

Zambian Government issues 2021 Tax Amendment Acts and Regulations

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Executive summary

On 1 January 2021, various Tax Amendment Acts came into effect in line with the announcements made in Zambia's 2020 National Budget. The 2021 Amendment Acts and Regulations are as follows:

- ▶ *Income Tax (Amendment) Act No. 20 of 2020*
- ▶ *Customs and Excise (Amendment) Act No. 21 of 2020*
- ▶ *Property Transfer Tax (Amendment) No. 22 of 2020*
- ▶ *Value Added Tax (Amendment) Act No. 23 of 2020*
- ▶ *Skills Development Levy (Amendment) Act No. 24 of 2020*
- ▶ *Mines and Minerals Development (Amendment) Act No. 25 of 2020*
- ▶ *The Income Tax (Transfer Pricing) (Amendment) Regulations No. 117 of 2020*
- ▶ *The Income Tax (Local content Allowance) Regulations No. 120 of 2020*
- ▶ *The Value Added Tax (Zero-Rating) (Amendment) Order No. 125 of 2020*

The Amendment Acts and Regulations seek to address the impact of the COVID-19 pandemic on the Zambian economy by providing specific relief to both corporate and individual taxpayers.

This Alert summarizes the key measures.

Detailed discussion

Business Tax

Corporate Income Tax

Change introduced: Revision of Section 29 of the *Income Tax Act* (ITA) to clarify the rule limiting interest expense deductibility for income tax purposes.

In 2019 the thin capitalization rule was replaced with the 30% EBITDA rule. The ITA was amended to provide for the limitation of the deductibility of gross interest on borrowings to 30% of Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA). The 2021 amendment clarifies that the limitation applies to gross interest arising from loans that are both revenue and capital in nature.

Change introduced: Amendment of Section 48 of the ITA to clarify that the obligation to furnish information to the Commissioner General extends to information that might be held outside of Zambia or by a person who is not a resident of Zambia.

The Act now states that a person who fails to provide records requested under this section shall be barred from using that record to challenge an assessment or determination in court or tribunal.

The Act does not include a reasonableness test and its use is likely to be controversial.

Change introduced: Amendment of Section 55(1) of the ITA to provide for the keeping of all books, accounts, documents and records in Zambian Kwacha.

Change introduced: Amendment of Section 34A(2) of the ITA to increase the period in which development allowances are to be claimed.

Currently, Section 34A(1) provides for an allowance of 10% annually for expenditure incurred for the growing of rose flowers, tea, coffee and citrus fruit trees, among others. For persons growing the plants mentioned above for the first time, the expenditure incurred is not deductible and may be carried forward to the following charge year up to the first year of production. The allowance was previously claimable for three consecutive years. The period of claim has now been extended from three to five years.

Change introduced: Insertion of Section 34(B) of the ITA to allow for the deduction of a local content allowance of 2% of expenditure incurred, other than that of a capital nature, for the growing or purchase of agricultural products by companies carrying on agro-processing or manufacturing in a particular charge year.

The local content allowance prescribed above shall apply to agricultural products grown within Zambia, including cassava pineapple and mango, and shall be claimable each year that the expenditure is incurred but not exceeding three charge years.

Change introduced: Amendment of Section 43D (2) of the ITA to increase the amount for deduction by the employer for employing a person with a disability from ZMW1,000 to ZMW2,000 annually. This serves as an incentive for employers to encourage the employment of differently abled persons.

Change introduced: Amendment of Section 81B to include a provision that states that an Institute or Authority, empowered by an Act of Parliament to regulate its members, will now only be permitted to register or renew members upon their submission of a tax clearance certificate. This includes the issue of a license, practicing certificate, permit or similar document.

This, however, does not apply to a student or applicant that is not carrying on business relating to the profession. In addition, an exemption may be granted to a member, by the Minister of Finance, on a case-by-case basis.

Change introduced: Tax Rates

Change Introduced	Previous Regulation	New Regulation
Reduction of the Corporate Income Tax rate on income earned by hotels and lodges on accommodation and food services for the charge year 2021	35%	15%
Amendment of Part III of the Ninth schedule of the ITA by increasing the presumptive tax on a person carrying on the business of betting and gaming	10%	25%

Withholding Tax

Change introduced: Amendment of Section 82A of the ITA to allow for the charging of Withholding Tax (WHT) on payments made by a Zambian resident to a nonresident for commodity royalty financing payments at a rate to be confirmed by the Zambia Revenue Authority.

Personal Tax**Pay-As-You-Earn (PAYE)**

Change introduced: Part II of the charging schedule of the ITA has been amended to revise the PAYE tax bands as follows:

Current regime		Amended regime	
<i>Income Band</i>	<i>Tax Rate</i>	<i>Income Band</i>	<i>Tax Rate</i>
0 - ZMW3,300 per month	0%	0 - ZMW4,000 per month	0%
ZMW3,301 - ZMW4,100 per month	25%	ZMW4,001 - ZMW4,800 per month	25%
ZMW4,101 - ZMW6,200 per month	30%	ZMW4,801 - ZMW6,900 per month	30%
Above ZMW6,200	37.50%	Above ZMW6,900	37.50%

Change introduced: An increase in the tax credit for differently abled individuals from ZMW250 to ZMW500.

Differently abled people have been provided with an increase in the tax credit.

Skills Development Levy

Amendment introduced: Amendment of Section 4 of the *Skills and Development Levy Act* provides that the levy is payable by an employer only and shall not be deducted from the emoluments of an employee.

International Tax and Transfer Pricing

Change introduced: Amendment of Section 97A(1) of the ITA to redefine "reference price."

This is a change in terminology following the rebranding of Metal Bulleting to FastMarkets MB.

Change Introduced: Amendment of the Zambian Transfer Pricing Regulations to revise the threshold for the preparation of transfer pricing (TP) documentation in Zambia and to introduce the submission of a Country-by-Country (CbC) Report:

- ▶ Regulation 21(2) is amended to increase the threshold for the preparation of TP documentation for local companies from an annual turnover of ZMW20,000,000 to ZMW50,000,000.
- ▶ The insertion of a new Regulation 22A that provides for the filing of a CbC report.

An ultimate parent entity that is tax resident in Zambia, with consolidated group revenue of €250 million or 4,795 million Zambian Kwacha in the previous accounting year shall file a CbC report with the Commissioner General, 12 months after the last day of the reporting year of the multinational enterprise with respect to that reporting accounting year:

- Specific terminology and definitions have been provided for relating to CbC reporting.
- A specific template has been provided for the CbC report and specific regulations have been issued for guidance.

The regulations shall have effect in relation to the charge year ending on 31 December 2021, and each subsequent charge year.

Property Transfer Tax

Change introduced: Amendment of Section 5(2A), 5(2B) & 5(2C) of the *Property Transfer Tax (PTT) Act* to redefine the method for determining the realized value on the indirect transfer of shares. This is in order to capture only the Zambia proportion of the value of the consideration or the nominal value. This exemption, however, does not apply to companies that have not been part of the group of companies for at least three years preceding the intergroup restructure.

Change introduced: Amendment of Section 9 of the PTT Act to prescribe the exchange rate applicable to foreign currency-denominated transactions which will be the appropriate Bank of Zambia mid-rate as at the end of the day immediately preceding the day on which the provisional return is submitted.

Change introduced: Amendment of Section 4 of the PTT Act to restrict the application of PTT in the case of indirect transfers of shares, where the value of shares being transferred, over a period of three years represents less than 10% of the value of shares in the Zambian company.

Mining

Change introduced: Section 89 of the *Mines and Minerals Development Act* is amended to introduce a provision stating that the Mineral Royalty Tax (MRT) may be paid in advance as prescribed.

Previously the MRT was payable 14 days after the month in which the sale of the mineral occurred. Details regarding the dates of advance payment and the calculation of the advance MRT have not been published yet.

Value Added Tax (VAT)

Change introduced: Section 21(6) of the VAT Act has been amended to clarify when the two-year limitation period commences with respect to assessment of tax.

Section 21(6) has been challenging for taxpayers as establishing the period beyond which the Commissioner-General can assess a return for incorrectness or inadequacy has been considered subjective.

The amendment limits the Commissioner-General to assessing matters that are revealed during an audit. The Commissioner-General could potentially still raise an assessment many years later on the basis the matter at issue was not revealed during the audit. Therefore, the uncertainty around this amendment still remains.

Change introduced: Amendment of Section 11(C) of the VAT Act provides clarity to the definition of “place of supply.” The amendment now deems goods to be supplied in Zambia as long as their supply involves entry in Zambia. It is not clear how this provision will apply to goods in transit, goods imported under bond for re-export or goods imported for remanufacturing.

Change introduced: Amendment of Section 42B of the VAT Act by the insertion of Section 42C to clarify that an electronic payment machine must be available at a point of sale for use as a mode of payment for the customer. In addition, a penalty for failure to comply of ninety thousand penalty units (ZMW27,000) has been introduced.

Change introduced: Amendment of Section 43 of the VAT Act to provide for an escalatory fine chargeable on false returns and statements.

This measure is aimed at increasing the fine payable for false declarations on returns or other declarations.

Change introduced: Amendment of Section 44(2) of the VAT Act to increase the fine chargeable for evasion of tax.

Section 44(2) of the VAT Act was amended to increase the penalty for tax evasion in respect of the supply and importation of goods and services from 30,000 to 300,000 penalty units (ZMW9 000 to ZMW90, 000).

Change introduced: Pursuant to the powers provided under the principal Act, the Minister of Finance has issued amendments to the VAT (Zero) Rating Order to introduce new items to be zero rated. These items fall under Group 12 (Petroleum products) of the VAT (Zero) Rating Order and specifically include petrol and diesel.

Customs and Excise

Change introduced: Increase in customs duty from 25% to 40% on the following agricultural products: beef and beef processed products, pork and pork processed products, chicken and chicken processed products and fish.

Change introduced: Amendment to chapter 87 of the *Customs and Excise Act* for the reduction of customs duty from 30% to 15% on electric motor vehicles of HS 8703.80.90. The measure aims at encouraging the use of electric motor vehicles and reducing the use of fossil fuel.

Change introduced: Amendment of Section 2 of the *Customs and Excise Act* to revise the definition of “used Motor Vehicles.” The definition of used motor vehicles now specifically excludes performance motor vehicles.

The definition of “used high performance motor vehicles” is included under Section 2 of the *Customs and Excise Act*.

Change introduced: Introduction of excise duty at the rate of ZMW1.50 per liter on reconstituted milk and harmonization of the customs duty rate at 15% for powdered milk.

The amendment above is intended to stimulate the local dairy sector.

Change introduced: Removal of 10% export duty on crocodile skins.

Change introduced: Suspension of 5% customs duty on copper ores and concentrates.

Change introduced: Suspension of 15% customs duty on tourist buses and coaches and safari game viewing vehicles for a specified period of one-year effective 1 January 2021.

Change introduced: Reduction of customs duty from 25% to 5% on selected trimmings and garments.

The measure will provide tax relief to the garments and textile industry and encourage its growth.

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