

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 50 OF 2014

The Income Tax Act
(Laws, Volume 19, Cap. 323)

The Income Tax (Pay as You Earn) Regulations, 2014

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IN EXERCISE of the powers contained in section *seventy-one* of the Income Tax Act, the following Regulations are hereby made:

PART I
PRELIMINARY

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| 1. (1) These Regulations may be cited as the Income Tax (Pay As You Earn) Regulations, 2014. | Title |
| 2. In these Regulations, unless the context otherwise requires— | Interpretation |
| “allowable pension contribution” means a sum paid by an employee by way of contribution towards an approved pension fund or scheme, which is allowed to be deducted as an expense under section <i>thirty-seven</i> of the Act; | |
| “appropriate tax table” in relation to a monthly paid employee, weekly paid employee or casual employee means the applicable tax table providing figures for monthly, weekly or daily deductions; | |
| “authorised officer” means a person authorised by the Commissioner-General for the purposes of these Regulations; | |
| “casual employee” has the meaning assigned to it in the Employment Act; | Cap. 268 |
| “chargeable emoluments” in relation to an employee, means the emoluments from an employee’s employment, which are chargeable to income tax, but does not include any allowable pension contribution or any amount which is exempt from income tax; | |
| “cumulative chargeable emoluments” in relation to a date in a charge year, means the aggregate amount of chargeable emoluments paid or deemed to have been paid by the employer to an employee from the beginning of the charge year up to and including that date; | |
| “cumulative tax” in relation to an employee at any date in a charge year, means the tax due in accordance with the appropriate tax tables in respect of the employee’s cumulative chargeable emoluments paid during the year to that date, abated by the aggregate of the tax credit due in respect of those | |
| emoluments from the beginning of the year to that date; | |
| “director” has the meaning assigned to it in the Companies Act; | Cap. 388 |
| “employing entity” means a company, firm or organisation, that pays emoluments; | |

- “monthly paid employee” means an employee whose emoluments are payable on a monthly basis;
- “monthly return” means a return of payment of tax made under regulation 17;
- “payment period” in relation to an employee, means a period beginning with the day immediately following the day on which an emolument is payable to the employee and ending with the day on which the next payment of emoluments is payable;
- “tax deduction record” means a record required to be kept under regulations 5, 11 and 24;
- “tax table” means a tax table devised by the Commissioner-General under section *seventyone* of the Act;
- “total net tax deducted” in relation to the emoluments paid to an employee during any period, means the total tax deducted from the emoluments less any tax repaid to the employee; and
- “weekly paid employee” means an employee whose emoluments are payable on a weekly basis.

Employee’s
certificate

3. (1) An employee shall, within thirty days of commencement of employment, notify the employer through a sworn affidavit, certifying whether or not
- (a) the current employment is the employee’s only employment;
 - (b) the employee is also an employee of another employer and that employment began before the employee’s current employment;
 - (c) the employee has been employed before in the charge year; or
 - (d) the employee has not been employed before in the charge year.
- (2) An employer shall not be liable for failure to deduct tax at the maximum rate from any payment of emoluments to an employee where
- (a) the employee has given the employer a certificate under this regulation; and
 - (b) the employer shows they relied on the truthfulness of the certificate, unless the employer knew or ought to have known that the certificate was untrue in any particular.

PART II
DEDUCTION AND REPAYMENT OF TAX

4. (1) An employer shall deduct tax from the emoluments paid to an employee or repay tax to an employee, in accordance with the appropriate tax table.

Deductions
and
repayments

(2) An employer shall, on the date of payment of emoluments to an employee, ascertain the cumulative chargeable emoluments of the employee at the date of the payment and the cumulative tax in respect of those emoluments.

(3) Where the cumulative tax exceeds the amount of the previous cumulative tax as at the time of the last preceding payment of emoluments to the employee in a charge year, the employer shall deduct the excess from the emoluments.

(4) Where the cumulative tax is less than the amount of the previous cumulative tax, the employer shall repay the difference to the employee.

(5) Where the cumulative tax is equal to the amount of the previous cumulative tax, tax shall not be deducted or repaid.

(6) Where there is no previous cumulative tax, the employer shall deduct the cumulative tax from the emoluments when making the payment in question.

(7) This regulation does not apply to a casual employee.

5. (1) An employer shall deduct tax from the emoluments paid to an employee in accordance with the appropriate tax table.

Casual
employee

(2) Where a casual employee is not paid on a daily basis, the amount of tax to be deducted from the employee's chargeable emoluments in accordance with this regulation shall be found by -

- (a) dividing the amount of the employee's emoluments for a payment period by the number of days in that period;
- (b) finding the amount of tax which the appropriate tax table requires to be deducted from a payment of emoluments of the amount under paragraph (a); and
- (c) multiplying the amount found under paragraph (b) by the number of days in the employee's pay period.

(3) An employer of a casual employee shall keep a tax deduction record for any casual employee from whose emoluments tax is required to be deducted in such form as the Commissioner-General may specify in the *Gazette*.

(4) An employer shall keep a written record of the names, dates of employment and emoluments of any casual employee for whom the employer is not required to keep a tax deduction record.

(5) Regulations 8, 9, 11, 12 and 13 do not apply in relation to a casual employee.

New
monthly and
weekly paid
employees

6. (1) An employer shall, where an employee who is not a casual employee commences employment with the employer after 1st January in a charge year, notify the Commissioner-General in such form as the Commissioner-General may specify in the *Gazette*.

(2) Unless the employee has given the employer a certificate in accordance with subregulation (3) of regulation 12, the employer shall, up to end of the charge year, apply regulation 4—

(a) in the case of a monthly paid employee, as if each month the employee works for the employer was the month of January; and

(b) in the case of a weekly paid employee, as if each week the employee works for the employer was the first week of the year.

Emoluments
not paid
weekly or
monthly

7. An employer shall, where an employee's payment period exceeds one month, calculate the tax due as follows:

(a) if the emoluments are payable once in a year, by reference to the tax table for the month of December in which the payment is made or if the emolument is made in any other month, for the December immediately following that month as if that were the table for the month in which the payment is made;

(b) if the emoluments are payable quarterly, by reference to the tax table for the last month in the quarter of the year in which the payment is made as if that were the table for the month in which the payment is made;

(c) if the emoluments are payable half-yearly, by reference to the table for June as respects the first payment made in the year, and by reference to the table for December as respects the second payment, as if in each case that were the table for the month in which the payment is made; or

(d) in any other case, by reference to the tax table for the month in which the payment is made.

Deduction of
tax at
maximum or
lower rate

8. (1) Regulations 4, 6 and 7 do not apply where tax shall be deducted in accordance with this regulation.

(2) Subject to sub-regulations (4) and (5), an employer shall, where—

(a) chargeable emoluments of an employee are payable in respect of parttime employment; or

(b) chargeable emoluments of an employee are paid after the employee ceases to be in employment;

deduct tax at the maximum rate from each payment of emoluments the employer makes to the employee, without regard to the employee's cumulative tax or to any tax credit to which the employee may be entitled.

(3) Sub-regulation (2) does not apply to any payment from which tax is required to be deducted under regulation 13.

(4) Paragraph (b) of sub-regulation (2) does not apply to any lump sum payment or to any amount taxable in accordance with subsection (1) of section *twenty-one* of the Act, but where the payment is made, an employer shall deduct tax from that payment at the rate or rates specified in the Charging Schedule in relation to the payments for the tax year in which they are paid, without regard to the employee's cumulative emoluments, the corresponding cumulative tax or to any tax credit to which the employee may be entitled.

(5) For the purpose of this regulation, where emoluments are payable to an employee in respect of only one employment, that employment shall not be treated as part-time employment whatever the hours of employment.

(6) Where an employee obtains other employment while still employed in the first employment, the later employment and any other employment shall be part-time employment for the purpose of these Regulations.

(7) In this regulation, reference to the maximum rate of tax, in relation to any payment of emoluments, is a reference to the highest rate of income tax applicable to the income of an individual for the year in which the emoluments are payable.

9. (1) The Commissioner-General may, in writing direct an employer to pay the gross amount of emoluments to an employee without deduction of tax.

Payment
without
deduction of
tax

(2) Where a direction is made under subregulation (1), regulations 4, 6 and 7 shall not apply.

(3) A direction made under sub-regulation (1) shall—

- (a) identify the employer and employee concerned;
- (b) apply to the payment of emoluments made after such date as may be specified in the direction, not being less than fourteen days after the date the direction is given to the employer; and
- (c) be copied to the employee.

10. An employer shall, on the date of payment of emoluments, inform the employee, in writing, of the total amount of the emoluments paid on that date and the total net tax deducted from the emoluments.

Pay slips

Tax
deduction
record

11. (1) An employer shall apply to the Commissioner-General for a tax deduction record.

(2) The tax deduction record shall be in such form as the Commissioner-General may specify in the *Gazette*.

(3) An employer shall keep a tax deduction record for each of the employees, whether or not any tax is required to be deducted or repaid under these Regulations, recording on the tax deduction record the particulars specified on it, and where different tax deduction records are prescribed for different purposes under these Regulations the employer shall use the appropriate record.

(4) The tax deduction records may be kept by means of computer-generated records.

(5) Where tax is not deductible from any payment, an employer shall, unless the Commissioner-General otherwise directs, make any repayment of tax which may be due by reference to the employee's cumulative emoluments and the corresponding cumulative tax.

Certificate
on change of
employment

12. (1) Where an employer ceases to employ an employee, not being a casual employee, the employer shall, within five days of the date on which the employment ceases, send a certificate to the Commissioner-General in such form as the Commissioner-General may specify in the *Gazette*.

(2) An employer shall send a copy of the certificate to the employee on the date on which the employment ceases.

(3) An employee shall, on commencing the next employment, deliver a copy of the certificate to the new employer and the new employer shall

(a) insert the address of the employee and the date on which the employment commenced on the copy of the certificate;

(b) prepare a tax deduction record in accordance with the particulars given in the copy of the certificate and record on the tax deduction record the cumulative tax as at the week or month shown on the copy of the certificate;

(c) subject to sub-regulation (4), deduct or repay tax as if the cumulative emoluments and cumulative tax shown on the tax deduction record represented emoluments paid to the employee by the new employer; and

(d) send a copy of the certificate to the Commissioner-General within seven days from the date on which the certificate is signed.

(4) Where tax repayable under paragraph (c) of sub-regulation (3) on the date of the first payment exceeds three thousand kwacha,

the new employer shall forthwith notify the Commissioner-General and shall not make the repayment until authorised to do so by the Commissioner-General.

(5) Where emoluments are paid by the same person before and after retirement, retirement on pension shall not be treated as cessation of employment for the purposes of this Regulation.

13. An employer shall notify the Commissioner-General of an employee's death.

Death of
employee

(2) The notification of death under subregulation (1) shall be made in such form as the Commissioner-General may specify in the *Gazette* within seven days of making the outstanding payment of, and deductions from, emoluments of the deceased employee.

(3) An employer shall, where emoluments are paid after the date of the employee's death

(a) pay emoluments exempt from tax under subsection (5) of section *twenty-one* of the Act without any deduction of tax;

(b) deduct tax from the balance of emoluments specified under paragraph (a) at the rate specified in the Charging Schedule in relation to such emoluments for the tax year in which they are paid, without regard to the employee's cumulative emoluments, the corresponding cumulative tax or to any tax credit to which the employee may be entitled; and

(c) as respects emoluments not within paragraph (a), deduct or pay tax as if the deceased employee was still in employment at the date of payment.

14. (1) Where an employer agrees with an employee to pay to the employee a specified amount of emoluments, in this regulation referred to as "the net emoluments" and to bear on the employee's behalf any tax chargeable in respect of the net emoluments—

Tax free
emoluments

(a) the agreement shall be read as an agreement by the employer to pay to the employee such gross emoluments as will after deduction of tax in accordance with these Regulations be equal to the net emoluments; and

(b) the employer shall calculate the amount of tax to be deducted from any payment of the employee's emoluments in accordance with these Regulations by reference to the gross emoluments of the employee, and not by reference to the employee's net emoluments.

(2) Where the employer agrees to bear on behalf of an employee any tax due on any emoluments of the employee payable in a charge year, the employer shall give notice to the Commissioner-General within fourteen days of the beginning of the year or of the commencement of the employment in question, whichever is the later, stating—

- (a) the names and addresses of the employer and the employee;
- (b) the net amount of the emoluments in question and if they are not payable wholly free of tax, how much is so payable or what level of tax will be borne by the employer; and
- (c) such other information as the Commissioner-General may require.

Repayment
of tax during
sickness or
unemployment

15. (1) Where an employee is not entitled to any emoluments due to absence from work, the employer shall, on the usual pay date, make such repayment of tax to the employee as may be appropriate, having regard to the cumulative emoluments on that date and the corresponding cumulative tax, notwithstanding that the employee is not entitled to any emoluments on that date.

(2) An employee who has ceased to be employed may, at the end of the charge year and in accordance with section *eighty-seven* of the Act, apply to the Commissioner-General for a repayment of tax for each month for which the employee requires a tax refund in such form as the Commissioner-General may specify in the *Gazette*.

(3) An application made under subregulation (2) shall include a notice showing the total amount of emoluments paid to the employee and the total net tax deducted.

Certificate of
Tax deducted

16. (1) An employer shall give to an employee—
- (a) who is in the employer's employment on the last day of a charge year; or
 - (b) who has ceased to be employed by the employer during a charge year;

from whose emoluments tax is required to be deducted under these Regulations, a certificate in such form as the Commissioner-General may specify in the *Gazette*.

(2) A certificate under subregulation (1) shall be given to the employee before the 1st March following the end of the charge year in question.

PART III

PAYMENT AND RECOVERY OF TAX

Payment of
tax by
employer

17. (1) An employer shall, within fourteen days of the end of an income tax month, send a monthly return to the Commissioner-General in such form as the Commissioner-General may specify in the *Gazette*.

(2) An employer shall, where there is an excess of the amount deductible over the repayments, remit with the monthly return an amount equal to the excess to the Commissioner-General.

(3) The Commissioner-General shall give an employer a receipt showing the amount of tax remitted by the employer.

(4) Where the monthly return made under sub-regulation (1) shows an excess of repayments over the deductions, an employer may deduct the excess from a subsequent payment which the employer is required to make to the Commissioner-General under sub-regulation (1), or the employer may recover the excess from the Commissioner-General.

(5) Where the tax paid by an employer to the Commissioner-General in respect of an employee exceeds the amount actually deducted by the employer from the emoluments paid to the employee during the month, the employer may deduct an amount equal to the excess from the subsequent emoluments of the employee.

(6) A monthly return shall be signed, where the employer is

(a) an individual, by the individual;

(b) a company, by a director or secretary of the company;

(c) a body of persons, by a principal officer of the body of persons; and

(d) a partnership, by a partner of the partnership.

(7) A monthly return may also be signed by a tax paying agent or any authorised representative of the employer.

(8) An employer who fails to submit a monthly return in accordance with this regulation is liable to pay a penalty of one thousand penalty units for each calendar month or part thereof.

(9) The Commissioner-General may remit the whole or part of the penalty specified under sub-regulation (8).

18. (1) Where an employer fails to make a return or remit tax, the Commissioner-General may—

(a) make an estimate of the amount of tax which the employer is required to remit and issue a notice requiring the employer to pay that estimated amount of tax; or

(b) by notice, require the employer to submit a default return for that month in such form as the Commissioner-General may specify in the *Gazette*.

(2) An employer shall comply with the notice served under sub-regulation (1) within fourteen days of the date of the notice.

(3) Where an employer pays any emoluments for a charge year to an employee after the end of that year or after the end of the employment, the employer shall, within fourteen days after the month in which the payment was made, submit a supplementary return in such form as the Commissioner-General may specify in the *Gazette*.

Failure by
employer to
make
returns or
pay tax

- Inspection
19. (1) An employer shall, upon request by an authorised officer, produce to the officer for inspection—
- (a) all wage sheets, tax deduction records, payslips and other documents or records relating to
 - (i) the calculation or payment of emoluments in respect of the years or income tax months specified by the officer; and
 - (ii) the deduction of tax; and
 - (b) such other documents and records as may be specified by the authorised officer.
- (2) Where the records are kept by the employer on a computer, the employer shall allow the officer reasonable access to the computer to examine the records.
- (3) Where an officer requests a copy of a record or document, the employer shall provide the officer with the copy.
- (4) The Commissioner-General may, by notice, require an employer to submit, within such time as may be specified in the notice, not being less than twenty-one days, all the tax deduction records relating to specified employees of the employer in that year or in any of the preceding six years.
- (5) Where the Commissioner-General has reasonable grounds for believing that the case involves fraud, the Commissioner-General may require the submission of tax deduction records for earlier years.
- Records
20. An employer shall retain all records required to be kept for the purposes of these Regulations and all documents given or sent to the employer for those purposes until the expiry of a period of six years beginning with the year to which a record or document relates.
- Death of employer
21. Where an employer dies, anything which the employer is required to do under these Regulations shall be done by the employer's personal representative or, in the case of an employer who pays emoluments on behalf of another person, by the person succeeding the employer or, if no person succeeds the employer, the person on whose behalf the employer paid the emoluments.
- Succession to business
22. (1) Where an undertaking carried on by an employer is transferred to another employer, the change in employer shall not in relation to the employees transferred to that employer, be treated as a change of employment for the purposes of these Regulations, and the new employer shall be liable to do anything which the old employer would have been required to do under these Regulations as if the change had not taken place.

(2) The new employer shall not be liable for the payment of tax which was deductible from emoluments paid to an employee before the change took place.

PART IV
ASSESSMENT AND DIRECT COLLECTION

23. (1) Where the tax payable under an assessment is less than the total net tax deducted from the employee's emoluments during the year, the Commissioner-General shall repay the difference to the employee.

Overpayments
and
underpayments

(2) The Commissioner-General may require an employee to pay the excess where the tax payable under an assessment exceeds the total net tax deducted from the employee's emoluments during the year.

24. (1) This regulation applies to an employee of a foreign mission or international organisation which is exempt from tax under the Diplomatic Immunities and Privileges Act, other than an employee who is exempt from tax.

Procedure
for direct
collection
Cap. 20

(2) An employee referred to in sub-regulation (1) may use a tax deduction record.

(3) Where an employee receives chargeable emoluments during the year for which a tax deduction record is required, the employee shall record on that record the emoluments, the date on which the employee received them, the employee's cumulative chargeable emoluments and the corresponding cumulative tax.

(4) An employee shall, within fourteen days after the end of every month

(a) make a return to the Commissioner-General stating the amount of the cumulative tax corresponding to the employee's cumulative chargeable emoluments as at the last date in the month in question on which the employee received emoluments, reduced by the amount of tax paid to the Commissioner-General in respect of the previous months in the same year; and

(b) remit to the Commissioner-General with the return a sum equal to the amount of the cumulative tax as so reduced.

(5) Where an employee—

(a) has not made a return or remitted tax to the Commissioner-General; or

(b) has remitted an amount of tax but the Commissioner-General is not satisfied that it is the amount which the employee is required to pay;

the Commissioner-General may, by notice, require the employee, within the specified time, to make a return or to remit to the Commissioner-General such amount of tax as may be specified in the notice.

(6) Where an employee ceases to receive emoluments from an employer, the employee shall make a return to the Commissioner-General showing the last date on which the employee received any emoluments, the employee's cumulative emoluments at that date and the corresponding cumulative tax.

(7) An employee shall not use one tax deduction record in respect of two or more employment capacities.

PART V GENERAL PROVISIONS

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| Notices | <p>25. (1) A notice or document authorised or required to be given, served or issued under these Regulations may be sent in person, electronically or by post to the last known address of the addressee.</p> <p>(2) A notice or document sent under sub-regulation (1) shall be deemed to have been received by the addressee within ten days from the date on which the notice or document was posted.</p> |
| Bonus commission and other additional payments | <p>26. Where an employer makes a payment of an amount of emoluments to an employee which is not the basic salary or wage on a day which is not the employee's regular pay day, the employer shall deduct an amount of tax from that payment equal to the difference between—</p> <ul style="list-style-type: none"> (a) the amount the employer will deduct from the employee's next payment of the basic salary or wage; and (b) the amount the employer would have deducted from the employee's next payment of the basic salary or wage if the payment which is not the basic salary or wage were paid on the employee's next regular pay day. |
| Time when emoluments paid | <p>27. (1) For the purposes of these Regulations, a payment of, or on account of, a chargeable emolument shall be treated as made at the earliest of the following times:</p> <ul style="list-style-type: none"> (a) at the time when the payment is received by a person within the meaning of section <i>five</i> of the Act; (b) at the time when the sum on account of the income is credited where <ul style="list-style-type: none"> (i) the emolument is an emolument from employment; (ii) a sum on account of the emoluments is credited to an employer's accounts or records at any time during a charge year; and |

- (iii) the holder of the employment is a director or a person exercising control of an employing entity during that charge year;
- (c) at the time when the period ends or the time when the amount is determined, whichever is later, where
 - (i) the emoluments are emoluments from an employment for a certain period; and
 - (ii) the holder of the employment is a director or a person exercising control or management of an employing entity at any time in the year in which the amount of the emolument is determined.

(2) For the purposes of paragraph (c) sub-regulation (1), a restriction on the right to draw the sums shall be disregarded.

28. (1) Where an arrangement or agreement exists for a gratuity or service charge to be shared by a person among two or more employees, payment to an employee by way of sharing out of the gratuity or service charge by the person, including the retention by that person of a share where the person is also an employee, shall be regarded for the purposes of these Regulations as a payment of emoluments.

Arrangement
for gratuity
or service
charge

(2) A person making the payment under sub-regulation (1) shall be treated for the purposes of these Regulations as an employer.

(3) The Commissioner-General may, where satisfied that a person has failed to comply with this regulation, direct that sub-regulation (1) shall not apply to the agreement or arrangement under which that person makes the payment and that a share of gratuity or service charge shall be assessed under section *sixty-three* of the Act on the employee or employees receiving the share.

29. (1) Sub-regulation (2) applies where—

- (a) an employee works during any period for a person, in this regulation referred to as “the relevant person” who is not the employee’s employer;
- (b) a person other than the relevant person makes a payment of, or on account of, chargeable emoluments of the employee in respect of the work done in that period;
- (c) these Regulations do not apply to the person making the payment; and
- (d) tax chargeable in respect of the payment is not deducted and accounted for in accordance with these Regulations by the person making the payment.

Payment of
emoluments
by person
not
employer

(2) For the purposes of these Regulations, and where this sub-regulation applies, the relevant person shall be treated as making the payment and as the employer of the employee.

(3) Where emoluments are paid to an employee by one person in respect of a period and by another person in respect of a period which is wholly or partly the same as that other period, subregulation (1) shall apply separately to each person making any such payment in respect of a payment period as if emoluments in respect of that period were paid to the employee only by that person.

(4) Where the relevant person is treated as making a payment to an employee—

(a) the obligation to deduct tax from that payment shall have effect as an obligation to make the deduction from any payment of chargeable emoluments which the relevant person does actually make to the employee;

(b) if the relevant person is not able to make the deduction from the payment, that person shall, not later than fourteen days after the month in which the obligation arose, account to the Commissioner-General for an amount of income tax equal to the amount of the deduction which the relevant person has not made; and

(c) any amount deducted and accounted for under this regulation shall be treated as an amount paid by the employee in question in respect of the employer's liability to income tax for the year in which the obligation rose.

Revocation of
S.I. No. 97 of
1999

30. The Income Tax (Pay As You Earn) Regulations, 1999, are hereby Revoked.

LUSAKA

10th September, 2014

[MF.70/3/22c]

A.B. CHIKWANDA,
Minister of Finance