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INCOME TAX BILL, 2012

EXPLANATORY MEMORANDUM

This Bill will repeal and replace the Income Tax Act [*Chapter 23:06*], which was first enacted in 1967. Among the major changes of principle embodied in this Bill are the following:

- the shift from the source-based system income taxation prevails under the existing income tax regime (whereunder tax is levied on income originated or deemed to have in Zimbabwe) to a residence-based one, whereunder the taxable income of a taxpayer resident in Zimbabwe is the taxpayer's income from all geographical sources within or outside Zimbabwe;
- a clearer distinction is drawn between the different types of income, that is to say, employment income, business income (previously called income from trade) and property income;
- a clearer distinction is drawn between deductions from income that are of a technical nature closely related to the production of the income in question and those that are "tax expenditures" (that is, deductions promotive of public policy objectives);
- the taxation of certain amounts which, though strictly speaking are capital gains, relate to the disposal of certain property used primarily in the production of income, namely business property and investment property (these are not presently taxable under the Capital Gains Tax, but is contemplated that the provisions latter Act will eventually be merged with those of this Bill if it becomes an Act).
- The removal from the body of the Bill of prescribed amounts and formulas wherever possible to separate Schedules, namely the Fourth Schedule ("Miscellaneous Calculations") and the Ninth Schedule ("Prescription of Various Amounts')
- To abolish the Special Court for Income Tax Appeals while retaining the Fiscal Appeal Court, which will now become the appellate court of first instance for income tax appeals.
- Generally, the updating and modernising of outdated terms to take account of contemporary developments in the field of income taxation, such as the changeover to the accrual basis of accounting.

In more detail, the individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill’s short title and date of commencement.

Clause 2

This clause contains definitions of words and phrases used throughout the Bill.

Clause 3

This clause sets out how, for the purposes of this Bill, individuals will be regarded as being related to each other.

Clause 4

This clause sets out how, for the purposes of this Bill, natural and juristic persons will be regarded as being associated with each other.

Clause 5

This clause sets out how, for the purposes of this Bill, natural and juristic persons will be considered to be in control of a company.

Clause 6

This clause enacts that the abolition or the alteration of the rate or incidence of a tax with effect from a particular year of assessment does not affect the liability of any taxpayer for that tax before its abolition or alteration of its rate or incidence (unless, of course, the abolishing or amending legislation expressly provides otherwise).

Clauses 7 to 11

These clauses set out rules to determine the residence of a person in order to determine that person’s liability for tax under this Bill. The current income tax law is based on the “source” principle, where tax is levied on income originated in Zimbabwe. Also under the current law certain foreign-sourced income was deemed to be from a Zimbabwean source, especially income of a passive nature such as foreign interest and dividend income.

This Bill seeks to provide for a residence-based tax system whereunder the taxable income of a taxpayer resident in Zimbabwe is the taxpayer’s income from all geographical sources, less any deductions allowed by this Bill.

With that object in mind, these clauses define what is meant by a resident and temporarily resident individual, a resident company, a resident trust, a resident partnership and a non-resident person.

Clause 12

This clause provides for the levy of income tax for the benefit of the Consolidated Revenue Fund on every person who has taxable income (as determined in accordance with Part I of Chapter IV of this Bill) in a year of assessment.

Clause 13

This clause provides that the income tax with which a taxpayer is chargeable will be determined by reference to the charging Act (the annual Finance Act charging rates of tax that will apply in year of assessment following that in which the Finance Bill is enacted), minus any tax credits allowed by the Finance Act.

Clause 14

This clause provides that, under the Finance Act, different rates of income tax may apply to different categories of person, with reference to whether they are individuals or are incorporated as companies or trusts. Also, special or concessionary rates of income tax may apply certain types of person with reference to the type of business carried on by them, such as holders of special mining leases, pension funds, industrial park developers, and so on.

Clauses 15 to 21

Under these clauses, the income tax base has, for ease of reference, been re-arranged according to the taxable income earned by a resident, temporarily resident or non-resident taxpayer, and taxpayer that is a trust or deceased estate. All businesses other than life insurance will be taxed on the same principles, except that holders of special mining leases and petroleum operators will continue to be taxed on the basis of special provisions contained in the Second and Third Schedules. The existing method of determining the taxable income of life insurance companies (as set out in the First Schedule) has been retained.

Clauses 22 to 26

These clauses will significantly change the method of calculating taxable income. Under the proposed new method, the income that a taxpayer earns is segregated according to whether it is employment, business or property income. This is done with a view to clarifying the eligibility of certain types of income for specified deductions, allowances and exemptions.

Under the existing Income Tax Act, the determination of the taxable income of a person starts with the determination of that person's "gross income". This is defined (in section 8) as including certain amounts that would ordinarily be regarded as "capital" in nature rather than as "income" amounts, or alternatively as excluding certain amounts hat would ordinarily be regarded as "income" in nature rather than as "capital" amounts. From the gross income so determined are deducted any amounts specified to be exempt from income tax under the Third Schedule of the Income Tax Act (the resulting amount is called a person's "income"). Finally, the taxable income of a person is the income so determined minus any deductions allowed by section 15 of the Income Tax Act.

Under this Bill it is proposed that the scope of a person's income, and the type of the exemptions and deductions allowed therefrom, will depend on whether that income is employment income, business income, property income, net gains on the disposal of investment property or any other specified income. The complex, diverse and unwieldy provisions of section 8 of the existing Income Tax Act are simplified by spinning off the various components of income in such a manner that their provenance (whether derived from employment, business, property or other generic sources) is readily apparent. **Clauses 23** to **26** comprehensively set out what is to be included in a person's employment income, business income, property income, net gains on the disposal of investment property or other specified income. Particular noteworthy is **clause 26**, which for the first time explicitly includes within the scope of income that may taxable the proceeds of any crime or other unlawful activity.

Clauses 27 to 29 and Seventh Schedule

Clause 27 signposts the Seventh Schedule, which sets out exemptions from income tax, that is to say, specified amounts that will not, for the purposes of this Bill, form part of a person's income. Most of the exemptions exiting under the current Act are continued in this

Bill. **Clause 28** empowers the Minister, by notice in a statutory instrument, to exempt holders of special mining leases from certain withholding taxes if the Minister is satisfied that the exemption "is in the interests of Zimbabwe". A similar power may be exercised in favour of petroleum operators under **clause 29**.

Clauses 30 to 44 and Eighth, Ninth and Tenth Schedules

These clauses provide for deductions that may be allowed to be made by a taxpayer from employment income, business or property income, and also specifies amounts that may not be so allowed.

Under the current law, deductions are allowed on the basis of expenditure incurred "for the purposes of trade" or "in the production of income". It thus provides for a wider base for deducting expenditures. The practice in the region, however, is that only expenditure and losses actually incurred in the production of income are allowed as deductions from income.

Accordingly, in order to expand the tax base, the Bill seeks to restrict allowable deductions to those expenses "incurred in the production of income" only. This will (except in certain specific cases allowed by the Bill on grounds of good public policy) eliminate deductions of expenses not directly linked to the production of income, albeit that such expenses may otherwise have been incurred "for the purposes of trade".

Clause 30 specifies the kinds of deductions allowed to be offset from employment income. **Clauses 31** stipulates that only expenditure and losses *incurred in the production of business income* during a year of assessment shall be allowed as deductions, unless they are expenses of a kind specified in the Tenth Schedule that are not incurred in the production of income, but allowed for desirable public policy reasons**.** **Clauses 32** to **44** specify the kinds of deductions allowed to be offset from business income, most of which are allowed under the existing Income Tax Act. Of particular note are the so-called "capital deductions" (for expenditure on business infrastructure and mining and farming improvements) referred to in **clause 34** and set out in the Eighth Schedule: these almost replicate the capital deductions allowed by the existing Income Tax Act

Clauses 45 to 50

These clauses provide for cases where no deduction from business income may be made. These cases relate to expenditure that is not directly linked to the production of income, such as audit and accountancy fees (generally incurred after the income has been earned), insurance premiums, travel expenses to and from the place of business, recruitment and retrenchment expenses and the cost of valuation of assets. Particular noteworthy is the explicit prohibition in **clause 46** against deduction of expenses contrary to public policy, namely the amounts of any corrupt payments made from business income, or of any fines or penalties paid by or on behalf of the business.

Clauses 51

This clause applies to property income the deductions of expenditure allowed for business income to the extent that the expenditure would be deductible if it had been incurred by the taxpayer to earn income from business.

Clauses 52 to 66 and Part II of Sixth Schedule

These clauses make comprehensive provision for tax accounting principles, with a view to ensuring consistency in the tax treatment of certain financial transactions. Accounting procedures follow certain rules and guidelines usually referred to as Generally Accepted Accounting Principles (GAAP) which set accounting standards and guidelines for preparing financial statements. **Clause 52** empowers the Commissioner, on request, to permit a taxpayer to use a year of assessment that is different from the fiscal year of assessment. **Clause 54** will favour the accrual method of accounting for income over the alternative cash accounting method. **Clause 55** provides for prepayments of deductible expenditure for services or other benefits that extend over more than one year of assessment. **Clause 56** provides for the taxable income of persons whose business extends beyond Zimbabwe where the determination of the sources of the income as between Zimbabwe and any other country where the business operates becomes problematical. **Clause 57** requires a taxpayer who maintains trading stock to maintain inventories thereof, and signposts the provisions of Part II of the **Sixth Schedule** on the valuation of trading stock other than farm trading stock. **Clause 58** provides for the tax treatment of interest in the form of any discount, premium, or deferred interest. **Clause 59** provides for the currency in which taxable income must be calculated and sets out the rules respecting currency conversions. **Clause 60** enacts the basis rule that income and deductions relating to a long-term contract must be taken into account on the basis of the percentage of the contract completed during the year of assessment. **Clause 61** provide for the tax treatment of hire-purchase and credit sales. **Clause 62** provides for the apportionment of income and deductions relating to jointly-owned property. **Clause 63** provides for the valuation for tax purposes of benefits in kind. **Clauses 64, 65** and **66** provide for the tax treatment of trust income, compensation receipts and recouped deductions (that is, expenditure allowed as a deduction that is subsequently recovered by the taxpayer).

Clauses 67 to 73

These clauses provide for the taxation of net gains from the disposal of business and other assets. Under the current legislation, the taxation of capital gains or losses is restricted to specified assets, that is, immovable property and marketable securities, which are both taxed under the Capital Gains Tax Act. Under this Bill it is proposed that all capital gains or losses on the disposal of business assets will be subject to income tax, unless specifically excluded by the Bill. Disposal of business assets includes the sale, donation, loss or destruction of a business asset.

The capital gain on the disposal of a business asset will be the difference between the proceeds from disposal and the cost base of an asset. A capital loss, on the other hand, is equal to the amount by which the cost base of an asset exceeds the proceeds. This eliminates provisions relating to recoupment and scrapping allowances.

Thus, a new concept on the taxation of gains and deduction of losses arising from the disposal of business and investment assets will be introduced. Presently, any gain above recoupment is disregarded for income tax purposes.

In this connection, **clause 70** provides for the cost base of property, that is, its valuation as an investment for the production of income.

Clauses 74 to 87

These clauses provide respectively for the principles governing the taxation of individuals, partnerships, trusts and deceased estates, companies Under **clause 79**, in order not to discourage the formation of partnerships, partners who contribute their property to the partnership will not be regarded as having disposed of their assets to the partnership. **Clause 87** introduces roll-over relief for persons who inject new capital into companies (that is to say, such capital injection will not be treated as a disposal of an asset by the investor for tax purposes).

Clauses 88 to 92

These clauses provide respectively for the principles governing international taxation. **Clause 88** lists the circumstances under which income shall be regarded as accruing from a source in Zimbabwe. **Clause 89 and 91** provide for the conclusion and promulgation of bilateral double-taxation agreements, and the formula for reducing double liability for tax under such an agreement. **Clause 90** is intended to facilitate cooperation in the collection of taxes due to a foreign country (with which Zimbabwe has concluded a double taxation agreement) by persons resident in Zimbabwe, and vice versa. **Clause 92** provides relief from double taxation where there is no double-taxation agreement in force.

Clauses 93 to 95

These clauses provide for the prevention of tax avoidance. The existing Income Tax Act provides that, where the Commissioner is of the opinion that any transaction, operation or scheme has been entered into and has the effect of avoiding or postponing or reducing tax liability, the Commissioner shall determine the liability as he or she considers appropriate. .This Bill seeks to strengthen and supplement this anti-avoidance measure through the elaboration of what constitutes unacceptable avoidance arrangements and the tax consequences of such arrangements. One of the most significant areas of tax risk in this regard is the manipulation of the prices charged on transactions between companies within the same group, commonly referred to as “transfer pricing”. Transfer pricing can lead to a significant diversion of profits from one tax territory to another tax territory or a company in a taxable position to another in a loss position. Accordingly, **clause 94** will require companies to price their transactions with other companies in the group at the same price as would have been charged if the two group companies had been independent of one another, that is, at the “arm’s length price”.

Clauses 96 to 109

These clauses provide, successively, for the following: the general obligation of taxpayers (with certain exceptions referred to in **clause 105**) to file a return of income for each year of assessment (**clause 96**); the filing of partnership returns (**clause 97**); the filing by employers on behalf of any class of their employees of returns as required by the Commissioner (**clause 98**); the filing of returns as to shareholdings and dividends (**clause 99**); the filing of returns on behalf of minor children who earn taxable income (**clause 100**); the filing and submission of additional returns, information, accounts and other documents at the request of the Commissioner (**clauses 101, 102, 103**) (of particular note in this regard is that accounts are no longer required to be furnished together with returns unless the Commissioner has reason to request them to be furnished); the extension of time to furnish returns or information (**clause 104**); the additional tax payable for default in rendering return (**clause 106**); and the

additional tax payable for rendering incorrect return (**clause 107**) (of particular note in this regard is the mitigation of the harsh penalties currently prevailing; generally, only 25% of the tax properly due will be charged as an additional tax in cases where incorrect returns are submitted, unless the mistake by the taxpayer concerned is egregious, or there is a pattern on the concerned taxpayer's part of submitting incorrect returns).

Clauses 110 to 116

These clauses provide successively for the following: the primary responsibility of the Commissioner to make and serve notices of the amounts of tax ("assessments") that are payable by taxpayers (**clause 110**); the secondary option of self-assessment by the taxpayers themselves (**clause 111**); the expedient by the Commissioner of issuing estimated assessments or additional assessments where a taxpayer defaults in making a proper return of income, or where an original assessment was faulty for any reason (**clauses 112 and 113**); the issuance of reduced assessments and the making of refunds of excess tax (**clause 114**); and the issuance of amended assessments of loss where the Commissioner is satisfied that an assessed loss determined in favour of a person is less than the amount that should have been determined (**clause 115**).

Clauses 117 to 126

These clauses provide in necessary detail for the collection, recovery and refund of tax. Particularly noteworthy is **clause 119**, which provides for the collective liability of associates and partners for tax where any one of them transfers property to another for the purpose of avoiding tax and in certain other circumstances. **Clause 120** enables the Commissioner (as presently) to declare any person to be the agent of any other person for the purposes of collecting and recovering tax due and payable by that other person.

Clauses 127 to 132

These clauses require (as presently) that corporate taxpayers, and other taxpayers who earn business or property income, to make advance payments of estimated tax by way of provisional payments made over four quarterly instalments.

Clauses 133 to 160

These clauses (comprising Chapter XII of the Bill) make provision with respect to employees' tax and other taxes withheld at source (non-residents' tax on fees and remittances, shareholders' tax on dividends, tax on interest, non-residents' tax on royalties, tobacco levy, property and insurance commission tax, tax on non-executive directors' fees, NOCZIM debt redemption levy and money transfer tax). No new withholding tax is introduced, but the manner in which such taxes are charged is greatly simplified, at least with respect to the way in which the relevant provisions are embodied in the Bill. Under the existing Income Tax Act, taxation of various withholding taxes is provided through Schedules relating to each kind of withholding tax. As part of the initiative to simplify tax legislation and ensure compatibility with international best practice in terms of drafting practice, provisions common to all the various withholding taxes are consolidated and incorporated non-repetitively in the body of the Bill itself.

Also noteworthy is that the Bill seeks to reduce the burden of tax administration by specifying that some of the withholding taxes are final, that is to say, no further tax liability

will be imposed upon the payee in respect of the payment from which the tax concerned is withheld.

Clauses 161 to 173

These clauses (comprising Chapter XIII of the Bill) continue certain miscellaneous taxes which are currently levied under the Income Tax Act. The taxes concerned are the presumptive tax (that is a tax on the basis of the presumed income of such of those persons engaging in any of the undertakings specified in the Twelfth Schedule as are unable or unlikely by reason of the small scale of their enterprises to furnish an income tax return), the carbon tax, the additional profits tax on persons who carry on special mining lease operations, and the petroleum importers levy.

Clauses 174 to 185

These clauses (comprising Chapter XIV of the Bill) make provision for the following: keeping of records by taxpayers whose income is not solely employment income and the consequences of the failure to do such (**clauses 174 and 175**); the Commissioner's access to the registers, records or documents of statutory corporations (**clause 177**); the Commissioner's power to require any person to produce for examination any records or documents for the purpose of obtaining information regarding a taxpayer's income or liability to tax or any matter relating to the collection of tax (**clause 178**); the Commissioner's power to examine persons and obtain search warrants for the same purpose (**clauses 179 and 180**); the exercise by the Commissioner of the foregoing powers under clauses 177-179 without notice or warrant where the Commissioner reasonably believes it is necessary to do so in order to prevent, detect or secure evidence of any offence against this Bill (**clause 181**); the admissibility in court of public documents in court in any proceedings which relate to the payment or non-payment of a tax (**clause 183**); the exclusion of claims to privileged information (such as spousal privilege and bank secrecy) in any proceedings before a court which relate to the payment or non-payment of a tax (**clause 184**); and the admissibility of electronic evidence (**clause 185**). It is worthy to note that all these powers are presently exercised by the Commissioner under the Income Tax Act and are indispensible to sound, fair and efficient tax administration.

Clauses 186 to 196

These clauses (comprising Chapter XV of the Bill) carry over the provisions with respect to the application of information technology to tax administration that are presently contained in the Income Tax Act.

Clauses 197 to 202

These clauses (comprising Chapter XVI of the Bill) adopt with little modification the provisions embodied in the existing Income Tax Act concerning representative taxpayers (that is to say persons who represent a taxpayer or act in some representative capacity for that taxpayer, such as public officers of companies, trustees, agents, administrators or executors of deceased estates and trustees in insolvency).

Clauses 203 to 206

These clauses provide for the right of taxpayers to object to assessments and certain decisions (specifically those itemised in the Fourteenth Schedule) made by the Commissioner,

As mentioned above, the Special Court for Income Tax Appeals will be abolished, thus making the Fiscal Appeal Court the appellate court of first instance for all income tax appeals.

Clauses 207 to 214

These clauses make up Chapter XVIII of the Bill. Consistently with the theme of this Chapter as indicated by its title, the Chapter includes only those offences that are truly "general" in character and not specific to a particular provision of the Bill. (non-general offences are embodied throughout the Bill in specific clauses or Chapters). Evidentiary matters in civil or criminal proceedings are enacted in **clauses 213 and 214**.

Clauses 215 to 218

These clauses make up Chapter XIX of the Bill and perpetuate with little modification the following matters of routine tax administration contained in the existing Income Tax Act: notices and documents, etc. (**clause 215**), the validity of notices, documents, etc. that are not in proper form (**clause 216**), the authentication of notices and other documents (**clause 217**), and the service of notices and other documents (**clause 218**).

Clauses 219 to 224

These are the terminal clauses of the Bill. **Clause 219** signposts the Fourth Schedule to the Revenue Authority Act, in which the Commissioner's power to make rulings as to the interpretation of this Act, and the effect of such rulings, is set forth. **Clause 211** introduces an important change: the delegated lawmaking power is shared between the Board of the Zimbabwe Revenue Authority and the Minister as a measure to improve the quality of regulations that may be necessary or expedient for the purposes of the Bill; in other words, instead of regulations being made and promulgated by the Minister (as at present), the ZIMRA Board will make them while the Minister will promulgate them (at which point, of course, the Minister may engage the Board to modify or withdraw any regulations that the Minister does not agree with). **Clauses 221 and 222** make consequential amendments to the Fiscal Appeal Court and the Revenue Authority Act (consequential amendments to the Finance Act will be made in the Finance Bill for the next fiscal year). **Clause 223** will repeal the Income Tax Act [*Chapter 23:06*] and the Income Tax (Transitional Period Provisions) Act [*Chapter 23:07*]. **Clause 224** contains the standard savings and transitional provisions.

INCOME TAX BILL, 2012

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PRESENTED BY THE MINISTER OF FINANCE

BILL

To provide for the taxation of incomes and for other taxes; to amend the Fiscal Appeal Court Act [*Chapter 23:05*] and the Revenue Authority Act [*Chapter 23:11*] (No. 17 of 1999); to repeal the Income Tax Act [*Chapter 23:06*] and the Income Tax (Transitional Period Provisions) Act [*Chapter 23:07*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

CHAPTER I

PRELIMINARY

1 Short title and date of commencement

(1) This Act may be cited as the Income Tax Act [*Chapter 23:13*].

(2) This Act shall come into operation on the 1st January, 2014, and shall have effect for the year of assessment beginning on that date and all subsequent years of assessment.

2 Definitions

(1) In this Act, except where the context otherwise requires—

"accrue", in relation to an amount or income, is to be construed in accordance with subsection (3);

"agent" includes—

(a) person or association of persons, whether incorporated or unincorporated, when acting for another person; and

(b) any person declared by the Commissioner in terms of section 119(2) to be the agent of some other person for the purposes of this Act;

"amount", for the purposes of determining a person's income, means money or any other property;

"assessed loss" has the meaning in section 44;

"assessment" means—

(a) the determination of taxable income and any tax credits to which a person is entitled, and the amount of tax payable or refundable thereon and any interest or penalty payable thereon; or

(b) the determination of an assessed loss ranking for deduction;

and includes a self-assessment in terms of section 110;

"associate" has the meaning in section 4;

"benefit fund" means a fund registered or provisionally registered as a provident fund under the Pension and Provident Funds Act [*Chapter 24:09*];

"building society" means an association of persons registered or required to be registered as such under the Building Societies Act [*Chapter 24:02*];

"business" includes a trade, profession, vocation, occupation and venture, and an isolated transaction of a business character, but does not include employment;

"business income" has the meaning in section 24;

"business property" means property which is held for the production of income and is used in a business or is held for sale in a business;

"charging Act" means the enactment by which credits and rates of tax are fixed;

"child" has the meaning in section 3;

"Commissioner" means—

(a) the Commissioner-General of the Zimbabwe Revenue Authority, in relation to any function which he or she has been authorised under the Revenue Authority Act, to exercise; or

(b) the Commissioner in charge of a department or division of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act to be responsible for assessing, collecting and enforcing the payment of the taxes leviable under this Act; or

(c) in relation to a function that has been delegated to an officer of the Zimbabwe Revenue Authority in terms of the Revenue Authority Act, that officer;

"company" means an association of persons, whether corporate or unincorporated and whether established under the law of Zimbabwe or elsewhere, but does not include—

(a) a partnership; or

(b) a trust other than a unit trust scheme;

"cost base", in relation to property, has meaning in section 70;

"depreciable property" means tangible property which is likely to lose value because of wear and tear or obsolescence, but does not include trading stock, or property whose useful life is less than one year;

"director", in relation to a company, means—

(a) a person who, individually or as a member of a management group, is responsible for the day-to-day-management of the company; or

(b) a member of a board or committee which is responsible for the day-to-day management of the company and additionally, or alternatively, for formulating the policies and strategies of the company;

"disposal," in relation to property, has the meaning in section 67(1);

"double-taxation agreement" means an agreement in force in terms of section 89(2);

"employee" means an individual in employment;

"employer" means a person who employs an employee and includes a representative or associate of the employer;

"employment" includes—

(a) the position of an individual in the employ of an employer, whether engaged in short-term or part-time work; and

(b) a directorship of a company; and

(c) a position, including a public office, entitling the holder to a fixed or ascertainable remuneration;

"employment income" has the meaning in section 23;

"farmer" means a person who derives income from pastoral, agricultural or other farming activities, including any person who derives income from the letting of a farm used for such purposes, and "farming operations" and "farming purposes" shall be construed accordingly;

"financial institution" means—

(a) a banking institution registered or required to be registered in terms of the Banking Act [*Chapter 24:20*]; or

(b) a building society; or

(c) the Reserve Bank of Zimbabwe; or

(d) the Infrastructure Development Bank of Zimbabwe established by the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*]; or

(e) the company which, in terms of the definition of "Corporation" in section 2 of the Agricultural Finance Act [*Chapter18:02*], exercises the Corporation's functions in terms of that Act; or

(f) a person that holds or is deemed to hold a postal licence in terms of the Postal and Telecommunications Act [*Chapter 12:05*] (No. 4 of 2000); or

(g) an asset manager as defined in the Asset Management Act [*Chapter 24:26*] (No. 16 of 2004); or

(h) a collective investment scheme as defined in section 3 of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997) and a company acting as the trustee or manager of such a scheme; or

(i) the People's Own Savings Bank of Zimbabwe established in terms of the People's Own Savings Bank of Zimbabwe Act [*Chapter 24:22*] (No. 18 of 1999);

(j) any person or incorporated or unincorporated association of persons providing any financial service that is declared to be a financial service in terms of subsection (2), whether generally for the purposes of this Act or specifically in relation to any provision of this Act;

"Fiscal Appeal Court" means the Fiscal Appeal Court established in by the Fiscal Appeal Court Act [*Chapter 23:05*];

"foreign-source income" means income accruing from a source outside Zimbabwe as described in section 88;

"gross income" means, in relation to a taxpayer who earns or obtains income from two or more sources (whether employment income, business income, property income or other income) means income earned or obtained from all sources, before it is segregated into employment income, business income, property income or other income for the purposes of this Act;

"immovable property-holding company" means a company or other association of persons , whether corporate or unincorporated, wheresoever formed, incorporated or registered, whose property consists principally of rights or interests in immovable property located in Zimbabwe, and includes any subsidiary of that company or other intermediate company or entity involved in the management of such property or the collection or handling of the income from such property;

"income derived from mining operations" means income derived from a particular mining location;

"income tax" means the tax levied in terms of section 12;

"individual" means a natural person;

"infrastructure arrangement" means a contract or arrangement whereby a person undertakes to construct an item of infrastructure for the State, a local authority or a statutory body in consideration for the right to own, operate or control it for a specified period, after which he or she will restore ownership or control of the item to the State, the local authority or the statutory body concerned;

"insolvent" means a person who is the subject of a sequestration order under the Insolvency Act [*Chapter 6:04*] or whose estate has been assigned to his or her creditors in terms of that Act, and "insolvent" when used as an adjective and "insolvency" shall be construed accordingly;

"interest" includes—

(a) any payment, by whatever name called, which is made in discharge of a debt and which is not a return of capital; and

(b) a swap payment or other payment functionally equivalent to interest; and

(c) a dividend distributed by a building society;

"investment property" means a property other than—

(a) a business property; or

(b) trading stock; or

(c) property that does not produce income and that is held primarily for personal use by the taxpayer;

"local authority" means—

(a) a city or municipal council, town council, local board or rural district council; or

(b) any body declared by the President to be a local authority for the purposes of the Interpretation Act [*Chapter 1:01*], which is not a body or authority referred to in paragraph (a);

"market value", in relation to any property or service, means the price which the property or service might reasonably be expected to command on the open market;

"marriage" has the meaning in section 3(2);

"medical aid society" means an association of persons registered or required to be registered as such under the Medical Services Act [*Chapter 15:03*] (No. 27 of 1998);

"mineral" includes any valuable crystalline or earthy substance forming part of or found within the earth's surface and produced or deposited there by natural agencies but does not include petroleum or any clay (other than fire-clay), gravel, sand, stone (other than limestone) or other like substance ordinarily won by the method of surface working known as quarrying;

"mining location" means a mining location registered or required to be registered as such in terms of the Mines and Minerals Act [*Chapter 21:05*];

"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;

"minor child" has the meaning in section 3;

"natural-resource payment" means—

(a) a payment, including a royalty, premium or similar payment, made as consideration for the taking or exploitation of minerals or a living or non-living resource from land; or

(b) a payment calculated wholly or partly by reference to the quantity or value of minerals or of a living or non-living resource taken from the land;

"near relative" has the meaning in section 3(1)(c);

"non-resident", in relation to a taxpayer or other person, means not resident in Zimbabwe in terms of Chapter II;

"notice of assessment" means a notice referred to in section 110(2) stating the amount of tax, and any interest or penalties in connection therewith, to be paid by a person;

"parent" has the meaning in section 3(1)(a);

"passenger motor vehicle" means a motor vehicle as defined in the Road Traffic Act [*Chapter 13:11*], other than—

(a) a vehicle which is used wholly or mainly for the conveyance of passengers for gain; or

(b) a vehicle which has seating accommodation for fifteen or more persons, excluding the driver;

"pay" includes confer value or benefit on a person by any means, and "payment" shall be construed accordingly;

"pension fund" means—

(a) a fund established by any enactment for the purpose of providing, amongst other things, annuities or pensions on superannuation or retirement; or

(b) a fund registered or provisionally registered as a pension fund or retirement annuity fund under the Pension and Provident Funds Act [*Chapter 24:09*];

"person" means an individual or a juristic person, including—

(a) a company; and

(b) an unincorporated association of persons; and

(c) a local or similar authority; and

(d) a deceased or insolvent estate; and

(e) in relation to trust income to which no beneficiary is entitled, the trust;

"presumptive tax" means a tax imposed in terms of Part I of Chapter XIII;

"private business corporation" means a private business corporation incorporated under the Private Business Corporations Act [*Chapter 24:11*];

"proceedings under this Act" means proceedings before a court or tribunal in which any one or more of the following matters is in issue—

(a) whether or not any person is liable to assessment or to pay any tax;

(b) whether or not any person has done or not done anything he or she is required or forbidden to do under this Act;

"property" means any property of any description, whether tangible or intangible;

"property income" has the meaning in section 25;

"public notice", in relation to a notice issued by the Commissioner or any other person authorised to issue such a notice under this Act, means a notice published—

(a) as a General Notice in the *Gazette*; and

(b) in such newspapers and periodicals, and by such other means, as the Commissioner or other authorised person considers will bring the notice to the attention of the taxpayers or other persons to whom it is addressed;

"public office" means a paid office in the service of the State;

"public officer"—

(a) in relation to a company or private business corporation, means the person who is the company's or corporation's public officer in terms of section 202;

(b) in any other regard, means a person holding a paid office in the service of the State;

"receive", in relation to an amount or income, is to be construed in accordance with subsection (3);

"representative taxpayer" has the meaning in section 197;

"resident", in relation to a person, means resident or (unless expressly provided otherwise) temporarily resident in Zimbabwe in terms of Chapter II;

"retirement annuity fund" means a fund registered or provisionally registered as a retirement annuity fund under the Pension and Provident Funds Act [*Chapter 24:09*];

"Revenue Authority Act" means the Revenue Authority Act [*Chapter 23:11*] (No. 17 of 1999),

"royalty" means an amount payable as consideration for—

(a) the use of, or the right to use—

(i) a literary, musical, artistic or audio-visual work, sound recording, broadcast, programme-carrying signal or published edition or other work whatsoever in which copyright exists; or

(ii) a patented article; or

(iii) a trade mark, design, model, plan, secret formula or process; or

(iv) industrial, commercial or scientific equipment; or

(b) information concerning industrial, commercial or scientific experience;

"savings bank" has the meaning in paragraph (i) of the definition of "financial institution";

"securities" means—

(a) stocks or securities, including bonds and Treasury bills, issued by any government, local authority or statutory corporation or any similar authority or body, whether situated inside or outside Zimbabwe; and

(b) debentures or debenture bonds; and

(c) mortgages or notarial bonds; and

(d) loans or deposits; and

(e) shares issued by a building society; and

(f) stocks or shares issued by a company;

"settler" in relation to a trust, has the meaning in section 81

"special initial allowance" means the allowance deductible in terms of paragraph 2 of the Eighth Schedule (**"**Capital Allowance Deductions");

"special mining lease operations" means mining operations conducted by the holder of the lease concerned within the area of a special mining lease issued in terms of Part IX of the Mines and Minerals Act [*Chapter 21:05*];

"spouse" has the meaning in section 3(3);

"statutory body" or "statutory corporation" means a body incorporated by or in terms of an enactment for special purposes specified in the enactment;

"swap agreement" means an arrangement between a person who has incurred a debt with a floating interest rate and a person who has incurred a debt with a fixed interest rate under which the persons agree to exchange their interest obligations;

"swap payment" means a payment made under a swap agreement;

"tax" —

(a) means any tax, charge or levy imposed under this Act; and

(b) for the purpose of the collection, recovery and refund of any tax pursuant to Chapter XI, includes—

(i) interest payable by a taxpayer in terms of this Act;

(ii) any additional tax or penalty payable by a taxpayer in terms of this Act;

(iii) any levy, royalty or sum payable in terms of the charging Act;

"tax clearance certificate" means a tax clearance certificate issued under section 34C(1) (a), (b), (c) or (d) of the Revenue Authority Act ;

"tax credit" means an amount which, in terms of the charging Act, is to be deducted from the tax payable by a taxpayer;

"taxable income" means the taxable income of a taxpayer, determined in accordance with Part I of Chapter IV;

"taxpayer" means a person who is liable to a tax or to whom income accrues that is liable to assessment under this Act;

"trade mark" means a trade mark as defined in section 2 of the Trade Marks Act [*Chapter 26:04*];

"trading stock" includes anything bred, produced, manufactured, purchased, or otherwise acquired for manufacture, sale, or exchange, as well as consumable stores, and includes work in progress and such things and materials to be incorporated into such things;

"trust" means any arrangement whereby property is held, administered, controlled or managed by a trustee;

"trust income to which no beneficiary is entitled" means trust income which—

(a) is not paid to or applied to the benefit of—

(i) a beneficiary with a vested right; or

(ii) a person who would be a beneficiary with a vested right, but for—

A. the conferment on the trustee by the trust instrument of a discretion so to pay or apply the income; and

B. the happening of some event stipulated in the trust instrument other than the exercise of that discretion;

and

(b) is not income deemed by virtue of section 82 to have accrued to the founder of the trust; and

(c) is not accumulated in terms of the trust instrument for the future benefit of a beneficiary with a vested right;

"trust instrument" means a deed, will, contract, order or disposition, including a verbal declaration, by which a trust is created;

"trustee" includes—

(a) the administrator or executor of a deceased estate; and

(b) the trustee or assignee of an insolvent estate; and

(c) the liquidator or judicial manager of a company which is being wound up or is under judicial management; and

(d) the legal representative of an individual under a legal disability, or anyone else who, whether in an official or private capacity, has the possession, disposal, control or management of the property of such an individual; and

(e) a person who has the administration, possession or control of property subject to a usufruct, *fideicommissum* or other limited interest;

"unit trust scheme" means a collective investment scheme, as defined in section 3 of the Collective Investment Schemes Act [*Chapter 24:19*] (No. 25 of 1997) under which the property of the scheme is held in trust for the participants;

"withholding tax" means a final or provisional tax imposed in terms of Chapter XII;

"year of assessment" means—

(a) an ordinary year of assessment, that is to say the period of twelve months, beginning on the 1st January in any year, in respect of which tax is to be charged, levied and collected in terms of this Act; or

(b) in relation to a taxpayer who has been permitted in terms of section 52 to use a substituted year of assessment, the period of that substituted year of assessment; or

(c) in relation to a taxpayer whose year of assessment is changing, the period of the taxpayer's transitional year of assessment in terms of section 53;

and includes any period within such a year of assessment;

"Zimbabwe Revenue Authority" means the Zimbabwe Revenue Authority established by section 3 of the Revenue Authority Act;

"ZIMSTAT" means the Zimbabwe National Statistics Agency established by section 3 of the Census and Statistics Act [*Chapter 10:29*] (No. 1 of 2000).

(2) The Minister may, by notice in a statutory instrument, declare that any person or incorporated or unincorporated association of persons providing any financial service of a description specified in the declaration shall be a financial institution for the purposes of all or any of the provisions of this Act and may in like manner amend or revoke any such declaration.

(3) If any question arises as to whether income or an amount is received by or accrues to any person for the purposes of this Act, then such income or an amount is deemed —

(a) to accrue to a person when the person becomes entitled to it, whether or not it is paid to or received by that person;

(b) to have been received by that person on the date that it accrues to that person, if that amount or income forms part of the business or property income of that person, unless otherwise provided by this Act;

(c) to have been received by a person even if—

(i) the person has invested, accumulated or otherwise capitalised it; or

(ii) it has been credited to an account or re-invested or accumulated or capitalised or otherwise dealt with in the person's name or on the person's behalf.

(4) A reference in this Act to another enactment includes a reference to any enactment replacing it, if the replacing enactment substantially re-enacts the relevant provisions of the original enactment.

3 When individuals deemed to be related

(1) For the purposes of this Act—

(a) an individual is a child's parent if—

(i) the child is his or her natural child, step-child or lawfully adopted child; or

(ii) he or she is legally liable to maintain the child;

(b) a minor child is an unmarried individual who is under eighteen years of age;

(c) individuals are near relatives if one of them is—

(i) a lineal ascendant of the other, including a step-father or step-mother; or

(ii) a child or other lineal descendant of the other; or

(iii) a brother, half-brother, step-brother, sister, half-sister, step-sister, uncle, aunt, nephew or niece of the other; or

(iv) an adopter of the other; or

(v) the spouse of a near relative of the other.

(2) Individuals are regarded as married to each other for the purposes of this Act if they are married under—

(a) a marriage solemnised within Zimbabwe in accordance with any enactment relating to the solemnisation of marriage; or

(b) a marriage contracted in Zimbabwe according to customary law, even if the marriage was not celebrated or solemnised in terms of any enactment relating to marriage; or

(c) a marriage solemnised outside Zimbabwe in accordance with the laws or customs relating to the solemnisation of marriage of the country or territory in which the marriage is solemnised.

(3) An individual is another's spouse for the purposes of this Act if he or she is married to that other individual, unless—

(a) he or she is separated from that other individual under a judicial order or written agreement of separation; or

(b) he or she is living apart from that other individual and is not wholly maintaining, or being wholly maintained by, that other individual; or

(c) in the case of a polygamous marriage, she is a wife who is not living with and wholly maintained by her husband.

4 When persons deemed to be associates

(1) Where a person, other than an employee, acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons shall be treated as associates of each other for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the following shall be treated as a person's associate—

(a) a near relative of the person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;

(b) a partner of the person, unless the Commissioner is satisfied that neither person acts in accordance with the directions, requests, suggestions or wishes of the other;

(c) a partnership in which the person is a partner, if the person, either alone or together with one or more associates, controls fifty *per centum* or more of the rights to the partnership's income or capital;

(d) the trustee of a trust under which the person, or an associate of the person, benefits or may benefit;

(e) a company which is controlled by the person, either alone or together with one or more associates;

(f) where the person is a partnership, a partner in the partnership who, either alone or together with one or more associates, controls fifty *per centum* or more of the rights to the partnership's income or capital;

(g) where the person is the trustee of a trust, any other person who benefits or may benefit under the trust;

(h) where the person is a company—

(i) a person who, either alone or together with one or more associates, controls the company; or

(ii) another company which is controlled by a person referred to in subparagraph (i), either alone or together with one or more associates.

5 When person deemed to control company

For the purposes of this Act, a person shall be deemed to control a company if the person, either alone or together with one or more associates or nominees—

(a) controls the majority of the voting rights attaching to all classes of shares in the company, whether directly or through one or more interposed companies, partnerships or trusts; or

(b) has any direct or indirect influence that, if exercised, results in him or her or his or her associates or nominees factually controlling the company.

6 Effect of amendments to this Act on liability for tax

Where any provision of this Act is amended or repealed so as to—

(a) abolish a tax; or

(b) alter the rate or incidence of a tax;

with effect from any particular year of assessment, the provision as it was immediately before the amendment or repeal shall continue to apply to the liability of any person for, and the assessment, payment and collection of, the tax in respect of previous years of assessment.

CHAPTER II

DETERMINATION OF RESIDENCE

7 Resident individuals

(1) Subject to this section and to section 8, an individual shall be regarded as resident in Zimbabwe for an entire year of assessment if that individual—

(a) has a normal place of abode in Zimbabwe and is present in Zimbabwe at any time during the year of assessment; or

(b) is present in Zimbabwe for one or more periods amounting in aggregate to one hundred and eighty-three days or more in any twelve-month period that ends during the year of assessment; or

(c) is a public officer posted outside Zimbabwe during the year of assessment.

(2) An individual who was not a resident of Zimbabwe in the preceding year of assessment shall not be regarded as resident in Zimbabwe for the period before the day he or she was first present in Zimbabwe during the year of assessment.

(3) An individual who is not a resident of Zimbabwe in the following year of assessment shall not be regarded as resident in Zimbabwe for the period following the last day on which he or she was present in Zimbabwe during the year of assessment if, during that period, he or she had a closer connection to a foreign country than to Zimbabwe.

(4) For the purposes of this section, an individual shall not be regarded as present in Zimbabwe on any day when he or she—

(a) enters Zimbabwe to perform services as an employee in Zimbabwe; or

(b) is in Zimbabwe while in transit between two points outside Zimbabwe; or

(c) is present in Zimbabwe for the purpose of medical treatment or full-time study; or

(d) is present in Zimbabwe as a diplomat of a foreign country or as a dependant of such a diplomat.

8 Temporarily resident individuals

An individual referred to in section 7(1) shall be regarded as temporarily resident in Zimbabwe for an entire year of assessment if that individual—

(a) is neither a citizen of nor domiciled in Zimbabwe, nor the holder of a permit under the Immigration Act [*Chapter 4:02*] authorising him or her to reside indefinitely in Zimbabwe; and

(b) does not intend, during the year of assessment, to reside in Zimbabwe for a total period of more than four years; and

(c) as of the end of the year of assessment, has not been present in Zimbabwe for more than four years.

9 Resident companies

(1) A company shall be regarded as resident in Zimbabwe in a year of assessment if it—

(a) is incorporated or registered, or required to be incorporated or registered, under the Companies Act [*Chapter 24:03*]; or

(b) has its effective management and control exercised in Zimbabwe at any time during the year of assessment; or

(c) undertakes the majority of its operations in Zimbabwe during the year of assessment.

(2) A branch in Zimbabwe of a non-resident company shall be regarded as a separate person which is resident in Zimbabwe if the branch would qualify as a resident company by reference to subsection (1)(a), (b) or (c).

10 Resident trusts

A trust shall be regarded as resident in Zimbabwe in a year of assessment if—

(a) the trust was established in Zimbabwe; or

(b) at any time during the year of assessment, a trustee of the trust was a resident person; or

(c) the trust's management and control was exercised in Zimbabwe at any time during the year of assessment.

11 Resident partnerships

A partnership shall be regarded as a resident in Zimbabwe in a year of assessment if, at any time during that year, a partner in the partnership was a resident person.

CHAPTER III

LEVYING OF INCOME TAX

12 Levy of income tax

Income tax is levied for the benefit of the Consolidated Revenue Fund on every person who has taxable income for the year of assessment.

13 Calculation of income tax

(1) Subject to this Act, the income tax with which a person is chargeable shall be calculated by applying the relevant rates of tax, determined by reference to the charging Act, to the person's taxable income for the year of assessment, and subtracting any allowable tax credits to which the person is entitled under the charging Act relating to that year.

(2) For the purposes of subsection (1), a taxpayer's—

(a) employment income, if any, from all sources shall be aggregated for the purpose of applying the relevant rates of tax in the charging Act;

(b) taxable income, apart from employment income, from all sources shall be aggregated for the purpose of applying the relevant rates of tax in the charging Act;

and the tax to be imposed on each such aggregated income, without regard to any withholding tax imposed on the income or part thereof, shall be reduced by the amount of such withholding tax imposed on that income.

14 Rates of income tax for individuals, companies and trusts and concessionary rates of income tax

(1) An individual's taxable income from employment and business for a year of assessment shall be charged to income tax at the rates prescribed in Parts I and II respectively of the charging Act.

(2) The taxable income of—

(a) a company; or

(b) a trust;

in a year of assessment shall be charged to income tax at the rate prescribed in Part III of the charging Act.

(3) The taxable income accruing in a year of assessment to the persons for whom concessionary rates of income tax are applied under Part IV of the charging Act, shall be charged to the income tax at the appropriate rate prescribed in Part IV of the charging Act.

CHAPTER IV

INCOME TAX BASE

PART I

TAXABLE INCOME

15 Taxable income of resident taxpayer

Subject to sections 19, 20, 21 and 22, the taxable income of a resident taxpayer for a year of assessment shall be the income which accrues to the taxpayer during that year from all sources, whether inside or outside Zimbabwe, less any deductions allowed under this Act.

16 Taxable income of temporarily resident taxpayer

The taxable income for a year of assessment of a taxpayer who is an individual temporarily resident in Zimbabwe shall be—

(a) the income which accrues to the taxpayer during that year from all sources outside Zimbabwe and which is required to be remitted to Zimbabwe in terms of any enactment relating to exchange control; and

(b) the income which accrues to the taxpayer from any source in Zimbabwe;

less any deductions allowed under this Act.

17 Taxable income of non-resident taxpayer

The taxable income of a non-resident taxpayer for a year of assessment shall be determined in accordance with Chapter VIII.

18 Taxable income of trust or deceased estate

The taxable income of a trust or a deceased estate for a year of assessment shall be determined in accordance with Part III of Chapter VII.

19 Taxable income of insurance company

(1) In this section—

"insurance business" and "insurer" have the meaning assigned to those terms by section 3 of the Insurance Act [*Chapter 24:07*];

"insurance company" means a company which carries on insurance business as an insurer.

(2) Where income accrues to an insurance company for a year of assessment—

(a) that part of its taxable income that is attributable to insurance business shall be determined in accordance with the First Schedule;

(b) any other taxable income that is attributable to the company shall be determined according to the general provisions of this Act.

20 Taxable income of holder of special mining lease

(1) In this section—

"holder of a special mining lease" means—

(a) a person to whom the special mining lease has been issued or transferred under the Mines and Minerals Act [*Chapter 21:05*]; or

(b) any person who is a tributor under a tribute agreement approved in terms of the Mines and Minerals Act [*Chapter 21:05*] in relation to the whole or part of the special mining lease area;

and, in relation to a year of assessment, includes a person who is or was such a holder at any time in that year;

(2) Where income accrues to the holder of a special mining lease for a year of assessment—

(a) that part of the holder's taxable income which is attributable to special mining lease operations shall be determined in accordance with Second Schedule;

(b) any other taxable income shall be determined according to the general provisions of this Act.

21 Taxable income of petroleum operator

(1) In this section—

"petroleum operator" means the grantee of a petroleum special grant in terms of Part XX of the Mines and Minerals Act [*Chapter 21:05*] and, in relation to a year of assessment, includes a person who was or is such a grantee at any time in that year.

(2) Where taxable income accrues to a petroleum operator for a year of assessment—

(a) that part of the operator's taxable income which is attributable to petroleum operations as defined in the Third Schedule shall be determined in accordance with that Schedule;

(b) any other taxable income shall be determined according to the general provisions of this Act.

PART II

INCOME

22 Income

(1) A taxpayer's income for a year of assessment shall include income from the following sources that accrue to the taxpayer in that year—

(a) employment income as provided for in section 23; and

(b) business income as provided for in section 24, and net gains on the disposal of business property as determined in accordance with Chapter VI; and

(c) property income as provided for in section 25; and

(d) net gains on the disposal of investment property as determined in accordance with Chapter VI; and

(e) any other income or gain referred to in section 26;

but shall not include amounts exempt from income tax.

(2) Income from each of the sources set out in subsection (1) shall be assessed to tax separately in accordance with the provisions of this Act applicable to the assessment of that particular income.

23 Employment income

(1) An individual's income from employment comprises all amounts that accrue to the individual from past, present or future employment as an employee, whether the amounts are of a revenue or capital nature, and include the following—

(a) any salary, wage or other remuneration provided to the employee, including leave pay, overtime payments, commissions, gratuities and bonuses; and

(b) any gift received by the employee in the course of or by virtue of past, present or future employment; and

(c) any consideration provided in respect of the employee's agreement to—

(i) any term or condition of employment or to any change in the terms or conditions of employment; or

(ii) a restriction of the employee's capacity to carry on employment or business;

and

(d) any payment made in respect of redundancy or for loss of office or termination of office or employment, or any similar payment; and

(e) any payment made as a supplement to a pension payment; and

(f) any payment made to discharge any of the employee's pecuniary liabilities, including the reimbursement or discharge of the employee's utilities expenditure; and

(g) the waiver of an obligation of the employee to pay or repay an amount owing to the employer or to any other person; and

(h) any allowance for the employee or any member of the employee's family, including a cost of living, subsistence, rent, entertainment or travel allowance, subject to the exclusions from income described in subsection (2); and

(i) any form of loan or credit granted, directly or indirectly, to the employee or to any member of the employee's family; and

(j) the provision by the employer to the employee of—

(i) an amount equal to the value of an advantage or benefit in respect of employment, service, office or other gainful occupation or in connection with the taking up or termination of employment, service, office or other gainful occupation, as determined in accordance with paragraph 1 of the Fourth Schedule ("Miscellaneous Calculations"):

Provided that—

A. an amount equal to the value of the grant of a passage benefit as defined in subparagraph (a)(i) of the definition of that term in paragraph 1(1) of the Fourth Schedule shall not be included in the employment income of an employee if no other passage benefit as defined in that subparagraph has been granted to the employee by the same employer;

B. an amount equal to the value of the grant of a passage benefit as defined in subparagraph (a)(ii) of the definition of that term in paragraph 1(1) of the Fourth Schedule shall not be included in the gross income of an employee if no other passage benefit as defined in that subparagraph has been granted to the employee by the same employer;

(ii) the use, or the availability for use, of a motor vehicle wholly or partly for the private purposes of the employee, the value of which benefit shall be calculated in accordance with paragraph 2 **("**Calculation of motor vehicle benefit**")** of the Fourth Schedule; or

(iii) the services of a housekeeper, chauffeur, gardener, security guard or other domestic assistant; or

(iv) any meal, refreshment or entertainment;

and

(k) an amount that is credited to the employee in the books or in the name of the employer, in circumstances in which the employee may draw sums on account of such amount or otherwise utilise such credit in any way; and

(l) any money or property withdrawn by a director not previously voted or taxed as employment income or a distribution and not otherwise standing to the director's credit in the books of the company; and

(m) where the employee is offered shares in a company that is the employer or an associate of the employer, the following amounts calculated in a accordance with paragraph 3 ("Calculation of gain arising from disposal of shares held by employees under share option scheme") of the Fourth Schedule—

(i) the amount, if any, by which the value of any such shares acquired by the employee, at the date of their acquisition, exceeds any consideration given by the employee for them, including any amount given as consideration for a right or option to acquire the shares; and

(ii) the amount of any gain derived by the employee on the disposal of a right or option to acquire such shares; and

(iii) the amount of any gain derived by the employee from the sale or disposal of any such shares held by him or her:

and

(n) without derogating from the generality of the foregoing, the particular amounts referred to in Part I **("**Amounts Deemed to Be included in Employment Income**")** of the Fifth Schedule ("Amounts Deemed to Be included in Employment, Business and Property Income**")**.

(2) For the purpose of determining the amount to be included in an employee's employment income, the taxable value of the payment described in—

(a) subsection (1)(f), shall be the amount of the reimbursement or discharge;

(b) subsection (1)(g), shall be the amount of the payment or repayment waived;

(c) subsection (1)(i), shall be ten *per centum* of the amount of the loan or credit, less the interest, if any, payable in the year of assessment by the person to whom the loan or credit was granted;

(d) subsection (1)(j)(ii), shall be the market rent of the accommodation or housing, reduced by any payment made by the employee for the accommodation or housing;

(e) subsection (1)(j)(iii), shall be the total employment income paid to the domestic assistant in respect of services rendered to the employee, reduced by any payment made by the employee for those services;

(f) subsection (1)(j)(iv), shall be the cost to the employer of providing the meal, refreshment or entertainment, reduced by any consideration paid by the employee for it;

(g) subsection (1) (m)(i), shall be the market value of the shares when they were acquired by the employee, less any amount paid by the employee in respect of their acquisition;

and in all other cases the taxable value of a payment referred to in subsection (1) shall be the cost to the employer of the payment or the market value of the benefit conferred on the employee by the payment, whichever is the higher, whether or not the benefit can be converted to money's worth by the employee.

24 Business income

(1) Subject to this section, any amount, whether of a revenue or capital nature, accruing to a taxpayer during a year of assessment from the profits or gains arising from a business shall be the taxpayer's business income.

(2) Without limiting subsection (1), the following amounts shall form part of a taxpayer's business income—

(a) a gift received by the taxpayer in the context of a business relationship; and

(b) a payment received by the taxpayer as consideration for accepting a restriction of his or her capacity to carry on business; and

(c) interest derived in respect of trade receivables or investment of working capital, or interest accruing to a taxpayer engaged in the business of banking or money-lending; and

(d) rent derived by the taxpayer from the letting of property; and

(e) an amount accruing to the taxpayer from another person as a premium, royalty or similar consideration paid by the other person for—

(i) the right to use or occupy immovable property; or

(ii) the right to use plant or machinery; or

(iii) the right to use a patent, design, trade mark, copyright, model, plan, secret process, formula or other intellectual property; or

(iv) the right to use a motion-picture film, television film or sound or electronic recording, or advertising matter connected with such a film or recording; or

(v) for imparting or undertaking to impart any knowledge directly or indirectly connected with the use of anything referred to in subparagraphs (ii), (iii) or (iv);

and

(f) an amount accruing to the taxpayer in respect of trading stock under a policy of insurance or a contract for indemnity; and

(g) an amount equal to the value, determined in accordance with the provisions of Part II ("Valuation of Trading Stock Other Than Farm Trading Stock") of the Sixth Schedule ("Valuation of Trading Stock"), of the trading stock belonging to a taxpayer carrying on a business which—

(i) has not been disposed of at the end of the year of assessment in the course of the taxpayer's business; or

(ii) has, during the year of assessment, been taken by the taxpayer for his or her domestic or private consumption or use; or

(iii) has, during the year of assessment—

A. vested in the trustee of the taxpayer on the insolvency, winding up or death of the taxpayer; or

B. been given by the taxpayer to someone else; or

C. been disposed of by the taxpayer otherwise than—

I. in a manner described in this paragraph; or

II. by sale or exchange;

or

(iv) is, at the end of the year of assessment, attached in pursuance of an order of court; or

(v) has, during the year of assessment, been—

A. disposed of by the taxpayer in pursuance of the sale or other disposal of his or her business; or

B. sold in pursuance of an order of court;

(h) any amount accruing to the taxpayer by way of grant or subsidy in respect of any expenditure allowable as a deduction under this Act; and

(i) without derogating from the generality of the foregoing paragraphs, the amounts referred to in Part II **(“**Amounts Deemed to Be included in Business Income**”)** of the Fifth Schedule (**“**Amounts Deemed to Be included in Employment, Business and Property Income”).

25 Property income

Any amount accruing to a taxpayer by way of—

(a) income from investment property, that is, dividends, interest, discounts, natural-resource payments, rents, royalties and annuity payments, and any other amount arising from the provision, use or exploitation of property; and

(b) gifts received in connection with the provision, use and exploitation of property; and

(c) without derogating from the generality of the foregoing paragraphs, the amounts referred to in Part III **(“**Amounts Deemed to Be included in Property Income**”)** of the Fifth Schedule (“Amounts Deemed to Be included in Employment, Business and Property Income**”)** which are hereby deemed to form part of property income;

shall be the taxpayer’s property income, unless the amount constitutes employment income or business income in terms of section 23 or 24.

26 Other income or gains

(1) Any amount or gain accruing to a taxpayer from—

(a) improvements effected to any land or building by another person in terms of an agreement granting that other person the right to use or occupy the land or building, calculated in accordance with paragraph 4 (“Calculation of gain arising from improvements effected to land or buildings by lessee or occupier”) of the Fourth Schedule (“Miscellaneous Calculations”); or

(b) a treasure trove or other found income; or

(c) awards, prizes and similar amounts; or

(d) the proceeds of any crime or other unlawful activity, including any property derived or realised directly or indirectly from such crime or activity, and such property that is successively converted, transformed or intermingled, as well as income, capital or

other economic gains derived or realised from such property at any time since the commission of the crime or occurrence of the activity.

(2) Income from each of the sources set out in subsection (1) shall be assessed to tax separately in accordance with the provisions of this Act applicable to the assessment of that particular income.

PART III

EXEMPTIONS

27 Exempt income and payments

The income and payments specified in the Seventh Schedule are, to the extent specified in that Schedule, exempt from income tax and to that extent shall not form part of the income of the taxpayers concerned.

28 Exemption of approved holder of special mining lease from certain taxes

(1) In this section—

"holder", in relation to a special mining lease, means—

(a) a person to whom the special mining lease has been issued or transferred under the Mines and Minerals Act [*Chapter 21:05*]; or

(b) any person who is a tributor under a tribute agreement approved in terms of the Mines and Minerals Act [*Chapter 21:05*] in relation to the whole or part of the special mining lease area;

and, in relation to a year of assessment, includes a person who is or was such a holder at any time in that year.

(2) Subject to subsection (6), if the Minister is satisfied that it is in the interests of Zimbabwe to exempt the holder of a special mining lease, wholly or partly, from any withholding tax, he or she may, by notice in a statutory instrument, declare the holder concerned to be an approved holder of a special mining lease for the purposes of that tax.

(3) The Minister may impose limits or conditions on a declaration in terms of subsection (2).

(4) Where the Minister has published a declaration in terms of subsection (2)—

(a) the approved holder of a special mining lease concerned shall be exempt, subject to the notice, from any withholding tax specified in the instrument; and

(b) any other person who, in terms of this Act, is required to collect any withholding tax specified in the notice shall be exempt, subject to the notice, from collecting that tax.

(5) The Minister may at any time, by further notice, after reasonable prior written notification to the approved holder of a special mining lease concerned of his or her intention to do so, revoke or, subject to subsection (5), amend a declaration in terms of subsection (2).

(6) When the Minister wishes to make a declaration under subsection (2) or amend it under subsection (4), the Minister shall lay the draft statutory instrument containing the declaration or amendment thereof before the House of Assembly, and if the House makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette.*

29 Exemption of approved petroleum operator and associates from certain taxes

(1) Subject to subsection (4), if the Minister is satisfied that it is in the interest of Zimbabwe to exempt a petroleum operator or any of its associates wholly or partly from any withholding tax, he or she may, by notice in a statutory instrument—

(a) declare the petroleum operator to be an approved petroleum operator for the purposes of that tax; and

(b) where he or she has made a declaration in terms of paragraph (a), declare any associate of the petroleum operator concerned to be an approved associate for the purposes of any of those sections;

and may impose limits or conditions on the declaration.

(2) Where the Minister has published a declaration in terms of subsection (1)—

(a) the petroleum operator or associate concerned shall be exempt, subject to the notice, from any withholding tax specified in the instrument; and

(b) any other person who is required to collect any withholding tax specified in the notice shall be exempt, subject to the notice, from collecting the tax.

(3) The Minister may at any time, by further notice in a statutory instrument, after reasonable prior written notification to the approved petroleum operator or associate concerned of his or her intention to do so, revoke or, subject to subsection (4), amend a declaration under subsection (1).

(4) When the Minister wishes to make a declaration under subsection (1) or amend it under subsection (3), the Minister shall lay the draft statutory instrument containing the declaration or amendment thereof before the House of Assembly, and if the House makes no resolution against the publication of the statutory instrument within the next seven sitting days after it is so laid before the House, the Minister shall cause it to be published in the *Gazette*.

PART IV

DEDUCTIONS

SUB-PART A

DEDUCTIONS ALLOWED FROM EMPLOYMENT INCOME

30 Deductions allowed from employment income

(1) Subject to this Part, for the purpose of ascertaining the taxable income accruing to a taxpayer during a year of assessment, there shall be allowed the following deductions from the employment income of the taxpayer—

(a) any contributions and arrear contributions, paid by a taxpayer during the year of assessment—

(i) towards a benefit or pension fund, made by the taxpayer as a beneficiary of the fund; or

(ii) to the Consolidated Revenue Fund, for the purposes of a pension payable from that Fund;

(b) any subscription paid by a taxpayer during the year of assessment for membership of any trade, technical or professional association;

(c) the proven cost incurred by a taxpayer during the year of assessment in acquiring tools used by the taxpayer in connection with the employment, trade or profession of the taxpayer.

(2) For the avoidance of doubt it is declared that the amounts in respect of which deductions are allowable under this section must have been paid using the taxpayer's own employment income.

(3) Where payments are made on the taxpayer's behalf or with the taxpayer's permission from the taxpayer's own employment income, the taxpayer shall be allowed a deduction in respect of those payments from his or her employment income if the deduction would have been allowed had the payment been made directly by the taxpayer.

SUB-PART B

PERMISSIBLE AND IMPERMISSIBLE DEDUCTIONS FROM BUSINESS INCOME

Division A: Deductions Allowed from Business Income

31 Deductions allowed from business income

(1) Subject to this Part, for the purpose of ascertaining the taxable income accruing to a taxpayer during a year of assessment, the following deductions shall be allowed from the taxpayer's business income—

(a) all expenditure and losses incurred in the production of income during that year of assessment, other than such expenditure and losses which this Act expressly disallows for the purposes of deduction; and

(b) amounts allowed as deductions in terms of the Tenth Schedule. ("Declarations Promotive of Public Policy Objectives").

(2) A taxpayer shall be allowed a deduction in respect of payments allowed as deductions by this section that are made on the taxpayer's behalf or with the taxpayer's permission, if the deduction would have been allowed had the payment been made directly by the taxpayer.

32 Expenditure incurred prior to commencement of business

A deduction is allowed for proven expenditure incurred by a taxpayer during the year of assessment for the purpose of starting up a business:

Provided that no deduction may be allowed for expenditure incurred more than eighteen months before the business commenced.

33 Deduction for bad debts

A deduction is allowed for the amount of any debt due to the taxpayer, to the extent that it is proved to the Commissioner's satisfaction to be bad, if the amount was included in the taxpayer's income in the current or a previous year of assessment.

34 Capital allowance deductions

(1) Subject to subsection (2), a capital allowance deduction is allowed, in accordance with the Eighth Schedule ("Capital Allowance Deductions")—

(a) in respect of—

(i) commercial buildings, farm improvements, fencing, industrial buildings, railway lines, staff housing and tobacco barns acquired or constructed and in both cases used by the taxpayer for the purposes of his or her business;

(ii) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his or her business;

(iii) training buildings and training equipment;

for which provision is made in Part I of that Schedule;

(b) in respect of any specified expenditure in connection with mining operations for which provision is made in Sub-Part A of Part II of that Schedule;

(c) in respect of any specified expenditure in connection with farming operations for which provision is made in Sub-Part B of Part II of that Schedule.

(2) Despite subsection (1)—

(a) in respect of special mining lease operations, the allowances and deductions for which provision is made in the Second Schedule shall be in lieu of the allowances and deductions provided for under the Eighth Schedule;

(b) in respect of petroleum operations, the allowances and deductions for which provision is made in the Third Schedule shall be in lieu of the allowances and deductions provided for under the Eighth Schedule.

35 Deduction for prospective expenditure and losses

(1) A deduction is allowed, if the taxpayer so elects, of an amount fixed by the Commissioner for expenditure or losses (except to the extent to which they are expenditure or losses of a capital nature) which, in the Commissioner's opinion—

(a) will be incurred by the taxpayer after the year of assessment concerned; and

(b) are directly related to income accruing to the taxpayer during the year of assessment concerned in respect of services rendered or property to be delivered after that year.

(2) The deduction under subsection (1) must be reduced by the amount of any expenditure or losses which are incurred by the taxpayer during the year of assessment concerned and which are directly related to income that will accrue to the taxpayer after that year in respect of services rendered or to be rendered or property delivered or to be delivered.

(3) Any deduction allowed under subsection (1), after any reduction in terms of subsection (2), must be included in the taxpayer's income for the following year of assessment.

36 Attendance at business conventions, etc., and subscriptions to business and professional associations

(1) A deduction is allowed for expenditure incurred by the taxpayer during the year of assessment in attending during that year—

(a) not more than one convention which, in the opinion of the Commissioner, was in connection with the taxpayer's business; or

(b) not more than one trade mission, approved by the Minister, in connection with the taxpayer's business:

Provided that the deduction allowable under this subsection must not exceed the appropriate amount specified in the Ninth Schedule ("Prescription of Various Amounts").

(2) If a convention or trade mission commences in one year of assessment and ends in another, then for the purposes of this paragraph it is deemed to have been attended, and the expenditure is deemed to have been incurred, in the year of assessment in which the convention or trade mission ends.

(3) Where the person attending a convention or trade mission is a member of a partnership and the expenditure has been incurred by the partnership, the deduction under subsection (1) is allowed in respect of one convention or trade mission for each partner, and is allowed to that person and to the other members of that partnership in the same proportion as each member shares in the profits or losses of the partnership during the year of assessment concerned.

(4) In addition to the the deduction under subsection (1), a deduction is allowed for any subscription paid by a taxpayer during the year of assessment for membership of any business, trade, technical or professional association.

37 Expenses incurred to derive rental income from immovable property

A deduction is allowed for expenditure incurred by a taxpayer during the year of assessment—

(a) on insuring and managing immovable property while it is occupied by a tenant; and

(b) in repairing, renewing, altering or improving immovable property, to the extent that the expenditure is attributable to a tenant's occupation of the property.

and no other deduction shall be allowed under this Act in respect of the cost of deriving rent from such immovable property.

38 Improvements to leased property

(1) A deduction is allowed for expenditure incurred by a taxpayer during the year of assessment on improvements to immovable property used or occupied by the taxpayer in the production of income, where—

(a) the taxpayer uses or occupies the immovable property under an agreement with another person; and

(b) the improvements are made pursuant to an obligation imposed by that agreement.

(2) If immovable property referred to in subsection (1)(a) is used or occupied by the taxpayer for other purposes in addition to the production of income, the deduction allowed under this paragraph must be reduced by an amount that the Commissioner considers fair and reasonable.

(3) Where the agreement referred to in subsection (1) permits the taxpayer to use or occupy the immovable property concerned for one or more years of assessment after the year in which the improvements were made to it, the deduction allowed by subsection (1) must be divided by the number of all those years of assessment and, so divided, may be claimed in each of them:

Provided that if the total number of years exceeds ten, or if the period of use or occupation is indefinite, the deduction allowed by subsection (1) must be divided by ten and, so divided, the taxpayer may claim it for a total of ten years of assessment only.

(4) Where the taxpayer acquires ownership of improvements in respect of which a deduction has been made in terms of subsection (1), then from the year of assessment following that in which the taxpayer acquires such ownership he or she ceases to be entitled to any allowance under this section in respect of it.

39 Repairs to property

A deduction is allowed for expenditure incurred by a taxpayer during the year of assessment to repair property used in the production of income.

40 Premiums, royalties, etc.

(1) A deduction is allowed for any premium, royalty or similar consideration paid by a taxpayer during the year of assessment—

(a) for the right to use or occupy immovable property; or

(b) for the right to use plant or machinery; or

(c) for the right to use a patent, design, trade mark, copyright, model, plan, secret process, formula or other intellectual property used in the production of income; or

(d) for the right to use a motion-picture film, television film or sound or electronic recording, or advertising matter connected with such a film or recording; or

(e) for imparting or undertaking to impart any knowledge directly or indirectly connected with the use of anything referred to in subparagraphs (c), (d) or (e);

where the immovable property, plant, machinery, intellectual property, film, recording, advertising matter or knowledge is used in the production of income.

(2) If immovable property referred to in subsection (1)(a) is used or occupied by the taxpayer for other purposes in addition to the production of income, the allowance under this section must be reduced by an amount that the Commissioner considers fair and reasonable.

(3) Where a premium, royalty or similar consideration referred to in subsection (1) is paid in one year of assessment and the payment permits the taxpayer to use or occupy the immovable property, plant, machinery, intellectual property, film, recording or advertising matter concerned for one or more subsequent years of assessment, the deduction allowed by subsection (1) must be divided by the number of all those years of assessment and, so divided, may be claimed in each of them:

Provided that if the total number of years exceeds ten, or if the period of use or occupation is indefinite, the deduction allowed by subsection (1) must be divided by ten and, so divided, the taxpayer may claim it for a total of ten years of assessment only.

(4) Where the taxpayer acquires ownership of any immovable property, plant, machinery, intellectual property, film, recording or advertising matter in respect of which a deduction has been made in terms of subsection (1), then from the year of assessment following that in which the taxpayer acquires such ownership he or she ceases to be entitled to any allowance under this section in respect of it.

41 Pension and annuity payments, and medical aid contributions

(1) Subject to this section, a deduction is allowed for contributions and arrear contributions, paid by a taxpayer during the year of assessment—

(a) towards a benefit or pension fund, whether the payment is made by the taxpayer as a beneficiary of the fund or as the employer of a beneficiary; or

(b) to the Consolidated Revenue Fund, for the purposes of a pension payable from that Fund.

(2) A deduction is allowed for any contributions paid by a taxpayer during the year of assessment to a medical aid society in respect of his or her employees or their dependants.

(3) A deduction may not be allowed under subsection (1) if the taxpayer was ordinarily resident outside Zimbabwe, unless—

(a) he or she was ordinarily resident in Zimbabwe when he or she became a member of the pension or benefit fund or first started contributing to the Consolidated Revenue Fund, as the case may be; and

(b) the contributions or arrear contributions are not allowable as a deduction in any other country where the taxpayer is liable to pay tax on his or her income.

(4) The maximum amount allowable under subsection (1) in respect of all contributions made by a taxpayer in any one year of assessment, whether to one or more funds, is the appropriate amount prescribed in the Ninth Schedule ("Prescription of Various Amounts").

42 Annuities, etc., for former employees and partners

(1) In this section—

"former partner", in relation to a taxpayer, means a person who was a member of a partnership—

(a) of which the taxpayer was a member; or

(b) of which any other person with whom the taxpayer is in partnership was a member; or

(c) which was a predecessor of any partnership of which the taxpayer is or was a member;

and "former partnership" shall be construed accordingly.

(2) A deduction is allowed for any amount paid by the taxpayer during the year of assessment as an annuity, allowance or pension—

(a) to a former employee who has retired from the taxpayer's employment on the grounds of ill-health, infirmity or old age; or

(b) to a former partner who has retired from the former partnership on the grounds of ill-health, infirmity or old age; or

(c) to any person who is dependent for his or her maintenance upon a former employee or former partner of the taxpayer or was so dependent immediately before the former employee or former partner died.

(3) The deduction allowable under this section must not exceed the maximum amount specified in the Ninth Schedule ("Prescription of Various Amounts").

43 Deductions promotive of public policy objectives

In order to promote the State's public policy objectives in the field of social and economic policy, the deductions specified in the Tenth Schedule shall be allowed to be made

from the taxpayer's business income in respect of expenditures incurred by the taxpayer during the year of assessment for any purpose specified in that Schedule.

44 Assessed losses

(1) Any reference in this section and in other provisions of this Act to an "assessed loss" mean any amount by which the sum of the deductions made under this Sub-Part from the business income of any taxpayer exceeds such income;

(2) Subject to subsection (3), any assessed loss determined in respect of the taxpayer for the previous year of assessment is deductible from a taxpayer's income remaining after all deductions in this Sub-Part and all the other deductions referred to in Part IV of Chapter IV of Chapter IV have been made.

(3) The following taxpayers are not entitled to carry forward an assessed loss—

(a) an insolvent taxpayer;

(b) a company—

(i) over which the controlling interest has changed, where the effect of the change is that the person currently controlling the company benefits from the assessed loss; or

(ii) that has been converted into a private business corporation, or a private business corporation that has been converted into a company,

unless it is proved to the Commissioner's satisfaction that the acquisition or conversion in question was not primarily motivated by the desire to take advantage of the assessed loss;

(4) An assessed loss that was incurred more than six years before the current year of assessment cannot be carried forward under subsection (2).

(5) Where in respect of any amount, a deduction would but for this subsection be allowable under more than one provision of this Act and whether it would be so allowable in respect of the same or different years of assessment, the taxpayer shall not be entitled to claim that such amount shall be deducted more than once and, where the deduction would but for this subsection be allowable under more than one provision of this Act in respect of the same year of assessment, the taxpayer shall elect under which one of those provisions he or she wishes to claim such amount as a deduction.

(6) An assessed loss must not be allowed as a deduction from income consisting of interest payable by a financial institution in respect of a loan to or deposit with that financial institution.

Division B: Cases Where No Deduction from Business Income May be Made

45 No deduction for personal, domestic or living expenses

In computing a taxpayer's net business income, no deduction is allowed for any expenditure incurred to the extent that it is a personal, domestic or living expense, that is to say, any expense of either or both of the following general descriptions—

(a) an expense from which the taxpayer incurring the expense derives a personal benefit, or

(b) an expense that is incurred as the result of a decision the taxpayer makes for a personal (as opposed to a business) reason;

and, without derogation from the generality of paragraph (a) or (b), includes the following particular kinds of expense—

(c) expenses incurred in travelling between the taxpayer's home and the place at which he or she carries on a business and, where a taxpayer carries on two or more businesses which are distinct in nature, between the places at which those businesses are carried on; and

(d) rent paid by a taxpayer for, or the cost of repairs made by a taxpayer to, any premises or part of a premises that he or she does not occupy for the purposes of his or her business;

(e) annuities, allowances or pensions paid to former employees or dependants of former employees, if the remuneration paid to the former employees during their employment with the taxpayer was a personal or domestic expense of the taxpayer.

46 No deduction for expenses against public policy

In computing the net business income, no deduction is allowed for—

(a) an amount paid as a bribe, kick-back, or similar corrupt or illegal payment; or

(b) a fine or civil or criminal penalty imposed for a breach of this Act or any other enactment or law.

47 Restriction on deduction for motor car hire

No deduction is allowed for any expenditure incurred by a taxpayer in hiring a passenger motor vehicle, to the extent that the expenditure, when added to expenditure incurred in any previous year in hiring the same vehicle, exceeds the cost of the vehicle.

48 Restriction of deduction of certain expenditure by companies and branches

(1) No deduction is allowed for any expenditure incurred by a company, or by a branch or subsidiary of a company, in servicing a debt contracted in connection with the production of income, if the debt or, where there is more than one such debt, the aggregate of the debts, cause the company's debt to equity ratio to exceed three to one.

(2) No deduction is allowed for any expenditure on general administration and management paid to a company of which the taxpayer is a subsidiary, branch or holding company, where the expenditure exceeds—

(a) nought comma seven five *per centum* of the amount obtained by applying the formula set out in paragraph 5 ("Calculation of maximum amount deductible by company for general administration and management") of the Fourth Schedule ("Miscellaneous Calculations"), where the expenditure was incurred before the taxpayer commenced business or produced income;

(b) one *per centum* of the amount obtained by applying the formula set out in the paragraph 5 of the Fourth Schedule, where the expenditure was incurred after the taxpayer commenced business or produced income.

49 Other impermissible deductions

Unless the contrary is expressly provided for in this Act, in computing a taxpayer's net business income, no deduction is allowed for any expenditure incurred on the following amounts—

(a) amounts that are included in the cost base of any property;

(b) amounts paid or owed by a taxpayer by way of tax, whether charged under Zimbabwean law or the law of any other country, or by way of interest in respect of such a tax;

(c) the cost of shares awarded by a company to an employee;

(d) contributions made by a taxpayer to a benefit fund or pension fund or similar fund established to provide benefits for employees or the widows, children, dependants or nominees of deceased employees;

(e) expenditure incurred by a taxpayer on entertainment or hospitality in any form, whether directly or by the provision of any allowance to an employee to incur expenditure on entertainment on the taxpayer's behalf;

(f) any loss or expense that is recoverable under a contract of insurance or indemnity;

(g) income carried to a reserve fund or capitalised in any way;

(h) expenditure or losses incurred in the production of income that is exempt from tax under this Act;

(i) interest earned on any capital employed in the taxpayer's business;

(j) expenditure incurred by a taxpayer under an obligation imposed by an agreement (commonly known as an "exclusive agency agreement") which restrains another person from selling goods other than those supplied by the taxpayer;

(k) expenditure incurred by a financial institution in producing income consisting of interest payable by the institution in respect of loans to or deposits with the institution;

(l) expenditure incurred by a resident taxpayer in the production of interest or dividends on stocks and shares derived from a source outside Zimbabwe.

50 Prohibition against double deduction

Where a deduction might be allowable under two or more provisions of Division A of this Sub-Part in respect of any particular expenditure, the only deduction to be allowed shall be—

(a) the deduction elected by the taxpayer; or

(b) in the absence of an election by the taxpayer, the deduction which, in the Commissioner's opinion, is the most appropriate in view of the nature of the expenditure.

SUB-PART C

DEDUCTIONS ALLOWED FOR INCOME FROM PROPERTY

51 Deductions allowed from property income

A taxpayer is allowed a deduction for any expenditure incurred by the taxpayer in the year of assessment in deriving income from property to the extent that the expenditure would be deductible if it had been incurred by the taxpayer to earn income from business.

CHAPTER V

TAX ACCOUNTING PRINCIPLES

52 Substituted year of assessment

(1) The Commissioner may grant a taxpayer written permission to use as a year of assessment a twelve-month period other than the period beginning on the 1st January, and where the Commissioner has granted such permission the taxpayer may use that substituted year of assessment subject to any conditions specified by the Commissioner.

(2) The Commissioner may, by written notice to the taxpayer concerned, withdraw permission to use a substituted year of assessment, and any such withdrawal shall take effect at the end of the taxpayer's current substituted year of assessment.

53 Transitional year of assessment

Where a taxpayer's year of assessment changes in terms of section 52—

(a) to a substituted year of assessment; or

(b) from a substituted year of assessment back to an ordinary year of assessment; or

(c) from one substituted year of assessment to another;

any period between the taxpayer's last full year of assessment before the change and the beginning of the changed year of assessment shall be treated as a separate year of assessment, to be known as a transitional year of assessment.

54 Method of accounting

(1) For the purposes of this Act, every taxpayer shall adopt a method of accounting which conforms to generally accepted accounting principles and clearly reflects the taxpayer's income.

(2) Income is determined according to the taxpayer's method of accounting, with such adjustments as are needed to conform to the provisions of this Act.

(3) For the purposes of this Act, a taxpayer shall account for income on an accrual basis in accordance with the following principles—

(a) the taxpayer takes income and deductions into account when amounts are payable;

(b) an amount is treated as payable—

(i) to the taxpayer when the taxpayer becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is discharged by instalments;

(ii) by the taxpayer when all the events that determine the taxpayer's liability have occurred and the extent of the liability can be determined with reasonable accuracy, but not before economic performance with respect to the amount has occurred.

(4) For the purposes of subsection (3)(b)(ii), economic performance occurs—

(a) with respect to the acquisition of a service or property, when the service is provided or the property is transferred;

(b) with respect to the use of property, when the property is used;

(c) in any other case, when the taxpayer makes payment in full satisfaction of the liability.

55 Prepayments

An allowable deduction for an expense which is not of a capital nature and which relates to a service or other benefit that extends after the end of the year of assessment shall be allowed proportionately over the years of assessment to which the service or other benefit relates.

56 Taxable income of persons whose business extends beyond Zimbabwe

(1) Where the business of any person, other than an insurance company, extends to any country other than Zimbabwe and the Commissioner is satisfied that it is impossible or impracticable to ascertain the taxable income derived by the person from sources in Zimbabwe in the manner otherwise provided in this Act, the Commissioner may require the person to submit to the Commissioner proposals for determining his or her taxable income in some alternative manner.

(2) If the Commissioner considers that a person's taxable income, calculated in accordance with proposals submitted in terms of subsection (1), approaches as closely as possible the income that might be expected if the general provisions of this Act were applied, the Commissioner may accept the proposals, and the taxable income determined in accordance with the proposals for any year of assessment shall be deemed to be the person's taxable income for that year.

(3) If a person does not submit proposals in terms of subsection (1), or if the Commissioner is not satisfied with the proposals so submitted, the Commissioner may determine the person's taxable income in such manner as he or she considers most appropriate, having regard to the circumstances of the case.

(4) This section shall apply, with any necessary changes, to the determination of a person's assessed loss.

57 Trading stock

(1) A taxpayer who maintains trading stock shall establish and maintain inventories of such stock.

(2) The cost of trading stock sold in a year of assessment shall be determined by adding to the value of the opening trading stock the cost of trading stock acquired during the year and subtracting the value of closing trading stock.

(3) The value of trading stock on hand at the end of a year of assessment shall be determined in accordance with Part II of the Sixth Schedule.

(4) Where particular items of trading stock are not readily identifiable, a taxpayer may account for the trading stock on the first-in-first-out method or the average-cost method, but once chosen, a stock valuation method may be changed only with the written permission of the Commissioner.

58 Debt obligations with discount or premium

(1) Subject to subsection (2), interest in the form of any discount, premium, or deferred interest shall be taken into account for tax purposes as it accrues.

(2) Where interest referred to in subsection (1) is subject to withholding tax, the interest shall be taken to be derived or incurred when it is paid.

59 Currency in which income to be calculated and currency conversions

(1) Subject to this Act, taxable income shall be calculated in any currency specified by the Minister in accordance with section 44A ("Legal tender of foreign currencies") of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (hereafter in this section called a "specified currency").

(2) Where the calculation of taxable income involves an amount—

(a) in a currency other than a specified currency, the amount shall be converted at the international cross rate of exchange of the first-mentioned currency to the United States dollar;

(a) in two or more specified currencies (other than the United States dollar), the currencies in question shall be converted at the international cross rate of exchange of currencies to the United States dollar;

on the date that the amount is paid, accrues or is otherwise taken into account for tax purposes.

(3) If, through a variation in the rate of exchange between a specified currency and any other currency, the amount received by a taxpayer, expressed in a specified currency, differs from the amount that had accrued before the variation in the rate of exchange—

(a) the amount to be included in the taxpayer's income shall be the amount received, expressed in a specified currency; and

(b) if the receipt and the accrual occur in different years of assessment, effect shall be given to the increase or reduction in the amount in the year of assessment in which the amount was received.

(4) If, through a variation in the rate of exchange between a specified currency and any other currency, the amount actually paid by a taxpayer in a specified currency differs from the amount of the liability that had been incurred before the variation in the rate of exchange—

(a) the amount to be deducted from the taxpayer's income shall be the amount actually paid in a specified currency;

(b) if the incurring of the liability and the payment occur in different years of assessment, effect shall be given to the increase or reduction in the amount in the year of assessment in which the amount was paid.

60 Long-term contracts

(1) In this section—

"long-term contract" means a contract for manufacture, installation or construction or the performance of related services which is not completed within the year of assessment in which work under the contract commenced, but does not include a contract estimated to be completed within six months from the date on which work under the contract commenced.

(2) Income and deductions relating to a long-term contract shall be taken into account on the basis of the percentage of the contract completed during the year of assessment.

(3) The percentage of completion of a long-term contract shall be determined by comparing costs allocated to the contract and incurred before the end of the year of assessment with the estimated total contract costs.

61 Hire-purchase and credit sales

(1) Subject to this section, where a taxpayer has entered into an agreement whose effect is that ownership of property will pass from the taxpayer to another person before the taxpayer has received the whole amount payable to him or her under the agreement, the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer when the agreement was entered into.

(2) Where the agreement referred to in subsection (1) concerns—

(a) movable property, the Commissioner, taking into consideration any deduction that has been allowed for bad or doubtful debts and any special circumstances of the taxpayer's business, may allow a further reasonable deduction to be made in respect of all amounts which are deemed to have accrued under the agreement but which have not been received at the close of the taxpayer's accounting period;

(b) immovable property, the Commissioner shall allow a deduction determined by applying the formula set out in paragraph 6 ("Calculation of deduction in respect of hire-purchase or credit sale of immovable property") of the Fourth Schedule ("Miscellaneous Calculations").

(3) Any further deduction made in terms of subsection (2) shall be included as income in the taxpayer's return for the following year of assessment and shall form part of the taxpayer's income.

(4) If a taxpayer has, for valuable consideration, ceded or disposed of an agreement referred to in subsection (1), then no further deduction shall be made in terms of subsection (2) for the year of assessment in which the cession or disposal took place.

62 Income and deductions relating to jointly-owned property

Income and deductions relating to jointly-owned property shall be apportioned between the joint owners in proportion to the value of their interests in the property:

Provided that, where the relative value of their interests cannot be ascertained, their interests in the property shall be deemed to be equal.

63 Valuation of benefits in kind

(1) For the purposes of this Act, the value of a benefit in kind shall be its market value on the date it is taken into account for tax purposes.

(2) The market value of a benefit in kind shall be determined without regard to any restriction on the subsequent transfer of the benefit or to the fact that it is not convertible into cash.

64 Trust income

Where a trust instrument provides that any income that is the subject of the trust—

(a) may be disposed of by the founder of the trust or his or her spouse or by a near relative of the founder or of his or her spouse; or

(b) accrues to the founder of the trust or his or her spouse or to a near relative of the founder or of his or her spouse;

pending the happening of a future event, or in any other circumstances, then the income shall be deemed to be the income of the founder of the trust on the date of such disposal or accrual.

65 Compensation receipts

Compensation payments accruing to a taxpayer shall take the character of the thing that is compensated.

66 Recouped deductions

(1) Where a deduction has been made in respect of any expenditure, loss or bad debt which is subsequently recovered, the amount recovered shall be treated as income of the year of assessment in which it is recovered and shall take the character of the income to which the deduction was related.

(2) For the purposes of subsection (1), an expenditure, loss or bad debt shall be considered as recovered when an event occurs that is inconsistent with the basis for the deduction that was previously made in regard to it.

(3) Where a taxpayer incurred expenditure for which a deduction was allowed under this Act, and the taxpayer subsequently made an arrangement or compromise with a creditor whereby the taxpayer's liability arising from that expenditure is reduced or extinguished, the benefit accruing to the taxpayer as a result of the arrangement or compromise shall be regarded as a recovery of expenditure for the purpose of subsection (1).

(4) For the avoidance of doubt it is declared that subsection (3) does not apply to a reduction or extinction of liability—

(a) as a result of the taxpayer having been declared insolvent or having made an assignment of his or her estate for the benefit of his or her creditors; or

(b) where the taxpayer is a company, as a result of the company being wound up by the court on the grounds that it is unable to pay its debts.

CHAPTER VI

CALCULATION OF GAINS AND LOSSES FROM DISPOSAL OF BUSINESS OR INVESTMENT PROPERTY

67 Interpretation and application of Chapter VI

(1) In this Chapter—

"disposal", in relation to a business or investment property, means—

(a) the sale, exchange, redemption or distribution of the property; or

(b) the transfer of the property by way of gift or at death; or

(c) the destruction, loss or extinction of the property;

and includes the deemed disposal of business or investment property in the circumstances specified in sections 68 and 69;

"gain", in relation to the disposal of a business or investment property, is the excess of the consideration received over the cost base of the property;

"loss", in relation to the disposal of a business or investment property, is the excess of the cost base over the consideration received for the property.

(2) This Chapter applies for the purposes of determining the amount of gain or loss arising on the disposal of a business or investment property.

68 Deemed disposal where use of property is converted to or from use as business or investment property

(1) Disposal of property is deemed to have occurred where it is converted—

(a) from its use as business or investment property to some other use; or

(b) from its use as property otherwise than as business or investment property to its use as business or investment property.

(2) A person who is deemed to have disposed of property in terms of subsection (1) is deemed to have disposed of it for its market value at the time of conversion and to have reacquired it for a cost equal to its market value.

69 Deemed acquisition or disposal of investment property where non-resident becomes resident and *vice versa*

(1) A non-resident person who becomes a resident person is deemed to have acquired all investment property (other than immovable property located in Zimbabwe, the income from which is not, by virtue of section 88(1)(c), regarded as foreign-source income]) owned by the person at the time of becoming a resident for its market value at that time.

(2) A resident person who becomes a non-resident person is deemed to have disposed of all investment property (other than immovable property located in Zimbabwe referred to in subsection (1)) owned by the person at the time of becoming a non-resident for its market value at that time.

(3) If a person to whom subsection (2) would otherwise apply—

(a) intends to reacquire status as a resident of Zimbabwe; and

(b) provides the Commissioner with sufficient security to satisfy any tax liability that would otherwise arise by virtue of subsection (2),

the Commissioner may exempt the person from the application of subsections (1) and (2).

70 Cost base to for calculating gains and losses from disposal of business or investment property other than that referred to in sections 68, 69, 72 and 73

(1) For the purpose of calculating any gain or loss from the disposal of business or investment property, **t**his section establishes the cost base of such property, except as

otherwise provided in sections 68 and 69 (dealing with deemed dispositions) or sections 72 and 73 (dealing with non-recognition rules).

(2) The cost base of a business or investment property acquired, produced, or constructed by a taxpayer is the amount paid or incurred by the taxpayer in respect of the acquisition, production or construction of the property, including—

(a) indirect expenses, including commissions and legal fees, incurred in respect of the acquisition, production or construction of the property; and

(b) interest and taxes incurred during the acquisition, production, or construction period of the property, if this period exceeds one year; and

(c) customs duties incurred in respect of the importation of the property; and

(d) the cost of improvements and other costs properly added to capital accounts in respect of the property, other than amounts allowed as a deduction; and

(e) in the case of non-depreciable property, expenses incurred to alter or improve the property; and

(f) the market value of any consideration in kind given for the property.

(3) The cost base of a business or investment property acquired by way of a bequest or inheritance is the market value of the property at the date of death of the disposer.

(4) The cost base of a business or investment property acquired in a non-arm's length transaction described in section 71(5) is the amount of consideration deemed by that section to be received by the person disposing of the property.

(5) If part of a business or investment property is disposed of, the cost base of the property is apportioned between the part of the property retained and the part disposed of in accordance with their respective fair market values determined at the time of acquisition.

(6) If a taxpayer is required by this Act to include an amount in income when he or she acquires a business or investment property, that amount is added to the cost base of the property.

(7) The cost of a business or investment property does not include the amount of any grant, subsidy, rebate, commission, or other assistance received or receivable by a person in respect of the acquisition of the property, except to the extent to which the amount is included in the person's business or property income.

(8) The cost base of a share received by the taxpayer as a dividend shall be the market value of the share at the time it is received.

71 Consideration received on disposal of business or investment property

(1) For the purpose of calculating any gain or loss from the disposal of business or investment property**, t**his section establishes the amount of consideration received on disposal of such property, except as otherwise provided in sections 68 and 69 (dealing with deemed dispositions) or sections 72 and 73 (dealing with non-recognition rules).

(2) The consideration received by a person on disposal of a business or investment property is the total amount received by the person for the property, including the fair market value of any consideration received in kind.

(3) If a business or investment property has been lost or destroyed by a person, the consideration received for the property includes any compensation, indemnity, or damages received by the person under—

(a) an insurance policy, indemnity, or other agreement;

(b) a settlement out of court; or

(c) a judicial decision.

(4) If a business or investment property is disposed of by way of testamentary gift or by reason of intestacy, the disposer is treated as having received consideration equal to the market value of the property at the date of death of the disposer.

(5) If a business or investment property is disposed of in a non-arm's length transaction other than by way of testamentary gift or by reason of intestacy, the disposer is treated as having received consideration equal to the greater of—

(a) the cost base of the property; or

(b) the fair market value of the property at the date of disposal.

(6) If two or more business or investment properties are disposed of by a person in a single transaction, the total consideration received by the person is apportioned among the properties disposed of in proportion to their respective market values determined at the time of the transaction.

72 Non-recognition rules – spouses

(1) No gain or loss is taken into account in determining income on a transfer of a business or investment property—

(a) between spouses; or

(b) between former spouses as part of a divorce settlement or under an agreement to live apart.

(2) Subsection (1) does not apply if the person acquiring the business or investment property is a non-resident person at the time of the acquisition.

(3) Where no gain or loss is taken into account as a result of subsection (1), the person acquiring the business or investment property is treated as acquiring property of the same character as the property of the person disposing of it and—

(a) in the case of a depreciable or intangible property, acquiring the property for a cost equal to the written down value of the property at the time of the disposal; and

(b) in any other case, acquiring the property for a cost equal to the cost base of the property at the time of the transfer.

73 Non-recognition rules – replacement property

(1) No gain or loss is taken into account in determining income on a disposal of a business or investment property if, and to the extent that, consideration in excess of the cost base of the property is invested in a replacement property of a like kind within one year of the disposal.

(2) The cost base of a replacement property described in subsection (1) is—

(a) in the case of a depreciable or intangible property, the written down value of the property at the time of disposal; or

(b) in any other case, the cost base of the replacement property,

plus the excess, if any, of the consideration paid for the replacement property over the consideration received for the replaced property.

CHAPTER VII

PERSONS ASSESSABLE

PART I

PRINCIPLES APPLICABLE TO TAXATION OF INDIVIDUALS

74 Taxation of individuals

The taxable income of each individual taxpayer shall be determined separately, regardless of the taxpayer's marital relationship with any other taxpayer.

75 Income splitting

(1) Where an individual attempts to split income with an associate, the Commissioner may adjust the taxable income of the taxpayer and the associate to prevent any reduction in tax payable as a result of the splitting.

(2) A taxpayer shall be treated as having attempted to split income where—

(a) the taxpayer transfers income, directly or indirectly, to an associate; or

(b) the taxpayer transfers property, directly or indirectly, to an associate with the result that the associate receives or enjoys the income from that property;

and the sole or main reason for the transfer is to lower the tax payable upon the incomes of the taxpayer and the associate.

(3) In determining whether a taxpayer is seeking to split income, the Commissioner shall consider the value, if any, given by the associate for the transfer of the income or property concerned.

PART II

PRINCIPLES APPLICABLE TO TAXATION OF PARTNERSHIPS

76 General principles for taxation of partnerships

(1) Partners rather than their partnership are taxed under this Act, but the partnership shall file a partnership return.

(2) Income accruing to a partnership in any period ending on an accounting date shall be deemed to be income accruing to the partners on that date in the proportions in which the partners agree to share the partnership's profits at that date.

(3) An election, notice or statement required to be filed in relation to a partnership's activities shall be filed by the partnership.

77 Calculation of partnership income or loss

(1) The income of a partnership for a year of assessment shall be—

(a) the gross income of the partnership for that year calculated as if the partnership were a resident taxpayer; less

(b) the total amount of deductions allowed under this Act for expenditures and losses incurred by the partnership in deriving that income, other than a deduction allowed for an assessed loss carried forward from a previous year of assessment.

(2) A partnership shall be regarded as incurring a loss for a year of assessment where the amount in subsection (1)(b) exceeds the amount in subsection (1)(a) for that year, and the amount of the excess shall be the amount of the loss.

78 Taxation of partners

(1) The taxable income of a resident partner shall include the partner's share of partnership income for the year of assessment.

(2) The taxable income of a non-resident partner for a year of assessment shall include the partner's share of the partnership income for that year which is attributable to sources in Zimbabwe.

(3) A resident partner shall be allowed a deduction in a year of assessment for the partner's share of partnership loss for that year.

(4) Income accruing to, and expenses or losses incurred by, a partnership shall retain their character as to source and type of income, expenses or losses, as the case may be, in the hands of the partners.

79 Disposals of property to and by partnership

(1) Where a partner contributes his or her property (other than business property referred to in subsection (2) to the partnership, he or she shall be not regarded as having disposed of the property to the partnership.

(2) A partner's interest in the partnership shall be treated as a business property of the partner for the purposes of this Act.

80 Cost base of partner's interest in partnership

The cost base of a partner's interest in a partnership includes any share of partnership income which has been included in the partner's taxable income in a previous year, and any share of exempt income accruing to the partnership which has not been distributed from the partnership.

PART III

PRINCIPLES APPLICABLE TO TAXATION OF TRUSTS AND DECEASED ESTATES

81 Interpretation in Part III of Chapter VII

In this Part—

"ascertained beneficiary", in relation to income accruing by virtue of property in a deceased estate or any of the proceeds of such property, means a person who on the death of the deceased person acquires an immediate certain right to claim the present or future enjoyment of the income, but does not include a person whose right became due before the death of the deceased person;

"beneficiary with a vested right", in relation to income the subject of a trust created by a trust instrument, means a person named or identified in the trust instrument who has at the time the income is derived an immediate certain right to the present or future enjoyment of the income;

"identified beneficiary trust" means a trust to the income of which a beneficiary with a vested right is or has become entitled;

"mentally incapacitated person" means a resident person who has been declared, under the law of any country, to be mentally disordered or intellectually handicapped;

"mentally incapacitated person's trust" means a trust established wholly or mainly for the benefit of a mentally incapacitated person;

"settler" means a person who has—

(a) established a trust; or

(b) transferred property to, or conferred a benefit on, a trust for no consideration or for a consideration which is less than the market value of the property or benefit;

"settler trust" means a trust in which the settler has—

(a) power to revoke or alter the whole or part of the trust so as to become entitled to all or part of the trust property or income; or

(b) a reversionary interest in the whole or part of the property or income of the trust;

"taxable income", in relation to a trust for a year of assessment, means the gross income of the trust for that year, calculated on the basis that the trust is a resident trust, less—

(a) any amount to which section 83 or 84 applies; and

(b) the total amount of deductions allowed under this Act for expenditures or losses incurred by the trust in deriving that income;

82 Principles of taxation of trusts, other than deceased estates

(1) This section applies to trusts other than deceased estates.

(2) Separate calculations of taxable trust income shall be made for separate trusts, regardless of whether they have the same trustee.

(3) Income derived, or expenditure or losses incurred, by a trust retain their character as to geographic source and type of income, expenditure or loss, as the case may be, in the hands of the beneficiary.

(4) A trust is required to furnish a return in accordance with this Act.

(5) A settler trust and an identified beneficiary trust shall not be treated as an entity separate from the settler or beneficiary with a vested right, respectively.

(6) The income of a settler trust or an identified beneficiary trust shall be taxed to the settler or the beneficiary with a vested right, and the trust property shall be deemed to be the property of the settler or beneficiary with a vested right, as the case may be.

(7) The trustee of a mentally incapacitated person's trust shall liable for tax on the taxable income of the trust.

(8) Trustees shall be jointly and severally liable for any tax liability arising in respect of taxable income of the trust that is not satisfied out of the assets of the trust.

(9) Where a trustee has paid tax on the taxable trust income of the trust, that income shall not be taxed again in the hands of the beneficiary.

83 Taxation of trustees and beneficiaries

(1) Subject to section 84, any amount accruing to a trustee for the immediate or future benefit of an beneficiary with a vested right, other than a mentally incapacitated person, shall be regarded for the purposes of this Act as having accrued to the beneficiary when the beneficiary acquires a vested right to the amount.

(2) Subject to section 84, where a beneficiary has acquired a vested right to any amount referred to in subsection (1) as a result of the trustee exercising a discretion vested in the trustee under the trust instrument, the amount shall be deemed to have accrued to the trustee for the immediate benefit of the beneficiary.

(3) For subsection (2) to apply to a beneficiary for a year of assessment, a trustee must have exercised the discretion by the end of the second month after the end of the year of assessment.

(4) Where subsection (1) or (2) applies, the amount shall be regarded as having accrued to beneficiary when it accrued to the trustee.

(5) Where any amount to which subsection (1) applies is included in the gross income of the beneficiary for a year of assessment, the beneficiary shall be allowed a deduction in accordance with this Act for any expenditure or losses incurred in that year by the trustee in regard to that amount.

(6) A trustee of a resident trust shall be liable for tax on the taxable income of the trust for the year of assessment concerned.

(7) A trustee of a non-resident trust shall be liable for tax on so much of the taxable income of the trust for the year of assessment concerned as is attributable to sources in Zimbabwe.

84 Taxation of deceased estates

(1) Any amount accruing to a trustee as executor of a deceased person's estate shall, to the extent that the Commissioner is satisfied that the amount has accrued for the immediate or future benefit of an ascertained beneficiary of the estate, be treated as having accrued to the beneficiary for the purposes of this Act.

(2) Where any amount to which subsection (1) applies is included in the gross income of the ascertained beneficiary for a year of assessment, the beneficiary shall be allowed a deduction in accordance with this Act for any expenditure or losses incurred in that year by the trustee in regard to that amount.

(3) The trustee of an estate of a deceased person that is a resident trust shall be liable for tax on the taxable income of the trust for the year of assessment concerned.

(4) The trustee of an estate of a deceased person that is a non-resident trust shall be liable for tax on so much of the taxable income of the trust for the year of assessment concerned as is attributable to sources in Zimbabwe.

(5) The trustee of an estate of a deceased person shall be responsible for any tax liability of the deceased person arising for any year of assessment prior to the year of assessment in which the person died.

PART IV

PRINCIPLES APPLICABLE TO TAXATION OF COMPANIES

85 General principles for taxation of companies

(1) A company shall be liable to tax separately from its shareholders.

(2) A dividend received by a resident company from another resident company shall be exempt from taxation.

86 Share cancellations, redemptions and acquisitions

(1) Where—

(a) a company cancels or redeems a share or acquires a share from a shareholder, other than in the course of the liquidation of the company; and

(b) the shareholder retains other shares in the company following the redemption, cancellation or acquisition;

the shareholder shall be treated as not having disposed of the share that was redeemed, cancelled or acquired by the company, and—

(c) the shareholder's cost base in the share shall be added to the adjusted cost base of shares in the company retained by the shareholder on a *pro rata* basis; and

(d) the shareholder shall be treated as having received a dividend of the amount transferred in redeeming, cancelling or acquiring the share.

(2) Where—

(a) a company cancels or redeems a share or acquires a share from a shareholder, including such a cancellation, redemption or acquisition in the course of the liquidation of the company; and

(b) the shareholder retains no other shares in the company following the redemption or cancellation;

the proceeds accruing to the shareholder shall be deemed not to be dividends.

(3) If in the course of the liquidation of a company its property is distributed in kind to a shareholder that is a resident company—

(a) no gain or loss shall, for the purposes of this Act, be recognised in regard to the liquidated company as a result of the disposal; and

(b) the shareholder's cost base in the distributed property shall be the shareholder's cost base in the cancelled shares.

(4) Where a shareholder to which subsection (3) applies receives more than one item of property in the course of a liquidation of a company in which it has shares, the proportion of

the cost base of its shares that is attributed to any such item shall be the proportion of the market value of all the property received in respect of the liquidation that is attributable to the market value of the item.

87 Incorporation roll-over

(1) Where—

(a) a person transfers property (with or without any liability not in excess of the cost base of the property) to a company in exchange for one or more shares in the company; and

(b) immediately after the transfer the person has fifty *per centum* or more of the shares in the company;

the transfer shall not be treated as a disposal of the asset by the transferor but shall be treated as an acquisition by the transferee.

(2) The transferee's cost base of property transferred in an exchange described in subsection (1) shall be the same as the transferor's cost base at the time of transfer.

(3) The cost base of a share received in an exchange described in subsection (1) shall be equal to the cost base of the asset transferred less any liability transferred.

CHAPTER VIII

INTERNATIONAL TAXATION

88 Source of income

(1) For the purposes of this Act, income shall be regarded as accruing from a source in Zimbabwe if it—

(a) accrues from an activity which occurs in Zimbabwe; or

(b) accrues from employment in Zimbabwe, whether or not the gains or profits from such employment are received in Zimbabwe; or

(c) accrues from immovable property located in Zimbabwe, including any gain from—

(i) the disposal of a right or interest in such property; and

(ii) the disposal of a share or interest in an immovable property-holding company;

or

(d) accrues from the disposal of a share in a resident company; or

(e) accrues from the rental of movable property used in Zimbabwe; or

(f) accrues from the disposal or licensing of industrial or intellectual property used in Zimbabwe; or

(g) consists of interest where—

(i) the debt is secured by property located in Zimbabwe; or

(ii) the borrower is a resident, other than a temporarily resident individual; or

(iii) the borrowing relates to a business carried on in Zimbabwe;

or

(h) consists of a dividend, management fee or director's fee paid by a resident company; or

(i) consists of a pension or annuity paid by the Government or by a resident; or

(j) consists of a natural-resource payment in respect of a natural resource in Zimbabwe; or

(k) generally, accrues from a source within or deemed to be within Zimbabwe.

(2) Any income which does not accrue from a source in Zimbabwe in terms of subsection (1) shall be regarded for the purpose of this Act as foreign-source income.

89 Double-taxation agreements

(1) The President may enter into an agreement with the government of any other country to—

(a) prevent, mitigate or discontinue the levying of taxes, under this Act and the law of the other country, in respect of the same income; and additionally, or alternatively

(b) to render reciprocal assistance in matters of taxation;

and the agreement may be made with retrospective effect if the President considers it desirable to do so.

(2) As soon possible after concluding an agreement in terms of subsection (1), the President shall publish its terms by proclamation in the *Gazette*, whereupon the agreement shall have effect as if enacted in this Act, but only if, and for so long as, the agreement has the effect of law in the other country concerned.

(3) The President may at any time revoke a proclamation under subsection (2) by a further proclamation in the *Gazette*, and the agreement shall cease to have effect upon the date fixed in the latter proclamation, but the revocation shall not affect the validity of anything previously done under the revoked proclamation.

(4) The duty to preserve secrecy imposed by section 34A of the Revenue Authority Act shall not prevent the disclosure to an authorised officer of the country with which an agreement in terms of this section is in force, of facts and information whose disclosure is necessary—

(a) to enable it to be determined whether immunity, exemption or relief ought to be given under the agreement; or

(b) in order to render or receive assistance in terms of the agreement; or

(c) to prevent fraud; or

(d) for the administration of statutory provisions against the avoidance of taxes which are the subject of the agreement.

(5) Notwithstanding any other provision of this Act, the Commissioner shall raise additional assessments or authorise reductions and refunds at any time if the assessments, reductions or refunds are the result of carrying out the provisions of an agreement that is in force in terms of this section.

90 Collection of taxes due to another country under arrangements made pursuant to double-taxation agreement[1]

(1) If the Commissioner has, in accordance with arrangements made with the government of any other country under a double-taxation agreement, received a request, in such form as the Commissioner may prescribe, for the collection from any person of an amount alleged to be due by him or her under the tax laws of such other country, the Commissioner may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he or she admits liability for such amount or any lesser amount.

(2) If such person —

(a) admits liability;

(b) fails to respond to the notice; or

(c) denies liability but the Commissioner, after consultation with the competent authority of such other country, is satisfied that —

(i) the liability for such amount is not disputed in terms of the laws of such other country; or

(ii) although the liability for such amount is disputed in terms of the laws of such other country —

A. such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or

B. there is a risk of dissipation or concealment of assets by such person;

the Commissioner may, by notice in writing, require such person to pay the amount for which he or she has admitted liability or the amount specified, as the case may be, on a date specified, for transmission to the competent authority in such other country.

(3) If such person fails to comply with the notice under subsection (2), the amount in question may be recovered, for transmission to such competent authority, as if it were a tax payable by such person under this Act.

(4) No steps taken in assistance in collection by any other country under any arrangements referred to in subsection (1), for the collection of an amount alleged to be due by any person under the tax laws of Zimbabwe, and no judgment given against any such person in pursuance of such arrangements in such other country for any such amount, shall affect his or her right to have his or her liability for any such amount determined in Zimbabwe in accordance with Chapter XVII or any other relevant law.

(5) If a person to whom this section is applied lodges an objection with the Commissioner in accordance with Chapter XVII, section 25 ("Foreign law") of the Civil Evidence Act [*Chapter 8:01*] shall apply to the consideration by the Commissioner of any issue as to the tax or other laws of any foreign country or territory concerned as if the Commissioner were a court.

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[1] This clause repeats section 91A of the current ITA, a provision which was only inserted by section 4 of the Finance (No. 2) Act, 2012.

(6) For the avoidance of doubt, it is declared that section 25 ("Foreign law") of the Civil Evidence Act [*Chapter 8:01*] applies to the consideration by the Special Court or any other court of any issue as to the tax or other laws of any foreign country or territory that may arise from the application of this section.

91 Reduction of tax under double-taxation agreement

(1) This section shall apply where, under a double-taxation agreement, the tax payable on any income under a foreign law is to be allowed as a tax credit against tax chargeable under this Act on that income.

(2) Subject to subsection (3), a tax credit referred to in subsection (1) shall not exceed an amount arrived at by applying the appropriate formula set out in paragraph 7 ("Calculation of tax credit allowable in respect of foreign tax on income to which double-taxation agreement applies") of the Fourth Schedule ("Miscellaneous Calculations").

(3) The total tax credit to be allowed to any person for a year of assessment shall not exceed the total tax chargeable in terms of this Act to that person for that year of assessment.

(4) Where a tax credit given in terms of a double-taxation agreement is rendered excessive or insufficient through a subsequent adjustment of any tax applicable to the foreign-source income concerned, whether under this Act or a foreign law, the amount of the credit may be adjusted notwithstanding any other provision of this Act, and any tax underpaid as a result of such adjustment shall be recoverable and any tax overpaid shall be refundable.

(5) For the purposes of this section—

(a) the tax credit allowed in respect of foreign-source income and the tax imposed on that income under this Act shall be calculated separately for each amount of foreign-source income accruing to a taxpayer;

(b) foreign-source income accruing to a foreign branch of a resident company shall be aggregated and considered a single receipt of income;

(c) foreign tax imposed upon—

(i) a partnership shall be treated as imposed upon the partners;

(ii) a trustee shall be treated as imposed upon the beneficiary, where the income on which the trustee was assessed in the foreign country is included in the income of a beneficiary under this Act;

(iii) a beneficiary shall be treated as imposed upon the trustee, where the income on which the beneficiary was assessed in the foreign country is included in the income of a trustee under this Act.

92 Relief from double taxation where there is no double-taxation agreement

(1) If a person—

(a) in Zimbabwe; or

(b) outside Zimbabwe, to whom income is deemed to have accrued from a source within Zimbabwe;

who has paid or is liable to pay tax on foreign-source income accruing from a country with which there is no double-taxation agreement in force proves to the satisfaction of the Commissioner that he or she has paid tax on the income in the country from which the income

accrued, then the tax chargeable under this Act in respect of the income shall be reduced by the amount of foreign tax paid or payable on the income as if section 89(2) applied to it.

(2) For the purposes of subsection (1), tax which is deducted from income in a foreign country shall be deemed to be tax paid by the person to whom the income accrues.

CHAPTER IX

PREVENTION OF TAX AVOIDANCE

93 Tax avoidance generally

Where a transaction, operation or scheme, including a transaction, operation or scheme involving the alienation of property, has been concluded or carried out, which has the effect of avoiding, postponing or reducing liability for any tax, and in the Commissioner's opinion it—

(a) was concluded or carried out by means or in a manner which would not normally be employed by persons dealing at arm's length; or

(b) has created rights or obligations which would not normally be created between persons dealing at arm's length;

and the Commissioner considers that the avoidance, postponement or reduction of liability for tax was the sole or a main purpose of the transaction, operation or scheme, the Commissioner shall determine the liability for any tax and the extent of such liability as if the transaction, operation or scheme had not been concluded or carried out, or in such manner as he or she considers appropriate for preventing or limiting such avoidance, postponement or reduction.

94 Transactions between associates, employers and employees

(1) In any transaction between associates or between persons who are in an employer-employee relationship, the Commissioner may distribute, apportion or allocate income, deductions or tax credits between the associates or persons as he or she considers necessary to reflect the taxable income that would have accrued to them in an arm's length transaction.

(2) The Commissioner may adjust the income accruing from any transfer or licence of intangible property between associates or persons in an employer-employee relationship so that it is commensurate with the income attributable to the property.

(3) In making any adjustment under subsections (1) and (2), the Commissioner may re-characterise the source of income and the nature of any payment or loss as revenue, capital or otherwise.

95 Tax clearance certificate required for certain licences and registrations

(1) In this section—

"licensing authority" means—

(a) in respect of a public service vehicle, the Commissioner of Road Transport referred to in section 3 of the Road Motor Transportation Act [*Chapter 13:15*] (Act No. 1 of 1997) or any person acting on his or her behalf in terms of that Act;

(b) in respect of a miner, the appropriate mining commissioner as defined in the Mines and Minerals Act [*Chapter 21:05*], or the Secretary responsible for mines;

(c) in respect of a trade or business required to be licensed in terms of the Shop Licences Act [*Chapter 14:17*], the appropriate licensing authority as defined in that Act;

(d) in respect of a person who owns, conducts or operates a designated tourist facility as defined in the Tourism Act [*Chapter 14:20*] or who provides or assists in providing any service which is a designated tourist facility, the appropriate licensing officer as defined in that Act;

"public service vehicle" means a motor vehicle for whose operation an operator's licence is required in terms of the Road Motor Transportation Act [*Chapter 13:15*] (Act No. 1 of 1997).

(2) A licensing authority shall not issue or renew—

(a) an operator's licence for the operation of a public service vehicle; or

(b) a certificate of registration for a mining location under the Mines and Minerals Act [*Chapter 21:05*]; or

(c) a licence in respect of any trade or business in terms of the Shop Licences Act [*Chapter 14:17*]; or

(d) a licence to any person who owns, conducts or operates a designated tourist facility as defined in the Tourism Act [*Chapter 14:20*] or who provides or assists in providing any service which is such a designated tourist facility;

unless the person to whom, or in whose name, the licence or certificate is issued produces to the licensing authority a valid tax clearance certificate.

(3) A registrar of companies appointed in terms of the Companies Act [*Chapter 24:03*] shall not register a company under the Companies Act [*Chapter 24:03*] or incorporate a private business corporation under the Private Business Corporations Act [*Chapter 24:11*] unless the person applying for registration or incorporation produces to the registrar a valid tax clearance certificate stating that a public officer has been appointed for the proposed company or private business corporation in accordance with this Act.

(4) A licence issued or registration effected in contravention of this section shall be void.

CHAPTER X

RETURNS AND ASSESSMENTS

PART I

RETURNS

96 Filing of returns

(1) Subject to this Part, every taxpayer shall furnish a return of income for each year of assessment not later than four months after the end of that year of assessment.

(2) A return shall be in the prescribed form or in a form approved by the Commissioner, shall state the information required, and shall be furnished in the manner determined by the Commissioner.

(3) Subject to subsection (5), a return shall be signed by the taxpayer and include a declaration that the return is complete and accurate:

Provided that, where the taxpayer is a person under a legal disability, the return and declaration shall be signed by the taxpayer's legal representative.

(4) A taxpayer carrying on business shall furnish, together with his or her return, any financial statements and supporting schedules that the Commissioner may reasonably require.

(5) Any person signing a return shall be deemed to be cognisant of all statements made in it.

(6) A return furnished or purporting to be furnished or signed by or on behalf of any person for the purposes of this Act shall be deemed to be duly furnished and signed by that person unless it is proved that the return was not so furnished or signed.

(7) If a person fails to furnish a return in terms of this section, the Commissioner may appoint a person to furnish a return on that person's behalf, and the return so furnished shall, for the purposes of this Act, be the return of the person liable to furnish it.

(8) If the Commissioner thinks it necessary, he or she may require a person to furnish fuller or further returns in respect of any matter of which a return is required or prescribed by this Act.

(9) If a person is unable to furnish a return when called upon to do so under this Act, the Commissioner may accept a return of estimated income for assessment or may make an estimated assessment in terms of section 112 without imposing any additional tax, if he or she is satisfied that there is no intent to defraud the revenue or to postpone payment of tax, and any such estimated assessment shall be adjusted by the Commissioner when a return of actual income is furnished.

(10) Where, during a year of assessment—

(a) a taxpayer has died; or

(b) a taxpayer has become insolvent or is being wound up; or

(c) a taxpayer is about to leave Zimbabwe indefinitely; or

(d) the Commissioner otherwise considers it appropriate;

the Commissioner may, by notice in writing, require the taxpayer or the taxpayer's trustee, as the case may be, to furnish, by the date specified in the notice, a return for a period of less than twelve months.

97 Partnership returns

(1) Persons carrying on business in partnership shall, for each year of assessment, furnish a joint return of income as partners in their partnership.

(2) A return furnished in terms of subsection (1) shall state such particulars as may be required and, notwithstanding anything to the contrary in the partners' partnership agreement, shall be accompanied by such accounts as are necessary to show the result of the operations of the partnership for the year of assessment concerned.

(3) Each partner shall be separately and individually liable for the rendering of the joint return in terms of subsection (1), but the partners shall be liable to tax only in their separate individual capacities.

(4) Where because of the death of a partner accounts are prepared in order to show the results of the partnership business from its last accounting date to the date of the partner's death, the surviving partners need not include their shares of the income as shown by such accounts in any return other than that furnished for the year of assessment in which the first anniversary of the accounting date before the date of the partner's death falls, and their shares of income shall be deemed to accrue accordingly.

98 Returns by employers and persons carrying on business

(1) If the Commissioner so requires, a person shall furnish the Commissioner with returns in respect of all or any class of his or her employees, showing the employment income of each such employee.

(2) If the Commissioner so requires, a person carrying on business in Zimbabwe shall furnish the Commissioner with returns showing—

(a) all payments made to any person in respect of any share or interest in the business; and

(b) all money received by him or her from any person on deposit for any fixed time or period, with or without interest, and any interest received or paid by him or her; and

(c) any other information he or she may have regarding the income accruing to himself or herself or any other person that may be prescribed or that may be required by the Commissioner.

(3) A return referred to in subsection (1) or (2) shall be furnished in such form and at such times as may be prescribed or as the Commissioner may reasonably require.

99 Returns as to shareholdings and dividends

(1) If the Commissioner so requires, a person who furnishes a return shall attach to it a statement showing fully—

(a) the number and class of shares in any company which are registered in the name of the taxpayer for whom the return is furnished;

(b) the gross dividends that accrued to the taxpayer for whom the return is furnished and the amounts of tax, if any, deducted from them;

(c) if the taxpayer for whom the return is furnished is not entitled to retain any dividends that accrued, the name and address of the person who is entitled to receive and retain them;

(d) the number and class of shares in any company which are not registered in the name of the taxpayer for whom the return is rendered but in respect of which the taxpayer obtains dividends;

(e) the gross amount of the dividends and the amount of tax, if any, deducted from them, that were obtained by the taxpayer for whom the return is rendered from the person in whose name the shares are registered.

(2) Any person who has been required by the Commissioner to attach a statement to his or her return in terms of subsection (1) and who without just cause—

(a) fails or refuses to attach such a statement to his return; or

(b) attaches a statement containing incorrect information;

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

Provided that, if it is proved that the person's conduct was wilful, he or she shall be liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

100 Returns in respect of income of minor children

Every parent shall include in his or her return—

(a) any income that accrued to or was deemed to have accrued to any of his or her minor children, either directly or indirectly, from himself or herself or from his or her spouse, together with such particulars in regard to such income as the Commissioner may require; and

(b) any income deemed to be his or hers in terms of this Act.

101 Further returns and information

(1) In addition to the returns specified in this Part, a person, whether a taxpayer or not, shall, if the Commissioner so requires, furnish such further or other returns or information as to any matter whatsoever as the Commissioner may reasonably require for the purposes of this Act.

(2) A return or information shall be furnished in terms of subsection (1) in such form and at such times as may be prescribed or as the Commissioner may reasonably require.

(3) Any person to whom the Commissioner has sent a form of return shall complete it in accordance with the requirements of the Commissioner and shall return it to the Commissioner at such time and place as the Commissioner may direct.

102 Requirements for accounts submitted in support of returns

(1) The Commissioner may, where a person—

(a) has previously furnished a return required to be furnished under this Act which is incorrect; or

(b) furnishes a return required to be furnished under this Act which the Commissioner has reason to believe is incorrect;

require the person furnishing the return to furnish (together with the return or within a specified time after the return is furnished, as the case may be) all balance sheets, statements of assets and liabilities, trading accounts, profit and loss accounts and other accounts of whatever nature, that are necessary to support the information contained in the return, and all such accounts shall be authenticated by the signature of the person furnishing the return.

(2) If any person submits in support of any return furnished by him or her under this Act a document referred to in subsection (1) that was prepared by someone else, he or she shall submit a certificate by that other person stating to what extent the other person has examined the books of account and documents from which the document was prepared or derived.

(3) A person who has prepared a document referred to in subsection (2) for someone else shall furnish the other person with the certificate required under that subsection.

(4) Any person who, without just cause, contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

103 Documents to be furnished by companies

(1) Every company shall file with the Commissioner—

(a) a copy of its memorandum and articles of association within thirty days after its incorporation or registration under any law; and

(b) a copy of every amendment to its memorandum or articles of association, within thirty days after the amendment was made.

(2) Where a company, without just cause, contravenes subsection (1) —

(a) it shall be guilty of an offence and liable to a fine not exceeding level four; and

(b) every director of the company shall be guilty of an offence and be liable to a fine of level four or imprisonment for a period not exceeding three months or to both such fine and such imprisonment, unless any director concerned proves that he or she took no part in the conduct for which the company is criminally liable under this section.

104 Extension of time to furnish return or information

(1) A person required to furnish a return or information under this Part may apply in writing to the Commissioner for an extension of time within which to furnish it.

(2) An application under subsection (1) shall be made not later than the date on which the return or information was due to be furnished.

(3) If the Commissioner is satisfied that there is just cause for an application under subsection (1), the Commissioner may, by notice in writing, grant the applicant an extension of time, not exceeding ninety days, within which to furnish the return or information concerned.

(4) The granting of an extension of time under this section shall not alter the due date for payment of tax under this Act.

105 Case where return not required

Notwithstanding any other provision of this Part, unless he or she is specifically called upon by the Commissioner to do so, a taxpayer whose taxable income consists solely of—

(a) employment income from which employees' tax has been deducted by an employer in accordance with this Act;

(b) any amount subject to a final withholding tax or to a presumptive tax;

need not furnish a return in terms of this Part.

106 Additional tax payable for default in rendering return

If a taxpayer, without just cause—

(a) fails to render a return for any year of assessment; or

(b) renders a return for a year of assessment after the expiry of the period within which it should have been rendered; or

(c) fails to complete a form of return sent by the Commissioner and to return it at such time and place as the Commissioner directs in terms of section 101 (3);

he or she shall be required to pay, in addition to the tax chargeable on his or her taxable income—

(d) an amount equal to the tax chargeable on his or her taxable income for that year of assessment; or

(e) an amount equal to the maximum fine prescribed in section 209(a) for failing to submit a return;

whichever is the greater, and such additional amount shall be deemed for the purposes of this Act to form part of the tax properly chargeable on his or her taxable income:

Provided that the Commissioner shall itemise such additional amount separately in the notice of assessment given to the taxpayer concerned, together with a note of the reason why such additional amount is being charged.

107 Additional tax payable for rendering incorrect return

(1) If a taxpayer, without just cause, omits from a return any amount which ought to have been included in it, he or she shall be required to pay, in addition to the tax chargeable on his or her taxable income for the year of assessment concerned, an amount—

(a) equal to the difference between the tax calculated on the taxable income returned by him or her and the tax properly chargeable on his or her taxable income as finally determined after including the omitted amount, if—

(i) the amount omitted exceeds the amount prescribed in the Ninth Schedule ("Prescription of Various Amounts"); or

(ii) the taxpayer has at any time within a period of three years prior to making the return omitted from any return any amount which ought to have been included in it;

or

(b) in any case other than that described in paragraph (a)(i) or (ii), equal to twenty-five *per centum* of the difference between the tax calculated on the taxable income returned by him or her and the tax properly chargeable on his or her taxable income as finally determined after including the omitted amount (or, if the amount so calculated is less than the amount prescribed for the purposes of this paragraph in the Ninth Schedule ("Prescription of Various Amounts"), the amount so prescribed).

(2) If a taxpayer, in determining his or her taxable income, deducts an amount which is not permitted to be deducted under this Act, or shows as an expenditure or loss an amount which he or she has not in fact expended or lost, the taxpayer shall be deemed for the purposes of subsection (1) to have omitted such amount from his or her return.

(3) If a taxpayer, without just cause, makes an incorrect statement in a return which results or, if accepted, would result in the calculation of tax at an amount which is less than the tax properly chargeable, he or she shall be required to pay, in addition to the tax chargeable on his or her taxable income for the year of assessment concerned, an amount—

(a) equal to the difference between the tax calculated in accordance with the return made by him or her and the tax properly chargeable if the incorrect statement had not been made, in any of the following cases—

(i) the incorrect statement is an understatement by more than ten *per centum* of the actual amount supposed to have been included in the return; or

(ii) the tax properly chargeable exceeds the amount prescribed in the Ninth Schedule ("Prescription of Various Amounts"); or

(iii) the taxpayer has at any time within a period of three years prior to making the return made an incorrect statement in a return which resulted or would have resulted in the calculation of tax at an amount which is less than the tax properly chargeable;

or

(b) in any case other than that described in paragraph (a)(i), (ii)or (iii), equal to twenty-five *per centum* of the tax properly chargeable (or, if the amount so calculated is less than the amount prescribed for the purposes of this paragraph in the Ninth Schedule ("Prescription of Various Amounts"), the amount so prescribed).

(4) If a taxpayer, without just cause, makes any statement which results or, if accepted, would result in the granting of a tax credit exceeding the tax credit to which he or she is entitled, the taxpayer shall be deemed for the purposes of subsection (3) to have made an incorrect statement.

(5) If a taxpayer fails, without just cause, to disclose in a return any facts which should have been disclosed and the failure results in the calculation of tax at an amount which is less than the tax properly chargeable, he or she shall be required to pay, in addition to the tax chargeable on his or her taxable income for the year of assessment concerned, an amount—

(a) equal to the difference between the tax calculated in accordance with the return made by him or her and the tax properly chargeable if the disclosure had been made, in either of the following cases—

(i) the tax properly chargeable exceeds the amount prescribed in the Ninth Schedule ("Prescription of Various Amounts"); or

(ii) the taxpayer has at any time within a period of three years prior to making the return failed to make any disclosure which resulted in the calculation of tax at an amount which was less than the tax properly chargeable;

or

(b) in any case other than that described in paragraph (a)(i) or (ii), equal to twenty-five *per centum* of the tax properly chargeable (or, if the amount so calculated is less than the amount prescribed for the purposes of this paragraph in the Ninth Schedule ("Prescription of Various Amounts"), the amount so prescribed).

(6) The additional amounts of tax chargeable under this section shall be deemed for the purposes of this Act to form part of the tax properly chargeable on a taxpayer's taxable income:

Provided that the Commissioner shall itemise any such additional amount separately in the notice of assessment given to the taxpayer concerned, together with a note of the reason why such additional amount is being charged.

108 Application of sections 106 and 107 to cases where tax is estimated or agreed

Sections 106 and 107 shall apply, with any necessary changes, to cases where a taxpayer's taxable income is estimated or agreed upon by the Commissioner in terms of section 112.

109 General provisions as to penalties under Chapter X and waiver or compromise thereof

(1) The powers conferred upon the Commissioner by sections 120, 122 and 123 shall be in addition to his or her right under this Act to take proceedings against a taxpayer to recover any amounts charged by way of additional tax under this Part for evading or avoiding assessment or the payment of tax.

(2) The exercise of the Commissioner's powers under this Part shall not affect a taxpayer's liability to prosecution for any offence he or she may have committed under this Act.

(3) If the taxpayer proves to the satisfaction of the Commissioner that—

(a) a taxpayer's default in rendering a return was not due to any intent either to defraud the revenue or to postpone the payment of any tax; or

(b) any omission from a return, or incorrect statement or failure to disclose facts in a return, was not due to any intent on the taxpayer's part to evade any tax;

and that, in either case, the default or omission is not attributable to gross negligence on the part of the taxpayer, the Commissioner may remit all or part of any additional tax for which the taxpayer is liable under this Part.

(4) The Commissioner may, either before or after an assessment is issued, agree with a taxpayer on the additional amount to be charged under this Part, and the amount so agreed shall not be subject to objection or appeal:

Provided that, if the Commissioner subsequently discovers that when the additional amount was agreed the taxpayer withheld information which, had it been known to the Commissioner, would have resulted in him or her not agreeing to that amount, the Commissioner may increase the agreed amount as he or she considers appropriate.

PART II

ASSESSMENTS

110 Responsibility for assessments, notice of assessment and assessment of partners

(1) Subject to section 111, all assessments under this Act shall be made by the Commissioner.

(2) The Commissioner shall cause notice of assessment and of the amount of tax payable, where tax is payable, to be given to the taxpayer assessed, and in the notice shall inform the

taxpayer that any objection to the assessment must be sent to the Commissioner within thirty days after the taxpayer received the notice.

(3) Notwithstanding section 97, separate assessments shall be made upon partners.

(4) The Commissioner shall cause complete copies of all notices of assessment to be filed in such of the offices of the offices of the Zimbabwe Revenue Authority as the Commissioner may designate:

Provided that the Commissioner may destroy any such copy six years after the original notice of assessment was issued.

(5) Notices of assessment shall not be open to public inspection, but every taxpayer shall be entitled to a copy, certified by the Commissioner, of any notice of assessment sent to him or her.

111 Self-assessment

(1) In this section—

"specified taxpayer" means a taxpayer of a class specified in a notice published under subsection (2);

"specified year of assessment" means the year of assessment to which a notice published under subsection (2) relates.

(2) The Commissioner may publish a public notice calling upon taxpayers of a class specified in the notice to furnish self-assessment returns in accordance with this section for any year of assessment.

(3) Every specified taxpayer shall, not later than four months after the end of the specified year of assessment—

(a) furnish the Commissioner with—

(i) a self-assessment return in the prescribed form or in a form approved by the Commissioner; and

(ii) any documents specified in the self-assessment return or required by Part I;

reflecting such information as may be required for the calculation of tax payable by the taxpayer in respect of that year; and

(b) calculate the amount of tax payable by the taxpayer and pay it to the Commissioner, or calculate the amount of any refund due to the taxpayer.

(4) Where a specified taxpayer has furnished a self-assessment return accompanied by the relevant documents for a year of assessment—

(a) the taxpayer is deemed to have made an assessment of his or her taxable income and the tax payable on that income for that year; and

(b) the taxpayer's return shall be treated as an assessment served on the taxpayer by the Commissioner on the due date for the furnishing of the return or on the actual date of furnishing the return, whichever is the later.

(5) Notwithstanding subsection (3), the Commissioner may make an assessment under Part I on a taxpayer in any case in which the Commissioner considers it necessary, but where he or she does so he or she shall include with the assessment a statement of his or her reasons for doing so.

112 Estimated assessments

(1) Where—

(a) a taxpayer has failed to furnish a return or information under this Act; or

(b) the Commissioner is not satisfied with a return or information which a taxpayer has furnished under this Act; or

(c) the Commissioner has reason to believe that a taxpayer is about to leave Zimbabwe and will not thereafter furnish a return or provide information under this Act; or

(d) for any other reason, the Commission has reason to believe that the assessment of a taxpayer's liability for tax or the collection of tax from a taxpayer is in jeopardy;

the Commissioner may make an assessment in which the taxpayer's taxable income or assessed loss is wholly or partly estimated, and shall notify the taxpayer of the assessment.

(2) A taxpayer who has been notified of an estimated assessment shall be liable to pay any tax so assessed as if it had been assessed on the basis of a return submitted by the taxpayer under this Act.

(3) If the Commissioner is satisfied that a person is unable for any reason to furnish an accurate return of his or her income, the Commissioner may agree with the person what should be the amount of his or her taxable income or assessed loss for the purposes of this Act.

(4) An amount agreed in terms of subsection (3) shall not be subject to objection or appeal:

Provided that if subsequently the Commissioner considers that the person withheld information which, had it been known to the Commissioner, would have resulted in him or her agreeing to a different amount or not agreeing to any amount, the Commissioner may alter the amount or withdraw the agreement as appropriate.

PART III

AMENDED ASSESSMENTS

113 Additional assessments

(1) If the Commissioner, having made an assessment on a taxpayer, later considers that—

(a) any taxable income that should have been charged to tax has not been charged to tax; or

(b) in the determination of an assessed loss—

(i) any income that should have been taken into account has not been taken into account; or

(ii) an amount has been allowed as a deduction from income which should not have been allowed; or

(c) any tax credit should not have been granted;

the Commissioner shall adjust the assessment accordingly and, if any tax is due, shall notify the taxpayer of the reasons for the adjustment and call upon the taxpayer to pay the correct amount of tax:

Provided that—

(i) no such adjustment or call upon the taxpayer shall be made if the assessment was made in accordance with the practice generally prevailing when the assessment was made;

(ii) subject to proviso (i), no such adjustment or call upon the taxpayer shall be made after six years from the end of the relevant year of assessment, unless the Commissioner is satisfied that the adjustment or call is necessary as a result of fraud, misrepresentation or wilful non-disclosure of facts, in which case the adjustment or call may be made at any time thereafter;

(iii) the powers conferred by this subsection shall not be construed so as to permit the Commissioner to vary any decision made by him or her in terms of this Act pursuant to an objection lodged by the taxpayer.

(2) A taxpayer who has been called upon to pay any tax under subsection (1) shall be liable to pay the tax as if it had been assessed on the basis of a return submitted by the taxpayer under this Act.

114 Reduced assessments and refunds

(1) If it is proved to the satisfaction of the Commissioner that a person has been charged with tax in excess of the amount properly chargeable under this Act, the Commissioner shall issue an amended assessment reducing the tax so charged and, if necessary, authorise a refund to the person of any tax overpaid:

Provided that—

(i) any such amended assessment shall not be subject to objection or appeal;

(ii) any tax payable in accordance with the practice generally prevailing and accepted by the person when the original assessment was made shall be deemed to have been properly chargeable;

(iii) the Commissioner shall not authorise a reduction or refund under this subsection unless a claim for it is made within six years after the date of the original notice of assessment.

(2) Where a claim is made in respect of additional tax charged in terms of section 112, the claim shall be restricted to that additional tax.

115 Amended assessments of loss

If it is proved to the satisfaction of the Commissioner that an assessed loss determined in favour of a person for a year of assessment is less than the amount that should have been determined under this Act, the Commissioner shall issue an amended assessment increasing the assessed loss:

Provided that—

(i) any such amended assessment shall not be subject to objection or appeal;

(ii) a determination of assessed loss made in accordance with the practice generally prevailing and accepted by the person when the original assessment was made shall be deemed to have been properly determined;

(iii) the Commissioner shall not increase an assessed loss under this section unless a claim for it is made within six years after the date of the original notice of assessment.

116 Evidence of assessments

A document signed by the Commissioner and purporting to be a copy of or an extract from a notice of assessment shall, on its production by any person in a court—

(a) be conclusive evidence of the making of the assessment; and

(b) except in proceedings on appeal against the assessment, be conclusive proof of the correctness of the amount and all the particulars of the assessment appearing in the document.

CHAPTER XI

COLLECTION, RECOVERY AND REFUNDS OF TAX

PART I

GENERAL PROVISIONS

117 When and how tax must be paid

(1) Subject to this section, tax shall become due and payable in terms of this Act—

(a) on or before the date specified in terms of this Act for the particular tax concerned; or

(b) where there is no date such as is referred to in paragraph (a), on or before the date notified by the Commissioner to the taxpayer concerned; or

(c) where there is no date such as is referred to in paragraph (a) or (b), not later than twenty-one days after the taxpayer concerned received the notice of assessment.

(2) Where a taxpayer has furnished a self-assessment return in terms of section 110, any tax payable shall be paid on or before the date by which the return is to be furnished.

(3) Tax shall be paid in terms of this Act to the Commissioner—

(a) at such office of the Zimbabwe Revenue Authority as may be prescribed or as the Commissioner may specify; or

(b) where no office of the Zimbabwe Revenue Authority has been prescribed or specified in terms of paragraph (a), at the nearest such office to the taxpayer concerned:

Provided that this subsection shall not be construed as depriving a taxpayer of the right to pay tax through the post.

(4) Tax may be paid in one sum or in instalments of equal or varying amounts as the Commissioner may determine, having regard to the circumstances of the case.

(5) Upon written application by a taxpayer and for good cause shown, the Commissioner may extend the time for payment of tax beyond the date on which it is required to be paid under this section or make alternative arrangements for payment of the tax.

118 Persons by whom tax is payable

(1) Subject to this Act, tax on any income shall be payable—

(a) by a representative taxpayer, where he or she is entitled to the income in a representative capacity, or where he or she manages, receives, disposes, remits, pays or controls the income in a representative capacity;

(b) by the person to whom the income accrues or is deemed to accrue, in any other case.

(2) A taxpayer who pays tax on income that he or she holds in trust for another person may recover from that other person so much of the tax he or she has paid as is attributable to the income so held.

119 Liability of associates and partnerships for payment of tax

(1) If a person by whom tax is payable transfers or has transferred any property to an associate with the intention of avoiding recovery of the tax, the associate shall be chargeable with the tax up to an amount equal to the fair market value of the property—

(a) when it was so transferred; or

(b) when the associate is charged with the tax;

whichever value is the greater.

(2) If it is proved that—

(a) after any tax became payable by him or her, or within one year before it became due and payable, a person transferred property to an associate; and

(b) the transfer was not one which is normally effected between associates in the same financial circumstances as that person and the associate concerned;

it shall be presumed, unless the contrary is proved, that the person transferred the property with the intention of avoiding recovery of the tax.

(3) If any tax due and payable by a taxpayer remains outstanding after his or her property in Zimbabwe has been sold in execution, and the tax is referable to income derived from a partnership business in which the taxpayer is or was a partner, the partnership shall be chargeable with the outstanding tax, up to the value of the taxpayer's interest in the property of the partnership.

(4) The amount of tax referable in terms of subsection (3) shall be the proportion of the total tax due by the partner determined in accordance with the ratio that the partner's taxable income accruing from the partnership business bears to his or her total taxable income.

(5) The tax with which a partnership is chargeable in terms of subsection (3) shall become due and payable by it on such date as the Commissioner may specify in a notification given to it for that purpose, and the partner by whom the tax was initially due shall be released from the payment of so much of the outstanding tax as is recovered by the Commissioner in pursuance of that notification.

(6) Any tax that is payable by a person in respect of income accruing to him or her through a trust may be recovered by the Commissioner from the property by which the income was produced.

120 Appointment of agent of taxpayer

(1) In this section—

"agent" means a person declared to be an agent under subsection (2), and "principal" shall be construed accordingly;

"person" includes—

(a) a bank, building society or savings bank; and

(b) a partnership; and

(c) any officer in the Public Service.

(2) Subject to this section, the Commissioner may declare any person to be the agent of any other person for the purposes of collecting and recovering tax due and payable by that other person.

(3) A declaration under subsection (2) shall be in writing and addressed to the agent.

(4) To enable the Commissioner to decide whether to make a declaration under subsection (2), the Commissioner may require any person to give him or her information concerning any money or other property which the Commissioner believes that person may hold for or owe to any other person.

(5) Notwithstanding any other enactment, an agent may be required to pay any tax due by his or her principal from—

(a) money in any account; or

(b) any other money, including employment income or pension money; or

(c) the proceeds of any property;

which the agent holds for or owes to the principal.

(6) Any amount which an agent pays to the Commissioner in compliance with a requirement under subsection (5) shall be deemed, in any proceedings between the agent and his or her principal, to have been lawfully paid to the principal.

(7) The Commissioner shall have the same rights and remedies in respect of money and other property referred to in subsection (5) as he or she has in respect of the money and property of the agent's principal.

121 Security for payment of tax

(1) Where the Commissioner has reason to believe that any person intends carrying on business in Zimbabwe for a limited period only, the Commissioner may require the person to give security, by bond or deposit or otherwise, to the satisfaction of the Commissioner, for the due return of and payment of tax on the income accruing to that person from the business.

(2) Any person who, without just cause, fails or refuses to give security when required to do so in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

122 Proceedings for recovery of tax

(1) When any tax becomes due and payable it shall be a debt due to the State and may be sued for and recovered by the Commissioner by proceedings in any court of competent jurisdiction.

(2) Notwithstanding anything contained in the Magistrates Court Act [*Chapter 7:10*], any amount whatever that is due and payable under this Act may be recoverable by proceedings in the court of the magistrate having jurisdiction in respect of the person by whom the amount is payable.

(3) Proceedings in a court for the recovery of tax shall be deemed to be proceedings for the recovery of a debt validly acknowledged in writing by the debtor.

(4) In any proceedings for the recovery of tax it shall not be competent for the defendant to question the correctness of any assessment, notwithstanding that an objection or appeal may have been lodged in regard to it.

123 Expedited procedure for recovery of outstanding tax

Notwithstanding any other provision of this Act, the Commissioner may recover any outstanding tax in accordance with the procedure set out in Part IIIA of the Revenue Authority Act.

124 Recovery by employers of employees' tax not withheld

(1) Where an employer has failed to withhold any employees' tax which he or she was required to withhold and subsequently pays the tax in terms of this Act, he or she may recover the amount of the tax from the employee from whose remuneration it should have been withheld.

(2) Until an employee pays to his or her employer any amount which is due to the employer in terms of subsection (1), the employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

125 Minimum amounts of tax payable

(1) Notwithstanding any other provision of this Act, no tax shall be payable by a person for a year of assessment if the tax payable or, if he or she is liable to pay two or more taxes, the aggregate amount of those taxes payable for that year is less than the amount prescribed in the Ninth Schedule ("Prescription of Various Amounts").

(2) Notwithstanding anything contained in this Act, no further income tax shall be payable by an individual for a year of assessment if the income tax payable for that year exceeds by less than five dollars, or such other amount as may be prescribed, the amount credited in payment of that tax in terms of paragraph 18 **("**Crediting of employees' tax**")** of the Eleventh Schedule ("Employees' Tax").

126 Minimum amounts of tax refundable

(1) Where tax withheld under this Act exceeds the taxpayer's assessed liability for the tax, the Commissioner may apply the excess in reduction of any other tax due from the taxpayer, and shall authorise any further excess to be refunded to the taxpayer:

Provided that an excess of less than the amount prescribed in the Ninth Schedule ("Prescription of Various Amounts") shall not be refunded.

(2) The Commissioner shall not authorise a refund unless the taxpayer claims it within six years from the date on which the tax was paid.

PART II

PROVISIONAL TAX : PAYMENT OF TAX IN INSTALMENTS

127 Interpretation in Part II of Chapter XI

In this Part—

"provisional tax", in relation to any person, means an amount which he or she estimates will be the amount of tax for which he or she will be liable after excluding any employees' tax which has been withheld in terms of this Act from any remuneration paid or payable to him or her for the relevant year of assessment;

"provisional taxpayer" means a person liable to pay provisional tax;

"quarterly payment date" means the date fixed in terms of section 130 as the date on or before which an instalment of provisional tax shall be paid;

"relevant year of assessment", in relation to provisional tax, means the year of assessment in which the income in respect of which the tax is payable accrued;

"tax liable to be paid", means any tax payable for the relevant year of assessment.

128 Persons liable to pay provisional tax

(1) Subject to subsections (2) and (3), where a person's taxable income in a year of assessment includes an amount in respect of which employees' tax is not withheld in terms of this Act, he or she shall pay provisional tax on that amount in four quarterly instalments in accordance with this Part.

(2) The following persons who would otherwise be liable to pay provisional tax under subsection (1) shall pay tax in the manner notified by the Commissioner under section 117—

(a) persons liable for property or insurance commission tax in terms of section 143, in respect of the income on which that tax is imposed; and

(b) any other class of taxpayer that the Commissioner may, by public notice, specify for the purposes of this subsection.

(3) A person shall not be required to pay provisional tax if his or her taxable income, apart from income in respect of which employees' tax is required to be withheld in terms of this Act, does not exceed the amount prescribed in the Ninth Schedule ("Prescription of Various Amounts") per quarterly payment date.

129 Provisional taxpayers to provide returns and estimates of income

(1) At such times as may be specified by the Commissioner by public notice, every provisional taxpayer shall submit to the Commissioner—

(a) a return in the form prescribed or approved by the Commissioner; and

(b) an estimate of the total taxable income which will accrue to the provisional taxpayer in the year of assessment for which provisional tax is or may be payable by the taxpayer.

(2) If a provisional taxpayer fails to submit a return or estimate as required by subsection (1), the Commissioner may estimate the taxpayer's taxable income, and the Commissioner's estimate shall be final and conclusive.

(3) The Commissioner may call upon a provisional taxpayer to justify any estimate made by him or her in terms of subsection (1), or to furnish particulars of his or her income and expenditure or any other particulars that may be required, and, if the Commissioner is dissatisfied with the taxpayer's estimate, he or she may increase it to such amount as the Commissioner considers reasonable, and the estimate as increased shall be final and conclusive.

(4) Any decision of the Commissioner-General in the exercise of his or her discretion under subsection (2) or (3) shall be subject to objection and appeal.

130 Payment of provisional tax

(1) Subject to subsection (2), provisional taxpayers shall pay provisional tax in four instalments as follows—

(a) the first quarterly instalment, of ten *per centum* of the provisional tax payable, shall be paid on or before the 25th March in the relevant year of assessment; and

(b) the second quarterly instalment, of twenty-five *per centum* of the provisional tax payable, shall be paid on or before the 25th June in the relevant year of assessment; and

(c) the third quarterly instalment, of thirty *per centum* of the provisional tax payable shall be paid on or before the 25th September in the relevant year of assessment; and

(e) the fourth quarterly instalment, of thirty-five *per centum* of the provisional tax payable, shall be paid on or before the 20th December in the relevant year of assessment.

(2) The Commissioner may, by written notice to the taxpayer concerned, fix different dates from those specified in subsection (1) as a provisional taxpayer's quarterly payment dates, and this section shall apply to that taxpayer accordingly.

(3) Section 118 (relating to persons by whom tax is payable) applies to the payment of provisional tax in the same way as it applies to the payment of tax.

131 Set-off of provisional tax against other taxes due by taxpayer

As soon as practicable after the tax payable by a person has been determined, the Commissioner shall set off any amount of provisional tax the person may have paid against, successively—

(a) the income tax the person is liable to pay; and

(b) any other tax or amount which is due and payable to the Commissioner by the person;

and shall refund to the person any amount of provisional tax not so credited.

132 Interest on unpaid provisional tax

(1) Subject to this section, section 207 (relating to interest on unpaid tax) applies, with any necessary changes, to interest payable on any amount of provisional tax remaining unpaid after the quarterly payment date on or before which the instalment was required to be paid.

(2) For the purposes of subsection (1), if the amount of a quarterly instalment of tax paid by a provisional taxpayer is less than the appropriate percentage of the amount of tax liable to be paid, the deficit shall be deemed to be an amount of provisional tax remaining unpaid by

the provisional taxpayer after the quarterly payment date on which the instalment was required to be paid:

Provided that the Commissioner shall waive any interest payable on the deficit where the taxpayer succeeded in forecasting his or her taxable income within a ten *per centum* margin of error.

(3) If the Commissioner is satisfied that a person required to pay provisional tax under this section—

(a) was unable, through special circumstances, to pay the whole or part of an instalment of provisional tax payable by him or her; or

(b) underestimated the amount of the tax liable to be paid by him through an increase in the rates of tax or for any other sufficient cause;

the Commissioner may waive the whole or part of any interest payable by the person in terms of this section.

CHAPTER XII

WITHHOLDING OF TAX AT SOURCE

PART I

PRELIMINARY

133 Interpretation in Chapter XII

In this Chapter—

"payee" means a person who is paid, or who is entitled to be paid, an amount from which tax is required to be withheld by a withholding agent in terms of this Chapter;

"withholding agent" means a person required to withhold tax in terms of this Chapter;

"withholding tax certificate" means a certificate provided in terms of section 151.

134 When amount deemed to have been paid to payee

For the purposes of this Chapter, an amount shall be deemed to be paid to a payee when it is credited to the payee's account or so dealt with that the payee becomes entitled to it.

PART II

WITHHOLDING OF EMPLOYEES' TAX

135 Employers to withhold employees' tax

(1) Employees' tax shall be payable in terms of the Eleventh Schedule in respect of the employment income liable to employees' tax as defined in paragraph 1 of that Schedule paid or payable in any year of assessment to an individual who is an employee as defined in that paragraph.

(2) An employer's obligation to withhold employees' tax in terms of subsection (1) shall not be limited or extinguished—

(a) because the employer has a right or is under an obligation to deduct and withhold any other amount from the employment income of the employees concerned; or

(b) because of any enactment providing that the employment income of the employees concerned shall not be reduced or be subject to attachment.

(3) Payments in respect of the amounts withheld under paragraph 3(1) of the Eleventh Schedule shall be made in accordance with that Schedule at such place as may be notified by the Commissioner.

136 Finality of tax for non-resident employees

Where employees' tax is withheld in terms of this Part from employment income payable to a payee who is a non-resident employee, the tax withheld shall be a final tax and—

(a) no further tax liability shall be imposed upon the payee in respect of it; and

(b) that income shall not be aggregated with the payee's other income for the purpose of ascertaining his or her taxable income.

PART III

WITHHOLDING OF OTHER TAXES

137 Payments to contractors

(1) In this section—

"consumer contract" means a contract, such as that for the sale of goods or services in a shop in the ordinary course of the business of the shop, in which the seller or supplier is dealing in the course of business and the purchaser or user is not, but does not include a contract for the sale, letting or hire of immovable property;

"contract" means a contract in terms of which the State or a quasi-Governmental institution or registered taxpayer is obliged to pay one or more persons an amount or amounts totalling or aggregating an amount equivalent to or exceeding the amount specified in the Ninth Schedule ("Prescription of Various Amounts"), but does not include—

(a) an agreement for the settlement of a delictual claim; or

(b) an employment contract; or

(c) a consumer contract;

"quasi-Governmental institution" means a person, whether corporate or unincorporated—

(a) established directly by or under an enactment for special purposes specified in that enactment; or

(b) wholly owned or controlled by the State that discharges statutory functions;

"registered taxpayer" means a person who is registered—

(a) as an employer in terms of paragraph 2 **("**Registration of employers**")** of the Eleventh Schedule ("Employees' Tax"); or

(b) as a taxpayer in the records of the Zimbabwe Revenue Authority, otherwise than as an employer; or

(c) as a registered operator in terms of the Value Added Tax Act [*Chapter 23:13*];

"withholding agent" means a person who is employed by the State or by a quasi-Governmental institution or registered taxpayer and who is responsible for paying a payee any amount due in terms of a contract;

(2) Subject to this section, unless a payee furnishes the withholding agent with a tax clearance certificate, the withholding agent shall withhold ten *per centum* of each amount payable to the payee under the contract concerned, and shall pay each amount so withheld to the Commissioner on or before the tenth day of the month following that in which the payment was made or within such further time as the Commissioner may allow under section 207(3).

(3) The Commissioner shall retain any amount remitted under subsection (2) until the income tax payable by the payee for the year of assessment concerned has been assessed, whereupon—

(a) the amount shall be allowed as a tax credit against the income tax payable by the payee; or

(b) where the amount exceeds the income tax payable by the payee, the Commissioner shall forthwith refund the excess to the payee.

(4) No action shall lie against the State or a quasi-Governmental institution, registered taxpayer or withholding agent in respect of the withholding of any amount in terms of this section, nor shall the withholding of the amount constitute a breach of the contract concerned.

(5) A person who concludes a contract on behalf of the State or a quasi-Governmental institution or registered taxpayer shall take all reasonable steps to ensure that the person with whom the contract is concluded is made aware of the provisions of this section:

Provided that a failure to comply with this subsection shall not—

(a) constitute a ground for cancelling the contract; or

(b) relieve a paying officer of his or her obligations under this section.

138 Non-residents' tax on fees and remittances

(1) In this section—

"allocable expenditure" means expenditure of a technical, managerial, administrative or consultative nature incurred outside Zimbabwe by a non-resident person in connection with the carrying on by him or her of a business within Zimbabwe;

"fees" means any amount payable for services of a technical, managerial, administrative or consultative nature, but does not include such an amount payable for—

(a) services rendered to an individual unconnected with his or her business affairs; or

(b) services rendered by a person in his or her capacity as an employee, other than a director, of the payer; or

(c) education or technical training; or

(d) the repair of goods outside Zimbabwe.

(2) Every—

(a) person who pays fees to a non-resident person; or

(b) non-resident person who remits any amount outside Zimbabwe in respect of allocable expenditure;

shall withhold non-residents' tax on fees and remittances from the fees or amount and shall pay the tax withheld to the Commissioner on or before the tenth day of the month following that in which the payment or remittance, as the case may be, was made or within such further time as the Commissioner may allow under section 207(3).

(3) Non-residents' tax on fees and remittances shall be withheld in terms of subsection (2) at the appropriate rates prescribed in the charging Act.

139 Shareholders' tax on dividends

(1) Subject to this section, a resident company that pays a dividend shall withhold shareholders' tax on dividends on the gross amount of the payment and shall pay the amount withheld to the Commissioner on or before the tenth day of the month following that in which the payment was made or within such further time as the Commissioner may allow.

(2) Shareholders' tax on dividends shall be withheld in terms of subsection (1) at the appropriate rates prescribed in the charging Act.

(3) For the purposes of this section, expenditure incurred by a company in servicing a debt contracted in connection with the production of income shall, to the extent that such debt causes the company to exceed a debt to equity ratio of three to one, be deemed to be a dividend.

(4) This section shall not apply to dividends paid to a resident company.

140 Tax on interest

(1) In this section—

"interest" means interest payable by a financial institution on a loan or deposit, and—

(a) includes—

(i) a dividend distributed by a building society; and

(ii) income from Treasury bills; and

(iii) income from banker's acceptances and other discounted instruments traded by financial institutions;

(b) does not include—

(i) interest payable to any other financial institution; or

(ii) interest payable to the holder of a moneylender's licence granted in terms of the Moneylending and Rates of Interest Act [*Chapter 14:14*]; or

(iii) interest payable to an insurance company or pension fund; or

(iv) such other interest as may be prescribed;

(2) Every financial institution that pays interest to any person shall withhold tax from the payment and shall pay the amount withheld to the Commissioner on or before the tenth day of the month following that in which the payment was made or within such further time as the Commissioner may allow under section 207(3).

(3) Tax on interest shall be withheld in terms of subsection (2) at the appropriate rates prescribed in the charging Act.

141 Non-residents' tax on royalties

(1) Subject to this section, a person who pays royalties to a non-resident person shall withhold tax from the payment and shall pay the amount withheld to the Commissioner on or before the tenth day of the month following that in which the payment was made or within such further time as the Commissioner may allow may allow under section 207(3).

(2) Non-residents' tax on royalties shall be withheld in terms of subsection (1) at the appropriate rates prescribed in the charging Act.

142 Tobacco levy

(1) In this section—

"auction floor" means premises for the sale of auction tobacco;

"auction tobacco" means tobacco which is declared in terms of the Tobacco Industry and Marketing Act [*Chapter 18:20*] to be auction tobacco;

"auctioneer" means the holder of an auction floor licence issued in terms of the Tobacco Industry and Marketing Act [*Chapter 18:20*];

"buyer" means a person who is—

(a) licensed or required to be licensed under the Tobacco Industry and Marketing Act [*Chapter 18:20*] as a buyer of auction tobacco; or

(b) registered or required to be registered under the Tobacco Industry and Marketing Act [*Chapter 18:20*] as an authorised buyer of auction tobacco;

"price", in relation to auction tobacco that has been sold, means the total amount payable by the purchaser under the agreement of sale;

"sell" means to sell by auction;

"tobacco levy" means the levy required to be withheld or recovered in terms of this section.

(2) Every auctioneer shall—

(a) withhold from the price payable for auction tobacco sold on his or her auction floor a levy at the appropriate rate specified in the charging Act; and

(b) before relinquishing possession of any auction tobacco sold to a buyer on his or her auction floor, recover from the buyer a levy at the appropriate rate specified in the charging Act;

and shall pay the amount so withheld or recovered to the Commissioner within the prescribed period after—

(c) the date of the sale, in the case of an amount withheld in terms of paragraph (a); or

(d) his or her relinquishing of possession of the auction tobacco concerned, in the case of an amount withheld in terms of paragraph (b);

or within such further time as the Commissioner may allow may allow under section 207(3).

143 Property and insurance commission tax

(1) In this section—

"commission" means an amount paid or payable by an insurance company or estate agent to a freelance agent for anything done by the freelance agent on its behalf as an insurance agent, insurance broker or property negotiator;

"estate agent" means a person who is a registered estate agent in terms of the Estate Agents Act [*Chapter 27:17*] (Act No. 6 of 1999);

"freelance agent" means an insurance agent, insurance broker or property negotiator who acts for, but is not an employee of, an insurance company or estate agent, as the case may be;

"insurance agent" means a person who, on behalf of one or more registered insurance companies—

(a) initiates insurance business; or

(b) does anything in relation to the receiving of proposals for insurance, the issue of policies or the collection of premiums;

"insurance broker" means a person who, on behalf of another person, negotiates insurance business with insurance companies;

"principal" means an estate agent or an insurance company;

"property negotiator" means a person by whatever title designated who, on behalf of one or more estate agents—

(a) introduces parties to the sale or lease of immovable property to each other or to the estate agent; or

(b) negotiates or concludes the sale or lease of immovable property.

(2) Every principal who pays a commission to a freelance agent shall withhold tax from the commission and shall pay the amount withheld to the Commissioner on or before the tenth day of the month following that in which the payment was made or within such further time as the Commissioner may allow may allow under section 207(3).

(3) Property and insurance commission tax shall be withheld in terms of subsection (2) at the appropriate rates prescribed in the charging Act.

144 Tax on non-executive directors' fees

(1) In this section—

"non-executive director's fees" means any remuneration paid to a director by the company of which he or she is a director, from which employees' tax is for any reason not withheld.

(2) Every company that pays non-executive director's fees to a director shall withhold tax from those fees and shall pay the amount withheld to the Commissioner on or before the tenth day of the month following that in which the payment was made or within such further time as the Commissioner may allow may allow under section 207(3).

(3) Tax on non-executive directors' fees shall be withheld in terms of subsection (2) at the appropriate rates prescribed in the charging Act.

(4) A company that fails to withhold or pay to the Commissioner any amount of tax in terms of subsection (2) shall itself be liable for the payment to the Commissioner, not later than the date on which the tax should have been paid, of—

(a) the tax that should have been paid; and

(b) an additional penalty equal to the tax that should have been paid:

Provided that, if the Commissioner is satisfied that the company's failure to pay the tax was not due to any intent to evade the provisions of this section, the Commissioner may waive payment of the whole or any part of the penalty or remit the whole or any part of it that has been paid.

145 NOCZIM debt redemption levy

(1) In this section—

"NOCZIM" means the National Oil Company of Zimbabwe (Private) Limited;

"NOCZIM Debt Redemption Sinking Fund" means the fund, deemed to have been established in terms of section 18 of the Public Finance Management Act [*Chapter 22:19*], for the settlement of debts incurred by NOCZIM in the procurement of petroleum products;

"oil company" means any person permitted by the Minister responsible for energy to import petroleum products into Zimbabwe;

"petroleum product" means—

(a) leaded or unleaded petrol; or

(b) the fuel designed for use in a compression-ignition engine, commonly known as diesel fuel; or

(c) any refined petroleum capable of being used as a motor-spirit;

but does not include aviation fuel, illuminating paraffin or power paraffin.

(2) Every oil company and other person that—

(a) purchases any petroleum product from NOCZIM, shall withhold from the purchase price it pays to NOCZIM an amount by way of a NOCZIM debt redemption levy and shall pay the amount withheld to the Commissioner on or before the tenth day of the month following that in which the payment was made or within such further time as the Commissioner may allow may allow under section 207(3);

(b) imports any petroleum product, shall pay an amount by way of a NOCZIM debt redemption levy to the appropriate officer of the Zimbabwe Revenue Authority at the port of entry of the petroleum product.

(3) The NOCZIM debt redemption levy referred to in subsection (2) shall be paid at the appropriate rates prescribed in the charging Act.

(4) If required to do so by the Commissioner, an oil company or other person referred to in subsection (2) shall supply the Commissioner with such accounts, reports, documents and information as may reasonably be required to ascertain whether or not the company or person is complying with subsection (2).

(5) The Commissioner shall ensure that all amounts paid by way of NOCZIM debt redemption levy in terms of this section are transferred without delay to the NOCZIM Debt Redemption Sinking Fund.

(6) The Minister responsible for energy, in consultation with the Minister, shall ensure that the moneys in the NOCZIM Debt Redemption Sinking Fund are applied towards the settlement of debts incurred by NOCZIM in the procurement of petroleum products, whenever such debts were incurred.

(7) In the exercise of his or her responsibilities under subsection (6), the Minister responsible for energy, in consultation with the Minister responsible for finance, may direct the order and manner in which the debts incurred by NOCZIM are to be settled, and NOCZIM shall take all necessary steps to comply with any such direction.

146 Money transfer tax

(1) In this section—

"automated teller machine" means an electronic device which enables a customer of a financial institution to perform transactions, including the withdrawal of cash from his or her account with the institution, directly and without the intervention of a teller or other officer of the financial institution concerned;

"financial institution" means any entity referred to in paragraph (a) to (h) of the definition of that term in section 2 (1);

"money" means—

(a) a coin or note that is legal tender in Zimbabwe; or

(b) a bill of exchange, promissory note, bank draft, postal order or money order;

"transfer" means to transfer physically, electronically or by any other means.

(2) A financial institution which has mediated the transfer of money between persons, otherwise than by cheque, shall pay to the Commissioner a money transfer tax on each such transfer, at the appropriate rates prescribed in the charging Act.

(3) Where a person effects a transfer of money to another person by means of an automated teller machine belonging to or leased by or under the control of a financial institution, the financial institution shall be deemed for the purposes of subsection (2) to have mediated the transfer of that money.

(4) Where a financial institution mediates the transfer of money to another financial institution on behalf of any of the persons for whom it acts as intermediary, the other financial institution shall not be liable for the money transfer tax payable on the transaction.

(5) Money transfer tax shall be paid to the Commissioner on or before the tenth day of the month following that in which the transfer in respect of which the tax is payable was effected, or within such further time as the Commissioner may allow under section 207(3).

(6) A financial institution that fails to pay to the Commissioner any money transfer tax in terms of this section shall be liable to pay, in addition to the tax, a penalty equal to fifteen *per centum* of the unpaid tax:

Provided that, if the Commissioner is satisfied that the failure to pay the tax was not due to an intent to evade the provisions of this section, the Commissioner may waive payment of the whole or any part of the penalty or remit the whole or any part of it that has been paid.

147 Finality and exclusivity of certain taxes under this Part7

Where a payee receives a payment from which tax has been withheld under this Part, each of such taxes withheld (but not including the amounts withheld or taxes referred to in sections 137, 139, 140, 142 and 145) shall be a final tax and—

(a) no further tax liability shall be imposed upon the payee in respect of the payment from which the tax concerned is withheld; and

(b) that income shall not be aggregated with the payee's other income for the purpose of ascertaining his or her taxable income.

PART IV

GENERAL PROVISIONS RELATING TO WITHHOLDING OF TAXES AT SOURCE

148 State bound to withhold tax from payments

Notwithstanding any law by which the State is exempted from compliance with enactments, an officer or employee of the State or a statutory corporation who makes a payment referred to in Part II or III of this Chapter shall be bound by all the obligations of a withholding agent in terms of this Chapter.

149 Agents to withhold tax not withheld by payer

Every person who, as the payee's agent, is paid an amount from which the payer has not withheld tax that should have been withheld under this Chapter, shall withhold tax from the amount and shall pay the tax to the Commissioner on or before the tenth day of the month following that in which the amount was paid, or within such further time as the Commissioner may allow.

150 Payee to pay tax not withheld by payer or agent

A payee who is paid an amount from which tax should have been withheld under this Chapter but was not withheld, shall pay the tax to the Commissioner on or before the tenth day of the month following that in which the amount was paid, or within such further time as the Commissioner may allow under section 207 (3).

151 Withholding tax certificates

(1) Where tax is withheld from an amount in terms of this Chapter, the withholding agent shall provide the payee with a certificate in a form prescribed or approved by the Commissioner, showing—

(a) the name of the payer; and

(b) the amount from which the tax has been withheld; and

(c) the amount of tax withheld.

(2) A withholding tax certificate shall be provided—

(a) in the case of a certificate showing employee's tax withheld, within thirty days of the end of the year of assessment or, where the payee's employment terminated

during the year of assessment, within fourteen days after his or her employment terminated;

(b) in any other case, when the tax concerned is withheld.

(3) A payee who is required to file a return of income shall attach to it the withholding tax certificates which relate to the year of assessment for which the return is filed.

152 Returns and records of payments and tax withheld

(1) Whenever a withholding agent pays the Commissioner an amount of tax withheld under this Chapter, he or she shall send the Commissioner, with the payment, a return in a form prescribed or approved by the Commissioner, specifying—

(a) the amount of the payment from which the tax was withheld; and

(b) the nature and amount of the tax that was withheld; and

(c) particulars of the payee.

(2) A withholding agent shall maintain records specifying, in relation to each year of assessment—

(a) payments made to each payee; and

(b) tax withheld from those payments;

and shall keep the records available for inspection by the Commissioner at all reasonable times.

(3) A withholding agent shall, within thirty days after the end of each year of assessment or such further time (not exceeding thirty days) as the Commissioner may allow on written application to the Commissioner by the withholding agent showing good cause, file with the Commissioner a statement in the prescribed form specifying—

(a) the name and address of each payee; and

(b) the amounts paid or payable to each payee; and

(c) the amounts of any tax withheld; and

(d) any other information that the Commissioner may require.

(4) The statement referred to in subsection (3) shall be signed by or on behalf of the withholding agent and shall contain a declaration that the statement is true and correct.

153 Failure to withhold tax

(1) A withholding agent who fails to withhold tax as required by this Chapter shall be personally liable to pay the Commissioner the amount of tax which has not been so withheld, but the withholding agent shall be entitled to recover that amount from the payee.

(2) The provisions of this Act relating to the collection and recovery of tax apply to the liability imposed by subsection (1).

154 Tax withheld to be held in trust by withholding agent

Tax withheld by a withholding agent under this Chapter—

(a) shall be regarded as held in trust for the Government until it is paid to the Commissioner; and

(b) shall not be liable to attachment at the instance of a creditor of the withholding agent;

and in the event of the withholding agent's death, liquidation or insolvency the tax shall not form part of the withholding agent's estate but shall be paid in full to the Commissioner by the withholding agent's executor, liquidator or trustee before any distribution of property is made.

155 Priority of withheld tax

Every amount which a withholding agent is required under this Chapter to withhold from a payment shall be—

(a) a first charge on that payment; and

(b) withheld prior to any other deduction which the withholding agent may be required to make by any other law or by an order of a court.

156 Adjustment on assessment and withholder's indemnity

(1) Every amount withheld under this Chapter shall be regarded as income accruing to the payee at the time it was withheld.

(2) A withholding agent who has withheld tax under this Chapter and remitted it to the Commissioner shall be regarded as having paid the withheld amount to the payee for the purposes of any claim by the payee for payment of the withheld amount.

(3) Tax withheld from a payment as required by this Chapter shall be deemed to have been paid by the payee and, except where it is a final tax, shall be credited against the tax assessed on the payee for the year of assessment in which the payment is made.

PART V

PENALTY AND OFFENCE RELATING TO WITHHOLDING OF TAXES

157 Penalty for failure to withhold tax

If a person, without just cause—

(a) fails to withhold a withholding tax which he or she is required to withhold in terms of this Chapter; or

(b) having withheld a withholding tax, fails to pay it to the Commissioner in terms of this Chapter, or delays unduly in so paying it;

he or she shall be required to pay, in addition to the tax, an amount equal to the amount of the tax he or she failed to withhold or pay.

158 Penalty for repeated default under section 157

Where a taxpayer who has previously been required to pay a penalty under section 157, does anything that would again render him or her liable for payment of a penalty under that section, he or she shall be required to pay, in addition to the tax chargeable on his or her taxable income, an amount equal to twice the amount payable in terms of the appropriate provision of that section.

159 General provisions as to penalties under Chapter XII and waiver or compromise thereof

(1) The powers conferred upon the Commissioner by this section shall be in addition to his or her right under this Act to take proceedings against a taxpayer to recover any penalties for evading or avoiding assessment or the payment of tax.

(2) The exercise of the Commissioner's powers under this section shall not affect a taxpayer's liability to prosecution for any offence he or she may have committed under this Act.

(3) If the Commissioner considers that a failure to withhold or pay any withholding tax, or a delay in doing so, was not due to an intent on the withholding agent's part to evade the provisions of this Act, the Commissioner may remit all or part of any penalty for which the taxpayer or withholding agent, as the case may be, is liable under this Part.

(4) The Commissioner may, either before or after an assessment is issued, agree with a taxpayer on the additional amount to be charged under this Part, and the amount so agreed shall not be subject to objection or appeal:

Provided that, if the Commissioner subsequently discovers that when the additional amount was agreed the taxpayer withheld information which, had it been known to the Commissioner, would have resulted in him or her not agreeing to that amount, the Commissioner may increase the agreed amount as he or she considers appropriate.

160 Offences relating to withholding taxes

(1) Any person who, without just cause—

(a) being required to withhold tax in terms of this Chapter—

(i) fails to withhold the tax; or

(ii) having withheld the tax, fails to pay it to the Commissioner in terms of this Chapter;

or

(b) knowingly makes or issues or causes or allows to be made or issued, or knowingly possesses or uses or causes or allows to be used, a withholding tax certificate which is materially false; or

(c) being a withholding agent, fails or neglects to deliver to a payee a withholding tax certificate as required by this Chapter; or

(d) fails to comply with a directive which is issued to him or her in terms of this Chapter and with which it is his or her duty to comply; or

(e) knowingly furnishes to a withholding agent or to the Commissioner any information that is materially false or misleading in relation to any matter affecting the amount of withholding tax to be withheld in his or her case; or

(f) fails or neglects to maintain or retain any record relating to any withholding tax or payee as required by this Chapter; or

(g) fails or neglects to apply to the Commissioner for registration as an employer in terms of paragraph 2 ("Registration of employers") of the Eleventh Schedule ("Employees' Tax") or, having so applied, fails or neglects to notify the

Commissioner of any change of his or her address or of the fact of his or her having ceased to be an employer as required by that section; or

(h) not being a withholding agent and without being duly authorised by a withholding agent, issues or causes to be issued any document purporting to be a withholding tax certificate;

shall be guilty of an offence and liable—

(i) to a fine not exceeding level eight or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, where the court is satisfied that the person intended to evade the payment of any tax; or

(j) in any other case, to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

CHAPTER XIII

MISCELLANEOUS TAXES

PART I

PRESUMPTIVE TAX

161 Levy of presumptive tax

(1) Presumptive tax is hereby levied for the benefit of the Consolidated Revenue Fund, in accordance with the Twelfth Schedule, on every person who engages in a business—

(a) which is specified in the Twelfth Schedule; and

(b) whose annual turnover is less than the amount prescribed in the Ninth Schedule ("Prescription of Various Amounts").

(2) Presumptive tax shall be at the appropriate rates specified in Part XX of the charging Act.

162 Collection of presumptive taxes by local authorities

(1) The Commissioner, at the written request of any tax-compliant local authority (that is, a local authority that is not in arrears to the Zimbabwe Revenue Authority for any amount of employees' tax or value added tax), may, on behalf of the Zimbabwe Revenue Authority, enter into an arrangement with that local authority authorising the local authority concerned to collect, on behalf of the Authority, in return for the retention by the local authority of not more than ten *per centum* of the proceeds of the presumptive taxes collected by it, of all or any of the presumptive taxes specified in paragraph 25 of the Twelfth Schedule.

(2) The arrangement entered into between a local authority referred to in subsection (1) and the Zimbabwe Revenue Authority shall be embodied in a contract ("collection contract") providing, among other things, for the following—

(a) full disclosure by the local authority to the Commissioner of all relevant particulars related to the collection by it of the contracted presumptive taxes, including the submission of regular specified returns to the Commissioner and unhindered access by officers of the Zimbabwe Revenue Authority to all premises, books, accounts and other documents of the local authority for the purposes of inspection and verification of compliance with the collection contract;

(b) adequate training of personnel employed or retained by the local authority for the purpose of collecting the contracted presumptive taxes.

163 Persons paying income tax not liable for presumptive tax

(1) A taxpayer who has furnished a return under this Act for a year of assessment shall not be liable to pay presumptive tax for that year.

(2) If a taxpayer, having furnished a return under this Act for a year of assessment, pays presumptive tax on any income that was or should have been disclosed in that return, he or she shall not be entitled to a refund of the presumptive tax so paid, but shall be allowed a tax credit for the amount so paid against income tax chargeable on that person's business or property income in respect of that year of assessment.

PART II

CARBON TAX

164 Interpretation in Part II of Chapter XIII

In this Part—

"carbon tax receipt" means a receipt for the payment of carbon tax issued in terms of section 166;

"chargeable motor vehicle" means a motor vehicle which is registered outside Zimbabwe and in respect of which a visitor has paid or is liable to pay carbon tax in terms of section 165(1)(c);

"chargeable person" means a person liable to pay carbon tax in terms of section 165(1);

"motor vehicle" means any vehicle, including a motor cycle, propelled by mechanical or electrical power and intended or adapted for use or capable of being used on roads;

"oil procurement entity" means a person licensed or authorised to import petroleum products in bulk or to purchase or import them for resale;

"petroleum product" means—

(a) leaded or unleaded petrol; or

(b) the fuel designed for use in a compression-ignition engine, commonly known as diesel fuel; or

(c) any refined petroleum capable of being used as a motor-spirit;

but does not include aviation fuel, illuminating paraffin or power paraffin.

165 Levy of carbon tax

(1) Carbon tax is hereby levied for the benefit of the Consolidated Revenue Fund on—

(a) any oil procurement entity, including an entity owned or controlled by the State, which imports a petroleum product; and

(b) any person who imports a petroleum product for his or her own consumption; and

(c) any visitor to Zimbabwe who uses within Zimbabwe a motor vehicle registered outside Zimbabwe:

Provided that the following persons shall not be liable to pay carbon tax—

(i) a diplomatic mission which, or any person connected with that mission who, enjoys the privileges and immunities provided under the Privileges and Immunities Act [*Chapter 3:03*]; or

(ii) any international or regional organisation upon which the President has conferred any of the privileges and immunities set out in the Third Schedule to the Privileges and Immunities Act [*Chapter 3:03*].

(2) Carbon tax shall be levied at the appropriate rate specified in the charging Act and shall be payable to the Commissioner by the chargeable person—

(a) at the port of entry where the petroleum product concerned entered Zimbabwe; or

(b) in the case of a visitor referred to in subsection (1)(c), at the port of entry where the visitor entered Zimbabwe.

(3) A visitor who stays in Zimbabwe for longer than the period for which he or she originally paid carbon tax shall, before leaving Zimbabwe, pay additional carbon tax at any port of entry or at any office of the Zimbabwe Revenue Authority.

(4) When paying carbon tax, a chargeable person shall complete a return in the form prescribed or approved by the Commissioner.

166 Receipt for payment of carbon tax

(1) Where a chargeable person has paid carbon tax, the person to whom it is paid shall issue the chargeable person with a carbon tax receipt.

(2) If a carbon tax receipt is lost or destroyed or if any essential particulars on it have been defaced, the Commissioner, on application by the chargeable person to whom it was issued and on payment of any prescribed fee, shall issue a duplicate carbon tax receipt.

(3) A—

(a) chargeable person; or

(b) person, whether a chargeable person or not, who is in charge of a chargeable vehicle;

shall produce any carbon tax receipt issued to him or her, on demand by a police officer or an officer of the Zimbabwe Revenue Authority:

Provided that, if the officer considers that the person's failure to produce the carbon tax receipt is due to its loss or destruction and not to non-payment of carbon tax, the officer may require the person to produce a duplicate receipt within seven days at such place as the officer shall specify.

167 Penalty for failing to pay carbon tax

A chargeable person who fails to pay carbon tax in terms of section 165 shall be liable to a penalty, in addition to the amount of the unpaid tax, of two *per centum* of the unpaid tax for every week or part of a week during which the default continues.

168 Penalty for failing to produce carbon tax receipt

(1) Subject to this section, a person who fails to produce a carbon tax receipt when required to do so under section 166(3) shall be guilty of an offence and liable to a fine equal to the amount of the carbon tax paid or payable in respect of any petroleum product imported by him or her or in respect of the vehicle concerned, as the case may be.

(2) Section 356 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply in relation to an offence under subsection (1), irrespective of the amount of the fine that may be imposed in respect of it, as if an officer referred to in section 12.6(3) were a prescribed officer for the purposes of the said section 356.

(3) The Commissioner-General of Police shall furnish to the Commissioner particulars of every person who has been convicted of an offence in terms of this section.

PART III

ADDITIONAL PROFITS TAX

169 Additional profits tax in respect of special mining lease areas

(1) Additional profits tax is hereby levied for the benefit of the Consolidated Revenue Fund, in accordance with the Thirteenth Schedule, on persons who carry on special mining lease operations.

(2) Where a person carries on special mining lease operations in two or more special mining lease areas, the additional profits tax shall be levied separately in respect of each such area.

(3) Where two or more persons are holders of a special mining lease for all or part of a year of assessment, they shall be jointly and severally liable for any additional profits tax levied in respect of their special mining lease operations, but this shall not affect a right that any one of the holders may have to claim a refund or contribution from the other or others.

PART IV

PETROLEUM IMPORTERS LEVY

170 Interpretation in Part IV of Chapter XIII

(1) In this Part—

"petroleum importer" means a company or other person holding a procurement licence to import petroleum products in bulk into Zimbabwe;

(2) Any term to which a meaning has been assigned in the Petroleum Act [*Chapter 13:22*] (No. 11 of 2006) shall bear the same meaning when used in this Part.

171 Petroleum importers levy

There shall be charged, levied and collected for the benefit of the Consolidated Revenue Fund from every petroleum importer who transports petroleum products by road a petroleum importers levy at the rate fixed from time to time in the charging Act.

172 Liability for petroleum importers levy

(1) Every petroleum importer who transports petroleum products by road shall, at any designated port of entry into Zimbabwe, pay to the Zimbabwe Revenue Authority the petroleum importers levy.

(2) If required to do so by the Zimbabwe Revenue Authority a petroleum importer referred to in subparagraph (1) shall supply the Zimbabwe Revenue Authority with such accounts, reports, documents and information as may reasonably be required to ascertain whether or not the petroleum importer concerned is complying with subsection (1).

173 Penalty for failure to pay petroleum importers levy timeously

(1) If any petroleum importer referred to in section 172 fails timeously to pay any amount of petroleum importers levy due, the Zimbabwe Revenue Authority may by notice in writing to the petroleum importer concerned levy a civil penalty in the amount prescribed in the Ninth Schedule ("Prescription of Various Amounts") for each day during which the petroleum importer fails to pay the levy in full, which penalty shall not continue to be levied beyond the one hundred and eighty-first day calculated from the first day on which such levy is due:

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.

(2) A civil penalty levied under subsection (1) shall constitute a debt due to the Zimbabwe Revenue 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.

CHAPTER XIV

RECORDS, INFORMATION COLLECTION AND EVIDENCE

PART I

RECORDS TO BE KEPT BY TAXPAYERS

174 Duty to keep records

(1) Every person whose income is not solely employment income shall keep, in the English language, proper books and accounts of all his or her transactions.

(2) Every taxpayer shall retain for six years from the date of the last entry therein—

(a) all books and accounts relating to any business carried on by him or her in Zimbabwe; and

(b) all records, including paid cheques, bank statements, stock sheets and invoices, recording details from which his or her returns for the purposes of this Act were prepared, unless the Commissioner or a court authorises him or her to destroy or dispose of the books, accounts or records at an earlier date.

(3) This section shall be regarded as additional to, and not as substituting for, the provisions of any other enactment requiring persons to keep records and documents.

(4) Any person whose income is not solely employment income and who, without just cause, fails to keep proper books and accounts of all his or her transactions shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(5) Any taxpayer who, without just cause, fails to retain for six years from the date of the last entry therein—

(a) all books and accounts relating to any business carried on by him or her in Zimbabwe; and

(b) all records, including paid cheques, bank statements, stock sheets and invoices, recording details from which his or her returns for the purposes of this Act were prepared;

shall be guilty of an offence and liable—

(c) where the court is satisfied that the person intended by his or her failure to evade the payment of any tax, to a fine—

(i) not exceeding level seven; or

(ii) equivalent to ten *per centum* of the person's taxable income;

Whichever is the greater amount, or to imprisonment for a period not exceeding three months, or to both such fine and such imprisonment;

or

(d) in any other case, to a fine not exceeding level six or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

(6) Copies of books, accounts and records kept photographically or electronically or in miniature or abbreviated form, in accordance with conditions specified by the Commissioner, shall be deemed to be kept in compliance with subsection (5).

175 Consequence of failure to produce record or evidence

The Commissioner may disallow a taxpayer's claim for a deduction under this Act if the taxpayer is , without reasonable cause, unable, at the Commissioner's request, to produce a record or other evidence of the circumstances or transaction giving rise to the claim.

PART II

INFORMATION COLLECTION

176 Interpretation in Part II of Chapter XIV

In this Part—

"authorised officer" means an officer of the Zimbabwe Revenue Authority acting with the authority of the Commissioner.

177 Commissioner to have access to public records

Notwithstanding any other enactment, any public officer or officer of a statutory corporation who has custody of any registers, records or documents shall, without fee or charge—

(a) permit the Commissioner or an authorised officer to inspect every such register, record or document and to copy it and take extracts from it; and

(b) provide the Commissioner or an authorised officer with such information as the Commissioner or officer may require in regard to any such register, record or document;

for the purpose of ensuring the payment of any tax or uncovering or proving a failure to pay any tax or an offence in relation to any tax.

178 Commissioner may require production of documents

(1) For the purpose of obtaining information regarding a taxpayer's income or liability to tax or any matter relating to the collection of tax, the Commissioner may require any person to produce any records or documents for examination by the Commissioner or by an authorised officer, at a time and place specified by the Commissioner.

(2) The Commissioner or the authorised officer may retain any records or documents produced in terms of subsection (1) for as long as they may be required for an assessment or for civil or criminal proceedings under this Act.

(3) The Commissioner may allow a person who produces a record or document in terms of subsection (1) any reasonable expenses the person may have incurred in obtaining and producing it.

179 Commissioner may examine persons

(1) The Commissioner may, by reasonable written notice to the person concerned, require any person whom the Commissioner considers able to furnish information regarding his or her own or any other person's liability to tax, to attend at a time and place specified by the Commissioner for the purpose of being examined by the Commissioner or an authorised officer, on oath or otherwise as the Commissioner may decide, in regard to—

(a) the person's income or liability to tax; or

(b) any matter relating to the collection of tax from the person; or

(c) any transactions or any matters affecting the person's income or liability to tax or the collection of tax from him or her.

(2) Where a person has made a statement as a result of being examined on oath under subsection (1), the statement shall be recorded in writing and read over to or by the person making it, who, after making such corrections to it as he or she thinks necessary, may sign it.

(3) A person who is examined under subsection (1), whether on oath or otherwise, shall not be obliged to answer any question which he or she would not be compelled to answer if he or she were a witness in civil or criminal proceedings before a court.

(4) A person who is examined under subsection (1) shall be entitled to be assisted by a legal practitioner, accountant or other adviser, and if he or she makes a statement in terms of subsection (2), he or she shall be furnished with a copy of it.

(5) The Commissioner may allow a person attending for examination under subsection (1) any reasonable expenses necessarily incurred by him or her in so attending.

180 Commissioner may obtain search warrant

(1) If the Commissioner or an authorised officer satisfies a magistrate by statement made on oath that there are reasonable grounds for believing that it is necessary to search any premises within the magistrate's area of jurisdiction and examine or take possession of any money property, records or documents in order to—

(a) prevent, investigate or detect an offence under this Act; or

(b) enforce any tax;

the magistrate may by warrant authorise the officer and any other officers designated by the Commissioner to exercise the following powers—

(c) without previous notice, at any reasonable time during the day to enter the premises and search the them for any money, property, records or documents specified in the warrant;

(d) in carrying out a search referred to in paragraph (c), to open or cause to be removed and opened any article in which money, property, records or documents referred to in that paragraph are suspected to be contained;

(e) to seize any money, property, records or documents which, in the officer's opinion, may afford material evidence in assessing a person's liability for any tax and to retain the money, property, records and documents for as long as they are reasonably required for any assessment or proceedings, whether civil or criminal, under this Act.

(2) An authorised officer shall on demand by any interested person produce for inspection the warrant issued to him or her under subsection (1).

(3) Subject to subsections (1) and (2), sections 50, 55, 56 and 57 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, with any necessary changes, in relation to the issue of a warrant under subsection (1) and to the powers conferred by the warrant.

(4) Section 11 ("Notice of disclosure of protected information") of the Interception of Communications Act [*Chapter 11:20*] (No. 6 of 2007), applies, with such changes as may be necessary, as if a warrant issued under subsection (1) is a notice imposing a disclosure requirement in respect of any records or documents subject to the warrant that are "protected information" as defined in section 2(1) of that Act.

181 Commissioner may obtain information

If the Commissioner or an authorised officer has reasonable grounds for believing it is necessary to do so for the enforcement of any tax, he or she may—

(a) at any reasonable time during the day, enter any business premises;

(b) require any person to produce for his or her inspection any—

  (i) record or 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 record, 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 this Act or any person who may be able to supply information in connection with such a suspected offence to give his or her name and address.

182 Rights of persons whose documents are taken under Part II of Chapter XIV

A person whose records or documents have been taken or retained in terms of sections 178(2), 180(1) and 181(d) shall be entitled to examine them and make extracts from them during office hours or such other times as the Commissioner may in his or her discretion allow and under such supervision as the Commissioner may determine.

PART III

EVIDENCE

183 Admissibility of public documents

(1) In any proceedings before a court which relate to the payment or non-payment of a tax, a document which purports to be a copy of or extract from a register, record or document in the custody of a public officer or an officer of a statutory corporation shall be admissible in evidence on its production by any person as *prima facie* evidence of any facts or circumstances stated in it:

Provided that no such document shall be tendered in evidence unless the taxpayer has been given not less than ten days' written notice of the intention to produce it and an opportunity to inspect it and make a copy of it.

(2) Any record or document referred to in subsection (1) which purports to have been signed by or on behalf of a taxpayer shall be presumed to have been so signed unless the contrary is proved.

184 Admissibility of evidence regarding transactions by relatives of taxpayer

(1) Notwithstanding any other enactment, in any proceedings before a court which relate to the payment or non-payment of a tax, evidence shall be admissible regarding transactions between any financial institution and the spouse or minor child of the taxpayer concerned.

(2) Sections 39, 40, 41, 42 and 44 of the Civil Evidence Act [*Chapter 8:01*] and sections 285, 286 and 287 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], as the case may be, may be used in relation to any evidence referred to in subsection (1).

185 Admissibility of electronic data

(1) In this section—

"electronic data" means any data or instructions which are stored in the memory of, or produced by, a computer or a computer system, and includes any reproduction or representation of such data or instructions in any form, including computer print-outs, magnetic or optical storage media, punched cards or punched tapes;

(2) Notwithstanding any other law, electronic data shall not be treated as inadmissible in any proceedings, whether criminal or civil, under this Act—

(a) solely on the ground that they are electronic data; or

(b) on the ground that they are not in their original form, if they are the best evidence that can reasonably be expected to be adduced.

(3) A court shall give due weight to evidence in the form of electronic data, having regard to such of the following considerations as may be applicable in the circumstances—

(a) the reliability of the way in which the data were generated, stored and communicated; and

(b) the reliability of the way in which the integrity of the data was maintained; and

(c) the way in which the originator of the data was identified.

(4) This section shall be regarded as additional to, and not as derogating from, section 13 of the Civil Evidence Act [*Chapter 8:01*].

CHAPTER XV

APPLICATION OF INFORMATION TECHNOLOGY

186 Interpretation in Chapter XV

In this Chapter—

"access", means gaining entry into, instructing or communicating with the logical, arithmetical or memory-function resources of a computer, computer system or computer network;

"affix", in relation to a digital signature, means to authenticate an electronic record or communication by means of a digital signature;

"computer" means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetical and memory functions by manipulating electronic, magnetic or optical impulses, and includes all input, output, processing, storage, software or communication facilities which are connected or related to the computer in a computer system or a computer network;

"computer network" means the interconnection of one or more computers through—

(a) the use of satellite, microwave, terrestrial line or other communication media; and

(b) terminals or a complex consisting of two or more inter-connected computers;

whether or not the interconnection is continuously maintained;

"computer system" means a device or collection of devices, including input and output devices capable of being used with external files which contain computer programmes, electronic instructions, and input and output data that performs logic, arithmetical, data storage and retrieval, communication control and other functions;

"digital signature" means an electronic signature created by computer that is intended by the registered user using it, and by the Commissioner accepting it, to have the same effect as a manual signature;

"electronic communication" means electronic data received or sent in an electronic form or in microfilm or computer-generated microfiche;

"electronic data" means any data or instructions which are stored in the memory of, or produced by, a computer or a computer system, and includes any reproduction or representation of such data or instructions in any form, including computer print-outs, magnetic or optical storage media, punched cards or punched tapes;

"electronic record" means electronic data recorded in an electronic form or in microfilm or computer-generated microfiche;

"intermediary", with respect to any particular electronic communication, means any person who on behalf of another person receives, stores or transmits that communication or provides any service with respect to that communication;

"Internet" means the international computer network that is commonly known as the Internet;

"originator" means a person who sends, generates, stores or transmits any electronic communication to be sent, generated, stored or transmitted to any other person, but does not include an intermediary;

"registered user" means a person registered as such in terms of section 190;

"user agreement", means an agreement between a registered user and the Commissioner concluded in terms of section 189;

"ZIMRA computer system" means a computer system established in terms of section 187.

187 Establishment of computer systems for tax purposes

Notwithstanding any other provision of this Act, the Commissioner may establish and maintain a computer system for the purpose of applying information technology to any process or procedure under this Act, including—

(a) the despatch, receipt and processing of any return, record, assessment, declaration, form, notice, statement or other document; and

(b) communications between the Commissioner and registered users; and

(c) the electronic processing of any register, book, account, record, return, paper, assessment or other document.

188 Restriction on access to computer system

No person shall communicate with the Commissioner through a ZIMRA computer system unless the person is a registered user and the communication is in accordance with the person's user agreement concluded in terms of this Chapter.

189 User agreements

(1) The Commissioner, on behalf of the Zimbabwe Revenue Authority, may conclude user agreements to regulate communications through a ZIMRA computer system between the Commissioner and registered users.

(2) A user agreement shall be in the form prescribed or approved by the Commissioner and shall set out terms and conditions governing communication through the ZIMRA computer system concerned, including—

(a) the use by registered users of specified classes and kinds of computer equipment and facilities;

(b) the allocation of digital signatures to registered users;

(c) measures to be taken by registered users to ensure the security of the digital signatures allocated to them;

(d) the way in which digital signatures are to be affixed to electronic communications and records;

(e) the grant to the Commissioner of reasonable access to the computer systems of registered users for verification and audit purposes;

(f) the keeping of electronic records.

189 Registration of users and suspension or cancellation of registration

(1) An application for registration as a registered user shall be made in a form prescribed or approved by the Commissioner, and shall be accompanied by a user agreement completed by the applicant and the prescribed fee, if any, and any other information that the Commissioner may reasonably require.

(2) If, after considering an application under subsection (1) and making such enquiries as he or she considers necessary, the Commissioner is satisfied that the applicant—

(a) is a person who will make regular use of the ZIMRA computer system concerned; and

(b) will introduce adequate measures to—

(i) prevent disclosure to an unauthorised person of the digital signature allocated to him or her by the Commissioner; and

(ii) safeguard the integrity of information communicated through the ZIMRA computer system;

and

(c) will maintain the reliability of his or her own computer system in accordance with the user agreement;

the Commissioner may approve the application, subject to such reasonable conditions as he or she may impose, and register the applicant as a registered user.

(3) If at any time the Commissioner is satisfied that a registered user—

(a) has not complied with his or her user agreement or with any condition imposed by the Commissioner when registering the user; or

(b) made a statement in the application for registration that was materially false or misleading, or omitted to state a material fact which was required to be stated in the application; or

(c) fails to make regular use of the ZIMRA computer system concerned; or

(d) has contravened any provision of this Act; or

(e) has been convicted of an offence involving dishonesty; or

(f) is insolvent or under liquidation; or

(g) no longer carries on the business which he or she carried on at the time of his or her registration;

the Commissioner may, subject to subsection (4), cancel or suspend for a specified period the user's registration.

(4) Before cancelling or suspending a registered user's registration in terms of subsection (3), the Commissioner shall—

(a) give notice to the registered user of the proposed cancellation or suspension; and

(b) inform the registered user of the reasons for the proposed cancellation or suspension; and

(c) afford the registered user a reasonable opportunity to respond and make representations as to why the registration should not be cancelled or suspended.

191 Digital signatures

(1) On registering a user, the Commissioner shall allocate to the user—

(a) if the user is an individual, a digital signature or sufficient digital signatures for the user and each employee of the user nominated in the user agreement; or

(b) if the user is not an individual, sufficient digital signatures for each employee of the user nominated in the user agreement.

(2) Every digital signature intended for use in connection with a ZIMRA computer system shall—

(a) be unique to the registered user concerned and under the registered user's sole control; and

(b) be capable of verification; and

(c) be linked or attached to electronically transmitted data in such a way that, if the integrity of the data is compromised, the digital signature is invalidated; and

(d) conform completely with any requirements contained in the user agreement.

192 Obligations, indemnities and presumptions with respect to digital signatures

(1) If the security of a digital signature allocated to a registered user has been compromised in any manner, the registered user shall inform the Commissioner in writing of that fact without delay.

(2) No liability shall attach to the Commissioner, the Zimbabwe Revenue Authority or any of its officers for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her.

(3) Without derogating from subsection (2), where electronic data authenticated by a digital signature is received by the Commissioner through a ZIMRA computer system—

(a) without the authority of the registered user to whom the signature was allocated; and

(b) before the registered user has notified the Commissioner that the security of the digital signature has been compromised;

the Commissioner and the Zimbabwe Revenue Authority shall be entitled to assume that the data has been communicated by, or with the authority of, the registered user of that digital signature.

(4) Where, in any proceedings under this Act or in any dispute to which the Zimbabwe Revenue Authority is a party, a question arises whether a digital signature affixed to any electronic communication was used with or without the consent and authority of the registered user concerned, it shall be presumed, unless the contrary is proved, that the signature was used with the consent and authority of the registered user.

193 Sending and receipt of electronic communications

(1) An electronic communication sent through a ZIMRA computer system, or the electronic record of such a communication, shall be attributed to the originator if—

(a) it was sent by the originator; or

(b) it was sent by a person who had the authority to act on behalf of the originator in respect of that communication; or

(c) it was sent by a computer system programmed by or on behalf of the originator to operate automatically.

(2) Where the Commissioner and a registered user have not agreed that an acknowledgment of receipt of electronic communication should be given in any particular form or by any particular method, an acknowledgement may be given by—

(a) any communication by the Commissioner, electronic or otherwise; or

(b) conduct by the Commissioner or any officer of ZIMRA sufficient to indicate to the registered user that the electronic communication has been received.

(3) Where the Commissioner and the registered user have agreed that an electronic communication shall be binding only on receipt of an acknowledgement of the communication, then, unless such an acknowledgement has been so received within such time as may have been agreed upon, the electronic communication shall be deemed not to have been sent.

(4) As between a ZIMRA computer system and a computer system of a registered user, the lodging of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) An electronic communication shall be regarded as having been received—

(a) where the electronic communication is sent by a registered user, when the communication enters a computer at any office of the Zimbabwe Revenue Authority, or of the Commissioner, to whichever it was addressed, and such office shall be the place of receipt;

(b) where the electronic communication is sent by the Zimbabwe Revenue Authority or the Commissioner to a registered user, when the communication enters a computer at the place of receipt that is stipulated in the user agreement.

(6) Where a registered user is authorised to submit and sign electronically any return, record, assessment, declaration, form or other document which is required to be submitted and signed in terms of this Act, the user's electronic signature affixed to such electronic communication shall, for the purposes of this Act, have effect as if it was affixed to the document in manuscript, and acceptance of it shall not be denied if it is in conformity with the user agreement concluded between the Commissioner and the registered user.

(7) Notwithstanding any other provision of this section, the Commissioner may permit a registered user to submit electronically any return, record, assessment, declaration, form or other document which is required to be submitted in terms of this Act, by using the Internet, and subject to such exceptions, adaptations or additional requirements as the Commissioner may stipulate or prescribe, this section shall apply to the submission of any such document using the Internet.

194 Alternatives to electronic communication in certain cases

(1) Whenever a ZIMRA computer system or the computer system of a registered user is inoperative, the registered user and the Commissioner shall communicate with each other in writing in the manner prescribed in this Act.

(2) The Commissioner may at any time require from a registered user the submission of any original document required to be produced under any provision of this Act.

195 Production and retention of documents by registered users

(1) Where any provision of this Act prescribes or requires that records or documents should be retained for a specific period, that requirement shall be satisfied by a registered user if the records, documents or information are (subject to subject to subsection (2)) retained in electronic form so that—

(a) the information contained in them remains accessible so as to be subsequently usable; and

(b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which represents accurately the information originally generated, sent or received; and

(c) any details which serve to identify the origin, destination, date and time of dispatch or receipt of the record or document are available in the electronic record:

(2) Nothing in this section absolves a registered user from producing and retaining printed copies of the records or documents in question as backups in the event that they cannot be accessed or availed in their electronic form for any reason, unless the Commissioner, on written application by the user concerned, is satisfied that this requirement is not necessary, taking into account all the precautions to be deployed by the user to preserve the records or documents in question against loss, damage or destruction.

196 Unlawful uses of computer systems

(1) Any person who, not being the registered user to whom a digital signature has been allocated, uses the digital signature in any electronic communication to the Commissioner or the Zimbabwe Revenue Authority without the authority of the registered user, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who—

(a) intentionally makes a false electronic record or falsifies an electronic record; or

(b) with intent to deceive—

(i) makes, affixes a digital signature to, or transmits an electronic record or communication; or

(ii) causes any other person to make, affix a digital signature to, or transmit an electronic record or communication;

shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

CHAPTER XVI

REPRESENTATIVE TAXPAYERS

197 Interpretation in Chapter XVI

(1) In this Chapter—

"representative income" means income—

(a) which accrues to a representative; or

(b) of which a representative has the management and control;

in his or her representative capacity;

"representative taxpayer"—

(a) in relation to the income of a company, means the public officer of the company;

(b) in relation to income the subject of a trust, means the trustee;

(c) in relation to income possessed, disposed of, controlled or managed by an agent, means the agent;

(d) in relation to income paid by a resident person to a non-resident person, means the resident person;

(e) in relation to income paid under a court order to a receiver, that is to say to a person appointed by the court to control the income pending litigation or a further order, means the receiver;

(f) in relation to the income of a person who has died or become insolvent or subject to a legal disability, whether the income accrued before or after the person's death, insolvency or subjection to the legal disability, means the administrator, executor or trustee of the person's estate or the person's legal representative, as the case may be.

198 Liability of representative taxpayer

(1) Subject to this section, a representative taxpayer shall be subject to the same duties, responsibilities and liabilities in relation to his or her representative income as he or she would have been had the income accrued beneficially.

(2) A representative taxpayer shall be liable to assessment in his or her own name for his or her representative income, but any such assessment shall be made in his or her representative capacity only.

(3) Any tax credit, deduction, exemption or right to deduct a loss which could be claimed by the person represented by a representative taxpayer shall be allowed in the assessment made upon the representative taxpayer in his or her representative capacity.

(4) Except in the case of an assessment upon the public officer of a company, any tax payable under an assessment upon a representative taxpayer shall be recoverable from the representative taxpayer, but only to the extent of any property belonging to the person whom he or she represents which is in the possession of the representative taxpayer or under his or her management, disposal or control.

(5) Any tax payable under an assessment made upon a public officer of a company in his or her capacity as such shall be recoverable from the company.

199 Right of representative taxpayer to recover tax paid

A representative taxpayer who pays tax in a representative capacity shall be entitled to recover the amount paid from the person on whose behalf it is paid, or to recoup it from any money that may accrue or may have accrued to him or her in a representative capacity.

200 Personal liability of representative taxpayer

A representative taxpayer shall be liable personally for any tax payable by him or her in a representative capacity if, while it remains unpaid—

(a) he or she alienates, encumbers or disposes of the representative income on which the tax is chargeable; or

(b) he or she disposes of or parts with any money or property of the person whom he or she represents—

(i) which is in his or her possession, or which accrues to him or her, after the tax is payable; and

(ii) from which the tax could lawfully have been paid.

201 Company or association regarded as agent for absent shareholder or member

Where a shareholder or member of a company, or member of an unincorporated association, is absent from Zimbabwe, the company or association shall be regarded as the agent of the shareholder or member for the purposes of this Act, and in regard to any income accruing to the shareholder or member in his or her capacity as such, the company or association shall have all the powers, duties and responsibilities of an agent of a taxpayer absent from Zimbabwe.

202 Public officers of companies

(1) Every company which carries on business in Zimbabwe or has an office or other place of business in Zimbabwe shall at all times be represented by a resident individual who—

(a) has been appointed by the company, or by a person who has the company's authority to make the appointment; and

(b) is approved by the Commissioner:

Provided that, if the company is placed under judicial management or is in liquidation, the company's judicial manager or liquidator shall exercise the functions and responsibilities of the company's public officer while the company is under judicial management or in liquidation.

(2) Not later than one month after a company begins to carry on business in Zimbabwe or establishes an office or other place of business in Zimbabwe, the company shall—

(a) cause a public officer to be appointed in terms of subsection (1); and

(b) appoint a place in Zimbabwe where documents under this Act affecting the company may be served;

and the company shall immediately notify the Commissioner, in writing, of the name of the public officer and the address of the place so appointed.

(3) In default of any other appointment, the public officer of a company shall be such director, secretary or other officer of the company as the Commissioner may designate for that purpose.

(4) Every company shall keep the office of public officer constantly filled and ensure that there is always a place where documents under this Act affecting it may be served, and whenever it changes its public officer or the place for the service of such documents, it shall notify the Commissioner of within thirty days of the change taking effect.

(5) Any document or proceeding which under this Act may be given to, served upon or taken against a company may be given to, served upon or taken against its public officer, and if at any time there is no public officer then the document or proceeding may be given to, served upon or taken against any person who manages or appears to manage the company's business or who acts, or appears to act, as the company's agent.

(6) A company's public officer shall be responsible for doing everything that is required to be done under this Act by the company as a taxpayer, and in the event of default the public officer shall be liable to the penalties provided for defaults by a taxpayer.

(7) Everything done by a company's public officer which he or she is required to do in that capacity shall be deemed to have been done by the company.

(8) If a company's public officer is absent or a company has not appointed a public officer, the company shall not be absolved from complying with this Act.

(9) A company which without just cause fails to comply with any provision of this section with which it is its duty to comply, and every person who acts within Zimbabwe as agent or manager or representative of such company, shall be guilty of an offence and liable to a fine not exceeding level one for each day that the offence continues.

CHAPTER XVII

OBJECTIONS AND APPEALS

203 Right of taxpayers to object to assessments and certain decisions

Subject to this Act, a taxpayer who is aggrieved by—

(a) an assessment made upon him or her under this Act; or

(b) an decision of the Commissioner mentioned in the Fourteenth Schedule;

may object to the assessment or decision.

204 Requirements as to form and lodging of objections

(1) An objection under section 203 shall be in writing, specifying in detail the grounds upon which it is made, the facts on which it is based and any point of law which the taxpayer believes to be in issue, and shall be lodged with the Commissioner within thirty days after the taxpayer received written notice of the assessment or decision that is objected to.

(2) The Commissioner may consider an objection which he or she receives after the thirty-day period specified in subsection (1), if the taxpayer satisfies him or her that there were reasonable grounds for the delay in lodging the objection.

205 Decision on objection and effect thereof, burden of proof as to exemptions, etc., and payment of tax pending decision on objection

(1) On receipt of an objection in terms of section 204, the Commissioner—

(a) may reduce or alter the assessment or alter the decision, as the case may be, or may disallow the objection; and

(b) shall send a written notice of his or her decision to the taxpayer who lodged the objection:

Provided that, if the Commissioner has not notified the taxpayer of his or her decision on the objection within three months after receiving it, or within such longer period as the Commissioner and the taxpayer may agree, the objection shall be deemed to have been disallowed.

(2) If an objection has been allowed in terms of subsection (1), the assessment or decision as reduced, increased or altered shall, subject to this Act, be final.

(3) In any objection under this Act, the burden of proof that any amount is exempt from or not liable to tax or is subject to a deduction or tax credit, shall be upon the person claiming the exemption, non-liability, deduction or tax credit.

(4) The obligation to pay any tax shall not be suspended pending a decision on an objection in terms of this Act, unless the Commissioner otherwise directs and subject to such terms and conditions as he or she may impose.

206 Appeal against Commissioner's decision on objection

(1) A taxpayer who is dissatisfied with the Commissioner's decision on an objection may appeal against the decision to the Fiscal Appeal Court.

(2) An appeal under subsection (1) shall be made in the form and manner prescribed by or under the Fiscal Appeal Court Act [*Chapter 23:05*] and the rules prescribed in the Fifteenth Schedule, and in the case of any inconsistency in this respect between the Fiscal Appeal Court Act [*Chapter 23:05*] and the Fifteenth Schedule, the latter must prevail.

(3) The procedure to be followed in an appeal under subsection (1), and the effect of the Fiscal Appeal Court's decision in the appeal, shall be as prescribed in or under the Fiscal Appeal Court Act [*Chapter 23:05*] and the rules prescribed in the Fifteenth Schedule, and in the case of any inconsistency in this respect between the Fiscal Appeal Court Act [*Chapter 23:05*] and the Fifteenth Schedule, the latter must prevail.

(4) The Fifteenth Schedule may be amended or replaced by rules made in accordance with section 4 of the Fiscal Appeal Court Act [*Chapter 23:05*].

CHAPTER XVIII

INTEREST, GENERAL OFFENCES AND EVIDENCE

PART I

INTEREST

207 Interest on unpaid tax

(1) A person who fails—

(a) to pay any tax, including provisional tax and a withholding tax; or

(b) to pay any penalty imposed in terms of this Act;

on or before the due date for payment, shall be liable for interest at the prescribed rate on the amount unpaid calculated from that due date.

(2) The Commissioner shall refund interest paid under subsection (1) to the extent that the tax to which the interest relates is found not to have been due and payable.

(3) If a person has just cause for delaying the payment of any tax which he or she is liable to pay under this Act, or to withhold and pay under Chapter XII, that person may make written application to that effect to the Commissioner no later than the final date on which the tax is payable, and the Commissioner may, if satisfied that there is just cause for the delay, grant an extension of time, not exceeding thirty days, within which to pay the tax:

Provided that interest on the amount due shall be payable under subsection (1) in respect of the extended period.

(4) Where a person who is required to withhold tax in terms of Chapter XII—

(a) fails to withhold the tax; or

(b) having withheld the tax, fails to pay it to the Commissioner;

the person shall be responsible for paying interest in terms of this section, and the interest shall not be recoverable from the person entitled to receive the payment from which the tax was or should have been withheld.

(5) The provisions of this Act relating to the collection and recovery of tax shall apply to interest charged under this section as if it were tax due.

208 Interest on delayed refunds

The Commissioner shall pay interest at the prescribed rate on any amount of tax overpaid that is not refunded by him or her within sixty days of the date when the taxpayer claimed the refund or the date of completion of the assessment, whichever is the later, unless the overpayment was due to an incomplete or defective return or other error on the part of the taxpayer, and not an error on the part of the Commissioner.

PART II

GENERAL OFFENCES

209 Failure to submit return or document

Any person who, without just cause, fails to furnish, file or submit any return or document which he or she is required to furnish, file or submit in terms of this Act or in terms of a directive or order of the Commissioner under this Act shall be guilty of an offence and liable—

(a) to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment, where the court is satisfied that the person intended by his or her failure to evade the payment of any tax; or

(b) in any other case, 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.

210 Failure to give information or evidence

Any person who, without just cause—

(a) fails or refuses to furnish any information when required to do so by the Commissioner in terms of this Act; or

(b) having been required by the Commissioner to attend at any place and give evidence or information, fails or refuses to attend or to give evidence or to reply to any question lawfully put to him or her, or to produce any records or documents which he or she is lawfully required to produce;

shall be guilty of an offence and liable—

(c) to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment, where the court is satisfied that the person intended by his or her failure or refusal to evade the payment of any tax; or

(d) in any other case, 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.

211 Obstruction of officers

Any person who, without just cause, hinders or obstructs the Commissioner or any other officer of the Zimbabwe Revenue Authority in the discharge of his or her duties under this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

212 False statements, etc.

(1) If a person—

(a) knowingly makes a materially false statement or entry in a return, whether rendered on his or her own or on anyone else's behalf; or

(b) knowingly signs a return, whether rendered on his or her own or on anyone else's behalf, which contains a materially false statement or entry;

without having reasonable grounds for believing the statement or entry to be true, the person shall be guilty of an offence and liable—

(c) to a fine not exceeding level eight or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, where the court is satisfied that the person intended to evade the payment of any tax; or

(d) in any other case, to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) If a person knowingly makes a materially false entry in any ledger, cash-book, journal or other book of account or record without having reasonable grounds for believing the entry to be true, and the false entry, if believed, would be likely to have the effect of reducing his or her liability for tax, the person shall be guilty of an offence and liable—

(a) to a fine not exceeding level eight or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, where the court is satisfied that the person intended to evade the payment of any tax; or

(b) in any other case, to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) A person who, having been required by the Commissioner in terms of this Act—

(a) to furnish any information, knowingly furnishes information that is materially false; or

(b) to attend at any place and give evidence or information, knowingly gives evidence or information that is materially false;

shall be guilty of an offence and liable—

(c) to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment, where the court is satisfied that the person intended to evade the payment of any tax; or

(d) in any other case, to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(4) If in proceedings for an offence under this section it is proved that a false statement or entry has been made in a return rendered by or on behalf of a taxpayer or in books of account or other records of a taxpayer—

(a) that taxpayer shall be presumed, until the contrary is proved, to have made that false statement or entry, or to have caused or allowed it to be made, with intent to evade a tax; and

(b) any other person who made false statement or entry shall be presumed, until the contrary is proved, to have made it with intent to assist the taxpayer to evade a tax.

(5) If, in proceedings for an offence under this section where it is alleged that the accused person made a materially false statement or entry in any book or record, it is proved that the statement or entry conflicts with a statement or entry in any other book or record kept by or under the direction of the accused person or by an employee or agent of the accused person, the first-mentioned statement or entry shall be presumed to be false unless the contrary is proved.

PART III

EVIDENCE

213 Admissibility of certain documentary evidence

(1) Subject to this section, in any proceedings, whether civil or criminal, under this Act—

(a) any information, entry or statement contained in a return furnished by or on behalf of a taxpayer in terms of this Act;

(b) any statement or entry contained in any book, record or document kept by a taxpayer or under his or her direction or kept on his or her behalf by an agent or employee;

(c) any statement made by a taxpayer to the Commissioner or an officer of the Zimbabwe Revenue Authority for the purposes of this Act;

shall be admissible in evidence in the proceedings upon its mere production by any person, notwithstanding that the taxpayer was required to give the information or make the statement or entry in terms of this Act.

(2) Except in the case of information, statements or entries contained in a return furnished by or on behalf of a taxpayer, no such statement, information or entry shall be tendered in evidence unless the taxpayer has been given not less than ten days' written notice of the intention to produce it and an opportunity to inspect it and make a copy of it;

(3) In criminal proceedings a statement which is a confession by an accused person of the offence with which he or she is charged, or of a substantially similar offence, shall not be admissible unless it is proved to have been made freely and voluntarily by the accused person.

(4) This section shall not be construed as limiting any other rule of law under which documents may be admitted in evidence.

214 Proof of certain facts by affidavit or orally

(1) In any proceedings under this Act, whether civil or criminal, concerning a person's failure to furnish or file a return or other document, a document purporting to be an affidavit made by a person who alleges in it that—

(a) he or she is an officer of the Zimbabwe Revenue Authority; and

(b) if the return or document had been furnished or filed it would ordinarily have come to the deponent's knowledge, either at the time it was furnished or filed or subsequently, and a record of it would have been kept and the record would be accessible to him or her; and

(c) the return or document has not, to the deponent's knowledge, been furnished or filed and he or she has satisfied himself or herself that there is no record of it;

shall be admissible in those proceedings on its mere production by any person as *prima facie* proof that the return or document has not been furnished or filed.

(2) In any proceedings under this Act, whether civil or criminal, in which the question whether the Commissioner or another officer of the Zimbabwe Revenue Authority sent any return, form, notice, assessment, letter or other document is in issue, a document purporting to be an affidavit made by a person who alleges in it that—

(a) he or she is an officer of the Zimbabwe Revenue Authority; and

(b) when any specified return, form, notice, assessment, letter or other document has been sent by the Commissioner or an officer of the Zimbabwe Revenue Authority, a record of its sending would have been kept and the record is accessible to the deponent; and

(c) the deponent has satisfied himself or herself that there is such a record;

shall be admissible in those proceedings on its mere production by any person as *prima facie* proof that the return, form, notice, assessment, letter or other document was sent by the Commissioner or officer concerned.

(3) An affidavit referred to in subsection (1) or (2) shall not be tendered in evidence by any party unless the other party to the proceedings concerned has been given at least three days' notice in writing of the intention to produce the affidavit or consents to its production.

(4) Where an affidavit in terms of subsection (1) or (2) has been produced in evidence, the court may, of its own motion or at the request of either party to the proceedings, cause the deponent to be summoned to give oral evidence in the proceedings.

(5) An officer in the department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act may give evidence referred to in subsection (1) or (2) orally instead of by affidavit, and any such oral evidence shall have the same effect as is provided in subsection (1) or (2), as the case may be.

(6) This section shall not be construed as limiting any other rule of law under which documents may be admitted in evidence.

CHAPTER XIX

FORMS AND NOTICES

215 Form of notices, documents, etc.

(1) Notices, returns and other documents under this Act shall be in the prescribed form or in a form approved by the Commissioner.

(2) Where the Commissioner has approved a form for any notice, return or document under this Act, he or she shall ensure that the form is available for inspection by the public during ordinary office hours at all offices of the Zimbabwe Revenue Authority, and at such other places as he or she may determine.

216 Validity of notices, documents, etc. that are not in proper form

No notice, return or other document under this Act shall be invalid on the ground that it is not in the proper form, if—

(a) it is, in substance and effect, in conformity with this Act; and

(b) the person affected by the document, or to whom it is addressed, is designated according to common understanding or accepts the document.

217 Authentication of notices and other documents

Notices, returns and other documents issued by the Commissioner under this Act shall be valid if—

(a) they are signed by the Commissioner or by any other officer of the Zimbabwe Revenue Authority who has been authorised by the Commissioner to sign them; or

(b) the name or title of the Commissioner, or of the officer referred to in paragraph (a), is printed, stamped or written on them.

218 Service of notices and other documents

(1) A notice, assessment or other document required or permitted under this Act to be served on or sent to any person shall be regarded as having been properly served or sent—

(a) if personally served upon the person; or

(b) if left with an adult individual apparently residing, occupying or employed at the person's usual or last-known abode, office or place of business in Zimbabwe; or

(c) if sent by registered or unregistered post addressed to the person's usual or last-known abode, office or place of business in Zimbabwe, or to any post office box rented in the person's name or in the name of his or her employer.

(2) A notice, assessment or other document required or permitted under this Act to be served on or sent to a company shall be regarded as having been properly served or sent—

(a) if personally served upon the public officer of the company; or

(b) if sent by registered or unregistered post to the public officer of the company at the company's address for service under this Act; or

(c) where the company has lodged no address for service, if the document is left at or sent by registered or unregistered post to any office of the company in Zimbabwe or to any premises in Zimbabwe where the company carries on business; or

(d) by electronic means in a manner approved under Chapter XV

(3) Where a document is sent by post, it shall be deemed for the purposes of this Act to have reached the recipient when it would have been delivered in the ordinary course of post.

CHAPTER XX

GENERAL, SAVINGS AND TRANSITIONAL PROVISIONS

219 Advance tax rulings

The Commissioner's power to make rulings as to the interpretation of this Act, and the effect of such rulings, shall be as set out in the Fourth Schedule to the Revenue Authority Act.

220 Regulations

(1) Subject to subsection (3), the Board of the Zimbabwe Revenue Authority may make regulations prescribing anything which under this Act is required or permitted to be prescribed or which, in the Board's opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations under subsection (1) may provide for—

(a) the duties of persons engaged or employed in the administration of this Act;

(b) the accounts to be rendered by a taxpayer in support of any return rendered under this Act and the manner in which such accounts shall be authenticated;

(c) fees and charges for approvals granted, documents issued or provided, and any other thing done in terms of this Act;

(d) penalties for contraventions of the regulations, but no such penalty shall exceed a fine of level seven.

(3) Regulations under subsection (1) shall not have effect until they have been approved by the Minister and published in the *Gazette*.

221 Amendment of Cap. 23.05

The Fiscal Appeal Court Act [*Chapter 23:05*] is amended—

(a) by the insertion of the following section after section 3—

"3A Jurisdiction of Court

"(1) In any appeal under this Act, the Court shall have all the powers of the High Court.";

(b) in section 4 ("Procedure of Court") by the insertion of the following subsections after subsection (4)—

"(5) In relation to appeals from the Income Tax Act [*Chapter 23:13*], the general procedure and practice of the Court shall, in so far as the same is applicable, be that prevailing in the High Court, except as otherwise specially provided for by the rules contained in the Fifteenth Schedule to that Tax.

(6) If any matter should arise in connection with any appeal from the Income Tax Act [*Chapter 23:13*] which is not contemplated by either such procedure and practice or such rules, the Court shall give instructions regarding the course to be pursued, which instructions shall be binding on the parties.";

(c) in section 12 ("Interpretation in Part III")—

(i) in the definition of "tax" by the insertion after paragraph (b) of the following paragraph—

"(c) the Income Tax Act [*Chapter 23:13*], has the meaning given to it in section 2 of that Act;";

(ii) in the definition of "tax Act" by the insertion after paragraph (b) of the following paragraph—

"(c) the Income Tax Act [*Chapter 23:13*];";

(d) in section 13 ("Appeals from decisions of Commissioner") by the repeal of subsection (1) and the substitution of—

"(1) A person who is dissatisfied with—

(a) a decision by a Commissioner on an objection under the Income Tax Act [*Chapter 23:13*]; or

(b) any decision of a Commissioner under the Stamp Duties Act [*Chapter 23:09*] or the Value-Added Tax Act [*Chapter 23:12*];

may appeal to the Court against the decision.";

(e) in section 15 ("Burden of proof") by the insertion of the following subsection, the existing section becoming subsection (1)—

"(2) In an appeal in terms of this Part, the Court shall not reverse any decision of a Commissioner unless the appellant shows that the decision was wrong.".

222 Amendment of Cap. 23.11

The Revenue Authority Act is amended—

(a) in section 33C ("When expedited procedure competent, jurisdiction of magistrates courts and period within which expedited procedure allowed") in subsection (1) by the deletion from paragraph (b) of "[*Chapter 23:06*]" and the substitution of "[*Chapter 23:13*]";

(b) in section 34A ("Preservation of secrecy") by the deletion from subsection (4) of "[*Chapter 23:06*]" wherever it occurs and the substitution of "[*Chapter 23:13*]";

(c) in section 34C by the deletion from subsections (1) and (2) of "[*Chapter 23:06*]" wherever it occurs and the substitution of "[*Chapter 23:13*]";

(d) in section 39 ("Construction of certain references") by the deletion from subparagraph (ii) of paragraph (c) of "[*Chapter 23:06*]" and the substitution of "[*Chapter 23:13*]";

(e) in the First Schedule ("Specified Acts") by the deletion from paragraph 4 of "[*Chapter 23:06*]" and the substitution of "[*Chapter 23:13*]".

223 Repeal of Cap. 23:06 and Cap. 23:07

Subject to section 223, the Income Tax Act [*Chapter 23:06*] and the Income Tax (Transitional Period Provisions) Act [*Chapter 23:07*] are repealed.

224 Savings and transitional provisions

(1) In this section—

"fixed date" means the date fixed in terms of section 1(2) as the date of commencement of this Act;

"repealed Act" means the Income Tax Act [*Chapter 23:06*].

(2) Notwithstanding subsection (1)—

(a) the repealed Act shall continue to apply in relation to the assessment of any person's liability for tax, and the collection and recovery of any tax, for a year of assessment prior to the fixed date;

(b) any agreement or arrangement between the Government and the government of a foreign country with a view to affording relief from double taxation which was made under the repealed Act and was in force immediately before the fixed date shall continue in force as if it had been made under this Act;

(c) any appeal that was lodged before the fixed date with the Special Court for Income Tax Appeals shall be heard and concluded by that court in all respects as if the repealed Act were still in force, and the court's decision in such an appeal shall have effect as if it had been given by the Fiscal Appeal Court in terms of the Fiscal Appeal Court Act [*Chapter 23:05*] as amended by this Act;

(d) all statutory instruments and general notices made under the repealed Act that were in force immediately before the commencement of this Act shall continue to be in force thereafter until repealed or replaced under section 219 or the corresponding provision of this Act under which the general notice concerned was made;

(e) any other thing that was made, done or commenced under the repealed Act and which had or was capable of acquiring effect immediately before the fixed date shall continue to have or to be capable of acquiring, as the case may be, effect as if it had been made, done or commenced under this Act.

(3) All forms and documents used under the repealed Act may continue to be used, with any necessary changes, under this Act, and all references in those forms and documents to the

provisions of, and expressions appropriate to, the repealed Act shall be taken to refer to the corresponding provisions of and expressions appropriate to, this Act.

FIRST SCHEDULE (Section 19(2)(a))

TAXABLE INCOME OF INSURANCE COMPANY

Interpretation

1. In this Schedule—

"assessed loss attributable to insurance business" means a deficiency determined after applying paragraphs 4, 5 and 6;

"assets in Zimbabwe" means such of an insurance company's assets as—

(a) relate to the company's life insurance business; and

(b) are required to be shown as assets in Zimbabwe in the company's balance sheets in terms of the Insurance Act [*Chapter 24:07*];

"benefit fund" means a fund registered or provisionally registered as a provident fund under the Pension and Provident Funds Act [*Chapter 24:09*];

"investments in Zimbabwe" means such of an insurance company's securities as form part of its assets in Zimbabwe;

"life insurance business" has the meaning in section 3 of the Insurance Act [*Chapter 24:07*];

"life policy" has the meaning in section 3 of the Insurance Act [*Chapter 24:07*];

"local life insurance business" means a business of assuming the obligations of an insurer under local life policies;

"local life policy" means a life policy under which the insurer assumes a contingent obligation in respect of the life of a person resident in Zimbabwe;

"productive assets in Zimbabwe" means an insurance company's assets in Zimbabwe which are not—

(a) outstanding premiums, cash in hand or in current account; or

(b) ordinary stocks or shares; or

(c) property wholly occupied by the company in connection with its local life insurance business; or

(d) such part of any other property of the company as, in the Commissioner' opinion, is occupied by it in connection with its local life insurance business; or

(e) such other assets as, in the Commissioner's opinion, did not produce investment income during the year of assessment;

"public securities" mean—

(a) bonds, stocks, Treasury bills or other like securities issued by the State, a local authority or a statutory corporation; or

(b) loans made to any fund established in terms of the Housing and Building Act [*Chapter 22:07*];

"short-term insurance business" means insurance business in Zimbabwe which is not life insurance business;

"taxable income attributable to insurance business" means any surplus determined after applying paragraphs 4, 5 and 6 and after deducting any assessed loss attributable to insurance business determined in respect of the previous year of assessment.

Returns and liability to tax

2. This Schedule shall not be construed as relieving an insurance company from—

(a) the obligation of rendering returns of income which is not derived from insurance business; or

(b) any liability to tax in respect of income referred to in subparagraph (a).

Information in returns

3. An insurance company shall specify separately in a return rendered in respect of its insurance business in Zimbabwe the gross income it has derived from each class of insurance business, as prescribed in terms of section 63(3) of the Insurance Act [*Chapter 24:07*], which it carries on in Zimbabwe.

Determination of taxable income or assessed loss of an insurer attributable to short-term insurance business

4.(1) An insurance company's taxable income or assessed loss attributable to short-term insurance business shall be determined by charging the losses, expenses and deductions in respect of its short-term insurance business which are specified in paragraph 5 against the sum of—

(a) premiums received in the course of carrying on its short-term insurance business; and

(b) amounts, other than premiums but including commissions on re-insurance, received from the carrying on of its short term insurance business; and

(c) the amount of a reserve allowed as a deduction in the previous year of assessment for unexpired risks at the percentage for such risks adopted by the insurance company in relation to its short term insurance operations as a whole; and

(d) amounts allowed to be deducted under paragraph 5 (a), (b), (c) and (d), whether in the current or any previous year of assessment, which have been recovered or recouped during the year of assessment.

(2) For the purposes of subparagraph (1)(b), commission on re-insurance includes all commission on re-insurance applicable to premiums mentioned in subparagraph (1)(a), even if any of the operations by which the re-insurance has been effected have been performed outside Zimbabwe.

Deductions in respect of short term insurance business

5. The losses, expenses and deductions in respect of an insurance company's short-term insurance business referred to in paragraph 4(1) are—

(a) premiums paid on re-insurance; and

(b) actual losses less losses recoverable on re-insurance; and

(c) expenditure and losses, other than those referred to in subparagraphs (a) and (b), to the extent that they are incurred for the purposes of the insurance company's short-term insurance business or in the production of the amounts referred to in paragraph

4(1)(b), except to the extent to which they are expenditure or losses of a capital nature; and

(d) the allowances and deductions for which provision is made in—

(i) sections 32 ("Expenditure incurred prior to commencement of business"), 36 ("Attendance at business conventions, etc., and subscriptions to business and professional associations"), 37 ("Expenses incurred to derive rental income from immovable property"), 40 ("Premiums, royalties, etc."), 41 ("Pension and annuity payments, and medical aid contributions"), and 42 ("Annuities, etc., for former employees and partners"); and

(ii) Part I ("Deductions to be Allowed in respect of Buildings, etc.") of the Eighth Schedule ("Capital Allowance Deductions"); and

(iii) paragraph 2 ("Research and development costs"), 3 ("Grants, scholarships, etc."), 4 ("Donations to public or charitable funds, trusts etc."), 6 ("Expenditure on maintaining local authority infrastructure") and 11 ("Deduction for unrecovered legal costs in tax appeals") of the Tenth Schedule ("Deductions Promotive of Public Policy Objectives");

in so far as the allowances and deductions relate to the insurance company's short-term insurance business and in so far as they have not been deducted in terms of Part IV of Chapter IV; and

(e) the amount of a reserve for unexpired risks, at the percentage adopted for such risks by the insurance company in relation to its insurance operations as a whole, which is set aside by the company at the end of the year of assessment.

Determination of taxable income or assessed loss of an insurer attributable to local life insurance business

6.(1) An insurance company's taxable income or assessed loss attributable to its local life insurance business shall, subject to this Schedule, be determined by applying the formula—

$$\frac{(A - B) + (C - D)}{2} \times \frac{(E \times 2) - 7}{200} + (F - G) - H$$

where—

A is the amount of the actuarial liabilities in respect of all the insurance company's local life policies which were in force at the end of the previous year of assessment;

B is the amount of the actuarial liabilities in respect of all the insurance company's local life policies entered into in connection with pension and benefit funds and with purchased immediate annuities, which were in force at the end of the previous year of assessment;

C is the amount of the actuarial liabilities in respect of all the insurance company's local life policies which were in force at the end of the year of assessment;

D is the amount of the actuarial liabilities in respect of all the insurance company's local life policies entered into in connection with pension and benefit funds and with purchased immediate annuities which were in force at the end of the year of assessment;

E is the average rate of interest *per centum* derived by the insurance company during the year of assessment from its productive assets in Zimbabwe;

F is any profit arising from the realisation by the insurance company of its investment in Zimbabwe computed in accordance with paragraph 7;

G is any loss arising from the realisation by the insurance company of its investments in Zimbabwe computed in accordance with paragraph 8;

H is any allowance to be deducted in accordance with paragraph 9.

(2) For the purposes of subparagraph (1), the actuarial liabilities of an insurance company shall be determined on the basis used by it to value its liabilities in respect of its life insurance business in Zimbabwe for the purposes of the Insurance Act [*Chapter 24:07*].

Determination of factor F

7.(1) The profit arising from the realisation by an insurance company of its investments in Zimbabwe shall be computed by applying whichever of the following formulas produces the lesser amount—

$$I \times \frac{(A - B) + (C - D)}{(A + C)}$$

or

$$I \times \frac{(A - B) + (C - D)}{(J + K)}$$

where—

A, B, C and D are the same factors as in the formula contained in paragraph 6;

I is the total profit arising during the year of assessment from the realisation of any of the insurance company's investments in Zimbabwe, other than public securities;

J is the total amount of the insurance company's assets in Zimbabwe at the beginning of the year of assessment;

K represents the total amount of the insurance company's assets in Zimbabwe at the end of the year of assessment.

(2) If—

(a) an insurance company's investments in Zimbabwe are transferred to another insurance company in the course of or in furtherance of a scheme of reconstruction or a merger or other business operation which, in the Commissioner's opinion, is of a similar nature; and

(b) the Commissioner is satisfied that, as a condition of the transfer, the transferee is to assume the liabilities of the transferor in respect of all local life policies issued by the transferor;

the transferor and the transferee may elect that, notwithstanding the terms of any agreement under which the transfer was effected, for the purposes of subparagraph (1) the consideration at which the investments in Zimbabwe are transferred shall be the cost of such investments to the transferor:

Provided that, if the transferee subsequently realises or disposes of any of the investments so transferred, otherwise than in the circumstances referred to in this subparagraph, the cost at

which it acquired the investments shall be deemed, for the purpose of determining factor I, to have been the cost at which they were acquired by the first transferor which made an election in terms of this subparagraph.

Determination of factor G

8. A loss arising from the realisation by an insurance company of its investments in Zimbabwe shall be computed by applying whichever of the following formulas produces the lesser amount—

$$L \times \frac{(A - B) + (C - D)}{(A + C)}$$

or

$$L \times \frac{(A - B) + (C - D)}{(J + K)}$$

where—

A, B, C and D are the same factors as in the formula contained in paragraph 6;

J and K are the same factors as those employed in the formulas contained in paragraph 7;

L is the total loss arising during the year of assessment from the realisation of any of the insurance company's investments in Zimbabwe, other than public securities.

Determination of factor H

9.(1) A deduction from an insurance company's taxable income shall be made, subject to this paragraph, in an amount computed by applying the formula—

$$(M - N) - \frac{O \times 7}{2000} \times \frac{(A - B) + (C - D)}{2}$$

where—

A, B, C and D are the same factors as in the formula contained in paragraph 6;

M is the interest derived by the insurance company during the year of assessment from such of its public securities as are assets in Zimbabwe, excluding any such securities issued outside Zimbabwe;

N is the interest, computed in accordance with paragraph 10, derived by the insurance company during the year of assessment from such of its public securities as are directly related to that part of his local life insurance business which is attributable to local life policies entered into in connection with pension and benefit funds and with purchased immediate annuities;

O is the average rate of interest *per centum* derived by the insurance company during the year of assessment from such of its public securities as are assets in Zimbabwe, excluding any such securities issued outside Zimbabwe.

(2) No deduction shall be made in terms of this paragraph if, by applying the formula contained in paragraph 6 without the factor H, the insurance company would have a loss.

(3) The allowance referred to in subparagraph (1) shall not exceed an amount computed by applying the formula contained in paragraph 6 without the factor H.

Determination of factor N

10. The interest derived by an insurance company during a year of assessment from such of its public securities as are directly related to that part of its local life insurance business which is attributable to local life policies entered into in connection with pension and benefit funds and with purchased immediate annuities shall be computed by applying the formula—

$$\frac{M}{2} \times \left\{ \frac{B}{A} + \frac{D}{C} \right\}$$

where—

A, B, C and D are the same factors as those employed in the formula contained in paragraph 6;

M is the same factor as is employed in the formula contained in paragraph 9.

SECOND SCHEDULE (Section 20(2)(a))

TAXABLE INCOME FROM SPECIAL MINING LEASE OPERATIONS

Interpretation

1. In this Schedule—

"allowable deduction" means a deduction allowable under this Schedule;

"assessed loss" means an assessed loss determined by applying paragraph 2;

"capital expenditure" means development expenditure or exploration expenditure or both, as the context requires;

"chargeable minerals" means minerals obtained by the holder of a special mining lease from special mining lease operations carried on by him or her;

"development expenditure" means expenditure actually incurred, whether directly or indirectly, in connection with development operations, including expenditure incurred on—

(a) the acquisition of motor vehicles, machinery, implements and other articles used for the purpose of development operations, including pipes, units for the purpose of production and treatment, and drilling equipment; and

(b) the acquisition of furniture, tools and equipment used in offices, residential units, schools, hospitals, nursing homes or clinics such as are referred to in paragraph (c)(ii) of the definition of "development operations", and on warehouses, vehicles, motorised rolling equipment, aircraft, fire and security stations, water and sewerage plants and power plants; and

(c) labour, fuel, haulage, supplies, materials and repairs in connection with development operations; and

(d) charges, fees or rent for or in respect of land or buildings occupied for the purpose of development operations; and

(e) general administration and management directly connected with development operations in such verifiable amount as may be agreed in accordance with the special mining lease agreement or, where there is no such agreement, in accordance with the formula set out in paragraph 5 ("Calculation of maximum amount deductible by company for general administration and management") of the Fourth Schedule ("Miscellaneous Calculations"); and

(f) measures to prevent, minimise or remedy environmental damage caused by development operations, where such measures are taken pursuant to a mining development plan approved by the Minister responsible for the administration of the Mines and Minerals Act [*Chapter 21:05*];

"development operations" means operations carried out in Zimbabwe in order to develop a special mining lease area, and includes—

(a) the sinking of shafts; and

(b) the installation of machinery, implements and other articles required for special mining lease operations; and

(c) the construction of—

(i) facilities for the production, treatment, storage, gathering and conveyance of minerals; and

(ii) offices, residential units, schools, hospitals, nursing homes or clinics for use by persons employed in connection with mining operations and by their families;

and

(d) the construction of roads in or to the special mining lease area;

"disposed of", in relation to minerals, has the meaning in paragraph 3(3);

"exploration expenditure" means expenditure actually incurred, whether directly or indirectly, in connection with exploration operations, including expenditure incurred on—

(a) the acquisition of motor vehicles, machinery, implements, utensils and other articles employed for the purpose of exploration operations, including pipes and drilling equipment; and

(b) labour, fuel, haulage, supplies, materials, and repairs in connection with exploration operations; and

(c) charges, fees or rent for or in respect of land or buildings occupied for the purposes of exploration operations; and

(d) general administration and management directly connected with exploration operations in such verifiable amount as may be agreed in accordance with the special mining lease agreement or, where there is no such agreement, in accordance with the formula set out in paragraph 5 ("Calculation of maximum amount deductible by company for general administration and management") of the Fourth Schedule ("Miscellaneous Calculations");

"exploration operations" means any operations carried out in Zimbabwe in connection with exploration for minerals, and includes—

(a) geological, geophysical, geochemical, paleontological, aerial, magnetic, gravity or seismic surveys; and

(b) the study of the feasibility of any special mining lease operations or development operations to be carried out or of the environmental impact of such operations;

"income attributable to special mining lease operations" means the aggregate of the amounts referred to in paragraph 3(1);

"Minerals Marketing Corporation of Zimbabwe" means the corporation established by section 3 of the Minerals Marketing Corporation of Zimbabwe Act [*Chapter 21:04*];

"residential unit" means an apartment, flat, house, whether detached, semi-detached or terraced, or any similar unit of residential accommodation;

"taxable income" means any taxable income determined by applying paragraph 2;

"year of production", in relation to a special mining lease area, means the year of assessment in which minerals from the area are first sold or otherwise disposed of.

Determination of taxable income or assessed loss

2. The taxable income or assessed loss accruing to the holder of a special mining lease in a year of assessment shall be the difference, if any, between the income attributable to special mining lease operations that accrues to the holder in that year and the sum of his or her allowable deductions for that year; and that difference is taxable income if the income is greater than the sum of those allowable deductions, and is otherwise an assessed loss.

Income from special mining 1ease operations

3.(1) Gross income from special mining lease operations includes every amount received by or accrued to or in favour of the holder of a special mining lease or deemed to have been received by or to have accrued to or in favour of such holder that is attributable to special mining lease operations carried out by him or her in any year of assessment, including—

(a) the fair market value, established in accordance with subparagraph (2), of so much of the holder's chargeable minerals as were disposed of in the year of assessment; and

(b) any amount accruing to the holder in the year of assessment, under a policy of insurance or otherwise, from the loss or destruction of any of the holder's chargeable minerals; and

(c) any interest or other amount accruing to the holder in the year of assessment from special mining lease operations; and

(d) any amount to be included in the holder's income attributable to special mining lease operations in the year of assessment pursuant to paragraph 8(2); and

(e) any amount allowed to be deducted under paragraph 4 or 5, whether in the current or any previous year of assessment, which has been recovered or recouped; and

(f) any amount or value referred to in section 24(2)(e) or (g), or 26(1)(a) ,or paragraphs 1, 2 or 3 of Part II ("Amounts to be Included in Business Income") of the Fifth Schedule ("Amounts Deemed to Be included in Employment, Business and Property Income").

(2) The fair market value of minerals disposed of by the holder of a special mining lease is—

(a) the value established by the Commissioner by reference to criteria for the determination of that value specified in the special mining lease agreement; or

(b) where there is no special mining lease agreement or there are no criteria such as are referred to in subparagraph (a), the value established by the Commissioner in accordance with such rules as are prescribed.

(3) Minerals are disposed of by the holder of a special mining lease if they are—

(a) sold, donated or bartered or used for repayment of loans or any form of consumer credit; or

(b) appropriated to refining or other processing in Zimbabwe without having been sold, donated or bartered prior to appropriation; or

(c) exported without having been sold, donated or bartered prior to export.

(4) Except as provided in subparagraph (1), the amounts referred to in section 24(2) and Part II of the Fifth Schedule shall not constitute income attributable to special mining lease operations.

General deductions allowed in determining taxable income

4.(1) Subject to Division B ("Cases Where No Deduction from Business Income May be Made") of Sub-Part B of Part IV of Chapter IV, and paragraph 6, for the purpose of determining the taxable income of the holder of a special mining lease for a year of assessment, there shall be deducted from the income attributable to special mining lease operations in that year the amount of any—

(a) expenditure and losses incurred in that year wholly and exclusively for the purpose of special mining lease operations carried out by him; and

(b) expenditure incurred in that year in respect of interest on, or in borrowing or obtaining, a loan or other form of credit or financial accommodation; and

(c) expenditure incurred in that year in respect of royalty payable to the Government on minerals won; and

(d) expenditure incurred in that year in respect of commission payable to the Minerals Marketing Corporation of Zimbabwe; and

(e) expenditure and losses incurred in that year wholly and exclusively for the purpose of special mining lease operations carried out by him or her, in respect of any matter for which a deduction or allowance is allowable in terms of—

(i) 32 ("Expenditure incurred prior to commencement of business"), 33 ("Deduction for bad debts"), 41 ("Pension and annuity payments, and medical aid contributions"), and 42 ("Annuities, etc., for former employees and partners"); or

(ii) paragraph 2 ("Research and development costs"), 3 ("Grants, scholarships, etc."), 4 ("Donations to public or charitable funds, trusts etc."), 6 ("Expenditure on maintaining local authority infrastructure") and 11 ("Deduction for unrecovered legal costs in tax appeals") of the Tenth Schedule ("Deductions Promotive of Public Policy Objectives"); or

(ii) paragraph 5.

(2) Where any expenditure or losses referred to in subparagraph (1) are incurred as part of or in conjunction with any other expenditure, only that portion of the total expenditure or losses, as the case may be, which is wholly and exclusively incurred for the purpose of special mining lease operations shall be allowed as a deduction in terms of this paragraph.

(3) Section 44 ("Assessed losses") (2) shall apply in relation to subparagraph (2) as it applies in relation to that subsection.

(4) Section 50 ("Prohibition against double deduction") shall have effect for the purpose of this Schedule as it has effect for the purposes of that section.

(5) For the purpose of determining the taxable income of the holder of a special mining lease for a year of assessment, any assessed loss, determined under this Schedule, incurred by

the holder for the previous year of assessment shall be deducted from the income remaining after the deductions referred to in this paragraph have been made.

Capital redemption allowances

5.(1) Subject to this paragraph and paragraph 6, capital expenditure incurred by the holder of a special mining lease may be deducted only in accordance with this paragraph for the purpose of determining the holder's taxable income attributable to special mining lease operations in any year of assessment.

(2) Expenditure which the holder of a special mining lease incurs in or before the year of production of his or her special mining lease area, on—

(a) exploration operations carried out in the special mining lease area, whether before or after the issue of the special mining lease; or

(b) development operations;

shall be deemed to have been incurred in the year of production and may, in the case of exploration expenditure, be deducted in full in that year or, in the case of development expenditure, be deducted as to one-quarter of the expenditure in that year and as to a further one-quarter in each of the three immediately succeeding years of assessment.

(3) Expenditure which the holder of a special mining lease incurs in a year of assessment after the year of production of the special mining lease area, on—

(a) exploration operations in respect of the special mining lease area, may be deducted in full in that year of assessment;

(b) development operations, may be deducted as to one-quarter of the expenditure in that year of assessment and as to one-quarter in each of the three immediately succeeding years of assessment.

(4) Expenditure which the holder of a special mining lease incurs on exploration operations not more than six years before a year of assessment after the year of production may be deducted in full in that year of assessment, if—

(a) the area in which the exploration operations were carried out was embraced by an exclusive prospecting order made in terms of Part VI of the Mines and Minerals Act [*Chapter 21:05*], which order ceased to have effect before the year assessment concerned; and

(b) the exploration operations were carried out as part of a programme of operations approved by the Mining Affairs Board in terms of Part VI of the Mines and Minerals Act [*Chapter 21:05*]; and

(c) no mining operations have resulted from the exclusive prospecting order referred to in subparagraph (a); and

(d) the expenditure on the exploration operations has not been deducted against any other income accruing to the holder concerned.

(5) Where, in or before the year of production of the special mining lease area concerned, an amount has accrued to the holder of a special mining lease from the disposal, loss or destruction of any property used in connection with his or her exploration operations or development operations, any capital expenditure incurred in respect of the property shall, if

otherwise allowable as a deduction under this paragraph, be allowable only to the extent that the capital expenditure exceeds the amount so accrued.

(6) For the purposes of subparagraph (5), the amount accruing to the holder of the special mining lease concerned shall be—

(a) if the property was disposed of by way of sale for a separate price, the price for which it was sold, less the expenses of sale; or

(b) if the property was disposed of together with other property by way of sale and a separate price was not determined in respect of the property concerned, such part of the price for which all the property was sold as the Commissioner may determine, less such part of the expenses of the sale as he or she may determine; or

(c) if the property was disposed of otherwise than by way of sale, its value at the date of disposal; or

(d) if the property was lost or destroyed, such amount as may have accrued to the holder, under a policy of insurance or otherwise, in respect of the loss or destruction.

(7) Any capital expenditure incurred by the holder of a special mining lease in or before the year of production of the special mining lease area, other than capital expenditure incurred in respect of any property, shall, if otherwise allowable as a deduction under this paragraph, be reduced by any amount accruing to the holder in or before the year of production from a recovery or recoupment of any of that capital expenditure.

Limitations on allowable deductions

6.(1) In this paragraph—

"equity capital", in relation to the holder of a special mining lease, means the sum of the holder's issued and paid-up share capital, reserves, unappropriated profits and loans from shareholders:

Provided that such loans bear no interest and are not repayable on or by a certain date.

(2) The holder of a special mining lease shall not be allowed any deduction under this Schedule in respect of—

(a) expenditure, other than payments to the Government in the nature of royalty payments, or commission payable to the Minerals Marketing Corporation of Zimbabwe, wholly or partly depending on, or determined by reference to, the quantity or value of, or the profits from, the holder's chargeable minerals; or

(b) any amount payable to the Government which is calculated by reference to the profitability of the holder's special mining lease operations, or on the rate of return on his or her investment in those operations, or on an after-tax basis or in any similar manner; or

(c) expenditure to the extent that it is incurred to produce income which is not income attributable to special mining lease operations; or

(d) expenditure such as is referred to in paragraph 4(1)(b)—

(i) unless the Commissioner is satisfied that the loan or credit has been or is being used for the purpose of special mining lease operations; or

(ii) to the extent that the interest concerned exceeds the commercial rate payable for the type and currency of the loan by a borrower dealing at arm's length with the lender; or

(iii) to the extent that any expenditure incurred exceeds the amount that would have been agreed upon by a person dealing at arm's length with the person providing the loan or credit concerned;

or

(e) expenditure, in the case of a loan for development operations—

(i) unless the expenditure was incurred in accordance with a financing plan approved in terms of a special mining lease agreement; or

(ii) to the extent that the expenditure relates to a part of the debt exceeding, in any year of assessment, three times the holder's equity capital, or such other multiple of his or her equity capital as may be fixed by or in terms of a special mining lease agreement;

or

(f) expenditure on a residential unit used for housing the holder's employees and their families, to the extent that the expenditure exceeds twenty-five thousand United States dollars; or

(g) expenditure on a passenger motor vehicle, to the extent that the expenditure exceeds ten thousand United States dollars; or

(h) expenditure on a permanent building used for the purpose of a school, hospital, nursing home or clinic to the extent that the expenditure exceeds—

A. in respect of any residential unit used by staff employed at the school, hospital, nursing home or clinic, twenty-five thousand United States dollars; or

B. in respect of any one such school, hospital, nursing home or clinic, the expenditure incurred;

or

(i) any additional profits tax, or interest payable thereon, charged in terms of this Act, or any similar tax charged in any country other than Zimbabwe.

(3) Where the holder of a special mining lease disposes of any chargeable minerals, the holder shall not be allowed a deduction under this Schedule for the transportation of the minerals—

(a) outside Zimbabwe; or

(b) if applicable, within Zimbabwe beyond the delivery point as defined in the special mining lease.

(4) Except as provided in paragraph 4, no deduction shall, as regards income attributable to special mining lease operations, be made in respect of allowances or deductions referred to in Division A ("Deductions Allowed from Business Income") of Sub-Part B of Part IV of Chapter IV.

(5) No deduction shall be allowed in respect of any bonus payment made by any person in respect of the signing of a special mining lease agreement or the issue of a special mining lease.

Deductions allowed on transfer of special mining lease

7.(1) Where in a year of assessment the holder of a special mining lease transfers the lease, wholly or partially, to another person under the Mines and Minerals Act [*Chapter 21:05*], the transferor and the transferee shall jointly, within thirty days after the date of the transfer, furnish to the Commissioner a statement in writing—

(a) identifying any property to which this paragraph applies which passed to the transferee; and

(b) stating the proportion of the consideration given for the transfer which appertains to the property or, where no consideration was so given, the value of the property.

(2) If the Commissioner is satisfied with a statement furnished in terms of subparagraph (1), the proportion of the consideration which appertains to the property or, as the case may be, the value of the property shall—

(a) for the purposes of paragraph 5, rank as—

(i) exploration expenditure if the deduction allowed as provided in subparagraph (4) was in respect of exploration expenditure; or

(ii) development expenditure if that deduction was in respect of development expenditure;

and

(b) for the purpose of paragraph 8, rank as a recovery of the transferor's capital expenditure.

(3) If the Commissioner is not satisfied with a statement furnished in terms of subparagraph (1) or if no such statement has been furnished, the Commissioner shall determine the value of the property which shall then rank as exploration expenditure or development expenditure, as provided in subparagraph (2)(a), or as capital expenditure as provided in subparagraph (2)(b).

(4) This paragraph applies in relation to any property in respect of which a deduction has been allowed under paragraph 5 for the purpose of determining the transferor's taxable income.

Disposal, loss etc. of property

8.(1) This paragraph applies where, in a year of assessment, property of the holder of a special mining lease—

(a) in respect of which a deduction under paragraph 5(3) has been allowed for the purpose of determining the holder's taxable income, is disposed of, lost or destroyed; or

(b) to which paragraph 7 applies, passes to a transferee in circumstances such as are referred to in that paragraph.

(2) Where this paragraph applies, the income attributable to special mining lease operations of the holder of the special mining lease in the year of assessment concerned shall

include the amount of the deduction allowed in respect of the property concerned, to the extent that the deduction has been recovered or recouped as a result of the disposal, loss, destruction or passing of that property.

(3) Paragraph 5(6) shall apply, with any necessary changes, for the purpose of determining the amount received or recouped as a result of the disposal, loss or destruction of any property.

Returns and liability to tax

9. Nothing in this Schedule shall be construed as relieving the holder of a special mining lease from—

(a) the obligation to render returns of income in respect of income, other than income attributable to special mining lease operations, accruing to the holder; or

(b) any liability to tax in respect of income, not attributable to special mining lease operations, referred to in subparagraph (a).

Information in returns

10. The holder of a special mining lease shall specify separately, in a return rendered in respect of special mining lease operations, the income attributable to those operations and shall furnish information with respect to the following matters—

(a) the quantity of chargeable minerals won by the holder; and

(b) the total quantity of those minerals disposed of, the manner of each disposal making up that total and the fair market value in relation to each disposal; and

(c) in the case of minerals won that are lost or destroyed, the quantity lost or destroyed and the amount received or receivable under a policy of insurance or otherwise in respect of the minerals; and

(d) any amount included in the holder’s income pursuant to paragraph 8(2); and

(e) any interest or other amount derived by the holder from special mining lease operations; and

(f) the amount of each allowable deduction claimed and particulars of that amount; and

(g) any property in relation to which paragraph 5(5), paragraph 7 or paragraph 8 applies; and

(i) the amount, if any, of tax payable; and

(j) such other information as the Commissioner may require.

THIRD SCHEDULE (Section 21(2(a))

TAXABLE INCOME OF PETROLEUM OPERATOR

1.(1) In this Schedule—

"allowable deduction" means a deduction allowable under this Schedule;

"assessed loss attributable to petroleum operations" means any such loss determined by applying paragraph 2;

"capital expenditure" has the meaning in subparagraph (2);

"chargeable petroleum" means petroleum obtained by a petroleum operator from petroleum operations carried on by him or her;

"disposed of", in relation to petroleum, has the meaning in paragraph 3(3);

"income attributable to petroleum operations" means the aggregate of the amounts referred to in paragraph 3(1);

"petroleum" means any naturally occurring hydrocarbon or any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state, and includes crude oil and natural gas but does not include hydrocarbons obtained from coal by destructive distillation or in any other way;

"petroleum agreement" means an agreement between the Government and any person to whom a petroleum special grant has been or is to be issued, incorporating terms and conditions of that grant;

"petroleum information" means geological, geophysical and technical information that relates to the presence, absence or extent of deposits of petroleum in any area in Zimbabwe;

"petroleum operations" means—

(a) exploration in Zimbabwe with a view to detecting the existence of deposits of petroleum; or

(b) the appraisal of reservoirs, the preparation of wells for production, the development of producing facilities and the extraction of petroleum, whether or not those operations are carried on in conjunction with operations such as are referred to in paragraph (a), and any preliminary treatment of such petroleum for the purpose of purification and stabilisation of the petroleum extracted in order to facilitate transport of such petroleum from the site of the petroleum operations; or

(c) the disposal of petroleum obtained from operations referred to in paragraph (b);

"residential unit" means an apartment, flat, house whether detached, semi-detached or terraced, or similar unit of residential accommodation;

"taxable income attributable to petroleum operations" means any such income determined by applying paragraph 2.

(2) Capital expenditure of a petroleum operator in relation to a petroleum special grant is expenditure incurred by the petroleum operator on any of the following matters in relation to that special grant—

(a) exploring for petroleum and ascertaining and testing the extent and characteristics of any such discovery, including the costs of—

(i) geological, geophysical, geochemical, aerial, magnetic, gravity, seismic and other surveys and all processing, analyses, interpretations and studies related to those surveys;

(ii) drilling of shot holes, core holes, bore holes, water holes and holes for the discovery and delineation of petroleum reservoirs;

(iii) appraisal of surveys and drilling, including the drilling and testing of exploration and appraisal wells and all reservoir studies;

(b) preparing for drilling or drilling and maintaining development or production wells, including all costs of labour, fuel, repairs, hauling and supplies and materials without salvage value;

(c) the acquisition of petroleum information or on reservoir studies;

(d) the provision of plant, machinery and equipment for the exploration for, and the development and production of, petroleum;

(e) the construction of any buildings, structures or works for the purpose of petroleum operations, including the provision of residential accommodation and associated facilities for employees of the petroleum operator and their dependants, and including any premium or consideration in the nature of a premium paid for the use of buildings, structures, works or land required for petroleum operations;

(f) the provision of any transportation or communication facilities required for the conduct of petroleum operations;

(g) the provision of office equipment and furniture in any building required for petroleum operations;

(h) the preparation of sites for production, including studies on the environmental impact of petroleum operations, engineering and design studies, delineation work and feasibility studies, done to determine the best means of conducting petroleum operations;

(i) prior to the year of assessment in which the petroleum operator first produces petroleum under a programme of continuous production and sale—

(i) so much as does not exceed the maximum amount of expenditure on general administration and management for the purposes of petroleum operations, calculated in accordance with the formula set out in paragraph 5 (“Calculation of maximum amount deductible by company for general administration and management”) of the Fourth Schedule (“Miscellaneous Calculations”);

(ii) on the education and training of citizens and residents of Zimbabwe at an educational or technical institution, approved by the Commissioner, on attachment with a petroleum operator or an affiliate of the petroleum

operator, in any aspect of operations for the discovery or recovery of petroleum;

(j) in pursuance of a plan approved by the Minister responsible for the administration of the Mines and Minerals Act [*Chapter 21:05*], in relation to the closing down of an oil field or any part of it;

(k) on any permanent building used for the purposes of a school, hospital, nursing home or clinic.

Determination of taxable income or assessed loss

2. The taxable income or assessed loss, attributable to petroleum operations, accruing to a petroleum operator in any year of assessment, shall be the difference, if any, between the income so attributable that accrues to the petroleum operator in the year of assessment and the sum of his or her allowable deductions for that year; and that difference is taxable income if the income is greater than the sum of those allowable deductions, and is otherwise an assessed loss.

Income from petroleum operations

3.(1) Gross income from petroleum operations includes every amount received by or accrued to or in favour of the petroleum operator or deemed to have been received by or to have accrued to or in favour of such operator that is attributable to petroleum operations carried out by him or her in any year of assessment, including—

(a) the fair market value, established in accordance with subparagraph (2), of so much of the petroleum operator's chargeable petroleum as was disposed of in the year of assessment; and

(b) any amount accruing to the petroleum operator in the year of assessment, under a policy of insurance or otherwise, from the loss or destruction of any of the operator's chargeable petroleum; and

(c) any interest or other amount accruing to the petroleum operator in the year of assessment from petroleum operations; and

(d) any amount to be included in the petroleum operator's gross income in the year of assessment pursuant to paragraph 8(2); and

(e) any amount allowed to be deducted under paragraph 4, whether in the current or in any previous year of assessment, which has been recovered or recouped; and

(f) any amount or value referred to in section 24(2)(g) or (h), or 26(1)(a), or section 40 ("Premiums, royalties, etc."), or paragraphs 1 or 2 of Part II ("Amounts to be Included in Business Income") of the Fifth Schedule ("Amounts Deemed to Be included in Employment, Business and Property Income").

(2) The fair market value of petroleum disposed of by a petroleum operator is—

(a) the value established by reference to criteria for the determination of that value specified in the petroleum operator's special grant; or

(b) where there are no criteria such as are referred to in subparagraph (a), the value established in relation to the disposal in accordance with such rules as are prescribed.

(3) Petroleum is disposed of by a petroleum operator if it is—

(a) sold, donated or bartered; or

(b) appropriated to refining or other processing in Zimbabwe without having been sold, donated or bartered prior to appropriation; or

(c) exported without having been sold, donated or bartered prior to export.

(4) Except as provided in subparagraph (1), the amounts referred to in section 24(2) and Part II of the Fifth Schedule shall not, in the case of the petroleum operations of a petroleum operator, constitute income attributable to petroleum operations.

Deductions allowed in determining taxable income from petroleum operations

4.(1) Subject to Division B ("Cases Where No Deduction from Business Income May be Made") of Sub-Part B of Part IV of Chapter IV, and paragraph 5, for the purpose of determining a petroleum operator's taxable income attributable to petroleum operations, there shall be deducted from the income so attributable the amounts of any—

(a) expenditure and losses incurred wholly and exclusively for the purposes of petroleum operations, including expenditure so incurred—

(i) for repairs to any building structure, works, plant, machinery, implements, utensils or articles held, occupied or used for the purpose of carrying on petroleum operations; and

(ii) in respect of rent for land or buildings in Zimbabwe occupied for the purpose of carrying on petroleum operations; and

(iii) in respect of interest on, or in borrowing or obtaining, a loan or other form of credit;

but not any expenditure or losses of a capital nature;

(b) expenditure and losses incurred wholly and exclusively for the purpose of petroleum operations in respect of any matter for which a deduction or allowance is allowable in terms of—

(i) 33 ("Deduction for bad debts"), 41 ("Pension and annuity payments, and medical aid contributions"), and 42 ("Annuities, etc., for former employees and partners"); or

(ii) paragraph 2 ("Research and development costs"), 3 ("Grants, scholarships, etc."), 4 ("Donations to public or charitable funds, trusts etc."), 6 ("Expenditure on maintaining local authority infrastructure") and 11 ("Deduction for unrecovered legal costs in tax appeals") of the Tenth Schedule ("Deductions Promotive of Public Policy Objectives"); or

(ii) paragraph 5.

(2) Where any expenditure or losses referred to in subparagraph (1) are incurred as part of or in conjunction with any other expenditure, only that portion of the total expenditure or losses, as the case may be, which is wholly and exclusively incurred for the purposes of petroleum operations shall be allowed as a deduction in terms of this paragraph.

(3) Section 44 ("Assessed losses") (2) shall apply in relation to subparagraph (2) as they apply in relation to that subsection.

(4) For the purpose of determining a petroleum operator's taxable income attributable to petroleum operations in a year of assessment, any assessed loss, determined under this Schedule, incurred by the operator for the previous year of assessment shall be deducted from the income remaining after the deductions referred to in this paragraph have been made.

(5) Where—

(a) a petroleum special grant ceases to have effect, otherwise than through its cancellation, and the petroleum operator is not then a petroleum operator in relation to any other petroleum special grant; and

(b) an assessed loss of the petroleum operator, determined under this Schedule, remains undischarged after the petroleum special grant has ceased to have effect; and

(c) the petroleum operator becomes, within five years after that date, a grantee of another petroleum special grant;

that assessed loss, to the extent that it remains undischarged when the petroleum operator becomes such a grantee, shall be deemed to be the assessed loss or part of the assessed loss, as the case may be, of the petroleum operator determined for the year of assessment in which the petroleum operator became such a grantee, and section 44 ("Assessed losses") (2) shall apply accordingly.

(7) Section 50 ("Prohibition against double deduction") shall have effect for the purposes of this Schedule as it has effect for the purposes of that section.

Limitations on allowable deductions

5.(1) A petroleum operator shall not be allowed any deduction under this Schedule in respect of—

(a) expenditure, other than payments to the Government in the nature of royalty payments, wholly or partly depending on, or determined by reference to, the quantity or value of, or the profits from, petroleum won by a petroleum operator; or

(b) any amount which—

(i) is payable to the government in terms of a petroleum special grant under which the amount is calculated by reference to the profitability of the petroleum operator's petroleum operations or on the rate of return on the operator's investment in those operations or in any similar manner; and

(ii) in terms of the petroleum special grant, is calculated on an after-tax basis;

or

(c) expenditure to the extent that it is incurred to produce income which is not attributable to petroleum operations; or

(d) expenditure such as is referred to in paragraph 4(1)(a)(iii)—

(i) unless the Commissioner is satisfied that the loan or credit has been or is being used for the purpose of petroleum operations; or

(ii) to the extent that the interest concerned exceeds the commercial rate payable by a borrower dealing at arms' length with the lender; or

(iii) to the extent that any expenditure incurred exceeds the amount that would have been agreed upon by a person dealing at arm's length with the person providing the loan or credit concerned;

or

(e) expenditure on a residential unit used for housing the operator's employees, to the extent that the expenditure exceeds twenty-five thousand United States dollars; or

(f) expenditure on a passenger motor vehicle, to the extent that the expenditure exceeds ten thousand United States dollars; or

(g) expenditure on a permanent building used for purposes of a school, hospital, nursing home or clinic, to the extent that the expenditure exceeds—

(i) in respect of any residential unit used by staff employed at the school, hospital, nursing home or clinic, twenty-five thousand United States dollars; or

(ii) in respect of any one such school, hospital, nursing home or clinic, the expenditure incurred.

(2) Where a petroleum operator dispose of any chargeable petroleum, the operator shall not be allowed a deduction under this Schedule for in respect of any cost of the transportation of the petroleum—

(a) outside Zimbabwe; or

(b) if applicable, within Zimbabwe beyond the point of disposal as defined in the petroleum special grant under which the petroleum was won.

(3) Except as provided in paragraph 4, no deduction shall, as regards income attributable to petroleum operations, be made in respect of allowances or deductions referred to in Division A ("Deductions Allowed from Business Income") of Sub-Part B of Part IV of Chapter IV.

(4) No deduction shall be allowed in respect of any bonus payment made by a petroleum operator or other taxpayer in respect of the signing of a petroleum agreement.

Allowances in respect of capital expenditure

6. Where in a year of assessment a petroleum operator incurs capital expenditure for the purpose of petroleum operations, that expenditure shall be allowed as a deduction for the purpose of determining the taxable income or assessed loss, as the case may be, of the petroleum operator in the year of assessment.

Assignment of petroleum special grant

7.(1) Where in a year of assessment a petroleum assigns a petroleum special grant under Part XX of the Mines and Minerals Act [*Chapter 21:05*], the assignor and the assignee shall jointly furnish to the Commissioner a statement in writing—

(a) identifying any property to which this paragraph applies which passed to the assignee on the assignment; and

(b) stating the proportion of the consideration given for the assignment which appertains to the property or, where no consideration was given, the value of the property.

(2) Where—

(a) a statement is furnished in terms of subparagraph (1) and the Commissioner is satisfied with it, the proportion of the consideration which appertains to the property or, as the case may be, the value of the property, as stated in the statement shall, for the purposes of paragraph 6, rank as capital expenditure incurred by the assignee, and shall, for the purposes of paragraph 8, rank as a recovery of capital expenditure by the assignor, in respect of the property;

(b) the Commissioner is not satisfied with a statement furnished in terms of subparagraph (1) or if no such statement is furnished, the Commissioner shall determine the amount which appertains to the property and that amount shall rank as provided in subparagraph (a).

(3) This paragraph applies to any property in respect of which a deduction has been allowed under paragraph 6 for the purpose of determining the assignor's taxable income.

Disposal, loss, etc., of property

8.(1) This paragraph applies where, in a year of assessment, property of a petroleum operator—

(a) in respect of which a deduction under paragraph 6 has been allowed for the purpose of determining the operator's taxable income, is disposed of, lost or destroyed; or

(b) to which paragraph 7 applies, passes to an assignee in circumstances such as are referred to in that paragraph.

(2) Where this paragraph applies, the income attributable to petroleum operations of the petroleum operator in the year of assessment concerned shall include the amount of the deduction allowed in respect of the property concerned, to the extent that the deduction has been recovered or recouped as a result of the disposal, loss, destruction or passing of that property.

Returns and liability to tax

9. Nothing in this Schedule shall be construed as relieving a petroleum operator from—

(a) the obligation of rendering returns of income in respect of income, other than income attributable to petroleum operations, accruing to the operator, or

(b) any liability to tax in respect of income, not attributable to petroleum operations, referred to in subparagraph (a).

Information in returns

10. A petroleum operator shall specify separately in a return rendered in respect of petroleum operations, the income attributable to those operations and shall furnish information with respect to the following matters—

(a) the quantity of chargeable petroleum won and saved by the operator; and

(b) the total quantity of that petroleum disposed of, the manner of each disposal making up that total and the fair market value in relation to each disposal; and

(c) in the case of petroleum won that is lost or destroyed, the quantity lost or destroyed and the amount received or receivable under a policy of insurance or otherwise in respect of the petroleum; and

(d) any amount included in the operator's income pursuant to paragraph 8(2); and

(e) any interest or other amount derived by the operator from petroleum operations; and

(f) the amount of each allowable deduction claimed and particulars of that amount; and

(g) any property in relation to which paragraph 7 or 8(1) applies; and

(i) the amount of the taxable income, if any, or the assessed loss; and

(j) the amount, if any, of tax payable;

(k) such other information as the Commissioner may require.

FOURTH SCHEDULE (Sections 23(1)(j)(i) and (ii), 23(1)(m), 26(1)(a), 48(2)(a) and (b), 61(2)(b), 90(2), paragraph 1 (definitions of "development expenditure" and "exploration expenditure") of Second Schedule, paragraph 1(2) of Third Schedule, paragraph 2(1) of Part II of the Eighth Schedule (definition of "capital expenditure"), paragraph 2(2) (proviso) of the Tenth Schedule)

MISCELLANEOUS CALCULATIONS

Calculation of Value of "advantage or benefit" for purposes of section 23(1)(j)

1.(1) For the purposes of section 23(1)(j)—

"advantage or benefit"—

(*a*) means—

(i) board; or

(ii) the occupation of quarters or of a residence; or

(iii) the use of furniture or of a motor vehicle; or

(iv) the use or enjoyment of any other property whatsoever, tangible or intangible, including a loan, whether of the same kind as that referred to in subparagraph (i), (ii) or (iii) or not, which is not an amount referred to in the following paragraphs of the Fifth Schedule ("Amounts Deemed to Be included in Employment, Business and Property Income"): paragraphs 1 and 2 of Part I ("Amounts Deemed to Be included in Employment Income"), and paragraph 1 of Part III ("Amounts Deemed to Be included in Property Income");

(v) an allowance;

granted to a employee, his or her spouse or child by or on behalf of his or her employer in so far as it is not consumed, occupied, used or enjoyed, as the case may be, for the purpose of the business transactions of the employer and in so far as a amount is not paid by the employee, his or her spouse or child in respect of its grant; and

(b) includes a passage benefit;

"loan" means any form of loan or credit whatsoever granted directly or indirectly to an employee, his or her spouse or child by or on behalf of his or her employer or a person associated with his **or** her employer, but does not include any such loan or credit which is proved to the satisfaction of the Commissioner to have been granted for the purpose of the education or technical training or medical treatment of such employee, spouse or child;

"passage benefit" means so much as is borne of the cost or paid by an employer towards the cost of—

(a) any journey made by an employee, his or her spouse and children or one or more of them—

(i) in connection with his taking up of employment, service, office or other gainful occupation; or

(ii) on the termination of his employment, service, office or other gainful occupation;

or

(b) any other journey made by an employee, his or her spouse and children or one or more of them in so far as that journey is not made for the purpose of a business transaction of the employer;

"person associated", in relation to an employer, includes any person to whom or fund to which the employer makes or has made any contribution, loan or other payment in order that such person or fund may pay or grant pensions, loans or any other amounts whatsoever to or in respect of his employees or their spouses or children;

(2) The value of the grant of an advantage or benefit, other than a payment by way of an allowance, shall be determined—

(*a*) in the case of the occupation or use of quarters, residence or furniture, by reference to its value to the employee; and

(*b*) in the case of any other advantage or benefit, by reference to the cost to the employer.

(3) In the case where an advantage or benefit consists of a motor vehicle, the cost of the advantage or benefit to the employer shall be determined in accordance with the following provisions, unless the person entitled to use the motor vehicle proves the contrary or unless the Commissioner considers such cost to be greater—

(a) in the case of a sale or disposal of a motor vehicle to an employee, whether during or on termination of the employee's employment, in respect of the year of assessment beginning on—

(i) the 1st January, 2009, and any subsequent year of assessment, the deemed benefit shall be determined in accordance with the following formula:

A—B

where—

A. represents the market value of the motor vehicle:

B. represents the cost at which the employee acquired the motor vehicle:

Provided that if the motor vehicle was acquired before the 1st January, 2009, the cost of the vehicle shall be the value of the vehicle shown in the final balances of the employer determined and carried forward in terms of section 3(3) and (4) of the Finance Act, 2009 (as substituted by the Finance Ac (No. 2) Act, 2009);

Provided further that no advantage or benefit in terms of this subparagraph shall be deemed to have accrued to an employee who, on the date of the sale or disposal is of or over the age of fifty-five;

(b) in determining the market value of a motor vehicle for the purposes of subparagraph (a), the Commissioner shall have regard to the valuation of a member of such institution or association of motor dealers or valuers as is prescribed by the Commissioner by notice in the *Gazette*;

(c) in the case of use, or the availability for use, of a motor vehicle wholly or partly for the private purposes of the employee, the value of that benefit shall be calculated in accordance with paragraph 2.

Calculation of motor vehicle benefit

2. The amount to be included in employment income as a motor vehicle benefit under section 23(1)(j)(i) is calculated according to the following formula—

$$(C + R) \times P$$

where—

C is twenty *per centum* of the cost to the employer of purchasing the vehicle, or the full cost of leasing the vehicle;

R is the running costs of the vehicle in the year ultimately borne by the employer;

P is the proportion the employee's non-business use of the vehicle bears to its total use in the year of assessment (it will be presumed for this purpose that the vehicle is exclusively for non-business use, unless the employee satisfies the Commissioner that the business use of the vehicle, excluding its use in commuting between the employee's home and place of employment, represents more than seventy-five *per centum* of its total use in the year of assessment).

Calculation of gain arising from disposal of shares held by employees under share option scheme

3. Pursuant to section 23(1)(m), the amount received or accrued as a result of the sale of shares offered to an employee in a company that is the employer or an associate of the employer, is calculated according to the following formula—

$$A-(B + C)$$

where—

A. represents the value of the shares at the time of exercise of the share option by the employee;

B. represents the value of the shares offered to the employee pursuant to a share option scheme,

C. represents the figure B to which the inflation allowance is applied, which allowance is to be determined in accordance with the following formula:

$$\frac{(D - E) \times B}{E}$$

where—

D. is the figure for the All-items Consumer Price Index issued by ZIMSTAT at the time the employee exercises the share option;

E. is the figure for the All-items Consumer Price Index issued by ZIMSTAT at the time when the shares were offered to the employees pursuant to a share option scheme.

Calculation of gain arising from improvements effected to land or buildings by lessee or occupier

4.(1) The gain accruing to a taxpayer from improvements effected under an agreement described in section 26(1)(a) is—

(a) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on improvements; or

(b) if no amount is stipulated in the agreement, an amount which, in the Commissioner's opinion, represents the fair and reasonable value of the improvements;

and, in either case, the amount is deemed to have accrued to the taxpayer from the date the improvements were effected, in equal monthly instalments over the unexpired period of the agreement, or over a period of ten years, whichever is the less:

Provided that, if any of the following events occur before the end of that period—

(a) the cancellation of the agreement; or

(b) the sale or disposal of the land or buildings on which the improvements were effected; or

(c) the death or insolvency of the taxpayer or, if the taxpayer is a company, the liquidation of the company;

all instalments which have not already formed part of the taxpayer's income in any year of assessment are deemed to have accrued to the taxpayer immediately before the happening of the event concerned.

(2) For the purposes of subparagraph (1)—

(a) where the agreement is for an initial period which may be extended or renewed, the period of the agreement is deemed to be the initial period only;

(b) where the agreement is silent or indefinite as to its duration, the period of the agreement is deemed to be ten years.

Calculation of maximum amount deductible by company for general administration and management

5. The maximum amount deductible for general administration and management in terms of—

(a) section 48 ("Restriction of deduction of certain expenditure by companies and branches") (2)(a) and (b); or

(b) paragraph (e) of the definition of "development expenditure", and paragraph (d) of the definition of "exploration expenditure" in paragraph 1 of the Second Schedule ("Taxable Income from Special Mining Lease Operations"); or

(c) subparagraph (i) of paragraph 1(2)(i) of the Third Schedule ("Taxable Income of Petroleum Operator"),

(d) paragraph (a)(iii) B of the definition of "capital expenditure" in paragraph 2(1) of Part II ("Allowances and Deductions In Respect of Income From Mining Operations and Other Provisions Relating Thereto") of the Eighth Schedule ("Deductions and Allowances"); or

is calculated according to the following formula—

$$A — (B + C)$$

where—

A is the total expenditure on general administration and management qualifying for deduction in terms of Part IV of Chapter IV;

B is the amount of such expenditure paid outside Zimbabwe;

C is the amount of expenditure qualifying for deductions in respect of any mining operation, special mining lease operation or petroleum operation carried on by the taxpayer, or other expenditure qualifying for deduction referred to section 48(2)(a) and (b) .

Calculation of deduction in respect of hire-purchase or credit sale of immovable property

6. For the purposes of section 61 ("Hire-purchase and credit sales")(2)(b), the calculation of the deduction allowed in respect of the sale or disposal of immovable property under a hire-purchase or credit agreement shall be calculated according to the formula—

$$\frac{D \times [E - (F + G)]}{E}$$

where—

D represents that portion of the amount deemed to have accrued under the agreement which is not receivable at the close of the taxpayer's accounting year;

E represents the amount deemed to have accrued under the agreement;

F represents the cost to the taxpayer of the immovable property sold or disposed of;

G represents that proportion of development and other charges which the Commissioner considers is applicable to the immovable property.

Calculation of tax credit allowable in respect of foreign tax on income to which double-taxation agreement applies

7.(1) Subject to subparagraph (2), the tax credit allowable under 90 ("Reduction of tax under double-taxation agreement")(2) shall not exceed an amount calculated according to the following formula—

$$\frac{(A - B) \times C}{C + D}$$

where—

A represents the tax which would have been payable in terms of this Act had no such credit been granted in respect of any foreign-source income;

B represents the tax which would have been payable in terms of this Act had the foreign-source income from all sources in respect of which such a credit is to be allowed not been included in the taxable income;

C represents the amount of the foreign-source income in respect of which such a credit is to be allowed which is included in the taxable income;

D represents the amount of any other foreign-source income in respect of which such a credit is to be allowed.

(2) Where the foreign-source income arises from shares issued by a company, the tax credit allowable under section 92 shall not exceed an amount calculated according to the following formula—

$$\frac{E \times F}{F + G}$$

where—

E represents the tax which would have been payable in terms of this Act in respect of the total of the foreign-source income had no such credit been granted;

F represents the amount of the foreign-source income in respect of which such a credit is to be allowed which is included in the taxable income;

G represents the amount of any other such foreign-source income in respect of which a reduction is to be allowed.

Calculation of deduction allowable for contribution towards research and development expenditure

8. The deduction allowable under the proviso to paragraph 2(2) of the Tenth Schedule ("Deductions Promotive of Publ8ic Policy Objectives") for contributions towards experiments and research conducted by another person must not exceed an amount arrived at by applying the following formula—

$$\frac{A \times B}{C}$$

where—

A is the amount of the contribution by the taxpayer;

B is the amount of the expenditure incurred by the person who conducted the experiments or research, to the extent that the expenditure would have been allowable as a deduction under section paragraph 2(2) of the Tenth Schedule;

C is the amount of the expenditure which is incurred by the person in carrying out the experiments and research.

FIFTH SCHEDULE (Sections 23(1)(n)), 24(2)(i) and 25(c))

AMOUNTS DEEMED TO BE INCLUDED IN EMPLOYMENT, BUSINESS AND PROPERTY INCOME

PART I

AMOUNTS DEEMED TO BE INCLUDED IN EMPLOYMENT INCOME

1. Any amount so received or accrued in respect of services rendered or to be rendered, whether due and payable under any contract of employment or service or not, and any amount so received or accrued by reason of the cessation of the employment or service of a person other than a benefit (not being a pension or gratuity) received or accrued by reason of contributions made to the Consolidated Revenue Fund, and any amount so received or accrued in commutation of amounts due under a contract of employment or service:

   Provided that—

   (i) an amount paid to an employee when proceeding on leave shall be deemed to accrue and to be paid proportionately on the last day of each month during the continuance of the period of leave;

   (ii) any portion of any amount paid by an employer to an employee by way of compensation for leave due but not taken or by reason of the cessation of the employment or service of such employee or in commutation of an amount due under a contract of employment or service or when proceeding on leave which, under any previous law, fell to be apportioned over a number of years of assessment, shall for the purposes of this Act be included in gross income as though the relevant provisions of such previous law were still in force;

   (iii) any amount so received or accrued in any year of assessment which is paid or payable to a member of the Police Force or of the Regular Force of the Army or Air Force by way of a re-engagement or extended service gratuity shall, notwithstanding section *seven*, be charged to tax in such manner and at such rates as may be fixed by the charging Act relating to the year of assessment in which such amount was received or accrued;

2. Any amount so received by or accrued to a person by reason of his or her withdrawal from or the winding up of a benefit or pension fund or an unapproved fund (as defined in the First Schedule) or any amount so received by or accrued to a person which is a benefit (not being a pension or gratuity) received or accrued by reason of contributions to the Consolidated Revenue Fund which is not—

   (a) an amount referred to in paragraph 1 of this Part or paragraph 1 of Part III; or

   (b) an amount which, in the Commissioner's opinion, represents a return or repayment of any money in respect of whose payment a deduction was not allowable in terms of this Act or a previous law:

   Provided that any amount so received or accrued shall, notwithstanding section 13, be charged to tax in such manner and at such rates as may be fixed by the

charging Act relating to the year of assessment in which such amount was received or accrued.

3. The amount or value of the waiver of the whole or any portion of the tuition fees, levies and boarding fees (hereinafter called a "school benefit") made in favour of any child of an employee who is a member of the teaching or non-teaching staff of a "school" as defined in the Education Act [Chapter 25:04], whether that child is a student at that or another school.

PART II

AMOUNTS DEEMED TO BE INCLUDED IN BUSINESS INCOME

1. The amount or value of any benefit received by or accrued to a taxpayer as a result of any concession granted by, or compromise or arrangement made with, a creditor whereby a liability which arose from expenditure in respect of which a deduction has been made under Sub-Part B ("Permissible and Impermissible Deductions from Business income") of Part IV ("Deductions") of Chapter IV or the corresponding provisions of any previous law, is reduced or extinguished:

   Provided that—

   (i) any benefit relating to expenditure in respect of assets ranking for the allowances referred to in Part I or II of the Eighth Schedule ("Capital Allowance Deductions") shall not exceed the total amount of the allowances so granted;

   (ii) the provisions of this paragraph shall not apply in respect of any reduction in liability in consequence of—

   A. a taxpayer having been adjudged or otherwise declared, or having become, insolvent or having made an assignment of his property or estate for the benefit of his creditors; or

   B. the estate of the taxpayer having been vested in the Corporation as defined in section 2 of the Agricultural Finance Act [*Chapter 18:02*]

   C. the taxpayer, in the case of a company, having been wound up by the court on the grounds that it is unable to pay its debts;

2. In the case of a person by whom any movable or immovable property has been acquired, any amount paid, whether in the form of rent, premium, consideration in the nature of a premium or otherwise, for the right of use or occupation of such property which has been allowed as a deduction under this Act or a previous law in the determination of any person's taxable income and which, or the equivalent of which, is upon the subsequent acquisition of such property applied in reduction or towards settlement of the purchase price of such property.

   For the purposes of this paragraph—

   (i) any expenditure incurred by a person in pursuance of an obligation to effect improvements to land or buildings under an agreement by which the right of use or occupation of the land or buildings is granted by another, shall be deemed to be an amount which has been paid;

(ii) where any amount has been paid by any person for the right of use or occupation of any property, which is thereafter acquired by that or any other person for no consideration or for a consideration which, in the opinion of the Commissioner, is not an adequate consideration, such amount, unless the Commissioner, having regard to the circumstances of the case, otherwise decides, or so much thereof as does not exceed the fair market price, as determined by the Commissioner, of such property where no consideration was given, or the difference between such fair market price and the amount of the consideration for which it has been acquired as aforesaid, as the case may be, shall be deemed to have been applied in reduction or towards settlement of the purchase of such property:

Provided that—

(i) any amount included in the gross income of any person under this paragraph may, if that person so elects (which election shall be binding) be deemed to accrue in six successive equal instalments, the first instalment to be deemed to have accrued in the year of assessment in which he acquired the property and the subsequent instalments being deemed to accrue in each year of assessment thereafter, so, however, that, if a person who has made an election in terms of this paragraph subsequently disposes of the property in question before the expiry of the period of six years, the balance of the instalments which have not already been included in his income shall be included in his income for the year of assessment in which the property is so disposed of;

(ii) any portion of any amount which was included in the gross income of any person under similar provisions of a previous law and which under such previous law fell to be apportioned over a number of years of assessment shall, for the purposes of this Act, be included in gross income as though the relevant provisions of such previous law were still in force;

3. Any amount received or accrued by way of grant or subsidy in respect of any expenditure allowed or allowable as a deduction under this Act or a previous law;

4. Subject to paragraph 25 (“Determination of taxable income or assessed loss from growing of timber”) of Sub-Part B (“Deductions in Respect of Income Derived From Farming Operations, etc.”) of Part II of the Eighth Schedule (“Capital Allowance Deductions”), where land is sold or otherwise disposed of and timber or other crops are growing on such land which, in the opinion of the Commissioner, have been grown for sale, the market value of such timber or growing crops at the time such land is sold or so disposed of:

   Provided that no amount will be included in gross income if such timber or crops were acquired by such person by way of inheritance or donation and did not become assets of any business carried on by him or her;

5. Any recoupments from capital expenditure which—

   (a) exceed the balance of capital expenditure ranking for redemption in terms of paragraphs 16, 17, 18 and 19 of Sub-Part A (“Allowances and Deductions In Respect of Income From Mining Operations, etc.”) of Part II of the Eighth

Schedule ("Capital Allowance Deductions"), or the corresponding provisions of any previous law; or

(b) are a recovery of amounts allowed as a deduction in terms of paragraph 20 of Sub-Part A of Part II of the Eighth Schedule, or the corresponding provisions of any previous law;

6. Any amount allowed to be deducted under Part IV of Chapter IV, or the corresponding provisions of any previous law, other than any sums deducted in terms of section 41 ("Pension and annuity payments, and medical aid contributions") and paragraph 2 ("Special deductions applicable to farmers") of Sub-Part B of the Eight Schedule, or the corresponding provisions of any previous law, whether in the current or any previous year of assessment, which has been recovered or recouped:

Provided that—

(i) if an amount which has been allowed as a deduction under paragraph 2 ("Deduction of special initial allowance") or 3 ("Deduction of allowance for wear and tear") of the Eighth Schedule ("Capital Allowance Deductions"), or under the corresponding provisions of any previous law, has been recovered or recouped by a person as a result of damage or destruction of any asset in respect of which a deduction—

(*a*) has been allowed; or

(*b*) would have been allowed had it been new or unused at the time of acquisition; or

(*c*) would have been allowed had the expenditure been incurred on or after the 1st April, 1967; or

(*d*) would have been allowed, if it had been new or unused at the time of acquisition and the expenditure had been incurred on or after the 1st April, 1967;

in terms of paragraph 5 of that Schedule as it existed on the 31st March, 1981, or, with effect from the year of assessment beginning on the 1st April, 1981, would have been so allowed had that paragraph not been repealed with effect from that year, such amount shall not be included in the business income of that person if he or she satisfies the Commissioner—

A. that he or she has purchased or constructed or will purchase or construct, within a period of eighteen months from the date the asset was damaged or destroyed, a further asset of a like nature in replacement thereof; and

B. that such further asset has been or will be brought into use within a period of three years from the date the aforesaid asset was damaged or destroyed;

so, however, that if in the event the Commissioner is not satisfied—

C. that the whole of the amount so recovered or recouped has been fully expended on the purchase or construction of a further asset of a like nature within the period stipulated in subparagraph A, he or she shall include any amount not so expended in that person's business income

in the year of assessment in which the amount was originally recovered or recouped; or

D. that the further asset of a like nature has been brought into use within the period stipulated in subparagraph B, he or she shall include in that person's business income, in the year of assessment in which the amount was originally recovered or recouped, any part of that amount not previously included in business income;

(ii) any amount recovered or recouped by an employer on the winding up of a benefit or pension fund or on his ceasing to be an employer because of insolvency or liquidation or on the withdrawal of all his employees from membership of the fund shall not be excluded from business income;

PART III

AMOUNTS DEEMED TO BE INCLUDED IN PROPERTY INCOME

1. Any amount so received or accrued by way of annuity other than that part of that amount which, in the opinion of the Commissioner, represents, in the case of an annuity the right to which was acquired by means of the payment of the annuitant or his or her spouse of a sum of money or the disposal by the annuitant or his or her spouse of an asset or by both those means, a return of any part of that sum of money or of the value of that asset in respect of which a deduction or a credit in terms of this Act is not allowable or an abatement, deduction or rebate in terms of a previous law was not allowable.
2. Any amount received or accrued by way of commutation of a pension or annuity, the right to which was acquired by virtue of contributions first made on or after the 1st August, 1970, and which is payable by a retirement annuity fund, to the extent that it exceeds the amount that would have been payable had one-third only of the total value of the pension or annuity been commuted;
3. Any amount so received or accrued by way of commutation of a pension or annuity which is payable from the Consolidated Revenue Fund or a pension fund, other than a retirement annuity fund, if the pension or annuity itself would not have been subject to income tax.

SIXTH SCHEDULE (Sections 24(2)(g) and 57(3))

VALUATION OF TRADING STOCK

PART I

PRELIMINARY

Interpretation of terms relating to trading stock

1. In the provisions of this Part relating to the trading stock of a person—

"cost price" includes the freight charges, insurance premium, duty and other costs and expenses incurred by the person in bringing the trading stock to hand;

"date of valuation", in relation to trading stock referred to in section 24(2)(g) (i) to (iv), means—

(a) in the case of trading stock referred to in subparagraphs (i) and (iv) of that section, the last day of the year of assessment; and

(b) in the case of trading stock referred to in subparagraphs (ii) and (iii) of that section, the date on which the trading stock was taken, given, disposed of or sold or vested, as the case may be;

"farm trading stock" means—

(a) livestock acquired or bred by a farmer for the purposes or in the carrying on of his or her farming operations; and

(b) crops and other produce produced or partially produced by a farmer in the carrying on of his or her farming operations.

PART II

VALUATION OF TRADING STOCK OTHER THAN FARM TRADING STOCK

Interpretation in Part II

2.(1) In this Part—

"market value", in relation to the trading stock of a person—

(a) means an amount equal to the consideration for which other trading stock of the same kind, quality and condition is disposed of in the ordinary course of trade by other persons carrying on the same trade in like circumstances;

(b) does not include any amount attributable to freight, handling and selling charges and commission incurred in the disposal in the ordinary course of trade of trading stock normally disposed of through an agent.

(2) If in the opinion of the Commissioner there is insufficient evidence of the market value of trading stock at the date of valuation, the market value of the trading stock at that date shall, notwithstanding the definition of "market value" in subparagraph (1), be an amount which he or she considers to be fair and reasonable.

Application of Part II

3. This Part shall not apply to the farm trading stock of a farmer.

Valuation of trading stock referred to in subparagraphs (i), (iii) and (iv) of section 24(2)(g)

4. Subject to paragraph 7, the value of the trading stock of a person shall, for the purpose of subparagraphs (i), (iii) and (iv) of section 24(2)(g), be an amount equal to—

(a) the cost price to the person; or

(b) the cost of replacement at the date of valuation; or

(c) the market value at the date of valuation;

of each item of the trading stock, whichever the person or, as the case may be, his or her trustee may elect at the time of the return of income of the person in which the trading stock is included:

Provided that—

(i) if the Commissioner is satisfied that it is impossible or impracticable to determine the value of trading stock as in this paragraph is provided he or she may accept such other method of valuation as he or she considers the circumstances warrant;

(ii) if trading stock—

(*a*) has been given by the person to some other person; or

(*b*) has been disposed of by the person otherwise than by sale or exchange; or

(*c*) has been disposed of by the person otherwise than in the manner described in subparagraph (ii) or (iii)A or (iv) or (v) of section 24(2)(g);

and the Commissioner is of the opinion that such trading stock has been given away or disposed of in pursuance of a transaction, operation or scheme which has as its sole purpose or one of its main purposes the avoidance or postponement of liability for or the reduction of any tax, the Commissioner shall determine the amount which he or she considers such trading stock would have realized had it been disposed of by sale in the ordinary course of trade and such amount shall be included in the gross income of the person so giving away or otherwise disposing of such stock.

Valuation of trading stock referred to in subparagraph (ii) of section 24(2)(g)

5. Subject to paragraph 7, the value of the trading stock of a person shall, for the purposes of subparagraph (ii) of section 24(2)(g), be an amount equal to the cost price to the person or the market value of the trading stock, whichever the person may elect.

Valuation of trading stock referred to in subparagraph (v) of section 24(2)(g)

6. The value of the trading stock of a person shall, for the purposes of subparagraph (v) of section 24(2)(g), be the amount at which the trading stock was sold or disposed of.

Valuation of partially manufactured trading stock, etc.

7. The value of the trading stock of a person which, at the date of valuation is partially manufactured, produced, constructed, improved, consumed or used shall, for the purposes of subparagraphs (i) to (iv) of section 24(2)(g), be an amount which the Commissioner considers to be the fair and reasonable value of the trading stock at the date of valuation.

PART III

VALUATION OF TRADING STOCK WHICH IS FARM TRADING STOCK

Interpretation in Part III

8. In this Part—

"class of livestock" means a class of livestock approved by the Commissioner for the purposes of this Part;

"cost and maintenance value", in relation to the ordinary livestock of a farmer, means the sum of—

(a) the amount, as nearly as it can be ascertained, of the cost price to the farmer of the livestock or, as the case may be, the cost incurred by the farmer in breeding the livestock; and

(b) the cost to the farmer of maintaining the livestock in the year of assessment and any preceding year of assessment;

"fixed standard value", in relation to—

(a) a class of ordinary livestock of a farmer, means the standard value fixed by the farmer in terms of paragraph 10(2)(a);

(b) a class of stud livestock of a farmer, means—

(i) in the case of an animal in that class the cost price to the farmer of which was less than one hundred and fifty United States dollars, the standard value fixed by the farmer in terms of paragraph 10(2)(b); and

(ii) in the case of an animal in that class the cost price to the farmer of which was one hundred and fifty United States dollars or more—

A. the standard value fixed by the farmer in terms of paragraph 10(2)(b); or

B. one hundred and fifty United States dollars;

whichever the farmer in terms of that subparagraph may elect;

"ordinary livestock" means livestock which is not stud livestock;

"purchase price value", in relation to the stud livestock of a farmer, means—

(*a*) in the case of an animal the cost price to the farmer of which was less than one hundred and fifty United States dollars, the cost price of the animal; and

(*b*) in the case of an animal the cost price to the farmer of which was one hundred and fifty United States dollars or more—

(i) the cost of the animal; or

(ii) one hundred and fifty United States dollars;

whichever the farmer may elect;

"stud livestock" means livestock bought by a farmer for stud purposes.

Application of Part III

9. This Part shall apply to the farm trading stock of a farmer.

Methods of valuation of livestock

10.(1) For the purposes of this Part, the livestock of a farmer shall be valued—

(a) in the case of a class of ordinary livestock, by reference to—

(i) the fixed standard value of the livestock; or

(ii) the cost and maintenance value of the livestock;

whichever the farmer in his first return of income in which that class of livestock is included may elect; and

(b) in the case of a class of stud livestock, by reference to—

(i) the purchase price value of each animal; or

(ii) the fixed standard value of the livestock;

whichever the farmer in his first return of income in which that class of livestock is included may elect:

Provided that a farmer who ceases to carry on farming operations after having made an election in terms of subparagraph (a) or (b) or under the similar provisions of a previous law shall be required to make a new election should he or she subsequently again commence farming operations and such election shall be made in the first return of income in which ordinary or stud livestock are included after he or she again commenced farming operations.

(2) If a farmer elects in terms of subparagraph (1) to value a class of livestock by reference to the fixed standard value of that class of livestock, the farmer shall at the time of the election—

(a) in the case of each class of his or her ordinary livestock, fix, with the approval of the Commissioner, the standard value which shall be applicable to all animals in that class; and

(b) in the case of each class of his or her stud livestock—

(i) fix, with the approval of the Commissioner, the standard value which shall be applicable—

A. to all animals in that class the cost price to the farmer of each of which was less than one hundred and fifty United States dollars; and

B. if the farmer so elects, to any animal in that class the cost price to the farmer of which was one hundred and fifty United States dollars or more;

and

(ii) make the election referred to in subparagraph (i)B:

Provided that in any case where the Commissioner is unable to approve of a standard value fixed by a farmer in terms of subparagraph (*a*) or (*b*), the Commissioner shall fix such standard value.

(3) If a farmer elects in terms of subparagraph (1)(b) to value a class of his or her stud livestock by reference to the purchase price value of each animal, the farmer shall, at the time of the election, make the election to which subparagraph (*b*) of the definition of "purchase price value" in paragraph 8 relates.

Alteration in methods of valuation and fixed standard values

11.(1) With the approval of the Commissioner a farmer may, subject to such conditions as the Commissioner may fix—

(a) change the method of valuation of his or her livestock; and

(b) alter the standard value of any class of his or her livestock which was fixed by the farmer in terms of paragraph 10(2).

(2) Save as is provided in subparagraph (1), an election to which this Part relates shall be irrevocable.

Valuation of farm trading stock referred to in subparagraphs (i), (ii) and (iv) of section 24(2)(g)

12. The value of the farm trading stock of a farmer shall, for the purpose of subparagraphs (i), (ii) and (iv) of section 24(2)(g), be an amount equal to—

(a) in the case of livestock, the value of the livestock at the date of valuation determined in accordance with the method of valuation elected by the farmer in terms of paragraph 10(1); and

(b) in the case of all other farm trading stock, an amount which the Commissioner considers to be the fair and reasonable value of the farm trading stock at the date of valuation:

Provided that if farm trading stock—

(i) has been given by the farmer to some other person; or

(ii) has been disposed of by the farmer otherwise than by sale or exchange; or

(iii) has been disposed of by the farmer otherwise than in the manner described in subparagraph (ii) or (iii)A or (iv) or (v) of section 24(2)(g);

and the Commissioner is of the opinion that such farm trading stock has been given away or disposed of in pursuance of a transaction, operation or scheme which has as its sole purpose or one of its main purposes the avoidance or postponement of liability for or the reduction of any tax, the Commissioner shall determine the amount which he or she considers such farm trading stock would have realised had it been disposed of by sale in the ordinary course of trade and such amount shall be included in the gross income of the farmer so giving away or otherwise disposing of such farm trading stock.

Valuation of farm trading stock referred to in subparagraph (ii) of section 24(2)(g)

13. The value of the farm trading stock of a farmer shall, for the purposes of subparagraph (ii) of section 24(2)(g), be an amount which the Commissioner considers to be the fair and reasonable value of the farm trading stock at the date of valuation.

Valuation of farm trading stock referred to in subparagraph (v) of section 24(2)(g)

14. The value of the farm trading stock of a farmer shall, for the purposes of subparagraph (v) of section 24(2)(g), be an amount at which the farm trading stock was sold or disposed of.

SEVENTH SCHEDULE (Section 27)

EXEMPTIONS FROM INCOME TAX

Interpretation in Seventh Schedule

1 In this Schedule—

"benefit fund" means a fund registered or provisionally registered as a provident fund under the Pension and Provident Funds Act [*Chapter 24:09*];

"industrial park" means any premises or area which is approved by the Minister by statutory instrument and in which two or more persons, independently of the industrial park developer, carry on the business of—

(a) manufacturing or processing goods for export from Zimbabwe; or

(b) manufacturing or processing components of goods, which are intended for export from Zimbabwe;

"industrial park developer" means a person who owns and maintains an industrial park;

"retirement annuity fund" means a fund registered or provisionally registered as a retirement annuity fund under the Pension and Provident Funds Act [*Chapter 24:09*];

Income of statutory bodies

2.(1) All income accruing to—

(a) local authorities;

(b) the Reserve Bank of Zimbabwe referred to in section 4 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (No. 5 of 1999);

(c) the People's Own Savings Bank referred to in section 3 of the People's Own Savings Bank Act [*Chapter 24:22*] (No. 18 of 1999);

(d) the Environmental Management Agency established by section 9 of the Environmental Management Act [*Chapter 20:27*] (No. 13 of 2002);

(e) the Deposit Protection Fund established in terms of the Deposit Protection Corporation Act [*Chapter 24:29:*] (No. 7 of 2011).

(2) Such income accruing to a statutory corporation, other than one specified in subparagraph (1), as may be prescribed for the purpose of this subparagraph.

Income of international and regional organisations

3..(1) All income accruing to—

(a) the organisations referred to in the International Financial Organizations Act [*Chapter 22:09*];

(b) the African Development Bank referred to in the African Development Bank (Membership of Zimbabwe) Act [*Chapter 22:01*];

(c) the African Development Fund referred to in the African Development Fund (Zimbabwe) Act [*Chapter 22:02*];

(d) any international organisation specified in terms of section 7 of the Privileges and Immunities Act [*Chapter 3:03*] which is prescribed for the purposes of this subparagraph;

(e) the Zambezi River Authority referred to in section 4 of the Zambezi River Authority Act [*Chapter 20:23*];

(f) any agency of any government, other than the Government of Zimbabwe, which is prescribed for the purposes of this subparagraph.

(2) The income accruing to any non-resident organisation that provides finance for development in Zimbabwe, to the extent that the income is from a project prescribed for the purposes of this subparagraph.

Income of companies, funds, trusts and associations

4. All income accruing to—

(a) agricultural, mining and commercial institutions or societies not operating for the private pecuniary profit or gain of their members;

(b) benefit funds;

(c) building societies established in terms of the Building Societies Act [*Chapter 24:02*];

(d) clubs, societies, institutes and associations organised and operated solely for social welfare, civic improvement, pleasure, recreation or the advancement or control of any profession or trade or other similar purposes, if their income, whether current or accumulated, may not be divided amongst or credited to or be used for the benefit of any of the members or shareholders, other than by way of remuneration for services rendered;

(e) ecclesiastical, charitable and educational institutions of a public character;

(f) employees saving schemes or funds approved by the Commissioner;

(g) friendly, benefit or medical aid societies;

(h) funds established by the Treasury in terms of section 30 of the Audit and Exchequer Act [*Chapter 22:03*];

(i) pension funds, until such date as the Minister may specify by notice in the *Gazette*;

(j) trade unions;

(k) trusts of a public character.

Income and allowances of public officers

5.(1) The salary and emoluments of office of—

(a) the President; or

(b) a member of the President's staff, in so far as the salary and emoluments are paid by the President.

(2) An allowance payable by the State to—

(a) a spouse of the President or a Vice-President in respect of duties the spouse performs for or on behalf of the State; or

(b) the spouse of a former President.

(3) An allowance granted to a Minister or Deputy Minister, provincial governor, the Speaker, the Deputy Speaker, the Leader of the Opposition, a Chief Whip or a member of Parliament, if it is specified for the purposes of this paragraph by the President by statutory instrument with effect from such date, whether before, on or after the publication of the instrument, as the President may specify in the instrument.

(4) The value of the grant of quarters, a residence, furniture or a motor vehicle to a Minister or Deputy Minister or the Speaker if it is specified for the purposes of this paragraph by the President by statutory instrument.

(5) Any allowance or the value of any benefit which is granted to any person in the full-time employment of the State and which is specified for the purposes of this subparagraph by the President by statutory instrument with effect from such date, whether before, on or after the publication of the instrument, as the President may specify in the instrument.

(6) Any gratuity payable to a judge of the Supreme Court or the High Court in terms of his or her conditions of service.

(7) An allowance payable to a chief or headman in his capacity as chief or headman;

(8) An allowance payable by reason of the overseas service of a member of the Defence Forces which is declared to be active service in terms of the Defence Act [*Chapter 11:02*].

(9) Any of the following allowances granted to a person who is not in full-time military or police employment, as the case may be—

(a) a quarterly allowance granted to a commissioned officer in the Defence Forces; or

(b) a volunteers allowance granted to a member of the Defence Forces; or

(c) an annual allowance granted to a commissioned officer in the Police Constabulary established in terms of section 27 of the Police Act [*Chapter 11:10*].

(10) An allowance payable by the State to a person in its service in respect of—

(a) the expenditure incurred by the person in the discharge of his or her duties outside Zimbabwe; or

(b) so much of the expenditure of the person in maintaining himself or herself and his or her family or establishment whilst employed on duty outside Zimbabwe as exceeds the expenditure he or she would normally incur if he or she were employed in Zimbabwe.

(11) The value of the grant of rations to a member of the Defence Forces or the Police Force for any period during which he or she is in the field engaged on operational military duties.

(12) A monthly personal allowance payable to a councillor, in his capacity as a councillor, in terms of section 112 of the Urban Councils Act [*Chapter 29:15*].

Income and allowances of other persons

6.(1) Income accruing to any person who—

(a) is entitled to an exemption in respect of income in terms of an agreement entered into by the Government of Zimbabwe with any other government or organisation; and

(b) is approved by the Minister by statutory instrument;

to the extent provided in the agreement concerned.

(2) All income accruing to a bank or other financial institution outside Zimbabwe in connection with a loan or other facility granted to the Reserve Bank of Zimbabwe in terms of section 7(i)(n) of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*].

(3) All income accruing to a company which has as its principal object the provision of venture capital for development purposes and which is approved by the Minister by statutory instrument.

(4) The salary and emoluments of office of—

(a) any person who is entitled to exemption or relief from income tax in respect of such salary or emoluments in terms of the Privileges and Immunities Act [*Chapter 3:03*];

(b) any person who—

(i) is entitled to exemption or relief from income tax in respect of such salary or emoluments in terms of an agreement entered into by the Government of Zimbabwe with any other government or with any international, regional or non-resident organisation; and

(ii) is approved by the Minister by statutory instrument.

(5) A gratuity given in conjunction with the grant of an honour or award created in terms of section 3 of the Honours and Awards Act [*Chapter 10:11*].

(6) A scholarship or bursary, or a payment in respect of tuition fees, or any other educational allowance to a student receiving instruction at a school, college or university, but not including an amount accruing to the student by way of remuneration for services rendered or to be rendered by the student or a near relative of the student.

(7) A reward paid to a person by the Commissioner-General in terms of section 34B of the Revenue Authority Act [*Chapter 23:11*].

(8) An award paid to a person from the Recovered Foreign Currency Fund in terms of section 10 of the Exchange Control Act [*Chapter 22:05*].

(9) Rental income accruing to a taxpayer who is of or over the age of fifty-five in respect of the first three thousand United States dollars accruing to the taxpayer in the year of assessment concerned.

Payments relating to employment

7.(1) A loan or credit paid, directly or indirectly, by an employer or an associate of an employer to an employee which is proved to the satisfaction of the Commissioner to have been paid for the purpose of the education or technical training of the employee or a spouse or child of the employee.

(2) The value of medical treatment or of travelling to obtain such treatment which is provided by an employer, or by an associate of an employer, for an employee or the dependant of an employee, whether provided in kind, by direct payment, by refund or in any other manner whatsoever.

(3) The amount of any contribution paid to a medical aid society by an employer, or by an associate of an employer, on behalf of his or her employees.

(4) Any amount paid by an employer, or by an associate of an employer, by way of an entertainment or hospitality allowance to an employee, to the extent that it is expended on the employer's business.

(5) The value of accommodation provided by an employer, or by an associate of an employer, to an employee where—

(a) the employee is required to serve the employer's business at locations specified by the employer; and

(b) the employee maintains a household at his or her previous place of abode after moving at the employer's request.

(6) In the case of an employee not described in subparagraph (5) who is required to change his place of abode at the request of his or her employer, the difference between the rental value of the employee's previous accommodation and the rental value of accommodation provided by the employer, reduced by any contributions made by the employee towards the cost of accommodation.

(7) The reimbursement of expenditure incurred by an employee on behalf of his or her employer for which the employer would be entitled to a deduction under this Act if incurred directly.

(8) That portion of an allowance for which an employee has provided receipts or other proof of payment of expenses which, had they been incurred directly by the employer, would have been deductible by the employer under this Act.

(9) The cost incurred by an employer of any passage to or from Zimbabwe in respect of a non-resident or temporarily resident employee's first appointment or termination of such appointment.

(10) Any amount paid by an employer as a contribution to an approved retirement fund, up to an amount equal to thirty *per centum* of the employee's employment income during the year of assessment in question.

(11) The first one-third of any severance pay, gratuity or similar benefit, other than a pension or cash in lieu of leave, which is paid to an employee on his or her retrenchment, where his or her employment has ceased due to retrenchment under a scheme approved by the Minister responsible for the administration of the Labour Act [*Chapter 28:01*]:

Provided that this subparagraph shall apply only in respect of the first forty-five thousand United States dollars of any such pay, gratuity or benefit payable to the employee in any one year of assessment.

(12) A fringe benefit whose value, in the opinion of the Commissioner, after taking into account the frequency with which similar benefits are provided by the employer, is so small as to make accounting for it unreasonable or administratively impracticable.

(13) A bonus or performance-related award accruing to an employee in respect of his or her employment, to the extent that the bonus or award does not exceed or, where the employee receives more than one such bonus or award in the year of assessment concerned, to the extent that in the aggregate they do not exceed, four hundred United States dollars.

(14) The value of an allowance in respect of accommodation and transport, or the value of the grant of quarters or a residence, to an employee of—

(a) a private hospital or rural clinic which is owned, operated or sponsored by a religious body; or

(b) a hospital or rural clinic owned or operated by a rural district council.

Payments relating to agency

7. A bonus or performance-related award accruing to an agent in respect of his or her agency, to the extent that the bonus or award does not exceed or, where the agent receives more than one bonus or award in the year of assessment concerned, to the extent that in the aggregate they not exceed four hundred United States dollars.

Retirement and medical benefits

8.(1) A pension or allowance payable in terms of the Presidential Pension and Retirement Benefits Act [*Chapter 2:05*].

(2) The value of a service or facility provided in terms of the Presidential Pension and Retirement Benefits Act [*Chapter 2:05*].

(3) A war disability pension.

(4) A war widow's pension.

(5) A pension or gratuity payable in terms of a scheme established in terms of section 7 of the War Veterans Act [*Chapter 11:15*].

(6) An award, benefit or compensation, including a pension, payable to any person or to his or her dependants—

(a) under any enactment in respect of injury, disease, disablement or death suffered in employment; or

(b) in respect of personal injury, disablement or death which has been paid or is deemed to have been paid in terms of the War Victims Compensation Act [*Chapter 11:16*] or any enactment repealed by that Act; or

(c) which has been paid from the Wankie Disaster Relief Fund.

(7) A pension paid from a pension fund or the Consolidated Revenue Fund to a taxpayer who attained the age of fifty-five years before the commencement of the year of assessment.

(8) A benefit in respect of the injury, sickness or death of a person which is paid to the person or his or her dependants or deceased estate—

(a) by a trade union; or

(b) from a benefit fund; or

(c) in terms of a policy of insurance covering accident, sickness or death; or

(d) by a medical aid society.

Dividends

9. Dividends accruing to a person from a company which is incorporated in Zimbabwe, where the amount has been charged to tax in the hands of the company.

Interest

10.(1) In this paragraph—

"deposit" means an amount of money, whether made up of Zimbabwean or foreign currency or both, cheques or other negotiable or non-negotiable instruments, which a financial institution accepts for credit to an account in its books or in those of another institution inside or outside Zimbabwe;

"foreign currency account" means an account held at a bank or other financial institution in Zimbabwe in which the funds are denominated in a foreign currency;

"loan" includes any form of indebtedness known as an acceptance or standby credit facility.

(2) Interest paid on—

(a) a tax reserve certificate issued in terms of the Tax Reserve Certificates Act [*Chapter 23:10*]; or

(b) a loan raised by the State which is prescribed, for the purpose of this paragraph, to be exempt from income tax; or

(c) class "C" permanent shares as defined in the Building Societies (Class "C" Shares) Regulations,1986, to the extent and subject to the conditions specified in those regulations; or

(d) a foreign currency account held by a taxpayer other than a company or a trust; or

(e) a bond issued by the Reserve Bank of Zimbabwe on behalf of the National Fuel Investments Company (Private) Limited; or

(f) a deposit with a financial institution accruing to a taxpayer who is an individual of or over the age of fifty-five years, in respect of the first three thousand United States dollars accruing to the taxpayer in the year of assessment concerned; or

(g) banker's acceptances and other discounted instruments traded by financial institutions and accruing to a taxpayer who is an individual of or over the age of fifty-five years, in respect of the first three thousand United States dollars accruing to the taxpayer in the year of assessment concerned.

(3) Interest from which tax on interest is required to be withheld in terms of this Act.

(4) Subject to subparagraph (5), interest accruing to a person who, at the time it accrues, is not a resident of Zimbabwe and does not carry on business within Zimbabwe, where the interest accrues on a loan—

(a) made to a person carrying on mining operations or undertaking prospecting or exploratory works for the purpose of acquiring rights to mine minerals, to the extent that the loan is used by the person in carrying on or undertaking such operations or works in Zimbabwe; or

(b) to the State or to a company all of whose shares are owned by the State; or

(c) to a local authority; or

(d) to a statutory corporation.

(5) Subparagraph (4) shall not apply to interest—

(a) accruing to a person ordinarily resident in a country other than Zimbabwe, where the interest would, but for this subparagraph, be liable to tax in that country by reason of its exemption from tax in Zimbabwe; or

(b) accruing to a company which, when the interest accrues, is under the control of an individual who is resident or carries on business in Zimbabwe; or

(c) accruing to a company incorporated outside Zimbabwe, where it is paid by a company incorporated in Zimbabwe and—

(i) the majority of the voting rights attaching to all classes of shares in the company incorporated in Zimbabwe is controlled, directly or indirectly, by the company incorporated outside Zimbabwe; and

(ii) the interest is liable to tax in a country other than Zimbabwe; and

(iii) the income tax which would, but for the provisions of this paragraph, be chargeable on the interest, would be allowable as a credit against tax payable in the country referred to in subparagraph (ii).

Miscellaneous payments

11.(1) Payments received as maintenance or support for a spouse or child, however they are paid.

(2) Income accruing to an industrial park developer, to the extent that it accrues directly from the operation of the industrial park, in the year of assessment in which the park is established or is approved by the Minister for the purposes of the definition of "industrial park" in section 2, whichever year is the earlier, and in each of the next four years of assessment.

(3) Income accruing to an employee who participates in an approved employee share ownership trust from the sale or redemption by the trust of any stock, shares, debentures, units or other interests of the employee in the scheme or trust.

(4) Any capital gain that is not included in the taxpayer's business income.

School benefits

12. (1) Subject to subparagraph (1), half the amount or value of a "school benefit" referred to in paragraph 3 of Part I ("Amounts Deemed to be Included in Employment Income") of the Fifth Schedule ("Amounts Deemed to be Included in Employment, Business and Property Income").

(2) The exemption granted under subparagraph (1) does not apply to more than three children of an employee to whom a school benefit is given.

EIGHTH SCHEDULE (Section 34)

CAPITAL ALLOWANCE DEDUCTIONS

ARRANGEMENT OF PARAGRAPHS

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Paragraph

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2. Deduction of special initial allowance.
3. Deduction of allowance for wear and tear.
4. Deduction for scrapping allowance.
5. Calculation of wear and tear allowances for commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns.
6. Calculation of wear and tear allowance for articles, implements, machinery and utensils used for business.
7. General provisions relating to calculation of allowances.
8. Rates of special initial allowance.
9. Hire-purchase agreements relating to articles, implements, machinery and utensils and sales of property under suspense conditions.
10. Expenditure on additions or alterations to articles implements, machinery or utensils not owned but used for business.
11. Cases in which no deductions to be made in terms of this Schedule.
12. Limitation on cost of farm dwelling.
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PART II

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20. Deduction of expenditure incurred on renewal or replacement of buildings, works or equipment.

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SUB-PART B

DEDUCTIONS IN RESPECT OF INCOME DERIVED FROM FARMING OPERATIONS, ETC.

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24. Special deductions applicable to farmers.

25. Determination of taxable income or assessed loss from growing of timber.

26. Determination of taxable income or assessed loss from orchards or vineyards.

27. Assessment of income when drought conditions enforce sales of livestock.

28. Additional allowance in respect of cost of restocking herd depleted by drought.

PART I

DEDUCTIONS TO BE ALLOWED IN RESPECT OF BUILDINGS, IMPROVEMENTS, MACHINERY AND EQUIPMENT USED FOR COMMERCIAL, INDUSTRIAL AND FARMING PURPOSES, AND OTHER PROVISIONS RELATING THERETO

Interpretation in Part I of Eighth Schedule

1.(1) In this Part—

"associated company" means a company which controls, is controlled by or is under common control with a taxpayer;

"commercial building" means any building the erection of which was commenced on or after the date of commencement of this Act, and which is used to the extent of at least ninety *per centum* of the floor area for the purposes of business or in the production of income, but does not include—

(a) a farm improvement, an industrial building, staff housing or a tobacco barn; or

(b) a building which is occupied to the extent of ten *per centum* or more of the floor area for residential purposes by one or more persons and which is not—

(i) a block of flats, apartments or similar units of residential accommodation; or

(ii) a hotel that is registered under the Tourism Act [*Chapter 14:20*];

or

(c) a building which is a block of flats, apartments or similar units of residential accommodation where—

(i) the building is owned by a company, partnership or association of persons; and

(ii) the shareholders of the company, partners or members of the association, as the case may be, have the right, by virtue of or in connection with the ownership of the shares or of their being partners or members, as the case

may be, to occupy particular flats, apartments or other units of residential accommodation in the building.

"farm improvement" means—

(a) any building or structure or work of a permanent nature, including any water furrow, which is used in the carrying on of farming operations, but does not include—

(i) any building, structure or work of a permanent nature referred to in paragraph 2 of Sub-Part B of Part II; or

(ii) staff housing or any dwelling—

A. used by the taxpayer as the homestead of himself or herself and his or her family; or

B. purchased or constructed after the year of assessment beginning on the 1st April, 1979; or

(iii) a tobacco barn;

(b) any permanent building the erection of which was commenced on or after the 1st April, 1988, used for the purposes of—

(i) a school; or

(ii) a hospital, nursing home or clinic;

in connection with taxpayer's farming operations;

"industrial building"—

(a) means—

(i) any building which contains and is used mainly for the purposes of operating machinery worked by steam, electricity, water or other mechanical power;

(ii) any building which is on the same premises as any other building mentioned in subparagraph (i) and which, in the opinion of the Commissioner, suffers depreciation by reason of the operation of machinery installed in such other building;

(iii) any building which, in the opinion of the Commissioner, suffers depreciation by reason of the use of chemicals, corrosives, furnaces of any description or any other agent directly utilised in the particular trade or industry of which the building forms an integral and essential part;

(iv) any building erected and used mainly for the purpose of carrying out industrial research or scientific experiments into improved or new methods of manufacture;

(v) any building used mainly for a hotel business in respect of which a hotel liquor licence or casino licence, not being a temporary licence, has been issued, and includes ancillary buildings, structures and works of a permanent nature which are, in the opinion of the Commissioner, used mainly in connection with such a business;

(vi) any buildings in use mainly for the storage—

A. of goods or materials which are to be used by the taxpayer in the manufacture of other goods or materials; or

B. of goods or materials which are to be subjected by the taxpayer, in the course of a trade, to any manufacturing process; or

C. of goods or materials which, having been manufactured or subjected by the taxpayer in the course of a trade to any manufacturing process, have not yet been delivered to any purchaser;

(vii) any building in use mainly for the purposes of a trade which consists in the distribution of hydro-carbon oils by pipeline;

(viii) any building in use mainly for the purposes of a trade which consists in the manufacture of goods or materials, including any building used for the welfare of employees employed in the trade but excluding any building used mainly as a dwelling-house, retail shop or showroom or for the storage of goods or materials;

(ix) any works for the prevention of pollution;

(x) any building erected and used mainly for the purpose of international data capture operations and additionally, or alternatively, for the assembly of computers;

(xi) any toll-road or toll-bridge declared in terms of the Toll-roads Act [*Chapter 13:13*];

and

(b) includes any fencing or permanent sealing of the ground area surrounding such building;

"process of manufacture" includes the grading, processing and packing of tobacco and "manufacture", "manufacturer" and "manufacturing process" shall be construed accordingly;

"previous law" means the Income Tax Act [Chapter 23:06] of the Income Tax Act, 1954 (No. 16 of 1954) or a law repealed by that Act;

"railway lines" means the rails, sleepers and equipment pertaining thereto of any railway track but does not include ballast, embankments, bridges, culverts and other railway constructions;

"residential unit" means an apartment, flat, house whether detached, semi-detached or terraced, or similar unit of residential accommodation;

"staff housing" means any permanent building used by the taxpayer for the purposes of his or her business wholly or mainly for the housing of his or her employees, but does not include, in the case of any such building the erection of which was commenced on or after the 1st January, 2009, any building comprising or incorporating any residential unit the cost of which exceeds twenty-five thousand United States dollars;

"tobacco barn" means any building used for the curing of tobacco;

"trade training" means any education or training, other than any education or training which is provided as part of the general school education of a pupil, which is intended to train persons to perform work in connection with the trade of the taxpayer or of an associated company or to improve their performance of such work;

(3) For the purposes of this Part, a building shall not be deemed to be used for the purposes of—

(a) a school; or

(b) a hospital, nursing home or clinic;

in connection with a taxpayer's farming operations, unless it is proved to the satisfaction of the Commissioner that, at the relevant time—

(i) in the case of a school, more than one-half of the pupils are children of persons employed by the taxpayer in carrying on farming operations;

(ii) in the case of a hospital, nursing home or clinic, more than one-half of the persons receiving treatment thereat are employed by the taxpayer in carrying on farming operations or are members of the families of persons who are so employed.

Deduction of special initial allowance

2. If the taxpayer so elects (which election shall be binding) an allowance (hereinafter called a special initial allowance) in respect of capital expenditure incurred by the taxpayer during the year of assessment on—

(a) the construction of new farm improvements, industrial building, railway lines, staff housing or tobacco barns; or

(b) additions or alterations to existing farm improvements, industrial buildings, railway lines, staff housing or tobacco barns; or

(c) the purchase of articles, implements, machinery or utensils;

used by the taxpayer during such year of the purposes of his or her business subject to the conditions mentioned in, and calculated in accordance with, paragraphs 9 and 10:

Provided that—

(i) if farm improvements, industrial buildings, railway lines, staff housing or tobacco barns are constructed or articles, implements, machinery or utensils are purchased in one year of assessment and first put into use in a later year of assessment, then the special initial allowance shall be allowed in the year of assessment in which such asset in first used;

(ii) in the case of articles, implements, machinery or utensils, the special initial allowance shall only be allowed if the Commissioner decides, having regard to the use to which such articles, implements, machinery or utensils were put by the taxpayer in the year of assessment in which they were first put into use or the next following year of assessment, that the articles, implements, machinery or utensils were purchased by the taxpayer wholly or almost wholly for the purposes of his or her business;

(iii) the special initial allowance shall not be allowed in respect of articles, implements, machinery or utensils purchased by the taxpayer and leased to another person for use

by him or her unless the taxpayer establishes to the satisfaction of the Commissioner that—

A. at the termination of the period of the lease, he or she is entitled to the return of the articles, implements, machinery or utensils concerned and no option to purchase or other right in relation to the acquisition or disposal of the articles, implements, machinery or utensils concerned is or will be given to the lessee or any other person; and

B. the articles, implements, machinery or utensils concerned were not purchased by him or her for the purpose of being leased to a particular person with the intention of giving that person or any other person an option or other right such as is referred to in paragraph A.

Deduction of allowance for wear and tear

3. (1) Subject to subparagraph (2), an allowance in respect of—

(a) commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns acquired or constructed and in both cases used by the taxpayer for the purposes of his or her business;

(b) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his or her business;

the value of which, in either case, has been diminished by reason of wear and tear during the year of assessment, and such allowance shall be subject to, and calculated in accordance with, paragraphs 6 and 10 in the case of commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns, and of paragraphs 7 and 10 in the case of articles, implements, machinery and utensils.

(2) Where any commercial building, farm improvement, industrial building, railway line, staff housing, tobacco barn, article, implement, machinery or utensil has been the subject of an allowance in terms of paragraph 2, no allowance shall be made in terms of subparagraph (1) in respect of that commercial building, farm improvement, industrial building, railway line, staff housing, tobacco barn, article, implement, machinery or utensil for the year of assessment in which the commercial building, farm improvement, industrial building, railway line, staff housing, tobacco barn, article, implement, machinery or utensil, as the case may be, was first used.

Deduction for scrapping allowance

4. An allowance in respect of—

(a) commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns acquired or constructed and in both cases used by the taxpayer for the purposes of his or her business;

(b) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his or her business;

which have, in either case, been scrapped during the year of assessment and such allowance shall be a sum equivalent to the cost (or, if in any particular case the Commissioner has declared that any lesser amount shall be regarded as the cost for the purposes of this Part or a similar provision of any previous law, the cost so declared) to the taxpayer of such

commercial buildings, farm improvements, industrial buildings, railway lines, staff housing, tobacco barns, articles, implements, machinery and utensils after deducting from that cost the total amount of any allowances which have at any time been made in terms of paragraphs 2 and 3 or under similar provisions of any previous law and any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of any such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing, tobacco barns, articles, implements, machinery and utensils:

Provided that if articles, implements, machinery or utensils referred to in this paragraph were used by the taxpayer for the purposes of his or her business and for other purposes the allowance shall be reduced by an amount determined by applying the formula—

$$\frac{A \times B}{C}$$

in which—

A represents the amount of the allowance which would have been allowed if the articles, implements, machinery or utensils had been used wholly for the purposes of the taxpayer's business;

B represents the amount by which the Commissioner decides the value of the articles, implements, machinery or utensils was diminished by their use for other purposes;

C represents the amount by which the value of the articles, implements, machinery or utensils was diminished by their use for purposes of the taxpayer's business and for other purposes.

Calculation of wear and tear allowances for commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns

5. (1) Subject to subparagraphs (2) and (3), the allowance in terms of paragraph 3 in respect of wear and tear on commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns which have been acquired or constructed by the taxpayer and used for the purposes of his or her business shall be—

(a) in the case of any commercial building, two and one-half *per centum* of the cost to the taxpayer of the commercial building allowable in the first year of assessment in which the commercial building is first used and thereafter in subsequent years a sum equal to two and one-half *per centum* of such cost;

(b) in the case of any farm improvement, industrial building, railway line, staff housing or tobacco barn—

(i) where no allowance has been made in terms of paragraph 2 in respect of the farm improvement, industrial building, railway line, staff housing or tobacco barn concerned, five *per centum* of the cost to the taxpayer of the farm improvement, industrial building, railway line, staff housing or tobacco barn allowable in the first year of assessment in which the farm improvement, industrial building, railway line, staff housing or tobacco barn, as the case may be, is first used and thereafter in subsequent years a sum equal to five *per centum* of such cost;

(ii) where an allowance has been made in terms of paragraph 2 in respect of the farm improvement, industrial building, railway line, staff housing or tobacco

barn concerned, twenty-five *per centum* of the cost to the taxpayer of such farm improvement, industrial building, railway line, staff housing or tobacco barn allowable in the year of assessment following that in which the farm improvement, industrial building, railway line, staff housing or tobacco barn was first used, and thereafter in subsequent years a sum equal to twenty-five *per centum* of such cost.

(2) The sum of the allowances that may be made in terms of paragraph 3 in respect of commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns shall not exceed an amount determined by applying the formula—

$$A - (B + C)$$

in which—

A represents the cost to the taxpayer of such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns;

B represents the amount of the allowance made to the taxpayer in terms of paragraph 2 or any similar provision of a previous law in respect of such farm improvements, industrial buildings, railway lines, staff housing or tobacco barns;

C represents the sum of the allowances made to the taxpayer in terms of any provision of a previous law which is similar to paragraph 3 in respect of such farm improvements industrial buildings, railway lines, staff housing or tobacco barns.

(3) The allowance referred to in subparagraph (1) shall be subject to the following provisions—

(a) in the case of buildings, structures or works referred to in subparagraph (v) of paragraph (a) of the definition of "industrial building" in paragraph 1 acquired or erected prior to the 1st April, 1964, the sum of the allowances to be made in terms of paragraph 3 shall not exceed an amount determined by applying the formula—

$$D - (E + F)$$

in which—

D represents the cost to the taxpayer of the buildings, structures or works and if, for any reason, such cost cannot be ascertained, such cost shall be deemed to be such sum as the Commissioner may determine;

E represents the sum of the allowances, similar to the allowance referred to in paragraph 3, which, in terms of the previous law, would have been made each year from the time the buildings, structures or works were acquired or erected by the taxpayer up to and including the year of assessment ended the 31st March, 1964, had the buildings, structures or works, at the time they were acquired or erected, qualified as industrial buildings under the previous law;

F represents the sum of the allowances, similar to the allowance referred to in paragraph 3,

which were made to the taxpayer in terms of a previous law for the three years of assessment ended the 31st March, 1965, the 31st March, 1966, and the 31st March, 1967;

(b) in the case of buildings, structures or works of a permanent nature which have not qualified for the allowance in terms of this Act or a similar allowance in terms of a previous law and which, on or after the date of commencement of this Act, are used by a person for the purposes of his or her business as commercial buildings, farm improvements, industrial buildings or railway lines, the sum of the allowances to be made in terms of paragraph 3 shall not exceed an amount determined by applying the formula—

$$G – H$$

in which—

G represents the cost to the taxpayer of such buildings, structures or works and if, for any reason, such cost cannot be ascertained, such cost shall be deemed to be such sum as the Commissioner may determine;

H represents the sum of the allowances, similar to the allowance referred to in paragraph 3, which, in terms of this Act or a previous law, would have been made each year from the time the buildings, structures or works were acquired or erected by the taxpayer, had the buildings, structures or works at the time they were acquired or erected, qualified as commercial buildings, farm improvements, industrial buildings or railway lines.

Calculation of wear and tear allowance for articles, implements, machinery and utensils used for business

6.(1) The allowance in terms of paragraph 3 in respect of wear and tear on articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his or her business shall be—

(a) where no allowance has been made in terms of paragraph 2 in respect of the articles, implements, machinery or utensils concerned, such sum as the Commissioner thinks reasonable as representing the amount by which the value of such articles, implements, machinery or utensils has been diminished by reason of wear and tear during the year of assessment;

(b) where an allowance has been made in terms of paragraph 2 in respect of the articles, implements, machinery or utensils concerned, twenty-five *per centum* of the cost to the taxpayer of such articles, implements, machinery or utensils allowable in the year of assessment following that in which the articles, implements, machinery or utensils were first used, and thereafter in subsequent years a sum equal to twenty-five *per centum* of such cost:

Provided that, where a deduction has been allowed under section 40 (“Repairs to property”) in respect of such articles, implements, machinery or utensils, the Commissioner may take into consideration the deduction allowed under that section.

(2) For the purpose of this paragraph, the value of articles, implements, machinery and utensils means the cost thereof to the taxpayer at the time they were acquired, but in the case of articles, implements, machinery or utensils which were acquired before the 1st April, 1967, and which were the subject of a similar allowance under any previous law, the cost thereof shall be reduced by the sums allowed under such previous law and by the amount of any special initial allowance or similar allowance which may also have been made under such previous law.

(3) If any articles, implements, machinery or utensils have been—

(*a*) used elsewhere by the taxpayer and transferred to Zimbabwe for use by him or her in his or her business; or

(*b*) used by the taxpayer for a purpose other than that of his or her business and then used by him or her in his or her business; or

(*c*) acquired by the taxpayer without payment of any valuable consideration;

their value shall be deemed to be such amount as the Commissioner may determine.

General provisions relating to calculation of allowances

7. (1) Whenever a change in the ownership of commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns takes place—

(a) save as otherwise provided in subparagraph (b) or (c), the transferor and the transferee shall provide the Commissioner with a statement in writing, signed by both, setting out the cost to the transferee of such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns, and if the Commissioner is not satisfied that such cost represents the fair market price thereof, he or she shall determine the amount which shall be deemed, for the purposes of calculating any allowance in terms of this Part, to be the cost of such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns;

(b) where such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns formed part of any property which has been sold for a lump sum, the transferor and the transferee shall furnish the Commissioner with a statement in writing, signed by both, setting out details of the allocation of the purchase price to the various classes of the property transferred as required by the Commissioner and if the Commissioner is not satisfied that the sum so allocated to the purchase price of commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns, as the case may be, represents the fair market price thereof, he or she shall determine the amount which shall be deemed, for the purposes of calculating any allowance in terms of this Part, to be the cost of such commercial buildings, farm improvement, industrial buildings, railway lines, staff housing or tobacco barns;

(c) where the ownership was acquired by the taxpayer without payment of any valuable consideration, the cost of such commercial buildings, farm improvements, industrial buildings, railway lines, staff housing or tobacco barns shall be deemed to be such sum as the Commissioner may determine.

(2) Whenever articles, implements, machinery or utensils which have been used for the purposes of a business are sold, together with other assets, for a lump sum, the transferor and the transferee shall furnish the Commissioner with a statement in writing, signed by both, setting out details of the allocation of the purchase price to the various classes of the assets transferred as required by the Commissioner and if—

(*a*) the Commissioner is not satisfied that the sum so allocated to the purchase price of the articles, implements, machinery or utensils, as the case may be, represents the fair market price thereof; or

(*b*) no such statement is furnished;

the cost of such articles, implements, machinery or utensils for the purposes of calculating any allowance in terms of this Part, shall be deemed to be such sum as the Commissioner may determine.

(3) If the ownership of assets referred to in subparagraphs (1) and (2) is transferred—

(a) in the circumstances described in paragraph (b) or (c) of the proviso to section 44("Assessed losses") (1) from one company, with or without an assessed loss, to another company; or

(b) from a company, in the course of or in furtherance of a scheme of reconstruction of a group of companies or a merger or other business operation which, in the opinion of the Commissioner, is of a similar nature, to another company under the same control;

the transferor and the transferee may elect that the selling price of the assets, for all purposes of this Act and notwithstanding the terms of any agreement of sale or the provisions of subparagraphs (1) and (2), shall be deemed to be the value of the assets, established in the hands of the transferor as a result of the application of this Part, at the date of the transfer:

Provided that, where any such asset is sold or otherwise disposed of after the transfer other than to another company under the same control, any amount which would have been included in the business income of any transferor in terms of section 66 ("Recouped deductions") had such transferor retained ownership of the asset, shall be included in the business income of the transferee effecting such sale or disposal.

(4) If the ownership of assets referred to in subparagraphs (1) and (2) is transferred between spouses, the transferor and the transferee may elect that the selling price of the assets for all purposes of this Act and notwithstanding the terms of any agreement of sale or the provisions of subparagraphs (1) and (2), shall be deemed to be the value of the assets, established in the hands of the transferor as a result of the application of this Part, at the date of the transfer:

Provided that, where any such asset is subsequently sold or otherwise disposed of to a person who is not the spouse of the transferor, any amount which would have been included in the business income of any transferor in terms of section 66 ("Recouped deductions"), had such transferor retained ownership of the asset, shall be included in the business income of the transferee effecting such sale or disposal.

Rates of special initial allowance

8. The special initial allowance referred to in paragraph 2 shall, if it is allowed in the year of assessment beginning on the 1st January, 2010, or on any subsequent year of assessment, ending on the 31st December, 2013, be a sum equal to twenty-five *per centum*. of the capital expenditure incurred by the taxpayer on the construction, additions, alterations or purchase, as the case may be.

Hire-purchase agreements relating to articles, implements, machinery and utensils and sales of property under suspense conditions

9. (1) A hire-purchase agreement as defined in the law relating to hire-purchase agreements which relates to articles, implements, machinery, utensils or plant referred to in paragraphs 2, 3 and 4 shall, for the purposes of those paragraphs, be deemed to be an agreement for the sale on credit of those articles, implements, machinery, utensils or plant to the party to the agreement who is the buyer as defined in that law at a price equal to the purchase price fixed in the agreement.

(2) Where there takes place a sale of property under a suspensive condition such sale shall, for the purposes of paragraphs 2, 3 and 4, be deemed to have effected a change of ownership of the property from the date of the sale.

Expenditure on additions or alterations to articles implements, machinery or utensils not owned but used for business

10. Where a taxpayer incurs any expenditure which is not allowed as a deduction in terms of section 31 ("Deductions allowed from business income") (1)(a) on additions or alterations to articles, implements, machinery or utensils which are not owned by him or her but are used by him or her for the purposes of his or her business, the provisions of paragraphs 2, 3, 4, 7 and 9 shall, with such changes as may be necessary, apply as though—

(a) the articles, implements, machinery or utensils belonged to the taxpayer; and

(b) the taxpayer had purchased the articles, implements, machinery or utensils at the time of the additions or alterations for an amount equal to the expenditure incurred by him or her on such additions or alterations.

Cases in which no deductions to be made in terms of this Part

11. In no case shall any allowance be deductible in respect of any buildings, structures or works of a permanent nature other than such allowances as are deductible in terms of paragraphs 2, 3 and 4.

Limitation on cost of farm dwelling

12. For the purposes of paragraphs 3 and 4, the cost of a farm improvement which ranked as a farm dwelling prior to the repeal of the definition thereof with effect from the year of assessment beginning on the 1st April, 1980, and any additions or alterations thereto shall be deemed to be so much of such costs as does not exceed the sum of fifteen thousand United Sates dollars.

Limitation on cost of passenger motor vehicle

13. (1) In calculating, for the purpose of paragraphs 2, 3, 4, 7, 9 or 11, the cost of a passenger motor vehicle and any additions or alterations thereto, any amount in excess of ten thousand United States dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2009.

(2) For the purposes of subsection (1)—

"passenger motor vehicle" means any motor vehicle propelled by mechanical or electrical power and intended or adapted for use or capable of being used on roads mainly for the conveyance of passengers, including an estate car, station wagon, van or similar vehicle but excluding any vehicle—

(a) which is used wholly or almost wholly—

(i) for the conveyance of passengers for gain; or

(ii) by a person operating a hotel for the conveyance of guests;

or

(b) which has seating accommodation for fifteen or more passengers, excluding the driver of the vehicle; or

(c) which was purchased by the taxpayer for the purpose of being leased to a particular person and has been so leased and where the taxpayer—

(i) will not be entitled to the return of the vehicle at the expiry of the period of the lease; and

(ii) has given or is required to give an option to purchase or other right in relation to the acquisition or disposal of the vehicle to the lessee or any other person.

Maximum amounts allowable in respect of schools, hospitals, nursing homes and clinics

14. The following amounts shall be disregarded in calculating, for the purposes of paragraph 2, 3, 4, 6, 8 or 9, the total cost of any buildings which are used for the purposes of a school, hospital, nursing home or clinic and which rank as farm improvements, and any additions or alterations thereto—

(*a*) in respect of any one building used wholly or mainly for the housing of staff employed at the school, hospital, nursing home or clinic, any amount in excess of ten thousand United States dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;

(b) in respect of any one such school, hospital, nursing home or clinic, any amount in excess of ten thousand United States dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;

PART II

DEDUCTIONS ALLOWABLE FOR SPECIFIED OPERATIONS

SUB-PART A

ALLOWANCES AND DEDUCTIONS IN RESPECT OF INCOME FROM MINING OPERATIONS AND OTHER PROVISIONS RELATING THERETO

Interpretation in Sub-Part A Part II of Eighth Schedule

15.(1) In this Part—

"approved estimated life", in relation to a mine, means the estimate of the life of the mine determined by a company for the purposes of paragraph 16(2)(a) or, if the Commissioner does not accept the estimate of the life determined by the company, the estimate of the life of the mine determined by the Commissioner;

"capital expenditure" means—

(*a*) expenditure, in relation to mining operations (other than expenditure in respect of which a deduction is allowable in terms of paragraph 16(3))—

(i) on buildings, works or equipment, including any premium or consideration in the nature of a premium paid for the use of buildings, works, equipment or land, but excluding—

A. in the case of a mine which is owned, tributed or leased by a company which is under the control of not more than four individuals, any expenditure in excess of ten thousand United States dollars on a building used mainly as a dwelling by one or more of the individuals who control the mining company, where the building was erected on or after the beginning of the year of assessment concerned, or in the preceding year of assessment if the deduction was not claimed in that year;

B. in the case of a passenger motor vehicle as defined in paragraph 13(2), any expenditure in excess of any expenditure in excess of the amount prescribed in paragraph 13(1) where such motor vehicle was purchased on or after the beginning of the year of assessment concerned, or in the preceding year of assessment if the deduction was not claimed in that year;

(ii) on shaft sinking;

(iii) incurred prior to the commencement of production or during any period of non-production on—

A. preliminary surveys, bore-holes and development, including any interest payable on loans utilized for mining purposes;

B. general administration and management in accordance with the formula set out in paragraph 4 ("Calculation of maximum amount deductible by company for general administration and management") of the Fourth Schedule ("Miscellaneous Calculations");

(b) expenditure incurred on or after the beginning of the year of assessment concerned, or in the preceding year of assessment if the deduction was not claimed in that year, on any permanent building used—

(i) for the purposes of a school; or

(ii) for the purposes of a hospital, nursing home or clinic;

(iii) mainly as a dwelling by staff employed at the school, hospital, nursing home or clinic

in connection with the taxpayer's mining operations, to the extent that the expenditure does not exceed fifty thousand United States dollars;

"estimate of the life of the mine" means the number of years not exceeding—

(*a*) in the case of a mine operated for the purpose of producing lead or zinc or lead and zinc, ten years;

(*b*) in the case of a mine operated for the purpose of producing iron, five years;

(*c*) in the case of any other mine, twenty years;

during which mining operations at the mine may be expected to continue after the beginning of the year of assessment;

"expenditure" means net expenditure after taking into account any refund of, or returns from, expenditure;

"expenditure on equipment" includes expenditure on renewals or replacements of buildings, works or equipment unless such expenditure has been allowed as a deduction in terms of paragraph 20;

"expenditure on shaft sinking" includes the expenditure on sumps, pump chambers, stations and ore bins accessory to a shaft;

"miner" means any person who at the time the expenditure was incurred was—

(a) the owner, tributor or option holder of a mining location; or

(b) the holder of a prospecting licence issued or an exclusive prospecting order granted in terms of the Mines and Minerals Act [*Chapter 21:05*];

"mineral" includes any valuable crystalline or earthy substance forming part of or found within the earth's surface and produced or deposited there by natural agencies, but does not include—

(a) petroleum; or

(b) any clay (other than fire-clay), gravel, sand, stone (other than limestone) or other similar substance ordinarily won by the method of surface working known as quarrying;

"mining location" means a mining location registered as such in terms of the Mines and Minerals Act [*Chapter 21:05*];

"mining operations " means—

(a) any operations for the purpose of winning a mineral from the earth; or

(b) any operations for the purpose of winning a mineral from any substance or constituent of the earth which are carried on in conjunction with operations referred to in paragraph (a) by the person carrying on those operations; and

(c) such operations for the purpose of winning a mineral from any substance or constituent of the earth which are not carried on in conjunction with operations referred to in paragraph (a) or by a person carrying on those operations as the Commissioner may determine to be mining operations for the purposes of this Act;

and "mine", whether used as a noun or a verb, shall be construed accordingly;

'previous law" means the Income Tax Act [CHAPTER 23:06] or the Income Tax Act, 1954 (No. 16 of 1954) or a law repealed by that Act;

"trade training" means any education or training, other than any education or training which is provided as part of the general school education of a pupil, which is intended to train persons to perform work in connection with the mining operations of the taxpayer or an associated company or to improve their performance of such work;

"training building" means any building the construction of which was commenced on or after the 1st April, 1983, which is erected by the taxpayer and used exclusively for the purpose of providing trade training for persons who are or will be employed by him or her or an associated company in connection with the taxpayer's mining operations or those of the associated company;

"training equipment" means new or unused articles, implements, machinery or utensils purchased on or after the 1st April, 1983, and, in the opinion of the Commissioner, used by the taxpayer exclusively for the purpose of providing trade training for persons who are or will be employed by him or her or an associated company in connection with the taxpayer's mining operations or those of the associated company.

(2) For the purpose of determining whether the training equipment was used or is being used exclusively by the taxpayer for the purpose of providing trade training for persons who are or will be employed by him or her or an associated company in connection with the taxpayer's mining operations or those of the associated company, the Commissioner may have regard to the use to which the equipment was or is being put by the taxpayer in the year of assessment in which it was first put into use in the next following year of assessment.

(3) For the purposes of this Sub-Part, a building shall not be deemed to be used for the purposes of—

(a) for the purposes of a school; or

(b) for the purposes of a hospital, nursing home or clinic;

in connection with a taxpayer's mining operations, unless it is proved to the satisfaction of the Commissioner that, at the relevant time—

(c) in the case of a school, more than one-half of the pupils are children of persons employed by the taxpayer in carrying on mining operations;

(d) in the case of a hospital, nursing home or clinic, more than one-half of the persons receiving treatment thereat are employed by the taxpayer in carrying on mining operations or are members of the families of persons who are so employed.

Application of Sub-Part A of Part II of Eighth Schedule

16.(1) In respect of income from mining operations, the allowances and deductions for which provision is made in this Sub-Part are in lieu of the allowances and deductions provided in sections 32 ("Expenditure incurred prior to commencement of business"), 38 ("Improvements to leased property") and 40 ("Premiums, royalties, etc").

(2) An allowance or deduction in terms of this Sub-Part may be claimed in respect of two or more mining locations together, whether or not the expenditure or losses are attributable to either or any one of the mining locations concerned, where the Commissioner is satisfied that the mining operations conducted on the mining locations are inseparable or substantially interdependent;

(3) Any expenditure which is proved to the satisfaction of the Commissioner to have been incurred during the year of assessment by a taxpayer who is a miner on surveys, boreholes, trenches, pits and other prospecting and exploratory works undertaken for the purpose of acquiring rights to mine minerals in Zimbabwe or incurred on a mining location in Zimbabwe, together with any other expenditure (other than expenditure referred to in

paragraph (*a*) of the definition of "capital expenditure" in paragraph 15) which, in the opinion of the Commissioner, is incidental thereto, shall be allowed as a deduction:

Provided that the taxpayer may elect (which election shall be binding) that the expenditure be—

(*a*) allowed in the year of assessment in which it is incurred; or

(*b*) carried forward and allowed against income from mining operations in any subsequent year of assessment.

Calculation of redemption allowance and unredeemed balance of capital expenditure in the case of mine-owning companies

17.(1) Subject to paragraph 19, there shall be deducted in the year of assessment in respect of income derived by a company from the carrying on of mining operations in a mine of which such company is the owner, an allowance for the redemption of capital expenditure ascertained as follows—

(*a*) the balance of unredeemed capital expenditure in respect of that mine at the commencement of the year of assessment, after subtracting therefrom any recoupments from capital expenditure during such year, shall be added to the amount of capital expenditure incurred on that mine during such year;

(*b*) the aggregate amount of the sums so added shall be divided by the number of years in the approved estimated life of the mine;

(*c*) the quotient resulting from the division shall be the amount to be deducted as aforesaid.

(2) The company shall furnish annually to the Commissioner a statement giving an estimate of the life of the mine based on the certified estimates of ore reserves, supported by calculations showing how the estimate is arrived at.

The annual revision shall not affect any assessment determined or any allowance made or presumed to have been made under this Act or under any previous law.

(3) When separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for redemption of capital expenditure shall be computed separately according to the approved estimated life of each such mine.

(4) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance determined at the end of the immediately preceding year of assessment in terms of the previous law.

Calculation of redemption allowance in the case of persons other than mine-owning companies

18.(1) Subject to paragraph 19, there shall be deducted for each year of assessment in respect of income derived by—

(*a*) a company from the carrying on of mining operations in a mine of which such company is not the owner; or

(*b*) any person other than a company from the carrying on of mining operations;

an allowance for the redemption of capital expenditure in such sum as the Commissioner considers to be fair and reasonable:

Provided that where any person referred to in subparagraph (b) who is the owner of a mine furnishes, for any year of assessment, an estimate of the life of the mine, then the amount to be deducted shall be calculated for such year as if paragraph 17 applied to such person.

(2) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance determined at the end of the immediately preceding year of assessment in terms of the previous law.

Further provisions in regard to capital redemption, allowance

19.(1) Notwithstanding paragraphs 17 and 18, where any person carried on mining operations in a mine and had, under any previous law, made an election relating to the deduction of current capital expenditure incurred during any year of assessment, the allowance for redemption of capital expenditure shall continue to be calculated in accordance with the terms of the previous law relating to such election.

(2) Notwithstanding paragraphs 17 and 18, any person who carries on mining operations in a mine may elect that the amount to be deducted for each year of assessment in respect of the allowance for the redemption of capital expenditure shall be the aggregate of the amount of capital expenditure incurred by him during such year of assessment in respect of that mine and a proportion of any balance of unredeemed capital expenditure in respect of that mine at the commencement of such year determined as provided in subparagraph (3).

(3) The proportion of any balance of unredeemed capital expenditure referred to in subparagraph (2) shall—

(*a*) be determined by dividing the amount of the balance of such unredeemed capital expenditure by the life of the mine concerned, where the person who makes the election in terms of subparagraph (2) is the owner of the mine concerned and—

(i) complies with paragraph 17(2); or

(ii) furnishes an estimate of the life of the mine in terms of the proviso to paragraph 18(1);

(*b*) be fixed by the Commissioner at such sum as may seem to him or her to be fair and reasonable, in any case not referred to in subparagraph (*a*).

(4) Despite subparagraph (2), a person carrying on mining operations in a new mine, as defined in subparagraph (8), may elect that the amount to be deducted in the year of assessment in which production on the new mine first commences shall be the aggregate of the amount of capital expenditure incurred by him or her during such year of assessment in respect of the mine and the balance of the unredeemed capital expenditure in respect of the mine at the commencement of such year of assessment.

(5) Any election made in terms of subparagraph (2) shall be binding in respect of all subsequent years of assessment.

(6) Where an election is made under subparagraph (2), recoupments from capital expenditure during the year of assessment shall be deducted from the unredeemed balance of capital expenditure at the commencement of such year and, if there is no such unredeemed balance, then from the capital expenditure incurred during such year.

(7) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance determined at the end of the immediately preceding year of assessment in terms of the previous law.

(8) For the purpose of subparagraph (4)—

"new mine" means any mining undertaking which, in the opinion of the Commissioner, is an independent workable proposition, whether or not it is operated by a person already carrying on mining operations, and which—

(*a*) first commenced regular production on or after the date of commencement of this Act; or

(*b*) having previously been in production—

(i) had been closed down and has subsequently been reopened; or

(ii) had changed ownership and has been reorganized with substantially new development and new plant;

and commenced regular production on or after the date of commencement of this Act.

Deduction of expenditure incurred on renewal or replacement of buildings, works or equipment

20. If the taxpayer so elects (which election shall be binding) in respect of income from mining operations, he or she shall be allowed a deduction of expenditure in relation to those operations, incurred during the year of assessment on any single renewal or replacement of buildings, works or equipment which, together with the accessories thereto, does not exceed in cost ten thousand United States dollars:

Provided that in the case of a mine which is owned, tributed or leased by a company under the control of not more than four individuals, no expenditure in excess of one thousand five hundred United States dollars on the renewal or replacement of any building shall be allowed as a deduction if such building is used mainly by any such individual or individuals as a dwelling.

Deduction of royalties

21. There is allowed as a deduction to a miner who pays any royalty during the year of assessment in terms of the Mines and Minerals Act [*Chapter 21:05*], the amount of any royalty so paid.

Computation of unredeemed balance of capital expenditure on change of ownership of a mine

22.(1) Whenever there takes place a change of ownership of a mine, the transferor and the transferee of the mine shall jointly furnish to the Commissioner a statement in writing as to the proportion of the consideration, where consideration is given, or of the value, where no consideration is given, as appertains to such assets the cost of which would rank as capital expenditure.

(2) If the Commissioner is satisfied with such statement, he or she shall allow the amount so declared to rank as capital expenditure for redemption to the transferee of the mine and such amount shall be deemed to be a recoupment from capital expenditure in the hands of the transferor.

(3) If the Commissioner is not satisfied with the statement furnished by the transferor and transferee, or if no statement has been furnished, the Commissioner may determine the proportion of the consideration given, or of the value where no consideration is given, which shall rank as capital expenditure for redemption in the hands of the transferee. The proportion of the consideration or of the value where no consideration is given so determined shall be deemed to be a recoupment from capital expenditure in the hands of the transferor.

(4) Notwithstanding subparagraphs (1), (2) and (3), where the ownership of a mine is transferred for no valuable consideration from a transferor who has deducted capital expenditure in respect of such mine under paragraph 19(1) or (2) or the corresponding provisions of any previous law, the amount of capital expenditure to be allowed to rank for redemption in the hands of the transferee shall not exceed the amount of capital expenditure ranking for redemption in the hands of the transferor at the time the transfer is made and such amount shall be deemed to be a recoupment from capital expenditure in the hands of the transferor.

(5) If the ownership of a mine is transferred from one company, with or without an assessed loss, to another company, the amount of capital expenditure to be allowed to rank for redemption in the hands of the transferee shall, notwithstanding subparagraphs (1), (2) and (3), be the amount of the capital expenditure ranking for redemption in the hands of the transferor at the time transfer is made which shall be deemed to be a recoupment from capital expenditure in the hands of the transferor:

Provided that, where the transferor company has an assessed loss, no deduction is allowed under this paragraph where the Commissioner finds that the transferee took transfer primarily in order to take advantage of the assessed loss.

(6) If a company, in the course of or furtherance of a scheme of reconstruction of a group of companies or a merger or other business operation which, in the opinion of the Commissioner, is of a similar nature, transfers ownership of a mine to another company, the transferor and transferee may elect, notwithstanding the terms of any agreement of sale or the provisions of subparagraphs (1), (2) and (3), that the amount of capital expenditure ranking for redemption in the hands of the transferor at the time transfer is made shall rank as capital expenditure for redemption in the hands of the transferee and be deemed to be a recoupment from capital expenditure in the hands of the transferor.

(7) If the ownership of a mine is transferred between spouses, the transferor and the transferee may elect, notwithstanding the terms of any agreement of sale or the provisions of subparagraphs (1), (2) and (3), that the amount of capital expenditure ranking for redemption in the hands of the transferor at the time transfer is made shall rank as capital expenditure for redemption in the hands of the transferee and be deemed to be a recoupment from capital expenditure in the hands of the transferor.

SUB-PART B

DEDUCTIONS IN RESPECT OF INCOME DERIVED FROM FARMING OPERATIONS AND OTHER PROVISIONS RELATING THERETO

Interpretation in Sub-Part B of Part II Eighth Schedule

23. In this Sub-Part—

"drought-stricken area" means any area of Zimbabwe specified by the Minister in a notice in a statutory instrument which the Minister declares in the notice shall be treated as a drought-stricken area for the purposes of this Sub-Part;

"expenditure incurred", in relation to the cost of any work done by any other person for which a farmer has become liable in terms of the Environmental Management Act [Chapter 20:27] (No. 13 of 2002), means the amounts actually paid by him or her during the year of assessment in respect of such costs;

"fencing" means—

(a) fencing erected by the taxpayer and used in the carrying on of farming operations; and

(b) fencing erected by any other person for part of the cost of which a farmer has become liable in terms of the Fencing Act [*Chapter 20:06*], and which is used in the carrying on of farming operations;

"grazer" means any livestock which a farmer, in terms of a contract with the owner of the livestock, has in his possession and for which he or she has assumed responsibility for the grazing and management thereof;

"livestock" means cattle, sheep and goats;

"period of drought" means any period specified by the Minister in a notice referred to in the definition of "drought-stricken area" which the Minister declares in the notice shall be the period during which the area of Zimbabwe specified in the notice shall be treated as a drought-stricken area for the purposes of this Sub-Part;

"water conservation work" means any reservoir, weir, dam or embankment constructed for the impounding of water.

Special deductions applicable to farmers

24. Despite anything contained in this Act, a farmer shall be entitled to deduct any expenditure incurred by him or her during the year of assessment on—

(a) the stumping and clearing of lands;

(b) works for the prevention of soil erosion;

(c) the sinking of boreholes and wells;

(d) aerial and geophysical surveys;

(e) any water conservation work and any amounts paid by him towards the cost of any water conservation work done by any other person for which such farmer has become liable in terms of the Environmental Management Act [Chapter 20:27] (No. 13 of 2002),;

(f) fencing.

Determination of taxable income or assessed loss from growing of timber

25.(1) Any farmer who grows timber for the purpose of deriving income therefrom may elect that the following rules shall apply in the determination of the taxable income or the assessed loss, as the case may be, in respect of such operation—

(a) the cost of planting the timber shall be carried forward until such time as the timber has reached maturity;

(b) to the cost of planting mentioned in subparagraph (a) there shall be added annually until the timber has reached maturity an amount (hereinafter called the fixed percentage) equal to five *per centum* of such cost;

(c) whenever timber which has been grown by such farmer is sold, there shall be deducted from the proceeds of such sale a proportionate part of the sum of the cost of planting and the total of the fixed percentage added annually, and the remaining amount shall be included in the taxable income or the assessed loss, as the case may be, of such farmer;

(d) there shall be added to the taxable income or deduction from the assessed loss, as the case may be, of such farmer in each year of assessment the amount of the annual fixed percentage determined under subparagraph (b);

(e) there shall be deducted from the taxable income or added to the assessed loss, as the case may be, of such farmer all expenditure (including deductions made under sections 38 ("Improvements to leased property") and 40 ("Premiums, royalties, etc"). incurred on the maintenance and upkeep of such timber;

(f) any election made in terms of this paragraph shall be binding in respect of all subsequent years of assessment and may be made only in respect of timber planted after the 1st April, 1950:

Provided that an election made in terms of the similar provisions of a previous law shall be deemed to have been made in terms of this Act.

(2) For the purposes of the first year of assessment under this Act, the opening value of any timber to which this paragraph applies shall be deemed to be the closing value in the last year of assessment under the previous law.

Determination of taxable income or assessed loss from orchards or vineyards

26.(1) Any farmer who is engaged in fruit-growing or viticulture for the purpose of deriving income therefrom may elect that the following rules shall apply in the determination of the taxable income or the assessed loss, as the case may be, in respect of such operations—

(*a*) expenditure incurred in connection with orchards or vineyards such as is referred to in paragraph 24 and any allowance in respect of orchards or vineyards which are deductible in terms of Part I shall be deducted from the taxable income or added to the assessed loss, as the case may be, of such farmer;

(*b*) all other expenditure or allowances deductible in terms of this Sub-Part and expenditure incurred in the planting and upkeep of orchards and vineyards shall be carried forward until such time as they become productive;

(*c*) the farmer shall submit to the Commissioner in the year of assessment in which an orchard or vineyard becomes productive an estimate of the number of years during which the orchard or vineyard may be expected to remain productive and the Commissioner may either accept that estimate or himself or herself determine the number of years during which the orchard or vineyard may be expected to remain productive;

(*d*) after an orchard or vineyard becomes productive the total amount of expenditure carried forward in terms of subparagraph (*b*) shall be divided by the number of years accepted or, as the case may be, determined by the Commissioner in terms of years accepted or, as the case may be, determined by the Commissioner in terms of subparagraph (*c*) and a sum equal to the amount resulting shall be deducted in equal annual instalments from the taxable income or added to the assessed loss, as the case may be, until the total amount of the expenditure carried forward in terms of subparagraph (*b*) has been allowed as a deduction;

(e) no deduction from taxable income or addition to an assessed loss shall be made after the farmer has, in the opinion of the Commissioner, ceased to keep up an orchard or vineyard in respect of which expenditure carried forward in terms of subparagraph (b) was incurred;

(f) if part of an orchard or vineyard is uprooted and replanted, whether before or after the orchard or vineyard has become productive—

(i) the amount of the balance of expenditure in respect of that part of the orchard or vineyard carried forward in terms of subparagraph (*b*), which is still to be deducted or added in terms of subparagraph (*d*), may be deducted or added in the year of assessment in which the uprooting takes place; and

(ii) the part so uprooted and replanted shall be treated as a new orchard or vineyard for the purposes of the provisions of this paragraph relating to expenditure incurred in the planting and upkeep of orchards and vineyards;

(g) if—

(i) the ownership of an orchard or vineyard is transferred for valuable consideration; and

(ii) the transferor has elected that this paragraph shall apply;

the transferor and transferee shall jointly submit to the Commissioner a statement in writing showing the amount of the consideration and the proportion of that amount which is attributable to the cost of planting and upkeep referred to in subparagraph (b);

(h) if no statement is submitted in terms of subparagraph (g) or if the Commissioner is not satisfied with a statement submitted in terms of that subparagraph, the Commissioner may determine the proportion of the consideration for the transfer of an orchard or vineyard which is attributable to the cost of planting and upkeep referred to in subparagraph (b);

(i) the amount by which the proportion of the consideration for the transfer of an orchard or vineyard shown in a statement referred to in subparagraph (g) or, as the case may be, determined in terms of subparagraph (h) exceeds the amount of the balance of expenditure carried forward in terms of subparagraph (b) which is still to be deducted or added in terms of subparagraph (d) shall, subject to subparagraph (j)—

(i) be deemed to be a recoupment in the hands of the transferor; and

(ii) be added to the taxable income or, as the case may be, deducted from the assessed loss of the transferor;

(*j*) the amount to be deducted from the assessed loss or added to the taxable income of a transferor in terms of subparagraph (*i*) shall not exceed the total amount of the sums deducted or added in terms of subparagraph (*d*);

(*k*) an election made by a farmer in terms of his paragraph shall be irrevocable:

Provided that an election made in terms of the similar provisions of a previous law shall be deemed to have been made in terms of this Act.

(2) Subparagraph (1) shall not apply to orchards or vineyards established before the 1st April, 1956.

Assessment of income when drought conditions enforce sales of livestock

27.(1) If a farmer engaged in raising livestock in a drought-stricken area who is driven by stress of the drought conditions in the area to dispose of livestock during the period of the drought so elects, the amount of taxable income derived from the disposal of the livestock which would otherwise be included in his return for the year of assessment in which the livestock are so disposed of shall, notwithstanding anything to the contrary in this Act, be allocated equally between the year of assessment and each of the next two following years of assessment and be assessed to tax accordingly:

Provided that—

(i) if, in any year of assessment in which livestock are so disposed of, the amount of the taxable income derived from the disposal of the livestock exceeds the total taxable income of the farmer determined in accordance with the provisions of this Act before the provisions of this paragraph are applied in the assessment of his income, the farmer may elect that his total taxable income determined in accordance with the provisions of this Act before the provisions of this paragraph are applied shall be allocated equally between that year of assessment and each year of the next two following years of assessment and be assessed to tax accordingly;

(ii) any portion of any amount which was due to be included in the taxable income of a farmer under the similar provisions of a previous law and which, under such previous law, fell to be apportioned over a number of years, shall, for the purposes of this Act, be included in his taxable income as though the relevant provisions of such previous law were still in force.

(2) An election made in terms of subparagraph (1) shall be irrevocable.

(3) For the purposes of subparagraph (1), where a farmer returns grazers to the owner thereof, he or she shall be deemed to have disposed of the livestock concerned.

Additional allowance in respect of cost of restocking herd depleted by drought

28. There shall be admissible as a deduction in the determination of the taxable income or the assessed loss of any farmer engaged in raising livestock in a drought-stricken area during any year of assessment an allowance of an amount equal to fifty *per centum* of the cost to him of any livestock purchased in that year of assessment in order to restock a herd depleted during a period of drought by death or enforced disposal as a result of the drought conditions in such area:

Provided that if the number of livestock so purchased exceeds the difference between the assessed carrying capacity of the land on which the farmer engaged in raising livestock

carried on such occupation, as determined by the Department of Agricultural Technical and Extension Services, and the number of livestock on hand, immediately prior to the date of such purchase, then the allowance shall not exceed an amount determined by applying the formula—

$$\frac{A}{2} \times \frac{B}{C}$$

in which—

A represents the cost of the livestock purchased;

B represents such difference as aforesaid;

C represents the number of livestock purchased.

NINTH SCHEDULE (Sections 36 (1) (proviso), 41(4), 42(3), 107(1)(a)(i) and (b), (3)(a)(ii) and (b), (5)(a)(i) and (b), 125(1), 126(1)(proviso), 137(1) (definition of "contract"), 161(1), 173(1)

PRESCRIPTION OF VARIOUS AMOUNTS

US $

1. Maximum amount deductible under **section 36(1) (proviso)** for attending convention or trade mission: 2 500, 00
2. Maximum amount deductible by way of contributions or arrear contributions to benefit or pension fund or to Consolidated Revenue Fund under **section 41(1)**: 5 400,00
3. Maximum amount deductible for annuities, allowances or pensions under **section 42(2)** —
   (a) where amount paid in respect of any one former employee: 500,00
   (b) where amount paid in respect of any one former partner or any one dependant of a former employee or partner: 200,00
4. The following amounts prescribed under section 106 ("Additional tax payable for rendering incorrect return"), namely —
   (a) section 106(1)(a)(i): 500,00
   (b) section 106(1)(b): 10,00
   (c) section 106(3)(a)(ii).......... 500,00
   (d) section 106(3)(b) 10,00
   (e) section 106(4)(a)(i).......... 500,00
   (f) section 106(4)(b) 10,00
5. Amount at or below which no tax is payable in terms of section 124(1).......... 5,00
6. Amount of excess tax withheld which is non-refundable for the purposes of the proviso to section 125(1).......... 5,00
7. Value of contract for purposes of definition of "contract" in section 136(1) 250,00
8. Minimum annual turnover of person engaged in a business referred to in Twelfth Schedule, below which person is liable for presumptive tax (section 160(1)(b)) 60 000,00
9. Civil penalty for failure to pay petroleum importers levy timeously (section 172(1)).......... 30,00
10. Maximum amount of contribution to research institution deductible under paragraph 2(4) 100 000,00
11. Maximum amounts deductible under paragraph 4(1) of the Tenth Schedule for donations—
    (a) to the Public Private Partnership Fund: 50 000,00

(b) to the Destitute Homeless Persons Rehabilitation Fund: 200,00

12. Maximum amount deductible under paragraph 4(2) of the Tenth Schedule for donations towards the establishment or maintenance of hospitals and schools: 100 000,00

13. Maximum amount deductible under paragraph 6 of the Tenth Schedule for expenditure on items of infrastructure owned or managed by local authority: 50 000,00

14. Amount of taxable income of co-operative agricultural company or co-operative society entitling it to allowance under paragraph 7(2) of the Tenth Schedule: 500,00

TENTH SCHEDULE(Sections 2(1), 31(1)(b) and 43)

DEDUCTIONS PROMOTIVE OF PUBLIC POLICY OBJECTIVES

Employee share ownership schemes

1.(1) In this paragraph—

"approved employee share ownership scheme" means an arrangement which satisfies the Commissioner that its dominant purpose or effect is to enable employees of a company or group of companies to participate in income arising from the acquisition, holding or disposal of shares, securities or property of the company or group of companies concerned, where—

(a) the shares, securities and property are held in trust for the employees; and

(b) the arrangement has either or both of the following characteristics—

(i) the employees' contributions, if any, and the profits and income out of which payments are to be made are pooled;

(ii) each employee has a right or interest in the shares, securities and property held in trust for him or her.

(2) A deduction is allowed of an amount representing the fair value of any shares, debentures, units or other interests paid or given by the taxpayer during the year of assessment to or for the benefit of any of his or her employees pursuant to an approved employee share ownership scheme.

Research and development costs

2.(1) A deduction is allowed for any expenditure incurred by a taxpayer during the year of assessment in carrying out experiments and research relating to the taxpayer's business other than capital expenditure on plant, machinery, land or premises or on the acquisition by the taxpayer of rights, whether for the purpose of his or her business or otherwise.

(2) A deduction is allowed for any sum contributed by a taxpayer during the year of assessment towards expenditure incurred by another person, which would have been deductible under subparagraph (1) had it been incurred by the taxpayer:

Provided that the deduction may not exceed an amount determined by applying the formula set out in paragraph 8 ("Calculation of deduction allowable for contribution towards research and development expenditure") of the Fourth Schedule ("Miscellaneous Calculations").

(3) A deduction is allowed for any sum contributed by a taxpayer during the year of assessment to a scientific or educational society or institution or other similar body of a public character approved by the Commissioner, if the taxpayer has stipulated that the sum must be utilised by the society, institution or body solely for the purpose of industrial research or scientific experimental work connected with the taxpayer's business.

(4) A deduction is allowed of any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to a research institution approved by the Minister responsible for higher or tertiary education:

Provided that the deduction allowable under this subparagraph must not exceed the appropriate amount specified in the Ninth Schedule ("Prescription of Various Amounts").

Grants, scholarships, etc.

3.(1) In this paragraph—

"person not connected with the taxpayer" means a person who is not—

(a) the taxpayer's spouse or near relative, or a near relative of the taxpayer's spouse; or

(b) where the taxpayer is a company—

(i) a person who controls the company, or a spouse or near relative of that person, or a near relative of that person's spouse; or

(ii) a director of the company or a spouse or near relative of a director, or a near relative of a director's spouse.

(2) A deduction is allowed for any amount contributed by a taxpayer during the year of assessment in the form of a grant, bursary or scholarship to enable a person not connected with the taxpayer to take a course of technical education related to the taxpayer's business at an educational institution.

Donations to public or charitable funds, trusts etc.

4.(1) A deduction is allowed for amounts paid by a taxpayer during the year of assessment, without any consideration, to—

(a) the National Scholarship Fund established in terms of the Public Finance Management Act [*Chapter 22:19*] (No. 19 of 2009); or

(b) the National Bursary Fund established in terms of the Public Finance Management Act [*Chapter 22:19*] (No. 19 of 2009); or

(c) the Destitute Homeless Persons Rehabilitation Fund established in terms of the Public Finance Management Act [*Chapter 22:19*] (No. 19 of 2009); or

(d) the Public Private Partnership Fund; or

(e) a charitable trust administered by a Minister or member of the Public Service in his or her official capacity; or

Provided that a deduction allowable under this subparagraph must not exceed the appropriate amount specified in the Ninth Schedule ("Prescription of Various Amounts").

(2) A deduction shall be allowed for amounts paid by a taxpayer during the year of assessment, without any consideration, to the State or to a fund—

(a) for any one or more of the following purposes approved by the Minister responsible for health—

(i) the purchase of medical equipment for a hospital operated by the State, a local authority or a religious organisation; or

(ii) the construction, extension or maintenance of a hospital operated by the State, a local authority or a religious organisation; or

(iii) the procurement of drugs, including anti-retroviral drugs, to be used in a hospital operated by the State, a local authority or a religious organisation;

(b) for any one or more of the following purposes approved by the Minister responsible for education—

(i) the purchase of educational equipment for a school operated by the State, a local authority or a religious organisation; or

(ii) the construction, extension or maintenance of a school operated by the State, a local authority or a religious organisation; or

(iii) the procurement of books or other educational materials to be used in a school operated by the State, a local authority or a religious organisation:

Provided that a deduction allowable under this paragraph must not exceed the appropriate amount specified in the Ninth Schedule ("Prescription of Various Amounts").

Donations to approved employee housing trust fund

5.(1) In this paragraph—

" approved employee housing trust fund" means an arrangement embodied in a notarised trust deed which satisfies the Commissioner that its dominant purpose or effect is to enable a company or group of companies to finance and construct housing for its employees on terms that will eventually allow the employees to acquire ownership of their homes from the trust.

(2) A deduction is allowed for amounts paid by a taxpayer during the year of assessment, without any consideration, to an approved employee housing trust fund established for the benefit of the taxpayer's employees.

Expenditure on maintaining local authority infrastructure

6. A deduction is allowed of expenditure by a taxpayer during the year of assessment towards the maintenance of any item of infrastructure managed or owned by a local authority, where the expenditure was made at the request of the local authority concerned and with the approval of the Minister responsible for local government:

Provided that the deduction allowable under this paragraph for any year of assessment must not exceed the appropriate amount specified in the Ninth Schedule ("Prescription of Various Amounts").

Deductions for co-operatives

7.(1) In this paragraph—

"co-operative agricultural company" means a co-operative company which is registered under the Companies Act [*Chapter 24:03*] and which restricts membership to—

(a) farmers, including farmers who carry on farming operations in conjunction with other activities; or

(b) other co-operative agricultural companies; or

(c) co-operative societies;

"co-operative society" means a co-operative society which is registered in terms of the Co-operative Societies Act [*Chapter 24:05*].

(2) A deduction is allowed from the income of a co-operative agricultural company or a co-operative society—

(a) for amounts distributed by the company or society during the year of assessment to shareholders, members or other persons as discounts, rebates or bonuses for their transactions with the company or society; and

(b) of an allowance calculated at the rate of one dollar for each dollar by which the taxable income of the company or society, before the deduction of the allowance, is less than the appropriate amount specified in the Ninth Schedule ("Prescription of Various Amounts"):

Provided that the maximum amount of the allowance must not exceed the taxable income of the company or society in the year of assessment.

Deductions for growth point business

8.(1) In this paragraph—

"commercial infrastructure" means commercial buildings and other permanent assets constructed for commercial purposes;

"growth point business" means a business which—

(a) is carried on in an area which the Minister, by notice in the *Gazette*, has declared to be a growth point area; and

(b) has been designated by the Minister as a growth point business in relation to that growth point area.

(2) A taxpayer carrying on a growth point business is entitled to—

(a) a special initial allowance in accordance with Part I of the Eighth Schedule in respect of any business infrastructure constructed, added to or altered for the purpose of the growth point business; as if such infrastructure were "industrial buildings" referred to in that provision; and

(b) an investment allowance of fifteen *per centum* of the cost to the taxpayer of—

(i) any commercial or industrial building or staff housing erected in the growth point area concerned; and

(ii) any alteration or addition to an existing commercial or industrial building or staff housing in the growth point area concerned; or

(iii) any unused property, other than motor vehicles;

brought into use for the purpose of that business during the year of assessment.

Export-market development expenditure

9.(1) In this paragraph—

"Zimbabwean export" means anything that has, in Zimbabwe, been manufactured, produced, grown, assembled, bottled, canned, packed, graded, processed or otherwise dealt with in such manner as the Commissioner may approve;

(2) A deduction is allowed for any expenditure incurred by a taxpayer during the year of assessment which the Commissioner is satisfied was incurred wholly or exclusively for either or both the following purposes—

(a) seeking opportunities for the export of Zimbabwean exports;

(b) creating or increasing the demand outside Zimbabwe for Zimbabwean exports;

including any of the following—

(i) research into, or obtaining information relating to, markets outside Zimbabwe;

(ii) research into packaging or presenting Zimbabwean exports for sale outside Zimbabwe;

(iii) advertising Zimbabwean exports outside Zimbabwe or otherwise securing publicity for them outside Zimbabwe;

(iv) soliciting business outside Zimbabwe or participating in trade fairs;

(v) investigating or preparing information, designs, estimates or other material for the purpose of submitting tenders for the sale or supply of Zimbabwean exports outside Zimbabwe;

(vi) bringing prospective buyers to Zimbabwe from outside Zimbabwe;

(vii) providing samples of Zimbabwean exports to persons outside Zimbabwe.

Tobacco levy

10. A deduction is allowed of the amount of any tobacco levy paid by a taxpayer during the year of assessment.

Deduction for unrecovered legal costs in tax appeals

11.(1) Subject to this paragraph, a deduction is allowed for the taxed costs incurred by a taxpayer during the year of assessment in connection with an appeal under this Act to the Fiscal Appeal Court, if—

(a) the appeal is allowed in full; or

(b) the appeal is allowed to a substantial extent and the court directs that the costs are to be allowed as a deduction under this subparagraph.

(2) No deduction may be allowed under subparagraph (1) until the time for noting an appeal to the Supreme Court has elapsed and—

(a) no such appeal has been noted; or

(b) if such an appeal has been noted, the appeal has been finally determined by the Supreme Court.

(3) Subject to this paragraph, a deduction is allowed for the taxed costs incurred by a taxpayer during the year of assessment in connection with an appeal under this Act to the Supreme Court against a decision of the High Court or the Special Court, if—

(a) the decision of the Supreme Court is wholly or substantially in favour of the taxpayer; and

(b) the Supreme Court directs that the costs are to be allowed as a deduction under this subparagraph.

(4) No deduction may be allowed under this paragraph if the taxpayer has recovered the costs concerned from any source.

ELEVENTH SCHEDULE (Sections 128, 138 and 142)

EMPLOYEES' TAX

PART I

PRELIMINARY

Interpretation

1. (1) In this Schedule—

"employee" means an individual to whom employment income is paid or payable at an annual rate that is more than the amount specified in section 14(2)(a)(i) of the Finance Act [*Chapter 23:04*] in respect of the year of assessment concerned;

"employees' tax" means any amount required to be withheld by an employer in terms of paragraph 3;

"employees' tax certificate" means a certificate required to be issued by an employer in terms of paragraph 14;

"employment income", in relation to an employee's employment income from which an employer is required to withhold employees' tax, means (unless otherwise expressly provided), employment income that an employer pays to his or her employee, but does not, for the purposes of this Schedule, include—

(a) any amount paid or payable to any person in respect of services rendered or to be rendered by that person in the course of any business conducted by him or her independently of the person by whom such amount is paid or payable:

Provided that where any such amount is paid or payable to—

(i) an insurance agent in respect of any act done by him or her on behalf of a person who is a registered insurer in terms of the Insurance Act [*Chapter 24:07*] in relation to the initiating of insurance business, the receiving of proposals for insurance, the issuing of policies or the collection of premiums; or

(ii) a person in respect of any act done by him or her on behalf of a person who is a registered estate agent in terms of the Estate Agents Act [*Chapter 27:05*] in relation to introducing parties to the sale or lease of immovable property to each other or negotiating or concluding such sale or lease;

such amounts shall constitute employment income for the purposes of this Schedule;

or

(b) any amount of director's fees paid or payable to any individual by any company in respect of services rendered or to be rendered by such individual to such company if no other amounts constituting employment income in terms of this definition have been paid or become payable to such individual by such company; or

(c) any amount of fees paid or payable to the chairperson or a member of a board of any statutory corporation in respect of services rendered or to be rendered by such chairperson or member on such board if no other amounts constituting employment income in terms of this definition have been paid or become payable to such chairperson or member by such statutory corporation; or

(d) any amount exempt from income tax by virtue of the Seventh Schedule ("Exemption from Income Tax"); or

(e) any amount paid or payable out of moneys of a partnership to a person who is a member of that partnership; or

(f) any amount paid or payable to an employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his or her employment; or

(g) any amount which is paid or payable to a person by way of a commutation of a pension or annuity other than an amount referred to in paragraph 2 of 3 of Part III ("Amounts Deemed to Be included in Property Income") of the Fifth Schedule ("Amounts Deemed to Be included in Employment, Business and Property Income**")** ; or

(h) any amount which the Commissioner directs or prescribes shall not be remuneration for the purposes of this Schedule;

"employment income liable to employees' tax" means so much of the remuneration payable to an employee as remains after the deduction of any amount in respect of ordinary contributions, excluding contributions to a benefit fund;

"employer"—

(a) means any person (excluding any person not acting as a principal or any person or class of persons specified by the Commissioner, but including any person acting in a fiduciary capacity or in his or her capacity as a trustee of an insolvent or deceased estate or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any employee any amount by way of employment income, and any person responsible for the payment of any amount by way of employment income to any employee under any law or out of public funds (including the funds of any statutory corporation or undertaking of the State) or out of moneys appropriated by Act of Parliament; and

(b) includes a representative of the employer;

"non-resident employer " means—

(a) an individual who is not ordinarily resident in Zimbabwe; or

(b) a company, partnership or organisation which does not have its head office or principal place of business within Zimbabwe;

"ordinary contribution", in relation to—

(a) a member of a pension fund or a person to whom the provisions of a pensions law of Zimbabwe apply, means a contribution to the fund or the Consolidated Revenue Fund, as the case may be, which—

(i) is not an arrear contribution; and

(ii) is made by or in connection with the member or the officer, as the case may be; and

(iii) is not refundable to the contributor; and

(iv) is required to be made at intervals fixed by the rules of the fund or at a rate and at intervals fixed by a pensions law of Zimbabwe, as the case may be; and

(v) is calculated on annual emoluments of a contributor which are included in his gross income;

(b) a member of a benefit fund, means a contribution to the fund which—

(i) is not an arrear contribution; and

(ii) is made by or in connection with the member

"principal", in relation to a resident employer who is that principal's subordinate, means any company, partnership, organisation or other person of which the subordinate is a branch or division (unless that branch or division is a subsidiary of the principal as defined in section 143 of the Companies Act [*Chapter 24:03*]);

"representative of the employer" means—

(a) in the case of any company, the public officer of the company or any other officer of the company who controls the payment of employment income and who has been appointed by the company and approved by the Commissioner or, in the event of the company being placed in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;

(b) in the case of an association of persons, other than a company, a member of the association of persons appointed by its governing body;

(c) in the case of a local or like authority, an officer of the local or like authority appointed by the local or like authority;

(d) in the case of a person under legal disability, the trustee;

(e) in the case of an employer who is not ordinarily resident in Zimbabwe, any agent of such employer who is authorised to pay employment income on behalf of such employer;

(f) in the case of an individual, other than a person referred to in subparagraph (a), (b), (c), (d) or (e), that individual or any other individual authorized to pay employment income on behalf of that individual;

but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him or her by this Schedule.

(2) Any trustee shall, as regards any amounts paid or payable by the deceased prior to his or her death or by the person under a legal disability prior to his or her becoming subject to

such legal disability by way of employment income to any employee, be subject, in his or her representative capacity, in all respects to the same duties, responsibilities and liabilities under this Schedule as if the amounts had been paid or payable by him or her.

PART II

RIGHTS AND DUTIES OF EMPLOYERS

Registration of employers

2. (1) Every person who becomes an employer shall apply to the Commissioner in such form as may be prescribed for registration as an employer, within fourteen days of his or her becoming an employer.

(2) Every registered employer shall, within fourteen days after changing his or her address or ceasing to be an employer, notify the Commissioner in such manner and form as may be prescribed of his or her new address or of the fact of his or her having ceased to be an employer, as the case may be.

(3) Every non-resident employer shall—

(a) appoint a resident representative to secure registration on his or her behalf under this section and generally to act as his or her agent for the purposes of this Schedule; and

(b) without delay notify the Commissioner, in writing, of the appointment.

(4) Every principal of a resident employer who is that principal's subordinate shall apply to the Commissioner in such form as may be prescribed for registration as the employer.

(5) The Commissioner shall issue public notices drawing the attention of employers to the requirements of subsections (1), (2), (3) and (4).

(6) If, on written request by the Commissioner, a non-resident employer fails to furnish the Commissioner promptly with particulars of his or her resident representative appointed under subsection (3), the Commissioner may appoint a person to be the non-resident employer's resident representative, and that person shall secure registration on the employer's behalf under this paragraph and otherwise act as the employer's agent for all purposes of this Schedule:

Provided that the Commissioner—

(i) shall not appoint a person to be a non-resident employer's resident representative unless the person is an employee of the non-resident employer or consents to the appointment;

(ii) may—

A. if the non-resident employer persists in failing to furnish the Commissioner with the particulars required under subparagraph (3); and

B. it is not possible for any reason to appoint a person to be the employer's resident representative;

give the employer concerned fourteen days' written notice that the Commissioner will, notwithstanding anything contained in the Immigration Act [*Chapter 4:02*], cause any work permit held by the employer or any director or employee of the employer to be forthwith cancelled upon the written request of the Commissioner to

the Chief Immigration Officer, unless the employer earlier complies with subparagraph (3).

Employers to withhold tax

3. (1) Every employer (whether or not he or she has registered as an employer in terms of paragraph 2(1) who pays or becomes liable to pay any amount of employment income to any employee shall, unless the Commissioner has granted authority to the contrary, withhold from that amount by way of employees' tax an amount which shall be determined in accordance with such tax deduction tables as may be prescribed or as is provided in subparagraph (2), (3) or (4) of this paragraph or in paragraph 20(2), whichever is applicable, in respect of the liability for income tax of that employee, and shall pay the amount so withheld to the Commissioner on the third day of the month following, or within such longer period not exceeding seven days as the Commissioner may for good cause allow, after the end of the month during which the amount was withheld or, in the case of a person who ceases to be an employer before the end of such month, on the day after the day on which he or she ceases to be an employer.

(2) The amount to be withheld in respect of employees' tax from any payment of an amount referred to in paragraph 2 of Part I ("Amounts Deemed to Be Included in Employment Income") of the Fifth Schedule ("Amounts Deemed to Be included in Employment, Business and Property Income") shall be ascertained by the employer from the Commissioner before making such payment, and the Commissioner's determination of the amount to be so withheld shall be final.

(3) If an employer has not at any time received any tax code declaration from an employee as required by paragraph 16(1) or (3) and has not in respect of that employee received a directive from the Commissioner as provided in paragraph 16(2) or paragraph 20(2) he or she shall, until such declaration or directive is received, withhold employee's tax in accordance with the prescribed tax deduction tables.

(4) An employer shall, at the request of an employee in the manner and form prescribed, withhold from any amount of employment income an amount by way of employees' tax greater than that required to be withheld in terms of subparagraph (1), as read with subparagraph (5), and shall pay such amount to the Commissioner, and the provisions of this Schedule relating to employees' tax shall apply, with such changes as may be necessary, in respect of such amount:

Provided that the Commissioner, having regard to the circumstances of the case, may direct that the amount withheld shall be reduced to an amount not being less than that required to be withheld in terms of subparagraph (1) as read with subparagraph (5).

(5) Any amount by way of a levy or surcharge that is imposed by the charging Act on the income tax payable by a taxpayer in any year of assessment shall be withheld by an employer in addition to any amount determined in accordance with the prescribed tax deduction tables.

Employers to keep records and to furnish returns

4. (1) Every employer shall, in respect of each employee, maintain a record showing the amounts of employment income paid or payable by him or her to such employee and the amount of employee's tax withheld from each such amount of employment income in respect

of the year of assessment, and such record shall be retained by the employer and shall be available for scrutiny by the Commissioner.

(2) Every employer shall, in respect of the year of assessment concerned, furnish to the Commissioner—

(a) returns in such form as may be prescribed showing—

(i) the name and address of each employee to whom he or she paid or was liable to pay employment income during such year; and

(ii) the total employment income paid or payable to each employee in respect of such year; and

(iii) the total amount of employees' tax withheld by him or her from such employment income in respect of such year;

and

(b) a copy of each employee's tax certificate in respect of such year delivered by such employer under paragraph 14.

(3) The returns referred to in subparagraph (2) shall be submitted to the Commissioner within thirty days, or within such longer period as the Commissioner may approve, after the end of the year of assessment:

Provided that if the employer ceases to carry on any business or other undertaking in respect of which he or she has paid or become liable to pay employment income or otherwise ceases to be an employer, the returns shall be in respect of the period from the 1st January immediately preceding the date on which he or she ceased to carry on such business or other undertaking or otherwise ceased to be an employer, as the case may be, to the date of such cessation and shall be furnished within fourteen days of such cessation or within such longer period as the Commissioner may approve.

Accrual of amounts withheld

5. An amount which has been withheld by way of employees' tax in terms of this Part by an employer from the employment income paid or payable to an employee shall be deemed, for the purposes of this Act, to have accrued to the employee on the date such amount was withheld.

No actions to be maintained in connection with the withholding of amounts in terms of this Part

6. No action shall lie against an employer who withholds any amount of employees' tax in compliance or intended compliance with this Part by reason only of his or her withholding of that amount.

Agreement to avoid the provisions of this Part

7. An agreement between an employer and an employee whereby the employer undertakes not to withhold employees' tax shall be void.

Paragraph 3 to be in derogation of any other law, instrument or agreement

8.(1) Paragraph 3 shall be in derogation of any law, instrument or agreement which empowers, requires, authorises, prohibits or regulates the deduction, withholding, reduction or attachment of any amount payable by way of employment income.

(2) A law, instrument or agreement referred to in subparagraph (1) shall be deemed for all purposes to apply only to so much of any employment income payable to an employee as remains after the withholding of any employees' tax.

Remunerator payable to deceased estates

9. Immediately upon the death of an employee the employer shall apply to the Commissioner for a directive in respect of the amount of employees' tax to be withheld from employment income payable by the employer to the deceased estate of the employee or to any other person, and no such employment income shall be paid by the employer to the deceased estate of the employee or to such other person otherwise than in accordance with such directive.

Failure or refusal of employers to withhold or to remit employee' tax

10. (1) Subject to paragraph 11, an employer who fails to withhold or to pay to the Commissioner any amount of employees' tax as provided in paragraph 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made if the employees' tax had been withheld in terms of paragraph 3, of—

(a) the amount of employees' tax which he or she failed to withheld or to pay to the Commissioner; and

(b) a further amount equal to such employees' tax.

(2) The amounts for the payment of which an employer is liable in terms of subparagraph (1)—

(*a*) shall be debts due by the employer to the State; and

(*b*) may be sued for and recovered by action by the Commissioner in any court of competent jurisdiction.

(3) For the purposes of this paragraph the Commissioner may make an assessment in which the amount of employees' tax for which an employer is personally liable by virtue of subparagraph (1) is estimated, and section 111 ("Estimated Assessments") shall, with necessary modifications, apply to such assessment.

(4) If a defaulting employer referred to in subparagraph (1)(b) does not pay the additional amount of employees' tax in full on the date on which the default has ceased, interest, calculated at a rate to be fixed by the Minister by statutory instrument, shall be payable on so much of the additional amount as remains unpaid by the employer during the period beginning on the date the default has ceased and ending on the date the additional amount is paid in full, and such interest shall be recoverable by the Commissioner by action in any court of competent jurisdiction:

Provided that in special circumstances the Commissioner may extend the time for payment of the additional amount without charging interest.

Remission of penalties for failure to withhold or to remit employees' tax

11. The Commissioner may, if he or she is satisfied that a failure to withhold or to pay to him or her employees' tax was not due to an intent to evade the provisions of this Schedule, waive the payment of the whole or such part as he or she thinks fit or repay the whole or such part as he or she thinks fit of any amount referred to in paragraph 10(1)(b).

Recovery by employers of employees' tax not withheld or remitted

12. (1) Where an employer has failed to withhold an amount of employees' tax in terms of paragraph 3 and subsequently pays that amount in terms of paragraph 10, he or she may recover that amount from the employee from whose employment income that amount should have been withheld.

(2) An amount recoverable by an employer in terms of subparagraph (1) shall be a debt due by the employee to the employer and may be recovered from the employment income liable to employees' tax payable by the employer in the future in accordance with the direction of the Commissioner.

(3) Until such time as an employee pays to his or her employer any amount which is due to the employer in terms of this paragraph, such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

(4) An employer shall not be entitled to recover from an employee any amount referred to in paragraph 10(1)(b)..

Insolvency of employers

13. (1) A claim by the Commissioner against an estate of an employer under sequestration for the payment of an amount referred to in paragraph 10(1)(a) shall have the same priority as is accorded to a claim for any tax due and payable by the insolvent otherwise than in terms of section 105 or 106.

(2) A claim by the Commissioner against an estate of an employer under sequestration for the payment for an amount referred to in paragraph 10(1)(b) shall have the same priority as is accorded to a claim for any tax due and payable by the insolvent in terms of section 105 or 106.

Furnishing of employees' tax certificates by employer

14. (1) Subject to paragraphs 10 and 18, every employer who withholds any amount by way of employees' tax as required by paragraph 3 shall, within the time allowed by subparagraph (3), deliver to each employee or former employee or the trustee of such employee or former employee to whom employment income has been paid or becomes payable by the employer during the year of assessment in question, an employees' tax certificate in such form as the Commissioner may prescribe or approve.

(2) The employees' tax certificate shall show the total employment income of such employee or former employee and the sum of the amounts of employees' tax withheld by such employer from such employment income during the said year, excluding any amount of employment income or employees' tax included in any other employees' tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him or her as provided in paragraph 15(9).

(3) The employees' tax certificate referred to in subparagraph (1) shall be delivered—

(*a*) if the employer who is required to deliver the certificate has not ceased to be an employer in relation to the employee concerned, within thirty days after the end of the period to which the certificate relates; or

(*b*) if the employer has ceased to be an employer in relation to the employee concerned but has continued to be an employer in relation to other employees, within thirty days of the date on which he or she has so ceased; or

(*c*) if the employer has ceased to be an employer, within fourteen days of the date on which he or she has so ceased; or

(*d*) at any other time specified by the Commissioner.

(4) A copy of the employees' tax certificate referred to in subparagraph (3) (a) and (b) shall be furnished by the employer to the Commissioner within thirty days of the end of the year of assessment in question and a copy of the employees' tax certificate referred to in subparagraph (3) (c) shall be furnished by the employer to the Commissioner within fourteen days of the date on which the employer ceased to be an employer.

(5) For the purposes of subparagraph (3), an employer shall, if the Commissioner having regard to the circumstances of the case so directs, be deemed not to have ceased to be an employer in relation to any of his or her casual employees who are likely from time to time to be re-employed by such employer.

Employees' tax certificate forms

15. (1) Employees' tax certificate forms and duplicate employees' tax certificate forms shall be produced by the employer in such form as the Commissioner may prescribe or approve for general use.

(2) Subject to subparagraph (3), an employer shall not use for the purpose of furnishing an employee with an employees' tax certificate or duplicate employees' tax certificate any form other than the appropriate from supplied to him or her by the Commissioner.

(3) In the case of an employer who has a mechanised or electronic accounting system the Commissioner may, subject to such conditions as he or she may impose, approve the use by such employer of employee's tax certificates in a form other than the form prescribed for general use, and if such employer fails to comply with the conditions imposed by the Commissioner, the Commissioner may withdraw his or her consent for the use of such certificates and the employer shall forthwith or from any date specified by the Commissioner cease to use such certificates and shall, within such period as the Commissioner may prescribe comply with any condition which may have been imposed by the Commissioner providing for the surrender to the Commissioner of all unused stocks of such certificates upon the employer so ceased to use such certificates.

(4) An employer may, at the request of the employee or the former employee, issue a duplicate employees' tax certificate but any such duplicate certificate shall be clearly marked as such and shall disclose full details of the original certificate.

(5) Unless authorised thereto by the Commissioner, no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in subparagraph (4).

(6) Every person who ceases to be an employer shall, unless the Commissioner otherwise directs, within fourteen days of so ceasing, surrender to the Commissioner all unused employees' tax certificate form and duplicate employees' tax certificate forms supplied for the purposes of performing his or her duties as an employer under this Part.

(7) For the purposes of this Schedule, any employees' tax certificate on which appears the name or any trade name of any employer shall, until the contrary is proved, be deemed to

have been issued by such employer if such certificate is in a form prescribed by the Commissioner for general use and was supplied by the Commissioner to such employer for use by him or her is in a form approved by the Commissioner under subparagraph (2) for use by such employer.

(8) An employer shall not destroy but shall, until the Commissioner requires it to be surrendered to him or her, retain—

(*a*) in the case of a completed employees' tax certificate, any such certificate or copy thereof which has not been furnished to the Commissioner or an employee or former employee in terms of this Schedule; and

(*b*) any cancelled or spoiled employees' tax certificate and any copy thereof:

Provided that if at the expiry of six years from the end of the year of assessment in which any such certificate was completed, cancelled or spoiled, as the case may be, the Commissioner has not required it to be surrendered to him or her, the employer may destroy any such certificate and any such copy.

PART III

RIGHTS AND DUTIES OF EMPLOYEES

Statements to be furnished by employees

16. (1) Subject to subparagraph (2), every individual who becomes an employee shall, within seven days after he or she becomes an employee, furnish his or her employer with a tax code declaration in such form and in such manner as may be prescribed, and every individual who is an employee shall furnish a fresh declaration within seven days after the date on which any change in the particulars previously furnished, whether under this Act or the previous law, occurs or, if he or she falls within the terms of the public notice referred to in subparagraph (3), within seven days after the date of publication in the *Gazette* of such notice:

Provided that until a fresh declaration is received or a directive is received from the Commissioner in terms of paragraph 20(2), the employer shall regard the latest declaration submitted to him or her by the employee concerned as correct and shall continue to determine the amounts to be withheld by way of employees' tax in accordance with the particulars disclosed therein.

(2) If for any reason an employee does not wish to furnish the declaration referred to in subparagraph (1), he or she may instead apply to the Commissioner in such form as may be prescribed for the issue of a directive to his or her employer and in such case the Commissioner may issue a directive to the employer as provided in paragraph 20(2).

(3) Subject to subparagraph (2) and notwithstanding any tax code declaration furnished in terms of subparagraph (1), the Commissioner may, by notice in the *Gazette*, require every person who falls within a classification specified in that notice to furnish his or her employer with a fresh declaration within seven days after the date of publication of that notice.

Employees to furnish employees' tax certificate to Commissioner

17. (1) An employees' tax certificate furnished in terms of paragraph 14 shall be forwarded with any return for assessment required to be furnished by or on behalf of the employee in terms of Chapter X of this Act:

(2) No employees' tax withheld from the employment income paid or payable to an employee in respect of any year of assessment shall be credited in terms of paragraph 18(1) in payment of any tax payable by the employee in respect of that year unless an employees' tax certificate or a duplicate employees' tax certificate is forwarded to the Commissioner.

(3) It shall be the duty of any employee or former employee who has not received an employee's tax certificate within the time allowed by paragraph 14 forthwith to apply to the employer for such certificate.

PART IV

GENERAL PROVISIONS

Crediting of employees' tax

18. (1) On the determination of the income tax payable by an employee in respect of any year of assessment—

(a) the Commissioner shall—

(i) credit the amount of the employees' tax which is shown in the employees' tax certificate or in the duplicate employees' tax certificate as withheld in payment successively of—

A. the income tax payable by the employee in respect of that year; and

B. any other tax or amount due and payable to the Commissioner by the employee;

(ii) if the employee's tax withheld exceeds the amount of the employee's liability for income tax by five United States cents or more, refund the whole of such excess to the employee;

(b) if the amount of the employee's liability for income tax exceeds by five United States cents or more the sum of employees' tax withheld, the whole of such excess shall be payable by the employee to the Commissioner.

(2) The burden of proof that any amount of employees' tax has been withheld by his or her employer shall be upon the employee and any employees' tax certificate shall be *prima facie* evidence that the amount of employees' tax reflected therein has been withheld by the employer.

(3) If the Commissioner is satisfied that the amount or any portion of the amount of employees' tax shown in any employees' tax certificate has not been withheld by the employer and the amount of the employees' tax shown in the employees' tax certificate has been applied as provided in subparagraph (1), the employer and the employee shall be jointly and severally liable to pay to the Commissioner the amount which should not have been so applied and such amount shall be recoverable under this Act as if it were a tax.

(4) An employer who has under subparagraph (3) paid to the Commissioner an amount which has, but should not have been, applied under subparagraph (1), may, if the amount was shown or included in the certificate because of a *bona fide* error, recover the amount so paid from the employee concerned, and in that case paragraph 12(2) shall, with such changes as may be necessary, apply.

(5) No employees' tax certificate shall be issued by the employer in respect of any amount recovered by him or her from the employee in terms of subparagraph (4), nor shall any such amount be included in any return rendered in terms of paragraph 4 (2).

(6) If the Commissioner is satisfied that the employee to whom an employees' tax certificate refers was directly or indirectly responsible for an incorrect amount being shown in such certificate, he or she shall absolve the employer from the liability imposed upon him or her by subparagraph (3), and in that case the employee shall be solely liable under that subparagraph.

Refunds

19. No refund of any amount of employees' tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 18.

Directives of the Commissioner

20. (1) In giving a directive or prescribing any person, matter or thing for the purposes of this Schedule the Commissioner may make different provision for different classes of employers, employees and other persons and for different classes of employment income.

(2) In order to alleviate hardship to an employee due to illness or other circumstances or to correct any error in regard to the calculation of employees' tax, whether arising from the furnishing to an employer by an employee of a false or incorrect tax code declaration or otherwise, or where the employee has, in terms of paragraph 16(2), applied to the Commissioner for the issue of a directive to his employer to enable the employer to withhold the correct amount by way of employees' tax, the Commissioner may, having regard to the circumstances of the case, issue a directive to the employer concerned authorising the employer to refrain from withholding any amount under paragraph 3 by way of employees' tax from any employment income due to the employee or to withhold by way of employees' tax a specified amount or an amount to be determined in accordance with a specified rate or scale, and the employer shall comply with such directive.

Directives regarding final deduction system

21. (1) The Commissioner may direct any employer to withhold employees' tax from the employment income of his or her employees in such a way as to ensure that the amount withheld in any year of assessment is as nearly as possible the same as the income tax payable by the employees concerned for that year of assessment.

(2) A directive in terms of subparagraph (1) may provide for—

(*a*) adjustments of the amount of employees' tax to be withheld from the employment income of any employees to take account of—

(i) any credits referred to in section 13 ("Calculation of income tax") (1) to which the employees may be entitled; and

(ii) any circumstances of the employees, including any additional income accruing to them, which affects their liability to income tax; and

(iii) any alteration of the level of taxable income of employees, the rates of income tax with which employees are chargeable and the credits to which employees may be entitled, made by the charging Act during the year of assessment;

(b) refunds by the employer of amounts withheld by way of employees' tax;

(c) information to be furnished to the employer by his or her employees in regard to their liability for income tax.

(3) Directives in terms of subparagraph (1) shall have effect notwithstanding any other provision of this Schedule.

(4) An employer to whom a directive has been issued in terms of subparagraph (1) shall ensure that a document setting out the terms of the directive is available for inspection at all reasonable times by any employee who may be affected by it.

(5) The Commissioner shall not be liable to make any refund of income tax overpaid on account of any failure by an employer to make an appropriate adjustment of the amounts of employees' tax to be withheld or refunded in accordance with a directive issued in terms of subparagraph (1).

Application of this Schedule to remuneration payable by the State

22. This Schedule shall, subject to such modifications and exceptions as the Commissioner may direct or prescribe, apply in relation to employment income liable to employees' tax paid by the State and any individual to whom it is paid and to any officer responsible for its payment as if that officer were a person liable to pay employment income or any employer, as the case may be.

Offences and penalties

23. (1) Any person who—

(a) pays or becomes liable to pay any amount by way of employment income and who fails to withhold therefrom any amount of employees' tax or to pay such amount to the Commissioner as is provided in paragraph 3; or

(b) uses or applies any amount withheld by him or her by way of employees' tax for purposes other than the payment of such amount to the Commissioner; or

(*c*) makes or issues or causes or allows to be made or issued or knowingly possesses or uses or causes or allows to be used any employees' tax certificate which is false; or

(*d*) without just cause shown by him or her, fails to comply with any directive issued to him or her by the Commissioner in terms of paragraph 20(2) or 21; or

(e) furnishes to his or her employer or to the Commissioner a false or misleading tax code declaration or gives any false information or misleads his or her employer in relation to any matter affecting the amount of employees' tax to be withheld in his or her case; or

(*f*) fails or neglects to deliver to any employee or former employee an employees' tax certificate as required by paragraph 14; or

(*g*) fails to comply with any condition imposed by the Commissioner in terms of paragraph 15 in regard to the manner in which employees' tax certificates or duplicate employees' tax certificates may be used or as to the surrender of unused stocks of such certificates or to account for used, unused or spoiled certificates when required by the Commissioner under that paragraph or on ceasing to be an employer fails to surrender unused certificates in his or her possession as required by that paragraph; or

(*h*) fails or neglects to maintain any record as required by paragraph 4 or to retain such record for a period of six years from the date of the last entry therein or to furnish to the Commissioner any return or any copy of any employees' tax certificate as required by that paragraph; or

(j) fails or neglects to apply to the Commissioner for registration as an employer as required by paragraph 2(1) or, having so applied, fails or neglects to notify the Commissioner of any change of his or her address or of the fact of his or her having ceased to be an employer as required by subparagraph (2) of that paragraph; or

(*j*) alters any employees' tax certificate made or issued by any other person or falsely pretends to be the employee named in any employees' tax certificate or, for his or her own advantage or benefit, obtains credit with respect to or payment of the whole or any part of any amount of employees' tax withheld from employment income paid or payable to another person; or

(*k*) not being an employer and without being duly authorised by any person who is an employer, issues or causes to be issued any document purporting to be an employees' tax certificate;

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.

(2) For the purposes of subparagraph (1)(b), an amount which has been withheld by any person from employment income shall, until the contrary is proved, be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Commissioner if such amount is not paid to the Commissioner within the period allowed for payment under paragraph 3.

TWELFTH SCHEDULE (Section 161(1))

PRESUMPTIVE TAX

PART I

PRELIMINARY

Interpretation

1. In this Schedule—

"appropriate presumptive tax" means the tax payable under this Schedule by an informal trader, a small-scale miner, an operator of a taxicab or an operator of an omnibus, as the case may be;

"commercial goods" means goods which are used mainly for the generation of income or the making of profits;

"commercial waterborne vessel" means—

(a) any ship, cruiser, boat, houseboat, speedboat, canoe or any other waterborne vessel of whatever description that is employed for the carriage of passengers for profit on inland waters; or

(b) a fishing rig;

"cottage industry" means any of the following trades or industries whether or not they are based in or conducted from the residential premises of the operators thereof, and whether or not the operators use their own tools or equipment—

(*a*) furniture-making or upholstery;

(*b*) metal fabrication;

(*c*) any other cottage industry that the Minister may, by notice in a statutory instrument, prescribe;

"cross-border trader" means a person who imports commercial goods into Zimbabwe with the intention of carrying on any trade in those goods, but does not, subject to paragraph 16, include any person registered as an operator in terms of the Value Added Tax Act [*Chapter 23:12*];

"driving school" means a person registered or required to be registered in terms of the Road Traffic (Driving Schools) Regulations, 1985, published in Statutory Instrument 309 of 1985, or any other law substituted for the same;

"furniture-making or upholstery" means the manufacture for profit of furniture or the fitting of furniture with padding, springs, webbing or covering for profit;

"goods vehicle", "omnibus" and "taxicab" have the meanings given to those terms by section 2(1) of the Road Motor Transportation Act, 1997 (No. 1 of 1997);

"hairdressing salon" means a commercial establishment in which any one or more hairdressers carry on their occupation or business;

"holder", in relation to—

(*a*) a registered mining location, means the person in whose name such location is registered with the mining commissioner or with the Secretary responsible for mines; and

(*b*) an unregistered mining location, any person who, on his or her own behalf, works the location for mining purposes;

and, in the case of a deceased person or of a company in liquidation or of any person under a legal disability, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration or control of the property of the person in whose name such location is registered or was worked;

"informal cross-border trader" means a cross-border trader who does not furnish to an officer in accordance with paragraph 16 (1)(*a*) or (*b*) a tax clearance certificate or proof of registration as a taxpayer in terms of this Act;

"informal trader" means an individual who—

(a) carries on a trade for his or her own account from which he or she derives a gross income of less than six thousand United States dollars or such other amount as the Minister may prescribe by notice in the *Gazette*; and

(b) has not, in the most recent year of assessment for which he or she could have done so, furnished a return in terms of Part I of Chapter X for the assessment of the income referred to in paragraph (a);

and, without limiting the generality of paragraph (a), includes—

(c) a hawker or street vendor; and

(d) a person who sells articles at a place commonly known as a "people's market" or a "flea market"; and

(e) a person who manufactures or processes any articles in or from residential premises;

"inland waters" has the meaning given to it in section 2(1) of the Inland Waters Shipping Act [*Chapter 13:06*];

"intermediary", in relation to a small-scale miner, means any person who purchases precious metals or precious stones from the small-scale miner and sells them to an agent referred to in paragraph 7(1);

"lessor" means—

(a) a local authority to which an informal trader pays rent in respect of residential accommodation; or

(b) any person, including a local authority, to whom an informal trader pays rent in respect of premises or a place in or from which he or she carries on his or her trade as such;

"metal fabrication" means the fabrication of articles from metal for profit or any beneficiation of metal whatsoever for profit;

"mining location" means any location that is worked for mining purposes, whether or not such location is registered with the mining commissioner or indirectly connected therewith or incidental thereto;

"officer", for the purposes of Part VI, means an officer of the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of duties in terms of the Customs and Excise Act [*Chapter 23:02*];

"operator", in relation to—

(*a*) the operation of a goods vehicle, omnibus or taxicab for the carriage of goods or passengers for hire or reward, means the person in whose name the goods vehicle, omnibus or taxicab is or is required to be registered in terms of the Road Motor Transportation Act, 1997 (No. 1 of 1997);

(*b*) the operation of a driving school, means the person to whom a certificate of registration has been issued in terms of the Road Traffic (Driving Schools) Regulations, 1985, published in Statutory Instrument 309 of 1985, or any other law substituted for the same;

(*c*) the operation of a hairdressing salon, means the person who owns or is in charge of the salon, whether or not the salon or any hairdresser therein is licensed as such in terms of the Shop Licences Act [*Chapter 14:17*] or under the by-laws of the local authority in which the salon is located;

(*d*) the operation of a restaurant or bottle store, means the person who owns or is in charge of the restaurant or bottle store, whether or not the restaurant or bottle store is licensed as such in terms of the Shop Licences Act [*Chapter 14:17*] or under the by-laws of the local authority in which the restaurant or bottle store is located, but does not include any such person in possession of—

(i) a tax clearance certificate to the effect that he or she has furnished a return under section 37 for the last year of assessment for which such a return is due; or

(ii) proof that he or she is a registered operator in terms of the Value Added Tax Act [*Chapter 23:13*];

(e) the operation of a cottage industry, means the person who owns or is in charge of the cottage industry, whether or not the cottage industry is licensed as such in terms of the Shop Licences Act [*Chapter 14:17*] or under the by-laws of the local authority in which the cottage industry is located, but does not include any such person in possession of—

(i) a tax clearance certificate to the effect that he or she has furnished a return under Part I of Chapter X for the last year of assessment for which such a return is due; or

(ii) proof that he or she is a registered operator in terms of the Value Added Tax Act [*Chapter 23:13*];

(f) the operation of a commercial waterborne vessel, means the person who owns or is in control of the commercial waterborne vessel, whether or not such vessel

is registered in terms of the Inland Waters Shipping Act [*Chapter 13:06*], but does not include any such person in possession of—

(i) a tax clearance certificate to the effect that he or she has furnished a return under Part I of Chapter X for the last year of assessment for which such a return is due; or

(ii) proof that he or she is as a registered operator in terms of the Value Added Tax Act [*Chapter 23:13*];

"precious metals" means gold, silver, platinum, platinoid metals, chrome and tantalite in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings, residues and amalgams as are valuable and contain such precious metals.

"precious stones" means rough or uncut diamonds or emeralds or any substances which may be declared by the Minister by notice in the *Gazette* to be precious stones for the purposes of this Schedule;

"quarter" means a period of three months ending on the 31st March, 30th June, 30th September and 31st December in each year;

"restaurant or bottle store" includes any bar or beerhall and any other place where food or drink is served to members of the public for payment, whether consumed on or off the premises of the restaurant or bottle store;

"small-scale miner" means a holder or tributor of a mining location whose output of precious metals or precious stones from his mining operations do not exceed such level for such period as the Minister shall, by notice in the *Gazette* prescribe, and includes any intermediary:

Provided that, notwithstanding any such prescription, a miner shall be presumed to be a small-scale miner if he or she—

(*a*) does not produce a valid tax clearance certificate to an agent in terms of paragraph 8(1); or

(*b*) produces a valid tax clearance certificate to an agent in terms of paragraph 8(1) relating only to the payment of presumptive tax in terms of this Schedule;

"tributor" means the lessee or assignee of the rights of a holder.

PART II

INFORMAL TRADERS' PRESUMPTIVE TAX

Informal traders to notify status

2.(1) Every informal trader who pays rent to a lessor in respect of residential accommodation, premises or a place referred to in paragraph (*a*) or (*b*) of the definition of "lessor" in paragraph 1 shall notify that lessor of his status as an informal trader.

(2) A lessor who has been notified by an informal trader of his status as provided in subparagraph (1) shall record the notification, together with the informal trader's name, address and such other particulars as may be prescribed, and shall forthwith send the Commissioner written notification thereof in a form approved by the Commissioner.

Collection of presumptive tax from informal trader

3.(1) Whenever an informal trader pays a lessor who has been notified of his or her status in terms of paragraph 2 rent in respect of residential accommodation, premises or a place referred to in paragraph (*a*) or (*b*) of the definition of "lessor" in paragraph 1, the lessor shall recover from him an additional amount by way of presumptive tax, equal to such percentage of the rent so paid as fixed from time to time in the charging Act;

Provided that the lessor shall not recover any such amount where the informal trader produces to the lessor a valid tax clearance certificate in respect of the income received by or accruing to him from his trade.

(2) A lessor who has recovered an amount by way of presumptive tax in terms of subparagraph (1) shall pay the amount to the Commissioner within thirty days of the date on which he or she recovers it or within such further time as the Commissioner may for good cause allow.

(3) Payment of informal traders tax in terms of subparagraph (2) shall be accompanied by a return in the form prescribed.

Certificates to be provided to informal traders who pay presumptive tax

4.(1) Whenever a lessor has recovered any amount by way of presumptive tax in terms of paragraph 3, the lessor shall provide the informal trader with a certificate in a form approved by the Commissioner showing—

(*a*) the amount of rent paid by the informal trader; and

(*b*) the amount of presumptive tax recovered from him or her.

(2) For the purposes of section 94 ("Tax clearance certificate required for certain licences and registrations") or any other purpose, the Commissioner shall, on production to him or her by an informal trader of a certificate referred to in subsection (1), furnish the informal trader with a tax clearance certificate in respect of the presumptive tax shown on the first-mentioned certificate to have been paid.

Penalty for non-payment of presumptive tax payable in respect of informal traders

5.(1) Subject to subparagraph (2), a lessor who, having been notified by an informal trader of his status in terms of paragraph 2, fails to recover presumptive tax in terms of paragraph 3(1) and additionally, or alternatively, fails to pay any such tax to the Commissioner in terms of paragraph 3(2) shall be personally liable for the payment to the Commissioner, not later than the date on which the payment should have been made in terms of subparagraph (2) of that paragraph, of—

(a) the amount of presumptive tax which he or she failed to pay; and

(b) a further amount equal to the amount referred to in subparagraph (a).

(2) If the Commissioner is satisfied in any particular case that a failure to pay any presumption tax under this Part was not due to an intent to evade the provisions of this Part, he or she may waive the payment pf the whole or such part as he thinks fit of the amount referred to in paragraph (1)(*b*).

Effect on lease of failure to pay presumptive tax in respect of informal traders

6. Notwithstanding any other law or any provision of a lease between a lessor and an informal trader—

(*a*) payment by an informal trader of rent for any premises or place referred to in paragraph (*a*) or (*b*) of the definition of "lessor" in paragraph 1 shall not constitute a valid payment under the lease concerned unless the payment is accompanied by any informal traders tax required to be paid in terms of this Part;

(*b*) a failure or refusal on the part of an informal trader to pay informal traders tax required to be paid in terms of this Part shall constitute a breach of a fundamental term of the lease concerned, entitling the lessor to terminate it without notice

PART III

SMALL-SCALE MINERS' PRESUMPTIVE TAX

Agents for collection of presumptive tax from small-scale miners

7.(1) The following shall be agents for the collection of presumptive tax from small-scale miners under this Part—

(*a*) the Minerals Marketing Corporation of Zimbabwe, established by the Minerals Marketing Corporation of Zimbabwe Act [*Chapter 21:04*]; and

(*b*) the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [*Chapter 22:15*](No. 5 of 1999), in its capacity as a buyer of precious metals; and

(*c*) Fidelity Printers and Refiners (Private) Ltd; and

(*d*) any holder of a gold-buying permit granted in terms of section 5 of the Gold Trade (Gold-buying Permits for Concession Areas) Regulations, 2002, published in Statutory Instrument 328 of 2002, or the agent of such a permit-holder appointed in terms of section 8 of those regulations; and

(*e*) such other person as the Commissioner may in writing appoint for the purposes of this Part.

(2) Every agent who buys any precious metals or precious stones from a small-scale miner shall, no later than thirty days from the date of commencement of this Schedule, or, in the case of a small-scale miner from whom he or she has not, before that date, bought any precious metals or precious stones, thirty days from the date when he or she buys precious metals or precious stones from a small-scale miner for the first time, as the case may be, notify the Commissioner in writing of the name, home address and address of the mining location of the small-scale miner concerned.

(3) An agent shall maintain such records of any small-scale miner from whom he or she buys any precious metals or precious stones as the Commissioner may require from time to time.

Withholding or presumptive tax from amounts payable to small-scale miners

8.(1) Subject to this paragraph, unless a small-scale miner produces to the agent to whom he or she sells any precious metals or precious stones a valid tax clearance certificate in respect the income earned or to be earned from the sale of the precious metals or precious stones in question, the agent shall withhold from the gross amount payable to the small-scale miner for the sale of the precious metals or precious stones in question an amount equal to such percentage of the amount so paid as is fixed from time to time in the charging Act and shall remit each amount so withheld to the Commissioner on or before the tenth day of the month following that in which the payment was made:

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amounts of tax withheld in terms of subparagraph (1) due shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act.

(3) Where an agent has withheld any amount in terms of subparagraph (1) he or she shall furnish the small-scale miner concerned with a certificate, in a form approved by the Commissioner, showing the amount so withheld.

(4) For the purposes of section 80A or any other purpose, the Commissioner shall, on production to him or her by a small-scale miner of a certificate referred to in subsection (2), furnish the small-scale miner with a tax clearance certificate in respect of the presumptive tax shown on the first-mentioned certificate to have been paid.

Interest on overdue presumptive tax payable in respect of small-scale miners

9. If presumptive tax is not paid timeously in terms of paragraph 8, interest, calculated at a rate to be fixed by the Minister by statutory instrument, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

Penalty for non-payment of presumptive tax payable in respect of small-scale miners

10.(1) Subject to subparagraph (2), an agent who fails to recover presumptive tax in terms of paragraph 8(1) and additionally, or alternatively, fails to pay any such tax to the Commissioner in terms of that paragraph shall be personally liable for the payment to the Commissioner, not later than the date on which the payment should have been made in terms of that paragraph, of—

(*a*) the amount of presumptive tax which he failed to pay; and

(*b*) a further amount equal to of the amount referred to in subparagraph (*a*).

(2) If the Commissioner is satisfied in any particular case that a failure to pay any presumptive tax under this Part was not due to an intent to evade the provisions of this Part, he or she may waive the payment of the whole or such part as he thinks fit of the amount referred to in paragraph (1)(*b*).

PART IV

TRANSPORT AND DRIVING SCHOOL OPERATORS' PRESUMPTIVE TAX

Payment of presumptive tax by operators of driving schools and transport services

11.(1) Subject to this paragraph, no later than twenty days after the end of each quarter, every operator of—

(*a*) a taxicab for the carriage of passengers for hire or reward having seating accommodation for not more than seven passengers; or

(*b*) an omnibus for the carriage of passengers for hire or reward having seating accommodation for not less than eight or more than fourteen passengers; or

(*c*) an omnibus for the carriage of passengers for hire or reward having seating accommodation for not less than fifteen or more than twenty-four passengers; or

(*d*) an omnibus for the carriage of passengers for hire or reward having seating accommodation for not less than twenty-five or more than thirty-six passengers; or

(*e*) an omnibus for the carriage of passengers for hire or reward having seating accommodation for not less than thirty-seven passengers; or

(*f*) a goods vehicle for the carriage of goods for hire or reward having a carrying capacity—

(i) of more than ten tonnes but less than twenty tonnes; or

(ii) of ten tonnes or less but which is driving one or more trailers resulting in a combined carrying capacity of more than fifteen tonnes but less than twenty tonnes; or

(iii) of twenty tonnes or more;

or

(*g*) a driving school providing driving tuition—

(i) for class 4 vehicles only; or

(ii) for class 1 and 2 vehicles (whether or not in addition to providing driving tuition for other classes of vehicles);

shall pay the amount of presumptive tax that is fixed from time to time in the charging Act:

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amounts of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act.

(3) When an operator has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator concerned with the appropriate tax clearance certificate.

Interest on overdue presumptive tax payable in respect of operators of passenger transport services

12. If presumptive tax is not paid timeously in terms of paragraph 11, interest, calculated at a rate to be fixed by the Minister by statutory instrument, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

Tax clearance certificate to be carried by operators of omnibuses and taxicabs

13.(1) Every tax clearance certificate issued to the operator of an omnibus or taxicab shall be carried in the omnibus or taxicab to which it relates.

(2) If any tax clearance certificate is lost or destroyed or any essential particulars thereon have become defaced or if the certificate is dilapidated, the Commissioner-General, on application

by the holder thereof and on payment of the fee, if any, prescribed, shall issue a duplicate tax clearance certificate.

(3) A police officer may demand that any operator or person in charge of an omnibus or taxicab produce a tax clearance certificate as proof that he or she has paid the presumptive tax payable in respect of the omnibus or taxicab.

(4) Subject to subsection (5), any person in charge of an omnibus or taxicab who does not carry a tax clearance certificate as required by subparagraph (1) or who fails to produce it as required by subparagraph (3) shall, whether or not he or she is the operator of the omnibus or taxicab, be guilty of an offence and liable to a fine equal to the amount of the presumptive tax payable for the omnibus or taxicab or, in default of payment, to imprisonment for a period not exceeding six months:

Provided that if the failure to carry a tax clearance certificate was due to its loss or destruction and not to non-payment of presumptive tax, a police officer may require the person in charge of the omnibus or taxicab concerned or, if he or she is not the operator of the omnibus or taxicab, the operator thereof, to produce a duplicate certificate within seven days at such place as the police officer shall specify.

(5) A person referred to in subparagraph (4) may sign and deliver to the police officer referred to in that subparagraph a document admitting that he or she is guilty of the said offence and deposit with such officer a fine equal to the amount of the presumptive tax payable for the omnibus or taxicab, and such person shall thereupon, subject to subparagraph (6), not be required to appear in court to answer the charge of having committed the said offence.

(6) Section 356 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply to the procedure to be followed in relation to an admission of guilt made under subparagraph (5).

(7) The Zimbabwe Republic Police shall furnish to the Commissioner-General of every person who has compounded or been convicted of an offence in terms of this paragraph.

PART V

HAIRDRESSING SALON OPERATORS PRESUMPTIVE TAX

Payment of presumptive tax by hairdressing salon operators

14..(1) Subject to this paragraph, no later than twenty days after the end of each quarter, every operator of a hairdressing salon shall pay the amount of presumptive tax that is fixed from time to time in the Charging Act.

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amount of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner

(3) Where an operator of a hairdressing salon has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator with the appropriate tax clearance certificate.

Interest on overdue hairdressing salon operators presumptive tax

15. If presumptive tax is not paid timeously in terms of paragraph 14, interest, calculated at a rate to be fixed by the Minister by statutory instrument shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

PART VI

INFORMAL CROSS-BORDER TRADERS' PRESUMPTIVE TAX

Payment of presumptive tax by informal cross-border traders

16.(1) Whenever a cross-border trader imports any commercial goods into Zimbabwe, he or she shall pay to the officer concerned a presumptive tax of such percentage of the value for duty purposes of the commercial goods concerned as is fixed from time to time in the Charging Act, unless the cross-border trader produces to the officer—

(a) tax clearance certificate to the effect that he or she has furnished a return under section 95 for the last year of assessment for which such a return is due; or

(b) proof that he or she is a registered taxpayer in terms of the Income Tax Act [*Chapter 23: 06*]

Provided that, where a person produces a tax clearance certificate or proof of registration as a taxpayer referred to in paragraph (a) or (b), but he or she is in arrears of any tax or duty payable under this Act, the Value Added Tax Act [*Chapter 23:12*] or the Customs and Excise Act [*Chapter 23:02*], this Part shall apply to such person as if he or she was an informal cross-border trader.

(2) Where an informal cross-border trader has paid any amount of presumptive tax in terms of subparagraph (1), the officer concerned shall furnish the informal cross-border trader with the appropriate tax clearance certificate.

(3) Where no payment of presumptive tax is made in terms of this paragraph the officer concerned shall treat the commercial goods in question as if they are goods in respect of which no due entry has been made in terms of the Customs and Excise Act [*Chapter 3:02*], and the appropriate provisions of that Act shall apply accordingly to those goods.

PART VII

RESTAURANT OR BOTTLE-STORE OPERATORS' PRESUMPTIVE TAX

Payment of presumptive tax by restaurant or bottle store operators

17..(1) Subject to this paragraph, no later than ten days after the end of each quarter, every operator of a restaurant or bottle store shall pay the amount of presumptive tax that is fixed from time to time in the charging Act:

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amount of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing,

collecting and enforcing the payment of taxes under this Act or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner.

(3) Where an operator of a restaurant or bottle store has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator with the appropriate tax clearance certificate.

Interest on overdue restaurant or bottle store operators' presumptive tax

18. If presumptive tax is not paid timeously in terms of paragraph 17, interest, calculated at a rate to be fixed by the Minister by statutory instrument, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

PART VIII

COTTAGE INDUSTRY OPERATORS' PRESUMPTIVE TAX

Payment of presumptive tax by cottage industry operators

19.(1) Subject to this paragraph, no later than ten days after the end of each quarter, every operator of a cottage industry shall pay the amount of presumptive tax that is fixed from time to time in the charging Act:

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amount of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner.

(3) Where an operator of a cottage industry has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator with the appropriate tax clearance certificate.

Interest on overdue cottage industry operators 'presumptive tax

20. If presumptive tax is not paid timeously in terms of paragraph 19, interest, calculated at a rate to be fixed by the Minister by statutory instrument, shall be payable on so much of the tax as remains unpaid during the period beginning on the day next following the last day provided for its payment and ending on the date the tax is paid in full:

Provided that in special circumstances the Commissioner may extend the time for payment of the tax without charging interest.

PART IX

COMMERCIAL WATERBORNE VESSEL OPERATORS' PRESUMPTIVE TAX

Payment of presumptive tax by operators of commercial waterborne vessels

21.(1) Subject to this paragraph, no later than ten days after the end of each quarter, every operator of a commercial waterborne vessel shall pay the amount of presumptive tax that is fixed from time to time in the charging Act.

Provided that the Commissioner may, for good cause shown, allow the tax to be paid over at a later date.

(2) The amount of presumptive tax payable in terms of subparagraph (1) shall be payable at any branch, division or department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act or through any agent of the Zimbabwe Revenue Authority notified by the Commissioner.

(3) Where an operator of commercial waterborne vessel has paid the amount of presumptive tax due in terms of subparagraph (1), the Commissioner shall furnish the operator with the appropriate presumptive tax clearance certificate.

PART X

GENERAL

When presumptive taxpayers exempt from submitting returns

22**.**(1) For the avoidance of doubt, but subject to subparagraphs (2) and (3), it is declared that the payment of any amount by way of presumptive tax in terms of this Schedule does not exempt the presumptive taxpayer concerned from the provisions of this Act relating to the furnishing of returns and the payment of tax:

Provided that, without prejudice to the obligation of the presumptive taxpayer to render the return or make the arrangements mentioned in paragraphs (*a*) and (*b*) below, a presumptive taxpayer shall be entitled to be issued with a tax clearance certificate in respect of his or her payment of presumptive tax in terms of this Schedule, notwithstanding that he or she has not—

(a) furnished a return under section 95 for the last year of assessment for which such a return is due; or

(b) made arrangements satisfactory to the Commissioner-General for the furnishing of a return referred to in paragraph (a).

(2) Where the Minister prescribes a level of output of precious metals or precious stones for the purposes of the definition of "small-scale miner" contained in paragraph 1, and a holder or tributor of any mining location is deemed to be a small-scale miner because his or her output of precious metals or precious stones is below the level prescribed, such small-scale miner shall, if his or her investment in any such mining location is the sole source of his or her income, be exempt from furnishing a return under section 95.

(3) The Minister may, by notice in the *Gazette*, prescribe the level turnover for any period specified in that notice below which the operator of an omnibus or taxicab for the carriage of passengers for hire or reward shall be exempt from furnishing a return under section 37.

Refund of excess payment of presumptive tax

23. .If it is proved to the satisfaction of the Commissioner that any person has paid an amount by way of presumptive tax under this Schedule in excess of the amount properly payable in terms of this Part, the Commissioner shall authorise a refund of the amount overpaid;

Provided that the Commissioner shall not authorise a refund in terms of this paragraph unless the claim therefore is made within six years of the date of the overpayment.

Interest on unpaid penalties

24. If a defaulting lessor referred to in paragraph 5(1), or defaulting agent referred to in paragraph 10(1), does not pay the penalty in full on the date on which the default has ceased, interest, calculated at a rate to be fixed by the Minister by statutory instrument, shall be payable on so much of the penalty as remains unpaid by the lessor or agent during the period beginning on the date the default has ceased and ending on the date the penalty is paid in full, and such interest shall be recoverable by the Commissioner by action in any court of competent jurisdiction:

Provided that in special circumstances the Commissioner may extend the time for payment of the penalty without charging interest.

Specification of presumptive taxes for purposes of section 161

25. The following presumptive taxes are specified for the purposes of section 161—

(a) informal traders presumptive tax;

(b) presumptive tax payable by operators of taxicabs for the carriage of passengers for hire or reward having seating accommodation for not more than seven passengers;

(c) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than eight or more than fourteen passengers;

(d) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than fifteen or more than twenty-four passengers;

(e) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than twenty-five or more than thirty-six passengers;

(f) presumptive tax payable by operators of omnibuses for the carriage of passengers for hire or reward having seating accommodation for not less than thirty-seven passengers;

(g) presumptive tax payable by operators of driving schools providing driving tuition—

   (i) for class 4 vehicles only;

   (ii) for class 1 and 2 vehicles (whether or not in addition to providing driving tuition for other classes of vehicles);

(h) presumptive tax payable by operators of hairdressing salons;

(i) presumptive tax payable by operators of restaurants or bottle-stores;

(j) cottage industry operators presumptive tax;

(k) commercial waterborne vessel operators' presumptive tax.

THIRTEENTH SCHEDULE (Section 169(1))

DETERMINATION OF ADDITIONAL PROFITS TAX IN RESPECT OF SPECIAL MINING LEASE AREA

Interpretation

1.(1) In this Schedule—

"allowable deduction" means, subject to subparagraph (2), a deduction allowable under the Second Schedule in respect of expenditure incurred;

"first accumulated net cash position" means an amount determined in accordance with paragraph 3(2), (4) and (5);

"first year of assessment", in relation to a special mining lease area, means the year of assessment in which the special mining lease is issued in respect of that area;

"net cash receipts", in relation to a special mining lease area, means such receipts determined by applying the provision of paragraph 2;

"Price Index" means—

(*a*) the monthly level of the United States Industrial Goods Producer Price Index, as reported for the first time for the year of assessment concerned in the publication of the International Monetary Fund known as the "International Financial Statistics" in the section title "Prices, Production, Employment"; or

(*b*) such other monthly index as the Minister may prescribe by notice in the *Gazette*;

"second accumulated net cash position" means an amount determined in accordance with paragraph 3(3), (4) and (5);

"taxable income" means any taxable income determined by applying paragraph 2 of the Second Schedule;

"year of production", in relation to a special mining lease area, means the year of assessment in which minerals from the area are first sold or otherwise disposed of.

(2) For the purposes of this Schedule, a deduction made in respect of—

(*a*) expenditure of the kind referred to in paragraph 4(1)(b) of the Second Schedule; or

(*b*) a training investment allowance referred to in paragraph 4(1)(f) of the Second Schedule; or

(*c*) any capital redemption allowance referred to in paragraph 5 of the Second Schedule;

shall not be treated as an allowable deduction.

Net cash receipts

2.(1) For the purpose of this Schedule, the net cash receipts from a special mining lease area in a year of assessment shall be the result, which may be a positive or negative figure, of deducting from the income referred to in subparagraph (2) the deductions referred to in subparagraph (3).

(2) The income to which subparagraph (1) relates is the aggregate of the following amounts—

(*a*) amounts referred to in paragraph 3(1) of the Second Schedule, other than any amount of interest referred to in of subparagraph (1)(c) of that paragraph, accruing in the year of assessment concerned to the holder of the special mining lease or, in the case of joint holders, to each of the holders. from special mining lease operations carried on—

(i) in the special mining lease area; or

(ii) subject to subparagraph (4), in any other special mining lease area, in the case of an amount other than interest referred to in paragraph 3(1)(c) of the Second Schedule;

and

(*b*) any amounts not covered by subparagraph (*a*), which are the proceeds of sales of material, equipment, plant, facilities, data, information, intellectual property or rights, the acquisition costs of which have previously been deducted in calculating net cash receipts from a special mining lease area; and

(*c*) any amounts of a capital nature received, or any contribution, from any person for the use of facilities, to the extent that they are not included in the amounts referred to in subparagraph (*a*) or (*b*).

(3) The deductions to which subparagraph (1) relates are the aggregate of—

(a) allowable deductions in respect of expenditure which—

(i) has been incurred or is deemed to have been incurred in the year of assessment concerned by the holder of the special mining lease or, in the case of joint holders, by each of the holders; and

(ii) the Commissioner determines is attributable to the special mining lease area for the purpose of calculating the holder's liability for income tax;

and

(*b*) income tax paid for the year of assessment concerned in respect of the taxable income of the holder of the special mining lease or, in the case of joint holders, of each of the holders, which the Commissioner determines is attributable to the special mining lease area; and

(*c*) capital expenditure incurred solely in relation to a special mining lease area which is allowable as a deduction under paragraph 5 of the Second Schedule:

Provided that—

(i) any capital expenditure in respect of exploration operations which is so allowable and which is incurred prior to the first year of assessment shall be deemed to have been incurred in the first year of assessment for special mining lease operations;

(ii) such capital expenditure shall be deducted in full in the year in which it is incurred or deemed to have been incurred.

(4) Where a person is the holder of more than one special mining lease in any year of assessment, an amount accruing to him in that year of assessment as provided in subparagraph (2)(b) shall, for the purposes of this paragraph, be treated as accruing to him in equal parts from each of the special mining lease areas.

(5) Where a person is the holder of more than one special mining lease in any year of assessment and there are deductions pursuant to subparagraph (3) (a) and (c) in respect of expenditure not incurred exclusively in respect of any one of the special mining lease areas, the deductions shall be apportioned between the special mining leases, for the purposes of calculating the holder's net cash receipts, in the same proportions as the income from each special mining lease are determined in accordance with paragraph 2(2), bears the holder's total income determined from all the special mining lease areas held by him or her.

Determination of first and second accumulated net cash position

3.(1) For the first year of assessment of a special mining lease area, and for every subsequent year of assessment, there shall be established the first accumulated net cash position and the second accumulated net cash position.

(2) The first accumulated net cash position shall be determined accordance with the formula—

$$A\ (100 \text{ per cent} + R_1)\ (100 \text{ per cent} + P) + B,$$

where—

A represents, subject to subparagraphs (4) and (5), the first accumulated net cash position in relation to the special mining lease area concerned at the end of the year of assessment immediately preceding the year of assessment for which the determination is being made;

B represents the net cash receipts from the special mining lease area concerned in the year of assessment;

P represents the change, expressed as a percentage, in the level of the Price Index between—

(a) the last month of the year of assessment immediately preceding the year of assessment for which the determination is being made; and

(b) the last month of the year of assessment for which the determination is being made;

R_1 represents 15 per centum or such other percentage as may be specified for this purpose in the special mining lease agreement relating to the special mining lease concerned.

(3) The second accumulated net cash position shall be determined in accordance with the formula—

$$A\ (100 \text{ per cent} + R_2)\ (100 \text{ per cent} + P) + B - C,$$

where—

A represents, subject to subparagraphs (4) and (5), the second accumulated net cash position in relation to the special mining lease area concerned at the end of the year of assessment immediately preceding the year of assessment for which the determination is being made;

B represents the net cash receipts from the special mining lease area concerned in the year of assessment;

C represents the amount of additional profits tax, if any, determined in accordance with this Schedule in relation to the first accumulated net cash position for the special mining lease area concerned;

P represents the change, expressed as a percentage, in the level of the Price Index between—

(*a*) the last month of the year of assessment immediately preceding the year of assessment for which the determination is being made; and

(*b*) the last month of the year of assessment for which the determination is being made;

R_2 represents 20 per centum or such other percentage as may be specified for this purpose in the special mining lease agreement relating to the special mining lease concerned.

(4) Where the first accumulated net cash position or the second accumulated net cash position, established in respect of a special mining lease area for a year of assessment, is a positive amount, that accumulated net cash position shall be deemed to be nil for the purpose of determining the equivalent net cash position for the immediately succeeding year of assessment.

(5) For the purpose of determining the amount of factor "A" of the formulae referred to in subparagraphs (2) and (3), the year immediately preceding the first year of assessment for a special mining lease area shall be deemed to be a year of assessment for the area and, for that purpose, the first or second accumulated net cash position at the end of that preceding year shall be deemed to be nil.

Computation of additional profits tax

4.(1) If the first accumulated net cash position in respect of a special mining lease area for any year of assessment is expressed as a positive amount, the additional profits tax payable by the holder of the special mining lease shall be computed at such percentage of that positive amount as may be determined in accordance with the formula—

$$U = \frac{41{,}5 - T}{100 - T}$$

where—

U represents the rate of additional profits tax, expressed as a decimal, determined in relation to the first accumulated net cash position;

T represents the rate at which income tax is levied upon holders of special mining leases in terms of the charging Act relating to the year of assessment concerned.

(2) If the second accumulated net cash position in respect of a special mining lease area for any year of assessment is expressed as a positive amount, the additional profits tax payable by the holder of the special mining lease shall be the aggregate of—

(a) the additional profits tax determined in accordance with subparagraph (1); and

(b) 27,778 per centum of the positive amount in which the second accumulated net cash position is expressed.

Information in returns

5. The holder of a special mining lease shall specify separately, in a return rendered in respect of his special mining lease operations, the net cash receipts from his special mining lease area for the year of assessment to which the return relates, and shall furnish information with respect to the following matters—

(a) the amount of all income and deductions taken into account in determining the net cash receipts; and

(b) the appropriate change, expressed as a percentage, in the level of the Price Index between the last month of the preceding year of assessment and the last month of the year of assessment to which the return relates; and

(c) the values of the first accumulated net cash position and the second accumulated net cash position for the year of assessment for which the return is made and for the immediately preceding year of assessment; and

(d) the amount, if any, of additional profits tax computed with reference to the first accumulated net cash position and with reference to the second accumulated net cash position; and

(e) the total amount, if any, of additional profits tax payable; and

(f) such other information as the Commissioner may require.

FOURTEENTH SCHEDULE (Section 203(b))

COMMISSIONER'S DECISIONS AGAINST WHICH OBJECTIONS MAY BE MADE

The decisions of the Commissioner to which any person may object under section 202 (b) of subsection are those made in terms of—

(a) section 4 ("When persons deemed to be associates") (2)(a) or (b);

(b) section 33 ("Deduction for bad debts")

(c) section 35 ("Deduction for prospective expenditure and losses") (1);

(d) section 36 ("Attendance at business conventions, etc., and subscriptions to business and professional associations") (1)(a);

(e) section 40 ("Premiums, royalties, etc.") (2);

(f) section 44 ("Assessed losses") (3)(b):

Provided that in any objection made in terms of this subparagraph and in any subsequent appeal lodged in terms of section 205 against the decision of the Commissioner thereon, the burden of proof that the change in the controlling interest of a company or its conversion from or to a private business corporation was not effected solely or mainly in pursuance of or in connection with any scheme to take advantage of the assessed loss of that company or private business corporation, shall be upon the company or private business corporation claiming such assessed loss as a deduction under section 44;

(g) section 50 ("Prohibition against double deduction") (b);

(h) section 52 ("Substituted year of assessment");

(i) section 56 ("Taxable income of persons whose business extends beyond Zimbabwe") (1) or (3);

(j) section 61 ("Hire-purchase and credit sales") (2);

(k) section 69 ("Deemed acquisition or disposal of investment property where non-resident becomes resident and *vice versa*") (3);

(l) section 75 ("Income splitting") (1);

(m) section 84 ("Taxation of deceased estates") (1);

(n) section 93 ("Tax avoidance generally"):

Provided that in any objection made in terms of this paragraph and in any subsequent appeal lodged in terms of section 205 against the decision of the Commissioner thereon, the burden of proof that the avoidance or postponement of liability for any tax or the reduction of the amount thereof was neither the sole purpose nor one of the main purposes of any transaction, operation or scheme, shall be upon the taxpayer;

(o) section 94 ("Transactions between associates, employers and employees") (1), (2) or (3);

(p) section 109 ("General provisions as to penalties under Chapter X and waiver or compromise thereof") (3);

(q) section 111 ("Self-assessment") (5);

(r) section 112 ("Estimated assessments")(1);

(s) section 113 ("Additional assessments")(1);

(t) section 190 ("Registration of users and suspension or cancellation of registration")(2) or (3);

(u) any provision of the following Schedules in terms of which the Commissioner exercises a power or discretion against the objector, namely, the First ("Taxable Income of Insurance Company"), Second ("Taxable Income from Special Mining Lease Operations"), Third ("Taxable Income of Petroleum Operator"), Sixth ("Valuation of Trading Stock"), Eighth ("Capital Allowance Deductions"), Tenth ("Deductions Promotive of Public Policy Objectives") and Eleventh ("Employees' Tax") Schedules.

FIFTEENTH SCHEDULE (Section 206)

RULES REGULATING APPEALS

The rules in this Part shall apply in the determination of appeals under section 206 or any proceedings incidental thereto or connected therewith—

1. In any case in which the Fiscal Appeal Court makes an order as to costs, the bill of such costs shall be taxed by the registrar of the High Court:

   Provided that either the Commissioner or the appellant may apply to the Fiscal Appeal Court for reconsideration of any items or portions of items in such bill, and the Court's decision as to whether such items or portions of items shall be allowed, reduced or disallowed shall be final.

2. The fees, charges and rates to be allowed in such bill of costs shall be as far as applicable those fixed by the tariff of fees and charges in cases heard before the High Court.

3. The Fiscal Appeal Court may enlarge any of the times and periods set out in these rules on good cause being shown or by agreement of the parties.

4. When any taxpayer has given notice of an appeal he shall state the grounds of his or her appeal and set forth in writing all the facts which he or she considers material and relevant and the contentions in law based thereon. Such statement shall be called the "appellant's case" and shall be lodged with the Commissioner in duplicate within sixty days of the date on which notice of appeal is given to the Commissioner.

5. Should the statement of facts in the appellant's case be admitted by the Commissioner to be sufficient and correct, he or she shall within sixty days of the lodging of the appellant's case draw up and submit to the appellant a document embodying the admitted statement of facts, the contentions in law of the appellant and the contentions in law of the Commissioner. Such document shall be called an "agreed case".

6. The appellant and the Commissioner may agree to a statement of facts, each setting out his respective contention in law based on such facts, in the form of an agreed case.

7. The agreed case shall be transmitted to the Fiscal Appeal Court by the Commissioner within fourteen days of submitting the agreed case to the appellant in terms of rule 5, and the arguments on appeal and the decision of the Court shall be confined to the facts admitted.

8. Should the Commissioner not admit the statement of facts in the appellant's case to be correct or sufficient, or should he or she not come to an agreement with the appellant on a statement of facts, the Commissioner shall within sixty days of the receipt of the appellant's case lodge with the taxpayer a statement setting out which of the allegations he or she admits as correct and which he or she denies, and shall set out all such other facts which he or she considers relevant and material to the determination of the appeal. The Commissioner shall also state his or her contentions in law. Such statement shall be called the "Commissioner's case".

9. Should the appellant and the Commissioner not agree in regard to the statement of facts, the Commissioner shall transmit to the Fiscal Appeal Court the appellant's case and the Commissioner's case within thirty days of the lodgement of the Commissioner's case with the taxpayer.
10. The Commissioner shall transmit to Fiscal Appeal Court, together with the agreed case, or with the appellant's case and the Commissioner's case, a certified copy or extract of the assessment in so far as it relates to the assessment made upon the appellant, and also the notice of objection lodged and the notice of appeal, together with any material correspondence related thereto, unless the same have already been included in the statement of facts. A copy of the decision appealed from and of the reasons for the same shall accompany the documents above mentioned.
11. The Fiscal Appeal Court shall, after consultation with the parties, notify them of a day, time and place for the hearing of the appeal, such day being not less than thirty days after the receipt of the agreed case or of the appellant's and Commissioner's cases, and shall give notice to the Commissioner of the appointed day.
12. If any facts are in dispute either the appellant or the Commissioner may call such evidence and produce such documents at the hearing of the appeal as may be deemed material and relevant.
13. If neither the appellant nor anyone authorised to appear on his or her behalf appears before the Fiscal Appeal Court at the time and place appointed for the purpose then the Court, upon the request of the Commissioner and upon proof that the prescribed notice of the sitting of the Court has been given to the appellant, shall confirm the assessment objected to, unless any question of law arises, in which case the Court may, before giving its decision, call upon the Commissioner for argument in support of the assessment.