FINANCE (No. 2) BILL, 2015

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

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.

PART I

PRELIMINARY

1 Short title

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

PART II

INCOME TAX

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

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

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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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.