

FINANCE (NO. 2) ACT, 2009

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ZIMBABWE

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

This Act may be cited as the Finance (No. 2) Act, 2009.

PART II

INCOME TAX

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

2 Repeal of section 18 of Cap. 23:04

Section 18 of the Finance Act [Chapter 23:04] is repealed.

3 New section inserted in Cap. 23:04

Part III of Chapter I of the Finance Act [*Chapter 23:04*] is amended by the insertion after section 22J of the following section—

“22 K Tax on exercise of share options granted before 1st February, 2009

Notwithstanding paragraph (t) of the definition of “gross income” in section 8(1) of the Taxes Act, where an employee was, before the 1st February, 2009, offered shares pursuant to a share option scheme operated by his or

her employer, there shall be charged on the sale of any of those shares after that date a tax of five *per centum* of each United States dollar on the market value of those shares prevailing on the date of the exercise of the option.”.

Amendments to Income Tax Act [Chapter 23:06]

4 Amendment of section 2 of Cap. 23:06

Section 2 (“Interpretation”) (1) of the Income Tax Act [*Chapter 23:06*] is amended by the insertion of the following definition—

““LIBOR” means the London Interbank Offered Rate referred to in section 97A(2) and (3);”.

5 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, 2009, by the repeal of proviso (x) to paragraph (f) II and the substitution of—

“(x) in the case of a sale or disposal of a motor vehicle to an employee, whether during or on termination of the employee’s employment, in respect of the year of assessment beginning on the 1st January, 2009, and any subsequent year of assessment, the deemed benefit shall be determined in accordance with the following formula:

$$A - B$$

where—

A represents the market value of the motor vehicle:

B represents the cost at which the employer acquired the motor vehicle:

Provided that if the motor vehicle was acquired before the 1st January, 2009, the cost of the vehicle shall be the value of the vehicle shown in the final balances of the employer determined and carried forward in terms of section 3(3) and (4) of the Finance Act, 2009 (as substituted by the Finance Act (No. 2) Act, 2009).

No advantage or benefit in terms of this proviso shall be deemed to have accrued to an employee who, on the date of the sale or disposal is of or over the age of fifty-five.

In determining the market value of a motor vehicle for the purposes of this proviso, the Commissioner shall have regard to the valuation of a member of such institution or association of motor dealers or valuers as is prescribed by the Commissioner by notice in the *Gazette*.”.

6 Repeal of section 29 of Cap. 23:06

Section 29 of the Income Tax Act [*Chapter 23:06*] is repealed.

7 Repeal of section 94 of Cap. 23:06

Section 94 of the Income Tax Act [*Chapter 23:06*] is repealed.

8 Amendment of section 97A of Cap. 23:06

Section 97A (“Calculation of interest payable under this Act”) of the Income Tax Act [*Chapter 23:06*] is amended—

- (a) in the heading thereof by the deletion of "Calculation of interest payable under this Act" and the substitution of "Calculation and fixing of interest payable under this Act";
- (b) by the insertion of the following subsections, the existing section becoming subsection (1) —

"(2) The Minister may, by statutory instrument, alter any rate of interest specified in this Act, and in doing so may substitute a specific rate by a variable rate applicable to the borrowing of funds in any international money market, such as the LIBOR (London Interbank Offered Rate).

(3) Where the Minister substitutes any rate of interest specified in this Act by a variable rate referred to in subsection (2), the Commissioner-General may, in terms of the Fourth Schedule to the Revenue Authority Act [*Chapter 23:11*], issue binding general rulings on the tax consequences of any variation of such rate."

9 Repeal of Sixteenth Schedule to Cap. 23:06

The Sixteenth Schedule to the Income Tax Act [*Chapter 23:06*] is repealed.

PART III

STAMP DUTY

10 Amendment of Schedule to Chapter II of Cap. 23:04

The Schedule ("Stamp Duty on Instruments and other Matters") to Chapter II of the Finance Act [*Chapter 23:04*] is amended in item 2 ("Brokers' notes") by the repeal of sub item (1) and substitution of—

- "(1) In respect of the purchase of any marketable security—
for every \$100 or part thereof of the consideration 0 25".

PART IV

VALUE ADDED TAX ACT

Amendments to Value Added Tax Act [*Chapter 23:12*]

11 Amendment of section 28 of Cap. 23:12

With effect from the 1st August, 2009, section 28 ("Returns and payments of tax") of the Value Added Tax Act [*Chapter 23:12*] is amended by the repeal of subsections (1) and (1a) and the substitution of the following subsection—

"(1) Every registered operator shall, within the period ending on the fifth day of the first month commencing after the end of a tax period relating to such registered operator or, where such tax period ends on or after the first day and before the last day of a month, within the period ending on such last day—

- (a) furnish the Commissioner with a return in the prescribed form reflecting such information as may be required for the purpose of the calculation of tax in terms of section 15; and

- (b) calculate the amounts of such tax in accordance with the said section and pay the tax payable to the Commissioner or calculate the amount of any refund due to the registered operator.”.

PART V

CAPITAL GAINS TAX

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

12 New section substituted for section 38 of Cap. 23:04

(1) Sections 38 and 39 of the Finance Act [*Chapter 23:04*] are repealed and substituted by the following—

“38 Rates of capital gains tax

The capital gains tax chargeable in terms of section 6 of the Capital Gains Tax Act [*Chapter 23:01*], shall be calculated at the rate of twenty United States cents for each United States dollar of the capital gain determined in accordance with the Capital Gains Tax Act [*Chapter 23:01*]:

Provided that, in respect of the sale or disposal of a specified asset that was acquired before the 1st February, 2009, by the person selling or disposing of that asset—

- (i) the person selling or disposing of that asset shall be deemed to have made a capital gain equivalent to the gross capital amount realised from the sale or disposal of that asset; and
- (ii) the capital gains tax chargeable in respect of the sale or disposal of such asset shall be at the rate of five United States cents for each United States dollar of the capital gain referred to in proviso (i).

39 Rates of capital gains withholding tax

(1) The rates of capital gains withholding tax chargeable in terms of Part IIIA of the Capital Gains Tax Act [*Chapter 23:01*] shall be as follows—

- (a) in the case of a sale of immovable property, fifteen *per centum* of the price at which the property was sold:

Provided that, in respect of the sale of a immovable property that was acquired before the 1st February, 2009, by the person selling or disposing of that property—

- (i) the person selling or disposing of that property shall be deemed to have made a capital gain equivalent to the gross capital amount realised from the sale or disposal of that property; and
 - (ii) the capital gains tax chargeable in respect of the sale or disposal of such property shall be at the rate of five United States cents for each United States dollar of the capital gain referred to in proviso (i).
- (b) in the case of a sale of a marketable security that is a listed security, one *per centum* of the price at which the security was sold.”.

(2) Sections—

- (a) 38 and 39(a) of the Finance Act [*Chapter 23:04*] as substituted by this Act shall be deemed to have come into force on the 1st February, 2009;
- (b) 39(b) of the Finance Act [*Chapter 23:04*] as substituted by this Act shall come into force on the 1st August, 2009.

(3) No part of any capital gains withholding that was withheld and paid over to Commissioner-General before the date of commencement of this Act shall be refunded on the basis that any amount paid over was in excess of the rate chargeable under section 39 of the Finance Act [*Chapter 23:04*] as substituted by this section.”

13 Amendment of section 39A of Cap. 23:04

With effect from the 1st February, 2009, section 39A (“Payment of capital gains tax in foreign currency in certain circumstances”) of the Finance Act [*Chapter 23:04*] is amended by the insertion of the following proviso to subsection (9)(a)—

“Provided that no amounts in terms of this paragraph or any other amount that is allowed to be deducted in terms of section 11 of the Capital Gains Tax Act [*Chapter 23:01*] shall be deducted from a capital gain in respect of the sale or disposal of a specified asset referred to in the proviso to section 38, or the sale of immovable property subject to capital gains withholding tax referred to in the proviso to section 39(a);”

Amendment to Capital Gains Tax Act [Chapter 23:01]

14 Amendment of section 10 of Cap. 23:01

With effect from the 1st February, 2009, section 10 (“Exemptions from capital gains tax”) is amended by the insertion of the following paragraph after paragraph (m)—

- “(n) amounts received by or accruing to a person on the sale of any marketable security which was subjected to withholding tax in terms of section 39(b) of the Charging Act.”

PART VI

CUSTOMS AND EXCISE

15 Amendment of section 70 Cap. 23:02

Section 70 (“Storing of goods in warehouse without payment of duty”) of the Customs and Excise Act [*Chapter 23:02*] is amended by the insertion of the following subsection after subsection (4)—

“(5) In this section, “duty” includes any import tax which is payable in terms of the Value Added Tax Act [*Chapter 23:12*].”

16 Amendment of section 188 Cap. 23:02

Section 188 (“Goods and ships, aircraft, vehicles or other things liable to forfeiture”) of the Customs and Excise Act [*Chapter 23:02*] is amended by the insertion of the following subsections after subsection (2)—

“(2a) Any person who makes available his or her ship, aircraft or vehicle for use by another person for the removal of goods referred to in subsection (2)(a) or (b), shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment, unless he or she proves that he or she was unaware that the ship, aircraft or vehicle would be so used.

(2b) Where any person was previously convicted for the removal of goods referred to in subsection (2)(a) or (b) using any ship, aircraft or vehicle belonging to another person, then, despite the fact that such other person was not charged or convicted for an offence in terms of subsection (2a) in connection with that previous conviction, his or her ship, aircraft or vehicle shall be liable to forfeiture if the same ship, aircraft or vehicle is used on any subsequent occasion for the removal of goods referred to in subsection (2)(a) or (b), whether or not by the person previously convicted.”.

PART VII

RESERVE BANK OF ZIMBABWE

17 New section inserted in Cap. 22:15

(1) Part IV (“Banknotes and coinage”) of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] is amended by the insertion after section 44 of the following section—

“44A Legal tender of foreign currencies

The Minister may, in regulations made under section 64, prescribe that, subject to such conditions as may be specified in the regulations, a tender of payment in any currency other than Zimbabwean currency shall be legal tender in all transactions or in such transactions as may be specified in the regulations.”.

(2) The tender in Zimbabwe of the British pound, euro, United States dollar, South African rand and Botswana pula in any transaction shall be deemed to be legal tender as if—

- (a) section 44A of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (No. 5 of 1999) as inserted by this Act had come into force on the 1st February, 2009; and
- (b) the Minister of Finance had, on the 1st February, 2009, prescribed in regulations made for the purposes of the aforementioned section 44A, that the aforementioned currencies are legal tender in any transaction.

PART VIII

AMENDMENT OF SPECIFIED AMOUNTS IN VARIOUS FINANCIAL LAWS

18 Amendments of specified amounts in various financial laws

The provisions of the Acts specified in the first column of the Schedule are amended to the extent specified opposite thereto in the second column of the Schedule.

PART IX

TRANSITIONAL PROVISIONS

19 Amendment of section 3 of Act No. 3 of 2009

With effect from the 1st January, 2009, section 3 (“New section inserted in Part I of Chapter I of Cap. 23:04”) of the Finance Act, 2009 (No. 3 of 2009), is amended by the repeal of subsections (3) and (4) and the substitution of—

“(3) For all accounting and taxation purposes, where—

- (a) an individual or partnership whose taxable income from trade or investment was received or accrued in whole or in part in Zimbabwean currency; or

- (b) a company, trust, pension fund or other juristic person whose taxable income is earned, received or accrued in whole or in part in Zimbabwean currency;

then—

- (c) the final balances denominated in Zimbabwean currency determined in financial statements prepared in respect of the previous financial year of the individual, partnership, company, trust, pension fund or other juristic person shall be expressed in United States dollars at such rate of exchange as the Commissioner may approve:

Provided that the Commissioner-General shall, in terms of the Fourth Schedule to the Revenue Authority Act [*Chapter 23:11*], issue a binding general rulings on the manner in which he or she shall exercise his or her discretion for the purposes of this paragraph;

- (d) the final balances determined in accordance with paragraph (c) shall be regarded as initial balances for financial statements prepared in respect of the new financial year;

(4) An individual, partnership, company, trust, pension fund or other juristic person referred to in subsection (3) shall, to the extent that such individual, partnership, company, trust, pension fund or other juristic person satisfies the Commissioner that its taxable income was, before the 1st January, 2009, received or accrued in a foreign currency, express any final balances relating to that income in the foreign currency concerned.

SCHEDULE (Section 15)

AMENDMENTS OF SPECIFIED AMOUNTS IN VARIOUS FINANCIAL LAWS

<i>Provision</i>	<i>Extent of amendment</i>
Income Tax Act [Chapter 23:06]	
Section 8 (1) (f)11(b) proviso (i)(g)	By the repeal of the provision and the substitution of— “(h) during the year of assessment beginning on the 1st January, 2009, and any subsequent year of assessment, is less than the LIBOR rate plus five per centum where the amount of the loan exceeds one hundred United States dollars.”
Section 15 (2)(i)(ii)	By the insertion of the following subparagraph after subparagraph H— “I. if the period commences on or after the 1st January, 2009, one thousand eight hundred United States dollars <i>per annum</i> .”
Section 15(2)(q), in proviso (i)(a) thereto	By the deletion of “three thousand dollars” and the substitution of “five hundred United States dollars”.
Section 15(2)(q), in proviso (i)(b) thereto	By the deletion of “three thousand dollars” and the substitution of “two hundred United States dollars”.
Section 15(2)(q), in proviso (i)(c) thereto	By the deletion of “two thousand dollars” and the substitution of “two hundred United States dollars”.
Section 15(2)(r4)	By the deletion of “one hundred million dollars” and the substitution of “fifty thousand United States dollars”.
Section 15(2)(r5)	By the deletion of “five hundred million dollars” and the substitution of “fifty thousand United States dollars”.
Section 15(2)(y)(ii)	By the deletion of “fifteen thousand dollars” and the substitution of “five hundred United States dollars”.
Section 15 (2)(kk), in the proviso thereto	By the deletion of “one hundred million dollars” and the substitution of “fifty thousand United States dollars”.
Section 16(1)(k)	By the insertion of the following subparagraph after subparagraph (v)— “(vi) in or after the year of assessment beginning on the 1st January, 2009, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same

<i>Provision</i>	<i>Extent of amendment</i>
	vehicle, exceeds ten thousand United States dollars;”.
Section 76(1) and (2)	By the deletion of “one hundred thousand dollars” and the substitution of “fifty United States cents”.
First Schedule paragraph 1(1) (in the definition of “annuity on retirement”)	By the deletion of “six hundred dollars” wherever it occurs, and the substitution of “one thousand eight hundred United States dollars”.
First Schedule paragraph 3(a)(i)	By the deletion of “six hundred dollars” and the substitution of “one thousand eight hundred United States dollars”.
First Schedule paragraph 4(a)	By the deletion of “eight thousand four hundred dollars” and the substitution of “one thousand eight hundred United States dollars”.
First Schedule paragraph 7(a) and (b)	By the deletion of “two thousand dollars” and the substitution of “one thousand eight hundred United States dollars”.
First Schedule paragraph 8(a) and (b)	By the deletion of “two thousand dollars” and the substitution of “one thousand eight hundred United States dollars”.
Second Schedule paragraph 8 (in paragraph (b)(i), (ii) and (ii) B of the definition of “fixed standard value”)	By the deletion of “fifteen thousand dollars” and the substitution of “one hundred and fifty United States dollars”.
Second Schedule paragraph 8 (in paragraph (b)(i), (ii) and (ii)B of the definition of “purchase price value”)	By the deletion of “fifteen thousand dollars” and the substitution of “one hundred and fifty United States dollars”.
Second Schedule, paragraph 10(2)(b)(i)A and B	By the deletion of “fifteen thousand dollars” and the substitution of “one hundred and fifty United States dollars”.
Fourth Schedule, paragraph 15(1)(a)	By the insertion of the following subparagraph after subparagraph (ix)— “(x) ten thousand United States dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;”.
Fourth Schedule, paragraph 15(1)(b)	By the insertion of the following subparagraph after subparagraph (viii)— “(ix) ten thousand United States dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;”.
Fifth Schedule, paragraph 1(1) (in paragraph (a)(i)A of the definition of “capital expenditure”)	By the insertion of the following subparagraph after subparagraph VIII—

<i>Provision</i>	<i>Extent of amendment</i>
Fifth Schedule, paragraph 1(1) (in paragraph (a)(i)B of the definition of "capital expenditure")	<p>"IX. ten thousand United States dollars on a building used mainly as a dwelling by one or more individuals who control the company, where the building was erected on or after the 1st January, 2009;"</p> <p>By the insertion of the following subparagraph after subparagraph IX—</p>
Fifth Schedule, paragraph 1(1) (in paragraph (b)(ii)A of the definition of "capital expenditure")	<p>"X. ten thousand United States dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2009;"</p> <p>By the insertion of the following subparagraph after subparagraph VIII—</p>
Fifth Schedule, paragraph 1(1) (in paragraph (b)(ii)B of the definition of "capital expenditure")	<p>"IX. fifty thousand United States dollars, where the expenditure was incurred on or after the 1st January, 2009;"</p> <p>By the insertion of the following subparagraph after subparagraph VII—</p>
Fifth Schedule, paragraph 6	<p>"VIII. fifty thousand United States dollars, where the expenditure was incurred on or after the 1st January, 2009;"</p> <p>By the deletion of "forty thousand dollars" and the substitution of "ten thousand United States dollars".</p>
Fifth Schedule, paragraph 6 (proviso)	<p>By the deletion of "fifteen thousand dollars" and the substitution of "one thousand five hundred United States dollars".</p>
Sixth Schedule, paragraph 4(b)	<p>By the deletion of "six hundred dollars" and the substitution of "one thousand five hundred United States dollars".</p>
Thirteenth Schedule, paragraph 1(1) (in the definition of "remuneration")	<p>By the repeal of paragraph (h).</p>
Thirteenth Schedule, paragraph 18(1)(a)(ii)	<p>By the deletion of "one hundred dollars" and the substitution of " five United States cents".</p>
Thirteenth Schedule, paragraph 18(1)(b)	<p>By the deletion of "one hundred dollars" and the substitution of "five United States cents".</p>
Fifteenth Schedule, paragraph 7(2)	<p>By the deletion of "fifty-nine years" and the substitution of "fifty-five years".</p>

<i>Provision</i>	<i>Extent of amendment</i>
Fifteenth Schedule, paragraph 7(2)(a) and (b)	By the deletion of "six thousand dollars" and the substitution of "six hundred United States dollars".
Fifteenth Schedule, paragraph 7(2)(b) and (c)	By the deletion of "seven thousand two hundred dollars" and the substitution of "seven hundred and twenty United States dollars".
Fifteenth Schedule, paragraph 7(2)(c) and (d)	By the deletion of "eight thousand four hundred dollars" and the substitution of "eight hundred and forty United States dollars".
Fifteenth Schedule, paragraph 7(2)(d)	By the deletion of "nine thousand six hundred dollars", and the substitution of "nine hundred and sixty United States dollars".
Fifteenth Schedule, paragraph 7(3)	By the deletion in of "fifty-nine years" and the substitution of "fifty-five years".
Fifteenth Schedule, paragraph 7(3)(a) and (b)	By the deletion of "four thousand eight hundred dollars" and the substitution of "four hundred and eighty United States dollars".
Fifteenth Schedule, paragraph 7(3)(b) and (c)	By the deletion of "six thousand dollars" and the substitution of "six hundred United States dollars".
Fifteenth Schedule, paragraph 7(3)(c) and (d)	By the deletion of "seven thousand two hundred dollars", and the substitution of "seven hundred and twenty United States dollars".
Fifteenth Schedule, paragraph 7(3)(d)	By the deletion of "eight thousand four hundred dollars", and the substitution of "eight hundred and forty United States dollars".
Twentieth Schedule, paragraph 5(1)(e)	By the insertion of the following subparagraph after subparagraph (v)— " (vi) ten thousand United States dollars, incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;".
Twentieth Schedule, paragraph 5(1)(f)	By the insertion of the following subparagraph after subparagraph (v)— " (vi) ten thousand United States dollars, incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;".
Twenty-Second Schedule, paragraph 6(2)(h)(ii)(A)	By the insertion of the following subparagraph after subparagraph III—

<i>Provision</i>	<i>Extent of amendment</i>
	“IV. ten thousand United States dollars, incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;”.
Twenty-Sixth Schedule, paragraph 1 (in paragraph (a) of the definition of “informal trader”)	By the deletion of “one hundred and fifty million dollars” and the substitution of “six thousand United States dollars”.
Twenty-Ninth Schedule, paragraph 1 (in the definition of “small or medium enterprise”)	By the deletion of “twelve million dollars” and the substitution of “twenty thousand United States dollars”.
Twenty-Ninth Schedule, paragraph 5(4)	By the deletion of “five thousand dollars” and the substitution of “level 11”.
Finance Act [Chapter 23:04]	
Section 4A(1)(d)	By the insertion of “a small scale miner” before “an operator of a taxicab”.
Section 4A(1)(d)	By the deletion of “section 22C(c)” and the substitution of “section 22C(b) and (c)”.
Section 22B	By the deletion of “one hundred dollars” and the substitution of “zero comma zero five United States dollars”.
Section 22G	By the deletion of “five hundred dollars” and the substitution of “zero comma zero five United States dollars”.
<i>Schedule to Chapter II of Cap. 23:04</i>	
Item 2 (1) (2nd column)	By the deletion of “US\$ 2” and the substitution of “US 50c”.
Item 5 (1) (2nd column)	By the deletion of “5” and the substitution of “US 5c”.
Capital Gains Act [Chapter 23:01]	
Section 2(1) (in the proviso to the definition of “assessed capital loss”)	By the deletion of “one thousand dollars” and the substitution of “one hundred United States dollars”.
Section 10(l)	By the deletion of “fifty-nine years” and the substitution of “fifty-five years”.
Section 10(m)	By the deletion of “fifty-nine years” and “twenty-four million dollars” and the substitution of “fifty-five years” and “one thousand eight hundred United States dollars”.
Section 11(2)(h)	By the deletion of “five thousand dollars” and the substitution of “fifty United States dollars”.