Law Development Commission, Zimbabwe

CHAPTER 23:06

INCOME TAX ACT

Acts 5/1967, 35/1967, 30/1968, 36/1969 (s. 10), 39/1969, 32/1970, 2/1971, 41/1971, 20/1972, 57/1972 (s. 34), 8/1973 (Part II), 21/1973, 23/1974, 32/1975, 38/1976, 16/1977, 27/1977, 12/1978, 23/1978, 35/1978, 22/1979, 1/1980, 11/1980, 10/1981, 15/1981, 29/1981, 55/1981, 30/1982, 32/1983, 7/1984, 24/1984, 19/1985, 12/1986, 20/1986, 17/1987, 30/1987, 4/1988, 8/1988, 16/1988, 22/1989, 10/1990, 19/1990, 21/1991, 17/1992, 12/1993, 19/1994, 4/1995, 17/1995, 23/1995, 4/1996, 10/1996, 13/1996, 17/1997, 23/1997, 29/1998, 9/1999, 14/1999, 17/1999, 21/1999, 22/1999, 6/2000, 18/2000, 22/2001, 27/2001, 15/2002, 10/2003, 16/2004, 18/2004, 29/2004, 2/2005, 8/2005, 6/2006, 12/2006, 8/2007, 16/2007, 3/2009, 5/2009, 10/2009, 3/2010, 5/2010.
R.G.N.s 217/1970, 50/1971, 57/1971, 387/1971. SI 136/2007.

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Law Development Commission, Zimbabwe

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AN ACT to provide for the taxation of incomes and for other taxes; and to provide for matters incidental thereto.

[Date of commencement: 1st April, 1967.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Income Tax Act [*Chapter 23:06*].

2 Interpretation

(1) In this Act—

"affiliate", in relation to a petroleum operator, has the meaning given by subsection (4) of section *thirty-two*;

"agent" includes—

(*a*) any partnership or company or any other body of persons, corporate or unincorporate, when acting as an agent; and

(*b*) any person declared by the Commissioner to be the agent of some other person for the purposes of this Act;

"amount", for the purposes of the provisions of this Act relating to the determination of the gross income, income or taxable income, as defined in subsection (1) of section *eight*, of a person, means—

(*a*) money; or

(*b*) any other property, corporeal or incorporeal, having an ascertainable money value;

and "accrued", "paid, "received" or any cognate expression shall, in so far as it applies to an amount as defined in paragraph (*b*), be construed in a sense correlative with that in which it is construed when it applies to money;

"approved employee share ownership trust" means an arrangement embodied in a notarised trust deed which satisfies the Commissioner that its dominant purpose or effect is to enable employees of a company or group of companies to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the stock, shares, debentures or any property, including money, of the company or group of companies concerned where—

(*a*) the stock, shares, debentures and any property, including money, 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, whether described as a unit or otherwise,

in the stock, shares, debentures and any property, including money, held in trust for the employee, which may be acquired or disposed of under the arrangement ;

[Definition inserted by Act 27 of 2001 and amended by Act 15 of 2002]

"assessed loss" means any amount by which the sum of the deductions to be made under Part III of this Act from the income (as defined in Part III) of any taxpayer exceeds such income;

Provided that no amount received by or accruing to the taxpayer under a contract of employment shall be taken into account for the purpose of determining his assessed loss;

"assessment" means—

(*a*) the determination of taxable income and of the credits to which a person is entitled in terms of the charging Act; or

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

and includes a self-assessment in terms of section *thirty-seven A*;

[Definition substituted by Act 12 of 2006]

"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;

"benefit fund", save as otherwise provided in paragraph 1 of the First Schedule, means—

(*a*) a scheme or fund approved by the Commissioner in respect of the year of assessment in terms of subsection (1) of section *thirteen*; or

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

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

"child" includes a step-child and a lawfully adopted child;

"Commissioner", subject to section *three*, means—

(*a*) the Commissioner in charge 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 the taxes leviable under this Act; or

(*b*) the Commissioner-General of the Zimbabwe Revenue Authority, in relation to any function which he has been authorized under the Revenue Authority Act [*Chapter 23:11*], to exercise;

"company" includes any association wheresoever incorporated;

"credit" means a credit to which paragraph (*c*) of section *seven* relates;

"export processing zone" means any part of Zimbabwe declared in terms of the Export Processing Zones Act [*Chapter 14:09*] to be an export processing zone;

"family taxpayer" …..

[Definition repealed by Act 18 of 2000]

"farmer" means any 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;

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

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

(*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 all 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;

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

[Definition inserted by Act 18 of 2000]

"income from trade and investment", in the case of income received by or accruing to a person other than a company or trust, means any part of the income of such person which is received by or accrues to him from any trade, investment or other activities, but does not include income from employment;

[Definition inserted by Act 18 of 2000]

"income the subject of a trust to which no beneficiary is entitled" means income the subject of a trust created by a trust instrument 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 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;

be a beneficiary with a vested right;

or

(*b*) is not income deemed by virtue of section *ten* to have been received or have accrued to or in favour of the person by whom the trust instrument was made; or

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

"individual" means a person other than a company;

"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;

"insolvency" and "insolvent" shall be construed in accordance with any law relating to insolvency and as including an assignment with creditors made in terms of that law;

"investment licence" means an investment licence issued in terms of the Export Processing Zones Act [*Chapter 14:09*];

"law" means an enactment as defined in the Interpretation Act [*Chapter 1:01*];

"lawful minor child", in relation to a taxpayer, means a lawful child of the taxpayer who—

(*a*) was under the age of seventeen years on the last day of the immediately preceding year of assessment; or

(b) is born in the year of assessment; or

(c) was under the age of twenty-five immediately prior to the commencement of the year of assessment and receives during any part of the year of assessment full-time instruction as a student at any educational institution;

"licensed investor" means the holder of an investment licence;

"LIBOR" means the London Interbank Offered Rate referred to in section 97A(2) and (3);

[Definition inserted by Act 5 of 2009]

"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*);

"marriage" means—

(*a*) a marriage solemnized within Zimbabwe in accordance with any law relating to the solemnization of marriage; and

(*b*) a marriage solemnized outside Zimbabwe in accordance with the laws or customs relating to the solemnization of marriage of the country in which the marriage is solemnized;

(*c*) a marriage contracted according to customary law, notwithstanding that the marriage may not have been celebrated or solemnized in terms of any law relating to marriage:

and "married", "husband" and "wife" shall be construed accordingly;

"married woman" means a woman married with or without community of property who is not a woman referred to in paragraph (*c*), (*d*) or (*e*) of the definition of "spouse";

"medical aid society" means any society or scheme which is approved by the Commissioner in respect of the year of assessment in question in terms of subsection (2) of section *thirteen*;

"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 as such in terms of the Mines and Minerals Act [*Chapter 21:05*];

[Definition inserted by Act 18 of 2000]

"mining operations" means—

(*a*) any operations for the purpose of winning a mineral from the earth; and

(*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;

"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" means a child who is under eighteen years of age and is unmarried;

"near relative" means—

(*a*) a lineal ascendant of an individual, including a step-father or step-mother; or

(*b*) a child or a lineal descendant of an individual other than a child; or

(*c*) a brother, half-brother, step-brother, sister, half-sister, step-sister, uncle, aunt, nephew or niece of an individual; or

(*d*) the adopter or adopters of an individual; or

(*e*) the spouse of a relative of an individual referred to in paragraphs (*a*) to (*d*);

"nominee", in relation to an individual, means a person who—

(*a*) holds shares in a company, directly or indirectly, on behalf of the individual; or

(*b*) can be required to exercise voting powers in the affairs of a company in accordance with the directions of the individual;

"parent" includes a person liable at law to maintain a child;

"pension fund" means—

(*a*) a fund established by any law 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*];

"period of assessment" means any period within the year of assessment in respect of which tax is to be charged, levied or collected in terms of this Act;

"person" includes a company, body of persons corporate or unincorporate (not being a partnership), local or like authority, deceased or insolvent estate and, in relation to income the subject of a trust to which no beneficiary is entitled, the trust;

"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 agreements" 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 operations" means—

(*a*) exploration in Zimbabwe with a view to detecting the existence of deposits of petroleum;

(*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 stabilization of the petroleum ex-

tracted in order to facilitate transport of such petroleum from the site of the petroleum operations;

(*c*) the disposal of petroleum obtained from operations referred to in paragraph (*b*);

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

"petroleum special grant" means a special grant issued under Part XX of the Mines and Minerals Act [*Chapter 21:05*] authorizing the grantee to win petroleum on terms and conditions included in the grant pursuant to a petroleum agreement;

"prescribed" means, unless otherwise provided, prescribed by the Commissioner;

"previous law" means the Income Tax Act, 1954 (No. 16 of 1954), or a law repealed by that Act;

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

"recoupment from capital expenditure" means any amount accruing to a person from the sale or other disposal of or damage to or destruction of—

(*a*) an asset ranking for a redemption allowance in accordance with paragraph 2, 3 or 4 of the Fifth Schedule or the corresponding provisions of a previous law; or

(*b*) an asset in respect of which a deduction has been allowed to the person in accordance with paragraph 6 of the Fifth Schedule or the corresponding provisions of a previous law;

but in the case of any amount accruing from damage to or destruction of such asset does not include such portion thereof as is in excess of the original cost of such asset;

"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*];

"return" includes a self-assessment return;

[Definition inserted by Act 12 of 2006]

"securities" means—

(*a*) stocks or securities, including bonds and Treasury bills, issued by any government, local authority or statutory corporation or like 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 any building society; and

(*f*) stocks or shares issued by any company;

and for the purposes of the Eighth Schedule includes any other stocks or shares and rights in immovable property;

"self assessment return" means a return rendered in terms of section *thirty-seven A*;

"Special Court" means the Special Court for Income Tax Appeals established by subsection (1) of section *sixty-four*;

"special mining lease" means a special mining lease issued under Part IX of the Mines and Minerals Act [*Chapter 21:05*];

"special mining lease agreement" means an agreement between the Government and the holder of a special mining lease, entered into in terms of section 167 of the Mines and Minerals Act [*Chapter 21:05*];

"special mining lease area" means the area covered by a special mining lease;

"special mining lease operations" means any mining operations, or exploration operations or development operations as defined in paragraph 1 of the Twenty-Second Schedule, carried out in or in relation to a special mining lease area pursuant to the special mining lease;

"spouse" does not include—

(*a*) a husband who is separated from his wife under a judicial order or written agreement of separation; or

(*b*) a husband who—

(i) is living apart from his wife; and

(ii) is not wholly maintaining his wife;

or

(*c*) a wife who is separated from her husband under a judicial order or written agreement of separation; or

(*d*) a wife who—

(i) is living apart from her husband; and

(ii) is not wholly maintained by her husband; or

(*e*) in the case of a polygamous marriage, a wife, other than the first wife, who is living with and wholly maintained by her husband;

"statutory corporation"—

(*a*) means a body, other than a private society, incorporated by or in terms of a law for special purposes specified in or under the law; and

(*b*) includes any other body or association specified in subparagraphs (*b*) to (*d*) of paragraph 1 of the Third Schedule;

"tax" means any tax or levy leviable under this Act;

"tax clearance certificate" means a valid tax clearance certificate issued to a person by or on behalf of the Commissioner-General under section 34C(1)(*a*), (*b*) or (*c*) of the Revenue Authority Act [*Chapter 23:11*] (Act No. 17 of 1999);

[Definition inserted by Act 2 of 2005]

"taxpayer"—

(*a*) means any person in respect of whom an assessment is made; and

(*b*) includes, for the purposes of any provision of this Act relating to a return, any person who is required in terms of this Act to furnish a return;

"trade" includes any profession, trade, business, activity, calling, occupation or venture, including the letting of any property, carried on, engaged in or followed for the purposes of producing income as defined in subsection (1) of section *eight* and anything done for the purpose of producing such income;

"trade mark" means a trade mark as defined in subsection (1) of section 2 of the Trade Marks Act [*Chapter 26:04*];

"trading stock" includes—

(*a*) goods and other property of any description, including livestock, which are acquired, manufactured, produced, bred, constructed or improved in the ordinary course of trade for the purposes of disposal in the ordinary course of trade; and

(*b*) goods and other property of any description, including livestock—

(i) which are acquired in the ordinary course of trade for the purposes of or in connection with the manufacture, production, breeding, construction or improvement of goods or other property of any description, including livestock; and

(ii) the expenditure on which is allowable as a deduction in terms of paragraph (*a*) of subsection (2) of section *fifteen*;

and

(*c*) goods and other property of any description referred to in paragraph (*b*), other than livestock, which, at the end of the year of assessment, are partially manufactured, produced, constructed, improved, consumed or used; and

(*d*) advertising, packing or other materials, the acquisition, manufacture or production of which is incidental to the disposal in the ordinary course of trade of goods or other property of any description, including livestock; and

(*e*) goods and other property of any description of a person, including livestock, which—

(i) are acquired by that person otherwise than in the ordinary course of his trade; and

(ii) are brought to hand or otherwise appropriated or allocated by that person for the purposes of or in connection with his trade; and

(iii) would have been "trading stock" as defined in paragraph (*a*), (*b*), (*c*) or (*d*) had they been acquired in the ordinary course of the trade of that person;

"trust instrument" means a deed, will, contract of settlement or other 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 any individual under a legal disability or other person having, whether in a official or private capacity, the possession, disposal, control or management of the property of an individual under a legal disability; and

(*e*) the person having the administration or control of property subject to a usufruct, *fidei commissum* or other limited interest;

and "trust", "property the subject of a trust" and "income the subject of a trust" shall be construed accordingly;

"year of assessment" means 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; and includes any period within such a year of assessment:

[Definition of substituted by Act 17 of 1997.]

Provided that—

(i) for the period before the 1st April, 1997, a year of assessment shall be the period of twelve months beginning on the 1st April in any year;

(ii) the nine-month period beginning on the 1st April, 1997, and ending on the 31st December, 1997, shall constitute a year of assessment.

(iii) the year of assessment beginning on the 1st January, 2004, in respect of the taxable income from employment of a person other than a company, a trust or a pension fund, consists of the following two periods, each of which shall be deemed for all purposes of this Act to be a year of assessment—

A. the eight-month period beginning on the 1st January, 2004, and ending on the 31st August, 2004;

B. the four-month period beginning on the 1st September, 2004, and ending on the 31st December, 2004;

[Proviso substituted by Act 2 of 2005

(iv) the year of assessment beginning on the 1st January, 2005, in respect of the taxable income from employment of a person other than a company, a trust or a pension fund, consists of the following two periods, each of which shall be deemed for all purposes of this Act to be a year of assessment—

A. the eight-month period beginning on the 1st January, 2005, and ending on the 31st August 2005;

B. the four-month period beginning on the 1st September, 2005, and ending on the 31st December, 2005

[Proviso (iv) inserted by Act 2 of 2005]

(v) the year of assessment beginning on the 1st January, 2006, in respect of the taxable income from employment of a person other than a company, a trust or a pension fund, consists of the following two periods—

A. the eight-month period beginning on the 1st January, 2006, and ending on the 31st August, 2006;

B. the four-month period beginning on the 1st September, 2006, and ending on the 31st December, 2006.

[Proviso inserted by Act 6 of 2006]

(vi) the year of assessment beginning on the 1st January, 2007, in respect of the taxable income from employment of a person other than a company, a trust or a pension fund, consists of the following three periods—

A. the six-month period beginning on the 1st January, 2007, and ending on the 30th June, 2007;

B. the two-month period beginning on the 1st July, 2007, and ending on the 31st August, 2007.

C. the four-month period beginning on the 1st September, 2007, and ending on the 31st December, 2007.

[Proviso (vi) inserted by Act 16 of 2007]

"Zimbabwe Revenue Authority" means the Zimbabwe Revenue Authority established by section 3 of the Revenue Authority Act [*Chapter 23:11*].

PART II

ADMINISTRATION

3 Delegation of functions by Commissioner

(1) Subject to the Zimbabwe Revenue Authority Act [*Chapter 23:11*], the Commissioner may delegate to any officer employed in his department of the Zimbabwe Revenue Authority any function that is conferred or imposed upon him by this Act, other than this power of delegation.

(2) An officer to whom a function has been delegated in terms of subsection (1) shall exercise it subject to the Commissioner's directions.

(3) A delegation in terms of subsection (1)—

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

(*b*) shall not preclude the exercise by the Commissioner of the function so delegated.

(4) Anything done by an officer in the exercise of a function delegated to him by the Commissioner in terms of subsection (1)—

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

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

(5) This section shall be construed as being additional to, and not as derogating from, the Commissioner's powers of delegation under any other law.

[Section substituted by Act 17 of 1999]

4 ....

[Section repealed by Act 17 of 1999]

5 Preservation of secrecy

(1) All persons who—

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

(*b*) examine records under the control or in the custody of the Commissioner in terms of the laws relating to the Public Service, the collection and safe custody of public moneys and the audit of public accounts;

shall, subject to subsections (2) and (3), keep secret, and aid in keeping secret, all information coming to their knowledge in the exercise of their functions.

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

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

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

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

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

or

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

(3) The Commissioner shall, if he is required to do so by the Minister, inform the Minister of the total amount of taxable income (as defined in subsection (1) of section *eight*) which, according to the records under the control or in the custody of the Commissioner, accrued during such periods to such classes of persons from such sources as the Minister may specify.

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

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

[Subsection amended by Act 22 of 2001]

(5a) Any person referred to in subsection (1) who, in the course of his official duties, has acquired information relating to the business or affairs of another person and who uses that information for personal gain, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection inserted Act 22 of 2001]

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

[Subsection substituted by Act 15 of 2002]

PART III

INCOME TAX

6 Levy of income tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund an income tax in respect of the taxable income, as defined in this Part, received by or accrued to or in favour of any person during the year of assessment ending the 31st March, 1968, and each succeeding year of assessment thereafter.

7 Calculation of income tax

(1) The income tax with which a person is chargeable shall, subject to section *fifty*, be calculated in accordance with the charging Act by reference to—

(*a*) the taxable income of the person in the year of assessment; and

(*b*) the appropriate rates of income tax fixed by the charging Act relating to that year; and

(*c*) the credits to which the person is entitled in terms of the charging Act relating to that year.

(2) The tax payable in respect of a self-assessment return shall be calculated in accordance with subsection (1) in respect of each year of assessment during which a tax payer carried on a trade and is required to submit a self-assessment return in terms of section *thirty-seven A*.

[Subsection inserted by Act 12 of 2006]

8 Interpretation of terms relating to income tax

(1) For the purposes of this Part—

"gross income" means the total amount received by or accrued to or in favour of a person or deemed to have been received by or to have accrued to or in favour of a person in any year of assessment from a source within or deemed to be within Zimbabwe excluding any amount (not being an amount included in "gross income" by virtue of any of the following paragraphs of this definition) so received or accrued which is proved by the taxpayer to be of a capital nature and, without derogation from the generality of the foregoing, includes—

(*a*) 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 spouse of a sum of money or the disposal by the annuitant or his 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;

Provided that, in the case of an annuity on retirement as defined in paragraph 1 of the First Schedule the right to which was acquired from the disposal of any part of a lump sum payment to which reference is made in paragraph 3, 4, 7 or 8 of that Schedule, the whole of such annuity shall be included;

(*b*) 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) ……

[Proviso (i) repealed by Act 15 of 2002]

(ii) 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;

(iii) 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;

(iv) any amount so received or accrued in the year of assessment ending on the 31st March, 1974, or any subsequent 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;

(*c*) any amount so received by or accrued to a person by reason of his 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—

(i) an amount referred to in paragraph (*a*) or (*b*); or

(ii) an amount received or accrued by way of a lump sum payment to which the First Schedule relates;

(iii) 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 *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;

(*d*) any amount so received or accrued from another person as a premium or like consideration paid by such other person—

(i) for the right of use or occupation of land or buildings; or

(ii) for the right of use of plant or machinery; or

(iii) for the right of use of any patent, design, trade mark, copyright, model, plan, secret process or formula or any other property which, in the opinion of the Commissioner is of a similar nature; or

(iv) for the right of use of any motion picture film or television film, sound recording or advertising matter connected with such film or recording; or

(v) for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such plant or machinery, patent design, trade mark, copyright, model, plan, secret process or formula or other property as aforesaid, film, sound recording or advertising matter;

(*e*) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings or by the cession or assignment of any rights under any such agreement, there has accrued in any such year the right to have improvements affected on the land or to the buildings by any other person—

(i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on improvements; or

(ii) if no amount is so stipulated, an amount representing, in the opinion of the Commissioner, the fair and reasonable value of the improvements;

and, in either case, any such amount shall be deemed to have accrued to such first-mentioned person from the date such improvements were effected, in equal monthly instalments over the unexpired period of such agreement, cession or assignment, as the case may be, or over a period of ten years, whichever is the less:

Provided that—

(i) all instalments which have not in any year of assessment formed part of the gross income of such first-mentioned person in terms of this paragraph immediately before the date of the happening of the first of any of the following events, shall be deemed to have accrued to him immediately before that date—

A. the cancellation of such agreement, cession or assignment; or

B. the sale or other disposal of the land or buildings on which the improvements were effected; or

C the death or insolvency of such first-mentioned person or, if such first-mentioned person is a company, the liquidation of the company;

(ii) in any case where such agreement is for an initial period which may be extended or renewed for a further period or periods, the period of such agreement shall be deemed to be the initial period only;

(iii) in any case where such agreement is silent or indefinite as to the period of use or occupation, the period of such agreement shall be deemed to be a period of ten years;

(iv) any portion of any instalments 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;

(*f*) 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:

Provided that—

(i) an amount equal to the value of the grant of a passage benefit as defined in subparagraph (i) of paragraph (*a*) of the definition of that term in this paragraph 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) an amount equal to the value of the grant of a passage benefit as defined in subparagraph (ii) of paragraph (*a*) of the definition of that term in this paragraph 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.

For the purposes of this paragraph—

I. "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, corporeal or incorporeal, 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 paragraph (*a*), (*b*) or (*c*) of the definition of "gross income" in this subsection; or
(v) an allowance;

granted to a employee, his spouse or child by or on behalf of his 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 spouse or child in respect of its grant; and

(*b*) includes a passage benefit;

"employee" includes a person who is a director of a company, agent or servant or is otherwise gainfully occupied and "employer", in relation to such person shall be construed accordingly;

"loan" means any form of loan or credit whatsoever granted directly or indirectly to an employee, his spouse or child by or on behalf of his employer or a person associated with his 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 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 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, means—

(*a*) in the case of an employer that is a company, any other company that is managed by or under the same control as the employer; or

(*b*) in the case of an employer that is not a company—
(i) any company managed by or under the control of such employer; or
(ii) any partnership of which such employer is a member;
or

(*c*) 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;

II. 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:

Provided that—

(i) in the case of a loan on which the rate of interest payable by the grantee—
(*a*) during the period beginning on the 1st October, 1984, and ending on the 31st March, 1985, is less than nine and three-quarters *per centum* per annum; or
(*b*) during the year of assessment beginning on the 1st April, 1985, is less than eleven and one-half *per centum* per annum; or
(*c*) during the years of assessment beginning on the 1st April, 1986, and ending on the 31st March, 1991 is less than—
A. twelve and one-half *per centum* per annum, where the amount of the loan does not exceed twelve thousand dollars; or
B. thirteen and one-quarter *per centum* per annum, where the amount of the loan exceeds twelve thousand dollars;
or
(*d*) during the year of assessment beginning on the 1st April, 1991, is less than—
A. thirteen *per centum* per annum, where the amount of the loan does not exceed twelve thousand dollars;

B. fourteen and one-half *per centum* per annum, where the amount of the loan exceeds twelve thousand dollars;

or

(*e*) during the year of assessment beginning on 1st April, 1992, is less than—

A. ten *per centum* per annum, where the amount of the loan does not exceed thirty-five thousand dollars;

B. twelve *per centum* per annum, where the amount of the loan exceeds thirty-five thousand dollars;

or

(*f*) in respect of the years of assessment beginning on the 1st April, 1993 and ending on the 31st December 2000, is less than—

A. ten and one-half *per centum*, where the amount of the loan does not exceed thirty-five thousand dollars;

B. fourteen *per centum*, where the amount of the loan exceeds thirty-five thousand dollars;

the cost to the employer in respect of that period or year of assessment shall be deemed to be equal to an amount determined by applying the following formula—

A–B

in which—

A. represents the amount of interest that would have been payable on the loan during such period or year of assessment by the person to whom the loan had been granted, had interest been payable by him at the appropriate rate specified in paragraph (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) or (*g*);

[Paragraph amended by Act 18 of 2000]

B. represents the amount of interest payable on the loan during such period or year of assessment by the person to whom the loan has been granted;

or

(*g*) during the year of assessment beginning on the 1st January, 2001, and any subsequent year of assessment, is less than—

A. twelve and one-half *per centum* where the amount of the loan does not exceed thirty-five thousand dollars;

B. sixteen *per centum* where the amount of the loan exceeds thirty-five thousand dollars.

[Paragraph inserted by Act 18 of 2000]

(*h*) during the year of assessment beginning on the 1st January, 2009, and any subsequent year of assessment, is less than the LIBOR rate plus five *per centum* where the amount of the loan exceeds one hundred United States dollars.

[Proviso inserted by Act 5 of 2009. Act purported to substitute proviso (h) for (g) in error]]

(ii) in the case of a motor vehicle, the cost to the employer shall be deemed to be the following in respect of any period before the 31st December, 1998, unless the person entitled to use the motor vehicle proves the contrary or unless the Commissioner considers such cost to be greater—

[Proviso amended Act 29 of 1998]

(*a*) in respect of the years of assessment beginning on the 1st April, 1984, and ending on the 31st March, 1991—

(i) one thousand five hundred dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(ii) two thousand dollars, in the case of a motor vehicle whose engine capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(iii) three thousand dollars, in the case of a motor vehicle whose engine capacity exceeds two thousand cubic centimetres;

(*b*) in respect of the years of assessment beginning on the 1st April, 1991, and ending on the 31st March, 1997—

(i) two thousand four hundred dollars, in the case of a motor vehicle whose capacity does not exceed one thousand five hundred cubic centimetres;

(ii) three thousand two hundred dollars, in the case of a motor vehicle whose engine capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(iii) four thousand eight hundred dollars in the case of a motor vehicle whose engine capacity exceeds two thousand cubic centimetres;

and such deemed cost shall be reduced proportionately where the period of use of the motor vehicle is less than the year of assessment;

(*c*) in respect of the period beginning on the 1st April, 1997, and ending on the 31st December, 1997, fifty *per centum* of the cost to the employer;

(*d*) in respect of the period beginning on the 1st January, 1998, and ending on the 31st December, 1998, seventy-five *per centum* of the cost to the employer;

(*e*) …..

(iii) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 1999, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

(*a*) twenty-five thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(*b*) forty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(*c*) seventy thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(*d*) one hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment;

[Proviso (iii) inserted by Act 29 of 1998]

(iv) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 2000, and ending on the 31st December, 2001 and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

(*a*) forty thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(*b*) sixty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(*c*) one hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(*d*) one hundred and fifty thousand dollars, in the case of a motor vehicle whose engine capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment.

[Proviso (iv) inserted by Act 18 of 2000]

(v) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 2002, and ending on the 31st December, 2002 and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

[Proviso (v) amended by Act 15 of 2002]

(*a*) fifty thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(*b*) one hundred and fifty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(*c*) two hundred and fifty thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(*d*) four hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment.

(vi) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 2004, and any subsequent year, the cost to the employer shall be deemed to be the following—

(*a*) two hundred and forty thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(*b*) four hundred and twenty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(*c*) five hundred and forty thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(*d*) nine hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment.

[Proviso inserted by Act 15 of 2002 and amended by Act 10 of 2003]

(vii) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 2004, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

(*a*) six hundred thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(*b*) one million two hundred and sixty thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(*c*) two million four hundred and eighty thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(*d*) three million three hundred and twelve thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment;

[Proviso inserted by Act 10 of 2003]

(viii) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 2005, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

(*a*) two million two hundred and eighty thousand dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(*b*) four million two hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(*c*) six million four hundred and eighty thousand dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(*d*) seven million two hundred thousand dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment;

[Proviso (viii) inserted by Act 10 of 2003 and amended by section 6 of Act 8 of 2005]

(ix) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 2007, and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

(*a*) nine million dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(*b*) fifteen million dollars, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(*c*) eighteen million dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(*d*) twenty-four million dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment;

[Proviso (ix) inserted by section 6 of Act 8 of 2005 and amended by Act 12 of 2006. The Law Reviser confirms that Act 12 of 2006 erroneously substituted 1st January, 2007 for 1st January, 2006. The year 2007 is provided for in proviso (xi).]

(x) 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 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:

[Proviso amended by Act 10 of 2009]

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).

No advantage or benefit in terms of this proviso 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.

In determining the market value of a motor vehicle for the purposes of this proviso, 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*.

[Proviso (x) substituted by Act 5 of 2009]

(xi) in the case of a motor vehicle, in respect of the year of assessment beginning on the 1st January, 2010 and any subsequent year of assessment, the cost to the employer shall be deemed to be the following—

(*a*) one thousand eight hundred United States dollars, in the case of a motor vehicle whose engine capacity does not exceed one thousand five hundred cubic centimetres;

(*b*) two thousand four hundred United States, in the case of a motor vehicle whose capacity exceeds one thousand five hundred cubic centimetres but does not exceed two thousand cubic centimetres;

(*c*) three thousand six hundred United States dollars, in the case of a motor vehicle whose capacity exceeds two thousand cubic centimetres but does not exceed three thousand cubic centimetres;

(*d*) four thousand eight hundred United States dollars, in the case of a motor vehicle whose capacity exceeds three thousand cubic centimetres;

and such deemed cost shall be reduced proportionally where the period of use of the motor vehicle is less than the year of assessment;

[Proviso substituted by Act 10 of 2009]

(xii) – (xiv)

[Provisos (xii), (xiii) ,(xiv) repealed by Act 10 of 2009]

(*g*) subject to paragraph 3 of the Seventh Schedule, 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 trade carried on by him;

(*h*) an amount equal to the value, determined in accordance with the provisions of the Second Schedule, of the trading stock belonging to a person carrying on a trade which—

(i) has not been disposed of at the end of the year of assessment; or

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

(iii) has, during the year of assessment—

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

B. been given by the person to some other person; or

C. been disposed of by the person 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 person in pursuance of the sale or other disposal of his business; or

B. sold in pursuance of an order of court;

(*i*) any recoupments from capital expenditure which—

(i) exceed the balance of capital expenditure ranking for redemption in terms of paragraphs 2, 3, 4 and 5 of the Fifth Schedule or the corresponding provisions of any previous law; or

(ii) are a recovery of amounts allowed as a deduction in terms of paragraph 6 of the Fifth Schedule or the corresponding provisions of any previous law;

(*j*) any amount allowed to be deducted under subsection (2) of section *fifteen* or the corresponding provisions of any previous law other than any sums deducted in terms of paragraph 5 of the Fourth Schedule, the Sixth Schedule, paragraph 2 of the Seventh Schedule and paragraph 3 of the Fourteenth 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 or 3 of the Fourth Schedule, 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 gross income of that person if he satisfies the Commissioner—

A. that he 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—

I. 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 shall include any amount not so expended in that person's gross income in the year of assessment in which the amount was originally recovered or recouped; or

II. that the further asset of a like nature has been brought into use within the period stipulated in subparagraph B, he shall include in that person's gross income, in the year of assessment in which the amount was originally recovered or recouped, any part of that amount not previously included in gross 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 gross income;

(*k*) 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 subsection (2) of section *fifteen* 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 paragraphs (*c*), (*f*) and (*z*) of subsection (2) of section *fifteen* shall not exceed the total amount of the allowances so granted less any allowance granted under paragraph 5 of the Fourth Schedule prior to its repeal;

(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*]

[Paragraph (*B*) substituted by Act 14 of 1999]

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;

(*l*) 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;

(*m*) 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;

(*n*) 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;

[Subparagraph amended by Act 17 of 1997]

(*o*) any amount received or accrued, directly or indirectly, from the State in terms of the Designated Areas Grant Scheme;

(*p*) any amount so received accrued to a petroleum operator which, in terms of the Twentieth Schedule, is income attributable to petroleum operations carried on by the petroleum operator;

(*r*) 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;

[Paragraph substituted by Act 29 of 2004]

(*s*) any amount so received or accrued to the holder of a special mining lease, where the amount, in terms of the Twenty-Second Schedule, is income attributable to special mining lease operations carried out by him;

(*t*) the amount so received or accrued as a result of the sale of shares offered to an employee pursuant to a share option scheme as adjusted in accordance with 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:

$$\frac{(D - E)}{E} \times B$$

where—

D is the figure for the All-items Consumer Price Index issued by the Central Statistics Office at the time the employee exercises the share option;

E is the figure for the All-items Consumer Price Index issued by the Central Statistics Office at the time when the shares were offered to the employees pursuant to a share option scheme.

[Paragraph inserted by section 8 of Act 16 of 2007]

"income" means the amount remaining of the gross income of any person for any such year after deducting therefrom any amounts exempt from income tax under this Act;

"taxable income" means the amount remaining after deducting from the income of any person all the amounts allowed to be deducted from income under this Act.

(2) For the purposes of the definition of "gross income" in subsection (1), when, owing to a variation in the rate of exchange of currency between Zimbabwe and any other country, the amount received, expressed in Zimbabwean currency, differs from the amount that had accrued prior to the variation in the rate of exchange—

(*a*) the amount to be included in gross income shall be the said amount received, expressed in Zimbabwean 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 gross income in the year of assessment in which the amount was received.

9 …

[Section repealed by Act 10 of 2009]

10 Special circumstances in which income is deemed to have accrued

(1) Income shall be deemed to have accrued to a person notwithstanding that such income—

(*a*) has been invested, accumulated or otherwise capitalized by him; or

(*b*) has not been actually paid over to him but remains due and payable to him; or

(*c*) has been credited to an account or re-invested or accumulated or capitalized or otherwise dealt with in his name or on his behalf;

and a complete statement of all such income shall be included by any person in the returns rendered by him under this Act.

(2) Income received by or accrued to or in favour of a partnership in any period ending on an accounting date shall be deemed to be income received by or accrued to or in favour of the partners on such accounting date in the proportions in which the partners agree to share the profits of the partnership as at such date.

(3) If, in pursuance or by reason of a donation, settlement or other disposition, income accrues to or in favour of or is paid to or applied to the benefit of or is accumulated for the future benefit of a minor child, whether legitimate or illegitimate, of the person by whom the donation, settlement or other disposition was made, the income so accruing, paid, applied or accumulated shall be deemed to be income received by or accrued to or in favour of the person by whom the donation, settlement or other disposition was made.

(4) If—

(*a*) in pursuance or by reason of a donation, settlement or other disposition made by a person, income accrues to or in favour of or is paid to or applied to the benefit of or is accumulated for the future benefit of a minor child, whether legitimate or illegitimate, of some other person; and

(*b*) the parent of the child or his spouse or a near relative of the parent of the child or of the spouse of the parent of the child has made a donation, settlement or other disposition or given some consideration to or in favour of the person or the spouse or a near relative of the person or of the spouse of the person by whom the donation, settlement or other disposition referred to in paragraph (*a*) was made;

the income so accruing, paid, applied or accumulated shall be deemed to be income received by or accrued to or in favour of the parent of the child.

(5) If in any deed of donation, settlement or other disposition a person has stipulated that the beneficiaries, or some of them, shall not receive the income thereunder or some portion of that income until the happening of some event, whether fixed or contingent and—

(*a*) if by virtue of the powers conferred under such deed upon that person, his spouse, his near relative or a near relative of his spouse he or she has power to control the ultimate evolution of that income or portion thereof or of any funds derived from the accumulation of such income; or

(*b*) if that income or portion thereof or those funds or any property under such deed may—

(i) devolve upon that person, his spouse, his deceased estate, the deceased estate of his spouse or the deceased estate of the first dying spouse and the surviving spouse; or

(ii) be lent to that person or any of the persons referred to in paragraph (*a*) or to a company controlled by that person and those other persons or one or more of them;

the income or portion thereof, as the case may be, to the extent to which it is to be withheld from the beneficiaries, shall, until the happening of the event stipulated in the deed, be deemed to be income of that person.

(6) If any deed of donation, settlement or other disposition contains any stipulation that the right to receive any income thereby conferred may, under powers retained by the person by whom that right is conferred, be revoked or conferred upon another, so much of any income as in consequence of the donation, settlement or other disposition, is received by or accrues to or in favour of or is deemed to be received by or to accrue to or in favour of the person on whom that right is conferred, shall be deemed to be the income only of the person by whom it is conferred, so long as he retains those powers.

(7) Subject to subsection (2) of section *eight* and sections s*eventeen* and *eighteen,* where during any year of assessment a taxpayer becomes entitled to any amount which is payable after the last day of that year of assessment, the amount shall be deemed to have accrued to him during that year of assessment:

Provided that, if in respect of any year of assessment before the 1st April, 1991, the taxpayer submitted a return of income prepared on the basis that the value of the amount accruing to him during that year of assessment was less than the amount that he would ultimately receive, there shall be deemed to have accrued to him, in any subsequent year of assessment in which he received the amount or any portion thereof, a sum equal to the difference between the value of the amount or portion thereof which he so declared and the amount or portion thereof which he received.

11 Special provisions in connection with income derived from assets in deceased and insolvent estates

(1) In this section—

"ascertained beneficiary", in relation to income received or accruing by virtue of an asset in a deceased estate or the proceeds or any part of the proceeds of an asset in a deceased estate, means a person named or identified in the will of the deceased person who by reason of the will, acquires on the death of the deceased person an immediate certain right to claim the present or future enjoyment of the income so received or accruing;

"asset in a deceased estate" does not include a right to claim an amount which became due and payable before the death of the deceased person.

(2) So much of the income received or accruing by virtue of an asset in a deceased estate or the proceeds or any part of the proceeds of an asset in a deceased estate during the period beginning immediately after the death of the deceased person and ending immediately before a person, other than a person who acquires the asset in pursuance of the realization of the assets in the deceased estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, as is received by or accrues to or in favour of an ascertained beneficiary, shall be treated for the purposes of this Act as income of the ascertained beneficiary and not as income received in or accruing to the deceased estate.

(3) Income received or accruing by virtue of an asset in a deceased estate or an asset in an insolvent estate or the proceeds or any part of the proceeds of an asset in the deceased or insolvent estate during the period beginning immediately after a person becomes entitled to the transfer from the deceased or insolvent estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, and ending immediately before the transfer from the deceased or insolvent estate of the asset or the proceeds or part of the proceeds of the asset, as the case may be, shall, unless the effect of a condition governing the transfer is to provide that the income so received or accruing shall continue to be income of the deceased or insolvent estate, be treated for the purposes of this Act—

(*a*) in the case of income which is not income the subject of a trust to which no beneficiary is entitled, as income of the person who has immediately after the transfer an immediate certain right to the present or future enjoyment of the income so received or accruing; and

(*b*) in the case of income the subject of a trust to which no beneficiary is entitled, as income of the trust;

and not as income received in or accruing to the deceased or insolvent estate.

(4) For the avoidance of doubt it is declared that—

(*a*) an amount received or accruing by virtue of a right forming part of the assets in a deceased estate which did not become due and payable before the death of the deceased person shall, subject to paragraph (*b*), be income for the purposes of this Act if the amount would have been income of the deceased person had it been received or been deemed to have been received by him or accrued or been deemed to have accrued to him or in his favour in his lifetime; and

(*b*) an amount received in a deceased estate which would have been income of a deceased person had it been received or been deemed to have been received by him or accrued or been deemed to have accrued to him or in his favour in his lifetime shall not be income for the purposes of this Act if—

(i) the decease person had no right to claim the amount in his lifetime; and

(ii) the amount is received *ex gratia* or in pursuance of a gratuitous promise made after the death of the deceased person;

and

(*c*) an amount received or forming part of the assets in a deceased estate—

(i) which became due and payable before the death of the deceased person; and

(ii) which the deceased person had a right to claim in his lifetime;

shall be income received by or accruing to or in favour of the deceased person on the date the amount became due and payable if the amount would have been income of the deceased person had it been received by him in his lifetime.

12 Circumstances in which amounts are deemed to have accrued from sources within Zimbabwe

(1) An amount shall be deemed to have accrued to any person from a source within Zimbabwe whenever it has been received by or has accrued to or in favour of such person—

(*a*) under any contract made within Zimbabwe for the sale of goods, whether such goods have been delivered or are to be delivered in or out of Zimbabwe;

(*b*) for any service rendered or work or labour done by such person in the carrying on in Zimbabwe of any trade, whether the payment for such service or work or labour is made or is to be made by a person resident in or out of Zimbabwe, and wherever payment for such service or work or labour is made or is to be made;

(*c*) for any service rendered or work or labour done as an employee by such person outside Zimbabwe, during any temporary absence of such person from Zimbabwe, if such person is ordinarily resident in Zimbabwe, whether the payment for such service or work or labour is or is to be made by a person resident in or out of Zimbabwe and wheresoever payment for such service or work or labour is or is to be made.

For the purposes of this paragraph—

(i) "temporary absence" means an absence for a period or periods not exceeding in the aggregate one hundred and eighty-three days during the year of assessment;

(ii) "employee" includes a director of a company;

(*d*) for services rendered to the State either inside or outside Zimbabwe:

Provided that an amount received by or accrued to or in favour of a person by virtue of services rendered outside Zimbabwe shall not be deemed to have accrued from a source within Zimbabwe if the person was not ordinarily resident outside Zimbabwe solely for the purpose of rendering such service;

(*e*) by virtue of a pension or annuity for services rendered which is or was granted to the person by—

(i) any person wherever resident; or

(ii) the Government of the former Federation; or

(iii) the State;

wherever the funds from which the pension or annuity is paid are situate or payment of the pension or annuity is made:

Provided that—

(i) a pension or annuity shall not be deemed to be derived from a source within Zimbabwe if the service or employment for which it was granted was performed wholly outside Zimbabwe and the remuneration for the service or employment was not deemed by virtue of paragraph (*d*) to accrue from a source within Zimbabwe;

(ii) a pension or part of a pension granted by the Government of the former Federation shall not be deemed to be derived from a source within Zimbabwe if—

A. the pension was granted in pursuance of the dissolution of the former Federation and the recipient of the pension was—

I. ordinarily resident in Malawi or Zambia on the 31st March, 1964; or

II. not ordinarily resident in Malawi or Zambia on the 31st March, 1964, in any of the Territories which comprised the former Federation and his home Territory, as determined in Part I of Schedule II to the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963 of the United Kingdom or the regulations in terms of which such pension is payable, as the case may be, was not Zimbabwe, and, if he had no home Territory, he was not ordinarily resident in Zimbabwe at the time he first became entitled to such pension;

B. the pension was granted otherwise than in pursuance of the dissolution of the former Federation and the recipient of the pension was not employed by—

I. the Government of Southern Rhodesia immediately before he joined the service of the Government of the former Federation; or

II. any of the Governments of the Territories which comprised the former Federation immediately before he joined the service of the Government of the former Federation and was not ordinarily resident in Zimbabwe at the time when he first became entitled to such pension; or

III. the State at the time he first became entitled to such pension;

(iii) if a pension or annuity, other than a pension or annuity granted in respect of employment by the State or the Government of the former Federation, was granted for service or employment performed both within and outside Zimbabwe, only that part of the pension or annuity which bears the same proportion to the whole of the pension or annuity as the period of the person's service or employment within Zimbabwe bears to the whole of the period of the person's service or

employment for which the pension or annuity was granted shall be deemed to be derived from a source within Zimbabwe.

For the purposes of this paragraph—

I. a pension granted to a member of the Public Service of the former Federation in pursuance of the dissolution of the former Federation shall be deemed to have been granted to him by the Government of the former Federation;

II. a pension which devolves upon another person by reason of the death of a person who was in receipt of a pension from the Government of the former Federation shall not be deemed to be from a source within Zimbabwe if the pension receivable by the deceased person at the time of his death was not derived or deemed to be derived from a source within Zimbabwe.

(2) An amount derived from a source outside Zimbabwe by way of interest or dividends on securities which is received by or accrues to or in favour of a person or would, had it been derived from a source within Zimbabwe, be deemed in terms of section *ten* to be income received by or accruing to or in favour of a person shall, if the person is ordinarily resident in Zimbabwe at the time the amount is so received or so accrues or is deemed to be so received or to so accrue, be deemed to be income from a source within Zimbabwe:

Provided that—

(i) any amount so received or accrued in any year of assessment by way of income arising from securities referred to in paragraph (*f*) of the definition of "securities" in subsection (1) of section *two*—

(*a*) 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 that year of assessment; and

(*b*) shall not reduce any assessed loss which the taxpayer would have had in that year of assessment if such amount had not been received by or accrued to him;

(ii) for the purposes of this Act the amount of any credit which, in terms of the laws of any other country, a taxpayer is entitled to claim in respect of income referred to in proviso (i) shall be deemed to constitute such income and shall be deemed to have accrued to such taxpayer.

(3) Any amount received or accrued by way of an annuity from any source outside Zimbabwe, the right to which was acquired by means of the payment by the annuitant of a sum of money or the disposal by the annuitant of an asset or by both those means, shall be deemed to be income from a source within Zimbabwe if the annuitant was ordinarily resident in Zimbabwe at the time the right to the annuity was acquired.

(4) An amount shall be deemed to have accrued to any person from a source within Zimbabwe if it has been received by or has accrued to or in favour of such person by virtue of the use in Zimbabwe of or the grant of permission to use in Zimbabwe, or the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use in Zimbabwe of—

(*a*) any patent, design, trade mark, copyright, model, plan, secret process or formula or any other property which, in the opinion of the Commissioner, is of a similar nature; or

(*b*) any motion picture film or television film or any sound recording or advertising matter used or intended to be used in connection with such film;

wheresoever such patent, design, trade mark, copyright, model, plan, secret process, formula, property, film, sound recording or advertising matter has been produced or made or such permission has been granted or such knowledge has been imparted or such undertaking has been given or payment for such use, grant of permission, imparting of knowledge or undertaking has been made or is to be made, and whether such payment has been made or is to be made by a person resident in or out of Zimbabwe.

(5) Any amount which is specifically required to be included in a person's gross income in terms of paragraph (i) or (*j*) of the definition of "gross income" in subsection (1) of section *eight* shall be deemed to have been received by or accrued to such person from a source within Zimbabwe notwithstanding that such amount may have been recovered or recouped outside Zimbabwe.

13 Commissioner may approve of benefit funds and medical aid societies for the purposes of this Act

(1) For the purposes of this Act, the Commissioner may, in respect of each year of assessment, approve of a benefit fund subject to such limitations or conditions as he may determine if he is satisfied that such fund—

(*a*) is a permanent fund, other than—

(i) a pension fund; or

(ii) a medical aid society; or

(iii) a fund registered or provisionally registered as a provident fund under the Pension and Provident Funds Act [*Chapter 24:09*];

and

(*b*) is bona fide established for the purpose of providing—

(i) sickness, accident or unemployment benefits for its members; or

(ii) benefits for the widows, children, dependants or nominees of deceased members.

(2) For the purposes of this Act, the Commissioner may, in respect of each year of assessment, approve of a medical aid society or scheme subject to such limitations or conditions as he may determine if he is satisfied that it is a permanent society or scheme bona fide established for the purpose of providing benefits for its members and their dependants in respect of expenditure incurred on medical, dental or optical treatment, including treatment prescribed by a medical or dental practitioner, the provision of drugs for medical, dental or optical purposes, the provision of medical, surgical, dental or optical appliances or the provision of ambulance services.

14 Exemptions

(1) There shall be exempt from income tax the amounts specified in the Third Schedule.

(2) The exemptions provided by paragraphs 1 and 2 of the Third Schedule shall not extend to the salaries, wages, allowances, other remuneration or pensions of persons employed by any local authority, society, institution, company, association or statutory corporation specified in those paragraphs although the same may be paid wholly or in part out of the revenues or funds thereof.

(3) The exemptions provided by paragraphs 9, 10, and 11 of the Third Schedule shall not apply in respect of any portion of an annuity paid out of the amounts specified in those paragraphs.

15 Deductions allowed in determination of taxable income

(1) For the purpose of determining the taxable income of any person, there shall be deducted from the income of such person the amounts allowed to be deducted in terms of this section:

Provided that—

(*a*) When, owing to a variation in the rate of exchange of currency between Zimbabwe and any other country, the amount actually paid in Zimbabwean currency differs from the amount of the liability that had been incurred prior to the variation in the rate of exchange—

(i) the amount to be deducted shall be the said amount actually paid in Zimbabwean currency

(ii) if the incurring of the liability and the payment therefor 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.

(*b*) in a case where a person earns income from trade and investment and income from employment, any amounts allowed to be deducted in terms of this section shall only be claimed in respect of the income to which they relate;

(*c*) in a case where a person earns income from mining operations and income from other trade and investment, any amounts allowed to be deducted in terms of this section shall only be claimed in respect of the income to which they relate.

[Proviso substituted by Act 18 of 2000]

(2) The deductions allowed shall be—

(*a*) expenditure and losses to the extent to which they are incurred for the purposes of trade or in the production of the income except to the extent to which they are expenditure or losses of a capital nature;

(*b*) expenditure incurred during the year of assessment on—

(i) repairs to articles, implements, machinery and utensils used and property occupied for the purposes of trade; and

(ii) repairs resulting from the letting of property;

(*c*) the allowances 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 trade;

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

(iii) training buildings and training equipment;

which are provided in the Fourth Schedule;

(*d*) (i) an allowance in respect of any premium or consideration in the nature of a premium paid by any taxpayer—

A. for the right of use or occupation of land or buildings used or occupied for the purposes of trade or in the production of income; or

B. for the right of use of plant or machinery used for the purposes of trade or in the production of income; or

C. for the right of use of any patent, design, trade mark, copyright, model, plan, secret process or formula or any other property which in the opinion of the Commissioner is of a similar nature, if such patent, design, trade mark, copyright, model, plan, secret process or formula or other property is used for the purposes of trade or in the production of income; or

D. for the right of use of any motion picture film or television film, sound recording or advertising matter connected with such film or recording if such film, sound recording or advertising matter is used for the purposes of trade or in the production of income; or

E. for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such plant or machinery, patent, design, trade mark, copyright, model, plan, secret process or formula or other property as aforesaid, film, sound recording or advertising matter:

Provided that—

(i) the allowances under subparagraph A, B, C or D shall not exceed for any year of assessment such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one-tenth of the said amount, whichever is the greater;

(ii) if in any case the right of use or occupation of any property referred to in subparagraph A, B, C or D is granted for an initial period which may be extended or renewed for a further period or periods, the period for which the taxpayer is entitled to the use or occupation shall be deemed to be the initial period only;

(iii) in any case where the agreement granting the use or occupation of any property referred to in subparagraph A, B, C or D is silent or indefinite as to the period of use or occupation, the period of such agreement shall be deemed to be a period of ten years;

(iv) the allowance under subparagraph E shall not exceed for any year of assessment that portion (not being less than one-tenth) of the amount of the premium or consideration so paid as the Commissioner may allow having regard to the period during which the taxpayer will enjoy the right to use such plant or machinery, patent, design, trade mark, copyright, model, plan, secret process or formula or other property as aforesaid, film, sound recording or advertising matter and any other circumstances which in the opinion of the Commissioner are relevant;

(v) if the land or buildings referred to in this paragraph are used or occupied by the taxpayer for the purposes of his trade or in the production of income and for other purposes, the allowance under this paragraph shall be reduced by such amount as the Commissioner, in the circumstances, considers fair and reasonable;

(vi) where the taxpayer acquires the ownership of any land or buildings, plant or machinery, patent, design, trade mark, copyright, model, plan, secret process or formula or other property, motion picture film or television film, sound recording or advertising matter in respect of which allowance has been made in terms of this paragraph, then from the year of assessment following that in which he acquires such ownership he shall cease to be entitled to any allowance under this paragraph in respect thereof;

(ii) for the purposes of this paragraph, the amount of any premium or consideration in the nature of a premium shall be reduced by the total amount of any similar allowance made under any previous law:

Provided that for the purposes of the calculation of the annual allowance in terms of proviso (i) to subparagraph (*i*) the amount of the premium or consideration shall not be reduced;

(*e*) (i) an allowance in respect of any expenditure actually incurred by the taxpayer in pursuance of an obligation to effect improvements on land or to buildings incurred under any agreement whereby the right of use or occupation of the land or buildings is granted by any other person, where the land or buildings are used or occupied for the purposes of trade or in the production of income:

Provided that—

(i) the aggregate of the allowances under this paragraph shall not exceed the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements or, if no amount is so stipulated, an amount representing in the opinion of the Commissioner the fair and reasonable value of the improvement;

(ii) any such allowance shall not exceed for any year of assessment such portion of the aggregate of the allowances under this paragraph as is equal to the said aggregate divided by the number of years (calculated from the date on which the improvements are first used or occupied for the purposes of trade or in the production of income) for which the taxpayer is entitled to the use or occupation, or one-tenth of the said aggregate, whichever is the greater, and if the taxpayer is entitled to such or occupation for an indefinite period, he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupation for a period of ten years;

(iii) if the land or buildings referred to in this paragraph are used or occupied by the taxpayer for the purposes of his trade or in the production of income and for other purposes, the allowance under this paragraph shall be reduced by such amount as the Commissioner, in the circumstances, considers fair and reasonable;

(iv) in any case where such agreement is for an initial period which may be extended or renewed for a further period or periods, the period of such agreement shall be deemed to be the initial period only;

(v) where the taxpayer acquires the ownership of improvements in respect of which an allowance has been made under this paragraph, then from the year of assessment following that in which he acquires such ownership he shall cease to be entitled to any allowance under this paragraph in respect thereof;

(ii) for the purposes of this paragraph, the aggregate of the allowances determined under the provisions of proviso (i) to subparagraph (*i*) shall be reduced by the aggregate of any allowances of whatever nature made under a previous law in respect of the same improvements:

Provided that for the purposes of the calculation of the annual allowance in terms of proviso (ii) to subparagraph (*i*) the aggregate of the allowances shall not be so reduced;

(*f*) (i) in respect of income from mining operations, the allowances and deductions for which provision is made in the Fifth Schedule in lieu of the allowances and deductions provided in paragraphs (*c*), (*d*), (*e*) and (*t*);

Provided that an allowance or deduction in terms of this subparagraph 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;

[Proviso inserted by Act 18 of 2000 and amended by Act 10 of 2003]

(ii) where the taxpayer is a miner, any expenditure (other than expenditure in respect of which a deduction is allowable in terms of paragraph (*a*)), which is proved to the satisfaction of the Commissioner to have been incurred during the year of assessment by the taxpayer 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 1 of the Fifth Schedule) which, in the opinion of the Commissioner, is incidental thereto:

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.

For the purposes of this subparagraph—

"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*];

(iii) where the taxpayer is a miner as defined in subparagraph (ii), the amount of any royalty paid during the year of assessment in terms of section 245 of the Mines and Minerals Act [*Chapter 21:05*];

[Subparagraph inserted by Act 10 of 2003]

(*g*) the amount of any debts due to the taxpayer to the extent to which they are proved to the satisfaction of the Commissioner to be bad, if such amount is included in the current year of assessment or was included in any previous year of assessment in the taxpayer's income either in terms of this Act or a previous law;

[Paragraph substituted by Act 10 of 2009]

(*h*) an amount to be determined in accordance with the Sixth Schedule in respect of contributions made in the year of assessment to a benefit or pension fund or the Consolidated Revenue Fund:

Provided that no contribution to a retirement annuity fund shall be allowed as a deduction to a member of such fund who was not ordinarily resident in Zimbabwe at the time he made the contribution unless—

(i) he was ordinarily resident in Zimbabwe at the time he became a member of the fund; and

(ii) he became a member of the fund before the 1st April 1967; and

(iii) no amount in respect of the contribution is allowed as a deduction in terms of any law imposing a tax on income which is in force in a country other than Zimbabwe;

(*i*) the amount of any arrear contributions which are paid by the taxpayer in respect of past service with his employer to a pension fund, other than a retirement annuity fund, or to the Consolidated Revenue Fund and which—

(i) do not exceed eight *per centum* of the aggregate of his annual emoluments as defined in paragraph 1 of the Sixth Schedule for any period ending on or before the 31st March, 1972, in respect of which the calculation of the arrear contributions payable was based; or

(ii) together with any amounts which have been allowed for the appropriate year of assessment as a deduction in terms of paragraph (*h*), do not, in relation to any period in respect of which the calculation of the arrear contributions payable was based, exceed—

A. if the period commences on or after the 1st April, 1972, and ends on or before the 31st March, 1975, two thousand dollars per annum; or

B. if the period commences on or after the 1st April, 1975, and ends on or before the 31st March, 1988, two thousand four hundred dollars per annum;

C. if the period commences on or after the 1st April, 1988, and ends on or before the 31st March, 1991, three thousand dollars per annum;

D. if the period commences on or after the 1st April, 1991, and ends on or before the 31st March, 1994, three thousand six hundred dollars per annum; or

E. if the period commences on or after the 1st April, 1994, and ends on or before the 31st March, 1996, five thousand four hundred dollars per annum; or

F. if the period commences on or after the 1st April, 1996, and ends on or before the 31st December, 1998, ten thousand dollars per annum; or

G. if the period commences on or after the 1st January, 1999, and ends on or before the 31st December, 2000, fifteen thousand dollars per annum; or

H. if the period commences on or after the 1st January, 2001, thirty thousand dollars per annum;

I. if the period commences on or after the 1st January, 2009, one thousand eight hundred United States dollars *per annum*;

[Subparagraph inserted by Act 5 of 2009]

Provided that no deduction shall be allowed in terms of this paragraph in respect of contributions paid by a member of a partnership in respect of any period prior to the 1st April, 1995.

[Paragraph amended by Act 18 of 2000]

(*j*) the amount of any contributions paid to a medical aid society by an employer in respect of his employees or their dependents;

(*k*) in respect of income from the sale of crops or timber, or the sale of the right to reap crops or fell timber, which were growing on the land at the time of the acquisition of the ownership of such land by the taxpayer or in respect of income to which paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight* applies, an amount determined as follows—

(i) where such land was acquired by the taxpayer for valuable consideration, so much of the valuable consideration as the Commissioner thinks just and reasonable as representing the cost of such crops or timber;

(ii) where no valuable consideration was given by the taxpayer for such land, an allowance fixed by the Commissioner as representing the value of such crops or timber at the time that the taxpayer acquired such land;

(iii) where the taxpayer sells the crops or timber the amount to be deducted for any year of assessment shall be the proportion attributable to the crops or timber sold during that year;

(*l*) in respect of income from the sale by the taxpayer of crops or timber, the right to reap or fell and dispose of which was not acquired with the land on which the crops or timber were grown, so much of the consideration for which the crops or timber were acquired as is attributable to the amount of the crops or timber sold by the taxpayer in the year of assessment;

(*m*) the amount of any expenditure incurred by the taxpayer during the year of assessment in carrying out experiments and research relating to his trade, 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 trade or otherwise;

(*n*) any sum contributed by the taxpayer during the year of assessment in respect of expenditure incurred by any other person to which paragraph (*m*) would have applied had the expenditure been incurred by the taxpayer:

Provided that the deduction shall not exceed an amount arrived at by applying the following formula—

$$\frac{A \times B}{C}$$

in which—

A represents the amount of the contribution by the taxpayer;

B represents the amount of the expenditure incurred by the other person referred to in this paragraph which would have been allowed as a deduction in terms of paragraph (*m*) had it been incurred by the taxpayer;

C represents the amount of the expenditure which is incurred by the other person referred to in this paragraph in carrying out experiments and research;

(*o*) an amount equal to the sum contributed by the taxpayer during the year of assessment to a scientific or educational society or institution or other like body of a public character approved by the Commissioner if the taxpayer has stipulated that the sum must be utilized by such society, institution or body, as the case may be, solely for the purpose of industrial research or scientific experimental work connected with the trade of the taxpayer;

[Paragraph amended by Act 15 of 2002 and Act 10 of 2009]

(*p*) any sum contributed by the taxpayer during the year of assessment in the form of a grant, bursary or scholarship to enable any person not connected with the taxpayer to take a course of technical education related to the trade of such taxpayer at any educational institution.

For the purposes of this paragraph—

"director" does not include a director—

(*a*) whose time, in the opinion of the Commissioner, is wholly occupied in the service of the company; and

(*b*) who is unable, either directly or indirectly, to control more than five *per centum* of the voting rights attaching to all classes of the shares of the company;

"person not connected with the taxpayer" means a person who is not—

(*a*) the taxpayer, the spouse or a near relative of the taxpayer or a near relative of the spouse of the taxpayer; or

(*b*) in the case where the taxpayer is a company—

(i) an individual controlling the company or the spouse or near relative or nominee of an individual controlling the company or a near relative or nominee of the spouse of an individual controlling the company; or

(ii) a director of the company or the spouse or near relative or nominee of a director of the company or near relative or nominee of the spouse of a director of the company;

(*q*) any amount paid by way of an annuity, allowance or pension during the year of assessment by the taxpayer—

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

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

(iii) to any person who is dependent for his maintenance upon a former employee or former partner of such taxpayer or, where such former employee or former partner is deceased, was so dependent immediately prior to his death:

Provided that—

(i) the deduction allowable in terms of this paragraph shall not exceed—

(*a*) under subparagraph (i), an amount of five hundred United States dollars in respect of any one former employee or, if that former employee received any amount by way of a pension or annuity during the year of assessment from any fund, wherever situated, of which the former employee contributed in respect of that former employee, an amount of five hundred United States dollars reduced by the amount of that pension or annuity; or

[Proviso amended by Act 5 of 2009]

(*b*) under subparagraph (ii), an amount of two hundred United States dollars in respect of any one former partner or, if that former partner received any amount by way of a pension or annuity during the year of assessment from any fund, wherever situated, to which the former partnership contributed in respect of that former partner, an amount of two hundred United States dollars reduced by the amount of that pension or annuity; or

[Proviso amended by Act 5 of 2009]

(*c*) under subparagraph (iii), an amount of two hundred United States dollars in respect of persons so dependent on any one retired or deceased former employee or former partner, as the case may be, or, if those persons so dependent received any amount by way of pensions or annuities during the year of assessment from any fund, wherever situated, to which the former employer or former partnership, as the case may be, contributed in respect of that retired or deceased former employee or former partner, as the case may be, two hundred United States dollars reduced by the amount of those pensions or annuities;

[Proviso amended by Act 5 of 2009]

(ii) no deduction shall be allowed in terms of this paragraph in respect of a former employee if the remuneration paid to the former employee during his employment with the taxpayer was a domestic or private expense of the taxpayer.

For the purposes of this paragraph—

"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;

(*r*) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to—

(i) the National Scholarship Fund established in terms of the Audit and Exchequer Act [*Chapter 22:03*]; or

(ii) the National Bursary Fund established in terms of the Audit and Exchequer Act [*Chapter 22:03*];

(iii) a charitable trust administered by—

A. the Minister responsible for social welfare; or

B. the Minister responsible for health;

in his capacity as such, or by any official in his Ministry, in his official capacity;

[Subparagraph inserted by Act 13 of 1996]

(*r*1) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to the State or to a fund 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:

[Subparagraph substituted by Act 29 of 2004]

Provided that the deduction allowable under this paragraph shall not exceed one hundred thousand United States dollars;

[Proviso amended by Act 3 of 2009]

(*r*2) 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 paragraph shall not exceed one hundred thousand United States dollars;

[Proviso amended by Act 3 of 2009]

(*r*3) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to the State or to a fund 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 organization; or

(ii) the construction, extension or maintenance of a school operated by the State, a local authority or a religious organization; 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 the deduction allowable under this paragraph shall not exceed one hundred thousand United States dollars.

[Paragraph inserted by Act 15 of 2002 and amended by Act 3 of 2009]

(*r*4) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to the Public Private Partnership Fund:

Provided that the deduction allowable under this paragraph shall not exceed fifty thousand United States dollars

[Paragraph inserted by Act 10 of 2003 and amended by Act 5 of 2009]

(*r*5) any amount paid by the taxpayer during the year of assessment, without any consideration whatsoever, to the Destitute Homeless Persons Rehabilitation Fund, being a fund established by the Ministry of Finance under section 30 of the Audit and Exchequer Act to alleviate the condition of destitute homeless persons:

Provided that the deduction allowable under this paragraph shall not exceed fifty thousand United States dollars;

[Paragraph inserted by Act 29 of 2004 and amended by Act 5 of 2009]

(*s*) any subscription paid during the year of assessment by the taxpayer in respect of his continued membership for any period of any business, trade, technical or professional association;

(*t*) in respect of income from a business, the amount of any expenditure which—

(i) is incurred by the taxpayer not more than eighteen months before beginning a business in the course of establishing the business; and

(ii) would have been allowed as a deduction had it been incurred after beginning the business; and

(iii) is claimed as a deduction in the year of assessment in which the business is commenced;

(*u*) in respect of income derived by the taxpayer from the carrying on of a trade, an amount equal to the value, determined for the purposes of subparagraphs (i) and (iv) of paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*, of the trading stock belonging to the taxpayer which had not been disposed or for which was attached in pursuance of an order of court at the end of the immediately preceding year of assessment. For the first year of assessment under this Act, the value of the trading stock included in the gross income of the taxpayer for the last year of assessment in terms of the previous law or which would have been included had he been liable for tax, shall be the value of the trading stock to be deducted for the purposes of this paragraph;

(*v*) in respect of income derived by the taxpayer during any year of assessment from the carrying on of a trade, an amount equal to the amount which the Commissioner considers was at the date it was brought to hand, or at the date it was acquired, whichever the Commissioner may decide, the fair and reasonable value of such of the trading stock of the taxpayer as was acquired by the taxpayer otherwise then in the ordinary course of trade:

Provided that in no case other than that of inheritance by a beneficiary in a deceased estate shall the deduction exceed the amount which would have been allowed as a deduction to the person from whom the stock was acquired had it been sold by such person in the ordinary course of trade;

(*w*) any expenditure not exceeding two thousand five hundred United States dollars incurred by the taxpayer during the year of assessment in attending during that year—

[Paragraph amended by Act 3 of 2009]

(i) not more than one convention which, in the opinion of the Commissioner, was in connection with the trade carried on by the taxpayer; or

(ii) not more than one trade mission, approved by the Minister, in connection with the trade carried on by the taxpayer:

Provided that—

(i) if any such convention or trade mission commences in one year of assessment and ends in another, then for the purposes of this paragraph the convention or trade mission shall be deemed to have been attended, and the expenditure shall be deemed to have been incurred, in the year of assessment in which the convention or trade mission ends;

(ii) where the person attending such convention or trade mission is a member of a partnership and the expenditure has been incurred by the partnership, the deduction shall be allowed in respect of one convention or trade mission for each partner to the extent of the expenditure incurred by the partnership in connection with the attendance or three thousand six hundred dollars, whichever is the lesser, and shall be 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 in which the expenditure was incurred or deemed to have incurred in terms of proviso (i);

(*x*) …..

[Paragraph repealed by Act 17 of 1995]

(*y*) in respect of income derived by a co-operative agricultural company or co-operative society—

(i) any amount distributed during the year of assessment by way of discounts, rebates or bonuses granted by the company or society to shareholders, members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the company or society; and

(ii) an amount calculated at the rate of one dollar for each dollar by which the taxable income of such company or society, before the deduction of any allowance in term of this subparagraph, is less than five hundred United States dollars:

[Subparagraph amended by Act 18 of 2000 and Act 5 of 2009]

Provided that—

(i) if, in the opinion of the Commissioner, the company or society and one or more other co-operative agricultural companies or co-operative societies are under the management or control of the same persons, the deduction allowable under this subparagraph shall not exceed an amount determined by applying the formula—

$$\frac{A}{A + B} \times C$$

in which—

A represents the taxable income of the company or society before the deduction of any allowance in terms of this subparagraph;

B represents the total of the taxable income of such other companies or societies before the deduction of any allowance in terms of this subparagraph;

C represents the amount that would have been calculated in terms of this subparagraph if such amount had been calculated on the total of the taxable incomes, before the deduction of any allowances in terms of this subparagraph, of the company or society and such other companies or societies;

(ii) the deduction allowable in terms of this subparagraph shall not exceed the taxable income of the company or society calculated before the deduction of any allowance in terms of this subparagraph;

For the purposes of this paragraph—

"co-operative agricultural company" means a co-operative company which is registered under the Companies Act [*Chapter 24:03*] and which by its articles provides that only—

(*a*) a person carrying on farming operations for the benefit of himself in Zimbabwe, either exclusively or in conjunction with some other person or with some other business, profession or occupation; or

(*b*) another co-operative agricultural company; or

(*c*) a co-operative society;

shall be admitted to membership;

"co-operative society" means a co-operative society which is registered in terms of the Co-operative Societies Act [*Chapter 24:05*];

(*z*) in addition to the deductions allowable in terms of this subsection, a farmer shall be entitled in respect of his farming operations to the deductions for which provision is made in the Seventh Schedule;

(*aa*) the amount of any costs, taxed by the registrar of the High Court during the year of assessment and not recovered from any source whatsoever, incurred by the taxpayer in connection with an appeal made in terms of section *sixty-five*, if—

(i) the appeal is allowed in full; or

(ii) the appeal is allowed to a substantial degree and the High Court or the Special Court, as the case may be, directs that such costs shall be allowed as a deduction in terms of this paragraph:

Provided that—

(i) if any determination of the High Court or the Special Court is reversed, affirmed or amended by the Supreme Court on an appeal in terms of section *sixty-six*, no deduction shall be made in terms of this paragraph unless the decision of the Supreme Court is wholly or substantially favourable to the taxpayer and the Supreme Court directs that such costs shall be allowed as a deduction in terms of this paragraph;

(ii) no deduction shall be made in terms of this paragraph until the time for noting an appeal in terms of section *sixty-six* has lapsed or any appeal so noted has been heard and determined and any costs shall be deemed not to have been taxed until such lapse or determination;

(*bb*) the amount of any costs, taxed by the registrar of the Supreme Court during the year of assessment and not recovered from any source whatsoever, incurred by the taxpayer in connection with an appeal made in terms of section *sixty-six*, if—

(i) the decision of the Supreme Court is wholly or substantially favourable to the taxpayer; and

(ii) the Supreme Court directs that such costs shall be allowed as a deduction in terms of this paragraph.

(*cc*) if the taxpayer so elects, an allowance of such amount as may be fixed by the Commissioner in respect of such expenditure or losses, not being expenditure or losses of a capital nature, as he considers will be incurred by the taxpayer after the end of the year of assessment and will be directly related to gross income received by or accrued to the taxpayer during the year of assessment in respect of services to be rendered or goods to be delivered after the end of the year of assessment:

Provided that—

(i) such allowance shall be reduced by the amount of any expenditure or losses, not being expenditure or losses of a capital nature, which are incurred during the year of assessment and which are directly related to gross income to be received or to accrue after the end of the year of assessment in respect of services rendered or to be rendered or goods delivered or to be delivered;

(ii) such allowance, after any reduction in terms of proviso (i), shall be included in the income of the taxpayer for the following year of assessment.

(*dd*) in addition to the deductions allowable in terms of this subsection a person operating a business in a growth point area shall be entitled for the year of assessment beginning on the 1st April, 1981, and any

subsequent year of assessment in respect of such operations to the deductions for which provision is made in the Fourteenth Schedule;

(*ee*) in respect of petroleum operations, the allowances and deductions for which provision is made in the Twentieth Schedule in lieu of the allowances and deductions provided for under the other paragraphs of this subsection.

(*ff*) in respect of special mining lease operations, the allowances and deductions for which provision is made in the Twenty-Second Schedule in lieu of the allowances and deductions provided for under the other paragraphs of this subsection;

(*gg*) the amount of any export-market development expenditure incurred by the taxpayer during the year of assessment, together with an amount equal to one hundred *per centum* of such expenditure.

For the purposes of this paragraph—

"export market development expenditure" means expenditure, not being expenditure of a capital nature, that is proved to the satisfaction of the Commissioner to have been incurred wholly or exclusively for the purpose of seeking opportunities for the export of goods from Zimbabwe or of creating or increasing the demand for such exports and, without derogation from the generality of the foregoing, includes expenditure for any one or more of the following purposes—

(i) research into, or the obtaining of information relating to, markets outside Zimbabwe;
(ii) research into the packaging or presentation of goods for sale outside Zimbabwe;
(iii) advertising goods outside Zimbabwe or otherwise securing publicity outside Zimbabwe for goods;
(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 goods outside Zimbabwe;
(vi) bringing prospective buyers to Zimbabwe from outside Zimbabwe;
(vii) providing samples of goods to persons outside Zimbabwe;

"goods" 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;

[Paragraph re-inserted by Act No.27 of 2001]

(*hh*) the amount of any tobacco levy paid in the year of assessment in terms of section *thirty-six A*;

[Paragraph re-inserted by Act No.27 of 2001]

(*jj*) an amount representing the fair value of any stock, shares, debentures, units or other interest paid or given by the taxpayer to an employee of the taxpayer or for the benefit of an employee of the taxpayer pursuant to an approved employee share ownership scheme or trust.

[Paragraph inserted by Act No.27 of 2001]

(*kk*) an amount paid by the taxpayer during the year of assessment in respect of expenditure approved by the Minister responsible for local government at the request of the local authority concerned for the maintenance of any one or more of the following things managed or owned by the local authority—

(i) buildings;
(ii) roads;
(iii) bridges;
(iv) sanitation works;
(v) water works;
(vi) public parks;
(vii) any other utility, amenity or item of infrastructure approved by the Minister responsible for local government:

Provided that the deduction allowable under this paragraph shall not exceed fifty thousand United States dollars.

[Paragraph inserted by Act 10 of 2003 and amended by Act 5 of 2009]

(3) Subject to this section, from the amount of income remaining after the deductions referred to in subsection (2) and sections *seventeen* and *eighteen* have been made, there shall be deducted any assessed loss determined in respect of the previous year of assessment:

Provided that—

(i) no taxpayer who—
(*a*) has been adjudged or otherwise declared or become insolvent; or
(*b*) has made an assignment of his property or estate for the benefit of his creditors;
shall be entitled to carry forward an assessed loss incurred before the date he was adjudged or otherwise declared or become insolvent or made the assignment, as the case may be;

(ii) if during any year of assessment there is a change in the shareholding of a company with an assessed loss or in the shareholding of any company which directly or indirectly controls any company with an assessed loss and the Commissioner is satisfied that such change has been effected solely or mainly in

pursuance of or in connection with any scheme for taking advantage of such assessed loss, no assessed loss incurred prior to that change shall be deductible.

For the purposes of this proviso a company shall be deemed to be controlled by another company if the majority of the voting rights attaching to all classes of its shares are held directly or indirectly by such other company;

(iii) if the Commissioner decides that a company with an assessed loss (hereinafter called the old company)—

(*a*) was incorporated outside Zimbabwe; and

(*b*) carried on its principal business within Zimbabwe; and

(*c*) is about to be wound up voluntarily in its country of incorporation for the purpose of the transfer of the whole of its business and property wherever situate to a company which will be or has been incorporated under any law (hereinafter called the new company) for the sole purpose of acquiring the whole of the business and property wherever situate of the old company and where—

I. the sole consideration for the transfer will be the issue to the members of the old company of shares in the new company in proportion to their shareholdings in the old company; and

II. no shares in the new company will be available for issue to any persons other than members of the old company;

the new company shall be allowed as a deduction after the transfer referred to in paragraph (*c*) has been effected, the assessed loss of the old company;

(iv) where taxpayer, whether before, on or after the 1st April, 1991, has carried forward an assessed loss over two or more consecutive years of assessment—

(*a*) subject to paragraph (*b*), that part of the assessed loss which was determined in respect of the earliest such year shall be deducted first, then that part determined in respect of the next such year, and so on until—

(i) the entire assessed loss has been deducted; or

(ii) there is no further income against which to deduct the assessed loss, in which event, subject to provisos (i), (ii) and (iii), the balance of the assessed loss shall be carried forward to the next year of assessment;

(*b*) except in the case of an assessed loss or any part thereof arising from mining operations, no part of an assessed loss shall be deducted which was first determined in respect of a year of assessment more than six years before the year of assessment in which the deduction is made;

(v) if—

(*a*) a company which is incorporated under the Companies Act [*Chapter 24:03*] and which has an assessed loss is converted into a private business corporation; or

(*b*) a private business corporation with an assessed loss is converted into a company in terms of the Companies Act [*Chapter 24:03*];

and the Commissioner is satisfied that such conversion has not been effected solely or mainly in pursuance of or in connection with any scheme for taking advantage of the assessed loss, the new private business corporation or the new company, as the case may be, shall be allowed the assessed loss as a deduction after the conversion.

[Subsection amended by Act 13 of 1996]

(vi) in the case of a person engaged in mining operations in more than one mining location who has an assessed loss in respect of the year of assessment ending on the 31st December, 2000, and at the end of any subsequent year of assessment, no such assessed loss shall be allowed as a deduction unless the person concerned submits for the approval of the Commissioner a breakdown showing the extent to which such assessed loss is attributable to each of the locations concerned.

[Proviso (vi) inserted by Act 18 of 2000]

(4) 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 wishes to claim such amount as a deduction.

(5) No assessed loss attributable to petroleum operations, as defined in paragraph 1 of the Twentieth Schedule, shall be allowable as a deduction to the petroleum operator concerned in respect of any income accruing to him from any trade other than petroleum operations.

(6) No assessed loss shall be allowed as a deduction from income consisting of interest payable by—

(*a*) any bank, discount house or finance house registered or required to be registered in terms of the Banking Act [*Chapter 24:20*]; or

(*b*) any building society registered or required to be registered in terms of the Building Societies Act [*Chapter 24:02*];

in respect of any loan to or deposit with that bank, discount house, finance house or building society.

(7) No assessed loss, as defined in paragraph 1 of the Twenty-Second Schedule, shall be allowable as a deduction to the holder of a special mining lease in respect of income other than income attributable to special mining lease operations, and no expenditure or loss in respect of any other trade carried on by him shall be allowable against income from special mining lease operations.

(8) No assessed loss attributable to business operations carried on by a taxpayer shall be allowable as a deduction from income received by or accruing to him under a contract of employment.

[Subsection inserted by Act 13 of 1996]

16 Cases in which no deduction shall be made

(1) Save as is otherwise expressly provided in this Act, no deduction shall be made in respect of any of the following matters—

(*a*) the cost incurred by any taxpayer in the maintenance of himself, his family or establishment;

(*b*) domestic or private expenses of the taxpayer, including expenses incurred in travelling between his home and the place at which he carries on a trade and, in the case of a taxpayer who carries on two or more trades which are distinct in nature, between the places at which such trades are carried on;

(*c*) any loss or expense which is recoverable under any insurance contract or indemnity;

(*d*) tax upon the income of the taxpayer or interest payable thereon, whether charged in terms of this Act or any law of any country whatsoever;

(*e*) income carried to a reserve fund or capitalized in any way;

(*f*) so much of any expenditure or loss, including the whole or any part of an assessed loss in a previous year of assessment, as is incurred—

(i) in the production of any amount exempt from income tax in terms of this Part or not derived or deemed to be derived from sources within Zimbabwe; or

(ii) in connection with any operation or transaction or the carrying on of a trade which would, had any amount been derived as a result, direct or indirect, of the operation or transaction or the carrying on of the trade, have been expenditure or a loss such as is described in subparagraph (*i*);

(*g*) any contribution made by a taxpayer to a fund established for the purpose of providing pensions, annuities or sickness, accident or unemployment or other benefits for employees or the widows, children, dependants or nominees of deceased employees or for all or any of those purposes;

(*h*) interest which might have been earned on any capital employed in trade;

(*i*) the rent of, or cost of repairs to, any premises not occupied for the purposes of trade, or any dwelling-house or domestic premises, except such part thereof as may be occupied for the purposes of trade;

(*j*) any expenditure incurred by the taxpayer in pursuance of an obligation imposed on him under an agreement which restrains another person from selling goods other than those supplied to him by the taxpayer;

(*k*) any expenditure incurred by a taxpayer in leasing a passenger motor vehicle as defined in subparagraph (2) of paragraph 14 of the Fourth Schedule and first leased—

(i) in or after the year of assessment beginning on the 1st April, 1986, but before the 1st April, 1991, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds twenty-two thousand dollars;

(ii) in the year of assessment beginning on the 1st April, 1991, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds thirty thousand dollars;

(iii) in or after the year of assessment beginning on the 1st April, 1992, but before the 1st April, 1995, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds fifty thousand dollars;

(iv) in or after the year of assessment beginning on the 1st April, 1995, but before the 1st January, 1999, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds seventy-five thousand dollars;

[subparagraph amended by Act 29 of 1998]

(v) in or after the year of assessment beginning on the 1st January, 1999, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds two hundred thousand dollars;

[Subparagraph inserted by Act 29 of 1998]

(vi) in or after the year of assessment beginning on the 1st January, 2009, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds ten thousand United States dollars;

[Subparagraph inserted by Act 5 of 2009]

(*l*) the cost of any shares awarded by any company to any employee.

For the purposes of this paragraph "employee" includes a director.

(*m*) any expenditure incurred by any taxpayer on entertainment whether directly or by the provision of any allowance to any employee to incur expenditure or entertainment on behalf of the taxpayer.

For the purposes of this paragraph—

"employee" includes a director;

"entertainment" includes hospitality in any form;

(*n*) any expenditure incurred in the production of any income referred to in proviso (i) to subsection (2) of section *twelve;*

(*o*) any expenditure incurred in the production of income consisting of interest payable by—

(i) any bank, discount house or finance house registered or required to be registered in terms of the Banking Act [*Chapter 24:20*]; or

(ii) any building society registered or required to be registered in terms of the Building Societies Act [*Chapter 24:02*];

in respect of any loan to or deposit with that bank, discount house, finance house or building society.

[Paragraph amended by Act 9 of 1999.]

(*p*) ……

[Paragraph repealed by Act 15 of 2002]

(*q*) any expenditure incurred by a local branch or subsidiary of a foreign company, or by a local company or subsidiary of a local company, in servicing any debt or debts contracted in connection with the production of income to the extent that such debt or debts cause the person to exceed a debt to equity ratio of three to one;

[Paragraph inserted by Act 18 of 2000 and amended by Act 10 of 2003]

(*r*) in the case of expenditure incurred on general administration and management in favour of a company of which the taxpayer is the subsidiary or holding company or (where the company is a foreign company) the local branch—

(i) incurred prior to the commencement of trade or the production of income or during any period of non-production, any amount in excess of zero comma seventy-five *per centum* of the amount obtained by applying the following formula—

$$A - (B + C)$$

Where —

A represents the total expenditure qualifying for deduction in terms of section *fifteen*;

B represents the expenditure on general administration and management paid outside Zimbabwe by such local branch or subsidiary, whether or not such expenditure was incurred by the head office of that foreign company;

C represents expenditure qualifying for deduction in terms of section (2) of paragraph (*f*) of subparagraph (i) of section *fifteen*;

(ii) incurred after the commencement of trade or the production of income , any amount in excess of one *per centum* of the amount obtained by applying the above formula

[Paragraph inserted by Act 18 of 2000 and amended by Act 10 of 2003]

(2) No deduction which is not a deduction in respect of expenditure or loss shall be made in respect of any matter, other than those referred to in paragraph (*h*) or (*q*) of subsection (2) of section *fifteen*, if the Commissioner decides that the matter is not directly related to the trade carried on by the taxpayer in Zimbabwe.

17 Special provisions relating to hire-purchase or other agreements providing for postponement of passing of ownership of property

If any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of movable property, the ownership shall pass or, in the case of immovable property, transfer shall be effected from the taxpayer to that other person upon or after receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer on the date on which the agreement was entered into:

Provided that—

(i) in the case of movable property—

A. the Commissioner, taking into consideration any allowance he has made under paragraph (*g*) of subsection (2) of section *fifteen*, may make such further allowance as under the special circumstances of the trade of the taxpayer seems to him reasonable in respect of all amounts which are

deemed to have accrued under such agreement but which have not been received at the close of the taxpayer's accounting period;

B. any allowance so made shall be included as income in his return for the following year of assessment and shall form part of the income of the said taxpayer and for the first year of assessment under this Act the amount to be included shall be the amount of any similar allowance made in the immediately preceding year of assessment in terms of the previous law;

C. if any such agreement has been ceded or otherwise disposed of for valuable consideration by the taxpayer, then no such allowance shall be made by the Commissioner in the year of assessment in which such cession or disposal took place;

(ii) in the case of immovable property—

A. the Commissioner shall deduct an allowance determined by applying the following formula—

$$\frac{D \times [E - (F + G)]}{E}$$

in which—

D represents that portion of the amount deemed to have accrued under such 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 so disposed of;

G represents that proportion of development and other charges which the Commissioner considers is applicable to such property;

B. any allowance so deducted shall be included as income in his return for the following year of assessment and shall form part of the income of the said taxpayer;

C. if any such agreement is ceded or otherwise disposed of for valuable consideration by the taxpayer, then no such allowance shall be made by the Commissioner in the year of assessment in which such cession or disposal took place.

18 Special provisions relating to credit sales

If any taxpayer has entered into any agreement with any other person in respect of any movable property the effect of which is that—

(*a*) the ownership shall pass to that other person on delivery of the property; and

(*b*) the amount payable to the taxpayer under the agreement shall be paid in instalments;

the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer on the date on which the agreement was entered into:

Provided that—

(i) the Commissioner, taking into consideration any allowance he has made under paragraph (*g*) of subsection (2) of section *fifteen*, may make such further allowance as under the special circumstances of the trade of the taxpayer seems to him reasonable in respect of all amounts which are deemed to have accrued under such agreement but which have not been received at the close of the taxpayer's accounting period;

(ii) any allowance made in terms of proviso (i) shall be included as income in his return for the following year of assessment and shall form part of the income of the said taxpayer.

19 Special provisions relating to persons carrying on business which extends beyond Zimbabwe

(1) Where the trade of any person, other than a person carrying on the business of insurance, 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 such person from sources in Zimbabwe in the manner otherwise provided in this Act, such person shall submit to the Commissioner proposals for the determination of his taxable income in some alternative manner.

(2) The Commissioner shall consider the proposals submitted in terms of subsection (1) and, if of the opinion that the taxable income calculated in accordance therewith approaches as closely as possible to that which might be expected to ensue if the general provisions of this Act were applied, may accept the same, and the taxable income so determined for any year of assessment shall be deemed to be the taxable income of such person for that year.

(3) Should no such proposals be submitted, or if the Commissioner is not satisfied with the proposals so submitted, the Commissioner may determine the taxable income in such manner as appears to him most appropriate, having regard to the circumstances of the case.

(4) The foregoing provisions shall apply, *mutatis mutandis*, to the determination of an assessed loss.

20 Special provisions relating to insurance business

(1) In the case of any person carrying on the business of insurance, that part of his taxable income or assessed loss, as the case may be, which is attributable to that business for a year of assessment shall be determined in accordance with the Eighth Schedule.

(2) If such person derived income from any source other than insurance, that part of his taxable income or assessed loss, as the case may be, which is attributable to that other source shall be determined in accordance with the general provisions of this Act.

21 Special provisions relating to petroleum operations

(1) In the case of any petroleum operator, that part of the operator's taxable income or assessed loss, as the case may be, attributable to petroleum operations for a year of assessment shall be determined in accordance with the Twentieth Schedule.

(2) If a petroleum operator derives income from any trade other than petroleum operations, that part of his taxable income or assessed loss, as the case may be, which is attributable to that other trade shall be determined in accordance with the general provisions of this Act.

22 Special provisions relating to special mining lease operations

(1) In the case of the holder of a special mining lease, that part of the holder's taxable income or assessed loss, as the case may be, which is attributable to special mining lease operations for a year of assessment shall be determined in accordance with the Twenty-Second Schedule.

(2) If the holder of a special mining lease derives income from any trade other than special mining lease operations, that part of his taxable income or assessed loss, as the case may be, which is attributable to that other trade shall be determined in accordance with the general provisions of this Act.

23 Special provisions relating to determination of taxable income of persons buying and selling any property at a price in excess of or less than the fair market price and of non-resident persons exporting products of Zimbabwe without prior sale

(1) Where any person carrying on a trade in Zimbabwe purchases any property, whether movable or immovable, from any other person at a price in excess of the fair market price, or where he sells any property, whether movable or immovable, to any other person at a price less than the fair market price, the Commissioner may, for the purpose of determining the taxable income or assessed loss, as the case may be, of such first-mentioned person, determine the fair market price at which such purchase or sale shall be taken into his accounts or returns for assessment.

(2) Where a non-resident person produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves or constructs, in whole or in part, anything within Zimbabwe, and exports the same without sale prior to the export thereof, he shall be deemed to have derived from a source within Zimbabwe a taxable income corresponding to the proportionate part of any profit ultimately derived from the sale or disposal thereof outside Zimbabwe and section *nineteen* shall apply for the purposes of determining such taxable income.

24 Special provisions relating to determination of taxable income in accordance with double taxation agreements

The Commissioner may—

(*a*) if any person—

(i) carrying on business in Zimbabwe participates directly or indirectly in the management, control or capital of a business carried on by some other person outside Zimbabwe; or

(ii) carrying on business outside Zimbabwe participates directly or indirectly in the management, control or capital of a business carried on by some other person in Zimbabwe; or

(iii) participates directly or indirectly in the management, control or capital both of a business carried on in Zimbabwe by some other person and of a business carried on outside Zimbabwe by some other person;

and

(*b*) if conditions are made or imposed between any of the persons mentioned in paragraph (*a*) in their business or financial relations which, in the opinion of the Commissioner, differ from those which would be made between two persons dealing with each other at arm's length;

determine the taxable income of the person carrying on business in Zimbabwe as if such conditions had not been made or imposed but in accordance with the conditions which, in the opinion of the Commissioner, might be expected to have been made or imposed between two persons dealing with each other at arm's length.

25 Deduction of tax from dividends

Any company incorporated in Zimbabwe shall be entitled to deduct from any dividends on stocks or shares income tax at the rate applicable to a company for the year of assessment immediately preceding the year of as-

sessment within which the dividend was declared or, if no such rate was applicable, at the rate which was last applicable whether in terms of this Act or the previous law:

Provided that in the case of dividends on—

(*a*) preference stocks or shares; or

(*b*) any stocks or shares in terms of a contract or of the memorandum or articles of association of a company which provides for a stipulated amount or rate of dividend;

the amount so deducted shall not exceed the difference between the amount of such dividends and the minimum benefit to which the holder of the stocks or shares is entitled.

PART IV

TAXES ON SHAREHOLDERS, INTEREST, FEES, REMITTANCES AND ROYALTIES

26 Non-resident shareholders' tax

(1) There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a non-resident shareholders' tax in accordance with the Ninth Schedule at the rate of tax fixed from time to time in the charging Act.

(2) For the purposes of this section, any amount paid outside Zimbabwe by a local branch or subsidiary of a foreign company in excess of the amount allowable as a deduction in terms of paragraph (*q*) or (*r*) of subsection (1) of section *sixteen* shall be deemed to be the payment of a dividend upon which non-resident shareholders' tax shall be charged, and the term "dividend" shall be so construed for the purposes of the Ninth Schedule.

[Subsection inserted by Act 18 of 2000 and amended by Act 10 of 2003]

27 .....

[Section repealed by Act 29 of 1998]

28 Resident shareholders' tax

(1) There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a resident shareholders' tax in accordance with the Fifteenth Schedule at the rate of tax fixed from time to time in the charging Act.

(2) For the purposes of this section, any amount paid inside Zimbabwe by a local company or a subsidiary of a local company in excess of the amount allowable as a deduction in terms of paragraph (*q*) of subsection (1) of section *sixteen* shall be deemed to be the payment of a dividend upon which resident shareholders' tax shall be charged, and the term "dividend "shall be so construed for the purposes of the Fifteenth Schedule;

[Subsection inserted by Act 18 of 2000 and amended by Act 10 of 2003]

29.....

[Section repealed by Act 5 of 2009]

30 Non-residents' tax on fees

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a non-residents' tax on fees in accordance with the provisions of the Seventeenth Schedule at the rate of tax fixed from time to time in the charging Act.

31 Non-residents' tax on remittances

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a non-residents' tax on remittances in accordance with the provisions of the Eighteenth Schedule at the rate of tax fixed from time to time in the charging Act.

32 Non-residents' tax on royalties

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a non-residents' tax on royalties in accordance with the provisions of the Nineteenth Schedule at the rate of tax fixed from time to time in the charging Act.

33 Additional profits tax in respect of special mining lease areas

(1) There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund an additional profits tax, determined in accordance with the Twenty-Third Schedule, in respect of the first accumulated net cash position and the second accumulated net cash position, as so determined, in respect of any special mining lease area for any year of assessment.

(2) The additional profits tax referred to in subsection (1) shall be determined, charged and levied in respect of each special mining lease area separately.

(3) Where two or more persons are holders of a special mining lease for the whole or any part of a year of assessment, those persons shall be jointly and severally liable to pay any additional profits tax referred to in subsection (1) chargeable for that year of assessment in respect of the special mining lease area concerned.

(4) Subsection (3) shall not affect any right a holder referred to in that subsection may have to claim a refund or contribution from any other such holder in respect of any amount of additional profits tax paid by him.

34 Residents' tax on interest

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a resident' tax on interest in accordance with the Twenty-First Schedule at the rate of tax fixed from time to time in the charging Act.

35 Exemption of petroleum operators and affiliates from certain taxes

(1) Where, after consultation with the Minister responsible for the administration of the Mines and Minerals Act [*Chapter 21:05*], the Minister is satisfied that it is in the interest of Zimbabwe to exempt a petroleum operator or any affiliate wholly or partly from any tax charged under section *twenty-seven*, *twenty-nine*, *thirty*, *thirty-one or thirty-two*, he may, by statutory instrument—

(*a*) declare the petroleum operator to be an approved petroleum operator for the purposes of any of those sections;

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

and may impose any limits or conditions on any such declaration.

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

(*a*) the petroleum operator or affiliate concerned shall be exempt, subject to the statutory instrument, from any tax specified therein; and

(*b*) any other person who, in terms of any other provision of this Act, is required to collect any tax specified in the notice shall be exempt, subject to the statutory instrument, from any such requirement.

(3) The Minister may at any time revoke any declaration under subsection (1) by a further statutory instrument.

(4) An affiliate, in relation to a petroleum operator, is a company which controls, is controlled by, or is under common control with, the petroleum operator and, for that purpose, a company shall not be treated as having control of another company unless it holds directly or indirectly all the share capital or voting rights in or in relation to the other company.

36 Exemption of holders of special mining leases from certain taxes

(1) Where, after consultation with the Minister responsible for the administration of the Mines and Minerals Act [*Chapter 21:05*], as 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 tax charged under section *twenty-six*, *twenty-seven*, *twenty-nine*, *thirty*, *thirty-one* or *thirty-two*, he may, by statutory instrument declare the holder concerned to be an approved holder of a special mining lease for the purposes of any of those sections.

[Subsection amended by Act 13 of 1996.]

(2) The Minister may impose limits or conditions on any declaration in terms of subsection (1).

(3) Where the Minister has published a statutory instrument in terms of subsection (1)—

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

(*b*) any other person who, in terms of any other provision of this Act, is required to collect any tax specified in the statutory instrument shall be exempt, subject to the provisions of the statutory instrument, from any such requirement.

(4) The Minister may at any time, by further statutory instrument, revoke or vary any declaration in terms of subsection (1):

Provided that the Minister shall not revoke any such declaration or vary it in such a manner as to diminish any exemption conferred by it, unless the approved holder of a special mining lease concerned—

(*a*) has consented to the revocation or variation; or

(*b*) has failed to comply with any provision of the declaration.

36A Tobacco levy

There shall be charged, levied and collected for the benefit of the Consolidated Revenue Fund a tobacco levy in accordance with the Twenty-Fourth Schedule, at the rate fixed from time to time in the charging Act.

36B Automated financial transactions tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund an automated financial transactions tax in accordance with the Twenty-Fifth Schedule, at the rate of tax fixed from time to time in the charging Act.

36C Presumptive tax

(1) For the benefit of the Consolidated Revenue, there shall be charged, levied and collected throughout Zimbabwe in accordance with the Twenty-Sixth Schedule and at the rate from time to time in the charging Act, a tax on the basis of the presumed income (commonly known as a "presumptive tax") of those persons engaging in any of the trades, occupations or undertakings specified in the Twenty-Sixth Schedule.

(1a) The Commissioner-General may, on behalf of the Zimbabwe Revenue Authority, in writing invite 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), to enter into an arrangement with the Zimbabwe Revenue 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 following presumptive taxes from persons liable to pay presumptive tax within the area of jurisdiction of the local authority—

(*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.

[Subsection inserted by Act 5 of 2010]

(1b) The arrangement entered into between a local authority referred to in subsection(la) 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-General 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-General 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.

[Subsection inserted by Act 5 of 2010]

(2) A taxpayer who, before the date of commencement of the Finance Act, 2005 or (in the case of operators of goods vehicles and driving schools) the Finance (No. 2) Act, 2005`, furnished a return under section *thirty-seven* in any year of assessment shall be not liable to pay presumptive tax in accordance with the Twenty-Sixth Schedule or, if he or she pays such tax, shall not be entitled to a tax clearance certificate in terms of the proviso to paragraph 13(1) of the Twenty-Sixth Schedule unless he or she continues to furnish a return under section 37.

[Section substituted by Act 2 of 2005 and amended by Act 8 of 2005]

36D Demutualisation levy

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a demutualisation levy in accordance with the Twenty-Seventh Schedule at the rate fixed from time to time in the charging Act.

36E Carbon tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a carbon tax in accordance with the Twenty-Eighth Schedule at the rate fixed from time to time in the charging Act.

[Section inserted by Act 18 of 2000.]

36F

[Section repealed by Act 10 of 2009]

36G Intermediated money transfer tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund an intermediated money transfer tax in accordance with the Thirtieth Schedule at the rate fixed from time to time in the charging Act.

[Section inserted by Act 15 of 2002]

36H NOCZIM debt redemption levy

(1) There shall be charged, levied and collected throughout Zimbabwe for the benefit of the NOCZIM Debt Redemption Sinking Fund a NOCZIM debt redemption levy in accordance with the Thirty-First Schedule at the rate fixed from time to time in the Charging Act.

(2) This section and the Thirty-First Schedule, and section 22 H of the Charging Act, shall lapse on the date when the debts for which NOCZIM Debt Redemption Sinking Fund was established have been repaid in full.

[Section inserted by Act 10 of 2003]

36I Property or insurance commission tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a property or insurance commission tax paid by estate agents and insurers in accordance with the Thirty-Second Schedule at the rate fixed from time to time in the charging Act.

[Section inserted by Act 29 of 2004]

36J Tax on non-executive directors' fees

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a tax on non-executive directors' fees in accordance with the Thirty-Third Schedule at the rate fixed from time to time in the charging Act.

[Section inserted by Act 12 of 2006]

36K Petroleum importers levy

There shall be charged, levied and collected from every petroleum importer who transports petroleum products by road from—

(*a*) the port of Beira in Mozambique to the Msasa Fuel Terminal in Harare; or

(*b*) the port of entry at Beitbridge to any off-loading point in Bulawayo;

a petroleum importers levy in accordance with the Thirty-Fourth Schedule at the rate fixed from time to time in the Charging Act.

[Section inserted by Act 5 of 2010]

PART V

RETURNS AND ASSESSMENTS

37 Notice by Commissioner requiring returns for assessment under this Act and manner of furnishing returns and interim returns

(1) Subject to section *thirty-seven A*, the Commissioner shall annually give public notice that all persons who fall within any of the classifications prescribed in such notice, whether personally or in any representative capacity, are required, within thirty days after the date of such notice, or within such further time as the Commissioner may for good cause allow, to furnish returns for assessment.

[Subsection amended by Act 12 of 2006]

(2) Such notice shall state the places at which the prescribed forms may be obtained, and it shall be the duty of all such persons, and of all persons required by this Act to furnish such returns, to apply for the prescribed forms of returns.

(3) Any such person failing to furnish such return shall not be relieved from any penalty by reason only of his having received no notice to furnish the same, or of the prescribed form not having been delivered to him, but the Commissioner may, if he deems it so advisable, cause forms to be delivered or sent by registered or unregistered post to any person.

(4) The Commissioner may, prior to the issue of any such annual notice, require any person by notice in writing to render an interim return for any period he may designate in such notice, and may proceed to make an assessment in respect of that period.

(5) Every person who falls within any of the classifications prescribed in the annual notice published ion terms of subsection (1) or to whom a form or notice has been delivered or sent in terms of this section shall, on publication of the annual notice or on receipt of any such form or written notice, prepare and deliver in the prescribed manner, within the period mentioned in such form or notice, to the person appointed to receive the same, a return in the form prescribed, giving the particulars required and all other details in relation thereto which may be prescribed. Such return shall be signed by the taxpayer, or by his agent duly authorized in that behalf.

(6) Any person signing any such return shall be deemed for all purposes in connection with this Act to be cognizant of all statements made therein.

(7) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act shall be deemed to be duly made and signed by the person affected, unless such person proves that such return was not made or signed by him or on his behalf.

(8) If any person fails to make such a return, the Commissioner may appoint a person to make a return on behalf of such person, and the return made by the person so appointed shall be, for all the purposes of this Act, the return of the person liable to make the same.

(9) The returns furnished by or on behalf of every person required to furnish returns under this Act shall contain such particulars, be in such form and be furnished to the person appointed to receive the same at such time as may be prescribed.

(10) The Commissioner may, when and as often as he thinks necessary, require any person to make fuller or further returns respecting any matter of which a return is required or prescribed by this Act.

(11) All returns required to be furnished under this Act shall be delivered at, or sent by post to, the prescribed address.

(12) Notwithstanding any other provision of this section, unless he is specifically called upon by the Commissioner to do so, no return need be made by a taxpayer whose taxable income consists solely of remuneration from which employees' tax has been deducted by an employer in accordance with a directive issued in terms of paragraph 20A of the Thirteenth Schedule.

[Subsection reinserted by Act 21 of 1999]

(13)

(*a*) The return of income to be made by any person in respect of any year of assessment chargeable under this Act shall be a full and true return for the whole period of twelve months ending upon the last day of that year of assessment.

(*b*)(i) Where the Commissioner is satisfied that any individual usually makes up his accounts for a period of twelve months ending on some date other than end of a year of assessment, the Commissioner may in his discretion, and subject to such terms and conditions as he may impose, accept for the year of assessment any such accounts the period of which includes a portion of such year of assessment. Any return in respect of which accounts have been so accepted shall be deemed for all purposes of this Act to be a return for the year of assessment:

Provided that where the account of an individual have been accepted for a year or period ending on some date other than the than end of a year of assessment, all subsequent accounts of the individual shall, except in the year of assessment in which the individual ceases to trade, be made up for each succeeding period of twelve months ending on that other date unless the Commissioner, subject to such terms and conditions as he may impose, otherwise agrees.

(ii) If any company makes up its accounts for a period ending on some date other than the than end of a year of assessment, the Commissioner may in his discretion accept such accounts for assessment in respect of the assessment year ending immediately before or after the closing date of such accounts, and no part of such assessment shall be charged to tax in any other year of assessment. Any return in respect of which accounts have been so accepted shall be deemed for all purposes of this Act to be a return for such year of assessment:

Provided that where the accounts of a company have been accepted for a year or period ending on some date other than the than end of a year of assessment, all subsequent accounts of the company shall be made up for each succeeding period of twelve months ending on that other date unless the Commissioner, subject to such terms and conditions as he may impose, otherwise agrees.

(iii) If the accounts of an individual or a company have been accepted by the Commissioner, in terms of a previous law, for a year or period ending on some date other than the 31st March, such acceptance shall be deemed to have been made in terms of this Act.

(*c*)(i) Where a company whose accounts have been accepted in terms of subparagraph (ii) of paragraph (*b*) ceases to operate, there shall be returned for assessment accounts which shall include all income which has been received by or accrued to such company in the period between the closing date of the late accounts so accepted for the immediately preceding year of assessment and the date when such company ceased to operate.

(ii) Where such period exceeds twelve months, separate accounts shall be rendered for a period of twelve months ending on the date accepted as the closing date of its account under subparagraph (ii) of paragraph (*b*) and for the balance of the period in excess of twelve months.

(iii) The taxable income determined on the basis of such accounts shall be charged to tax as follows—

A. if the period is in excess of twelve months, the taxable income determined on the basis of the accounts rendered for twelve months as required in terms of subparagraph (ii) shall be deemed to be the taxable income for the year of assessment succeeding that in which the taxable income based on the accounts for the immediately preceding year of assessment was assessed, and the taxable income for the remaining period shall be deemed to be the taxable income for the following year of assessment;

B. if the period is one of less than twelve months, the taxable income based on the accounts rendered in terms of subparagraph (i) shall be deemed to be the taxable income for the year of assessment succeeding that in which the taxable income based on the accounts for the immediately preceding year was assessed:

Provided that, where a company has rendered accounts for assessment and the whole or part of the taxable income determined from such accounts has been charged to tax in more than one year of assessment, either under this Act or under any previous law, then when such company ceases to operate the taxable income for the last year of assessment shall be reduced by an estimate of the taxable income which has been so charged to tax in more than one year of assessment. If such estimate exceeds the taxable income for the last year of assessment, then the taxable income for the penultimate year of assessment shall be reduced by the amount of such excess.

(iv) The said taxable income shall be assessed as the taxable income of such company notwithstanding that such company may not have been in existence during any portion of such year of assessment.

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

(15) Persons carrying on any trade in partnership shall, subject to subsection (13), in respect of each year of assessment, make a joint return of income as partners in such trade together with such particulars as may from time to time be prescribed, and such return shall, notwithstanding any provisions to the contrary contained in any agreement of partnership, be accompanied by such accounts as are necessary to show the result of the operations of the partnership for each such year of assessment, and each partner shall be separately and individually liable for the rendering of the joint return, but the partners shall be liable to tax only in their separate individual capacities:

Provided that, where because of the death of a partner accounts are prepared in order to show the results of the operations of the partnership for the period from the last accounting date to the date of the death of the partner, the surviving partners shall not be required to include their shares of the income as shown by such accounts in any return other than that for the year of assessment in which the first anniversary of the accounting date prior to the date of the death of the partner falls and their shares of income shall be deemed to accrue accordingly.

37A Self assessment

(1) Every taxpayer specified in a notice published by the Commissioner-General as a taxpayer or member of a class of taxpayers to whom this section is to apply for any year of assessment (hereafter in this section called a "specified taxpayer") shall, not later than four months after the end of the tax year—

(*a*) furnish the Commissioner-General with a self assessment return in the prescribed form reflecting such information as may be required for the calculation of tax payable in respect of that year in terms of section 7(2); and

(*b*) calculate the amounts of such tax in accordance with section 7(2) and pay the tax payable to the Commissioner-General or calculate the amount of any refund due to the taxpayer.

(2) Every specified taxpayer shall, within the period allowed in subsection (1), furnish to the Commissioner-General the return referred to in that subsection in respect of each year of assessment, whether or not tax is payable or a refund is due in respect of such year of assessment.

(3) The Commissioner-General may require any taxpayer by notice in writing to render an interim self assessment return for any period he or she may designate in such notice.

(4) The Commissioner-General may, having regard to the circumstances of any case but subject to section 71, extend the period within which such return is to be furnished or such tax is to be paid.

(5) Subject to subsection (6), a self-assessment return of income shall be signed by the specified taxpayer and include a declaration that the return is complete and accurate. Any person signing any such return shall be deemed for all purposes in connection with this Act to be cognisant of all statements made therein.

(6) A self-assessment return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act shall be deemed to be duly made and signed by the person affected, unless such person proves that such return was not made or signed by him or her or on his or her behalf.

(7) If any specified taxpayer fails or is unable to make a self assessment return, the Commissioner-General may appoint a person to make a return on behalf of such taxpayer, and the return made by the person so appointed shall be, for all the purposes of this Act, treated as the return of the specified taxpayer.

(8) Notwithstanding any other provision of this section, unless he or she is specifically called upon by the Commissioner-General to do so, no return need be made by a specified taxpayer whose taxable income consists solely of remuneration from which employees' tax has been deducted by an employer in accordance with a directive issued in terms of paragraph 20A of the Thirteenth Schedule.

(9) Where a specified taxpayer is legally incapacitated, the taxpayer's self-assessment return of income, and a declaration as to its completeness and accuracy, shall be signed by the taxpayer's legal representative.

(10) Where a specified taxpayer has furnished a self-assessment return accompanied by the relevant documents for a year of assessment, the taxpayer is deemed to have made an assessment of his or her taxable income and the tax payable on that taxable income for that year, being those respective amounts shown in the return.

(11) Where a specified taxpayer has furnished a return in terms of subsection (1), the taxpayer's return of income is treated as an assessment served on the taxpayer by the Commissioner-General on the due date for the furnishing of the return or on the actual date of furnishing the return, whichever is the later.

(12) Notwithstanding subsection (1), the Commissioner-General may make an assessment under section 46 and 47 on a specified taxpayer in any case in which the Commissioner-General considers necessary.

(13) Where the Commissioner-General raises an assessment in terms of subsection (12), the Commissioner-General shall include with the assessment a statement of reasons as to why the Commissioner-General considered it necessary to make such an assessment.

[Section inserted by Act 12 of 2006]

37B Duty to keep records

(1) Every person whose gross income does not consist solely of salary, wages or similar compensation for personal service, shall keep or cause to be kept in the English language, proper books and accounts of all his or her transactions and, unless otherwise authorised by a competent court or by the Commissioner, shall retain for a period of six years from the date of the last entry therein all ledgers, cash-books, journals, paid cheques, bank statements and deposit slips, stock sheets, invoices, and all other books of account relating to any trade carried on by him or her and recording the details from which his or her returns for the purposes of this Act were prepared.

(2) Any person who contravenes subsection (1) 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.

[Section substituted by Act 3 of 2009]

38 Income of minor children

Every parent shall include in his return—

(*a*) any income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of, any of his minor children, either directly or indirectly, from himself or from his wife or husband, together with such particulars thereof as may be required by the Commissioner; and

(*b*) any income deemed to be his in terms of subsections (3) and (4) of section *ten*.

39 Duty to furnish further returns and information

(1) Every person shall, if required by the Commissioner, furnish to him, in such form and at such time as may be prescribed or as the Commissioner may require, returns of all or any particular class of persons employed by him, and the earnings, salary, wages, allowances, advantages, benefits or pensions, whether in money or otherwise, paid or allowed to each person so employed.

(2) Every person carrying on a trade in Zimbabwe shall, in such manner and form and at such times as may be prescribed, furnish to the Commissioner returns showing—

(*a*) all payments made to any person in respect of any share or interest in such trade; and

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

(*c*) all such other information in his possession with regard to the income received by or accruing to or in favour of himself or any other person as may be prescribed or may be required by the Commissioner.

(3) In addition to the returns specified in this section and in sections *thirty-four* and *thirty-five* every person, whether a taxpayer or not, shall, as and when required by the Commissioner, make such further or other returns or furnish such further information as to any matter whatsoever as the Commissioner may require for the purposes of this Act.

(4) Every person to whom a form of return is sent by the Commissioner shall complete the same 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.

40 Commissioner to have access to all public records

(1) Notwithstanding anything to the contrary contained in any law relating to post offices or to post office savings banks or any other law, any officer in the Public Service having in his custody any registers, books, accounts, records, returns, papers, documents or proceedings, the inspection whereof may tend to secure any tax or to give proof or lead to the discovery of any fraud, offence or omission in relation to any tax, shall, without fee or charge, permit the Commissioner, or any person authorized by the Commissioner, to inspect for such purposes such registers, books, accounts, records, returns, papers, documents or proceedings and to take such notes and extracts as he may consider necessary.

(2) Every officer in the Public Service shall, if required by the Commissioner, furnish to him in such form and at such time as the Commissioner may require, such information as such officer in the Public Service is able to give from the registers, books, accounts, records, returns, papers, documents or proceedings in his custody.

(3) In any legal proceedings, civil or criminal, any such document as is referred to in subsection (1) which purports to be signed by the taxpayer or the accused, as the case may be, may on its mere production be received in evidence, unless such taxpayer or accused raises an objection that the signature is not his signature, in which case the court, before receiving such document in evidence, shall hear evidence as to whether or not the signature is that of the taxpayer or the accused, as the case may be:

Provided that no such document shall be tendered in evidence unless the taxpayer or accused, as the case may be, has been given not less than ten days' written notice of the intention so to produce such document and an opportunity to inspect the same and make a copy thereof.

(4) Notwithstanding anything to the contrary contained in any law relating to post offices or post office savings banks or any other law, in any legal proceedings under this Act, whether civil or criminal, evidence may, if relevant to the inquiry, be admitted in regard to the transactions with any bank, including the Reserve Bank of Zimbabwe, the Post Office Savings Bank and any savings bank, of the spouse or minor children of the taxpayer or accused, as the case may be, and sections 39, 40, 41, 42 and 44 of the Civil Evidence Act [*Chapter 8:01*], or 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 such evidence.

(5) Subsections (1), (2) and (3) shall apply in relation to an employee of the Posts and Telecommunications Corporation and any registers, books, accounts, records, returns, papers, documents or proceedings in his custody as they apply in relation to an officer in the Public Service and any registers, books, accounts, records, returns, papers, documents or proceedings in his custody.

41 Returns as to shareholdings

(1) Every person who makes a return of his own income or, in a representative capacity, makes a return of the income of some other person, shall, if called upon by the Commissioner to do so, attach to such return a statement showing fully—

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

(*b*) the gross dividends from any company received by or accrued to the taxpayer for whom the return is rendered and the amounts of tax, if any, deducted therefrom;

(*c*) if the taxpayer for whom the return is rendered is not entitled to retain the dividends received or accrued from any company, the name and address of the person who, under any agreement or arrangement, is entitled to receive and retain such dividends;

(*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 such taxpayer, under an agreement or arrangement with the registered owner, obtains all dividends payable by such company;

(*e*) the gross amount of the dividends and the amount of the tax, if any, deducted therefrom, so received by the taxpayer for whom the return is rendered from the person in whose name such shares are registered.

(2) Any person who has been called by the Commissioner to attach a statement to his 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 provided that the person's conduct was wilful, he 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.

[Subparagraph inserted by Act 22 of 2001]

42 Duties of companies to furnish returns and copy of memorandum and articles of association

(1) Every company shall file with the Commissioner a copy of the memorandum and articles of association constituting the company within thirty days of its incorporation or registration under any law and copies of all amendments thereto within thirty days of the making of any such amendment.

(2) Any company which, without just cause, fails or refuses to file with the Commissioner a copy of its memorandum or articles of association or any amendment thereto when required to do so by 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.

[Subparagraph inserted by Act 22 of 2001]

43 Duty of person submitting accounts in support of return or preparing accounts for other persons

(1) Every return required to be rendered by a taxpayer under the provisions of this Act shall be accompanied by all such balance sheets, trading accounts, profit and loss accounts and other accounts of whatsoever nature, as are necessary to support the information contained in the return, and all such accounts shall be authenticated by the signature of the person rendering the return.

(2) If any person submits in support of any return furnished by him under this Act any balance sheet, statement of assets and liabilities or account prepared by any other person, he shall, together with such balance sheet, statement or account, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up.

(3) Any person who has prepared any balance sheet, statement of assets and liabilities or account for any other person shall furnish such other person with the certificate or statement required under subsection (2).

(4) Any person who, without just cause, contravenes subsection (2) or (3) 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:

Provided that, if it is proved that the person's conduct was wilful, he 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.

[Subparagraph inserted by Act 22 of 2001]

44 Production of documents and evidence on oath

(1) For the purpose of obtaining full information in respect of any part of the income of a taxpayer or his liability to tax or any matter relating to the collection of his tax or any matter relating to employees' tax (as defined in paragraph 1 of the Thirteenth Schedule), the Commissioner may require any person to produce for examination by the Commissioner, or by any person appointed by him for that purpose, at such time and place and as may be appointed by the Commissioner for that purpose, any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents which the Commissioner may consider necessary for the purposes of this Act.

(2) Any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents which in terms of subsection (1) are produced to the Commissioner, or to the person appointed by him, may be retained by the Commissioner or such person for as long as they may be reasonably required for any assessment or for any criminal or other proceedings under this Act.

(3) Any person who, in terms of subsection (1), produces any deed, plan, instrument, book, record, account, trade list, stock list or document which is not a ledger, cash-book, journal, paid cheque, bank statement, deposit slip, stock sheet, invoice or other book of account required by this Act to be kept and retained by a person where gross income does not consist of salary, wages or similar compensation for personal services, may be allowed by the Commissioner any reasonable expenses necessarily incurred in producing it or obtaining and producing a copy of it.

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

(5) Where any statement has been made by any person as a result of his being examined on oath under the provisions of subsection (4), such statement shall be recorded in writing and shall be read over to or by the person making it, who, after making such corrections therein as he may think necessary, may sign it.

(6) Any person required to attend in terms of subsection (4) shall be entitled to be accompanied by a legal practitioner, accountant or other adviser, and any person making a statement in terms of subsections (4) and (5) shall be furnished with a copy thereof.

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

(*a*) without previous notice, at any reasonable time during the day enter any premises whatsoever and on such premises search for any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents;

(*b*) in carrying out any such search, open or cause to be removed and opened any article in which he suspects any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents to be contained;

(*c*) seize any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents as in his opinion may afford evidence which may be material to assessing the liability of any person for any tax;

(*d*) retain any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents for as long as they may be reasonably required for any assessment or for any criminal or other proceedings under this Act.

(8) Any officer engaged in carrying out the provisions of this Act may, if he has reasonable grounds for believing that it is necessary to do so for the enforcement of any tax—

(*a*) at any reasonable time during the day enter any business premises;

(*b*) require any person to produce for its inspection any—

(i) book, record, statement, account, trade list, stock list or other document; or

(ii) file, schedule, working paper or calculation relating to the determination of a taxpayer's income, expenses or liability for tax;

(*c*) require any person to prepare and additionally, or alternatively, to produce for inspection a print-out or other reproduction of any information stored in a computer or other information retrieval system;

(*d*) take possession of any document or other thing referred to in paragraph (*b*) or (*c*) for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry;

(*e*) require any person reasonably suspected of having committed an offence under this Act or any person who may be able to supply information in connection with a suspected offence to give his name and address.

(9) Any officer authorized in accordance with subsection (7) when exercising any power under such subsection shall on demand produce the warrant issued to him thereunder.

(10) Any person in whose deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents have been retained in terms of subsection (2) or which have been seized or taken in terms of subsection (7) or (8) shall be entitled to examine and make extracts from them during office hours or such further hours as the Commissioner may in his discretion allow and under such supervision as the Commissioner may determine.

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

[Subsection substituted by Act 15 of 2002]

(12) Any person who—

(*a*) falsely holds himself out to be an officer carrying out the provisions of this Act; or

(*b*) hinders, obstructs or assaults an officer in the exercise of his functions in terms of this Act; or

(*c*) wilfully fails to comply with any lawful demand made by an officer in the exercise of his functions in terms of this Act;

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

[Subsection substituted by Act 15 of 2002]

45 Estimated assessments

(1) In every case in which any taxpayer makes default in furnishing any return or information, or in which the Commissioner is not satisfied with the return or information furnished by any taxpayer, or, notwithstanding that a taxpayer may not have been called upon to furnish a return of income under this Act, in which the Commissioner has reason to believe that such taxpayer is about to leave Zimbabwe the Commissioner may make an assessment in which the taxpayer's taxable income or assessed loss is estimated either in whole or in part and thereupon shall give notice thereof to the taxpayer to be charged, and such taxpayer shall be liable to pay the tax upon the same if any tax is chargeable.

(2) If it appears to the Commissioner that any person is unable from any cause to furnish an accurate return of his income the Commissioner may agree with such person what shall be the amount of his taxable income or assessed loss. Any amount of taxable income or assessed loss so agreed shall not be subject to any objection and appeal:

Provided that if subsequently the Commissioner is of the opinion that the taxpayer, at the time the amount of his taxable income or assessed loss was agreed, withheld information which, had it been known to the Commissioner, would have resulted in his not agreeing to that amount, the Commissioner may, subject to section *forty-seven*, increase such agreed amount of taxable income or decrease such agreed amount of assessed loss in such manner as he may consider to be appropriate.

46 Additional tax in event of default or omission

(1) A taxpayer shall be required to pay, in addition to the tax chargeable in respect of his taxable income—

(*a*) if he makes default in rendering a return in respect of any year of assessment—

(i) an amount of tax equal to the tax chargeable in respect of his taxable income for that year of assessment; or

(ii) an amount equal to the maximum fine prescribed in subsection (1) of section *eighty-one* for the offence of failing to submit a return;

whichever is the greater;

[Paragraph amended by Act 29 of 1998]

(*b*) if he omits from his return any amount which ought to have been included therein, an amount of tax equal to the difference between the tax as calculated in respect of the taxable income returned by him and the tax properly chargeable in respect of his taxable income as finally determined after including the amount omitted;

(*c*) if he makes any incorrect statement in any return rendered by him which results or would, if accepted, result in the calculation of the tax at an amount which is less than the tax properly chargeable, an amount of tax equal to the difference between the tax as calculated in accordance with the return made by him and the tax properly chargeable if the incorrect statement had not been made;

(*d*) if he fails to disclose in any return made by him any facts which should be disclosed and the failure to disclose such facts results in the calculation of the tax at an amount which is less than the tax properly chargeable, an amount of tax equal to the difference between the tax as calculated in accordance with the return made by him and the tax properly chargeable if the disclosure had been made;

(*e*) if he makes any statement which results or would, if accepted, result in the granting of a credit exceeding the credit to which he is entitled, an amount equal to the difference between the tax with which he was chargeable as a result of his statement or would have been chargeable as a result of his statement had it been accepted and the tax with which he is properly chargeable.

(1a) Where a taxpayer, having previously been required to pay any additional tax in terms of subsection (*a*), (*b*), (*c*), (*d*) or (*e*) of subsection (1), makes any default or omission or does any act or thing that would again render him or her liable for payment of additional tax in terms of the same or a different paragraph of that subsection, he or she shall be required, in addition to the tax chargeable in respect of his or her taxable income, to pay an amount of tax equal to twice the amount payable in terms of subsection (*a*), (*b*), (*c*), (*d*) or (*e*) of subsection (1), as the case may be.

[subsection inserted by Act 10 of 2003]

(2) The additional amounts for which provision is made under this section shall be chargeable in cases where the taxable income or any part thereof is estimated by the Commissioner in terms of subsection (1) of section *forty-five* or agreed with the taxpayer in terms of subsection (2) of that section as well as in cases where such taxable income or any part thereof is determined from the return rendered by the taxpayer.

[Subsection amended by Act 29 of 1998]

(3) The powers conferred upon the Commissioner by this section shall be in addition to any right conferred upon him by this Act to take proceedings for the recovery of any penalties for evading or avoiding assessment or the payment of tax or attempting to do so.

(4) Any taxpayer who, in determining his taxable income as disclosed by his return, deducts any amount the deduction of which is not permissible under the provisions of this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this section to have omitted such amount from his return.

(5) If, in any year of assessment in which the determination of the taxable income of the taxpayer does not result in an assessed loss, he is entitled to deduct a balance of assessed loss from a previous year of assessment and such balance is less than it would have been had it been calculated on the basis of the returns rendered by him, he shall be deemed for the purposes of this section to have omitted from his return for the first mentioned year of assessment an amount equal to the difference between the amount at which such balance is finally determined and the amount at which it would have been determined on the said basis.

(6) If the Commissioner considers that the default in rendering the return was not due to any intent either to defraud the revenue or to postpone the payment by the taxpayer of the tax as chargeable, or that any such omission, incorrect statement or failure to disclose facts was not due to any intent to evade tax on the part of the taxpayer, he may remit such part or all of the said additional amount for which provision is made under this section as he may think fit.

[Subsection amended by Act 29 of 1998]

(7) Notwithstanding subsection (6), the Commissioner may, either before or after an assessment is issued, agree with the taxpayer on the additional amount to be charged and the amount so agreed shall not be subject to any objection and appeal:

Provided that if subsequently the Commissioner is of the opinion that the taxpayer, at the time the additional amount was agreed, withheld information which, had it been known to the Commissioner, would have resulted in his not agreeing to that amount, the Commissioner may, subject to section *forty-seven*, increase such agreed amount of additional tax in such manner as he may consider to be appropriate.

[Subsection amended by Act 29 of 1998]

47 Additional assessments

(1) If the Commissioner, having made an assessment on any taxpayer, later considers that—

(*a*) an amount of taxable income which should have been charged to tax has not been charged to tax; or

(*b*) in the determination of an assessed loss—

(i) an amount of income which 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 sum granted by way of a credit should not have been granted;

he shall adjust such assessment so as to charge to tax such amount of taxable income or to reduce such assessed loss or to withdraw or vary such credit, and if any tax is due either additionally, or alternatively, call upon the taxpayer to pay the correct amount of tax:

Provided that—

(i) no such adjustments or call upon the taxpayer shall be made if the assessment was made in accordance with the practice generally prevailing at the time 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 in terms of subsection (4) of section *sixty-two*.

(2) Sections *forty-five* and *forty-six* shall apply to any assessments or additional assessments or to a call for the payment of any additional sum in respect of a credit made by the Commissioner under the powers conferred by subsection (1).

48 Reduced assessments and refunds

(1) If it is proved to the satisfaction of the Commissioner that any 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, authorize a refund to such person of any tax overpaid:

Provided that—

(i) any such amended assessment issued by the Commissioner shall not be subject to any objection and appeal;

(ii) any tax payable in accordance with the practice generally prevailing and accepted by such person at the time when any assessment was made shall be deemed to have been properly so chargeable;

(iii) the Commissioner shall not authorize any reduction or refund under this subsection unless the claim thereof is made within six years after the date of the notice of assessment in question.

(2) In the case of a claim made in respect of any additional tax charged in terms of section *forty-seven*, such claim shall be restricted to such additional tax.

(3) The Commissioner shall pay interest, calculated at a rate to be fixed by the Minister by statutory instrument, 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 date, unless the overpayment was due to an incomplete or defective return or other error on the part of the taxpayer, and not to an error on the part of the Commissioner.

[Subsection inserted by Act 18 of 2004]

49 Amended assessments of loss

If it is proved to the satisfaction of the Commissioner that the assessed loss determined in favour of any person for any year of assessment is less than the amount which should have been determined for that year of assessment under this Act, the Commissioner shall issue an amended assessment increasing such assessed loss:

Provided that—

(i) any such amended assessment issued by the Commissioner shall not be subject to any objection and appeal;

(ii) a determination of assessed loss made in accordance with the practice generally prevailing and accepted by such person at the time when any assessment was made shall be deemed to have been properly determined;

(iii) the Commissioner shall not increase any assessed loss under this section unless the claim thereof is made within six years after the date of the notice of assessment in which any assessed loss was first determined.

50 Adjustment of tax, etc., payable in pursuance of assessments made before date of commencement of charging Act relating to a year or period of assessment

(1) The tax with which a person is chargeable in pursuance of an assessment which is made in respect of a year or period of assessment before the date of commencement of the charging Act relating to that year or period shall be calculated as if the last enacted charging Act were the charging Act relating to that year or period.

(2) After the date of commencement of the charging Act relating to a year or period of assessment, the Commissioner shall adjust the tax with which a person is charged or the tax paid by a person in pursuance of an assessment referred to in subsection (1) if an adjustment is required by reason of the making of provision in that Act which is different from that made in the charging Act by reference to the provisions of which the tax so charged or paid was calculated.

(3) On an adjustment made in terms of subsection (2), any amount over or short paid shall be refundable to or recoverable from the taxpayer.

(4) Notwithstanding subsection (2), the Commissioner shall not make an adjustment such as is referred to in that subsection if the Commissioner is of the opinion that an adjustment would be impracticable or cause undue delay in winding up the affairs of a trust.

51 Assessments and recording thereof

(1) All assessments required to be made under this Act shall, subject to section *four*, be made by the Commissioner or under his direction.

(2) Notice of assessment and of the amount of tax payable, where tax is payable, shall be given to the taxpayer assessed.

(3) The Commissioner shall, in the notice of assessment, give notice to the taxpayer that any objection to the assessment must be sent to him within thirty days after the date of such notice.

(4) Complete copies of all notices of assessment shall be filed in the office of the Commissioner or such office as he may designate:

Provided that any copy of a notice of assessment so filed may be destroyed by the Commissioner after the expiration of a period of six years from the date of issue of such notice of assessment.

(5) Separate assessments shall be made upon partners notwithstanding subsection (15) of section *thirty-seven*.

52 Copies of assessments

Notices of assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Commissioner of his own notices of assessment.

PART VI

REPRESENTATIVE TAXPAYERS

53 Representative taxpayers

(1) For the purposes of this Act—

"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, including an agent to whom section *fifty-eight* relates, means the agent;

(*d*) in relation to income remitted or paid by a person in Zimbabwe to a person temporarily or permanently absent from Zimbabwe, means the person remitting or paying the income;

(*e*) in relation to income paid under a decree or order of a court or judge to a receiver or other person, means the receiver or other person whether or not—

(i) the receiver or other person is entitled to the benefit of income; or

(ii) the income is receivable by or accrues to a beneficiary on a contingency or on the happening of an uncertain event;

(*f*) in relation to—

(i) the income in any year of assessment of a person whose property becomes the subject of a trust during that year by reason of his death or his becoming subject to a legal disability; or

(ii) the income of that person in any other year of assessment in respect of which a return was not made to the satisfaction of the Commissioner;

means the trustee.

(2) Nothing contained in subsection (1) shall be construed as relieving a person of any liability, responsibility or duty imposed upon him by this Act.

54 Liability of representative taxpayer

(1) Every representative taxpayer, in respect of the income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control, shall be

subject in all respects to the same duties, responsibilities and liabilities as if such income were received by or accruing to or in favour of him beneficially and shall be liable to assessment in his own name in respect of such income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(2) Every representative taxpayer referred to in paragraph (*f*) of the definition of "representative taxpayer" in subsection (1) of section *fifty-three* shall, as regards the income received by or accrued to any person prior to his death or his becoming subject to a legal disability, be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accrued to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(3) Any credit, deduction, exemption or right to deduct a loss which could be claimed by the person represented by him shall be allowed in the assessment made upon the representative taxpayer in his representative capacity.

(4) Any tax payable in respect of any assessment shall, save in the case of an assessment upon the public officer of a company, be recoverable from the representative taxpayer, but to the extent only of any assets belonging to the person whom he represents which are in his possession or under his management, disposal or control.

(5) Any tax payable in respect of any assessment made upon a public officer of a company in his capacity as such shall be recoverable from the company of which he is the public officer.

55 Right of representative taxpayer to indemnity

Every representative taxpayer who as such pays any tax shall be entitled to recover from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, so much as is required to indemnify him for the payment.

56 Personal liability of representative taxpayer

Every representative taxpayer shall be liable personally for any tax payable by him in his representative capacity if, while it remains unpaid—

(*a*) he alienates, charges or disposes of the income in respect of which the tax is chargeable; or

(*b*) he disposes of or parts with any fund or money which is in his possession or comes to him after the tax is payable when from or out of such fund or money the tax could lawfully have been paid.

57 Company or society regarded as agent for absent shareholder or member

Where a shareholder or member of a company or society is absent from Zimbabwe, such company or society shall, for the purposes of this Act, be deemed to be the agent of such shareholder or member and shall as regards such shareholder or member, and in respect of any income received by or accruing to him or in his favour as shareholder or member, have and exercise all the powers, duties and responsibilities of an agent of a taxpayer absent from Zimbabwe.

58 Power to appoint agent

(1) The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent of such other person for the purposes of this Act, and, notwithstanding anything to the contrary contained in any other law, may be required to pay any tax due from any moneys in any current account, deposit account, fixed deposit account or savings account or from any other moneys, including pensions, salary, wages or any other remuneration, which may be held by him for, or due by him to, the person whose agent he has been declared to be.

(2) For the purpose of subsection (1)—

"person" includes—

(*a*) a bank, building society or savings bank; and

(*b*) a partnership; and

(*c*) any officer in the Public Service;

"tax" includes—

(*a*) interest payable by virtue of subsection (2) of section *seventy-one*, subsection (6) of section *seventy-two* or subsection (3) of section *seventy-three*; and

(*b*) provisional tax referred to in section *seventy-two*; and

(*c*) employees tax referred to in section *seventy-three*; and

(*d*) any additional tax or other penalty payable under this Act;

(*e*) any levy or sum payable in terms of section *fourteen* of the charging Act.

[Definition substituted by Act 4 of 1996 and Act 13 of 1996.]

59 Remedies of Commissioner against agent and trustee

Against all property of any kind vested in or under the control or management of any agent or trustee the Commissioner shall have the same remedies and in as full and ample a manner as he has against the property of any other person who is liable to pay tax.

60 Power to require information

(1) For the purposes of sections *fifty-eight* and *fifty-nine*, the Commissioner may require any person to give him information in respect of any moneys, funds or other assets which may be held by him for, or due by him to, any other person.

(2) For the purpose of subsection (1)—

"person" has the same meaning as it has for the purpose of section *fifty-eight*.

61 Public officer of companies

(a1) In this section, "company" includes a private business corporation.

[Subsection inserted by Act 2 of 2005]

(1) Every company which carries on a trade or has an office or other established place of business in Zimbabwe shall at all times be represented by an individual residing therein.

(a1) In this section "company" includes a private business corporation.

[Subsection inserted by Act 2 of 2005]

(2) Such individual shall be a person approved by the Commissioner and shall be appointed by the company or by an agent or legal practitioner who has authority to appoint such a representative for the purposes of this Act:

Provided that, in the event of any company being placed under judicial management or in voluntary or compulsory liquidation, the judicial manager or liquidator duly appointed shall be required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under this Act during the continuance of such management or liquidation.

(3) The representative shall be called the public officer of the company and shall be appointed, in the case of a company which begins to carry on a trade, or establishes an office or other place of business in Zimbabwe, within one month from the establishment of such office or other place of business.

(4) In default of any such appointment, the public officer of any company shall be such managing director, director, secretary or other officer of the company as the Commissioner may designate for that purpose.

(5) Every such company, within the period prescribed by subsection (3), shall also appoint a place within Zimbabwe at which any notices or other documents under this Act affecting the company may be served or delivered, or to which any such notices or documents may be sent.

(6) No appointment shall be deemed to have been made under subsection (3) or (5) until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to the Commissioner.

(7) Every such company shall keep the office of public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with subsection (5), and every change of public officer or of the place for the service or delivery of notices shall be notified to the Commissioner within thirty days of such change taking effect.

(8) Any company which 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 incur a penalty not exceeding level five for every day during which the default continues, and every such penalty shall be recoverable by the Commissioner by action in any court of competent jurisdiction.

[Subsection amended Act 2 of 2005]

(8a) If a defaulting company referred to in subsection (8) 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 company 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.

[Subsection inserted by Act 8 of 2005]

(9) Every notice, process or proceeding which under this Act may be given to, served upon or taken against any company may be given to, served upon or taken against its public officer, and if at any time there is no public officer then any such notice, process or proceeding may be given to, served upon or taken against any officer or person acting or appearing to act in the management of the business or affairs of such company or as agent of such company.

(10) Every public officer shall be answerable for the doing of all such acts, matters or things as are required to be done under this Act by a taxpayer, and in case of default shall be liable to the penalties provided in respect of defaults by a taxpayer.

(11) Everything done by any public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

(12) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with the provisions of this Act, but the company shall in all respects be subject to and liable to comply with this Act as if there were no requirement to appoint such officer.

PART VII

OBJECTIONS AND APPEALS

62 Time and manner of lodging objections

(1) Any taxpayer who is aggrieved by—

(*a*) any assessment made upon him under this Act; or

(*b*) any decision of the Commissioner mentioned in the Eleventh Schedule; or

(*c*) the determination of a reduction of tax in terms of section *ninety-two*, *ninety-three*, *ninety-four*, *ninety-five* or *ninety-six*;

may, unless it is otherwise provided in this Act, object to such assessment, decision or determination within thirty days after the date of the notice of assessment or of the written notification of the decision or determination in the manner and under the terms prescribed by this Act:

Provided that nothing herein contained shall give a further right of objection to the amount of any assessed loss determined in respect of the previous year of assessment.

(2) No objection shall be entertained by the Commissioner which is not delivered at his office or posted to him in sufficient time to reach him on or before the last day appointed for lodging objections, unless the taxpayer satisfies the Commissioner that reasonable grounds exist for delay in lodging his objection.

(3) Every objection shall be in writing and shall specify in detail the grounds upon which it is made.

(4) On receipt of a notice of objection to an assessment, a decision or the determination of a reduction of tax the Commissioner—

(*a*) may reduce or alter the assessment, alter the decision or, as the case may be, increase or alter the reduction or may disallow the objection; and

(*b*) shall send the person upon whom the assessment has been made or to whom the decision has been conveyed or, as the case may be, to whom the reduction has been allowed, notice of the reduction, increase, alteration or disallowance.

Provided that, if the Commissioner has not notified the person who lodged the objection of his decision on it within three months after receiving the notice of objection, or within such longer period as the Commissioner and that person may agree, the objection shall be deemed to have been disallowed.

[Proviso amended by Act 8 of 2005]

(5) If—

(*a*) no objection to an assessment or the determination of a reduction of tax has been made; or

(*b*) an objection to an assessment or the determination of a reduction of tax has been disallowed or withdrawn;

the assessment or reduction shall, subject to any adjustment made in terms of section *forty-seven* or the decision of a court on an appeal determined in pursuance of this Part, be final and conclusive.

(6) If an objection to an assessment or the determination of a reduction of tax has been allowed, the assessment or reduction as reduced, increased or altered shall, subject to any adjustment made in terms of section *forty-seven* or the decision of a court on appeal determined in pursuance of this Part, be final and conclusive.

63 Burden of proof as to exemptions, deductions or abatements

In any objection or appeal under this Act, the burden of proof that any amount is exempt from or not liable to the tax or is subject to any deduction in terms of this Act or credit, shall be upon the person claiming such exemption, non-liability, deduction or credit and upon the hearing of any appeal the court shall not reverse or alter any decision of the Commissioner unless it is shown by the appellant that the decision is wrong.

64 Special Court for Income Tax Appeals and proceedings on appeal

(1) For the purpose of hearing and determining appeals in accordance with section *sixty-five* or any proceedings incidental thereto or connected therewith, there is hereby established a court which shall be a court of record and be known as the Special Court for Income Tax Appeals.

(2) The Special Court shall be presided over by a President, who shall be a person who is qualified in terms of subsection (3) and appointed as President of the Special Court in terms of subsection (1) of section 92 of the Constitution:

Provided that, if no person has been so appointed or if such person is for any reason unable to serve as President of the Special Court, the Chief Justice may, after consulting the Judicial Service Commissioner, appoint a judge or acting judge of the High Court to be President of the Special Court for such period as he may specify.

(3) A person shall not be qualified for appointment in terms of subsection (2) unless—

(*a*) he is a former judge of the Supreme Court or the High Court; or

(*b*) he is qualified for appointment as a judge of the Supreme Court or the High Court.

(4) A person appointed in terms of subsection (2) may be appointed—

(*a*) from time to time to deal with any particular case; or

(*b*) for a particular period:

Provided that a judge or acting judge appointed by the Chief Justice in terms of the proviso to subsection (2) shall preside over the Special Court for such period as the Chief Justice may specify.

(5) Subject to subsection (2) of section 92 of the Constitution, the conditions of service of a President of the Special Court, and the remuneration and allowances payable to any assessors who may be appointed in terms of section *sixty-seven*, shall be as determined from time to time by the President.

(6) The Special Court shall sit at all times as may be fixed by the President of the Special Court and at such places as may be appointed by the Judge President of the High Court.

(7) The Registrar of the High Court shall be the Registrar of the Special Court and shall ensure the proper functioning of the court.

[Subsection amended by Act 12 of 2006]

(8) The procedure for the institution and hearing of appeals to the Special Court shall be in accordance with this Part and the rules set out in the Twelfth Schedule.

65 Appeals from decision of Commissioner to High Court or Special Court

(1) Any taxpayer entitled to object and who is dissatisfied with the decision or deemed decision of the Commissioner in terms of subsection (4) of section *sixty-two*, may, in accordance with the rules set out in the Twelfth Schedule, appeal therefrom either—

(*a*) to the High Court; or

(*b*) to the Special Court.

(2) Every notice of appeal shall be in writing, shall state whether the appellant wishes to appeal to the High Court or to the Special Court and shall be lodged with the Commissioner within twenty-one days after the date of the notice mentioned in subsection (4) of section *sixty-two* or, as the case may be, after the expiry of the period mentioned in the proviso to that subsection. Unless such notice of appeal has been lodged within the period prescribed by this subsection, it shall be of no effect whatsoever and the objection shall not be considered further:

Provided that the High Court or the Special Court to which the appellant wishes to appeal may, on good cause being shown or by agreement of the parties, extend the said period.

(3) If any person fails to lodge the statement to which rule 5 in the Twelfth Schedule relates within the period specified in that rule, the appeal shall be deemed to have lapsed unless the High Court or the Special Court, on good cause being shown, grants relief from the provisions of this subsection.

(4) At the hearing of any such appeal the arguments of the appellant shall be limited to the grounds stated in his notice of objection:

Provided that the High Court or the Special Court which hears such appeal may, on good cause being shown or by agreement of the parties, grant leave to the appellant to rely on other grounds.

(5) If the assessment has been altered or reduced, the assessment as altered or reduced shall be deemed to be the assessment against which the appeal is made.

(6) The hearing of an appeal under this section may be adjourned by the High Court or the Special Court, as the case may be, from time to time to any time and place that may seem convenient.

(7) Notwithstanding anything to the contrary contained in any other law, the sittings of the High Court and of the Special Court for the hearing of appeals under this section shall not be public, and either the High Court or the Special Court shall at any time, on the application of the appellant, exclude from such sittings, or require to withdraw therefrom, all or any persons whosoever whose attendance is not necessary for the hearing of the appeal under consideration:

Provided that the High Court or the Special Court may authorize the publication of the legal considerations on which its judgment in any case is based.

(8) On the hearing and determination of any appeal under this section by the High Court, appearance on behalf of the Commissioner or the appellant or any other person who is interested in such appeal shall be in accordance with the laws and rules of court governing such appearance.

(9) On the hearing and determination of any appeal to the Special Court, the Commissioner or any person authorized by him may appear in support of the assessment, and the appellant may appear in person or represented by a legal practitioner or by an agent authorized by him in writing.

(10)

(*a*) Subject to this Act, the High Court or the Special Court, whichever hears an appeal under this section, may order any assessment or decision under appeal to be amended, reduced, withdrawn or confirmed or may, if it so thinks fit, refer the assessment or decision back to the Commissioner for further investigation and assessment or decision. Any assessment or decision made by the Commissioner on such reference shall be subject to objection and appeal as provided in this Part.

(*b*) The power conferred upon the High Court or the Special Court by paragraph (*a*) shall, in the case of an appeal against any decision of the Commissioner made in the exercise of his discretion under subsection (6) of section *forty-six*, include the power to restore in part or in whole such portion of the additional tax imposed under subsection (1) of that section as may have been remitted by the Commissioner.

(11) The Commissioner shall give effect, by the issue of such assessments as may be necessary, to any decision of the High Court or the Special Court under this section.

(12) The High Court or the Special Court to which an appeal is made under this section shall not make any order as to costs save when the claim of the Commissioner is held to be unreasonable or the grounds of appeal therefrom to be frivolous.

(13) Subject to section *sixty-six,* any decision of the High Court or the Special Court under this section shall be final and without appeal.

66 Appeals from determination of High Court or Special Court to Supreme Court

(1) On the determination by the High Court or the Special Court of an appeal under section *sixty-five* or other proceedings incidental to or connected therewith, the appellant or the Commissioner, if dissatisfied with the determination—

(*a*) may appeal to the Supreme Court on any ground of appeal which involves a question of law alone;

(*b*) may, with the leave of a judge of the High Court or a President of the Special Court, as the case may be, or, if such judge or President refuses to grant leave, with the leave of a judge of the Supreme Court, appeal to the Supreme Court on any ground of appeal which involves a question of fact alone or a question of mixed law and fact.

(2) Notwithstanding anything to the contrary contained in any other law, the sittings of the Supreme Court for the hearing of appeals under subsection (1) shall not be public and the Supreme Court shall at any time, on the application of the appellant in the court below, exclude from such sittings, or require to withdraw therefrom, all or any persons whomsoever whose attendance is not necessary for the hearing of the appeal under consideration:

Provided that the Supreme Court may authorize the publication of the legal considerations on which its judgment in any case is based.

67 Assessors

For the hearing of any appeal under the provisions of this Part, the presiding judge or a President of the Special Court may, either of his own motion or on the application of either party, appoint one or two assessors to advise at such hearing. Any assessor appointed in terms of this section shall act in a purely advisory capacity and shall have no right to vote on any decision.

68 Decisions not subject to objection or appeal

Save as is provided in paragraph (*b*) of subsection (1) of section *sixty-two*, no decision of the Commissioner shall be subject to objection or appeal.

69 Payment of tax pending decision on objection and appeal

(1) The obligation to pay and the right to receive any tax chargeable under this Act shall not, unless the Commissioner otherwise directs and subject to such terms and conditions as he may impose, be suspended pending a decision on any objection or appeal which may be lodged in terms of this Act.

(2) If any assessment or decision is altered on appeal, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded and amounts short paid shall be recoverable.

70 Judge and assessors not disqualified from adjudicating or advising

A judge of the Supreme Court or of the High Court or a President of the Special Court or any assessor of any such courts shall not, solely on account of his liability to tax under this Act, be deemed to be interested in any matter upon which he may be called upon to adjudicate or advise thereunder.

PART VIII

PAYMENT AND RECOVERY OF TAX

71 Appointment of day and place for payment of tax

(1) Tax shall become due and payable on such date and shall be paid on or before such days and at such places as are fixed or prescribed by or under this Act or, where no such time or place is so fixed or prescribed, as may be notified by the Commissioner, and may be paid in one sum or in instalments of equal or varying amounts as may be determined by the Commissioner, having regard to the circumstances of the case:

Provided that nothing herein contained shall deprive any taxpayer of the right to pay his tax through the post.

[Subsection amended by Act 18 of 2000]

(2) If tax is not paid on or before such days and at such places as are fixed or prescribed by or under this Act or, where no such time or place is so fixed or prescribed, as are notified by the Commissioner in terms of subsection (1), interest, calculated at a rate to be fixed by the Minister, by statutory instrument, shall be payable on so much of the tax or an instalment of the tax, as the case may be, as from time to time remains unpaid by the tax-

payer during the period beginning on the date specified by the Commissioner in the notification as the date on which the tax or the instalment of the tax shall be paid and ending on the date the tax or the instalment of 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.

[Subsection inserted by Act 10 of 2003]

(3) For the avoidance of doubt it is declared that where any person responsible for the payment of any tax to the Commissioner in terms of the Ninth, Thirteenth, Fifteenth, Sixteenth, Seventeenth or Eighteenth Schedule fails, within the time provided by the Schedule concerned to pay the tax, 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 in the Schedule concerned for its payment and ending on the date the tax is paid in full.

[Subsection inserted by Act 10 of 2003]

72 Payment of provisional tax

(1) In this section—

"notice of assessment" means a notice referred to in subsection (2) of section *fifty-one*, stating the amount of tax to be paid by a person;

"provisional tax", in relation to any person, means an amount which he or she estimates will be the amount of tax liable to be paid by him or her after excluding any employees' tax which has been withheld in terms of the Thirteenth Schedule from any remuneration paid or payable to him or her in respect of the same year of assessment;

"quarterly payment date", means the day fixed in terms of this section as the day on or before which an instalment of provisional tax shall be paid;

"relevant year of assessment", in relation to any 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 in respect of the relevant year of assessment.

(2) Subject to this section, where a person's taxable income in any year of assessment includes an amount in respect of which employees' tax is not withheld in terms of the Thirteenth Schedule, he or she shall pay provisional tax on that amount in four quarterly instalments:

Provided that the following persons who would otherwise be liable to pay provisional tax under this section shall pay tax in the manner notified by the Commissioner-General under section *seventy-one*—

(i) persons liable for property or insurance commission tax in terms of section *thirty-six I*; and

(ii) any other class of taxpayer as the Commissioner-General may, by public notice, specify for the purposes of this proviso.

(3) Every provisional taxpayer shall, during every period within which provisional tax is or may be payable, submit to the Commissioner-General, together with a return in the form prescribed by the Commissioner-General, an estimate of the total taxable income which will be derived by the taxpayer in the year of assessment in respect of which provisional tax is or may be payable by the taxpayer.

[Subsection substituted by Act 6 of 2006]

(4) If any provisional taxpayer fails to submit any estimate or return as required by subsection (3), the Commissioner-General may estimate the taxable income which is required to be estimated, and such estimate shall be final and conclusive.

[Subsection substituted by Act 6 of 2006]

(5) The Commissioner-General may call upon any provisional taxpayer to justify any estimate made by him or her in terms of subsection (3), or to furnish particulars of his or her income and expenditure or any other particulars that may be required, and, if the Commissioner-General is dissatisfied with the said estimate, he may increase the amount thereof to such amount as he considers reasonable, and the estimate as increased shall be final and conclusive.

(6) Any decision of the Commissioner-General in the exercise of his discretion under subsection (4) or (5) shall be subject to objection and appeal.

(7) Subject to this section, the instalments of provisional tax payable in terms of subsection (2) shall be paid 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 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

(*d*) 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:

Provided that, for the avoidance of doubt, the Commissioner shall waive interest under circumstances where the tax-payer fails to forecast profits within a ten *per centum* margin of error.

[Subsection amended by Act 16 of 2007]

(8) As soon as practicable after the tax payable by a person has been determined, the Commissioner-General shall—

(*a*) set off any amount of provisional tax the person may have paid against, successively—

(i) the tax the person is liable to pay; and

(ii) any other tax or amount due and payable to the Commissioner-General

by the person;

and

(*b*) refund to the person any amount of provisional tax not so credited.

(9) Subsection (2) of section *seventy-one*, other than the proviso thereto, shall, subject to subsections (7) and (8), apply, *mutatis mutandis*, to any amount of provisional tax remaining unpaid after the quarterly payment date on or before which the instalment was required to be paid.

(10) For the purposes of subsection (9), if the amount of a quarterly instalment of tax paid by a person is less than ten *per centum* or forty *per centum*, as the case may be, of the amount of tax actually due, such deficit shall be deemed to be an amount of provisional tax remaining unpaid by him or her after the quarterly payment date on which the instalment was required to be paid.

(11) If the Commissioner-General is satisfied that a person required to pay provisional tax under this section—

(*a*) was, through special circumstances, unable 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-General may waive the whole or part of any interest payable by the person by virtue of subsection (9).

(12) Section *seventy-four* shall apply to the payment of provisional tax in the same way as it applies to the payment of tax.

(13) Notwithstanding any other provision of this section—

(*a*) this section shall not apply to any person whose taxable income, apart from income in respect of which employees' tax is required to be withheld in terms of the Thirteenth Schedule, does not exceed such amount as may be prescribed by the Minister by notice in the *Gazette*;

(*b*) the Commissioner-General may, by written notice to the person concerned, fix different dates from those specified in paragraphs (*a*), (*b*), (*c*) and (*d*) of subsection (7) as any person's annual payment dates, and this section shall apply to that person accordingly.

[Section substituted by Act 29 of 2004]

73 Payment of employees' tax

(1) Employees' tax shall be payable in terms of the Thirteenth Schedule in respect of the remuneration 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) Payments in respect of the amounts withheld under subparagraph (1) of paragraph 3 of the Thirteenth Schedule shall be made in accordance with that Schedule at such place as may be notified by the Commissioner.

(3) If any amount of employees' tax is not paid in full within the period prescribed for payment thereof by subparagraph (1) of paragraph 3 of the Thirteenth Schedule, interest shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be paid by the employer at a rate to be fixed by the Minister, by statutory instrument, on so much of such amount as from time to time remains unpaid by the employer during the period beginning on the day next following the last day of the period prescribed as aforesaid and ending on the day such amount is paid in full.

74 Persons by whom tax is payable

(1) Tax shall, subject to the provisions of this Act, be payable—

(*a*) in respect of income to which a representative taxpayer is entitled in his representative capacity or of which in that capacity he has the management, receipt, disposal, remittance, payment or control, by the representative taxpayer; and

(*b*) in respect of income not referred to in paragraph (*a*) which accrues or is deemed to accrue to or in favour of or is received or deemed to be received by a person, by the person to whom or in whose favour the income accrues or is deemed to accrue or by whom the income is received or is deemed to be received.

(2) A taxpayer in whose income there is included an amount which would, but for subsection (3), (4), (5) or (6) of section *ten* be included in the income of some other person, may recover from that other person so much of the tax paid by the taxpayer as is attributable to the inclusion of that amount in the income of the taxpayer.

75 Temporary trade

(1) Where the Commissioner has reason to believe that any person intends carrying on a trade in Zimbabwe for a limited period only he may at any time and from time to time require that 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 derived by that person from sources within, or deemed to be within, Zimbabwe.

(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.

[Subsection inserted by t Act No. 22 of 2001]

76 No tax payable in certain circumstances

(1) Notwithstanding any other provision of this Act or a charging Act, no tax in respect of a year of assessment shall be payable by a person if his liability for such tax or, if he is liable to pay two or more taxes, the aggregate of such taxes in respect of that year, is less than fifty United States cents or such other amount as the Minister may fix in regulations made under section *ninety*.

[Subsection amended by Act 29 of 2004 and Act 5 of 2009]

(2) Notwithstanding anything contained in this Act or any charging Act, no further income tax in respect of a year of assessment shall be payable by an individual if his liability for income tax in respect of that year exceeds by less than fifty United States cents or such other amount as the Minister may fix in regulations made under section *ninety* the amount credited in payment of that tax in terms of paragraph 18 of the Thirteenth Schedule.

[Subsection amended by Act 29 of 1998 and by Act 29 of 2004 and Act 5 of 2009]

77 Recovery of tax

(1) Any tax shall, when it becomes due or is payable, be deemed to be a debt due to the State and shall be payable to the Commissioner in the manner and at the place prescribed, and may be sued for and recovered by action by the Commissioner in any court of competent jurisdiction.

(2) Notwithstanding anything contained in any law relating to magistrates courts, any amount whatsoever due and payable under this Act shall be recoverable by action in the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable under this Act.

(3) If a person by whom tax is due and payable transfers or has transferred any asset to a relation with the intention of avoiding recovery of the tax, the relation shall be deemed to be chargeable with the tax up to an amount equal to the fair market value of the asset—

(*a*) when it was so transferred; or

(*b*) when the relation is charged with the tax; whichever value is the greater.

(4) If it is proved that—

(*a*) after any tax became due and payable by him, or within one year before it became due and payable, a person transferred an asset to a relation; and

(*b*) the transfer was not one which is normally effected between relations in the same financial circumstances as that person and his relation;

it shall be presumed, unless the contrary is proved, that he transferred the asset with the intention of avoiding recovery of the tax.

(5)

(*a*) If any tax due and payable by a partner in any business, which is referable to the taxable income derived from the partnership business, is outstanding after his assets in Zimbabwe, other than his interest in the assets of the partnership, have been excused or taken in execution, the partnership shall be deemed to be chargeable with the tax outstanding which shall become due and payable by it on such date as the Commissioner may specify in a notification given to it for that purpose in terms of subsection (1) of section *seventy-one* and that partner shall be released from the payment of so much of the tax outstanding as is recovered by the Commissioner in pursuance of that notification:

Provided that the amount of tax recoverable from the partnership shall not exceed the value of such partner's interest in the assets of the partnership.

(*b*) The amount of tax referable in terms of paragraph (*a*) shall be the proportion of the total tax due by the partner determined in accordance with the ratio that the partner's taxable income derived from the partnership business bears to his total taxable income.

(6) So much of any tax payable by any person under this Act as is due to the inclusion in his income of any income deemed to have been received by or accrued to him or to be his income, as the case may be, in terms of subsection (3), (4), (5) or (6) of section *ten*, may be recovered by the Commissioner from the assets by which the income so included was produced.

(7) In subsections (3) and (4)—

"relation" in respect of—

(*a*) an individual, means a near relative;

(*b*) a company, means another company which, in the Commissioner's opinion, is under the same or substantially the same control or is a member of the same group of companies.

78 Form of proceedings

(1) Proceedings in any court for the recovery of any tax shall be deemed to be proceedings for the recovery of a debt validly acknowledged in writing by the debtor.

(2) In any action or proceedings for the recovery of any 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 thereto.

79 Evidence as to assessments

The production of any document under the hand of the Commissioner or of any officer duly authorized by him purporting to he a copy of an extract from any notice of assessment shall be conclusive evidence of the making of such assessment and, except in the case of proceedings on appeal against the assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such document are correct.

80 Withholding of amounts payable under contracts with State or statutory corporations

(1) In this section—

"contract" means a contract in terms of which the State or a statutory body, quasi-Governmental institution or registered taxpayer is obliged to pay one or more persons an amount or amounts totalling or aggregating five hundred million dollars more or, where the contract is denominated in foreign currency, two hundred and fifty United States dollars or more, but does not include—

(*a*) an agreement for the settlement of a delictual claim against the State or a statutory corporation; or

(*b*) an employment contract; or

(*c*) a sale effected in any shop in the ordinary course of the business of such shop, or any other consumer contract for the sale or supply of goods or services or both (other than a contract for the sale, letting or hire of immovable property), in which the seller or supplier is dealing in the course of business and the purchaser or user is not;

[Definition substituted by Act 2 of 2005 and amended by Act 16 of 2007 and Act 3 of 2009]

"payee" means a person to whom any amount is payable in terms of a contract;

"paying officer" means an officer or employee of the State or a statutory body, a quasi-Governmental institution or registered taxpayer who is responsible for paying a payee any amount due to him in terms of a contract;

[Definition amended by Act 29 of 2004]

"quasi-Governmental institution" means any person, whether corporate or unincorporated—

(*a*) established directly by or under any enactment for special purposes specified in that enactment; or

(*b*) wholly owned or controlled by the State that discharges statutory functions;

[Definition inserted by Act 29 of 2004]

"registered taxpayer" means a person who is registered—

(*a*) as an employer in terms of the Thirteenth Schedule; or

(*b*) as a taxpayer in the records of the Commissioner-General otherwise than as an employer; or

(*c*) as a depositary in terms of section 22FA of the Capital Gains Tax Act [*Chapter 23:01*]; or

(*d*) as a registered operator in terms of the Value Added Tax Act [*Chapter 23:13*].

[Definition inserted by Act 29 of 2004]

(2) Subject to this section, unless a payee furnishes the paying officer with a tax clearance certificate, the paying officer shall withhold ten *per centum* of each amount payable to the payee under the contract concerned, 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.

[Subsection substituted by section 9 of Act 2 of 2005 and amended by Act 10 of 2009]

(3) Where a paying officer has withheld any amount in terms of subsection (2) he shall furnish the payee concerned with a certificate, in a form approved by the Commissioner, showing the amount so withheld.

(4) The Commissioner shall retain any amount remitted to him under subsection (2) until the income tax payable by the payee concerned for the year of assessment referred to in that subsection has been assessed, whereupon—

(*a*) the amount shall be allowed as a credit against the income tax so payable by the payee; or

(*b*) where the amount exceeds the income tax so payable by the payee, the Commissioner shall forthwith refund the excess to the payee.

(5) No action shall lie against the State, statutory body, quasi-Governmental institution, registered taxpayer or a paying officer in respect of withholding of any amount in terms of this section, nor shall such withholding constitute a breach of the contract concerned.

[Subsection amended by Act 29 of 2004]

(6) A person who concludes a contract on behalf of the State, a statutory body, quasi-Governmental institution or registered taxpayer shall take all necessary 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 relieve a paying officer of his obligations under this section.

[Subsection amended by Act 29 of 2004]

(7) Subject to subsection (9), if a statutory body, quasi-Governmental institution or registered taxpayer fails to withhold or to pay the Commissioner any amount required to be withheld from a payee in terms of this section, the statutory body, quasi-Governmental institution or registered taxpayer shall be liable for the payment to the Commissioner, not later than the date on which payment should have been made if the amount had been withheld in terms of subsection (2), of—

(*a*) the amount which the statutory body, quasi-Governmental institution or registered taxpayer failed to withhold or to pay to the Commissioner; and

(*b*) a further amount equal to such amount.

[Subsection inserted by Act 2 of 2005]

(8) The amounts for the payment of which a statutory body, quasi-Governmental institution or registered taxpayer is liable in terms of subsection (7)—

(*a*) shall be debts due by the statutory body, quasi-Governmental institution or registered taxpayer to the State; and

(*b*) may be sued for and recovered by action by the Commissioner in any court of competent jurisdiction.

(9) The Commissioner may, if he or she is satisfied that a failure to withhold or to pay to him or her any amount required to be withheld from a payee in terms of this section was not due to an intent to evade this section, 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 subsection (7)(*b*).

[Subsection inserted by Act 2 of 2005]

(10) If a defaulting statutory body, quasi-Governmental institution or registered taxpayer referred to in subsection (7) 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 statutory body, quasi-Governmental institution or registered taxpayer 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.

[Subsection inserted by Act 8 of 2005]

80A Valid tax clearance certificate required before certain trades, services or entities licensed or registered

(1) In this section—

"holder", "mining location" and "tributor" have the meanings assigned to those terms in paragraph 1(2) of the Twenty-Sixth Schedule;

"licensing authority" means—

(*a*) in respect of public service vehicles, the Commissioner of Road Transport referred to in section 3 of the Road Motor Transportation Act, 1997 (Act No, 1 of 1997) or any Assistant Commissioner of Road Transport;

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

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

(*d*) in respect of the persons who own, conduct or operate designated tourist facilities as defined in the Tourism Act [*Chapter 14:20*] or who provide or assist in providing any services which are such designated tourist facilities the licensing authority as defined in that Act;

"miner" means any person who is—

(*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*];

"public service vehicle" means a motor vehicle in respect of whose operation an operator's licence is required in terms of the Road Motor Transportation Act, 1997 (Act No. 1 of 1997).

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

(*a*) any operator's licence in respect of the operation of any public service vehicle; or

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

(*c*) a licence in respect of any trade or business required to be licensed 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 operator, miner, person carrying on the trade or business or person referred to in paragraph (*d*), as the case may be, 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 unless the person applying for registration or incorporation produces to the registrar (in addition to, and together with, the other documentation required to be lodged with the registrar by the Companies Act [*Chapter 24:03*] or the Private Business Corporations Act [*Chapter 24:11*], as the case may be) a valid tax clearance certificate relating to the appointment of a public officer of the company or private business corporation in accordance with section 61.

[Section substituted by Act 2 of 2005]

PART VIIIA

APPLICATION OF INFORMATION TECHNOLOGY TO ACT

[Part VIIIA (sections 80B to 80K) inserted by Act 12 of 2006]

80B Interpretation in Part VIIIA

In this Part—

"access", means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network;

"affixing a digital signature", in relation to an electronic record or communication, means authenticating the 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, arithmetic and memory functions by manipulation of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer 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, and which complies with the requirements for acceptance as a digital signature specified in subsection (1) of section *eighty G*;

"electronic data" means any information, knowledge, fact, concept or instruction stored internally in the memory of the computer or represented in any form (including computer printouts, magnetic optical storage media, punched cards or punched tapes) that is being or has been prepared in a formalised manner and is intended to be or is being or has been processed in a computer system or network;

"electronic record or communication" means electronic data that is recorded, received or sent 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" has the meaning given to that word by the Postal and Telecommunications Act [*Chapter 12:05*];

"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 in terms of section *eighty F*;

"user agreement", means the agreement between the registered user and the Commissioner referred to in section *eighty E*.

80C Use of electronic data generally as evidence

(1) Notwithstanding anything to the contrary contained in any other law, the admissibility in evidence of any electronic data for any purpose under this Act shall not be denied—

(*a*) on the sole ground that it is electronic data; or

(*b*) if it is the best evidence that the person adducing it can reasonably be expected to obtain, on the grounds that it is not in original form.

(2) Information in the form of electronic data shall be given due evidential weight.

(3) In assessing the evidential weight of electronic data a court shall have regard to such of the following considerations as may be applicable in the circumstances of the case—

(*a*) the reliability of the manner in which the data was generated, stored and communicated; and

(*b*) the reliability of the manner in which the integrity of the data was maintained; and

(*c*) the manner in which its originator was identified.

80D Establishment of computer systems for tax purposes

The Commissioner may, notwithstanding anything to the contrary in this Act, 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 and receipt and processing of any return, record, assessment, declaration, form, notice, statement or other document relating to any amount liable to tax; and

(*b*) the electronic processing of any register, book, account, record, return, paper, assessment or other document.

80E User agreements

(1) The Commissioner may, for the purpose of regulating communication through a computer system established in terms of section *eighty D*, prescribe the form of a user agreement to be entered between the Zimbabwe Revenue Authority and registered users.

(2) A user agreement shall set out—

(*a*) the terms and conditions governing communication through a computer system established in terms of section *eighty D*, including—

(i) the use by registered users of computer equipment and facilities of a class or kind specified in the agreement;

(ii) the allocation to a registered user of a digital signature by the Commissioner;

(iii) the requirement that registered users ensure the security of the digital signatures allocated to them in the manner specified in the agreement;

(*b*) the manner of affixing a digital signature to any electronic communication or record;

(*c*) the conditions of reasonable access to the computer system of the registered user by the Commissioner for such verification and audit purposes as may be required by this Act;

(*d*) the manner and period of keeping electronic records that are necessary or convenient to be kept in connection with a computer system established in terms of section *eighty D*.

80F Registration of registered users and suspension or cancellation of registration

(1) No person shall communicate with the Commissioner through a computer system established in terms of section *eighty D* unless such person is a registered user.

(2) An application for registration as a registered user shall be made in the prescribed form, and be accompanied by the user agreement completed by the applicant and the prescribed fee, if any, and such other information as the Commissioner may reasonably require the applicant to furnish in support of the application.

(3) If, after considering an application in terms of subsection (2) and making such enquiries as he or she may deem necessary, the Commissioner is satisfied that the applicant—

(*a*) is a person who will make regular use of the computer system established in terms of section *eighty D*;

(*b*) will introduce adequate measures to—

(i) prevent disclosure of the digital signature allocated to him or her by the Commissioner to any person not authorised to affix such signature;

(ii) safeguard the integrity of information communicated through a computer system established in terms of section *eighty D*, apart from any change which may occur in the normal course of such communication or during storage and display of such information;

(*c*) will maintain the standard of reliability of his or her own computer system required in accordance with the requirements of the user agreement;

the Commissioner may approve the application, subject to such reasonable conditions as he or she may impose either generally or in relation to the applicant.

(4) If, at any time after granting an application in terms of subsection (2), the Commissioner is satisfied that a registered user—

(*a*) has not complied with the requirements of his or her user agreement with any condition or obligation imposed by the Commissioner in respect of such registration;
(*b*) has made a false or misleading statement with respect to any material fact or omits to state any material fact which was required to be stated in the application for registration;
(*c*) fails to make regular use of the computer system established in terms of section *eighty D*;
(*d*) has contravened or failed to comply with any provision of this Act;
(*e*) has been convicted of an offence under this Act;
(*f*) has been convicted of an offence involving dishonesty;
(*g*) is sequestrated or liquidated;
(*h*) no longer carries on the business for which the registration was issued;

the Commissioner may cancel or suspend for a specified period the registration of the registered user.

(5) Before cancelling or suspending the registration of a registered user in terms of subsection (4) the Commissioner shall—

(*a*) give notice to the registered user of the proposed cancellation or suspension; and
(*b*) provide 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.

80G Digital signatures

(1) Every digital signature intended for use in connection with a computer system established in terms of section *eighty D* shall comply with the following requirements, namely, it must—

(*a*) be unique to the registered user and under the sole control of the registered user; and
(*b*) be capable of verification; and
(*c*) be linked or attached to electronically transmitted data in such a manner that, if the integrity of the data transmitted is compromised, the digital signature is invalidated; and
(*d*) be in complete conformity with the requirements prescribed by the Commissioner and contained in the user agreement.

(2) The Commissioner shall, on registering a user, allocate to the registered user—

(*a*) if the user is a natural person, 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 a natural person, sufficient digital signatures for each employee of the user nominated in the user agreement.

80H Production and retention of documents

Where any provision of this Act prescribes or requires that documents, records, information or the like should be retained for a specific period, that requirement shall be deemed to have been satisfied by a registered user if such documents, records, information or the like are so retained in electronic form that—

(*a*) the information contained therein 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 can be demonstrated to represent accurately the information originally generated, sent or received; and
(*c*) the details which will facilitate the identity of the origin, destination, date and time of dispatch or receipt of such electronic record are available in the electronic record.

80I Sending and receipt of electronic communications

(1) An electronic communication through a computer system established in terms of section *eighty D* or the record of such communication shall be attributed to the originator—

(*a*) if it was sent by the originator; or
(*b*) if it was sent by a person who had the authority to act on behalf of the originator in respect of that communication or record; or
(*c*) if 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 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 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 the receipt of an acknowledgement of such electronic communication, then, unless such acknowledgement has been so received within such time as agreed upon, such electronic communication shall be deemed not to have been sent.

(4) As between a computer system established in terms of section *eighty D* and any other computer system of a registered user, the lodgement of an electronic communication occurs when it enters a computer system outside the control of the originator.

(5) The time of receipt of an electronic communication shall be the time when the electronic communication enters the computer—

(*a*) where the electronic communication is by a registered user, 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; or

(*b*) if the electronic communication is sent by the Zimbabwe Revenue Authority or the Commissioner to a registered user, at the place of receipt that is stipulated in the user agreement.

(6) Whenever any registered user is authorised to submit and sign electronically any return, record, assessment, declaration, form, notice, statement or the like, which is required to be submitted and signed in terms of this Act, such signature electronically affixed to such electronic communication and communicated to the Zimbabwe Revenue Authority or the Commissioner, shall, for the purposes of this Act, have effect as if it was affixed thereto in manuscript, and acceptance thereof shall not be denied if it is in conformity with the user agreement concluded between the Commissioner and the registered user.

(7) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit any registered user to submit electronically any return, record, assessment, declaration, form, notice, statement or the like, 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 the foregoing documents using the Internet.

80J 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 officer or employee thereof for any failure on the part of a registered user to ensure the security of the digital signature allocated to him or her and, in particular, where electronic data authenticated by a digital signature is received by the Commissioner or the Zimbabwe Revenue Authority—

(*a*) without the authority of the registered user to whom such signature was allocated; and

(*b*) before notification to the Commissioner or the Zimbabwe Revenue Authority by the registered user that the security of the digital signature allocated to him or her has been compromised;

the Commissioner or the Zimbabwe Revenue Authority shall be entitled to assume that such data has been communicated by, or with the authority of, the registered user of that digital signature.

(3) Where in any proceedings or prosecution under this Act or in any dispute to which the Zimbabwe Revenue Authority is a party, the question arises whether an digital signature affixed to any electronic communication to the Commissioner or the Zimbabwe Revenue Authority was used in such communication with or without the consent and authority of the registered user, it shall be presumed, in the absence of proof to the contrary, that such signature was so used with the consent and authority of the registered user.

80K Alternatives to electronic communication in certain cases

(1) Whenever a computer system established in terms of section *eighty D* or any other 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 any registered user the submission of any original document required to be produced under any of the provisions of this Act.

80L Unlawful uses of computer systems

(1) A person who, not being the registered user of a digital signature to whom it is allocated, uses such a signature in any electronic communication to the Commissioner or the Zimbabwe Revenue Authority without the authority of such registered user, commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

(2) A person who—

(*a*) makes a false electronic record or falsifies an electronic record; or

(*b*) dishonestly or fraudulently—

(i) makes, affixes any digital signature to, transmits or executes an electronic record or communication; or

(ii) causes any other person to make, affix any digital signature to, execute, transmit or execute an electronic record or communication;

commits an offence and is liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

Law Development Commission, Zimbabwe

PART IX

GENERAL

81 Offences: general

(1) Any person who, without just cause being shown by him—

(*a*) fails or neglects to furnish, file or submit any return or document required by the Commissioner under the powers conferred by this Act; or

(*b*) refuses or neglects to furnish any information or reply, or to attend and give evidence as and when required by the Commissioner or any officer duly authorized by him, or to answer truly and fully any question put to him, or to produce any books or papers required of him by the Commissioner or any such officer; or

(*c*) fails to show in any return made by him any portion of the gross income received by or accrued to or in favour of himself, or fails to disclose to the Commissioner, when making such return, any material facts which should have been disclosed; or

(*d*) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person, or fails to disclose to the Commissioner, when preparing or making such return, any facts which, if so disclosed, might result in increased tax; or

(*e*) ….

[Paragraph repealed by Act 3 of 2009]

(*f*) – (*n*)……

[Paragraphs repealed by Act 22 of 2001]

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.

[Subsection amended Act 22 of 2001 and by Act 15 of 2002]

(2) A person who retains, in accordance with conditions specified by the Commissioner, photographical reproductions in miniature of a document or book referred to in paragraph (*e*) of subsection (1), which is not a ledger, cash-book or journal, shall be deemed to retain that document or book for the purposes of that paragraph.

82 Offences: wilful failure to comply with requirements of Commissioner or to keep proper accounts, and obstruction

(1) Any person who—

(*a*) wilfully fails or neglects to furnish, file or submit any return or document required by the Commissioner under the powers conferred by this Act; or

(*b*) wilfully refuses or neglects to furnish any information or reply, or to attend and give evidence as and when required by the Commissioner or any officer duly authorized by him, or to answer truly and fully any question put to him, or to produce any books or papers required of him by the Commissioner or any such officer; or

(*c*) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, wilfully fails to keep or cause to be kept in the English language, proper books and accounts of all his transactions or, unless otherwise authorized by a competent court or by the Commissioner, wilfully fails to retain for a period of six years from the date of the last entry therein all ledgers, cash-books, journals paid cheques, bank statements and deposit slips, stock sheets, invoices and other books of account relating to any trade carried on by him and recording the details from which his returns for the purposes of this Act were prepared;

(*d*) obstructs or hinders any officer in the discharge of his duties;

[Paragraph reinstated by Act 15 of 2002]

shall be guilty of an offence and liable 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.

[Subsection substituted by Act 15 of 2002]

(2) Where the facts proved in any charge under subsection (1) do not justify a conviction under subsection (1), but prove an offence under section *eighty-one* the person charged may be convicted of the corresponding offence under that section and sentenced accordingly.

(3) A person who retains, in accordance with conditions specified by the Commissioner, photographical reproductions in miniature of a document or book referred to in paragraph (*c*) of subsection (1), which is not a ledger, cash-book or journal, shall be deemed to retain that document or book for the purposes of that paragraph.

(4) Any person who, without just cause, obstructs or hinders an officer in the discharge of his 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.

[Subsection inserted by Act 22 of 2001]

83 Offences: increased penalty on subsequent conviction

If, upon conviction of any person for an offence under section *eighty-one* or *eighty-two* for—

(*a*) failing or neglecting to furnish, file or submit any return or document required by the Commissioner; or

(*b*) refusing or neglecting to furnish any information or reply, or to produce any books or papers required of him by the Commissioner or any other officer;

within any reasonable period fixed by the Commissioner or any other officer and of which notice has been given to him by the Commissioner, it is proved that that person has been previously convicted of a like failure, neglect or refusal in relation to the same return, document, information, reply, books or papers, then such person shall, in addition to any punishment inflicted under such section, be liable also to a fine not exceeding level one for each day that he is in default, or to imprisonment for a period not exceeding twelve months.

[Section substituted by Act 15 of 2002]

84 Offences: wilful failure to submit correct returns, information, etc.

(1) Any person who wilfully—

(*a*) fails to show in any return made by him any portion of the gross income received by or accrued to him or in favour of himself, or fails to disclose to the Commissioner, when making such return, any material facts which should have been disclosed; or

(*b*) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person, or fails to disclose to the Commissioner, when preparing or making such return, any facts which, if so disclosed, might result in increased tax;

(*c*) - (*j*) ….

[Paragraphs repealed by Act 22 of 2001]

shall be guilty of an offence and liable 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.

[Subsection substituted by Act 15 of 2002]

(2) Where the facts proved in any charge under subsection (1) do not justify a conviction under subsection (1), but prove an offence under section *eighty-one*, the person charged may be convicted of the corresponding offence under that section and sentenced accordingly.

85 Offences: false statements, etc.

(1) If any person makes any false statement or entry in any return rendered in respect of any year of assessment, or signs any statement or return so rendered, without reasonable grounds for believing the statement or entry to be true, he shall be guilty of an offence and liable 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.

[Subsection amended by Act 22 of 2001]

(2) If a person makes a false entry in any ledger, cash-book, journal or other book of account without reasonable grounds for believing it to be true, and the false entry, if believed, would be likely to have the effect of reducing the persons' liability for tax, he shall be guilty of an offence and liable 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.

[Subsection amended by Act 22 of 2001]

86 Offences: wilful making of false statements, and keeping of false accounts, and fraud

(1) Any person who, with intent to evade or to assist any other person to evade assessment or taxation—

(*a*) makes or causes or allows to be made any wilfully false statement or entry in any return rendered in terms of this Act, or signs any statement or return so rendered, without reasonable grounds for believing the same to be true; or

(*b*) gives any wilfully false answer, whether verbally or in writing, to any request for information under this Act made by the Commissioner or any person duly authorized by him; or

(*c*) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records, or falsifies or authorizes the falsification of any books of account or records; or

(*d*) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of any such fraud, art or contrivance;

shall be guilty of an offence and liable 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.

[Subsection substituted by Act 22 of 2001]

(2) Whenever in any proceedings under subsection (1) it is proved that any wilful false statement or entry has been made in any return rendered under this Act by or on behalf of any taxpayer or in any books of account or other records of any taxpayer, that taxpayer shall be presumed, until the contrary is proved, to have made, or to have caused or allowed to be made, that false statement or entry with intent to evade assessment or taxation, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the taxpayer to evade assessment or taxation.

(3) In any proceedings in which a person is charged with an offence under paragraph (*c*) of subsection (1), where it is proved that any statement, entry or record in any book of account or other record kept by the accused or under his direction or kept by any employee or agent of the accused on his behalf is in conflict with any statement, entry or record in any other book of account or record so kept as aforesaid, it shall not be necessary to allege in the indictment, summons or charge, or to prove, which of the conflicting statements, entries or records is false.

87 Evidence

(1) At the trial of any person charged with any contravention of this Act, any information, statement, entry or record contained in any return furnished by or on behalf of the accused in terms of this Act, and any statement, entry or record contained in any book, account or document kept by the accused or under his direction or kept by any employee or agent of the accused on his behalf and any statement made by the accused to the Commissioner or other officer which is not a confession of the offence with which he is charged, or of an offence which is substantially similar to the offence with which he is charged, shall, notwithstanding that it was required of him in terms of this Act and notwithstanding section *five* and without order of any competent court of law in terms of that section, be admissible in evidence upon its mere production by any person:

Provided that, except in the case of information, statements, entries or records contained in any return furnished by or on behalf of an accused person, no such statement, entry or record shall be tendered in evidence unless the accused has been given not less than ten days' written notice of the intention to produce such statement, entry or record and an opportunity to inspect the same and make a copy thereof.

(2) Notwithstanding any law, in any proceedings in which a person is charged with an offence under paragraph (*c*) or (*d*) of subsection (1) of section *eighty-one*, paragraph (*a*) or (*b*) of subsection (1) of section *eighty-four* or paragraph (*a*) of subsection (1) of section *eighty-six* where any statement, entry or record contained in any book, account or document kept by the accused or under his direction or kept by any employee or agent of the accused on his behalf is in conflict with any information, statement, entry or record contained in any return which is the subject of the charge, such first-mentioned statement, entry or record shall be presumed to be true unless the contrary is proved; and this subsection shall apply whether or not any other statement, entry or record contained in such book, account or document or in any other book, account or document so kept as aforesaid is consistent with the information, statement, entry or record contained in such return.

For the purposes of this subsection—

"law" includes the common law of Zimbabwe.

88 Proof of certain facts by affidavit or orally

(1) In any criminal proceedings under this Act concerning the failure of a person to furnish, file or submit any return or other document required by or under this Act, a document purporting to be an affidavit made by a person who alleges therein that—

(*a*) he is an officer in the department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act;

[Subsection amended by Act 17 of 1999.]

and

(*b*) if the said return or other document had been furnished, filed or submitted, it would in the ordinary course of events have come to the deponent's knowledge, either at the time it was furnished, filed or submitted or subsequently, and a record thereof available to him would have been kept; and

(*c*) no such return or other document has, to the deponent's knowledge, been furnished, filed or submitted and that he has satisfied himself that there is no record thereof;

shall, subject to this section, on its mere production in those proceedings by any person be prima facie proof that such return or document has not been furnished, filed or submitted.

(2) In any criminal proceedings under this Act a document purporting to be an affidavit made by a person who alleges therein that—

(*a*) he is an officer in the department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act; and

(*b*) when any return, form, notice, assessment, letter or other document such as is referred to therein has been sent by the Commissioner or an officer in the department referred to in paragraph (*a*) a record thereof available to the deponent would have been kept; and

(*c*) the deponent has satisfied himself that there is a record thereof;

shall, subject to this section, on its mere production in those proceedings by any person, be prima facie proof that such return, form, notice, assessment, letter or other document has been sent by the Commissioner or officer concerned.

(3) No such affidavit as is mentioned in subsection (1) or (2) shall be tendered in evidence unless the accused has been given not less than three days' notice in writing of the intention to produce such affidavit or consents to its production.

(4) The court in which any affidavit in terms of subsection (1) or (2) is produced in evidence may in its discretion, of its own motion or at the request of the prosecutor or the accused, cause the person who made it to be summoned to give oral evidence in the proceedings in question.

(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) Nothing in this section contained shall affect any other rule of law under which any certificate or other document is admissible in evidence and the provisions of this section shall be deemed to be additional to, and not in substitution for, any such rule of law.

89 Forms and authentication and service of documents

(1) All forms of returns and other forms required for the administration of this Act shall be in such form as may be prescribed by the Commissioner from time to time.

(2) Notices given by the Commissioner under this Act may be signed by any officer authorized by him on his behalf, and any notice purporting to be signed by order of the Commissioner shall be as valid and effectual as if signed by himself.

(3) Every form, notice, demand or other document issued or given by or on behalf of the Commissioner or any other officer under this Act shall be sufficiently authenticated if the name of the Commissioner or officer by whom the same is issued or given is written thereon.

(4) Any notice required or authorized under this Act to be served upon any person shall be sufficiently and effectually served—

(*a*) if personally served upon him; or

(*b*) if left with some adult person apparently resident at, occupying or employed at his usual or last known abode, office or place of business in Zimbabwe; or

(*c*) if sent by post addressed to such usual or last known place of abode, office or place of business, or to any post office box rented in the name of such person or the employer of such person;

and, in the case of a company, shall be sufficiently and effectually served if personally served on the public officer of the company, or sent by post to him at the company's address for service under this Act or, if the company has lodged no address for service as required by this Act, then if the notice is left at or sent by post to any office of the company in Zimbabwe or any premises therein where it carries on business.

(5) For the purposes of subsection (4), the term "post" means registered or unregistered post and, unless the contrary is proved, the service shall be deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.

90 Regulations

(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed by regulations or which in his or her opinion is necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

(2) Without derogation from the generality of subsection (1) the Minister may make regulations—

(*a*) prescribing the duties of all persons engaged or employed in the administration of this Act;

(*b*) defining the limits of areas within which such persons are to act;

(*c*) prescribing the nature of the accounts to be rendered by any taxpayer in support of any returns rendered under this Act and the manner in which such accounts shall be authenticated;

(*d*) prescribing the fee payable in respect of an application for an advance tax ruling in terms of section *thirty-seven B*, or for registration as a registered user of a computer system established in terms of section *eighty D*, or for any other service in respect of which a fee may be prescribed in terms of this Act.

[Paragraph inserted by Act 12 of 2006]

(3) The regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine or penalty of level seven.

[Section substituted by Act 29 of 2004 and amended by Act 2 of 2005.]

91 Relief from double taxation

(1) The President may enter into agreements with the government of any other country or territory with a view to the prevention, mitigation or discontinuance of the levying, under this Act and the laws of such other country or territory, of taxes in respect of the same income, or to the rendering of reciprocal assistance in the administration of, and in the collection of taxes under, this Act and taxes on income levied under the laws of such other country or territory.

(2) As soon as may be after the conclusion of any such agreement the terms thereof shall be notified by the President by proclamation in the *Gazette*, whereupon until such proclamation is revoked by the President 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 such country or territory.

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

(4) The duty to preserve secrecy imposed by section *five* shall not prevent the disclosure to any authorized officer of the country or territory mentioned in any proclamation issued in terms of subsection (4) of—

(*a*) facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in terms of the agreement; or

(*b*) information which is necessary for the prevention of fraud, or for the administration of statutory provisions against legal avoidance in relation to taxes which are the subject of agreement.

(5) Notwithstanding proviso (ii) to subsection (1) of section *forty-seven* which deals with the raising of additional assessments or proviso (iii) to subsection (1) of section *forty-eight* which deals with reductions and refunds, the Commissioner shall raise additional assessments or authorize reductions and refunds after the expiry of the period of three years referred to in those provisos if such additional assessments or reductions and refunds result from the carrying out of the provisions of any agreement entered into with the government of any other country or territory in terms of this section.

(6) Any agreement referred to in subsection (1) may be made with retrospective effect if the President considers it expedient so to do.

(7) Any agreement entered into in terms of the similar provisions of a previous law prior to the 1st April, 1967, and valid and subsisting at that date shall be deemed to have been entered into, approved and proclaimed in terms of this Act.

92 Reduction of tax payable as a result of double taxation agreements

(1) This section shall apply where, under any agreement entered into with any other country or territory in terms of section *ninety-one*, the tax (hereinafter referred to as foreign tax) payable to that other country or territory in respect of any income (hereinafter referred to as foreign income) is to be allowed as a credit against tax chargeable in terms of this Act in respect of such foreign income.

(2) Subject to subsection (3), the amount of the tax chargeable under this Act in respect of such foreign income shall be reduced by the amount to be allowed as a credit in terms of any agreement.

(3) Any reduction granted in terms of subsection (2) shall be subject to the provisions set out in this subsection—

(*a*) a reduction in tax shall not exceed an amount arrived at by applying the following formula—

$$\frac{(A - B) \times C}{C + D}$$

in which—

A represents the tax which would have been payable in terms of this Act had no reduction in respect of any foreign income been granted;

B represents the tax which would have been payable in terms of this Act had the foreign income from all sources in respect of which a reduction is to be allowed not been included in the taxable income;

C represents the amount of the foreign income in respect of which a reduction is to be allowed which is included in the taxable income;

D represents the amount of any other foreign income in respect of which a reduction is to be allowed;

(*b*) a reduction in tax in respect of any foreign income as is income referred to in provisos (i) and (ii) to subsection (2) of section *twelve* shall not exceed the amount arrived at by applying the following formula—

$$\frac{E \times F}{F + G}$$

in which—

E represents the tax which would have been payable in terms of this Act in respect of the total of such income had no reduction in respect of such income been granted;

F represents the amount of such foreign income in respect of which a reduction is to be allowed which is included in the taxable income;

G represents the amount of any other such foreign income in respect of which a reduction is to be allowed;

(*c*) the total reduction to be allowed to any person for any year of assessment shall not exceed the total tax chargeable in terms of this Act in respect of that year of assessment;

(*d*) where the amount of any reduction given in terms of any such agreement is rendered excessive or insufficient by reason of any subsequent adjustment of the amount of any foreign tax applicable to such foreign income or to any tax chargeable in terms of this Act in respect of such foreign income, nothing in this Act limiting the time for the raising of additional assessments or the reduction of an assessment or of the granting of refunds shall prevent a subsequent adjustment of the amount of such reduction, and

any tax underpaid as a result of such adjustment shall be recoverable and any tax overpaid shall be refundable.

(4) In paragraph (*a*) of subsection (3), references to tax, tax which would have been payable and foreign income shall be construed as relating to such amounts other than foreign income to which paragraph (*b*) relates and any tax which would have been payable in respect thereof.

93 Relief from double taxation in cases where no double taxation agreements have been made

If any person—

(*a*) in Zimbabwe; or

(*b*) outside Zimbabwe who is deemed to have derived income from a source within Zimbabwe in terms of paragraph (*d*) of subsection (1) or subsection (4) of section *twelve*;

who has paid or is liable to pay tax for any year of assessment on income which is derived from a country or territory which has not entered into an agreement with Zimbabwe in terms of section *ninety-one* proves to the satisfaction of the Commissioner that he has paid tax on the same income in the country or territory from which such income was derived and requests relief in respect of that tax, then the tax chargeable under this Act in respect of such income shall be reduced by the amount of foreign tax paid or payable on such income as if subsection (3) of section *ninety-two* was applicable thereto.

For the purposes of this section, tax in respect of such income, which is deducted from such income in such country or territory, shall be deemed to be tax paid by such person.

94.....

[Section repealed by Act 5 of 2009]

95 Credit where non-residents' tax on fees has been withheld

(1) If any person who is not ordinarily resident in Zimbabwe and to whom fees as defined in the Seventeenth Schedule have accrued during the year of assessment proves to the satisfaction of the Commissioner that non-residents' tax on fees has in terms of that Schedule been withheld and paid from such fees, such non-residents' tax on fees shall, subject to subsection (2), be allowed as a credit against income tax chargeable in terms of this Act in respect of those fees and the income tax so chargeable shall be reduced accordingly.

(2) Any reduction granted in terms of subsection (1) shall be subject to the provisions set out in this subsection—

(*a*) a reduction in income tax shall not exceed an amount arrived at by applying the following formula—

A – B

in which—

A represents the income tax which would have been payable in terms of this Act had no reduction been granted in respect of fees from which non-residents' tax on fees has been withheld and paid;

B represents the income tax which would have been payable had the fees from which non-residents' tax on fees has been withheld not been included in taxable income;

(*b*) the total deduction to be allowed to any person for any year of assessment shall not exceed the total income tax chargeable in terms of this Act in respect of that year of assessment.

96 Credit where non-residents' tax on royalties has been withheld

(1) If any person who is not ordinarily resident in Zimbabwe and to whom royalties as defined in the Nineteenth Schedule have accrued during the year of assessment proves to the satisfaction of the Commissioner that non-residents' tax on royalties has in terms of that Schedule been withheld and paid from such royalties, such non-residents' tax on royalties shall, subject to subsection (2), be allowed as a credit against income tax chargeable in terms of this Act in respect of those royalties and the income tax so chargeable shall be reduced accordingly.

(2) Any reduction granted in terms of subsection (1) shall be subject to the provisions set out in this subsection—

(*a*) a reduction in income tax shall not exceed an amount arrived at by applying the following formula—

A – B

in which—

A represents the income tax that would have been payable in terms of this Act had no reduction been granted in respect of royalties from which non-residents' tax on royalties has been withheld and paid;

B represents the income tax that would have been payable had the royalties from which non-residents' tax on royalties has been withheld not been included in taxable income;

(*b*) the total deduction to be allowed to any person for any year of assessment shall not exceed the total income tax chargeable in terms of this Act in respect of that year of assessment.

97 Credit where presumptive tax has been withheld

If any person proves to the satisfaction of the Commissioner that during a year of assessment he has paid any amount by way of presumptive tax in terms of the Twenty-Sixth Schedule, that amount shall be allowed as a

credit against income tax chargeable in terms of this Act in respect of that person's taxable income from trade or investment, as defined in section 14(1) of the charging Act, in respect of that year of assessment.

[Section substituted by section 12 of Act 2 of 2005]

97A Credit where tax on commissions paid by insurers and estate agents to freelance agents has been withheld

If any freelance agent as defined in the Thirty-Second Schedule proves to the satisfaction of the Commissioner-General that tax has been withheld from his or her commission in terms of that Schedule during the year of assessment and paid in accordance with that Schedule, such tax shall be allowed as a credit against income tax chargeable in terms of this Act in respect of that commission, and the income tax so chargeable shall be reduced accordingly and any excess refunded.

[Section inserted by Act 29 of 2004]

97B Calculation and fixing of interest payable under this Act

[Heading amended by Act 5 of 2009]

(1) Where—

(*a*) any interest is payable under section *forty-eight*, *seventy-one*, *seventy-three* or paragraph 3 of the Thirteenth Schedule; and

(*b*) the rate at which such interest is payable has with effect from any date been altered; and

(*c*) such interest is payable in respect of any period or any number of months or any part of a month which commenced before the said date;

the interest to be determined in respect of that portion of such period which ended immediately before the said date or in respect of any such months or part of a month which commenced before the said date shall be calculated as if the said rate had not been so altered.

(2) The Minister may, by statutory instrument, alter any rate of interest specified in this Act, and in doing so may substitute a specific rate by a variable rate applicable to the borrowing of funds in any international money market, such as the LIBOR (London Interbank Offered Rate).

(3) Where the Minister substitutes any rate of interest specified in this Act by a variable rate referred to in subsection(2), the Commissioner-General may, in terms of the Fourth Schedule to the Revenue Authority Act [*Chapter 23:11*], issue binding general rulings on the tax consequences of any variation of such rate.

[Section 97B inserted by Act 18 of 2004 and subsections (2) and (3) inserted by Act 5 of 2009]

97C Credit where tax on non-executive, directors' fees has been withheld

If any non-executive director as defined in the Thirty-Third Schedule proves to the satisfaction of the Commissioner-General that tax has been withheld from his or her fees in terms of that Schedule during the year of assessment and paid in accordance with that Schedule, such tax shall be allowed as a credit against income tax chargeable in terms of this Act in respect of those fees, and the income tax so chargeable shall be reduced accordingly and any excess refunded.

[Section inserted by Act 12 of 2006]

98 Tax avoidance generally

Where any transaction, operation or scheme (including a transaction, operation or scheme involving the alienation of property) has been entered into or carried out, which has the effect of avoiding or postponing liability for any tax or of reducing the amount of such liability, and which in the opinion of the Commissioner, having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out—

(*a*) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or

(*b*) has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question;

and the Commissioner is of the opinion that the avoidance or postponement of such liability or the reduction of the amount of such liability was the sole purpose or one of the main purposes of the transaction, operation or scheme, the Commissioner shall determine the liability for any tax and the amount thereof as if the transaction, operation or scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he considers appropriate for the prevention or diminution of such avoidance, postponement or reduction.

99 Transitional provisions relating to separate taxation of married women

Where in terms of this Act or any previous law, gross income which was received by or accrued to or in favour of a married woman in any year of assessment prior to the year of assessment beginning on the 1st April, 1988, has been deemed to be income received by or accrued to or in favour of her husband, then, for the purposes of charging, levying and collecting tax in respect of the year of assessment beginning on the 1st April, 1988, and any subsequent year of assessment—

(*a*) any taxable income accruing to or assessed loss carried forward by the husband from that source; or

(*b*) any right of election exercised by or allowance or deduction granted to her husband in respect of the taxable income or assessed loss referred to in paragraph (*a*);

shall be deemed to have accrued to or been carried forward or exercised by or been granted to, as the case may be, the married woman, and the same consequences shall follow and the same rights accrue to the married woman as would have followed or, as the case may be, accrued to her husband in respect of that taxable income, assessed loss, election, allowance or deduction.

FIRST SCHEDULE (Section 8)

AMOUNTS RECEIVED OR ACCRUED BY WAY OF LUMP SUM PAYMENTS WHICH SHALL NOT BE INCLUDED IN GROSS INCOME

PRELIMINARY

Interpretation

1. (1) In this Schedule—

"amended pensions law", in relation to a Part II beneficiary to whom a pensions law of Zimbabwe applied, means a pensions law of Zimbabwe in force before the 1st July, 1960, the provisions of which were amended or re-enacted on or after that date to provide for an increase in the ordinary contributions made to the Consolidated Revenue Fund by the beneficiary or the State or the beneficiary and the State with the object of increasing the amount of the pension payable to the beneficiary and "unamended", when used in relation to a pensions law, and "unamended or re-enacted", when used in relation to the provisions of a pensions law, shall be construed accordingly;

"annuity on retirement", in relation to—

(*a*) a Part I beneficiary, means—

(i) in the case of a male beneficiary, an annuity payable on his attaining an age of not less than fifty-five years;

(ii) in the case of a female beneficiary, an annuity payable on her attaining an age of not less than fifty years;

the right to which cannot be assigned or pledged and of which no amount in excess of one-third of the total value of the annuity may be commuted for a single payment except where the annual amount of such annuity does not exceed one thousand eight hundred United States dollars;

(*b*) a Part II beneficiary, means an annuity payable on or after the date from which a pension or other benefit—

(i) first became payable to the beneficiary on the grounds of superannuation; or

(ii) would, but for the cessation of the employment of the beneficiary or his withdrawal from or the winding up of the pension fund of which he was a member, first have become payable to the beneficiary on the grounds of superannuation;

the right to which cannot be assigned or pledged and of which no amount in excess of one-third of the total value of the annuity may be commuted for a single payment except where the annual amount of such annuity does not exceed one thousand eight hundred United States dollars;

[Paragraph amended by Act 5 of 2009]

"benefit fund" means a fund as defined in paragraph (*b*) of the definition of "benefit fund" in subsection (1) of section *two*;

"fund with changed rules", in relation to a Part I beneficiary or a Part II beneficiary who was a member of a pension fund, means a benefit or pension fund established before the 1st July 1960, the rules of which were changed on or after that date to provide for an increase in the ordinary contributions made by the beneficiary or the employer of the beneficiary or the beneficiary and the employer of the beneficiary with the object of increasing the amount of the benefit or pension payable to the beneficiary and "unchanged", when used in relation to the rules of a benefit or pension fund, shall be construed accordingly;

"lump sum payment", in relation to—

(*a*) a Part I or Part II beneficiary who was employed within Zimbabwe throughout the period during which ordinary contributions were made, means an amount equal to the terminal benefit paid to him;

(*b*) a Part III beneficiary who was employed within Zimbabwe throughout the period during which he was a member of an unapproved fund, means an amount equal to the terminal benefit paid to him;

(*c*) a Part I or Part II beneficiary who was not employed within Zimbabwe throughout the period during which ordinary contributions were made, means an amount which bears the same proportion to the terminal benefit paid to him as the period of his employment within Zimbabwe during which ordinary contributions were made bears to the period throughout which ordinary contributions were made;

(*d*) a Part III beneficiary who was not employed within Zimbabwe throughout the period during which he was a member of an unapproved fund, means an amount which bears the same proportion to the terminal benefit paid to him as the period of his employment within Zimbabwe during which he was a member of such fund bears to the period throughout which he was a member of such fund;

"new fund" means a benefit or pension fund established on or after the 1st July, 1960;

"ordinary contribution", in relation to—

(*a*) a Part I beneficiary, means a contribution to a benefit fund which—

(i) was not an arrear contribution; and

(ii) was made by or in connection with the beneficiary; and

(iii) was required to be made at intervals fixed by the rules of the fund; and

(iv) was not refundable to the contributor;

(*b*) a Part II beneficiary, means a contribution to a pension fund or the Consolidated Revenue Fund, as the case may be, which—

(i) was not an arrear contribution; and

(ii) was made by or in connection with the beneficiary; and

(iii) was required to be made at intervals fixed by the rules of the fund or at a rate and at intervals fixed by the pensions law of Zimbabwe, as the case may be; and

(iv) was not refundable to the contributor;

"Part I beneficiary" means a person who was a member of a benefit fund;

"Part II beneficiary" means—

(*a*) a person who was a member of a pension fund; or

(*b*) a person to whom a pensions law of Zimbabwe applied;

"Part III beneficiary" means a person who was a member of an unapproved fund;

"pensions law of Zimbabwe" means a law of Zimbabwe, the provisions of which require a person to contribute to the Consolidated Revenue Fund for the purpose of securing a pension for himself, his widow or children;

"terminal benefit", in relation to—

(*a*) a Part I beneficiary, means any amount (other than a payment by way of annuity), which is paid or will be payable to the beneficiary by reason of his withdrawal from or the winding up of a benefit fund;

(*b*) a Part II beneficiary, means any amount (other than—

(i) an amount referred to in paragraph (*a*) or (*b*) of the definition of "gross income" in subsection (1) of section *eight*; or

(ii) a payment in commutation of a pension made from a pension fund or the Consolidated Revenue Fund);

which is paid or will be payable to the beneficiary by reason of his withdrawal from or the winding up of a pension fund or which is a benefit (not being a pension or gratuity) which is paid or will be payable by reason of contributions to the Consolidated Revenue Fund;

(*c*) a Part III beneficiary, means any amount other than a payment by way of an annuity which is paid or will be payable to the beneficiary by reason of his withdrawal from or the winding up of an unapproved fund;

"unapproved fund" means a fund or scheme established by an employer for the purpose of providing pensions, annuities, terminal benefits or similar benefits for his employees or the widows, children, dependants or nominees of deceased employees or for all or any of these purposes, which is not a pension fund or a benefit fund.

(2) For the purposes of this Schedule—

(*a*) a Part I or Part II beneficiary who was employed outside Zimbabwe by the State or the Government of the former Federation during any period in which ordinary contributions were made shall, if he was resident outside Zimbabwe solely for the purposes of that employment, be deemed to have been employed within Zimbabwe during that period; and

(*b*) a lump sum payment from the Federal Provident Fund established in terms of section 4 of the Federal Provident Fund Act, 1960 (No. 29 of 1960), to a Part I beneficiary who, by reason of the provisions or in pursuance of anything done in terms of subsection (4) of section 15 of that Act, became a member of that Fund on ceasing to be a member of the Government Employees' Provident Fund established in terms of section 3 of the Government Provident Fund Act [*Chapter 86 of 1963*] shall, if he became a member of the Government Employees' Provident Fund before the 1st July, 1960, be deemed to be a lump sum payment made from a benefit fund established before the 1st July, 1960, to a Part I beneficiary who became a member of the fund before that date; and

(*c*) a lump sum payment from the Government Employees' Provident Fund established in terms of section 3 of the Government Provident Fund Act [*Chapter 86 of 1963*] to a Part I beneficiary who was a member of that Fund prior to the 1st July, 1960, and who, immediately on ceasing to be a member of that Fund, became a member of the Federal Provident Fund established in terms of section 4 of the Federal Provident Fund Act, 1960 (No. 29 of 1960) and who, immediately on ceasing to be a member of the Federal Provident fund, became a member of he first-

mentioned Fund, shall be deemed to be a lump sum payment made from a benefit fund established before the 1st July, 1960, to a Part I beneficiary who became a member of the fund before that date; and

(*d*) a lump sum payment to a Part II beneficiary who was a member of the pension fund of the Government of the former Federation or a statutory corporation before the 1st July, 1960, and who, as a result of the dissolution of the former Federation, is required to contribute to the Consolidated Revenue Fund or to the pension fund of a successor statutory corporation, shall be deemed to be a lump sum payment made from a pension fund established before the 1st July, 1960, to a Part II beneficiary who became a member of the fund before that date.

PART I

AMOUNTS RECEIVED OR ACCRUED BY WAY OF LUMP SUM PAYMENTS FROM BENEFIT FUNDS WHICH SHALL NOT BE INCLUDED IN GROSS INCOME

Lump sum payments from funds with unchanged rules to Part I beneficiaries who became members before the 1st July, 1960

2. If a lump sum payment is made from a fund with unchanged rules to a Part I beneficiary who became a member of the fund before the 1st July, 1960, the amount of the lump sum payment shall not be included in the gross income of the beneficiary.

Lump sum payments from funds with changed rules to Part I beneficiaries who became members before the 1st July, 1960

3. If a lump sum payment is made from a fund with changed rules to a Part I beneficiary who became a member of the fund before the 1st July, 1960—

(*a*) so much of the amount of the lump sum payment as—

(i) does not exceed one thousand United States eight hundred dollars; or

[Subparagraph amended by section 16 of Act 18 of 2000]

(ii) is equal to the lump sum payment the beneficiary would have received had the rules of the fund remained unchanged;

whichever is the greater amount; and

(*b*) so much of the balance of the amount of the lump sum payment, if any, remaining after the amount referred to in subparagraph (*a*) has been excluded therefrom as is used by the beneficiary to acquire a right to an annuity on retirement; and

(*c*) so much of the balance of the amount of the lump sum payment, if any, remaining after the amounts referred to in subparagraphs (*a*) and (*b*) have been excluded therefrom as is paid by the beneficiary into another benefit fund or into a pension fund as contributions which do not qualify for deduction in terms of paragraph (*h*) or (*i*) of subsection (2) of section *fifteen*;

shall not be included in the gross income of the beneficiary.

Lump sum payments from new funds to Part I beneficiaries and from funds with changed or unchanged rules to Part I beneficiaries who became members on or after the 1st July, 1960

4. If a lump sum payment is made from a new fund to a Part I beneficiary or from a fund with changed or unchanged rules to a Part I beneficiary who became a member of the fund on or after the 1st July, 1960—

(*a*) so much of the amount of the lump sum payment as does not exceed one thousand eight hundred United States dollars; and

[Subparagraph amended by section 16 of Act 18 of 2000 and Act 5 of 2009]

(*b*) so much of the balance of the amount of the lump sum payment, if any, remaining after the amount referred to in subparagraph (*a*) has been excluded therefrom as is used by the beneficiary to acquire a right to an annuity on retirement; and

(*c*) so much of the balance of the amount of the lump sum payment, if any, remaining after the amounts referred to in subparagraphs (*a*) and (*b*) have been excluded therefrom as is paid by the beneficiary into another benefit fund or into a pension fund as contributions which do not qualify for deduction in terms of paragraph (*h*) or (*i*) of subsection (2) of section *fifteen*;

shall not be included in the gross income of the beneficiary.

Lump sum payments to Part I beneficiaries from new funds, funds with changed rules or funds of which they became members on or after 1st July, 1960, which contain amounts received from other funds

5. For the purposes of this Part, a lump sum payment received by a Part I beneficiary from a new fund, a fund with changed rules or a fund of which he became a member on or after the 1st July, 1960, shall not include that part of any amount received from such fund as relates to his membership of any other fund and which would not have been subject to tax in terms of this Act or any previous law had it been received from such other fund.

PART II

AMOUNTS RECEIVED OR ACCRUED BY WAY OF LUMP SUM PAYMENTS FROM PENSION FUNDS OR THE CONSOLIDATED REVENUE FUND WHICH SHALL NOT BE INCLUDED IN GROSS INCOME

Lump sum payments from funds with unchanged rules to Part II beneficiaries who became members before the 1st July, 1960, and from the Consolidated Revenue Fund to Part II beneficiaries to whom an unamended pensions law applied before the 1st July, 1960

6. If a lump sum payment is made from a fund with unchanged rules to a Part II beneficiary who became a member of the fund before the 1st July, 1960, or from the Consolidated Fund to a Part II beneficiary to whom an unamended pensions law applied before the 1st July, 1960, the amount of the lump sum payment shall not be included in the gross income of the beneficiary.

Lump sum payments from funds with changed rules toPart II beneficiaries who became members before the 1st July, 1960, and from the Consolidated Revenue Fund to Part II beneficiaries to whom an amended pensions law applied before the 1st July, 1960

7. If a lump sum payment is made from a fund with changed rules to a Part II beneficiary who became a member of the fund before the 1st July, 1960, or from the Consolidated Revenue Fund to a Part II beneficiary to whom an amended pensions law applied before the 1st July, 1960—

(*a*) in the case of a lump sum payment which does not exceed one thousand eight hundred United States dollars, the amount of the lump sum payment; and

[Subparagraph amended by section 16 of Act 18 of 2000 and Act 5 of 2009]

(*b*) in the case of a lump sum payment which exceeds one thousand eight hundred United States dollars—

(i) so much of the amount of the lump sum payment as is equal to the lump sum payment the beneficiary would have received had the rules of the fund remained unchanged or the amended pensions law not been amended or re-enacted, as the case may be; and

(ii) so much of the balance of the amount of the lump sum payment, if any, remaining after the amount referred to in subparagraph (i) has been excluded therefrom as is used by the beneficiary to acquire a right to an annuity on retirement; and

(iii) so much of the balance of the amount of the lump sum payment, if any, remaining after the amounts referred to in subparagraphs (i) and (ii) have been excluded therefrom as is paid by the beneficiary into another pension fund as contributions which do not qualify for deduction in terms of paragraph (*h*) or (*i*) of subsection (2) of section *fifteen*;

[Subparagraph amended by section 16 of Act 18 of 2000 and Act 5 of 2009]

shall not be included in the gross income of the beneficiary.

Lump sum payments from new funds to Part II beneficiaries, from funds with changed or unchanged rules to Part II beneficiaries who became members on or after the 1st July, 1960, and from the Consolidated Revenue Fund to Part II beneficiaries to whom a pensions law did not apply before the 1st July, 1960

8. If a lump sum payment is made from a new fund to a Part II beneficiary or from a fund with changed or unchanged rules to a Part II beneficiary who became a member of the fund on or after the 1st July, 1960, or from the Consolidated Revenue Fund to a Part II beneficiary to whom a pensions law of Zimbabwe did not apply before the 1st July, 1960—

(*a*) in the case of a lump sum payment which does not exceed one thousand eight hundred United States dollars, the amount of the lump sum payment; and

[Paragraph amended by section 16 of Act 18 of 2000 and Act 5 of 2009]

(*b*) in the case of a lump sum payment which exceeds one thousand eight hundred United States dollars—

(i) so much of the amount of the lump sum payment as is used by the beneficiary to acquire a right to an annuity on retirement; and

(ii) so much of the balance of the amount of the lump sum payment, if any, remaining after the amount referred to in subparagraph (i) has been excluded therefrom as is paid by the beneficiary into another pension fund as contributions which do not qualify for deduction in terms of paragraph (*h*) or (*i*) of subsection (2) of section *fifteen*;

[Paragraph amended by section 16 of Act 18 of 2000 and Act 5 of 2009]

shall not be included in the gross income of the beneficiary.

Lump sum payments to Part II beneficiaries from new funds, funds with changed rules or funds of which they became members on or after 1st July, 1960, which contain amounts received from other funds

9. For the purposes of this Part, a lump sum payment received by a Part II beneficiary from a new fund, a fund with hanged rules or a fund of which he became a member on or after the 1st July 1960, shall not include that part of any amount received from such fund as relates to his membership of any other fund

and which would not have been subject to tax in terms of this Act or any previous law had it been received from such other fund.

PART III

AMOUNTS RECEIVED OR ACCRUED BY WAY OF LUMP SUM PAYMENTS FROM UNAPPROVED FUNDS WHICH SHALL NOT BE INCLUDED IN GROSS INCOME

10. If a lump sum payment is made to a Part III beneficiary, so much thereof as represents a refund of the beneficiary's contributions to the unapproved fund shall not be included in the gross income of the beneficiary.

Law Development Commission, Zimbabwe

SECOND SCHEDULE (Section 8)

VALUATION OF TRADING STOCK

PART I

PRELIMINARY

Interpretation of terms relating to trading stock

1. In the provisions of this Schedule 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 subparagraphs (i) to (iv) of paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*, means—

(*a*) in the case of trading stock referred to in subparagraphs (i) and (iv) of that paragraph, 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 paragraph, 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 farming operations; and

(*b*) crops and other produce produced or partially produced by a farmer in the carrying on of his 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 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 (ii), (iii) and (iv) of paragraph (h) of the definition of "gross income"

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 paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*, 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 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 may accept such other method of valuation as he 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 subparagraph A of subparagraph (iii) or subparagraph (iv) or subparagraph (v) of paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*;

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 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 paragraph (h) of the definition of "gross income"

5. Subject to paragraph 7, the value of the trading stock of a person shall, for the purposes of subparagraph (ii) of paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*, 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 paragraph (h) of the definition of "gross income"

6. The value of the trading stock of a person shall, for the purposes of subparagraph (v) of paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*, 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 paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*, 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 subparagraph (*a*) of subparagraph (2) of paragraph 10;

(*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 subparagraph (*b*) of subparagraph (2) of paragraph 10; 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 subparagraph (*b*) of subparagraph (2) of paragraph 10; or

B. one hundred and fifty United States dollars;

whichever the farmer in terms of that subparagraph may elect;

[Definition amended by section 17 of Act 18 of 2000 Act 5 of 2009]

"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 fifteen thousand dollars, the cost price of the animal; and

[Paragraph, in reference to fifteen thousand dollars not amended in error by Act 5 of 2009]

(*b*) in the case of an animal the cost price to the farmer of which was fifteen thousand dollars or more—

(i) the cost of the animal; or

(ii) one hundred and fifty United States dollars;

whichever the farmer may elect;

[Definition amended by section 17 of Act 18 of 2000 and Act 5 of 2009. Act 5 of 2009 contained errors which created contradictions in paragraph (b) of the definition. Law Reviser.]

"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 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 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 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 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

[Subparagraphs amended by section 17 of Act 18 of 2000 and Act 5 of 2009]

(ii) make the election referred to in subparagraph B of subparagraph (i):

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 (*b*) of subparagraph (1) to value a class of his 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 livestock; and

(*b*) alter the standard value of any class of his livestock which was fixed by the farmer in terms of subparagraph (2) of paragraph 10.

(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*), (iii) *and* (iv) *of paragraph* (*h*) *of the definition of "gross income"

12. The value of the farm trading stock of a farmer shall, for the purpose of subparagraphs (i), (iii) and (iv) of paragraph (*h*) of the definition "gross income" in subsection (1) of section *eight*, 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 subparagraph (1) of paragraph 10; 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—

(*a*) has been given by the farmer to some other person; or

(*b*) has been disposed of by the farmer otherwise than by sale or exchange; or

(*c*) has been disposed of by the farmer otherwise than in the manner described in subparagraph (ii) or subparagraph A of subparagraph (iii) or subparagraph (iv) or subparagraph (v) of paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*;

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 considers such farm 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 farmer so giving away or otherwise disposing of such farm trading stock.

Valuation of farm trading stock referred to in subparagraph* (ii) *of paragraph* (*h*) *of the definition of "gross income"

13. The value of the farm trading stock of a farmer shall, for the purposes of subparagraph (ii) of paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*, 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 paragraph* (*h*) *of the definition of "gross income"

14. The value of the farm trading stock of a farmer shall, for the purposes of subparagraph (v) of paragraph (*h*) of the definition of "gross income" in subsection (1) of section *eight*, be an amount at which the farm trading stock was sold or disposed of.

Law Development Commission, Zimbabwe

THIRD SCHEDULE (Section 14)

EXEMPTIONS FROM INCOME TAX

1. The receipts and accruals of—
   (*a*) local authorities;
   (*b*) the Reserve Bank of Zimbabwe;
   [Subparagraph substituted by Act 4 of 1996]
   (*c*) the Zambezi River Authority;
   [Subparagraph substituted by Act 4 of 1996]
   (*d*) the Natural Resources Board;
   (*e*) the Post Office Savings Bank referred to in section 3 of the Post Office Savings Bank Act [*Chapter 24:10*];
   [Subparagraph reinserted by Act 17 of 1997
   (*f*) ….
   [Subparagraph repealed by Act 4 of 1996]
   (*g*) ….
   [Subparagraph repealed by Act 4 of 1996]

2. The receipts and accruals of—
   (*a*) agricultural, mining and commercial institutions or societies not operating for the private pecuniary profit or gain of the members;
   (*b*) benefit funds;
   (*c*) building societies;
   (*d*) clubs, societies, institutes and associations organized 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 such receipts or accruals, whether current or accumulated, may not be divided amongst or credited to or enure to the benefit of any member or shareholder 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*];
   [Subparagraph inserted by Act 29 of 1998]
   (*i*) pension funds, until such date as the Minister may specify by notice in the Gazette;
   [Subparagraph substituted by Act 22 of 1999]
   (*j*) any statutory corporation which is declared by the Minister, by notice in the Gazette, to be exempt from income tax;
   Provided that the Minister may limit any such declaration to such of the statutory corporation's receipts and accruals as he may specify in the notice;
   [Subparagraph substituted by Act 4 of 1996 and amended by Act 17 of 1997]
   (*k*) trade unions;
   (*l*) trusts of a public character.
   (*m*) the Deposit Protection Fund established in terms of section 66 of the Banking Act [*Chapter 24:20*].
   [Subparagraph inserted by Act 10 of 2003][

3. The receipts and accruals of—
   (*a*) any agency of any government, other than the Government of Zimbabwe, approved by the Minister by notice in a statutory instrument;
   (*b*) any international organization specified in terms of section 7 of the Privileges and Immunities Act [*Chapter 3:03*] which has been approved by the Minister by notice in a statutory instrument;
   (*c*) the organizations referred to in the International Financial Organizations Act [*Chapter 22:09*];
   (*d*) the African Development Bank referred to in the African Development Bank (Membership of Zimbabwe) Act [*Chapter 22:01*];
   (*e*) the African Development Fund referred to in the African Development Fund (Zimbabwe) Act [*Chapter 22:02*];
   (*e*1) the South African Reserve Bank;
   [Subparagraph renumbered by Act 17 of 1997.]

(*f*) any foreign organization that provides finance for development in Zimbabwe, to the extent that its receipts and accruals are from a project approved for the purposes of this subparagraph by the Minister;

(*g*) any person who—

(i) is entitled to an exemption in respect of such receipts or accruals in terms of any agreement entered into by the Government of Zimbabwe with any other government or organization; and

(ii) is approved by the Minister by notice in a statutory instrument;

to the extent provided in the agreement concerned;

(*h*) any 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 paragraph (*m*) of subsection (1) of section 9 of the Reserve Bank of Zimbabwe Act [*Chapter 22:10*];

(*i*) any 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.

[Subparagraph substituted by Act 13 of 1996]

4. An amount accruing by way of—

(*a*) salary and emoluments paid in respect of his office to—

(i) the President;

(ii) a member of the staff of the President in so far as such salary and emoluments are paid by the President;

(iii) 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*];

(iv) any person who—

A. is entitled to exemption or relief from income tax in respect of such salary or emoluments in terms of any agreement entered into by the Government of Zimbabwe with any other government or international, regional or foreign organization; and

B. is approved by the Minister by notice in a statutory instrument;

(*a*1) any allowance payable to a spouse of the President or a Vice-President in respect of duties the spouse performs for or on behalf of the State;

[Subparagraph (a1) inserted by Act 17 of 1997.]

(*a2*) any allowance payable by the State to the spouse of a former President;

[(Subparagraph inserted by Act No. 27 of 2001]

(*b*) 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 notice in a statutory instrument with effect from such date, whether before, on or after the date of the notice, as the President may specify therein;

(*c*) 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 notice in a statutory instrument;

(*d*) 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 notice in a statutory instrument with effect from such date, whether before, on or after the date of the notice, as the President may specify therein;

(*d*1) any gratuity payable to a judge of the Supreme Court or the High Court in terms of his conditions of service;

[Subparagraph inserted by Act 17 of 1997]

(*e*) an allowance payable to a chief or headman in his capacity as chief or headman;

(*f*) 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 any law relating to defence;

(*g*) one of the following allowances granted to a person who is not in full-time military or police employment, as the case may be—

(i) a quarterly allowance granted to a commissioned officer in the Defence Forces; or

(ii) a volunteers allowance granted to a member of the Defence Forces; or

(iii) 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*];

(*h*) a gratuity given in conjunction with the award of—

(i) the Fire Brigades Long Service Medal; or

(ii) the Medal for Long Service and Good Conduct (Military);

[Subparagraph substituted by Act 10 of 2009]

(*i*) a gratuity given to a member of the Police Force who has become eligible for the award of a medal as a reward for long service;

(*j*) an allowance payable by the State to a person in its service in respect of—

(i) the expenditure incurred by the person in the discharge of his duties outside Zimbabwe; or

(ii) so much of the expenditure of the person in maintaining himself, his family or establishment whilst employed on duty outside Zimbabwe as exceeds the expenditure he would normally incur if he were employed in Zimbabwe;

(*k*) the value of the grant of rations to a member of the Defence Forces or the Police Force for any period during which he is in the field engaged on operational military duties;

(*l*) a gratuity given in conjunction with the grant of any honour or award created in terms of section 3 of the Honours and Awards Act [*Chapter 10:11*];

(*m*) a scholarship, bursary, payment in respect of tuition fees or 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;

(*n*) 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*];

(*o*) a bonus or performance-related award accruing to an employee or agent in respect of his or her employment or agency, to the extent that the bonus does not exceed or, where the employee or agent receives more than one bonus in the year of assessment concerned, to the extent that the aggregate of the bonuses does not exceed five hundred United States dollars;

[Paragraph substituted by Act 10 of 2009 and amended by Act 5 of 2010]

(*p*) the first five thousand United States dollars or one-third, whichever is the greater, of the amount 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 the cessation of his or her employment, where his or her employment has ceased due to retrenchment under a scheme approved by the Minister responsible for labour or the Public Service:

Provided that the exemption provided in 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 him or her in any one year of assessment.

[Subparagraph substituted by Act 10 of 2009]

(*q*) …..

[Paragraph repealed by Act 3 of 2010]

(*q*) …..

[Second paragraph (*q*) inserted by Act 29 of 2004 and repealed by Act 2 of 2005]

(*r*) …..

[Paragraph repealed by Act 3 of 2010]

(*s*) a reward paid to a person by the Commissioner-General in terms of section 34B of the Revenue Authority Act [*Chapter 23:11*];

[Paragraph inserted by Act 10 of 2003]

(*t*) the value of an allowance in respect of accommodation and transport, or the value of the grant of quarters or a residence to any member of staff of a mission hospital or rural clinic.

In this subparagraph "mission hospital or rural clinic" means a private hospital or rural clinic owned, operated or sponsored by any religious body or a hospital or rural clinic owned or operated by a rural district council.

[Paragraph inserted by Act 10 of 2003]

(*t*) 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*];

[Subparagraph inserted by Act 16 of 2004]

(*v*) rental income 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.

[Subparagraph inserted by Act 2 of 2005 and amended by Act 3 of 2009]

5. An amount accruing by way of—

(*a*) a pension or allowance payable in terms of the Presidential Pension and Retirement Benefits Act [*Chapter 2:05*];

(*b*) the value of a service or facility provided in terms of the Presidential Pension and Retirement Benefits Act [*Chapter 2:05*].

6. An amount accruing by way of—

(*a*) a war disability pension;

(*b*) a war widow's pension:

(i) a pension payable in terms of a scheme established in terms of section 7 of the War Veterans Act [*Chapter 11:15*];

(ii) a gratuity payable to a war veteran in terms of section 4 of the War Veterans (Benefits Scheme) Regulations, 1997, published in terms of section 7 of the War Veterans Act [*Chapter 11:15*];

(*c*) a pension in terms of the Old Age Pensions Act [*Chapter 332 of 1974*];

(*d*) …..

[Subparagraph repealed by Act 3 of 2010]

(*e*) an award, benefit or compensation, including a pension, to any person or his dependants or heirs under any law in respect of injury, disease, disablement or death suffered in employment;

(*f*) an award, benefit or compensation, including a pension, to any person or his dependants 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 law repealed by that Act;

(*g*) an award, benefit or compensation, including a pension, to any person or his dependants which has been paid from the Wankie Disaster Relief Fund;

(*h*) 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.

[Subparagraph reinserted by Act 8 of 2005]

(*i*) a pension payable in terms of a scheme established in terms of section 7 of the War Veterans Act [*Chapter 11:15*];

(*j*) a gratuity payable to a war veteran in terms of section 4 of the War Veterans (Benefits Scheme) Regulations, 1997, published in terms of section 7 of the War Veterans Act [*Chapter 11:15*];

[Subparagraph inserted by Act 23 of 1997 and renumbered by Act 22 of 1999]

7. An amount accruing by way of a benefit in respect of the injury, sickness or death of a person which is paid to the person or his 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.

8. (1) The value of medical treatment or of travelling to obtain such treatment which is provided by 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.

(2) The amount of any contributions paid to a medical aid society by an employer on behalf of his employees.

9. An amount received by or accrued to or in favour of a person by way of a dividend from a company which is incorporated in Zimbabwe and is charged or chargeable to income tax.

10. (1) An amount accruing by way of interest paid on—

(*a*) any savings certificate issued in terms of any law;

(*b*) a sum deposited in the Post Office Savings Bank of Zimbabwe;

(*c*) any tax reserve certificate issued in terms of the Tax Reserve Certificates Act [*Chapter 23:10*];

(*d*) a loan raised by the State subject to the condition that interest on the loan shall be exempt from income tax;

(*e*) a loan raised by the State which is declared by the Minister, by statutory instrument, to be exempt from income tax;

(*f*) any loan made by the European Investment Bank established by Article 129 of the Treaty establishing the European Economic Community;

(*g*) any loan to the Infrastructure Development Bank of Zimbabwe established by section 3 of the Infrastructure Development Bank of Zimbabwe Act [*Chapter 24:14*] made by an institutional shareholder as defined in that Act who is not ordinarily resident in Zimbabwe;

[Subparagraph inserted by Act 3 of 2010]

(*h*) 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;

(*h*1) …..

[Paragraph repealed by Act 2 of 2005]

(*i*) ….

[Subparagraph repealed by Act 13 of 1996]

(*j*) …..

[Subparagraph repealed by Act 3 of 2010]

(*k*) any so called "agricultural bond" issued by the Agricultural Finance Corporation and a consortium of commercial banks.

(*l*) any bond issued by the Reserve Bank of Zimbabwe on behalf of the National Fuel Investments Company (Private) Limited.

[Subparagraph inserted by Act 18 of 2000]

(*m*) any "agricultural bond" issued by a consortium of commercial banks led by Syfrets Corporate and Merchant Bank (Sybank) for the purpose of advancing the proceeds to support the beneficiaries of the resettlement programme which commenced under the terms of the Land Acquisition Act [*Chapter 20:10*] on the 23rd May, 2000;

(*n*) any deposit with a financial institution accruing to a taxpayer who is 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

For the purpose of this subparagraph—

"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;

[Subparagraph amended by Act 3 of 2009]

"financial institution" means—

(*a*) the Reserve Bank of Zimbabwe referred to in section 4 of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*]; or

(*b*) any banking institution registered in terms of the Banking Act [*Chapter 24:20*]; or

(*c*) any building society registered in terms of the Building Societies Act [*Chapter 24:02*]; or

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

(*e*) a collective investment scheme as defined in section 3 of the Collective Investment Schemes Act, 1997;

(*o*) banker's acceptances and other discounted instruments traded by financial institutions and accruing to a taxpayer who is 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.

[Subparagraph (o) substituted by Act 6 of 2006 and amended by Act 3 of 2009]

[Subparagraphs (*m*), (*n*), (*o*) inserted by Act 2 of 2005]

(*p*) any "Diaspora Bond" issued by the Commercial Bank of Zimbabwe (CBZ).

[Subparagraph inserted by Act 5 of 2010]

(2) In subparagraph (1)—

"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.

10A. An amount accruing by way of interest, as defined in the Twenty-First Schedule, from which residents' tax on interest is required to be withheld in terms of that Schedule.

11. (1) Subject to subparagraph (2), an amount by way of interest received by or accrued to or in favour of a person who, at the time the interest accrues, is not ordinarily resident and does not carry on business within Zimbabwe—

(*a*) on so much of any loan made to a person carrying on mining operations or undertaking prospecting or exploratory works for the purpose of acquiring rights to mine minerals as is used by the person in carrying on or undertaking such operations or works in Zimbabwe; and

(*b*) on any loan to the State or any company all the shares of which are owned by the State; and

(*c*) on any loan to a local authority; and

(*d*) on any loan to a statutory corporation; and

(*e*) …..

[Subparagraph repealed by Act 3 of 2010]

(2) In subparagraphs (*b*) and (*d*) of subparagraph (1), "loan" includes any form of indebtedness known as an acceptance or standby credit facility.

(3) Subparagraph (1) shall not apply to interest received by or accrued to or in favour of—

(*a*) a person ordinarily resident in a country other than Zimbabwe which would, but for this subparagraph, be liable to tax in that country by reason of its exemption from tax in Zimbabwe; or

(*b*) a company which, at the time the interest accrues, is under the control of a person who at that time is ordinarily resident or carries on business within Zimbabwe; or

(*c*) a company incorporated outside Zimbabwe from a company incorporated in Zimbabwe if—

(i) the majority of the voting rights attaching to all classes of shares in the company incorporated within 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).

12. An amount received by way of alimony, howsoever paid.

13. An amount accruing by way of the sale of traditional beer in terms of the Traditional Beer Act [*Chapter 14:24*] to the extent that such amount is devoted to the purposes to which a person authorized under that Act to sell such beer is in terms of that Act required to devote such amount.

14. An amount paid by the State to an exporter of goods in terms of a Scheme for the development of export trade, excluding the amount of any duty refunded in terms of the Customs and Excise Act [*Chapter 23:02*].

15. Any amount received by way of an allowance referred to in paragraph (*m*) of subsection (1) of section *sixteen* to the extent that it is expended on the business of the employer.

16. ……

[Paragraph repealed by Act 8 of 2005]

17. The receipts and accruals of an industrial park developer, to the extent that they accrue directly from the operation of his industrial park, in the year of assessment in which the industrial park is established or is approved by the Minister for the purposes of the definition of "industrial park" in section *two*, whichever year is the earlier, and in each of the next four following years of assessment.

18. An amount received by way of the sale, disposal or transfer of any duty exemption certificate issued by the Reserve Bank of Zimbabwe to an exporter qualifying for a rebate of duty on imports in terms of an export incentive scheme under which such certificates are issued.

[Paragraph inserted by Act 18 of 2000 and amended by Act 15 of 2002]

19. An amount received by or accrued to or in favour of an employee participating in an approved employee share ownership trust from the sale to or redemption by the trust of any stock, shares, debentures, units or other interest of the employee in the scheme or trust of any stock, shares, debentures, units or other interest of the employee in the trust.

[Paragraph inserted by Act 27 of 2001 and amended by Act 15 of 2002]

Law Development Commission, Zimbabwe

FOURTH SCHEDULE (Section 15 (2) (*c*))

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

1. (1) In this Schedule—

"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 1st April, 1975, and which is used to the extent of at least ninety *per centum* of the floor area for the purposes of trade 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 14:22*];

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 the Seventh Schedule; or

(ii) staff housing or any dwelling—

A. used by the taxpayer as the homestead of himself and his 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 utilized 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 workers 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*];

[Subparagraph inserted by section 20 of Act 13 of 1996]

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;

"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 trade wholly or mainly for the housing of his employees, but does not include—

(*a*) in the case of any such building the erection of which was commenced before the 1st April, 1984, any building comprising or incorporating any residential unit the cost of which exceeds five thousand dollars; or

(*b*) in the case of any such building the erection of which was commenced on or after the 1st April, 1984, but before the 1st April, 1986, any building comprising or incorporating any residential unit the cost of which exceeds eight thousand dollars;

(*c*) in the case of any such building the erection of which was commenced on or after the 1st April, 1986, but before the 1st April, 1988, any building comprising or incorporating any residential unit the cost of which exceeds ten thousand dollars;

(*d*) in the case of any building the erection of which was commenced on or after the 1st April, 1988, but before the 1st April, 1991, any building comprising or incorporating any residential unit the cost of which exceeds fifteen thousand dollars;

(*e*) in the case of any such building the erection of which was commenced on or after the 1st April, 1991, but before the 1st April, 1992, any building comprising or incorporating any residential unit the cost of which exceeds sixty-five thousand dollars;

(*f*) in the case of any such building the erection of which was commenced on or after the 1st April, 1992, but before the 1st April, 1995, any building comprising or incorporating any residential unit the cost of which exceeds seventy-five thousand dollars;

(*g*) in the case of any such building the erection of which was commenced on or after the 1st April, 1995, but before the 1st January, 1999, any building comprising or incorporating any residential unit the cost of which exceeds one hundred thousand dollars; or

[Paragraph amended by Act 17 of 1997]

(*h*) in the case of any such building the erection of which was commenced on or after the 1st January 1999, but before the 1st January, 2001, any building comprising or incorporating any residential unit the cost of which exceeds two hundred thousand dollars.

[Paragraph inserted by Act 17 of 1997 and amended by Act 27 of 2001]

(*i*) in the case of any such building the erection of which was commenced on or after the 1st January, 2002, but before the 1st January, 2003, any building comprising or incorporating any residential unit the cost of which exceeds five hundred thousand dollars;

[Paragraph inserted by Act 27 of 2001 and amended by Act 15 of 2002]

(*j*) in the case of any such building the erection of which was commenced on or after the 1st January, 2003, but before the 1st January, 2004, any building comprising or incorporating any residential unit the cost of which exceeds three million dollars;

[Paragraph inserted by Act 15 of 2002 and amended by Act 10 of 2003]

(*k*) in the case of any such building the erection of which was commenced on or after the 1st January, 2004 but before the 1st January, 2005, any building comprising or incorporating any residential unit the cost of which exceeds fifty million dollars;

[Paragraph inserted by Act 10 of 2003 and amended by Act 29 of 2004]

(*l*) in the case of any such building the erection of which was commenced on or after the 1st January, 2005, any building comprising or incorporating any residential unit the cost of which exceeds two hundred and seventy million dollars.

[Paragraph inserted by Act 29 of 2004]

(*m*) in the case of any such building the erection of which was commenced on or after the 1st January, 2006 but before the 1st January, 2007, any building comprising or incorporating any residential unit the cost of which exceeds one billion five hundred million dollars.

[Paragraph inserted by Act 8 of 2005 and amended by Act 12 of 2006]

(*n*) in the case of any such building the erection of which was commenced on or after the 1st January, 2007 but before the 1st January, 2008, any building comprising or incorporating any residential unit the cost of which exceeds sixteen million dollars;

[Paragraph inserted by Act 12 of 2006 and amended by Act 16 of 2007

(*o*) in the case of any such building the erection of which was commenced on or after the 1st January, 2008 but before the 1st January, 2009, any building comprising or incorporating any residential unit the cost of which exceeds one hundred billion dollars or an amount equivalent to fifty *per centum* of the cost of constructing the building, whichever is the lesser amount;

[Paragraph inserted by Act 16 of 2007 and amended by Act 3 of 2009]

(*p*) 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;

[Paragraph inserted by Act 3 of 2009]

"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;

"training building" ….

[Definition repealed by Act 18 of 2000]

"training equipment" ….

[Definition repealed by Act 18 of 2000]

(2) ….

[Subparagraph repealed by Act 18 of 2000]

(3) For the purposes of this Schedule, 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 trade 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 assess-

ment 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 trade;

(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 unless the taxpayer establishes to the satisfaction of the Commissioner that—

A. at the termination of the period of the lease, he 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 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;

(iv) the special initial allowance shall not be allowed in respect of half of the capital expenditure incurred in the purchase of any fiscalised electronic register whose purchase qualifies for relief in terms of section 15(3)(*k*) of the Value Added Tax Act [*Chapter 23:12*].

[Proviso inserted by Act 3 of 2010 with effect from 1 October 2010]

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 trade;

(*b*) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his trade;

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 trade;

(*b*) articles, implements, machinery and utensils belonging to and used by the taxpayer for the purposes of his trade;

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 Schedule 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 trade 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 trade;

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 trade and for other purposes.

Deduction for training investment allowance

5. ….

[Paragraph repealed by Act 18 of 2000]

Calculation of wear and tear allowances for commercial buildings, farm improvements, industrial buildings, railway lines, staff housing and tobacco barns

6. (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 trade 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 trade 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 trade

7. (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 trade 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 paragraph (*b*) of subsection (2) of section *fifteen* in respect of such articles, implements, machinery or utensils, the Commissioner may take into consideration the deduction allowed under that paragraph.

(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.

If any articles, implements, machinery or utensils have been—

(*a*) used elsewhere by the taxpayer and transferred to Zimbabwe for use by him in his trade; or

(*b*) used by the taxpayer for a purpose other than that of his trade and then used by him in his trade; 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

8. (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 shall determine the amount which shall be deemed, for the purposes of calculating any allowance in terms of this Schedule, 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 shall determine the amount which shall be deemed, for the purposes of calculating any allowance in terms of this Schedule, 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 trade 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 Schedule, 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 paragraphs (*a*), (*b*) and (*c*) of proviso (iii) or proviso (v) to subsection (3) of section *fifteen* 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 Schedule, 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 gross income of any transferor in terms of paragraph (*j*) of the definition of "gross income" in subsection (1) of section *eight*, had such transferor retained ownership of the asset, shall be included in the gross 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 Schedule, 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 gross income of any transferor in terms of paragraph (*j*) of the definition of "gross income" in subsection (1) of section

eight, had such transferor retained ownership of the asset, shall be included in the gross income of the transferee effecting such sale or disposal.

Rates of special initial allowance

9. The special initial allowance referred to in paragraph 2 shall, if it is allowed in the year of assessment beginning—

(*a*) on the 1st April, 1975, be a sum equal to forty *per centum*;

(*b*) on the 1st April, 1976, be a sum equal to seventy *per centum*;

(*c*) on the 1st April, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989 or 1990, be a sum equal to one hundred *per centum*;

(*d*) on the 1st April, 1991, or the 1st April 1992, be a sum equal to fifty *per centum*;

(*e*) on the 1st April, 1993, or any subsequent year of assessment ending on the 31st December, 2000, be a sum equal to twenty-five *per centum*;

[Subparagraph amended by Act 18 of 2000]

(*f*) on the 1st January, 2001, or any subsequent year of assessment, be a sum equal to fifty per centum;

[Subparagraph amended by Act 18 of 2000]

(*g*) on the 1st January, 2011, or in any subsequent year of assessment, be a sum equal to one hundred per *centum* in the case of a taxpayer which is a "small or medium enterprise" as defined in section 2B of the Charging Act:

Provided that fifty *per centum* shall be allowed in the first year of assessment in which the taxpayer claims the special initial allowance in terms of this subparagraph, and twenty-five *per centum* in each of the next two years of assessment following that year;;

[Subparagraph substituted by Act 3 of 2010]

(*h*) 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*.

[Subparagraph inserted by Act 10 of 2009]

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

10. (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 trade

11. Where a taxpayer incurs any expenditure which is not allowed as a deduction in terms of paragraph (*a*) of subsection (2) of section *fifteen* on additions or alterations to articles, implements, machinery or utensils which are not owned by him but are used by him for the purposes of his trade, the provisions of paragraphs 2, 3, 4, 7 and 9 shall apply, *mutatis mutandis*, 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 on such additions or alterations.

Cases in which no deductions to be made in terms of this Schedule

12. 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

13. 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 dollars.

Limitation on cost of passenger motor vehicle

14. (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—

(*a*) twenty-two thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st April, 1986, but before the 31st March, 1991;

(*b*) thirty thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st April 1991, but before the 1st April, 1992;

(*c*) fifty thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st April, 1992, but before the 1st April, 1995;

(*d*) seventy-five thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st April, 1995, but before the 1st January, 1999.

[Subparagraph amended by Act 29 of 1998]

(e) two hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January 1999, but before the 1st January, 2001.

[Subparagraph inserted by Act 29 of 1998 and amended by Act 18 of 2000]

(*f*) three hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2001, but before the 1st January, 2002.

[Subparagraph inserted by Act 18 of 2000 and amended by Act 27 of 2001]

(*g*) five hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2002.

[Subparagraph inserted by Act 27 of 2001]

(*h*) one million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2003 but before the 1st January, 2004.

[Subparagraph inserted by Act 15 of 2002 and amended by Act 10 of 2003]

(*i*) ten million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2004 but before the 1st January, 2005.

[Subparagraph inserted by Act 10 of 2003 and amended by Act 29 of 2004]

(*j*) fifty million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2005, but before the 1st January, 2006..

[Subparagraph inserted by Act 29 of 2004 and amended by Act 8 of 2005]

(*k*) one billion dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2006, but before the 1st January, 2007.

[Subparagraph inserted by Act 8 of 2005 and amended by Act 12 of 2006]

(*l*) ten million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2007 but before the 1st January, 2009.

[Subparagraph inserted by Act 12 of 2006 and amended by Act 3 of 2009]

(*m*) fifty per centum of the cost of acquisition of the vehicle, or one hundred billion dollars, whichever is the lesser amount, shall be disregarded, where the vehicle was purchased on or after the 1st January, 2008.

[Subparagraph inserted by Act 16 of 2007]

(*m*) ten thousand United States dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2009.

[Subparagraph inserted by Act 3 of 2009 and erroneously numbered (m) instead of (o)]

(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

[Paragraph amended by Act 29 of 1998]

(*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;

or

(*d*) ….

[Paragraph repealed by Act 29 of 1998]

Maximum amounts allowable in respect of schools, hospitals, nursing homes and clinics

15. (1) 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—

(i) fifteen thousand dollars incurred by the taxpayer, where the expenditure was incurred before the 1st April, 1991;

(ii) thirty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st April, 1991, but before the 1st April, 1992;

(iii) thirty-five thousand dollars incurred by the tax payer, where the expenditure was incurred on or after the 1st April, 1992, but before the 1st April, 1995;

(iv) fifty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January, 1999;

(v) one hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 1999, but before the 1st January, 2001.

[Subparagraph inserted by Act 17 of 1997 and amended by Act 18 of 2000]

(vi) one hundred and fifty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2001 but before the 1st January, 2002;

[Subparagraph inserted by Act 18 of 2000 and amended by Act No. 27 of 2001]

(vii) two hundred and fifty thousand dollars incurred by the taxpayer where the expenditure was incurred on or after the 1st January, 2002, but before the 1st January, 2003.

[Subparagraph inserted by Act 27 of 2001 and amended by Act 15 of 2002]

(viii) one million dollars incurred by the taxpayer where the expenditure was incurred on or after the 1st January, 2003 but before the 1st January, 2004.

[Subparagraph inserted by Act 15 of 2002 and amended by Act 10 of 2003]

(ix) fifteen million dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2004 but before the 1st January, 2005;

[Subparagraph inserted by Act 10 of 2003 and amended by Act 29 of 2004]

(x) ten thousand United States dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;

[Subparagraph inserted by Act 5 of 2009]

(*b*) in respect of any one such school, hospital, nursing home or clinic, any amount in excess of—

(i) one hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred before the 1st April, 1993;

(ii) two hundred and fifty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st April, 1993, but before the 1st April, 1995.

(iii) five hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st April, 1995 but before 1st January, 1999;

(iv) one million five hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January 1999, but before the 1st January, 2001.

[Subparagraph inserted by Act 17 of 1997 and amended by Act 18 of 2000]]

(v) two million two hundred and fifty thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2001 but before the 1st January, 2002.

[Subparagraph inserted by Act 18 of 2000 and amended by Act No. 27 of 2001]

(vi) three million five hundred thousand dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2002, but before the 1st January, 2003.

[Subparagraph inserted by Act No. 27 of 2001 and amended by Act 15 of 2002]

(vii) ten million dollars incurred by the taxpayer where the expenditure was incurred on or after the 1st January, 2003, but before the 1st January, 2004.

[Subparagraph inserted by Act 15 of 2002 and amended by Act 10 of 2003]

(viii) fifty million dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2004

[Subparagraph inserted by Act 10 of 2003]

(ix) ten thousand United States dollars incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;

[Subparagraph inserted by Act 5 of 2009]

(2) With effect from the year of assessment beginning on the 1st January, 2005, the total cost to the taxpayer of any school, hospital, nursing home, or clinic shall be allowed in calculating for the purposes of paragraph 2, 3, 4, 6, 8 or 9 the total cost of any buildings which rank as farm improvements, and any additions or alterations thereto.

[Paragraph substituted by Act 29 of 2004]

(3) With effect from the year of assessment beginning on the 1st January, 2005, the total cost to the tax-payer of any one building used wholly or mainly for the housing of staff employed at a school, hospital, nursing home, or clinic 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.

[Paragraph inserted by Act 29 of 2004]

Law Development Commission, Zimbabwe

FIFTH SCHEDULE (Section 15 (2) (f))

ALLOWANCES AND DEDUCTIONS IN RESPECT OF INCOME FROM MINING OPERATIONS AND OTHER PROVISIONS RELATING THERETO

Interpretation

1. (1) In this Schedule—

"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 subparagraph (*a*) of subparagraph (2) of paragraph 2 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;

"associated company" means a company which controls, is controlled by or is under common control with a taxpayer;

"capital expenditure" means—

(*a*) expenditure, in relation to mining operations (other than expenditure in respect of which a deduction is allowable in terms of subparagraph (ii) of paragraph (*f*) of subsection (2) of section *fifteen*)—

(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—

I. fifteen thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the first day of the first year of assessment under this Act but before the 1st April, 1991; or

II. thirty thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the 1st April, 1991, but before the 1st April, 1992; or

III. thirty-five thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the 1st April, 1992, but before the 1st April, 1995; or

IV. fifty thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the 1st April, 1995;

[Subparagraph amended by Act 17 of 1997]

V. one hundred thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the 1st January 1999, but before the 1st January, 2001;

[Subparagraph amended by Act 17 of 1997 and amended by Act 18 of 2000]

VI. one hundred and fifty thousand dollars on a building used mainly as a dwelling by one or more of the individuals who control the company, where the building was erected on or after the 1st January, 2001,but before the 1st January, 2002; or

[Subparagraph amended by Act 18 of 2000 and by Act No.27 of 2001]

VII. two hundred and fifty thousand dollars on a building used mainly as a dwelling by one or more individuals who control the company, where the building was erected on or after the 1st January, 2002, but before the 1st January, 2003.or

[Subparagraph inserted by Act.27 of 2001 and amended by Act 15 of 2002]

VIII one million dollars on a building used mainly as a dwelling by one or more individuals who control the company, where the building was erected on or after the 1st January, 2003.

[Subparagraph inserted by Act 15 of 2002]

IX. ten thousand United States dollars on a building used mainly as a dwelling by one or more individuals who control the company, where the building was erected on or after the 1st January, 2009;

[Subparagraph inserted by Act 5 of 2009]

B. in the case of a passenger motor vehicle as defined in subparagraph (2) of paragraph 14 of the Fourth Schedule, any expenditure in excess of—

I. twenty-two thousand dollars, where such motor vehicle was purchased on or after the 1st April, 1986 but before the 1st April, 1991; or

II. thirty thousand dollars, where such motor vehicle was purchased on or after the 1st April, 1991, but before the 1st April, 1992; or

III. fifty thousand dollars, where such motor vehicle was purchased on or after the 1st April, 1992; but before the 1st April, 1995; or

IV. seventy-five thousand dollars, where such motor vehicle was purchased on or after the 1st April, 1995, but before the 1st January 1999; or

[Subparagraph amended by Act 29 of 1998]

V. two hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January 1999, but before the 1st January, 2001; or

[Subparagraph inserted by Act 29 of 1998]

VI. three hundred dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2001, but before the 1st January, 2002; or

[Subparagraph inserted by Act 18 of 2000 and amended by Act 27 of 2001]

VII. five hundred thousand dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2002, but before the 1st January, 2003.

[Subparagraph inserted by Act 27 of 2001 and amended by Act 15 of 2002]

VIII. one million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2003 but before the 1st January, 2007; or

[Subparagraph inserted by Act 15 of 2002 and amended by Act 12 of 2006]

IX. ten million dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2007.

[Subparagraph inserted by Act 12 of 2006]

X. ten thousand United States dollars shall be disregarded, where the vehicle was purchased on or after the 1st January, 2009;

[Subparagraph inserted by Act 5 of 2009]

(ii) on shaft sinking;

(iii) incurred prior to the commencement of production or during any period of non-production on preliminary surveys, bore-holes, development, general administration and management, including any interest payable on loans utilized for mining purposes;

(*b*) expenditure incurred on or after the 1st April, 1988, on any permanent building used for the purposes of—

(i) a school; or

(ii) a hospital, nursing home or clinic;

in connection with the taxpayer's mining operations, to the extent that the expenditure does not exceed—

A. in respect of any building used mainly as a dwelling by staff employed at the school, hospital, nursing home or clinic—

I. fifteen thousand dollars, where the expenditure was incurred before the 1st April, 1991; or

II. thirty thousand dollars, where the expenditure was incurred on or after the 1st April, 1991, but before the 1st April, 1992; or

III. thirty-five thousand dollars, where the expenditure was incurred on or after the 1st April, 1992, but before the 1st April, 1995; or

IV. fifty thousand dollars, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January 1999 ; or

V. one hundred thousand dollars where the expenditure was incurred on or after 1st January 1999, but before the 1st January, 2001; or

[Subparagraph inserted by Act 17 of 1997 and amended by Act 18 of 2000]

VI. one hundred and fifty thousand dollars, where the expenditure was incurred on or the 1st January, 2001, but before the 1st January, 2002;or

[Subparagraph inserted by Act 18 of 2000 and amended by Act 27 of 200]

VII. two hundred and fifty thousand dollars, where the expenditure was incurred on or after the 1st January, 2002, but before the 1st January, 2003 ; or

[Subparagraph inserted by Act 27 of 2001 and amended by Act 15 of 2002.]

VIII. one million dollars, where the expenditure was incurred on or after the 1st January, 2003.

[Subparagraph inserted by Act 15 of 2002.]

IX. fifty thousand United States dollars, where the expenditure was incurred on or after the 1st January, 2009;

[subparagraph inserted by Act 5 of 2009]

B. in respect of any one such school, hospital, nursing home or clinic—

I. one hundred thousand dollars, where the expenditure was incurred before the 1st April, 1993; or

II. two hundred and fifty thousand dollars, where the expenditure was incurred on or after the 1st April, 1993, but before the 1st April, 1995; or

III. five hundred thousand dollars, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January 1999; or

IV. one million five hundred thousand dollars where the expenditure was incurred on or after the 1st January 1999, but before the 1st January, 2001; or

[Subparagraph inserted by Act 17 of 1997 amended by Act 18 of 200.]

V. two million two hundred and fifty thousand dollars, where the expenditure was incurred on or the 1st January, 2001, but before the 1st January, 2002; or

[Subparagraph inserted by Act 18 of 2000 and amended by Act.27 of 2001.]

VI. three million five hundred thousand dollars, where the expenditure was incurred on or after the 1st January, 2002, but before the 1st January, 2003; or

[Subparagraph inserted by Act No.27 of 2001 and amended by Act 15 of 2002.]

VII. ten million dollars, where the expenditure was incurred on or after the 1st January, 2003.

[Subparagraph inserted by Act 15 of 2002]

VIII. fifty thousand United States dollars, where the expenditure was incurred on or after the 1st January, 2009;

[Subparagraph inserted by Act 5 of 2009]

"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 6;

"expenditure on shaft sinking" includes the expenditure on sumps, pump chambers, stations and ore bins accessory to a shaft;

"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 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 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 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 Schedule, 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 mining 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 mining 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 mining operations or are members of the families of persons who are so employed.

Calculation of redemption allowance and unredeemed balance of capital expenditure in the case of mine-owning companies

2. (1) Subject to paragraph 4, 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)(*a*) 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.

(*b*) 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

3. (1) Subject to paragraph 4, 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 2 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

4. (1) Notwithstanding paragraphs 2 and 3, where any person, at the 1st of April, 1967, 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 2 and 3, 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 subparagraph (2) of paragraph 2; or

(ii) furnishes an estimate of the life of the mine in terms of the proviso to subparagraph (1) of paragraph 3;

(*b*) be fixed by the Commissioner at such sum as may seem to him to be fair and reasonable, in any case not referred to in subparagraph (*a*).

(4) Notwithstanding 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 produc-

tion on the new mine first commences shall be the aggregate of the amount of capital expenditure incurred by him 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 1st April, 1968; 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 1st April, 1968.

Allowance for capital expenditure incurred on non-contiguous mine

5.

[Paragraph repealed by Act 18 of 2000]

Deduction of expenditure incurred on renewal or replacement of buildings, works or equipment

6. If the taxpayer so elects (which election shall be binding) in respect of income from mining operations, he 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.

[Paragraph amended by Act 5 of 2009]

Deduction for training investment allowance

7.

[Paragraph repealed by Act 18 of 2000]

Computation of unredeemed balance of capital expenditure on change of ownership of a mine

8. (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 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 subparagraph (1) or (2) of paragraph 4 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 in the circumstances described in paragraphs (*a*), (*b*) and (*c*) of proviso (iii) to subsection (3) of section *fifteen* 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.

(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.

Deduction not admissible in respect of income derived from carrying on of mining operations

10. No deduction shall, as regards income derived from the carrying on of mining operations, be made in respect of the allowances or deductions referred to in paragraphs (*c*), (*d*), (*e*) and (*t*) of subsection (2) of section *fifteen*.

Law Development Commission, Zimbabwe

SIXTH SCHEDULE (Section 15 (2) (*h*))

DEDUCTIONS IN RESPECT OF CONTRIBUTIONS TO BENEFIT AND PENSION FUNDS AND THE CONSOLIDATED REVENUE FUND

PART I

PRELIMINARY

Interpretation of terms

1. In this Schedule—

"amended pensions law", in relation to an officer, means a pensions law of Zimbabwe in force before the 1st July, 1960, the provisions of which have been amended or re-enacted on or after that date to provide for an increase in the ordinary contributions to be made to the Consolidated Revenue Fund by the officer or the State or the officer and the State with the object of increasing the amount of the pension payable to the officer and "unamended", when used in relation to a pensions law, and "unamended or re-enacted", when used in relation to the provisions of a pensions law, shall be construed accordingly;

"annual emoluments", in relation to a member of a benefit or pension fund, other than a retirement annuity fund, or an officer, means—

(*a*) so much of the emoluments of the member or officer in the year of assessment as are emoluments for the purposes of calculating the amount of ordinary contributions to the fund or the Consolidated Revenue Fund, as the case may be; or

(*b*) such sum, exceeding the amount of his emoluments referred to in paragraph (*a*), as the Commissioner may, in the case of the member or officer, fix; or

(*c*) where the member is a member of a partnership, the taxable income of the member from the partnership;

"employer", in relation to a member of a benefit or pension fund who is a member of a partnership, means the partnership;

"fund with changed rules", in relation to a member of a pension fund, means a pension fund, other than a retirement annuity fund, established before the 1st July, 1960, the rules of which have been changed on or after that date to provide for an increase in the ordinary contributions to be made by the member or the employer of the member or the member and the employer of the member with the object of increasing the amount of the pension or other benefit payable to the member and "unchanged", when used in relation to the rules of the pension fund, shall be construed according;

"lump sum contribution to a pension fund by an employer" means a contribution (other than an ordinary contribution) by an employer to a pension fund which, in the opinion of the Commissioner, is made for the purpose of ensuring that the moneys in the fund are sufficient to meet all payments to be made in terms of the rules of the fund;

"new fund" means a pension fund, other than a retirement annuity fund, established on or after the 1st July, 1960, but does not include any pension fund established by a statutory corporation which is a successor corporation to a statutory corporation which has been dislodged in pursuance of the dissolution of the former Federation and which had established a fund before 1st July, 1960;

"officer" means a person to whom the provisions of a pensions law of Zimbabwe apply;

"ordinary contribution", in relation to—

(*a*) a member of a pension fund or an officer, 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;

"pensions law of Zimbabwe" means a law of Zimbabwe, the provisions of which require a person in the service of the State to contribute to the Consolidated Revenue Fund for the purpose of securing a pension for himself, his widow or children;

PART II

AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS BY EMPLOYERS OF MEMBERS OF ONE BENEFIT FUND

Application of Part II

2. This Part shall, subject to subparagraph (1) of paragraph 5, not apply to ordinary contributions to a benefit fund by an employer of a member of the fund in connection with whom the employer makes ordinary contributions to some other benefit fund.

Employers of members of benefit funds who became members before the 1st April, 1958

3. The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a benefit fund who became a member of the fund before the 1st April, 1958, shall be an amount equal to the amount of those contributions.

Employers of members of benefit funds who became members on or after the 1st April, 1958

4. The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a benefit fund who became a member of the fund on or after the 1st April, 1958, shall be an amount equal to—

(*a*) the amount of those contributions; or

(*b*) one thousand five hundred United States dollars;

whichever is the lesser amount.

[Paragraph amended by Act 5 of 2009]

PART III

AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS BY EMPLOYERS OF MEMBERS OF TWO OR MORE BENEFIT FUNDS

5. (1) For the purposes of this paragraph, ordinary contributions to two or more benefit funds by an employer of a member of the fund who became a member of the funds on or after 1st April, 1958, shall be deemed to be ordinary contributors to one and the same fund.

(2) The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a benefit fund in relation to whom the employer makes ordinary contributions to some other benefit fund shall be an amount equal to the sum of the amounts which, in terms of Part II, would, but for paragraph 2, have been allowable to the employer as a deduction in respect of his ordinary contributions to each of those funds.

PART IV

AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF LUMP SUM CONTRIBUTIONS TO PENSION FUNDS BY EMPLOYERS

6. Any lump sum contribution to a pension fund by an employer shall be allowed as a deduction:

Provided that—

(i) the Commissioner may direct that the lump sum contribution shall be treated as an expense to be spread over such period of years as the Commissioner may determine;

(ii) where the Commissioner has, in terms of any previous law, directed that a lump sum or similar contribution shall be so treated, any balance of the contribution which has not been allowed as a deduction shall be carried forward and allowed as a deduction in terms of this paragraph.

PART V

AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS BY EMPLOYERS OF MEMBERS OF ONE PENSION FUND

Application of Part V

7. This Part shall, subject to subparagraph (1) of paragraph 11, not apply to ordinary contributions to a pension fund by an employer of a member of the fund in connection with whom the employer makes ordinary contributions to some other pension fund.

Employers of members of funds with unchanged rules who became members before the 1st July, 1960

8. The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a fund with unchanged rules who became a member of the fund before the 1st July, 1960, shall be an amount equal to the amount of those ordinary contributions.

Employers of members of funds with changed rules who became members before the 1st July, 1960

9. The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a fund with changed rules who became a member of the fund before the 1st July, 1960, shall—

(*a*) if the amount of those contributions exceeds—

(i) the amount of the ordinary contributions which would have been allowed as a deduction in the year of assessment had the rules of the fund remained unchanged; or

(ii) the amount of the ordinary contributions which would have been allowed as a deduction in the year of assessment had the member become a member of the fund on or after the 1st July, 1960;

be an amount equal to so much of those contributions as does no exceed the greater of the amounts referred to in subparagraphs (i) and (ii); and

(*b*) if the amount of those contributions does not exceed one or other of the amounts referred to in subparagraphs (i) and (ii) of subparagraph (*a*), be an amount equal to the amount of those contributions.

Employers of members of new funds and members of funds with changed or unchanged rules who became members on or after the 1st July, 1960

10. The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a new fund or a member of a fund with changed or unchanged rules who became a member of the fund on or after the 1st July, 1960, shall be an amount equal to—

(*a*) the amount of those contributions; or

(*b*) five thousand four hundred United States dollars;

whichever is the lesser amount.

[Subparagraph (b) substituted by Act 10 of 2009]

PART VI

AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS BY EMPLOYERS OF MEMBERS OF TWO OR MORE PENSION FUNDS

11. (1) For the purposes of this paragraph, ordinary contributions to two or more new funds by an employer of a member of the funds shall be determined to be ordinary contributions to one and the same fund.

(2) The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by an employer of a member of a pension fund in relation to whom the employer makes ordinary contributions to some other pension fund shall be an amount equal to the sum of the amounts which, in terms of Part V, would, but for paragraph 7, have been allowable to the employer as a deduction in respect of his ordinary contributions to each of those funds.

PART VII

AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS TO ONE PENSION FUND OR CONSOLIDATED REVENUE FUND BY MEMBERS AND OFFICIALS WHO ARE UNMARRIED OR WHOSE SPOUSES ARE NOT MEMBERS OF PENSION FUNDS OR OFFICERS

Application for Part VII

12. The provisions of this Part shall not apply to ordinary contributions by—

(*a*) a member of a pension fund who is also a member of some other pension fund; or

(*b*) an officer who is also a member of a pension fund.

Members of funds with unchanged rules who became members before the 1st July, 1960: Officers to whom an unamended pensions law applied before the 1st July, 1960

13. The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment to a fund with unchanged rules by a member of the fund who became a member of the fund before the 1st July, 1960, or to the Consolidated Revenue Fund by an officer to whom an unamended pensions law of Zimbabwe applied before the 1st July, 1960, shall be an amount equal to the amount of those contributions.

Members of funds with changed rules who became members before the 1st July, 1960: Officers to whom an amended pensions law applied before the 1st July, 1960

14. The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment to a fund with changed rules by a member of the fund who became a member of the fund before the 1st July, 1960, or to the Consolidated Revenue Fund by an officer to whom an amended pensions law of Zimbabwe applied before the 1st July, 1960, shall be—

(*a*) if the amount in respect of ordinary contributions which would have been allowed as a deduction had the rules of the fund remained unchanged or the provisions of the amended pensions law not been amended or re-enacted, as the case may be, exceeds five thousand four hundred United States dollars, be an amount equal to the amount in respect of ordinary contributions which would have been so allowed as a deduction;

[Subparagraph amended by Act 3 of 2009 and Act 10 of 2009]

(*b*) if the amount in respect of ordinary contributions which would have been allowed as a deduction had the rules of the fund remained unchanged or the amended pensions law not been amended or re-enacted, as the case may be, does not exceed five thousand four hundred United States dollars, be an amount equal to so much of his ordinary contributions as does not exceed one million four hundred and forty thousand dollars.

[Subparagraph amended by Act 3 of 2009 and Act 10 of 2009]

Members of new funds: Members of funds with changed or unchanged rules who became members on or after the 1st July, 1960: Officers to whom a pensions law did not apply before the 1st July, 1960

15. The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment to a new fund by a member of the fund or to a fund with changed or unchanged rules by a member of the fund who became a member of the fund on or after 1st July, 1960, or to the Consolidated Revenue Fund by an officer to whom a pensions law of Zimbabwe did not apply before the 1st July, 1960, shall be an amount equal to—

(*a*) so much of those contributions as do not exceed seven comma five *per centum* of the member's annual emoluments; or

(*b*) five thousand four hundred United States dollars,

whichever is the lesser amount.

[Subparagraph (b) substituted by Act 10 of 2009]

Members of retirement annuity funds

16. The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment to a retirement annuity fund by a member of the fund shall be an amount equal to—

(*a*) so much of those contributions as do not exceed seven comma five *per centum* of the member's annual emoluments; or

(*b*) five thousand four hundred United States dollars,

whichever is the lesser amount.

[Subparagraph (b) substituted by Act 10 of 2009]

PART VIII

AMOUNTS ALLOWABLE AS DEDUCTIONS IN RESPECT OF ORDINARY CONTRIBUTIONS TO TWO OR MORE PENSION FUNDS OR ONE OR MORE PENSION FUNDS AND CONSOLIDATED REVENUE FUND BY MEMBERS AND OFFICERS WHO ARE UNMARRIED OR WHOSE SPOUSES ARE NOT MEMBERS OF PENSION FUNDS OR OFFICERS

Members of two or more pension funds who became members of the funds or one or more of the funds before the 1st July, 1960, and who are unmarried or whose spouses are not members of pension funds or officers: Officers who are members of one or more pension funds who became officers or members of the fund or funds before the 1st July, 1960, and who are unmarried or whose spouses are not members of pension funds

17. (1) For the purposes of this paragraph, the Consolidated Revenue Fund to which ordinary contributions are made shall be deemed to be a pension fund of which—

(*a*) an officer to whom a pensions law of Zimbabwe applied before the 1st July, 1960, shall be deemed to have become a member before the 1st July, 1960; and

(*b*) an officer to whom a pensions law of Zimbabwe did not apply before the 1st July, 1960, shall be deemed to have become a member on or after the 1st July, 1960.

(2) The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by a member of two or more pension funds who became a member of the funds or one or more of the funds before the 1st July, 1960, shall—

(*a*) if the sum of the amounts or the amount which, in terms of paragraphs 13 and 14 or, as the case may be, paragraph 13 or 14, would, but for paragraph 12, have been allowable as a deduction in respect of ordinary contributions to the funds or fund, of which became a member before the 1st July, 1960, exceeds five thousand four hundred United States dollars, be an amount equal to the sum of the amounts or the amount referred to in this subparagraph;

[Subparagraph amended by Act 3 of 2009 and Act 10 of 2009]

(*b*) if the sum of the amounts or the amount referred to in subparagraph (*a*) does not exceed five thousand four hundred United States dollars,

[Subparagraph amended by Act 3 of 2009 and Act 10 of 2009]

(i) the sum of the amounts or the amount referred to in subparagraph (*a*); and

(ii) so much of the sum of the amounts, if any, or the amount, if any, which, in terms of paragraphs 15 and 16 or, as the case may be, paragraph 15 or 16, would, but for paragraph 12, have been allowable as a deduction in respect of ordinary contributions to the funds or fund of which he became a member on or after the 1st July, 1960, as does not exceed the difference between—

A. two thousand seven hundred United States dollars; and

[Subparagraph amended by Act 3 of 2009 and Act 10 of 2009]

B. three thousand six hundred United States dollars:

[Subparagraph amended by Act 3 of 2009]

Provided that if all the pension funds of which he is a member are retirement annuity funds, the amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment shall be an amount equal to—

(*a*) the sum of the amounts of those contributions; or

(*b*) five thousand four hundred United States dollars;

whichever is the lesser amount.

[Proviso amended by Act 12 of 2006 , Act 16 of 2007 and Act 10 of 2009]

Members of two or more pension funds who did not become members of the funds before the 1st July, 1960, and who are unmarried or whose spouses are not members of pension funds or officers: Officers who are members of one or more pension funds who did not become officers or members of the fund or funds before the 1st July, 1960, and who are unmarried or whose spouses are not members of pension funds

18. (1) For the purposes of this paragraph, the Consolidated Revenue Fund to which ordinary contributions are made shall be deemed to be a pension fund of which an officer to whom a pensions law of Zimbabwe did not apply before the 1st July, 1960, shall be deemed to have become a member on or after the 1st July, 1960.

(2) The amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment by a member of two or more pension funds who became a member of the funds on or after the 1st July, 1960, shall be an amount equal to so much as does not exceed five thousand four hundred United States dollars of the sum of the amounts which, in terms of paragraphs 15 and 16 or, as the case may be, paragraph 15 or 16 would, but for the provisions of paragraph 12, have been allowable as a deduction in respect of his ordinary contributions to the funds:

Provided that if all the pension funds of which he is a member are retirement annuity funds, the amount to be allowed as a deduction in respect of ordinary contributions in the year of assessment shall be an amount equal to—

(*a*) the sum of the amounts of those contributions; or

(*b*) two thousand seven hundred United States dollars;

whichever is the lesser amount.

[Paragraph amended by Act 10 of 2009]

PART IX

CHANGE OF MEMBERSHIP OF A PENSION FUND AS A RESULT OF DISSOLUTION OF FORMER FEDERATION

19. For the purposes of Parts VII, VIII and IX of this Schedule, any person who before the 1st July, 1960, was a member of the pension fund of the Government of the former Federation and who as a result of the dissolution of the former Federation is required to contribute to the Consolidated Revenue Fund, or any person who before the 1st July, 1960, was a member of the pension fund of a statutory corporation and who as a result of the dissolution of the former Federation has become a member of the pension fund of a successor corporation, shall be deemed to have commenced contributions to the Consolidated Revenue Fund or to the pension fund of the successor corporation, as the case may be, before the 1st July, 1960.

Law Development Commission, Zimbabwe

SEVENTH SCHEDULE (Section 15 (2) (*z*))

DEDUCTIONS IN RESPECT OF INCOME DERIVED FROM FARMING OPERATIONS AND OTHER PROVISIONS RELATING THERETO

Interpretation

1. In this Schedule—

"drought-stricken area" means any area of Zimbabwe which is seriously affected by drought and which the Minister declares in a statutory instrument shall be treated as a drought-stricken area for the purposes of this Schedule;

"epidemic area" means any area of Zimbabwe which is affected by an epidemic disease of livestock and which the Minister declares in a statutory instrument shall be treated as an epidemic area for the purposes of this Schedule;

"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 Natural Resources Act [*Chapter 20:13*], means the amounts actually paid by him 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 has assumed responsibility for the grazing and management thereof;

"livestock" includes cattle, sheep, goats, pigs, crocodiles, ostriches, fowls and any other animals or birds that are raised or possessed by a farmer as livestock in the course of his farming operations;

"period", in relation to—

(*a*) a drought, means the period specified by the Minister in the statutory instrument referred to in the definition of "drought-stricken area"; or

(*b*) an epidemic disease of livestock, means the period specified by the Minister in the statutory instrument referred to in the definition of "epidemic area";

as the period during which the area concerned shall be treated as a drought-stricken area or an epidemic area, as the case may be, for the purposes of this Schedule;

"water conservation work" means any reservoir, weir, dam or embankment constructed for the impounding of water.

Special deductions applicable to farmers

2. Notwithstanding anything contained in this Act, a farmer shall be entitled to deduct any expenditure incurred by him 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 Natural Resources Act [*Chapter 20:13*];

(*f*) fencing.

Determination of taxable income or assessed loss from growing of timber

3. (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 paragraphs (*c*), (*d*) and (*e*) of subsection (2) of section *fifteen*) 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

4. (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 2 and any allowance in respect of orchards or vineyards which are deductible in terms of paragraph (*c*) of subsection (2) of section *fifteen* 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 subsection (2) of section *fifteen* 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 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 or epidemic disease enforce sales of livestock

5. (1) If a farmer who raises or possesses livestock in a drought-stricken area or an epidemic area is driven by stress of the drought conditions or the epidemic disease, as the case may be, to dispose of his livestock during the period of the drought or the epidemic disease, he may elect to allocate the taxable income derived from the disposal of the livestock equally between the year of assessment in which he disposes of the livestock and each of the next two following years of assessment, and if he so elects he shall be assessed to tax accordingly:

Provided that if, in the year of assessment in which he so disposes of the livestock, his taxable income derived from the disposal exceeds his total taxable income determined in accordance with this Act before the provisions of this paragraph are applied, he may elect that his total taxable income, determined in accordance with this Act before the provisions of this paragraph are applied, shall be allocated equally between that year of assessment and each of the next two following years of assessment, and if he so elects he shall be assessed to tax accordingly.

(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 their owner, he shall be deemed to have disposed of them.

Assessment of income when compulsory acquisition of farm necessitates sale of livestock.

5A. (1) If it becomes necessary for a farmer to dispose of his livestock because any farm or part of a farm belonging to the farmer has been compulsorily acquired for resettlement purposes in terms of the Land Acquisition Act [*Chapter 20:10*], he may elect to allocate the taxable income derived from the disposal of the livestock equally between the year of assessment in which he disposes of the livestock and each of the next two following years of assessment, and if he so elects he shall be assessed to tax accordingly:

Provided that if, in the year of assessment in which he so disposes of the livestock, his taxable income derived from the disposal exceeds his total taxable income determined in accordance with this Act before the provisions of this paragraph are applied, he may elect that his total taxable income, determined in accordance with this Act before the provisions of this paragraph are applied, shall be allocated equally between that year of assessment and each on the next two following years of assessment, and if he so elects he shall be assessed to tax accordingly.

(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 their owner, he shall be deemed to have disposed of them.

[Section inserted by Act 18 of 2000]

Additional allowance in respect of cost of restocking herd depleted by drought

6. There shall be admissible as a deduction in the determination of the taxable income or the assessed loss of any farmer who raises or possesses livestock in a drought-stricken area or an epidemic 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 the period of the drought or the epidemic disease, as the case may be, by death or enforced disposal as a result of the drought or the epidemic disease:

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.

Law Development Commission, Zimbabwe

EIGHTH SCHEDULE (Section 20)

DETERMINATION OF TAXABLE INCOME OR ASSESSED LOSS ATTRIBUTABLE TO THE BUSINESS OF INSURANCE

Interpretation

1. (1) In this Schedule—

"assessed loss attributable to the business of insurance" means any deficiency determined after applying paragraphs 4, 5 and 6 and includes any assessed loss attributable to the business of insurance determined in respect of the previous year of assessment;

"assets in Zimbabwe" means such of the assets of an insurer as—

(*a*) relate to his life insurance business; and

(*b*) are required to be shown as assets in Zimbabwe in balance sheets furnished by the insurer in terms of any law relating to insurance;

"insurance business" means insurance business as defined in any law relating to insurance;

"insurer" means a person carrying on insurance business;

"investments in Zimbabwe" means such of the securities of an insurer as form part of his assets in Zimbabwe;

"life insurance business" means the business of assuming the obligations of an insurer under life policies;

"life policy" means a life, industrial, funeral or sinking fund policy as defined in any law relating to insurance;

"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 which is a local policy as defined in any law relating to insurance;

"productive assets in Zimbabwe" means such assets in Zimbabwe of an insurer as are securities 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 insurer in connection with his local life insurance business; or

(*d*) such part of any other property of the insurer as, in the opinion of the Commissioner, is occupied by him in connection with his local life insurance business; or

(*e*) such other assets as, in the opinion of the Commissioner, did no 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 the business of insurance" means any surplus determined after applying paragraphs 4, 5 and 6 and after deducting any assessed loss attributable to the business of insurance determined in respect of the previous year of assessment.

(2) For the purposes of this Schedule, the actuarial liabilities of an insurer shall be determined on the basis used by him from time to time to value the liabilities in respect of his life insurance business in Zimbabwe for the purposes of any law relating to insurance.

Returns and liability to tax

2. Nothing in this Schedule shall be construed as relieving an insurer 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 insurer shall specify separately in a return rendered in respect of his insurance business in Zimbabwe the gross income derived by the insurer from—

(*a*) local life insurance business; and

(*b*) fire insurance business; and

(*c*) accident insurance business, including employers' insurance business; and

(*d*) marine insurance business; and

(*e*) fidelity or guarantee insurance business; and

(*f*) all classes of insurance business other than those specified in subparagraphs (*a*) to (*e*).

Determination of taxable income or assessed loss of an insurer attributable to short term insurance business

4. The part of the taxable income or the assessed loss of an insurer attributable to short term insurance business shall be determined by charging the losses, expenses and deductions in respect of his short term insurance business which are specified in paragraph 5 against the sum of—

(*a*) premiums received in the course of carrying on his short term insurance business; and

(*b*) amounts, other than premiums but including commissions in re-insurance, received from the carrying on of his short term insurance business:

Provided that commission on re-insurance shall include all commission on re-insurance applicable to premiums mentioned in subparagraph (*a*) notwithstanding that any of the operations by which such re-insurance has been effected have been performed outside Zimbabwe; 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 insurer in relation to his short term insurance operations as a whole:

Provided that the amount to be added in terms of this subparagraph for the first year of assessment under this Act shall be the amount of the reserve allowed as a deduction under the similar provisions of the previous law for the immediately preceding year of assessment; and

(*d*) amounts allowed to be deducted under the provisions of subparagraphs (*a*), (*b*), (*c*) and (*d*) of paragraph 5 or the corresponding provisions of any previous law, whether in the current or any previous year of assessment, which have been recovered or recouped during the year of assessment.

Deductions in respect of short term insurance business

5. The losses, expenses and deductions in respect of short term insurance business of an insurer to which the provisions of paragraph 4 relate shall be—

(*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 to which they are incurred for the purposes of the short term insurance business of the insurer or in the production of the amounts referred to in subparagraph (*b*) of paragraph 4, 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 paragraphs (*b*), (*c*), (*d*), (*e*), (*h*), (*j*), (*m*), (*o*),(*p*), (*q*), (*r*), (*s*), (*t*), (*aa*) and (*bb*) of subsection (2) of section *fifteen* in so far as such allowances and deductions relate to the short term insurance business of the insurer and in so far as they have not been deducted in terms of Part III of this Act; and

(*e*) the amount of a reserve for unexpired risks at the percentage adopted for such risks by the insurer in relation to his insurance operations as a whole which is set aside by the insurer 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. The part of the taxable income or the assessed loss of an insurer attributable to his local life insurance business shall, subject to the provisions of this Schedule, be determined by applying the formula—

$$\frac{(A - B) + (C - D)}{2} \times \frac{(E \times 2) - 7}{200} + (F - G) - H$$

in which—

A represents the amount of the actuarial liabilities in respect of all local life policies of the insurer which were in force at the end of the previous year of assessment;

B represents the amount of the actuarial liabilities in respect of all local life policies of the insurer 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 represents the amount of the actuarial liabilities in respect of all local life policies of the insurer which were in force at the end of the year of assessment;

D represents the amount of the actuarial liabilities in respect of all local life policies of the insurer 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 represents the average rate of interest *per centum* derived by the insurer during the year of assessment from his productive assets in Zimbabwe;

F represents the profit arising from the realization by the insurer of his investment in Zimbabwe computed in accordance with paragraph 7;

G represents the loss arising from the realization by the insurer of his investments in Zimbabwe computed in accordance with paragraph 8;

H represents the allowance, if any, to be deducted in accordance with paragraph 9.

Determination of factor F

7. (1) The profit arising from the realization by an insurer of his investments in Zimbabwe shall be computed by applying whichever of the following formulae produces the lesser amount—

$$1 \times \frac{(A - B) + (C - D)}{(A + C)}$$

or

$$1 \times \frac{(A - B) + (C - D)}{(J + K)}$$

in which—

A, B, C and D are the same factors as those employed in the formula contained in paragraph 6;

I represents the total profit arising during the year of assessment from the realization by the insurer of any of his investments in Zimbabwe, which are not public securities but including such securities issued outside Zimbabwe as have been purchased by the insurer after 31st March, 1964;

J represents the total amount of the assets in Zimbabwe of the insurer at the beginning of the year of assessment;

K represents the total amount of the assets in Zimbabwe of the insurer at the end of the year of assessment.

(2) If—

(*a*) an insurer's investments in Zimbabwe are transferred to another insurer in the course of or in furtherance of a scheme of reconstruction of a group of insurers or a merger or other business operation which, in the opinion of the Commissioner, 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 he 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 who made an election in terms of this subparagraph.

Determination of factor G

8. The loss arising from the realization by an insurer of his investments in Zimbabwe shall be computed by applying whichever of the following formulae produces the lesser amount—

$$L \times \frac{(A - B) + (C - D)}{(A + C)}$$

or

$$L \times \frac{(A - B) + (C - D)}{(J + K)}$$

in which—

A, B, C and D are the same factors as those employed in the formula contained in paragraph 6;

J and K are the same factors as those employed in the formulae contained in paragraph 7;

L represents the total loss arising during the year of assessment from the realization by the insurer of any of his investments in Zimbabwe which are not public securities but including such securities issued outside Zimbabwe as have been purchased by the insurer after the 31st March, 1964.

Determination of factor H

9. (1) A deduction in respect of the taxable income of an insurer shall, subject to the provisions of this paragraph, be made of an amount computed by applying the formula—

$$(M - N) - \frac{0 \times 7}{2000} \times \frac{(A - B) + (C - D)}{2}$$

in which—

A, B, C and D are the same factors as those employed in the formula contained in paragraph 6;

M represents the interest derived by the insurer during the year of assessment from such of his public securities as are assets in Zimbabwe, excluding such securities issued outside Zimbabwe as have been purchased by the insurer after the 31st March, 1964;

N represents the interest, computed in accordance with paragraph 10, derived by the insurer during the year of assessment from such of his 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 represents the average rate of interest *per centum* derived by the insurer during the year of assessment from such of his public securities as are assets in Zimbabwe excluding any such securities issued outside Zimbabwe as have been purchased by the insurer after the 31st March, 1964.

(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 insurer would have a loss.

(3) No allowance referred to in subparagraph (1) shall exceed an amount equal to the amount computed by applying the formula contained in paragraph 6 without the factor H.

Determination of factor N

10. The interest derived by an insurer during the year of assessment from such of his 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 shall be computed by applying the formula—

$$\frac{M}{2} \times \{ \frac{B}{A} + \frac{D}{C} \}$$

in which—

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.

Law Development Commission, Zimbabwe

NINTH SCHEDULE (Section 26)

NON-RESIDENT SHAREHOLDERS' TAX

Interpretation

1. (1) In this Schedule—

"company" means any company which is ordinarily resident in Zimbabwe;

"dividend" means any amount which is distributed by a company to its shareholders, but excluding—

(*a*) any amount so distributed by a building society which is not distributed as a dividend in respect of—

(i) in the case of the Central African Building Society, a paid-up permanent share—class "A"; and

(ii) in the case of the Founders Building Society, an ordinary permanent fully paid-up share; and

(iii) in the case of the Beverley Building Society, a foundation fully paid-up share or class "A" share;

and

(*b*) any bonus shares; and

(*c*) any amount so distributed which, in the opinion of the Commissioner, is a return of the amount received by the company for its shares; and

(*d*) any amount so distributed by the Industrial Development Corporation of Zimbabwe, Limited, in respect of its issued share capital; and

(*e*) ….

[Subparagraph repealed by Act 29 of 1998]

(*f*) any amount so distributed by the Zimbabwe Development Bank established by section 3 of the Zimbabwe Development Bank Act [*Chapter 24:14*]; and

(*g*) any amount so distributed to the International Finance Corporation referred to in the International Financial Organizations Act [*Chapter 22:09*]; and

(*h*) any amount so distributed by a licensed investor which arises from his operations in an export processing zone; and

(*i*) any amount so distributed which, in the opinion of the Commissioner, is a return of an amount contributed to the capital of a private business corporation by a member;

(*j*) any amount so distributed by an industrial park developer which arises from the operation of his industrial park;

less any income tax which has been deducted from such amount in terms of section *twenty-five*;

"foreign company" means a body corporate which is ordinarily resident in a state or territory other than Zimbabwe;

"person", in addition to the meaning given to the term in section *two*, includes, in relation to income the subject of a trust to which a beneficiary is entitled, the trust;

"relevant accounting year" means the year or period whose end coincided with the end of the year of assessment or on the date which was accepted by the Commissioner in terms of subparagraph (ii) or paragraph (*b*) of subsection (13) of section *thirty-seven*, immediately prior to the date of distribution of a dividend;

"shareholder" includes a member of a private business corporation.

(2) For the purposes of this Schedule, a dividend shall be deemed to be distributed when it is paid to the shareholder, credited to his account or so dealt with that he becomes entitled to it, whichever occurs first.

(3) For the purposes of this Schedule, a company and a foreign company shall be deemed to be ordinarily resident in the state or territory in which its central management and control is situated.

Companies to withhold the tax

2. (1) Every company which distributes a dividend to—

(*a*) a person, other than a company, a pension fund, a benefit fund or a medical aid society, who is not ordinarily resident in Zimbabwe; or

(*b*) a partnership which is not ordinarily resident in Zimbabwe; or

(*c*) a foreign company; or

(*d*) a foreign life insurance company, in respect of any shareholding determined by the Commissioner as having been acquired from funds other than those arising from the life insurance business in Zimbabwe of that foreign life insurance company;

shall withhold non-resident shareholders' tax from that dividend and shall pay the amount withheld to the Commissioner within thirty days of the date of distribution or within such further time as the Commissioner may for good cause allow:

Provided that where a company establishes to the satisfaction of the Commissioner that, during the relevant accounting year, its receipts from sources outside Zimbabwe exceeded fifteen *per centum* of its total receipts, the amount of any dividend shall be deemed to be the amount determined in accordance with the formula—

$$\frac{A \times B}{C}$$

in which—

A represents the amount of the divided;

B represents the aggregate of the receipts of the company from sources within Zimbabwe during the relevant accounting years;

C represents the aggregate of the total receipts of the company during the relevant accounting year.

For the purposes of this proviso—

"receipts" means gross receipts on both income and capital account other than sums received by the company for its shares, debentures or similar capitalizations or from borrowings.

(2) Notwithstanding subparagraph (1), where a company distributes a dividend to the Commonwealth Development Corporation the company shall not be required to withhold and pay non-resident shareholders' tax in respect of so much of the dividend as in the opinion of the Commissioner relates to operations of the company which are connected with any project approved for the purposes of this subparagraph by the Minister.

(3) The non-resident shareholders' tax shall be withheld in terms of subparagraph (1) notwithstanding any objection that may be lodged to any decision made by the Commissioner in terms of the proviso to subparagraph (1) or the definition of "dividend" in subparagraph (1) of paragraph 1.

(4) Where non-resident shareholders' tax is withheld in terms of subparagraph (1), the company shall provide the shareholder with a certificate, in the form approved by the Commissioner, showing—

(*a*) the gross amount of the dividend; and

(*b*) the amount, if any, of income tax deducted in terms of section *twenty-five*; and

(*c*) any reduction made in terms of the proviso to subparagraph (1); and

(*d*) the amount of the non-resident shareholders' tax withheld.

(5) Any company which fails to provide a shareholder with a certificate in terms of subparagraph (4), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Provided that, if it is proved that the company's conduct was wilful, it shall be liable 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.

[Subparagraph inserted by Act No. 22 of 2001.]

Payment of tax where dividend deemed to have been paid in terms of section 26 (2)

2A. Where a dividend is deemed to have been paid in terms of subsection (2) of section *twenty-six*, the company which is deemed to have paid the dividend shall pay non-resident shareholders' tax for that dividend upon written notification by the Commissioner of the tax due.

[Paragraph inserted by Act 18 of 2000]

Agents to withhold the tax not deducted by company

3. (1) Every agent who receives on behalf of a shareholder who is—

(*a*) a person, other than a company, a pension fund, a benefit fund or a medical aid society, who is not ordinarily resident in Zimbabwe; or

(*b*) a partnership which is not ordinarily resident in Zimbabwe; or

(*c*) a foreign company; or

(*d*) a foreign life insurance company, in respect of any shareholding determined by the Commissioner as having been acquired from funds other than those arising from the life insurance business in Zimbabwe of that foreign life insurance company;

a dividend from which non-resident shareholders' tax has not been withheld by the company distributing the dividend, shall withhold non-resident shareholders' tax from that dividend and shall pay the amount withheld to the Commissioner within thirty days of the date of receipt of the dividend:

Provided that, subject to the approval of the Commissioner, the proviso to subparagraph (1) of paragraph 2 may be applied to the dividend received by the agent for the purpose of calculating the

amount in respect of which the non-resident shareholders' tax shall be withheld in terms of this subparagraph.

(2) Where non-resident shareholders' tax is withheld in terms of subparagraph (1) the agent shall provide the shareholder with a certificate, in the form approved by the Commissioner, showing—

(*a*) the name of the company distributing the dividend; and

(*b*) the gross amount of the dividend; and

(*c*) the amount, if any, of income tax deducted in terms of section *twenty-five*; and

(*d*) any reduction made in terms of the proviso to subparagraph (1); and

(*e*) the amount of the non-resident shareholders' tax withheld.

(2a) Any agent who fails to provide a shareholder with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Provided that, if it is proved that the agent's conduct was wilful, he shall be liable 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.

[Subparagraph inserted by Act 22 of 2001.]

(3) For the purposes of this paragraph, a person shall be deemed to be the agent of a shareholder and to have received a dividend on behalf of that shareholder if—

(*a*) that person's address appears in the share register of the company as the registered address of the shareholder; and

(*b*) the warrant or cheque in payment of the dividend distributable to the shareholder is delivered at that person's address:

Provided that any person so deemed to be the agent of a shareholder shall, as regards such shareholder and in respect of any income received by or accruing to or in favour of the shareholder, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Zimbabwe.

Shareholder to pay the tax not withheld by company or agent

4. A shareholder to whom a dividend has been distributed from which non-resident shareholders' tax has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section *seventy-seven* shall pay to the Commissioner within thirty days of the date of distribution of the dividend the tax that should have been withheld:

Provided that, subject to the approval of the Commissioner, the proviso to subparagraph (1) of paragraph 2 may be applied to the dividend received by the shareholder for the purpose of calculating the amount in respect of which the non-resident shareholders' tax shall be paid in terms of this paragraph.

Returns to be furnished

5. Payment of the non-resident shareholders' tax by a company or an agent shall be accompanied by a return in the form prescribed.

Penalty for non-payment of the tax

6. (1) Subject to subparagraph (2), a company or an agent in Zimbabwe who falls to withhold or to pay the Commissioner any amount of non-resident shareholders' tax as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

(*a*) the amount of non-resident shareholders' tax which the company or the agent, as the case may be, failed to pay to the Commissioner; and

(*b*) a further amount equal to one hundred *per centum* of such non-resident shareholders' tax.

[Paragraph amended by Act 18 of 2000]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him non-resident shareholders' tax was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of the amount referred to in subparagraph (*b*) of subparagraph (1).

(3) If a defaulting company or agent referred to in subparagraph (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 company 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.

[Subparagraph inserted by Act 8 of 2005]

Law Development Commission, Zimbabwe

Refund of non-resident shareholders' tax

7. If it is proved to the satisfaction of the Commissioner that any person has been charged with non-resident shareholders' tax—

(*a*) in excess of the amount properly chargeable in terms of this Schedule; or

(*b*) ….

[Subparagraph repealed by Act 29 of 1998]

(*c*) in respect of any dividend which has subsequently been rescinded with the approval of the Minister in order to comply with any conditions attaching to the payment of any dividend outside Zimbabwe in terms of the law relating to exchange control; or

(*d*) in respect of any dividend to the extent that it has subsequently been utilized to import essential goods into Zimbabwe in accordance with concessions allowed or permission granted by the Minister in terms of any enactment;

the Commissioner shall authorize a refund in so far as it has been overpaid or is in respect of any such dividend:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim thereof is made within six years of the date of payment of such tax.

Law Development Commission, Zimbabwe

TENTH SCHEDULE

BRANCH PROFITS TAX

[Schedule repealed by Act 29 of 1998]

Law Development Commission, Zimbabwe

ELEVENTH SCHEDULE (Section 62 (1) (*b*))

DECISIONS OF THE COMMISSIONER TO WHICH ANY PERSON MAY OBJECT

The decisions of the Commissioner to which any person may object under paragraph (*b*) of subsection (1) of section *sixty-two* are those made in terms of—

(*a*) paragraph (*c*) of the definition of "mining operations" in subsection (1) of section *two*;

(*b*) paragraphs (*a*), (*d*), (*e*), (*f*), (*g*), (j) and (*l*) of the definition of "gross income" in subsection (1) of section *eight*;

(*c*) subsection (4) of section *twelve*;

(*d*) section *thirteen*;

(*e*) the following provisions of section *fifteen*—

(i) paragraphs (*d*), (*e*), (*f*), (*g*), (*i*), (*k*), (*p*), (v), (*w*), (*x*) and (*y*) of subsection (2);

(ii) proviso (ii) to subsection (3):

Provided that in any objection made in terms of this subparagraph and in any subsequent appeal lodged in terms of section *sixty-five* against the decision of the Commissioner thereon, the burden of proof that the change in the shareholding of a company 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, shall be upon the company claiming such assessed loss as a deduction under subsection (3) of section *fifteen*;

(iii) proviso (iii) to subsection (3);

(*f*) subsection (2) of section *sixteen*;

(*g*) section *seventeen*;

(*h*) section *eighteen*;

(*i*) section *nineteen*;

(*j*) section *twenty-three*;

(*k*) section *twenty-four*;

(*k*1) section 37A(12)*;*

[Paragraph inserted by Act 12 of 2006]

(*l*) subsection (1) and the proviso to subsection (2) of section *forty-five*;

(*m*) subsection (6) and the proviso to subsection (7) of section *forty-six*;

(*n*) subsection (1) of section *forty-seven*;

(*o*) section *ninety-eight*:

Provided that in any objection made in terms of this paragraph and in any subsequent appeal lodged in terms of section *sixty-five* 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;

(*p*) the following provisions of the Second Schedule—

(i) subparagraph (2) of paragraph 2;

(ii) proviso (ii) to paragraph 4:

Provided that in any objection made in terms of this subparagraph and in any subsequent appeal lodged in terms of section *sixty-five* against the decision of the Commissioner thereon, the burden of proof that any transaction, operation or scheme did not have as its sole purpose or one of its main purposes the avoidance or postponement of liability for or reduction of tax, shall be upon the taxpayer;

(iii) paragraph 7;

(iv) the proviso to subparagraph (2) of paragraph 10;

(v) subparagraph (1) of paragraph 11;

(vi) subparagraph (*b*) of paragraph 12;

(vii) the proviso to paragraph 12:

Provided that in any objection made in terms of this subparagraph and in any subsequent appeal lodged in terms of section *sixty-five* against the decision of the Commissioner thereon, the burden of proof that any transaction, operation or scheme did not have as its sole purpose or one of its main purposes the avoidance or postponement of liability for or reduction of tax, shall be upon the taxpayer;

(viii) paragraph 13;

(*q*) the following provisions of the Fourth Schedule—

(i) subparagraphs (ii), (iii) and (v) of paragraph (*a*) of the definition of "industrial building" in paragraph 1;

(ii) the definition of "training equipment" in paragraph 1;
(iii) provisos (ii) and (iii) to paragraph 2;
(iv) paragraph 4;
(v) paragraph 8;

(*r*) the following provisions of the Fifth Schedule—
(i) the definition of "approved estimated life" in paragraph 1;
(ii) the definition of "training equipment" in paragraph 1;
(iii) the definition of "new mine" in subparagraph (8) of paragraph 4;
(iv) subparagraphs (3) and (6) of paragraph 8;

(*s*) subparagraphs (*c*), (*e*) and (*h*) of subparagraph (1) of paragraph 4 of the Seventh Schedule;

(*t*) subparagraph (2) of paragraph 7 of the Eighth Schedule.

(*u*) the following provisions of the Ninth Schedule—
(i) the definition of "dividend" in subparagraph (1) of paragraph 1;
(ii) subparagraph (*d*) of subparagraph (1) of paragraph 2;
(iii) the proviso to subparagraph (1) of paragraph 2;
(iv) subparagraph (2) of paragraph 2;
(v) subparagraph (*d*) of subparagraph (1) of paragraph 3;
(vi) subparagraph (2) of paragraph 6;

(*v*) paragraph 11 of the Thirteenth Schedule;

(*w*) the following provisions of the Fifteenth Schedule—
(i) the definition of "dividend" in subparagraph (1) of paragraph 1;
(ii) subparagraph (2) of paragraph 6;

(*x*) the provisions of the Sixteenth Schedule, where the determination relates to—
(i) whether or not interest is from a source within Zimbabwe; or
(ii) whether or not a payee is ordinarily resident in Zimbabwe; or
(iii) the waiver or repayment of any amount referred to in subparagraph (1) of paragraph 6;

(*y*) the provisions of the Seventeenth Schedule, where the determination relates to—
(i) whether or not any amounts are fees for the purposes of that Schedule; or
(ii) whether or not a payee is ordinarily resident in Zimbabwe; or
(iii) the waiver or repayment of any amount referred to in subparagraph (1) of paragraph 6;

(*z*) the provisions of the Eighteenth Schedule, where the determination relates to—
(i) whether or not a remittance was in respect of allowable expenditure; or
(ii) whether or not a person or partnership is a non-resident person; or
(iii) the waiver or repayment of any amount referred to in subparagraph (1) of paragraph 4;

(*aa*) the provisions of the Nineteenth Schedule, where the determination relates to—
(i) whether or not any amounts are royalties for the purposes of that Schedule; or
(ii) whether or not a payee is a non-resident person; or
(iii) the waiver or repayment of any amount referred to in subparagraph (1) of paragraph 6;

(*bb*) the provisions of the Twenty-First Schedule, where the determination relates to—
(i) whether or not any amount is interest for the purposes of that Schedule; or
(ii) whether or not an amount of interest is from a source in Zimbabwe; or
(iii) the waiver or repayment of any amount referred to in subparagraph (1) of paragraph 6.

(*cc*) the provisions of the Twenty-Seventh Schedule, where the determination relates to—
(i) the residence of a member or former member of a mutual society ; or
(ii) the waiver or repayment of any amount in terms of subparagraph (3) of paragraph 8; or
(iii) the refund of an overpayment in terms of paragraph 10.

Law Development Commission, Zimbabwe

TWELFTH SCHEDULE (Sections 64, 65 and 66)

RULES FOR REGULATING APPEALS

PART I

The rules in this Part shall apply in the determination of appeals under section sixty-five or any proceedings incidental thereto or connected therewith—

1. The Special Court shall have all the powers of the High Court as in civil actions, and the general procedure and practice, save as specially provided for by these rules, shall be that prevailing in the High Court, in so far as the same is applicable, and if any matter should arise which is not contemplated by either such procedure and practice or these rules, the Special Court shall give instructions regarding the course to be pursued, which instructions shall be binding on the parties.
2. In any case in which the Special 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 Special Court for reconsideration of any items or portions of items in such bill, and the Special Court's decision as to whether such items or portions of items shall be allowed, reduced or disallowed shall be final.
3. 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.
4. The Special 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.
5. When any taxpayer has given notice of an appeal he shall state the grounds of his appeal and set forth in writing all the facts which he 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.
6. Should the statement of facts in the appellant's case be admitted by the Commissioner to be sufficient and correct, he 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".
7. 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.
8. The agreed case shall be transmitted to the Special Court by the Commissioner within fourteen days of submitting the agreed case to the appellant in terms of rule 6, and the arguments on appeal and the decision of the Special Court shall be confined to the facts admitted.
9. Should the Commissioner not admit the statement of facts in the appellant's case to be correct or sufficient, or should he not come to an agreement with the appellant on a statement of facts, he 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 admits as correct and which he denies, and shall set out all such other facts which he considers relevant and material to the determination of the appeal. The Commissioner shall also state his contentions in law. Such statement shall be called the "Commissioner's case".
10. Should the appellant and the Commissioner not agree in regard to the statement of facts, the Commissioner shall transmit to the Special Court the appellant's case and the Commissioner's case within thirty days of the lodgement of the Commissioner's case with the taxpayer.
11. The Commissioner shall transmit to the Special 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.
12. The Special 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.
13. 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.
14. If neither the appellant nor anyone authorized to appear on his behalf appears before the Special Court at the time and place appointed for the purpose then the Special Court, upon the request of the Commissioner and upon proof that the prescribed notice of the sitting of the Special Court has been given to the appellant, shall confirm the assessment objected to, unless any question of law arises, in which case the

Special Court may, before giving its decision, call upon the Commissioner for argument in support of the assessment.

Law Development Commission, Zimbabwe

THIRTEENTH SCHEDULE (Sections 71, 72, and 73)

EMPLOYEES' TAX

PART I

PRELIMINARY

Interpretation

1. (1) In this Schedule—

''auction rate" ….

[Definition inserted by Act 2 of 2005 and repealed by Act 8 of 2007]]

"employee" means an individual to whom remuneration is paid or payable at an annual rate that is more than the amount specified in subparagraph (i) of paragraph (*a*) of subsection (2) of section 14 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;

"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 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 remuneration, and any person responsible for the payment of any amount by way of remuneration 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;

"Exchange Control (Exchange Rate) Direction" …

[Definition repealed by Act 3 of 2009]

"Exchange Control (General) Order" means the Exchange Control (General) Order, 1996, published in Statutory Instrument 110 of 1996, or any other enactment that may be substituted for the same;

[Definition inserted by Act 2 of 2005]

"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;

[Definition inserted by Act 29 of 2004.]

"remuneration" means any amount of income which is paid or payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance, stipend or commutation of a pension or an annuity, whether in cash or otherwise and whether or not in respect of services rendered, including any amount referred to in paragraph (*a*), (*b*), (*c*) or (*f*) of the definition of "gross income" in subsection (1) of section *eight*, but not including—

(*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 trade conducted by him 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 remuneration for the purposes of this Schedule;

[Proviso substituted by Act 29 of 2004.]

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 remuneration 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 chairman or a member of a board of any statutory corporation in respect of services rendered or to be rendered by such chairman or member on such board if no other amounts constituting remuneration in terms of this definition have been paid or become payable to such chairman or member by such statutory corporation; or

(*d*) any amount exempt from income tax by virtue of the Third Schedule; 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 employment; or

(*g*) any amount which is paid or payable to a person by way of a commutation of a pension or annuity and which does not form part of that person's gross income as defined in section *eight*; or

(*h*) …..

[Paragraph repealed by Act 5 of 2009]

(*i*) any amount which the Commissioner-General directs or prescribes shall not be remuneration for the purposes of this Schedule;

[Definition inserted by Act 2 of 2005]

"remuneration 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 as defined in paragraph 1 of the Sixth Schedule excluding contributions to a benefit fund;

"remuneration paid in foreign currency" means remuneration paid in United States dollars or Euros or in any currency denominated under the Exchange Control (General) Order;

[Definition inserted by Act 2 of 2005]

"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 remuneration 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 authorized to pay remuneration 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 remuneration 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 by this Schedule.

(2) Any trustee shall, as regards any amounts paid or payable by the deceased prior to his death or by the person under a legal disability prior to his becoming subject to such legal disability by way of remuneration to any employee, be subject, in his 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.

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 becoming an employer.

(2) Every person who has registered as an employer under subparagraph (1) shall, within fourteen days after changing his address or ceasing to be an employer, notify the Commissioner in such manner and form as may be prescribed of his new address or of the fact of his having ceased to be an employer, as the case may be.

(3) The Commissioner may, at such times as he may decide, issue public notices drawing attention to the provisions of this paragraph.

(4) Every non-resident employer shall appoint a resident representative to secure registration on its behalf under this paragraph and otherwise to act as its agent for all purposes of this Schedule.

[Subparagraph inserted by Act 29 of 2004.]

(5) A non-resident employer shall give notice in writing to the Commissioner-General of the appointment of a resident representative under paragraph (4).

[Subparagraph inserted by Act 29 of 2004.]

(6) If a non-resident employer fails, when required in writing to do so by the Commissioner-General, to furnish the Commissioner-General with particulars of the appointment of a resident representative under paragraph (4) within such period as the Commissioner-General shall specify, the Commissioner-General may—

(*a*) appoint a person to be the non-resident employer's resident representative, and such 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; and additionally or alternatively;

(*b*) 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-General to the Chief Immigration Officer.

[Subparagraph substituted by Act 2 of 2005]

Employers to withhold tax

3. (1) Every employer (whether or not he has registered as an employer in terms of subparagraph (1) of paragraph 2) who pays or becomes liable to pay any amount by way of remuneration 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 subparagraph (2) of paragraph 20, 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 tenth 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 following day after the day on which he or she ceases to be an employer.

[Subparagraph amended by Act 3 of 2009 and by Act 3 of 2010]

(1a) …

[Subparagraph repealed by Act 3 of 2009]

(1b) Where part of the remuneration from which employees' tax is required to be withheld under subparagraph (1) is remuneration paid in foreign currency, the employer shall determine the amount of employees' tax to be withheld from that part of the remuneration that is paid in foreign currency separately from the other remuneration, and shall pay to the Commissioner-General within the period specified in subparagraph (1) the appropriate amounts of employees' tax.

[Subparagraph inserted by Act 2 of 2005]

(2) The amount to be withheld in respect of employees' tax from any payment to which paragraph (*c*) of the definition of "gross income" in subsection (1) of section *eight* apply 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 subparagraph (1) or (3) of paragraph 16 and has not in respect of that employee received a directive from the Commissioner as provided in subparagraph (2) of paragraph 16 or subparagraph (2) of paragraph 20 he 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 remuneration an amount by way of employees' tax greater than that required to be withheld in terms of subparagraph (1), (1a) or (1b) as read with subparagraph (5), (6), (7), (8), (9), (10), (11) or (12), as the case may be, and shall pay such amount to the Commissioner, and the provisions of this Schedule relating to employees' tax shall apply, *mutatis mutandis*, 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), (6), (7), (8), (9), (10), (11) or (12), as the case may be.

[Subparagraph amended by Act 2 of 2005]

(5) For the year of assessment beginning on the 1st April, 1979, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deductible tables, the said subparagraph shall apply as if it required the employer to withhold, in respect of the period beginning on the 1st October, 1979, and ending on the 31st March, 1980, in addition to any amount so determined, a sum equal to ten *per centum* of that amount.

(6) For the year of assessment beginning on the 1st April, 1980, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax de-

duction tables, the said subparagraph shall apply as if it required the employer to withhold, in addition to any amount so determined, a sum equal to ten *per centum* of that amount.

(7) For the years of assessment beginning on the 1st April, 1981, and the 1st April, 1982, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold, in addition to any amount so determined, a sum equal to fifteen *per centum* of that amount.

(8) For the year of assessment beginning on the 1st April, 1983, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold—

(*a*) in respect of the period beginning on the 1st April, 1983, and ending on the 30th September, 1983, in addition to any amount so determined, a sum equal to fifteen *per centum* of that amount; and

(*b*) in respect of the period beginning on the 1st October, 1983, and ending on the 31st March, 1984, in addition to any amount so determined, a sum equal to twenty-five *per centum* of that amount.

(9) For the year of assessment beginning on the 1st April, 1984, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold in respect of the period beginning on the 1st October, 1984, and ending on the 31st March, 1985, a sum equal to five *per centum* of the amount so determined, which sum shall be in addition to that amount and to any amount to be withheld in terms of subparagraph (10).

(10) For the terms of assessment beginning on the 1st April, 1985, 1986 and 1987, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction table, the said subparagraph shall apply as if it required the employer to withhold, in addition to any amount so determined, a sum equal to fifteen *per centum* of that amount.

(11) For the year of assessment beginning on the 1st April, 1985, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold in respect of the period beginning on the 1st April, 1985, and ending on the 30th September, 1985, a sum equal to five *per centum* of the amount so determined, which sum shall be in addition to that amount and to any amount to be withheld in terms of subparagraph (10).

(12) For the year of assessment beginning on the 1st April, 1992, where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said subparagraph shall apply as if it required the employer to withhold, in respect of the period beginning on the 1st October, 1992, and ending on the 31st March, 1993, in addition to any amount so determined, a sum equal to ten *per centum* of that amount.

(13) For the years of assessment beginning on the 1st April, 1995, and the 1st April, 1996 where in terms of subparagraph (1) or (3) the amount to be withheld by an employer is to be determined in accordance with the prescribed tax deduction tables, the said paragraph shall apply as if it required the employer to withhold, in addition to any amount so determined, a sum equal to five *per centum* of that amount.

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 remuneration paid or payable by him to such employee and the amount of employee's tax withheld from each such amount of remuneration 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 paid or was liable to pay remuneration during such year; and

(ii) the total remuneration paid or payable to each employee in respect of such year; and

(iii) the total amount of employees' tax withheld by him from such remuneration 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 has paid or become liable to pay remuneration or otherwise ceases to be an employer, the returns shall be in respect of the period from the 1st April immediately preceding the date on which he

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 remuneration 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 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) The provisions of paragraph 3 shall be in derogation of any law, instrument or agreement which empowers, requires, authorizes, prohibits or regulates the deduction, withholding, reduction or attachment of any amount payable by way of remuneration.

(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 remuneration 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 remuneration payable by the employer to the deceased estate of the employee or to any other person, and no such remuneration 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 the provisions of 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 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 *forty-five* shall, with necessary modifications, apply to such assessment.

[Subparagraph inserted by Act 10 of 2003]

(4) If a defaulting employer referred to in subparagraph (1)(*b*) 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 employer 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.

[Subparagraph inserted by Act 8 of 2005]

Remission of penalties for failure to withhold or to remit employees' tax

11. The Commissioner may, if he is satisfied that a failure to withhold or to pay to him 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 thinks fit or repay the whole or such part as he thinks fit of any amount referred to in subparagraph (*b*) of subparagraph (1) of paragraph 10.

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 may recover that amount from the employee from whose remuneration 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 remuneration 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 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 subparagraph (*b*) of subparagraph (1) of paragraph 10.

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 subparagraph (*a*) of subparagraph (1) of paragraph 10 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 *forty-six*.

(2) A claim by the Commissioner against an estate of an employer under sequestration for the payment for an amount referred to in subparagraph (*b*) of subparagraph (1) of paragraph 10 shall have the same priority as is accorded to a claim for any tax due and payable by the insolvent in terms of section *forty-six*.

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 remuneration 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 remuneration of such employee or former employee and the sum of the amounts of employees' tax withheld by such employer from such remuneration during the said year, excluding any amount of remuneration 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 as provided in subparagraph (9) of paragraph 15.

(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 has so ceased; or

(*c*) if the employer has ceased to be an employer, within fourteen days of the date on which he has so ceased; or

(*d*) at any other time specified by the Commissioner.

(4) A copy of the employees' tax certificate referred to in subparagraphs (*a*) and (*b*) of subparagraph (3) 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 (*c*) of subparagraph (3) 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 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) In the case of an employer who has a mechanised 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.

[Subparagraph substituted by Act 10 of 2003.]

(3) Subject to subparagraph (4), 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 form supplied to him by the Commissioner.

(4) In the case of an employer who has a mechanized accounting system the Commissioner may, subject to such conditions as he 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 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.

(5) An employer may, at the request of the employee or former employee, issue a duplicate employees' tax certificate but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate.

(6) Unless authorized thereto by the Commissioner, no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in subparagraph (5).

(7) 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 duties as an employer under this Part.

(8) 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 is in a form approved by the Commissioner under subparagraph (4) for use by such employer.

(9) An employer shall not destroy but shall, until the Commissioner requires it to be surrendered to him, 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, 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 becomes an employee, furnish his 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 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 subparagraph (2) of paragraph 20 the employer shall regard the latest declaration submitted to him 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 may instead apply to the Commissioner in such form as may be prescribed for the issue of a directive to his employer and in such case the Commissioner may issue a directive to the employer as provided in subparagraph (2) of paragraph 20.

(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 employer with a fresh declaration within seven days after the date of publication of that notice.

Employees to furnish employees' tax certificate to the 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 Part V of this Act:

(2) No employees' tax withheld from the remuneration paid or payable to an employee in respect of any year of assessment shall be credited in terms of subparagraph (1) of paragraph 18 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;

[Subparagraph amended by Act 5 of 2009]

(*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.

[Paragraph amended by Act 5 of 2009]

(2) The burden of proof that any amount of employees' tax has been withheld by his 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 subparagraph (2) of paragraph 12 shall apply, *mutatis mutandis*.

(5) No employees' tax certificate shall be issued by the employer in respect of any amount recovered by him from the employee in terms of subparagraph (4), nor shall any such amount be included in any return rendered in terms of subparagraph (2) of paragraph 4.

(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 shall absolve the employer from the liability imposed upon him 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 remuneration.

(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 subparagraph (2) of paragraph 16, 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 authorizing the employer to refrain from withholding any amount under paragraph 3 by way of employees' tax from any remuneration 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

20A. (1) The Commissioner may direct any employer to withhold employees' tax from the remuneration of his 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 remuneration of any employees to take account of—

(i) any credits referred to in paragraph (*c*) of section *seven* 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;

[Subparagraph inserted by Act 18 of 2004]

(*b*) refunds by the employer of amounts withheld by way of employees' tax;

(*c*) information to be furnished to the employer by his 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.

[Subparagraph inserted by Act 21 of 1999]

(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).

[Subparagraph inserted by Act 18 of 2004]

Application of this Schedule to remuneration payable by the State

21. This Schedule shall, subject to such modifications and exceptions as the Commissioner may direct or prescribe, apply in relation to remuneration 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 remuneration or any employer, as the case may be.

Offences and penalties

22. (1) Any person who—

(*a*) pays or becomes liable to pay any amount by way of remuneration 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 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, fails to comply with any directive issued to him by the Commissioner in terms of subparagraph (2) of paragraph 20; or

[Paragraph substituted by Act 15 of 2002.]

(*e*) furnishes to his employer or to the Commissioner a false or misleading tax code declaration or gives any false information or misleads his employer in relation to any matter affecting the amount of employees' tax to be withheld in his 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 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

(*i*) fails or neglects to apply to the Commissioner for registration as an employer as required by subparagraph (1) of paragraph 2 or, having so applied, fails or neglects to notify the Commissioner of any change of his address or of the fact of his 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 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 remuneration paid or payable to another person; or

(*k*) not being an employer and without being duly authorized 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.

[Subparagraph by Act 22 of 2001 and by Act 15 of 2002]

(2) For the purposes of subparagraph (*b*) of subparagraph (1), an amount which has been withheld by any person from remuneration 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.

Increased penalty on subsequent conviction

23. …..

[Section repealed by Act 22 of 2001]

FOURTEENTH SCHEDULE (Section 15 (2) (*dd*))

DEDUCTIONS IN RESPECT OF INCOME DERIVED FROM BUSINESS OPERATIONS IN GROWTH POINT AREAS

[Schedule repealed by Act 3 of 2010]

FIFTEENTH SCHEDULE (Section 28)

RESIDENT SHAREHOLDERS' TAX

Interpretation

1. (1) In this Schedule—

"company" means any company which is ordinarily resident in Zimbabwe;

"company limited by shares" means a company incorporated in Zimbabwe which is not a company limited by guarantee as described in paragraph (*b*) of section 7 of the Companies Act [*Chapter 24:03*];

"dividend" means any amount which is distributed by a company to its shareholders, but excluding—

(*a*) any amount so distributed by a building society which is not distributed as a dividend in respect of—

(i) in the case of the Central African Building Society, a paid-up permanent share — class "A"; and

(ii) in the case of the Founders Building Society, an ordinary permanent fully paid-up share; and

(iii) in the case of the Beverly Building Society, a foundation fully paid-up share or class "A" share

and

(*b*) any bonus shares; and

(*c*) any amount so distributed which, in the opinion of the Commissioner, is a return of the amount received by the company for its shares; and

(*d*) any amount so distributed by the Industrial Development Corporation of Zimbabwe Limited, in respect of its issued share capital; and

(*e*) any amount so distributed to the Development Trust of Zimbabwe, a body corporate established by notarial deed of trust on the 12th June, 1989; and

(*f*) any amount is distributed by a licensed investor which arises from his operations in an export processing zone; and

(*g*) any amount so distributed which in the opinion of the Commissioner, is a return of an amount contributed to the capital of a private business corporation by a member;

(*h*) any amount so distributed by an industrial park developer which arises from the operation of his industrial park;

less any income tax which has been deducted from such amount in terms of section *twenty-five*;

"nominee" means a person who holds the shares on which a dividend is paid directly or indirectly on behalf of another person;

"person", in addition to the meaning given to the term in section *two*, includes, in relation to income the subject of a trust to which a beneficiary is entitled, the trust;

"shareholder" includes a member of a private business corporation.

(2) For the purpose of this Schedule, a dividend shall be deemed to be distributed when it is paid to the shareholder, credited to his account or so dealt with that he becomes entitled to it, whichever occurs first.

(3) For the purposes of this Schedule, a company shall be deemed to be ordinarily resident in the state or territory in which its central management and control is situated.

Companies to withhold the tax

2. (1) Every company which distributes a dividend to—

(*a*) a person, other than a statutory corporation, a company limited by shares, a private business corporation, a pension fund, a benefit fund or a medical aid society, who is ordinarily resident in Zimbabwe; or

(*b*) a partnership which is ordinarily resident in Zimbabwe;

shall withhold resident shareholders' tax from that dividend and shall pay the amount withheld to the Commissioner within ten days of the date of distribution or within such further time as the Commissioner may for good cause allow.

[Subparagraph amended by Act 12 of 2006 and Act 10 of 2009]

(2) The resident shareholders' tax shall be withheld in terms of subparagraph (1) notwithstanding any objection that may be lodged to any decision made by the Commissioner in terms of the definition of "dividend" in subparagraph (1) of paragraph 1.

(3) Where resident shareholders' tax is withheld in terms of subparagraph (1), the company shall provide the shareholder with a certificate, in the form approved by the Commissioner, showing—

(*a*) the gross amount of the dividend; and

(*b*) the amount, if any, of income tax deducted in terms of section *twenty-five*; and

(*c*) the amount of the resident shareholders' tax withheld.

(4) Any company which fails to provide a shareholder with a certificate in terms of subparagraph (3), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the company's conduct was wilful, it shall be liable 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.

[Subparagraph inserted Act 22 of 2001]

Payment of tax where dividend deemed to have been paid in terms of section 28 (2)

2A. Where a dividend is deemed to have been paid in terms of subsection (2) of section *twenty-eight*, the company which is deemed to have paid the dividend shall pay resident shareholders' tax for that dividend upon written notification by the Commissioner of the tax due.

[Paragraph inserted by Act 18 of 2000]

Nominees to withhold the tax not deducted by company

3. (1) Every nominee who receives on behalf of a shareholder who is—

(*a*) a person, other than a statutory corporation, a company limited by shares, a pension fund, a benefit fund or a medical aid society, who is ordinarily resident in Zimbabwe; or

(*b*) a partnership which is ordinarily resident in Zimbabwe;

a dividend from which resident shareholders' tax has not been withheld by the company distributing the dividend, shall withhold resident shareholders' tax from that dividend and shall pay the amount withheld to the Commissioner within ten days of receipt of that dividend.

[Subparagraph amended by section 12 of 2006 and Act 10 of 2009]

(2) Where resident shareholders' tax is withheld in terms of subparagraph (1), the nominee shall provide the shareholder with a certificate, in the form approved by the Commissioner, showing—

(*a*) the gross amount of the dividend; and

(*b*) the amount, if any, of income tax deducted in terms of section *twenty-five*; and

(*c*) the amount of the resident shareholders' tax withheld.

(3) Any nominee who fails to provide a shareholder with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

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

[Subparagraph inserted by Act 22 of 2001]

Shareholders to pay the tax not withheld by company or nominee

4. A shareholder to whom a dividend has been distributed from which resident shareholders' tax has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section *seventy-seven* shall pay to the Commissioner within ten days of the date of distribution of the dividend the tax that should have been withheld.

[Paragraph amended by Act 12 of 2006 and Act 10 of 2009]

Returns to be furnished

5. Payment of the resident shareholders' tax by a company or nominee shall be accompanied by a return in the form prescribed.

Penalty for non-payment of the tax

6. (1) Subject to subparagraph (2), a company or a nominee in Zimbabwe who fails to withhold or to pay to the Commissioner any amount of resident shareholders' tax as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

(*a*) the amount of resident shareholders' tax which the company or nominee, as the case may be, failed to pay to the Commissioner; and

(*b*) a further amount equal to one hundred *per centum* of such resident shareholders' tax.

[Subparagraph amended by Act 18 of 2000]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him resident shareholders' tax was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of the amount referred to in subparagraph (*b*) of subparagraph (1).

(3) If a defaulting company or nominee referred to in subparagraph (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 company or

nominee 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.

[Subparagraph amended by Act 8 of 2005]

Refund of the tax

7. (1) If it is proved to the satisfaction of the Commissioner that any person has been charged with resident shareholders' tax—

(*a*) in excess of the amount properly chargeable in terms of this Schedule; or

(*b*) in respect of any dividend which has subsequently been rescinded with the approval of the Minister in order to comply with any conditions attaching to the payment of any dividend outside Zimbabwe in terms of the law relating to exchange control;

the Commissioner shall authorize a refund in so far as it has been overpaid or is in respect of any such dividend.

(2) If it is proved to the satisfaction of the Commissioner that the taxable income of any shareholder who is an individual and who had attained the age of fifty-five years prior to the commencement of the year of assessment, when aggregated with any dividends distributed to him and any interest as defined in the Twenty-First Schedule paid to him during the year of assessment—

[Paragraph amended by Act 5 of 2009]

(*a*) does not exceed six hundred United States dollars; or

[Paragraph amended by Act 5 of 2009]

(*b*) exceeds six hundred United States dollars but does not exceed seven hundred and twenty United States dollars; or

[Paragraph amended by Act 5 of 2009]

(*c*) exceeds seven hundred and twenty United States dollars but does not exceed eight hundred and forty United States dollars; or

[Paragraph amended by Act 5 of 2009]

(*d*) exceeds eight hundred and forty United States dollars but does not exceed nine hundred and sixty United States dollars;

[Paragraph amended by Act 5 of 2009]

the Commissioner shall authorize a refund of a percentage of resident shareholders' tax withheld or paid, as follows—

(i) in the case of an aggregate amount referred to in subparagraph (*a*), one hundred *per centum*;

(ii) in the case of an aggregate amount referred to in subparagraph (*b*), seventy-five *per centum*;

(iii) in the case of an aggregate amount referred to in subparagraph (*c*), fifty *per centum*;

(iv) in the case of an aggregate amount referred to in subparagraph (*d*), twenty-five *per centum*:

Provided that, if the period of assessment is less than twelve months, the amounts specified in subparagraphs (*a*), (*b*), (*c*) and (*d*) shall be reduced proportionately.

(3) If it is proved to the satisfaction of the Commissioner that the taxable income of any shareholder who is an individual and who had not attained the age of fifty-five years prior to the commencement of the year of assessment, when aggregated with any dividends distributed to him and any interest as defined in the Twenty-First Schedule paid to him during the year of assessment—

[Paragraph amended by Act 5 of 2009]

(*a*) does not exceed four hundred and eighty United States dollars; or

[Paragraph amended by Act 5 of 2009]

(*b*) exceeds four hundred and eighty United States dollars but does not exceed six hundred United States dollars; or

[Paragraph amended by Act 5 of 2009]

(*c*) exceeds six hundred United States but does not exceed seven hundred and twenty United States dollars; or

[Paragraph amended by Act 5 of 2009]

(*d*) exceeds seven hundred and twenty United States dollars but does not exceed eight hundred and forty United States dollars;

[Paragraph amended by Act 5of 2009]

the Commissioner shall authorize a refund of a percentage of resident shareholders' tax withheld or paid, as follows—

(i) in the case of an aggregate amount referred to in subparagraph (*a*), one hundred *per centum*;
(ii) in the case of an aggregate amount referred to in subparagraph (*b*), seventy-five *per centum*;
(iii) in the case of an aggregate amount referred to in subparagraph (*c*), fifty *per centum*;
(iv) in the case of an aggregate amount referred to in subparagraph (*d*), twenty-five *per centum*:

Provided that, if the period of assessment is less than twelve months, the amounts specified in subparagraphs (*a*), (*b*), (*c*) and (*d*) shall be reduced proportionately.

(4) The Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made within six years of the date of payment of the tax.

Law Development Commission, Zimbabwe

SIXTEENTH SCHEDULE (Sections 29 and 94)

[Schedule repealed by Act 5 of 2009]

SEVENTEENTH SCHEDULE (Sections 30 and 95)

NON-RESIDENTS' TAX ON FEES

Interpretation

1. (1) In this Schedule, subject to subparagraph (2)—

"fees" means any amount from a source within Zimbabwe payable in respect of any services of a technical, managerial, administrative or consultative nature, but does not include any such amount payable in respect of—

(*a*) services rendered to an individual unconnected with his business affairs; or

(*b*) services rendered by any person in his 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; or

(*e*) any project which is specified for the purposes of this subparagraph by the Minister by notice in a statutory instrument; or

(*f*) any project which is the subject of any agreement entered into by the Government of Zimbabwe with any other government or international organization in terms of which any person is entitled to exemption from tax in respect of such amount; or

(*g*) services rendered to a licensed investor in respect of his operations in an export processing zone;

(*h*) services rendered to an industrial park developer in respect of the operation of his industrial park;

"foreign company" means a body corporate that is incorporated in a state or territory other than Zimbabwe under the laws of that state or territory;

"non-resident person" means—

(*a*) a person, other than a company, who; or

(*b*) a partnership or foreign company which;

is not ordinarily resident in Zimbabwe;

"payee" means a non-resident person to whom fees are payable or paid;

"payer" means any person who or partnership which pays or is responsible for the payment of fees, including the State or a statutory corporation or any person who or partnership which pays or is responsible for the payment of fees for or on behalf of the State or any statutory corporation.

(2) For the purposes of this Schedule—

(*a*) fees shall be deemed to be from a source within Zimbabwe if the payer is a person who or partnership which is ordinarily resident in Zimbabwe;

(*b*) in determining whether or not non-residents' tax on fees should be withheld, the question as to whether or not—

(i) the payer is a person or partnership ordinarily resident in Zimbabwe; or

(ii) the payee is a non-resident person;

shall be decided by reference to the date on which the fees are paid by the payer;

(*c*) fees shall be deemed to be paid to the payee if they are credited to his account or so dealt with that the conditions under which he is entitled to them are fulfilled, whichever occurs first;

(*d*) a partnership shall—

(i) in relation to fees for services rendered by such partnership in the carrying on of any trade in Zimbabwe, be deemed to be ordinarily resident in Zimbabwe if at least one member of such partnership is ordinarily resident in Zimbabwe;

(ii) in relation to fees payable to a non-resident person, be deemed to be ordinarily resident in Zimbabwe if at least one member of such partnership is ordinarily resident in Zimbabwe.

Payers to withhold tax

2. (1) Every payer of fees to a non-resident person shall withhold non-residents' tax on fees from those fees and shall pay the amount withheld to the Commissioner within ten days of the date of payment or within such further time as the Commissioner may for good cause allow.

[Subparagraph amended by Act 12 of 2006 and Act 10 of 2009]

(2) Where non-residents' tax on fees is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

(*a*) the amount of the fees; and

(*b*) the amount of the non-residents' tax on fees withheld.

Agents to withhold tax not deducted by payer

(3) Any payer who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable 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.

[Subparagraph inserted by Act 22 of 2001]

3. (1) Every agent who receives on behalf of a payee fees from which non-residents' tax on fees has not been withheld by the payer, shall withhold non-residents' tax on fees from those fees and shall pay the amount withheld to the Commissioner within ten days of the date of the receipt of the fees.

[Subparagraph amended by Act 12 of 2006 and Act 10 of 2009]

(2) Where non-residents' tax on fees is withheld in terms of subparagraph (1), the agent shall provide the payee with a certificate in a form approved by the Commissioner, showing—

(*a*) the name of the payer; and

(*b*) the amount of the fees; and

(*c*) the amount of non-residents' tax on fees withheld.

(2a) Any agent who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable 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.

[Subparagraph inserted by Act 22 of 2001]

(3) For the purposes of this paragraph, a person shall be deemed to be the agent of a payee and to have received fees on behalf of that payee if—

(*a*) that person's address appears in the payer's records as the address of the payee; and

(*b*) the warrant or cheque in payment of the fees is delivered at that person's address.

(4) Any person deemed to be the agent of a payee in terms of subparagraph (3) shall, as regards the payee and in respect of any income received by or accruing to or in favour of the payee, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Zimbabwe.

Payee to pay tax not withheld by payer or agent

4. A payee to whom fees have been paid from which non-residents' tax on fees has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section *seventy-seven* shall pay to the Commissioner within ten days of the date of payment of the fees the tax that should have been withheld.

[Paragraph amended by Act 12 of 2006 and Act 10 of 2009]

Returns to be furnished

5. Payment of the non-residents' tax on fees by a payer or an agent shall be accompanied by a return in the form prescribed.

Penalty for non-payment of tax

6. Subject to subparagraph (2), a payer or an agent in Zimbabwe who fails to withhold or pay to the Commissioner any amount of non-residents' tax on fees as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

(*a*) the amount of non-residents' tax on fees which the payer or the agent, as the case may be, failed to pay to the Commissioner; and

(*b*) a further amount equal to one hundred *per centum* of such non-residents' tax on fees.

[Subparagraph amended by Act 18 of 2000.]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him non-residents' tax on fees was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of the amount referred to in subparagraph (*b*) of subparagraph (1).

(3) If a defaulting payer or agent referred to in subparagraph (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 payer 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.

[Subparagraph inserted by Act 8 of 2005]

Refund of tax on fees

7. If it is proved to the satisfaction of the Commissioner that any person or partnership has been charged with non-residents' tax on fees in excess of the amount properly chargeable in terms of this Schedule, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made within six years of the date of payment of such tax.

Law Development Commission, Zimbabwe

EIGHTEENTH SCHEDULE (Section 31)

NON-RESIDENTS' TAX ON REMITTANCES

Interpretation

1. (1) In this Schedule, subject to subparagraph (2)—

"allocable expenditure" means expenditure of a technical, managerial, administrative or consultative nature incurred outside Zimbabwe by a non-resident person in connection with or allocable to the carrying on by him of any trade within Zimbabwe;

"non-resident person" means a person who, or partnership which, is not ordinarily resident in Zimbabwe, but does not include a licensed investor;

"remittance" means the transfer of any amount from Zimbabwe to another country.

(2) For the purpose of this Schedule, in determining whether or not non-residents' tax on remittances should be paid, the question as to whether or not a person or a partnership is a non-resident person shall be decided by reference to the date on which the remittance is effected by such person or partnership.

Non-resident persons to pay tax

2. Any non-resident person who effects any remittance in respect of allocable expenditure shall in relation to such remittance pay non-residents' tax on remittances to the Commissioner within ten days of the date of remittance or within such further time as the Commissioner may for good cause allow.

[Paragraph amended by Act 12 of 2006 and Act 10 of 2009]

Returns to be furnished

3. Payment of non-residents' tax on remittances by a non-resident person shall be accompanied by a return in the form prescribed.

Penalty for non-payment of tax

4. (1) Subject to the provisions of subparagraph (2), a non-resident person who fails to pay to the Commissioner any amount of non-residents' tax on remittances as provided in paragraph 2 shall be liable for the payment to the Commissioner of a further amount equal to one hundred *per centum* of such non-residents' tax on remittances.

[Subparagraph amended by Act 18 of 2000]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him non-residents' tax on remittances was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of the amount referred to in subparagraph (1).

(3) If a defaulting payer or agent referred to in subparagraph (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 payer 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.

[Subparagraph inserted by Act 8 of 2005]

Refund of tax on remittances

5. If it is proved to the satisfaction of the Commissioner that any non-resident person has paid non-residents' tax on remittances in excess of the amount properly payable in terms of this Schedule, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made within six years of the date of payment of such tax.

Law Development Commission, Zimbabwe

NINETEENTH SCHEDULE (Sections 32 and 96)

NON-RESIDENTS' TAX ON ROYALTIES

Interpretation

1. (1) In this Schedule, subject to subparagraph (2)—

"foreign company" means a body corporate that is incorporated in a state or territory other than Zimbabwe under the law of that state or territory;

"non-resident person" means—

(*a*) a person, other than a company, who; or

(*b*) a partnership or foreign company which;

is not ordinarily resident in Zimbabwe;

"payee" means a non-resident person to whom royalties are payable or paid;

"payer" means any person who or partnership which pays or is responsible for the payment of royalties, including the State or a statutory corporation or any person who pays or is responsible for the payment of royalties for or on behalf of the State or any statutory corporation, but not including a licensed investor or any person acting on his behalf;

"royalties" means any amount from a source within Zimbabwe payable as a consideration for the use of, or the right to use, any literary, dramatic, musical, artistic, scientific or other work whatsoever (including cinematograph films or recordings) in which any copyright exists, any patented article, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, but does not include any such amount payable in respect of—

(*a*) any project which is specified for the purposes of this subparagraph by the Minister of notice in a statutory instrument; or

(*b*) any project which is the subject of any agreement entered into by the Government of Zimbabwe with any other government or international organization in terms of which any person is entitled to exemption from tax in respect of such amount;

"use", in relation to any work in which any copyright exists or any patented article, means the doing of any thing which would infringe the copyright or patent concerned if it were done without the permission or authority of the holder of the copyright or patent or his agent or assignee.

(2) For the purposes of this Schedule—

(*a*) royalties shall be deemed to be from a source within Zimbabwe if—

(i) the payer is a person who or a partnership which is ordinarily resident in Zimbabwe; or

(ii) they are payable by virtue of the use in Zimbabwe or the grant of permission to use in Zimbabwe any property referred to in the definition of "royalties" in subsection (1);

(*b*) in determining whether or not non-residents' tax on royalties should be withheld, the question as to whether or not—

(i) the payer is a person or partnership ordinarily resident in Zimbabwe; or

(ii) the payee is a non-resident person;

shall be decided by reference to the date on which the royalties are paid by the payer;

(*c*) royalties shall be deemed to be paid to the payee if they are credited to his account or so dealt with that the conditions under which he is entitled to them are fulfilled, whichever occurs first;

(*d*) a partnership shall—

(i) in relation to royalties payable to such partnership in the carrying on by it of any trade in Zimbabwe, be deemed to be ordinarily resident in Zimbabwe if at least one member of such partnership is ordinarily resident in Zimbabwe;

(ii) in relation to royalties payable to a non-resident person, be deemed to be ordinarily resident in Zimbabwe if at least one member of such partnership is ordinarily resident in Zimbabwe.

Payers to withhold tax

2. (1) Every payer of royalties to a non-resident person shall withhold non-residents' tax on royalties from those royalties and shall pay the amount withheld to the Commissioner within ten days of the date of payment or within such further time as the Commissioner may for good cause allow.

[Subparagraph amended by Act 12 of 2006 and Act 10 of 2009]

(2) Where non-residents' tax on royalties is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

(*a*) the amount of the royalties; and

(*b*) the amount of the non-residents' tax on royalties withheld.

(3) Any payer who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable 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.

[Subparagraph inserted by Act 22 of 2001]

Agents to withhold tax not deducted by payer

3. (1) Every agent who receives on behalf of a payee royalties from which non-residents' tax on royalties has not been withheld by the payer, shall withhold non-residents' tax on royalties from those royalties and shall pay the amount withheld to the Commissioner within ten days of the date of receipt of the royalties.

[Subparagraph amended by Act 12 of 2006 and Act 10 of 2009]

(2) Where non-residents' tax on royalties is withheld in terms of subparagraph (1), the agent shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

(*a*) the name of the payer; and

(*b*) the amount of the royalties; and

(*c*) the amount of the non-residents' tax on royalties withheld.

(2a) Any agent who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the agent's conduct was wilful, he shall be liable 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.

[Subparagraph inserted by Act 22 of 2001]

(3) For the purposes of this paragraph, a person shall be deemed to be the agent of a payee and to have received royalties on behalf of that payee if—

(*a*) that person's address appears in the payer's records as the address of the payee; and

(*b*) the warrant or cheque in payment of the royalties is delivered at that person's address.

(4) Any person deemed to be the agent of a payee in terms of subparagraph (3) shall, as regards the payee and in respect of any income received by or accruing to or in favour of the payee, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Zimbabwe.

Payee to pay tax not withheld by payer or agent

4. A payee to whom royalties have been paid from which non-residents' tax on royalties has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section *seventy-seven* shall pay to the Commissioner within ten days of the date of payment of the royalties the tax that should have been withheld.

[Paragraph amended by Act 12 of 2006 and Act 10 of 2009]

Returns to be furnished

5. Payment of the non-residents' tax on royalties by a payer or an agent shall be accompanied by a return in the form prescribed.

Penalty for non-payment of tax

6. (1) Subject to subparagraph (2), a payer or an agent in Zimbabwe who fails to withhold or pay to the Commissioner any amount of non-residents' tax on royalties as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

(*a*) the amount of non-residents' tax on royalties which the payer or the agent, as the case may be, failed to pay to the Commissioner; and

(*b*) a further amount equal to one hundred *per centum* of such non-residents' tax on royalties.

[Subparagraph amended by Act 18 of 2000]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him non-residents' tax on royalties was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of the amount referred to in subparagraph (*b*) of subparagraph (1).

(3) If a defaulting non-resident person referred to in subparagraph (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 non-resident person 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.

[Subparagraph inserted by Act 8 of 2005]

Refund of tax on royalties

7. If it is proved to the satisfaction of the Commissioner that any person or partnership has been charged with non-residents' tax on royalties in excess of the amount properly chargeable in terms of this Schedule, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made within six years of the date of payment of such tax.

Law Development Commission, Zimbabwe

TWENTIETH SCHEDULE (Sections 8 (1) (*p*) and 15 (2) (*ee*))

DETERMINATION OF GROSS INCOME AND TAXABLE INCOME OR ASSESSED LOSS FROM PETROLEUM OPERATIONS

Interpretation

1. (1) In this Schedule—

"allowable deduction" means a deduction allowable under this Schedule;

"asset" includes any part or share of an asset or interest in an asset;

"assessed loss attributable to petroleum operations" means any such loss determined by applying the provisions of paragraph 2;

"capital expenditure" has the meaning given by subparagraph (2);

"chargeable petroleum", in relation to a petroleum operator, means petroleum obtained by the operator from petroleum operations carried on by the operator;

"disposed of", in relation to petroleum, has the meaning given by subparagraph (3) of paragraph 3;

"income attributable to petroleum operations" means the aggregate of the amounts referred to in subparagraph (1) of paragraph 3;

"petroleum information" means geological, geophysical and technical information, being information that relates to the presence, absence or extent of deposits of petroleum in any area in Zimbabwe;

"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 the provisions of paragraph 2.

(2) Capital expenditure of a petroleum operator in relation to a petroleum special grant is expenditure incurred by the petroleum operator in relation to that special grant—

(*a*) in exploring for petroleum and ascertaining and testing the extent and characteristics of any such discovery, including such costs of—

(i) geological, geophysical, geochemical, aerial, magnetic, gravity, seismic and other surveys and all processing analyses, interpretations and studies related thereto;

(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*) in 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*) in the acquisition of petroleum information or on reservoir studies;

(*d*) on the provision of plant, machinery and equipment for the exploration for, and the development and production of, petroleum;

(*e*) on 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*) on the provision of any transportation or communication facilities required for the conduct of petroleum operations;

(*g*) on the provision of office equipment and furniture in any building required for petroleum operations;

(*h*) on 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; and

(*i*) prior to the year of assessment in which the petroleum operator first produces petroleum under a programme of continuous production and sale—

(i) on general administration and management for the purposes of petroleum operations;

(ii) on the education and training of citizens of Zimbabwe at an educational or technical institution, approved by the Commissioner, on attachment with a petroleum operator or an affiliate of a 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—

(i) a school; or
(ii) a hospital, nursing home or clinic.

Determination of taxable income or assessed loss

2. The taxable income or, as the case may be, the 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 accruing to the petroleum operator in the year of assessment and the sum of the allowable deductions of the petroleum operator for the year of assessment; and that difference, if any, is a taxable income if the income so attributable is greater than the sum of those allowable deductions, and is otherwise an assessed loss.

Income from petroleum operations

3. (1) For the purposes of paragraph (*p*) of the definition of "gross income" in subsection (1) of section *eight*, the amounts received by or accruing to, or deemed to have been received by or accrued to, a petroleum operator in a year of assessment include—

(*a*) the fair market value, established as provided in 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 received or receivable in the year of assessment by the petroleum operator under a policy of insurance or otherwise in respect of the loss or destruction of any of the petroleum operator's chargeable petroleum; and

(*c*) any interest or other amount derived by the petroleum operator in the year of assessment from or in connection with petroleum operations carried on by the petroleum operator; and

(*d*) any amount to be included in the gross income of the petroleum operator in the year of assessment pursuant to subparagraph (2) of paragraph 8; 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 paragraph (*d*), (*e*), (*h*), (*k*), (*l*) or (*m*) of the definition of "gross income" in subsection (1) of section *eight*.

(2) The fair market value, in relation to a disposal of petroleum, is—

(*a*) the value established in relation to the disposal by reference to criteria for the determination of that value specified in the petroleum special grant under the authority of which the petroleum was won; or

(*b*) where there are no criteria, such as are referred to in subparagraph (*a*), the value established in relation to the disposal under and in accordance with such rules as are prescribed.

(3) Petroleum is disposed of 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 or bartered prior to export.

(4) Except as is provided in subparagraph (1), the amounts referred to in paragraphs (*a*) to (*o*) of the definition of "gross income" in subsection (1) of section *eight* 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 subsection (1) of section *sixteen* and paragraph 5, for the purpose of determining the taxable income attributable to the petroleum operations of any petroleum operator, there shall be deducted from the income so attributable of the petroleum operator the amounts allowed to be deducted in terms of this paragraph.

(2) The deductions allowed shall be—

(*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 does not include 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—

(i) a deduction is allowable in terms of paragraph (*g*), (*h*), (*j*), (*m*), (*o*), (*q*), (*r*), (*u*), (*aa*) or (*bb*) of subsection (2) of section *fifteen*; or

(ii) an allowance is provided for in paragraph 6.

(3) Where any expenditure or losses referred to in subparagraph (2) are incurred as part of or in conjunction with any other expenditure, only that proportion 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.

(4) For the purpose of determining the taxable income attributable to petroleum operations of any petroleum operator in a year of assessment, there shall be deducted any assessed loss, determined under this Schedule for the previous year of assessment, from the income remaining after the deductions referred to in subparagraph (2) and sections *seventeen* and *eighteen* have been made.

(5) The provisos to subsection (3) of section *fifteen* shall apply in relation to subparagraph (3) as they apply in relation to that subsection.

(6) Where—

(*a*) a petroleum special grant ceases to have effect, otherwise than by reason of cancellation, and, at the date thereof, the petroleum operator is not then a petroleum operator in relation to any other petroleum special grant; and

(*b*) an assessed loss, determined under this Schedule, of the petroleum operator remains undischarged after that date; and

(*c*) the petroleum operator becomes, within five years after that date, a grantee of a 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 subsection (3) of section *fifteen* shall apply accordingly.

(7) Subsection (4) of section *fifteen* 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) No deduction shall be allowed under paragraph 4 in respect of—

(*a*) any 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 any provision in 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) by the terms and conditions of the petroleum special grant is calculated on an after-tax basis;

or

(*c*) any expenditure to the extent that it is incurred to produce income which is not attributable to petroleum operations; or

(*d*) any expenditure such as is referred to in subparagraph (iii) of subparagraph (*a*) of subparagraph (2) of paragraph 4—

(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*) any expenditure on a residential unit used for housing employees of the petroleum operator, to the extent that the expenditure exceeds—

(i) fifteen thousand dollars, where it was incurred before the 1st April, 1991; or

(ii) thirty thousand dollars, where it was incurred in the year of assessment beginning on the 1st April, 1991; or

(iii) thirty-five thousand dollars, where it was incurred on or after the 1st April, 1992, but before the 1st April, 1995; or

(iv) fifty thousand dollars, where it was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or

(v) one hundred thousand dollars, where it was incurred on or after the 1st January, 1999;

or

(vi) ten thousand United States dollars, incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;

[Subparagraph inserted by Act 5 of 2009]

(*f*) any expenditure on a passenger motor vehicle as defined in subparagraph (2) of paragraph 13 of the Fourth Schedule, to the extent that the expenditure exceeds—

(i) twenty-two thousand dollars, where it was incurred before the 1st April, 1991; or

(ii) thirty thousand dollars, where it was incurred in the year of assessment beginning on the 1st April, 1991; or

(iii) fifty thousand dollars, where it was incurred on or after the 1st April, 1992, but before the 1st April, 1995; or

(iv) seventy-five thousand dollars, where it was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or

(v) two hundred thousand dollars, where it was incurred on or after 1st January, 1999;

vi) ten thousand United States dollars, incurred by the taxpayer, where the expenditure was incurred on or after the 1st January, 2009;

[Subparagraph inserted by Act 5 of 2009]

(*g*) any expenditure on any permanent building used for purposes of a school, hospital, nursing home or clinic—

(i) unless it is proved to the satisfaction of the Commissioner that, at the relevant time—

A. in the case of a school, more than one-half of the pupils are children of persons employed by the petroleum operator in carrying on petroleum operations; or

B. in the case of a hospital, nursing home or clinic, more than one-half of the persons receiving treatment thereat are employed by the petroleum operator in carrying on petroleum operations or are members of the families of persons who are so employed;

or

(ii) 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—

I. fifteen thousand dollars, where the expenditure was incurred before the 1st April, 1991; or

II. thirty thousand dollars, where the expenditure was incurred in the year of assessment beginning on the 1st April, 1991; or

III. thirty-five thousand dollars, where the expenditure was incurred on or after the 1st April, 1992, but before the 1st April, 1995; or

IV. fifty thousand dollars, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or

V. one hundred thousand dollars, where the expenditure was incurred on or after the 1st January, 1999;

or

B. in respect of any one such school, hospital, nursing home or clinic—

I. one hundred thousand dollars, where the expenditure was incurred before the 1st April, 1993;

II. two hundred and fifty thousand dollars, where the expenditure was incurred on or after the 1st April, 1993, but before the 1st April, 1995; or

III. five hundred thousand dollars, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or

IV. one million five hundred thousand dollars, where the expenditure was incurred on or after the 1st January, 1999.

(2) Where petroleum is disposed of, no deduction shall be allowed 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 subsection (2) of section *fifteen*.

(4) No deduction shall be made in regard to any bonus payment made by a petroleum operator or taxpayer in respect of the signing of a petroleum agreement.

Allowances in respect of capital expenditure

6. Where in any 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 a petroleum special grant is assigned in any year of assessment under Part XX of the Mines and Minerals Act [*Chapter 21:05*] by a petroleum operator, the petroleum operator and the assignee shall jointly furnish to the Commissioner a statement in writing—

(*a*) identifying any asset 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 that asset or, where no consideration was given, the value of that asset.

(2) Where—

(*a*) a statement is furnished in terms of subparagraph (1) and the Commissioner is satisfied with it, the proportion of the consideration or, as the case may be, the value, 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 asset; or

(*b*) the Commissioner is not satisfied with a statement furnished in terms of subparagraph (1) or if no such statement is furnished, the Commissioner may determine the amount which appertains to the asset and that amount shall rank as provided in subparagraph (*a*).

(3) This paragraph applies to any asset, used for carrying on petroleum operations, in respect of which a deduction has been allowed under paragraph 6 for the purpose of determining the taxable income of the petroleum operator making the assignment.

Disposal, loss, etc., of asset

8. (1) This paragraph applies where, in a year of assessment, any asset of a petroleum operator—

(*a*) in respect of which a deduction under paragraph 6 has been allowed for the purpose of determining the taxable income of the petroleum operator, 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 of the petroleum operator in the year of assessment shall include the amount of the deduction allowed in respect of the asset concerned, to the extent that the deduction has been recovered or recouped as a result of the disposal, loss, destruction or passing of that asset, for the purpose of determining the taxable income of the petroleum operator.

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, derived by the petroleum operator, and

(*b*) any liability to tax in respect of income, not so attributable, referred to in subparagraph (*a*).

Information in returns

10. A petroleum operator shall specify separately in a return rendered in respect of the petroleum operator's petroleum operations the income attributable to those operations and shall furnish information with respect to the following matters—

(*a*) the quantity of the petroleum operator's chargeable petroleum won and saved;

(*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;

(*c*) in the case of petroleum won and saved 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;

(*d*) any amount included in the income of the petroleum operator pursuant to subparagraph (2) of paragraph 8;

(*e*) any interest or other amount derived by the petroleum operator from petroleum operations;

(*f*) the amount of all the allowable deductions claimed;

(*g*) the amount of each allowable deduction claimed and particulars of that amount;

(*g*1) any asset in relation to which paragraph 7 or subparagraph (1) of paragraph 8 applies;

(*i*) the amount of the taxable income, if any, or the assessed loss;

(*j*) the amount, if any, of tax payable;

(*k*) such other information as the Commissioner may require.

Law Development Commission, Zimbabwe

Maintenance of books in foreign currency, etc.

11. Where a taxpayer that is a petroleum operator elects, which election shall be final, to maintain all books and records relating to petroleum operations in the currency of the United States of America—

(*a*) the Commissioner shall determine the taxable income or assessed loss attributable to petroleum operations for any year of assessment in that currency; and

(*b*) notice of assessment and of any amount of tax payable shall be given to the taxpayer in that currency; and

(*c*) payment of tax shall be effected in that currency.

Law Development Commission, Zimbabwe

TWENTY-FIRST SCHEDULE (Section 34)

RESIDENTS' TAX ON INTEREST

Interpretation

1. (1) In this Schedule—

"financial institution" means—

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

[Paragraph amended by Act 9 of 1999 and by Act 18 of 2000].

(*b*) any building society registered or required to be registered in terms of the Building Societies Act [*Chapter 24:02*]; or

(*c*) the Reserve Bank of Zimbabwe;

[Paragraph inserted by Act 17 of 1997.]

(*c*) a company acting as trustee or manager of a unit trust scheme registered in terms of the Collective Investment Schemes Act [*Chapter 24:19*], the Zimbabwe Development Bank established in terms of the Zimbabwe Development Dank Act [*Chapter 24:14*] and the successor company to the Agricultural Finance Corporation formed under the Agricultural Finance Act [*Chapter 18:02*]; or

[Paragraph inserted by Act 18 of 2000]

(*c*) an asset manager as defined in the Asset Management Act [*Chapter 24:26*]; or

(*d*) a collective investment scheme as defined in section 3 of the Collective Investment Schemes Act, [*Chapter 24:19*];

[Second subparagraphs (*c*) and (*d*) inserted by Act 16 of 2004

"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;

"interest" means interest from a source in Zimbabwe payable by a financial institution on any loan or deposit, and—

(*a*) includes—

(i) a dividend distributed by a building society in respect of any share other than a share referred to in subparagraph (i), (ii) or (iii) of the definition of "dividend" in subparagraph (1) of paragraph 1 of the Ninth Schedule; and

(ii) income from Treasury bills;

(iii) income from banker's acceptances and other discounted instruments traded by financial institutions;

[Subparagraph substituted by Act 17 of 1997]

[Paragraph (iii) inserted by Act 18 of 2000]

(*b*) does not include—

(i) interest paid on class "C" shares as defined in the Building Societies (Class "C" Shares) Regulations, 1986 (Statutory Instrument 308 of 1986), to the extent and subject to the conditions specified in those regulations; or

(ii) ……..

[Subparagraph repealed by Act 13 of 1996.]

(iii) interest payable to any other financial institution; or

(iv) 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

(v) interest payable to any person whose receipts and accruals are exempt from income tax in terms of paragraph 1, 2 or 3 of the Third Schedule; or

(vi) interest payable to an insurer registered in terms of the Insurance Act [*Chapter 24:07*]; or

(vii) interest payable on a foreign currency account held by a taxpayer other than a company or trust; or

(viii) interest which is exempt from income tax in terms of paragraph 10 of the Third Schedule;

[Subparagraph inserted by Act 4 of 1996 and reinserted (?) by Act 16 of 2004]

(ix) interest on the amount payable by the Reserve Bank of Zimbabwe for the export proceeds of a business organisation engaging in the export of goods and services upon the acquittance by that organisation of the export documentation relating to that amount;

[Subparagraph inserted by Act 16 of 2007]

"person", in addition to the meaning given to the term in section *two*, includes, in relation to income the subject of a trust to which a beneficiary is entitled, the trust.

(2) For the purposes of this Schedule—

(*a*) in determining whether or not residents' tax on interest should be withheld, the question as to whether or not the payee is ordinarily resident in Zimbabwe shall be decided by reference to the date on which the interest is paid by the financial institution;

(*b*) interest shall be deemed to be paid to the payee if it is credited to his account or so dealt with that the conditions under which he is entitled to it are fulfilled, whichever occurs first.

Financial institutions to withhold tax

2. (1) Every financial institution that pays interest to—

(*a*) a person, other than a company or trust, who is ordinarily resident in Zimbabwe; or

(*b*) a partnership, company or trust which is ordinarily resident in Zimbabwe;

shall withhold residents' tax on interest from that interest and shall pay the amount withheld to the Commissioner on or before the tenth day of the month following the month in which the payment was made or within such further time as the Commissioner may for good cause allow.

[Subparagraph amended by Act 12 of 2006 and Act 10 of 2009]

Provided that in the case of interest referred to in paragraph (*a*)(ii) and (iii) of the definition of "interest" in paragraph 1(1), payment of the interest shall be deemed to have been made on the date of maturity of the Treasury bill, banker's acceptance or other discounted instrument concerned.

[Proviso substituted by Act 8 of 2005]

(2) Where residents' tax on interest is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

(*a*) the amount of the interest; and

(*b*) the amount of the residents' tax on interest withheld.

(3) Any payer who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable 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.

[Subparagraph inserted by Act 22 of 2001.]

Agents to withhold tax not deducted by financial institutions

3. (1) Every agent who, on behalf of a payee who is—

(*a*) a person, other than a company or trust, who is ordinarily resident in Zimbabwe; or

(*b*) a partnership, company or trust which is ordinarily resident in Zimbabwe;

receives interest from which residents' tax on interest has not been withheld by the financial institution shall withhold residents' tax on interest from that interest and shall pay the amount withheld to the Commissioner on or before the tenth day of the month following the month in which the interest was received.

[Subparagraph amended by Act 12 of 2006 and Act 10 of 2009]

(2) Where residents' tax on interest is withheld in terms of subparagraph (1), the agent shall provide the payee with a certificate in a form approved by the Commissioner, showing—

(*a*) the name of the financial institution that paid the interest; and

(*b*) the amount of the interest; and

(*c*) the amount of the residents' tax on interest withheld.

(2a) Any agent who fails to provide a payee with a certificate in terms of subparagraph (2), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the agent's conduct was wilful, he shall be liable 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.

[Subparagraph inserted by Act 22 of 2001.]

(3) For the purpose of this paragraph, a person shall be deemed to be the agent of a payee and to have received interest on behalf of that payee if—

(*a*) that person's address appears as the address of the payee in the records of the financial institution that paid the interest; and

(*b*) the warrant or cheque in payment of the interest is delivered at that person's address.

(4) For the purposes of this paragraph, where a trust receives interest—

(*a*) to the whole or part of which a beneficiary is entitled in terms of the trust; or

(*b*) which in terms of section *ten* is deemed to accrue to a person;

then—

(i) a trustee of that trust shall be deemed to be an agent in respect of such interest or part thereof; and

(ii) any such beneficiary or person shall be deemed to be a payee in respect of such interest or part thereof.

(5) Any person deemed to be the agent of a payee in terms of subparagraph (3) or (4) shall, as regards the payee and in respect of any income received by or accruing to or in favour of the payee, have and exercise all the powers, duties and responsibilities of a person declared to be the agent of the payee in terms of section *fifty-eight*.

Payee to pay tax not withheld by financial institution or agent

4. A payee to whom interest is paid from which residents' tax on interest has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section *seventy-seven* shall pay to the Commissioner, on or before the tenth day of the month following the month in which the payment was made, the tax that should have been withheld.

[Paragraph amended by Act 12 of 2006 and Act 10 of 2009]

Returns to be furnished

5. Payment of residents' tax on interest by a financial institution or an agent shall be accompanied by a return in the form prescribed.

Penalty for non-payment of tax

6. (1) Subject to subparagraph (2), a financial institution or an agent in Zimbabwe that fails to withhold or pay to the Commissioner any amount of residents' tax on interest as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

(*a*) the amount of residents' tax on interest which the financial institution or the agent, as the case may be, failed to pay to the Commissioner; and

(*b*) a further amount equal to one hundred *per centum* of such residents' tax on interest.

[Subparagraph amended Act 18 of 2000]

(2) The Commissioner, if he is satisfied in any particular case that the failure to pay to him residents' tax on interest was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he thinks fit of the amount referred to in subparagraph (*b*) of subparagraph (1).

(3) If a defaulting financial institution or agent referred to in subparagraph (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 financial institution 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.

[Subparagraph inserted by Act 8 of 2005]

Refund of overpayments

7. If it is proved to the satisfaction of the Commissioner that any person has been charged with residents' tax on interest in excess of the amount properly chargeable to him in terms of this Schedule, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorize any refund in terms of this paragraph unless the claim therefor is made within six years of the date of payment of such tax.

Law Development Commission, Zimbabwe

TWENTY-SECOND SCHEDULE (Sections 2 (1), 8 (1), 15 (2) (ff) and 22)

DETERMINATION OF GROSS INCOME AND TAXABLE INCOME OR ASSESSED LOSS FROM SPECIAL MINING LEASE OPERATIONS

Interpretation

1. In this Schedule—

"allowable deduction" means any deduction allowable under this Schedule;

"assessed loss" means an assessed loss determined by applying the provisions of paragraph 2;

"asset" includes any part or share of an asset or interest in an asset;

"capital expenditure" means exploration expenditure or development 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 out by him;

"development expenditure" means expenditure actually incurred, whether directly or indirectly, in or in connection with development operations, including expenditure incurred in respect of —

(*a*) the acquisition of motor vehicles, machinery, implements, utensils 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 subparagraph (ii) of paragraph (*c*) of the definition of "development operations", and in warehouses, vehicles, motorized 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 or pursuant to the special mining lease agreement or, where there is no such agreement, in such amount as may be determined by the Commissioner to be fair and reasonable; and

(*f*) measures to prevent, minimize 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 for or in connection with the development of a special mining lease area, and includes —

(*a*) the sinking of shafts; and

(*b*) the installation of machinery, implements, utensils and other articles required for special mining lease operations; and

(*c*) the construction and erection 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 or 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 given by subparagraph (3) of paragraph 3;

"exploration expenditure" means expenditure actually incurred, whether directly or indirectly, in or in connection with exploration operations, including expenditure incurred in respect of—

(*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 or pursuant to the special mining lease agreement or, where there is no such agreement, in such amount as may be determined by the Commissioner to be fair and reasonable;

"exploration operations" means any operations carried out in Zimbabwe for or 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 amounts referred to in subparagraph (1) of paragraph 3;

"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;

"trade training" means any education or training. other than education or training which is provided as part of the general education of a pupil, which is intended to train persons to perform work in connection with the special mining lease operations of the taxpayer or to improve the performance of such work;

"training building" means :my building the construction of which was commenced on or after the 1st April, 1994 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 in connection with his special mining lease operations;

"training equipment" means new or unused articles, implement or utensils purchased on or after 1st April, 1994, 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 the taxpayer in connection with the taxpayer's special mining lease operations;

"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, as the case may be, the 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 accruing to him in that year and the sum of his allowable deductions for that year; and that difference, if any, is a taxable income if the income so attributable is greater than the sum of those allowable deductions, and is otherwise an assessed loss.

Income from special mining 1ease operations

3. (1) For the purposes of paragraph (*s*) of the definition of "gross income" in subsection (1) of section *eight*, the amounts received by or accruing to, or deemed to have been received by or accrued to, the holder of a special mining lease in a year of assessment shall include—

(*a*) the fair market value, established as provided in subparagraph (2), of so much of the holder's chargeable minerals as were disposed of in the year of assessment; and

(*b*) any amount received or receivable in the year of assessment by the holder, under a policy of insurance or otherwise, in respect of the loss or destruction of any of the holder's chargeable minerals; and

(*c*) any—

(i) interest or amount in the nature of interest;

(ii) other amount;

received or receivable by the holder in the year of assessment from or in connection with his special mining lease operations; and

(*d*) any amount to be included in the income attributable to special mining lease operations of the holder in the year of assessment pursuant to subparagraph (2) of paragraph 8; 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 paragraph (*d*), (*e*), (*h*), (*k*), (*l*) or (*m*) of the definition of "gross income" in subsection (1) of section *eight*.

(2) The fair market value, in relation to a disposal of minerals 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 under and 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 paragraphs (*a*) to (*s*) of the definition of "gross income" in subsection (1) of section *eight* shall not, in the case of the holder of a special mining lease, constitute income attributable to his special mining lease operations.

General deductions allowed in determining taxable income

4. (1) Subject to subsection (1) of section *sixteen* 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 income attributable to his special mining lease operations in that year the amount of any—

(*a*) expenditure and losses, other than of a capital nature, 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, in respect of any matter for which a deduction is allowable in terms of paragraph (*b*), (*g*), (*h*), (*j*), (*m*), (*o*), (*q*), (*r*), (*u*), (*aa*) or (*bb*) of subsection (2) of section *fifteen* or in terms of paragraph 5; and

(*f*) a training investment allowance which shall be equal to fifty *per centum* of the cost to the holder of—

(i) any training building; or

(ii) any addition or alteration to any training building; or

(iii) any training equipment;

which is brought into use in that year.

(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) The provisos to subsection (3) of section *fifteen* shall apply in relation to subparagraph (2).

(4) Subsection (4) of section *fifteen* 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 incurred by him 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 special mining lease area, in respect of—

(*a*) exploration operations carried out in the special mining lease area, whether before or after the issue of the special mining lease; or

(*b*) exploration operations carried out not more than six years before the issue of the special mining lease, where—

(i) the area in which the operations were carried out and the special mining lease area were embraced by the same exclusive prospecting order made in terms of Part VI of the Mines and Minerals Act [*Chapter 21:05*]; and

(ii) the operations were carried out as part of a programme of operations approved by the Mining Affairs Board in terms of that Part;

or

(*c*) exploration operations carried out not more than six years before the issue of the special mining lease, where—

(i) the area in which the 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 did not embrace the special mining lease area and has ceased to have effect; and

(ii) the 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

(iii) no mining operations have resulted from the exclusive prospecting order referred to in subparagraph (i); and

(iv) the expenditure on the exploration operations has not been deducted against any other income accruing to the holder concerned;

or

(*d*) 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 his special mining lease area, in respect of—

(*a*) exploration operations in respect of the special mining lease area, may be deducted in full in that year of assessment; or

(*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 subsequent to the year of production of his special mining lease area 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 hold concerned.

(5) Where, in or before the year of production of the special mining lease area concerned, an amount has been received by or accrued to or in favour of the holder of a special mining lease in respect of the disposal, loss or destruction of any asset used in connection with his exploratic operations or development operations, any capital expenditure incurred in respect of the asset shall, if otherwise allowable as a deduction under this paragraph, be allowable only to the extent that the capital expenditure exceeds the amount so received or accrued.

(6) For the purposes of subparagraph (5), the amount received or accrued to or in favour of the holder of the special mining lease concerned shall be—

(*a*) if the asset 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 asset was disposed of together with other property by way of sale and a separate price was not determined in respect of the asset, such part of the price for which the asset and the other property were sold as may be determined by the Commissioner, less such part of the expenses of the sale as he may determine; or

(*c*) if the asset was disposed of otherwise than by way of sale the value of the asset as at the date of disposal; or

(*d*) if the asset was lost or destroyed, such amount as may be received by or have accrued to or in favour of 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 his special mining lease area, other than capital expenditure incurred in respect of an asset, shall, if otherwise allowable as a deduction under this paragraph, be reduced by any amount received by or accrued to or in favour of 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*) any 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, his chargeable minerals; or

(*b*) any amount payable to the Government which is calculated by reference to the profitability of his special mining lease operations, or on the rate of return on his investment in those operations, or on an after-tax basis or in any similar manner; or

(*c*) any expenditure to the extent that it is incurred to produce income which is not income attributable to special mining lease operations; or

(*d*) any expenditure such as is referred to in subparagraph (*b*) of subparagraph (1) of paragraph 4—

(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 3 person dealing at arm's length with the person providing the loan or credit concerned; or

(*e*) any expenditure, in the case of a loan for development operations—

(i) unless the expenditure was incurred in accordance with the provisions of 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 equity capital as may be fixed by or in terms of a special mining lease agreement;

or

(*f*) any expenditure on any residential unit which is used for housing the holder's employees and their families, to the extent that the expenditure exceeds—

(i) thirty-five thousand dollars. where the residential unit was erected in the year of assessment beginning on the 1st April 1994; or

(ii) fifty thousand dollars, where the residential was erected on or after the 1st April, 1995, but before the 1st January, 1999; or

(iii) one hundred thousand dollars, where the residential unit was erected on or after the 1st January, 1999;

or

(*g*) any expenditure on any passenger motor vehicle as defined in subparagraph (2) of paragraph 14 of the Fourth Schedule, to the extent that the expenditure exceeds—

(i) fifty thousand dollars, where the motor vehicle was purchased in the year of assessment beginning the 1st April, 1994; or

(ii) seventy-five thousand dollars, where the motor vehicle was purchased on or after the 1st April 1995, but before the 1st January, 1999; or

(iii) two hundred thousand dollars, where the motor vehicle was purchased on or after the 1st January, 1999;

or

(*h*) any expenditure on any permanent building used for the purpose of a school, hospital, nursing home or clinic—

(i) unless it is proved to the satisfaction of the Commissioner that, at the relevant time—

A. in the case of a school, more than one-half of the pupils are children of persons employed by the holder in carrying out special mining lease operations; or

B. in the case of a hospital, nursing home or clinic, more than one-half of the persons receiving treatment thereat are employed by the holder in carrying out special mining lease operations or are members of their families;

or

(ii) 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—

I. thirty-five thousand dollars, where he expenditure was incurred in the year of assessment beginning on the 1st April, 1994; or

II. fifty thousand dollars, where the expenditure was incurred on or after 1st April, 1995, but before the 1st January, 1999; or

[Subparagraph amended by Act 29 of 1998]

III. one hundred thousand dollars, where the expenditure was incurred on or after the 1st January, 1999;

[Subparagraph inserted by Act 29 of 1998]

IV ten thousand United States dollars, incurred by the taxpayer, where the expenditure was incurred on or after the 1st January 2009 or;

[Subparagraph inserted by Act 5 of 2009]

or

B. in respect of any one such school, hospital, nursing home or clinic—

I. two hundred and fifty thousand dollars, where the expenditure was incurred in the year of assessment beginning the 1st April, 1994; or

II. five hundred thousand dollars, where the expenditure was incurred on or after the 1st April, 1995, but before the 1st January, 1999; or

[Subparagraph amended by Act 29 of 1998]

III. one million five hundred thousand dollars, where the expenditure was incurred on or after the 1st January, 1999;

[Subparagraph inserted by Act 29 of 1998]

(iii) 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 of his chargeable minerals, he shall not be allowed any deduction under this Schedule in respect of the transportation of the minerals—

(*a*) outside Zimbabwe; or

(*b*) if applicable, within Zimbabwe beyond the delivery point as defined in his special mining lease.

(4) Except as provided in paragraph 4, no deduction shall, as regards income attribu-table to special mining lease operations, be made in respect of allowances or deductions referred to in subsection (2) of section *fifteen*.

(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 any year of assessment the holder of a special mining lease transfers his lease, wholly or partially, to another person under the Mines and Minerals Act [*Chapter 21:05*], he 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 asset 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 asset or, where no consideration was so given, the value of the asset.

(2) If the Commissioner is satisfied with a statement furnished to him in terms of subparagraph (1), the proportion of the consideration which appertains to the asset or, as the case may be, the value of the asset 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 to him in terms of subparagraph (1) or if no such statement has been furnished to him, he shall determine the value of the asset which shall then rank as exploration expenditure or development expenditure, as provided in subparagraph (*a*) of subparagraph (2), or as capital expenditure as provided in subparagraph (*b*) of subparagraph (2).

(4) This paragraph applies in relation to any asset in respect of which a deduction has been allowed under paragraph 5 for the purposes of determining the transferor's taxable income.

Disposal, loss etc. of asset

8. (1) This paragraph applies where, in a year of assessment, an asset of the holder of a special mining lease—

(*a*) in respect of which a deduction under subparagraph (3) of paragraph 5 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 asset concerned, to the extent that the deduction has been recovered or recouped as a result of the disposal, loss, destruction or passing of that asset.

(3) Subparagraph (6) of paragraph 5 shall apply, *mutatis mutandis*, for the purpose of determining the amount received or recouped as a result of the disposal, loss or destruction of any asset.

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, derived by or accruing to him; or

(*b*) any liability to tax in respect of income, not attributable to his 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 his 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 him; 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 subparagraph (2) of paragraph 8; and

(*e*) any interest or other amount derived by the holder from special mining lease operations; and

(*f*) the amount of all allowable deductions claimed; and

(*g*) the amount of each allowable deduction claimed and particulars of that amount; and

(*h*) any asset in relation to which subparagraph (5) of paragraph 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.

Maintenance of books in foreign currency

11. (1) The holder of a special mining lease may, in the first year of assessment after the issue of his special mining lease, elect to maintain all books and records relating to his special mining lease operations in the currency of the United States of America, and any such election shall be final.

(2) Where the holder of a special mining lease has made an election referred to in subparagraph (1)—

(*a*) any—

(i) income accruing to the holder and attributable to his special mining lease operations; or

(ii) expenditure incurred by the holder and constituting an allowable deduction;

in a currency other than that of the United States of America shall be shown in all books and records relating to his special mining lease operations in that other currency and in the currency of the United States of America; and

(*b*) the Commissioner shall determine the holder's taxable income or, as the case may be, his assessed loss, for any year of assessment in the currency of the United States of America; and

(*c*) notice of assessment and of any tax payable shall be given to the holder in the currency of the United States of America; and

(*d*) payment of tax shall be effected in the currency of the United States of America; and

(*e*) the provisions of the special mining lease shall apply in relation to the conversion of any other currency into the currency of the United States of America for the purposes of this paragraph:

Provided that, if there are no such provisions in the special mining lease, the conversion shall be made in accordance with such procedure as the Commissioner may direct either generally or in any particular case.

Law Development Commission, Zimbabwe

TWENTY-THIRD SCHEDULE (Section 33)

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 Twenty-Second Schedule in respect of expenditure incurred;

"first accumulated net cash position" means an amount determined in accordance with subparagraphs (2), (4) and (5) of paragraph 3;

"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 subparagraphs (3), (4) and (5) of paragraph 3;

"taxable income" means any taxable income determined by applying paragraph 2 of the Twenty-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 subparagraph (*b*) subparagraph (1) of paragraph 4 of the Twenty-Second Schedule; or

(*b*) a training investment allowance referred to in subparagraph (*f*) of subparagraph (1) of paragraph 4 of the Twenty-Second Schedule; or

(*c*) any capital redemption allowance referred to in paragraph 5 of the Twenty-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 subparagraph (1) of paragraph 3 of the Twenty-Second Schedule, other than any amount referred to in subparagraph (i) of subparagraph (*c*) of subparagraph (1) 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 referred to in subparagraph (ii) of subparagraph (*c*) of subparagraph (1) of paragraph 3 of the Twenty-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 Twenty-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 (*b*) of subparagraph (2) 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 subparagraphs (*a*) and (*c*) of subparagraph (3) 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 subparagraph (2) of paragraph 2, bears the holder's total income determined from all the special mining lease areas held by him.

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.

Administration and collection of additional profits tax

6. Where the holder of a special mining lease has elected, in terms of paragraph 11 of the Twenty-Second Schedule, to maintain his books and records in the currency of the United States of America—

(*a*) the Commissioner shall determine the holder's accumulated net cash position and his second accumulated net cash in that currency; and

(*b*) notice of assessment and of any additional profits payable shall be given in that currency; and

(*c*) payment of additional profits tax shall be effected in that currency; and

(*d*) the provisions of that paragraph shall apply to the conversion into that currency of amounts expressed in any other currency.

Law Development Commission, Zimbabwe

TWENTY-FOURTH SCHEDULE (Section 36A)

[Schedule inserted by Act 4 of 1996.]

TOBACCO LEVY

Interpretation

1.In this Schedule—

"auction floor" means premises for the sale of auction tobacco;

"auction tobacco" means tobacco which is declared in terms of the Tobacco Marketing and Levy Act to be auction tobacco;

"auctioneer" means the holder of an auction floor license issued in terms of the Tobacco Marketing and Levy Act;

"buyer" means a person who is—

(*a*) licensed or required to be licensed under the Tobacco Marketing and Levy Act as a buyer of auction tobacco; or

(*b*) registered or required to be registered under the Tobacco Marketing and Levy Act as an authorized 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 sell by auction;

"tobacco levy" means the levy required to be withheld or recovered in terms of subparagraph (1) of paragraph 2;

"Tobacco Marketing and Levy Act" means the Tobacco Marketing and Levy Act [*Chapter 18:20*].

Auctioneer to withhold tobacco levy

2. (1) Every auctioneer shall—

(*a*) withhold from the price payable for auction tobacco sold on his auction floor a levy at the rate fixed from time to time in the charging Act; and

(*b*) before relinquishing possession of any auction tobacco sold to a buyer on his auction floor, recover from the buyer a levy at the rate fixed from time to time in the charging Act;

and shall pay the amount so withheld or recovered to the Commissioner within the prescribed period after—

(i) the date of the sale, in the case of an amount withheld in terms of subparagraph (*a*); or

(ii) his relinquishing of possession of the auction tobacco concerned, in the case of an amount withheld in terms of subparagraph (*b*);

or within such further time as the Commissioner may for good cause allow.

(2) The tobacco levy shall be withheld in terms of subparagraph (*a*) of subparagraph (1) notwithstanding any writ of execution or attachment or other process that may have been issued in respect of the auction tobacco concerned, and the levy shall be withheld before any other amounts are withheld or deducted from the price of the auction tobacco in terms of any other law.

Certificates to be provided to seller

3. (1) Whenever he has withheld any tobacco levy in terms of subparagraph (*a*) of paragraph 2 or recovered any tobacco levy in terms of subparagraph (*b*) of that paragraph, an auctioneer shall provide the seller or buyer concerned, as the case may be, of the auction tobacco concerned with a certificate in a form approved by the Commissioner showing—

(*a*) the price at which the auction tobacco was sold; and

(*b*) the amount of tobacco levy withheld.

(2) Any payer who fails to provide a payee with a certificate in terms of subparagraph (1), or furnishes an incorrect certificate under that subparagraph, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment:

Provided that, if it is proved that the payer's conduct was wilful, he shall be liable 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.

[Subparagraph inserted by Act 22 of 2001]

Returns to be furnished to Commissioner

4. Payment of tobacco levy by an auctioneer in terms of paragraph 2 shall be accompanied by a return in the form prescribed.

Penalty for non-payment of tobacco levy

5. (1) Subject to subparagraph (2), an auctioneer who fails to withhold, recover or pay to the Commissioner any tobacco levy as provided in paragraph 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 paragraph 2, of—

(*a*) the mount of the tobacco levy which he failed to pay; and

(*b*) a further amount equal to fifteen *per centum* of the amount referred to in subparagraph (*a*).

(2) If the Commissioner is satisfied in any particular case ;hat a failure to pay any tobacco levy was not due o an intent to evade the provisions of this Schedule, he may waive the payment of the whole or such part as he thinks fit of the amount referred to in subparagraph (*b*) of subparagraph (1).

(3) If a defaulting auctioneer referred to in subparagraph (1)(*b*) 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 auctioneer 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.

[Subparagraph inserted by Act 8 of 2005]

Refund of tobacco levy

6. If it is proved to the satisfaction of the Commissioner that any person has paid any amount by way of tobacco levy in excess of the amount properly payable in terms of this Schedule, the Commissioner shall authorize a refund of the amount overpaid:

Provided that the Commissioner shall not authorize a refund in terms of this paragraph unless the claim therefor is made within six years of the date of the overpayment.

Law Development Commission, Zimbabwe

TWENTY-FIFTH SCHEDULE (Section 36B)

[Schedule inserted by Act 13 of 1996]

AUTOMATED FINANCIAL TRANSACTIONS TAX

Interpretation

1. In this Schedule—

"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 account with the institution, directly and without the intervention of a teller or other officer of the financial institution concerned;

"financial institution" means—

(*a*) a bank, discount house or finance house registered or required to be registered under the Banking Act [*Chapter 24:20*]; or

(*b*) a building society registered or required to be registered in terms of the Building Societies Act [*Chapter 24:02*].

Liability for automated financial transactions tax

2. Whenever a customer of a financial institution—

(*a*) withdraws cash from his account with the institution; or

(*b*) effects any debit on his account with the institution;

by means of an automated teller machine, the financial institution concerned shall pay to the Commissioner an automated financial transactions tax on each such transaction.

Period within which automated financial transactions tax to be paid

3. Automated financial transactions tax shall be paid in terms of paragraph 2 not later than the tenth day of the month following the month in which the transaction in respect of which the tax is payable was effected:

Provided that the Commissioner may for good cause allow the tax to be paid within a further time.

[Paragraph amended by Act 10 of 2009]

Returns to be furnished to Commissioner

4. Payment of the automated financial transactions tax in terms of paragraph 2 shall be accompanied by a return in the form prescribed.

Recovery of automated financial transactions tax from customer

5. Notwithstanding any other law, a financial institution that has paid automated financial transactions tax on any transaction may recover the tax from the customer on whose account the transaction was effected, either by debiting the customer's account or in any other manner, in all respects as if the amount of the tax were a fee or charge levied by the financial institution in the ordinary course of its business.

Penalty for non-payment of automated financial transactions tax

6. (1) Subject to subparagraph (2), a financial institution that fails to pay to the Commissioner any automated financial transactions tax as provided in paragraph 2 shall be liable to pay, in addition to the tax, a further amount equal to one hundred *per centum* of the unpaid tax.

[Schedule amended by Section 61 of Act 18 of 2000.]

(2) If the Commissioner is satisfied in any particular case that a failure to pay an automated financial transactions tax was not due to an intent to evade the provisions of this Schedule, he may waive the payment of the whole or such part as he thinks fit of the additional amount referred to in subparagraph (1).

(3) If a defaulting financial institution referred to in subparagraph (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 financial institution 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.

[Subparagraph inserted by Act 8 of 2005]

Refund of automated financial transactions tax

7. If it is proved to the satisfaction of the Commissioner that any person has paid any amount by way of automated financial transactions tax in excess of the amount properly payable in terms of this Schedule, the Commissioner shall authorize a refund of the amount overpaid:

Provided that the Commissioner shall not authorize a refund in terms of this paragraph unless the claim thereof is made within six years of the date of the overpayment.

Law Development Commission, Zimbabwe

TWENTY-SIXTH SCHEDULE (Section 36C)

[Schedule substituted by Act 2 of 2005]

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;

[Definition inserted by Act 16 of 2007]

"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;

[Definition inserted by Act 10 of 2009]

"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 13C, include any person registered as an operator in terms of the Value Added Tax Act [*Chapter 23:12*];

[Definition substituted by Act 10 of 2009]

"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;

[Definition inserted by Act 8 of 2005]

"furniture-making or upholstery" means the manufacture for profit of furniture or the fitting of furniture with padding, springs, webbing or covering for profit;

[Definition inserted by Act 10 of 2009]

"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);

[Definition inserted by Act 8 of 2005]

"hairdressing salon" means a commercial establishment in which any one or more hairdressers carry on their occupation or business;

[Definition inserted by Act 16 of 2007]

"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 13C(1)(*a*) or (*b*) a tax clearance certificate or proof of registration as a taxpayer in terms of the Income Fax Act [*Chapter 23:06*];

[Definition inserted by Act 16 of 2007]

"informal trader" means an individual who—

(*a*) carries on a trade for his own account from which he 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

[Paragraph amended by Act 5 of 2009]

(*b*) has not, in the most recent year of assessment for which he could have done so, furnished a return in terms of Part V 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;

"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 carries on his trade as such;

"metal fabrication" means the fabrication of articles from metal for profit or any beneficiation of metal whatsoever for profit;

[Definition inserted by Act 10 of 2009]

"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 IVB, 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*].

[Definition inserted by Act 16 of 2007]

"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;

[Definition substituted by Act 8 of 2005]

(*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;

[Definition inserted by Act 16 of 2007]

(*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*];

[Paragraph inserted by Act 10 of 2009]

(*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 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*];

[Paragraph inserted by Act 10 of 2009]

"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.

[Definition substituted by Act 8 of 2005]

"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;

[Paragraph inserted by Act 10 of 2009]

"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 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 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 he has recovered any amount by way of presumptive tax in terms of paragraph 3, a 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.

(2) For the purposes of section 80A 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 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 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 Schedule;

(*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 Schedule 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 22:10*], in its capacity as a buyer of precious metals; and

(*c*) Fidelity Printers and Refiners (Pvt) 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 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:

[Paragraph amended by Act 10 of 2009]

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 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 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

[Heading substituted by Act 8 of 2005]

Payment of presumptive tax by operators of driving schools and transport services

[Heading substituted by Act 8 of 2005]

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, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; 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, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; 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, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; 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, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; or
    (*e*) an omnibus for the carriage of passengers for hire or reward having seating accommodation for not less than thirty-seven passengers, shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; 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;
    shall pay the amount of presumptive tax that is fixed from time to time in the charging Act; or

    [Subparagraph inserted by Act 8 of 2005]

    (*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:

    [Subparagraph inserted by Act 8 of 2005]

    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 12, 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.

12A. (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 (4).

(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.

[Section inserted by Act 6 of 2006]

PART IVA

HAIRDRESSING SALON OPERATORS PRESUMPTIVE TAX

Payment of presumptive tax by hairdressing salon operators

13A. (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.

[Section inserted by Act 16 of 2007]

Interest on overdue hairdressing salon operators presumptive tax

13B. If presumptive tax is not paid timeously in terms of paragraph 13A, 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.

[Section inserted by Act 16 of 2007]

PART IVB

INFORMAL CROSS-BORDER TRADERS' PRESUMPTIVE TAX

Payment of presumptive tax by informal cross-border traders

13C. (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 com-

mercial goods concerned as is fixed from time to time in the Charging Act, unless the cross-border trader produces to the officer—

(*a*) 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

(*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.

[Proviso inserted by Act 10 of 2009]

(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.

[Section inserted by Act 16 of 2007]

PART IVD

[Part IVD inserted by Act 10 of 2009]

RESTAURANT OR BOTTLE-STORE OPERATORS' PRESUMPTIVE TAX

Payment of presumptive tax by restaurant or bottle store operators

13D.(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

13E. If presumptive tax is not paid timeously in terms of paragraph 13D, 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 IVE

[Part IVD inserted by Act 10 of 2009]

COTTAGE INDUSTRY OPERATORS' PRESUMPTWE TAX

Payment of presumptive tax by cottage industry operators

13E.(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.

[Numbering of paragraph 13E repeated in error- Law reviser]

Interest on overdue cottage industry operators 'presumptive tax

13F. If presumptive tax is not paid timeously in terms of paragraph 13E, 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 V

GENERAL

When presumptive taxpayers exempt from submitting returns

13. (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 37 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 37.

(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

14 . 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

15. 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.

[Paragraph inserted by Act 8 of 2005]

Law Development Commission, Zimbabwe

TWENTY-SEVENTH SCHEDULE (Section 36D)

[Schedule inserted by Act 22 of 1999]

DEMUTUALISATION LEVY

Interpretation

1. (1) In this Schedule—

"affected company" means an insurance company which carries on insurance business in Zimbabwe consequent upon a demutualisation scheme effected by a mutual society;

"Commissioner of Insurance" means the person referred to in paragraph (*a*) of subsection (1) of section 4 of the Insurance Act [*Chapter 24:07*];

"demutualisation levy" means the levy required to be paid in terms of paragraph 2;

"demutualisation scheme" means a scheme which—

(*a*) is sanctioned by the Minister in accordance with section 33 of the Insurance Act [*Chapter 24:07*]; and

(*b*) results in—

(i) all or most of the insurance business of a mutual society being transferred to an insurance company; or

(ii) the conversion of a mutual society into an insurance company, to the extent that such a conversion may be permitted in terms of the Insurance Act [*Chapter 24:07*];

by combination of the results referred to in subparagraph (i) and (ii);

"free reserve" means funds accumulated by a mutual society which represent the excess of assets over liabilities, the value of which is determined in accordance with paragraph 3;

"free share" means a share allotted and issued in terms of a demutualisation scheme to a member of the affected company concerned, but does not include a share issued for the purposes of raising capital for the affected company;

"insurance business" has the meaning assigned to it in section 3 of the Insurance Act [*Chapter 24:07*];

"insurance company" has the meaning assigned to it in subsection (1) of section 11 of the Insurance Act [*Chapter 24:07*];

"mutual society" means—

(*a*) a mutual insurance society as defined in subsection (2) of section 11 of the Insurance Act [*Chapter 24:07*]; or

(*b*) an existing society as defined in subsection (1) of section II or subsection (1) of section 90 of the Insurance Act [*Chapter 24:07*];

"share" includes any share, stock, security, debenture or other interest capable of being sold in a stock exchange, share market or otherwise;

"Zimbabwean member" means a member or former member of a mutual society—

(*a*) to whom free shares are allotted in terms of a demutualisation scheme concluded by the mutual society; and

(*b*) who is regarded as being resident in Zimbabwe in accordance with subparagraph (2).

(2) A member or former member of a mutual society shall be regarded as being resident in Zimbabwe for the purposes of this Schedule if—

(*a*) in the case of an individual, he is ordinarily resident in Zimbabwe; or

(*b*) in the case of a company or a trust, it is effectively managed in Zimbabwe; or

(*c*) in the case of any person whose place of residence or control cannot, in the Commissioner's opinion, be determined by the affected company concerned, his last address recorded in the mutual society's records is in Zimbabwe.

Demutualisation Levy

2. Subject to this Schedule, a demutualisation levy shall be paid, at the rate fixed from time to time in the charging Act, upon an amount calculated according to the following formula in respect of each Zimbabwean member of a mutual society who is allotted free shares pursuant to a demutualisation scheme—

$$\frac{A \times B}{C}$$

where—

A represents the total free reserves of the mutual society concerned, calculated in accordance with paragraph 3;

B represents the value of the free shares allotted to the Zimbabwean member concerned;

C represents the total value of the free shares allotted to all members of the mutual society concerned.

Determination of free reserve

3. (1) Subject to subparagraph (3), the value of the free reserve of a mutual society shall be determined for the purposes of paragraph 2 from the statements deposited with the Commissioner of Insurance by the affected company concerned in terms of paragraph (*a*) of section 34 of the Insurance Act [*Chapter 24:07*].

(2) The date as at which the free reserve of a mutual society shall be determined for the purposes of paragraph 2 shall be—

(*a*) the date on which the mutual society's insurance business is transferred to the affected company or, where the business is transferred on different dates, such of those dates as the Commissioner of Insurance may approve; or

(*b*) the date on which the mutual society is convened into an insurance company;

as the case may be.

(3) The value of the free reserve of a mutual society, as determined in accordance with subparagraphs (1) and (2), shall be increased by fifteen *per centum* per annum from the date referred to in subparagraph (2) until the date on which free shares are issued to the Zimbabwe member concerned.

Responsibility for paying demutualisation levy

4. Subject to paragraph 9, the affected company concerned shall be responsible for paying the demutualisation levy on behalf of its Zimbabwe members.

Payment of demutualisation levy

5. (1) An affected company that is responsible for paying any demutualisation levy shall pay the levy to the Commissioner within three months after issuing to the Zimbabwean member concerned the free shares on which the levy is calculated, or within such further time as the Commissioner may for good cause allow.

(2) Payment of any demutualisation levy in terms of subparagraph (1) shall be accompanied by a return in the form prescribed.

Recoupment of levy paid by affected company

6. (1) An affected company that has paid any demutualisation levy on behalf of a Zimbabwean member shall be entitled to recover the amount paid from the member concerned.

(2) Without derogation from the generality of subparagraph (1), an affected company may effect a recovery in terms of that subparagraph by withholding from the free shares issued to the Zimbabwean member concerned such number of shares as is equal in value to the amount of demutualisation levy paid on that member's behalf:

Provided that —

(i) the affected company shall hold and dispose of any shares so withheld in accordance with the Insurance Act [*Chapter 24:07*];

(ii) any shares so withheld shall be counted for the purposes of assessing the Zimbabwean member's liability for demutualisation levy.

Assessment by Commissioner

7. Where—

(*a*) the full amount of demutualisation levy has not been paid within the period referred to in paragraph 5; or

(*b*) an affected company is unable to assess the amount of demutualisation levy payable by any of its Zimbabwean members

the Commissioner may make an assessment of the amount payable and give notice thereof to the affected company concerned, and the affected company shall be liable to pay that amount accordingly.

Interest and penalties for late payment or non-payment of demutualisation levy

8. (1) Interest shall be payable at the prescribed rate on any amount of demutualisation levy that is not paid within the period referred to in paragraph 5.

(2) Without derogation from paragraph 7 or subparagraph (1), an affected company that fails to pay any amount of demutualisation levy within the period referred to in paragraph 5 shall become personally liable for the payment to the Commissioner, by not later than three months after the date on which the levy should have been paid, of—

(*a*) the demutualisation levy which should have been paid; and

(*b*) a further amount equal to fifteen *per centum* of the demutualisation levy that should have been paid.

(3) If the Commissioner is satisfied in any particular case that a delay in paying any amount of demutualisation levy, or a failure to pay such an amount, was not due to any intent to evade the provisions of this Schedule, he may waive the payment of the whole or such part as he thinks fit or repay the whole or such part as he thinks fit of any interest or amount referred to in subparagraph (1) or (2).

Liability of Zimbabwean member for payment of demutualisation levy

9. (1) Without derogation from paragraphs 7 and 8, if an affected company has failed to pay any amount of demutualisation levy on behalf of a Zimbabwean member to whom the company has issued free shares, the Commissioner may, by written notice to the Zimbabwean member concerned, require him to pay the amount within such reasonable period, being not less than three months, as the Commissioner may specify in the notice, and the Zimbabwean member shall thereupon become liable to pay the amount accordingly.

(2) Subparagraph (2) of paragraph 5 and paragraphs 7 and 8 shall apply, *mutatis mutandis*, in respect if a Zimbabwean member who becomes liable to pay any amount in terms of subparagraph (1).

Refund of overpayments

10. (1) If it is proved to the satisfaction of the Commissioner that any person has been charged with demutualisation levy in excess of the amount properly chargeable in terms of this Schedule, the Commissioner shall authorize a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorise a refund in terms of this paragraph unless a claim for it is made within six years of the date of payment of the levy.

Law Development Commission, Zimbabwe

TWENTY-EIGHTH SCHEDULE (Section 36E)

[Schedule substituted by Act 8 of 2005]

CARBON TAX

Interpretation

1. In this Schedule—

"carbon tax certificate" means a certificate of payment of carbon tax issued in terms of paragraph 4;

"liable person" means a person liable to pay carbon tax in terms of paragraph 3, but does not, for the purposes of this Schedule, include—

(*a*) 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*];

(*b*) 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*];

(*c*) the State or any local authority in respect of any motor vehicle owned by the State or the local authority.

[Paragraph inserted by Act 16 of 2004]

"motor vehicle" has the meaning given to that term in section 2(1) of the Vehicle Registration and Licensing Act [*Chapter 13:14*];

"NOCZIM" oil company or other person or entity engaged in oil procurement" means a company, person or entity licensed or authorised by the Ministry responsible for energy to import petroleum products in bulk or 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;

"State oil procurement entity" means NOCZIM or any other oil procurement entity formed by the State in addition to or substitution for NOCZIM.

Payment of carbon tax under section 22E(1)

2. Whenever an oil company or other person or entity engaged in oil procurement or wishing to use the petroleum product for his or her own consumption imports any petroleum product, he or she shall pay the required carbon tax to the Zimbabwe Revenue Authority at the port of entry of the petroleum product.

[Paragraph substituted by Act 6 of 2005]

Liability for and payment of carbon tax by visitors to Zimbabwe

3. (1) A visitor to Zimbabwe who uses within Zimbabwe a motor vehicle registered outside Zimbabwe shall—

(*a*) upon entering Zimbabwe; and

(*b*) for each month or part of a month during which he visits Zimbabwe;

pay the required carbon tax in respect of such vehicle to the Zimbabwe Revenue Authority, in United States dollars, Euros or any other currency denominated under the Exchange Control (General) Order, 1996 (Statutory Instrument 110 of 1996), at the rate of exchange specified in the Exchange Control (Exchange Rate) Direction, 2002 (Statutory Instrument 223 of 2002) or the equivalent international cross rate of exchange if the tax is paid otherwise than in United States dollars.

(2) Carbon tax shall be payable at any port of entry or branch or division department of the Zimbabwe Revenue Authority responsible for assessing, collecting and enforcing the payment of taxes under this Act:

Provided that if a visitor to Zimbabwe stays in Zimbabwe for a longer period than the period for which he or she originally paid carbon tax he or she shall, at any time before leaving Zimbabwe, pay the additional carbon tax in respect of such vehicle to the Zimbabwe Revenue Authority in foreign currency as provided in this paragraph.

(3) Any person who fails to comply with subparagraph (1) or (2) shall incur a penalty of two *per centum* of the carbon tax due for every week or part of a week during which the default continues, and every such penalty shall be recoverable by the Commissioner by action in any court of competent jurisdiction.

Carbon tax receipt

4. (1) A liable person shall, when paying over any carbon tax in terms of this Schedule, complete a prescribed form.

(2) Upon completion of the prescribed form and payment of the required carbon tax, the certifying authority shall issue him or her with a carbon tax receipt.

(3) A police officer may demand that any liable person produce a carbon tax receipt as proof that he or she has paid the carbon tax.

(4) If any carbon tax receipt is lost or destroyed or any essential particulars thereon have been defaced or if the certificate is dilapidated, the issuing authority, on application by the holder thereof and on payment of the fee, if any, prescribed, shall issue a duplicate carbon tax receipt.

Offence of failing to produce carbon tax receipt and compromise thereof

5. (1) Subject to subparagraph (2), any person in charge of a motor vehicle liable for carbon tax who does not produce a carbon tax receipt when required to do so under paragraph 4, shall, whether or not he or she is the liable person, be guilty of an offence and liable to a fine equal to the amount of the carbon tax payable for the vehicle or, in default of payment, to imprisonment for a period not exceeding six months:

Provided that if the failure to produce the carbon tax receipt was due to its loss or destruction and not to non-payment of carbon tax, a police officer or officer of the Authority may require the person in charge of the motor vehicle concerned or, if he or she is not the owner of the vehicle, the owner thereof, to produce a duplicate receipt within seven days at such place as the police officer shall specify.

(2) A person referred to in subparagraph (1) 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 carbon tax payable for the vehicle, and such person shall thereupon, subject to subparagraph (3), not be required to appear in court to answer the charge of having committed the said offence.

(3) 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 (2).

(4) The Zimbabwe Republic Police shall furnish to the Commissioner particulars of every person who has compounded or been convicted of an offence in terms of this paragraph.

Law Development Commission, Zimbabwe

TWENTY-NINTH SCHEDULE (Section 36F)

[Schedule repealed by Act 10 of 2009]

THIRTIETH SCHEDULE (Section 36G)

[Schedule inserted by Act 15 of 2002]

INTERMEDIATED MONEY TRANSFER TAX

Interpretation

1. (1) In this Schedule—

"automated teller machine" has the meaning given to that term in paragraph 1 of the Twenty-Fifth Schedule;

"financial institution" means—

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

(*b*) any building society registered or required to be registered in terms of the Building Societies Act [*Chapter 24:02*]; or

(*c*) the Reserve Bank of Zimbabwe; or

(*d*) the People's Own Savings Bank of Zimbabwe established in terms of the People's Own Savings Bank of Zimbabwe Act [*Chapter 24:22*]; or

(*e*) the Zimbabwe Development Bank established in terms of the Zimbabwe Development Bank Act [*Chapter 24:14*]; or

(*f*) the successor company to the Agricultural Finance Corporation formed under the Agricultural Finance Act [*Chapter 18:02*]; or

(*g*) the postal company licensed in terms of section 113 of the Postal and Telecommunications Act [*Chapter 12:05*] to provide the postal services previously carried on by the Posts and Telecommunications Corporation established by the repealed Posts and Telecommunications Corporation Act [*Chapter 12:02*], or any person licensed in terms of the Postal and Telecommunications Act [*Chapter 12:05*] to provide postal services;

"money" means—

(*a*) coins of current mass or bank notes which the Reserve Bank of Zimbabwe has issued in Zimbabwe in accordance with Part VI of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] and which have not been demonetized.

(*b*) any—

(i) coin, other than a coin made wholly or mainly from a precious metal, or bank note which is the currency of any country, other than Zimbabwe, and which is used or circulated or is intended for use or circulation as currency;

(ii) bill of exchange, promissory note, bank draft, postal order or money order;

except when disposed of or imported as a collector's piece, investment article or item of numismatic interest;

"transfer" means transfer physically, electronically or by any other means.

(2) Where a customer of a financial institution 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 the financial institution, the financial institution shall be deemed to have mediated the transfer of that money.

Liability for intermediated money transfer tax

2. (1) Whenever a financial institution mediates the transfer of money otherwise than by cheque—

(*a*) between two persons; or

(*b*) from one person to two or more persons; or

(*c*) from two or more persons to one person;

the financial institution concerned shall pay to the Commissioner an intermediated money transfer tax on each such transaction.

(2) 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 intermediated money transfer tax.

Period within which intermediated money transfer tax to be paid

3. Intermediated money transfer tax shall be paid in terms of paragraph 2 not later than the tenth day of the month following the month in which the transaction respect of which the tax is payable was effected.

Provided that the Commissioner may for good cause allow the tax to be paid within any further time.

[Paragraph amended by Act 10 of 2009]

Returns to be furnished to Commissioner

4. Payment of the intermediated money transfer tax in terms of paragraph 2 shall be accompanied by a return in the form prescribed.

Recovery of intermediated money transfer tax from customer

5. Notwithstanding any other law, a financial institution that has paid intermediated money transfer tax may recover the tax from either of the persons on whose account the transaction was effected, or from both or any of them in such proportions as it may determine, either by debiting the person's account operated with it or in any other manner. In all respects as if the amount of the tax were a fee or charge levied by the financial institution in the ordinary course of its business.

Penalty for non-payment of intermediated money transfer tax

6. (1) Subject to subparagraph (2), a financial institution that fails to pay to the Commissioner any intermediated money transfer tax as provided in paragraph 2 shall be liable to pay, in addition to the tax, a further amount equal to fifteen *per centum* of the unpaid tax.

(2) If the Commissioner is satisfied in any particular case that a failure to pay any intermediated money transfer tax was not due to an intent to evade the provisions of this Schedule, he may waive the payment of the whole or such part as he thinks fit of the additional amount referred to in subparagraph (1).

Refund of intermediated money transfer tax

7. If it is proved to the satisfaction of the Commissioner that any person has paid any amount by way of intermediated money transfer tax in excess of the amount properly payable in terms of this Schedule, 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 three years of the date of the overpayment.

Law Development Commission, Zimbabwe

THIRTY-FIRST SCHEDULE (Section 36H)

[Schedule inserted by Act 10 of 2003]

NOCZIM DEBT REDEMPTION LEVY

Interpretation

1. (1) In this Schedule—

"NOCZIM" means the National Oil Company of Zimbabwe (Private) Limited;

"NOCZIM Debt Redemption Sinking Fund" means the sinking fund established in terms of section 30 of the Exchequer Act [*Chapter 22:03*] for the purposes referred to in subparagraph (1) of paragraph 3, and administered by the Minister responsible for energy;

"oil company" means—

(*a*) BP and Shell Marketing (Private) Limited; or
(*b*) Caltex Oil Zimbabwe (Private) Limited; or
(*c*) Mobil Oil Zimbabwe (Private Limited; or
(*d*) Total Zimbabwe (Private) Limited; or
(*e*) Country Petroleum Services; or
(*f*) Engen Petroleum Services; or
(*g*) Jovenna Energy Services; or
(*h*) Royal Oil Services group; or
(*i*) Kadoma Haulage; or
(*j*) Atrax Commodities (Private) Limited; or
(*k*) Exor Enterprises (Private) Limited; or
(*l*) Migdale Investments (Private) Limited; or
(*m*) FSI Trading; or
(*n*) Wedzera Investments; or
(*o*) any other person permitted by the Minister responsible for energy to import petroleum products;

"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;

"Reserve Bank" means the Reserve Bank of Zimbabwe.

Liability for NOCZIM debt redemption levy

2. (1) With effect from the year of assessment beginning on the 1st December, 2003, every oil company and other person or entity that—

(*a*) purchases any petroleum product from NOCZIM, shall deduct from the purchase price it pays to NOCZIM the required NOCZIM debt redemption levy and without delay pay the amount so deducted to the Zimbabwe Revenue Authority; or
(*b*) imports any petroleum product, shall pay the required NOCZIM debt redemption levy to the Zimbabwe Revenue Authority at the port of entry of the petroleum product.

(2) If required to do so by the Zimbabwe Revenue Authority an oil company or other person or entity referred to in subsection (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 oil company, person or entity concerned is complying with subsection (1).

Application of moneys received in terms of this Schedule

3. (1) The Minister responsible for energy, in consultation with the Minister responsible for finance shall ensure that all moneys received from the Zimbabwe Revenue Authority in terms of this Schedule are deposited in the NOCZIM Debt Redemption Sinking Fund and applied towards the settlement of debts incurred by NOCZIM in the procurement of petroleum products, whether such debts are incurred before or after the 1st January, 2004,and, in so doing, the Minister, in consultation with the Minister responsible for finance, may direct the order and manner in which NOCZIM is to settle its debts.

(2) NOCZIM shall take all necessary steps to comply with any direction referred to in subsection (1).

Law Development Commission, Zimbabwe

THIRTY-SECOND SCHEDULE (Section 36I)

[Schedule inserted by Act 29 of 2004.]

PROPERTY OR INSURANCE COMMISSION TAX

Interpretation

1. (1) In this Schedule—

"commission" means an amount paid or payable by an insurer or estate agent to a freelance agent in respect of any act done by that 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 27:05*];

"freelance agent" means—

(*a*) an insurance agent who is not registered as an employee by an insurer in terms of the Thirteenth Schedule; or

(*b*) an insurance broker who is not registered as an employee by an insurer in terms of the Thirteenth Schedule, to the extent that any commission earned by the broker is payable by the insurer; or

(*c*) a property negotiator who is not registered as an employee by an estate agent in terms of the Thirteenth Schedule and to whom a commission is paid by an estate agent, whether on its own account or on behalf of any party to the sale or lease of immovable property;

"insurance agent" means a person who, on behalf of a registered insurer or registered insurers—

(*a*) initiates insurance business; or

(*b*) does any act 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 any other person, negotiates insurance business with insurers, and includes a person who negotiates reinsurance business on behalf of any other person;

"insurer" means a person registered as an insurer in terms of the Insurance Act [*Chapter 24:07*];

"principal" means an estate agent or an insurer;

"property negotiator" means a person by whatever title designated who, on behalf of an estate agent or 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.

Principals to withhold tax

2. (1) Every principal who pays a commission to a freelance agent shall withhold property or insurance commission tax from that commission and shall pay the amount withheld to the Commissioner-General on or before the tenth day of the month following the month in which the payment was made or within such further time as the Commissioner-General may for good cause allow.

[Paragraph amended by Act 10 of 2009]

(2) Where property or insurance commission tax is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner-General, showing—

(*a*) the amount of the commission; and

(*b*) the amount of the property or insurance commission tax withheld.

Payee to pay tax not withheld by principal

3. A freelance agent to whom a commission is paid from which property or insurance commission tax has not been withheld in terms of paragraph 2 or recovered in terms of section *seventy-seven* shall pay to the Commissioner-General, on or before the tenth day of the month following the month in which the payment was made, the tax that should have been withheld.

[Paragraph amended by Act 10 of 2009]

Returns to be furnished

4. Payment of property or insurance commission tax by a principal shall be accompanied by a return in the form prescribed.

Penalty for non-payment of tax

5. (1) Subject to subparagraph (2), a principal who fails to withhold or pay to the Commissioner-General any amount of property or insurance commission tax as provided in paragraph 2 shall be personally liable for the payment to the Commissioner-General, not later than the date on which payment should have been made in terms of paragraph 2 of—

(*a*) the amount of property or insurance commission tax which the principal failed to pay to the Commissioner-General; and

(*b*) a further amount equal to such property or insurance commission tax.

(2) The amounts for the payment of which a principal is liable in terms of subsection (1)—

(*a*) shall be debts due by the principal to the State; and

(*b*) may be sued for and recovered by action by the Commissioner-General in any court of competent jurisdiction.

(3) The Commissioner-General, if he or she is satisfied in any particular case that the failure to pay to him or her property or insurance commission tax was not due to any intent to evade the provisions of this Schedule, may waive the payment of the whole or such part as he or she thinks fit of the amount referred to in subparagraph (*b*) of subparagraph (1).

Refund of overpayments

6. If it is proved to the satisfaction of the Commissioner-General that any person has been charged with property or insurance commission tax in excess of the amount properly chargeable to him or her in terms of this Schedule, the Commissioner-General shall authorise a refund in so far as it has been overpaid:

Provided that the Commissioner-General shall not authorise any refund in terms of this paragraph unless the claim therefor is made within six years of the date of payment of such tax.

Law Development Commission, Zimbabwe

THIRTY-THIRD SCHEDULE (Sections 36J and 97C)

TAX ON NON-EXECUTIVE DIRECTOR'S FEES

[Schedule inserted by Act 12 of 2006]

Interpretation

(1). In this Schedule—

"corporate body" means any body or association incorporated or registered under any law relating to asset managers, banks, building societies, unit trust schemes, companies, financial institutions, insurers or pension funds or under a special law;

"director", in relation to a corporate body, means a person, by whatever name he or she may be called, who—

(*a*) controls or governs that corporate body; or

(*b*) is a member of a body or group of persons which controls or governs that corporate body;' or

and includes any person occupying the position of director or alternate director of a body corporate;

"non-executive director's fees" means any remuneration of a director paid by the corporate body of which he or she is a director—

(*a*) that is excluded for the purposes of employees' tax by virtue of paragraph (*b*) of the definition of "remuneration" in paragraph 1(1) of the Thirteenth Schedule; or

(*b*) from which employees' tax is not withheld in terms of the Thirteenth Schedule for any reason;

"tax" means tax on non-executive director's fees.

Payers to withhold tax

2.(1) Every payer of non-executive director's fees to a director shall withhold tax from those fees and shall pay the amount withheld to the Commissioner within ten days of the date of payment or within such further time as the Commissioner may for good cause allow.

[Paragraph amended by Act 10 of 2009]

(2) Where tax is withheld in terms of subparagraph (1), the payer shall provide the payee with a certificate, in a form approved by the Commissioner, showing—

(*a*) the amount of the non-executive director's fees; and

(*b*) the amount of tax withheld.

Agents to withhold tax not deducted by payer

3.(1) Every agent who receives on behalf of a payee non-executive director's fees from which tax has not been withheld by the payer, shall withhold tax from those fees and shall pay the amount withheld to the Commissioner within ten days of the date of the receipt of the fees.

[Paragraph amended by Act 10 of 2009]

(2) Where tax is withheld in terms of subparagraph (1), the agent shall provide the payee with a certificate in a form approved by the Commissioner, showing—

(*a*) the name of the payer; and

(*b*) the amount of the non-executive director's fees; and

(*c*) the amount of tax withheld.

(3) For the purposes of this paragraph, a person shall be deemed to be the agent of a payee and to have received non-executive director's fees on behalf of that payee if—

(*a*) that person's address appears in the payer's records as the address of the payee; and

(*b*) the warrant or cheque in payment of the fees is delivered at that person's address.

Payee to pay tax not withheld by payer or agent

4. A payee to whom non-executive director's fees have been paid from which tax has not been withheld in terms of paragraph 2 or 3 or recovered in terms of section 77 shall pay to the Commissioner within fifteen days of the date of payment of the fees the tax that should have been withheld.

Returns to be furnished

5. Payment of tax on fees by a payer or an agent shall be accompanied by a return in the form prescribed.

Penalty for non-payment of tax

6.(1) Subject to subparagraph (2), a payer or an agent in Zimbabwe who fails to withhold or pay to the Commissioner any amount of tax as provided in paragraph 2 or 3 shall be personally liable for the payment to the Commissioner, not later than the date on which payment should have been made in terms of paragraph 2 or 3, as the case may be, of—

(*a*) the amount of the tax which the payer or the agent, as the case may be, failed to pay to the Commissioner; and

(*b*) a further amount equal to such tax.

(2) The Commissioner, if he or she is satisfied in any particular case that the failure to pay to him or her tax was not due to any intent to evade the provisions of this Schedule, may 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 the amount referred to in sub-paragraph (1)(*b*).

Refund of tax

7. If it is proved to the satisfaction of the Commissioner that any person has been charged with tax in excess of the amount properly chargeable in terms of this Schedule, the Commissioner shall authorise a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorise any refund in terms of this paragraph unless the claim therefor is made within three years of the date of payment of such tax.

Law Development Commission, Zimbabwe

THIRTY-FOURTH SCHEDULE (Section 37K)

PETROLEUM IMPORTERS LEVY

[Schedule inserted by Act 5 of 2010]

1. Interpretation

(1) In this Schedule—

"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 Schedule.

2. Liability for petroleum importers levy

(1) With effect from the year of assessment beginning on the 1st January, 2011, every petroleum importer who transports petroleum products by road from—

(*a*) the port of Beira in Mozambique to the Msasa Fuel Terminal in Harare;

(*b*) the port of entry at Beitbridge to any off-loading point in Bulawayo; shall, at any designated port of entry into Zimbabwe, pay to the Zimbabwe Revenue Authority a petroleum importers levy at the rate fixed by the Charging Act.

(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 subparagraph (1).

3. Penalty for failure to pay petroleum importers levy timeously

(1) If any petroleum importer referred to in paragraph 2 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 of thirty United States dollars 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 subparagraph (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.