MATRIX TAX SCHOOL

beyond knowledge

# MONTHLY TAX UPDATE

## August 2021


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# Contents


It is with great pleasure that we inform you that Matrix Tax School is now an accredited member of the South African Institute of Taxation (SAIT). Beneficiaries of our Tax Trainings will be assured of attaining SAIT accredited certificates and CPD hours. Please see the above certificate and the below link for more details:

https://www.thesait.org.za/page/cpdproviders


We are honoured to present our August 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:

Suspension of fuel levies: This is SI 210A of 2021 which granted suspension of strategic reserve levy payable where diesel or petrol is purchased or imported through free funds.
Rebate of duty for the printing: The Minister has through SI 216 of 2021 added Polycrown Packaging (Private) Limited to the list of entities who are eligible to rebate of duty.
Customs and excise exemption: The Minister has added milk importers to the list of entities granted duty suspension through SI 224 of 2021.
Taxpayers misinterpreted the provisions of s 69 of the VAT Act: This is a case of Triangle and Hippo Valley vs ZIMRA and a number of farmers. Being an appeal in the Supreme against the judgment of the Fiscal Appeals Court for a declaratory order and an interdict in relation to some VAT and other matters.
Ambiguity on provisions relating to the leasing of PMVs: Expenses incurred in leasing a passenger motor vehicle (PMV) are deductible only to a certain extent as provided for under section 16 (1) (k).
Government must address VAT controversy on RBZ liquidation: Any good tax administration must be tax efficient. In this article we look at how such principles of taxation influenced the directive on liquidation foreign currency proceeds to Zimbabwe dollars published in the Exchange Control Directive RV 176/2020.
ZIMRA's areas of focus when scrutinizing returns: The article looks at the areas that ZIMRA will be looking into whilst inspecting the recently submitted 2020 income tax returns.
ZIMRA requesting public officers only to sign of tax returns: The ZIMRA has been recently rejecting returns submitted without the signature of the appointed public officer.
Renewal of clearing agent licenses: The ZIMRA through public notice 82 of 2021 reminded registered Customs Clearing Agents that applications for the Agents Bond license renewal for the year 2022 shall be made not later than the 31st October 2021.

Meanwhile, 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. Suspension of fuel levies

### The law and Interpretation

SI 210A of 2021 was published to temporarily zero rate the strategic reserve levy payable where diesel or petrol is purchased or imported through the use of "free funds" by NOCZIM or its subsidiaries or successors; or by any person licensed by the Minister responsible for energy to import the petroleum product in bulk. Free funds are defined in section 2 of the Exchange Control Regulations as money which is lawfully held outside Zimbabwe by a Zimbabwean resident and which was acquired by him otherwise than as the proceeds of any trade, business or other gainful occupation or activity carried on by him in Zimbabwe. Meanwhile the zero rating implied that the levy was calculated at the rate of zero (0.000) United States dollars per litre of diesel or petrol. This was with effect from the 5th August, 2021, up to 3rd September, 2021.

### Decision Impact

The suspension of the levy for the NOCZIM and the licensed petroleum importers are an incentive meant to reduce cost of the fuel importation and in effect stabilise fuel prices in the country. This suspension must have been implemented in connection with the fuel price hikes that were being published by the ZERA from the 5th of August 2021. However, the effectiveness of the suspension can be challenged considering that the duration of the suspension was short.

2. Rebate of duty for the printing industry

### The law and Interpretation

The Minister of Finance and Economic Development has through SI 216 of 2021 added a manufacturer to the list of entities who are eligible to rebate of duty. The manufacturer, Polycrown Packaging (Private) Limited, is being granted a rebate of duty on its printing and packaging supplies imported by it.

### Decision Impact

This rebate of duty follows another one of its kind which was granted to Lamapex Packaging (Private) Limited, an entity in the printing and packaging industry as published in SI 109 of 2021. Such rebates

will likely contribute in the reduction of prices for printing services in the country.

## 3. Customs and excise suspension

### The law and Interpretation

The Finance Minister gazetted SI 224 of 2021 whose effect was to add various entities to the list of approved importers of powdered milk eligible for suspension of duty as follows:

| Name | Proposed additional quota allocation from 1st July, 2021 (Kgs) | |
|---|---|---|
| | **Full cream milk powder** | **Skimmed milk powder** |
| Dairibord Zimbabwe (Pvt) Ltd | 460,000 | 120,000 |
| Dendairy (Pvt) Ltd | - | 1,100,000 |
| Kefalos Cheese Products | - | 250,000 |

### Decision Impact

The back dating of the incentive to July 2021will allow the companies to obtain duty refunds on already goods imported. Further the duty suspension provided will assist in the reduction of prices on milk products in Zimbabwe.


4. Taxpayers misinterpreted the provisions of s 69 of the VAT Act

| Case name | Triangle Limited and Hippo Valley Estates Limited vs ZIMRA and many others Judgment No. SC 82/21, Civil Appeal No. SC 288/20 |
|---|---|
| Summary Facts | • Triangle Limited and Hippo Valley Estates are into sugar production.<br>• The entities charge 23 percent of the proceeds received by its customers, the farmers upon providing milling and marketing services.<br>• Triangle and Hippo did not include VAT as required by law and did not in turn pay the tax in relation to the 23 percent proceeds.<br>• The ZIMRA raised assessments for the VAT not paid following an audit on Triangle and Hippo, which the two objected but objections were all disallowed.<br>• They then appealed to the Fiscal Appeals Court but paid the assessed VAT to the ZIMRA notwithstanding.<br>• After effecting payments, Triangle and Hippo sought to recover such VAT from the farmers on the basis that they were obliged to charge and collect the VAT from the consumers of the service, the farmers, but had not done so.<br>• In their application Triangle and Hippo sought relief that they were legally entitled to continue charging and collecting VAT from the farmers over and above the 23 percent milling charge.<br>• They also sought to be reimbursed the monies they paid to the ZIMRA on past assessments.<br>• They also accused the ZIMRA of interfering with contractual issues between them and the farmers by rendering advice to the farmers on the VAT dispute.<br>• Their application to the fiscal appeals court was dismissed with costs, and the two entities went on to appeal to the Supreme Court. |
| Jurisdiction | • Supreme court of Zimbabwe |
| Issues for determination | • Whether or not the Fiscal Appeals Court erred in refusing to grant the declaratory order and the interdict.<br>• Whether or not the Fiscal Appeals Court erred in granting costs against Triangle and Hippo. |
| Decision date | 18 May 2021 & 01 July 2021. |
| Decision | Appeal was partial dismissed. |

## The Facts

Triangle Limited and Hippo Valley Estates Limited are sugar producing giants in the Lowveld. The other respondents (named the 'farmers' for purposes of this case) besides the ZIMRA are sugar cane farmers and some are associations representing such farmers. Triangle and Hippo and the farmers entered into two types of agreements, either a "cane milling agreement" or a "cane purchase agreement" in terms of which Triangle and Hippo would either provide milling services to the farmers and market their sugar and molasses or out rightly purchase the sugar cane. The dispute which arose between the parties involved the cane milling agreements entered into between the parties. In terms of the cane milling agreements, the charge for milling and marketing services payable by the farmers to Triangle and Hippo was calculated at 23 percent of the proceeds the farmers would get. Regrettably, in fixing the milling and marketing charge, Triangle and Hippo did not include Value Added Tax (VAT) as required by law. As a result, no VAT was paid by Triangle and Hippo to the ZIMRA. It was in the process of auditing Triangle and Hippo's VAT assessments for the period 2009 to 2017 that the ZIMRA decided that the milling and marketing charges of 23 percent of the proceeds levied by Triangle and Hippo against the farmers attracted VAT. The ZIMRA proceeded to issue assessments of VAT for those years and demanded payment of same from Triangle and Hippo. Triangle and Hippo objected to the assessments which objections were all disallowed. They appealed firstly to the Fiscal Appeals Court but paid the assessed VAT to the ZIMRA notwithstanding. After effecting payments, they sought to recover such VAT from the farmers on the basis that they were obliged to charge and collect the VAT from the consumers of the service, the farmers, but had not done so. Triangle and Hippo were of the view that it was only fair and reasonable that the farmers should reimburse them of the VAT paid. There being no convergence between the farmers, who had obtained advice from the ZIMRA that the 23 percent ratio was inclusive of VAT then caused Triangle and Hippo to file an application to the Fiscal Appeals Court. In their application Triangle and Hippo sought declaratory relief that they were legally entitled to continue charging and collecting VAT from the farmers over and above the 23 percent milling charge. Triangle and Hippo also sought to be reimbursed the monies they paid to the ZIMRA on past assessments. In addition, they accused the ZIMRA of interfering with contractual issues between them and the farmers by rendering advice to the farmers on the VAT dispute. Accordingly, Triangle and Hippo sought an order interdicting the ZIMRA from what they called "gratuitously interfering in pricing and contractual issues" between them and the farmers. Their application to the fiscal appeals court was dismissed with costs, and the two entities went on to appeal to the Supreme Court.

| Issue | Court reasoning and decision |
|---|---|
| Whether or not the fiscal appeals court erred in refusing to grant the declaratory order and the interdict? | • That s 6 of the VAT Act provides that VAT shall be charged and levied where a service is provided.<br>• That s 72(1) of the Act provides: *"(1) Whenever the VAT is imposed in respect of any supply of goods or services in relation to which any agreement was entered into by the acceptance of an offer made before the tax was imposed, the registered operator may recover the VAT from the recipient."*<br>• That s 69 makes a presumption that a price set not reflecting VAT has that VAT included thereto.<br>• That s69 is a shield in the hands of the revenue collector as it is an administrative tool for the facilitation of easy collection of taxes without disruptive disputes with registered operators.<br>• That the entire appeal turned on the effect of the deeming provision in s69 i.e. |

whether it operates to prevent an operator who has fallen foul of the law by not reflecting VAT on the price of products, from later recouping the VAT demanded by the ZIMRA from the consumer.

- That also important was whether s72 applies to a situation where the registered operator has excluded or not reflected VAT on the price of products even though the law required such registered operator to levy and reflect VAT on the price.
- That s72 varies the contract price by the margin of VAT imposed or increased subsequent to the contract being concluded.
- That s72 is a law-changing provision as it clearly relates to the imposition of a new tax or the increase of an existing tax.
- That it is common cause that the burden of paying VAT lies with the consumer of goods and services.
- That the system of VAT collection was summarised in *ZIMRA v Packers Int* 2016(2) ZLR 84(S): as involving the imposition of tax at each step along the chain of manufacture of goods or the provision of services subject to VAT.
- That consequently, every registered operator is required in terms of s 28 of the VAT Act, to submit returns to the CG every month, calculate the VAT due on the return and make payment of such VAT.
- That due to the sheer volume and complexity of the VAT collection system, the ZIMRA lacks the capacity and manpower to effectively monitor each and every transaction liable to VAT
- That as a result the ZIMRA is heavily reliant on the self- assessment process by registered operators.
- That however, in order to ensure that operators comply with the requirements the ZIMRA conducts periodic investigations as well as audits.
- That however in terms of the VAT collection system which is in place, while the burden to pay resides with the consumer, the registered operator bears the burden of collecting VAT and remitting it to the revenue collector.
- That where the registered operator has omitted as required by s 6(1) of the VAT Act, to include VAT on the price, s 69(1) is activated to deem VAT to be included in whatever price is pegged by the operator.
- That by failing to charge, levy and collect VAT from the consumers of their milling services Triangle and Hippo breached, to their peril, the peremptory provisions of s 6(1) of The Act.
- That by operation of s 69(1) the 23 percent charge for milling services was taken to include VAT for all intents and purposes.
- That the fiscal appeals court cannot be faulted for finding that, whether by inadvertence, oversight or misinterpretation of the nature of the contract, the consequence of the failure to specifically include VAT are that it is deemed included in the milling price.
- That the deeming provision cannot be applied differently on the registered operator and the consumer.
- That as regards the question whether s 72(1) rescues Triangle and Hippo from the consequences of their failure to comply with the peremptory provisions of s 6(1)(a), it was clearly a matter of statutory interpretation.

| | |
|---|---|
| | • That the simple grammatical meaning of the words "whenever the VAT is imposed in respect of any supply of goods and services..." is that there would be no tax on such supply and the law steps in to impose a tax.<br>• That the quo court was correct in concluding that there was no imposition of a "new tax" and accordingly s 72(1) had no application and was certainly not available to Triangle and Hippo.<br>• That evidence placed before the Fiscal Appeals court showed that Triangle and Hippo invited the ZIMRA to intervene and educate the farmers on the tax implications of their contracts with Triangle and Hippo.<br>• That the fact that the ZIMRA interpreted their contracts in a manner not favourable to Triangle and Hippo can scarcely be found as a cause of action.<br>• That the requirements for the grant of an interdict were not met.<br>• That the quo court made factual findings relating to the failure by Triangle and Hippo to prove that the ZIMRA had interfered with the contractual issues.<br>• That the advice rendered by the ZIMRA was only confined to VAT matters falling within the statutory province of the ZIMRA as a revenue collector.<br>• That surely one cannot be interdicted from carrying out a lawful duty.<br>• That the Fiscal Appeals court also made a finding that the use of the term "gratuitously interfering" was too imprecise and unenforceable.<br>• That on appeal Triangle and Hippo failed to set out a basis for interference with those findings.<br>• That regarding the alleged interference with contractual rights and obligations by the ZIMRA, the advice rendered by the ZIMRA was not only at the invitation of Triangle and Hippo themselves but also in fulfilment of a statutory obligation.<br>• That the ZIMRA is obliged to educate tax payers on their tax obligations.<br>• That the requirements for an interdict were not met. |
| Whether or not the fiscal appeals court erred in granting costs against Triangle and Hippo | • That the Fiscal Appeals court granted costs against Triangle and Hippo in favour of those respondents who participated in the proceedings.<br>• That is premised its decision on the general rule that costs follow the result.<br>• That its attention was not drawn to the widely held principle in tax cases that the High Court or the Special Court hates to make an order as to costs save where the claim is held to be unreasonable or the grounds of appeal are frivolous.<br>• That on appeal, counsel again did not address that issue at all.<br>• That it occurs to me that the quo court was incapacitated in respect of costs by the failure to bring its attention to the prevailing jurisprudence on such costs.<br>• That as a result it misdirected itself, a misdirection entitling this Court to interfere with its exercise of discretion.<br>• That there is nothing in this case suggesting that Triangle and Hippo's case was unreasonable or that it was frivolous.<br>• That quite to the contrary, they raised quite pertinent issues which required the court to embark on detailed interpretation of the law.<br>• That the same applies to the appeal.<br>• That this was a classic case in which the costs previous costs in the Fiscal Appeals Court and those of the Supreme Court could not be awarded to any party. |


## 5. Ambiguity on provisions relating to the leasing of PMVs

### Background

The Income Tax Act provides for expenses that are deductible and those that are specifically disallowed for income tax purposes. One of the disallowed expenses include the cost of leasing a passenger motor vehicle (PMV). The legislative provisions relating to this are essential as they are the demarcation of whether a taxpayer will be allowed to claim certain expenses. If the provisions themselves are found to be unclear as is the case with the PMV lease expenses, it creates problems borne by ambiguity.

### The law and interpretation

Section 16 (1) (k) (iv) of the Income Tax Act disallowed expenditure incurred by a taxpayer in leasing a passenger motor vehicle and first leased in 2009, to the extent that such expenditure, when added to expenditure incurred in any previous year in leasing the same vehicle, exceeds ZWL$ 800,000. Sub paragraph 2 of paragraph 14 of the 4$^{th}$ schedule to the ITA defines a PMV as a motor vehicle propelled by mechanical or electrical power and intended or adapted for use or capable of being used on roads mainly for the conveyance of passengers.

The questionable point of emphasis in s 16 (1) (k) (iv) is the phrase “leasing the **same** vehicle”. The use of the phrase same vehicle can mean a vehicle of the same class or type, same number plate registration number, same engine capacity etc. For instance, if an individual lease 2 Isuzu Double Cabs will that count as the “same vehicle” in accordance with s 16 (1) (k), or the vehicle must have the same registration number. The legislation is not quite clear on what makes a vehicle the same as another.

### Decision Impact

Whilst the legislative provisions in regards to the lease of PMVs is still not finely defined as to the meaning of the same vehicle, tax payers can assume the literal meaning of the word as to refer to a vehicle of the same type, class, color but most importantly registration number. Hence the registration number of a vehicle becomes the distinctive mechanism for vehicles. This is so because no matter how similar vehicles maybe, each vehicle will always have a unique and different registration number from the other.

## 6. Government must address VAT controversy on RBZ liquidation

### Background

In the year 2020, the RBZ issued Exchange Control Directive RV 176/2020 in terms of section 35(1) of the Exchange Control Regulations SI 109 of 1996. In terms of this directive, domestic foreign currency amounts from the supply of goods and services were to be liquidated at 20% of the proceeds to Zimbabwe dollars at the time of depositing the amounts into the domestic FCA. The 20% to be liquidated was to be calculated on the foreign currency receipts net of tax. Fundamentally, when this directive was made, one can tell that there was an understanding that the principles of tax policy had to be taken into consideration, hence the notion of liquidation net of taxes. Without the liquidation net of taxes, taxpayers would have to pay tax in foreign currency on amount that would have been converted to Zimbabwe dollars. This may well be the case with regard to VAT.

### The law and interpretation

In giving effect to this directive, there was a realisation that for income tax purposes, income is realised upon receipt or accrual. This was effected by amending the provisions of section 4A of the Finance Act by insertion of a provision which reads as follows: " *(10) Where any person liable to pay tax on income from trade or investment— (a) earns any part of such income in foreign currency; and (b) has any part of such income liquidated and paid in local currency upon transfer to a nostro account, pursuant to a retention scheme operated by the Reserve Bank of Zimbabwe; any tax due on such part that is liquidated shall be calculated on the basis that it was earned in local currency.*". Therefore, income tax on liquidation is payable in ZWL$ and this is with effect from 1 January 2021.
Unlike the income tax provisions that were amended to give effect to the net of taxes directive, the VAT provisions have predominantly remained the same. The net of taxes directive is suggestive of the fact that VAT should be deducted from the funds received before liquidation (net of taxes). Whilst the spirit and purport of the directive is to ensure that VAT is excluded from the liquidation proceeds, there remains a dichotomy between this intent and actual implementation. Administratively, banks are unable to know whether the funds being received by a taxpayer are for a taxable or non-taxable supply such that they can exclude the VAT to be remitted to ZIMRA before liquidating the funds. It places too much burden on the bank and it is impracticable when dealing with small amounts such as retail sales which may be processed in their thousands in a day of trading with supplies being both taxable and non-taxable. In light of the forgoing, it is arguable that government's silence on this matter is in recognition of the principle of efficiency which denotes that compliance costs to business and administration costs for governments should be minimised as far as possible. In the context of VAT in foreign currency on liquidation proceeds, it appears that government has avoided the cost of administering the VAT on liquidation and has tacitly left this responsibility on banks who are tasked with the responsibility of liquidating the funds. However, the bank's responsibility is not to administer taxes, but to administer the liquidation of funds. Therefore, the legal framework has not been set up to explicitly place the burden on banks to exclude VAT on liquidation proceeds. The responsibility to administer taxes is in the purview of ZIMRA, unless the law delegates this power to another to withhold and remit such taxes to ZIMRA such as in the case of money transfer tax. The revenue law does not ask the banks to exclude the VAT from the liquidation. This in essence reduces the provisions of the directive on netting of taxes upon liquidation to being a wish rather than substantive law that creates or defines rights, duties, obligations, and causes of action that can be enforced by law.

With that said, in our view, the principle of fairness is completely ignored in respect to VAT in favour of the principle of effectiveness. With the lack of legislative framework for the collection of VAT before liquidation of proceeds, taxpayers are left in situation where they are to remit VAT at 14.5% of the full invoice amount of the supply made in foreign currency despite having received a portion of the funds in Zimbabwe dollars.

### Decision Impact

Our tax system has to be effective in administering fairness as much as possible. We will be expecting the Minister to adjust the VAT framework around the administration of the RBZ liquidation so as to make sure VAT is not paid in foreign currency for the amounts received as Zimbabwean dollar amounts.

## 7. ZIMRA's areas of focus when scrutinizing returns

### Background

The due date for submission of 2020 ITF 12 C was 31st of August 2021. After this deadline we expect the ZIMRA to start undertaking the verification process of these returns. There are many areas of focus and with the below being some the areas the authority usually look at during the verification process.

### The law and interpretation

#### Income Tax in Foreign currency

Foreign currency income tax is the major item of scrutiny that the ZIMRA will ensure by all means that there is compliance. Taxpayers with gross income in foreign currency will be under scrutiny by the ZIMRA for compliance with the submission of the return and also payment of the tax. The ZIMRA will be checking on completeness of declaration of foreign currency turnover and follow up enquiry will on cash sales in foreign currency as well deposits or declarations in the bank statements. The VAT returns and accompanying sales computation can also be used to verify the accuracy of sales declaration in foreign currency.

#### TP requirements

Companies that have associate entities will be under scrutiny by the ZIMRA for submission of the ITF 12 C 2 return which accompanies the ITF 12 C return. Declarations made on the ITF 12 C 2 can likely initiate a ZIMRA audit, hence companies with related parties must be ready and prepared for this. Compliance with TP requirements is advisable like for instance being in position of TP policy documentation.

#### Turnover declarations VAT returns vs ITF12C

The turnover amounts declared under VAT 7 returns for the year are required to be tallying with those declared under the ITF 12 C returns. Reconciliations should be made to ensure this is enforced.

#### Cost of employment

The cost of employment, i,e, salary and wages costs are required to be tallying in the PAYE returns and the ITF 12 C return. This is to avoid additional assessments raised on the basis of understated taxes.

#### Assessed loss

Assessed losses are claimable over a period of six years, and taxpayers should ensure that the losses are not claimed for a longer period than this. Furthermore, the continuing of assessed losses for an entity can trigger audits from the ZIMRA as the ZIMRA can begin to question the authenticity of the losses and

also transfer pricing issues can become the spotlight during audits assessed by assessed losses.

### General administrative issues

Other issues that the ZIMRA can look at include date of submission of the return, the correctness of the information entered on the return, application of the correct rate, the margin of error between the ITF 12 C income tax amount and the amounts assessed under the ITF 12 Bs (QPDs) and the validity of deductions, capital allowances or any tax credits claimed on the return.

### Decision Impact

It is important for tax payers to note areas that ZIMRA can focus on in scrutinizing return to ensure full compliance with the legislative provisions and avoid ZIMRA audits and additional assessments thereto. Taxpayers who notice any errors after the submission of returns are advised to submit amended returns as soon as possible.

## 8. ZIMRA requesting public officers only to sign of tax returns

### Background

The expressions "natural justice," "procedural fairness" and "administrative fairness" are sometimes used interchangeably, however, natural justice is the historical foundational concept that has been expanded to include the more modern principles of procedural fairness and administrative fairness. The three main requirements of natural justice that must be met in every case are: adequate notice, fair hearing and no bias. These principles of natural justice form part of our Constitution which is the supreme law of the land and have been legislated in terms of Administrated Justice Act. ZIMRA being an administrative authority is bound by these rules of natural justice as encapsulated in terms of the laws of Zimbabwe. The recent developments regarding the refusal of refunds of clients on the basis that their returns were allegedly not signed by the public officer, have caused a stain in the administrative conduct of ZIMRA. It is arguable that the requirement of adequate notice has been completely disregarded to the detriment of the taxpaying public.

### The law and interpretation

Before impugning the administrative conduct of ZIMRA in refusing refunds on the basis of lack of public officer's signature on the return, it is important to evaluate the provisions of the Income Tax Act and VAT Act as they relate to the signing of returns by the public officer. Section 61 of the Income Tax Act and section 47 of the VAT Act both provide for the responsibilities of the public officer, but neither explicitly or impliedly provide that returns should be signed by the public officer. In these sections, there is nothing that is expressive of the fact that a return should be signed by the public officer or that it cannot be signed by proxy. Section 61 (12) provides that: "The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with the provisions of this Act, but the company shall in all respects be subject to and liable to comply with this Act as if there were no requirement to appoint such officer." This provision recognizes that there may even be a vacuum in the office of the public officer, but that in essence may not exonerate the company from its liabilities. Therefore, in the same vein, the non-signature of the public officer on the return does not mean that a declaration of the taxpayer's liability has not been made and that there would be no ramifications on the taxpayer for untruthful information.

Furthermore, as a matter of established practice, returns have always been submitted and signed by either the public officer or a person appointed by the public officer who signs "per procurationem" meaning the person that signs the returns has been delegated by the public officer to do so. There is nothing in the Income Tax Act, VAT Act and the Revenue Authority Act that is suggestive that the power to sign returns cannot be delegated by the public officer. Furthermore, even refunds were being made on the basis of returns signed by delegated persons. In addition to the forgoing, the returns themselves, that is, the ITF12C and the VAT 7 returns are demonstrative of the fact that the return may be signed by other persons other than the public officer. The returns allow for a representative of the taxpayer or the public officer to sign the return. A representative of the taxpayer could be any person who is duly appointed to represent the taxpayer. As for the VAT return (VAT 7) it simply has space for the name, designation and signature of the person signing the return. It does not specifically provide that the return should be signed by the public officer. When a return is signed by someone who has been delegated by the public officer, it is as good as the public officer himself who has signed the return. This view is also cemented by the legal maxim "Qui facit per alium facit per se" meaning "He who acts through another does the act himself." Therefore, the public officer remains answerable to a company's tax affairs whether the returns are signed by him or by someone delegated by him.

## Decision Impact

Assuming but not conceding that ZIMRA has a case in refusing refunds on the basis that the returns have not been signed by the public officer, if ZIMRA required the old practice to stop, then there had to be formal communication with the taxpaying public instead of ambushing taxpayers and holding them at ransom by refusing to pay refunds. ZIMRA could have issued a public notice to formally communicate and emphasize on the signing of returns by public officers. If ZIMRA's argument is that this has been the position of the law, then it suffices that communication should still have been made in the same way in which ZIMRA communicated on the payment of taxes in foreign currency despite law having been in existence since 2009. Therefore, in our view, ZIMRA has violated the requirement of adequate notice in natural justice thereby taking a procedurally unfair administrative decision.


## 9. Renewal of clearing agent licenses

### Background

The ZIMRA through public notice 82 of 2021 reminded registered Customs Clearing Agents that applications for the Agents Bond license renewal for the year 2022 shall be made on e-Form No. 64 not later than the 31st October 2021. Registered Clearing Agents are urged to take note of the following issues:

- Applications are to be submitted from 1 September 2021 up to 31 October 2021.
- Applications must be submitted electronically through the ZIMRA ASYCUDA platform.
- Where necessary, applications must be accompanied by the appropriate supporting documentation in conformity with the standard requirements.
- Standard requirements for Agents bond registration are circulated separately through the recognized Clearing Agents Associations, or may be forwarded directly to individuals on request.
- Each Customs Clearing Agent's Outstanding transactions or issues in the ASYCUDA System (e.g. Registered entries, Outstanding Y-Assessments, Outstanding Form 45s etc.) of more than 30 days prior to the date of on-line application for renewal must have been cleared or fully accounted for in the ASYCUDA System. [Note that the System automatically flags all Outstanding transaction outside the 30-day cut-off period - and then instantly blocks the entire on-line application, till all the Outstanding transactions are cleared]
- Outstanding manually processed transactions (e.g. Applications for Temporary Importation Privileges (ATIPs), Embargoes, Report Orders etc.) must have been acquitted directly with the Port of Entry or Station of Jurisdiction prior to the lodgment of the on-line application for renewal in the ASYCUDA System [Note that cross-checking mechanisms are in use for this purpose]

Registered Customs Clearing Agents are to note that Clearance of all Outstanding transactions in the System or Manually processed transactions and their subsequent follow-ups must be directed to the Port of Entry, Station or Region of Jurisdiction until cleared. The Agents Bond National Team will be available for assistance with any encountered challenges or System Errors during working hours via the following email: AgentsBondsNational@zimra.co.zw.

### Decision Impact

No renewal applications will be accepted after the 31st of October 2021, hence all registered customs clearance agents must ensure applications are made before this date.

10. Contacts


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## 11. Disclaimer Clauses

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