



**FINANCE (No. 2) BILL, 2015**

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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 other Acts. 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 amends section 22A of the Finance Act, which fixes the rate of the tobacco levy payable by both sellers and buyers of tobacco. The effect of the amendment is to reduce the levy payable by tobacco sellers from 1.5% to 0.75%.

*Clause 3*

Section 80 of the Income Tax Act, makes special provision for persons ("payees") who enter into contracts with the Government, statutory bodies, quasi-Governmental institutions or taxpayers who are registered as such in the records of the Commissioner-General, and who have not submitted income tax returns for the most recent year of assessment. The paying officer of the Government or the statutory body, quasi-Governmental institution or taxpayer concerned is obliged to withhold a specified percentage of all payments due to the payees under the contracts and pay the withheld amounts to the Commissioner-General. However, no provision is made for the paying officer to recover the amount so withheld from the payee. This clause seeks to provide accordingly, subject to specified safeguards.

*Clauses 4 and 6*

The Finance Act of 2014 incorporated certain anti-avoidance and anti-transfer pricing provisions in the Income Tax Act. This clause seeks to improve the anti-transfer pricing provisions by giving sufficient guidance to taxpayers involved in transactions that are not "at arm's length", in other words, transactions in which the parties concerned are associated with each other in some way.

*Clause 5*

This clause seeks to amend the Third Schedule to the Income Tax Act (which sets out amounts exempted from income tax) in two main respects, as indicated below:

Paragraph 1 of the Third Schedule exempts the receipts and accruals of certain statutory or quasi-statutory bodies. It is proposed to add ZAMCO, a company incorporated and wholly owned by the Reserve Bank of Zimbabwe which is charged with buying up and selling for best value non-performing loans of banking institutions.

Paragraph 6 of the Third Schedule exempts terminal benefits of various kinds. Presently, retrenched employees who have not attained pensionable age are not entitled to exemption on their commuted pensions or annuities. This amendment will extend tax exemption in those circumstances, up to a value of \$10 000 or one third of such commutation, whichever is the higher (but not exceeding \$60 000 in the latter case).

*Clause 8*

This clause limits VAT payable on short-term insurance to commission earned on the buying and selling of insurance policies by brokers and agents of insurance and reinsurance firms.

*Clauses 9 and 10*

The Finance (No. 2) Act of 2000 introduced a special excise duty on sales of second-hand motor vehicles. To remove the uncertainty surrounding the valuation of second-hand motor vehicles for special excise duty purposes, it is proposed to introduce

flat rates of special excise duty based graduated by reference to the engine capacities of the motor vehicles in question.

*Clause 11*

This clause inserts a section in the Revenue Authority Act that will enable the Commissioner-General of ZIMRA to set off any tax refund due to a taxpayer against any outstanding tax for which that taxpayer is liable, whether that liability arises under the Act by virtue of which the refund is being made or under any other revenue law.

*Clause 12*

Clause 12 allows a rebate of royalty to large-scale gold producers on any increment in their output in the current year of assessment compared to the output as at the end of the preceding year of assessment.

*Clause 13*

This clause amends the Mines and Minerals Act to allow an exemption from royalty on diamonds and precious stones (up to 10 000 carats) for those producers who enter into an agreement with the Government to localise gemmology skills, technology and marketing.

*Clauses 14*

This clause amends the Audit Office by changing the name of the Audit Office Commission to the Audit Office Board, in conformity with the Constitution.

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. New section substituted for section 22A of Cap. 23:04.

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

3. Amendment of section 80 of Cap. 23:06.
4. New section substituted for section 98B of Cap. 23:06.
5. Amendment of Third Schedule to Cap. 23:06.
6. New Schedule inserted in Cap. 23:06.

PART III

STAMP DUTY

7. Condonation of underpayment of stamp duty on policies or certificates of insurance, etc.

PART IV

VALUE ADDED TAX

8. Amendment of section 11 of Cap. 23:12.

PART V

CUSTOMS AND EXCISE

9. New section substituted for section 172D of Cap. 23:02.
10. New Schedule inserted in Cap. 23:02.

PART VI

REVENUE AUTHORITY

11. New section inserted in Cap. 23:11

PART VII

MINES AND MINERALS

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

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

*Amendments to Mines and Minerals Act [Chapter 21:05]*

13. New section substituted for section 249 of Cap. 21:05.

PART VIII

AMENDMENT OF CAP. 22:18

14. Minor amendments to Cap. 22:18.

SCHEDULE: Minor Amendments to Audit Office Act [*Chapter 22:18*]

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.

5 ENACTED by the Parliament and the President of Zimbabwe.

## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Finance (No. 2) Act, 2015.

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## PART II

### INCOME TAX

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

#### **2 Amendment of section 22A of Cap. 23:04**

15 With effect from the 1st January, 2016, section 22A (“Tobacco levy”) of the Finance  
Act [Chapter 23:04] is amended by the repeal of paragraph (b) and the substitution  
of—

“(b) sellers of auction and contract tobacco at the rate of 0,75 cents of each  
dollar;”.

H.B. 18, 2015.]

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*Printed by the Government Printer, Harare*

*Amendments to Income Tax Act [Chapter 23:06]***3 Amendment of section 80 of Cap. 23:06**

With effect from the 1st February, 2009 (and notwithstanding anything in the Prescription Act [*Chapter 8:11*]), section 80 (“Withholding of amounts payable under contracts with State or statutory corporations”) of the Income Tax Act [*Chapter 23:06*], is amended by the insertion of the following subsection after subsection (10)—

“(11) Where a statutory body, quasi-Governmental institution or registered taxpayer pays to the Commissioner an amount referred to in subsection (7)(a) for failure to pay any amount required to be withheld from a payee in terms of this section, it shall have the right, within twenty-four months from the date on which payment should have been made if the amount had been withheld in terms of subsection (2), to recover that amount from the payee:

Provided that—

- (a) the period of twenty-four months specified in this subsection is additional to any period calculated from the date on which any payment referred to in subsection (7)(a) was made between the 1st February, 2009 and the date of commencement of this Act;
- (b) the statutory body, quasi-Governmental institution or registered taxpayer concerned shall not be entitled to recover from the payee any amount referred to in subsection (7)(a) or (10).”.

**4 New section substituted for section 98B of Cap. 23:06**

With effect from the 1st January, 2016, section 98B of the Income Tax Act [*Chapter 23:06*] is repealed and substituted by—

**“98B Transactions between associates**

(1) For the purposes of this section, where a person engages directly or indirectly in any transaction, operation or scheme (hereinafter referred to as a controlled transaction), with an associated person, the amount of taxable income derived by a person that engages in that transaction shall be consistent with the arm’s length principle, where the conditions of the controlled transaction do not differ from an uncontrolled transaction, that is to say, from the conditions that would have applied between independent persons, in comparable transactions carried out under comparable circumstances.

(2) Any amount of income that would have accrued to either of the associated persons in a controlled transaction and been taxable in Zimbabwe, shall, in the absence of the arm’s length principle in that transaction which resulted in the avoidance, reduction or postponement of the liability to tax of either or both of them for any year of assessment, be included in the taxable income of either or both of them and be liable to be taxed accordingly.

(3) The determination of whether the conditions of a controlled transaction between associated persons are consistent with the arm’s length principle, and of the quantum of any tax payable under subsection (2), are prescribed in the Thirty-Fifth Schedule.

(4) Subsection (1) also applies where a person (whether or not an associated person) who is resident in Zimbabwe engages in any transaction with a person resident outside Zimbabwe in a jurisdiction considered by the Commissioner-General to provide a taxable benefit in relation to that transaction.

(5) Every person who engages in a transaction to which subsection (1) or (4) applies shall keep the documentation prescribed in the Thirty-Fifth Schedule to enable the Commissioner-General to ascertain whether a transaction was conducted in accordance with the arm's length principle.

(6) The Minister, after consultation with the Commissioner-General, may by notice in a statutory instrument amend or replace the Thirty-Fifth Schedule.

(7) When the Minister wishes to amend or substitute the Thirty-Fifth Schedule the Minister shall lay the draft statutory instrument amending or substituting the Thirty-Fifth Schedule before the House of Assembly, and if the House makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette*."

## 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) in paragraph 1 with effect from the 1st January, 2016, by the insertion of the following subparagraph after subparagraph (e)—

"(f) the wholly owned company of the Reserve Bank of Zimbabwe called the Zimbabwe Asset Management Corporation (Private) Limited (ZAMCO), incorporated in terms of the Companies Act [Chapter 24:03] on the 15th July, 2014."

(b) in paragraph 4 (p) by the deletion of "under a scheme approved by the Minister responsible for Labour or the Public Service";

(c) in paragraph 6 by the insertion of the following subparagraph after subparagraph (h)—

"(h1) an amount referred to in section 8(1)(r) that is received by a person who has not attained the age of fifty-five years before the commencement of the year of assessment, to the extent of the first ten thousand United States dollars or one third of such amount, whichever is the greater, of the amount of any pension commutation or annuity, which is paid to an employee on the cessation of his or her employment, where his or her employment has ceased due to retrenchment:

Provided that the exemption in this subparagraph shall apply only in respect of the first sixty thousand United States dollars of any deemed pension or annuity payable to him or her in any one year of assessment."

(d) in paragraph 10 by the insertion of the following paragraph after paragraph (q)—

"(r) deposits with a tenure of more than twelve months."

## 6 New Schedule inserted in Cap. 23:06

With effect from the 1st January, 2016, the Income Tax Act [Chapter 23:06] is amended by the insertion of the following Schedule—



“THIRTY-FIFTH SCHEDULE (Section 98B)

TRANSFER PRICING

*Interpretation*

1. In this Schedule—

“comparable transaction” means a transaction that is comparable 5  
by reference to paragraph 4;

“uncontrolled transaction” means any transaction between  
independent persons;

*Arm’s length principle*

2. The determination of whether the conditions of a controlled 10  
transaction are consistent with the arm’s length principle for the purposes  
of section 98B shall be made by the Commissioner-General in accordance  
with this Schedule.

*Comparability*

3. (1) An uncontrolled transaction is comparable to a controlled 15  
transaction within the meaning of section 98B(1)—

(a) when there are no differences between them that could  
materially affect the financial indicator being examined  
under the appropriate transfer pricing method; or

(b) when such differences exist, if a reasonably accurate 20  
comparability adjustment is made to the relevant financial  
indicator of the uncontrolled transaction in order to eliminate  
the effects of such differences on the comparison.

(2) To determine whether two or more transactions are comparable,  
the following factors shall be considered to the extent that they are 25  
economically relevant to the facts and circumstances of the transactions—

(a) the characteristics of the property or services transferred;  
and

(b) the functions undertaken by each person with respect to  
the transactions, taking into account assets used and risks 30  
assumed; and

(c) the contractual terms of the transactions; and

(d) the economic circumstances in which the transactions take  
place; and

(e) the business strategies pursued by each of the associated 35  
persons in relation to the transactions.

*Transfer pricing*

4. (1) The arm’s length remuneration of a controlled transaction shall  
be determined by applying the most appropriate transfer pricing method  
to the circumstances of the case. 40

(2) The most appropriate transfer pricing method shall be selected  
from among the approved transfer pricing methods set out in paragraph  
5(5), taking into consideration the following criteria—

(a) the respective strengths and weaknesses of the approved  
methods; and 45

(b) the appropriateness of an approved method in view of the  
nature of the controlled transaction, determined in particular

through an analysis of the functions undertaken by each person in the controlled transaction, taking into account assets used and risks assumed; and

- (c) the availability of reliable information needed to apply the selected transfer pricing method or other methods; and
- (d) the degree of comparability between the controlled and uncontrolled transactions, including the reliability of comparability adjustments, if any, that may be required to eliminate differences between them.

(3) It shall not be necessary to apply more than one method to determine whether the conditions of a given controlled transaction are consistent with the arm's length principle.

(4) Where a taxpayer has used an approved transfer pricing method and the selection of that method is consistent with this regulation, the examination by the Commissioner of whether the conditions of the taxpayer's controlled transactions are consistent with the arm's length principle shall be based on that transfer pricing method applied by the taxpayer.

(5) The following shall be the approved transfer pricing methods for purposes of paragraph 5(1)—

- (a) the Comparable Uncontrolled Price Method, which is the comparable uncontrolled price method consisting of comparing the price charged for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction; and
- (b) the Resale Price Method, which is the resale price method consisting of comparing the resale margin that a purchaser of property in a controlled transaction earns from reselling that property in an uncontrolled transaction with the resale margin that is earned in comparable uncontrolled purchase and resale transactions; and
- (c) the Cost Plus Method, which is the cost plus method consisting of comparing the mark up on those costs directly and indirectly incurred in the supply of property or services in a controlled transaction with the mark up on those costs directly and indirectly incurred in the supply of property or services in a comparable uncontrolled transaction; and
- (d) the Transactional Net Margin Method, which is the transactional net margin method consisting of comparing the net profit margin relative to an appropriate base, such as costs, sales or assets, that a person achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions; and
- (e) the Transactional Net Margin Method, which is the transactional net margin method consisting of comparing the net profit margin relative to an appropriate base, such as costs, sales or assets, that a person achieves in a controlled transaction with the net profit margin relative to the same base achieved in comparable uncontrolled transactions; and

(f) the Transactional Profit Split Method, which is the transactional profit split method consisting of allocating to each associated person participating in a controlled transaction the portion of common profit (or loss) derived from such transaction that an independent person would expect to earn from engaging in a comparable uncontrolled transaction. When it is possible to determine an arm's length remuneration for some of the functions performed by the associated persons in connection with the transaction using one of the approved methods described in paragraph 5(5)(a) to (d), the transactional profit split method shall be applied based on the common residual profit that results once such functions are so remunerated.

(6) Where, taking account of the criteria described in paragraph 5(3), a comparable uncontrolled price method described in paragraph 5(5)(a) and an approved method described in paragraph 5(5)(b) to (e) can be applied with equal reliability, the determination of arm's length conditions shall be made using the comparable uncontrolled price method.

(7) Where, taking account of the criteria described in paragraph 5(3), an approved method described in paragraph 5(5)(a) to (c) and an approved method described in paragraph 5(5)(d) to (e) can be applied with equal reliability, the determination of arm's length conditions shall be made using the method described in paragraph 5(5)(a) to (c).

(8) It shall not be necessary to apply more than one method to determine the arm's length remuneration for a given controlled transaction.

(9) A transfer pricing method other than the approved methods contained in paragraph 5(5) may be applied where the Commissioner is satisfied that—

- (a) none of the approved methods can be reasonably applied to determine arm's length conditions for the controlled transaction; and
- (b) such other method yields a result consistent with that which would be achieved by independent persons engaging in comparable uncontrolled transactions under comparable circumstances.

(10) When a method other than the approved methods contained in paragraph 5(5) is used it shall establish that the requirements of this paragraph 5(9) have been satisfied.

(11) When applying a cost plus, resale price or transactional net margin method, provided under paragraph 5, it shall be necessary to select the party, hereinafter referred to as the "tested party", to the transaction for which a financial indicator, mark-up on costs, gross margin, or net profit indicator, is tested under the applicable transfer pricing method.

(12) The selection of the tested party should be consistent with the functional analysis of the transaction.

(13) Where a taxpayer has used a transfer pricing method to establish the remuneration of its controlled transactions and that transfer pricing method is consistent with the provisions of this paragraph 5, then

the tax administration's examination of whether the conditions of the taxpayer's controlled transactions are consistent with the arm's length principle shall be based on the transfer pricing method applied by the taxpayer.

5                    *Evaluation of taxpayer's combined controlled transactions*

5. If a taxpayer carries out, under the same or similar circumstances, two or more controlled transactions that are economically closely linked to one another or that form a continuum such that they cannot reliably be analysed separately, those transactions may be combined to (i) perform  
10 the comparability analysis set out in paragraph 4 and (ii) apply the transfer pricing methods set out in paragraph 5.

*Arm's length range*

6. (1) An arm's length range is a range of relevant financial indicator figures (e.g. prices, margins or profit shares) produced by the application  
15 of the most appropriate transfer pricing method as set out in paragraph 5 to a number of uncontrolled transactions, each of which is relatively equally comparable to the controlled transaction based on a comparability analysis conducted in accordance with paragraph 4.

(2) A controlled transaction, or a set of transactions that are  
20 combined according to paragraph 6 shall not be subject to an adjustment under section 98B where the relevant financial indicator derived from the controlled transaction or set of transactions and being tested under the appropriate transfer pricing method is within the arm's length range.

(3) Where the relevant financial indicator derived from a controlled  
25 transaction, or from a set of transactions that are combined according to paragraph 6, falls outside the arm's length range, the Commissioner may adjust it pursuant to section 98B(1), and any such adjustment shall be to the median in the arm's length range.

(4) For the purposes of subparagraph (3), the median of the arm's  
30 length range shall be the 50th percentile of the financial indicator figures derived from the comparable uncontrolled transactions forming the arm's length range. For this purpose, the 50th percentile is the lowest financial indicator figure such that at least 50 percent of the financial indicator  
35 figures are at or below the value of that figure. However, if exactly 50 percent of the results are at or below a financial indicator figure, then the 50th percentile is equal to the arithmetic mean of that figure and the next highest figure.

*Sources of information on comparable uncontrolled transactions*

7. (1) Possible sources of information on comparable uncontrolled  
40 transactions that may include —

- (a) internal uncontrolled transactions, which are uncontrolled transactions where one of the parties to the controlled transaction is also a party to the uncontrolled transaction; and
- 45 (b) external uncontrolled transactions, which are uncontrolled transactions to which neither of the parties to the controlled transaction is a party.

(2) Information concerning a comparable external uncontrolled transaction may not be relied upon by the Commissioner for the purposes of making an adjustment under section 98B of the Income Tax Act if the information concerning the transaction is not available to the taxpayer.

(3) Information concerning a comparable uncontrolled transaction may not be relied upon by the taxpayer for the purposes of demonstrating the consistency a transaction with section 98B of the Income Tax Act if the information on the transaction is not available to the Commissioner. 5

(4) In the absence of information on uncontrolled transactions from the same geographic market as the controlled transaction, comparable uncontrolled transactions from other geographic markets may be accepted by the Commissioner. 10

(5) A determination of whether comparables from other geographic markets are reliable has to be made on a case-by-case basis, and by reference to the extent to which they satisfy paragraph 4 of this Schedule. 15

(6) Taxpayers using such comparables would be expected to assess the expected impact of geographic differences and other factors on the price and profitability.

*Services between associated enterprises*

8. (1) A service charge between a taxpayer and an associated person shall be considered consistent with the arm's length principle where— 20

- (a) it is charged for a service that is actually rendered; and
- (b) the service provides, or when rendered was expected to provide, the recipient with economic or commercial value to enhance its commercial position; and 25
- (c) it is charged for a service that an independent enterprise in comparable circumstances would have been willing to pay for if performed for it by an independent enterprise, or would have performed in-house for itself; and
- (d) its amount corresponds to that which would have been agreed between independent enterprises for comparable services in comparable circumstances. 30

(2) A service charge made to a person shall not be consistent with the arm's length principle where it is made by an associated person solely because of the shareholder's ownership interest in one or more other group members, including for any of the following costs incurred or activities undertaken by such associated person— 35

- (a) costs or activities relating to the juridical structure of the parent company of the first-mentioned person, such as meetings of shareholders of the parent, issuing of shares in the parent company and costs of the parent company's supervisory board; and 40
- (b) costs or activities relating to reporting requirements of the parent company of the first-mentioned person, including the consolidation of reports; and 45
- (c) costs or activities related to raising funds for the acquisition of participations, unless those participations are directly

or indirectly acquired by the first-mentioned person and the acquisition benefits or is expected to benefit that first-mentioned person.

(3) Where it is possible to identify specific services provided by a taxpayer to a associated person, the determination whether the service charge is consistent with the arm's length principle shall be made for each specific service, subject to the provisions of paragraph 8(4).

(4) Where services are rendered by a taxpayer jointly to various associated persons and it is not possible to identify specific services provided to each of them, the total service charge shall be allocated among the associated persons that benefit or expect to benefit from the services according to reasonable allocation criteria.

(5) For the purpose of this sub-regulation, allocation criteria shall be viewed as reasonable where they are based on a variable or variables that—

- (a) take into account the nature of the services, the circumstances under which they are provided and the benefits obtained or that were expected to be obtained by the persons for which the services are intended; and
- (b) relate exclusively to uncontrolled, rather than controlled, transactions; and
- (c) are capable of being measured in a reasonably reliable manner.

*Transactions involving intangible property*

9. (1) The determination of arm's length conditions for controlled transactions involving licenses, sales or other transfers of intangible property between associated persons shall take into account both the perspective of the transferor of the property and the perspective of the transferee, including in particular the pricing at which a comparable independent enterprise would be willing to transfer the property and the value and usefulness of the intangible property to the transferee in its business.

(2) In applying the provisions of paragraph 4 to a transaction involving the license, sale or other transfer of intangible property, consideration shall be given to any special factors relevant to the comparability of the controlled and uncontrolled transactions, including—

- (a) the expected benefits from the intangible property; and
- (b) any geographic limitations on the exercise of rights to the intangible property; and
- (c) the exclusive or non-exclusive character of the rights transferred; and
- (d) whether the transferee has the right to participate in further developments of the intangible property by the transferor.

*Corresponding adjustments for domestic transactions*

10. (1) The determination of arm's length conditions for controlled transactions involving licenses, sales or other transfers of intangible property between associated persons shall take into account both the perspective of the transferor of the property

and the perspective of the transferee, including in particular the pricing at which a comparable independent enterprise would be willing to transfer the property and the value and usefulness of the intangible property to the transferee in its business.

(2) In applying the provisions of paragraph 4 to a transaction involving the license, sale or other transfer of intangible property, consideration shall be given to any special factors relevant to the comparability of the controlled and uncontrolled transactions, including— 5

- (a) the expected benefits from the intangible property; and
- (b) any geographic limitations on the exercise of rights to the intangible property; and 10
- (c) the exclusive or non-exclusive character of the rights transferred; and
- (d) whether the transferee has the right to participate in further developments of the intangible property by the transferor.

*Corresponding adjustments for domestic transactions* 15

11. Where an adjustment is made by the Commissioner under section 98B to the taxable income of a taxpayer in relation to domestic transaction, then, the Tax Authority shall make an appropriate adjustment to the taxable income of the other party to the transaction.

*Corresponding adjustments for international transactions* 20

12. (1) A service charge between a taxpayer and an associated person shall be considered consistent with the arm's length principle where—

- (a) an adjustment to the conditions of transactions between a person resident in Zimbabwe and an associated person is made or proposed by a tax administration in a country other than Zimbabwe; and 25
- (b) this adjustment results in the taxation in that other country of an amount of income on which the person resident in Zimbabwe has already been charged to tax in Zimbabwe; and 30
- (c) the country making or proposing the adjustment has a treaty with Zimbabwe that reflects an intention to provide for the relief of economic double taxation.

(2) The Commissioner, shall after a request is made by the person resident in Zimbabwe, examine the consistency of that adjustment with the arm's length principle provided for under section 98B, consulting as necessary with the competent authority of the other country. 35

(3) If the adjustment proposed or made by the other country is consistent with the arm's length principle both in principle and as regards the amount, the Commissioner shall make a corresponding adjustment to the amount of the tax charged in Zimbabwe to that person on those profits, in order to eliminate the economic double taxation that would result from the inclusion of the same profits in the taxable income of both that person and the associated person. 40

(4) A request under paragraph 11(1) must include the information necessary for the Commissioner to examine the consistency of the adjustment made by the tax administration of the other country with the arm's length principle, including— 45

- (a) the name, registered address and, where applicable, trading name(s) of the related person; and
- (b) evidence of the tax residence of the related person;
- 5 (c) the year(s) in which the adjusted controlled transaction(s) took place;
- (d) the amount of the requested corresponding adjustment and the amounts of the adjustment made by the tax administration of the other country;
- 10 (e) evidence of the adjustment made by the tax administration of the other country and the basis for the adjustment, including details of comparability analysis relied upon and the transfer pricing method applied;
- 15 (f) confirmation that the related person party will not, or is unable to, pursue any further recourse under the domestic law of the other country that may result in the adjustment made by the tax administration of the other country being reduced or reversed;
- 20 (g) any other information that may be relevant for examining the consistency of the adjustment with the arm's length principle.

(5) The request must be made within the applicable time period for making a request for the case to be resolved by way of mutual agreement procedure under the applicable tax treaty.

#### *Relevance of OECD Transfer Pricing Guidelines*

- 25 13. The Organization for Economic Cooperation and Development (OECD) "Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations" and the UN Manual on the interpretation of transfer pricing are relevant sources of interpretation for these regulations. There may also be other relevant sources such as the United Nations Practical
- 30 Manual on Transfer Pricing for developing countries.

### PART III

#### STAMP DUTIES

#### **7 Condonation of underpayment of stamp duty on policies or certificates of insurance, etc.**

- 35 (1) The underpayment between the 1st February, 2009, to the 30th July, 2015, of the stamp duty referred to in subsection (2) in the circumstances referred to in subsection (3) is hereby condoned.

- (2) The stamp duty in question is payable under item 5 ("Policy of Insurance") of the Schedule ("Stamp Duty on Instruments and other Matters") to Chapter II of the Finance Act [Chapter 23:04].
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- (3) The underpayment resulted from the erroneous application by insurance companies and insurance brokers (on the basis of mistaken advice communicated to insurance companies and insurance brokers collectively) of stamp duty at the rate of US\$0.01 instead of US\$0.05 for every dollar worth of premiums payable on policies or certificates of insurance or renewals thereof or on other documents which are in
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the form of guarantee, fidelity, security or surety bonds and which are signed by an insurance company or by any person transacting business on behalf of brokers or underwriters at Lloyd's.

## PART IV

## VALUE ADDED TAX

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**8 Amendment of section 11 of Cap. 23:12**

With effect from the 1st January, 2016, section 11 ("Exempt supplies") the Value Added Tax Act [*Chapter 23:12*] is amended in paragraph (a) and by the repeal of subparagraph (i) and the substitution of—

"(i) the supply of short-term insurance by insurance agents or brokers liable to property and insurance commission tax under section 36H of the Income Tax Act [*Chapter 26:04*];

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For the purpose of this subparagraph the short-term insurance in question shall be deemed to be a supply of financial services by the agents or brokers in question, and not by the insurance company or reinsurance company on behalf of which the brokers or agents buy or sell any policy of insurance;

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Provided tax shall be payable on the amount of the commission earned by such agents or brokers and not on the value of the policy of insurance;".

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## PART V

## CUSTOMS AND EXCISE

**9 New section substituted for section 172D of Cap. 23:02**

With effect from the 1st January, 2016, the Customs and Excise Act [*Chapter 23:02*] is amended by the repeal of section 172D and the substitution of—

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"172D Rate of excise duty on second-hand motor vehicle on which special excise duty payable

For the purposes of this Part, the rate of special excise duty on the sale of a second-hand motor vehicle shall be calculated by reference to the Schedule.".

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**10 New Schedule inserted in Cap. 23:02**

With effect from the 1st January, 2016, the Customs and Excise Act [*Chapter 23:02*] is amended by the insertion of the following Schedule—

## “SCHEDULE (Section 172D)

## RATES OF SPECIAL EXCISE DUTY ON SECOND-HAND MOTOR VEHICLES

Number of Years from date of Manufacture	Engine Capacity	Proposed Excise Duty Rate (US\$)
0-4	Up to 1000 cc	\$300
	1001-1500 cc	\$400
	1501 – 2000 cc	\$500
	2001 – 2500 cc	\$600
	2501 – 3000 cc	\$600
	3001 – 3500 cc	\$600
	Above 3501 cc	\$600
5-10	Up to 1000 cc	\$150
	1001-1500 cc	\$200
	1501 – 2000 cc	\$250
	2001 – 2500 cc	\$300
	2501 – 3000 cc	\$400
	3001 – 3500 cc	\$400
	Above 3501 cc	\$400
11-15	Up to 1000 cc	\$75
	1001-1500 cc	\$100
	1501 – 2000 cc	\$150
	2001 – 2500 cc	\$200
	2501 – 3000 cc	\$200
	3001 – 3500 cc	\$200
	Above 3501 cc	\$200
16-20	Up to 1000 cc	\$50
	1001-1500 cc	\$75
	1501 – 2000 cc	\$100
	2001 – 2500 cc	\$150
	2501 – 3000 cc	\$150
	3001 – 3500 cc	\$150
	Above 3501 cc	\$150
Above 20	All Engine Capacity	\$50”.

## PART VI

## REVENUE AUTHORITY

**11 New section inserted in Cap. 23:11**

The Revenue Authority Act [*Chapter 23:11*] is amended by the insertion of the following section after section 34C—

**“34D Offsetting of tax refunds against tax liabilities**

Wherever in any Act specified in the First Schedule (“the Scheduled Acts”) provision is made for the refund of any amount of tax overpaid, that provision is to be understood as permitting the Commissioner-General

to offset the amount of the refund due to a person against any liability of that person to the Commissioner-General for outstanding tax, whether that tax is imposed under the same Act by virtue of which the refund is to be made or is imposed under any other Scheduled Act.”.

## PART VII

5

## MINES AND MINERALS

*Amendments to Chapter VII of Finance Act [Chapter 23:04]***12 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—

“Gold produced by other miners who have not realised any increment in their output in the current year of assessment compared to the output as at the end of the preceding year of assessment . . . . . 5: 15

Gold produced by other miners who have realised any increment in their output in the current year of assessment compared to the output as at the end of the preceding year of assessment (for the purpose of this item, royalty shall be paid at the rate of 5% and the reduction in the rate due to the increment found to have been archived at the end of the current year of assessment shall be offset against the royalty payable for the following year of assessment) . . . . . 3 (on the incremental or additional output only);”.

*Amendment to Mines and Minerals Act [Chapter 21:05]* 25

**13 New section substituted for section 249 of Cap. 21:05**

Section 249 of the Mines and Minerals Act [Chapter 21:05] is repealed and substituted by—

## “249 Exemption of royalty in certain circumstances

If any miner— 30

(a) desires to extract or treat ore from his or her location for experimental or similar purposes, he or she may apply to the Secretary for permission to treat or deal with the mineral or mineral-bearing product obtained from his or her location for a limited period or up to a limited amount, and the Secretary may permit such treatment or dealing without payment of royalty under such terms and conditions as may by the Secretary be deemed expedient Part VI; 35

(b) of diamonds or other precious stones—

(i) enters into written agreement with the Minister whereunder the miner undertakes— 40

A. to train or fund the training (whether locally or abroad or both) of a specified number of

- 5 Zimbabwean citizens, annually  
or over a specified period, In the  
cutting, polishing, grading, valuation  
and beneficiation of diamonds and  
precious stones, and in all aspects  
of the diamond or jewellery trade  
generally; and
- 10 B. to establish or help to establish any one  
or a combination of the following: a  
significant local jewellery fabrication  
plant; one or more local jewellery  
retail outlets; or a local laboratory for  
the certification of cut and polished  
diamonds or precious stones in  
15 Zimbabwe;
- and
- (ii) satisfies the Minister that he or she has  
the resources and plans and to comply  
with his or her undertakings referred to in  
20 subparagraph (i) within a specified period;  
the Minister may, with the approval of the  
Minister responsible for finance, waive the  
payment of royalty, export tax and all fees  
and commissions charged by the Minerals  
25 Marketing Corporation of Zimbabwe on  
the export of rough diamonds or other  
unbeneficiated precious stones up to a  
limit of 10 000 carats of rough diamonds  
or precious stones per month.”.

30 PART VIII

AMENDMENT OF CAP. 22:18

**14 Minor amendments to Cap. 22:18**

35 The provisions of the Audit Office Act [*Chapter 22:18*] (No. 12 of  
2009) specified in the first column of the Schedule are amended to the extent  
set out opposite thereto in the second column.

**SCHEDULE (Section 14)**

MINOR AMENDMENTS TO AUDIT OFFICE ACT [*CHAPTER 22:18*]

<i>Provision</i>	<i>Extent of Amendment</i>
Section 2(1)	By the repeal of the definition of “Commission” and the substitution of:  ““Board” means the Audit Office Board established by section 14;”.
Section 14 (Heading)	By the deletion of the heading thereto and the substitution of “Establishment and composition of Audit Office Board”.

Section 14(1),	By the deletion of “a Commission, to be known as the Audit Office Commission” and the substitution of “a Board, to be known as the Audit Office Board”.
Section 15 (Heading)	By the deletion of the heading thereto and the substitution of “Functions of Board”.
Sections 14(1)(a) and (2)(a) and (b), 15(1), (1)(f), (2), 16(1), (2) and (2)(c), 17(2) and (3), 18(1)(a) and (b) 20(1), 21(1), (2) and (3), 21(5), 22(1) and (4), 23, 27, 28(1), (3) and (4), 28(5), 29(1), (3)(a) and (5), 30(1), (4) and (6), 31(2)(i) and (n) and (5), 35(3)	By the deletion of “Commission” and the substitution of “Board”.
Sections 16(3) and (4), 17(1), 18(2), 19(1), 20(2), 22(3), 24(1), 28(2), 30(2), (3) and (5), 35(2)	By the deletion of “Commission” wherever it occurs and the substitution of “Board”.
Section 30 (Heading)	By the deletion of the heading thereto and the substitution of “Minister may give Policy directions to Board”.
First Schedule (Heading)	By the deletion of the heading thereto and the substitution of “Provisions Applicable to Board”.
First Schedule (Paragraphs 1, 2 (Heading) and (1), 3 (Heading) and (1), 4(Heading), (1) and (2)(a), 5 (Heading), 6 (Heading), 6(1), (2)(a) and (b), (5), (6), (7), (8), (9), (10), (11) and (12), 7 (Heading), (1), (2), (3), (4) and (9), 8 (Heading), (1), (2) and (3), 9 (Heading), (1) and (1)(b), (2)(b) and (3), 10 (Heading) (1) and (2))	By the deletion wherever it occurs of “Commission” and the substitution of “Board”.
Second Schedule	By the deletion wherever it occurs of “Commission” and the substitution of “Board”.