COUNTRY COMPARATIVE GUIDES 2023

The Legal 500 Country Comparative Guides

Zambia

TAX

Contributor

Dentons Eric Silwamba, Jalasi & Linyama

Joseph Alexander Jalasi Jr.

Senior Partner, Lusaka | joseph.jalasi@dentons.com

Wana Chinyemba

Associate, Lusaka | wana.chinyemba@dentons.com

This country-specific Q&A provides an overview of tax laws and regulations applicable in Zambia.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

ZAMBIA
TAX

1. How often is tax law amended and what is the process?

The usual cycle of amendment is once a year. This usually follows revenue measures announced by the Government in its annual budget which is presented in the last quarter of the year. The Amendment proposals are presented to parliament in the forms of what are known as Bills of Parliament. They are usually approved in December but the amendments take effect on the 1st of January of each fiscal year. In rare circumstances it is possible that an amendment will be made in the middle of the fiscal year however, this is extremely rare.

The process of amending tax legislation like any other legislation is by submitting the proposed amendments to Parliament. It is usual for the Minister of Finance to invite proposals in the third quarter of the year that should be considered for amendment. This however, is not a mandatory procedural legal requirement. Once presented to Parliament the Bills are then deliberated upon. Should Parliament approve the proposed amendments, after passing through the three stages, namely, first reading (Presentation Stage), second reading (Committee and Report Stage) and third reading (Approval stage) the amendments are then incorporated in the existing legislation and published as amended law in the Government Gazette.

At this stage the law either takes effect on publication in the Government Gazette or on issue of a Commencement Order by way of Statutory Instrument.

2. What are the principal administrative obligations of a taxpayer, i.e. regarding the filing of tax returns and the maintenance of records?

Tax payers are expected to comply with provisional and final income tax requirements with respect to the Income Tax Act. Tax returns with respect to provisional tax are expected to be filed quarterly and tax returns with respect to final income tax are expected to be filed on or before the 21st day of June following the end of the tax year.

With respect to Value Added Tax, a tax payer is required to make a monthly return. The return should be made by the 16th or 18th day of the month following the transaction period. The former date being with respect to manual returns and the latter being for electronic returns.

With regard to Customs Duty, a tax payer is required to make a return upon importation of goods into the country.

The Excise Duty return should be made by the 14th day of the month following the transaction period.

Books, accounts, documents, records and other information relating to the business should be retained for the period not exceeding 10 years.

3. Who are the key tax authorities? How do they engage with taxpayers and how are tax issues resolved?

The Zambia Revenue Authority (ZRA) is the tax regulatory body in Zambia. The period it takes to resolve standard issues varies depending on the facts of the issue. From experience, disputes are resolved within a reasonably short time, this however entirely depends on the complexity of the matter.

4. Are tax disputes heard by a court, tribunal or body independent of the tax authority? How long do such proceedings generally take?

The dispute resolution system is two tier. The first is the ZRA internal appeal process which usually takes the form of an appeal against a tax assessment to the Commissioner under which jurisdiction the relevant tax falls. If a party is dissatisfied with a decision of the Commissioner, he can then appeal to the Commissioner

General whose office has a tax appeals Unit.

If a tax payer is dissatisfied with a decision of the Commissioner General, the tax dispute is adjudicated upon by the Tax Appeals Tribunal.

The second is an appellate where decisions of the Tax Appeals Tribunal are appealed to the Supreme Court. The Length of adjudication depends on the complexity of the matter.

5. What are the typical deadlines for the payment of taxes? Do special rules apply to disputed amounts of tax?

The Income Tax Act provides that Provisional Tax is due and payable on the following dates in a respective tax year:

1. 1st instalment – 31st March, payable by 10th April;
2. 2nd instalment – 30th June, payable by 10th July;
3. 3rd installment – 30th September, payable by 10th October; and
4. 4th instalment – 31st December, payable by 10th January;
5. The final income tax instalment is payable on or before the 21st day June.

Withholding Tax should be paid within 14 days after the end of the period in which the transaction took place.

Property Transfer Tax should be paid within 14 days of ZRA raising the tax assessment upon filing a return.

The VAT Act provides that a monthly return should be made by the 16th or 18th day of the month following the transaction period. The former date being with respect to manual returns and the latter being for electronic returns. The tax payer is expected to pay simultaneously with the filing of the return

With regard to Customs Duty, a tax payer is required to make payment within seven days upon assessment of the goods at the port of entry.

The Excise Duty should be paid within 14 days of the date of the transaction.

6. Are tax authorities subject to a duty of confidentiality in respect of taxpayer data?

Section 8 of the Income Tax Act, Chapter 323, Volume 19, of the Laws of Zambia and Section 21 of the Zambia Revenue Authority Act, Chapter 323, Volume 19, of the Laws of Zambia provides that the information is confidential but that confidentiality does not extend to investigations by law enforcement agencies.

7. Is this jurisdiction a signatory (or does it propose to become a signatory) to the Common Reporting Standard? Does it maintain (or intend to maintain) a public register of beneficial ownership?

Zambia Is not a signatory to Common Reporting Standard. However, the Patents and Companies Registration Agency, pursuant to Section 21 (2) of the Companies Act No 10 of 2017 has provision for a beneficial ownership register.

8. What are the tests for determining residence of business entities (including transparent entities)?

A company is said to be resident if it is incorporated or formed under the laws of Zambia or if its activities in Zambia have led to the formation of a permanent establishment.

9. Do tax authorities in this jurisdiction target cross border transactions within an international group? If so, how?

Yes. Authorities in our jurisdiction target cross border transactions within an international group. For instance, Zambia has transfer pricing rules. Of particular note is the Income Tax (Transfer Pricing) Regulations, Statutory Instrument No. 20 of 2000 (as amended) made pursuant to the Income Tax Act, Chapter 323, Volume 19, of the Laws of Zambia governing matters relating to income tax payable in relation to transactions of companies.

Further, The Zambia Revenue Authority (ZRA) Transfer Pricing Guidelines, under Paragraph 1(e) of the Annex, published in June 2020, states that in its documentation a multinational enterprise (MNE) should include a list and brief description of the MNE group’s existing unilateral advance pricing agreements and other tax rulings relating to the allocation of income among countries.

Additionally, Property Transfer Tax (PTT) is levied by ZRA in relation to indirect transfer of shares in holding companies resident outside Zambia where they own at least 10% of the shares of a country in Zambia. This is provided by the Property Transfer Act, Chapter 340, Volume 19, of the Laws of Zambia.

10. Is there a controlled foreign corporation (CFC) regime or equivalent?

Yes, Thin Capitalisation limit on interest deductions exceeding 30% of EBITDA was introduced effective 1st January 2019. The law requires that the transaction is undertaken at an arm's length rate by reference to :

1. the appropriate level or extent of the issuing company's overall indebtedness;
2. whether the amount issued would have been provided as a loan on an arm's length basis; and
3. the rate of interest and other terms that would apply to such an arm's length loan

Yes, Zambia has the Income Tax (Transfer Pricing) (Amendment) Regulations No. 24 of 2018 and the Organisation for Economic Co-operation and Development Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines").

There is no regulation that supports advance pricing agreement.

11. Is there a transfer pricing regime? Is there a "thin capitalization" regime? Is there a "safe harbour" or is it possible to obtain an advance pricing agreement?

Zambia has implemented the Income Tax (Transfer Pricing) Rules, interest deduction restrictions and anti-avoidance rules. Zambia is a member of the Organization for Economic Corporation and Development.

12. Is there a general anti-avoidance rule (GAAR) and, if so, how is it enforced by tax authorities (e.g. in negotiations, litigation)?

Yes, anti-avoidance regulations are provided for under the provisions of Section 95 of Income Tax Act. This was applied in the case of D DONKIN SENIOR & D DONKIN JUNIOR v ZAMBIA REVENUE AUTHORITY 2002/RAT/43.

13. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?

Besides the proposed introduction of a levy between 8 ngwee to ZMW 1.80 on the transaction value for person-to-person mobile money transfer, Zambia has not taken any unilateral action in regard to digital activities.

Therefore, there is currently no specific legislation enacted to tax digital services which are taxed through the existing legislation on Income Tax and Value Added Tax.

14. Have any of the OECD BEPS recommendations, including the OECD's recent two-pillar solution to address the tax challenges arising from digitalisation of the economy, been implemented or are any planned to be implemented?

Yes, these include the Income Tax (Transfer Pricing) documentation requirements, Interest deduction restrictions, and the provision of the Income Tax Act on anti-avoidance.

Although Zambia is a member of the inclusive framework, no legislation pertaining to Pillars 1 and 2 has been enacted

15. How has the OECD BEPS program impacted tax policies?

It resulted in the introduction of stringent Transfer Pricing Regulations and review of the Thin Capitalisation Variation Rules.

16. Does the tax system broadly follow the OECD Model i.e. does it have taxation of: a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties? If so, what are the current rates and how are they applied?

Rates for business profits/corporate – 35%

Employment Income/Pay As You Earn (PAYE) – 37% (upper limit);

Pension/Gratuity – 0%

VAT – 16%;

Withholding Tax on Dividends by a local Company – 20%;

Withholding Tax on Royalties by a local Company to a Non-Resident – 20%; and

Withholding Tax on interest by a local Company to a Non-Resident – 20%.

17. Is business tax levied on, broadly, the revenue profits of a business computed in accordance with accounting principles?

Yes.

18. Are common business vehicles such as companies, partnerships and trusts recognised as taxable entities or are they tax transparent?

Yes. Common business vehicles such as companies, partnerships and trusts are recognized as taxable entitles.

Notably, Companies limited by shares and Partnerships are the most common vehicles for business simply because their structures are well understood and their regulatory environment well established.

19. Is liability to business taxation based on tax residence or registration? If so, what are the tests?

It is based on source of income. However the residence test, is set out in section 4 of the Income Tax Act. The liability under section 4 of the Income Tax Act requires that for Income to be taxed under the Zambian Tax Act it must be deemed to be from a source within the Republic of Zambia.

In the case **of JAYESH SHAH V ZAMBIA REVENUE AUTHORITY 1999RAT/14 & 15** it was held that section 14(1)(a) of the Income Tax Act does not differentiate between a resident or non-resident regarding imposition of tax on income received from a source deemed to be from the Republic of Zambia.

20. Are there any favourable taxation regimes for particular areas (e.g. enterprise zones) or sectors (e.g. financial services)?

Under the Zambia Development Agency Act and the Investment, Trade and Business Development Act, No. 18 of 2022 investments of US$ 500,000 and above in a Multi Facility Economic Zone, an Industrial Park, a Priority Sector and investment in a Rural Enterprise, are entitled to the following fiscal incentives:

(i) Zero percent import duty rate on capital equipment and machinery including trucks and specialized motor vehicles for five years.

(ii) Accelerated depreciation on capital equipment and machinery including trucks and specialized motor vehicles for five years.

Additionally measures proposed for implementation in the 2024 budget year in relation to Multi-Facility Economic Zones encompass the accelerating depreciation up to 100 percent in respect of any new implement, plant or machinery to developers of Multi-Facility Economic Zones; and Provision for the extension of the validity period for the customs duty incentives accessible by a developer of a Multi-Facility Economic Zone for 5 years upon fulfilment of the conditions as may be prescribed.

21. Are there any special tax regimes for intellectual property, such as patent box?

No, however, property transfer tax is charged on the realized value in relation to a transfer of intellectual property at the rate of 5%.

22. Is fiscal consolidation permitted? Are groups of companies recognised for tax purposes and, if so, are there any jurisdictional limitations on what can constitute a tax group? Is there a group contribution system or can losses otherwise be relieved across group companies?

No.

23. Are there any withholding taxes?

There is withholding tax on management fees, consultancy fees, royalties, interest and dividends.

24. Are there any environmental taxes payable by businesses?

There are no environmental taxes payable however entities conducting mining activities are required to contribute to the environmental protection fund.

25. Is dividend income received from resident and/or non-resident companies taxable?

Yes it is taxed by way of withholding tax.

26. What are the advantages and disadvantages offered by your jurisdiction to an international group seeking to relocate activities?

There is no special consideration for businesses seeking to relocate on account of Brexit other than what is already in place under the Zambia Development Agency Act. In this Act, investments of US$ 500,000 and above in a Multi Facility Economic Zone, an Industrial Park, a Priority Sector and investment in a Rural Enterprise, are entitled to the following fiscal incentives:

(i) Zero percent import duty rate on capital equipment and machinery including trucks and specialized motor vehicles for five years. (ii) Accelerated depreciation on capital equipment and machinery including trucks and specialized motor vehicles for five years.

Contributors

Joseph Alexander Jalasi Jr.
Senior Partner, Lusaka

joseph.jalasi@dentons.com

Wana Chinyemba
Associate, Lusaka

wana.chinyemba@dentons.com