GOVERNMENT OF ZAMBIA

ACT

No. 1 of 2008

Date of Assent: 28th March, 2008

An Act to amend the Income Tax Act

[28th March, 2008

ENACTED by the Parliament of Zambia. Enactment

1. (1) This Act may be cited as the Income Tax (Amendment) Act, 2008, and shall be read as one with the Income Tax Act, in this Act referred to as the principal Act. Short title and commencement Cap. 323

(2) This Act shall come into operation on 1st April, 2008, and subject to any provisions to the contrary, shall have effect in relation to the charge of tax for the charge year which ends on 31st March, 2009, and in relation to each subsequent charge year.

2. Section *two* of the principal Act is amended in subsection (1)— Amendment of section 2

(a) by the deletion of the definition of "business" and the substitution therefor of the following new definition: "business"includes—

(a) any profession, vocation or trade;

(b) any adventure or concern in the nature of trade whether singular or otherwise;

(c) manufacturing;

(d) farming; and

(e) hedging;

(b) in the definition of "finance lease" by the insertion in subparagraph (iv) of paragraph (d) of the word "not" after the word "does";

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(*c*) by the deletion of the definition of "mining operations" and the substitution therefor of the following new definition:

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"mining operations" means any operation carried out under a mining right referred to in section *six* of the Mines and Minerals Development Act, but does not include any operations carried out under a prospecting permit, a prospecting licence or any operations involving only mineral processing; and

(*d*) by the insertion in the appropriate place of the following new definition:

"operating lease" means any lease of implements, machinery or plant, other than a finance lease.

Amendment of section 30

3. Section *thirty* of the principal Act is amended—

(*a*) by the insertion immediately after subsection (1) of the following new subsection:

(1A) Subject to the other provisions of this section, any loss incurred in a charge year on hedging by a person, shall be deducted only from the income from hedging.;

(*b*) in the proviso to subsection (2) by the deletion of clause (i) and the substitution therefor of the following clause:

(i) in the case of any loss incurred by any person carrying on mining operations, the loss shall not be carried forward beyond ten subsequent charge years after the charge year in which the loss is incurred;.

Insertion of new section 43C

4. The principal Act is amended by the insertion immediately after section *forty-three* B of the following new section:

Deduction for mortgage interest

43C. (1) Subject to the provisions of this section, any amount paid by a Zambian individual during a charge year by way of interest on a loan secured by a property in respect of the period of the charge year for which the property was owned shall be deducted from the income of the individual for that charge year, and before allowing deductions under subsection (3) of section *thirty-seven* and sections *thirty, thirty-two, thirty-six, forty* and *forty-one*:

Provided that this section shall apply only to interest which is payable on such part of the loan as is used to defray money applied in the construction, purchase, repair or improvement of the property in respect of the period from the date of such commencement of construction or purchase or for the payment of a premium on a mortgage protection insurance policy and the loan has been used within what the Commissioner-General shall determine is a reasonable period in the circumstances from the date of such application.

(2) The deduction to be allowed in a charge year under subsection (1) shall not exceed—

(a) the amount which would have been allowable if the interest on the mortgage, or that part of it which is allowable, had been payable at the highest rate charged on a mortgage by a building society in a charge year; or

(b) the assessable income of an individual for that charge year before allowing a deduction under subsection (1) and the deductions under subsection (3) of section *thirty-seven* and sections *thirty, thirty-two, thirty-six, forty* and *forty-one*;

whichever is less.

(3) For the purposes of this section, "property" means immovable residential property within the Republic.

5. Section *forty-three D* of the principal Act is amended in subsection (2) by the deletion of the words "five hundred thousand kwacha" and the substitution therefor of the words "one million kwacha". Amendment of section 43D

6. Section *forty-four* of the principal Act is amended in clause (iii) of the proviso to paragraph (h) by the deletion of "K25,000" and the substitution therefor of the words "one hundred thousand kwacha". Amendment of section 44

7. Section *forty-five A* of the principal Act is amended by the insertion immediately after subsection (4) of the following new subsection: Amendment of section 45A

(5) For the purposes of subsection (1), "person" includes a partnership.

8. Section *forty-six* of the principal Act is amended by the insertion immediately after subsection (4) of the following new subsections: Amendment of section 46

(5) Any person liable to windfall tax for any charge year shall furnish to the Commissioner-General a windfall tax return and such particulars as may be required for the purposes of ascertaining the income chargeable, if any, and the tax liability due, if any, under this Act.

(6) The return required under this section shall—

(a) contain the quantities of the minerals sold;

(b) contain the quantities of the concentrates or slime sold;

(c) contain the contracts of sale for minerals, slime or concentrates;

(d) be designated in kwacha; and

(e) contain any other particulars as determined by the Commissioner-General.

(7) The return referred to in subsection (5) shall be furnished to the Commissioner-General quarterly and not later than the fourteenth day following the end of each quarter.

(8) Where a person fails to submit a return on or before the date provided for under subsection (7),that person shall be charged a penalty of —

(a) in the case of an individual, one thousand penalty units per month or part thereof; or

(b) in the case of a company, two thousand penalty units per month or part thereof:

Provided that the Commissioner-General may remit the whole or part of the penalty.

Amendment of section 64

9. Section *sixty-four* of the principal Act is amended in clause (i) of the proviso by the deletion of the words "fifty thousand kwacha" and the substitution therefor of the words "one hundred and fifty thousand kwacha".

Amendment of section 64A

10. Section *sixty-four A* of the principal Act is amended—

(a) in the proviso to subsection (2) by the insertion of the words "or from mining operations" after the word "services"; and

(b) by the insertion immediately after subsection (2) of the following new subsection:

(3) The Minister may, by statutory instrument, make regulations for the administration of this section.

Insertion of new section 64B

11. The principal Act is amended by the insertion immediately after section *sixty-four A* of the following new section:

64 B . The Commissioner-General may make a windfall tax assessment requiring any person carrying on mining operations of base metals or precious metals to pay a windfall tax at the rates set out in the Tenth Schedule. Windfall tax assessment

12. Section *seventy-seven* of the principal Act is amended by the insertion immediately after subsection (1C) of the following new subsection: Amendment of section 77

(1D) Notwithstanding subsection (1), the tax payable for any charge year by any person required to submit a windfall tax return under subsection (5) of section *forty-six* shall be due on—

(a) for the first quarter, thirtieth June;

(b) for the second quarter, thirtieth September;

(c) for the third quarter, thirty-first December; and

(d) for the fourth quarter, thirty-first March.

13. Section *seventy-eight* of the principal Act is amended in subsection (1) by— Amendment of section 78

(a) the deletion of the word "or" at the end of paragraph (a);

(b) the insertion of the word "or" at the end of paragraph (b); and

(c) the insertion immediately after paragraph (b) of the following new paragraph:

(c) any amount of windfall tax within fourteen days.

14. Section *eighty-one C* of the principal Act is amended in the proviso to subsection (2) by the deletion of the words *"forty-five"* and the substitution therefor of the words *"forty-six"*. Amendment of section 81C

15. Section *eighty-two A* of the principal Act is amended in paragraph (b) of subsection (1) by the deletion of the proviso and the substitution therefor of the following new proviso: Amendment of section 82A

Provided that—

(i) this section shall not apply to interest payable on a bill of exchange drawn for one hundred and eighty days or less; and

(ii) the payment of any amount in excess of the original issue price for any treasury bill or any other similar financial instrument sold at a discount from face value shall be deemed for the purposes of this section to be payment of interest when any such treasury bill or any other similar financial instrument is presented for redemption or re-discount;.

Amendment of section 93

16. Section *ninety-three* of the principal Act is amended by the deletion of the words "twenty thousand kwacha" and the substitution therefor of the words "one hundred thousand kwacha".

Amendment of section 97A

17. Section *ninety-seven A* of the principal Act is amended by the insertion immediately after subsection (12) of the following new subsections:

(13) Notwithstanding any provision in this Act, for any transaction for the sale of base metals, precious metals or any substance containing base metals or precious metals, directly or indirectly, between related or associated parties, the applicable sale price of such metals or recoverable metals shall be the reference price.

(14) For the purposes of subsection (13), "reference price" means—

(a) the monthly average London Metal Exchange cash price;

(b) the monthly average Metal Bulletin cash price to the extent that the base metals or precious metal prices are not quoted on the London Metal Exchange;

(c) the monthly average cash price of any other metal exchange market as approved by the Commissioner-General to the extent that the base metal price or precious metal price is not quoted on the London Metal Exchange or Metal Bulletin; or

(d) the average monthly London Metal Exchange cash price, average monthly Metal Bulletin cash price or any other monthly average metal market exchange cash price approved by the Commissioner-General, less any discounts on account of poor or low quality or grade.

(15) For the purposes of subsection (13), "related or associated parties" include but are not limited to—

(a) parties connected directly or indirectly through shareholding, equity or partnerships;

(b) any joint venture owned or operated jointly with or an unrelated party;

(c) connected persons; or

(d) parties connected through management and control.

(16) For the purposes of subsection (15), two persons are connected with each other if—

(a) one of them is an individual and the other is that person's spouse, a relative of that person or of that person's spouse, or the spouse of such a relative; or

(b) one of them is a trustee of a settlement and the other is—

(i) a person who, in relation to that settlement, is a settlor; or

(ii) a person who is connected with a person falling within subparagraph (i).

(17) For the purposes of subsection (16), "relative" means a brother, sister, ancestor or lineal descendant.

18. The Second Schedule to the principal Act is amended in subparagraph (3) of paragraph 5 by the deletion of the words "three million, six hundred thousand kwacha" wherever they appear and the substitution therefor of the words "the amount taxable at the rate of zero per centum per annum as set out in clause (c) of subparagraph (1) of paragraph 2 of the Charging Schedule." Amendment of Second Schedule

19. The Fifth Schedule to the principal Act is amended— Amendment of Fifth Schedule

(a) in the proviso to subparagraph (4) of paragraph 1 by the deletion of clause (i) and the substitution therefor of the following clause:

(i) the cost of each housing unit does not exceed twenty million kwacha (in this paragraph referred to as low cost housing);

(b) in subparagraph (5) of paragraph 10 by the deletion of the word "leasing" and substitution therefor of the words "leased out under an operating lease";

(c) in paragraph 19—

(i) in the definition of "deemed loss" by the deletion of the words "section *twenty-one*" and the substitution therefor of the words "paragraph 21";

(ii) by the deletion of the definition of "production charge year" and the substitution therefor of the following new definition:

"production charge year" means a charge year in which a mine first commences regular production;

(iii) by the deletion of the definition "1953 new mine";

(iv) by the deletion of the definition "1970 new mine";

(v) by the deletion of the definition "1975 new mine"; and

(vi) by the insertion in the appropriate place of the following new definition:

"existing mine" means

(a) any mine that has a production commencement date before 1st April, 2008;

(b) any mine that is not in regular production but whose development commenced before 1st April, 2008; or

(c) a combination of *(a)* and *(b)*;

(d) in paragraph 21—

(i) by the deletion of the proviso to subparagraph (4); and

(ii) in sub-paragraph (5) by the deletion of "1975 new" after the words "operator of a";

(e) in paragraph 22—

(i) by the deletion of subparagraph (2) and the substitution therefor of the following:

(2) The deduction to be allowed for a charge year for a mine shall be calculated on a straight line basis at twenty-five per centum of the original expenditure:

Provided that—

(*a*) the deduction for pre-production expenditure shall be one hundred per centum of the original expenditure in the production charge year to the extent that such expenditure has not already been allowed as a deduction;

(*b*) seventy-five per centum of the capital expenditure incurred in the charge year ending 31st March, 2009, shall be allowed as a deduction in that charge year and the balance in the subsequent charge year; and

(c) fifty per centum of the capital expenditure incurred in the charge year ending 31st March, 2010, shall be allowed as a deduction in that charge year and the balance shall be allowed equally in the subsequent two charge years.;

(ii) by the deletion of subparagraph (3) and the substitution therefor of the following:

(3) Where separate and distinct mining

operations are carried on by a person in mines which are not contiguous,the deduction allowable under subparagraph (2) shall be calculated separately according to the respective mines:

Provided that this subparagraph shall not apply to any existing mine; and

(iii) by the deletion of subparagraphs (4), (5), (6) and (7); and

(iv) by the deletion of paragraph 23 and the substitution therefor of the following:

Deductions for mining expenditure on non-contiguous mine

23. (1) Where a person is carrying on mining operations in a mine which is in regular production and is also the owner of, or has a right to work a mine which is not contiguous with the producing mine and from which the person has a loss in the charge year, the amount of such loss shall not be deducted in ascertaining the gains or profits from the mining operations:

Provided that the loss incurred may be allowed as a deduction in ascertaining the gains or profits arising from the same mine when it commences regular production.

(2) The provisions of subparagraph (1) shall not apply to any existing mine.

Amendment of Sixth Schedule

20. The Sixth Schedule to the principal Act is amended in paragraph 1 by the deletion in the definition of "farm dwelling" of the words "ten million kwacha" and the substitution therefor of the words "twenty million kwacha".

Insertion of new Tenth Schedule

21. The principal Act is amended by the insertion after the Ninth Schedule of a new Tenth Schedule as set out in the Appendix to this Act.

Amendment of Charging Schedule

22. The Charging Schedule to the principal Act is amended—

(a) in clause *(b)* of subparagraph (1) of paragraph 1 by the deletion of the words "one hundred and forty-four thousand kwacha per annum" and the substitution therefor of the words " six hundred thousand kwacha per annum";

(b) in subparagraph (1) of paragraph 2—

(i) by the deletion in clause *(c)* of the words "six million kwacha" and the substitution therefor of the words "seven million, two hundred thousand Kwacha"; and

(ii) by the deletion of clauses *(d)*, *(e)* and *(f)* and the substitution therefor of the following clauses:

(d) on the balance of so much of an individual's income as exceeds seven million, two hundred thousand kwacha but does not exceed fourteen million, eight hundred and twenty thousand kwacha, at the rate of twenty-five per centum per annum;

(e) on the balance of so much of an individual's income as exceeds fourteen million, eight hundred and twenty thousand kwacha but does not

exceed forty-eight million kwacha, at the rate of thirty per centum per annum; and

(f) on the balance of so much of an individual's income as exceeds forty-eight million kwacha at the rate of thirty five per centum per annum;

(c) in paragraph 3—

(i) by the deletion of clause *(e)* and the substitution therefor of the following clause:

(e) where the income from mining operations does not exceed eight per centum of the gross sales, at the rate of thirty per centum per annum;

(d) in paragraph 5—

(i) by the deletion of the word "and"at the end of subparagraph *(e)*;

(ii) by the deletion of the full stop at the end of subparagraph *(f)* and the substitution therefor of a semi-colon and the insertion of the word "and" after the semi-colon; and

(iii) by the insertion immediately after subparagraph (f) of the following new subparagraph:

(g) subject to the provisions of this Act, the rate of tax chargeable on income received from hedging in a charge year is thirty-five per centum per annum.;

(e) in subparagraph (1) of paragraph 6 by the deletion of clause (c) and the substitution therefor of the following clause:

(c) at the rate of zero per centum for any dividends paid by any person carrying on mining operations; and

(f) where the income from mining operations exceeds eight per centum of the gross sales at the rate determined in accordance with the following formula:

y=30%+[a-(ab/c)]

Where—

y= the tax rate to be applied per annum;

a= 15%;

b= 8%; and

c= the percentage ratio of the assessable income to gross sales:

Provided that where any person has paid windfall tax in accordance with section *sixty four B* on any base metal or precious metal in any charge year in respect of that charge year, the rate applicable to income from such base metal or precious metal shall be thirty per centum per annum; and

(iii) by the re-numbering of clause (f) as (g).

(g) in the proviso to paragraph 7—

(i) by the deletion in clause (i) of the words "twenty-five per centum per annum" and the substitution therefor of the words "fifteen per centum per annum";

(ii) by the deletion of clause (iv); and

(iii) by the renumbering of clauses (v) and (vi) as clauses (iv) and (v).

APPENDIX

(Section 20)

TENTH SCHEDULE

(Section 64B)

WINDFALL TAX

PART I

COPPER

1. In this Part, unless the context otherwise requires — Interpretation

"first trigger price" (FTP) means the copper price of five thousand, five hundred and twelve United States dollars (US$5,512) per metric tonne;

"monthly average price" (MAP) means the weighted average London Metal Exchange copper price in respect of a calendar month calculated in accordance with the following formula:

$$MAP = \frac{Q_1P_1+Q_2P_2+Q_3P_3+\ldots+Q_{n-1}P_{n-1}+Q_nP_n}{Q_n}$$

Where—

Qn= the quantity of copper or recoverable copper sales in metric tonnes in a calendar month;

Pn= the corresponding London Stock Exchange daily closing cash price in United States dollars per metric tonne for grade A cathode; and

n = the aggregate number of copper or recoverable copper sales invoiced in the relevant calendar month;

" ruling exchange rate " (RER) means the Bank of Zambia monthly average kwacha to United States dollar currency exchange rate;

" second trigger price " (STP) means the copper price of six thousand, six hundred and fourteen United States dollars (US$6,614) per metric tonne; and

" third trigger price " (TTP) means the copper price of seven thousand, seven hundred and sixteen United States dollars (US$7,716) per metric tonne.

2. Subject to the provisions of this Act, windfall tax in respect of income from mining operations of a person for a charge year shall be charged as follows:

Windfall tax

(a) where the monthly average price does not exceed the first trigger price, windfall tax shall not be payable;

(b) where the monthly average price exceeds the first trigger price but does not exceed the second trigger price, the windfall tax shall be calculated in accordance with the following formula:

$WT = (RER*Q_n)[25\%(MAP\text{-}FTP)]$

Where—

WT = windfall tax payable for the month;

(c) where the monthly average price exceeds the second trigger price, but does not exceed the third trigger price the windfall tax shall be calculated in accordance with the following formula:

$WT = (RER*Q_n)\ \{[25\%(STP\text{-}FTP)] + [50\%(MAP\text{-}STP)]\}$; and

(d) where the monthly average price exceeds the third trigger price, the windfall tax shall be calculated in accordance with the following formula:

$WT = (RER*Q_n)\{[25\%(STP\text{-}FTP)] + [50\%(TTP\text{-}STP)] + [75\%(MAP\text{-}TTP)]\}$

PART II

COLBALT

Interpretation

3. In this Part, unless the context otherwise requires—

"first trigger price" (FTP) means the cobalt price of fifty-five thousand, one hundred and sixteen United States dollars (US$55,116) per metric tonne;

"monthly average price" (MAP) means the weighted average Metal Bulletin cobalt cash price in respect of a calendar month calculated in accordance with the following formula:

$$MAP = \frac{Q_1P_1+Q_2P_2+Q_3P_3+...+Q_{n-1}P_{n-1}+Q_nP_n}{Q_n}$$

Where—

Qn = the quantity of cobalt or recoverable cobalt sales in metric tonne in a calendar month;

Pn= the corresponding Metal Bulletin daily closing cash price in United States dollars per metric tonne; and

n = the aggregate number of cobalt or recoverable cobalt sales invoiced in the relevant calendar month;

"ruling exchange rate" (RER) means the Bank of Zambia monthly average kwacha to United States Dollar currency exchange rate;

"second trigger price" (STP) means the cobalt price of seventy-seven thousand, one hundred and *sixty two* United States dollars (US$77,162) per metric tonne; and

"third trigger price" (TTP) means the cobalt price of eighty-eight thousand, one hundred and eighty-five United States dollars (US$88,185) per metric tonne;

Windfall tax

4. Subject to the provisions of this Act, windfall tax in respect of income from mining operations of a person for a charge year shall be charged as follows:

(a) where the monthly average price does not exceed the first trigger price, windfall tax shall not be payable;

(b) where the monthly average price exceeds the first trigger price but does not exceed the second trigger price, the windfall tax shall be calculated in accordance with the following formula:

$WT = (RER*Q_n)[25\%(MAP-FTP)]$

Where—

WT = windfall tax payable for the month;

(c) where the monthly average price exceeds the second trigger price, but does not exceed the third trigger price the windfall tax shall be calculated in accordance with thecalculated in accordance with the following formula:

$WT = (RER*Q_n)\{[25\%(STP-FTP)] + [50\%(MAP-STP)]\}$; and

(d) where the monthly average price exceeds the third trigger price the windfall tax shall be calculated in accordance with the following formula:

$WT = (RER*Q_n)\{[25\% (STP-FTP)]+ [50\%(TTP-STP)]+[75\%(MAP-TTP)]\}$