

## Overview

The Zambian tax framework comprises both indirect tax and direct tax. As a former British protected territory, Zambia inherited essentially the English colonial legacy of tax legislation. The direct taxes are principally income tax, which operates on a source-based principle. Thus, every person or entity who receives income from a source deemed to be within Zambia will be liable to income tax in Zambia. Apart from the source principle, the issue of residence of a taxpayer becomes critical with regards to taxation of interest and dividends received from a source outside of Zambia.

Other direct taxes include withholding tax, which is charged on dividends, interest, royalties, rent and management or consultancy fees. The last type of direct tax is the property transfer tax, which is chargeable on transfer of shares, land and more recently mineral rights. In addition to this, there is also a Pay As You Earn tax (PAYE). This is income tax charged on the earnings of an employee's emoluments.

Zambia charges value-added tax (VAT) on any transaction relating to the sale of goods and services conducted in the country. It is important to note that services procured outside of Zambia, but used in the country, are subject to a reverse charge VAT in the absence of the provider of a service appointing a tax agent in Zambia.

An excise duty is payable on goods manufactured in Zambia and also on the sale of airtime. Customs duty is charged on the importation of goods.

Zambia has also signed various double-taxation treaties with various countries, which are part of the national legislation as schedules to the Income Tax Act. The 2016 Constitution also now requires that future treaties be ratified by the Parliament.

Zambia is member of the Inclusive Framework on Base Erosion and Profit Sharing (BEPS) established by the Organisation for Economic Co-operation and Development (OECD) and the G20.

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# Legal system

Zambia is a unitary state operating under a common law legal system that hails from its legacy as a British protected territory. Tax laws are comprised of 1) principle legislation and 2) delegated legislation in the form of statutory instruments issued by the Ministry of Finance or rules issued by the commissioner general of the Zambia Revenue Authority (ZRA). Local authorities do not collect or administer any taxes.

## Taxation authorities

The ZRA administers the tax system through 10 offices nationwide. The Zambia Revenue Authority Act is the principal legislation dealing with the administration of the ZRA. It provides for the establishment of the ZRA and the appointment of the commissioner general and staff.

## Business vehicles

Zambia provides for various entities to conduct business. The principle forms of business vehicles include sole traders, partnerships, companies and corporations.

### Partnerships

Partnerships are generally treated as unincorporated entities for tax purposes. This means that they have no legal personality and each partner is individually and severally liable to pay income tax as if they were a sole trader. The partners of the partnerships are required under the provisions of the Income Tax Act (ITA) to file quarterly, provisional and annual individual income tax returns. The concept applied to tax a partnership is “flow-through taxation.” The entity does not pay taxes on its income; instead the partners of the entity pay their portion of their drawings/profits. The test for a partnership is whether two or more people are carrying on a business with a view of profit.

Other than income tax, partners are jointly and severally liable for taxes that are an expense of the business, such as VAT and PAYE.

### Companies

Zambia has three types of companies. The first type of company is a private limited company, which is limited by the number of shares. This means that the private limited company is limited to a maximum of 50 shareholders as per the Companies Act. Companies limited by shares are expected to have a minimum share capital of ZMW15,000. The Companies Act makes provision for share reserve account known as a premium account. The second type is a publicly listed company, which is listed on the Lusaka Stock Exchange. Thirdly, we have companies limited by guarantee of its members. These companies are limited to non-profit activities.

Companies are required to have at least two shareholders. There is no residency requirement for shareholders, but by law at least half of the board of directors must be resident in Zambia.

See Section 6.1 for discussion of corporate income tax.

### Foreign local branch or subsidiary

The Companies Act provides that a foreign company may register a branch in Zambia. The law requires that the company appoint a local director who is resident in Zambia. No capital duty is imposed on the formation of the branch, only a minimal branch registration fee.

See Section 6.3 for discussion of local branch or subsidiary income tax obligations.

## Financing a corporate subsidiary

### Equity financing

## Contribution for shares

When an equity investment is made into a Zambian company in exchange for shares, the investment amount is added to the company's minimum share capital as paid-up capital. Equity financing takes the form of money paid by a new shareholder in exchange for ownership of shares in the business. Non-resident shareholders are subject to a 20% withholding tax on the payment of dividends in Zambia, unless otherwise determined by a relevant double taxation treaty.

Dividends are payable at the discretion of the board of directors, as long as the company is solvent. There is no compulsory dividend payment and no capital tax payable on the minimum share capital of the company. There is no investment tax on minimum share capital. The only statutory fee payable on minimum capital is when a company's share capital is increased; this carries a fee of 2.5% of the increased share capital plus ZMW175.

Dividend payments are not tax-deductible.

## Contributions without taking additional shares

A company can issue bonus shares to its shareholders without contribution to equity by using its share premium account (such account, as noted earlier, is required by the Companies Act). The share premium account represents the difference between the par value of the shares issued and the subscription or issue price. The share premium account is not distributable except for among others paying up unissued shares, which are issued to shareholders of the company as fully paid-up bonus shares. Other authorized uses of the share premium account include writing off preliminary expenses of the company and expenses of commission paid or discount allowed on any issued capital. The issuance of bonus shares is not subject to any tax.

## Debt financing

### Withholding tax implications

Zambian companies may obtain financing through loans from a bank or other financial institution, or through domestic or international shareholders. Since dividend payments are not tax-deductible, debt financing provides an optimal tax structure on account of the fact that interest on loans by a shareholder are deductible. This is, however, subject to transfer pricing rules requiring arm's length interest payments and thin capitalization rules. As stated earlier, withholding tax on interest paid by a local company to a non-resident is 20%.

### Thin capitalization

If a subsidiary is to be financed by debt, it is subject to the thin capitalization rules. The current thin capitalization limit applies to interest deductions exceeding 30% of EBITDA. The Income Tax Act requires that a loan transaction be at arm's length by reference to the following:

- i. The appropriate level or extent of the issuing company's overall indebtedness
- ii. Whether the amount issued would have been provided as a loan on an arm's length basis
- iii. The rate of interest and other terms that would apply to such an arm's length loan

## Stamp tax

Zambia does not impose a stamp tax in respect of debt or equity financing.

# Corporate income tax

## Income tax rate

Companies are generally taxed at a corporate rate of 35% on profits. However, companies operating in certain sectors have a different corporate tax rate. Income from the agricultural sector and non-traditional exports is taxed at 15%. Telecommunications companies with an income exceeding ZMW250,000 are taxed at of 40%, the highest corporate tax rate applied in Zambia. Companies listed on the Lusaka Stock Exchange also pay the incentive tax rate of 33% on profits.

## Capital gains

There is no capital gains tax in Zambia.

## Branch tax

There are no differences in the manner in which a local subsidiary and a local branch of a non-resident may be taxed. However, profit repatriated to the foreign parent company is subject to a 20% withholding tax. If the foreign parent company is located in a country with which Zambia has a double taxation treaty, the relevant provisions of the treaty regulating profit attribution will apply.

## Computation of taxable income

### Taxable base

A taxpayer is subject to tax on its profits and from carrying on a business enterprise. Profit is calculated by subtracting deductible expenditures from revenue.

### Deductions

The Income Tax Act allows a taxpayer to deduct all expenses from their gross income. According to the Income Tax Act, only expenses that are wholly and exclusively incurred in the course of production of income are deductible. Expenses of a capital nature are excluded. To determine whether an expense is capital in nature, it depends on the nature of each transaction.

## Income tax reporting

An entity that derives its source of income from Zambia, or from a source deemed to be income from Zambia is required to file income tax returns. These take two forms: provisional income tax returns and annual income tax returns.

The returns are due and payable on the following dates:

- i. Provisional income tax: first installment due March 31, payable by April 10; second installment due June 30, payable July 10; third installment due September 30, payable by October 30; fourth and final installment due December 31, payable by January 10. All payments are due in the same year
- ii. Annual/final income tax: payable by June 30 of the next fiscal year

# Cross-border payments

## Transfer pricing

Under the Income Tax (Transfer Pricing) Amendment Regulations No. 24 of 2018, the ZRA may impose a transfer pricing adjustment in respect of a transaction that is not made on arm's length terms or conditions. Zambian taxpayers are also required to maintain contemporaneous documentation in respect of transactions subject to transfer pricing rules.

## Withholding tax on passive income

As stated earlier, a tax of 20% is imposed on dividends paid by a local resident company to a non-resident. The same rate of withholding tax applies on interest paid by a local company to a non-resident. Please take note of the thin capitalization limit on interest deductions for interest amounts exceeding 30% of EBITDA earlier referred to. Note should also be taken of the arm's length rate discussed in Section 5.2.2.

## Withholding tax on services fees

Zambia applies withholding tax on management or consultation fees, royalties and carriage of passengers, mail, livestock of goods and commissions. The rate of withholding tax is 20% payable by a local company to a non-resident.

# Payroll taxes

## Pay As You Earn (PAYE)

The Income Tax Act provides for payment of employees' income tax through what is known as PAYE. The current tax bands provide for a top rate of 37.5%.

## National Pension Scheme Authority (NAPSA)

Employers paying remuneration to employees are liable to make contributions to the NAPSA. Employers contribute 15%, while employees contribute 5%.

## Employment health insurance

The National Health Insurance Act 2018 requires employers to pay to the NAPSA an employee's contribution at the end of each month. This consists of the employer's contribution and the employee's contribution at a prescribed percentage. A self-employed citizen or established resident must pay a contribution to the scheme as prescribed, with exemptions for persons with disabilities who are unable to work, persons over the age of 65, persons classified as poor and vulnerable by the ministry responsible for social welfare and any other person as may be prescribed by the minister.

# Indirect taxes

## Value-added tax (VAT)

VAT is payable on all goods and services consumed in Zambia, at a current standard rate of 16%. The VAT Act provides for standard rated, zero rated and exempt supplies. A reverse-charge VAT is also imposed on goods and services rendered by a foreign supplier if that supplier does not appoint a tax agent. Certain goods, including all exports, are zero-rated for VAT purposes. Certain services, such as financial services, are exempted.

## Property transfer tax (PTT)

PTT is payable on any transfer of shares, mineral rights, intellectual property rights including patents, trademark or industrial design and land in Zambia. The current rate is 5% of the realized value (market value) of the property to be sold. An exemption is provided for the internal reorganization of a company resident in Zambia. Equity contributions are also exempt.

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