining the gains or profits of a business for the charge year in which that business commences, in respect of any expenditure that-

(a) was incurred within eighteen months before the commencement of the business; and

(b) would have been allowed as a deduction in ascertaining the gains or profits of the business after its commencement.

Preliminary business expenses

36. Where any amount is paid by any person after the cessation of his business which, if it had been paid prior to the cessation, would have been deductible in computing his gains or profits from the business, then, to the extent to which that amount has not already been deducted in computing the gains or profits, it shall be deducted from his income for the charge year in which it is paid or, if he has not income in that charge year, from his income for the charge year in which the business ceased, and such deduction shall be made before deductions under sections *thirty, thirty-one and thirty-two*.

(As amended by Act No. 26 of 1970 and No. 4 of 2000)

Amount paid after cessation of business

37. (1) (a) A deduction shall, subject to the provisions of this subsection and subsection (4), be allowed in ascertaining the income from emoluments of an employee for a charge year of any amount paid by him during that charge year by way of contribution to any approved fund including National Pension Scheme Authority if the fund to which the contribution is made continues to be an approved fund for that charge year:

Approved fund deductions

Provided that no deduction shall be allowed under this paragraph in respect of any contribution other than a contribution-

(i) which is not a contribution in arrear (hereinafter in this subsection referred to as a current contribution); or

(ii) which is a special lump sum contribution allowed to be deducted under and in accordance with paragraph (b).

(b) A contribution paid by an employee-

(i) in respect of services rendered by him whilst resident in the Republic to his employer prior to the date of the employee becoming a member of the approved fund to which the said contribution is paid; or

(ii) in respect of a period when the employee was resident and employed in the Republic prior to the date of the employee becoming a member of a fund within paragraph (c) of the definition of approved fund or a fund approved under paragraph 5 of the Fourth Schedule to which the said contribution is paid;

in order that the employee may qualify for benefits under the approved fund to which the contribution is paid in respect of such prior services or period as aforesaid shall be a special lump sum contribution and shall, for the purposes of paragraph (a), be treated as a current contribution for such charge year or as current contributions for such charge years and in such amounts as the Commissioner-General, in his discretion, may direct.

(c) The deduction to be allowed to an employee for a charge year in respect of his current contributions to approved pension funds shall not exceed-

(i) fifteen per centum of his income from emoluments liable to tax which have been received for that charge year from any employer who established, adhered to or continued the said approved pension fund, the fifteen per centum to be calculated before any deduction under this subsection; or

(ii) One hundred and eighty thousand kwacha whichever is the less.

(d) The total deductions to be allowed to an employee for a charge year in respect of current contributions to an approved fund within the meaning of paragraph (c) of the definition of approved fund and a fund approved under paragraph 5 of the Fourth Schedule shall not exceed fifteen per centum of the income from emoluments of the employee liable to tax before allowing any deduction under this subsection for that charge year or one hundred and eighty thousand kwacha, whichever is the less.

(e) The total of the deductions to be allowed for a charge year under paragraphs (c) and (d) shall not exceed fifteen per centum of the income from emoluments of the employee liable to tax before allowing any deduction under this subsection for that charge year or one hundred and twenty thousand kwacha, whichever is the less, and in any case shall not exceed the assessable income of the employee for the charge year before allowing the deductions under this subsection, subsection (3) and sections *thirty*, *thirty-two*, *thirty-six*, *forty* and *forty-one*.

(2) (a) A deduction shall, subject to the provisions of this subsection, be allowed in ascertaining the gains or profits of an employer for a charge year of any amount paid during that charge year by him by way of contribution to an approved fund established for the benefit of his employees (including an approved fund within the meaning of paragraph (c) of the definition of approved fund and a fund approved

under paragraph 5 of the Fourth Schedule) if the fund to which the contribution is made continues to be an approved fund for that charge year:

Provided that no deduction shall be allowed under this paragraph in respect of any contribution other than a contribution-

(i) which is not a contribution in arrear (hereinafter in this subsection referred to as a current contribution); or

(ii) which is a special lump sum contribution which is allowed to be deducted under and in accordance with paragraph (b).

(b) A contribution paid by an employer-

(i) in respect of services rendered to him by an employee prior to the date of the employee becoming a member of the approved fund to which the said contribution is paid in order that the employee may qualify for benefits under that approved fund in respect of such prior services; or

(ii) for any other reason approved by the Commissioner-General; shall be a special lump sum contribution and shall be treated as a current contribution for such charge year or as current contributions for such charge years and in such amounts as the Commissioner-General, in his discretion, may direct.

(c) The deduction to be allowed for a charge year in respect of current contributions to an approved fund other than a fund approved under subsection (1) of section *eleven* of the former Act shall not exceed twenty per centum of the emoluments liable to tax received from the employer in that charge year by each employee in respect of whom the contributions are paid.

(3) (a) A deduction shall, subject to the provisions of this subsection and subsection (4), be allowed from the income of an individual for a charge year of any amount paid by him during that charge year by way of a premium payable under an approved annuity contract if the pension fund to which the contribution is paid or the annuity contract under which the premium is paid continues to be an approved fund for that charge year and such deduction shall be deducted from the income of an individual before deductions under sections *thirty*, *thirty-two*, *thirty-six*, *forty*, and *forty-one*.

(b) The deduction to be allowed for a charge year under this subsection shall not exceed one hundred and twenty thousand kwacha or the assessable income of the individual for the charge year before allowing the deduction under this subsection and deductions under sections *thirty*, *thirty-two*, *thirty-six*, *forty* and *forty-one*, whichever is the less, except that in the case of an individual who is not resident in the Republic, the deduction shall not exceed an amount equal to the contribution or premium paid as aforesaid multiplied by the fraction of his assessable income as above over his world income.

(3A) For the purposes of subsection (3) "world income" in relation to any person means the total amount of that person's income from all sources, excluding the income which is chargeable to tax but which the

Commissioner-General is precluded from including in an assessment, the amount of income from each source being substantiated to the satisfaction of the Commissioner-General;

(4) The total of all deductions to be allowed to an individual under subsection (1) and (3) for a charge year shall not exceed one hundred and eighty thousand kwacha or the assessable income of that individual for that charge year before allowing the deductions under subsection (1) and (3) and deductions under sections *thirty, thirty-two, thirty-six, forty* and *forty-one*, whichever is the less.

(As amended by Acts No. 29 of 1970, No.12 of 1982, No. 11 of 1984, No. 14 of 1987, No. 11 of 1992, No.4 of 1993, No. 14 of 1994, No. 2 of 1995 and No. 7 of 1996, No.6 of 1999 and No. 1 of 2001)

37A. A deduction shall be allowed in ascertaining the gains or profits of an employer for a charge year of any amount incurred by the employer in the establishment or in the administration of an approved share option scheme for that year

Deduction for
share option
scheme

38. A deduction shall be allowed in ascertaining the gains or profits of a business for any payment made for the purposes of technical education relating to that business or for the purposes of obtaining further experience, training or qualifications, relating to that business:

Technical education

Provided that no deduction shall be allowed under this section in respect of any payment made-

(a) on behalf of an individual who is related by blood or marriage to the person making the payment, or to a person who is able to control directly or indirectly the person making the payment;

(b) in pursuance of an agreement or undertaking to the effect that the person making the payment will receive any reciprocal benefit for such payment where made on behalf of an individual who is related by blood or marriage to any other party to that agreement or undertaking.

(As amended by Act No. 26 of 1970)

39. A deduction is allowed in ascertaining the gains or profits of a business or the emoluments of any employment or office for any subscription paid by a person in respect of his membership of a trade, technical or professional association which is related to his business, employment or office.

Subscriptions

40. *Repealed by Act No. 3 of 1997.*

41. (1) Subject to the provisions of this section, any amount paid by a person during a charge year to an ecclesiastical, charitable, research, educational institution of a public character or to a national amateur sporting association or to any fund of a public character wholly and exclusively established for the use of the Republic or for ecclesiastical,

charitable, research, educational or amateur sporting purposes, shall be deducted from the income of that person for that charge year if-

Charities

(a) the payments are in money or money's worth;
(b) the payments are made for no consideration whatsoever;
(c) the Minister approves the institution, association or fund to which payment is made or to be made and the Minister may in like manner withdraw such approval and such withdrawal may be made retrospectively.

(2) The deduction to be allowed in a charge year under this section shall be allowed before deductions under sections *thirty*, *thirty-one*, *thirty-two*, *thirty-six* and *forty*, and in no case shall exceed fifteen per centum of the assessable income of the person for the charge year.

(As amended by Acts No. 26 of 1970, No. 11 of 1973, No. 6 of 1980, No. 12 of 1982, No. 14 of 1987, No. 11 of 1992 and No. 7 of 1996)

42. Repealed by Act No. 3 of 1997.

43. (1) A deduction is allowed in ascertaining the gains or profits of a business of any expenditure, not being expenditure of a capital nature, incurred by the business during a charge year on experiments or research relating to the business.

Deduction for
research

(2) A deduction is allowed in ascertaining the gains or profits of a business for any contribution to a scientific or educational society or institution or other like body of a public character approved by the Commissioner-General where a condition of the contribution is that it must be utilised by the society, institution or body, as the case may be, solely for the purposes of industrial research or scientific experimental work connected with the business.

43A. (1) A deduction shall be allowed in ascertaining the income from any source for debts to the extent that the debts have been included in the income from that source and to the extent that they are proved to the satisfaction of the Commissioner-General to be bad or likely to become bad and, where there is no income from that source for the charge year for which such deduction is due that deduction shall be deemed to be a loss under section *thirty*.

(2) Where a deduction has been allowed under subsection (1) in respect of any debt, and in the subsequent charge year part or all the debt is recovered, the amount of the recovery or, where less, the total deductions allowed in one or more charge years in respect of that debt, shall be assessable in the charge year in which the recovery is received: Provided that where recoveries are effected in more than one charge year, the total amount assessable in each charge year after the first such charge year shall not exceed the amount of the recovery in that later year or, where less, the total of the deductions previously allowed less any recoveries assessable in previous charge years.

(3) Where a claim for a deduction is made under subsection (1) by a bank, bank subsidiary or financial institution, subsection (1) shall apply subject to the following:

(a) the words "to the extent that the debts have been included in the income from that source" in that subsection shall not apply; and

(b) the maximum deduction for any debt falling within the classifications set out by or under the Banking and Financial Services Act shall not exceed the minimum level of provisioning for such a debt required by the Bank of Zambia by or under the Banking and Financial Services Act.

(As repealed and replaced by Act No.6 of 1999, amended by Act No. 4 of 2000 and No. 1 of 2001)

Deduction for bad and doubtful debts

43B. (1) A deduction shall be allowed in ascertaining gains or profits of a business of any mineral royalty payable and paid for a charge year in pursuance of the provisions of section *sixty-six* of the Mines and Minerals Act.

(2) This section shall not apply to any royalty payable and paid for any charge year prior to the charge year ending 31st March 2000

Cap. 213

(Repealed by Act No. 17 of 1988 and replaced by Act No.6 of 1999).

43C. Repealed by Act No. 3 of 2002

(As amended by Acts No. 17 of 1971, No. 11 of 1974, No. 10 of 1979, No. 8 of 1986, No. 14 of 1987, No. 33 of 1989, No. 11 of 1992 and No. 3 of 2002)

43D. (1) A deduction shall be allowed in ascertaining the gains or profits of a business in respect of each person with disability who has been employed full-time by such business for the whole or substantial part of the charge year for which the deduction is claimed.

Deduction for employing handicapped person

(2) The amount of the deduction referred to in subsection (1) shall be five hundred thousand kwacha.

(As amended by Act No. 11 of 1985, No. 4 of 1993, No. 7 of 1996 and No. 3 of 2002)

43E. *Repealed by Act No. 7 of 1996.*

44. No deduction is made in respect of any of the following matters:

(a) the cost incurred by an individual in the maintenance of himself, his family or establishment, or which is a domestic or personal expense.

(b) any loss or expense which is recoverable under any insurance contract or indemnity;

(c) capital expenditure or loss of capital, other than loss of stock in trade, unless specifically permitted under this Act;

(d) any payment to a pension or superannuation fund or scheme or premium payable under an annuity contract, except such payments as are allowed under section *thirty-seven*;

(e) any tax or penalty chargeable under this Act;

(f) *Repealed by Act No. 9 of 1998;*

Case of no deduction

(g) any amount which would be deductible in ascertaining the income from a source or from income which the Commissioner-General is prohibited from including in any assessment under the provisos to subsection (1) of section *sixty-three*;

(h) any expenditure incurred or capital asset employed, whether directly or indirectly, in the provision of entertainment, hospitality or gifts of any kind:

Provided that this paragraph shall not apply to-

(i) any expenditure incurred or capital asset employed in the provision of anything which it is the purpose of a person's business to provide and which is provided in the ordinary course of that business for payment or for the purpose of advertising to the public generally without payment;

(ii) *Repealed by Act No. 11 of 1992;*

(iii) any expenditure incurred in the provision of a gift to any person consisting of an article incorporating a conspicuous advertisement for the donor the cost of which to the donor, taken together with the cost to him of any other such articles given by him to that person in the same charge year, does not exceed K25,000.00;

(i) any amount incurred by the employer in the establishment or administration of a share option scheme, except such amounts as are allowed under section *thirty-seven A*.

(j) *Repealed by Act No. 3 of 1997;*

(k) *Repealed by Act No. 4 of 1993;*

(l) the cost of any benefit or advantage not capable of being turned into money or money's worth that is provided to employees, subject to such directions as shall be issued by the Commissioner-General; and

(m) any copper price participation payment or cobalt price participation payment:

Provided that a deduction shall be allowed to Konkola Copper Mines Plc and Mopani Mines Plc in respect of any payments made pursuant to cobalt price participation and copper price participation agreements between Konkola Copper Mines Plc or Mopani Copper Mines Plc and Zambia Consolidated Copper Mines Limited:

(n) incidental costs of obtaining finance such as commitment and guarantee fees, commissions and any other incidental cost of a similar nature; and

(o) any levy payable under the Medical Levy Act.

(As amended by Acts No. 26 and 27 of 1970, No. 17 of 1971,

No. 11 of 1973, No. 11 of 1975, No. 14 of 1976, No. 10 of 1981, No. 14 of 1987, No. 11 of 1992, No. 4 of 1993, No. 2 of 1995, No. 3 of 1997, No. 1 of 1997, No. 9 of 1998, No. 4 of 2000, No. 3 of 2002, No. 3 of 2003 and Act No. 1 of 2005)

Act No. of 2003

PART V

RETURNS AND ASSESSMENTS

45. Every person within thirty days from first receiving income liable to tax under this Act shall give written notice accordingly to the Commissioner-General.

(As amended by Act No. 26 of 1970)

Notice to

Commissioner-General

45A. (1) Every person shall provide his taxpayer identification number with all forms, notices, certificates, documents, and other communications submitted to the Commissioner-General under this Act.

Duty to provide
taxpayer identification
number

(2) Any person carrying on any business in partnership shall provide the taxpayer identification number of every partner with all documents, forms, notices, certificates, and other communications submitted to the Commissioner-General under this Act.

(3) Every person making payments for which it is required to submit to the Commissioner-General a return, notice, form, certificate, or other such document under sections *fifty, fifty-two, seventy-one, eighty, eighty-one, eighty-one A, eighty-two, or ninety-five D* of this Act shall furnish to the Commissioner-General on or along with that document the taxpayer identification numbers for all persons to whom the payments have been made.

(4) This section shall have effect irrespective of the charge year to which the forms, notices, certificates, documents and other communications referred to in subsection (1) to (3) pertain.

(As amended by Act No. 11 of 1992)

45B. (1) The institutions listed in column 1 of this subsection shall require a tax payer identification number from any person, applying for anything listed, or engaged in the types of transactions listed, whichever is applicable, in column 2 of this section.

Column 1 Column 2

Institution Type of Transaction

Commissioner of Lands Registration of titles

Registrar of Motor Vehicles Registration and transfer of motor vehicles

Ministry of Commerce Import licensing and trade licensing

Tax payer
identification number
required for certain
transactions

Zambia Electricity Supply Payment of deposit for power Corporation connection

Registrar of Companies and Registration of Companies and Business Names business names

(2) Each institution listed in column 1 of subsection (1) shall avail the

Commissioner-General or his authorised agent access to the documents, forms, notices, certificates, and other communications in which a tax-payer identification number is required to be used under subsection (1):

Provided that such access shall be as is necessary to assist in the enforcement of the tax laws.

(3) Any person, including a person carrying on any business in partnership, who is required under subsection (1) to furnish a tax-payer identification number and who furnishes a false number shall be guilty of an offence under this Act.

(As amended by Act No. 4 of 1993 and No.9 of 1998)

46. (1) Every person liable to tax for any charge year, other than an individual whose income consists entirely of emoluments within the provisions of Part VI (which relates to Pay As You Earn), shall furnish to the Commissioner-General a return of income and such particulars as may be required for the purposes of ascertaining the income chargeable, if any, and the tax liability due, if any under this Act.

Returns generally

(2) The return required under this section shall-

(a) contain a statement of the person's income liable to tax, including income deemed under this Act to be the income of the person in respect of whom the return is submitted but excluding any income which cannot be assessed by virtue of the proviso to subsection (1) of section *sixty-three*;

(b) contain a computation, by or on behalf of the person liable to tax, of the amount of tax due based on rates of tax applicable for such charge year and, in the case of an individual, any deductions, and tax credit to which he is entitled;

(c) include a declaration by such person, or by the person in whose name he is assessable, that such return includes a full statement of income liable to tax and a proper computation of tax due for such charge year; and

(d) be designated in kwacha.

(3) The return referred to in subsection (1) shall be furnished to the Commissioner-General not later than 30th September following the end of the charge year.

(4) Where a person fails to submit a return on, or before, the date provided under subsection (3), there shall be charged a penalty of-

(a) in the case of an individual, one thousand penalty units per month or part thereof; or

(b) in the case of a company, two thousand penalty units per month or part thereof:

Provided that the Commissioner-General may in his discretion remit the whole or part of any such penalty.

(As amended by Acts No. 11 of 1992, No. 13 of 1994, No. 2 of 1995, No. 3 of 1997, No.9 of 1998, No. 3 of 2002 and No. 1 of 2005)

46A. (1) Without prejudice to the requirement under section *forty-six*, every person, including an individual whose income consists entirely of emoluments within the provisions of Part VI which relates to (Pay As You Earn), shall submit in accordance with this section a return of provisional income tax for any charge year:

Provisional Income tax

Provided that an individual who does not expect to receive assessable income (other than emoluments within the provisions of Part VI) in excess of one million eight hundred thousand kwacha for such charge year need not submit such return.

(2) The return of provisional income required under this section shall-

- (a) contain an estimate (based on information reasonably believed to be true) of the person's income liable to tax, including income deemed under this Act to be the income of the person in respect of whom the return is submitted but excluding any income which cannot be assessed by virtue of the proviso to subsection (1) of section *sixty-three*;
- (b) contain a computation of tax based on rates of tax applicable for such charge year and, in the case of an individual, deducting any tax credit to which the individual is entitled, and any such computation shall exclude tax on income falling within Part VI (Pay As You Earn) and any tax deducted from any other income;
- (c) include a declaration by such person or by the person in whose name he is assessable, that such provisional return includes a full and reasonable estimate of his income for such charge year;
- (d) be designated in kwacha.

(3) The return of provisional income referred to in subsection (2) shall be furnished not later than the 30th June of the charge year to which such return relates.

Provided that where during the course of the charge year, any person discovers that the return of provisional income furnished under this section is likely to be substantially incorrect because of changed circumstances, such person shall furnish a revised return of revised provisional income and in such a case, any alteration in the amount of estimated tax payable shall be taken into account in the next instalment (pursuant to section *seventy-seven*) immediately following the date of such revised return;

(4) Where an individual is not required to make a return of provisional income and tax for any charge year by virtue of the proviso to subsection (1) but at a time subsequent to 30th June in that year that proviso ceases to apply to the individual, that individual shall make a return in accordance with subsections (1) and (2) within fourteen days of the proviso ceasing to apply to that individual.

(5) Where, upon the receipt of a return of income pursuant to section *forty-six*, it is discovered that income has been so underestimated that the tax on such estimate has been underpaid by at least one-third, then such person shall be liable to a penalty under this section calculated at the rate of twenty-five percent of the tax which has been underpaid;

(6) In this Act any reference to a person's provisional income for any charge year is a reference to the estimate calculated in accordance with paragraph (a) of subsection (2) of that person's income for that charge year.

(7) In this Act any reference to any provisional tax which a person is liable to pay during any charge year is a reference to the estimate calculated in accordance with paragraph (b) of subsection (2) of that person's tax liability for that charge year.

(8) Where a person fails to submit a return or a revised return in accordance with this section, there shall be charged a penalty of-

(a) in the case of an individual, one thousand penalty units per month or part thereof during which such failure continues; or

(b) in the case of a company, two thousand penalty units per month or part thereof during which such failure continues:

Provided that the Commissioner-General may remit the whole or part of any such penalty.

(9) Any reference to tax in subsection (7) of section *seventy-eighty*, and in sections *seventy-eight A*, *seventy-nine*, *seventy-nine A*, *seventy-nine B*, *seventy-nine C*, *seventy-nine D*, *eighty-three*, *eighty-four*, *eighty-six*, *eighty-seven*, and *ninety-two* includes a reference to provisional tax. (As amended by Act No.6 of 1999, Act No.4 of 2000, No.1 of 2001, No. 3 of 2002 and No. 1 of 2005)

46B. (1) Where any person has, for any year, failed to submit a return or revised return under section *forty-six A* the Commissioner-General may-

(a) estimate such person's income chargeable to tax, in accordance with paragraph (a) of subsection (2) of section *forty-six A*; and

(b) compute the provisional liability to tax of that person on that estimated income in accordance with paragraph (b) of subsection (2) of section *forty-six A*; and shall serve notice on that person specifying the amount of income so estimated and the provisional tax liability so computed.

(2) Subject to subsections (1) and (3) of section *forty-six A* a notice served on any person under subsection (1) shall, for the purposes of this Act, be deemed to be a return of provisional income and tax made by that person, and a person is not relieved of any obligation to make any return of provisional income or tax or from any penalties for failure to make such a return under section *forty-six A*.

(3) Where a person who has been served with a notice under this section makes a return under section *forty-six A* which, apart from the date on which the return is made, complies with the requirements of that section, the notice under this section shall cease to have effect.

(As amended by Acts No. 12 of 1982, No. 17 of 1988, No. 11 of 1992, No. 2 of 1995, No. 7 of 1996, No.9 of 1998, No. 4 of 2000, and No. 1 of 2001)

Estimated
provisional tax

returns

47. (1) The Commissioner-General may, by notice in writing require any person to furnish him, within a reasonable time specified in the notice, with further returns or particulars in relation to any matter contained in a return made under this Act or in relation to any transactions or matters appearing to the Commissioner-General to be relevant to the ascertainment of the income of that person.

Further provisions as to
returns

(2) The Commissioner-General may determine that any person shall make a return on another person's behalf, and any such return is the return of that other person for the purposes of this Act, save that the operation of this subsection shall not relieve that other person of any liability under this Act.

(3) Any person preparing, signing or rendering any return or statement for the purposes of this Act is deemed to be aware of the contents of that return or statement.

(As amended by Act No.6 of 1999)

48. Every person shall furnish to the Commissioner-General such information, whether relating to the affairs of himself or any other person, as the Commissioner-General determines is necessary for the purposes of this Act, and every provision of this Act relating to the delivery of information to the Commissioner-General is without prejudice to the generality of this section.

Information generally

49. The Commissioner-General may give notice in writing to any person requiring him to furnish within the time limited by such notice, not being less than thirty days from the date of service of such notice, a statement in writing containing particulars of-

(a) all banking accounts, whether current or deposit business or private, in his own name or in the name or names of his wife or wives, or in any other name, in which he is or has been interested, or on which he has or has had power to operate, jointly or solely, and which are in existence or which have existed at any time during the period stated in the notice;

(b) all savings and loan accounts, deposits, building society, and cooperative society accounts, in regard to which he has, or has held, any interest or power to operate jointly or solely during the period aforesaid;

(c) all assets, other than those referred to in paragraph (a) or (b) which he and his wife or wives possess, or have possessed, during the period aforesaid;

(d) all sources of income not referred to in paragraph (a), (b) or (c) and the income derived therefrom; and

(e) all facts bearing upon his liability to income tax to which he is or has been liable.

Statement of bank
accounts, assets, etc.

50. The Commissioner-General may by notice in writing require any person whose business is to provide living accommodation to deliver a list of all persons he has so accommodated.

Return of lodgers and
inmates

51. Whenever so required by the Commissioner-General, and in the prescribed form, everyone carrying on business shall deliver returns showing-

(a) particulars of all payments in respect of any share or interest in the
Information as to
business matters
business;

(b) particulars of all moneys received by him on deposit;

(c) particulars of any interest received or paid by him;
and

(d) such other information as may be in his possession relating to the income received by any other person.

52. *Repealed by Act No. 3 of 1997.*

53. Notwithstanding anything to the contrary in any written law, any officer in the service of the Government, a local authority or public body who has charge of documents or electronically stored data which might aid the carrying out of the provisions of this Act shall permit the Commissioner-General or the Commissioner-General's authorised officer to inspect and copy those documents or electronically stored data, and have custody of such of them as are necessary for production in proceedings.

(As amended by Act No. 3 of 2002)

Public documents

54. Every resident company shall deliver to the Commissioner-General a copy of its memorandum and articles of association, and copies of all amendments thereto, and, if the Commissioner-General so determines, all such particulars relating to the company's affairs and shareholders as the Commissioner-General may in writing require.

Information as to
companies

55. (1) Every person carrying on a business shall keep, in the English language, books and accounts of all his transactions, and, unless otherwise authorised by the Commissioner-General, shall retain for six years from the date of the last entry all documents relating to any business carried on by him, or otherwise recording the details from which his returns for the purposes of this Act were prepared.

Accounts and records

(2) A person who retains, in accordance with conditions specified by the Commissioner-General, photographic reproductions of the documents referred to in subsection (1) is deemed to retain those documents for the purposes of that subsection.

(3) A person carrying out any mining operations may elect to keep books of accounts in United States Dollars of all transactions relating

to, connected with, or incidental to, such operations if the Commissioner-General is satisfied that not less than seventy-five per centum of that person's gross income from mining operations is earned in the form of foreign exchange from outside the Republic. Provided that such election shall not be reversed without the consent of the Commissioner-General.

(As amended by Act No. 14 of 1994)

56. (1) Notwithstanding the provisions of subsection (3) of section *fifty-five* every return furnished under subsection (1) of section *forty-six* by any person shall be accompanied by such accounts and other documents, in kwacha, as are necessary to support the return and shall be signed by the person furnishing the return.

Documents in support
of returns

(2) Where such accounts were audited by a person in a professional capacity or where such accounts were not so audited but were prepared by a person in a professional capacity, that auditor or person shall furnish a certificate signed by him stating-

(a) the nature of the books of account and other documents from which such accounts were prepared;

(b) the extent of his verification of the books of account and other documents produced to him;

(c) whether and to what extent, if any, there are included any estimated amounts or balancing adjustments;

(d) whether and subject to what reservations, if any, he considers that such accounts present a true and fair view of the gains or profits from such business for the period and the state of business at the end of the period; and

(e) the capacity in which he signs the certificate;
and such certificate shall accompany the return.

(3) Where a person furnishes a return supported by accounts and such accounts were not audited or prepared by a person referred to in subsection (2), then he shall furnish a certificate signed by himself stating-

(a) the nature of the books from which such accounts were prepared;

(b) whether and to what extent, if any, there are included any estimated amounts or balancing adjustments;

(c) whether such accounts include all the transactions of his business and present a true and fair view of the gains or profits from such business for such period.

(4) In this section, "accounts" means a balance sheet or statement of assets and liabilities together with a trading account, profit and loss account or an income and expenditure account or other similar statement, however named.

(5) For the purposes of this section, "person in a professional capacity" shall mean an individual carrying on the profession of accountant or auditor or one who prepares accounts for reward or in

the course of his business, either on his own or in partnership or as an employee.

(As amended by Act No. 16 of 1972 and No. 3 of 2002)

57. Where the Commissioner-General determines that any person is able to impart information necessary for the purposes of this Act, the Commissioner-General may, on reasonable notice to that person, require him to attend to be examined at the time and place specified in the notice.

Examination by
Commissioner-General

58. For the purpose of obtaining full information in respect of the income of any person or class of persons, the Commissioner-General may, by notice in writing, require, in the case of the income of any person, that person or any other person, and in the case of any class of persons, any person-

(a) to produce for examination by the Commissioner-General, at such time and place as may be specified in such notice, any accounts, books of account and other documents or electronically stored data which the Commissioner-General may consider necessary;

(b) to produce forthwith for retention by the Commissioner-General for such period as may be reasonable for their examination any accounts, books of account and other documents or electronically stored data which the Commissioner-General may specify in such notice;

(c) not to destroy, damage or deface, on or after service of such notice, any of the accounts, books of account and other documents or electronically stored data so specified without permission of the Commissioner-General in writing.

(As amended by Act No. 3 of 2002)

Production and
preservation of books
and documents

59. *Repealed by Act No. 7 of 1996.*

60. (1) The amount of income received from which tax is deductible under sections *eighty-one*, *eighty-one A*, *eighty-two* or *eighty-two A* or on which tax is payable under section *eightyone* shall be the gross amount before deduction or payment:

Amount of dividends,
interest or royalties to be
included in income

Provided that the amount of income received by way of dividends from which tax has been deducted in accordance with the direction of the Commissioner-General made pursuant to the provisions of paragraph (a) of subsection (1) of section *eighty-one* shall be the amount that would have been received if tax had been deducted at the rate that would have been deductible but for the direction.

(2) The amount of income received from a source outside the Republic (in this section called foreign income) shall be the gross

amount of that income before the deduction of the amount of the foreign tax.

(3) The amount of the income received by a beneficiary from a trust or deceased's estate on which tax has been paid or is payable by the trust or deceased's estate shall be the gross amount of that income before deduction of tax at the rate paid or payable on that income by the trust or deceased's estate.

(4) In this section, "foreign tax" has the same meaning as in section *seventy-five* or *seventy-six*, as the case may require.

(As amended by Acts No. 16 of 1972, No. 11 of 1973, No. 11 of 1974, No. 9 of 1977 and No. 9 of 1978)

61. Persons carrying on any business in partnership shall furnish a joint return of the income of the partnership for a charge year declaring therein the names and addresses of all the partners and the amount of the share of the income to which each partner is entitled for that year, together with such other particulars as the Commissioner-General may, in writing, require.

Partnership returns

62. (1) Where the accounts of the business of any person or partnership are made up for a period of twelve months ending on some date other than the last day of the charge year, the Commissioner-General may in his discretion accept such accounts for the purposes of determining the gains or profits of the business in respect of the charge year ending either before or after the closing date of such accounts, and the Commissioner-General may for the purposes of this subsection accept accounts for a period less than twelve months as though the accounts had been made up for a period of twelve months.

Business accounts

(2) Where the Commissioner-General accepts the accounts of the business of a person or a partnership pursuant to subsection (1), the accounts of that business shall for the purposes of this Act be made up subject to subsection (3) for all subsequent charge years to the date corresponding in subsequent charge years to the date so accepted.

(3) Where the accounts of the business of a person or partnership are not made up in respect of a subsequent charge year to the date in that year corresponding to the date so accepted, then the income of the business for that subsequent charge year and the preceding year may be computed or adjusted, as the Commissioner-General, in his discretion, may decide.

(3A) Where a company makes up the accounts of its business for a period in this section referred to as "the accounting period" ending on a date other than 31st March and such accounts are or will be accepted by the Commissioner-General for the purpose of determining the gains or profits of the business in respect of a charge year, in accordance with the provisions of this section and that company is required by any provision of this Act to submit a return of income,

including a return of provisional income and tax, for that charge year, that return shall be of income, or provisional income, for the accounting period for which relevant accounts are or will be made up.

(3B) For purposes of subsection (3A) "relevant accounts" in relation to any charge year means the accounts which are or will be submitted to the Commissioner-General for the purpose of determining the gains or profits of the business in question in respect of that charge year.

(4) Where the Commissioner-General has accepted the accounts of the business of a person or partnership pursuant to subsection (1), and the business ceases, that person or partnership shall return for assessment accounts to include all income of the business in the period between the closing date of the last accounts so accepted for the immediately preceding charge year and the date when the business ceased.

(5) Where the period referred to in subsection (4) exceeds twelve months, separate accounts shall be delivered for the period of twelve months ending on the date accepted under subsection (1) as the closing date of the accounts of the business, and for the balance of the period in excess of twelve months.

(6) The income determined on the basis of the accounts referred to in subsections (4) and (5) is charged to tax as follows:

(a) where the period is in excess of twelve months, the income determined on the basis of the accounts delivered for twelve months, as required under subsection (5), is deemed to be the income for the charge year succeeding that in which the income based on the accounts for the immediately preceding charge year was assessed, and the income for the remaining period is deemed to be income of the following charge year;

(b) where the period is one of less than twelve months, the income based on the accounts delivered under subsection (4) is deemed to be the income of the charge year succeeding that in which the income based on the accounts for the immediately preceding year was assessed.

(7) Notwithstanding subsection (6), where a person or partnership has delivered accounts for the assessment of his business, and the whole or part of the income determined on those accounts has been charged to tax in more than one charge year, then when the business ceases the income for the last charge year is reduced by an estimate determined by the Commissioner-General of the income which has been so charged to tax in more than one charge year, and if that estimate exceeds the income for the last charge year, then the income for the penultimate charge year shall be reduced by the amount of such excess.

(8) For the purposes of this section, a person may be assessed in respect of his income notwithstanding that he may not have been in

existence during any part of the relevant charge year.

(As amended by Act No. 4 of 1976 and Act No.6 of 1999)

62A. Where a person or partnership carries on in two consecutive charge years a business of fishing or of farming, excluding the letting of property for such purpose, and irrevocably so elects by notice in writing to the Commissioner-General before the end of the charge year immediately following the end of the second such consecutive charge year, the income received from, or loss incurred in, such business in each of the two charge years shall be averaged, and the average income or loss shall be deemed to have been received or incurred in each of the two said charge years:

Averaging of farming
and fishing income

Provided that there shall be no right of election under this section where an election has already been made under this section in respect of one or two consecutive charge years in respect of the same income or loss.

(As amended by Acts No. 17 of 1971 and No. 14 of 1987)

63. (1) Subject to the provisions of subsection (1A) and sections *seventy-two* and *ninety-three*, the Commissioner-General shall assess every person who is liable to tax under this Act or who claims, or is entitled to, a deduction under section *thirty*, *thirty-one*, *thirty-two* or *thirty-six*:

Commissioner-General's
power to assess

Provided that the Commissioner-General shall take into account the provisions of any agreement made under section *seventy-four*, if applicable, and shall not include in any such assessment for any charge year-

- (i) dividends from which tax in respect of that charge year has been deducted under section *eighty-one*;
- (ii) a lump sum payment from which tax in respect of that charge year has been deducted under section *eighty-two*;
- (iii) *Obsolete*.
- (iv) in the case of a person who is not resident in the Republic for any charge year interest, public entertainment fee royalties or any management or consultancy fee from which tax, in respect of that charge year, has been deducted under section *eighty-two A*;
- (v) in the case of a resident individual, interest from which tax in respect of that charge year has been deducted under section *eighty-twoA*; and
- (vi) income of an individual from which tax in respect of that charge year has been paid under section *sixty-four A*; and
- (vii) in the case of a person exempted under subparagraph (1) of paragraph 5 and subparagraph (1) of paragraph 6 of the Second Schedule, interest from which tax in respect of that charge year has been deducted under section *eighty-two A*.

(1A) In any case where a person has made payments of tax or provisional tax in respect of any charge year under section *forty-six* or *forty-six A* if the Commissioner-General is satisfied that the person has no outstanding tax liability for that year, the Commissioner-General need not assess that person under this section, unless the person makes a request in writing for an assessment.

(1B) Where a person has made a return of tax under section *forty-six* but is assessed under this section for any amount, the assessment shall not relieve that person of any liability under section *seventy-eight* in respect of any failure to make any payment of tax.

(1C) Where a person has made payments of tax or provisional tax for a charge year but subsection (1A) does not apply, the Commissioner-General shall make an assessment in respect of that year and that person only for the amount by which the payments made differ from the amount of tax due for that year.

(2) Subject to the provisions of subsection (1C), an assessment shall be made in respect of every person for each charge year, and as many amended assessments may be made in respect of such person for any such charge year as are necessary to give effect to the provisions of this Act, and whereby his liability to tax may be increased, reduced or cancelled, as the circumstances require.

(3) Wherever for the purposes of this Act income is chargeable to tax in any charge year following the charge year in which it is received, the Commissioner-General may assess any person in respect of such income at any time and may make such assessment at the current rate of tax.

(4) The liability of any person to render a return or other information required under this Act for any charge year is not relieved because he is assessed for that charge year before such return or information is rendered.

(As amended by Acts No. 23 of 1968, No. 26 of 1970, No. 17 of 1971, No. 16 of 1972, No. 11 of 1973, No. 11 of 1974, No. 11 of 1975, No. 14 of 1976, No. 10 of 1979, No. 11 of 1984, No. 11 of 1985, No. 4 of 1993, No.9 of 1998, Act No.6 of 1999, No. 4 of 2000, No. 3 of 2002 and No. 3 of 2003)

64. An assessment may be made by the Commissioner-General in any amount according to the best of his judgement in respect of any person-

(a) who has not delivered a return as required by this Act, or on whose behalf no return has been so delivered; or

(b) whose return does not satisfy the Commissioner-General;

(c) who the Commissioner-General has reason to believe is about to leave the Republic:

Estimated assessments

Provided that-

(i) where the Commissioner-General does not have sufficient

information on which to estimate an assessment, the Commissioner-General may assess a base tax of fifty thousand kwacha in any charge year; and

(ii) a credit shall be allowed for the amount of any base tax which has been paid in a charge year when establishing the amount of tax which is due and payable resulting from any subsequent assessment which the Commissioner-General may determine for the same charge year; or

(d) where the Commissioner-General has reason to believe that the company is to be wound up or liquidated.

(As amended by Act No. 14 of 1994, No. 3 of 1997, Act No.6 of 1999 and No. 3 of 2002)

64A. (1) The Commissioner-General may make a standard assessment requiring any individual or partnership carrying on the business of operating a public service vehicle for the carriage of persons to pay a presumptive tax as set out in Part I of the Ninth Schedule.

(2) The Commissioner-General may make a standard assessment requiring any person carrying on any business, other than the business referred to in subsection (1), with an annual turnover of two hundred million kwacha or less to pay tax on turnover at the rate set out in Part II of the Ninth Schedule;

Provided that the provisions of this subsection shall not apply to income earned from the provision of consultancy services.

(As amended by Act No. 3 of 2003 and No. 1 of 2004)

Standard Assessment

65. (1) Notice of assessment shall be given to the person charged. Assessment rules

(2) Save in case of fraud or wilful default or for the purposes of section *twenty-one, eighty-seven, eighty-eight, ninety-one or one hundred and thirteen*, or Part VII (which provides for double taxation relief), or paragraph (25) of the Fifth Schedule, or granting tax credits as provided in the Charging Schedule, no assessment shall be made for any charge year after six years from the end of that year.

(3) No assessment shall be made in respect of the income of any deceased person after the expiry of three years after the end of the charge year in which such deceased person died.

(4) An assessment made in accordance with generally prevailing practice is not affected by any change in that practice after the time for objection to the assessment has expired.

(As amended by Acts No. 26 of 1970, No. 14 of 1976 and No. 7 of 1996)

66. (1) For the purposes of this Act, a taxpaying agent is, in relation to income-

Taxpaying agents

(a) of a company, any of the individuals mentioned in subsection (1) of section *sixty-nine*;

(b) managed by an agent, the agent;

(c) remitted by a person or partnership in the Republic to a person who or partnership which is outside the Republic, the person or partnership remitting the income;

(d) of a trust, a trustee of the trust;

(e) of a person who has died, his executor or administrator;

(f) of a deceased's estate, the executor or administrator of the deceased person's estate;

(g) of a bankrupt's estate, the trustee in bankruptcy;

(h) of an incapacitated person, his trustee, guardian, curator, committee or receiver appointed by a court, as the circumstances of the case may require;

(i) of a company which is being wound up or is under judicial management, the liquidator or judicial manager.

(2) No provision concerning a taxpaying agent shall relieve any other person of any liability under this Act.

(3) Every reference in this Act to a taxpaying agent is to him only as such, save where otherwise provided.

(As amended by Acts No. 23 of 1968 and No. 14 of 1976)

67. (1) Every taxpaying agent, in respect of the income which he receives as an agent, shall be subject in all respects to the same duties, responsibilities and liabilities as if that income were received by him beneficially and is assessed and charged in his own name in respect of that income, but any such assessment is deemed to be made upon him as an agent.

Assessment of taxpaying agent

(2) Any tax credits or deduction which might have been claimed by a person is allowed in the assessment made upon his taxpaying agent as such an agent.

(As amended by Acts No. 23 of 1968 and No. 7 of 1996)

68. Every taxpaying agent who pays tax in respect of income assessed on him is entitled to recover the amount or that tax from the person on whose behalf the tax is paid or retain out of any moneys that are or may come into his possession on behalf of that person so much as is necessary to indemnify him for the payment.

Right of taxpaying agent

69. (1) Where a company carries on business or has a place of business in the Republic, a director, the secretary or any individual concerned or appearing to be concerned in the management of the company's business, is that company's taxpaying agent (and where a

Company's taxpaying agent

company is being wound up or liquidated, the liquidator, receiver or manager of the company, is that company's taxpaying agent) and with necessary modifications the provisions of this Part relating to taxpaying agents apply accordingly.

(2) The Commissioner-General may require a company's taxpaying agent to answer for all such acts and matters as the company might be

required to answer for under this Act, and, if the company's taxpaying agent defaults in this requirement, he is liable to such penalties as are provided for by this Act in the case of like default by an individual.

(As amended by Act No. 11 of 1973)

70. No assessment, document or proceeding under this Act is invalid-

(a) for any error in a person's name, if the erroneous name is or may be understood to be that person's name, or the person has at any time been known by the erroneous name, or one like it; or

(b) for any other error or defect, if the assessment, document or proceeding is in substance in accordance with this Act.

Errors in form

PART VI

PAY AS YOU EARN

71. (1) On the making of any payment of, or on account of, any emolument, tax shall, subject to and in accordance with regulations made by the Minister, be deducted or repaid by the person or partnership making the payment, notwithstanding that when the payment is made no assessment has been made in respect of the emoluments, and notwithstanding that the emoluments are in whole or in part emoluments for some charge year other than the year during which the payment is made, and, for the purposes of this subsection, payment shall be deemed to be made when the emolument is received as provided in section *five*:

Assessment, charge,
collection and
recovery

Provided that with reference to paragraph (1) of section *forty-four* the requirements of this subsection shall not apply to emoluments provided to employees in the form of non-money fringe benefits.

(2) Tax deducted, as reduced by any tax refunded, under subsection (1), shall be payable to the Commissioner-General on the dates prescribed by the regulations made in accordance with subsection (6).

(3) Where the tax payable in accordance with subsection (2) is not paid by the prescribed date, a penalty equal to five per centum of the amount of tax payable but not paid shall be chargeable thereto for each calendar month or part thereof for which, and to the extent that, such tax remains unpaid, and for the purpose of any regulations relating to collection and recovery of tax deducted under subsection (1), such penalty shall be deemed to be tax deducted.

(4) *Repealed by Act No.9 of 1998*

(5) The Commissioner-General may, in his discretion, remit the whole or any part of the penalty due under subsection (3).

(6) The Minister shall make regulations for the administration of this Part, and for the assessment, charge, collection and recovery of tax in respect of emoluments accordingly, and such regulations shall have effect notwithstanding anything in this Act.

(6A) Regulations under this section may create offences punishable

with a fine not exceeding ten thousand penalty units for any failure to comply with the provisions of the regulations, other than a failure to which subsection (3) applies.

(7) The Commissioner-General shall devise tax tables to ensure, so far as possible, that-

(a) the total tax payable in respect of any emoluments for any charge year is deducted from the emoluments paid during the year; and

(b) the tax deductible or repayable on the occasion of any payment of, or on account of, emoluments is such that the total net tax deducted since the beginning of the charge year bears to the total tax payable for the year the same proportion that the part of the year which ends with the date of the payment bears to the whole year.

(8) In subsection (6), the references to the total tax payable for the year shall be construed as references to the total tax estimated to be payable for the year in respect of the emoluments, subject to a provisional allowance for deductions and tax credit and subject also, if necessary to an adjustment for amounts overpaid or remaining unpaid on account of tax in respect of emoluments to which this section applies for any previous year.

(9) In estimating the total tax payable, it may be assumed, in relation to any payment of, or on account of, emoluments, that the emoluments paid in the part of the charge year which ends with the making of the payment will bear to the emoluments for the whole of that year the same proportion that part of the year bears to the whole year.

(10) For the purposes of this section emoluments shall include any annuity or part thereof as is not exempt from tax under paragraph 10 of the Second Schedule.

(As amended by Acts No. 26 of 1979, No. 11 of 1974, No. 11 of 1975, No. 11 of 1992, No.9 of 1998 and Act No.6 of 1999).

72. (1) Subject to the provisions of this section, no assessment need be made on an individual in respect of his emoluments for any charge year if the total net tax deducted in the year in question from his emoluments is the same as it would have been if all the relevant circumstances had been known to all parties throughout the year, and deductions and repayments had, throughout the year, been made accordingly, and had been so made by reference to cumulative tax tables.

Assessments not
always necessary

(2) In subsection (1)-

(a) "cumulative tax tables" means tax tables devised under the last preceding section so as to require the tax to be deducted or repaid on each payment in the year to be ascertained by reference to a total of emoluments paid in the year up to the time of making that payment; and

(b) references to the total net tax deducted shall be construed as references to the total tax deducted during the year by virtue of regulations made under the last preceding section, less any tax repaid by virtue of any such regulations.

(3) Nothing in this section shall be construed as preventing an assessment being made on an individual in respect of his emoluments and, without prejudice to this generality, an assessment shall be made in respect of an individual's emoluments for any charge year if-

(a) the individual assessable, by notice in writing given to the Commissioner-General within five years from the end of the charge year, so demands; or

(b) the Commissioner-General so elects.

(4) In any proceedings in regard to an assessment made under subsection (3), that assessment shall be treated as having been made in accordance with the practice generally prevailing at the end of the year to which the assessment relates.

73. In the distribution of the property of a bankrupt and in the distribution of the assets of any company being wound up, any sums due on account of tax deducted under this Part shall be paid as if such sums were tax within the meaning of section *three (d)* of the Preferential

Priority on
insolvency

Cap. 83

Claims in Bankruptcy Act, or the corresponding provision of any Act replacing that Act.

PART VII

DOUBLE TAXATION RELIEF

74. (1) The President may enter into an agreement, which may have retrospective effect, with the government of any other country or territory with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the Republic and of such other country or territory, of taxes in respect of the same income, or to the rendering of reciprocal assistance in the administration of and the collection of taxes under the income tax laws of the Republic and of such other country or territory.

Double taxation
agreements

(2) The Minister shall lay a copy of an agreement referred to in subsection (1) before the Cabinet for ratification.

(3) As soon as may be after the conclusion and ratification of any such agreement, the terms thereof shall be notified by the President by statutory instrument, whereupon, until such statutory instrument is revoked by the President, the agreement shall have effect as if enacted in this Act but only if, and for so long as, the agreement has the effect of law in the other country or territory.

(4) The President may at any time revoke any such statutory instrument by a further statutory instrument and the agreement shall cease to have effect upon the date fixed in such latter statutory instrument, but the revocation of any statutory instrument shall not affect the validity of anything previously done thereunder.

(5) The duty imposed by any law to preserve secrecy with regard to

income tax shall not prevent the disclosure to any authorised officer of the country or territory mentioned in any statutory instrument issued, in terms of subsection (3), of the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in such statutory instrument.

(As amended by Act No. 26 of 1970)

75. (1) This section applies where, by virtue of any agreement under Double taxation this Part, tax (in this section called foreign tax) payable to another country in respect of any income (in this section called foreign income) is to be allowed as a credit against Zambian tax in respect of that foreign income.

relief

(2) The Zambian tax for any charge year in respect of foreign income is reduced by the amount allowed as a credit in respect of that foreign income under any agreement under this Part, but that reduction shall not exceed the amount of that foreign income included in the income liable to tax under this Act, multiplied by the Zambian tax before the reduction, divided by the sum of the income assessable under this Act and the income which the Commissioner-General is prohibited from including in an assessment under the provisos to subsection (1) of section *sixtythree*.

(3) In this section, "Zambian tax" means income tax chargeable under this Act.

(As amended by Act No. 16 of 1972)

76. (1) Where a person is liable to pay Zambian tax for any charge year in respect of income received from a source within a country which has not entered into an agreement under this Part (in this section called foreign income) and he has paid tax on that income in the country from which it was received (in this section called foreign tax), then the Zambian tax for that charge year in respect of the foreign income is reduced by the amount of foreign tax, but that reduction shall not exceed the amount of the foreign income included in the income liable to tax under this Act, multiplied by the Zambian tax before the reduction, divided by the sum of the income assessable under this Act and the income which the Commissioner-General is prohibited from including in an assessment under the provisos to subsection (1) of section *sixtythree*.

Unilateral double
taxation relief

(2) In this section, "Zambian tax" means income tax chargeable under this Act.

(3) This section shall not apply to income which the Commissioner-General is prohibited from including in an assessment under the provisions to subsection (1) of section *sixty-three*.

(As amended by Act No. 16 of 1972)

PART VIII

COLLECTION, RECOVERY AND RELIEFS

77. (1) Subject to the provisions of this Act, tax for any charge year payable by any person required to submit a return under section *forty-six* in respect of any income shall be due and payable on 30th September immediately following the end of the charge year.

(1A) any person who is liable to pay any tax in accordance with subsection (1) for any charge year may deduct from the amount due-

(a) the amount of any payment of provisional tax which the person has made for that charge year; and

(b) any amount of tax or provisional tax agreed by the Commissioner-General to have been overpaid and which has not been refunded to that person or otherwise taken into account.

(1B) Any person who is required by section *forty-six A* to submit a return of provisional income and tax for any charge year shall make payments of provisional tax to the Commissioner-General in accordance with subsections (1C) to (3).

(1C) Provisional tax for any charge year required to be paid under subsection (1B) shall be paid during the charge year in four instalments, each one of which shall be equal to one-quarter of the amount of provisional tax shown in the return, and shall be paid after:

- (a) 1st instalment on 30th June;
- (b) 2nd instalment on 30th September;
- (c) 3rd instalment 30th December; and
- (d) 4th instalment 30th March;

of the charge year to which such return of provisional income relates.

When tax due is payable

(2) Any person who is liable to pay any provisional tax in accordance with subsection (1B) for any charge year may deduct from the amount due any amount of tax or provisional tax agreed by the Commissioner-General to have been overpaid and which has not been refunded to that person or otherwise taken into account.

(2A) a person who reduces an instalment of tax or provisional tax under this section shall-

- (a) certify in writing to the Commissioner-General the amount of tax or provisional tax overpaid and the charge year to which it relates; and
- (b) attach to that certificate a copy of the Commissioner-General's agreement that the tax or provisional tax has been overpaid.

(2B) Where a revised return is required to be made under subsection (4) or (6) of section *forty-six A* by any date, the payments of tax required to be made in accordance with subsection (1B) shall-

- (a) be made in instalments on the dates mentioned in subsection (1C) as fall on or after that date; and
- (b) be equal in amount to the amount of provisional tax shown in the return divided by four;

but where an instalment payment has been made before an instalment os

a revised amount is due under this subsection, the amount of that revised instalment shall be increased or reduced, as the case may require, so as to take into account the excess or shortfall in the earlier payment or payments.

(3) Any payment required by this section shall be made in such form as the Commissioner-General may determine.

(4) Any tax payable by any person under an assessment made under subsection (3) of section *sixty-three* or section *sixty-four* shall be due and payable on the date notice of the assessment is given to the person under section *sixty-five*.

(5) The Commissioner-General, may extend the time limited by subsections (1), (1C) and (4) and where a time limit has been extended under this subsection, any reference elsewhere in this Act or any regulations made under it to the time when any payment of tax or provisional tax is due shall be construed as a reference to the time as so extended.

(6) Subsection (4) shall have effect notwithstanding that the person assessed objects to or appeals against that assessment.

(As amended by Act No. 11 of 1992 and Act No.6 of 1999)

78. (1) Any person who fails to pay

(a) any amount of tax within one month; or

(b) any amount of provisional tax within fourteen days;

Penalty for

non-payment of tax

of the date on which that payment is due under section *seventy-seven* shall be liable to the penalty specified in subsection (2).

(2) Any person who fails to pay tax or provisional tax in accordance with section *seventy-seven* shall be liable to pay, in respect of each month during which that amount any part of it remains unpaid, an amount equal to five per centum of that amount or so much of it as remains unpaid during the month in question.

(3) Where any person contravenes more than one provision of this Act in respect of tax or provisional tax on the same income in respect of the same period of time that person shall, under this section, be liable to pay only one penalty in respect of that contravention.

(4) Any penalties imposed under this section shall, for the purposes of this Act relating to collection and recovery, be deemed to be tax.

(5) The penalty prescribed in subsection (1) shall become due and payable on the date of issue by the Commissioner-General of a notice to that effect.

(6) For the purposes of claiming relief under any of the provisions of this Act, any penalties imposed under this section shall not be deemed to be part of the tax paid.

(7) The Commissioner-General may, in his discretion, remit the whole or part of any penalties due under this section.

(8) In the event of any refund of tax or any part thereof, the penalties imposed under this section shall be reduced to the extent that the tax to

which the penalties relate is set off or refunded and the amount of such reduction shall be deemed to be tax paid in excess to which the provisions of section *eighty-seven* shall apply.

(As amended by Acts No. 26 of 1970, No. 16 of 1972, No. 11 of 1975, No. 14 of 1976, No. 9 of 1977, No. 12 of 1982, No. 11 of 1992 and No. 3 of 1997, No.9 of 1998, Act No.6 of 1999 and No.1 of 2001)

78A. (1) Subject to subsection (3), any payment of tax which is overdue as specified in regulations made under sections *seventy-one* or under section *seventy-eight* shall attract interest at the rate prescribed in subsection (2) and shall continue to attract such interest until such time as the payment of the tax has been remitted.

Interest on overdue payments

(2) The rate of interest prescribed for the purpose of subsection (1) shall be the discount rate published from time to time by the Bank of Zambia plus two per centum per annum.

(3) The Commissioner-General may remit the whole or part of any interest due under this section.

(4) Any interest imposed under this section shall, for the purposes of this Act relating to collection and recovery, be deemed to be tax.

(As amended by Act No. 14 of 1994, Act No.9 of 1998 and Act No.6 of 1999)

79. (1) Tax is a debt due to the Government and may be recovered by the Commissioner-General either by distress or by suit in any court of competent jurisdiction.

(2) Notwithstanding the other provisions of this Act, where tax is found to be owing to the Republic under this Act the Commissioner-General may, by notice in writing issued to any individual or person, fix a date for the payment of such tax:

Provided that where payment of the tax referred to in this section is to be made by instalments, the Commissioner-General may set different dates for the payment of such tax.

(As amended by Act No. 17 of 1971 and No. 1 of 2004)

Recovery and proceedings

79A. (1) Any officer appointed for the purpose of carrying out the provisions of this Act may, under warrant by the Commissioner-General, levy distress upon the goods and chattels of the person or partnership from whom tax is recoverable.

Recovery by distress

(2) For the purposes of levying any such distress, the officer authorised under warrant by the Commissioner-General, together with such servants or agents as the officers may consider necessary, may break open at any time between sunrise and sunset, any premises; and the officer so authorised may require any police officer to be present while such distress is being levied and any police officer so required shall comply with such requirement.

(3) A distress levied under this section shall be kept for ten days either at the premises at which such distress is levied or at such other place as the person authorised under warrant may consider appropriate at the cost of the person or partnership from whom such tax is recoverable.

(4) If the person or partnership from whom such tax is recoverable does not pay the tax due together with the costs incurred in levying the distress and all other costs incidental thereto within the period of ten days mentioned in subsection (3), the goods and chattels upon which distress has been levied shall be sold by public auction and the proceeds realised from such sale shall be applied towards the payment of the said costs and all further costs incurred in completing such sale and, the surplus, if any, shall be applied in the payment of the tax and, the balance, if any, shall be paid to such person or partnership after deducting any further tax liable to be paid by such person or partnership.

(5) Where the full amount of the tax due and all the costs mentioned in subsection (4) are not recovered, the Commissioner-General may recover the deficiency either in accordance with section *seventy-nine B* or any other provisions contained in this Act.

(6) No civil or criminal proceedings shall be instituted against any officer for any act or omission arising out of the levying of distress.

(7) If the person or partnership upon whose goods or chattels distress is to be levied, or has been levied, fraudulently removes and conveys away such goods or chattels to prevent the Commissioner-General from distraining them or completing the distress so levied, or if any person or partnership wilfully and knowingly aids or assists such person or partnership in such fraudulent conveying away or carrying off any part of such goods or chattels or in concealing the same, every person or partnership so offending-

(a) shall forfeit to the Commissioner-General a sum equal to double the value of goods or chattels carried off or concealed as aforesaid, to be recovered by action; and

(b) shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding twelve months, or to both.

(As amended by Acts No. 17 of 1971, No. 14 of 1974, No. 14 of 1976, No. 9 of 1977, No. 11 of 1992 and No. 13 of 1994)

79B. (1) Notwithstanding anything to the contrary contained in any law, the Commissioner-General may institute proceedings in any subordinate court of the first or second class for the recovery of any tax or other amount recoverable under this Act.

Recovery through
court

(2) Any officer appointed for the purposes of carrying out the provisions of this Act may represent the Commissioner-General in the proceedings referred to in subsection (1) and for that purpose may conduct any such proceedings and shall have a right of audience in

subordinate courts of the first or second class, notwithstanding any law to the contrary.

(3) Proceedings in any court for the recovery of any tax or other amount are deemed to be proceedings for the recovery of a debt validly acknowledged in writing by the debtor.

(4) In any proceedings for the recovery of tax-

(a) it is not competent to question any assessment whether or not an objection or appeal has been made against such assessment; and

(b) the mere production of an assessment or any document under the Commissioner-General's hand or the hand of any officer duly authorised by him is conclusive evidence as to the contents of the assessment or document.

(As amended by Act No. 17 of 1971)

79C. (1) Notwithstanding anything to the contrary contained in any other law, where a person or partnership from whom tax is due is the owner of land situated in the Republic, the Commissioner-General may give notice to the person or partnership in writing that the amount of tax due shall be a charge on such land and such charge shall, without registration that may be required under any law relating to the registration of charges upon land, be effective from the date of service of the notice for so long as such land remains in the ownership of such person or partnership or until the notice is withdrawn.

Charge on land

(2) For the purposes of this section, "land" includes any vacant piece or parcel of land and also any buildings or improvements on any piece or parcel of land.

(As amended by Acts No. 17 and No. 14 of 1976)

79D. Where the tax due by a person relates in whole or in part to tax charged on income derived from a partnership, the tax charged on such income shall, where notice in writing to this effect is given by the Commissioner-General to the partnership, be due from such partnership and the provisions of this Act relating to collection and recovery shall apply as if such tax had been charged on the partnership.

(As amended by Act No. 14 of 1976)

Recovery of partner's
tax from partnership

80. *As repealed by Act No.9 of 1998*

81. (1) Subject to the provisions of this section, every company incorporated in the Republic shall deduct from every payment of dividend, other than a pioneer industry dividend or a dividend paid to Government, tax at the rate specified in Annexure "H" of Part III of the Charging Schedule, or as the Commissioner-General directs to-

Deduction of tax
from dividends

(a) give effect to the provisions of any agreement made under section *seventy-four*; or

(b) give effect to the provisions of the Second Schedule;

and shall account for such tax as if the payment were subject to Part VI

(which relates to Pay As You Earn); and for the purposes of this subsection payment shall be deemed to be made on the day the dividend accrues to the share or stock holders as provided in paragraph (a) of subsection (2) of section *five*.

(2) Subject to the provisions of this section, where, in a charge year a company has received dividends from which tax has been deducted under subsection (1), the total amount which the company is liable to account for under subsection (1) on dividends paid in the charge year shall, as far as possible, be reduced by the amount of the tax so deducted, and the company shall be liable to account only for the balance remaining after such reduction.

(3) Subject to the provisions of this section, where the total amount of tax deducted from dividends in a charge year as referred to in subsection (2) exceeds the amount which a company is liable to account for on dividends paid in the charge year before the operation of subsection (2), the excess shall, as far as possible, be deducted from the total amount which the company is liable to account for on dividends paid, after the operation of subsections (2), in the following charge year and so on from year to year until the excess is extinguished.

(4) Where in any charge year after the operation of subsection (2) and (3) there is an excess available to be deducted in accordance with subsection (3) from the amount which a company is liable to account for in the following or a subsequent charge year and the company was directed by the Commissioner-General to deduct tax from dividends paid in the charge year in accordance with paragraph (a) or (b) of subsection (1), then the difference between what the company would have been liable to account for but for the said direction and the amount the company is liable to account for before the operation of subsections (2) and (3) (not exceeding the amount of excess available), shall be deemed to be tax paid in excess to which the provisions of section *eighty-seven* shall apply and the excess available to be deducted in the following or a subsequent charge year shall be reduced by the amount so treated as tax paid in excess.

(5) Every company, upon payment of a dividend as provided in subsection (1), shall furnish the share or stock holder to whom the dividend is paid with a certificate stating in relation to the dividend-

(a) the share or stock holder's name and address;

(b) the date of payment;

(c) the amount of dividend payable before the deduction of tax;

(d) the amount of tax deducted;

(e) the net amount paid; and

(f) such other particulars as the Commissioner-General may by notice in writing require;

and shall send a copy of the certificate to the Commissioner-General.

(6) The certificate furnished under subsection (5) shall be treated as if it were an assessment for the purpose of Part XI only, and the date of

service shall be deemed to be ten days after the date of payment shown thereon.

(7) For the purposes of this section-

"pioneer industry dividend" means a dividend exempted by sub-paragraph (i) of paragraph (7) of the Second Schedule.

(As amended by Acts No. 11 of 1974, No. 11 of 1975, No. 14 of 1975 and No. 10 of 1979)

81A. (1) Every person or partnership on making any payment on or after 1st April, 1998, to or on behalf of a non-resident contractor in respect of construction or haulage operations, irrespective of whether such payment is made outside the Republic or not, shall, before making any other deductions whatsoever, deduct tax from such payment at the specified in Annexure L of Part III of the charging Schedule and that person or partnership shall account for such tax as if it were a payment subject to Part VI of the Act.

(2) For the purposes of this section-

(a) "non-resident contractor" means-

(i) an individual, who is neither resident nor ordinarily resident in the Republic; or

(ii) any other person or partnership who is not resident in the Republic and who does not have a permanent establishment in the Republic;

(b) a partnership shall be resident in the Republic-

(i) if the partners are resident or ordinarily resident in the Republic; or

(ii) if they are not all resident or ordinarily resident in the Republic,

Deduction of tax
from payment made
to non-resident
contractor

where the majority of the partners are resident or ordinarily resident in the Republic;

(c) "construction operations" include-

(i) the erection, alteration, maintenance, repair, extension or demolition of any building or structure, whether permanent or not;

(ii) the installation in any building or structure of heating, elevators, air conditioning, ventilation, power, drainage, sanitation, water or fire protection, or like supplies or services;

(iii) the painting or decorating of the internal or external surfaces of any building or structure;

(iv) any operations which are an integral part of, or prior to, or which render complete, the operations described in paragraphs (i) to (iii) of this subsection; and

(d) "haulage operations" includes transportation by land, water or air of persons, livestock or any goods whatsoever including farm produce, or produce of a like nature, ores and minerals, food stuffs and merchandise.

(Repealed by Act No. 7 of 1996 and Amended by Act No.9 of 1998)

81AA. (1) Where a person, other than an agent of an independent status to whom subsection (2) applies is acting on behalf of an enterprise and

has, and habitually exercises, in the Republic an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the Republic in respect of any activity which the person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in subsection (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that subsection.

(2) An enterprise shall not be deemed to have a permanent establishment in the Republic merely because it carries on business in the through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(3) The fact that a company which is a resident of the Republic controls or is controlled by a company which is a resident of another country, or which carries on business in that other country (whether through a permanent establishment or otherwise), shall not of itself constitute

Definition of permanent establishment

either company a permanent establishment of either country.

(4) For purposes of subsection (1) the following activities shall not make a fixed place of business a permanent establishment:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of the stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of the stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise; or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of preparatory or auxiliary character; or
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraph (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of preparatory or auxiliary character.

(5) For the purposes of section *eighty-one A*, “permanent establishment” means a fixed place of business at which the business of an enterprise is wholly or partly carried on and included_

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;

- (f) a mine, an oil or gas well, quarry or any other place of extracting or exploitation of natural resources;
- (g) a building site, a construction, assembly or installation project or supervisory activity in connection with such site or activity, but only where such sites, project or activity continues for a period, or periods, of more than one hundred and eighty-three days;
- (h) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Republic for a period or periods exceeding in the aggregate one hundred and eighty-three days in any twelve-month period commencing on or ending in the fiscal year concerned.

(As amended by Act No. 7 2006)

81B. (1) Where any person, institution or authority is empowered by any written law or otherwise to register the transfer to any property, that person, institution or authority shall not register the transfer unless the person or partnership transferring the property produces a tax clearance certificate issued to them for the purpose of the transfer.

(2) Any person, institution or authority empowered to issue a trading licence under the Trades Licensing Act or any other written law shall not issue the trading license to any applicant unless the applicant produces a tax a clearance certificate.

(3) Any person, institution or authority empowered to issue a permit or mining licence under the Mines and Minerals Act shall not issue the permit or licence to any applicant unless the applicant produces a tax clearance certificate.

(4) A person, partnership, institution, organization, or association shall not transact with a supplier of goods or services unless the supplier produces a tax clearance certificate issued pursuant to subsection (2); Provided that the Minister may by regulations determine the threshold at which goods or services may be supplied by a person or partnership without the requirement of a tax clearance certificate.

(5) The Commissioner-General may by notice in writing cancel a tax clearance certificate and the cancellation shall have effect from the date of service of the notice on the holder of the tax clearance certificate.

(6) The holder of a tax clearance certificate shall, within thirty days after the date of service and of the notice of cancellation of the certificate, return the certificate to the Commissioner-General.

(7) For purpose of this section-

Tax clearance
certificate

Cap. 393

Cap. 213

“mining licence” means a gemstone, small scale or large scale mining licence;

“permit” means a prospecting licence;

“property” means

(a) any land in Zambia; or
(b) any share issued by a company incorporated in Zambia; and
“tax clearance certificate” means a certificate issued by the
Commissioner-General, valid for such period as may be specified in it,
stating that the person or partnership to whom or to which it is issued
fulfilled all obligations imposed upon them or it by this Act and by any
other Act for which the Commissioner-General is responsible or has
made arrangements satisfactory to the Commissioner-General for doing
so.

*(As amended by Act No. 1 of 200, No. 3 of 2003, No. 1 of 2005 and No.
7 of 2006)*

81C. As repealed by Act No.9 of 1998

82. (1) Every person or partnership on making payment from an
approved fund of a lump sum payment shall, before making any other
deductions, deduct tax from such part of the payment as is liable to tax at
the rate specified in the Charging Schedule and that person or
partnership shall account for such tax as if the payment were subject to
Part VI (which relates to Pay As You Earn) and for the purposes of this
subsection payment shall be deemed to be made when the income is
received by the recipient as provided in section *five*.

Deduction of tax
from lump sum
payments

(2) Every person or partnership on making a payment referred to in
subsection (1) shall furnish the person or partnership to, or on behalf of
whom it is made with a certificate stating, in relation to the payment-

- (a) the title of the approved fund;
- (b) the date of approval of the fund;
- (c) the date of the payee's admission to the fund;
- (d) the date of change in contribution rates if increased since 30th June,
1960;
- (e) the payee's name and address;
- (f) the date of payment;
- (g) the gross amount of the payment;
- (h) the amount of tax deducted under subsection (1);
- (i) the net amount of the payment; and
- (j) such other particulars as the Commissioner-General may, by notice
in writing, require;

and shall send a copy to the Commissioner-General.

*(As amended by Acts No. 26 of 1970, No. 11 of 1974
No. 14 of 1976 and Act No.6 of 1999)*

82A. (1) Subject to the provisions of this section every person or
partnership making a payment of-

Deduction of tax
from certain payment

- (a) a management or consultancy fee deemed under section *eighteen* to
be from a source within the Republic; or
- (b) interest and royalties from a source within or deemed, under section

eighteen, to be within the Republic:

Provided that

(i) where interest payment to an individual during any one month on any single savings account, deposit account or building society account, does not exceed sixty-two thousand five hundred kwacha, then that interest payment shall be exempt from the requirement of this section;

(ii) this section shall not apply to interest payable on a bill of exchange drawn for one hundred and eighty days or less; and

(iii) the payment of any amount in excess of the original issue price for any treasury bill or any other similar financial instrument sold at discount from face value shall be deemed for the purposes of this section to be payment of interest when any such treasury bill or any other similar financial instrument is presented to the Bank of Zambia for redemption or re-discount; or

(c) rent from a source within the Republic;

(d) commissions, other than Commissioner-General may determine that the provisions of paragraph (c) or (d) shall not apply in any particular case and shall, in writing, direct the person or partnership concerned in that behalf; and the provisions of paragraph (c) or (d) as applicable shall not apply to such person or partnership to the extent and to the period specified in such direction.

(e) a public entertainment fee to, or on behalf of, a person or persons in partnership not resident in the Republic; and irrespective of whether such payment under this subsection is made outside the Republic, shall, before making any other deductions, deduct tax from the payment referred to in paragraphs (a), (b), (c), (d) and (e) at the rate specified in the Charging Schedule or as the Commissioner-General may direct to give effect to the provisions of any agreement made under section *seven-four* or the provisions of the Second Schedule and that person or partnership shall account for such tax as if that payment were subject to Part VI (which relates to Pay As You Earn) and for the purposes of this subsection, payment shall be deemed to be made when the income is received by the recipient as provided in section *five*.

(2) Every person or partnership shall, on making the payment referred to in subsection (1), record on the form prescribed by the Commissioner-General the amount of the payment, the amount of tax deducted therefrom and such other particulars as the Commissioner-General may require.

(3) Within fourteen days from the end of the month in which payment from which tax is required to be deducted under subsection (1) was made, the person or partnership making the payment, shall forward to the Commissioner-General the form referred to in subsection (2) together with a statement and declaration in the form prescribed by the Commissioner-General.

(4) Within fourteen days of the end of the month in which any payment

under subsection (1) is made, the person or partnership making the payment shall furnish each person or partnership to or on behalf of whom a payment has been made with a certificate stating the amount of the payment made to or on behalf of such person or partnership, the amount of tax deducted therefrom, the date of issue of the certificate and such other particulars as the Commissioner-General may require;

(5) The certificate issued under subsection (4) shall be treated as if it were an assessment for the purposes of Part XI only, and the date of service shall be deemed to be fourteen days after the end of the charge year in which the payment to which the certificate relates was made;

(6) For the purposes of this section "rent" means a payment in any form, including a fine, premium or any like amount, made as a consideration for the use or occupation of or the right to use or occupy any real property including personal property directly connected with the use or occupation of, or the right to use or occupy such real property.

(7) Any person who, or partnership which, receives from the Commissioner-General a receipt showing that such person or partnership has deducted tax under this section from any payment of rent shall, within fourteen days from the day of receiving such a receipt, furnish that receipt to the payee of the rent.

(8) Where a person fails to furnish the Commissioner-General or any other person authorised by the Commissioner-General with any document in accordance with the requirements of this section, there shall be charged a penalty of-

(a) in the case of an individual one hundred and seventy penalty units per month or part thereof during which such failure continues; or

(b) in the case of a company, three hundred and forty penalty units per month or part thereof during which such failure continues:

Provided that the Commissioner-General may remit the whole or part of any such penalty.

(As amended by Acts No. 11 of 1973, No. 11 of 1974,

No. 11 of 1975, No. 14 of 1976, No. 9 of 1977, No. 11 of 1984, No. 11 of 1985, No. 8 of 1986, No. 14 of 1987, No. 17 of 1988, No. 11 of 1992, No. 4 of 1993, No. 14 of 1994, No. 2 of 1995, No. 7 of 1996, No. 6 of 1999, No. 4 of 2000, No. 1 of 2001 and No. 1 of 2004)

82B. For the purposes of sections *eighty-three, eighty-four and eighty-six*, "property" shall include moneys, cheques, promissory notes and all other kinds of bills of exchange, and movable and immovable property of whatsoever nature and kind.

(As amended by Act No. 17 of 1971)

Definition of
property

83. Any person or partnership who holds or is in possession of any kind of property whatsoever on behalf or on account of another person or partnership shall give the Commissioner-General all such information in relation to that property as the Commissioner-General may require, and, in relation to any tax due by that other person or partnership, the Commissioner-General's rights in regard to any such

property are the same and may be exercised in as full and ample a manner as if the property were held or in the possession of that other person or partnership.

(As amended by Act No. 14 of 1976).

Property not in possession

84. (1) Any person or partnership may be declared by the Commissioner-General to be an agent for the payment of tax due by another person or partnership.

Agent for payment of tax

(2) Any person or partnership declared to be an agent in pursuance of subsection (1) shall apply to the payment of the tax due so much of any kind of property whatsoever held by him or coming into his hands on behalf of the person or partnership from whom the tax is due as is sufficient to pay such tax, and any such agent is hereby indemnified against any person or partnership whatsoever in respect of all payments so made by him.

(3) Where the Commissioner-General has reasonable grounds to believe that a person or partnership has disposed of any kind of property whatsoever without full consideration in money or money's worth to another person or partnership with the intention of avoiding payment of tax that is or may become due, he may declare such other person or partnership an agent for the payment of tax due from the person or partnership which has disposed of the said property and such property shall, for the purposes of subsection (2), be deemed to be property held by such other person or partnership on behalf of the person or partnership which has disposed of the said property to the extent that the open market value of the said property at the time of the disposal exceeds the consideration given.

(4) Any person or partnership declared by the Commissioner-General to be an agent for the payment of tax due by another person or partnership under the provisions of any previous enactment shall be deemed to have been declared an agent under the provisions of subsection (1).

(5) Notwithstanding the other provisions of this section, where a shareholder of a company is absent from Zambia the company shall be deemed to have been declared an agent for the payment of tax due by the shareholder under subsection (1):

Provided that this subsection shall not apply to a company the ordinary share capital of which may be bought or sold on a stock exchange or which is controlled by any such company or any company controlled directly or indirectly by Government.

(6) Any person who wilfully obstructs or wilfully attempts to obstruct an agent in the execution of the duties imposed upon him by this section shall be guilty of an offence and shall, upon conviction, be liable to a fine not exceeding thirty thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(As amended by Acts No.17 of 1971, No. 11 of 1974,
No. 14 of 1976, No. 9 of 1977, No. 11 of 1992 and No. 13 of 1994)

85. Repealed by Act No. 7 of 1996.

86. Every person who or partnership which is an agent in accordance with the provisions of section *sixty-six* or declared to be an agent in accordance with the provisions of section *eighty-four* and who or which
Liability where
property alienated

alienates or charges any kind of property whatsoever from which tax ought to have been paid by such person or partnership shall be liable for such tax as if it were tax charged on that person or partnership.

(As amended by Act No. 14 of 1976)

87. (1) Where for any charge year any person or partnership claims that tax has been paid or is deemed to have been paid by deduction or otherwise in excess of the amount-

Refunds in general

(a) liable to be paid by the person or partnership in accordance with the provisions of this Act;

(b) deductible by the person or partnership in accordance with the provisions of this Act;

(c) liable to be paid by the person or partnership because relief is due in accordance with the provisions of sections *seventy-six*, *eighty-eight*, *eighty-nine*, *ninety*, *ninety A*, *ninety-one*, *ninety-five*, *ninety-five D*, or *one hundred and thirteen*;

the Commissioner-General shall make such assessments or adjustments as are necessary to determine the amount of such excess and shall give written notice to the person or partnership of the amount so determined as paid or deemed to have been paid in excess.

(2) A claim under subsection (1) shall be made in accordance with the provisions of the section or Schedule under which it is made, or if none, the claim shall be made in writing to the Commissioner-General not later than six years after the end of the charge year to which the claim relates, or if later, six years after the date of service of the notice of assessment or of the notification of an amount of tax deductible under the provisions of this Act in the charge year, to which the claim relates.

(3) Where any tax is due and payable to the Commissioner-General for any charge year under this or any other Act, the amount of the excess shall first be applied towards the satisfaction of the tax so due and payable to the extent of such tax, and the Commissioner-General shall give written notice to the person or partnership of the amount so applied: Provided that-

(i) such part of the excess which relates to tax paid by deduction shall be deemed to be available for application on the last day of the charge year to which the excess relates; and

(ii) subject to the provisions of section *ninety-five D*, such part of the excess which relates to tax paid or deemed to have been paid other than by deduction shall be available for application on the day such part was

paid or deemed to have been paid.

(4) Where any person or partnership claims a refund of the amount of the excess adjusted in accordance with the provisions of subsection (3), the Commissioner-General shall refund such adjusted excess.

(5) A claim under subsection (4) shall be made in writing to the Commissioner-General not later than six years after the end of the charge year to which the excess relates or, if later, six years after the date of service of the written notice of the amount of the excess given in accordance with the provisions of subsection (1).

(As amended by Acts No. 11 of 1975, No. 14 of 1976, No. 10 of 1979 and No.9 of 1998)

88. (1) Where under any will or settlement, other than a settlement to which section *nineteen* or section *ninety-seven* applies, any income (in this section referred to as the trust income) arising from any fund is accumulated for the benefit of any individual contingently on his attaining some specified age or marrying, then, if such individual claims and the Commissioner-General determines that such contingency has happened, the sum equal to the amount by which the total amount of tax paid on the trust income during the period of accumulation exceeds the total amount of additional tax which would have been paid by him during such period if such trust income and the income from any other fund subject to the like trust for accumulation has been included in his income shall be deemed to be tax paid in excess to which the provisions of section *eighty-seven* shall apply; but in calculating such sum a deduction shall be made in respect of any tax paid by the trust and already repaid to him.

Refunds in cases of
accumulated income

(2) Every claim under this section shall be made in writing to the Commissioner-General within six years after the expiry of the charge year in which the contingency happened.

(As amended by Act No. 14 of 1976)

89. Where a beneficiary entitled to the whole or part of the income of a trust or deceased's estate is assessed and chargeable to tax for any charge year in respect of that income, any tax paid by a trust or deceased's estate and attributable to the income so assessed and charged on the beneficiary shall be set off against the tax chargeable for that charge year on the beneficiary and the provisions of section *eighty-seven* shall apply to any amount so paid in excess of such tax chargeable.

(As amended by Act No. 14 of 1976)

Refund or set-off of
tax chargeable on a
beneficiary

90. The amount of tax deducted from or paid under sections *Refund or set-off of tax deducted from*

eighty-one, eighty-one A, eighty-two or eighty-two A on income received by a person for any charge year shall be set-off against the tax chargeable on his income for that charge year and the provisions of

section *eighty-seven* shall apply to any tax so deducted or paid in excess of the tax so chargeable:

dividends, etc.

Provided that-

(i) subject to paragraph (ii), where the amount of tax which a company is required by subsection (1) of section *eighty-one* to account for any charge year is reduced by an amount of tax which has been deducted from the dividends received by the company in that year, the amount of tax on income from dividends received by the company in that year which may be set off under this section against the tax chargeable on the company's income for that year shall be the balance of that tax after any such reduction.

(ii) in the case of a person who is not resident in the Republic for a charge year and who receives dividends in such charge year, subject to the provisions of any agreement under section *seventy-four*, the tax deducted under section *eighty-one* shall not be set off or refunded;

(iii) in the case of a person who receives a lump sum payment, the tax deducted under section *eighty-two* shall not be set off or refunded;

(iv) in the case of a person who is not resident in the Republic for a charge year and who receives interest, royalties, management or consultant fees, or public entertainment fees in such charge year, subject to the provisions of any agreement made under section *seventy-four*, the tax deducted under section *eighty-two* shall not be set off or refunded.

(As amended by Acts No. 11 of 1975, No. 4 of 1976, No. 9 of 1978, No. 10 of 1979 and Act No.6 of 1999)

90A. The Minister may, by statutory order, provide for the granting of job credits in such amounts, for such periods and for such employees of such businesses as may be prescribed therein:

Job Credits

Provided that any such order may be made with retrospective effect.

(As amended by Act No. 6 of 1980)

90B. Repealed by Act No. 9 of 1977.

91. (1) If any person alleges that an assessment is excessive by reason of some error or mistake in the return or statement made by him for the purposes of the assessment, he may, at any time, not later than six years after the end of the charge year in respect of which the assessment was made, make an application in writing to the Commissioner-General for relief.

Error or mistake

relief

(2) On receiving any such application, the Commissioner-General shall inquire into and determine the matter and shall, subject to the provisions of this section make any assessment or other adjustment necessary to give effect to such determination and the provisions of section *eighty-seven* shall apply to any tax paid in excess as a result of such determination.

(3) In determining any application under this section, the

Commissioner-General shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from the charge to tax of income of the applicant, and for this purpose the Commissioner-General may take into consideration the liability of the applicant and assessments made upon him in respect of the other years.

(As amended by Acts No. 26 of 1970 and No. 14 of 1976)

92. (1) The Commissioner-General may remit tax if he is satisfied that it is not recoverable; and where the person to be charged with tax is also subject to equity levy under the Equity Levy Act, 1982, and the amount of the equity levy is greater than the amount of tax payable under this Act, the Commissioner-General shall remit such tax.

Remission of tax

Cap. 338

(2) On the Commissioner-General's recommendation the Minister may remit tax if he is satisfied that it is just to do so.

(3) This section shall not give rise to any appeal or other proceedings.

(As amended by Act No. 23 of 1968 and No.12 of 1982)

92A. The Minister may, by Statutory Instrument, exempt from, or reduce the payment of corporate tax, income tax and withholding tax on dividends for investors in manufacturing, agriculture, commercial banking and insurance who operate in an area declared a tax free zone under the Customs and Excise act to such an extent as may be specified in that statutory instrument.

Reduction in Tax

for tax free zones

93. Notwithstanding anything contained in this Act, no tax in respect of a charge year shall be payable by a person if the tax with which the person is chargeable in respect of that year is less than twenty thousand kwacha.

(As amended by Act No. 11 of 1992, No. 2 of 1995, No. 7 of 1996 and No. 4 of 2000)

Tax less than

K20,000 not payable

PART IX

AVOIDANCE

94. The Commissioner-General shall not allow any set-off or refund of tax deducted under section *eighty-one* where he determines that the object, or one of the objects of a change in the ownership of shares in a company, whether direct or indirect, was to obtain such set-off or refund.

No set-off or refund where that is the object of change of ownership of shares in company

95. (1) Where the

Commissioner-General has reasonable grounds to believe that the main purpose or one of the main purposes for which any transaction was effected (whether before or after the commencement of this Act) was the avoidance or reduction of liability to tax for any charge year, or that the main benefit which might have been expected to accrue from the transaction within the three years immediately following the completion thereof, was the avoidance or reduction of liability to tax, he may, if he determines it to be just and reasonable, direct that such adjustments shall be made as respects liability to tax as he considers appropriate to counteract the avoidance or reduction of liability to tax which would otherwise be effected by the transaction.

Transactions designed to avoid tax liability

(2) Without prejudice to the generality of the powers conferred by subsection (1), the powers conferred thereby extend to-

(a) the charging with tax the income of persons who, but for the adjustments, would not be chargeable with any tax or would not be chargeable to the same extent;

(b) the charging of a greater amount of tax than would be chargeable but for the adjustments.

(3) Any direction of the Commissioner-General under this section shall specify the transaction giving rise to the direction and adjustments as respects liability to tax which the Commissioner-General considers appropriate.

(As amended by Acts No. 26 of 1970, No. 16 of 1972, No. 11 of 1973, No. 14 of 1976, No.

10 of 1979, No. 6 of 1980,
No. 6 of 1981, No. 12 of 1982 and
Act No.6 of 1999)

95A. *Repealed by Act No. 12 of
1982.*

95B. (1) Where shares in any
company are held by-

Inter-company shareholdings

(a) another company or other
companies, some or all of whose
shares are held by the
first-mentioned company; or

(b) a company which is not
incorporated in the Republic, some
or all of whose shares are held by-

(i) an individual who is resident in
the Republic; or

(ii) a nominee on behalf of the
individual mentioned in
sub-paragraph (i);

whether by direct holding or through
an interest in some other company or
companies, the

Commissioner-General may, by
notice in writing to the companies
concerned, direct that, for the
purposes of this Act, the shares of all
or any of such companies shall be
deemed to be held in such manner as
he shall determine (notwithstanding
the actual shareholdings in such
companies) and any distribution of
dividends by those companies shall
be deemed to have been received by
the shareholders so determined in
such companies in accordance with
such determination.

*(As amended by Acts No. 16 of 1972,
No. 11 of 1984 and No.6 of 1999)*

95C. *Repealed by Act No. 7 of
1996.*

95D. (1) For the purposes of this
section-

"amount of a loan" means the amount
of money advanced, the extent of
credit facilities provided, the
difference between the cost of

providing any benefit or advantage and the amount paid for such benefit or advantage when provided or the difference between the open market value, as determined by the Commissioner-General, of an asset transferred and the amount paid for this at the date of transfer, as the case may be;

"grossed up equivalent of a loan" means such an amount as after deduction of tax at the highest rate specified in the Charging Schedule in respect of the income of an individual for the charge year in which the loan is made, is equal to the amount of the loan;

Loans to effective shareholder

"loan" includes any advance of money, the provision of credit facilities, the provision of any benefit or advantage (whether or not such benefit or advantage is capable of being turned into money or money's worth) and the transfer of an asset.

(2) Subject to the other provisions of this section, where in any charge year a company makes, directly or indirectly, any loan to any person who at the time the loan is made is an effective shareholder of the company or a nominee of the effective shareholder, the company shall pay, without assessment, such an amount as is equal to the difference between the amount of the grossed up equivalent of the loan and the amount of the loan, as if the amount were tax charged on the company.

(2A) Subsection (2) shall not apply where the ordinary business of the lender includes the making of loans and the loan is a normal commercial loan made in the ordinary course of that business.

(3) Subject to the other provisions of this section, the amount which a

company is liable to pay under this section shall be due and payable to the Commissioner-General within fourteen days after the end of the income tax month in which the loan is made and for the purposes of this section a loan shall be deemed to be made by when the loan would have been received, as provided by section *five*, by the effective shareholder or the nominee, if the loan had been income of the effective shareholder or of the nominee;

(4) On making payment of any amount due under this section, the company shall furnish the Commissioner-General with a certificate stating, in relation to the loan in respect of which the amount is being paid-

(a) the name and address of the person to whom the loan has been made;

(b) the date the loan was made;

(c) the grossed up equivalent of the amount of the loan;

(d) the amount of the payment;

(e) the amount of the loan; and

(f) such other particulars as the Commissioner-General may, by notice in writing, require;

and shall send a copy of the certificate to the person to whom the loan was made.

(5) The Commissioner-General may, in his discretion, extend the time limited by subsection (3) within which the amount payable under this section shall be paid.

(6) Where any part of the amount payable under this section is not paid within the time limited by subsection (3), or as extended under subsection (5), penalties shall be chargeable in accordance with subsections (1) and (2) of section *seventy-eight* as if the

amount payable were tax and the remaining subsections except subsection (7) of that section shall apply to such penalties as if they were penalties charged in relation to tax.

(7) Where a company has paid any amount payable under this section in any charge year in respect of any loan made and the Commissioner-General determines that the loan or part thereof has been repaid by the person to whom the loan was made or, in the event of the death of such person by his executor or administrator, the amount paid relating to the loan or part thereof so repaid, shall at the end of the charge year in which the loan or part thereof was repaid, be deemed to be tax paid in excess to which the provisions of section *eighty-seven* shall apply.

(8) Where any amount is payable under this section in any charge year in respect of any loan made, or where such an amount would have been payable but for the provisions of subsection (12), and the loan or part thereof is released or written off, the grossed up equivalent of the amount so released or written off shall be deemed to be income of the person to whom the loan was made or, in the event of the death of such person before the date on which the loan or part thereof is released or written off, of his estate, received on the day on which the loan or part thereof is released or written off:

Provided that-

(i) where the loan relates to the provision of a benefit or advantage or to the transfer of an asset, that loan shall be deemed to have been released or written off on the last day of the accounts period of the

company in which the loan was made to the extent that the loan is not included in the debtors as shown in the balance sheet of the company on that day;

(ii) where the person to whom a loan is made is not an individual, this subsection shall not apply if at the time the loan is released or written off such person is not in existence.

(9) Where a company releases or writes off a loan or part thereof and subsection (8) applies, the company shall, within thirty days after releasing or writing off such loan or part thereof, furnish the Commissioner-General with a certificate stating in relation to such loan or part thereof-

(a) the name and address of the person to whom the loan was made;

(b) the date the loan was made;

(c) the amount of the loan released or written off

(d) the date the amount of the loan was released or written off; and

(e) such other particulars as the Commissioner-General may, by notice in writing, require;

and shall send a copy of the certificate to the person to whom the loan was made.

(10) Where a company releases or writes off a loan or part thereof and subsection (8) applies, the amount paid by the company under this section in respect of the loan or part thereof so released or written off, shall be applied firstly towards the satisfaction of any tax payable by the person deemed to have received income in respect of the loan or part thereof released or written off to the extent of such tax and the excess shall be deemed to be tax paid in excess by the company to which the

provisions of section *eighty-seven* shall apply.

(11) Where any amount paid by a company is applied towards the satisfaction of the tax payable by any person in accordance with subsection (10), the company shall be entitled to recover the amount so applied from the person on whose behalf the amount was so applied or to retain out of any moneys that are or may come into his possession on behalf of that person so much as is necessary to indemnify him for the payment.

(12) This section shall not apply to a loan made to an effective shareholder or to his nominees where the joint total of all loans made to the effective shareholder and his nominees by all companies to which this section applies and of which the effective shareholder is an effective shareholder, does not exceed ten million kwacha:

Provided that where the said joint total exceeds ten million kwacha this section shall only apply to the excess.

(13) Where the Commissioner-General is of the opinion that a company is liable to pay an amount under this section but has failed to do so, he may forthwith make an assessment on such company specifying the particulars required in the certificate to be furnished by the company under subsection (4) and the date such amount was due to be paid in accordance with subsection (3).

(14) Any amount assessed by the Commissioner-General in accordance with subsection (13) shall be deemed to be tax due and payable on the date such amount was due to be paid as stated in the assessment and the provisions of Part

VIII, relating to the collection, recovery and charging of penalties shall apply thereto:

Provided that where an assessment is made on a company under subsection (12) by reason that while the joint total of the loans made by such company did not exceed twenty thousand kwacha but the joint total of the loans made by such company and other companies did exceed that sum and the Commissioner-General determines that the company had taken all reasonable steps before making the loan to ascertain whether or not this section applied to the loan or part thereof, the amount payable shall be due and payable within thirty days of the date of service of the notice of assessment.

(15) The provisions of Part V, relating to the making of assessments, and the provisions of Part XI, relating to objections and appeals against assessments, shall apply to an assessment made under this section.

(As amended by Acts No. 11 of 1975, No. 14 of 1976, No. 13 of 1994, No. 7 of 1996 and No.6 of 1999)

96. (1) No deduction shall be made in respect of any loss arising from any business which, having regard to the nature of the business, to the Incurring loss not deductible in certain cases principal occupation of the owner, partners, shareholders or other persons having a beneficial interest therein, to the relationship of the business to the domestic establishment of any such person or to any other relevant factor, the Commissioner-General considers it reasonable to regard as not being carried on mainly with a view to the realisation of profits; and, without

prejudice to the generality of the foregoing, a business shall be deemed not to be carried on for any charge year with a view to the realisation of profits where more than one-quarter of the amount of the revenue expenditure incurred in such business in such year relates to goods, services, amenities or benefits, or to the production of goods, services, amenities or benefits, which are of a personal or domestic nature enjoyed by the owner, partners, shareholders or other persons having a beneficial interest in the business or a member of the family or the domestic establishment of any such person.

(2) Where the Commissioner-General is of the opinion that any change in the shareholding in any company, as a direct or indirect result of which income has been received by or has accrued to that company during any charge year, has been effected by any person solely or mainly for the purpose of utilising any loss incurred by the company in order to avoid liability on the part of that company or any other person for the payment of tax to reduce the amount thereof, any loss incurred in any charge year prior to the charge year in which the change in shareholding took place and not deducted from income and the loss incurred for the period from the commencement of the charge year in which the change of shareholding took place to the date of the change in shareholding shall not be deducted from any income received by the company after the date of the change in shareholding.

(As amended by Act No. 26 of 1970)

97. (1) Where because of the

existence of a trust the incidence of tax for any charge year in relation to a person beneficially interested in that trust is less than would be the case if that trust (apart from the ascertainment of the nature and amount of the beneficiary's interest for the purposes of this subsection) did not exist, the

Commissioner-General may determine that the income of the trust attributable to that beneficiary's interest for any charge year shall for the purposes of this Act be assessed as if it were his income, and it shall be assessed and charged accordingly.

Commissioner-General may avoid trust

(2) This section applies, with necessary modifications, to the administration of the estate of a deceased person as from a year after his death.

97A. (1) In this section-

"actual conditions" which are made or imposed between any two associated persons in their commercial or financial relations;

"arms length conditions" means subject to section *ninety-seven AA* where that section applies

Transfer pricing

conditions or no conditions which would have been made or imposed if persons were not associated with each

(2) The provisions of this section shall apply where by reason of actual conditions have been made or imposed instead of the arms length conditions there is, except for this section, a reduction in amount of income taken into account in computing the income of one of those associated persons referred to in subsection (1), in this section referred to as the first taxpayer, chargeable to tax for a

charge year, in this section referred to as the income year.

(3) The income of the first taxpayer chargeable to tax in the income year shall be computed for tax purposes on the basis that the arm's length condition had been made or imposed, as between the first taxpayer and other associated person referred to in subsection (2) instead of the actual conditions; and a computation on that basis is referred to as a computation on the arm's length basis.

(4) If-

(a) in the income year and by reason of the actual conditions, an amount of income received by that other person associated with the first taxpayer, in this section referred to as, the second taxpayer, is increased;

(b) that increase in income corresponds to the reduction in income of the first taxpayer referred to in subsection (2); and

(c) a claim under this subsection has been made in writing by the second taxpayer to the Commissioner-General; the second taxpayer's income chargeable to tax in the income year shall be computed on the arm's length basis for all tax purposes except for the purposes of section *forty-six A*.

(5) For the purposes of this section-

(a) references to a reduction in an amount of income include references to a reduction to nil or to the accrual of a loss or an increase loss; and

(b) reference to an increase in income include references to the reduction in a loss whether to a smaller amount or to nil.

(6) Subsection (4) shall not apply unless the amount of income mentioned in paragraph (a) of that subsection would be taken into account in computing the amount of the second taxpayer's income chargeable to tax for the income year.

(7) For the purposes of subsection (6) in case where no loss accrues or a smaller loss accrues, as mentioned in paragraph (a) of subsection (4) and in subsection (5), a profit shall instead be deemed to have accrued.

(8) Where an assessment or an amended assessment is made on the first taxpayer and the computation of income on which it is based takes into account a different amount of income from that on which earlier computations were based, the second taxpayer may amend a claim under subsection (4) accordingly.

(9) a claim by the second taxpayer under subsection (4) shall not be made in relation to an income year unless-

(a) the first taxpayer has made a return on the arm's length basis under section *forty-six A* for the income year or an assessment on the arm's length basis is made on that first taxpayer for that year; and

(b) it is made within three years of the date on which that return or, if earlier, that assessment is made, or such longer period as the Commissioner-General may allow.

(10) A claim may not be amended under subsection (8) by reason of an assessment or amended assessment unless the amended claim is made within one year of the date on which the assessment or amended assessment is made.

(11) Where a claim under

subsection (4) or an amended claim under subsection (8) is allowed and the claimant has been or may be given credit by virtue of any agreement made under section *seventy-four* or under *seventy-six* for foreign tax, within the meaning of section *seventy-five* or *seventy-six*, in computing the amount of that credit-

(a) the foreign tax to be taken into account as having been paid or as Special provisions where actual conditions include issuing security being payable by the claimant shall exclude any amount of foreign tax which would not have been paid or payable if the computation of the income on which the foreign tax is chargeable had, so far as it includes income to which the claim or amended claim relates, been made on the arm's length basis; and
(b) the amount of the income to be taken into account as having been received by the claimant and in respect of which the claimant is or may be given credit for foreign tax shall be determined, so far as it includes income to which the claim or amended claim relates, on the arm's length basis.

(12) any adjustment required to be made by virtue of this section shall be made by way of discharge or repayment of tax, by an amended assessment or otherwise and may be made notwithstanding that the adjustment relates to a charge year which ended more than six years earlier; and subsections (3), (4) and (5) of section *eighty-seven* shall apply to an excess tax due to the taxpayer under this section as they apply to an excess determined under subsection (1) of section *eighty-seven*.

(As amended by Act No.1 of 2001)

97AA. (1) Where-

(a) actual conditions are imposed in terms of subsection (1) of section *ninety-seven A* between two associated persons and those conditions include the issuing of a security; and

(b) the matters specified in subsection (2) are relevant, in any way and to any extent, to the determination of the arm's length conditions for the purposes of section *ninety-sevenA*; those conditions shall be determined, not only as if the issuing company and the other person, referred to in this section as "the first associate", were not associated, but also as if there were no relationship, arrangement or connection, whether formal or informal, between the issuing company and any other person which is associated with the issuing company unless they are both members of the same *Zambian grouping*.

(2) The matters referred to in paragraph (b) of subsection (1) are-

(a) the appropriate level or extent of the issuing company's overall indebtedness;

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to that company; and

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transactio;

and the fact that it is not part of any

company's business to make loans generally shall be disregarded for the purposes of this section.

(3) The membership of a Zambian grouping in relation to any issuing company shall be determined as follows:

(a) where the issuing company is not a subsidiary of a company resident in the Republic-

(i) if the issuing company has no subsidiaries, the only member of the Zambian grouping shall be the issuing company;

(ii) if it has one or more subsidiaries, the only members of the Zambian grouping shall be the issuing company and its subsidiaries; and

(b) where the issuing company is a subsidiary of a company resident in the Republic, in this section referred to as "the Zambian holding company", the only members of the Zambian grouping shall be -

(i) if there is more than one company resident in Zambia of which the issuing company is a subsidiary, such one of them as is not itself a subsidiary of any of the others, and all its subsidiaries;

(ii) if subparagraph (i) does not apply, the Zambian holding company and all its subsidiaries; but the first associate is not a member of the Zambian grouping in any case.

(4) For the purposes of this section referred to as "the subsidiary", is a subsidiary of another company in this section referred to as "the parent" at any time if-

(i) the parent is beneficially entitled to more than fifty percent of any profits of the subsidiary available for distribution to equity holders of

the subsidiary; and

(ii) the parent would be beneficially entitled to more than fifty percent of any assets of the subsidiary available for distribution to its equity holders on winding up; and for this purpose any profits or assets available for distribution to any equity holder otherwise than as an equity holder shall be disregarded;

(b) "the issuing company" means the company, which issued the security referred to in paragraph (a) of subsection (1);

(c) "security" includes securities not creating or evidencing a charge on assets, and any-

(i) interest paid payable by a company on money advanced without the issue of a security for the advance; or

(ii) other consideration given by a company for the use of money so advanced;

shall be treated as if paid or payable or given in respect of a security issued for the advance by the company;

(d) "subsidiary" shall have the meaning assigned to it by paragraph (a) of this subsection; and

(e) "Zambian grouping" refers to those companies that are members of a Zambian grouping within the meaning of subsection (3);.

(5) For the purposes of subsection (4)-

(a) the percentage entitlement of a company means the percentage to which the company is or would be entitled either directly or through another body corporate or other bodies corporate or partly through another body corporate or other bodies corporate;

(b) the entitlement means, in the

case of profits, the entitlement during the charge year, which is the income year in question within the meaning of subsection (2) of section *ninety-sevenA* and, in the case of assets, the entitlement at the end of that charge year;

(c) "equity holder" means a person who-

(i) holds ordinary shares in the company; or

(ii) is a loan creditor of the company in respect of a loan which is not a normal commercial loan; and

(d) "ordinary shares" means all the shares other than fixed-rate preference shares.

(6) A "loan creditor" referred to in subparagraph (ii) of paragraph (c) of subsection (5), in relation to a company, means a creditor in respect of any debt incurred by the company(

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

(b) in respect of any redeemable loan capital issued by the company: Provided that a person carrying on the business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by that person in the ordinary course of that business.

(7) The "fixed rate preference shares" referred to in paragraph (d) of subsection (5) are shares which-

(a) not carry any right either to conversion shares or securities of any description or to the acquisition of any additional shares or securities;

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

which-

- (i) are of a fixed amount or at a fixed rate per centum of the nominal value of the shares; and
- (ii) represent no more than reasonable commercial return on the consideration received by the company in respect of the shares; and
- (c) on the repayment do not carry any rights to an amount exceeding that consideration.

(8) A "normal commercial loan" referred to in paragraph (c) of subsection (5) is a loan

- a) which does not carry any right either to conversion into shares or securities or the acquisition of any additional shares or securities;
- (b) which does not entitle the loan creditor to any amount by way of interest which depends to any extent on the results of the company's business or which exceeds a reasonable commercial return on the amount lent; and
- (c) in respect of which the loan creditor is entitled, on repayment to an amount which does not exceed the amount lent.

(As amended by Act No. 1 of 2001, and No. 3 of 2002)

97B. (1) Section *ninety-seven A* (2) shall not apply in relation to the computations of income of any person who carries on a business in so far as that income is determined by reference to the accounts for that business for a period beginning before 1st April, 1999.

(2) Nothing in section *ninety-seven A* shall apply in relation to any interest which is allowable as deduction under paragraph 22 of the Fifth Schedule

to this Act or which would be so allowable but for the provisions of paragraph 22A of that Schedule.

(3) Nothing in section *ninety-seven A* shall apply for the computation of any allowance which may, in accordance with sections *thirty-three, thirty-four or*

Non application of section 97A

thirty-four A of this Act, be deducted in ascertaining the profits or gains of a business or the emoluments of any employment or office.

97C. (1) For the purposes of sections *ninety-seven A* and *ninety-seven B*-

(a) any reference to a computation on the arm's length basis shall be construed in accordance with subsection (3) of section *ninety-seven A*;

(b) a return by a person or an assessment on a person is made on the arm's length basis if the computation of income on which it is based is made by virtue of subsection (3) of section *ninety-seven A*;

(c) any reference to arrangements or agreements means any arrangement or agreement whether legally enforceable or not, and includes a reference to understandings or mutual practices; and

(d) "person" includes a partnership.

(2) Section *ninety-seven A* applies whenever the conditions in question were made or imposed, whether before, on or after 1st April, 1999.

(3) For the purposes of sections *ninety-seven A* and *ninety-seven B*

conditions may be taken to have been made or imposed between associated persons in their commercial or financial relations-

Provisions
supplementary
to 97A

(a) whether they are made or imposed in one arrangement or agreement or in a series of arrangements or agreements; and

(b) where conditions are made or imposed in a series of arrangements or agreements, notwithstanding that-

(i) conditions made or imposed in one arrangement or agreement differ from those made or imposed in another; or

(ii) the parties to one arrangement or agreement differ from those to another; or

(iii) any party to an arrangement or agreement is not associated with any party to that or another arrangement or agreement.

(4) The Minister may by regulations make supplementary provision for the interpretation of subsection (3).

(5) For the purposes of section *ninety-seven A* and *ninety-seven B* one person is associated with another if-

(a) one participates directly or indirectly in the management, control or capital of the other; or

(b) the same persons participate directly or indirectly in the management, control or capital of both of them.

(6) The Minister shall make provision by regulations on the direct and indirect participation in the management, control or capital of a person, and different provision may be made in relation

to different cases or different classes of each case.

(7) For the purposes of section *ninety-seven A* and *ninety-seven b* where conditions are made or imposed between associated persons in their commercial or financial relations-

(a) it shall be assumed, unless the contrary is shown to the satisfaction of the Commissioner-General, that different conditions or no conditions would have been imposed if those persons were not associated; and

(b) where a claim is made under subsection (4) of section *ninety-seven A*, it shall be for the claimant to prove that the claim satisfies that subsection.

97D. (1) The Minister shall make regulations enabling a person, in such cases as may be prescribed in the regulations, to be joined as a party to an appeal to the Revenue Appeal Tribunal under section *one-hundred and nine* or to make representations to the Commissioner-General on an objection against an assessment under section *one hundred and eight*.

(2) Regulations under subsection (1) shall apply only in cases where one of the grounds of the appeal or the objection relates to the question whether section *ninety-seven A* applies in relation to any computation relevant to the assessment or whether any computation has been made in

accordance with that section.

(As amended by Act No.6 of 1999)

PART X

OFFENCES AND PENALTIES

98. Any person guilty of an offence against this Act shall, unless any other penalty is specifically provided therefor, be liable on conviction therefor to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding twelve months, or to both.

(As amended by Acts No. 11 of 1992, No. 13 of 1994, No. 14 of 1994 and No. 2 of 1995)

General Penalty

99. Every person who-

(a) without just cause shown by him fails to furnish a full and true return in accordance with the requirements of any notice served upon him under this Act or of section *forty-six* or *forty-sixA* or fails to give notice to the Commissioner-General as required by section *forty-five*; or

(b) without just cause shown by him fails to furnish within the required time to the Commissioner-General or to any other person any document which under this Act or under any notice served on him under this Act he is required so to furnish; or

(c) fails to keep any records, books, accounts or documents that he is required to keep under this Act; or

(d) fails to produce any document for the examination or inspection of the Commissioner-General or other person in accordance with the requirements of this Act; or

(e) without just cause shown by him fails to attend at a time and place in accordance with the requirements of any notice served on him under this Act; or

(f) without just cause shown by him fails to answer any question lawfully put to him or to supply or furnish any information lawfully required from him under this Act; or

(g) otherwise contravenes or fails to comply with any of the provisions of this Act or of any regulations made thereunder, or fails to comply

Penalty for failure to
comply with notice,
etc.

with any requirements of the Commissioner-General lawfully made under this Act or under any of the Schedules thereto; or

(h) obstructs or hinders any officer acting in the discharge of his duty under this Act;

shall be guilty of an offence against this Act.

(As amended by Act No.6 of 1999)

100. (1) Every person who negligently or through wilful default or fraudulently-

Penalty for incorrect
returns, etc.

(a) fails to furnish a return of income in accordance with the requirements of sub-section (2) of section *forty-six*;

(aa) fails to furnish a provisional return of income and tax in accordance with the requirements of section *forty-sixA*;

(b) makes an incorrect return by omitting therefrom or understating therein any income of which he is required by this Act to make a return;

(c) gives any incorrect information in relation to any matter affecting his own liability to tax or the liability to tax of any other person; or

(d) submits any incorrect balance sheet, account, or other document;

shall pay a penalty equal to-

(i) in the case of negligence, seventeen point five per centum of the amount;

(ii) in the case of wilful default, thirty-five per centum of the amount; or

(iii) in the case of fraud, fifty-two point five per centum of the amount; of any income omitted or understated, or any expenses overstated, in consequence of such failure, incorrect return, information or submission.

(2) Except for paragraph (a), any reference in subsection (1) to tax or income includes a reference to provisional tax and provisional income respectively.

(3) The penalties provided by this section are a debt due to the Government and shall be treated as if they were tax for the purpose of recovery and shall be recoverable accordingly whether or not any proceedings are commenced for any offence against this Act arising out of the same facts.

(4) The Commissioner-General may accept a pecuniary settlement instead of taking proceedings for the recovery of a penalty under this section and may, in his discretion, mitigate or remit any penalty or stay or compound any proceedings for recovery thereof and may also after judgment in any proceedings under this Act further mitigate or entirely remit the penalty.

(5) Notwithstanding anything contained in Part XI, where in any appeal against an assessment which includes penalty, one of the grounds of appeal relates to the charge of such penalty then the decision of the Tax Appeal Court in relation to such ground of appeal shall be confined to the question as to whether or not the failure, claim, understatement or omission which gave rise to the penalty under subsection (1) was due to any neglect, wilful default or fraud.

(As amended by Acts No. 11 of 1973, No. 14 of 1973,

No. 10 of 1979, No. 11 of 1992, No. 4 of 1993 and No. 6 of 1999)

101. No complaint charging any offence under section *ninety-eight* or *ninety-nine* shall be made at any time subsequent to six years after the date of the commission of the offence.

Time Limit

102. (1) Any person who wilfully with intent to evade or to assist another person to evade tax-

Penalty for
fraudulent returns,

etc.

(a) omits from a return made under this Act any income which should under this Act be included therein; or
(b) makes any false statement or entry in any return under this Act; or
(c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act; or
(d) prepare or maintains or authorises the preparation of maintenance of any false books of account or other records, or falsifies or authorises the falsification of any books of account or records; or
(e) makes use of any fraud, art or contrivance whatsoever or authorises the use of any such fraud, art or contrivance; or
(f) makes any fraudulent claim for the refund of any tax;
shall be guilty of an offence and on conviction shall be liable to a fine not exceeding thirty thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

(2) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return furnished under this Act by or on behalf of any person or partnership, or in any books of account or other records maintained by or on behalf of any person or partnership, that person or the partners shall be presumed, until the contrary is proved, to have made that false statement or entry with intent to evade tax.

(3) Any reference in this section to income or tax includes a reference to provisional income and provisional tax, respectively.

(As amended by Acts No. 17 of 1971, No. 11 of 1992, No. 13 of 1994, No. 2 of 1995 and No.9 of 1998)

103. Where any offence under this Act has been committed by a body corporate, every person who, at the time of the commission of the offence was a director, general manager, secretary or other similar officer of such body corporate or who was acting or purporting to act in any such capacity, shall also be guilty of that offence, unless he proves that the offence was committed without his knowledge or consent, and that he exercised all such diligence to prevent the commission of the offence, as he ought to have exercised, having regard to the nature of his functions in such capacity and in all the circumstances.

Bodies corporate

104. If an officer authorised by the Commissioner-General to inquire into the affairs under this Act of any person satisfies a magistrate that in fact or according to reasonable suspicion that person has committed an offence under this Act, the magistrate may, by warrant, authorise the officer to exercise all or any of the following powers:

(a) between sunrise and sunset to enter any premises to search for money or documents or electronically stored data;
(b) to open, or remove from the premises and open, any article in which money or documents or electronically stored data may be contained;
(c) to seize any documents or electronically stored data which may be necessary for assessment or any criminal or other proceedings and retain

them for so long as they are required for such purposes.

(As amended by Act No. 3 of 2002)

Power to search and
seize

105. (1) In any civil or criminal proceedings under this Act any relevant document in the Commissioner-General's possession shall be received in evidence on mere production as such and shall be *prima facie* evidence of its contents, but the person affected by such production shall be given not less than four days' notice of intention to produce a document under this section, and he shall be given an opportunity to inspect and copy that document.

Documents in
evidence

(2) Statements made or documents produced by or on behalf of any person shall not be inadmissible in any proceedings to which this section applies by reason only that it has been brought to his attention that-

(a) in relation to tax the Commissioner-General may accept pecuniary settlements instead of instituting proceedings; and

(b) though no undertaking can be given as to whether or not the Commissioner-General will accept such a settlement in the case of any particular person, it is the practice of the Commissioner-General to be influenced by the fact that a person has made a full confession of any fraud or default to which he has been a party and has given full facilities for investigation;

and that he was or may have been induced thereby to make the statements or produce the documents.

(As amended by Act No. 17 of 1971)

PART XI

OBJECTIONS AND APPEALS

106. Subject to the Commissioner-General's power relating to assessment, every assessment under this Act shall stand good unless proved otherwise by the person assessed upon objection or appeal under this Part.

Assessments good until
disproved

107. (1) For the purposes of hearing and determining appeals as provided for in this Part, there is hereby established a Tax Appeal Court (hereinafter in this Part referred to as "the court"), consisting of a Chairman or Deputy Chairman or a Special Chairman, as the case may be, appointed by the Judicial Service Commission.

Establishment of Tax
Appeal Court, its
composition and powers

(2) The Chairman, Deputy Chairman and the Special Chairman shall be persons-

(a) who are entitled to practise as advocates in Zambia;

(b) who have held a judicial office; or

(c) who, in the opinion of the Judicial Service Commission, have sufficient knowledge of and experience in tax matters so as to be

qualified for appointment to the offices of the Chairman, Deputy Chairman and the Special Chairman.

(3) The court shall be presided over by the Chairman, and in his absence by the Deputy Chairman, and in the absence of the Chairman and Deputy Chairman by the Special Chairman. The Deputy Chairman or the Special Chairman shall do all things which the Chairman is empowered to do under this Act, and shall, while presiding over the court, have all the powers of the Chairman.

(4) A person shall not sit or act as a Chairman of the court if he has any interest, direct or indirect, personal or pecuniary, in any matter before the court.

(5) The court shall sit in such places as may be appointed by the Chairman.

(6) The date of hearing of any appeal shall be determined by the Chairman and notice thereof shall be published by him in the *Gazette* at least one month prior to that date.

(7) There shall be paid to the Chairman of the court such remuneration and allowances as the Attorney-General may (with the approval of the Minister) determine.

(8) The Public Service Commission may appoint a Registrar and such other officers of the court as it may deem necessary.

(9) If any person without reasonable excuse fails to attend as a witness or give evidence or to produce any document in his possession or power which relates to any matter in question on appeal when so required by the court he may be fined summarily by the Chairman an amount not exceeding two hundred penalty units and ordered to serve a sentence not exceeding three months' imprisonment in default of payment of the fine.

(10) The Minister may, by statutory instrument, make regulations with respect to the administration, organisation, powers, practice and procedure of the court in relation to appeals, costs on appeals and matters connected with the foregoing.

(As amended by Acts No. 14 of 1973, No. 11 of 1975, No. 11 of 1992 and No. 13 of 1994)

108. Within thirty days of the date of service of notice of assessment, the person assessed may make to the Commissioner-General a written statement of objection to the assessment setting out the grounds of objection, and the Commissioner-General shall give that person written notice of his decision concerning that objection:

Objection to assessment

Provided that-

(i) the Commissioner-General may determine that an objection may be made within a longer period than thirty days but where he does not so determine he shall give the person written notice of his determination and the person may appeal against the determination under section *one hundred and nine* without making an objection;

(ii) the right of objection to an amended assessment which is not made as a result of an objection shall be restricted to the items in that assessment which differ from, or are additional to, the items in the assessment for the same charge year made immediately prior to that assessment and only to the extent of such difference or addition;

(iii) the right of objection to an amended assessment which is made as a result of an objection shall be the same right of objection as existed to the assessment objected to; and

(iv) an amended assessment issued as a result of an objection shall, unless objected to, be the Commissioner-General's written decision concerning the objection.

(As amended by Act No. 11 of 1975)

109. (1) If a person assessed is dissatisfied with the Commissioner-General's decision concerning his objection to the assessment, that person may, by written notice to the Chairperson, within thirty days of the date of service of the written notice of the Commissioner-General's decision, appeal against the assessment to the tribunal and shall send a copy of the notice to the Commissioner-General.

Appeal against
assessment

(As amended by Acts No. 14 of 1973, No. 11 of 1975 and No. 4 of 2000)

110. (1) Upon the hearing of an appeal under the Revenue Appeals Tribunal Act, 1998, the court may make such order in relation to the assessment under appeal as is in accordance with this Act.

Determination of
appeals

Act No. 11 pf 1998

(As amended by Acts No. 26 of 1970, No. 14 of 1973 and No. 4 of 2000)

111. (1) Either party to an appeal to the court may appeal to the High Court from the decision of the tribunal on any question of law or question of mixed law and fact but not on a question of fact alone.

Appeal to High Court
and Supreme Court

(2) The High Court shall hear and determine any such appeal and may confirm, reduce, increase or annul the assessment determined by the court and make such further or other order on such appeal, whether as to costs or otherwise, as to the High Court may seem fit.

(3) An appeal from a decision of the High Court under this section shall lie to the Supreme Court as it lies in the case of and as though it were a judgement of the High Court made in the exercise of its original civil jurisdiction.

(As amended by Acts No. 14 of 1973, No. 11 of 1974 and No. 4 of 2000)

112. (1) Where a person assessed so requests, all proceedings concerning him under this Part shall be in private, or *in camera*, as the

case may be.

Privacy of proceedings

(2) Nothing in subsection (1) shall prevent the printing or publishing of the judgement or order made on the determination of an objection or appeal if the High Court or Supreme Court does not prohibit publication, but any such publication shall not disclose the identity of the taxpayer concerned.

(As amended by Acts No. 14 of 1973 and No. 11 of 1974)

113. On the final determination of an objection or appeal against an assessment the Commissioner-General shall make all assessments and adjustments as are necessary to give effect to the determination and the provisions of section *eighty-seven* shall apply to any tax paid in excess as a result of such determination.

(As amended by Acts No. 26 of 1970 and No. 14 of 1976)

Adjustment on
successful objection or
appeal

114. (1) Where it is provided by this Act that any matter is subject or according to-

Appeals from
Commissioner-General's
discretions and
determinations

(a) the Commissioner-General's discretion, such discretion shall not be questioned in any proceedings;

(b) the Commissioner-General's determination, such determination shall only be questioned in any proceedings on the ground that it is unreasonable.

(2) If a person is dissatisfied with a determination of the Commissioner-General, that person may object to or appeal against that determination as if the determination were an assessment and the provisions of this Part relating to objections and appeals against assessments shall apply *mutatis mutandis*.

(3) Where the Commissioner-General's determination as provided for in this Act is in relation to any assessment, any appeal against that determination shall be heard as a preliminary point upon an appeal against that assessment, and in any other case such appeal shall be heard as if the determination were an assessment.

115. Repealed by Act No.9 of 1998

115A. Repealed by Act No. 7 of 1996.

PART XII

REPEALS AND TRANSITIONAL PROVISIONS

116. Subject to the Seventh Schedule, the Income Tax Act, Chapter A.L. 31 of the 1965 Edition of the Applied Laws, the Income Tax (Employments) Act, 1966, and the Taxes Charging Act, 1966, are repealed.