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Gazetted: Friday 5th January, 2007 (General Notice 6/2007).

Commencement: Friday 5th January, 2007.

**FINANCE (NO. 2) ACT, 2006**

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# ACT

To make further provision for the revenues and public funds of Zimbabwe and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and Parliament of Zimbabwe.

## PART I

### PRELIMINARY

#### 1 Short title and interpretation

(1) This Act may be cited as the Finance (No. 2) Act, 2006.

(2) For the avoidance of doubt it is declared that amounts which are expressed in terms of the old currency system in any enactment referred to in this Act are re-denominated in this Act in accordance with the new currency system.

In this subsection “new currency system” and “old currency system” have the meanings given to those terms in section 2(1) of Statutory Instrument 199 of 2006.

## PART II

### INCOME TAX

#### *Amendments to Chapter I of Finance Act [Chapter 23:04]*

#### 2 Amendment of section 14 of Cap. 23:04

With effect from the year of assessment beginning on the 1st January, 2007, section 14 (“Income tax for periods of assessment after 1.4.88”) of the Finance Act [*Chapter 23:04*] is amended in subsection (2)—

(a) by the deletion of “1st January, 2006,” and the substitution of “1st January, 2007,”;

(b) by the repeal of paragraph (a) and the substitution of—

“(a) in the case of a person other than a company, a trust or a pension fund, at the specified percentage of each dollar of each of the following parts of his taxable income from employment—

(i) so much as does not exceed one million two hundred thousand dollars;

(ii) so much as exceeds one million two hundred thousand dollars but does not exceed two million four hundred thousand dollars;

(iii) so much as exceeds two million four hundred thousand dollars but does not exceed three million six hundred thousand dollars;

- (iv) so much as exceeds three million six hundred thousand dollars but does not exceed twelve million dollars;
- (v) so much as exceeds twelve million dollars but does not exceed thirty-six million dollars;
- (vi) so much as exceeds thirty-six million dollars but does not exceed sixty million dollars;
- (vii) so much as exceeds sixty million dollars;”.

### **3 Amendment of section 22B of Cap. 23:04**

With effect from the 1st January, 2007, section 22B (“Automated financial transactions tax”) of the Finance Act [*Chapter 23:04*] is amended by the deletion of “ten dollars” and the substitution of “fifty dollars”.

### **4 Amendment of section 22C of Cap. 23:04**

With effect from the year of assessment beginning on the 1st January, 2007, section 22C (“Presumptive tax”) of the Finance Act [*Chapter 23:04*] is amended by the repeal of paragraphs (c) to (i) and the substitution of—

- “(c) operators of taxicabs for the carriage of passengers for hire or reward having seating accommodation for not more than seven passengers, ninety thousand dollars per quarter year for each such taxicab so operated; or
- (d) operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than eight or more than fourteen passengers, ninety thousand dollars per quarter year for each such omnibus so operated; or
- (e) operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than fifteen or more than twenty-four passengers, ninety thousand dollars per quarter year for each such omnibus so operated; or
- (f) operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than twenty-five or more than thirty-six passengers, one hundred and eighty thousand dollars per quarter year for each such omnibus so operated; or
- (g) operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than thirty-seven passengers, one hundred and eighty thousand dollars per quarter year for each such omnibus so operated.
- (h) operators of goods vehicles having a carrying capacity—
  - (i) of more than ten tonnes but less than twenty tonnes one hundred and eighty thousand dollars per quarter year;
  - (ii) of ten tonnes or less but which is driving one or more trailers resulting in a combined carrying capacity of more than fifteen tonnes but less than twenty tonnes, one hundred and eighty thousand dollars per quarter year;
  - (iii) of twenty tonnes or more, three hundred thousand dollars per quarter year;

- (i) operators of driving schools providing driving tuition—
- (i) for class 4 vehicles only, one hundred and twenty thousand dollars per quarter year;
  - (ii) for class 1 and 2 vehicles (whether or not in addition to providing driving tuition for other classes of vehicles), one hundred and eighty thousand dollars per quarter year.”.

## 5 Amendment of section 22E of Cap. 23:04

Section 22E (“Carbon tax”) (1) of the Finance Act [*Chapter 23:04*] is amended with effect from the 1st January, 2007, by the deletion of “five dollars per litre” and the substitution of “one hundred dollars per litre”;

## 6 Amendment of section 22H of Cap. 23:04

With effect from the 1st January, 2007, section 22H (“NOCZIM debt redemption levy”) of the Finance Act [*Chapter 23:04*] is amended by the deletion of “twenty-five dollars per litre” and the substitution of “sixty dollars per litre”.

## 7 New section inserted in Cap. 23:04

With effect from the year of assessment beginning on the 1st January, 2007, Part III of Chapter I of the Finance Act [*Chapter 23:04*] is amended by the insertion after section 22H of the following section—

### "22J Tax on non-executive directors' fees

The tax on non-executive directors' fees chargeable in terms of section 36J of the Taxes Act shall be calculated at the rate of twenty *per centum* of each dollar of the fees from which such tax is to be paid in terms of the Thirty-Third Schedule to that Act.”.

## 8 Amendment of Schedule to Chapter I of Cap. 23:04

With effect from the year of assessment beginning on the 1st January, 2007, the Schedule (“Credits and Rates of Income Tax”) to Chapter I of the Finance Act [*Chapter 23:04*] is amended—

- (a) by the repeal of Part I and the substitution of—

### “PART I

### CREDITS

<i>Section</i>	<i>Nature of credit</i>	<i>Specified amount</i>
		\$
10	Credit for taxpayers over 59 years of age .....	120 000
11	Blind persons credit .....	120 000
13	Mentally or physically disabled persons credit .....	120 000”;

- (b) in Part II by the deletion of the items relating to the level of taxable income and the substitution of—

<i>“Section</i>	<i>Level of taxable income</i>	<i>Specified percentage</i>
		<i>%</i>
14(2)(a)(i)	Up to \$1 200 000 .....	0
14(2)(a)(ii)	\$1 200 001 to \$2 400 000 .....	25
14(2)(a)(iii)	\$2 400 001 to \$3 600 000 .....	30
14(2)(a)(iv)	\$3 600 001 to \$12 000 000 .....	35
14(2)(a)(v)	\$12 000 001 to \$36 000 000.....	40
14(2)(a)(vi)	\$36 000 001 to 60 000 000.....	45
14(2)(a)(vii)	\$60 000 001 and above .....	47,5”.

*Amendments to Income Tax Act [Chapter 23:06]*

**9 Amendment of section 2 of Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, section 2 (“Interpretation”) (1) of the Income Tax Act [Chapter 23:06] is amended—

- (a) by the repeal of the definition of “assessment” and the substitution of—

““assessment” means—

- (a) the determination of taxable income and of the credits to which a person is entitled in terms of the charging Act; or
- (b) the determination of an assessed loss ranking for deduction;

and includes a self-assessment in terms of section 37A;”;

- (b) by the insertion of the following definitions—

““return” includes a self-assessment return;

“self-assessment return” means a return rendered in terms of section 37A;”.

**10 Amendment of section 7 of Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, section 7 (“Calculation of income tax”) of the Income Tax Act [Chapter 23:06] is amended by the insertion of the following subsection, the existing section becoming subsection (1)—

“(2) The tax payable in respect of a self-assessment return shall be calculated in accordance with subsection (1) in respect of each year of assessment during which a taxpayer carried on a trade and is required to submit a self-assessment return in terms of section 37A.”.

## 11 Amendment of section 8 of Cap. 23:06

Section 8 (“Interpretation of terms relating to income tax”)(1) of the Income Tax Act [*Chapter 23:06*] is amended in the definition of “gross income” with effect from the year of assessment beginning on the 1st January, 2007, in paragraph (f) II—

- (a) in proviso (ix) by the deletion of “in respect of the year of assessment beginning on the 1st January, 2006, and any subsequent year of assessment,” and the substitution of “in respect of the year of assessment beginning on the 1st January, 2007”;
- (b) by the insertion after proviso (x) of the following proviso—
  - “(xi) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 2007, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—
    - (a) one hundred thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;
    - (b) one hundred and sixty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;
    - (c) two hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;
    - (d) two hundred and sixty thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment;”.

## 12 Amendment of section 15 of Cap. 23:06

With effect from the year of assessment beginning on the 1st January, 2007, section 15 (“Deductions allowed in determination of taxable income”) of the Income Tax Act [*Chapter 23:06*] is amended in subsection (2)—

- (a) in paragraph (r1) by the deletion from the proviso of “five hundred thousand dollars” and the substitution of “twenty-five million dollars”;
- (b) in paragraph (r2) by the deletion from the proviso of “five hundred thousand dollars” and the substitution of “twenty-five million dollars”;
- (c) in paragraph (r3) by the deletion from the proviso of “five hundred thousand dollars” and the substitution of “twenty-five million dollars”;
- (d) in paragraph (w) by the deletion of “ten thousand dollars” and the substitution of “one million dollars”.



### **13 New section inserted in Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, Part IV of the Income Tax Act [*Chapter 23:06*] is amended by the insertion after section 36I of the following section—

#### **"36J Tax on non-executive directors' fees**

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a tax on non-executive directors' fees in accordance with the Thirty-Third Schedule at the rate fixed from time to time in the charging Act."

### **14 Amendment of section 37 of Cap. 23:06**

With effect from the 1st January, 2007, section 37 ("Notice by Commissioner requiring returns for assessment under this Act and manner of furnishing returns and interim returns") (1) the Income Tax Act [*Chapter 23:06*] is amended by the deletion of "The Commissioner" and the substitution of "Subject to section 37A, the Commissioner".

### **15 New sections inserted in Cap. 23:06**

With effect from the 1st January, 2007, the Income Tax Act [*Chapter 23:06*] is amended by the insertion of the following section after section 37 of the following sections—

#### **"37A Self-assessment**

(1) Every taxpayer specified in a notice published by the Commissioner-General as a taxpayer or member of a class of taxpayers to whom this section is to apply for any year of assessment (hereafter in this section called a "specified taxpayer") shall, not later than four months after the end of the tax year—

- (a) furnish the Commissioner-General with a self assessment return in the prescribed form reflecting such information as may be required for the calculation of tax payable in respect of that year in terms of section 7(2); and
- (b) calculate the amounts of such tax in accordance with section 7(2) and pay the tax payable to the Commissioner-General or calculate the amount of any refund due to the taxpayer.

(2) Every specified taxpayer shall, within the period allowed in subsection (1), furnish to the Commissioner-General the return referred to in that subsection in respect of each year of assessment, whether or not tax is payable or a refund is due in respect of such year of assessment.

(3) The Commissioner-General may require any taxpayer by notice in writing to render an interim self assessment return for any period he or she may designate in such notice.

(4) The Commissioner-General may, having regard to the circumstances of any case but subject to section 71, extend the period within which such return is to be furnished or such tax is to be paid.

(5) Subject to subsection (6), a self-assessment return of income shall be signed by the specified taxpayer and include a declaration that the return is complete and accurate. Any person signing any such return shall be deemed for all purposes in connection with this Act to be cognisant of all statements made therein.

(6) A self-assessment return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act shall be deemed to be duly made and signed by the person affected, unless such person proves that such return was not made or signed by him or her or on his or her behalf.

(7) If any specified taxpayer fails or is unable to make a self assessment return, the Commissioner-General may appoint a person to make a return on behalf of such taxpayer, and the return made by the person so appointed shall be, for all the purposes of this Act, treated as the return of the specified taxpayer.

(8) Notwithstanding any other provision of this section, unless he or she is specifically called upon by the Commissioner-General to do so, no return need be made by a specified taxpayer whose taxable income consists solely of remuneration from which employees' tax has been deducted by an employer in accordance with a directive issued in terms of paragraph 20A of the Thirteenth Schedule.

(9) Where a specified taxpayer is legally incapacitated, the taxpayer's self-assessment return of income, and a declaration as to its completeness and accuracy, shall be signed by the taxpayer's legal representative.

(10) Where a specified taxpayer has furnished a self-assessment return accompanied by the relevant documents for a year of assessment, the taxpayer is deemed to have made an assessment of his or her taxable income and the tax payable on that taxable income for that year, being those respective amounts shown in the return.

(11) Where a specified taxpayer has furnished a return in terms of subsection (1), the taxpayer's return of income is treated as an assessment served on the taxpayer by the Commissioner-General on the due date for the furnishing of the return or on the actual date of furnishing the return, whichever is the later.

(12) Notwithstanding subsection (1), the Commissioner-General may make an assessment under section 46 and 47 on a specified taxpayer in any case in which the Commissioner-General considers necessary.

(13) Where the Commissioner-General raises an assessment in terms of subsection (12), the Commissioner-General shall include with the assessment a statement of reasons as to why the Commissioner-General considered it necessary to make such an assessment.

### **37B Advance tax rulings**

The Commissioner-General may, in accordance with the Thirty-Fourth Schedule, make an advance tax ruling on any provision of this Act, whether on his or her own initiative or on application by any person interested in a transaction that is or may be liable to tax.”

## 16 Amendment of section 64 of Cap. 23:06

Section 64 ("Special Court for Income Tax Appeals and proceedings on appeal") of the Income Tax Act [*Chapter 23:06*] is amended by the repeal of subsection (7) and the substitution of—

“(7) The Registrar of the High Court shall be the Registrar of the Special Court and shall ensure the proper functioning of the court.”.

## 17 Amendment of section 72 of Cap. 23:06

With effect from the year of assessment beginning on the 1st January, 2007, section 72 (“Payment of provisional tax”) of the Income Tax Act [*Chapter 23:06*] is amended by the repeal of subsection (7) and the substitution of—

“(7) Subject to this section, the instalments of provisional tax payable in terms of subsection (2) shall be paid as follows—

- (a) the first quarterly instalment, of ten *per centum* of the provisional tax payable, shall be paid on or before the 25th March in relevant year of assessment; and
- (b) the second quarterly instalment, of twenty-five *per centum* of the provisional tax payable, shall be paid on or before the 25th June in the relevant year of assessment; and
- (c) the third quarterly instalment, of thirty *per centum* of the provisional tax payable shall be paid on or before the 25th September in the relevant year of assessment; and
- (d) the fourth quarterly instalment, of thirty-five *per centum* of the provisional tax payable, shall be paid on or before the 20th December in the relevant year of assessment:

Provided that, for the avoidance of doubt, the Commissioner shall waive penalties under circumstances where the taxpayer fails to forecast profits within a ten *per centum* margin of error.”.

## 18 Amendment of section 80 of Cap. 23:06

With effect from the year of assessment beginning on the 1st January, 2007, section 80 (“Withholding of amounts payable under contracts with State or statutory corporations”) (1) of the Income Tax Act [*Chapter 23:06*] is amended in the definition of “contract” by the deletion of “five thousand dollars” and the substitution of “five hundred thousand dollars”.

## 19 New Part inserted in Cap. 23:06

With effect from the 1st January, 2007, the Income Tax Act [*Chapter 23:06*] is amended by the insertion after Part VIII of the following Part—

## “PART VIII A

## APPLICATION OF INFORMATION TECHNOLOGY TO ACT

## “80B Interpretation in Part VIII A

In this Part—

“access”, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;

“affixing a digital signature”, in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;

“computer” means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;

“computer network” means the interconnection of one or more computers through—

- (a) the use of satellite, microwave, terrestrial line or other communication media; and
- (b) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

“computer system”, means a device or collection of devices, including input and output devices capable of being used with external files, which contain computer programmes, electronic instructions, and input and output data, that performs logic, arithmetical, data storage and retrieval, communication control and other functions;

“digital signature” means an electronic signature created by computer that is intended by the registered user using it and by the Commissioner accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in section 80G(1);

“electronic data” means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;

“electronic record or communication” means electronic data that is recorded, received or sent in an electronic form or in microfilm or computer-generated microfiche;

“intermediary”, with respect to any particular electronic communication, means any person who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;

“Internet” has the meaning given to that word by the Postal and Telecommunications Act [*Chapter 12:03*];

“originator” means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

“registered user” means a person registered in terms of section 80F;

“user agreement”, means the agreement between the registered user and the Commissioner referred to in section 80E.

#### **80C Use of electronic data generally as evidence**

(1) Notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

- (a) on the sole ground that it is electronic data; or
- (b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(2) Information in the form of electronic data shall be given due evidential weight.

(3) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

- (a) the reliability of the manner in which the data was generated, stored and communicated; and
- (b) the reliability of the manner in which the integrity of the data was maintained; and
- (c) the manner in which its originator was identified.

#### **80D Establishment of computer systems for tax purposes**

The Commissioner may, notwithstanding anything to the contrary in this Act, establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including—

- (a) the despatch and receipt and processing of any return, record, assessment, declaration, form, notice, statement or other document relating to any amount liable to tax; and
- (b) the electronic processing of any register, book, account, record, return, paper, assessment or other document.

## 80E User agreements

(1) The Commissioner may, for the purpose of regulating communication through a computer system established in terms of section 80D, prescribe the form of a user agreement to be entered between the Zimbabwe Revenue Authority and registered users.

(2) A user agreement shall set out—

- (a) the terms and conditions governing communication through a computer system established in terms of section 80D, including—
  - (i) the use by registered users of computer equipment and facilities of a class or kind specified in the agreement;
  - (ii) the allocation to a registered user of a digital signature by the Commissioner;
  - (iii) the requirement that registered users ensure the security of the digital signatures allocated to them in the manner specified in the agreement;
- (b) the manner of affixing a digital signature to any electronic communication or record;
- (c) the conditions of reasonable access to the computer system of the registered user by the Commissioner for such verification and audit purposes as may be required by this Act;
- (d) the manner and period of keeping electronic records that are necessary or convenient to be kept in connection with a computer system established in terms of section 80D.

## 80F Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Commissioner through a computer system established in terms of section 80D unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Commissioner may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Commissioner is satisfied that the applicant—

- (a) is a person who will make regular use of the computer system established in terms of section 80D;
- (b) will introduce adequate measures to—
  - (i) prevent disclosure of the digital signature allocated to him or her by the Commissioner to any person not authorised to affix such signature;
  - (ii) safeguard the integrity of information communicated through a computer system established in terms of section 80D, apart from any change which

may occur in the normal course of such communication or during storage and display of such information;

- (c) will maintain the standard of reliability of his or her own computer system required in accordance with the requirements of the user agreement;

the Commissioner may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (2), the Commissioner is satisfied that a registered user—

- (a) has not complied with the requirements of his or her user agreement with any condition or obligation imposed by the Commissioner in respect of such registration;
- (b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;
- (c) fails to make regular use of the computer system established in terms of section 80D;
- (d) has contravened or failed to comply with any provision of this Act;
- (e) has been convicted of an offence under this Act;
- (f) has been convicted of an offence involving dishonesty;
- (g) is sequestrated or liquidated;
- (h) no longer carries on the business for which the registration was issued;

the Commissioner may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Commissioner shall—

- (a) give notice to the registered user of the proposed cancellation or suspension; and
- (b) provide the reasons for the proposed cancellation or suspension; and
- (c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

## 80G Digital signatures

(1) Every digital signature intended for use in connection with a computer system established in terms of section 80D shall comply with the following requirements, namely, it must—

- (a) be unique to the registered user and under the sole control of the registered user; and
- (b) be capable of verification; and

- (c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and
  - (d) be in complete conformity with the requirements prescribed by the Commissioner and contained in the user agreement.
- (2) The Commissioner shall, on registering a user, allocate to the registered user—
- (a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or
  - (b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

#### 80H Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

- (a) the information contained therein remains accessible so as to be subsequently usable; and
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
- (c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

#### 80I Sending and receipt of electronic communications

(1) An electronic communication through a computer system established in terms of section 80D or the record of such communication shall be attributed to the originator—

- (a) if it was sent by the originator; or
- (b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or
- (c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Commissioner and a registered user have not agreed that an acknowledgment of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by—

- (a) any communication by the Commissioner, electronic or otherwise; or
- (b) conduct by the Commissioner or any officer sufficient to indicate to the registered user that the electronic communication has been received.



(3) Where the Commissioner and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(4) As between a computer system established in terms of section 80D and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

- (a) where the electronic communication is by a registered user, at any office of the Zimbabwe Revenue Authority, or of the Commissioner, to whichever it was addressed, and such office shall be the place of receipt; or
- (b) if the electronic communication is sent by the Zimbabwe Revenue Authority or the Commissioner to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any return, record, assessment, declaration, form, notice, statement or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Zimbabwe Revenue Authority or the Commissioner, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Commissioner and the registered user.

(7) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically any return, record, assessment, declaration, form, notice, statement or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Commissioner may stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

#### **80J Obligations, indemnities and presumptions with respect to digital signatures**

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Commissioner in writing of that fact without delay.

(2) No liability shall attach to the Commissioner, the Zimbabwe Revenue Authority or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Commissioner or the Zimbabwe Revenue Authority—

- (a) without the authority of the registered user to whom such signature was allocated; and

- (b) before notification to the Commissioner or the Zimbabwe Revenue Authority by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Commissioner or the Zimbabwe Revenue Authority shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Zimbabwe Revenue Authority is a party, the question arises whether an digital signature affixed to any electronic communication to the Commissioner or the Zimbabwe Revenue Authority was used in such communication with or without the consent and authority of the registered user, it shall be presumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

#### 80K Alternatives to electronic communication in certain cases

(1) Whenever a computer system established in terms of section 80D or any other computer system of a registered user is inoperative, the registered user and the Commissioner shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Commissioner may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

#### 80L Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Commissioner or the Zimbabwe Revenue Authority without the authority of such registered user, commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

- (a) makes a false electronic record or falsifies an electronic record; or
- (b) dishonestly or fraudulently—
  - (i) makes, affixes any digital signature to, transmits or executes an electronic record or communication; or
  - (ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.”.

## 20 Amendment of section 90 of Cap. 23:06

With effect from the 1st January, 2007, section 90 (“Regulations”) (1) of the Income Tax Act [*Chapter 23:06*] is amended by the repeal of paragraph (d) and the substitution—

- “(d) prescribing the fee payable in respect of an application for an advance tax ruling in terms of section 37B, or for registration as a registered user of a computer system established in terms of section 80D, or for any other service in respect of which a fee may be prescribed in terms of this Act.”.

## **21 New section inserted after section 97B of Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, the Income Tax Act [*Chapter 23:06*] is amended by the insertion of the following section after section 97B of the following section

### **"97C Credit where tax on non-executive directors' fees has been withheld**

If any non-executive director as defined in the Thirty-Third Schedule proves to the satisfaction of the Commissioner-General that tax has been withheld from his fees in terms of that Schedule during the year of assessment and paid in accordance with that Schedule, such tax shall be allowed as a credit against income tax chargeable in terms of this Act in respect of those fees, and the income tax so chargeable shall be reduced accordingly and any excess refunded.”.

## **22 Amendment of Third Schedule to Cap. 23:06**

(1) The Third Schedule (“Exemptions from Income Tax”) to the Income Tax Act [*Chapter 23:06*] is amended—

(a) in paragraph 4—

- (i) with effect from the 1st November, 2006, by the deletion in subparagraph (o) of “twenty thousand dollars” and the substitution of “one hundred thousand dollars”;
- (ii) with effect from the 1st December, 2006, in subparagraph (p)—
  - A. by the deletion of “one million dollars” and the substitution of “twenty-five million dollars”;
  - B. in the proviso by the deletion of “four million five hundred thousand dollars” and the substitution of “one hundred million dollars”;
- (iii) with effect from the year of assessment beginning on the 1st January, 2007, by the deletion in subparagraph (v) of “one hundred and forty-four thousand dollars” and the substitution of “one million three hundred and forty-four thousand dollars”;

(b) in paragraph 10(1), with effect from the year of assessment beginning on the 1st January, 2007—

- (i) by the deletion in subparagraph (n) of “one hundred and forty-four thousand dollars” and the substitution of “one million three hundred and forty-four thousand dollars”;

- (ii) by the deletion in subparagraph (o) of “one hundred and forty-four thousand dollars” and the substitution of “one million three hundred and forty-four thousand dollars”.

(2) If a bonus is paid in each of the years of assessment ending on the 31st August and 31st December, 2006, and the sum of the bonuses exceeds one hundred thousand dollars in the period of twelve months ending on the 31st December, 2006, the excess amount shall not be exempt from income tax in terms of paragraph 4(o) of the Third Schedule.

### **23 Amendment of Fourth Schedule to Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, the Fourth Schedule (“Deductions to be Allowed in Respect of Buildings, Improvements, Machinery and Equipment Used for Commercial, Industrial and Farming Purposes, and Other Provisions Relating Thereto”) to the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in paragraph 1 (“Interpretation”) in the definition of “staff housing” in subparagraph (1)—

- (i) in subparagraph (m) by the insertion after “1st January, 2006,” of “but before the 1st January, 2007,”;

- (ii) by the insertion after paragraph (m) of the following paragraph—

- “(n) in the case of any such building the erection of which was commenced on or after the 1st January, 2007, any building comprising or incorporating any residential unit the cost of which exceeds sixteen million dollars;”;

- (b) in paragraph 9 (“Rates of special initial allowance”) by the insertion after paragraph (f) of the following paragraph—

- “(g) on the 1st January, 2007, or on any subsequent year of assessment, be a sum equal to one hundred and fifty *per centum* in the case of a taxpayer which is a “small or medium enterprise” as defined in paragraph 1 of the Twenty-Ninth Schedule:

- Provided that one hundred *per centum* shall be allowed in the first year of assessment in which the taxpayer claims the special initial allowance in terms of this subparagraph, and twenty-five *per centum* in each of the next two years of assessment following that year;”;

- (c) in paragraph 14 (“Limitation on cost of passenger motor vehicle”)—

- (i) in subparagraph (1)—

- A. in subparagraph (k) by the insertion after “1st January, 2006” of “, but before the 1st January, 2007”;

- B. by the insertion after subparagraph (k) of the following subparagraph—

- “(l) ten million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2007.”.

## 24 Amendment of Fifth Schedule to Cap. 23:06

With effect from the year of assessment beginning on the 1st January, 2007, the Fifth Schedule ("Allowances and Deductions in respect of Income from Mining Operations and Other Provisions relating thereto") to the Income Tax Act [*Chapter 23:06*] is amended in paragraph 1, in the definition of "capital expenditure" in subparagraph (1)(a)(i)B(i)—

- (a) in subparagraph VIII by the insertion after "1st January, 2003" of ", but before the 1st January, 2007";
- (b) by the insertion after subparagraph VIII of the following subparagraph—
  - " or
  - IX. ten million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2007."

## 25 Amendment of Sixth Schedule to Cap. 23:06

With effect from the year of assessment beginning on the 1st January, 2007, the Sixth Schedule ("Deductions in Respect of Contributions to Benefit and Pension Funds and the Consolidated Revenue Fund") to the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in paragraph 10 by the repeal of subparagraph (b) and the substitution of—
  - "(b) nine hundred thousand dollars;"
- (b) in paragraph 14—
  - (i) in subparagraph (a) by the deletion of "seventy-two thousand dollars" and the substitution of "nine hundred thousand dollars";
  - (ii) in subparagraph (b) by the deletion of "seventy-two thousand dollars" wherever it occurs and the substitution of "nine hundred thousand dollars";
- (c) in paragraph 15 by the repeal of subparagraph (b) and the substitution of—
  - "(b) nine hundred thousand dollars;"
- (d) in paragraph 16 by the repeal of subparagraph (b) and the substitution of—
  - "(b) nine hundred thousand dollars;"
- (e) in paragraph 17(2)—
  - (i) in subparagraph (a) by the deletion of "hundred and forty-four thousand dollars" and the substitution of "seven hundred and twenty thousand dollars";
  - (ii) in subparagraph (b)—
    - A. by the deletion of "hundred and forty-four thousand dollars" and the substitution of "nine hundred thousand dollars";
    - B. in subparagraph (ii)A by the deletion of "thirty-six thousand dollars" and the substitution of "four hundred and fifty thousand dollars";
    - C. in the proviso by the repeal of paragraph (b) and the substitution of—
      - "(b) nine hundred thousand dollars;"

(f) in paragraph 18(2)—

- (i) by the deletion of “seventy-two thousand dollars” and the substitution of “nine hundred thousand dollars”;
- (ii) in the proviso by the repeal of paragraph (b) and the substitution of—  
“(b) nine hundred thousand dollars;”.

## **26 Amendment of Eleventh Schedule to Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, the Eleventh Schedule (“Decisions of the Commissioner to Which any Person may Object”) to the Income Tax Act [*Chapter 23:06*] is amended by the insertion of the following paragraph after paragraph (k)—

“(k1) section 37A(12);”.

## **27 Amendment of Fifteenth Schedule to Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, the Fifteenth Schedule (“Resident Shareholders’ Tax”) to the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in paragraph 2 (“Companies to withhold tax”) (1) by the deletion of “within thirty days of the date of distribution” and the substitution of “within fifteen days of the date of distribution”;
- (b) in paragraph 3 (“Nominees to withhold the tax not deducted by companies”) (1) by the deletion of “within thirty days of receipt of that dividend” and the substitution of “within fifteen days of receipt of that dividend”;
- (c) in paragraph 4 (“Shareholders to pay the tax not withheld by company or nominee”) by the deletion of “within thirty days of the date of distribution of the dividend” and the substitution of “within fifteen days of the date of distribution of the dividend”.

## **28 Amendment of Sixteenth Schedule to Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, the Sixteenth Schedule (“Non-Residents’ Tax on Interest”) to the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in paragraph 2 (“Payers to withhold tax”) (1) by the deletion of “within thirty days of the date of payment” and the substitution of “within fifteen days of the date of payment”;
- (b) in paragraph 3 (“Agents to withhold tax not deducted by payer”) (1) by the deletion of “within thirty days of the date of receipt of the interest” and the substitution of “within fifteen days of the date of receipt of the interest”;
- (c) in paragraph 4 (“Payee to pay tax not withheld by payer or agent”) by the deletion of “within thirty days of the date of payment of the fees” and the substitution of “within fifteen days of the date of payment of the fees”.

## **29 Amendment of Seventeenth Schedule to Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, the Seventeenth Schedule (“Non-Residents’ Tax on Fees”) to the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in paragraph 2 (“Payers to withhold tax”) (1) by the deletion of “within thirty days of the date of payment” and the substitution of “within fifteen days of the date of payment”;
- (b) in paragraph 3 (“Agents to withhold tax not deducted by payer”) (1) by the deletion of “within thirty days of the date of receipt of the fees” and the substitution of “within fifteen days of the date of receipt of the fees”;
- (c) in paragraph 4 (“Payee to pay tax not withheld by payer or agent”) by the deletion of “within thirty days of the date of payment of the fees” and the substitution of “within fifteen days of the date of payment of the fees”.

### **30 Amendment of Eighteenth Schedule to Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, the Eighteenth Schedule (“Non-Residents’ Tax on Remittances”) to the Income Tax Act [*Chapter 23:06*] is amended in paragraph 2 (“Non-resident persons to pay tax”) by the deletion of “within thirty days of the date of remittance” and the substitution of “within fifteen days of the date of remittance”.

### **31 Amendment of Nineteenth Schedule to Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, the Nineteenth Schedule (“Non-Residents’ Tax on Royalties”) to the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in paragraph 2 (“Payers to withhold tax”) (1) by the deletion of “within thirty days of the date of payment” and the substitution of “within fifteen days of the date of payment”;
- (b) in paragraph 3 (“Agents to withhold tax not deducted by payer”) (1) by the deletion of “within thirty days of the date of receipt of the royalties” and the substitution of “within fifteen days of the date of receipt of the royalties”;
- (c) in paragraph 4 (“Payee to pay tax not withheld by payer or agent”) by the deletion of “within thirty days of the date of payment of the royalties” and the substitution of “within fifteen days of the date of payment of the royalties”.

### **32 Amendment of Twenty-First Schedule to Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2007, the Twenty-First Schedule (“Residents’ Tax on Interest”) to the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in paragraph 2 (“Financial institutions to withhold tax”) (1) by the deletion of “on or before the last day of the month following the month in which the payment was made” and the substitution of “on or before the fifteenth day of the month following the month in which the payment was made”;
- (b) in paragraph 3 (“Agents to withhold tax not deducted by payee”) (1) by the deletion of “on or before the last day of the month following the month in which the interest was received” and the substitution of “on or before the fifteenth day of the month following the month in which the interest was received”;

- (c) in paragraph 4 ("Payee to pay tax not withheld by payer or agent") by the deletion of "on or before the last day of the month following the month in which the payment was made" and the substitution of "on or before the fifteenth day of the month following the month in which the payment was made".

### **33 New Schedules inserted in Cap. 23:06**

With effect from the year of assessment beginning on the 1st January, 2006, the Income Tax Act [*Chapter 23:06*] is amended by the insertion after the Twenty-Ninth Schedule of the following Schedule—

#### “THIRTY-THIRD SCHEDULE (SECTIONS 36J AND 97C)

##### TAX ON NON-EXECUTIVE DIRECTOR'S FEES

###### *Interpretation*

1.(1) In this Schedule, subject to subparagraph (2)—

"corporate body" means any body or association incorporated or registered under any law relating to asset managers, banks, building societies, unit trust schemes, companies, financial institutions, insurers or pension funds or under a special law;

"director", in relation to a corporate body, means a person, by whatever name he or she may be called, who—

- (a) controls or governs that corporate body: or
- (b) is a member of a body or group of persons which controls or governs that corporate body; or

and includes any person occupying the position of director or alternate director of a body corporate;

"non-executive director's fees" means any remuneration of a director paid by the corporate body of which he or she is a director—

- (a) that is excluded for the purposes of employees' tax by virtue of paragraph (b) of the definition of "remuneration" in paragraph 1(1) of the Thirteenth Schedule; or
- (b) from which employees' tax is not withheld in terms of the Thirteenth Schedule for any reason;

"tax" means tax on non-executive director's fees.

###### *Payers to withhold tax*

2.(1) Every payer of non-executive director's fees to a director shall withhold tax from those fees and shall pay the amount withheld to the Commissioner within fifteen days of the date of payment or within such further time as the Commissioner may for good cause allow.

(2) Where tax is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

- (a) the amount of the non-executive director's fees; and



- (b) the amount of tax withheld.

*Agents to withhold tax not deducted by payer*

3.(1) Every agent who receives on behalf of a payee non-executive director's fees from which tax has not been withheld by the payer, shall withhold tax from those fees and shall pay the amount withheld to the Commissioner within fifteen days of the receipt of the fees.

(2) Where tax is withheld in terms of subparagraph (1), the agent shall provide the payee with a certificate in a form approved by the Commissioner, showing—

- (a) the name of the payer; and
- (b) the amount of the non-executive director's fees; and
- (c) the amount of tax withheld.

(3) For the purposes of this paragraph, a person shall be deemed to be the agent of a payee and to have received non-executive director's fees on behalf of that payee if—

- (a) that person's address appears in the payer's records as the address of the payee; and
- (b) the warrant or cheque in payment of the fees is delivered at that person's address;

*Payee to pay tax not withheld by payer or agent*

4. A payee to whom non-executive director's fees have been paid from which tax has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section 77 shall pay to the Commissioner within fifteen days of the date of payment of the fees the tax that should have been withheld.

*Returns to be furnished*

5. Payment of tax on fees by a payer or an agent shall be accompanied by a return in the form prescribed.

*Penalty for non-payment of tax*

6.(1) Subject to subparagraph (2), a payer or an agent in Zimbabwe who fails to withhold tax or pay to the Commissioner any amount of tax as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

- (a) the amount of the tax which the payer or agent, as the case may be, failed to pay to the Commissioner; and
- (b) a further amount equal to such tax.

(2) The Commissioner, if he or she is satisfied in any particular case that the failure to pay to him or her tax was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he or she thinks fit or repay the whole or such part as he or she thinks fit of the amount referred to in subparagraph (1)(b).

*Refund of tax*

7. If it is proved to the satisfaction of the Commissioner that any person has been charged with tax in excess of the amount properly chargeable in terms of this Schedule, the Commissioner shall authorise a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorise any refund in terms of this paragraph unless the claim therefor is made within three years of the date of payment of such tax.

## THIRTY-FOURTH SCHEDULE (Section 37B)

## ADVANCE TAX RULINGS

*Interpretation*

1. In this Schedule—

“advance tax ruling” means a written statement in the form of a binding general ruling, binding private ruling or binding class ruling issued by the Commissioner-General regarding the interpretation or application of the Act;

“applicant” means a person who applies for a binding private ruling or a binding class ruling;

“binding class ruling” means an advance tax ruling issued in response to an application by an applicant regarding the application or interpretation of this Act as it affects a specific class of persons;

“binding general ruling” means an advance tax ruling, issued in accordance with the requirements of this Act;

“binding private ruling” means an advance tax ruling issued in response to an application by an applicant regarding the application or interpretation of this Act in respect of a proposed transaction as it affects the applicant alone;

“class member” means a member of the class to which a binding class ruling applies, such as a shareholder in a company or an employee participant in a share investment scheme;

“entity” means a person, other than a natural person, which may apply for a binding class ruling on behalf of its shareholders or members in respect of a proposed transaction to which it is a party and includes a company, private business corporation, cooperative society or trade association:

Provided that an entity does not include a professional firm acting or purporting to act on behalf of a client;

“nonbinding private opinion” means a written statement issued by the Commissioner-General in response to an inquiry by a person in order to provide the person with informal guidance in respect of the tax treatment of a particular set of facts and circumstances or transaction, but which does not have any binding effect;

“transaction” means any transaction, deal, business, arrangement, operation or scheme, and includes a series of transactions.

*Application for advance tax ruling*

2.(1) Subject to the minimum requirements set forth in subparagraph (2), an application an advance tax ruling must be made in such manner and in such form as the Commissioner-General may prescribe, and be accompanied by the fee prescribed in terms of section 90, if any.

- (2) An application must state the following minimum information—
- (a) applicant’s name, postal address and telephone number; and
  - (b) the name, postal address and telephone number of the applicant’s representative, if any; and
  - (c) a complete description of the proposed transaction in respect of which the ruling is sought; and
  - (d) a complete description of the impact the proposed transaction may have upon the tax liability of the applicant or, where relevant, any connected person in relation to the applicant, including any and all relevant information regarding the financial or tax implications of the proposed transaction; and
  - (e) a complete description of any transactions entered into by the applicant prior to submitting the application or that may be taken after the completion of the proposed transaction which may have a bearing on the tax consequences of the proposed transaction or may be considered to be part of a series of transactions involving the proposed transaction; and
  - (f) the proposed ruling being sought; and
  - (g) a citation of the relevant statutory provisions or issues; and
  - (h) the reasons why the applicant believes that the proposed ruling should be made; and
  - (i) a statement of the applicant’s interpretation of the relevant statutory provisions or issues, as well as an analysis of any relevant authorities either considered by the applicant or of which the applicant is aware, whether those authorities support or are contrary to the proposed ruling being sought; and
  - (j) a statement that, to the best of the applicant’s knowledge, the same or substantially the same or a substantially similar issue upon which a ruling is sought is not the subject of an audit, examination, investigation, ruling application, objection and appeal, or other proceeding currently before the Commissioner-General or the courts involving the applicant or a connected person in relation to the applicant; and
  - (k) a draft version of the binding private ruling or binding class ruling to be issued; and

- (l) a description of the information that the applicant believes should be deleted from the final ruling before the publication of the ruling in order to protect the applicant's confidentiality; and
- (m) the applicant's consent to the publication of the ruling by the Commissioner-General.

(3) In addition to the minimum information required by subparagraph (2), an application for a binding class ruling must also state the following minimum information—

- (a) a description of the class members concerned; and
  - (b) the impact the proposed transaction may have upon the liability of the class members or, where relevant, any connected person in relation to the applicant or to any class member.
- (4) The Commissioner-General may request additional from an applicant at any time.

*Cases where applications for advance tax ruling must be rejected*

3.(1) Notwithstanding the foregoing provisions, the Commissioner-General shall not accept an application for advance tax ruling in any of the following circumstances—

- (a) where the application requests or requires the rendering of an opinion, conclusion or determination regarding or in respect of any of the following—
  - (i) the market value of an asset; or
  - (ii) the application or interpretation of the laws of a foreign country; or
  - (iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant (or to a class member in the case of an application for a binding class ruling); or
  - (iv) the constitutionality of any tax law; or
  - (v) a proposed transaction that is hypothetical or not seriously contemplated;
- (b) where the application relates to the duty of an employer to determine whether a person is a casual, part-time or full-time employee, or an independent contractor; or
- (c) where the application is submitted for academic purposes; or
- (d) where the application presents, contains, or raises—
  - (i) a frivolous or vexatious issue; or
  - (ii) alternative courses of action by the applicant (or requests or requires the rendering of an opinion, conclusion or determination regarding such alternative courses of action); or
  - (iii) an issue that is the same as or substantially similar to an issue that is—
    - A. the subject of an audit, examination, investigation or other proceeding by the Commissioner-General involving the applicant

(or, in the case of a binding class ruling, in relation to the applicant or any class member); or

B. the subject of any draft legislation; or

C. pending before the courts.

(2) In addition to the rejections set forth in subparagraph (1), the Commissioner may reject any application regarding or in respect of the following—

(a) the application or interpretation of any general or specific anti-avoidance provision; or

(b) an issue—

(i) that is inherently or distinctly factual in nature; or

(ii) in respect of which material facts cannot be established at the time of application; or

(iii) the resolution of which would depend upon assumptions to be made regarding a future event or other matters which cannot be reasonably determined at the time of the application; or

(iv) which would more appropriately dealt with by the competent authorities of the parties to the agreement for the avoidance of double taxation; or

(v) which is the same as or substantially similar to an issue upon which the applicant has already received a ruling; or

(vi) in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction and that other party has not applied for a ruling; or

(vii) in respect of a transaction that is part of another transaction which has a bearing on that issue and the details of that other transaction have not been disclosed;

or

(c) a matter the resolution of which would be unduly time-consuming or resource-consuming or resource-intensive;

(3) In addition to the rejections set forth in subparagraphs (1) and (2), the Commissioner-General may publish lists of issues in respect of which applications for advance tax rulings will not be accepted

(4) If the Commissioner-General requests additional information in respect of or in connection with an application and the applicant fails or refuses to provide that information, the Commissioner-General may reject that application without any refund or rebate of any applicable fees.

*Binding effect of advance tax rulings*

4.(1) The Commissioner-General must interpret or apply the Act in favour of the applicant or otherwise in accordance with the advance tax ruling given.

(2) An advance tax ruling does not have any binding effect upon the Commissioner-General in relation to future cases.

(3) A binding general ruling may be cited by the Commissioner-General or any person in any proceedings before the Commissioner-General or the courts.

(4) A binding private ruling may not be cited in any proceeding before the Commissioner or the courts other than a proceeding involving the applicant for that ruling.

(5) A binding class ruling may not be cited in any proceeding before the Commissioner or the courts by any person other than a proceeding involving the applicant for that ruling or an affected class member identified in the ruling.

(6) A publication or other written statement issued by the Commissioner-General does not have any binding effect unless it is an advance tax ruling.

*Nonbinding private opinions and other written statements*

5.(1) The Commissioner-General may issue a nonbinding private opinion to a person regarding the tax treatment of a particular set of facts and circumstances or a particular transaction.

(2) A nonbinding private opinion may not be cited in any proceeding before the Commissioner-General or the courts other than a proceeding involving the person to whom the nonbinding private opinion was issued.

(3) Any written statement issued by the Commissioner-General interpreting or applying this Act prior to the 1st January, 2007, is to be treated as and have the effect of a nonbinding private opinion, unless the Commissioner-General prescribes otherwise in writing.

*Conditions for the applicability of advance tax rulings*

6.(1) An advance tax ruling applies to a person only if all of the following conditions have been satisfied—

- (a) the provision or provisions of the Act at issue are the subject of the advance tax ruling; and
- (b) the set of facts and circumstances of transaction presented by the person are the same as the particular set of facts and circumstances governed by the advance tax ruling;
- (c) the set of facts and circumstance of the transaction fall entirely within the effective period of the advance tax ruling; and
- (d) any assumptions made or conditions imposed by the Commissioner-General in connection with the validity of the advance tax ruling have been satisfied or carried out.

(2) In addition to the requirements set forth in subparagraph (1)—

- (a) in the case of a binding private ruling, the ruling applies to a person only if that person is the applicant identified in the ruling; and

- (b) in the case of a binding class ruling, the ruling applies to a person only if that person is either the applicant identified in the ruling or a class member identified in the ruling

*Rulings rendered void due to fraud, misrepresentation, etc.*

7.(1) A binding private ruling or a binding class ruling is nullified under any of the following circumstances—

- (a) the facts stated in the application regarding the proposed transaction are materially different from the transaction actually carried out; or
- (b) there is a misrepresentation or wilful nondisclosure of a material fact; or
- (c) any condition or assumption stipulated by the Commissioner-General as a condition of the issue or binding effect of the ruling is not satisfied or carried out.

(2) For purposes of this paragraph, a fact is considered material if it would have resulted in a different ruling had the Commissioner-General been aware of it when the original ruling was made.

*Impact of subsequent changes in tax law*

8(1) An advance tax ruling ceases to be effective upon the occurrence of any of the following circumstances—

- (a) if the provision of the Act that was the subject of the advance tax ruling is repealed or amended, the advance tax ruling will cease to be effective from the date such repeal or amendment is effective;
- (b) if a court overturns or modifies an interpretation of the Act on which the advance tax ruling is based, the advance tax ruling will cease to be effective from the date of the court's judgment unless—
  - (i) the decision is under appeal; or
  - (ii) the decision is fact-specific and the general interpretation upon which the advance tax ruling was based is unaffected; or
  - (iii) the reference to the interpretation upon which the advance tax ruling was based was *obiter dicta*.

(2) An advance tax ruling ceases to be effective immediately upon the occurrence of the circumstances described in subparagraph (1), whether or not the Commissioner-General publishes a notice of withdrawal or modification.

*Withdrawal or modification*

9.(1) Subject to this paragraph, the Commissioner-General may withdraw or modify an advance tax ruling at any time.

(2) Notification of the withdrawal or modification of an advance tax ruling must be communicated in such a manner as the Commissioner-General considers will notify the persons affected by it and must include the following information—

- (a) the title or number of the advance tax ruling being withdrawn or modified; and

- (b) if modification, a summary of the changes made; and
- (c) the effective date (which may be a retrospective date) of the withdrawal or modification.

(3) If the advance tax ruling is either a binding private ruling or a binding class ruling, the Commissioner-General must first provide the applicant with notice of the proposed withdrawal or modification and a reasonable opportunity to state any proposition of law or fact relevant to the decision to withdraw or modify the ruling.

*Binding general rulings*

10.(1) The Commissioner may, at any time, make binding general rulings.

(2) A binding general ruling may be effective for either—

- (a) a particular year of assessment or other definite period; or
- (b) an indefinite period.

(3) A binding general ruling must state—

- (a) that it is a binding general ruling made under this paragraph; and
- (b) the provisions of the Act which are the subject of the binding general ruling; and
- (c) either—
  - (i) the year of assessment or other definite period for which it applies; or
  - (ii) in the case of a binding general ruling for an indefinite period, that it is for an indefinite period and the date or year of assessment from or beginning with which it applies.

(4) Subject to subparagraph (3), binding general rulings may be issued in such form and in such manner as the Commissioner-General may prescribe, including but not limited to interpretation notes and practice notes.

(5) A publication or other written statement shall not be considered as a binding general ruling unless it contains the information prescribed by subparagraph (3).

*Binding private rulings*

11.(1) The Commissioner-General may issue binding private rulings regarding the application or interpretation of any of the provisions of this Act to a proposed transaction upon application by a person in accordance with paragraph 2.

(2) The Commissioner-General may make a binding private ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner-General must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding private ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner-General must issue the final binding private ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued.



(5) A binding general ruling must contain—

- (a) a statement identifying it as a binding private ruling made under this paragraph;
- (b) the name, tax number and postal address of the applicant;
- (c) a citation of the relevant statutory provisions or issues;
- (d) a description of the proposed transaction;
- (e) the specific ruling made;
- (f) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling; and
- (g) the period for which the ruling is valid.

(6) Subject to subparagraph (5), a binding private ruling may be issued in such manner and in such form as the Commissioner-General may prescribe.

*Binding class rulings*

12.(1) The Commissioner-General may issue binding class rulings regarding the application or interpretation of a provision of the Act to a proposed transaction upon application by a person in accordance with paragraph 2.

(2) The Commissioner-General may make a binding class ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner-General must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding class ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner-General must issue the final binding class ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued.

(5) A binding class ruling must contain—

- (a) a statement identifying it as a binding class ruling made under this paragraph;
- (b) the name, tax number and postal address of the applicant;
- (c) a list or a description of the affected class members;
- (d) a citation of the relevant statutory provisions or issues;
- (e) a description of the proposed transaction;
- (f) the specific ruling made;
- (g) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling; and
- (h) the period for which the ruling is valid.

(6) Subject to subparagraph (5), a binding class ruling may be issued in such manner and in such form as the Commissioner-General may prescribe

(7) Prior to final publication, the Commissioner must provide the applicant with a draft copy of the edited ruling for review and comment.

(8) It is the sole and exclusive responsibility of the applicant to communicate with the affected class members regarding the application for the binding class ruling, the issuance, withdrawal or modification of such ruling, or any other information or matters pertaining to such ruling.

*Procedures and guidelines*

13. The Commissioner may issue procedures and guidelines, in the form of binding general rulings, for the implementation and operation of the advance tax ruling system established by this Schedule.”.

PART III

STAMP DUTIES

**34 Amendment of Schedule to Chapter II of Cap. 23:04**

With effect from the 1st January, 2007, the Schedule (“Stamp Duty on Instruments and other Matters”) to Chapter II of the Finance Act [*Chapter 23:04*] is amended in item 3 by the deletion of “10 00” and the substitution of “100 00”.

PART IV

ESTATE DUTY

**35 Amendment of Schedule to Chapter VI of Cap. 23:04**

With effect from the 1st January, 2007, the Schedule to Chapter VI of the Finance Act [*Chapter 23:04*] is amended in paragraph 6E by the repeal of proviso (ii) thereto and the substitution of—

“(ii) only such portion of the value of the property included in the estate as exceeds one hundred million dollars shall be deemed to be the dutiable amount.”.

PART V

CAPITAL GAINS TAX

**36 Amendment of section 11 of Cap 23:01**

With effect from the year of assessment beginning on the 1st January, 2007, section 11 (“Deductions allowed in determination of capital gain”) of the Capital Gains Tax Act [*Chapter 23:01*] is amended in subsection (2) by the repeal of paragraph (c) and the substitution of—

“(c) in respect of the year of assessment beginning on the 1st January, 2007, and any subsequent year of assessment, an amount determined in accordance with the following formula:

$$\frac{A - B}{B}$$

where—

- A represents the figure for the All Items Consumer Price Index issued by the Central Statistics Office at the time of disposal of the property
- B represents the figure for the All Items Consumer Price Index issued by the Central Statistics Office in the month of effecting improvements or month of purchase of the property.”.

### **37 Amendment of section 21 of Cap. 23:01**

With effect from the 1st January, 2007, section 21 (“Provisions for the sale of principal private residences”) (1) of the Capital Gains Tax Act [*Chapter 23:01*] is amended—

- (a) in subsection (1) by the insertion of the following definition—
  - “residential stand”, in relation to an individual, means any land, whether or not it is a piece of land registered as a separate entity in a Deeds Registry, which—
    - (a) is owned by the individual concerned; and
    - (b) is proved to the satisfaction of the Commissioner to be intended for the building of a principal private residence thereon;”;
- (b) in subsections (2) and (3) by the insertion after “principal private residence” wherever it occurs of “residential stand”.

### **38 Amendment of section 23 of Cap. 23:01**

With effect from the 1st January, 2007, section 23 (“Application of provisions of Taxes Act relating to returns and assessments”) of the Capital Gains Tax Act [*Chapter 23:01*] is amended by the insertion of the following paragraph after paragraph (o)—

- “(o1) Part VIIIA relating to application of information technology for the purposes of the Taxes Act;”.

## PART VI

### VALUE ADDED TAX

### **39 Amendment of section 2 of Cap. 23:12**

Section 2 (“Interpretation”) (1) of the Value Added Tax Act [*Chapter 23:12*] is amended in the definition of “financial services” by the repeal of paragraph (g) and the substitution of—

- “(g) the services of an actuary, insurance agent, insurance broker as defined in the Insurance Act [*Chapter 24:07*] or fund administrator as defined in the Pension and Provident Funds Act [*Chapter 24:09*], to the extent that those services are rendered to or on behalf of an insurer registered in terms of the Insurance Act [*Chapter 24:07*] or to or on behalf of a pension fund registered in terms of the Pension and Provident Funds Act [*Chapter 24:09*].”.

**40 Amendment of section 28 of Cap. 23:12**

With effect from the 1st January, 2007, section 28 (“Returns and payment of tax”) (1) of the Value Added Tax Act [*Chapter 23:12*] is amended by the deletion of “last day of the first month” and the substitution of “twentieth day of the first month”.

**41 Amendment of section 32 of Cap. 23:12**

With effect from the 1st January, 2007, section 32 (“Objections to certain decisions or assessments”) (4) of the Value Added Tax Act [*Chapter 23:12*] is amended in the proviso thereto by the deletion of “six months” and the substitution of “three months”.

**42 New Part inserted in Cap. 23:06**

With effect from the 1st January, 2007, the Value Added Tax Act [*Chapter 23:12*] is amended by the insertion after Part X of the following Part—

“PART XA

APPLICATION OF INFORMATION TECHNOLOGY TO ACT

“68A Interpretation in Part XA

In this Part—

“access”, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;

“affixing a digital signature”, in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;

“computer” means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetical and memory functions by manipulation of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;

“computer network” means the interconnection of one or more computers through—

- (a) the use of satellite, microwave, terrestrial line or other communication media; and
- (b) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

“computer system”, means a device or collection of devices, including input and output devices capable of being used with external files, which contains computer programmes, electronic instructions and input and output data, and that performs logic, arithmetical, data storage and retrieval, communication control and other functions;

“digital signature” means an electronic signature created by computer that is intended by the registered user using it and by the Commissioner accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in section 68F(1);

“electronic data” means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;

“electronic record or communication” means electronic data that is recorded, received or sent in an electronic form or in microfilm or computer-generated microfiche;

“intermediary”, with respect to any particular electronic communication, means any person who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;

“Internet” has the meaning given to that word by the Postal and Telecommunications Act [*Chapter 12:05*];

“originator”, means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

“registered user” means a person registered in terms of section 68E;

“user agreement” means the agreement between the registered user and the Commissioner referred to in section 68D.

## **68B Use of electronic data generally as evidence**

(1) Notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

- (a) on the sole ground that it is electronic data; or
- (b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(2) Information in the form of electronic data shall be given due evidential weight.

(3) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

- (a) the reliability of the manner in which the data was generated, stored and communicated; and
- (b) the reliability of the manner in which the integrity of the data was maintained; and
- (c) the manner in which its originator was identified.

### 68C Establishment of computer systems for tax purposes

The Commissioner may, notwithstanding anything to the contrary in this Act, establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including—

- (a) the despatch and receipt and processing of any return, record, assessment, receipt, invoice, bill of entry, credit or debit note, declaration, form, notice, statement or other document relating to any amount liable to tax; and
- (b) the electronic processing of any return, record, assessment, receipt, invoice, bill of entry, credit or debit note, declaration, form, notice, statement or other document.

### 68D User agreements

(1) The Commissioner may, for the purpose of regulating communication through a computer system established in terms of section 68C, prescribe the form of a user agreement to be entered between the Zimbabwe Revenue Authority and registered users.

(2) A user agreement shall set out—

- (a) the terms and conditions governing communication through a computer system established in terms of section 68C, including—
  - (i) the use by registered users of computer equipment and facilities of a class or kind specified in the agreement;
  - (ii) the allocation to a registered user of a digital signature by the Commissioner;
  - (iii) the requirement that registered users ensure the security of the digital signatures allocated to them in the manner specified in the agreement;
- (b) the manner of affixing a digital signature to any electronic communication or record;
- (c) the conditions of reasonable access to the computer system of the registered user by the Commissioner for such verification and audit purposes as may be required by this Act;
- (d) the manner and period of keeping electronic records that are necessary or convenient to be kept in connection with a computer system established in terms of section 68C.

### 68E Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Commissioner through a computer system established in terms of section 68C unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Commissioner may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Commissioner is satisfied that the applicant—

- (a) is a clearing agent licensed under this Act, or is a person who will make regular use of the computer system established in terms of section 68C;
- (b) will introduce adequate measures to—
  - (i) prevent disclosure of the digital signature allocated to him or her by the Commissioner to any person not authorised to affix such signature;
  - (ii) safeguard the integrity of information communicated through a computer system established in terms of section 68C, apart from any change which may occur in the normal course of such communication or during storage and display of such information;
- (c) will maintain the standard of reliability of his or her own computer system required in accordance with the requirements of the user agreement;

the Commissioner may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (3), the Commissioner is satisfied that a registered user—

- (a) has not complied with the requirements of his or her user agreement or with any condition or obligation imposed by the Commissioner in respect of such registration;
- (b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;
- (c) fails to make regular use of the computer system established in terms of section 68C;
- (d) has contravened or failed to comply with any provision of this Act;
- (e) has been convicted of an offence under this Act;
- (f) has been convicted of an offence involving dishonesty;
- (g) is sequestrated or liquidated;
- (h) no longer ceases to be a registered operator;

the Commissioner may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Commissioner shall—

- (a) give notice to the registered user of the proposed cancellation or suspension; and
- (b) provide the reasons for the proposed cancellation or suspension; and

- (c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

#### 68F Digital signatures

(1) Every digital signature intended for use in connection with a computer system established in terms of section 68C shall comply with the following requirements, namely, it must—

- (a) be unique to the registered user and under the sole control of the registered user; and
  - (b) be capable of verification; and
  - (c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and
  - (d) be in complete conformity with the requirements prescribed by the Commissioner and contained in the user agreement.
- (2) The Commissioner shall, on registering a user, allocate to the registered user—
- (a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or
  - (b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

#### 68G Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

- (a) the information contained therein remains accessible so as to be subsequently usable; and
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
- (c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

#### 68H Sending and receipt of electronic communications

(1) An electronic communication through a computer system established in terms of section 68C or the record of such communication shall be attributed to the originator—

- (a) if it was sent by the originator; or
- (b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or



(c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Commissioner and a registered user have not agreed that an acknowledgment of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by—

- (a) any communication by the Commissioner, electronic or otherwise; or
- (b) conduct by the Commissioner or any officer sufficient to indicate to the registered user that the electronic communication has been received.

(3) Where the Commissioner and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication [*, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication*]<sup>1</sup> shall be deemed not to have been sent.

(4) As between a computer system established in terms of section 68C and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

- (a) where the electronic communication is by a registered user, at any office of the Zimbabwe Revenue Authority, or of the Commissioner, to whichever it was addressed, and such office shall be the place of receipt; or
- (b) if the electronic communication is sent by the Zimbabwe Revenue Authority or the Commissioner to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any return, record, assessment, receipt, invoice, bill of entry, credit or debit note, declaration, form, notice, statement or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Zimbabwe Revenue Authority or the Commissioner, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Commissioner and the registered user.

(7) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically any return, record, assessment, receipt, invoice, bill of entry, credit or debit note, declaration, form, notice, statement or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Commissioner may

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<sup>1</sup> Words in italics between the brackets omitted from printed Act. Veritas.

stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

#### 68I Obligations, indemnities and presumptions with respect to digital signatures

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Commissioner in writing of that fact without delay.

(2) No liability shall attach to the Commissioner, the Zimbabwe Revenue Authority or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Commissioner or the Zimbabwe Revenue Authority—

- (a) without the authority of the registered user to whom such signature was allocated; and
- (b) before notification to the Commissioner or the Zimbabwe Revenue Authority by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Commissioner or the Zimbabwe Revenue Authority shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Zimbabwe Revenue Authority is a party, the question arises whether a digital signature affixed to any electronic communication to the Commissioner or the Zimbabwe Revenue Authority was used in such communication with or without the consent and authority of the registered user, it shall be presumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

#### 68J Alternatives to electronic communication in certain cases

(1) Whenever a computer system established in terms of section 68C or any other computer system of a registered user is inoperative, the registered user and the Commissioner shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Commissioner may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

#### 68K Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Commissioner or the Zimbabwe Revenue Authority without the authority of such registered user, commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

- (a) makes a false electronic record or falsifies an electronic record; or
- (b) dishonestly or fraudulently—
  - (i) makes, affixes any digital signature to, transmits or executes an electronic record or communication; or
  - (ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.”.

## PART VII

### CUSTOMS AND EXCISE

#### **43 New Part inserted in Cap. 23:02**

With effect from the 1st January, 2007, the Customs and Excise Act [*Chapter 23:02*] is amended by the insertion after Part X of the following Part—

#### “PART XA

##### APPLICATION OF INFORMATION TECHNOLOGY TO CUSTOMS PROCESSES

#### “98A Interpretation in Part XA

In this Part—

“access”, means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;

“affixing a digital signature”, in relation to an electronic record or communication, means authenticating the electronic record or communication by means of a digital signature;

“computer” means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or a computer network;

“computer network” means the interconnection of one or more computers through—

- (a) the use of satellite, microwave, terrestrial line or other communication media; and
- (b) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

“computer system”, means a device or collection of devices, including input and output devices capable of being used with external files which contain computer programmes, electronic instructions, input and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

“digital signature” means an electronic signature created by computer that is intended by the registered user using it and by the Commissioner accepting it to have the same effect as a manual signature, and which complies with the requirements for acceptance as a digital signature specified in section 98F(1);

“electronic data” means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;

“electronic record or communication” means electronic data that is recorded, received or sent in an electronic form or in microfilm or computer-generated microfiche;

“intermediary”, with respect to any particular electronic communication, means any person who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;

“Internet” has the meaning given to that word by the Postal and Telecommunications Act [*Chapter 12:05*];

“originator”, means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

“registered user” means a person registered in terms of section 98E;

“user agreement”, means the agreement between the registered user and the Commissioner referred to in section 98D.

#### 98B Use of electronic data generally as evidence

(1) Notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

- (a) on the sole ground that it is electronic data; or
- (b) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(2) Information in the form of electronic data shall be given due evidential weight.

(3) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

- (a) the reliability of the manner in which the data was generated, stored and communicated; and

- (b) the reliability of the manner in which the integrity of the data was maintained; and
- (c) the manner in which its originator was identified.

#### 98C Establishment of computer systems for customs processing purposes

The Commissioner may, notwithstanding anything to the contrary in this Act, establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including—

- (a) the electronic processing of any document; and
- (b) the receipt and processing of reports and other documents relating to the arrival and departure of vehicles, vessels and aircraft and their passengers and cargo and the control of such passengers and cargo; and
- (c) the accounting for the receipt, clearance and release of goods, the storage of goods in customs warehouses or other places and the removal or carriage of goods for any purpose under this Act; and
- (d) the accounting for the production or manufacture of any goods in compliance with any procedure prescribed by or under this Act.

#### 98D User agreements

(1) The Commissioner may, for the purpose of regulating communication through a computer system established in terms of section 98C, prescribe the form of a user agreement to be entered between the Zimbabwe Revenue Authority and registered users.

(2) A user agreement shall set out—

- (a) the terms and conditions governing communication through a computer system established in terms of section 98C, including—
  - (i) the use by registered users of computer equipment and facilities of a class or kind specified in the agreement;
  - (ii) the allocation to a registered user of a digital signature by the Commissioner;
  - (iii) the requirement that registered users ensure the security of the digital signatures allocated to them in the manner specified in the agreement;
- (b) the manner of affixing a digital signature to any electronic communication or record;
- (c) the conditions of reasonable access to the computer system of the registered user by the Commissioner for such verification and audit purposes as may be required by this Act;
- (d) the manner and period of keeping electronic records that are necessary or convenient to be kept in connection with a computer system established in terms of section 98C.

### 98E Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Commissioner through a computer system established in terms of section 98C unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Commissioner may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Commissioner is satisfied that the applicant—

- (a) is a clearing agent licensed under this Act, or is a person who will make regular use of the computer system established in terms of section 98C;
- (b) will introduce adequate measures to—
  - (i) prevent disclosure of the digital signature allocated to him or her by the Commissioner to any person not authorised to affix such signature;
  - (ii) safeguard the integrity of information communicated through a computer system established in terms of section 98C, apart from any change which may occur in the normal course of such communication or during storage and display of such information;
- (c) will maintain the standard of reliability of his or her own computer system required in accordance with the requirements of the user agreement.

the Commissioner may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (2), the Commissioner is satisfied that a registered user—

- (a) has not complied with the requirements of his or her user agreement with any condition or obligation imposed by the Commissioner in respect of such registration;
- (b) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;
- (c) fails to make regular use of the computer system established in terms of section 98B;<sup>2</sup>
- (d) has contravened or failed to comply with any provision of this Act;
- (e) has been convicted of an offence under this Act;
- (f) has been convicted of an offence involving dishonesty;

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<sup>2</sup> Should be 98C. Veritas.

- (g) is sequestrated or liquidated;
- (h) no longer carries on the business for which the registration was issued;

the Commissioner may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Commissioner shall—

- (a) give notice to the registered user of the proposed cancellation or suspension; and
- (b) provide the reasons for the proposed cancellation or suspension; and
- (c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

#### 98F Digital signatures

(1) Every digital signature intended for use in connection with a computer system established in terms of section 98C shall comply with the following requirements, namely, it must—

- (a) be unique to the registered user and under the sole control of the registered user; and
- (b) be capable of verification; and
- (c) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and
- (d) be in complete conformity with the requirements prescribed by the Commissioner and contained in the user agreement.

(2) The Commissioner shall, on registering a user, allocate to the registered user—

- (a) if the user is a natural person, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or
- (b) if the user is not a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

(3) Where the registered user is a clearing agent licensed under this Act, no employee of such agent who is not licensed as a clearing agent shall be allocated a digital signature.

#### 98G Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

- (a) the information contained therein remains accessible so as to be subsequently usable; and

- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received; and
- (c) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

#### 98H Sending and receipt of electronic communications

(1) An electronic communication through a computer system established in terms of section 98C or the record of such communication shall be attributed to the originator—

- (a) if it was sent by the originator; or
- (b) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or
- (c) if it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Commissioner and a registered user have not agreed that an acknowledgment of receipt of electronic communication be given in any particular form or by any particular method, an acknowledgement may be given by—

- (a) any communication by the Commissioner, electronic or otherwise; or
- (b) conduct by the Commissioner or any officer sufficient to indicate to the registered user that the electronic communication has been received.

(3) Where the Commissioner and the registered user have agreed that an electronic communication shall be binding only on the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(4) As between a computer system established in terms of section 98C and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

- (a) where the electronic communication is by a registered user, at any office of the Zimbabwe Revenue Authority, or of the Commissioner, to whichever it was addressed, and such office shall be the place of receipt; or
- (b) if the electronic communication is sent by the Zimbabwe Revenue Authority or the Commissioner to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any manifest, bill of entry, return, prescribed form, document, schedule, application, declaration, statement, report, notice or the like, which is required to be submitted and signed in terms of



this Act, such signature electronically affixed to such electronic communication and communicated to the Zimbabwe Revenue Authority or the Commissioner, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Commissioner and the registered user.

(7) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically any manifest, bill of entry, return, prescribed form, document, schedule, application, declaration, statement, report, notice or the like, which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Commissioner may stipulate or prescribe, this section shall apply to the submission of the foregoing documents using the Internet.

#### 98I Obligations, indemnities and presumptions with respect to digital signatures

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner the registered user shall inform the Commissioner in writing of that fact without delay.

(2) No liability shall attach to the Commissioner, the Zimbabwe Revenue Authority or any officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Commissioner or the Zimbabwe Revenue Authority—

- (a) without the authority of the registered user to whom such signature was allocated; and
- (b) before notification to the Commissioner or the Zimbabwe Revenue Authority by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Commissioner or the Zimbabwe Revenue Authority shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Zimbabwe Revenue Authority is a party, the question arises whether an digital signature affixed to any electronic communication to the Commissioner or the Zimbabwe Revenue Authority was used in such communication with or without the consent and authority of the registered user, it shall be assumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

#### 98J Alternatives to electronic communication in certain cases

(1) Whenever a computer system established in terms of section 98C or any other computer system of a registered user is inoperative, the registered user and the Commissioner shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Commissioner may at any time require from any registered user the submission of any original document required to be produced under any of the provisions of this Act.

#### 98K Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Commissioner or the Zimbabwe Revenue Authority without the authority of such registered user, commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

- (a) makes a false electronic record or falsifies an electronic record; or
- (b) dishonestly or fraudulently—
  - (i) makes, affixes any digital signature to, transmits or executes an electronic record or communication;
  - (ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.”.

#### 44 Amendment of section 182 Cap. 23:02

With effect from the 1st January, 2007, the Customs and Excise Act [*Chapter 23:02*] is amended by the insertion in section 182 (“Smuggling”) of the following subsections, the existing section becoming subsection (1)—

“(2) If the smuggling of goods referred to in subsection (1) was discovered by the use of any mechanical scanning device, the person smuggling the goods shall be liable to pay a penalty equivalent to the value of goods in question,

(3) The Commissioner-General may, by action in any court of competent jurisdiction, recover from a person smuggling the goods referred to in subsection (2) the penalty there provided, and such penalty, once recovered, shall form part of the funds of the Zimbabwe Revenue Authority and be used for the purpose of maintaining mechanical scanning devices used by the Authority to detect smuggling.”.

### PART VIII

#### AMENDMENT OF OTHER ACTS AND SAVINGS

#### 45 Amendment of Cap. 21:03

The Gold Trade Act [*Chapter 21:03*] is amended—

- (a) in section 3 (“Prohibition of dealing in or possession of gold”) by the repeal of subsection (3) and the substitution of—

“(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable—

- (a) if there are no special circumstances in the particular case, to imprisonment for a period of not less than five years or more than ten years; or
- (b) if the person convicted of the offence satisfies the court that there are special circumstances in the particular case why the penalty provided under paragraph (a) should not be imposed, which circumstances shall be recorded by the court, to imprisonment for a period not exceeding five years or a fine not exceeding level nine or twice the value of the gold that is the subject-matter of the offence, whichever is the greater, or to both such fine and such imprisonment.

(2) A court sentencing a person under subsection (3)(a) shall not order that the operation of the whole or any part of the sentence be suspended.”;

(b) by the repeal of section 30 and the substitution of—

**“30 Offences and penalties**

(1) If any person contravenes section 4, 5, 7 or 8 he or she shall be guilty of an offence and liable—

- (a) if there are no special circumstances in the particular case, to imprisonment for a period of not less than five years or more than ten years; or
- (b) if the person convicted of the offence satisfies the court that there are special circumstances in the particular case why the penalty provided under paragraph (a) should not be imposed, which circumstances shall be recorded by the court, to imprisonment for a period not exceeding five years or a fine not exceeding level nine or twice the value of the gold that is the subject-matter of the offence, whichever is the greater, or to both such fine and such imprisonment.

(2) A court sentencing a person under subsection (1)(a) shall not order that the operation of the whole or any part of the sentence be suspended.

(3) Any person who is guilty of an offence in terms of this Act other than an offence referred to in subsection (1) or section 3, 6 or 12 shall be liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) On the conviction of any person for an offence under this Act the court shall order that any gold which is the subject of such offence shall be forfeited to the State, unless some person, other than the person convicted, establishes a legal claim thereto within the period mentioned in section 27(3).

(5) The court which has convicted any holder of a licence or permit of an offence under this Act shall cause notification of such conviction to be sent to the Minister.”.

**46 Amendment of Cap. 21:05**

The Mines and Minerals Act [*Chapter 21:05*] is amended in section 368 (“Prospecting prohibited save in certain circumstances”) by the repeal of subsection (4) and the substitution of—

“(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable—

- (a) if there are no special circumstances in the particular case, to imprisonment for a period of not less than two years; or
- (b) if the person convicted of the offence satisfies the court that there are special circumstances in the particular case why the penalty provided under paragraph (a) should not be imposed, which circumstances shall be recorded by the court, to imprisonment for a period not exceeding two years or a fine not exceeding level ten.

(5) A court sentencing a person under subsection (4)(a) shall not order that the operation of the whole or any part of the sentence be suspended.”.

**47 Amendment of Cap. 24:09**

With effect from the 10th November, 2006, the Pension and Provident Funds Act [*Chapter 24:09*] is amended in section 36 (“Regulatory powers of Minister”)—

(a) by the repeal in subsection (2) of paragraph (n) and the substitution of—

“(n) penalties for any contravention of the regulations not exceeding—

- (i) a penalty of level four for each day that the contravention continues up to a maximum of sixty days, where the contravention involves a delay in doing anything required by the regulations;
- (ii) a fine of level six or imprisonment for one year or both such fine and such imprisonment.”;

(b) by the insertion of the following subsections after subsection (2)—

“(3) A penalty imposed by regulations pursuant to subsection (2)(n)(i) shall constitute a debt due to the Insurance and Pensions Commission established in terms of section 3 of the Insurance and Pensions Commission Act [*Chapter 24:21*] (No. 7 of 2000) by the person liable to pay it, and may be recovered by action in a court of competent jurisdiction by proceedings in the name of the Insurance and Pensions Commission.

(4) The Commissioner may waive the payment or refund the whole or any part of any penalty referred to in subsection (3) if he or she is satisfied that the failure of the person to comply with any requirement of these regulations that rendered such person liable to pay the penalty was not due to an intent to evade those provisions or the lack of reasonable care.”.

#### 48 Amendment of Cap. 24:24

With effect from the 22nd August, 2006, the Bank Use Promotion and Suppression of Money Laundering Act [*Chapter 24:24*] (No. 2 of 2004) is amended—

- (a) in section 2 (“Interpretation”) by the repeal of the definition of “cash” and the substitution of—
  - ““cash” means Zimbabwean coins and banknotes that are currently designated as legal tender, and includes any Reserve Bank bearer cheques issued in terms of section 42A of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*];”;
- (b) in section 11 (“Traders and parastatals to bank surplus cash in an account within a certain time”)(1)(b) by the deletion of “ten thousand dollars” wherever it occurs and the substitution of “seven hundred and fifty thousand dollars”;
- (c) in section 12 (“Traders and parastatals to settle certain trade debts otherwise than in cash”) (2) by the deletion of “five thousand dollars” wherever it occurs and the substitution of “seven hundred and fifty thousand dollars”;
- (d) in section 15 (“Maximum cash to be kept by moneylenders”) (1) by the deletion of “five thousand dollars” wherever it occurs and the substitution of “seven hundred and fifty thousand dollars”;
- (e) in section 21 (“Temporary restrictions on cash withdrawals from financial institutions”) (1)—
  - (i) in paragraph (a) by the deletion of “ten thousand dollars” wherever it occurs and the substitution of “one hundred thousand dollars”;
  - (ii) in paragraph (b) by the deletion of “twenty thousand dollars” wherever it occurs and the substitution of “seven hundred and fifty thousand dollars”;
- (f) in section 22 (“Unlawful hoarding of cash” )(1) by the deletion of “ten thousand dollars” wherever it occurs and the substitution of “one hundred thousand dollars”.

#### 49 Amendment of Act No. 6 of 2006

The Finance Act (No. 6 of 2006) is amended—

- (a) in section 3 (“Amendment of section 22B of Cap. 23:04”) by the deletion of “1st August, 2006” and the substitution of “1st September, 2006”;
- (b) in section 4 (“Amendment of section 22E of Cap. 23:04”) by the deletion of “1st August, 2006” and the substitution of “1st September, 2006”;
- (c) in section 5 (“Amendment of section 22H of Cap. 23:04”) by the deletion of<sup>3</sup> the substitution of “1st September, 2006”.

#### 50 References to old currency system in enactments

Every amount in an enactment expressed in terms of the old currency system shall, on and after the 22nd August, 2006, be construed in accordance with the new currency system:

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<sup>3</sup> Words missing. Presumably “1st August, 2006”. Veritas.

In this section “new currency system” and “old currency system” have the meanings given to those terms in section 2(1) of the Presidential Powers (Temporary Measures) (Currency Revaluation) Regulations, 2006, published in Statutory Instrument 199 of 2006.

**51 Saving of powers exercised under SI 199 of 2006**

Every—

- (a) order or direction made; and
- (b) action or decision taken or thing done by the Minister of Finance or the Governor of the Reserve Bank of Zimbabwe or any officer or employee;

in the valid exercise of any power in terms of the Presidential Powers (Temporary Measures) (Currency Revaluation) Regulations, 2006, published in Statutory Instrument 199 of 2006, and anything required to be done or suffered in terms of those regulations, shall, notwithstanding the lapsing of those regulations, be deemed to have been validly made, taken, done or suffered, as the case may be, in terms of this Act.