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H.B. 6, 2012

Gazetted: Friday 23rd November 2012.

FINANCE (NO. 2) BILL, 2012

MEMORANDUM

This Bill will amend the Finance Act [*Chapter 23:04*], the Income Tax Act [*Chapter 23:06*], the Value Added Tax Act [*Chapter 23:12*], the Customs and Excise Act [*Chapter 23:02*], the Air Zimbabwe Corporation (Repeal) Act (No. 4 of 1008) and the Finance Act, 2012 (No. 4 of 2012). In more detail, the individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause will provide for the reduction in rate of residents tax on interest from 15% to 5% in cases where the interest from which the tax is withheld is earned on fixed-term deposits having a tenure of at least 90 days.

Clause 3 and Clause 5(b)

Section 8(1) of the Income Tax Act defines the term "gross income" for the purposes of the Act. Gross income derivable from employment remuneration includes the value of certain benefits (commonly known as "fringe benefits") afforded to employees, such as the value of motor vehicles, loans and accommodation at the employer's expense.

In order to encourage the retention of staff at primary and secondary schools, it is proposed to exclude from the gross income of teaching and non-teaching employees of those schools one half of any "school benefit" they receive from their employers, that is to say, one-half of the waiver of the whole or any portion of the amount of tuition fees, levies and boarding fees that would otherwise be payable by the employees concerned for any of their children or near relatives who are students at any school in which the employees are employed.

Clause 4

In the interests of the reciprocal enforcement of tax assessments and the collection of outstanding taxes as between Zimbabwe and other countries with which the Government of Zimbabwe has concluded double taxation agreements, this clause is inserted to facilitate cooperation in the collection of taxes due to a foreign country by persons resident in Zimbabwe, and *vice versa*.

Clause 5(a)

The Third Schedule to the Income Tax Act lists amounts that are exempt from income tax.

Paragraph 4(o) of the Schedule exempts bonuses and performance-related awards paid to employees, up to a maximum amount of US\$700. Paragraph (a) of this clause will increase that amount to US \$1 000.

Clause 6

The Finance Act, 2004 (No. 18 of 2004) inserted a new section in the Value Added Tax Act providing for the deferment of the collection of VAT on the importation of certain goods of a capital nature. Cases have arisen where beneficiaries of the deferment have failed to pay the tax deferred on the expiry of the period of deferment. The effect of this amendment is to subject such defaulters to penalties for non-payment of the deferred tax after the period of deferment.

Clause 7

This clause seems to amend the Customs and Excise Act by excluding certain vehicles from the scope of the special excise duty on sales or disposals of second-hand motor vehicles. The vehicles in question are those donated to the Government of Zimbabwe by a private voluntary organisation or a non-resident entity upon the completion of a project that was that subject of an agreement between the Government and the organisation or entity concerned.

Clause 8

In order to protect the assets of the Air Zimbabwe Corporation or its successor company from attachment by its creditors, it is proposed to extend to it the provisions of the State Liabilities Act [Chapter 22:13]. However, this protection is only temporary to enable the Corporation to repay its creditors in an orderly fashion, and will expire on the 1st January 2015.

Clause 9

This clause seeks to correct an error in section 11 of the Finance Act 2012 (No. 4 of 2012).

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.

PART II

INCOME TAX

Amendment to Chapter I of Finance Act [Chapter 23:04]

2. Amendment of section 22 of Cap. 23:04.

Amendments to Income Tax Act [Chapter 23:06]

3. Amendment of section 8 of Cap. 23:06.
4. New section inserted in Cap. 23:06.
5. Amendment of Third Schedule to Cap. 23:06.

PART III

VALUE ADDED TAX

6. Amendment of section 12A of Cap. 23:12.

PART IV

CUSTOMS AND EXCISE

7. Substitution of section 172B of Cap. 23:02.

PART V

AMENDMENT OF OTHER ACTS

8. New section inserted in Act No. 4 of 1998.
9. New section substituted for section 11 of Act No. 4 of 2012.

PRESENTED BY THE MINISTER OF FINANCE

BILL

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

This Act may be cited as the Finance (No. 2) Act, 2012.

PART II

INCOME TAX

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

2 Amendment of section 22 of Cap. 23:04

With effect from the year of assessment beginning on the 1st January, 2013, section 22 of the Finance Act [Chapter 23:04] is repealed and the following is substituted—

“22 Residents’ tax on interest

The residents’ tax on interest chargeable in terms of section 34 of the Income Tax Act shall be calculated at the rate of—

- (a) five per centum of each dollar of the interest from which such tax is to be withheld and paid in terms of the Twenty-First Schedule to the Income Tax Act, in the case where the interest is earned on a fixed-term deposit with a tenure of at least ninety days; or
- (b) fifteen per centum of each dollar of the interest from such tax is to be withheld and paid in terms of Twenty-First Schedule to the Income Tax Act, in every other case.”.

Amendments to Income Tax Act [Chapter 23:06]

3 Amendment of section 8 of Cap. 23:06

With effect from the year of assessment beginning on the 1st January, 2013, 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” in paragraph (f)I(a) by the insertion of the following subparagraph after subparagraph (v) in the definition of “advantage or benefit”—

- (vi) in the case of an employee who is a member of the teaching or non-teaching staff of a “school” as defined in the Education Act [Chapter 25:04], the waiver of the whole or any portion of the amount of tuition fees, levies and boarding fees (hereinafter called a “school benefit”) that would otherwise be payable by the employee for any child of his or hers who is a student at that or another school;”.

4. New section inserted in Cap. 23:06

The Income Tax Act [*Chapter 23:06*] is amended by the insertion after section 91 of the following section —

“91A Collection of taxes due to another country under arrangements made pursuant to section 91 agreement

(1) If the Commissioner has, in accordance with arrangements made with the government of any other country in an agreement with Zimbabwe in terms of section 91, received a request, in such form as the Commissioner may prescribe, for the collection from any person of an amount alleged to be due by him or her under the tax laws of such other country, the Commissioner may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he or she admits liability for such amount or any lesser amount.

(2) If such person —

- (a) admits liability;
- (b) fails to respond to the notice; or
- (c) denies liability but the Commissioner, after consultation with the competent authority of such other country, is satisfied that —
 - (i) the liability for such amount is not disputed in terms of the laws of such other country; or
 - (ii) although the liability for such amount is disputed in terms of the laws of such other country —
 - A. such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or
 - B. there is a risk of dissipation or concealment of assets by such person;

the Commissioner may, by notice in writing, require such person to pay the amount for which he or she has admitted liability or the amount specified, as the case may be, on a date specified, for transmission to the competent authority in such other country.

(3) If such person fails to comply with the notice under subsection (2), the amount in question may be recovered, for transmission to such competent authority, as if it were a tax payable by such person under this Act.

(4) No steps taken in assistance in collection by any other country under any arrangements referred to in subsection (1), for the collection of an amount alleged to be due by any person under the tax laws of Zimbabwe, and no judgment given against any such person in pursuance of such arrangements in such other country for any such amount, shall affect his or her right to have his or her liability for any such amount determined in Zimbabwe in accordance with Part VII of this Act or any other relevant law.

(5) If a person to whom this section is applied lodges an objection with the Commissioner in accordance with Part VII of this Act, section 25 (“Foreign law”) of the Civil Evidence Act [*Chapter 8:01*] shall apply to the consideration by the Commissioner of any issue as to the tax or other laws of any foreign country or territory concerned as if the Commissioner were a court.

(6) For the avoidance of doubt, it is declared that section 25 (“Foreign law”) of the Civil Evidence Act [*Chapter 8:01*] applies to the consideration by the Special Court or any other court of any issue as to the tax or other laws of any foreign country or territory that may arise from the application of this section.”.

5 Amendment of Third Schedule to Cap. 23:06

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

- (a) with effect from the 1st November, 2012, in paragraph 4(o) by the deletion of “seven hundred United States dollars” and the substitution of “one thousand United States dollars”;
- (b) with effect from the year of assessment beginning on the 1st January, 2013, in paragraph 8 by the insertion of the following subparagraph after subparagraph (2) —

“(3) Half the amount or value of a school benefit referred to in paragraph (f)I(a)(vi) of the definition of “advantage or benefit” in section :

Provided that this exemption shall not apply to more than three of the children of the employee concerned.”.

PART III

VALUE ADDED TAX

6 Amendment of section 12A of Cap. 23:12

With effect from the 1st January, 2013, section 12A (“Deferment of collection of tax on capital goods”) of the Value Added Tax Act [*Chapter 23:12*] is amended by the repeal of subsection (2) and the substitution of—

“(2) Where any person in favour of whom a deferment has been authorised in terms of subsection (1) —

- (a) sells, re-exports or otherwise disposes of such goods before or after the expiry of the period of the deferment, without having used them in the manner that qualified them for deferment of payment of tax in terms of subsection (1); or
- (b) fails to pay the deferred tax by the date which the Commissioner fixes in terms of subsection (1) as the date on which the payment of the deferred tax is due;

such person shall become liable, in addition to an tax for which he or she is liable on such disposal, to an additional amount of tax equal to the tax paid or payable by him or her on the expiry of the period of the deferment, together with interest thereon calculated in accordance with section 46:

Provided that if the Commissioner is satisfied that the disposal of the goods in question or the delay in paying the deferred tax was not due to an intent to evade the provisions of this section the Commissioner may waive the payment of the whole or such part of the additional amount of tax payable as the Commissioner thinks fit.”.

PART IV

CUSTOMS AND EXCISE

7 Amendment of section 172B of Cap. 23:02

Section 172B (“Special excise duty on sales of second-hand motor vehicles”) (1) of the Customs and Excise Act [*Chapter 23:02*] is amended by the insertion of the following paragraph after paragraph (d)—

“or

- (e) to the Government of Zimbabwe by a private voluntary organisation or a non-resident entity in circumstances where the vehicle is donated upon the completion of a project that was the subject of an agreement between the ‘Government and the organisation or entity concerned.”.

PART V

AMENDMENT OF OTHER ACTS

8 New section inserted in Act No. 4 of 1998

(1) The Air Zimbabwe Corporation (Repeal) Act (No. 4 of 1998) is amended by the insertion of the following section after section 9—

“9A Legal proceedings against Corporation or successor company

(1) The State Liabilities Act [*Chapter 22:13*]¹ applies with necessary changes to legal proceedings against the Corporation or any successor company.”.

(2) Subject to subsection (3), the amendment effected by subsection (1) applies to all legal proceedings against the Corporation or successor company (as those terms are defined in section 2 of the Air Zimbabwe Corporation (Repeal) Act (No. 4 of 1998) that were commenced or completed before the date of commencement of this Act.

(3) Section 9A of the Air Zimbabwe Corporation (Repeal) Act (No. 4 of 1998) shall be deemed to be repealed on the 1st January 2015.”.

9 New section substituted for section 11 of Act No. 4 of 2012

(1) Section 11 of the Finance Act, 2012 (No. 4 of 2012) is repealed and following is substituted—

“11 New section inserted in Cap. 18:14

(1) The Grain Marketing Act [*Chapter 18:14*]. is amended by the insertion of the following section after section 36—

“36A Legal proceedings against Board

(1) The State Liabilities Act [*Chapter 22:13*]² applies with necessary changes to legal proceedings against the Board.”.

(2) Subsection (1) applies to all legal proceedings against the Board that were commenced or completed before the date of commencement of the Finance Act, 2012 (No. 4 of 2012).”.

¹ *Note by Veritas.* This Chapter number is wrong. It should be Chapter 8:14.

² *Note by Veritas.* This Chapter number is wrong. It should be Chapter 8:14.