

CHAPTER 23:07

INCOME TAX (TRANSITIONAL PERIOD PROVISIONS) ACT

Acts 16/1966, 35/1967 (s. 16), 39/1969 (s. 35) 41/1971 (s. 18), 17/1999 (s. 36)

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AN ACT to provide for the determination of credits in respect of income tax payable by certain taxpayers for the year ending on the 31st March, 1966, and the reduction of tax chargeable for that year and subsequent years; and for matters incidental thereto and connected therewith.

[Date of commencement: 1st April, 1965.]

1 Short title

This Act may be cited as the Income Tax (Transitional Period Provisions) Act [*Chapter 23:07*].

2 Interpretation and application of Act No. 16 of 1954

(1) In this Act —

“assessed loss” has the same meaning as it has for the purposes of the Taxes Act;

“charging Act” has the same meaning as it has for the purposes of the Taxes Act;

“Commissioner” means—

- (a) the Commissioner in charge of the department of the Zimbabwe Revenue Authority which is declared in terms of the Revenue Authority Act [*Chapter 23:11*] to be responsible for assessing, collecting and enforcing the payment of the taxes leviable under the Income tax Act [*Chapter 23:06*]; or
- (b) the Commissioner-General of the Zimbabwe Revenue Authority, in relation to any function which he has been authorised under the Revenue Authority Act [*Chapter 23:11*] to exercise;

[Definition substituted by section 36 of Act 17 of 1999]

“company” has the same meaning as it has for the purposes of the Taxes Act;

“employees’ tax” has the same meaning as it has for the purposes of the Tenth Schedule to the Taxes Act;

“period of assessment” has the same meaning as it has for the purposes of the Taxes Act;

“remuneration” has the same meaning as it has for the purposes of the Tenth Schedule to the Taxes Act;

“remuneration liable to employees’ tax” has the same meaning as it has for the purposes of the Tenth Schedule to the Taxes Act;

“retire”, in relation to a taxpayer, means cease to engage, before attaining the age of sixty years, in the occupation to which the taxpayer, in the opinion of the Commissioner, devoted the major portion of his time and attention, where such cessation occurs because the taxpayer has become permanently incapable through infirmity of mind or body of continuing to engage in that occupation;

“tax” means the income tax calculated in accordance with the provisions of section 7 of the Taxes Act or section 7 of the Income Tax Act [*Chapter 23:06*];

“tax chargeable” means the tax chargeable before taking into account—

- (a) any investment credit due in terms of the charging Act relating to the transitional period; and
- (b) any credit determined in terms of section *three*;

“taxable income” has the same meaning as it has for the purposes of Part II of the Taxes Act;

“Taxes Act” means the Income Tax Act, 1954 (No. 16 of 1954);

“taxpayer” has the same meaning as it has for the purposes of the Taxes Act but excludes a company and a trust as defined in the Taxes Act;

“transitional period” means the year of assessment ending on the 31st March, 1966;

“year of assessment” has the same meaning as it has for the purposes of the Taxes Act.

(2) For the purposes of sections *seven* and *eight*, a taxpayer shall be deemed to have received remuneration or remuneration liable to employee's tax, as the case may be, if it has accrued to him or in his favour.

(3) For the purposes of this Act, the provisions of section 4 of the Taxes Act shall apply, *mutatis mutandis*, with respect to the duties, powers and functions conferred or imposed on the Commissioner by this Act.

3 Establishment and determination of credit

There shall be established in respect of every taxpayer a credit determined—

(a) in the case of a taxpayer whose taxable income for the transitional period does not exceed one hundred and ten *per centum* of his taxable income for the previous year of assessment, by an amount equal to the amount of tax chargeable in respect of the transitional period; and

(b) in the case of a taxpayer whose taxable income for the transitional period exceeds one hundred and ten *per centum* of his taxable income for the previous year of assessment, by applying the formula—

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

in which—

A represents the tax chargeable for the transitional period;

B represents one hundred and ten *per centum* of the taxable income for that previous year of assessment;

C represents the taxable income for the transitional period:

Provided that the Commissioner may, if in his opinion the circumstances of the taxpayer so warrant, increase the factor B to such amount as he considers to be reasonable.

4 Apportionment of credit between remuneration credit and non-remuneration credit

(1) The credit determined by the application of section *three* shall be apportioned by the Commissioner in respect of each taxpayer, between a remuneration credit and a non-remuneration credit.

(2) The remuneration credit shall be determined by applying the formula—

$$\frac{D \times E}{F}$$

in which—

D represents the credit determined in terms of section *three*;

E represents the taxable income derived by the taxpayer from remuneration in respect of the transitional period;

F represents the taxable income of the taxpayer for the transitional period increased by the balance of any assessed loss as at the close of the previous year of assessment and the amount of any other loss which has been taken into account in the determination of such taxable income.

(3) The non-remuneration credit shall be determined by applying the formula—

$$D - \frac{D \times E}{F}$$

in which the factors D, E and F are the same factors as those employed in the formula contained in subsection (2).

5 Application of remuneration credit to tax payable

Notwithstanding sections 6, 7 and 65 of the Taxes Act, and subject to subsection (1) of section *seven* and subsection (1) of section *eight*, the tax with which a taxpayer is chargeable in respect of the transitional period shall be reduced by the amount of any remuneration credit determined under the provisions of subsection (2) of section *four*.

6 Application of set-off of non-remuneration credit

(1) Notwithstanding sections 6, 7 and 65 of the Taxes Act and sections 6, 7 and 71 of the Income Tax Act [*Chapter 23:06*], and subject to subsection (2) of section *seven*, the tax with which a taxpayer is chargeable in respect of—

(a) in the case of a taxpayer who has, before the 1st April, 1965, attained the age of sixty years, the transitional period; or

(b) in any other case, the year of assessment in which the taxpayer dies, retires or attains the age of sixty years, whichever is the soonest;

shall have set-off against it the amount of any non-remuneration credit determined under subsection (3) of section *four*:

Provided that—

(i) if the non-remuneration credit exceeds two hundred dollars and—

(a) the taxpayer has attained or attains the age of sixty years before the 1st April, 1966, or retires during the transitional period, such credit shall be set off in annual installments of two hundred

dollars or one-fifth of such credit, whichever is the greater, against the tax chargeable in respect of the transitional period and the ensuing years of assessment; or

- (b) the taxpayer attains the age of sixty years or retires during the year ending on the 31st March, 1967, such credit shall be set off in annual installments of two hundred dollars or one-fourth of such credit, whichever is the greater, against the tax chargeable in respect of the year of assessment ending on the 31st March, 1967, and the ensuing years of assessment; or
- (c) the taxpayer attains the age of sixty years or retires during the year ending on the 31st March, 1968, such credit shall be set off in annual installments of two hundred dollars or one-third of such credit, whichever is the greater, against the tax chargeable in respect of the year of assessment ending on the 31st March, 1968, and the ensuing years of assessment; or
- (d) the taxpayer attains the age of sixty years or retires during the year ending on the 31st March, 1969, such credit shall be set off in annual installments of two hundred dollars or one-half of such credit, whichever is the greater, against the tax chargeable in respect of the year of assessment ending on the 31st March, 1969, and the next ensuing year of assessment;

so, however, that if an amount of less than two hundred dollars remains as the balance of such credit to be set off, the final installment of such credit to be set off shall be such lesser amount;

- (ii) if the taxpayer dies before any or all of the installments referred to in proviso (i) have been set off, so much of the non-remuneration credit as has not been set off by the date of death shall be set off against any tax chargeable in respect of the period of assessment ending on that date;
- (iii) if the taxpayer ceases to be ordinarily resident in Zimbabwe before any or all of the instalments referred to in proviso (i) have been set off, no non-remuneration credit shall be set off after the instalment has been set off in respect of the year ending on the 31st March prior to that in which he so ceases to be ordinarily resident.

For the purposes of this proviso, a taxpayer who has retired and is thereafter obliged on medical grounds to emigrate from Zimbabwe on or after the 1st April, 1967, shall be deemed not to have ceased to be ordinarily resident in Zimbabwe;

- (iv) if the non-remuneration credit which remains after any set-off in the transitional period is less than twenty dollars, such credit shall be set off against the tax chargeable in respect of the year of assessment ending on the 31st March, 1967, so, however, that no such set-off shall be made if the taxpayer was not ordinarily resident in Zimbabwe throughout that year of assessment.

For the purposes of this proviso, a taxpayer who retired and is thereafter obliged on medical grounds to emigrate from Zimbabwe on or after the 1st April, 1966, shall be deemed not to have ceased to be ordinarily resident in Zimbabwe;

(2) Where the non-remuneration credit or any instalment thereof, as the case may be, to be set off in terms of subsection (1) exceeds the amount of—

- (a) the tax against which it is to be set off; and
- (b) any tax as defined in subsection (1) of section 2 of the Taxes Act, due and payable but unpaid at the time of such set-off;

the amount of the excess shall be paid to the taxpayer or his estate, as the case may be, by the Commissioner.

7 Taxpayers to whom sections 5 and 6 shall not apply

(1) Section *five* shall not apply to a taxpayer who—

- (a) dies during the transitional period; or
- (b) during the transitional period ceases to be ordinarily resident in Zimbabwe and subsequently does not receive remuneration liable to employees' tax from a source within or deemed to be within Zimbabwe during the year ending on the 31st March, 1967.

(2) Section *six* shall not apply to a taxpayer who—

- (a) dies during the transitional period; or
- (b) is ordinarily resident outside Zimbabwe through the transitional period; or
- (c) during the transitional period ceases to be ordinarily resident in Zimbabwe and does not during that period again become ordinarily resident in Zimbabwe; or
- (d) is not ordinarily resident in Zimbabwe throughout the year of assessment in which he attains the age of sixty years or retires or the period of assessment in which he dies:

Provided that a taxpayer who has retired and is thereafter obliged on medical grounds to emigrate from Zimbabwe on or after the 1st April, 1967, shall be deemed not to have ceased to be ordinarily Zimbabwe in Rhodesia.

8 Adjustment of credit allowed under section 5

(1) Where a taxpayer—

- (a) has received remuneration during the transitional period; and
- (b) is for some time during the year ending on the 31st March, 1967, not ordinarily resident in Zimbabwe; and

(c) during the time mentioned in paragraph (b) does not receive remuneration liable to employee's tax; his remuneration credit allowed in terms of section *five* shall be reduced by an amount determined by applying the formula—

$$\frac{G \times H}{I}$$

in which—

- G represents the amount of remuneration credit calculated in accordance with subsection (2) of section *four*;
- H represents the number of completed months, if tax has been withheld monthly, or weeks, if tax has been withheld weekly, in the year ending on the 31st March, 1967, during which the taxpayer has not been ordinarily resident in Zimbabwe;
- I represents the number 12 if the tax has been withheld monthly or, if tax has been withheld weekly, the number 52 or the number 53 whichever the Commissioner, having regard to the number of pay periods, considers appropriate.

(2) Notwithstanding section 43 of the Taxes Act, if the Commissioner, having set off a remuneration credit under section *five*, later considers that such credit requires to be reduced in accordance with subsection (1), he shall make such reduction and shall call on the taxpayer to pay the additional tax.

9 Transactions, operations or schemes reducing the amount of tax

Where any transaction, operation or scheme has, whether before, on or after the 1st April, 1965, been entered into or carried out which has the effect of reducing the amount of tax payable in respect of the transitional period or any other year of assessment and which, in the opinion of the Commissioner—

- (a) would not normally have been entered into or carried out; or
- (b) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question;

and the Commissioner is of the opinion that a reduction in the amount of tax payable in respect of the transitional period or any other year of assessment was the sole purpose or one of the main purposes of the transaction, operation or scheme, the Commissioner shall determine the amount of tax payable to be such amount as he considers would have been determined had the transaction, operation or scheme not been so entered into or carried out; and the formation of a company may, if the Commissioner considers that the sole purpose or one of the main purposes of forming such company was the reduction of the amount of tax payable in respect of the transitional period or any other year of assessment, be deemed by him to be a transaction, operation or scheme in terms of this section.

10 Objections and appeals

A taxpayer who is aggrieved by a decision of the Commissioner made in terms of the definition of “retire” in subsection (1) of section *two*, the proviso to paragraph (b) of section *three* or section *nine*, shall be entitled to object to such decision, and section 55 of the Taxes Act shall apply, *mutatis mutandis*, to such objection, and if the taxpayer is dissatisfied with the decision of the Commissioner on such objection, he may appeal therefrom and sections 65, 66 and 67 of the Income Tax Act [*Chapter 23:06*] shall apply, *mutatis mutandis*, to any such appeal:

Provided that in any proceedings relating to an objection or appeal arising out of a decision of the Commissioner made in terms of—

- (a) the proviso to paragraph (b) of section *three*, the burden of proof that such decision should be varied shall be upon the taxpayer;
- (b) section *nine* where it is proved that the transaction, operation or scheme in question would result in the reduction of the amount of tax payable in respect of the transitional period or any other year of assessment, it shall be presumed, until the contrary is proved, that such reduction was the sole purpose or one of the main purposes of such transaction, operation or scheme.

11 Set-off or payment in terms of section 5 or 6 to be a drawback

Any set-off against tax payable or any amount paid to a taxpayer as a result of such a set-off in terms of section *five* or *six* shall be regarded as a drawback and shall be made from moneys received in terms of the Taxes Act or the Income Tax Act [*Chapter 23:06*].