MATRIX TAX SCHOOL

beyond knowledge

MONTHLY TAX UPDATE

April 2021

Our Contact Details

No. 46 Van Praagh Ave, Milton Park, Harare
Email: info@matrixtaxschool.co.zw
Cell: +263 775 911 383
Tel: +263 (242) 252 816

Table of **Contents**

-

We are honoured to present our April 2021 Monthly Tax Update ("MTU") which is designed to keep businesses and individuals informed of the latest tax issues and also bring value to both. Through our MTUs, we analyse tax developments to ensure that our valued clients are kept in tune with changes in the tax arena. It is our sincere hope that these MTUs will keep our clients updated with information that includes changes in tax and other related laws, court decisions, announcements and interpretations that bring relevancy to the business environment. We summarise the contains of this issue as follows:

Rebate of duty for immigrants: SI 91 of 2021 is putting a rebate of duty on returning student immigrants who import motor vehicles in excess of US $5 000 or the equivalent.
Suspension of duty for poultry breeders: Duty suspension is being granted by SI 100 of 2021 for approve poultry breeders subject to specified quantities.
Customs and excise duty on fuels: SI 103 of 2021 is making amendments to the customs and excise duty levying on fuel products.
The 2018 Exchange Control Directive and SI 133/19 ratified: This is the continuation of the previous Stone and Beattie case who had some foreign currency balance in CABS which was negatively affected by the exchange control directive and SI 133 of 2019. In that case, ruled by the High court, both the provisions were nullified and Beattie and Stone where to receive their due in foreign currency. This decision is being reverse in full upon CABS, RBZ and the Minister taking an appeal to the supreme course.
VAT WHT generally and currency of tax: This is a basic recap of the underlying principles of VAT WHT including how the tax is administrated and the requirements for the parties affected by the tax.
VAT treatment of services supplied to foreigners: This looks at the VAT treatments of foreign service payments. The general assumption is services supplied to foreigners are zero rated. However there are critical determinants in qualifying for zero rating.
Tax treatment of relocation allowance (a passage benefit): The income tax treatments of costs borne by an employer for any journey undertaken by an employee, his spouse or child to take up employment, on termination of employment or any other journey.
Tax incentives of a special economic zone: The tax benefits provided for licensed investors operating in a special economic zone as is legislated in the Zimbabwean Tax laws.
Zimra sniffing underground dealings by taxpayers: The Zimra recently issued public notice 38 of 2021 which urges customers to obtain receipts from suppliers or report incidences of non-compliance by suppliers.
Zimra given fleet to aid in curbing smuggling: The Finance Minister commissioned 20 Land cruiser vehicles for the ZIMRA to aid its operations that include curbing smuggling at ports of entry that sometimes have rugged terrains.
Transitional arrangement on importation of vehicles that are 10 years old and above: Following SI 89 of 2021, the Ministry of Industry and Commerce issued a further administrative guideline to facilitate and expedite importation of vehicles that are 10 years old and above, purchased prior to the gazette of SI 89 of 2021 without import licences. This is being provided for in public notice 40 of 2021.

Matrix Tax School would like to urge you all to take caution in this period of the Covid-19 outbreak and remember to follow all the hygiene guidelines recommended by authorities!!!

Marvellous Tapera
Chief Executive officer

1. A cap on the duty rebate for returning students

The law and Interpretation

The Minister of Finance and Economic Development has through SI 91 of 2021 amended the factors allowing a rebate of duty on motor vehicles imported by immigrant who is a returning student. They be granted rebate on motor vehicle imported with a value of US $ 5 000 (or equivalent). For the avoidance of doubt, where the total value for duty purposes for a motor vehicle imported exceeds the amount equivalent to US$ 5 000, the rebate shall be computed up to that amount.

Conditions for rebate

Eligible students are those who have been outside Zimbabwe for a period of at least 2 years and returning to Zimbabwe after having completed their studies. The following further conditions apply:

- Proof that one has completed studies for a person who has been pursuing studies.
- Proof of absence from Zimbabwe for a period of at least 2 years.
- A declaration stating that a rebate has not been granted to him/her in respect of a motor vehicle during the previous four years.
- A declaration that the effects and other goods are intended for the immigrant's own use in Zimbabwe and will not be used for trade or commercial purposes.
- A written undertaking that the effects and other goods will not be sold or disposed of in any manner and that he/she shall not leave Zimbabwe for a period of more than six months within 24 months of arrival.
- A written undertaking to pay rebated duty as may become due if one decides to sell or dispose of in any manner or leave Zimbabwe for a period of more than six months within 24 months of clearance.

Meanwhile when you regularly visit home whilst on the programme of study e.g on holiday or for a funerals etc, ensure each time your passport is endorsed visitor and not "RR" ("returning residence") otherwise you jeopardize your chances of being treated a "RR" when you eventually come back home.

Decision impact

The ceiling is meant to curb the abuse of the facility by third parties as returning students would not ordinarily afford to buy expensive cars. Meanwhile, with the banning of importation of second-hand motor vehicles of 10 years older or above from the date of manufacturer we do not foresee returning students taking advantage of the facility as they would not be able to import latest cars which are often expensive.

2. Suspension of duty for poultry breeders

The law and Interpretation

The Minister of Finance and Economic Development published SI 100 of 2021 which is suspending duty on fertilized poultry eggs for hatching imported by approved poultry breeders. Duty is wholly suspended on fertilized poultry eggs for hatching imported by approved poultry breeders, with effect from 1st April to 30th September, 2021 (for a period of six months); in the quantities listed in the Schedules below:

1st schedule

Name of Poultry Breeder	Ring-fenced quota (number) of fertilised broiler poultry eggs
Irvine's Zimbabwe (Private) Limited	4,109,549
Hukuru Chicks (Private) Limited	456,617
Charles Stewart Day Old Chicks (Private) Limited	456,617
Sondelani Ranching Co. (Private) Limited	380,514
Kudu Creek Farm (Private) Limited	456,617
Twowork Enterprises, trading as Supachick	1,826,466
Zim Avian (Private) Limited	684,925
Doctor Henn Investment (Private) Limited	761,028
Chinyika Day Old Chicks	304,411
Total	**9,436,742**

2nd schedule

Name of Poultry Breeder	Ring-fenced quota (number) of fertilised broiler poultry eggs
Charles Stewart Day Old Chicks (Private) Limited	495,709
Sondelani Ranching Co. (Private) Limited	215,526
Zim Avian (Private) Limited	517,262
Irvine's Zimbabwe (Private) Limited	926,761
Total	**2,155,257"**

Decision Impact

The suspension has been rolled forward on many occasions because of lack of capacity by local breeders. We foresee another extension when the current suspension expires in September 2021. However, the facility may be threatened by supply. Zambia recently banned exports of fertilized poultry eggs, imports from Europe are generally expensive, whilst imports from South Africa are banned because of avian influenza. The market must therefore brace up for shortages or increase poultry products the foreseeable future. Government support is required in areas of breeding equipment and farm land in order to build local capacity. Meanwhile SI6 of 2016 provides for suspension of duty on importation plant and machinery for use in the agriculture sector.

3. Customs and excise duty on fuels

The law and Interpretation

The Customs and Excise Notice was adjusted, through SI 103 of 2021 to add some fuel products titled light straight run fuels as follows:

Heading no	Commodity code	Description of goods	Quantity data	Rate of duty	
				General	MFN
27.10		--- Other			
	2710.12.31	----Light straight run fuels and oils	1.Kg 2.m3 3. L	0% + Excise	0% + Excise
	2710.12.39	---- Other	1.Kg 2. m3	5%	5%”

As shown above, there has been an addition of the fuels under 27.10 , i.e. light straight run fuels and oils (27.10.12.31). The products are chargeable for customs at 0%. There is also a change of the commodity code for other fuels to 2710.12.39.

Furthermore the SI 103 has also added some petroleum products chargeable for excise duty as follows:

Heading no	Commodity code	Description of goods	Quantity data	Rate of duty	
				General	MFN
27.10	2710.12.31	---Light straight run fuels and oils	1. Kg 2. m3 3. L	US$0.30/L	US$0.30/L”

As with the addition under customs duty, the light straight run fuels and oils of the commodity code 2710.12.31 have been added under excise duty at the rate of US 30 cents per litre.

Decision Impact

The SI is simply removing the light straight run fuels and oils under the category of other fuels, and in turn charging customs of the fuels at 0% which is a change from the 5% that was chargeable under other fuels. However the fuels have been added under the list of products subject to excise duty at US 30 cents per litre. The transition seems to be increasing the overall rate of duty from 5% to 30% per litre. (0.3/1)

4. The 2018 Exchange Control Directive and SI 133/19 ratified

Case name	CABS, STONE, BEATTIE, RBZ and the Minister *SC 183/20& 203/20 & 187/20*
Summary Facts	• This case is a continuation of the previous case held in 2020. • Stone and Beattie held a USD savings account with CABS which was opened in 2011 and had at the end of October 2016 a credit balance of US$142 000.00. • On 31st October 2016, Zimbabwe introduced bond notes and coins which were declared legal tender in all transactions as if each unit of a bond note shall be deemed to be equivalent to and exchangeable for one United States cent. • In trying to avert their money from being diluted by the new legal tender, Stone and Beattie then wrote to CABS giving them a written instruction that there would be no further deposits or withdrawals from the account. • Instead, CABS advised them that their deposits had been compulsorily converted into the RTGS FCA by operation of law and they would be paid in RTGS$. • Unsatisfied with this decision and they then approached the High Court for relief. • In the High Court, the main relief Stone and Beattie sought was a court order directing CABS to pay them US$142 000.00 cash. • Alternatively, Stone and Beattie also sought three alternative reliefs: a court order directing RBZ and the Minister of Finance to pay the US$142 000.00 cash; a declaratory order that Exchange Control Directive No. RT 120/2018 was a nullity; and a declaratory order striking down section 44B (3) and (4) of the Reserve Bank Act [Chapter 22:15] as unconstitutional. • The High Court then granted the alternative reliefs but denied the main relief. • CABS, RBZ and the Minister of Finance then all appealed against the decision of the High Court to the Supreme Court and hence the current court case.
Jurisdiction	• Supreme Courte of Zimbabwe
Issues for determination	• Whether the court erred in proceeding to grant the alternative relief which was the same with the main relief that the court had declined? • Whether the court erred by setting aside the 2018 Exchange Control Directive when such relief had not been sought on a constitutional basis and in any case, contrary to the principle of subsidiarity? • Whether the court erred in ordering CABS to pay Stone and Beattie an amount in foreign currency contrary to the provisions of SI 133/19 and ss 20,21,22, and 23 of the Finance Act (No 2) of 2019?
Date of decision	• March 16 2021

Decision	• All appeals as accepted and the decisions in the prior case reversed.

The Facts

Stone and Beattie had a USD savings account with CABS which was opened in 2011 which had a credit balance of US$142 000.00 at the end of October 2016. On 4 May 2016 the Governor of the Reserve Bank issued a statement entitled *"Measures to deal with cash shortages whilst simultaneously stabilising and stimulating the economy."* Through the statement the Governor proclaimed the introduction of bond notes and coins which would operate alongside the family of currencies in the multi-currency basket and would be at par with the United States Dollar. He also announced that the process to configure the RTGS system into the multi-currency basket was underway. On 31 October 2016 S.I 133/2016 was enacted in terms of s 2 of the Presidential Powers (Temporary Measures) Act C*hapter 10:20].* Pursuant to such enactment, on 28 November 2016, Stone and Beattie by way of correspondence instructed CABS to freeze their account. This was in a bid to preserve their bank balance in the United States Dollar currency. Two years later on 4 October 2018, the Reserve Bank issued the Exchange Control Directive No. RT120/2018 (`the 2018 Directive') whose effect was to separate the RTGS Foreign Currency Accounts from Nostro Foreign Currency Accounts based on the source of the funds. As a result of the directive, Stone and Beattie's account was categorized as an RTGS Foreign Currency Account payable in bond notes and not USD. On 17 October 2018, Stone and Beattie wrote a letter to CABS advising that they wished to withdraw the entire amount held in their account in US dollars or, alternatively, that the same amount be transferred into a Nostro FCA account as provided for by the Central Bank in its Monetary Policy Statement of the I October 2018. In response, CABS advised Stone and Beattie that it could only pay the balance due to them in bond notes in terms of the Reserve Bank's 2018 Directive.

Stone and Beattie where not satisfied and they then approached the High Court for relief. In the High Court, the main relief Stone and Beattie sought was a court order directing CABS to pay them US$142 000.00 cash. Alternatively, Stone and Beattie also sought three things: a court order directing RBZ and the Minister of Finance to pay the US$142 000.00 cash; a declaratory order that Exchange Control Directive No. RT 120/2018 was a nullity; and a declaratory order striking down section 44B (3) and (4) of the Reserve Bank Act [Chapter 22:15] as unconstitutional. The High court, however, noted that CABS was correct in its submission that it could not defy the directive of the RBZ, an entity established in terms of the Constitution of Zimbabwe. In issuing the impugned directive, the court observed that the RBZ was exercising its powers as conferred by the Constitution and the Reserve Bank of Zimbabwe Act [Chapter 22: 15]. It accordingly held that as long as the Exchange Control Directive No. RT120/18 had not been set aside, CABS could not comply with the Stone and Beattie's demand without incurring the penalties and consequences threatened by the enabling body. In that regard, the court held that it could not order for the main relief to be granted, that is for the payment of the amount in the face of an extant directive of the RBZ. The court thus effectively dismissed the main relief.

The court however declared the 2018 Directive to be invalid and set it aside. Inexplicably and unprompted, the court went on to grant the main relief sought by Stone and Beattie, and ordered CABS to pay them USD$142 000 in its denominating currency or transfer the funds into a Nostro Foreign Currency Account within 7 days of granting of the order. Consequently, the court did not consider the rest of the relief sought by Stone and Beattie in the alternative relief, to the effect that the RBZ and the Minister be ordered, in the place of CABS, to pay to Stone and Beattie the full amount that they had claimed from CABS.

Issue	Court reasoning and decision
Whether the court erred in proceeding to	• That the high court granted an order which was not sought by Stone and Beattie. • That the court created an additional basis for the main relief sought in respect of, the constitutional validity or otherwise of the 2018 Directive.

grant the alternative relief which was the same with the main relief that the court had declined?	• That the court proceeded to grant the same relief even though it did not form part of the alternative relief that they sought. • That the implication of the above is the principal relief, which was based on the banker/customer relationship could not be granted. • That the relief granted by the court was not sought by Stone and Beattie as an alternative to the main relief. • That the cause of action in relation to the principal relief sought was anchored on a perceived breach of the banker-customer relationship between them and CABS. • That CABS could not defy the 2018 Directive of the Reserve Bank in circumstances where the Directive had not been set aside. • That the finding that the court could not order CABS to make the payment in question was not only correct, but also dispositive of the main claim. • That the court could and should only have adverted to the alternative relief sought against the RBZ and the Minister which it effectively did not do. • That the alternative claim requiring RBZ and the Minister to pay the amount in question, was to be granted only in the event that the court was not persuaded to grant the main relief against CABS. • That thus, by completely disregarding that part of the alternative claim the court clearly misdirected itself. • That a court is duty bound to consider and determine every issue that is placed before it unless such issue has otherwise been resolved. • That the court was incorrect in granting the alternative relief.
Whether the court erred by setting aside the 2018 Exchange Control Directive when such relief had not been sought on a constitutional basis and in any case, contrary to the principle of subsidiarity?	• That the high court took that its dismissal of the main claim against CABS gave rise to the need for an enquiry by it, into the constitutional validity of the directive. • That this was despite the fact that Stone and Beattie had not challenged the constitutional validity of the 2018 Directive. • That instead, in part of their alternative relief, Stone and Beattie sought an order striking down s 44B (3) and (4) of the Reserve Bank Act - the enabling provisions. • That there is little doubt that the court read into the papers before it, an issue that was clearly not there as its determination of that issue was therefore incompetent. • That the high court concluded that the directive is illegal, irrational, and unreasonable for offending against the rule of law and good governance. • That thereafter the high court proceeded to resuscitate and grant the principal relief against CABS that it had earlier properly thrown out. • That further to this the court's unprompted consideration of the constitutionality or otherwise of the 2018 Directive violated the doctrine of subsidiarity. • That Stone and Beattie sought to sanitise the irregular process adopted by the court by stating that the power of the court to grant a just order is wide and flexible • That Stone and Beattie also justified the court's process stating that its power allows courts to formulate an order that does not follow prayers in the notice of motion. • That Stone and Beattie took the incorrect view that the high court having declared the 2018 Directive unconstitutional, granted the order requiring CABS to pay the amount. • That Stone and Beattie did not challenge the validity of the 2018 Directive on the basis that it offended against any provision of Judgment the Constitution. • That there was therefore no 'constitutional matter' before the court in so far as the directive was concerned. • That the order of the court requiring CABS to pay the amount cannot, be

	categorized as an order issued in the court's power • That CABS, RBZ and the Minister are therefore correct in their submissions that the court created a (constitutional) case and went on to determine it in their favor. • That it is trite that the high court's duty is to determine disputes as presented before it and not to go on a frolic of its own. • That a judge comes across a point not argued before him by counsel but which thinks material to the resolution of the case. • That in the result, the court's decision to nullify the directive cannot be sustained.
Whether the court erred in ordering CABS to pay an amount in foreign currency?	• That the high court was correct in its finding that it could not grant the main relief sought given that CABS had acted lawfully in terms of the 2018 Directive, in its refusal to pay the amount claimed in United States dollars. • That the directive had not been set aside and therefore remained valid. • That the court could not properly grant this same relief on a basis neither pleaded nor argued before it. • That order, being incompetent, must be vacated. • That being the case, the court considers that it is not necessary to determine this third issue listed for determination.
Decision	• All appeals as accepted and the decisions in the prior case reversed.

Decision Impact

With the validity of the directive and SI 133 of 2019 being reinforced in this case, this will mean that persons with foreign currency balances that were affected by these pieces of legislation will risk having their amounts paid in RTGS or Bond. Furthermore, the decision taken by the supreme court was expected, given the high court does not have powers to nullify enacted legislative provisions.

5. VAT WHT generally and currency of tax

Background

The withholding of Value Added Tax (VAT) was introduced on 1 January 2017 and some registered operators have since been appointed as VAT Withholding Tax agents. The VAT Withholding Tax agents' role is to withhold a portion of the VAT when paying their suppliers who are registered for VAT.

The law and interpretation

Section 50A empowers the Commissioner General to appoint VAT withholding agents. He, at any time, revoke the appointment of a value-added withholding tax agent, if he deems it appropriate to do so. The agents are responsible for collecting and remit VAT WHT on supplies made to them which are chargeable to VAT. VAT withholding tax so deducted should be remitted to ZIMRA on the 15th of the following month. The current VAT WHT the rate is fixed at 1/3rd of the VAT chargeable on the invoice. The supplier therefore receives his money less the 1/3 VAT withholding amount. The withholding tax should be deducted in the currency of payment to the supplier. No remittance is deemed to have taken place if the tax is not remitted in the currency in which the goods and services concerned were purchased. Any agent who fails to withhold or pay to the Commissioner any amount of value-added withholding tax is liable to the VAT withholding plus 100% penalty on the amount. Interest is also levied at the rate of 25% (10% for United States Dollar liability) for any month or part thereof on VAT withholding that is paid late. Any person who fails to deduct VAT withholding tax or comply with provisions relating to VAT withholding tax shall be, guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding twelve months or both such fine and such imprisonment.

VAT WHT has some administrative requirements that are to be followed. For instance, a supplier is entitled to receive a VAT withholding tax certificate from the agent in order to claim the VAT withheld as a credit on submission of VAT returns. The supplier must also attach a schedule of amounts withheld by various agents to the VAT return and retain the tax certificates obtained from withholding agents for a period of six years.

Decision Impact

Many taxpayers are not fully knowledgeable of the VAT WHT requirements and structure and the ZIMRA

may take advantage of this in recovering taxes due as a result of the anomaly. Hence it is necessary to know the requirements to avoid unnecessary penalties.

6. VAT treatment of services supplied to foreigners

Background

The general design of the VAT system is that VAT must not be exported which makes services supplied to foreigners zero rated. However, the contractual arrangement and the place of consumption of such services are critical determinants in qualifying for zero rating.

The law and interpretation

Section 10 (2)(l) of the VAT Act zero rate services supplied for the benefit of and contractually to a person who is not a resident of Zimbabwe and who is outside Zimbabwe at the time the services are rendered. The beneficiary and contracting party must be the same person and a non-resident who is outside Zimbabwe at the time the services are rendered. Where for instance the actual beneficiary or the services are consumed in Zimbabwe, zero rating would not apply. The case of *XO Africa Safaris v CSARS* (395/15) [2016] ZASCA 160 confirmed this point. XO Africa Safaris assembled tour packages for foreign tour operators (FTO's) arranging for group and individual foreign tours to South Africa which included accommodation, travel, restaurant bookings and recreational activities, such as golf, safaris, whale watching etc. to be provided in South Africa. It had a contract with FTO's and a corresponding contract with local supplies for the supply of the packages which it sought to zero rate. The court held that zero rating is inapplicable since the supply was not directly to the FTO, but to other persons who were in South Africa at the time that the goods and services were provided. In the same way, where accounting services are rendered to a local branch of a non-resident company, zero rating is inapplicable because the non-resident has a presence (the branch) in Zimbabwe while the services are rendered. Zero rating however will be applied on the supply, for example of a tax opinion by a Zimbabwean resident to a foreign company if such services were rendered while the foreign company did not have any presence in Zimbabwe.

Meanwhile standard rating applies on services supplied directly in connection with— (i) land or any improvement thereto situated inside Zimbabwe; or (ii) movable property situated inside Zimbabwe at the time the services are rendered. Zero rating remains applicable on services supplied to movable property which is subsequently exported to the said non-resident or where the services are rendered for purpose of supplying the movable property by the non-resident to a registered operator. For example, if a company in UK exports its machine to a Zimbabwean registered operator and engages the services of a Zimbabwean to install the machine, the services of the Zimbabwean to the UK company are zero rated. Zero rating does not extend to services in restraint of trade, to the extent that the carrying on of that trade would have occurred within Zimbabwe.

Decision Impact

Taxpayers within the tourism industry and who supplies services to foreigners must charge VAT on services consumed in country. The substance over form is that the services are supplied to the ultimate beneficiary or consumer of services, i.e., the end user, and as long as the beneficiary enjoys the services in country the general design of the VAT law in Zimbabwe is that the services should be standard rated and not zero rated.

7. Tax treatment of relocation allowance (a passage benefit)

Background

A "Passage benefit" covers the cost borne by an employer for any journey undertaken by an employee, his spouse or child to take up employment, on termination of employment or any other journey in so far as it is not made for the purpose of a business transaction of the employer. In short it covers relocation benefit and holidays of employees and their families whose cost are borne by the employer.

Law and Interpretation

Section 8 (1) (f) of the Income Tax Act provides that gross income includes—"(f) an amount equal to the value of an advantage or benefit in respect of employment, service, office or other gainful occupation or in connection with the taking up or termination of employment, service, office or other gainful occupation: Provided that—(i) an amount equal to the value of the grant of a passage benefit as defined in subparagraph (i) of paragraph (a) of the definition of that term in this paragraph shall not be included in the gross income of an employee if no other passage benefit as defined in that subparagraph has been granted to the employee by the same employer;(ii) an amount equal to the value of the grant of a passage benefit as defined in subparagraph (ii) of paragraph (a) of the definition of that term in this paragraph shall not be included in the gross income of an employee if no other passage benefit as defined in that subparagraph has been granted to the employee by the same employer.*".* The implication is that the first journey undertaken by an employee on taking up employment with each employer does not constitute a fringe benefit. The same applies to journey undertaken by an employee on termination of employment with each employer. Inclusive of these is the cost of moving an employee and his family and their goods. Settling expenses such as accommodation of the employee and family in a hotel or guest lodge upon arrival, but not a prolonged stay in the hotel or lodge, falls within the ambit of a passage benefit. Repatriation expenses are also exempt from tax. The exemption is applicable to both resident and non-resident persons.

If the cost is borne by an employee and reimbursed to him, the exemption would still apply. Our view is that moving expenses are limited to the costs of moving household goods and personal effects to the new residence (including in transit or foreign-move storage expenses) and travel and lodging costs during the move. It does not include meal expenses, expenses incurred while searching for a new home after obtaining employment; costs of selling the old residence (or settling a lease) or purchasing (or acquiring a lease on) a new home and temporary lodging at the new location after obtaining employment. Where these are borne by the employer, they present taxable income in the hands of the employee. All private trips of an employee and his family member(s) when sponsored by his/her employer are taxed to him/her, but business-related trips of employees are exempt. If the employee is accompanied by his or her spouse on business trip, and the employers reimburse their travel expenses, that payment is a taxable benefit to the employee unless the spouse was engaged primarily in business activities on behalf of the employers during that trip. A business trip appears not to cover cases where an employee is required because of the nature of his work to stay in a place or a site for a prolonged period such that that place becomes his usually place of work.

Decision Impact

Companies that wish to have passage benefit as part of an incentive for their employees should putting in place a passage benefit policy that is clearly defined in such a way that it does not constitute a taxable benefit to which the company must include on the payroll.

8. Tax incentives of a special economic zone

Background

Geographically location within Zimbabwe may offer opportunity of attaining the status of licensed investors operating in a special economic zone. Finance Act 2 of 2020 has amended the definition of a special

economic zone as a part of Zimbabwe declared in terms of the Zimbabwe Investment and Development Agency Act (No. 10 of 2019). It has also redefined the term investment licence as an investment licence issued in terms of the Zimbabwe Investment and Development Agency ("ZIA") Act, 2019 (No. 10 of 2019), to a licensed investor with a qualifying degree of export-orientation. "Qualifying degree of export-orientation", as characterising a licensed investor, means that the licensed investor exports all of its goods and services. For one to operate in a special economic zone, one needs to first apply for a licence in a special economic zone in terms of section 22(2) of the Zimbabwe Investment Development Agency Act and then granted the license to operate in terms of section 32 of the same Act.

Law and Interpretation

Operators who are licensed and operating in a special economic zone are entitled to various incentives including: low corporate tax, low employment tax, exemption from withholding non-resident's tax on fees and non-resident tax on royalties, exemption from withholding dividend tax and customs duty rebates on importation. The income tax rate is 0% for the first 5 years of operation in a special economic zone in terms of section 14 (2) (e) of the Finance Act *(Chapter 23:04) and* 15% thereafter. With effect from the 1st of January, 2017 the 4th Schedule to the Income Tax Act is amended by providing for Special Initial Allowance of 50% in the first year of assessment and 25% in each of the next two years of assessment in respect of capital expenditure incurred by the licensed investor within the special economic zone. In terms of section 14 (2) (b1) of the Finance Act, the taxable income from employment of individual (holding temporary employment permit) with a **licensed investor** having qualifying degree of export-orientation is subject to 15%. This means that any non-resident employee employed by a licensed investor in a special economic zone is subject to tax at the rate of 15%. A licensed investor operating in a special economic zone is also permitted to import capital equipment and raw materials for use in an approved activity as more fully appears in terms of paragraph 2 of the 3rd Schedule of the Zimbabwe Development Agency Act.

Decision Impact

The above incentives are of better utilisation by a stand-alone entity as opposed to a division which has separate geographical locations of operations. It would be impossible to ring-fence the operations in the special economic zone only and apply two separate tax rates for income accruing to the same person.

9. Return submission due date extension

Background

The Commissioner General of the ZIMRA reminds taxpayers that they are required to submit Income Tax Returns and Capital Gains Tax Returns for the tax year ended 31st December 2020. This was published through public notice number 36 of 2021. The Commissioner has however granted some extension of due date for submission of Income Tax Returns. This is due to the impact of the lockdown period from January to March 2021 and is also a way of decongesting return submissions

The law and interpretation

The Zimra issued public notice 36 of 2021 which grants an extension for the submission of income tax returns for 31 December 2020. Meanwhile the original due date was 30 April 2021. A similar extension was granted for 31 December 2019 to 31st of August 2020, due to COVID 19.

Returns	2021 Extension
Income tax (ITF 12 C)	a) 30 June 2021 for taxpayers reporting to Small Clients Office. b) 31 July 2021 for all taxpayers reporting to Medium Clients Office. c) 31 August 2021 for all taxpayers reporting to Large Clients Office.
Transfer pricing (ITF 12 C 2)	31 August 2021
Capital Gains Tax (CGT1)	a) 30 June 2021 for taxpayers reporting to Small Clients Office. b) 31 July 2021 for all taxpayers reporting to Medium Clients Office. c) 31 August 2021 for all taxpayers reporting to Large Clients Office.

The extension granted in 2021 is similar to that published in 2020, but with a noticeable difference on the differentiation of the due date extensions for different Zimra clients. The differentiation can be justified by the fact that the difficulty in preparing these returns differs with the volume of transaction, which obviously differs with the size of the entity. Also, the Zimra mentioned that the reason for granting the extensions was to decongest return submissions considering the impact of the lockdown period from January to March 2021.

Decision Impact

Taxpayers are to take note of the extension and use it to their advantage and take time in submitting the correct and accurate information. Taxpayers who are privileged to use this relief include those who receive income from trade and investment or from Employment [Non-Final Deduction System cases] or from disposal of specified assets and securities. The other parties to enjoy this relief include taxpayers with approved accounting years, dormant companies and all persons with income from Trade and Investments earned or accrued from Domestic and / or International Related Party Transactions. On the other hand, however the

decision to publish different due dates for different clients can be challenged as in terms of providing a relief for taxpayers, all entities whether small or large may need the same extension period. This is useful to ensure compliance, especially considering that it is the SMEs that mostly struggle in complying with small issues such as submission of returns.

10. Zimra sniffing underground dealings by taxpayers

Background

The country has laws on payment of taxes in foreign currency when trading has taken place in foreign currency. However, with the promulgation of SI85 of 2020 which sanctioned the use of foreign currency in domestic transactions once more there is a serious threat to the fiscus emanating from cash transactions mainly in United States. These transactions can easily by-pass the invoicing management system. This is notwithstanding the fact that SI 185 of 2020 requires dual pricing upon displaying, quoting and offering of prices for goods and services in the Zimbabwe Dollar currency and in foreign currency.

The law and interpretation

The Zimra recently issued public notice 38 of 2021 which urges customers to obtain receipts from suppliers or report incidences of non-compliance by suppliers. The full details of the notice are as follows: "PUBLIC NOTICE: REQUEST FOR RECEIPTS AFTER TRANSACTING. The public is being urged and reminded of the following: a) Where a sale is made in foreign currency, the invoices, till slips, or receipts recording that sale transaction must be issued in foreign currency. b) Where a sale is made in both local currency (ZWL) and foreign currency, the invoices, till slips, or receipts must reflect the correct respective currency details. c) To always request or be issued with a receipt/invoice in the currency of trade as used in the transaction. d) Report any such business that do not comply with issuance of invoices, till slips or receipts showing the correct currency of trade. Please report to the nearest ZIMRA Office or ZIMRA HOTLINES 08004422/08004423 or through the email address: Non-FiscalisationReport@zimra.co.zw In view of the COVID-19 Pandemic, We Encourage Our Clients to Maintain Social Distance and Utilise ZIMRA online services for more information, visit ZIMRA website www.zimra.co.zw or follow us on: Twitter https://twitter.com/Zimra_11; Facebook https://www.facebook.com/ZIMRA.ZW Public Notice number 38 of 2021"

Decision Impact

The public notice is simply addressing issues to do with the payment of taxes in foreign currency. Taxpayers are urged to comply with the law. There are serious tax ramifications for non-compliance which includes 100% penalty, interest at 10% per annum and possible imprisonment. The public notice is encouraging members of public to report non compliance and this can spell disaster especially for formalised business, but we do not foresee small businesses being deterred by this. The authority should therefore come up with appropriate strategy to deal with the matter.

11. Zimra given fleet to aid in curbing smuggling

Background

Finance Minister Professor Mthuli Ncube on 7 May 2021, commissioned 20 Land cruiser vehicles for the Zimbabwe Revenue Authority (ZIMRA) at a ceremony held in Harare. The vehicles are expected to go a long way in aiding ZIMRA's operations that include curbing smuggling at ports of entry that sometimes have rugged terrains.

The law and interpretation

At the ceremony, the Minister indicated the following: "I believe the vehicles that I am commissioning, will assist the Authority in operations as the economy transitions towards sustained economic growth and towards achievement of vision 2030 goals," said professor Ncube.

Professor Ncube also lauded ZIMRA's policies in minimising revenue leakages that include ensuring that registered Value Added Tax (VAT) operators are fully fiscalised with fiscalisation gadgets and correctly interfaced with the ZIMRA server, strict enforcement of the electronic cargo tracking system with the view to combat transit fraud, automation of ZIMRA operations in an effort to reduce personal interactions with taxpayers. The minister hinted that the system will continue to reduce opportunities for ransacking behaviour as well as enhancing efficiency in tax administration.

Speaking at the same ceremony, ZIMRA Acting Commissioner General, Mr Rameck Masaire expressed his gratitude to the Minister of Finance for the gesture of increasing fleet and stressed that such support will allow the Authority to generate the much-needed revenue.

Decision Impact

The efforts by the Minister in procuring the vehicles shows the interest by him and the fiscus at large in the maximum collection of fiscal revenue. Hence it is important that tax payers be urged to be found the right side of the tax legislation to avoid depriving the fiscus of its dues, which can lead to heavy penalties for such law breakers.

12. Transitional arrangement on importation of vehicles that are 10 years old and above

Background

Following the promulgation of Statutory Instrument 89 of 2021, the Ministry of Industry and Commerce issued a further administrative guidelines to facilitate and expedite importation of vehicles that are 10 years old and above, purchased prior to the gazette of Statutory Instrument 89 of 2021 without import licences. This is being provided for in public notice 40 of 2021

The law and interpretation

Individuals with vehicles purchased and paid for on or before 2 April 2021 should follow the procedure below for their vehicles to be exempted from submission of the import license from the Ministry of Industry and Commerce.

1. A written application for approval should be submitted to the Regional/Shift/Station Manager at the port of entry to be utilized to import the vehicle. The application is to be submitted electronically with all required supporting documents through the e-mail.
2. The following conditions must be met for exemption to be granted:

- The motor vehicle for which the application is made must have been paid for on or before the 2nd of April 2021 and verifiable proof of payment showing the date of payment should be attached. The proof of payment should cover the full value of the vehicle.
- The importer should comply fully with Reserve Bank Exchange Control Regulations. Vehicles paid for in cash of a value above US$2000.00, or its equivalence in other acceptable foreign currencies, should be

accompanied by an authorization letter from the Reserve Bank of Zimbabwe to export foreign currency in excess of US$2,000.00, or its equivalence.

- Any other required supporting documents for the vehicle must be submitted in support of the application, e.g. export clearances from country of export, purchase invoice, consignment notes, police clearances, deregistration certificates, freight statements, etc.

Decision Impact

The applications for exemption must be submitted between the 22nd of April 2021 and the 31st of May 2021. Any applications submitted after the closing date will not be considered. Also be reminded that only vehicles imported into the country by 31 May 2021 will qualify for the license exemption. Furthermore for qualifying applicants, a letter authorizing importation of the vehicles without an import license shall be issued. On clearance of the vehicle, a copy of the exemption letter should be presented and handed over to ZIMRA. For non-qualifying applications, a written response shall be issued clearly stating the reasons for denial.

13. Contacts

14. Disclaimer Clauses

The information contained in this MTU is for general guidance only and is not intended as a substitute for specific advice in considering the tax effects of particular transactions. Whilst a lot of care has been taken in the compilation of the information and opinions contained in this publication, no liability is accepted for the consequences of any inaccuracies contained in this guide. The information does not constitute a legal advice nor can it be relied on in any dispute with the tax authorities and shall not constitute any legal or tax opinion in this or any jurisdiction. The analysis contained in this MTU is based on the current legal framework which is subject to change and Tax Matrix (Pvt) Ltd or its employees assume no obligation to update or otherwise revise the materials contained in this or any of its MTUs. In making their considerations, recipients or people with access to the MTU are advised to make their own independent assessments, and, in this regard, to consult Tax Matrix or their own professional advisors before taking any action. The information and opinions contained in this MTU is valid as

at the date of uploading on the website, preparation or compilation, any of its contents may be subject to change without notice. The information contained and opinions contained in this MTU are for the purpose of general information ("the purpose") and for no other purpose. The company disclaims any responsibility for the use of the information contained herein for a different purpose or context. The information contained and opinions contained herein must not be copied, published, reproduced or distributed in whole or in part to others at any time by the recipients. Tax Matrix (Pvt) Ltd retains all intellectual copyright information contained and opinions contained in this MTU. Recipients should seek the written permission of the company before distributing copies of information and opinions contained in the MTU to third parties.