



MEMORANDUM

THE MAJOR CHANGES
IN TAX LEGISLATION FOR THE YEAR 2022

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MMLP

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LEGAL PRACTITIONERS

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MEMORANDUM ON THE MAJOR CHANGES IN TAX LEGISLATION FOR THE YEAR 2022

1. INTRODUCTION

On 1st January 2022 various legislative amendments came into force in line with the budget address by the Minister of Finance in October 2021.

The Amendment Acts and Regulations are as follows:

- a) The Income Tax (Amendment) Act No. 43 of 2021;
- b) The Value Added Tax (Amendment) Act No. 44 of 2021;
- c) The Customs and Excise (Amendment) Act No. 45 of 2021;
- d) The Zambia Development Agency (Amendment) Act No.48 of 2021
- e) The Property Transfer Tax (Amendment) Act No. 46 of 2021; and
- f) The Income Tax (Transfer Pricing) Regulations, Statutory Instrument No. 107 of 2021.

This memorandum presents an overview of the major changes that have been incorporated in tax legislation for the year 2022.

2. INVESTMENT INCENTIVES UNDER THE ZAMBIA DEVELOPMENT AGENCY ACT

Qualification for incentives

The Zambia Development Agency Act No. 11 of 2006 ("ZDA Act") has been amended to provide that the following persons are entitled to the incentives that are specified by the Customs and Excise Act Chapter 322 of the Laws of Zambia (the "Customs and Excise Act") or the Income Tax Act Chapter 323 of the Laws of Zambia (the "Income Tax Act"):

- a) a foreign investor who invests not less than five hundred thousand United States Dollars (USD 500,000.00) or the equivalent in convertible currency, in a priority sector; and
- b) a local investor who invests not less than fifty thousand United States Dollars (USD 50,000.00) or the equivalent in convertible currency, in a priority sector.

The ZDA Act defined a "foreign investor" as a person who makes direct investment in Zambia and who in the case of a natural person is not a citizen or permanent resident of Zambia and in the case of a company is incorporated outside Zambia, while a "local investor" is defined as a person who makes direct investment in Zambia and who in the case of a natural person is a citizen or permanent resident and in the case of a company is incorporated in Zambia.

INDIVIDUAL TAX

Incentives

The Income Tax Act has been amended to provide that tax on income earned from exports of a business enterprise approved by the Zambia Development Agency and carrying on manufacturing activities in a multi-facility economic zone or an industrial park shall be charged as follows:

- a) zero percent (0%) for a period of ten (10) years starting from the year of commencement of works;
- b) half of the standard income tax rate on the business enterprise's profits earned in year eleven (11) to thirteen (13) after the commencement of works; and
- c) three quarters ($\frac{3}{4}$) of the standard income tax rate on business enterprise's profits earned in year fourteen (14) and fifteen (15) after the commencement of works.

The Income Tax Act has further been amended to provide that tax at the rate of zero percent (0%) per annum is deductible from the following payments:

- a) dividends paid by a company operating in a multi-facility economic zone or industrial park under the ZDA Act on profits made on exports; and
- b) for a period of ten (10) years from the time of commencement of works in the multi-facility economic zone or industrial park under the ZDA Act.

3. INDIVIDUAL TAX

Increase in the exempt threshold for Pay As You Earn

The exempt threshold for Pay As You Earn has been increased from K4,000 to K4,500. This measure will provide relief to employees and self-employed individuals, especially those in the lower income brackets.

Revision of tax exemption relating to payments of interest arising on bank accounts held by individuals

The Income Tax Act has been revised to provide clarification that interest earned by individuals on all interest earning accounts held with financial service providers registered under the Banking and Financial Services Act ("BFSA") is zero percent (0%) per annum.

However, for interest payments other than interest arising from all interest earning accounts held by an individual with a financial service provider registered under the BFSA, WHT should be deducted at the rate of fifteen percent (15%) per annum and it is a final tax.

RENTAL INCOME TAX

4. RENTAL INCOME TAX

Reformation of Rental Income Tax

Previously, rental income was subject to WHT at the rate of 10%. The Income Tax Act has revised the rental income tax regime to turnover tax and now provides that the maximum tax rate for turnover received by a person or partnership from the letting of property shall be:

- a) four percent (4%) per annum on turnover as does not exceed eight hundred thousand Kwacha (K 800,000); and
- b) twelve and a half percent (12½%) per annum on turnover as exceeds eight hundred thousand Kwacha (K 800,000).

This provision applies to a person or partnership who is appointed by the Commissioner-General as withholding agent

5. CORPORATE TAX

Reformation of Rental Income Tax

The Income Tax Act has reduced the Corporate Income Tax rate from 35% to 30%. This amendment also extends to the income of a trust, a deceased's estate or bankrupt's estate.

Property Transfer Tax (“PTT”) imposed on the transfer of a share issued by a company incorporated outside Zambia

Section 4 of the Property Transfer Tax Act Chapter 340 of the Laws of Zambia (“PTT Act”) imposes PTT on any person that sells property in Zambia. “Property” includes intellectual property, shares, land and mining rights (or an interest therein), in Zambia. The rate of tax is ten percent (10%) of the realised value in respect of a mining right or five percent (5%) of the realised value in respect of land, shares and intellectual property.

According to section 4(1A) of the PTT Act, in the case of the transfer of a share issued by a company incorporated outside Zambia where that company directly or indirectly owns at least ten percent (10%) of a company incorporated in Zambia, PTT shall be charged and collected from the Zambian incorporated company.

Section 4(1B) of the PTT Act has been amended to clarify that a transfer of shares referred to under section 4 (1A) is not liable to tax if the total value of the transferred shares over a period of three (3) consecutive years represents less than 10% of the total value of shares in the company incorporated in Zambia. The amendment clarifies that the three (3) years are required to follow each other consecutively.

6. MINING COMPANIES

Increase in the period for disallowed interest for persons carrying on a mining operation

Currently interest on which a deduction is not allowed may be carried forward and treated as incurred during the next charge year, except that such interest cannot be carried forward for more than five (5) years. The Income Tax Act has extended the period for which disallowed interest deduction can be carried forward by persons carrying on a mining operation to ten (10) years from five (5) years. Such interest shall not exceed thirty percent (30%) of the tax earnings before interest, tax, depreciation and amortization.

Introduction of PTT on the transfer of mineral processing licence.

The PTT Act has been amended to provide for the payment of PTT on the transfer of a mineral processing licence issued under the Mines and Minerals Development Act No 11 of 2015, or an interest in the mineral processing licence at the rate of 10%. Prior to the current amendment, PTT was only payable on the transfer of a mining right. The amendment means that every transaction that involves the transfer of a mineral processing license or an interest therein will attract PTT at 10% of the realised value.

Deductibility of Mineral Royalty

Mineral Royalty is a payment made to the Zambia Revenue Authority (“ZRA”) as consideration for the extraction of minerals. Holders of large-scale mining license, large scale gemstone license, small-scale mining license, small scale gemstone license, and artisan's mining right are liable to mineral royalty on minerals produced under their respective licenses. Mineral Royalty was non-deductible for purposes of computing Corporate Income Tax when arriving at the gains and profits of a person carrying on mining operations and/or mineral processing, however the Income Tax Act has now introduced the deductibility of Mineral Royalty from the computation of Corporate Income Tax.

Amendment of the definition of commodity royalty

According to the Income Tax Act, the payment of a commodity royalty is subject to WHT at the rate of fifteen percent (15%). The Income Tax Act has amended the definition of “commodity royalty” to mean an amount paid under royalty financing or a general agreement to a person or partnership, by a person or partnership resident in Zambia that is computed by reference to the production, profit, or to the value of production from a mineral deposit or other natural resource in Zambia but does not include the repayment of the purchase price for the commodity royalty.

INCOME REAL ESTATE INVESTMENT TRUST

REIT

REAL
ESTATE
INVESTMENT

7. INCOME REAL ESTATE INVESTMENT TRUST

Taxation of an Income Real Estate Investment Trust

The Income Tax Act has been amended to provide for the taxation of an “income real estate investment trust” which is defined as a collective investment scheme that invests primarily in income generating real estate. “Income generating real estate” is defined to mean real estate properties that generate a consistent recurring revenue in the form of dividends, interest or cash distribution.

According to the Income Tax Act, distributed income of an income real estate investment trust is subject to WHT. The distributed income is the gross rent collected by an income real estate investment minus twenty-five percent (25%) of gross collections.

The Income Tax Act further provides that an income real estate investment trust approved by the Securities and Exchange Commission is exempt from income tax.

8. HOTELS AND LODGES

Extension of the rate of Corporate Income Tax on income received by persons providing accommodation and food services

To give relief to businesses in the hospitality industry that were highly affected by the COVID-19 pandemic, as of 1st January 2021, the rate of Corporate Income Tax on income earned by hotels and lodges on accommodation and food services was reduced to 15% from the standard rate of 35% until 31st December 2021. The Income Tax Act has extended the application of this rate to 15% until 31st December 2022.

9. ELECTRICITY COMPANIES

Increase in the period for disallowed interest for persons carrying on electricity generation

Currently interest on which a deduction is not allowed may be carried forward and treated as incurred during the next charge year, except that such interest cannot be carried forward for more than five (5) years. The Income Tax Act has extended the period for which disallowed interest deduction can be carried forward by persons carrying on electricity generation to ten (10) years from five (5) years. Such interest shall not exceed thirty percent (30%) of the tax earnings before interest, tax, depreciation and amortization..

INSURANCE AND REINSURANCE

10. INSURANCE AND REINSURANCE

Introduction of WHT for reinsurers that are not licensed in Zambia

To encourage the uptake of reinsurance from local Zambian firms and further develop the industry, WHT at the rate of 20% has been introduced on reinsurance premiums to a recipient not registered in Zambia.

Increase in Insurance Premium Levy

The Insurance Premium Levy (“IPL”) is a levy imposed on all insurance premiums for all classes of insurance business excluding re-insurance. There is no IPL imposed on commissions earned on brokerage because commissions are not classified as insurance business.

The Insurance Premium Levy Act No 21 of 2015 has been amended by increasing the rate of IPL from three percent (3%) to five percent (5%).

11. CASINO

Introduction a definition for “winnings”

According to the Income Tax Act, tax must be withheld at the rate of 20% on winnings from gaming, lotteries and betting other than winnings received by an individual by virtue of employment or office.

It is notable that the Income Tax Act did not define “winnings”. The Income Tax Act has introduced a definition for “winnings” “in that it means anything won:

- a) for lotteries, whether in money or in money's worth; or
- b) from gaming or betting in money or money's worth less the total amount staked by the person.

The Income Tax Act has also been amended to clarify that WHT on winnings only applies to online casinos and not brick and mortar casinos.



Revision of the bands for presumptive taxes on betting and gaming

The presumptive tax bands on betting and gaming have been revised as follows:

Type of Game Monthly Tax Amount	Monthly Tax Rate or
a) Online Casino Live Games	20 percent of gross takings
b) Online Casino Machine Games	35 percent of gross takings
c) Casino Games (Brick and Mortar)	K5,000 per table
d) Lottery Winnings	35 percent of net proceeds
e) Betting	25 percent of gross takings
f) Gaming Machines	K500 per machine

NOTES:

1. "Net proceeds" means the gross proceeds less sums paid out for the prizes.
2. "Gross takings" means the total amount staked by players less the winnings payable and redemptions by the players.

12. BUSES AND TAXIS

Revision of the bands for presumptive taxes on taxis and buses

The presumptive tax bands on public service motor vehicles have been revised as follows:

Type of vehicle (sitting capacity)	Amount of tax per vehicle (per annum)
a) 64 seater and above	K12,960
b) 50 - 63 seater	K10,800
c) 36 - 49 seater	K8,640
d) 22 - 35 seater	K6,480
e) 18 - 21 seater	K4,320
f) 12 - 17 seater	K2,160
g) Below 12 seater (including taxis)	K1,080



13. TRANSFER PRICING

Aligning Regulation 10 and 11 of the Income Tax (Transfer Pricing) Regulations with the Income Tax Act

Section 97A of the Income Tax Act requires that assessable (taxable) income of a person is calculated on the basis that the arm's length principle is applied in relation to all controlled transactions. In cases where the conditions of a controlled transaction are not in accordance with the arm's length principle, then the taxpayer must make the appropriate adjustments to ensure that the assessable income of such a person is calculated in accordance with the arm's length principle.

Regulation 10 and 11 of the Income Tax (Transfer Pricing) Regulations, SI No 20 of 2000 ("Transfer Pricing Regulations") which provide for the determination of the arm's length principle and the comparability analysis have been amended to make them more consistent with the provisions of Section 97A of the Income Tax Act.

Amendment of the threshold for Country by Country ("CbC") reporting

Regulation 22A of the Transfer Pricing Regulations provides that a company resident in Zambia is mandated to submit a CbC Report to the Commissioner-General where the company is the Ultimate Parent Entity or Surrogate Parent Entity of a Multinational Enterprise ("MNE") Group and the annual turnover of the group exceeds seven hundred and ninety-five million Euros (EUR 750 million) or four thousand seven hundred and ninety-five million Kwacha (K4,795 million).

The Transfer Pricing Regulations have been amended to only provide for a single threshold denominated in Kwacha, this being four thousand seven hundred and ninety-five million Kwacha (K4,795 million).

Clarification on the conditions under which a local entity will not be required to file a CbC Report

Regulation 22A(7) sets out the conditions under which a local entity will not be required to file a CbC Report with the Commissioner-General. The Transfer Pricing Regulations have amended one of the conditions, this being Regulation 22A (7) (d) to provide clarification that an entity will not be required to file a CbC report where the State of tax residence of the Surrogate Parent Entity has been notified in accordance with Sub-Regulation 7 by the Constituent Entity resident for tax purposes in its jurisdiction, that it is the Surrogate Parent Entity.



PROPERTY TRANSFER TAX

Clarification on the submission of the CbC Report to the Commissioner General

To eradicate any ambiguities that may punctuate the due process of CbC reporting, the procedure for the submission of the CbC Report to the Commissioner General as set in Regulation 22A (4) has been clarified by providing that, the standard template of a CbC Report shall be submitted manually or electronically in the Form set out in the Schedule to the Transfer Pricing Regulations.

Requirement to provide further information with regards to CbC reporting.

To align with international practice relating to CbC reporting, the Schedule to the Transfer Pricing Regulations has been amended and MNEs are now required to provide the following information:

- a) an overview of allocation of income, taxes and business by tax jurisdiction;
- b) list of the constituent entities in the MNEs group aggregated per tax jurisdiction;
and
- c) ancillary information such as the nature of the activities of a respective constituent entity.

14. PROPERTY TRANSFER TAX

Clarification that public benefit organisations are exempt from the provisions of the PTT Act

The PTT Act has been amended to clarify that a public benefit organisation (“PBO”) whose income is exempt from income tax under of the Income Tax Act, is exempt from the provisions of the PTT Act.

The income of a PBO is exempt from income tax if the PBO is established for the promotion of religion or education, or for the relief of poverty or other distress, if

- a) in relation to the people of Zambia, the income may not be expended for any other purpose; and
- b) the Minister of Finance has approved the exemption from tax the income of that PBO.



Revision of penalties for failure to record sales on an electronic fiscal device

Section 7A of the VAT Act makes it mandatory for a taxable supplier to use an EFD to record “daily sales”. Section 7A has been amended to provide clarify that an EFD must be used to record “each sale or transaction”.

The penalty for contravening section 7A has also been revised as follows:

- a) First offence, to a penalty not exceeding K 30,000.00;
- b) Second offence, to a penalty not exceeding K 60,000.00;
- c) Third offence, to a penalty not exceeding K 90,000.00 or to imprisonment for a term not exceeding three (3) years, or to both.

Clarification on documents to be submitted by a supplier in support of imported goods

Section 18 of the VAT Act allows taxable suppliers to claim back input tax (VAT incurred on goods and services that have been supplied to a taxable person) which relates to taxable business activities, from the ZRA when taxable suppliers file their VAT return. To do so, documentary evidence must be submitted to the ZRA in support of the claim for input tax.

The VAT Act has been revised to provide clarity that a taxable supplier cannot claim input tax unless at the time of lodging the VAT return, the taxable supplier gives the ZRA the following documents:

- a) a tax invoice issued from a serially numbered invoice book printed by a printer authorized for the purpose by the Commissioner General;
- b) a tax invoice printed from a computer package authorized by the Commissioner General for the purpose of invoicing taxable supplies; and
- c) in the case of imported goods, import bills of entry (Customs and Excise form CE 20).

Filing of PTT returns by a proxy where the transferor may be dead, absent from Zambia or cannot be located

The PTT Act has been revised to provide that where a transferor of property is dead, absent from Zambia or cannot be located despite reasonable efforts to do so, a person other than the transferor is permitted to render a provisional return on behalf of the transferor if that person is:

- a) permitted to do so through a court order; or
- b) appointed as a proxy for the Registrar of the High Court, where the Registrar of the High Court is appointed by the court to render a provisional return on behalf of the transferor

Clarification on the powers and functions of the Commissioner General under the PTT Act

The PTT Act has been amended to provide clarity that the powers of the Commissioner General are subject to the Minister of Finance's direction and that the Commissioner General is the person responsible for giving effect to the provisions of the PTT Act. Further that in exercising his functions under the PTT Act, the Commissioner General has all the powers conferred on him by the Income Tax Act. The PTT Act also empowers the Commissioner General to delegate the powers or duties conferred on him to an officer in the ZRA.

15. VALUE ADDED TAX (“VAT”) MEASURES

Revision of penalties for failure to issue a tax invoice

Section 7 of the Value Added Tax Act Chapter 331 of the Laws of Zambia (the “VAT Act”) states that the supply of goods or services made by a taxable supplier in the course or furtherance of a business that takes place in Zambia, other than an exempt supply, is subject to VAT. To account for VAT, the VAT Act imposes an obligation on a taxable supplier to issue a tax invoice for the supply of such goods and services using an electronic fiscal device (“EFD”).

The VAT Act has been amended by revising the penalty for failure by a taxable supplier to issue a tax invoice as follows:

- a) First offence, to a penalty not exceeding K 30,000.00;
- b) Second offence, to a penalty not exceeding K 60,000.00;
- c) Third offence, to a penalty not exceeding K 90,000.00 or to imprisonment for a term not exceeding three (3) years, or to both.

EXCISE TAX

CUSTOMS AND EXCISE DUTY



13. CUSTOMS AND EXCISE DUTY MEASURES

Obligations for entry of imported goods

The Customs and Excise Act provided that imported goods that remain within customs premises beyond forty-eight (48) hours from the time of their release from customs control are liable to such storage fees. The Customs and Excise Act has been amended by reducing the time from forty-eight (48) hours to eight (8) hours.

Removal of exemption from surtax

The Customs and Excise Act has removed the exemption from surtax of the goods listed in Part III of the Fourth Schedule.

Revision of the application for advance tariff ruling

The Customs and Excise Act provides that an application for an advance tariff ruling in respect of imported goods, or goods to be imported or exported can be made by any person to the ZRA. The Customs and Excise Act has been amended to provide that such an application must be made five (5) days prior to the importation or exportation of the goods.

OUR LIMITATIONS

Kindly note that this brief is not exhaustive and does not constitute legal advice. In the event that you would like us to render a comprehensive legal opinion, kindly contact our

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