



GILL & SEPH
ADVOCATES

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NEWSLETTER



**NEWSFLASH ON THE
TAX AND RELATED
LEGISLATIVE CHANGES
FOR 2022 FISCAL YEAR**

01 Introduction



On 29th October 2021, the Honourable Minister of Finance and National Planning (hereinafter referred to as “the Minister”) presented to the National Assembly of the Republic of Zambia the 2022 National Budget proposing a number of tax changes. However, not all proposals contained in the Budget Speech have been actualized.

It is against the above backdrop that this Newsflash adopts a comparative approach in highlighting the proposed tax changes catalogued in the Budget Speech as against the actual tax legislative changes for the 2022 Fiscal year as reflected in the various tax and related legislation. The Newsflash also contains some non-tax but related legislative changes.



02 Highlights of the Proposed and Actual Tax Changes

Insurance Premium Levy

Proposed Change in the Budget Speech

The Minister proposed to abolish the Insurance Premium Levy and replace it with Value Added Tax and standard rate the supply of property and non-life insurance.

Actual Legislative Change

Contrary to the proposal in the Budget Speech, a perusal of the Insurance Premium Levy (Amendment) Act, 2021 reveals that Insurance Premium Levy has not been abolished. However, section 4 of the principal Insurance Premium Levy Act, 2015 has been amended by revising the rate of Insurance Premium Levy from 3% to 5%.

Comment

We think that the government may have realized that standard rating insurance services would have made the cost of insurance services very high. Consequently, the proposal, if implemented, would have discouraged people from seeking insurance services. Hence, the decision not to abolish Insurance Premium Levy.



Income Tax: Mineral Royalty

Proposed Change in the Budget Speech

The Minister proposed to re-introduce the deductibility of mineral royalty for corporate income tax assessment purposes.

Actual Legislative Change

A perusal of section 6 of the Income Tax (Amendment) Act, 2021 reveals that the proposal to deduct mineral royalty for corporate income tax assessment purposes has been enacted into law.

Comment

The rationale for the measure is to conform to international good practice, enhance investment in the mining sector and contribute to economic growth and job creation.

Income Tax: Withholding Tax

Proposed Change in the Budget Speech

The Minister proposed to:

- i. introduce 20% withholding tax on reinsurers who are not licensed in Zambia
- ii. to extend the tax exemption relating to payments of Interest to all interest earning bank accounts held by individuals.

Actual Legislative Change

The proposal to introduce 20% withholding tax on reinsurers who are not licensed in Zambia has been enacted into law as revealed by the Income Tax (Amendment) Act, 2021 wherein section 82A of the principal Act has been amended by the deletion of subsection (1) and substitution of the said subsection with a new subsection (1) providing, in paragraph (j), for the payment of withholding tax on reinsurance premium made to a recipient not licensed in Zambia.

The proposal to extend the tax exemption to payments of interest to all interest earning bank accounts held by individuals has equally been enacted into law. The Charging Schedule of the principal Income Tax Act has since been amended and now provides that tax required to be deducted from a payment under section 82A arising from interest earning accounts held by an individual with a financial service provider registered under the Banking and Financial Services Act, 2017 shall be deducted at the rate of zero percent per annum.



Comment

- The introduction of 20% withholding tax on reinsurers who are not licensed in Zambia is intended to encourage the uptake of reinsurance from local firms and further develop the industry.
- The rationale for the extension of tax exemption relating to payments of Interest to all interest earning bank accounts held by individuals is to encourage a culture of saving and promote financial inclusion.

Corporate Income Tax

Proposed Change in the Budget Speech

The Minister proposed to:

- reduce the standard Corporate Income Tax rate to 30 percent from 35 percent but maintain the top marginal tax rate for telecommunication companies at 40 percent.
- extend the 15% Corporate Income Tax rate on income earned by hotel and lodges on accommodation and food services
- Suspend Corporate Income tax for persons carrying on the business of manufacturing ceramic products for the charge years 2022 and 2023

Actual Legislative Change

The proposal to reduce standard Corporate Income Tax rate to 30 percent from 35 percent has been enacted into law as is evident from the Charging Schedule to principal Act which has been amended in paragraph 3 (1) in items (b) and (c) by the deletion of the word "thirty-five" and the substitution therefor of the word "thirty".

On the other hand, a perusal of Section 14 of the Income tax (Amendment Act), 2021 reveals that the proposal to extend the 15% Corporate Income Tax rate on income earned by hotels and lodges on accommodation and food services has been enacted into law. The Charging Schedule has since been amended by the deletion of item (g) and the substitution therefor of an amended item (g) providing for 15 percent as the maximum rate of tax payable on income received by a person providing accommodation and food services.

Regarding the proposal to suspend Corporate Income Tax for persons carrying on the business of manufacturing ceramic products for the charge years 2022 and 2023, a perusal of the Income Tax (Amendment) Act, 2021 reveals that the proposal has been enacted into law. This is evident from section 14 of the Income Tax (Amendment) Act, 2021 in which the Charging Schedule to the principal Act has been amended in paragraph 5 by the insertion of a new item (h) (immediately after item (g)) providing for zero percent maximum rate of tax for the charge years 2022 and 2023 on income received by a person carrying on business of manufacturing ceramic products.

Comment

- The rationale for the proposal to extend the 15% Corporate Income Tax rate on income earned by hotels and lodges on accommodation and food services is to address the continued negative effects of the COVID-19 pandemic on the tourism sector.
- The rationale for reducing the standard Corporate Income Tax from 35% to 30% is to allow companies to retain some funds for further investments as well as attract foreign direct investment.
- The rationale for the suspension of Corporate Income Tax for persons carrying on the business of manufacturing ceramic products for the charge years 2022 and 2023 is to promote manufacturing of ceramic products and to facilitate entry of new players into the industry





Rental Income Tax

Proposed Change in the Budget Speech

The Minister proposed to reform the rental income regime by charging Turnover Tax at the rate of 4% on rental income below ZMW 800,000 per annum and apply the income tax regime for individuals or partnerships with rental income above ZMW 800,000 per annum.

Actual Legislative Change

The proposal has been enacted into law through the Income Tax (Amendment) Act, 2021 in which paragraph 5 of the Charging Schedule has been amended by deleting item (e) and substituting it with a paragraph providing for the payment of turnover tax at the rate of 4% per annum by a person or partnership letting property where the turnover does not exceed ZMW 800,000 and, 12.5% per annum on turnover that exceeds ZMW 800,000.

Comment

The measure is intended to align the treatment of rental income with that of other income sources.

Disallowed Interest Deductions

Proposed Change in the Budget Speech

The Minister proposed to increase the period for disallowed interest deduction carry forward to 10 years from 5 years.

Actual Legislative Change

The proposal was enacted into law by amending section 29 of the principal Income Tax Act through the Income Tax (Amendment) Act, 2021.

Section 29 in its amended form allows persons carrying on a mining operation or generating electricity to carry forward disallowed interest deductions for a period of ten years.

The provision applies to persons carrying on mining operations or generating electricity only.

Comment

The measure is intended to align the period for disallowed interest deduction carry forward with the current legislation on tax carry forward limit of losses.

Pay As You Earn

Proposed Change in the Budget Speech

The Minister proposed to increase the exempt threshold for Pay As You Earn (PAYE) to ZMW 4, 500 per month from ZMW 4, 000 and adjust the income tax bands accordingly.

Actual Legislative Change

A perusal of the Income Tax (Amendment) Act, 2021 reveals that there has been an amendment to the Charging Schedule in paragraph 2 (1) in items (c) and (d). In items (c) and (d) the words “forty-eight thousand Kwacha” have been deleted and substituted with the words “fifty-four thousand Kwacha”. The amendment increases the annual income band taxable at zero percent for individuals to ZMW 54, 000 from ZMW 48, 000. This means that an individual who earns up to ZMW 4, 500 per month or up to ZMW 54, 000 per annum shall not pay income tax.

Comment

The rationale for increasing the threshold for PAYE is to provide relief to low income tax payers and to cushion the rise in the cost of living.

Property Transfer Tax

Proposed Change in the Budget Speech

The Minister proposed to extend Property Transfer Tax on transfers of mineral processing and other mining related licences at the applicable rate of 10%.

Actual Legislative Change

A perusal of the Property Transfer Tax (Amendment) Act, 2021 reveals that Section 4 of the principal Act has been amended in subsection (2) by the insertion of a new paragraph (paragraph b) providing for the payment of property transfer tax on transfers of mineral processing licences at the rate of 10% of the realized value.

Comment

The aim of this measure is to broaden the tax base by subjecting the transfer of mineral processing licences to Property Transfer Tax as they have intrinsic value akin to a mining right.

Value Added Tax (VAT)

Proposed Change in the Budget Speech

The Minister proposed:

- i. zero-rating Value Added Tax on selected agricultural equipment and accessories. These include, inter alia, Manure Spreaders, Balers, Combine harvesters, Commercial Sprinkler Irrigation Systems and Animal Feed Grinder-Mixer.
- ii. zero-rating Value Added Tax on Solar Charge Control Units and Solar Street Lights.
- iii. House Keeping Measures

Actual Legislative Change

The proposal to zero-rate value added tax on selected agricultural equipment and accessories was enacted into law. This is evident from the Value Added Tax (Zero-Rating) Order, 2021, which reveals that group 8 of the principal Order (Value Added Tax (Zero-Rating) Order, 2014)) has been amended by the deletion of group 8 and the substitution therefor of an amended group 8 which lists selected agricultural equipment and accessories which are zero-rated for VAT purposes.

The proposal to zero-rate value added tax on Solar Charge Control Units and Solar Street Lights was also enacted into law as is evident from the Value Added Tax (Zero-Rating) Order, 2021, which reveals that group 7 of the principal Order (Value Added Tax (Zero-Rating) Order, 2014)) has been amended by the deletion of group 7 and the substitution therefor of an amended group 7 which lists solar street lights and solar control units as zero-rated items.

In relation to House-Keeping Measures, the following amendments were made to the Value Added Tax Act and the Valued Added Tax (Electronic Fiscal Devices) Regulations, 2020:

- Section 7A (1) of the Value Added Tax Act providing for the use of an electronic fiscal device to record daily sales by a taxable supplier has been amended through the Value Added Tax (Amendment) Act, 2021 by the deletion of the words “daily sales” and the substitution therefor of the words “each sale or transaction”.
- Further Section 7A (3) of the Value Added Tax Act has been amended by the deletion of the said subsection and the substitution therefor of a new subsection 3 providing for penalties for failure to comply with section 7A which includes recording each sale or transaction as provided in the amended section 7A (1). Failure to comply with section 7A will attract a penalty not exceeding: (a) 100, 000 penalty units (ZMW 30, 000) for a first offence; (b) 200, 000 penalty units (ZMW 60, 000) for a second offence; and (c) 300, 000 penalty units (ZMW 90, 000) or to imprisonment for a term not exceeding 3 years, or to both in respect of a third or subsequent offence. Therefore, failure to record each sale as and when it occurs will attract the above penalties.
- Regulation 7 of the Value Added Tax (Electronic Fiscal Devices) Regulations, 2020 has been amended by the revocation of the said regulation and substitution therefor of a new regulation 7 to allow a taxable supplier to only use accounting software integrated with the Tax Invoice Management System. The amendment was effected through the Value Added Tax (Electronic Fiscal Devices) (Amendment) Regulations, 2021.

- Section 18 (3) (c) of the Value Added Tax Act has been amended by the deletion of the word “or” and substitution therefor of the word “and” to clarify the documents required in support of an import for purposes of claiming input tax. Therefore, a supplier seeking to claim input tax on imported goods will have to be in possession of a bill of entry and such documentary evidence of the payment of tax as the Commissioner-General may, by administrative rule, prescribe. The amendment has been effected through the Value Added Tax (Amendment) Act, 2021.

Comment

- The rationale is to improve productivity through mechanisation in the agricultural sector.
- The rationale is to promote the use of alternative renewable sources of energy.
- The measure intends to provide a clearer meaning of recording daily sales. A taxable supplier is required to use an electronic fiscal device to record each sale transaction for any supply. Therefore, taxable suppliers will not be allowed to record their sales in intervals or as block sales but rather record sales as and when they occur. It is our considered view that the amendment to section 7A (3) of the Value Added Tax Act providing for penalties is to ensure compliance.
- The measure is intended to require a taxable supplier using accounting software to have their accounting software integrated with the Tax Invoice Management System.
- The measure seeks to clarify that the provision in the Commissioner General’s Rules pertaining to bills of entry is provided for in the Value Added Tax Act, 2021.



Customs and Excise Duty

Proposed Change in the Budget Speech

The Minister proposed, inter alia, to:

- introduce 5% excise duty on coal.
- Increase specific Excise Duty on unmanufactured tobacco, tobacco refuse, smoking tobacco whether or not containing tobacco substitutes, water pipe tobacco and cutrag to K355 per kg from K240 per kg.
- Remove the 10% Export Duty on Maize effective 1st November 2021.
- Extend to 31st December 2022 suspension of Customs Duty on importation of refrigerated trucks. The Minister further proposed to extend the relief to processors of milk and manufacturers of medicaments

Actual Legislative Change

The Customs and Excise (Amendment) Act, 2021 reveals that the proposal to introduce 5% excise duty on coal has been enacted into law through the amendment of the Second Schedule to the principal Act (the Customs and Excise Act) by the deletion of heading 9 of the Second Schedule and the substitution therefor of another heading providing for the duty rate of Coal at 5%.

The proposal to increase Excise Duty on unmanufactured tobacco, tobacco refuse and smoking tobacco has equally been enacted into law through the Customs and Excise (Amendment) Act, 2021 wherein the Second Schedule of the principal Act (the Customs and Excise Act) has been amended by the deletion of the figure "ZMW 240" in the duty rate column opposite heading 24.01 and the substitution therefor of the figure "ZMW 355".

In relation to the proposal to remove the 10% Export Duty on Maize, the Customs and Excise (Amendment) Act, 2021 shows that there has been an amendment to the Ninth Schedule (dealing with export duty) to the principal Act (the Customs and Excise Act) by the deletion of subheading 1005.90.00 dealing with Maize. The deletion of the subheading thus implies that export duty is no longer payable on Maize.

In relation to the proposal to extend suspension of Customs Duty on importation of refrigerated trucks and to extend the relief to processors of milk and manufactures of medicaments, the Minister issued the Customs and excise (Refrigerated Trucks) (Suspension) Regulations, 2021 in which the proposal to suspend Customs Duty until 31st December 2022 on imported refrigerated trucks if imported for use in agro-processing; or if imported for use by processors of milk or manufacturers of medicaments was enacted into law.

Comment

- The introduction of the 5% excise duty on coal is intended to raise revenue.
- The proposal to increase Excise Duty on unmanufactured tobacco, tobacco refuse and smoking tobacco is meant to raise revenue.
- The proposal to remove the 10% Export Duty on Maize is intended to open the market for food whilst ensuring food security.
- The rationale for the proposal to extend suspension of Customs Duty on importation of refrigerated trucks and to extend the relief to processors of milk and manufactures of medicaments is to support agro-processing in general.

03 Measures to Revamp MultiFacility Economic Zones



In order to revamp and remodel the economic zones and make the incentives more targeted, the Minister proposed to:

(a) reduce the threshold to US \$ 50,000 for a Zambian citizen to qualify for incentives provided under the Zambia Development Agency Act No. 11 of 2006.

The proposal has been enacted into law through the repeal and substitution of section 56 of the Zambia Development Agency Act, 2006. The substituted section 56 now provides in subsection 2 that a local investor who invests not less than US \$ 50, 000 or the equivalent in convertible currency, in a priority sector, is entitled to incentives as specified by or under the Customs and Excise Act or Income Tax Act.

(b) introduce zero percent tax for a period of 10 years from the first year of commencement of works in a Multi Facility Economic Zone or Industrial Park, on income earned from exports by companies operating in the said economic zones under the Zambia Development Agency Act No. 11 of 2006.

The proposal has been enacted into law through the amendment to the Charging Schedule of the Income Tax Act by the insertion of a new item (being item (i)) in paragraph 5 of the Charging Schedule. The new item (i) under roman numeral (i) provides for zero percent tax chargeable for a period of ten years from the year of commencement of works on income earned from exports of a business enterprise approved by the Zambia Development Agency and carrying on activities in a multi-facility economic zone or industrial park. In addition, for the profits earned in year 11 to 13, only 50% of the profits shall be taxed (roman numeral (ii) in item (i)); and 75% of the profits shall be taxed for year 14 and 15 after commencement of works (roman numeral (iii) in item (i)). The aforesaid amendments are contained in section 14 of the Income Tax (Amendment) Act, 2021.



04 Amendment to the Money - Lenders Act



Towards the backend of 2021 the Money - Lenders Act was amended. This amendment was undertaken on 29th December 2021 and pursuant to Statutory Instrument Number 51 of 2021 (the Money – Lenders (Amendment) Act, 2021). The amendment is to be read together with the Money – Lenders Act and officially came into operation (effect) on 1st January 2022.

The amendment was specifically targeted at section 3 of the Money – Lenders Act. This is the section that sets out the fee payable in respect of a money lenders licence. Set out below is a comparison of the old (repealed) and new fees payable:

	Fee Units	Kwacha Equivalent (ZMW)
Repealed Money Lender licence fee	450	135
Repealed Money Lender licence fee (in the event that the licence is issued for a period of not more than six months from the expiration date i.e. 31st December)	300	90
New Money Lender Licence Fee	33,333	9,999.9
New Money Lender Licence Fee (Repealed Money Lender licence fee (in the event that the licence is issued for a period of not more than six months from the expiration date i.e. 31st December)	22,222	6,666.6

Persons (including companies) intending to obtain a money lenders licence or indeed renew their money lending licence will therefore have to make payment based on the new applicable money lenders licence fee. Any person that carries on the business of or operates as a money lender in the absence of a money lenders licence shall be guilty of an offence and shall be liable, on conviction to a fine not exceeding three thousand penalty units.

05 The Economic and Financial Crimes Court



In other news, on 7th January 2022, the Chief Justice of the Republic of Zambia established the Economic and Financial Crimes Court as a division of the High Court through Statutory Instrument No. 5 of 2022 (The Economic and Financial Crimes (Division of Court) Order, 2022).

The purpose of the Economic and Financial Crimes Court is to hear and determine matters relating to economic and financial crimes, and corruption. The Court shall consist of a Judge or such number of Judges of the High Court as may be determined by the Chief Justice.

The rationale for establishing the Economic and Financial Crimes Court is to expedite the disposal of economic and financial crimes matters.



Disclaimer: The information and comments expressed in this newsletter are for general purposes only. They do not in any way constitute legal or professional advice. We do however remain available to provide detailed/comprehensive legal opinions on the subject matter of this newsletter (and any other related legal issues). Our contact details are as follows:

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