

**CHAPTER 23:11**  
**REVENUE AUTHORITY ACT**

*Acts 17/1999, 27/2001, 12/2002, 2/2005, 3/2009 (s 42), 10/2009, 5/2010 (ss. 14-18), 8/2011 (s 16), 4/2012 (ss. 10-11), 1/2014 (ss 26-27), 8/2015 (s 16), 9/2015 (s.11), 3/2016 (Part XCIX), 2/2017 (ss.33-34), 1/2018 (s 30), 12/2018 (s 22), 1/2019 (s 26), 3/2019, 7/2021, 8/2022, 13/2023 (ss 32-33) SI 188/2019, 188/2018. (s 33)*

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**AN ACT to establish the Zimbabwe Revenue Authority for the collection of certain revenues of the State and to provide for the Authority's functions, powers and management; to provide for the funds of the Authority; to amend the Betting and Totalizator Control Act [Chapter 10:02], the Capital Gains Tax Act [Chapter 23:01], the Customs and Excise Act [Chapter 23:02], the Fiscal Appeal Court Act [Chapter 23:05], the Income Tax Act [Chapter 23:06], the Income Tax (Transitional Period Provisions) Act [Chapter 23:07], the Stamp Duties Act [Chapter 23:09] and the Tax Reserve Certificates Act [Chapter 23:10]; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 19th January 2001.]

## PART I

### PRELIMINARY

#### **1 Short title and date of commencement**

- (1) This Act may be cited as the Revenue Authority Act [Chapter 23:11].
- (2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

#### **2 Interpretation**

In this Act—

- “appointed member” means a member of the Board appointed in terms of paragraph (c) of subsection (2) of section *five*;
- “Authority” means the Zimbabwe Revenue Authority established by section *three*;
- “Board” means the Revenue Board established by section *five*;
- “Commissioner-General” means the Commissioner-General of the Authority appointed in terms of section *nineteen*;

- “committee” means a committee of the Board established in terms of section *fourteen*;
- “department” means a department of the Authority established in terms of subsection (1) of section *twenty-one*;
- “financial year” means the financial year of the Authority referred to in section *thirty*;
- “member”, means a member of the Board, including the chairman;
- “Minister” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “revenues” means taxes, duties, fees, levies, charges, penalties, fines or any other moneys levied, imposed, collected or received in terms of any of the Acts specified in the First Schedule.

## PART II

### ZIMBABWE REVENUE AUTHORITY

#### **3 Establishment of Zimbabwe Revenue Authority**

There is hereby established an authority, to be known as the Zimbabwe Revenue Authority, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

#### **4 Functions and powers of Authority**

(1) The functions of the Authority shall be—

- (a) to act as an agent of the State in assessing, collecting and enforcing the payment of all revenues; and
- (b) to advise the Minister on matters relating to the raising and collection of revenues; and
- (c) to perform any other function that may be conferred or imposed on the Authority in terms of this Act or any other enactment.

(2) For the better exercise of its functions, the Authority shall have the power, subject to this Act, to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Second Schedule, either absolutely or conditionally and either solely or jointly with others.

#### **5 Board of Authority**

(1) The operations of the Authority shall, subject to this Act, be controlled and managed by a board to be known as the Revenue Board.

(2) The Board shall consist of—

- (a) the Secretary of the Ministry responsible for finance; and
- (b) the Commissioner-General; and
- (c) not more than eleven other members appointed, subject to subsection (3), by the Minister after consultation with the President and in accordance with such directions as the President may give him or her.

[Paragraph (c) substituted by s 32 of Act 13 of 2023 (effective as from 30th March 2022): Law Reviser]

(3) Members referred to in subsection (2)(c) shall be appointed for their knowledge of and experience in finance, commerce, economics, taxation, human resource management or law.

[Section substituted by Act 4 of 2012]

#### **6 Qualifications for and terms and conditions of office of members of Revenue Board and procedure and powers of Board**

The Fifth Schedule applies to the qualifications, terms and conditions of office and vacation of office of members, and to the procedure to be followed by the Board at its meetings.

[Section substituted by Act 5 of 2010]

#### **7 -18 ...**

[Sections 7 to 18 repealed by Act 5 of 2010]

#### **19 Appointment and functions of Commissioner-General**

(1) Subject to this section, the Board shall appoint, on such terms and conditions as the Board may fix, a person to be the Commissioner-General of the Zimbabwe Revenue Authority.

(1a) The Minister shall, before the Board notifies any person that it intends to appoint him or her as Commissioner-General, confirm the appointment by the Board of the Commissioner-General, and, if the Minister refuses to do so, he or she shall request the Board to appoint another person as Commissioner-General.

[Subsection inserted by Act 2 of 2017]

(1b) The Commissioner-General shall serve for a term of five years and be eligible for re-appointment for one more five-year term.

[Subsection inserted by Act 2 of 2017. In terms of section 33(2) of Act 2 of 2017, this subsection applies to the Commissioner-General of the Zimbabwe Revenue Authority in office at the date of commencement of the Act]

(2) Without the authority of the Minister, no person shall be appointed as Commissioner-General and no person shall be qualified to hold office as Commissioner-General if he is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe.

(3) The appointment of the Commissioner-General shall terminate if he would be required in terms of paragraph 1(1) or (2) of the Fifth Schedule to vacate his office had that section applied to him:

Provided that his appointment shall not terminate on the ground that he has ceased to be a citizen of Zimbabwe or ordinarily resident in Zimbabwe, if the Minister has granted authority under subsection (2).

[Subsection amended by Act 5 of 2010]

- (4) The Commissioner-General shall be responsible, subject to the Board's control, for—
- (a) supervising and managing the Authority's staff, activities, funds and property; and
  - (b) performing such other functions as the Board may assign to him or as may be conferred or imposed on him by or under this Act or any other enactment.
- (5) An assignment of functions by the Board in terms of subsection (4)—
- (a) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board may determine;
  - (b) may be revoked by the Board at any time;
  - (c) shall not preclude the Board itself from exercising the functions.

## **20 Commissioners and other staff of Authority**

(1) The Board shall appoint, on such terms and conditions as it may fix, such Commissioners and other officers and members of staff as the Board considers to be necessary for the proper exercise of the Authority's functions.

(2) The Minister shall, before the Board notifies any person that it intends to appoint him or her as a Commissioner, confirm the appointment by the Board of the Commissioner in question, and, if the Minister refuses to do so, he or she shall request the Board to appoint another person as Commissioner.

[Subsection inserted by Act 2 of 2017]

(3) Every Commissioner shall serve for a term of four years and be eligible for re-appointment for not more than two more four-year terms.

[Subsection inserted by Act 2 of 2017]

## **21 Departments of Authority and functions thereof**

(1) The Authority shall have such departments or divisions as the Board may establish from time to time.

(2) For each department or division the Board shall—

- (a) assign such officers as may be necessary to carry out the department's or division's functions; and
- (b) appoint a Commissioner, who shall be responsible, subject to the direction and control of the Commissioner-General, for managing the department's or division's officers and ensuring the proper exercise of the department's or division's functions.

(2) The Minister, with the approval of the Board, may by statutory instrument declare that a department or division specified in the instrument shall be responsible for assessing, collecting and enforcing the payment of all or any revenues in terms of any of the Acts specified in the First Schedule.

(3) Where the Minister has published a statutory instrument in terms of subsection (2)—

- (a) the Authority's officers assigned to the department or division concerned shall be responsible, subject to the direction and control of their Commissioner, for assessing, collecting and enforcing the payment of the revenues to which the instrument relates; and
- (b) the Commissioner in charge of the department or division concerned may exercise, subject to the direction and control of the Commissioner-General, all the functions conferred upon a commissioner by or in terms of the Act concerned:

Provided that the Commissioner-General may exercise any such function to the extent that the Minister, by statutory instrument, has authorised him to exercise the function concerned.

(4) Where any of the Acts specified in the First Schedule has been assigned to a Minister other than the Minister responsible for the administration of this Act, any statutory instrument in terms of subsection (3) shall be made with the approval of that other Minister in addition to the approval of the Board.

[Section as amended by Act 27 of 2001.]

## **21A Control of officers and delegation of functions under this Act and Scheduled Acts**

(1) The Commissioner-General shall, subject to this Act, have the charge of the all departments and divisions of the Authority and of all officers employed in them in carrying out the provisions of this Act and any of the Acts specified in the First Schedule ("the Scheduled Acts");

(2) The Commissioner-General may—

- (a) delegate to any officer referred to in subsection (1); or
- (b) with the approval of the Board given beforehand or (if the urgency of the circumstances giving rise to the delegation so require) as soon after the delegation as practicable, delegate to any person in the employment of the State or another statutory body;

any function which by this Act or any Scheduled Act is conferred or imposed upon him or her, other than such power of delegation.

[Subsection substituted by Act 8 of 2011]

(3) An officer or other person to whom a power has been delegated in terms of subsection (2) shall exercise the power subject to the directions of the Commissioner-General.

[Subsection amended by Act 8 of 2011]

(4) A delegation of power to which subsection (2) relates—

(a) may be revoked or modified by the Commissioner-General at any time; and

(b) shall not preclude the exercise or the performance by the Commissioner-General of the function delegated.

(5) Anything done by an officer or other person in the exercise of a function delegated to the officer or person by the Commissioner-General in terms of subsection (2)—

(a) may, subject to this Act or the Scheduled Act concerned, be set aside or revised by the officer or the Commissioner General; and

(b) shall, until set aside, be deemed to have been done by the Commissioner-General.

[Section inserted by Act 5 of 2010 and amended by Act 8 of 2011]

22 ...

[Section repealed by Act 5 of 2010]

### 23 Reports of Authority

(1) As soon as possible after the end of each financial year, the Board shall submit to the Minister a report on the Authority's operations, undertakings and activities during that year.

(2) In addition to the annual report referred to in subsection (1), the Board—

(a) shall submit to the Minister such other reports as the Minister may require; and

(b) may submit to the Minister such other reports as the Board considers desirable; in regard to the Authority's operations, undertakings and activities.

(3) The Minister—

(a) shall lay the annual report referred to in subsection (1) before Parliament at the same time as he lays the Authority's statement of accounts before Parliament in terms of section *thirty-one*; and

(b) may lay before Parliament a report submitted to him in terms of subsection (2)

(4) The Board shall give the Minister all information relating to the operations, undertakings and activities of the Authority that the Minister may at any time require.

### 24 Minister may require statistics and information

The Minister may from time to time direct the Board to furnish him with such information and statistics as the Minister may require in regard to revenues and additionally, or alternatively, the activities, funds and property of the Authority, and the Board shall forthwith comply with any such direction.

### 25 Minister may give Board directions on matters of policy

(1) Subject to subsection (2), the Minister may give the Board such directions of a general character relating to the policy which the Authority is to observe in the exercise of its functions, as the Minister considers to be requisite in the national interest.

(2) Before giving the Board a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the proposed direction and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal and the possible effects which the proposal may have on the finances, commercial interests and other resources and functioning of the Authority.

(3) After receipt of the views of the Board submitted in terms of subsection (2), the Minister may confirm, alter or withdraw any proposed direction to the Board and, where the Minister has confirmed a direction, whether altered or not, the Board shall forthwith comply with the direction.

(4) When any direction has been received by the Board in terms of this section, the Board shall set out in the Authority's annual report the direction received by it, the views expressed by it in terms of subsection (2), and the final direction given to it in terms of subsection (3).

## PART III

### FINANCIAL PROVISIONS RELATING TO AUTHORITY

### 26 Annual budgets of Authority

(1) On or before such date before the beginning of every financial year as the Minister may direct, the Board shall prepare and submit to the Minister for his approval a budget showing the expenditure which the Board proposes that the Authority will incur in respect of that financial year.

(2) During any financial year the Board may submit to the Minister for his approval a supplementary budget relating to expenditure which—

(a) was not, for good reason, provided for in the annual budget; or

(b) was inadequately provided for in the annual budget due to unforeseen circumstances.

(3) A supplementary budget approved by the Minister shall be deemed to form part of the annual budget of the Authority for the financial year to which it relates.

(4) The Board shall furnish the Minister with such additional information in regard to any budget submitted under subsection (1) or (2) as the Minister may require.

(5) In approving any budget under this section the Minister may impose such terms and conditions as he considers to be necessary or desirable.

(6) With the approval of the Minister, the Board may vary a budget approved under this section:

Provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

(7) The Minister may withdraw, vary or modify his approval of any budget under this section or any of the terms and conditions of such approval.

### **27 Retention of revenue by Authority**

At the beginning of each financial year, the Minister shall cause the Authority to retain sufficient moneys from the revenue collected to meet the expenditure which the Authority proposes to incur during that financial year, as shown in the budget or supplementary budget approved by the Minister in terms of section *twenty-six* for that financial year.

### **28 Funds of Authority**

(1) The funds of the Authority shall consist of—

(a) any moneys that may be payable to the Authority from moneys appropriated for the purpose by Act of Parliament; and

(b) any loans, donations and grants made to the Authority by any person or authority or by any government of any country; and

(c) any other moneys that may accrue to the Authority, whether in the course of its operations or otherwise.

(2) Subject to section *twenty-seven* and paragraph (b) of subsection (3) of section *thirty-four B*, revenues collected by the Authority in terms of any enactment shall be paid into the Consolidated Revenue Fund and shall not form part of the Authority's funds.

[Subsection substituted by Act 27 of 2002]

### **29 Investment of moneys not immediately required by Authority**

Moneys not immediately required by the Authority may be invested in such manner as the Board, in consultation with the Minister, may approve.

### **30 Financial year of Authority**

The financial year of the Authority shall be the period of twelve months ending on the 31st December in each year.

### **31 Accounts of Authority**

(1) The Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Authority's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) As soon as possible after the end of each financial year, the Board shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct.

(3) The Minister shall lay the statement of accounts submitted to him by the Board in terms of subsection (2) before Parliament.

### **32 Audit of Authority's accounts**

(1) The accounts of the Authority shall be audited by the Auditor-General, who for the purpose shall have all the functions conferred on him by Public Finance Management Act [*Chapter 22:19*] (Act No. 11 of 2009) as though the assets of the Authority were public moneys and the members of the Board and employees and agents of the Authority were officers as defined in that Act.

(2) Any member of the Board or employee or agent of the Authority who—

(a) fails or refuses to provide the Auditor-General with any explanation or information required by him for the purpose of an audit in terms of subsection (1); or

(b) hinders or obstructs the Auditor-General in the conduct of an audit in terms of subsection (1);

shall be guilty of an offence and liable to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(3) Notwithstanding subsection (1), Auditor-General may appoint a suitably qualified person to audit the accounts of the Authority and, if he does so—

(a) subsections (1) and (2) shall apply in respect of the person so appointed as if he were the Auditor-General; and

- (b) any expenses incurred by the person so appointed in carrying out his audit shall be met from the funds of the Authority.

[Section amended by Act 3 of 2016]

### 33 Internal auditor

Section 19 of the Public Finance Management Act [*Chapter 22:19*] (Act No. 11 of 2009) shall apply, *mutatis mutandis*, to the appointment of an internal auditor to the Authority in all respects as if the Authority were a department of the Ministry for which the Minister is responsible.

[Section amended by Act 3 of 2016]

## PART IIIA

### EXPEDITED PROCEDURE FOR RECOVERY OF OUTSTANDING TAXES

[Part substituted by Act 1 of 2019]

#### 33A Expedited Procedure for recovery of outstanding taxes

- (1) Notwithstanding anything contained in—
- (a) the Capital Gains Tax Act [*Chapter 23:01*]; or
  - (b) the Income Tax Act [*Chapter 23:06*]; or
  - (c) the Stamp Duties Act [*Chapter 23:09*]; or
  - (d) the Value Added Tax Act [*Chapter 23:12*] (No. of 2002);
  - (e) the Customs and Excise Act [*Chapter 23:02*];

The Authority may recover any outstanding tax or duty, including interest and any penalty thereon, payable and outstanding in terms of those Acts in accordance with this section.

(2) If any person fails to pay any duly assessed tax, additional tax, duty due, penalty fine or interest payable in terms of the Acts specified in subsection (1), when it becomes due or is payable by him or her, the Authority may make an application on notice in any Magistrates Court within the province where the taxpayer is ordinarily resident or has his or her principal place of residence, seeking an order—

- (a) for the payment of the assessed tax, additional tax, duty due, penalty fine or interest and authorising the messenger of court if the application is granted to attach the taxpayer's movable property itemised in the application to satisfy the debt due upon service of the order on the taxpayer; and

[Subsection amended by Act 3 of 2019]

- (b) authorising the Messenger of Court to attach the tax payer's movable property to satisfy the debt due upon service of the order on the taxpayer;

(3) The application shall be supported by an affidavit by or on behalf of the Commissioner-General setting forth the following, that—

- (a) the Authority has served an assessment on the taxpayer; and
- (b) the taxpayer has not objected to the assessment ,or if the taxpayer has objected, the taxpayer has not appealed against the decision on the assessment within the time prescribed in the Act in question, despite which the taxpayer has failed to pay the outstanding tax, and the amount thereof so due or payable by the taxpayer remains outstanding;

(4) In the case of a debt established in terms of the Customs and Excise Act, the affidavit referred to in subsection (2) shall set forth the following—

- (a) that the Commissioner-General has issued a special warrant for recovery of duty due; fine and interest, and

[Paragraph amended by Act 3 of 2019]

- (b) the person against whom the special warrant has been raised has not challenged the same; or the goods in question cannot be located or found and the Authority has made a written demand for the payment of the outstanding duty, fine or interest which demand has not been complied with, so that the duty due remains outstanding.

[Paragraph amended by Act 3 of 2019]

- (c) the payment of costs by judgement debtor.

[Paragraph inserted by Act 3 of 2019]

(5) The magistrate on considering the application in terms of subsection (2) may make an order for the following—

- (a) payment of the assessed amount; and
- (b) immediate attachment of the movable property of the judgment debtor.

(6) Until the application is determined in terms of subsection (5), the respondent taxpayer upon whom an application made in terms of subsection (2) has been served shall not in any way deal with the itemised property referred to in subsection (2)(a) in a manner that will in any way diminish it. Any person who deals with the property in such a way that diminishes it shall be guilty of an offence and liable to a level 10 fine or imprisonment for six months or both such fine and such imprisonment.

[Subsection substituted by Act 3 of 2019]

(7) Notwithstanding anything contained in the Magistrates Court Act [*Chapter 7:10*] or any other law dealing with monetary jurisdiction of the Magistrate Court, an application may be made in terms of subsection (2) in the Magistrates Court in the area where any property of the person is located for any amount whatsoever.

[Subsection substituted by Act 3 of 2019]

(8) No action shall be taken in terms of this section where more than six years have elapsed since the tax duty or penalty referred to in this section became payable.

(9) Nothing in this section shall be construed as depriving the Authority of any other remedy for the recovery of tax, additional tax, duty due, penalties or interest mentioned in the Acts specified in subsection(1) of this section or as exempting from prosecution and punishment any person who is liable thereto under any other section of the Acts in question.

(10) Where, in addition to any amount of tax or additional tax or duty which is due or is payable by any person in terms of the Acts specified in subsection (1), any amount of interest or penalty or fine is payable by him or her in terms of that Act, any payment made by that person in respect of such tax, additional tax, duty due, interest or penalty or fine which is less than the total amount due by him or her in respect of such tax, additional tax, duty due, interest and penalty or fine shall for the purposes of this section be deemed to be made towards settlement of the tax or additional tax or duty due in the first instance, until it is fully settled by any future such payments, and thereafter the payments shall be made—

(a) in respect of such penalty or fine; and

(b) to the extent that such payment exceeds the amount of such penalty or fine, in respect of such interest.

[Subsection amended by Act 3 of 2019]

(11) If any claim is made to or in respect of any movable property attached pursuant to an order issued in terms of subsection (5) by any person (“the claimant”) other than the taxpayer against whom such order is issued, interpleader proceedings may be instituted in respect of such claim in terms of the Magistrate Court Rules, and no such property shall be released from attachment if it is established that the property does not belong to the claimant or that the property in question was disposed of to the claimant with the intention of securing that property against attachment in terms of this section.

[Subsection substituted by Act 3 of 2019]

(12) The property attached and removed pursuant to an order granted in terms of subsection (5) shall be sold in execution by public auction.

[Subsection substituted by Act 3 of 2019]

(13) The proceeds of any sale in execution in terms of this section shall be applied in payment of—

(a) the tax or duty due, together with any penalty and interest thereon; and

(b) the costs awarded in favour of the Authority in terms of subsection (5) of this section; and

(c) expenses incurred in connection with the attachment and sale;

in that order.

[Subsection substituted by Act 3 of 2019]

(14) Any balance remaining after the proceeds of any sale have been applied in terms of subsection (13) shall be paid to the taxpayer.

(15) An appeal against an order made in terms of subsection (5) shall not suspend the operation of the order so granted against the tax debtor and no Court shall grant an application for stay of execution of such order.

[Subsection inserted by Act 3 of 2019]

[Section substituted by Act 1 of 2019]

### **33B – 33L..**

[Sections repealed by Act 1 of 2019]

## **PART IV**

### **GENERAL**

#### **34 Investigation into affairs of Authority**

(1) The Minister may at any time cause an investigation to be made into the affairs of the Authority by one or more persons appointed by him in writing.

(2) Any person appointed in terms of subsection (1) shall have the same powers as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 18 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of subsection (1) and to any person summoned to give or giving evidence at that investigation.

#### **34A Preservation of secrecy**

(1) Any person who—

(a) is employed in carrying out the provisions of this Act; or

(b) is authorised to receive payment of any revenues in terms of any of the Acts specified in the First Schedule;  
or



(c) examines records under the control or in the custody of the Commissioner-General in terms of the laws relating to the collection and safe custody of public moneys and the audit of public accounts; shall, subject to subsections (2), (3), (3a) and (4), keep secret, and aid in keeping secret, all information coming to their knowledge in the exercise of their functions.

[Subsection amended by Act 12 of 2018]

(2) No person referred to in subsection (1) shall, except in the exercise of his functions under this Act or unless he is required to do so by order of a competent court —

(a) communicate information coming to his knowledge in the exercise of his functions to any person who is not —

(i) the taxpayer or other person to whom the information relates or by whom the information was furnished; or

(ii) the lawful representative of the taxpayer or other person to whom the information was furnished; or

(iii) a person to whom the provisions of the laws referred to in paragraphs (a) and (b) of subsection (1) require the information to be communicated;

or

(b) allow any person who is not person referred to in subparagraph (i), (ii) or (iii) of paragraph (a) to have access to any record under the control or in the custody of the Commissioner-General which contains information referred to in that subparagraph.

(3) The Commissioner-General shall, if he is required or authorised, as the case the case may be, to do so by the Minister or the Board—

(a) inform the Minister or the Board of the total amount of taxable income which according to the records under the control or in the custody of the Commissioner-General accrued during such periods to such classes of persons from such sources as the Minister or the Board may specify;

(b) disclose such information for such statistical purposes as he considers to be desirable;

(c) disclose such information as is required and to the extent that is necessary in order to give effect to any obligation of Zimbabwe in terms of any international convention, treaty or agreement.

(3a) Where the Commissioner-General is satisfied that any information is required for the purpose of—

(a) detecting, investigating or preventing a serious offence; or

(b) combating money laundering or terrorist financing;

as defined in the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*], the Commissioner-General shall disclose that information to the Director-General of the Financial Intelligence Unit established by that Act.

[Subsection inserted by Act 12 of 2018]

(4) The Commissioner-General may—

(a) in the exercise of his functions under the Income Tax Act [*Chapter 23:06*], use any information coming to his knowledge in the exercise of his functions under the Capital Gains Tax Act [*Chapter 23:01*];

(b) in the exercise of his functions under the Capital Gains Tax Act [*Chapter 23:01*], use any information coming to his knowledge in the exercise of his functions under the Income Tax Act [*Chapter 23:06*].

(5) All persons referred to in subsection (1) shall, before commencing to exercise the functions conferred or imposed upon them by the laws referred to in paragraphs (a) and (b) of that subsection, take and subscribe before a magistrate, justice of the peace or commissioner of oaths the prescribed oath of secrecy.

(6) Every person who, in contravention of this section or the true intent of the oath of secrecy taken by him and without lawful excuse, reveals to any person whomsoever any matter or thing which has come to his knowledge in the course of his official duties, or suffers or permits any person to have access to any records in the possession or custody of the Commissioner, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

(7) Any person who acts in the execution of his office before he has taken the oath prescribed in terms of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars.

(8) Despite anything in this section, the Commissioner-General may, in relation to a taxpayer or other person who is convicted of a tax offence (“the offender”) in respect of which all appeal or review proceedings relating to the offence have, within the period allowed, been completed or not instituted (or, having been instituted, have been abandoned), publish for general information the following particulars—

(a) the name and area of residence of the offender; and

(b) any particulars of the offence that the Commissioner General thinks fit; and

(c) the particulars of the fine or sentence imposed on the offender; and

(d) any other particulars specified in subsection (2) in so far as they relate to a tax offence committed by the offender.

[Subsection inserted by Act 8 of 2015]

[Section inserted by Act 27 of 2001]

### **34B Reward for information**

(1) In this section —

“near relative” means—

- (a) a lineal ascendant of an individual, including a stepfather or step-mother; or
- (b) a child or a lineal descendant of an individual other than a child; or
- (c) a brother, half-brother, stepbrother, sister, half-sister, stepsister, uncle, aunt, nephew or niece of an individual; or
- (d) the adopter or adopters of an individual; or
- (e) the spouse of a relative of an individual referred to in paragraphs (a) to (d).

“revenue” has the meaning given to “revenues” in section 2, but for the purpose of this section does not include charges or penalties by way of interest or charges or penalties imposed at the discretion of the Commissioner.

[Definition inserted by Act 3 of 2019]

(2) The Commissioner-General may, with the approval of the Minister, award to any person, not being an employee of the Authority or a near relative of an employee of the Authority, a monetary reward for information provided or any measure taken which results in detection of smuggling or any other offence against any of the Acts specified in the First Schedule, and the recovery of revenue which would otherwise have been lost.

(3) Any amount to be awarded in terms of subsection (1)—

- (a) shall be at the rate of ten *per centum* of the revenue or fine recovered; and
- (b) may be deducted from the revenue recovered and paid to the person referred to in subsection (2).

[Section inserted by Act 27 of 2001]

[Section suspended indefinitely by Act 7 of 2021]

### **34C Tax clearance certificates**

(1) At the request of a person liable to pay any tax under the Income Tax Act [*Chapter 23:06*] or any of the Acts specified in the First Schedule (“the Scheduled Acts”) the Commissioner-General shall, if such person is entitled to such a certificate in terms of any of those Acts, issue to him or her a certificate (called a “tax clearance certificate”) signed by or on behalf of the Commissioner-General to any effect as follows, namely that the person—

- (a) has furnished a return under section 37 of the Income Tax Act [*Chapter 23:06*] for the last year of assessment for which such a return is due; or
- (b) has made arrangements satisfactory to the Commissioner-General for the furnishing of a return referred to in paragraph (a) or
- (c) has paid the appropriate presumptive tax in terms of the Twenty-Sixth Schedule to the Income Tax Act [*Chapter 23:06*] on the last date or occasion on which such tax was due before the certificate is presented for any purpose under that Act, or has made arrangements satisfactory to the Commissioner-General for the payment of such tax; or
- (d) in the case of new or proposed company or private business corporation, has appointed a public officer of the company or private business corporation in accordance with section 61 of the Income Tax Act [*Chapter 23:06*]; or
- (e) has furnished any return required to be furnished under any of the Scheduled Acts on the last date or occasion on which such return was due before the certificate is presented for any purpose under those Acts, or has made arrangements satisfactory to the Commissioner-General for the furnishing of such a return; or
- (f) has paid the appropriate tax in terms of any of the Scheduled Acts on the last date or occasion on which such tax was due before the certificate is presented for any purpose under those Acts, or has made arrangements satisfactory to the Commissioner-General for the payment of such tax.
- (g) being a registered operator for the purpose of the Value Added Tax Act [*Chapter 23:12*], has fiscalised his or her operations to the extent that they are interfaced with the Authority’s server.

[Paragraph inserted by Act 7 of 2021]

(2) The Commissioner-General may make the issuance of any tax clearance certificate in terms of subsection (1) conditional on the payment of any tax arrears that may be due from the person who requests that certificate, notwithstanding that such person has furnished any return required to be furnished under section 37 of the Income Tax Act [*Chapter 23:06*] or under any of the Scheduled Acts for the period in respect of which the certificate is requested.

(3) No fee shall be charged for the issuance of a tax clearance certificate except the prescribed fee for a duplicate tax clearance certificate or the replacement of a lost or destroyed tax clearance certificate.

[Section inserted by Act 2 of 2005]

### **34D Advance tax rulings.**

The Commissioner-General may, in accordance with the Fourth Schedule, make an advance tax ruling on any provision of any of the Acts specified in the First Schedule, whether on his or her own initiative or any application by any person interested in a transaction that is or may be liable to tax.

[Section inserted by Act 3 of 2009]

### **34E Offence by officers of Authority**

Any officer of the Authority who, being a person appointed for the due administration of, or in connection with the assessment and collection of any revenues levied under, this Act or any of the Acts specified in the First Schedule—

- (a) demands from any person an amount in excess of the authorised assessment of the revenue in question; or
- (b) withholds for his or her own use or otherwise any portion of the amount of revenue collected; or
- (c) renders a false return whether verbally or in writing of the amounts of revenue collected or received by him or her; or
- (d) defrauds any person, embezzles any money or otherwise uses his or her position so as to deal wrongfully either with the Authority, the Commissioner or any other individual; or
- (e) not being authorised under this Act or any of the Acts specified in the First Schedule to do so, collects or attempts to collect tax under any such Act; or
- (f) delays without justifiable cause to discharge his or her duties to assess or collect any revenues owed by any member of the public, or to discharge any service he or she is required to render to any member of the public under this Act or any of the Acts specified in the First Schedule;

commits an offence and shall be liable on conviction to a fine not exceeding level ten or to imprisonment not exceeding two years, or both.

[Section inserted by Act 10 of 2009]

### **34F Powers of Commissioner-General and officers of the Authority**

(1) The powers conferred by this section on Commissioner-General and on officers of the Authority shall be in addition to, and not derogate from, any specific power conferred on the Commissioner-General and on officers of the Authority by any of the Acts specified in the First Schedule (hereinafter referred to as the “Scheduled Acts”) or the Finance Act.

(2) For the purpose of obtaining full information in respect of any person’s liability to tax under a Scheduled Act or the Finance Act or any matter relating to the collection of such tax, the Commissioner-General may require any person to produce for examination by the Commissioner-General, or by any officer of the Authority appointed by him or her for that purpose, at such time and place and as may be appointed by the Commissioner-General for that purpose, any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents which the Commissioner-General may consider necessary for the purposes of the Scheduled Act in question or the Finance Act.

(3) Any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents which in terms of subsection (2) are produced to the Commissioner-General, or to any officer of the Authority appointed by him or her, may be retained by the Commissioner or such officer for as long as they may be reasonably required for any assessment or for any criminal or other proceedings under the Scheduled Act in question or the Finance Act.

(4) Any person who, in terms of subsection (2), produces any deed, plan, instrument, book, record, account, trade list, stock list or document which is not a ledger, cash-book, journal, paid cheque, bank statement, deposit slip, stock sheet, invoice or other book of account required by any Scheduled Act or the Finance Act to be kept and retained by a person, may be allowed by the Commissioner-General any reasonable expenses necessarily incurred in producing it or obtaining and producing a copy of it.

(5) The Commissioner-General may, by reasonable notice in writing, require any person liable to tax under a Scheduled Act or the Finance Act, whether on his or her own behalf or as the representative of any person, or any person whom the Commissioner-General may consider able to furnish information, to attend at a time and place to be named by the Commissioner-General for the purpose of being examined on oath or otherwise, at the discretion of the Commissioner-General, respecting the liability to tax or any matter relating to the collection of tax of any such person, or any transactions or any matters affecting the same, or any of them or any part thereof. Any person so attending may be allowed by the Commissioner-General any reasonable expenses necessarily incurred by such person in so attending.

(6) Where any statement has been made by any person as a result of his or her being examined on oath under subsection (5), such statement shall be recorded in writing and shall be read over to or by the person making it, who, after making such corrections therein as he or she may think necessary, may sign it.

(7) Any person required to attend in terms of subsection (5) shall be entitled to be accompanied by a legal practitioner, accountant or other adviser, and any person making a statement in terms of subsections (5) and (6) shall be furnished with a copy thereof.

(8) If any officer of the Authority engaged in carrying out the provisions of a Scheduled Act or the Finance Act who has, in relation to the affairs of a particular person, been authorised thereto by the Commissioner-General in writing or by electronic, satisfies a magistrate by statement made on oath that there are reasonable grounds for suspecting that such person has committed an offence under the Scheduled Act in question or the Finance Act, the magistrate may by warrant authorize such officer and any other officers designated by the Commissioner-General to exercise the following powers—

- (a) without previous notice, at any reasonable time during the day enter any premises whatsoever and on such premises search for any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents;
- (b) in carrying out any such search, open or cause to be removed and opened any article in which he or she suspects any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents to be contained;
- (c) seize any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents as in his or her opinion may afford evidence which may be material to assessing the liability of any person for any tax;
- (d) retain any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents for as long as they may be reasonably required for any assessment or for any criminal or other proceedings under a Scheduled Act or the Finance Act.

(9) Any officer of the Authority engaged in carrying out the provisions of this section may, if he or she has reasonable grounds for believing that it is necessary to do so for the enforcement of any tax payable under a Scheduled Act or the Finance Act—

- (a) at any reasonable time during the day enter any business premises;
- (b) require any person to produce for its inspection any—
  - (i) book, record, statement, account, trade list, stock list or other document; or
  - (ii) file, schedule, working paper or calculation relating to the determination of a taxpayer's income, expenses or liability for tax;
- (c) require any person to prepare and additionally, or alternatively, to produce for inspection a print-out or other reproduction of any information stored in a computer or other information retrieval system;
- (d) take possession of any document or other thing referred to in paragraph b) or (c) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry;
- (e) require any person reasonably suspected of having committed an offence under a Scheduled Act or the Finance Act or any person who may be able to supply information in connection with a suspected offence to give his or her name and address.

(10) In addition, officers of the Authority authorised in writing by the Commissioner-General are hereby authorised, at any time, to enter upon any mining location in Zimbabwe, including premises (other than dwelling houses) or working places situated thereon for the purpose of—

- (a) inspecting such location, premises or working places and examining prospecting or mining operations or the treatment of minerals being performed or carried out thereon;
- (b) taking soil samples or specimens of rocks, ores, concentrates, tailing, or minerals situated upon that area, premises or working places for the purpose of examination or assay;
- (c) examining and making copies of or taking extracts from books, accounts, vouchers, documents, maps, drilling logs or records of any kind;
- (d) examining security systems at mining locations;
- (e) generally, securing that any royal ties or taxes payable under any of the Scheduled Acts or the Finance Act in relation to the minerals mined at the mining location in question are paid and collected.

(11) Any officer of the Authority authorized in accordance with—

- (a) subsection (8), when exercising any power under that subsection, shall on demand produce the warrant issued to him or her thereunder; or
- (b) subsection (9), when exercising any power under that subsection, shall on demand produce proof that he or she is an officer of the Authority; or
- (c) subsection (10), when exercising any power under that subsection, shall on demand produce proof that he or she has been authorised in writing by the Commissioner-General to exercise such powers.

(12) Any person in whose deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents have been retained in terms of subsection (3) or which have been seized or taken in terms of subsection (8), (9) or (10) shall be entitled to examine and make extracts from them during office hours or such further hours as the Commissioner-General may in his or her discretion allow and under such supervision as the Commissioner may determine.

(13) The Commissioner-General is hereby empowered to administer oaths to persons examined in terms of this section. Any person who, after having been duly sworn, wilfully makes a false statement to the Commissioner-General on any matter relevant to the inquiry, knowing such statement to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(14) Any person who—

- (a) falsely holds himself or herself out to be an officer of the Authority carrying out the provisions of this section or of a Scheduled Act or the Finance Act; or
- (b) hinders, obstructs or assaults an officer of the Authority in the exercise of his or her functions in terms of this section or a Scheduled Act or the Finance Act; or
- (c) wilfully fails to comply with any lawful demand made by an officer of the Authority in the exercise of his or her functions in terms this section or a Scheduled Act or the Finance Act;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(15) In this section—

“mining location” means a mining location that is registered or required to be registered in terms of the Mines and Minerals Act [*Chapter 21:05*];

“tax” includes any royalty payable in respect of precious metals, precious stones or other minerals in terms of the Finance Act.

[Section inserted by Act 4 of 2012]

### **34G 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.

[Section inserted by Act 29 of 2015 and numbered 34D instead of 34G in error. Law Reviser]

### **34H Abuse of corporate vehicles to avoid liability for tax**

(1) In this section—

“beneficial owner” means—

- (a) an individual who or entity which enjoys the **benefits of** ownership though the property’s title is in another name (“the nominee”); or
- (b) an individual or entity who through the ownership of any share or stake in an entity or of all or any of the assets of the entity is able to exert a significant or preponderant voice in the affairs of the organisation, including an individual or entity who exerts such control through a nominee who holds such stake, share or assets on behalf of such person;

“control”, in relation to an individual controlling an entity, means to exert a preponderant voice in the affairs of the entity by virtue of any one or more of the following—

- (a) directly or indirectly holding all or a majority of shares or a controlling stake in the entity; or
- (b) having the power (notwithstanding the formal arrangements for the exercise of control over the entity as specified in its constitutive document), to make any decision on any matter or policy concerning the governance of the entity or the exercise of any of its functions, which decision is binding on the governing body of the entity; or
- (c) having the ability (notwithstanding the formal arrangements for the exercise of control over the entity as specified in its constitutive document) to overrule or veto any decisions of the governing body of the entity;

“custodial services” means the safekeeping and management of customer currency and digital assets through the exercise of fiduciary and trust powers as a custodian, and includes fund administration and the execution of customer instructions;

“entity”, for the purposes of this section means any of the following—

- (a) a partnership domiciled in or outside Zimbabwe; or
- (b) a company incorporated or domiciled in or outside Zimbabwe; or
- (c) a locally incorporated subsidiary company of a holding company incorporated or domiciled outside Zimbabwe; or
- (d) a company or other business entity unless it is incorporated under the Companies and Other Business Entities Act [*Chapter 24:31*], whether or not the majority of its members are citizens or permanent residents of Zimbabwe ordinarily resident in Zimbabwe; or

- (e) a partnership, syndicate or joint venture—
  - (i) made up of individuals, whether or not any of them are citizens of Zimbabwe ordinarily resident in Zimbabwe; or
  - (ii) made up of two or more companies referred to in paragraph (b); or
  - (iii) made up of any combination of individuals and companies whether or not its members or partners are citizens of Zimbabwe ordinarily resident in Zimbabwe; or
- (f) any other entity whatsoever domiciled inside or outside Zimbabwe that is capable to incur tax liabilities in its own right, including a trust, syndicate or joint venture;

“liable individual” means any individual identified in an imputed liability order as being subject to the order;

“imputed liability order” means an order issued in terms of this section.

(2) The Authority may, by application instituted in the High Court, seek an imputed liability order in terms of subsection (3) in relation to any entity, the individual or individuals in control of that entity, or both.

(3) If it appears to the court in relation to an entity that is the subject of the application that—

- (a) any revenue under any of the specified Acts has been assessed to be payable by any entity under any of the specified Acts, and
- (b) any appeal or objection in relation to such assessment has not been timeously pursued by the entity, or if pursued has been withdrawn, abandoned or dismissed; and
- (c) the revenue cannot be recovered from that entity because of any action taken by any one or more liable individuals in control of that entity, including but not limited to—
  - (i) not appointing a public officer for the entity in terms of section 61; or
  - (ii) making any account kept in the name of the entity at any banking or other financial institution unavailable to be garnished by virtue of section 58 of the Income Tax Act (or any other Scheduled Act) by—
    - A. not opening or keeping such account in contravention of section 10 of the Bank Use Promotion Act [*Chapter 24: 24*];
    - B. not depositing cash in such account in contravention of section 11 of the Bank Use Promotion Act [*Chapter 24: 24*];
    - C. depositing cash in a safety deposit box with a banking or other financial institution instead of in an account referred to in paragraph (a), (b) or (c) of the definition of “account” in section 2 of the Bank Use Promotion Act [*Chapter 24:24*], or making use of any custodial service of a banking or other financial institution that does not deem any cash or cash equivalent deposited or entrusted to it by virtue of such service to form part of the banking or other financial institution’s ordinary deposits;
    - D. transferring an account from the name of the entity to the name of another person or entity, or to an account in the name of any individual subjected to the application, or to another account in the name of another person or entity;
    - E. denuding the account of funds; or
  - (iii) the falsification or destruction of the material or electronic records of that entity; or
  - (iv) changing the beneficial ownership of the entity or the majority of its shares or of the interest or stake in it with the result that some other person is in control of the entity; or
  - (v) the redomiciliation in another country of an entity registered, incorporated or domiciled in Zimbabwe; or
  - (vi) the stripping off, secreting away or encumbering (by way of pledge, hypothecation or other charge in favour of one or more third parties) of the assets of that entity; or
  - (vii) the selling or cession (otherwise than in the ordinary course of business), or donation or trusting, of any of the assets of the entity to or in favour of any third party, whether or not for valuable consideration;
  - (viii) the dissolution or winding up of that entity or its merger into or amalgamation by another entity; or
  - (ix) the incorporation of one or more other entities engaged in the same or similar activities as the first-mentioned entity, but which do not succeed to the liabilities of the first-mentioned entity; or
  - (x) the incorporation of one or more other entities to which the assets of the first-mentioned entity have been transferred, whether the second-mentioned entity or entities is engaged in the same or similar activities; or
  - (xi) in the case of a company or other business entity registrable under the Companies and Other Business Entities Act [*Chapter 24:31*] neglecting to do anything under that Act to avoid the company or business entity being struck off;

the court may order that the individual or individuals in control of the entity who were knowingly parties to any action referred to in subsection (2)(c) shall be personally responsible, to the extent of the revenue debt for which the entity has been assessed, for the payment of the revenue due together with any penalties for delayed payment from the date when the revenue became due.

(4) The individual or individuals in control of an entity who are the subject of an application under this section bear the burden of satisfying the court, on a balance of probabilities, that any action on their part that made it impossible to recover any revenue assessed to be due from the entity, was not motivated by an intent to avoid payment of that revenue.

(5) The effect of a imputed liability order is that the liable individual named in it may be sued by action instituted by or on behalf of the Commissioner-General in any court of competent jurisdiction for the recovery of the amount of the revenue imputed by the order to be payable by the liable person in his or her personal capacity (and if two or more liable individuals are named in the order each is jointly and severally liable for the amount of the revenue imputed by the order to be payable by them).

(6) Additionally, having obtained an imputed liability order, an officer of the Authority may, at any time, on written application subscribed by the Commissioner-General to any judge, magistrate or justice of the peace (other than a police officer), obtain a search warrant permitting the entry upon and search of any premises—

(a) wherein or whereon a liable individual conducts his or her business, whether in his or her own name or through any entity, or wherein or whereon it is reasonably suspected the liable individual keeps any money or property that may properly be attached in satisfaction of an imputed liability order; or

(b) of a financial institution or any person specified in paragraph (a), (b), (c), (d), (e), (f), (g), (g1), or (h) of the definition of “designated non-financial business or profession” in section 13 of the Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] (No. 4 of 2013), where the liable individual keeps or is suspected of keeping any money or property that may properly be attached in satisfaction of an imputed liability order.

(7) An application for a warrant in terms of subsection (5) must—

(a) have attached to it an authenticated copy of an imputed liability order; and

(b) be supported by an affidavit sworn by or on behalf of the Commissioner-General affirming that, from information available to him or her, he or she has reasonable grounds of suspicion against that individual for having committed any offence in terms of section 83(1)(b) of the Income Tax Act [*Chapter 23:06*], or section 10 or 11 of the Bank Use Promotion Act [*Chapter 24:24*].

(8) By virtue of a warrant obtained under subsection (5), an officer of the Authority may, at any time, do any or all of the following on any premises upon which the warrant is executed—

(a) make such examination and inquiry as he or she considers appropriate into the affairs of any liable individual;

(b) require any person who is employed in or at the premises to produce any book, account, notice, record, list or other document relating to the affairs of an identified individual;

(c) require any person who is employed in or at the premises to open any safety deposit box or other receptacle in which cash, negotiable instruments, share certificates, title documents, precious metals or precious stone may be sequestered;

(d) require from any person an explanation of any entry made in any book, account, notice, record, list or other document found upon any person or premises referred to in paragraph (b);

(e) examine and make copies of any book, account, notice, record, list or other document relating to the affairs of an identified individual;

(f) take possession of any book, account, notice, record, list or other document relating to the affairs of an identified individual, or of the contents of any safety deposit box or receptacle:

Provided that—

(i) such book, account, notice, record, list or other document, or of the contents of any safety deposit box or receptacle, shall be retained only so long as may be necessary for the purpose of any examination, investigation, trial or inquiry arising out of any contravention of section 83(1)(b) of the Income Tax Act [*Chapter 23:06*], or section 10 or 11 of the Bank Use Promotion Act;

(ii) the officer of the Authority taking any items into possession shall issue to the person or institution having custody of the same a full written receipt for such items setting forth an adequate description of the nature, quantity and, if ascertainable, value of the same, and specifying any identification numbers or marks with which any such items may be labelled.

(9) An officer of the Authority executing a warrant obtained under subsection (5) shall—

(a) notify the officer commanding the police district in which the inspector intends to make the search, entry or seizure; and

(b) be accompanied by a police officer assigned to him or her or by the police officer referred to in paragraph (a):

Provided that where an officer of the Authority has reason for believing that any delay involved in obtaining the accompaniment of a police officer would defeat the object of the search, entry or seizure, he or she may make such search, entry or seizure without such police officer.

(10) The Authority (in the person of an officer of the Authority designated by the Commissioner-General for the purpose, the Prosecutor-General (or a public prosecutor designated by the Prosecutor-General for the purpose) and the liable person or liable persons may, if any items are seized pursuant to subsection (6)(f) in contemplation of a prosecution for an offence against section 83(1)(b) of the Income Tax Act [*Chapter 23:06*], or section 10 or 11 of the Bank Use Promotion Act [*Chapter 24:24*], may enter into a written agreement (called a “non-prosecution agreement”) whereunder the Prosecutor-General agrees not to institute criminal proceedings against any liable person on condition that the liable person (whether or not he or she admits guilt for any offence) agrees to the offsetting against the agreed cash value of items in question of the revenue owed by him or her in virtue of an imputed liability order, together with the an agreed amount in satisfaction or mitigation of the costs incurred by the Authority in recovering and securing the safe custody of the items in question.

(11) The non-prosecution agreement shall be in writing and signed by or the designated officer of the Authority, the Prosecutor-General (or a public prosecutor designated by the Prosecutor-General for the purpose), and the liable person or liable persons, and a copy authenticated by the Authority shall be served by the Authority on each of the other parties to the agreement.

(12) A financial institution or designated non-financial business or profession cannot invoke any secrecy or confidentiality provision in any statute or any other law, or any secrecy or confidentiality provision contained in any contract for the provision of custodial services or for the safeguarding of property in a safety deposit box, as grounds for refusing to comply with its obligations under this section.

(13) A financial institution or designated non-financial business or profession that complies with its obligations under this section shall be immunised against any civil or criminal action for the breach of any secrecy or confidentiality provision in any statute or any other law, or for the breach of any secrecy or confidentiality provision contained in any contract for the provision of custodial services or for the safeguarding of property in a safety deposit box.

[Section inserted by s 33 of Act 13 of 2023 and numbered 24F instead of 34H in error. Law Reviser]

## 35 Regulations

(1) The Minister, after consultation with the Board, may make regulations providing for all matters which in terms of this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made under subsection (1) may prescribe—

- (a) for any contraventions thereof criminal penalties not exceeding a fine of level fourteen or imprisonment for a period of five years or both such fine and such imprisonment;
- (b) civil penalties leviable by the Authority of not more than thirty United States dollars for each day during which any person liable to make a return of tax required to be made under the Income Tax Act [*Chapter 23:06*], the Capital Gains Tax [*Chapter 23:01*] or the Value Added Tax Act [*Chapter 23:12*] fails to make such a return, or submits such return after the due date, which penalty shall not continue to be levied beyond the ninety-first day calculated from the first day on which such return is due:

[Paragraph amended by Act 3 of 2019]

Provided that the Authority shall have power to waive the payment or refund the whole or part of any penalty prescribed under this paragraph if it is satisfied that the contravention was not wilful, or not due to the want of reasonable care.

(3) A civil penalty prescribed under subsection (2)(b) shall constitute a debt due to the Authority by the person against whom it is levied, and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Authority.

(4) For the avoidance of doubt it is declared that payment by any person of any penalty referred to in subsection (2)(b) shall not relieve such person of any criminal liability incurred through his or her failure to make a return of tax in terms of the Income Tax Act [*Chapter 23:06*] or the Value Added Tax Act [*Chapter 23:12*], nor shall the fact of any criminal liability having been imposed upon him or her relieve him or her from any obligation to pay any penalty referred to in subsection (2)(b).

[Subsections 2 - 4 inserted by Act 5 of 2010]



## PART V

### AMENDMENTS, TRANSITIONAL PROVISIONS AND SAVINGS

#### 36 Amendment of Acts

The Act specified in each Part of the Third Schedule is amended to the extent set out in that Part.

#### 37 Transfer of certain assets, obligations, etc., of State to Authority

(1) In this section—

“fixed date” means the date fixed in terms of subsection (2) of section *one* as the date on which this Act comes into operation;

“transfer date”, in relation to any property, right, liability or obligation which is transferred to the Authority in terms of this section, means the date with effect from which it is so transferred.

(2) The assets and rights of the State which—

(a) before the fixed date, were used or otherwise connected with the functions of the Department of Taxes and the Department of Customs and Excise; and

(b) are specified by the Minister;

together with any liabilities or obligations attaching to them, shall be transferred to the Authority with effect from such date as the Minister may specify.

(3) On the relevant transfer date, every asset and right of the State which the Minister has directed shall be transferred to the Authority, together with any liability or obligation attaching to it, shall vest in the Authority.

(4) All bonds, hypothecations, deeds, contracts, instruments, documents and working arrangements which subsisted immediately before the relevant transfer date in relation to any asset, right, liability or obligation transferred to the Authority under this section and to which the State was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the Authority as if, instead of the State, the Authority had been named therein.

(5) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his registers in respect of any immovable property, right or obligation which passes to the Authority under this section, but the Registrar of Deeds, when so requested in writing by the Authority in relation to any particular such property, right or obligation, shall cause the name of the Authority to be substituted, free of charge, for that of the State on the appropriate title deed or other document or in the appropriate register.

(6) Any cause of action or proceeding which existed or was pending by or against the State immediately before the relevant transfer date in respect of any asset, right, liability or obligation which passes to the Authority under this section, may be enforced or continued, as the case may be, by or against the Authority in the same way that it might have been enforced or continued, as the case may be, by or against the State had this Act not been passed.

(7) Subsection (6) shall not apply to any cause of action or proceedings existing or pending immediately before the relevant transfer date between the State and a person employed by the State.

(8) Subject to the Public Service Act [*Chapter 16:04*] and with the consent of the employees concerned, the Authority shall engage such of the persons who on the fixed date were employed in the State’s Department of Taxes and Department of Customs and Excise as the Public Service Commission, after consultation with the Board and the Minister, may direct.

(9) Persons engaged in terms of subsection (8)—

(a) shall be engaged on such terms and conditions as may be fixed by the Board with the agreement of the persons concerned;

(b) without derogation from paragraph (a), may be permitted to continue contributing towards a pension in terms of the Public Service (Pensions) Regulations, 1992 (Statutory Instrument 124 of 1992), or any other enactment, subject to such terms and conditions as the Public Service Commission may fix with the approval of the Minister and the Board.

(10) Terms and conditions fixed in terms of subsection (9) may provide for—

(a) payments by the Board to the Consolidated Revenue Fund to compensate the State, wholly or partially, for pensions and other paid or payable to or in respect of persons engaged in terms of subsection (8); and

(b) the application, non-application or modification of the provisions of the Public Service (Pensions) Regulations, 1992 (Statutory Instrument 124 of 1992), in regard to persons engaged in terms of subsection (8).

(11) Notwithstanding any other provision of this Act, a person who—

(a) as a member of the Public Service, was afforded an opportunity of engagement by the Authority in terms of subsection (8) and declined to avail himself of the opportunity; and

(b) subsequently left the Public Service and as a consequence became entitled to pension benefits in respect of the abolition of his post;

shall not be engaged in any capacity by the Authority for a period of ten years from the date on which he left the Public Service, unless the Minister and the Public Service Commission consent to his engagement.

### 38 Savings

Where, before the fixed date—

- (a) the Commissioner of Taxes; or
- (b) the Director of Customs and Excise; or
- (c) an officer, proper officer or revenue officer;

made any assessment or decision, or issued any notice or directive, or did any other thing whatsoever in terms of an Act specified in the First Schedule, and that assessment, decision, notice, directive or other thing had or was capable of acquiring effect immediately before the fixed date, it shall be deemed to have been made, issued or done, as the case may be, by the appropriate Commissioner or officer in terms of the Act concerned as amended by this Act, and shall continue to have effect or to be capable of acquiring effect, as the case may be, accordingly.

### 39 Construction of certain references

Any reference in any enactment, other than a provision of an Act amended by the Third Schedule, or in any document to—

- (a) the Director or Controller of Customs and Excise, shall be construed as a reference to the Commissioner in charge of the department which is declared in terms of subsection (2) of section *twenty-one* to be responsible for assessing, collecting and enforcing the payment of duties under the Customs and Excise Act [*Chapter 23:02*];
- (b) the Department of Customs and Excise, shall be construed as a reference to the department referred to in paragraph (a);
- (c) the Commissioner of Taxes—
  - (i) in relation to value added tax, shall be construed as a reference to the Commissioner in charge of the department which is declared in terms of subsection (3) of section *twenty-one* to be responsible for assessing, collecting and enforcing the payment of the value-added tax leviable under the Value Added Tax Act [*Chapter 23:12*];;
  - (ii) in relation to any other tax or impost, shall be construed as a reference to the Commissioner in charge of the department which is declared shall be construed as a reference to the Commissioner in charge of the department which is declared in terms of subsection (2) of section *twenty-one* to be responsible for assessing, collecting and enforcing the payment of the taxes leviable under the Income Tax Act [*Chapter 23:06*];
- (d) the Department of Taxes, shall be construed as a reference to the department referred to in paragraph (c).

[Section as amended by Act 12 of 2002]

## FIRST SCHEDULE (Sections 2, 21, 34A, 34B and 38)

### SPECIFIED ACTS

1. Betting and Totalizator Control Act [*Chapter 10:02*]
2. Capital Gains Tax Act [*Chapter 23:01*]
3. Customs and Excise Act [*Chapter 23:02*]
4. Income Tax Act [*Chapter 23:06*]
5. Income Tax (Transitional Period Provisions) Act [*Chapter 23:07*]
6. Stamp Duties Act [*Chapter 23:09*]
7. Tax Reserve Certificates Act [*Chapter 23:10*]
8. Value Added Tax Act, 2002

## SECOND SCHEDULE (Section 4)

### POWERS OF AUTHORITY

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interest therein and rights thereof and concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.

5. To open bank accounts in the name of the Authority and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, securities and other negotiable or transferable instruments.

6. To insure against losses, damages, risks and liabilities which it may incur.

7. To make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind such suretyships or guarantees.

8. With the approval of the Minister, to establish and administer such funds and reserves not specifically provided for in this Act as the Board considers appropriate or necessary for the proper exercise of the Authority's functions.

9. To pay such remuneration and allowances and grant such leave of absence and to make such gifts, bonuses and the like to its employees as it considers fit.

10. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.

11. To purchase, take on lease or in exchange or otherwise acquire land or dwelling-houses for use or occupation by its employees.

12. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken on lease or in exchange or otherwise acquired by it.

13. To sell or lease dwelling-houses and land for residential purposes to its employees.

14. To provide or guarantee loans made to its employees for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling-houses or land which are the property of its employees, subject to any conditions that may be imposed by the Board from time to time.

15. To provide security in respect of loans by the deposit of securities, in which the Authority may invest such money as the Board may consider necessary for the purpose.

16. To provide loans to any employee of the Authority for the purpose of purchasing vehicles or other property, subject to any conditions that may be imposed by the Board from time to time.

17. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training.

18. To provide such service as the Authority, with the approval of the Board, considers could properly be provided by the Authority and to charge for services such fees as the Board may from time to time determine.

19. To engage in any activity, either alone or in conjunction with other organisations or international agencies, to promote better understanding of revenue issues.

20. To provide technical advice or assistance, including training facilities, to revenue authorities of other countries.

21. To accept, with the approval of the Board, any donations, gifts, or assistance from any organisation or person.

22. On behalf of the State, to institute and maintain proceedings in any court or tribunal for the recovery of any revenues, and to take such other steps as may be necessary to recover revenues.

23. To do anything which by this Act is required or permitted to be done by the Authority.

24. Generally to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the function of the Authority in terms of this Act or any other enactment.

### **THIRD SCHEDULE**

(AMENDMENTS TO VARIOUS ACTS)

[Omitted by Law Reviser]

### **FOURTH SCHEDULE (Section 34D)**

ADVANCE TAX RULINGS

[Schedule inserted by Act 3 of 2009]

#### *1 Interpretation*

In this Schedule—

“advance tax ruling” means a written statement in the form of a binding

general ruling, binding private ruling and binding class ruling issued by the Commissioner-General regarding the interpretation or application of the relevant Act;

“applicant” means a person who applies for a binding private ruling or a binding class ruling;

“binding class ruling” means an advance tax ruling issued in response to an application by an applicant regarding the application or interpretation of the relevant Act as it affects a specific class of persons;

“binding general ruling” means an advance tax ruling issued in accordance with the requirements of the relevant Act;

“binding private ruling” means an advance tax ruling issued in response to an application by an applicant regarding the application or interpretation of the relevant Act in respect of a proposed transaction as it affects the applicant alone;

“class member” means a member of the class to which a binding class ruling applies, such as a shareholder in a company or an employee participant in a share investment scheme;

“entity” means a person, other than a natural person, which may apply for a binding class ruling on behalf of its shareholders or members in respect of a proposed transaction to which it is a party, and includes a company, private business corporation, cooperative society or trade association:

Provided that an entity does not include a professional firm acting or purporting to act on behalf of a client;

“non-binding private opinion” means a written statement issued by the Commissioner-General in response to an inquiry by a person in order to provide the person with informal guidance in respect of the tax treatment of a particular set of facts and circumstances or transaction, but which does not have any binding effect;

“relevant Act”, in relation to an advance tax ruling, means any one of the Acts specified in the First Schedule in respect of which the ruling is made or sought;

“tax” means any tax, duty, fee, levy, charge, penalty, fine or any other money levied, imposed, collected or received in terms of any of the Acts specified in the First Schedule;

“transaction” means any transaction, deal, business, arrangement, operation or scheme, and includes a series of transactions.

## *2 Application for advance tax ruling*

(1) Subject to the minimum requirements set forth in subparagraph (2), an application for an advance tax ruling must be made in such manner and in such form as the Commissioner-General may prescribe, and be accompanied by the fee charged in terms of paragraph 18 of the Second Schedule, if any.

(2) An application must state the following minimum information—

- (a) the applicant’s name, postal address and telephone number; and
- (b) the name, postal address and telephone number of the applicant’s representative, if any; and
- (c) a complete description of the proposed transaction in respect of which the ruling is sought; and
- (d) a complete description of the impact the proposed transaction may have upon the tax liability of the applicant or, where relevant, any connected person in relation to the applicant, including any and all relevant information regarding the financial or tax implications of the proposed transaction; and
- (e) a complete description of any transactions entered into by the applicant prior to submitting the application or that may be taken after the completion of the proposed transaction which may have a bearing on the tax consequences of the proposed transaction or may be considered to be part of a series of transactions involving the proposed transaction; and
- (f) the proposed ruling being sought; and
- (g) a citation of the relevant statutory provisions or issues; and
- (h) the reasons why the applicant believes that the proposed ruling should be made; and
- (i) a statement of the applicant’s interpretation of the relevant statutory provisions or issues, as well as an analysis of any relevant authorities either considered by the applicant or of which the applicant is aware, whether those authorities support or are contrary to the proposed ruling being sought; and
- (j) a statement to the best of the applicant’s knowledge that the same or substantially the same or substantially similar issue upon which a ruling is sought is no the subject of an audit, examination, investigation, ruling, application, objection and appeal, or other proceeding currently before the Commissioner-General or the courts involving the applicant or a connected person in relation to the applicant; and
- (k) a draft version of the binding private ruling or binding class ruling to be issued; and
- (l) a description of the information that the applicant believes should be deleted from the final ruling before the publication of the ruling in order to protect the applicant’s confidentiality; and
- (m) the applicant’s consent to the publication of the ruling by the Commissioner-General.

(3) In addition to the minimum information required by subparagraph (2), an application for a binding class ruling must also state the following minimum information—

- (a) a description of the class members concerned; and

- (b) the impact the proposed transaction may have upon the liability of the class members or, where relevant, any connected person in relation to the applicant or any class member.
- (4) The Commissioner-General may request additional information from an applicant at any time.

### *3 Cases where applications for advance tax ruling must be rejected*

(1) Notwithstanding the foregoing provisions, the Commissioner-General shall not accept an application for an advance tax ruling in any of the following circumstances—

- (a) where the application requests or requires the rendering of an opinion, conclusion or determination regarding or in respect of any of the following—
  - (i) the market value of an asset; or
  - (ii) the application or interpretation of the laws of a foreign country; or
  - (iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant (or to a class member in the case of an application for a binding class ruling); or
  - (iv) the constitutionality of any of the Acts specified in the First Schedule or any other tax law; or
  - (v) a proposed transaction that is hypothetical or not seriously contemplated;
- (b) where the application relates to the duty of an employer to determine whether a person is a casual, part-time or full-time employee, or an independent contractor;
- (c) where the application is submitted for academic purposes; or
- (d) where the application presents, contains, or raises—
  - (i) a frivolous or vexatious issue; or
  - (ii) alternative courses of action by the applicant (or requests or requires the rendering of an opinion, conclusion or determination regarding such alternative courses of action); or
  - (iii) an issue that is the same as or substantially similar to an issue that is—
    - A. the subject of an audit, examination, investigation or other proceeding by the Commissioner-General involving the applicant (or, in the case of a binding class ruling, in relation to the applicant or any class member); or
    - B. the subject of any draft legislation; or
    - C. pending before the courts.

(2) In addition to the rejections set forth in subparagraph (1), the Commissioner-General may reject any application regarding or in respect of the following—

- (a) the application or interpretation of any general or specific anti-avoidance provision; or
- (b) an issue—
  - (i) that is inherently or distinctly factual in nature; or
  - (ii) in respect of which material facts cannot be established at the time of application; or
  - (iii) the resolution of which would depend upon assumptions to be made regarding a future event or other matters which cannot be reasonably determined at the time of the application; or
  - (iv) which would more appropriately be dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation; or
  - (v) which is the same as or substantially similar to an issue upon which the applicant has already received a ruling; or
  - (vi) in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction and that other party has not applied for a ruling; or
  - (vii) in respect of a transaction that is part of another transaction which has a bearing on that issue and the details of that other transaction have not been disclosed;

or

- (c) a matter the resolution of which would be unduly time-consuming or resource-consuming or resource intensive.

(3) In addition to the rejections set forth in subparagraphs (1) and (2), the Commissioner-General may publish lists of issues in respect of which applications for advance tax rulings will not be accepted.

(4) If the Commissioner-General requests additional information in respect of or in connection with an application and the applicant fails or refuses to provide that information, the Commissioner-General may reject that application without any refund or rebate of any applicable fees.

### *4 Binding effect of advance tax rulings*

(1) The Commissioner-General must interpret or apply the relevant Act in favour of the applicant or otherwise in accordance with the advance tax ruling given.

(2) An advance tax ruling does not have any binding effect upon the Commissioner-General in relation to future cases.

(3) A binding general ruling may be cited by the Commissioner-General or any person in any proceedings before the Commissioner-General or the courts.

(4) A binding private ruling may not be cited in any proceeding before the Commissioner-General or the courts other than a proceeding involving the applicant for that ruling.

(5) A binding class ruling may not be cited in any proceeding before the Commissioner-General or the courts by any person other than a proceeding involving the applicant for that ruling or an affected class member identified in the ruling.

(6) A publication or other written statement issued by the Commissioner- General does not have any binding effect unless it is an advance tax ruling.

#### *5 Non-binding private opinions and other written statements*

(1) The Commissioner-General may issue a nonbinding private opinion to a person regarding the tax treatment of a particular set of facts and circumstances or a particular transaction.

(2) A nonbinding private opinion may not be cited in any proceeding before the Commissioner-General or the courts other than a proceeding involving the person to whom the nonbinding private opinion was issued.

(3) Any written statement issued by the Commissioner-General interpreting or applying the Income Tax Act [Chapter 23:06] prior to the 1st January, 2007, or any other relevant Act prior to the 1st January, 2009, is to be treated as and have the effect of a nonbinding private opinion, unless the Commissioner-General prescribes otherwise in writing.

#### *6 Conditions for applicability of advance tax rulings*

(1) An advance tax ruling applies to a person only if all of the following conditions have been satisfied—

(a) the provision or provisions of the relevant Act at issue are the subject of the advance tax ruling; and

(b) the set of facts and circumstances of the transaction presented by the person are the same as the particular set of facts and circumstances governed by the advance tax ruling; and

(c) the set of facts and circumstances of the transaction fall entirely within the effective period of the advance tax ruling; and

(d) any assumptions made or conditions imposed by the Commissioner- General in connection with the validity of the advance tax ruling have been satisfied or carried out.

(2) In addition to the requirements set forth in subparagraph (1)—

(a) in the case of a binding private ruling, the ruling applies to a person only if that person is the applicant identified in the ruling; and

(b) in the case of a binding class ruling, the ruling applies to a person only if that person is either the applicant identified in the ruling or a class member identified in the ruling.

#### *7 Rulings rendered void due to fraud, misrepresentation, etc.*

(1) A binding private ruling or a binding class ruling is nullified under any of the following circumstances—

(a) the facts stated in the application regarding the proposed transaction are materially different from the transaction actually carried out; or

(b) there is a misrepresentation or wilful nondisclosure of a material fact; or

(c) any condition or assumption stipulated by the Commissioner-General as a condition of the issue or binding effect of the ruling is not satisfied or carried out.

(2) For purposes of this paragraph, a fact is considered material if it would have resulted in a different ruling had the Commissioner-General been aware of it when the original ruling was made.

#### *8 Impact of subsequent changes in tax law*

(1) An advance tax ruling ceases to be effective upon the occurrence of any of the following circumstances—

(a) if the provision of the relevant Act that was the subject of the advance tax ruling is repealed or amended, the advance tax ruling will cease to be effective from the date such repeal or amendment is effective;

(b) if a court overturns or modifies an interpretation of the relevant Act on which the advance tax ruling is based, the advance tax ruling will cease to be effective from the date of the court's judgment unless—

(i) the decision is under appeal; or

(ii) the decision is fact-specific and the general interpretation upon which the advance tax ruling was based is unaffected; or

(iii) the reference to the interpretation upon which the advance tax ruling was based was obiter dicta.

(2) An advance tax ruling ceases to be effective immediately upon the occurrence of the circumstances described in subparagraph (1), whether or not the Commissioner-General publishes a notice of withdrawal or modification.

### *9 Withdrawal or modifications*

(1) Subject to this paragraph, the Commissioner-General may withdraw or modify an advance tax ruling at any time.

(2) Notification of the withdrawal or modification of an advance tax ruling must be communicated in such a manner as the Commissioner-General considers will notify the persons affected by it and must include the following information—

- (a) the title or number of the advance tax ruling being withdrawn or modified; and
- (b) in the case of a modification, a summary of the changes made; and
- (c) the effective date (which may be a retrospective date) of the withdrawal or modification.

(3) If the advance tax ruling is either a binding private ruling or a binding class ruling, the Commissioner-General must first provide the applicant with notice of the proposed withdrawal or modification and a reasonable opportunity to state any proposition of law or fact relevant to the decision to withdraw or modify the ruling.

### *10 Binding general rulings*

(1) The Commissioner-General may, at any time, make binding general rulings.

(2) A binding general ruling may be effective for either—

- (a) a particular year of assessment or other definite period; or
- (b) an indefinite period.

(3) A binding general ruling must state—

- (a) that it is a binding general ruling made under this paragraph; and
- (b) the provisions of the relevant Act which are the subject of the binding general ruling; and
- (c) either—

- (i) the year of assessment or other definite period for which it applies; or
- (ii) in the case of a binding general ruling for an indefinite period, that it is for an indefinite period and the date or year of assessment from or beginning with which it applies.

(4) Subject to subparagraph (3), binding general rulings may be issued in such form and in such manner as the Commissioner-General may prescribe, including but not limited to interpretation notes and practice notes.

(5) A publication or other written statement shall not be considered as a binding general ruling unless it contains the information prescribed by subparagraph (3).

### *11 Binding private rulings*

(1) The Commissioner-General may issue binding private rulings regarding the application or interpretation of any of the provisions of the relevant Act to a proposed transaction upon application by a person in accordance with paragraph 2.

(2) The Commissioner-General may make a binding private ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner-General must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding private ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner-General must issue the final binding private ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued.

(5) A binding general ruling must contain—

- (a) a statement identifying it as a binding private ruling made under this paragraph; and
- (b) the name, tax number and postal address of the applicant; and
- (c) a citation of the relevant statutory provisions or issues; and
- (d) a description of the proposed transaction; and
- (e) the specific ruling made; and
- (f) any assumptions made or conditions imposed by the Commissioner-General in connection with the validity of the ruling; and
- (g) the period for which the ruling is valid.

(6) Subject to subparagraph (5), a binding private ruling may be issued in such manner and in such form as the Commissioner-General may prescribe.

### *12 Binding class rulings*

(1) The Commissioner-General may issue binding class rulings regarding the application or interpretation of a provision of the relevant Act relating to a proposed transaction upon application by a person in accordance with paragraph 2.

(2) The Commissioner-General may make a binding class ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner-General must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding class ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner-General must issue the final binding class ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued;

(5) A binding general ruling must contain—

(a) a statement identifying it as a binding class ruling made under this paragraph; and

(b) the name, tax number and postal address of the applicant; and

(c) a list or a description of the affected class members; and

(d) a citation of the relevant statutory provisions or issues; and

(e) a description of the proposed transaction; and

(f) the specific ruling made; and

(g) any assumptions made or conditions imposed by the Commissioner- General in connection with the validity of the ruling; and

(h) the period for which the ruling is valid.

(6) Subject to subparagraph (5), a binding class ruling may be issued in such manner and in such form as the Commissioner-General may prescribe.

(7) Prior to final publication, the Commissioner must provide the applicant with a draft copy of the edited ruling for review and comment.

(8) It is the sole and exclusive responsibility of the applicant to communicate with the affected class members regarding the application for the binding class ruling, the issuance, withdrawal or modification of such ruling, or any other information or matters pertaining to such ruling.

### *13 Procedures and guidelines*

The Commissioner-General may issue procedures and guidelines, in the form of binding general rulings, for the implementation and operation of the advance tax ruling system established by this Schedule.

[Schedule inserted by Act 3 of 2009]

## **FIFTH SCHEDULE (Section 6)**

### PROVISIONS APPLICABLE TO REVENUE BOARD

[Schedule inserted by Act 5 of 2010]

#### ***1 Disqualifications for appointment as member***

(1) Subject to this Schedule, a person shall not be qualified for appointment as a member if—

(a) he or she is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or

(b) he or she has, in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated therefrom; or

(ii) made an assignment or composition with his or her creditors which has not been rescinded or set aside; or

(c) he or she has been convicted in Zimbabwe or in any other country—

(i) of any offence involving dishonesty; or

(ii) of any other offence, in the period of five years before his or her appointment, for which a term of imprisonment without the option of a fine has been imposed, whether or not any portion of that sentence has been suspended.

(2) A person shall not be qualified for appointment as a member, nor shall he or she hold office as an appointed member, if—

(a) he or she is a member of two or more other statutory bodies; or

(b) he or she is a member of Parliament.

(3) For the purposes of subparagraph (2)(a)—

(a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;

(b) “statutory body” means—

(i) any commission established by the Constitution; or

(ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other statutory body or by a Commission established by the Constitution.



## **2 Terms of office and conditions of service of members**

(1) An appointed member shall hold office for such period, not exceeding three years, as the Minister may fix at the time of his or her appointment.

(2) On the expiry of the period for which an appointed member has been appointed, he or she shall continue to hold office until he has been re-appointed or his or her successor has been appointed:

Provided that an appointed member shall not continue to hold office in terms of this subsection for more than six months.

(3) The Secretary of the Ministry responsible for finance and the Commissioner-General shall be members for so long as they hold office as Secretary or Commissioner-General, as the case may be.

(4) A person who ceases to be a member shall be eligible for re-appointment.

(5) Members shall hold office on such terms and conditions as the Minister may fix.

## **3 Vacation of office by appointed members**

(1) An appointed member shall vacate his or her office and his or her office shall become vacant—

(a) one month after the date he or she gives notice in writing to the Minister of his or her intention to resign his or her office or after the expiry of such other period of notice as he or she and the Minister may agree; or

(b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine—

(i) in Zimbabwe, in respect of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

(c) if he or she becomes disqualified in terms of paragraph 1(1) or (2) to hold office as a member; or

(d) if he or she is required in terms of subparagraph (2) or (3) to vacate his or her office as a member.

(2) The Minister may require an appointed member to vacate his or her office if—

(a) the member has been guilty of conduct which renders him or her unsuitable to continue to hold office as a member; or

(b) the member has failed to comply with any condition of his or her office fixed in terms of paragraph 2; or

(c) the member has ceased to possess any qualification by reason of which he or she was appointed; or

(d) the member is mentally or physically incapable of efficiently performing his or her duties as a member; or

(e) the member contravenes paragraph 11; or

(f) the member or his or her spouse engages in any occupation, service or employment, or holds any asset, which in the Minister's opinion is inconsistent with his or her duties as a member.

(3) The Minister, on the recommendation of the Board, may require an appointed member to vacate his or her office if the Minister is satisfied that the member has been absent without the consent of the chairperson of the Board from three consecutive meetings of the Board, of which he or she has been given at least seven days' notice, and that there was no just cause for the member's absence.

## **4 Suspension of members**

The Minister—

(a) may suspend from office a member against whom criminal proceedings are instituted for an offence involving dishonesty; and

(b) shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the member is to vacate his or her office;

and, whilst that member is so suspended, he or she shall not carry out any duties or be entitled to any remuneration or allowances as a member.

## **5 Dismissal of Board**

(1) Subject to subparagraph (2), if the Minister considers that—

(a) the Board has contravened this Act or any other law and has failed to rectify the contravention within a reasonable time after being required to do so by the Minister; or

(b) the Board has failed to comply with a direction in terms of section 25; or

(c) whether through disagreements amongst its members or otherwise, the Board is unable to carry out any of its functions in terms of this Act;

and that it is in the national interest to do so, the Minister may, by written notice to the chairperson and Commissioner-General, dismiss all the appointed members, and their offices shall become vacant as soon as the Commissioner-General receives the notice.

(2) Before dismissing all the appointed members, the Minister shall consult the President and act in accordance with any directions the President may give him or her.

#### **6 Filling of vacancies on Board**

(1) Subject to this Schedule, within three months after an appointed member's death or vacation of office in terms of paragraph 3, the Minister shall appoint a person to fill the vacancy.

(2) Within one month after dismissing all the appointed members in terms of paragraph 5, the Minister shall, subject to this Schedule, appoint persons to fill the vacancies.

#### **7 Chairperson and vice-chairperson of Board**

(1) The Minister shall designate one of the appointed members to be chairperson of the Board.

(2) At its first meeting, the Board shall elect an appointed member, other than the chairperson, to be vice-chairperson of the Board.

(3) The chairperson and vice-chairperson of the Board may at any time, by written notice to—

- (a) the Minister, in the case of the chairperson;
- (b) the Commissioner, in the case of the vice-chairperson;

resign their offices as such.

(4) Within three months after being notified of a vacancy in the office of—

- (a) chairperson of the Board, the Minister shall appoint another member to fill the vacancy;
- (b) vice-chairperson of the Board, the Board shall elect another member to fill the vacancy.

(5) The vice-chairperson shall perform the functions of the chairperson whenever the chairperson is unable to perform them or the office of chairperson is vacant.

#### **8 Meetings and procedure of Board**

(1) The Board shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet at least four times in each financial year.

(2) The chairperson of the Board—

- (a) may convene a special meeting of the Board at any time; and
- (b) shall convene a special meeting of the Board on the written request of the Minister or not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairperson's receipt of the request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of subparagraph (2) other than—

- (a) such business as may be determined by the chairperson of the Board, where he or she convened the meeting in terms of subparagraph (2)(a); or
- (b) the business specified in the request for the meeting, where the chairperson of the Board convened the meeting in terms of subparagraph (2)(b).

(5) The chairperson of the Board or, in his or her absence, the vice-chairperson shall preside at all meetings of the Board:

Provided that, if the chairperson and vice-chairperson are both absent from any meeting of the Board, the members present may elect one of their number to preside at that meeting as chairperson.

(6) Six members shall form a quorum at any meeting of the Board.

[Subparagraph amended by Act 1 of 2014]

(7) Subject to subparagraph (12), anything authorised or required to be done by the Board may be decided by a majority vote at any meeting of the Board at which a quorum is present.

(8) With the Board's approval, the chairperson of the Board may invite any person to attend a meeting of the Board or of a committee, where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Board or the committee, as the case may be, at that meeting.

(9) A person invited to attend a meeting of the Board or of a committee may take part in the proceedings of the Board or the committee as if he or she were a member thereof, but shall not have a vote on any question before the Board or committee, as the case may be.

(10) Subject to subparagraph (11) and to paragraph 11, at all meetings of the Board each member present shall have one vote on any question before the Board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

(11) The Commissioner-General shall not take part in the discussion of, and shall not vote on, any question before the Board which involves his or her tenure of office or conditions of service.

(12) Any proposal circulated among all members and agreed to in writing by a majority of them shall have the same effect as a resolution passed by a duly constituted meeting of the Board and shall be incorporated into the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such a proposal be placed before a meeting of the Board, this subparagraph shall not apply to the proposal.

### ***9 Committees of Board***

(1) For the better exercise of its functions, the Board may establish one or more committees in which the Board may vest such of its functions as it considers appropriate:

Provided that the vesting of any function in a committee shall not divest the Board of that function, and the Board may amend or rescind any decision of the committee in the exercise of that function.

(2) On the establishment of a committee in terms of subparagraph (1), the Board—

- (a) shall appoint at least one member of the Board as a member of the committee, and that member or one of those members, as the case may be, shall be chairperson of the committee; and
- (b) may appoint as members of the committee, on such terms and conditions as the Board may fix, persons who are not members of the Board.

(3) Meetings of a committee may be convened at any time and at any place by the chairperson of the Board or the chairperson of the committee.

(4) Subject to subparagraph (3) and to paragraphs 11 and 12, the procedure to be followed at any meeting of a committee and the quorum at any such meeting shall be as fixed by the Board.

### ***10 Remuneration and allowances of members of Board and committees***

Members of the Board and of committees shall be paid—

- (a) such remuneration, if any; and
  - (b) such allowances to meet reasonable expenses incurred by them in connection with the business of the Board or the committee concerned, as the case may be;
- as the Board may fix with the approval of the Minister.

### ***11 Members of Board and committees to disclose certain connections and interests***

(1) In this section—

“relative”, in relation to a member of the Board or a committee, means the member’s spouse, child, parent, brother or sister.

(2) Subject to subparagraph (4)—

- (a) if a member of the Board or of a committee—
  - (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or committee; or
  - (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his or her functions as a member; or
  - (iii) knows or has reason to believe that a relative of his or her—
    - A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or the committee; or
    - B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his or her functions as a member;

or

- (b) if for any reason the private interests of a member of the Board or a committee come into conflict with his or her functions as a member;

the member shall forthwith disclose the fact to the Board or the committee, as the case may be.

(3) A member referred to in subparagraph (2) shall take no part in the consideration or discussion of, or vote on, any question before the Board or the committee, as the case may be, which relates to any property, right or interest referred to in that subparagraph.

(4) Nothing in this section shall be taken to prevent members of the Board or of a committee of the Board from taking part in the consideration of, or voting on, any matter that affects members generally in their capacity as persons liable to pay revenue.

(5) Any person who contravenes subparagraph (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

### ***12 Minutes of proceedings of Board and committees***

(1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board and of every committee to be entered in books kept for the purpose.

(2) Any minutes which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned.

### ***13 Validity of decisions and acts of Board and committees***

No decision or act of the Board or a committee or act that is authorised by the Board or a committee shall be invalid solely because there was a vacancy in the membership of the Board or the committee or because a disqualified person purported to act as a member of the Board or the committee, as the case may be, at the time the decision was taken or the act was done or authorized.

### ***14 Execution of contracts and instruments by Authority***

An agreement, contract or instrument approved by the Board may be entered into or executed on the Authority's behalf by any person generally or specially authorised by the Board for that purpose