

# CHAPTER 23:11 REVENUE AUTHORITY ACT

*Acts 17/1999, 27/2001, 12/2002, 2/2005, 3/2009 (s. 42), 10/2009)*

## ARRANGEMENT OF SECTIONS

### **PART I**

#### PRELIMINARY

#### *Section*

1. Short title and date of commencement.
2. Interpretation.

### **PART II**

#### ZIMBABWE REVENUE AUTHORITY

3. Establishment of Zimbabwe Revenue Authority.
4. Functions and powers of Authority.
5. Board of Authority.
6. Disqualification for appointment as member.
7. Terms of office and conditions of service of members.
8. Vacation of office by appointed members.
9. Suspension of members
10. Dismissal of Board.
11. Filling of vacancies on Board.
12. Chairman and vice-chairman of Board.
13. Meetings and procedure of Board.
14. Committees of Board.
15. Remuneration and allowances of members of Board and committees.
16. Members of Board and committees to disclose certain connections and interests.
17. Minutes of proceedings of Board and committees.
18. Validity of decisions and acts of Board and committees.
19. Appointment and functions of Commissioner-General.
20. Commissioners and other staff of Authority.
21. Departments of Authority and functions thereof.
22. Execution of contracts and instruments by Authority.
23. Reports of Authority.
24. Minister may require statistics and information.
25. Minister may give Board directions on matters of policy.

### **PART III**

#### FINANCIAL PROVISIONS RELATING TO AUTHORITY

26. Annual budgets of Authority.
27. Retention of revenue by Authority.
28. Funds of Authority.
29. Investment of moneys not immediately required by Authority.
30. Financial year of Authority.
31. Accounts of Authority.
32. Audit of Authority's accounts.
33. Internal Auditor.

### **PART IIIA**

#### EXPEDITED PROCEDURE FOR RECOVERY OF OUTSTANDING TAXES

- 33A. Interpretation in Part IIIA.
- 33B. Commissioner-General may delegate powers under this Part.
- 33C. When expedited procedure competent, jurisdiction of magistrates courts and period within which expedited procedure allowed.
- 33D. Issuance, contents and service of provisional attachment order.
- 33E. Powers of Commissioner-General in relation to provisional attachment order.
- 33F. Where third parties claim property subject to provisional attachment order.
- 33G. Confirmation of provisional attachment order.
- 33H. Sale in execution of attached property.
- 33I. Exemption from liability for Commissioner-General and delegated officers.

## PART IV

### GENERAL

- 34. Investigation into affairs of Authority. 34A. Preservation of secrecy.
- 34B. Reward for information.
- 34C. Tax clearance certificates.
- 34D. Advance tax rulings.
- 34E. Offence by officers of Authority.
- 35. Regulations.

## PART V

### AMENDMENTS, TRANSITIONAL PROVISIONS AND SAVINGS

- 36. Amendment of Acts.
- 37. Transfer of certain assets, obligations, etc., of State to Authority.
- 38. Savings.
- 39. Construction of certain references.

## SCHEDULES

- First Schedule : Specified Acts.
- Second Schedule : Powers of Authority.
- Third Schedule : Amendment of Acts.
- Fourth Schedule : Advance Tax Rulings.

**AN ACT to establish the Zimbabwe Revenue Authority for the collection of certain revenues of the State and to provide for the Authority's functions, powers and management; to provide for the funds of the Authority; to amend the Betting and Totalizator Control Act [Chapter 10:02], the Capital Gains Tax Act [Chapter 23:01], the Customs and Excise Act [Chapter 23:02], the Fiscal Appeal Court Act [Chapter 23:05], the Income Tax Act [Chapter 23:06], the Income Tax (Transitional Period Provisions) Act [Chapter 23:07], the Stamp Duties Act [Chapter 23:09] and the Tax Reserve Certificates Act [Chapter 23:10]; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 19th January 2001.]

## PART I

### PRELIMINARY

#### 1 Short title and date of commencement

- (1) This Act may be cited as the Revenue Authority Act [Chapter 23:11].
- (2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

#### 2 Interpretation

In this Act—

- “appointed member” means a member of the Board appointed in terms of paragraph (c) of subsection (2) of section *five*;
- “Authority” means the Zimbabwe Revenue Authority established by section *three*;
- “Board” means the Revenue Board established by section *five*;
- “Commissioner-General” means the Commissioner-General of the Authority appointed in terms of section *nineteen*;
- “committee” means a committee of the Board established in terms of section *fourteen*;
- “department” means a department of the Authority established in terms of subsection (1) of section *twentyone*;
- “financial year” means the financial year of the Authority referred to in section *thirty*;

“member”, means a member of the Board, including the chairman;

“Minister” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“revenues” means taxes, duties, fees, levies, charges, penalties, fines or any other moneys levied, imposed, collected or received in terms of any of the Acts specified in the First Schedule.

## PART II

### ZIMBABWE REVENUE AUTHORITY

#### 3 Establishment of Zimbabwe Revenue Authority

There is hereby established an authority, to be known as the Zimbabwe Revenue Authority, which shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

#### 4 Functions and powers of Authority

(1) The functions of the Authority shall be—

- (a) to act as an agent of the State in assessing, collecting and enforcing the payment of all revenues; and
- (b) to advise the Minister on matters relating to the raising and collection of revenues; and
- (c) to perform any other function that may be conferred or imposed on the Authority in terms of this Act or any other enactment.

(2) For the better exercise of its functions, the Authority shall have the power, subject to this Act, to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Second Schedule, either absolutely or conditionally and either solely or jointly with others.

#### 5 Board of Authority

(1) The operations of the Authority shall, subject to this Act, be controlled and managed by a board to be known as the Revenue Board.

(2) The Board shall consist of—

- (a) the Secretary of the Ministry responsible for finance; and
- (b) the Commissioner-General; and
- (c) not more than five other members appointed, subject to subsection (3), by the Minister after consultation with the President and in accordance with such directions as the President may give him.

(2) Members referred to in paragraph (c) of subsection (2) shall be appointed for their knowledge of and experience in finance, commerce, economics, taxation or law.

#### 6 Disqualifications for appointment as member

(1) Subject to this Act, a person shall not be qualified for appointment as a member if—

(a) he is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe; or (b) he has, in terms of a law in force in any country—

- (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated therefrom; or
  - (ii) made an assignment or composition with his creditors which has not been rescinded or set aside; or
- (c) he has been convicted in Zimbabwe or in any other country
- (i) of any offence involving dishonesty; or
  - (ii) of any other offence, in the period of five years before his appointment, for which a term of imprisonment without the option of a fine has been imposed, whether or not any portion of that sentence has been suspended.

(2) A person shall not be qualified for appointment as a member, nor shall he hold office as an appointed member, if

(a) he is a member of two or more other statutory bodies; or (b) he is a member of Parliament.

(3) For the purposes of paragraph (a) of subsection (2)—

- (a) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body;
- (b) “statutory body” means—
  - (i) any commission established by the Constitution; or
  - (ii) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any other statutory body or by a Commission established by the Constitution.

## **7 Terms of office and conditions of service of members**

(1) An appointed member shall hold office for such period, not exceeding three years, as the Minister may fix at the time of his appointment.

(2) On the expiry of the period for which an appointed member has been appointed, he shall continue to hold office until he has been re-appointed or his successor has been appointed:

Provided that an appointed member shall not continue to hold office in terms of this subsection for more than six months.

(3) The Secretary of the Ministry responsible for finance and the Commissioner-General shall be members for so long as they hold office as Secretary or Commissioner-General, as the case may be.

(4) A person who ceases to be a member shall be eligible for re-appointment.

(5) Members shall hold office on such terms and conditions as the Minister may fix.

## **8 Vacation of office by appointed members**

(1) An appointed member shall vacate his office and his office shall become vacant—

(a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after the expiry of such other period of notice as he and the Minister may agree; or

(b) on the date he begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine— (i) in Zimbabwe, in respect of an offence; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence;

or

(c) if he becomes disqualified in terms of subsection (1) or (2) of section *six* to hold office as a member; or (d) if he is required in terms of subsection (2) or (3) to vacate his office as a member.

(2) The Minister may require an appointed member to vacate his office if—

(a) the member has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or

(b) the member has failed to comply with any condition of his office fixed in terms of section *seven*; or (c) the member has ceased to possess any qualification by reason of which he was appointed; or

(d) the member is mentally or physically incapable of efficiently performing his duties as a member; or (e) the member contravenes section *sixteen*; or

(f) the member or his spouse engages in any occupation, service or employment, or holds any asset, which in the Minister's opinion is inconsistent with his duties as a member.

(3) The Minister, on the recommendation of the Board, may require an appointed member to vacate his office if the Minister is satisfied that the member has been absent without the consent of the chairman of the Board from three consecutive meetings of the Board, of which he has been given at least seven days' notice, and that there was no just cause for the member's absence.

## **9 Suspension of members**

The Minister—

(a) may suspend from office a member against whom criminal proceedings are instituted for an offence involving dishonesty; and

(b) shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not any portion has been suspended, pending determination of the question whether the member is to vacate his office;

and, whilst that member is so suspended, he shall not carry out any duties or be entitled to any remuneration or allowances as a member.

## **10 Dismissal of Board**

(1) Subject to subsection (2), if the Minister considers that—

(a) the Board has contravened this Act or any other law and has failed to rectify the contravention within a reasonable time after being required to do so by the Minister; or

(b) the Board has failed to comply with a direction in terms of section *twenty-five*; or

(c) whether through disagreements amongst its members or otherwise, the Board is unable to carry out any of its functions in terms of this Act;

and that it is in the national interest to do so, the Minister may, by written notice to the chairman and Commissioner-General, dismiss all the appointed members, and their offices shall become vacant as soon as the Commissioner-General receives the notice.

(2) Before dismissing all the appointed members in terms of subsection (1), the Minister shall consult the President and act in accordance with any directions the President may give him.

## **11 Filling of vacancies on Board**

(1) Subject to this Part, within three months after an appointed member's death or vacation of office in terms of section *eight*, the Minister shall appoint a person to fill the vacancy.

(2) Within one month after dismissing all the appointed members in terms of section *ten*, the Minister shall, subject to this Part, appoint persons to fill the vacancies.

## **12 Chairman and vice-chairman of Board**

(1) The Minister shall designate one of the appointed members to be chairman of the Board.

(2) At its first meeting, the Board shall elect an appointed member, other than the chairman, to be vice-chairman of the Board.

(3) The chairman and vice-chairman of the Board may at any time, by written notice to □

(a) the Minister, in the case of the chairman;

(b) the Commissioner, in the case of the vice-chairman; resign their offices

as such.

(4) Within three months after being notified of a vacancy in the office of □

(a) chairman of the Board, the Minister shall appoint another member to fill the vacancy; (b)

vice-chairman of the Board, the Board shall elect another member to fill the vacancy.

(5) The vice-chairman shall perform the functions of the chairman whenever the chairman is unable to perform them or the office of chairman is vacant.

## **13 Meetings and procedure of Board**

(1) The Board shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit: Provided that the Board shall meet at least four times in each financial year.

(2) The chairman of the Board—

(a) may convene a special meeting of the Board at any time; and

(b) shall convene a special meeting of the Board on the written request of the Minister or not fewer than two members, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after the chairman's receipt of the request.

(3) Written notice of a special meeting convened in terms of subsection (2) shall be sent to each member not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of subsection (2) other than—

(a) such business as may be determined by the chairman of the Board, where he convened the meeting in terms of paragraph (a) of subsection (2); or

(b) the business specified in the request for the meeting, where the chairman of the Board convened the meeting in terms of paragraph (b) of subsection (2).

(5) The chairman of the Board or, in his absence, the deputy chairman shall preside at all meetings of the Board:

Provided that, if the chairman and deputy chairman are both absent from any meeting of the Board, the members present may elect one of their number to preside at that meeting as chairman.

(6) Four members shall form a quorum at any meeting of the Board.

(7) Subject to subsection (12), anything authorized or required to be done by the Board may be decided by a majority vote at any meeting of the Board at which a quorum is present.

(8) With the Board's approval, the chairman of the Board may invite any person to attend a meeting of the Board or of a committee, where the chairman considers that the person has special knowledge or experience in any matter to be considered by the Board or the committee, as the case may be, at that meeting.

(9) A person invited to attend a meeting of the Board or of a committee in terms of subsection (8) may take part in the proceedings of the Board or the committee as if he were a member thereof, but shall not have a vote on any question before the Board or committee, as the case may be.

(10) Subject to subsection (11) and to section *sixteen*, at all meetings of the Board each member present shall have one vote on any question before the Board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

(11) The Commissioner-General shall not take part in the discussion of, and shall not vote on, any question before the Board which involves his tenure of office or conditions of service.

(12) Any proposal circulated among all members and agreed to in writing by a majority of them shall have the same effect as a resolution passed by a duly constituted meeting of the Board and shall be incorporated into the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such a proposal be placed before a meeting of the Board, this subsection shall not apply to the proposal.

## **14 Committees of Board**

(1) For the better exercise of its functions, the Board may establish one or more committees in which the Board may vest such of its functions as it considers appropriate:

Provided that the vesting of any function in a committee shall not divest the Board of that function, and the Board may amend or rescind any decision of the committee in the exercise of that function.

(2) On the establishment of a committee in terms of subsection (1), the Board—

- (a) shall appoint at least one member of the Board as a member of the committee, and that member or one of those members, as the case may be, shall be chairman of the committee; and
- (b) may appoint as members of the committee, on such terms and conditions as the Board may fix, persons who are not members of the Board.

(3) Meetings of a committee may be convened at any time and at any place by the chairman of the Board or the chairman of the committee.

(4) Subject to subsection (3) and to sections *sixteen* and *seventeen*, the procedure to be followed at any meeting of a committee and the quorum at any such meeting shall be as fixed by the Board.

### **15 Remuneration and allowances of members of Board and committees**

Members of the Board and of committees shall be paid— (a) such remuneration, if any; and

(b) such allowances to meet reasonable expenses incurred by them in connection with the business of the Board or the committee concerned, as the case may be; as the Board may fix with the approval of the Minister.

### **16 Members of Board and committees to disclose certain connections and interests**

(1) In this section—

“relative”, in relation to a member of the Board or a committee, means the member’s spouse, child, parent, brother or sister.

(2) Subject to subsection (4)□

(a) if a member of the Board or of a committee—

- (i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or committee; or
- (ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his functions as a member; or
- (iii) knows or has reason to believe that a relative of his\_
  - A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Board or the committee; or
  - B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the member’s private interests coming or appearing to come into conflict with his functions as a member;

or

(b) if for any reason the private interests of a member of the Board or a committee come into conflict with his functions as a member; the member shall forthwith disclose the fact to the Board or the committee, as the case may be.

(3) A member referred to in subsection (2) shall take no part in the consideration or discussion of, or vote on, any question before the Board or the committee, as the case may be, which relates to any property, right or interest referred to in that subsection.

(4) Nothing in this section shall be taken to prevent members of the Board or of a committee of the Board from taking part in the consideration of, or voting on, any matter that affects members generally in their capacity as persons liable to pay revenue.

(5) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding two thousand dollars or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

### **17 Minutes of proceedings of Board and committees**

(1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board and of every committee to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the person presiding at the meeting to which the minutes relate or by the person presiding at the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings and decisions taken at the meeting concerned.

### **18 Validity of decisions and acts of Board and committees**

No decision or act of the Board or a committee or act that is authorized by the Board or a committee shall be invalid solely because there was a vacancy in the membership of the Board or the committee or because a disqualified person purported to act as a member of the Board or the committee, as the case may be, at the time the decision was taken or the act was done or authorized.

### **19 Appointment and functions of Commissioner-General**

(1) Subject to this section, the Board shall appoint, on such terms and conditions as the Board may fix, a person to be the Commissioner-General of the Zimbabwe Revenue Authority.

(2) Without the authority of the Minister, no person shall be appointed as Commissioner-General and no person shall be qualified to hold office as Commissioner-General if he is not a citizen of Zimbabwe or ordinarily resident in Zimbabwe.

(3) The appointment of the Commissioner-General shall terminate if he would be required in terms of subsection (1) or (2) of section *six* to vacate his office had that section applied to him:

Provided that his appointment shall not terminate on the ground that he has ceased to be a citizen of Zimbabwe or ordinarily resident in Zimbabwe, if the Minister has granted authority under subsection (2).

(4) The Commissioner-General shall be responsible, subject to the Board's control, for

- (a) supervising and managing the Authority's staff, activities, funds and property; and
- (b) performing such other functions as the Board may assign to him or as may be conferred or imposed on him by or under this Act or any other enactment.

(5) An assignment of functions by the Board in terms of subsection (4)—

- (a) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board may determine;
- (b) may be revoked by the Board at any time;
- (c) shall not preclude the Board itself from exercising the functions.

## **20 Commissioners and other staff of Authority**

The Board shall appoint, on such terms and conditions as it may fix, such Commissioners and other officers and members of staff as the Board considers to be necessary for the proper exercise of the Authority's functions.

## **21 Departments of Authority and functions thereof**

(1) The Authority shall have such departments or divisions as the Board may establish from time to time.

(2) For each department or division the Board shall

- (a) assign such officers as may be necessary to carry out the department's or division's functions; and
- (b) appoint a Commissioner, who shall be responsible, subject to the direction and control of the Commissioner-General, for managing the department's or division's officers and ensuring the proper exercise of the department's or division's functions.

(2) The Minister, with the approval of the Board, may by statutory instrument declare that a department or division specified in the instrument shall be responsible for assessing, collecting and enforcing the payment of all or any revenues in terms of any of the Acts specified in the First Schedule.

(3) Where the Minister has published a statutory instrument in terms of subsection (2)

- (a) the Authority's officers assigned to the department or division concerned shall be responsible, subject to the direction and control of their Commissioner, for assessing, collecting and enforcing the payment of the revenues to which the instrument relates; and
- (b) the Commissioner in charge of the department or division concerned may exercise, subject to the direction and control of the Commissioner-General, all the functions conferred upon a commissioner by or in terms of the Act concerned:

Provided that the Commissioner-General may exercise any such function to the extent that the Minister, by statutory instrument, has authorised him to exercise the function concerned.

(4) Where any of the Acts specified in the First Schedule has been assigned to a Minister other than the Minister responsible for the administration of this Act, any statutory instrument in terms of subsection (3) shall be made with the approval of that other Minister in addition to the approval of the Board.

[Section as amended by Act 27 of 2001.]

## **22 Execution of contracts and instruments by Authority.**

An agreement, contract or instrument approved by the Board may be entered into or executed on the Authority's behalf by any person generally or specially authorized by the Board for that purpose.

## **23 Reports of Authority**

(1) As soon as possible after the end of each financial year, the Board shall submit to the Minister a report on the Authority's operations, undertakings and activities during that year.

(2) In addition to the annual report referred to in subsection (1), the Board— (a) shall submit to the Minister such other reports as the Minister may require; and (b) may submit to the Minister such other reports as the Board considers desirable; in regard to the Authority's operations, undertakings and activities.

(3) The Minister—

- (a) shall lay the annual report referred to in subsection (1) before Parliament at the same time as he lays the Authority's statement of accounts before Parliament in terms of section *thirty-one*; and
- (b) may lay before Parliament a report submitted to him in terms of subsection (2)

(4) The Board shall give the Minister all information relating to the operations, undertakings and activities of the Authority that the Minister may at any time require.

## **24 Minister may require statistics and information**

The Minister may from time to time direct the Board to furnish him with such information and statistics as the Minister may require in regard to revenues and additionally, or alternatively, the activities, funds and property of the Authority, and the Board shall forthwith comply with any such direction.

## **25 Minister may give Board directions on matters of policy**

(1) Subject to subsection (2), the Minister may give the Board such directions of a general character relating to the policy which the Authority is to observe in the exercise of its functions, as the Minister considers to be requisite in the national interest.

(2) Before giving the Board a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the proposed direction and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal and the possible effects which the proposal may have on the finances, commercial interests and other resources and functioning of the Authority.

(3) After receipt of the views of the Board submitted in terms of subsection (2), the Minister may confirm, alter or withdraw any proposed direction to the Board and, where the Minister has confirmed a direction, whether altered or not, the Board shall forthwith comply with the direction.

(4) When any direction has been received by the Board in terms of this section, the Board shall set out in the Authority's annual report the direction received by it, the views expressed by it in terms of subsection (2), and the final direction given to it in terms of subsection (3).

## **PART III**

### FINANCIAL PROVISIONS RELATING TO AUTHORITY

## **26 Annual budgets of Authority**

(1) On or before such date before the beginning of every financial year as the Minister may direct, the Board shall prepare and submit to the Minister for his approval a budget showing the expenditure which the Board proposes that the Authority will incur in respect of that financial year.

(2) During any financial year the Board may submit to the Minister for his approval a supplementary budget relating to expenditure which

(a) was not, for good reason, provided for in the annual budget; or

(b) was inadequately provided for in the annual budget due to unforeseen circumstances.

(3) A supplementary budget approved by the Minister shall be deemed to form part of the annual budget of the Authority for the financial year to which it relates.

(4) The Board shall furnish the Minister with such additional information in regard to any budget submitted under subsection (1) or (2) as the Minister may require.

(5) In approving any budget under this section the Minister may impose such terms and conditions as he considers to be necessary or desirable.

(6) With the approval of the Minister, the Board may vary a budget approved under this section:

Provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

(7) The Minister may withdraw, vary or modify his approval of any budget under this section or any of the terms and conditions of such approval.

## **27 Retention of revenue by Authority**

At the beginning of each financial year, the Minister shall cause the Authority to retain sufficient moneys from the revenue collected to meet the expenditure which the Authority proposes to incur during that financial year, as shown in the budget or supplementary budget approved by the Minister in terms of section *twenty-six* for that financial year.

## **28 Funds of Authority**

(1) The funds of the Authority shall consist of—

(a) any moneys that may be payable to the Authority from moneys appropriated for the purpose by Act of Parliament; and

(b) any loans, donations and grants made to the Authority by any person or authority or by any government of any country; and

(c) any other moneys that may accrue to the Authority, whether in the course of its operations or otherwise.

(2) Subject to section *twenty-seven* and paragraph (b) of subsection (3) of section *thirty-four B*, revenues collected by the Authority in terms of any enactment shall be paid into the Consolidated Revenue Fund and shall not form part of the Authority's funds.

[Subsection substituted by Act 27 of 2002]

## **29 Investment of moneys not immediately required by Authority**

Moneys not immediately required by the Authority may be invested in such manner as the Board, in consultation with the Minister, may approve.



### **30 Financial year of Authority**

The financial year of the Authority shall be the period of twelve months ending on the 31st December in each year.

### **31 Accounts of Authority**

(1) The Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Authority's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) As soon as possible after the end of each financial year, the Board shall prepare and submit to the Minister a statement of accounts in respect of that financial year or in respect of such other period as the Minister may direct.

(3) The Minister shall lay the statement of accounts submitted to him by the Board in terms of subsection (2) before Parliament.

### **32 Audit of Authority's accounts**

(1) The accounts of the Authority shall be audited by the Comptroller and Auditor-General, who for the purpose shall have all the functions conferred on him by sections 8 and 9 of the Audit and Exchequer Act [*Chapter 22:03*] as though the assets of the Authority were public moneys and the members of the Board and employees and agents of the Authority were officers as defined in that Act.

(2) Any member of the Board or employee or agent of the Authority who—

(a) fails or refuses to provide the Comptroller and Auditor-General with any explanation or information required by him for the purpose of an audit in terms of subsection (1); or

(b) hinders or obstructs the Comptroller and Auditor-General in the conduct of an audit in terms of subsection (1);

shall be guilty of an offence and liable to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(3) Notwithstanding subsection (1), the Comptroller and Auditor-General may appoint a suitably qualified person to audit the accounts of the Authority and, if he does so—

(a) subsections (1) and (2) shall apply in respect of the person so appointed as if he were the Comptroller and Auditor-General; and

(b) any expenses incurred by the person so appointed in carrying out his audit shall be met from the funds of the Authority. **33 Internal auditor**

Section 19 of the Audit and Exchequer Act [*Chapter 22:03*] shall apply, *mutatis mutandis*, to the appointment of an internal auditor to the Authority in all respects as if the Authority were a department of the Ministry for which the Minister is responsible.

## **PART IIIA**

### **EXPEDITED PROCEDURE FOR RECOVERY OF OUTSTANDING TAXES**

[Part inserted by Act 3 of 2009]

### **33A Interpretation in Part IIIA**

In this Part—

“immovable property” includes Zimbabwean and foreign currency;

“provisional attachment order” means a provisional attachment order issued in terms of section 33D; “specified Act” means any one of the Acts referred to in section 33C(1)(a), (b), (c) or (d).

### **33B Commissioner-General may delegate powers under this Part**

(1) Subject to this Act, the Commissioner-General may delegate to an officer of the Authority any of the functions conferred or imposed upon him or her by this Part.

(2) The Commissioner-General shall furnish each officer referred to in subsection (1) with a certificate signed by or on behalf of the Commissioner-General stating that he or she has been delegated to exercise all or any of the functions conferred or imposed upon the Commissioner-General by this Part.

(3) An officer referred to in subsection (1) shall, on demand by any person affected by the exercise of the officer's powers pursuant to this Part, exhibit the certificate issued to him or her in terms of subsection (2).

### **33C When expedited procedure competent, jurisdiction of magistrates courts and period within which expedited procedure allowed**

(1) Notwithstanding anything contained in— (a) the Capital Gains Tax Act [*Chapter 23:01*]; or

(b) the Income Tax Act [*Chapter 23:06*]; or

(c) the Stamp Duties Act [*Chapter 23:09*]; or

(d) the Value Added Tax Act [*Chapter 23:12*] (No. 12 of 2002); the Commissioner-General may recover any outstanding tax or duty, including any interest and penalty thereon, payable and outstanding in terms of those Acts, in accordance with this Part.

(2) Notwithstanding anything contained in any law relating to magistrates courts, any amount whatsoever due and payable under this Part shall be recoverable by action in the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable under this Part.

(3) No action shall be taken in terms of this Part where more than six years have elapsed since the tax or duty referred to in subsection (1) became payable.

### **33D Issuance, contents and service of provisional attachment order**

(1) In every case in which—

- (a) any taxpayer fails to pay any tax or duty for which he or she is liable under any specified Act within the time allowed under the specified Act; or
- (b) any taxpayer fails to furnish any return or information in connection with his or her liability for tax or duty under any specified Act within the time allowed under the specified Act; or
- (c) the Commissioner-General is not satisfied with the return or information furnished by any taxpayer under any specified Act; or
- (d) the Commissioner-General, notwithstanding that a taxpayer may not have been called upon to furnish any return or information under any specified Act, has reason to believe that such taxpayer is about to leave Zimbabwe; the Commissioner-General may make an assessment of the extent of the taxpayer's liability for the tax or duty in question, either in whole or in part, together with any penalty and interest thereon calculated in accordance with the specified Act concerned, and thereupon shall serve upon the taxpayer a provisional attachment order authorising the attachment of any movable property of the taxpayer in satisfaction of the tax or duty so estimated.

(2) A provisional attachment order shall specify—

- (a) the name of the taxpayer liable for payment of the tax or duty and the amount of the tax or duty, together with any penalty and interest thereon, assessed under subsection (1); and
- (b) the circumstances, by reference to subsection (1)(a), (b), (c) or (d), that led to the order being made; and
- (c) the location of the movable property subject to attachment; and
- (d) the magistrates court at which, and the date or any one of two or more specified dates on which, the Commissioner-General intends to confirm the order in accordance with section 33G, being a date or dates not earlier than ten days or later than twenty-one days from the date of service of the provisional attachment order.

(3) A provisional attachment order may be served on a taxpayer in any of the following way 5— (a) by delivering it to him or her personally or to his or her duly authorised agent;

(b) by delivering it to a responsible person at the taxpayer's residence or place of business or employment; (c) by sending it by registered post;

(d) in the case where the taxpayer to be served is a body corporate, by delivering it to— (i) a responsible person at the body corporate's registered office or place of business; or (ii) a director or the secretary of the body corporate;

(e) in the case where the taxpayer to be served is a partnership, by delivering it to—

(i) a responsible person at the partnership's office or place of business; or (ii) any of the partners;

(f) in the case where the taxpayer to be served is a syndicate, club, society, or other unincorporated association, by delivering it to—

(i) a responsible person at the association's local office or place of business; or (ii) the association's chairperson, secretary or similar officer;

(g) in the case where service in accordance with any of the foregoing ways is not possible for any reason, by publication by or on behalf of the Commissioner-General of a notice in the Gazette or in one or more issues of a newspaper circulating in the area in which the taxpayer concerned last resided or conducted his

or her business, notifying the taxpayer of the terms of the provisional attachment order; and service of the order in accordance with this subsection shall constitute due notice to the taxpayer of the Commissioner-General's intention to confirm the provisional attachment order on the date or one of the dates specified therein.

### **33E Powers of Commissioner-General in relation to provisional attachment order**

(1) For the purposes of serving and executing a provisional attachment order the Commissioner-General may—

- (a) at any time on or after service of the order, without previous notice, but after having informed the person in charge or control of the house or premises of the purpose of his or her visit, and after exhibiting on demand proof of his or her identity (or the certificate referred to in section 33B(2) in the case of a delegated officer), enter any house or premises described in the order; and
- (b) require a police officer to be present while the order is being executed.

(2) The movable property subject to attachment under this section, other than perishable goods, may, pending the confirmation of the provisional attachment order in terms of section 33G, be kept for a period not exceeding twenty-one days either at the premises where the property is located or at any other place that the Commissioner-General may consider appropriate, at the cost of the taxpayer liable.

(3) In addition, the Commissioner-General, may do any or all of the following upon entering the house or premises referred to in subsection

(1)—

- (a) make such examination and inquiry as he or she considers appropriate;
- (b) question any person who is employed in or at the house or premises;
- (c) require any person who is employed in or at the house or premises to produce any book, account, notice, record, list or other document;
- (d) require from any person an explanation of any entry made in any book, account, notice, record, list or other document found upon any person or at the house or premises referred to in paragraph (c);
- (e) examine and make copies of any book, account, notice, record, list or other document; (f) take possession of any book, account, notice, record, list or other document:

Provided that such book, account, notice, record, list or other document shall be retained only so long as may be necessary for the purpose of any examination or investigation required for the purposes of this Part.

(4) Sections 178 (“Obstruction of public official”) and 180 (“Deliberately supplying false information to public authority”) of the Criminal Law Code applies to the obstruction of or the giving of false information to the Commissioner-General in the exercise of his or her powers under this section.

(5) A provisional attachment order may be discharged at any time before it is confirmed in terms of section 33G, if the taxpayer makes payment to the Commissioner-General of the amount of the tax or duty, together with any penalty and interest thereon, assessed in accordance with section 33D(1), in which event—

- (a) the taxpayer shall not be liable to pay the costs of executing the provisional attachment order; and
- (b) the Commissioner-General may agree terms for the payment of the amount of the tax or duty due by instalments, without prejudice to the Commissioner-General’s right to recommence proceedings under this Part if the taxpayer fails to abide by those terms.

### **33F Where third parties claim property subject to provisional attachment order**

(1) If any claim is made to or in respect of any movable property attached pursuant to section 33E by any person (“the claimant”) other than the taxpayer against whom such order is issued, the Commissioner- General shall, if he or she has reason to believe that the property in question was disposed of to the claimant with the intention of securing that property against attachment in terms of this Part, serve on the claimant a copy of the provisional attachment order relating to the taxpayer, and this Part shall apply to the claimant as if the claimant is joined in the proceedings against the taxpayer under this Part.

(2) For the avoidance of doubt it is declared that section 70 of the Magistrates Court Act [*Chapter 7:10*] does not apply to a claim referred to in subsection (1).

### **33G Confirmation of provisional attachment order**

(1) No later than twenty-one days after the service of a provisional attachment order, the order shall be confirmed as a final attachment order by application in chambers made by or on behalf of the Commissioner General to a magistrate referred to in section 33C(2).

(2) For the avoidance of doubt it is declared that a magistrate may— (a) confirm a provisional attachment order; and

(b) where a person other than the taxpayer lays claim to the attached property in terms of Section 33F, adjudicate upon the claim;

in the absence of the taxpayer or claimant concerned if the taxpayer or claimant has been duly served or notified in terms of section 33D(3) or 33F(1), as the case may be.

(3) There shall be submitted together with the application referred to in subsection(1)—

- (a) a copy of the provisional attachment order relating to the taxpayer who is the subject of the application; and
- (b) where a person other then the taxpayer lays claim to the attached property in terms of section 33F, written particulars identifying that person and disclosing sufficient facts concerning the claim to enable the magistrate to adjudicate upon the claim; and
- (c) an affidavit by or on behalf of the Commissioner-General that the taxpayer who is the subject of the application, and where applicable, any claimant referred to in paragraph (b) has been served or notified in accordance with section 33D(3) or 33F(1), as the case may be; and
- (d) written proof of any costs incurred by the Commissioner- General in serving and executing the provisional attachment order and storing or safeguarding the attached property.

(4) In an application under this section for a final attachment order, the onus shall be on the taxpayer concerned to prove any of the following—

- (a) that he or she is not liable for the tax or duty,
- (b) that the assessment of the amount of the tax or duty, together with any interest thereon, is incorrect;
- (c) that the Commissioner-General’s bill for the costs incurred by him or her the in serving and executing the provisional attachment order under subsection (3)(d) is incorrect.

(5) Upon considering an application under this section for a final attachment order, and the representations, if any, made by the taxpayer concerned or any claimant referred to in subsection (3)(b), the magistrate—

(a) may—

- (i) confirm the provisional attachment order as a final attachment order and make any award of costs in favour of the Commissioner-General; or
- (ii) to the extent that the taxpayer concerned has discharged the onus referred to in subsection (4)—
  - A. confirm the provisional attachment order subject to any conditions or alterations directed by the magistrate; or
  - B. decline to confirm the provisional attachment order as a final attachment order;

(b) shall, where a person other than the taxpayer lays claim to the attached property in terms of section 33F, adjudicate upon the claim and make such order between the parties in respect thereof and of the costs of the proceedings as to the magistrate seems just and lawful.

(6) A decision by a magistrate not to confirm a provisional attachment order or to confirm it subject to conditions or alterations shall not prevent the Commissioner-General from making a fresh application in terms of this subsection within twenty-one days on the basis of new evidence obtained since the original application, or to correct any mistake in the original application.

(7) Where the Commissioner-General notifies the magistrate of his or her intention to make a fresh application in terms of subsection (6), the magistrate shall not order the release of any property subject to the provisional attachment order until the determination of the fresh application.

(8) A fresh application in terms of subsection (6) shall simply state the new evidence obtained since the original application or specify the correction made to the original application and shall be—

- (a) served on the taxpayer concerned and (if necessary) any claimant referred to in subsection (3)(b) in any of the ways specified in terms of section 33D(3); and
- (b) submitted to the same magistrates court as that in which the original application was made on a date or any one of two or more dates specified in the fresh application; and subsections (1) to (5) shall apply to such fresh application with such changes as may be necessary.

### **33H Sale in execution of attached property**

(1) Not earlier than three days or more than fourteen days after the confirmation of a provisional attachment order in terms of section 33G, the Commissioner-General shall, subject to this section, cause the attached property to be sold by public auction:

Provided that the Commissioner-General shall give the taxpayer concerned not less than forty-eight hours written notice (served in any of the ways specified in terms of section 33D(3)) of the date and place of the auction, within which period the final attachment order may be discharged if the taxpayer makes payment to the Commissioner-General of the amount of the tax or duty, together with any penalty and interest thereon, that is due, in which event the Commissioner-General may—

- (i) in his or her sole discretion, waive the whole or any part of the costs awarded in his or her favour by the final attachment order; and
- (ii) agree terms for the payment of the amount of the tax or duty due by instalments, without prejudice to the Commissioner-General's right to recommence proceedings under this Part if the taxpayer fails to abide by those terms.

(2) The offer for sale by public auction shall be subject to a reserve sufficient to cover the tax or duty, together with any interest thereon, and the expenses incurred in connection with the sale: Provided that—

- (i) the Commissioner-General may by direction accept such bid below the reserve as he or she deems adequate;
- (ii) if the property is not sold at such sale it may, by direction of the Commissioner-General, be sold out of hand or appropriated to the State without compensation.

(3) The proceeds of any sale in terms of this section shall be applied in payment of— (a) the expenses incurred in connection with the sale; and

- (b) the tax or duty due, together with any penalty and interest thereon; and
- (c) the costs awarded in favour of the Commissioner-General by the final attachment order;

in that order.

(4) Any balance remaining after the proceeds of any sale have been applied in terms of subsection (3) shall, be paid to the taxpayer.

### **33I Exemption from liability for Commissioner-General and delegated officers**

No liability shall attach to the Commissioner-General or to any officer referred to in section 33B for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance of any function which by or in terms of this Part is conferred or imposed upon the Commissioner-General:

Provided that this section shall not be construed so as to prevent any taxpayer or claimant referred to in section 33F from recovering compensation for any loss or damage sustained by him or her which was caused by gross negligence.

**34 Investigation into affairs of Authority**

(1) The Minister may at any time cause an investigation to be made into the affairs of the Authority by one or more persons appointed by him in writing.

(2) Any person appointed in terms of subsection (1) shall have the same powers as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 18 of that Act shall apply, *mutatis mutandis*, in relation to an investigation made in terms of subsection (1) and to any person summoned to give or giving evidence at that investigation.

**34A Preservation of secrecy**

(1) Any person who

- (a) is employed in carrying out the provisions of this Act; or
- (b) is authorised to receive payment of any revenues in terms of any of the Acts specified in the First Schedule; or
- (c) examines records under the control or in the custody of the Commissioner-General in terms of the laws relating to the collection and safe custody of public moneys and the audit of public accounts; shall, subject to subsections (2) and (3), keep secret, and aid in keeping secret, all information coming to their knowledge in the exercise of their functions.

(2) No person referred to in subsection (1) shall, except in the exercise of his functions under this Act or unless he is required to do so by order of a competent court

- (a) communicate information coming to his knowledge in the exercise of his functions to any person who is not
  - (i) the taxpayer or other person to whom the information relates or by whom the information was furnished; or
  - (ii) the lawful representative of the taxpayer or other person to whom the information was furnished; or
  - (iii) a person to whom the provisions of the laws referred to in paragraphs (a) and (b) of subsection (1) require the information to be communicated; or

(b) allow any person who is not person referred to in subparagraph (i), (ii) or (iii) of paragraph (a) to have access to any record under the control or in the custody of the Commissioner-General which contains information referred to in that subparagraph.

(3) The Commissioner-General shall, if he is required or authorised, as the case the case may be, to do so by the Minister or the Board

- (a) inform the Minister or the Board of the total amount of taxable income which according to the records under the control or in the custody of the Commissioner-General accrued during such periods to such classes of persons from such sources as the Minister or the Board may specify;
- (b) disclose such information for such statistical purposes as he considers to be desirable;
- (c) disclose such information as is required and to the extent that is necessary in order to give effect to any obligation of Zimbabwe in terms of any international convention, treaty or agreement.

(4) The Commissioner-General may—

- (a) in the exercise of his functions under the Income Tax Act [*Chapter 23:06*], use any information coming to his knowledge in the exercise of his functions under the Capital Gains Tax Act [*Chapter 23:01*];
- (b) in the exercise of his functions under the Capital Gains Tax Act [*Chapter 23:01*], use any information coming to his knowledge in the exercise of his functions under the Income Tax Act [*Chapter 23:06*].

(5) All persons referred to in subsection (1) shall, before commencing to exercise the functions conferred or imposed upon them by the laws referred to in paragraphs (a) and (b) of that subsection, take and subscribe before a magistrate, justice of the peace or commissioner of oaths the prescribed oath of secrecy.

(6) Every person who, in contravention of this section or the true intent of the oath of secrecy taken by him and without lawful excuse, reveals to any person whomsoever any matter or thing which has come to his knowledge in the course of his official duties, or suffers or permits any person to have access to any records in the possession or custody of the Commissioner, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

(7) Any person who acts in the execution of his office before he has taken the oath prescribed in terms of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars.

[Section inserted by Act 27 of 2001]

**34B Reward for information**

(1) In this section

“near relative” means—

- (a) a lineal ascendant of an individual, including a step-father or step-mother; or
- (b) a child or a lineal descendant of an individual other than a child; or
- (c) a brother, half-brother, step-brother, sister, half-sister, step-sister, uncle, aunt, nephew or niece of an individual; or
- (d) the adopter or adopters of an individual; or
- (e) the spouse of a relative of an individual referred to in paragraphs (a) to (d).

(2) The Commissioner-General may, with the approval of the Minister, award to any person, not being an employee of the Authority or a near relative of an employee of the Authority, a monetary reward for information provided or any measure taken which results in detection of smuggling or any other offence against any of the Acts specified in the First Schedule, and the recovery of revenue which would otherwise have been lost.

(3) Any amount to be awarded in terms of subsection (1)□

- (a) shall be at the rate of ten *per centum* of the revenue or fine recovered; and
- (b) may be deducted from the revenue recovered and paid to the person referred to in subsection (2).

[Section inserted by Act 27 of 2001]

### 34C Tax clearance certificates

(1) At the request of a person liable to pay any tax under the Income Tax Act [*Chapter 23:06*] or any of the Acts specified in the First Schedule (“the Scheduled Acts”) the Commissioner-General shall, if such person is entitled to such a certificate in terms of any of those Acts, issue to him or her a certificate (called a “tax clearance certificate”) signed by or on behalf of the Commissioner-General to any effect as follows, namely that the person—

- (a) has furnished a return under section 37 of the Income Tax Act [*Chapter 23:06*] for the last year of assessment for which such a return is due; or
- (b) has made arrangements satisfactory to the Commissioner-General for the furnishing of a return referred to in paragraph (a) or
- (c) has paid the appropriate presumptive tax in terms of the Twenty-Sixth Schedule to the Income Tax Act [*Chapter 23:06*] on the last date or occasion on which such tax was due before the certificate is presented for any purpose under that Act, or has made arrangements satisfactory to the Commissioner-General for the payment of such tax; or
- (d) in the case of new or proposed company or private business corporation, has appointed a public officer of the company or private business corporation in accordance with section 61 of the Income Tax Act [*Chapter 23:06*]; or
- (e) has furnished any return required to be furnished under any of the Scheduled Acts on the last date or occasion on which such return was due before the certificate is presented for any purpose under those Acts, or has made arrangements satisfactory to the Commissioner-General for the furnishing of such a return; or
- (f) has paid the appropriate tax in terms of any of the Scheduled Acts on the last date or occasion on which such tax was due before the certificate is presented for any purpose under those Acts, or has made arrangements satisfactory to the Commissioner-General for the payment of such tax.

(2) The Commissioner-General may make the issuance of any tax clearance certificate in terms of subsection (1) conditional on the payment of any tax arrears that may be due from the person who requests that certificate, notwithstanding that such person has furnished any return required to be furnished under section 37 of the Income Tax Act [*Chapter 23:06*] or under any of the Scheduled Acts for the period in respect of which the certificate is requested.

(3) No fee shall be charged for the issuance of a tax clearance certificate except the prescribed fee for a duplicate tax clearance certificate or the replacement of a lost or destroyed tax clearance certificate.

[Section inserted by Act 2 of 2005]

### 34D Advance tax rulings.

The Commissioner-General may, in accordance with the Fourth Schedule, make an advance tax ruling on any provision of any of the Acts specified in the First Schedule, whether on his or her own initiative or any application by any person interested in a transaction that is or may be liable to tax.

[Section inserted by Act 3 of 2009]

### 34E Offence by officers of Authority

Any officer of the Authority who, being a person appointed for the due administration of, or in connection with the assessment and collection of any revenues levied under, this Act or any of the Acts specified in the First Schedule—

- (a) demands from any person an amount in excess of the authorised assessment of the revenue in question; or
- (b) withholds for his or her own use or otherwise any portion of the amount of revenue collected; or
- (c) renders a false return whether verbally or in writing of the amounts of revenue collected or received by him or her; or

- (d) defrauds any person, embezzles any money or otherwise uses his or her position so as to deal wrongfully either with the Authority, the Commissioner or any other individual; or
- (e) not being authorised under this Act or any of the Acts specified in the First Schedule to do so, collects or attempts to collect tax under any such Act; or
- (f) delays without justifiable cause to discharge his or her duties to assess or collect any revenues owed by any member of the public, or to discharge any service he or she is required to render to any member of the public under this Act or any of the Acts specified in the First Schedule;

commits an offence and shall be liable on conviction to a fine not exceeding level ten or to imprisonment not exceeding two years, or both.

[Section inserted by Act 10 of 2009]

### 35 Regulations

The Minister, after consultation with the Board, may make regulations providing for all matters which in terms of this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## PART V

### AMENDMENTS, TRANSITIONAL PROVISIONS AND SAVINGS

### 36 Amendment of Acts

The Act specified in each Part of the Third Schedule is amended to the extent set out in that Part.

### 37 Transfer of certain assets, obligations, etc., of State to Authority

(1) In this section□

“fixed date” means the date fixed in terms of subsection (2) of section *one* as the date on which this Act comes into operation;

“transfer date”, in relation to any property, right, liability or obligation which is transferred to the Authority in terms of this section, means the date with effect from which it is so transferred.

(2) The assets and rights of the State which□

(a) before the fixed date, were used or otherwise connected with the functions of the Department of Taxes and the Department of Customs and Excise; and

(b) are specified by the Minister; together with any liabilities or obligations attaching to them, shall be transferred to the Authority with effect from such date as the Minister may specify.

(3) On the relevant transfer date, every asset and right of the State which the Minister has directed shall be transferred to the Authority, together with any liability or obligation attaching to it, shall vest in the Authority.

(4) All bonds, hypothecations, deeds, contracts, instruments, documents and working arrangements which subsisted immediately before the relevant transfer date in relation to any asset, right, liability or obligation transferred to the Authority under this section and to which the State was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the Authority as if, instead of the State, the Authority had been named therein.

(5) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his registers in respect of any immovable property, right or obligation which passes to the Authority under this section, but the Registrar of Deeds, when so requested in writing by the Authority in relation to any particular such property, right or obligation, shall cause the name of the Authority to be substituted, free of charge, for that of the State on the appropriate title deed or other document or in the appropriate register.

(6) Any cause of action or proceeding which existed or was pending by or against the State immediately before the relevant transfer date in respect of any asset, right, liability or obligation which passes to the Authority under this section, may be enforced or continued, as the case may be, by or against the Authority in the same way that it might have been enforced or continued, as the case may be, by or against the State had this Act not been passed.

(7) Subsection (6) shall not apply to any cause of action or proceedings existing or pending immediately before the relevant transfer date between the State and a person employed by the State.

(8) Subject to the Public Service Act [*Chapter 16:04*] and with the consent of the employees concerned, the Authority shall engage such of the persons who on the fixed date were employed in the State’s Department of Taxes and Department of Customs and Excise as the Public Service Commission, after consultation with the Board and the Minister, may direct.

(9) Persons engaged in terms of subsection (8)□

(a) shall be engaged on such terms and conditions as may be fixed by the Board with the agreement of the persons concerned;

(b) without derogation from paragraph (a), may be permitted to continue contributing towards a pension in terms of the Public Service (Pensions) Regulations, 1992 (Statutory Instrument 124 of 1992), or any other

enactment, subject to such terms and conditions as the Public Service Commission may fix with the approval of the Minister and the Board.

(10) Terms and conditions fixed in terms of subsection (9) may provide for□

- (a) payments by the Board to the Consolidated Revenue Fund to compensate the State, wholly or partially, for pensions and other paid or payable to or in respect of persons engaged in terms of subsection (8); and
- (b) the application, non-application or modification of the provisions of the Public Service (Pensions) Regulations, 1992 (Statutory Instrument 124 of 1992), in regard to persons engaged in terms of subsection (8).

(11) Notwithstanding any other provision of this Act, a person who□

- (a) as a member of the Public Service, was afforded an opportunity of engagement by the Authority in terms of subsection (8) and declined to avail himself of the opportunity; and
- (b) subsequently left the Public Service and as a consequence became entitled to pension benefits in respect of the abolition of his post;

shall not be engaged in any capacity by the Authority for a period of ten years from the date on which he left the Public Service, unless the Minister and the Public Service Commission consent to his engagement.

### 38 Savings

Where, before the fixed date□

- (a) the Commissioner of Taxes; or
- (b) the Director of Customs and Excise; or
- (c) an officer, proper officer or revenue officer; made any assessment or decision, or issued any notice or directive, or did any other thing whatsoever in terms of an Act specified in the First Schedule, and that assessment, decision, notice, directive or other thing had or was capable of acquiring effect immediately before the fixed date, it shall be deemed to have been made, issued or done, as the case may be, by the appropriate Commissioner or officer in terms of the Act concerned as amended by this Act, and shall continue to have effect or to be capable of acquiring effect, as the case may be, accordingly.

### 39 Construction of certain references

Any reference in any enactment, other than a provision of an Act amended by the Third Schedule, or in any document to□

- (a) the Director or Controller of Customs and Excise, shall be construed as a reference to the Commissioner in charge of the department which is declared in terms of subsection (2) of section *twenty-one* to be responsible for assessing, collecting and enforcing the payment of duties under the Customs and Excise Act [*Chapter 23:02*];
- (b) the Department of Customs and Excise, shall be construed as a reference to the department referred to in paragraph (a);
- (c) the Commissioner of Taxes□
  - (i) in relation to value added tax, shall be construed as a reference to the Commissioner in charge of the department which is declared in terms of subsection (3) of section *twenty-one* to be responsible for assessing, collecting and enforcing the payment of the value-added tax leviable under the Value Added Tax Act [*Chapter 23:12*];;
  - (ii) in relation to any other tax or impost, shall be construed as a reference to the Commissioner in charge of the department which is declared shall be construed as a reference to the Commissioner in charge of the department which is declared in terms of subsection (2) of section *twentyone* to be responsible for assessing, collecting and enforcing the payment of the taxes leviable under the Income Tax Act [*Chapter 23:06*];
- (d) the Department of Taxes, shall be construed as a reference to the department referred to in paragraph (c).

[Section as amended by Act 12 of 2002]

## FIRST SCHEDULE (Sections 2, 21, 34A, 34B and 38)

### SPECIFIED ACTS

1. Betting and Totalizator Control Act [*Chapter 10:02*]
2. Capital Gains Tax Act [*Chapter 23:01*]
3. Customs and Excise Act [*Chapter 23:02*]
4. Income Tax Act [*Chapter 23:06*]
5. Income Tax (Transitional Period Provisions) Act [*Chapter 23:07*]
6. Stamp Duties Act [*Chapter 23:09*]
7. Tax Reserve Certificates Act [*Chapter 23:10*]
8. Value Added Tax Act, 2002



## SECOND SCHEDULE (Section 4)

### POWERS OF AUTHORITY

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interest therein and rights thereof and concessions, grants, powers and privileges in respect thereof.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.
3. To maintain, alter or improve property acquired by it.
4. To mortgage any assets or part of any assets and, with the approval of the Minister, to sell, exchange, lease, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.
5. To open bank accounts in the name of the Authority and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions promissory notes, bills of exchange, securities and other negotiable or transferable instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind such suretyships or guarantees.
8. With the approval of the Minister, to establish and administer such funds and reserves not specifically provided for in this Act as the Board considers appropriate or necessary for the proper exercise of the Authority's functions.
9. To pay such remuneration and allowances and grant such leave of absence and to make such gifts, bonuses and the like to its employees as it considers fit.
10. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.
11. To purchase, take on lease or in exchange or otherwise acquire land or dwelling-houses for use or occupation by its employees.
12. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken on lease or in exchange or otherwise acquired by it.
13. To sell or lease dwelling-houses and land for residential purposes to its employees.
14. To provide or guarantee loans made to its employees for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling-houses or land which are the property of its employees, subject to any conditions that may be imposed by the Board from time to time.
15. To provide security in respect of loans by the deposit of securities, in which the Authority may invest such money as the Board may consider necessary for the purpose.
16. To provide loans to any employee of the Authority for the purpose of purchasing vehicles or other property, subject to any conditions that may be imposed by the Board from time to time.
17. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research, including the awarding of scholarships for such training.
18. To provide such service as the Authority, with the approval of the Board, considers could properly be provided by the Authority and to charge for services such fees as the Board may from time to time determine.
19. To engage in any activity, either alone or in conjunction with other organisations or international agencies, to promote better understanding of revenue issues.
20. To provide technical advice or assistance, including training facilities, to revenue authorities of other countries.
21. To accept, with the approval of the Board, any donations, gifts, or assistance from any organisation or person.
22. On behalf of the State, to institute and maintain proceedings in any court or tribunal for the recovery of any revenues, and to take such other steps as may be necessary to recover revenues.
23. To do anything which by this Act is required or permitted to be done by the Authority.
24. Generally to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the function of the Authority in terms of this Act or any other enactment.

## THIRD SCHEDULE

(AMENDMENTS TO VARIOUS ACTS)

# FOURTH SCHEDULE (Section 34D)

## ADVANCE TAX RULINGS

[Schedule inserted by Act 3 of 2009]

### 1. Interpretation

In this Schedule—

“advance tax ruling” means a written statement in the form of a binding general ruling, binding private ruling and binding class ruling issued by the Commissioner-General regarding the interpretation or application of the relevant Act;

“applicant” means a person who applies for a binding private ruling or a binding class ruling;

“binding class ruling” means an advance tax ruling issued in response to an application by an applicant regarding the application or interpretation of the relevant Act as it affects a specific class of persons;

“binding general ruling” means an advance tax ruling issued in accordance with the requirements of the relevant Act;

“binding private ruling” means an advance tax ruling issued in response to an application by an applicant regarding the application or interpretation of the relevant Act in respect of a proposed transaction as it affects the applicant alone;

“class member” means a member of the class to which a binding class ruling applies, such as a shareholder in a company or an employee participant in a share investment scheme;

“entity” means a person, other than a natural person, which may apply for a binding class ruling on behalf of its shareholders or members in respect of a proposed transaction to which it is a party, and includes a company, private business corporation, cooperative society or trade association:

Provided that an entity does not include a professional firm acting or purporting to act on behalf of a client;

“non-binding private opinion” means a written statement issued by the Commissioner-General in response to an inquiry by a person in order to provide the person with informal guidance in respect of the tax treatment of a particular set of facts and circumstances or transaction, but which does not have any binding effect;

“relevant Act”, in relation to an advance tax ruling, means any one of the Acts specified in the First Schedule in respect of which the ruling is made or sought;

“tax” means any tax, duty, fee, levy, charge, penalty, fine or any other money levied, imposed, collected or received in terms of any of the Acts specified in the First Schedule;

“transaction” means any transaction, deal, business, arrangement, operation or scheme, and includes a series of transactions.

### 2. Application for advance tax ruling

(1) Subject to the minimum requirements set forth in subparagraph (2), an application for an advance tax ruling must be made in such manner and in such form as the Commissioner-General may prescribe, and be accompanied by the fee charged in terms of paragraph 18 of the Second Schedule, if any.

(2) An application must state the following minimum information— (a) the applicant’s name, postal address and telephone number; and

(b) the name, postal address and telephone number of the applicant’s representative, if any; and

(c) a complete description of the proposed transaction in respect of which the ruling is sought; and

(d) a complete description of the impact the proposed transaction may have upon the tax liability of the applicant or, where relevant, any connected person in relation to the applicant, including any and all relevant information regarding the financial or tax implications of the proposed transaction; and

(e) a complete description of any transactions entered into by the applicant prior to submitting the application or that may be taken after the completion of the proposed transaction which may have a bearing on the tax consequences of the proposed transaction or may be considered to be part of a series of transactions involving the proposed transaction; and

(f) the proposed ruling being sought; and

(g) a citation of the relevant statutory provisions or issues; and

(h) the reasons why the applicant believes that the proposed ruling should be made; and

(i) a statement of the applicant’s interpretation of the relevant statutory provisions or issues, as well as an analysis of any relevant authorities either considered by the applicant or of which the applicant is aware, whether those authorities support or are contrary to the proposed to ing being sought; and

(j) a statement to the best of the applicant’s knowledge that the same or substantially the same or substantially similar issue upon which a ruling is sought is no the subject of an audit, examination, Invesugancri, ruling, application, objection and appeal, or other proceeding currently before the Commissioner-General or the courts involving the applicant or a connected person in relation to the applicant; and

(k) a draft version of the binding private ruling or binding class ruling to be issued; and

- (l) a description of the information that the applicant believes should be deleted from the final ruling before the publication of the ruling in order to protect the applicant's confidentiality; and
  - (m) the applicant's consent to the publication of the ruling by the Commissioner-General.
- (3) In addition to the minimum information required by subparagraph (2), an application for a binding class ruling must also state the following minimum information—
- (a) a description of the class members concerned; and
  - (b) the impact the proposed transaction may have upon the liability of the class members or, where relevant, any connected person in relation to the applicant or any class member.
- (4) The Commissioner-General may request additional information from an applicant at any time.

### *3. Cases where applications for advance tax ruling must be rejected*

(1) Notwithstanding the foregoing provisions, the Commissioner-General shall not accept an application for an advance tax ruling in any of the following circumstances—

- (a) where the application requests or requires the rendering of an opinion, conclusion or determination regarding or in respect of any of the following—
  - (i) the market value of an asset; or
  - (ii) the application or interpretation of the laws of a foreign country; or
  - (iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant (or to a class member in the case of an application for a binding class ruling); or
  - (iv) the constitutionality of any of the Acts specified in the First Schedule or any other tax law; or
  - (v) a proposed transaction that is hypothetical or not seriously contemplated;
- (b) where the application relates to the duty of an employer to determine whether a person is a casual, parttime or full-time employee, or an independent contractor;
- (c) where the application is submitted for academic purposes; or (d) where the application presents, contains, or raises—
  - (i) a frivolous or vexatious issue; or
  - (ii) alternative courses of action by the applicant (or requests or requires the rendering of an opinion, conclusion or determination regarding such alternative courses of action); or
  - (iii) an issue that is the same as or substantially similar to an issue that is—
    - A. the subject of an audit, examination, investigation or other proceeding by the Commissioner-General involving the applicant (or, in the case of a binding class ruling, in relation to the applicant or any class member); or B. the subject of any draft legislation; or
    - C. pending before the courts.

(2) In addition to the rejections set forth in subparagraph (1), the Commissioner-General may reject any application regarding or in respect of the following—

- (a) the application or interpretation of any general or specific anti-avoidance provision; or (b) an issue—
  - (i) that is inherently or distinctly factual in nature; or
  - (ii) in respect of which material facts cannot be established at the time of application; or
  - (iii) the resolution of which would depend upon assumptions to be made regarding a future event or other matters which cannot be reasonably determined at the time of the application; or
  - (iv) which would more appropriately be dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation; or
  - (v) which is the same as or substantially similar to an issue upon which the applicant has already received a ruling; or
  - (vi) in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction and that other party has not applied for a ruling; or
  - (vii) in respect of a transaction that is part of another transaction which has a bearing on that issue and the details of that other transaction have not been disclosed;

or

- (c) a matter the resolution of which would be unduly time-consuming or resource-consuming or resource intensive.

(3) In addition to the rejections set forth in subparagraphs (1) and (2), the Commissioner-General may publish lists of issues in respect of which applications for advance tax rulings will not be accepted.

(4) If the Commissioner-General requests additional information in respect of or in connection with an application and the applicant fails or refuses to provide that information, the Commissioner-General may reject that application without any refund or rebate of any applicable fees.

### *4. Binding effect of advance tax rulings*

(1) The Commissioner-General must interpret or apply the relevant Act in favour of the applicant or otherwise in accordance with the advance tax ruling given.

(2) An advance tax ruling does not have any binding effect upon the Commissioner-General in relation to future cases.

(3) A binding general ruling may be cited by the Commissioner-General or any person in any proceedings before the Commissioner-General or the courts.

(4) A binding private ruling may not be cited in any proceeding before the Commissioner-General or the courts other than a proceeding involving the applicant for that ruling.

(5) A binding class ruling may not be cited in any proceeding before the Commissioner-General or the courts by any person other than a proceeding involving the applicant for that ruling or an affected class member identified in the ruling.

(6) A publication or other written statement issued by the Commissioner-General does not have any binding effect unless it is an advance tax ruling.

#### 5. *Non-binding private opinions and other written statements*

(1) The Commissioner-General may issue a nonbinding private opinion to a person regarding the tax treatment of a particular set of facts and circumstances or a particular transaction.

(2) A nonbinding private opinion may not be cited in any proceeding before the Commissioner-General or the courts other than a proceeding involving the person to whom the nonbinding private opinion was issued.

(3) Any written statement issued by the Commissioner-General interpreting or applying the Income Tax Act [Chapter 23:06] prior to the 1st January, 2007, or any other relevant Act prior to the 1st January, 2009, is to be treated as and have the effect of a nonbinding private opinion, unless the Commissioner-General prescribes otherwise in writing.

#### 6. *Conditions for applicability of advance tax rulings*

(1) An advance tax ruling applies to a person only if all of the following conditions have been satisfied—

(a) the provision or provisions of the relevant Act at issue are the subject of the advance tax ruling; and (b) the set of facts and circumstances of the transaction presented by the person are the same as the particular

set of facts and circumstances governed by the advance tax ruling; and

(c) the set of facts and circumstances of the transaction fall entirely within the effective period of the advance tax ruling; and

(d) any assumptions made or conditions imposed by the Commissioner-General in connection with the validity of the advance tax ruling have been satisfied or carried out.

(2) In addition to the requirements set forth in subparagraph (1)—

(a) in the case of a binding private ruling, the ruling applies to a person only if that person is the applicant identified in the ruling; and

(b) in the case of a binding class ruling, the ruling applies to a person only if that person is either the applicant identified in the ruling or a class member identified in the ruling.

#### 7. *Rulings rendered void due to fraud, misrepresentation, etc.*

(1) A binding private ruling or a binding class ruling is nullified under any of the following circumstances—

(a) the facts stated in the application regarding the proposed transaction are materially different from the transaction actually carried out; or

(b) there is a misrepresentation or wilful nondisclosure of a material fact; or

(c) any condition or assumption stipulated by the Commissioner-General as a condition of the issue or binding effect of the ruling is not satisfied or carried out.

(2) For purposes of this paragraph, a fact is considered material if it would have resulted in a different ruling had the Commissioner-General been aware of it when the original ruling was made.

#### 8. *Impact of subsequent changes in tax law*

(1) An advance tax ruling ceases to be effective upon the occurrence of any of the following circumstances—

(a) if the provision of the relevant Act that was the subject of the advance tax ruling is repealed or amended, the advance tax ruling will cease to be effective from the date such repeal or amendment is effective;

(b) if a court overturns or modifies an interpretation of the relevant Act on which the advance tax ruling is based, the advance tax ruling will cease to be effective from the date of the court's judgment unless— (i) the decision is under appeal; or

(ii) the decision is fact—specific and the general interpretation upon which the advance tax ruling was based is unaffected; or

(iii) the reference to the interpretation upon which the advance tax ruling was based was obiter dicta.

(2) An advance tax ruling ceases to be effective immediately upon the occurrence of the circumstances described in subparagraph (1), whether or not the Commissioner-General publishes a notice of withdrawal or modification.

#### 9. *Withdrawal or modifications*

(1) Subject to this paragraph, the Commissioner-General may withdraw or modify an advance tax ruling at any time.

(2) Notification of the withdrawal or modification of an advance tax ruling must be communicated in such a manner as the Commissioner-General considers will notify the persons affected by it and must include the following information—

- (a) the title or number of the advance tax ruling being withdrawn or modified; and
- (b) in the case of a modification, a summary of the changes made; and
- (c) the effective date (which may be a retrospective date) of the withdrawal or modification.

(3) If the advance tax ruling is either a binding private ruling or a binding class ruling, the Commissioner-General must first provide the applicant with notice of the proposed withdrawal or modification and a reasonable opportunity to state any proposition of law or fact relevant to the decision to withdraw or modify the ruling.

#### *10. Binding general rulings*

(1) The Commissioner-General may, at any time, make binding general rulings.

(2) A binding general ruling may be effective for either— (a) a particular year of assessment or other definite period; or (b) an indefinite period.

(3) A binding general ruling must state—

- (a) that it is a binding general ruling made under this paragraph; and
- (b) the provisions of the relevant Act which are the subject of the binding general ruling; and (c) either—

(i) the year of assessment or other definite period for which it applies; or

(ii) in the case of a binding general ruling for an indefinite period, that it is for an indefinite period and the date or year of assessment from or beginning with which it applies.

(4) Subject to subparagraph (3), binding general rulings may be issued in such form and in such manner as the Commissioner-General may prescribe, including but not limited to interpretation notes and practice notes.

(5) A publication or other written statement shall not be considered as a binding general ruling unless it contains the information prescribed by subparagraph (3).

#### *11. Binding private rulings*

(1) The Commissioner-General may issue binding private rulings regarding the application or interpretation of any of the provisions of the relevant Act to a proposed transaction upon application by a person in accordance with paragraph 2.

(2) The Commissioner-General may make a binding private ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner-General must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding private ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner-General must issue the final binding private ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued.

(5) A binding general ruling must contain—

(a) a statement identifying it as a binding private ruling made under this paragraph; and

(b) the name, tax number and postal address of the applicant; and

(c) a citation of the relevant statutory provisions or issues; and

(d) a description of the proposed transaction; and

(e) the specific ruling made; and

(f) any assumptions made or conditions imposed by the Commissioner-General in connection with the validity of the ruling; and

(g) the period for which the ruling is valid.

(6) Subject to subparagraph (5), a binding private ruling may be issued in such manner and in such form as the Commissioner-General may prescribe.

#### *12. Binding class rulings*

(1) The Commissioner-General may issue binding class rulings regarding the application or interpretation of a provision of the relevant Act relating to a proposed transaction upon application by a person in accordance with paragraph 2.

(2) The Commissioner-General may make a binding class ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner-General must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding class ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner-General must issue the final binding class ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued;

(5) A binding general ruling must contain—

(a) a statement identifying it as a binding class ruling made under this paragraph; and

(b) the name, tax number and postal address of the applicant; and

- (c) a list or a description of the affected class members; and
- (d) a citation of the relevant statutory provisions or issues; and
- (e) a description of the proposed transaction; and
- (f) the specific ruling made; and

(g) any assumptions made or conditions imposed by the Commissioner- General in connection with the validity of the ruling; and

(h) the period for which the ruling is valid.

(6) Subject to subparagraph (5), a binding class ruling may be issued in such manner and in such form as the Commissioner-General may prescribe.

(7) Prior to final publication, the Commissioner must provide the applicant with a draft copy of the edited ruling for review and comment.

(8) It is the sole and exclusive responsibility of the applicant to communicate with the affected class members regarding the application for the binding class ruling, the issuance, withdrawal or modification of such ruling, or any other information or matters pertaining to such ruling.

### *13. Procedures and guidelines*

The Commissioner-General may issue procedures and guidelines, in the form of binding general rulings, for the implementation and operation of the advance tax ruling system established by this Schedule.

[Schedule inserted by Act 3 of 2009]

