

THE TAX APPEALS TRIBUNAL ACT, 2015

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GOVERNMENT OF ZAMBIA

ACT

No. 1 of 2015

Date of Assent: 7th April, 2015

An Act to continue the existence of the Revenue Appeals Tribunal and rename it as the Tax Appeals Tribunal; provide for the composition and functions of the Tax Appeals Tribunal; repeal the Revenue Appeals Tribunal Act, 1998; and provide for matters connected with, or incidental to the foregoing.

[7th April, 2015

ENACTED by the Parliament of Zambia.

Enactment

PART I
PRELIMINARY

1. This Act may be cited as the Tax Appeals Tribunal Act, 2015. Short title
2. In this Act, unless the context otherwise requires— Interpretation
 - (a) a person who is a nominee or an employee of a member;
 - (b) a former spouse or conjugal partner of a member;
 - (c) a firm of which a member, or the member's nominee, is a partner or a person in charge or in control of its business or affairs;
 - (d) a company in which a member or the member's nominee, is a director or is in charge or in control of its business or affairs, or in which a member, alone or together with the member's nominee, holds a controlling interest or shares amounting to more than thirty percent of the total share capital;

(e) the trustee of a trust, where

(i) the trust has been created by a member;
or

(ii) the total value of the assets contributed by a member before or after the creation of the trust, amounts, at any time, to not less than twenty percent of the total value of the assets of the trust;
or

(f) a member's employer.

Cap. 321

" Commissioner-General " means the person appointed Commissioner-General under the Zambia Revenue Authority Act;

" Chairperson " means the person appointed Chairperson of the Tribunal under section *four*;

Act No. 11
of 1998

" former Tribunal " means the Revenue Appeals Tribunal established under the repealed Act;

" member " means a member of the Tribunal;

" Registrar " means the person appointed Registrar of the Tribunal under section *six*;

" relative " means —

(a) a member's son, daughter, brother, sister, nephew, niece, uncle, aunt, grandparent or cousin; and

(b) a member's spouse or the spouse of any of the persons mentioned in paragraph (a);

Act No. 11
of 1998

" repealed Act " means the Revenue Appeals Tribunal Act, 1998;

" Tribunal " means the Tax Appeals Tribunal provided for under section *three*; and

" ViceChairperson " means the person appointed Vice-Chairperson under section *four*.

Continuation
and re-
naming of
Revenue
Appeals
Tribunal

3. The Revenue Appeals Tribunal established under the repealed Act continues to exist as if established under this Act and is for purposes of this Act re-named the Tax Appeals Tribunal.

Composition
of Tribunal

4. (1) The Tribunal shall consist of the following members appointed by the Minister—

(a) three legal practitioners of ten years or more standing recommended by the Judicial Service Commission and who have sufficient knowledge of, and experience in, tax matters;

(b) two qualified accountants certified as such by the Zambia Institute of Chartered Accountants; and

(c) two persons from the business community.

(2) The Minister shall appoint a Chairperson and ViceChairperson from amongst the members who are legal practitioners.

(3) A member shall, subject to subsections (4) and (5), hold office for a period of four years from the date of appointment but may be reappointed for one further term.

(4) A member may resign upon giving three months' notice, in writing, to the Minister.

(5) The office of a member becomes vacant if the member—

(a) dies;

(b) is absent, without reasonable excuse, from three consecutive meetings of the Tribunal of which the member had notice;

(c) is an undischarged bankrupt;

(d) becomes mentally or physically incapable of performing the functions of a member;

(e) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine; or

(f) who is a legal practitioner or an accountant, ceases to practice as such on disciplinary grounds confirmed by the Law Association of Zambia or the Zambia Institute of Chartered Accountants, respectively.

(6) The Minister shall, where a vacancy occurs in accordance with subsections (4) and (5), appoint a new member in accordance with subsection (1), but that member shall hold office only for the unexpired part of the term.

(7) The Minister may appoint alternate members who shall have and may perform the functions of a member if the member is ill, absent or for any other reason unable to exercise the functions of a member.

(8) A member shall be paid such remuneration and allowances as the Minister may determine.

- Functions of Tribunal
5. The functions of the Tribunal are to hear and determine —
- (a) appeals from decisions of the Commissioner-General under the Customs and Excise Act, the Income Tax Act, the Property Transfer Tax Act, the Value Added Tax Act and other tax legislation; and
- (b) any matter prescribed by the Minister, by statutory instrument, to be a matter against which an appeal may be made under the Acts referred to in paragraph (a).
- Cap. 322
Cap. 323
Cap. 340
Cap. 331
- Registrar of Tribunal
6. (1) There shall be a Registrar who shall be appointed by the Judicial Service Commission.
- (2) The Registrar shall, subject to this Act—
- (a) issue summonses;
- (b) keep a record of the proceedings of the Tribunal;
- (c) keep, or cause to be kept and maintained, a register of orders and judgments of the Tribunal;
- (d) have the custody, and keep an account, of fees and other moneys payable or paid to the Tribunal, and shall keep proper accounts of the moneys;
- (e) subject to any rules made under this act, hear and determine interlocutory applications; and
- (f) have such other functions and exercise such other powers as may be conferred by rules made under section *eighteen*.
- (3) A direction or order made on an interlocutory application under paragraph (e) of subsection (2) shall not be so made as to prejudice the Tribunal from rendering a just decision on a matter.
- (4) A person aggrieved with a decision of the Registrar may appeal to the Chairperson and in the absence of the Chairperson, the Vice-Chairperson and in the absence of both the Chairperson and Vice-Chairperson, a member who is a legal practitioner.
- (5) A person shall not be appointed as Registrar unless the person is a legal practitioner of five years or more standing.
- (6) The Ministry shall provide such other staff as may be necessary for the performance of the functions of the Tribunal.

7. (1) A person may appeal to the Tribunal for a determination on any matter which falls within the jurisdiction of the Tribunal. Appeal to Tribunal

(2) An appeal, application or other document required to be filed under this Act shall be filed in the office of the Registrar.

8. (1) The Tribunal shall sit at such places and times as the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson may determine. Proceedings of Tribunal

(2) The Chairperson shall preside over the sittings of the Tribunal, and in the absence of the Chairperson, the Vice-Chairperson shall preside.

(3) The Tribunal shall, when hearing a matter, be duly constituted if it consists of three members, which number shall include either the Chairperson or the Vice-Chairperson.

(4) The Tribunal may sit as a circuit Tribunal.

(5) Three members of the Tribunal shall constitute a circuit Tribunal, which number shall include the Chairperson, Vice-Chairperson or a member who is a legal practitioner.

(6) A hearing before the Tribunal shall, for all purposes, and in particular for the purposes of Chapter XI of the Penal Code, be deemed to be a judicial proceeding. Cap. 87

(7) The determination of any matter before the Tribunal shall be according to the opinion of the majority of the members considering the matter, except that—

(a) in the event of an equality of votes, the person presiding at the sitting shall have a casting vote in addition to a deliberative vote; and

(b) where in any matter before the Tribunal the dispute to be resolved is on a point of law, the decision of the person presiding at the sitting shall prevail.

(8) A person appearing as a party before the Tribunal may appear in person or through a legal practitioner at the person's own expense.

(9) A member who is present at a meeting or hearing of the Tribunal at which any matter in which the member's relative or associate is directly or indirectly interested in a private capacity is the subject of consideration shall, as soon as is practicable after the commencement of the meeting or hearing, disclose such interest and shall not, unless the Tribunal otherwise directs, take part in any consideration or discussion of or vote on any question relating to that matter.

(10) A disclosure of interest made under this section shall be recorded in the record of proceedings at which it is made.

(11) The validity of any proceedings, act or decision of the Tribunal shall not be affected by any vacancy in the membership of the Tribunal or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(12) The Tribunal shall cause to be kept a record of its proceedings.

Powers of
Tribunal
with respect
to
proceedings

9. (1) The Tribunal may —

(a) order the parties or either of them to produce to the Tribunal such information as the Tribunal considers necessary for purposes of the proceedings; or

(b) take any other course which may lead to the just, speedy and inexpensive settlement of any matter before the Tribunal.

(2) The Tribunal may summon witnesses, call for the production and inspection of any book, document, record or other thing, and examine witnesses.

(3) A summons for the attendance of a witness or for the production of any book, document, record or other thing shall be signed by the Registrar and served in the same manner as a *subpoena* for the attendance of a witness at a civil trial in the High Court.

(4) A person giving evidence or summoned to give evidence or to produce any book, document, record or other thing before the Tribunal shall be entitled to the same privileges and immunities as if the person were summoned to attend or were giving evidence in a civil proceeding before the High Court.

(5) A person summoned under this section, other than a public officer or a person with an interest in the proceedings for which the person is summoned, may on the order of the Tribunal be paid from moneys appropriated by Parliament such allowances as may be prescribed.

Decision of
Tribunal

10. The Tribunal shall render a decision on any matter within sixty days after the conclusion of the hearing of the matter.

Costs

11. (1) The Tribunal may make such order relating to costs as it considers just having regard to the circumstances of the case.

(2) Subject to subsection (1), the costs and charges in connection with any proceedings before the Tribunal shall be the costs reasonably incurred by a person in connection with the proceedings or such part of those costs as may be determined by the Tribunal.

(3) The Registrar shall tax bills of costs in accordance with the scale of fees for the time being in use in the High Court in civil cases.

(4) A person aggrieved with a decision of the Registrar under subsection (3) shall, within fourteen days of the receipt of the decision, apply to the person presiding over the Tribunal to review the taxation.

12. The Registrar shall cause every decision of the Tribunal to be communicated to the parties concerned within seven days of the making of the decision.

Communication of decisions of Tribunal

13. The Tribunal may, where it determines that an appeal is frivolous or vexatious, dismiss the appeal and order the appellant to pay the Respondent the costs in connection with the proceedings.

Frivolous or vexatious proceedings

14. An action or other proceeding shall not lie or be instituted against a member or a member of staff of the Tribunal for any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of any of the powers or functions conferred under this Act.

Immunity of members and staff of Tribunal

15. (1) A party to an appeal to the Tribunal may appeal to the Supreme Court from the decision of the Tribunal on a question of law or question of mixed law and fact but not on a question of fact alone.

Appeal to Supreme Court

(2) The Supreme Court shall hear and determine any appeal and may refer the matter back to the Tribunal for re-hearing, confirmation, reduction, increment or annulment of the assessment or decision made by the Tribunal and may make such further or other order on appeal, whether as to costs or otherwise, as the Supreme Court consider necessary.

16. The expenses and costs of the Tribunal shall be paid out of funds appropriated by Parliament for the performance of the Tribunal's functions under this Act

Expenses of Tribunal

PART III
GENERAL PROVISIONS

- Offences 17. (1) A person who is summoned to give evidence or to produce any book, document or thing and—
- (a) without reasonable excuse, fails to attend as required;
 - (b) refuses to be sworn or affirmed as a witness;
 - (c) having been sworn as a witness, refuses to answer any question lawfully put to that person; or
 - (d) without reasonable excuse, fails to produce the book, document or thing; commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred and fifty penalty units or to imprisonment for a period not exceeding six months, or to both.
- (2) A person who knowingly gives false testimony regarding any matter which is material to a question in any proceedings before the Tribunal commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding seven years.
- Rules 18. The Chief Justice may, by statutory instrument, make rules—
- (a) prescribing the powers and functions of the Registrar of the Tribunal;
 - (b) prescribing the forms to be used in connection with any matter before the Tribunal;
 - (c) prescribing the procedure for summoning and compelling the appearance of witnesses and the production of any document or other evidence before the Tribunal;
 - (d) prescribing the procedure to be followed and the rules of evidence to be observed in proceedings before the Tribunal;
 - (e) empowering the Tribunal to award costs and to do and require all such acts and things as may be necessary for the performance of the Tribunal's functions under this Act;
 - (f) prescribing the procedure for the review of the taxation of costs;
 - (g) regulating the procedure relating to appeals from the Tribunal; and
 - (h) regulating or prescribing any other matter which is to be regulated or prescribed by rules under this Act.

19. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act. Regulations

(2) Notwithstanding the generality of subsection (1), regulations made under that subsection may provide for the organisation and administration of the Tribunal.

20. (1) The Revenue Appeals Tribunal Act, 1998, is repealed.

Repeal of
Act No. 11
of 1998

(2) Notwithstanding sub-section (1)—

(a) an appeal or proceeding pending before the former tribunal prior to the commencement of this Act shall be continued by or re-commenced before the Tribunal; and

(b) any right or benefit accruing or liability incurred before the former tribunal shall continue in accordance with and subject to this Act.

21. (1) On or after the commencement of this Act, references in any written law or other document to the Revenue Appeals Tribunal shall be construed as references to the Tax Appeals Tribunal.

Transitional
provisions

(2) On or after the commencement of this Act, references in any written law or other document to the Chairperson of the Revenue Appeals Tribunal shall be construed as references to the Chairperson of the Tax Appeals Tribunal.
