

DISTRIBUTED BY VERITAS

email: veritas@mango.zw website: www.veritaszim.net

Veritas makes every effort to ensure the provision of reliable information,
but cannot take legal responsibility for information supplied.

DEPARTMENTAL DRAFT

FINANCE (No. 2) BILL, 2014

MEMORANDUM

This Bill will amend the Finance Act [*Chapter 23:04*], the Income Tax Act [*Chapter 23:06*], the Value Added Tax Act [*Chapter 23:09*] and the Customs and Excise Act [*Chapter 23:02*]. In more detail, the individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clauses 2 and 6

These clauses give effect to the abolition of the presumptive tax on small-scale miners.

Clause 3

Section 80 of the Income Tax Act provides that if persons who enter into contracts with the Government or statutory bodies have not submitted income tax returns for the most recent year of assessment, the Government or the statutory body concerned will be obliged to withhold 15% of all payments due to them under the contracts and pay the withheld amounts to the Commissioner. These amounts will then be set off against the income tax due by the contractors when their tax liability is finally assessed. The amendment made by this clause ensures that the minimum amount due for a contract to be subjected to this section is an aggregate of \$250 over the year of assessment; this defeats avoidance of this provision by breaking up the amount due into a series of single transactions amounting to less than \$250.

Clause 4

The Finance Act, 2014, inserted a new section 80A into the Income Tax that sought to simplify the mechanism for taxation of performing artists and plug existing tax loopholes. It introduced a 15% withholding tax on gross fees paid to non-resident performing artists, with effect from 1 January 2014. However, no penalties were provided for non-compliance with this new provision by the contractors of non-resident performing artists, or their withholding agents. This clause enacts penalties for failure to withhold or make over the required withholding tax.

Clause 6

This clause amends the Thirteenth Schedule on the payment of employees tax (PAYE). It addresses an exceptional situation in the parastatal sector where, among other abuses, some senior management paid their tax liabilities using the moneys of the parastatals they were responsible for, without making good from their own resources the moneys thus paid over.

Clause 7

This clause corrects an error in the definition section of the Value Added Tax, which defines the term "fiscalised electronic register" in two different ways.

Clause 10

The Finance Act, 2014, amended the Value Added Tax Act by imposing an export tax of US\$0.75 per kg on raw hides exported from Zimbabwe. The effect of

this amendment to the relevant clause is to suspend the tax till January 1, 2015, and to exclude crocodile skins and goat and sheep skins from the definition of “unbeneficiated hide”.

Clauses 12 and 13

These clauses provide for the levying of excise duty on airline.

Clause 14

Currently, the earnings of gold producers (other than small-scale gold producers) are subject to the withholding of a royalty of 7% on gross proceeds realised by licensed gold buyers. This clause reduces that royalty to 5%.

FINANCE (No. 2) BILL, 2014

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.

PART II

INCOME TAX

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

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

Amendments to Income Tax Act [Chapter 23:06]

3. Amendment of section 80 of Cap. 23:06.
4. Amendment of section 80A of Cap. 23:06.
5. Amendment of Third Schedule to Cap. 23:06
6. Amendment of Thirtieth Schedule to Cap. 23:06.
7. Amendment of Twenty-Sixth Schedule to Cap. 23:06.
8. Amendment of Thirtieth Schedule to Cap. 23:06.

PART III

STAMP DUTY

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

PART IV

VALUE ADDED TAX

10. Amendment of section 2 of Cap. 23:12.
11. Amendment of section 12C of Cap. 23:12.

PART V

CUSTOMS AND EXCISE

Amendments to Finance Act [Chapter 23:04]

12. New Chapter inserted in Cap. 23:04.

Amendments to Customs and Excise Act [Chapter 23:02]

13. New Part inserted in Cap. 23:02

PART VI

MINES AND MINERALS

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

14. Amendment of Schedule to Chapter VII of Cap. 23:04.

PRESENTED BY THE MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT

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 Parliament and the President of Zimbabwe.

5

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Finance (No. 2) Act, 2014.

PART II

10

INCOME TAX

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

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

15 With effect from the year of assessment beginning on the 1st October, 2014,
section 22C ("Presumptive tax") of the Finance Act [Chapter 23:04] is amended by
the repeal of paragraph (b) and the substitution of—

"(b) small-scale miners, calculated at the rate of zero *per centum* of each
dollar of the purchase price of precious metals or precious stones upon
which the tax is chargeable in terms of the Twenty-Sixth Schedule to
the Taxes Act;".

20

Amendments to Income Tax Act [Chapter 23:06]

3 Amendment of section 80 of Cap. 23:06

With effect from the 1st October, 2014, section 80 ("Withholding of amounts
payable under contracts with State or statutory corporations") (1) of the Income Tax
H.B. 2014.]

Act [*Chapter 23:06*] is amended in the definition of “contract” by the deletion of “five hundred thousand dollars or more or, where the contract is denominated in foreign currency, two hundred and fifty United States dollars or more” and the substitution of “an aggregate amount of two hundred and fifty United States dollars or more over the year of assessment”.

5

4 Amendment of section 80B of Cap. 23:06

With effect from the 1st October, 2014, section 80B (“Payments to non-resident artists or entertainers”) of the Income Tax Act [*Chapter 23:06*] is amended

- (a) by the deletion of “artists” and “artist” wherever it occurs and the substitution of “artistes” and “artiste” respectively;
- (b) by the insertion of the following subsection after subsection (5)—

10

“(6) Payment to the Commissioner by a withholding agent of any amount as provided in subsection (2) shall be accompanied by a certificate under the hand of the withholding agent showing the amount withheld.

15

(7) Subject to subsection (9), a withholding agent who fails to withhold or pay to the Commissioner any amount as provided in subsection (2) 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 subsection (2) of—

20

- (a) the amount so provided; and
- (b) a further amount equal to such amount.

(8) The amounts for the payment of which a withholding agent is liable in terms of subsection (7)—

- (a) shall be debts due by the principal to the State; and
- (b) may be sued for and recovered by action by the Commissioner in any court of competent jurisdiction.

25

(9) The Commissioner, if he or she is satisfied in any particular case that the failure to pay to him or her any amount as provided in subsection (2) was not due to any intent to evade the provisions of this section, may waive the payment of the whole or such part as he or she thinks fit of the amount referred to in subsection (7)(b).”

30

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—

35

- (a) in paragraph 2 by the repeal of subparagraph (c) and the substitution of—
 - “(c) building societies, and financial institutions providing mortgage finance, but only to the extent that the receipts or accruals of such financial institutions are attributable to the provision of mortgage finance by them.

40

In this subparagraph—

“building society” means a building registered in terms of the Building Societies Act [*Chapter 24:02*];

“financial institution” means any banking institution registered in terms of the Banking Act [*Chapter 24:20*];

45

“mortgage finance” means the provision of loans for the acquisition of immovable property for residential purposes, which loans are secured by the collateral of that immovable property.”;

5 (b) in paragraph 10 by the insertion of the following subparagraph—

“(r) interest on any deposit in the low cost housing savings instrument as defined in the regulations to be prescribed by the Minister:

10 Provided that the regulations in question shall be laid before the House of Assembly and not come into force until the lapse of fourteen sitting days after they are so laid, unless the House has earlier passed a resolution annulling the regulations.”.

6 Amendment of Thirteenth Schedule to Cap. 23:06

The Thirteenth Schedule (“Employees’ Tax”) to the Income Tax Act [*Chapter 23:06*] is amended by the insertion of the following paragraph after paragraph 22—

15 “*Commissioner deemed to be employer in certain circumstances*

23. (1) In this section—

“public entity” means—

- (a) any corporate body established by or in terms of any Act for special purposes;
- 20 (b) any company in which the State has a controlling interest, whether by virtue of holding or controlling shares therein or by virtue of a right of appointment of members to the controlling body thereof or otherwise, and includes any company which is a subsidiary, as determined in accordance with section 143 of the Companies Act [*Chapter 24:03*], of such a body;
- 25 (c) a local authority;
- (d) any partnership or joint venture between the State and any person and which is prescribed by the Minister for the purposes of the application of this Act to be a partnership or joint venture.

30 (2) Where—

- (a) in terms of paragraph 10(3) the Commissioner makes an assessment in which the amount of employees’ tax for which an employer is personally liable by virtue of paragraph 10(1) is estimated (whether that assessment is made before or after the date of commencement of the Finance (No. 2) Act, 2014); and
- 35 (b) the employer concerned is—
 - (i) a public entity; or
 - (ii) any body or association of persons, whether incorporated or unincorporated, the majority of whose members are employees of the State who contribute to the funds of such body or association by means of deductions from their remuneration made by the State as their employer on behalf of such body or association;
 - 40 and
- (c) the public entity or body or association referred to in paragraph (b)—
 - (i) fails, as an employer, to withhold an amount of employees’ tax in terms of paragraph 3 and subsequently pays that amount in terms of paragraph 10; and
 - 45

- (ii) having paid that amount in terms of paragraph 10 fails subsequently to recover that amount in terms of paragraph 12 from the employee from whose remuneration that amount should have been withheld;

the Commissioner shall be deemed to be the employer instead of the public entity or body or association referred to in paragraph (b) and— 5

- (d) may recover that amount from the employee from whose remuneration that amount should have been withheld; and
- (e) shall, for the purposes of subparagraph (d), have all the rights and powers that he or she has under this Act for recovering outstanding tax. 10

(3) Notwithstanding subparagraph (b) of the definition of “remuneration” in paragraph 1(1), if a public entity or body or association referred to in subparagraph (2)(b)—

- (a) fails, as a payer, to withhold an amount of tax on non-executive directors’ fees in accordance with the Thirty-Third Schedule; and 15
- (b) subsequently purports to pay that amount in terms of paragraph 10 as if the non-executive director’s fees in question was “remuneration” for the purposes of this Schedule;

the non-executive director’s fees in question shall be deemed to be “remuneration” and the director to whom such fees were paid shall be deemed to be an “employee” for the purposes of this Schedule. 20

(4) Accordingly, where a public entity or body or association referred to in subparagraph (2) fails subsequently to recover from the director from whose non-executive directors’ fees an amount of tax on non-executive director’s fees should have been withheld, subsection (2) shall apply as if the Commissioner is the employer and the amount in question is an amount of employees’ tax.”. 25

7 Suspension of operation of Part III of Twenty-Sixth Schedule to Cap. 23:06

The operation of Part III (“Small-Scale Miners Presumptive Tax”) of the Twenty-Sixth Schedule (“Presumptive Tax”) to the Income Tax Act [Chapter 23:06] is suspended with effect from the 1st October, 2014. 30

8 Amendment of Thirtieth Schedule to Cap. 23:06

With effect from the 1st January, 2014, the Thirtieth Schedule (“Intermediated Money Transfer Tax”) to the Income Tax Act [Chapter 23:06] is amended in paragraph 1 (“Interpretation”) (1), in the definition of “financial institution” by the repeal of paragraph (h) and the substitution of— 35

“(h) any provider of a mobile banking service;”.

PART III

VALUE ADDED TAX 40

9 Amendment of section 2 of Cap. 23:12

Section 2 (“Interpretation”)(1) of the Value Added Tax Act [Chapter 23:12] is amended by the repeal of the definitions of “fiscalised electronic register” (where they occur twice) and “fiscalised recording regulations” and the substitution of the following definition— 45

““fiscalised electronic register” means an electronic sales register having such features as may be prescribed;”.

10 Amendment of section 12C of Cap. 23:12

(1) The Value Added Tax Act [Chapter 23:12] is amended in section 12C (“Collection of tax on exportation of unbeneficiated hides, determination of value thereof”) by the repeal of subsection (1) and the substitution of—

“(1) In this section, “unbeneficiated hide” means any raw or untanned animal hide, but does not include crocodile skin or goat or sheep skin.”.

(2) Despite section 14(2) of the Finance Act, 2014, section 12C (“Collection of tax on exportation of unbeneficiated hides, determination of value thereof”) of the Value Added Tax Act has effect from the year of assessment beginning on the 1st January, 2015.

PART IV

CUSTOMS AND EXCISE

Amendments to Finance Act [Chapter 23:04]

11 New Chapter inserted in Cap. 23:04

With effect from the 15th September, 2014, the Finance Act [*Chapter 23:04*] is amended by the insertion of the following Chapter after Chapter XI (“Statutory Fees and Charges”)—

“CHAPTER XII

EXCISE DUTY ON AIRTIME

48 Interpretation in Chapter XII

Any word or expression to which a meaning has been assigned in Part XIIB of the Customs and Excise Act [Chapter 23:02] shall bear the same meaning when used in this Chapter.

49 Rate of excise duty on airtime

The rate of excise duty on airtime shall be five *per centum* of the value of the service.”.

Amendments to Customs and Excise Act [Chapter 23:02]

12 New Part inserted in Cap. 23:02

(1) With effect from the 15th September, 2014, the Customs and Excise Act [*Chapter 23:02*] is amended by the insertion after Part XIIA of the following Part—

“PART XIIIB

EXCISE DUTY ON AIRTIME

172E Interpretation in Chapter XIIB

In this Part—

“airtime” means the minutes of voice calls, short message service (sms), multimedia service (mms), internet band width or such other service as a subscriber may consume through a mobile cellular telephone or any other electronic communications service;

“cellular telecommunication system” has the meaning given to it by the Postal and Telecommunications Act [*Chapter 12:05*];

“licence” means a licence to operate a cellular telecommunication system issued under the Postal and Telecommunications Act [*Chapter 12:05*];

“rendering a service” means operating a cellular telecommunication system for the benefit of the public;

“operator” means the operator of a cellular telecommunication system.

172F Excise duty on airtime

Subject to this Part, there shall be charged, levied and collected, for the benefit of the Consolidated Revenue Fund, an excise duty on the cost of rendering the service liable to such excise at such rate as may be fixed by the Charging Act:

172G Rendering of services liable to excise duty on airtime

(1) A person shall not render a service liable to excise duty on airtime except in accordance with this Part.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years, or to both.

(3) Notwithstanding the penalty prescribed in subsection (2) all the machinery, equipment and materials used in rendering services in contravention of subsection (1) shall be liable to seizure in accordance with section 9.

172H Commissioner may authorise service provider to render services without payment of duty

(1) Notwithstanding section 172G, the Commissioner may, subject to the provisions of this Part and any rules made hereunder, authorise an operator to render services liable to duty on airtime on an experimental or trial basis:

Provided that the services so rendered shall not be for sale or disposal for profit and shall be rendered without the payment of duty on airtime

(2) An operator who being authorised by the Commissioner to render services in terms of subsection (1) sells or disposes of such services for profit commits an offence and is liable, upon conviction, to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years, or to both.

172I Duties of operator

(1) Every operator shall —

(a) maintain in such form and manner as may be required by or under, this Act, a record of —

(i) all airtime sold; and

(ii) all air time consumed, lost or otherwise disposed of, during any process of rendering the service; and

(iii) all excise duty paid or payable; and

(b) submit in such form and manner as may be determined by the Commissioner, a return of all airtime consumed, lost or otherwise disposed of, in the preceding month and duly completed entry in the prescribed form accounting for all airtime disposed of during that month.

(2) The return and entry required under this section shall be submitted on or before the tenth day of the month following the month to which the return relates:

Provided that the Commissioner may for good cause allow the tax to be paid within any further time.

(3) An operator who fails to lodge a return within the time allowed by, or under, this Act shall pay the penalty prescribed in regulations made under section 35 of the Revenue Authority Act [*Chapter 23:11*].

(4) Where a return has not been lodged within the time allowed by, or under, this Act, the Commissioner may assess the amount of duty that is due and may, by written notice to an operator, require payment of the duty specified in the assessment.

(5) An assessment made by the Commissioner under subsection (4) shall be deemed to be the correct assessment for the purposes of section 172I and shall be due and payable within the time specified by the Commissioner.

(6) Where an operator fails to make payment as required under subsection (5) the duty specified in the assessment made under subsection (4) shall constitute a debt due to Government which debt shall be dealt with in accordance with the provisions of this Act.

172J Duty payable to constitute debt to State

The duty payable in respect of any service shall, from the time when it is due, constitute a debt due to the State from the operator concerned, and shall, any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority.

172K Records to be kept on licensed premises and powers of officers

(1) The records maintained pursuant to section 172I shall be kept on the operator's premises, whether or not in electronic or written form.

(2) An officer may, at any time, enter and search the premises of an operator or the premises of any person who renders services liable to excise duty on airtime and who is suspected of providing such services in contravention of, or without complying with, this Part, and may—

- (a) take extracts from, or make copies of, any book or document found on the premises that has a bearing on the investigation; or
- (b) use any computer system on the premises, or require as-

sistance of any person on the premises to use that computer system, to—

- (i) search any data contained in, or available to the computer system; or
- (ii) reproduce any record from the data; or 5
- (iii) seize any output from the computer for examination and copying.

(3) An officer may remove all the machinery, equipment and materials used in rendering services in contravention of, or without complying with this Part or, pending removal, seal the premises in which the services are so rendered. 10

(4) An operator shall, at the premises specified in his or her licence, provide free of charge, such accommodation and other facilities as the Commissioner may determine to enable officers to exercise their powers of inspection and supervision under this Act. 15

172L. Operator ceasing business

(1) Where an operator intends to cease the provision of the service liable to duty on airtime, the operator shall give to the Commissioner not less than one month's prior written notice of that intention and shall—

- (a) within twenty days from the date of ceasing to provide the service, lodge with the Authority a true and complete return of all airtime disposed of in whatever manner and business activity since the last monthly return; and 20
- (b) submit to the Authority an entry in the prescribed form accounting for all airtime disposed of on which excise duty has not been paid together with a payment for the amount of excise duty payable. 25

(2) Nothing contained in this section shall be deemed to deprive the State of any right it may have against the property or estate of the operator or those of its sureties in respect of any duty which may remain unpaid after cessation of business activity and shall not relieve the operator of liability to prosecution under this Act.”. 30

PART IV

MINES AND MINERALS 35

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

13 Amendment of Schedule to Chapter VII of Cap. 23:04

With effect from the 1st October, 2014, the Schedule to Chapter VII of the Finance Act [Chapter 23:04] is amended by the repeal in paragraph 1 (which fixes the rates of royalties for the purposes of section 245 of the Mines and Minerals Act [Chapter 21:05]) of the item on gold produced by miners other than small-scale gold miners, and the substitution of the following item— 40

“Gold produced by other miners 5”.