

CHAPTER 23:01 CAPITAL GAINS TAX ACT

Acts 54/1981, 30/1982, 32/1983, 7/1984, 24/1984, 19/1985, 4/1988, 16/1988, 22/1989, 10/1990, 19/1990, 21/1991, 17/1992, 12/1993, 19/1994, 13/1996, 29/1998, 21/1999, 22/1999, 18/2000, 22/2001, 27/2001, 15/2002, 10/2003, 17/2004, 18/2004, 29/2004, 2/2005, 8/2005, 6/2006, 12/2006 16/2007, 3/2009;5/2009. 1/2014. SIs: 222E/1999.

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AN ACT to provide for the raising of a tax on capital gains, and to make provision for matters ancillary or incidental thereto.

[Date of commencement: 1st August, 1981.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Capital Gains Tax Act [*Chapter 23:01*].

2 Interpretation

(1) In this Act—

“approved employee housing trust fund” means an arrangement embodied in a notarised trust deed which satisfies the Commissioner-General that its dominant purpose or effect is to enable a company or group of companies to finance and construct housing for its employees on terms that will eventually allow the employees to acquire ownership of their homes from the trust;

[Definition inserted by Act 6 of 2006]

“assessed capital loss” means the amount by which the sum of the deductions to be made under subsections (2) and (3) of section *eleven* from the capital amount (as defined in Part III) of any taxpayer exceeds such capital amount:

Provided that where the total amount of the assessed capital loss of a person in respect of sales in any year of assessment is one hundred United States dollars or less the assessed capital loss arising from such sales shall be reduced by such amount;

[Definition inserted by Act 5 of 2009]

“deed of sale” means an agreement in respect of a specified asset the effect of which is that ownership of the specified asset shall pass to a person upon or after payment by him of the whole or a certain portion of the amount payable under the agreement;

“marketable security” means—

(a) any bond capable of being sold in a share market or exchange; or

(b) any—

(i) debenture, share or stock; or

(ii) right possessed by reason of a person’s participation in any unit trust;

whether or not capable of being sold in a share market or exchange;

“share” includes a member’s interest in a private business corporation;

“specified asset” means—

- (a) immovable property; or
- (b) any marketable security;

“tax” means tax leviable in terms of this Act;

“Taxes Act” means the Income Tax Act [*Chapter 23:06*].

(2) For the purposes of this Act—

- (a) an expression to which a meaning is assigned in subsection (1) of section 2 of the Taxes Act in relation to the gross income, income or taxable income of a person or the making of any assessment or the furnishing of any return shall, unless the expression is otherwise defined in this Act, have the same meaning in this Act in relation to the gross capital amount, capital amount or capital gain, respectively, of a person or to the making of any assessment or the furnishing of any return under this Act;
- (b) an expression to which a meaning is otherwise assigned in subsection (1) of section 2 of the Taxes Act shall, unless the expression is otherwise defined in this Act, have the same meaning in this Act.

(3) For the purposes of this Act—

- (a) a company shall be deemed to be under the control of an individual if the majority of voting rights attaching to all classes of shares in the company is controlled, directly or indirectly, by the individual;
- (b) an individual and his nominee shall be deemed to be one individual.

(4) Any expression defined for the purposes of Part IIIA shall bear the same meaning when used elsewhere in this Act.

[Subsection inserted by Act 1 of 2014]

PART II

ADMINISTRATION

3 Delegation of functions by Commissioner

Section 3 of the Taxes Act relating to the delegation of functions shall apply, *mutatis mutandis*, in relation to this Act for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

[Section substituted by Act 17 of 1999]

4

Section repealed by Act 17 of 1999]

5

[Section repealed by Act 27 of 2001]

PART III

CAPITAL GAINS TAX

6 Charging of capital gains tax

There shall be charged, levied and collected throughout Zimbabwe for the benefit of the Consolidated Revenue Fund a capital gains tax in respect of the capital gains, as defined in this Part, received by or accrued to or in favour of any person during any year of assessment, other than a capital gain so received or accrued prior to the 1st August, 1981.

7 Calculation of capital gains tax

Subject to section *twenty-one*, the capital gains tax with which a person is chargeable shall be calculated in accordance with the Finance Act [*Chapter 23:04*] by reference to—

- (a) the capital gains of the person in the year of assessment; and
- (b) the rate of capital gains tax fixed from time to time in that Act.

8 Interpretation of terms relating to capital gains tax

(1) For the purpose of this Part—

- (a) “gross capital amount” 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 Zimbabwe from the sale on or after the 1st August, 1981, of specified assets excluding any amount so received or accrued which is proved by the taxpayer to constitute “gross income” as defined in subsection (1) of section 8 of the Taxes Act and includes any amount allowed to be deducted in terms of subsection (2) of section *eleven* which has been recovered or recouped:

Provided that in the case of bodies referred to in subparagraphs (a), (c) and (f) of paragraph 2 of the Third Schedule to the Taxes Act an amount so received or accrued shall, notwithstanding that it is so proved to constitute “gross income” as so defined, constitute a gross capital amount;

- (b) “capital amount” means the amount remaining of the gross capital amount of any person, after deducting therefrom any amounts exempt from capital gains tax under this Act;

Provided that this paragraph does not apply to the donation by a company or group of companies of immovable property to an approved employee housing trust fund.

[Proviso inserted by Act 6 of 2006]

- (c) “capital gain” means the amount remaining, after deducting from the capital amount of any person all the amounts allowed to be deducted from a capital amount under this Act.
- (2) For the purposes of the definition of “gross capital amount” in subsection (1)—
- (a) 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—
- (i) the amount to be included in the gross capital amount shall be the said amount received, expressed in Zimbabwean currency; and
 - (ii) if the receipt and the accrual occur in different years of assessment, effect shall be given to the increase or reduction in the gross capital amount in the year of assessment in which the amount accrued;
- (b) where a person disposes of a specified asset otherwise than by way of sale such disposal shall be deemed to be a sale and an amount which, in the opinion of the Commissioner, is equal to the fair market price of such asset at the time of disposal shall be deemed to have accrued to such person at such time;
- (c) where a specified asset is expropriated such specified asset shall be deemed to have been sold for an amount equal to the amount paid by way of compensation for the expropriation of such specified asset;
- (d) where a specified asset is sold in execution of the order of a court, the amount for which it was sold shall be deemed to have accrued to the person on whose behalf it was sold;
- (e) where an amount accrues to a person by reason of the maturity or redemption of a specified asset, or in circumstances which in the opinion of the Commissioner are of a similar nature, such asset shall at the date of such accrual be deemed to have been sold by such person for such amount;
- (f) where a person transfers to another person his rights under a deed of sale in respect of the passing of ownership of the specified asset which is the subject of the deed of sale, he shall be deemed to have sold the specified asset to that other person for an amount equal to the whole amount received by or accruing to him as a result of the transfer.
- (g) where a person transfers to another person his or her rights in a residential, commercial or industrial stand, whether or not the stand is serviced and whether or not his or her title to the stand is registered under the Deeds Registries Act [*Chapter 20:05*], he or she shall be deemed to have sold a specified asset to that other person for an amount equal to the whole amount received by or accruing to him or her as a result of the transfer;
- [Paragraph inserted by Act 1 of 2014]
- (h) where a person relinquishes a membership interest in a condominium in favour of another person, he or she shall be deemed to have sold a specified asset to that other person for an amount equal to the whole amount received by or accruing to him or her as a result of the relinquishment.

[Paragraph inserted by Act 1 of 2014]

9 When capital amount deemed to have accrued

A capital amount shall be deemed to have accrued to a person in the circumstances set out in subsections (1) and (2) of section 10 of the Taxes Act, the provisions of which shall, for the purposes concerned, apply *mutatis mutandis* in relation to this Act.

10 Exemptions from capital gains tax

There shall be exempt from capital gains tax—

- (a) the receipts and accruals of bodies referred to in paragraphs 1, 2 and 3 of the Third Schedule to the Taxes Act, other than those referred to in subparagraphs (a), (c) and (f) of paragraph 2;
- (b) amounts received or accrued on the realization or distribution by the executor of a deceased estate of a specified asset forming part of such estate;
- (c) amounts received or accrued on the sale of any marketable security being any bond or stock in respect of any loan to—
 - (i) the State or any company all the shares of which are owned by the State;
 - (ii) a local authority;
 - (iii) a statutory corporation;
- (d) amounts received or accrued on the sale, by a person carrying on life insurance business as defined in subparagraph (1) of paragraph 1 of the Eighth Schedule to the Taxes Act, of specified assets which are investments in Zimbabwe for the purposes of factor F or G in the formula in paragraph 6 of that Schedule;

- (e) amounts received or accrued on the sale of any shares in the Zimbabwe Development Bank established by section 3 of the Zimbabwe Development Bank Act [*Chapter 24:14*], where such sale is by an institutional shareholder as defined in that Act who is not ordinarily resident in Zimbabwe;
- (f) amounts received or accrued on the sale by a petroleum operator, approved by the Minister by notice in the *Gazette*, of immovable property used for the purposes of petroleum operations, to another petroleum operator, if the Commissioner is satisfied that the property is to be used for such purposes by the purchaser;
- (g) the receipts and accruals of a licensed investor from the sale of a specified asset forming the whole or part of the investment to which his investment licence relates.
- (h) the receipts and accruals of an industrial park developer from the sale of a specified asset that forms part of or is connected with his industrial park.
[Subparagraph inserted by section 18 of Act 22 of 1999]
- (i) amounts received or accrued on the sale or disposal of any shares withheld by an insurance company in the circumstances described in subparagraph (2) of paragraph 6 of the Twenty-Seventh Schedule to the Income Tax Act [*Chapter 23:06*].
[Subparagraph inserted by Act 18 of 2000]
- (j)
[Subparagraph repealed by Act 2 of 2005]
- (k) amounts received by or accruing to an employee from the sale or disposal of his shares or interest in an approved employee share ownership trust where such sale or disposal is to the trust.
[Subparagraph inserted by Act 15 of 2002]
- (l) amounts received by a person on the sale of his or her principal private residence as defined in subsection (1) of section *twenty-two* if such person was, on the date of the sale, of or over the age of fifty-nine years;
[Subparagraph inserted by Act 29 of 2004]
- (m) amounts received by or accruing to a person who is of or over the age of fifty-five years on the sale of any marketable security, other than a marketable security referred to in paragraph (j), in respect of the first twenty-four million dollars received by or accruing to him or her in the year of assessment concerned.
[Subparagraph inserted by Act 5 of 2009]
- (n) amounts received by or accruing to a person on the sale of any marketable security which was subjected to withholding tax in terms of section 39(b) of the Charging Act.
[Subparagraph inserted by Act 5 of 2009]
- (o) the amount by which the fair market price of shares sold to an indigenisation partner or community share ownership trust or scheme exceeds the actual price at which those shares were sold.
For the purposes of this paragraph—
“community share ownership trust or scheme” means such a scheme approved in terms of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in Statutory Instrument 21 of 2010;
“indigenisation partner” means an indigenous person who benefits (whether as an employee or in any other capacity) under an indigenisation implementation plan approved in terms of the Indigenisation and Economic Empowerment (General) Regulations, 2010, published in Statutory Instrument 21 of 2010.
[Paragraph inserted by Act 1 of 2014 with effect from 1 January 2013]

11 Deductions allowed in determination of capital gain

(1) For the purposes of determining the capital gain of any person there shall be deducted from the capital amount of such person the amounts allowed to be deducted in terms of this section:

Provided that 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—

- (a) the amount to be deducted shall be the amount actually paid in Zimbabwean currency;
- (b) 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 liability was incurred.
- (2) The deductions which shall be allowed for the purposes of subsection (1) shall be—
- (a) expenditure to the extent to which it is incurred on the acquisition or construction of such specified assets as are sold during the year of assessment other than expenditure in respect of which a deduction is allowable in the determination of the seller's taxable income as defined in subsection (1) of section 8 of the Taxes Act.

For the purposes of this paragraph where a person has acquired a specified asset—

- (i) by way of inheritance, he shall be deemed to have incurred expenditure on such acquisition to an amount which is equal to the amount at which the specified asset was valued in the deceased estate concerned;
- (ii) otherwise than by way of purchase or inheritance—
 - A. prior to the 1st August, 1981, he shall be deemed to have incurred expenditure on such acquisition to an amount which is equal to an amount proved to the satisfaction of the Commissioner to be the fair market value of the specified asset at the time it was so acquired;
 - B. on or after the 1st August, 1981, he shall be deemed to have incurred expenditure on such acquisition to an amount equal to the amount, if any, included in respect of the specified asset—
 - I. for the purposes of this Act, in the gross capital amount of the person disposing of the specified asset; or
 - II. for the purposes of the Taxes Act, in the gross income, as defined in subsection (1) of section 8 of that Act, of the person disposing of the specified asset;
- (b) expenditure to the extent to which it is incurred on additions, alterations or improvements to specified assets referred to in paragraph (a) other than expenditure in respect of which a deduction is allowable in the determination of the seller's taxable income as defined in subsection (1) of section 8 of the Taxes Act.

For the purposes of this paragraph, in the case of a capital amount arising from the sale of shares in a company which owns immovable property, any expenditure incurred by the seller on additions or alterations to the property shall be deemed to be expenditure incurred on additions to the shares;

- (c) in respect of the year of assessment beginning on the 1st January, 2007, and any subsequent year of assessment, an amount determined in accordance with the following formula:

$$\frac{A-B}{B}$$

where—

- A represents the figure for the All Items Consumer Price Index issued by the Central Statistics Office at the time of disposal of the property
- B represents the figure for the All Items Consumer Price Index issued by the Central Statistics Office in the month of effecting improvements or month of purchase of the property.

[Paragraph substituted by Act 12 of 2006]

- (d) any expenditure to the extent that it is directly incurred for the purposes of or in connection with the sale of a specified asset;
- (e) 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 capital amount in terms of this Act;
- (f) 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 to the High Court or the Special Court in terms of Part VI, 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, 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 against the determination to the Supreme Court 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;
- (g) 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 to the Supreme Court in terms of Part VI, 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;

- (h) where, after the application of the above paragraphs, the total amount of the capital gains of a person in any year of assessment is fifty United States dollars or less, an amount equal to such total amount.

[Paragraph amended by Act 5 of 2009]

(3) From the amount of the capital amount remaining after the deductions referred to in subsection (2) have been made there shall be deducted any assessed capital loss determined in respect of the previous year of assessment:

Provided that—

- (i) if during any year of assessment there is a change in the shareholding of a company with an assessed capital loss or in the shareholding of any company which directly or indirectly controls any company with an assessed capital 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 capital loss, no assessed capital loss incurred prior to that change shall be deductible.

For the purposes of this subparagraph 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;

- (ii) 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 capital loss incurred before the date he was adjudged or otherwise declared or became insolvent or made the assignment, as the case may be;
- (iii) where—
- (a) a company which is incorporated under the Companies Act [*Chapter 24:03*] and which has an assessed capital loss is converted into a private business corporation; or
 - (b) a private business corporation with an assessed capital loss is converted into a company in terms of the Companies Act [*Chapter 24:03*];

the new private business corporation or the new company, as the case may be, shall be allowed the assessed capital loss as a deduction after the conversion.

(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) Where the owner of immovable property has, as the lessor of such property, been charged to income tax in terms of paragraph (e) of the definition of “gross income” in subsection (1) of section 8 of the Taxes Act, he shall be deemed to have incurred expenditure in terms of paragraph (a) or (b) of subsection (2) in relation to such immovable property equal to the amount so included in his taxable income at the time of such inclusion.

(6) Where a person transfers to another person his rights under a deed of sale in respect of the passing of ownership of the specified asset which is the subject of the deed of sale, he shall be deemed for the purposes of this section to have acquired the specified asset from the person with whom he entered into the deed of sale for an amount equal to the amount payable by him under the deed of sale.

12 Circumstances in which no deductions may be made

Notwithstanding the provisions of section *eleven*, no deduction shall be made in respect of expenditure on or in relation to specified assets the sale of which is exempt from tax.

13 Damage to or destruction of specified asset

(1) Subject to subsections (2) and (3), where a specified asset is damaged or destroyed it shall for the purposes of the definition of “gross capital amount” in subsection (1) of section *eight* be deemed to have been sold for an amount equal to the amount of any receipt or accrual in respect of such damage or destruction.

(2) Where the amount referred to in subsection (1) does not exceed the total of the amounts referred to in paragraphs (a) and (b) of subsection (2) of section *eleven* in respect of that asset—

- (a) such asset shall not be deemed to have been sold; and
- (b) such total amount shall be deemed to be reduced accordingly with effect from the commencement of the year of assessment in which the receipt or accrual occurs; and
- (c) the amount of any subsequent deductions in terms of paragraph (c) of that subsection shall be calculated in relation to such reduced total amount.

(3) Where a specified asset is damaged or destroyed and the Commissioner is satisfied that the whole or part of any receipt or accrual in respect of such damage or destruction has been or will be expended, within two years from the date on which the specified asset was damaged or destroyed, on—

- (a) the purchase or construction of a further specified asset of a like nature in replacement of the damaged or destroyed specified asset; or
 - (b) the repair of the specified asset, where the specified asset was damaged;
- the provisions of subsections (1) and (2)—
- (i) shall not apply in relation to the amount so expended;
 - (ii) shall apply, with effect from the year of assessment in which the damage or destruction occurred or such later year of assessment as the Commissioner may determine, in relation to any part of the receipt or accrual not so expended.

(4) Expenditure to which subsection (3) relates shall not be allowable as a deduction in terms of section *eleven* upon the subsequent sale of the specified asset concerned.

14 Determination of fair market price of specified assets

Where a person purchases a specified asset from any other person at a price in excess of the fair market price or where he sells a specified asset to any other person at a price less than the fair market price the Commissioner may, for the purpose of determining the capital gain or assessed capital 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.

15 Transfers of specified assets between companies under the same control

(1) If the ownership of any specified asset is transferred from one company to another in any of the following circumstances—

- (a) where the Commissioner is satisfied that—
 - (i) the company that transfers the specified asset—
 - A. is incorporated outside Zimbabwe; and
 - B. has carried on its principal business inside 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 the company to which the specified asset is transferred;
 - and
 - (ii) the sole consideration for the transfer will be the issue, to the members of the company transferring the specified asset, of shares in the company to which the specified asset is transferred, in proportion to their holdings in the first-mentioned company; and
 - (iii) no shares in the company to which the specified asset is transferred will be available for issue to any persons other than members of the company transferring the specified asset;
- or
- (b) the transfer is effected from one company to another under the same control, 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;
- or
- (c) the transfer is effected—
 - (i) from a company incorporated under the Companies Act [*Chapter 24:03*] to a private business corporation into which the company has been converted in terms of the Private Business Corporations Act [*Chapter 24:11*]; or
 - (ii) from a private business corporation to a company into which the private business corporation has been converted in terms of the Companies Act [*Chapter 24:03*];

in the course of or in furtherance of that conversion;

the transferor and the transferee may elect that, notwithstanding the terms of any agreement of sale, the selling price of the asset shall, in relation to the transferor, be deemed, for the purposes of this Act, to be an amount equal to the sum of the deductions allowable to the transferor in respect of the specified asset in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section *eleven* at the date of the transfer:

Provided that, if the specified asset is subsequently sold, otherwise than to a company under the same control, the capital gain or capital loss in the hands of the seller shall be calculated as if the asset had at all times remained in the ownership of the first transferor in respect of whom the election was made in terms of this section.

(2) Where in the circumstances referred to in paragraph (a) or (b) of subsection (1), a marketable security issued by a company involved in the scheme, merger or operation is transferred from one person to another for no cash consideration, in exchange for a marketable security issued by another such company, the transferor may elect that, notwithstanding the terms of any agreement of sale, the marketable security transferred by him shall be deemed to have been sold for an amount equal to the sum of the deductions allowable to him at the date of transfer in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section *eleven* in respect of the marketable security transferred by him.

(3) An election in terms of subsection (2) shall be made not later than the date on which the person making the election submits a return for the assessment of his capital gain for the purposes of this Act.

[Subsection inserted by Act 21 of 1999]

16 Transfers of specified assets between spouses

(1) In this section—

“principal private residence” has the meaning given to it in section *twenty-one*.

(2) Where—

- (a) the ownership of any specified asset is transferred from a person to his or her spouse; or
- (b) a person transfers the ownership of a specified asset which is his principal private residence to his former spouse in compliance with an order of a court providing for the maintenance of the former spouse or dividing, apportioning or distributing the assets of the former spouses on or after the dissolution of their marriage;

the transferor and the transferee may elect that, notwithstanding the terms of any agreement of sale, the selling price of the specified asset shall in relation to the transferor be deemed, for the purposes of this Act, to be an amount equal to the sum of the deductions allowable to the transferor in respect of the specified asset in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section *eleven* at the date of transfer:

Provided that, if after the transfer such asset is sold to a person who is not the spouse of the seller, the capital gain or assessed capital loss in the hands of the seller shall be calculated as if the asset had at all times remained in the ownership of the first transferor to whom this section applies.

(3) An election in terms of subsection (2) shall be made not later than the date on which the person making the election submits a return for the assessment of his capital gain for the purposes of this Act.

[Subsection inserted by Act 21 of 1999]

17 Transfer of business property by individual to company under his control

If the ownership of any immovable property is transferred on or after the 1st April, 1991, from an individual to a company in circumstances where the Commissioner is satisfied that—

- (a) the immovable property was previously used by the individual for the purposes of his trade; and
- (b) the company will continue to use the immovable property for the purposes of its trade; and
- (c) the individual controls the company, whether through holding a majority of the company’s shares or otherwise;

the transferor and the transferee may elect that, notwithstanding the terms of any agreement of sale, the selling price of the immovable property shall, in relation to the transferor, be deemed, for the purposes of this Act, to be an amount equal to the sum of the deductions allowable to the transferor in respect of the immovable property in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section *eleven* at the date of the transfer:

Provided that, if after the transfer the immovable property is sold, otherwise than to a company under the same control, the capital gain or assessed capital loss in the hands of the seller shall be calculated as if the property had at all times remained in the hands of the first transferor to whom this section applies.

(2) An election in terms of subsection (1) shall be made not later than the date on which the person making the election submits a return for the assessment of his capital gain for the purposes of this Act.

[Subsection inserted by Act 21 of 1999]

18 Provisions for sales of immovable property under suspensive conditions

(1) If any taxpayer has entered into any agreement with any other person in respect of any specified asset the effect of which is that ownership shall pass 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 the 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 shall deduct an allowance determined by applying the formula—

$$\frac{A \times (B - C)}{D}$$

in which—

- A represents that portion of the amount deemed to have accrued under the agreement which is not receivable at the end of the year of assessment;
 - B represents the capital amount deemed to have accrued under the agreement;
 - C represents the aggregate of the sums deductible in respect of such specified asset in terms of paragraphs (a), (b), (c) and (d) of subsection (2) of section *eleven*;
 - D represents the amount deemed to have accrued under the agreement;
- (ii) any allowance so deducted shall be included by the taxpayer as a capital amount in his return for the following year of assessment and shall form part of the capital amount of the said taxpayer;
 - (iii) if any such agreement is ceded or otherwise disposed of by the taxpayer no such allowance shall be made by the Commissioner in the year of assessment in which such cession or disposal takes place.

(2) Where any agreement referred to in subsection (1) is cancelled there shall be included in the capital amount or assessed capital loss, as the case may be, of the seller in the year of assessment in which such cancellation takes place an amount equal to the difference between the total of the amounts received by the seller in terms of the agreement and the total of the amounts included in the capital gains of the seller in terms of that subsection, and that subsection shall cease to have effect after that year of assessment.

(3) Where the capital amount of a person for any year of assessment includes any amount to which this section relates no deduction shall be allowed in respect of the amount referred to in paragraph (h) of subsection (2) of section *eleven*.

(4) Where a person transfers to another person his rights under a deed of sale in respect of the passing of ownership of the specified asset which is the subject of the deed of sale. he shall be deemed for the purposes of this section to have entered into an agreement in respect of the specified asset the effect of which is that ownership shall pass from him to the other person concerned, and this section shall apply, *mutatis mutandis*, accordingly.

19 Provisions relating to credit sales where ownership passes

(1) If any taxpayer has entered into any agreement with any other person in respect of any specified asset the effect of which is that—

- (a) the ownership shall pass to that other person on delivery of the specified asset; 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 deduction under paragraph (e) of subsection (2) of section *eleven*, may deduct such further allowance as seems to him reasonable in respect of all amounts which are deemed to have accrued under such agreement but are not receivable at the end of the year of assessment;
- (ii) any allowance so deducted shall be included by the taxpayer as a capital amount in his return for the following year of assessment and shall form part of the capital amount of the taxpayer.

(2) Where the capital amount of a person for any year of assessment includes any amount to which this section relates, no deduction shall be allowed in respect of the amount referred to in paragraph (h) of subsection (2) of section *eleven*.

20 Provisions for the reductions in costs of specified assets

Where an amount is received or accrues, whether by way of recovery or of recoupment or otherwise, relating to the cost or deemed cost of a specified asset which has not been sold—

- (a) if such amount exceeds the total of the amounts referred to in paragraphs (a) and (b) of subsection (2) of section *eleven* in respect of that asset, such asset shall be deemed to have been sold for an amount equal to the amount so received or accrued;
- (b) if such amount does not exceed the total of the amounts referred to in paragraphs (a) and (b) of subsection (2) of section *eleven* in respect of that asset—
 - (i) such total amount shall be deemed to be reduced accordingly with effect from the commencement of the year of assessment in which the receipt or accrual occurs; and
 - (ii) the amount of any subsequent deductions in terms of paragraph (c) of that subsection shall be calculated in relation to such reduced total amount;

and the asset shall be deemed to have been sold on the date of the final such receipt or accrual.

21 Provision for sales of principal private residences

(1) In this section—

“dwelling” means a building, or any part of a building, which is used wholly or mainly for the purpose of residential accommodation;

“principal private residence”, in relation to an individual, means—

- (a) a dwelling which is proved to the satisfaction of the Commissioner—
 - (i) to have been that individual’s sole or main residence throughout the period that he owned it; or
 - (ii) to have been that individual’s sole or main residence for a period of four years or more immediately before the date of its sale, or for such shorter period immediately before the date of its sale as the Commissioner considers reasonable in all the circumstances; or
 - (iii) to have been regarded by that individual as his sole or main residence, even though he was prevented from residing in it as provided in subparagraph (i) or (ii) in consequence of his employment or for such other cause as the Commissioner considers reasonable in all the circumstances;

and

- (b) subject to subsection (5), any land, whether or not it is a piece of land registered as a separate entity in a Deeds Registry, which—
- (i) is owned by the individual concerned; and
 - (ii) surrounds or is adjacent to the dwelling referred to in paragraph (a); and
 - (iii) is used by the individual concerned primarily for private or domestic purposes in association with the dwelling referred to in paragraph (a);

“residential stand”, in relation to an individual, any land, whether or not it is a piece of land registered as a separate entity in a Deeds Registry, which—

- (a) is owned by the individual concerned, and
- (b) is proved to the satisfaction of the Commissioner to be intended for the building of a principal private residence thereon.

[Definition inserted by Act 12 of 2006]

(2) An individual may elect that, where a capital gain has been received by or has accrued to him on or after the 1st April, 1988, in respect of the sale by him of his residential stand (hereinafter in this section called the “old residential stand”) and the Commissioner is satisfied that, before the end of the year of assessment next following the sale, an amount equal to the whole or part of the consideration received or accrued in respect of the sale has been or will be expended on the purchase or construction, on land owned by him in Zimbabwe, of another residential stand (hereinafter in this section called the “new residential stand”) for the individual concerned—

- (a) capital gains tax shall not be chargeable, if the amount of the consideration so received or accrued is equal to or less than the amount so expended; and
- (b) capital gains tax shall be chargeable, if the amount of the consideration so received or accrued exceeds the amount so expended, on a proportion of the capital gain determined by applying the following formula—

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

in which—

- A represents that portion of the amount of the consideration received or accrued on the sale of the old residential stand not so expended on the purchase or construction of the new residential stand;
- B represents the total amount of the consideration received or accrued on the sale of the old residential stand;
- C represents the capital gain in respect of the sale of the old residential stand.

(2a) An election in terms of subsection (2) shall be made not later than the date on which the individual making the election submits a return for the assessment of his capital gain for the purposes of this Act.

[Subsection inserted by Act 21 of 1999]

(3) Where an amount is not chargeable to capital gains tax in terms of subsection (2), such amount shall be deducted from the amount referred to in paragraph (a) of sub-section (2) of section *eleven* when determining the capital gain in respect of the new residential stand, with effect from the year of assessment in which the new residential stand was acquired.

(4) For the purposes of this section, where—

- (a) a building owned by a company, partnership or other association of persons consists of or contains one or more flats, apartments or other units of residential accommodation; and
- (b) the members of the company, partnership or association, as the case may be, have the right, by virtue of their membership, to occupy particular flats, apartments or units of residential accommodation in the building;

an individual who, by becoming or ceasing to be a member of the company, partnership or association concerned, acquires or relinquishes such a right of occupation, shall be deemed to have purchased or sold, as the case may be, the flat, apartment or unit of residential accommodation concerned.

(5) Where—

- (a) land referred to in paragraph (b) of the definition of “principal private residence” in subsection (1); or
- (b) a garage, storeroom or other structure referred to in paragraph (c) of the definition of “principal private residence” in subsection (1);

is disposed of separately from the dwelling in association with which it was used, this section shall not apply in relation to its disposal.

(6) Where a principal private residence is sold together with or as part of other immovable property which is not used wholly or mainly for the purposes of residential accommodation, the proportion of—

- (a) the gross capital amount in the hands of the transferor; or
- (b) the cost of acquisition in the hands of the transferee;

received or accruing in respect of the sale of the principal private residence shall be deemed to be—

- (i) such proportion as may be specified by both the parties to the sale in a joint written statement which is submitted to the Commissioner and which is accepted by him; or
- (ii) where no statement has been submitted to the Commissioner in terms of paragraph (i) or where the Commissioner has not accepted such a statement, such proportion as may be determined by the Commissioner to be fair and reasonable.

22 Substitution of business property

(1) A taxpayer may elect that, where a capital gain has been received by or accrued to him on or after the 1st April, 1991, in respect of the sale by him of immovable property previously used for the purposes of his trade (hereinafter in this section called the “old property”) and the Commissioner is satisfied that, before the end of the year of assessment next following the sale, an amount equal to the whole or part of the consideration received or accrued in respect of the sale has been or will be expended on the purchase or construction of other immovable property (hereinafter in this section called the “new property”) to be used for the purposes of his trade—

- (a) capital gains tax shall not be chargeable, if the amount of the consideration so received or accrued is equal to or less than the amount so expended; and
- (b) capital gains tax shall be chargeable, if the amount of the consideration so received or accrued exceeds the amount so expended, on a proportion of the capital gain determined by applying the following formula—

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

in which—

- A represents that portion of the amount of the consideration received or accrued on the sale of the old property not so expended on the purchase or construction of the new property;
- B represents the total amount of the consideration received or accrued on the sale of the old property;
- C represents the capital gain in respect of the sale of the old property.

(1a) An election in terms of subsection (1) shall be made not later than the date on which the taxpayer making the election submits a return for the assessment of his capital gain for the purposes of this Act.

[Subsection inserted by Act 21 of 1999]

(2) Where an amount is not chargeable to capital gains tax in terms of subsection (1), such amount shall be deducted from the amount referred to in paragraph (a) of sub-section (2) of section *eleven* when determining the capital gain in respect of the new property, with effect from the year of assessment in which the new property was acquired.

PART IIIA

CAPITAL GAINS WITHHOLDING TAX

[Part IIIA section 22A to 22J inserted by Act 29 of 1998]

22A Interpretation in Part IIIA

In this Part—

“business of a land developer” means the business of doing any one or more of the following things for profit—

- (a) the acquisition of land for subdivision into more than three stands for residential, commercial or industrial purposes; or
- (b) the acquisition of stands for servicing for residential, commercial or industrial purposes; or
- (c) the selling of stands serviced by the land developer; or
- (d) the servicing of stands acquired by another person for residential, commercial, or industrial purposes;

[Definition inserted by Act 1 of 2014]

“cession of a stand”, in relation to a stand that is part of a land development scheme, means the transfer to another person (“the cessionary”) for money or other valuable consideration of all rights in respect of the stand (including rights of possession, occupation and, ultimately, of registration of title over the stand in the name of the cedent upon fulfillment of the agreed conditions) acquired by the cedent under the agreement by which he or she took possession of the stand from the local authority or the land developer (whether or not the cedent is an original beneficiary under a land development scheme or is himself or herself a cessionary of a previous cession of the stand);

[Definition inserted by Act 1 of 2014]

“condominium” means any company, partnership or other association of persons —

- (a) that owns any immovable property consisting of one or more flats, apartments or other units of residential accommodation; and
- (b) the members of which have the right, by virtue of their membership —

- (i) to occupy particular flats, apartments or units of residential accommodation comprising the immovable property; or
- (ii) to a time-sharing interest in particular flats, apartments or units of residential accommodation pursuant to a property time-sharing scheme;

[Definition inserted by Act 1 of 2014]

“depository” means—

- (a) a conveyancer, legal practitioner, estate agent or other person who—
 - (i) on behalf of any party to a sale of immovable property, holds the whole or any part of the price paid or payable in respect of the sale; and
 - (ii) is required, on completion of the sale or on transfer of the property, to pay the whole or any part of the amount he holds to the seller of the immovable property or to some other person for the seller’s credit;

or

- (b) a building society registered in terms of the Building Societies Act [*Chapter 24:02*]; or
- (c) the Sheriff or Master of the High Court; or
- (d) a stockbroker, financial institution or other person who—
 - (i) on behalf of any party to a sale of a marketable security, holds the whole or any part of the price paid or payable in respect of the sale; and
 - (ii) is required, on completion of the sale or on transfer of the marketable security, to pay the whole or any part of the amount he holds to the seller of the marketable security or to some other person for the seller’s credit;

- (e) in relation to a cession of a stand—

- (i) the cedent, whether or not he or she is liable to pay the whole or any part of the amount he or she holds to the land developer; or
- (ii) the local authority which, or land developer who, on behalf of a cedent or cessionary, holds the whole or any part of the price paid or payable in respect of the cession; or
- (iii) any person referred to in paragraph (a), (b), (c) or (d) who mediates a cession of a stand;

or

- (f) in relation to the acquisition or relinquishment of a membership interest in a condominium—
 - (i) the owner of the condominium; or
 - (ii) the custodian of the register of membership interests in the condominium; or
 - (iii) any person referred to in paragraph (a), (b), (c) or (d) who mediates such acquisition or relinquishment;

[Definition substituted by Act 10 of 2003 and amended by Act 1 of 2014]

“land developer” means a person who carries on the business of a land developer;

[Definition inserted by Act 1 of 2014]

“land development scheme” means any scheme whereunder—

- (a) land is subdivided into stands for servicing by a local authority or a land developer; and
- (b) beneficiaries of the scheme receive rights of possession, occupation and, ultimately, of registration of title over the stands in their names upon fulfilment of agreed conditions;

[Definition inserted by Act 1 of 2014]

“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);

[Definition inserted by Act 1 of 2014]

“membership interest in a condominium” means an interest or share in a condominium that confers on the holder thereof any of the rights referred to in paragraph (b) of the definition of “condominium”, however such membership, interest or share is evidenced, whether by the holding or transfer of shares in a condominium that is a company, or in the form of a partnership interest, or by registration of sectional title in terms of section 27 of the Deeds Registries;

[Definition inserted by Act 1 of 2014]

“payee” means a person to whom a depository pays or is required to pay an amount held by him as depository in respect of the sale of a specified asset.

“service”, in relation to a stand, means to clear the land constituting the stand and to drain, dredge, pave, excavate, grade, landscape, construct buildings upon or otherwise develop such stand in every way that will render it suitable for residential, commercial or industrial purposes, and “unserviced” shall be construed accordingly;

[Definition inserted by Act 1 of 2014]

“stand” means any unserviced or partly unserviced piece of land whether or not registered as a stand in terms of the Deeds Registries Act [*Chapter 20:05*].

[Definition inserted by Act 1 of 2014]

22B Capital gains withholding tax

There shall be charged, levied and collected throughout Zimbabwe in accordance with this Part, for the benefit of the Consolidated Revenue Fund, a capital gains withholding tax calculated in accordance with the Finance Act [Chapter 23:04].

22C Depositaries to withhold tax

(1) Subject to subsections (5) and (7), every depositary who, in consequence of the sale or transfer of a specified asset, pays any amount held by him as depositary to or for the credit of the seller of the specified asset shall withhold capital gains withholding tax from that amount and shall pay the amount withheld to the Commissioner no later than the third working day from the date when the payment was made or within such further time as the Commissioner may for good cause allow.

[Subsection amended by Act 16 of 2007 and by Act 3 of 2009]

(2) If the capital gains withholding tax payable in respect of any sale or transfer exceeds the amount held by a depositary, the depositary shall pay the full amount held by him to the Commissioner in accordance with subsection (1).

(3) Where capital gains withholding tax is withheld in accordance with subsection (1), the depositary shall provide the payee with a certificate, in a form approved by the Commissioner, showing the following particulars—

- (a) the depositary's name and address; and
- (b) the payee's name and address; and
- (c) particulars of the property sold; and
- (d) the amount of capital gains withholding tax that has been withheld.

(4) Where two or more depositaries hold the whole or any part of the price paid or payable in respect of any one sale of a specified asset—

- (a) they shall be severally liable for payment of the full amount of capital gains withholding tax in respect of that sale, up to the amount held by them; and
- (b) payment by any one of them of any amount of capital gains withholding tax in terms of this section shall absolve the others or reduce their liability *pro tanto*, as the case may be.

(5) A depositary need not withhold capital gains withholding tax in terms of subsection (1) if, before he pays any amount to or for the credit of the seller of the specified asset concerned—

- (a) he or the seller applies to the Commissioner for a clearance certificate in respect of the sale of that specified asset, and provides the Commissioner with such information regarding the sale as the Commissioner may reasonably require; and
- (b) the Commissioner, being satisfied that—
 - (i) no capital gains tax is likely to be payable in respect of the sale or that any capital gains tax so payable is likely to be less than the capital gains withholding tax required to be withheld in terms of subsection (1); and
 - (ii) adequate arrangements have been or will be made for the payment of any capital gains tax payable in respect of the sale;

has issued a clearance certificate in respect of the sale.

(6) A clearance certificate may be issued in terms of subsection (5) on such terms and conditions as the Commissioner may fix, including terms and conditions relating to the furnishing of a return or interim return for the assessment of capital gains tax.

(7) Where the amount held by a depositary represents the whole or part of an instalment payable in a sale by instalments, the amount of capital gains withholding tax to be withheld from that amount and paid to the Commissioner in terms of subsection (1) shall be calculated as if the instalment were the full price at which the specified asset concerned was sold.

22D Agents to withhold tax not withheld by depositaries

(1) Subject to subsections (7) and (9) where—

- (a) an agent, on behalf of a payee, receives from a depositary an amount which represents the whole or part of the price of a specified asset; and
- (b) capital gains withholding tax has not been withheld from that amount in terms of section *twenty-two C*, nor has a clearance certificate been issued in terms of that section in respect of the sale of the specified asset concerned;

the agent shall withhold capital gains withholding tax from that amount and shall pay the tax withheld to the Commissioner no later than the third working day from the date on which he or she received the amount or within such further time as the Commissioner may for good cause allow.

[Subsection substituted by Act 22 of 1999 and amended by Act 16 of 2007 and Act 3 of 2009]

(2) Where capital gains withholding tax is withheld in accordance with subsection (1), the agent shall provide the payee with a certificate, in a form approved by the Commissioner, showing the following particulars, to the extent that the agent knows them—

- (a) the depositary's name and address; and
- (b) the payee's name and address; and
- (c) particulars of the property sold; and
- (d) the amount of capital gains withholding tax that has been withheld.

(3) For the purpose of this section, a person shall be deemed to be the agent of a payee and to have received an amount on behalf of that payee if—

- (a) that person's address appears as the address of the payee in the records of the depositary who paid the amount; and
- (b) the warrant, cheque or draft in payment of the amount is delivered at that person's address.

(4) Where a trust receives from a depositary an amount—

- (a) to the whole or part of which a beneficiary is entitled in terms of the trust; or
- (b) which in terms of section nine is deemed to accrue to a person as a capital gain;

then—

- (i) a trustee of that trust shall be deemed for the purpose of this section to be an agent in respect of that amount; and
- (ii) any such beneficiary shall be deemed for the purpose of this section to be a payee in respect of that amount.

(5) Any person deemed to be the agent of a payee in terms of subsection (3) or (4) shall, as regards the payee and in respect of any capital gain 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 a taxpayer in terms of section 58 of the Taxes Act.

(6) Where two or more agents hold the whole or any part of the price paid in respect of any one sale of a specified asset—

- (a) they shall be severally liable for payment of the full amount of capital gains withholding tax in respect of that sale, up to the amount held by them; and
- (b) payment by any one of them of any amount of capital gains withholding tax in terms of this section shall absolve the others or reduce their liability *pro tanto*, as the case may be.

[Subsection inserted by Act 22 of 1999]

(7) An agent need not withhold capital gains withholding tax in terms of subsection (1) if, before he pays any amount to or for the credit of the seller of the specified asset concerned—

- (a) he or the seller applies to the Commissioner for a clearance certificate in respect of the sale of that specified asset, and provides the Commissioner with such information regarding the sale as the Commissioner may reasonably require; and
- (b) the Commissioner, being satisfied that—
 - (i) no capital gains tax is likely to be payable in respect of the sale or that any capital gains tax so payable is likely to be less than the capital gains withholding tax required to be withheld in terms of subsection (1); and
 - (ii) adequate arrangements have been or will be made for the payment of any capital gains tax payable in respect of the sale;

has issued a clearance certificate in respect of the sale.

[Subsection inserted by Act 22 of 1999]

(8) A clearance certificate may be issued in terms of subsection (7) on such terms and conditions as the Commissioner may fix, including terms and conditions relating to the furnishing of a return or interim return for the assessment of capital gains tax.

[Subsection inserted by Act 22 of 1999]

(9) Where the amount received by an agent represents the whole or part of an instalment payable in a sale by instalments, the amount of capital gains withholding tax to be withheld from that amount and paid to the Commissioner in terms of subsection (1) shall be calculated as if the instalment were the full price at which the specified asset concerned was sold.

[Subsection inserted by Act 22 of 1999]

22E Payee to pay tax not withheld by depositary or agent

(1) Subject to subsections (2) and (4), where—

- (a) a payee receives an amount which represents the whole or part of the price of a specified asset; and
- (b) capital gains withholding tax has not been withheld from that amount in terms of section *twenty-two C* or *twenty-two D*, nor has a clearance certificate been issued in terms of either of those sections in respect of the sale of the specified asset concerned;

the payee shall pay to the Commissioner, no later than the third working day from the date on which the amount was received or within such further time as the Commissioner may for good cause allow, the amount of capital gains withholding tax that should have been withheld.

[Subsection amended by Act 16 of 2007 and Act 3 of 2009]

(2) A payee need not pay capital gains withholding tax in terms of subsection (1) if, before end of the period within which it is required to be paid in terms of that subsection—

- (a) he applies to the Commissioner for a clearance certificate in respect of the sale of that specified asset, and provides the Commissioner with such information regarding the sale as the Commissioner may reasonably require; and
- (b) the Commissioner, being satisfied that—
 - (i) no capital gains tax is likely to be payable in respect of the sale or that any capital gains tax so payable is likely to be less than the capital gains withholding tax required to be withheld in terms of subsection (1); and
 - (ii) adequate arrangements have been or will be made for the payment of any capital gains tax payable in respect of the sale;

has issued a clearance certificate in respect of the sale.

(3) A clearance certificate may be issued in terms of subsection (2) on such terms and conditions as the Commissioner may fix, including terms and conditions relating to the furnishing of a return or interim return for the assessment of capital gains tax.

(4) Where the amount received by a payee represents the whole or part of an instalment payable in a sale by instalments, the amount of capital gains withholding tax to be withheld from that amount and paid to the Commissioner in terms of subsection (1) shall be calculated as if the instalment were the full price at which the specified asset concerned was sold.

[Section substituted by Act 22 of 1999]

22F Exemptions

Notwithstanding section *twenty-two C*, *twenty-two D* or *twenty-two E*, capital gains withholding tax —

- (a) need not be withheld or paid where the amount concerned is exempt from capital gains tax in terms of section 10;
- (b) shall not be withheld or paid on the sale of marketable securities by a unit trust registered as an internal scheme under the Collective Investment Schemes Act, 1997, or as an asset manager under the Asset Management Act [*Chapter 24:26*] (Act No. 16 of 2004), but shall be withheld and paid on the redemption of any unit by an investor in the unit trust.

[Section substituted by Act 8 of 2005]

22FA Registration of depositaries

(1) Every person who acts as a depositary in the ordinary course of his business shall apply to the Commissioner for a registration certificate—

- (a) within thirty days after he commences that business; or
- (b) in the case of a person who was carrying on that business before the date of commencement of the Finance (No. 2) Act, 1999, within thirty days after that date.

(2) An application in terms of subsection (1) shall be made in writing and shall be accompanied by such information as the Commissioner may reasonably require to ascertain the applicant's identity, the place where he conducts his business and the nature and extent of his business as a depositary.

(3) On a receipt of an application in terms of subsection (1) and any information he may have required in terms of subsection (2), the Commissioner shall promptly issue the applicant with a registration certificate in the form prescribed.

(4) Any one who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Section inserted by Act 21 of 1999 and amended by section 4 of Act 22 of 2001]

22G Depositaries to furnish returns

(1) Subject to subsection (4), every conveyancer, legal practitioner, estate agent, stockbroker, financial institution and other person that performs the functions of a depositary in the ordinary course of business shall, on or before the last day of every month or at such other intervals as the Commissioner may permit, submit to the Commissioner a statement in the form prescribed giving such particulars as may be prescribed of—

- (a) all sales of specified assets which the person has concluded or negotiated on behalf of any other person; and

(b) all amounts of capital gains withholding tax the person has withheld in terms of section *twenty-two C*; during the preceding month.

(2) A return submitted in terms of subsection (1) shall be accompanied by the amount of capital gains withholding tax payable in respect of the sales to which the return relates.

(3) Subject to subsection (4), payment of capital gains withholding tax by a depositary, other than a depositary referred to in subsection (1), shall be accompanied by a return in the form prescribed.

(4) Where a person performs the functions of a depositary—

(a) in partnership or association with any other person, the Commissioner may permit a joint return to be submitted in respect of sales concluded or negotiated, and capital gains withholding tax withheld, by the partnership or association;

(b) as an employee, the Commissioner may permit his employer to submit a return of sales the employee has concluded or negotiated and capital gains withholding tax the employee has withheld, whether such return is submitted individually or as part of a joint return referred to in paragraph (a);

and any return submitted in terms of this subsection shall be a sufficient discharge of the person's obligations under subsection (1) or (3).

[Section substituted by Act 22 of 1999]

22H Penalty for non-payment of tax

(1) Subject to subsection (2), a depositary or an agent who fails to withhold or pay to the Commissioner any capital gains withholding tax as provided in section *twenty-two C* or *twenty-two D* 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 section *twenty-two C* or *twenty-two D*, as the case may be, of—

(a) the amount of capital gains withholding tax which should have been withheld; and

(b) a further amount equal to fifteen *per centum* of the capital gains withholding tax which should have been withheld.

(2) If the Commissioner is satisfied in any particular case that a failure to pay capital gains withholding tax was not due to any 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 (b) of subsection (1).

22I Refund of overpayments

(1) If it is proved to the satisfaction of the Commissioner that any person has been charged with capital gains withholding tax in excess of the amount properly chargeable to him in terms of this Part, the Commissioner shall authorise a refund in so far as it has been overpaid:

Provided that the Commissioner shall not authorise any such refund unless a claim for it is made within six years of the date on which the tax was paid.

(2) The Commissioner shall pay interest, calculated at a rate to be fixed by the Minister by statutory instrument, on any amount of capital gains withholding 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]

22J Credit where tax has been withheld

If a person to whom a capital gain has accrued proves to the Commissioner's satisfaction that capital gains withholding tax has been paid in respect of that capital gain, the capital gains withholding tax shall be allowed as a credit against any capital gains tax chargeable in terms of this Act in respect of that capital gain, and any excess shall be refunded.

22K Application of Part IIIA to sales concluded before 1.1.1999

(1) This Part shall not apply in respect of any sale of a specified asset which was concluded before the 1st January, 1999, even if a depositary pays any amount after that date to or for the credit of a seller as a consequence of that sale.

(2) Notwithstanding subsection (1), any amount paid purportedly by way of capital gains withholding tax in respect of a sale referred to in subsection (1) shall be regarded in all respects as if it had been validly paid in terms of this Part.

[Section inserted by Act 22 of 1999]

22L Suspension of provisions of Part IIIA relating to marketable securities

Notwithstanding sections *twenty-two A* to *twenty-two H*, this Part shall be suspended in respect of—

(a) the charging, levying and collecting of capital gains withholding tax on the sale of marketable securities; and

(b) the submission of returns by depositaries, to the extent that they hold moneys representing the price paid or payable in respect of the sale of marketable securities;

until such date as the Minister may specify by notice in the *Gazette*:

Provided that the date so specified shall not be earlier than one month after the date of publication of the notice.

[Section inserted by Act 22 of 1999]

PART IV

RETURNS AND ASSESSMENTS

23 Application of provisions of Taxes Act relating to returns and assessments

For the purposes of providing for and giving effect to the matters concerned in relation to this Act, the following provisions of the Taxes Act—

- (a) section 37 relating to the publication of notices regarding, and the furnishing of, returns and interim returns ;
[Subsection amended by Act 22 of 1999]
- (b) section 38 relating to the income of minor children;
- (c) section 39 relating to the furnishing of further returns and information;
- (d) section 40 relating to the Commissioner having access to public records;
- (e) sections 41 and 42 relating to shareholdings;
- (f) section 43 relating to the submission of returns and the preparation of accounts;
- (g) section 44 relating to the production of documents and evidence on oath;
- (h) section 45 relating to estimated assessments;
- (i) section 46 relating to additional tax in the event of default or omission;
- (j) section 47 relating to additional assessments;
- (k) section 48 relating to reduced assessments and refunds;
- (l) section 49 relating to amended assessments of loss;
- (m) section 50 relating to adjustments of tax;
- (n) section 51 relating to assessments and the recording thereof; and
- (o) section 52 relating to copies of assessments;
- (o1) Part VIIIA relating to application of information technology for the purposes of the Taxes Act;
[Paragraph inserted by Act 12 of 2006]
- (p) section 97A relating to calculation of interest payable;
[Paragraph inserted by Act 18 of 2004]

shall apply, *mutatis mutandis*, in relation to this Act.

PART V

REPRESENTATIVE TAXPAYERS

24 Application of provisions of Taxes Act relating to representative taxpayer

For the purposes of providing for and giving effect to the matters concerned in relation to this Act, the following provisions of the Taxes Act—

- (a) section 53 relating to representative taxpayers;
- (b) section 54 relating to the liability of representative taxpayers;
- (c) section 55 relating to the right of representative taxpayers to indemnity;
- (d) section 56 relating to the personal liability of representative taxpayers;
- (e) section 58 relating to the power to appoint an agent;
- (f) section 59 relating to the remedies of the Commissioner against an agent or trustee;
- (g) section 60 relating to the Commissioner's power to require information; and
- (h) section 61 relating to public officers of companies;

shall apply, *mutatis mutandis*, in relation to this Act.

PART VI

OBJECTIONS AND APPEALS

25 Objections and appeals

(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—
 - (i) paragraphs (b) and (e) of subsection (2) of section *eight*;
 - (ii) subparagraph A of subparagraph (ii) of paragraph (a) of subsection (2) of section *eleven*;
 - (iii) proviso (i) to subsection (3) of section *eleven*;
 - (iv) subsection (3) of section *thirteen*;
 - (v) section *fourteen*;
 - (vi) section *fifteen*;
 - (vii) proviso (i) to subsection (1) of section *nineteen*;
 - (viii) the definition of “principal private residence” in subsection (1) of section *twenty-one*;
 - (ix) subsection (2) of section *twenty-one*;
 - (x) subsection (6) of section *twenty-one*;

may, unless it is otherwise provided in this Act, object to such assessment or decision within thirty days after the date of the notice of assessment or of the written notification of the decision 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 capital loss determined in respect of the previous year of assessment.

(2) The provisions of—

- (a) subsections (2), (3), (4), (5) and (6) of section 62 of the Taxes Act, relating to objections; and
- (b) sections 63 to 70 of the Taxes Act, relating to objections and appeals;

shall apply, *mutatis mutandis*, in relation to this Act for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

PART VII

PAYMENT AND RECOVERY OF TAX

26 Day and place for payment of tax

(1) Tax shall become due and payable—

- (a) no later than thirty days from the date when a specified asset referred to in section 18(1) or 19(1) accrues to the taxpayer in terms of those provisions; or
- (b) in any case other than one referred to in paragraph (a), no later than thirty days from the date when title to the specified asset in question is formally transferred to the taxpayer; or
- (c) no later than the last date specified in terms of section 22C, 22D and 22E, if that date is earlier than the last date referred to in paragraph (a) or (b):

Provided that nothing herein contained shall deprive any taxpayer of the right to pay his tax through the post.

(2) Tax 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) If tax is not paid on or before the date specified in terms of subsection (1)(a) or (b), interest, calculated at a rate to be fixed by the Minister, by statutory instrument, shall be payable on so much of the tax as from time to time remains unpaid by the taxpayer during the period beginning on the date specified by the Commissioner in the notification as the date on which the tax shall be paid 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.

(4) For the purposes of collecting the tax and any interest payable in terms of subsections (1) and (3) the Commissioner shall have the same powers as are conferred by the Taxes Act for the collection of income tax and the provisions of the Taxes Act shall apply accordingly with any necessary changes.

[Section substituted by Act 16 of 2007]

PART VIII

GENERAL

27 Application of provisions of Taxes Act relating to offences, evidence forms and regulations

The provisions of—

- (a) sections 81 to 86, relating to offences;
- (b) sections 87 and 88, relating to evidence and proof;
- (c) section 89, relating to forms and authentication and service of documents;
- (d) section 90, relating to regulations;

of the Taxes Act shall apply, *mutatis mutandis*, in relation to this Act, for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

28 Application of provisions of Taxes Act relating to relief from double taxation

The provisions of section 91 of the Taxes Act relating to relief from double taxation shall apply, *mutatis mutandis*, in relation to this Act, for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

29 Application of provisions of Taxes Act relating to tax avoidance

The provisions of section 98 of the Taxes Act relating to tax avoidance shall apply, *mutatis mutandis*, in relation to this Act, for the purposes of providing for and giving effect to the matters concerned in relation to this Act.

30 Transitional provision re capital gains and losses of married women

Where in terms of this Act a gross capital amount 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 a capital amount 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 capital gain accruing to or assessed capital loss carried forward by her husband from that source; or
- (b) any right of election exercised by or allowance or deduction granted to her husband in respect of the capital gain or assessed capital 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 capital gain, assessed capital loss, election, allowance or deduction.

30A Capital gains tax not withheld in terms of Part IIIA to be paid before transfer of specified asset

(1) No registration of the acquisition of a specified asset in respect of which capital gains tax is not withheld in terms of Part IIIA shall be executed, attested or registered by—

- (a) the Registrar of Deeds in terms of the Deeds Registries Act [*Chapter 20:05*];
- (b) the person responsible for registering the transfer of shares of any company registered or incorporated in terms of the Companies Act [*Chapter 24:03*];

unless there is submitted to the Registrar of Deeds or the person concerned by either of the parties or their agents concerned in the transaction a certificate issued by the Zimbabwe Revenue Authority stating that any capital gains tax payable on the acquisition of the specified asset has been paid.

(2) No registration of the acquisition of—

- (a) a stand that originated from a land development scheme and was subsequently ceded by the original beneficiary of the scheme to a cessionary (or, where further or more cessions of the stand occurred after that, by the cessionary seeking the registration of the stand); or
- (b) a membership interest in a condominium that is evidenced by the registration of sectional title in terms of section 27 of the Deeds Registries Act [*Chapter 20:05*];

shall be executed, attested or registered by the Registrar of Deeds in terms of the Deeds Registries Act [*Chapter 20:05*] unless the cessionary or acquirer of the membership interest in the condominium submits to the Registrar of Deeds a certificate issued by the Zimbabwe Revenue Authority stating that any capital gains tax payable on the cession of the stand or acquisition of the membership interest has been paid.

[Section inserted by Act 15 of 2002, heading amended by Act 10 of 2003, subsection (2) inserted by Act 1 of 2014]

31 Returns by Registrar of Deeds, financial institutions and other persons

(1) At such intervals as the Commissioner may require, the Registrar of Deeds shall notify the Commissioner in the form prescribed of—

- (a) all transfers of immovable property registered in the Deeds Registry during the period covered by the notification; and
- (b) the name and address of the transferor and the transferee in each transfer referred to in paragraph (a); and
- (c) the price, if any, at which each property referred to in paragraph (a) was transferred.

(2) Subject to subsection (3), whenever any marketable security is sold by or through the agency of—

- (a) a bank or other institution registered or required to be registered under the Banking Act [*Chapter 24:01*]; or
- (b) a building society registered or required to be registered under the Building Societies Act [*Chapter 23:02*]; or
- (c) a broker licensed or required to be licensed under the Securities Act [*Chapter 24:18*];

the institution, society or broker, as the case may be, shall forthwith notify the Commissioner in the form prescribed of—

- (i) the name and address of the seller and the purchaser; and
- (ii) the nature of the marketable security; and
- (iii) the price, if any, at which the marketable security was transferred:

Provided that, with the Commissioner's consent, such notification may be made at such intervals as the Commissioner may require.

[Subsection amended by section 120 of Act 17 of 2004]

(3) Subsection (2) shall be suspended until such date as the Minister may specify by notice in the *Gazette*:

Provided that the date so specified shall not be earlier than one month after the date of publication of the notice.

[Section inserted by Act 22 of 1999]