

**Tax Matrix**

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**MONTHLY TAX  
UPDATE**

**December 2021**

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December 2021 MTU



We are honoured to present our December 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. Each month we will consider the latest changes to the tax rules – legislative, case law, and Authorities announcements and interpretations that bring relevancy to the business community. Monthly Tax Updates ensure that our valued members are kept in tune with changes in the tax arena and are provided with an opportunity to stay on top of developments that directly and indirectly affect them and their clients/business. The focus is on key guidance from legislation, tax agencies and the courts that represent new interpretations, as well as guidance on new laws.

The updates are accompanied by an insightful commentary pointing out the key takeaway points from the material. Aside to what our regular Newsletters provide, MTUs are meant to help you:

- Identify new tax planning opportunities.
- Keep you updated with all changes in the tax world.
- Keep you aware of current revenue and fiscal announcements and interpretations.
- Recognise pitfalls many professionals miss.
- Minimise compliance errors and offer practical and effective tax solutions.

The contents of this issue are as follows:

- Finance Act 7 of 2021 and the major highlights
- SI 296 of 2021: (Regulation of Motor Vehicles in Customs Controlled Areas)
- Change of tariff codes
- Definition of fees for purposes of NRTF of wide import
- Whether PAYE should be paid in USD when par earnings are in ZWL\$
- 30% of airtime and data deemed fringe benefit
- VFSEX exemption from capital gains withholding tax over legislated
- New withholding tax on contracts regime
- Beware of Fraudsters masquerading as ZIMRA officials



*Marvellous Tapera*  
Chief Executive officer



## 1. New Legislative Provisions

### Finance Act 7 of 2021 the major highlights

The Finance Bill has been passed into law confirming most of the budget proposals. We highlight some of the major policy prescriptions, but for details refer to November 2021 Monthly Tax Update.

#### Mines and Minerals: Royalty rates

Rates of royalty for minerals or mineral bearing ore shall be calculated by using the following criteria

Metals	Method of computation
Concentrate	<ul style="list-style-type: none"> <li>85% of the international price of the refined mineral contained therein by reference to the price on the London Metal Exchange on the date of the transaction on which royalties will be paid; and</li> </ul>
Matte	<ul style="list-style-type: none"> <li>90% of the international price of the refined mineral contained therein by reference to the price on the London Metal Exchange on the date of the transaction on which royalties will be paid;</li> </ul>
Gold	<ul style="list-style-type: none"> <li>Invoice value as determined from time to time by Fidelity Printers and Refineries;</li> </ul>
Diamonds	<ul style="list-style-type: none"> <li>The invoice value as determined by the Minerals Marketing Corporation of Zimbabwe.</li> </ul>
All other minerals,	<ul style="list-style-type: none"> <li>The invoice value as determined by the Minerals Marketing Corporation of Zimbabwe.</li> </ul>

The model recognises method of determining royalty for opaque products which is known as the Net Smelter return as it takes into cognizance the existence beneficiation costs involved in arriving at the price of the opaque product at the time of sale.

#### Recovery of tax from beneficial owner of company

Companies are required to declare the shareholders/ beneficial owners when filing the income tax returns through the amendment of the provisions of section 77 of the Income Tax Act. This enables ZIMRA to be able to recover revenue from companies that participate on tenders whose directors and shareholders are relatives or people who do not have any idea what the business is all about and are just there as shareholders in order to meet tender requirements.

#### Retrenchment package

Retrenchment package exemption is the greater of ZWL400 000 or 1/3 of the retrenchment package, capped to a third of ZWL 2 million. In USD it is the greater of USD 3 200 or 1/3 of the retrenchment package but capped to a third of USD 15 100. Meanwhile the amendment in the Finance Act to para 4p of the 3<sup>rd</sup> Schedule is not in conformity with the Schedules. The Schedules provide for exemption of ZWL 1 300 000 or 1/3 of the package up to a maximum cap of ZWL 4 875 000. The Finance Act will need to be amended so that the amounts subject to exemption are clearly set out unequivocally by aligning the provisions to what is in the schedules so as to avoid confusion which may potentially trigger contra fiscum rule cases where a taxpayer applies the exemption figures that result in the least tax burden.

### Non-executive directors' fees

Remuneration liable to non-executive directors' tax on fees is exempt from employees' tax. Therefore income earned by non-executive director would not attract PAYE notwithstanding that the nature of the payment to the NED is synonymous to that paid to employees. This means that if NED get their fees in the form of benefits, they will still be treated as NED fees. The meaning of remuneration makes it clear that any fees paid to the NED in respect of services rendered are to be treated as NED fees and not subject to employees' tax.

### Prescribed for income tax purposes

Finance Act 7 of 2021 buttresses the position for computation of income tax in foreign currency when trading has taken place in foreign currency. It further gives taxpayers an option to make computation in foreign currency through provision of foreign currency prescribed income tax values as follows:

Item	2022		2021	2020	2019
	USD	ZWL\$	ZWL\$	ZWL\$	ZWL\$
Contributions by Employers to benefit funds for each member (employee)	1,000	130,000	80,000	15,000	12,000
Allowance to former employee retiring on grounds of ill health etc (exgraitia payment)	500	65,000	40,000	5,000	4,000
Allowance to former partner retiring etc on grounds of ill health (exgraitia payment)	200	26,000	16,000	2,000	1,600
Allowance to dependent (s) of former employee or partner	200	26,000	16,000	2,000	1,600
Donations to State, local authority, or religious organisation hospitals	100,000	Converted at official rate on donation date	8,000,000	1,000 000	800,000
Donation to a research institution	100,000	13,000,000	8,000,000	1,000 000	800,000
Donation of educational equipment, construction, or maintenance, books and other educational materials.	100,000	13,000,000	8,000,000	1,000 000	800,000
Donation to the Public Private Partnership Fund	50,000	6,500,000	4,000,000	500,000	400,000
Donation to the Destitute Homeless Persons Rehabilitation Fund	50,000	6,500,000	4,000,000	500,000	400,000
Trade Conventions or Trade Missions (each)	2,500	325,000	200,000	25,000	20,000
Trade Conventions or Trade Missions (each) per partner	3,600	468,000	200,000	25,000	20,000

Item	2022		2021	2020	2019
	USD	ZWL\$	ZWL\$	ZWL\$	ZWL\$
Expenditure incurred on infrastructural development or maintenance of property owned by local authority	50,000	6,500,000	4,000,000	500,000	400,000
Maximum lease expenses for PMV	10,000	1,300,000	800,000	100,000	80,000
Withholding tax on contracts (ITF263) threshold	1,000	130,000	80,000	10,000	8,000
Exemption of annuity on retirement lump sum payment cap	1,800	234,000	140,000	18,000	14,400
Exemption from income tax of Lump sum payments from funds with changed rules	1,800	234,000	140,000	18,000	14,400
Minimum exemption of pension commutation from the Consolidated Revenue Fund where employment ceases due to retrenchment	1,800	234,000	140,000	50,000	10,000
Pension contribution employers per member	3,000	390,000	240,000	54,000	43,200
Limitation of PMV for capital allowances	10,000	1,300,000	800,000	100,000	80,000
Qualifying cost per unit of employee housing (staff house not for mining)	25,000	3,250,000	2,000,000	250,000	25,000
Qualifying cost per unit of employee housing (staff house for miner workers)	Full cost	Full cost	Full cost	Full cost	Full cost
Any building used mainly as a dwelling by one or more individuals who control the mining company	10,000	1,300,000	800,000	100,000	10,000
Any building used as hospital, nursing home or clinic at farm	10,000	1,300,000	800,000	100,000	80,000
Any building used as a school at farm	10,000	1,300,000	800,000	100,000	80,000
Any building used as hospital, nursing home or clinic at mine	50,000	6,500,000	4,000,000	500,000	400,000
Any building used as a school at mine	50,000	6,500,000	4,000,000	500,000	400,000
Renewal or replacement of buildings, works or equipment (mining)	10,000	1,300,000	800,000	100,000	8,000
Limitation on renewal or replacement of buildings or equipment (mining)	1,500	195,000	120,000	100,000	
Arrear pension contribution by employees	1,000	130,000	80,000	18,000	

### Restrictions on claiming input tax

Only fiscalised tax invoices will be accepted for purposes of claiming input tax and this is a document strictly printed by a fiscalised electronic register or fiscal memory device used by a registered operator. It should contain the words "fiscal tax invoice" in a prominent place. Meanwhile VAT tax invoices that were generated prior to 1 January 2022 can be used to claim input tax no later than the 31st March, 2022. The requirement to fiscalise has been intensified with operators coerced to demand a fiscalised invoice so that they may claim their input tax.

### Excise duty and Surtax: Estimated assessments

Estimated assessments may be raised against persons engaged in manufacture of commodities liable to excise duty or surtax. In making such assessment the Commissioner may estimate the amount upon which excise duty is payable and the amount of excise duty payable by that person.

#### **Circumstances where estimated assessments can be raised:**

- Any person fails or neglects to furnish any return; or
- The Commissioner is not satisfied with any return or declaration so submitted or
- The Commissioner has reason to believe that any person has become liable for the payment of excise duty but has not paid such amount; or
- Any person, not being a licenced manufacturer, manufactures any excisable goods and does not render a return or pay the excise duty due.

The estimated assessments will promote compliance, and also means more administrative work on the part of taxpayers and tax administrators. Taxpayers are encouraged to submit returns and remit excise duty and surtax on time in order to avoid estimated assessments.

### Excise duty on Airtime in foreign currency

Where airtime is sold in foreign currency, payment of the special excise duty shall be made in the same currency. This ensures conformity with other tax heads such as VAT and Income Tax and this will also maintain the principle of fairness in payment of taxes by taxpayers.

### Tax clearance certificates and fiscalisation

In order to be issued with a tax clearance, a VAT registered operator should have fiscalised his or her operations to the extent that they are interfaced with the Authority's server. The effect is that fiscalisation is now being used in tandem with tax clearance to eradicate VAT evasion and coercing compliance, hence the issuance of tax clearances to only fully fiscalised taxpayers.

### Chinhoyi declared a customs house

SI 295 of 2021 has amended the Customs and Excise (Ports of Entry and Routes) Order, 2002, published in SI 14 of 2002, in the Fifth Schedule (Custom Houses) of the Order by the addition of "Chinhoyi" as a customs house. This is envisaged to improve efficiency in terms of facilitating trade and travel and importation and exportation of goods and service.

### SI 296 of 2021: (Regulation of Motor Vehicles in Customs Controlled Areas)

The Customs and Excise (Regulation of Motor Vehicles in Customs Controlled Areas) Regulations 2007, published in Statutory Instrument 57 of 2007, are amended by the addition of the following border posts in the First Schedule, Forbes Border Post, Kazungula Border Post, Sango Border Post, Nyamapanda Border Post, Mpoengs Border Post, Pandamatenga Border Post, Mt Selinda Border Post, Victoria Falls Border Post and Maitengwe Border Post. A penalty of US\$20, 00 for each hour or part thereof that a vehicle is parked in excess of three hours, up to a limit of US\$200. Vehicles registered locally will pay penalties charged in local currency using the prevailing rates of exchange. This measure is meant to prevent smuggling of goods or having goods filter into the Zimbabwean market without having paid customs duty.

### Change of tariff codes

The minister through SI 297 of 2021 has made the following changes in the customs tariff. In the First Schedule of the Tariff Notice, by the repeal of the following —

Heading Number	Commodity Code	Description of Goods	Quantity Data	Rate of Duty : General	Rate of Duty : MFN
"22.02	2202.10.10	Flavoured aerated waters	1.Kg 2 L	US\$0.50/L	US\$0.50/L

And the substitution with the following

Heading Number	Commodity Code	Description of Goods	Quantity Data	Rate of Duty : General	Rate of Duty : MFN
"22.02	2202.10.10	Flavoured aerated waters	1.Kg 2 L	US\$0.50/L	US\$0.50/L
	2202.10.19	....Energy Drinks	1. Kg 2. L	US\$ 0.50/L + Excise	US\$ 0.50/L + Excise

In Part II of the Second Schedule of the Tariff Notice, by the repeal of the following—

Heading Number	Commodity Code	Description of Goods	Quantity Data	Rate of Duty
"22.02	2402.10.00	- Cigars, cheroots and cigarillos containing tobacco	1. Kg 2. 1000u	20% + US\$5.00 per 1 000 cigarettes
	2402. 20.10	- - -Weighing not more than 910g per thousand	1. Kg 2. 1000u	20% + US\$5.00 per 1 000 cigarettes
	2402. 20.20	- - - Weighing more than 910g and not more than 1 000g per thousand	1. Kg 2. 1000u	20% + US\$5.00 per 1 000 cigarettes
	2402. 20.30	- - - Weighing more than 1 000g and not more than 1 135g per thousand	1. Kg 2. 1000u	20% + US\$5.00 per 1 000 cigarettes
	2402. 20.40	- - - Weighing more than 1135g and not more than 1 225g per thousand	1. Kg 2. 1000u	20% + US\$5.00 per 1 000 cigarettes
	2402. 20.90	- - - Other	1. Kg 2. 1000u	20% + US\$5.00 per 1 000 cigarettes."

Heading Number	Commodity Code	Description of Goods	Quantity Data	Rate of Duty
"22.02	2402.10.00	- Cigars, cheroots and cigarillos containing tobacco	1. Kg 2. 1000u	25% + US\$5.00 per 1 000 cigarettes
	2402. 20.10	- - -Weighing not more than 910g per thousand	1. Kg 2. 1000u	25% + US\$5.00 per 1 000 cigarettes
	2402. 20.20	- - - Weighing more than 910g and not more than 1 000g per thousand	1. Kg 2. 1000u	25% + US\$5.00 per 1 000 cigarettes
	2402. 20.30	- - - Weighing more than 1 000g and not more than 1 135g per thousand	1. Kg 2. 1000u	25% + US\$5.00 per 1 000 cigarettes
	2402. 20.40	- - - Weighing more than 1135g and not more than 1 225g per thousand	1. Kg 2. 1000u	25% + US\$5.00 per 1 000 cigarettes
	2402. 20.90	- - - Other	1. Kg 2. 1000u	25% + US\$5.00 per 1 000 cigarettes."





## 2. Court Case

### Definition of fees for purposes of NRTF of wide import

Case name	M Company vs ZIMRA SC 98/21
Summary Facts	<ul style="list-style-type: none"> <li>• M Company ("M Coy") is a locally registered company that operates as an exporter and seller of processed tobacco from Zimbabwe.</li> <li>• ZIMRA undertook an audit of the affairs of M Company whereupon it determined that the commission paid in respect of the Sales and Marketing Commission Agreements qualified as fees for services of a technical and administrative nature, performed by an overseas agent, on behalf of M Company.</li> <li>• As a result, ZIMRA determined that M Company was liable for withholding non-resident tax ("NRTF") as per 17<sup>th</sup> Schedule to the Income Tax Act.</li> <li>• The company objected to the ZIMRA assessment of NRTF which in turn the ZIMRA disallowed leading to an appeal being filed.</li> <li>• M Company disputed liability on the basis that commissions constituted fees as contemplated in s 30 as read with the Seventeenth Schedule of the Act.</li> <li>• This was confirmed by the Fiscal Court of Appeal which the decision M Coy appeals against in this court (Supreme Court of Zimbabwe)</li> </ul>
Jurisdiction	<ul style="list-style-type: none"> <li>• Supreme Court of Zimbabwe</li> </ul>
Issues for determination	<ul style="list-style-type: none"> <li>• Whether the appeal was properly before it.</li> <li>• Whether in terms of s 30 of the Act as read with the 17<sup>th</sup> Schedule of the Act; M Coy is liable to have withheld non-residents tax on commissions paid to certain foreign companies providing sales and marketing services to it for the sale of its export tobacco in overseas markets.</li> </ul>
Decision	<ul style="list-style-type: none"> <li>• That the court a quo did not err and misdirect itself in arriving in its decision.</li> <li>• That the amendment to the definition of fees was not applicable in retrospect.</li> </ul>

### The facts

The case is an appeal against the whole judgment of the Fiscal Appeal Court handed in favour of the ZIMRA. M Coy, a resident company and exporter of processed tobacco from Zimbabwe, entered into two successive sales and marketing agreements with two foreign companies for the sale of tobacco in foreign markets which entitled the foreign companies to 7.5% commission of the aggregate net export sales and FCA Zimbabwe sales value of each export, respectively. The company was not deducting withholding tax on commission paid to foreign companies. ZIMRA argued that the commission constituted fees for services of a technical and administrative nature performed by the overseas agent on behalf of the company which was confirmed by the fiscal court and hence the current case.

Issue	Court reasoning and decision
Whether the appeal was properly before it.	<ul style="list-style-type: none"> <li>• That M Coy was not precluded from objecting, as it did, to the ZIMRA's assessment of liability for its failure to remit NRTF.</li> <li>• That the court a quo correctly determined that the appeal was properly before it.</li> </ul>
Whether in terms of s 30 of the Act as read with the Seventeenth Schedule of the Act; M Company is liable to have withheld non-residents tax on commissions paid to certain foreign companies providing sales and marketing services to it for the sale of its export tobacco in overseas markets.	<ul style="list-style-type: none"> <li>• That the agents provided services of a technical, managerial, administrative or consultative nature to M Coy in the sale of its export tobacco.</li> <li>• That there were hardly any activities undertaken by a tax-payer that could escape the wide ambit of definition of "fees" as provided for in the 17<sup>th</sup> SCH of the Act.</li> <li>• That the commissions constituted fees as envisaged in s 30 as read with para 1 of the Seventeenth Schedule of the Act.</li> <li>• That M Coy was considered as a "payer of fees" as contemplated in the Seventeenth Schedule of the Act being the principal of the agents'</li> <li>• That in the circumstances, the amending Act did not purport to interpret the earlier definition of fees as contained in the 17<sup>th</sup> Schedule, neither can any such inference be drawn.</li> <li>• That the definition of "export market services" constitutes a distinctly new concept altogether.</li> <li>• That the definition of fees prior to the amendment, specifically relates to any amount incurred in respect of services of a "technical, managerial, administrative or consultative nature".</li> <li>• That the nature of the fees contemplated thereon are clear and unambiguous.</li> <li>• That the amending Act cannot therefore be applied retrospectively on the basis of legislative interpretation.</li> <li>• That ZIMRA was correct in its interpretation of the words "any amount" to include commission.</li> <li>• That from the definition it is clear that the legislature intended "fees" to cover any sum of money, by whatever name called, paid for services rendered of a technical, managerial, administrative or consultative nature save for those that are expressly excluded."</li> <li>• That the term fees connotes any payment made for services of a specific nature.</li> <li>• That the term "technical" was defined as "connected with the skills needed for a particular job"; "an adjective relating to a particular subject, art or craft or its techniques" and "of a person; skilled in or practically conversant with some particular art or subject, belonging to or relating to an art or arts, appropriate or peculiar to or characteristic of a particular art, science profession or occupation; also pertaining to the mechanical arts and applied sciences generally."</li> <li>• That the function of the agents' in providing practical knowledge of the climatic and soil conditions, the style and smoking characteristics of the export leaf necessary for the determination of the appropriate blend required by the customers constituted services of a technical nature.</li> <li>• That the term "managerial" was further determined to be synonymous with the directing of activities whilst the term "administrative" was held to mean "relating to the running of a business, organisation etc."</li> <li>• That the two concepts were determined as being interlinked to the extent that they could be deemed as inseparable.</li> <li>• That the agents' were responsible for "price negotiations and other marketing logistics" on behalf of M Coy and a range of other services for its activities abroad.</li> <li>• That the practical activities of the agents fell within the ambit of "managerial and administrative services" is not outrageous or defiant of logic to the extent that it would warrant the interference of this Court.</li> <li>• That the applied definition of "consultative" was "pertaining to consultation, deliberative, advisory, take counsel, deliberate, confer, to plan, advise, have recourse to professional advice".</li> <li>• That there is no absurdity in the finding that the agents offered services of a consultative nature to the appellant.</li> </ul>

## Decision

- That determination *a quo* was properly arrived at to the extent that it does not warrant an interference by the court.
- That the appeal lacks merit and is accordingly dismissed, with costs following the cause.

## Decision Impact

The case reminds us that it is important to ensure that there are actual assessments issued by ZIMRA before one can object to the assessment. Additionally, the issue regarding the payment of withholding tax on fees paid by way of a withholding done offshore by the service provider has been articulated once more. Commissions withheld offshore are deemed paid by the service recipient. This ruling is in tandem with the ruling in the case of G Bank v ZIMRA where correspondent bank was withholding amounts in the Correspondent offshore account for maintaining the account. Furthermore the terms technical, managerial, consultative or administrative are of such wide import that almost all services rendered by a non-resident to a Zimbabwean taxpayer will trigger NRTF unless specifically excluded from the definition of fees.



## 3. Technical interpretation

### Whether PAYE should be paid in USD when earnings are part in ZWL\$

#### The law and interpretation

This is an interpretation of the recent changes relating to PAYE as promulgated in the Finance Act 7 of 2021 on whether PAYE should be remitted 100% in foreign currency even when part of the earnings are in ZWL\$. In cases where salary is earned wholly in foreign currency taxpayers should perform the computation using the USD tax tables. Any RTGS income paid for by the company in RTGS, should be converted to the US dollar equivalent at the prevailing rate at the date of its payment or accrual to the employee. In terms of an amendment to section 14 (2) of the Finance Act *Chapter 23:04* through Finance Act 7 of 2021 which reads as follows: “*For the purpose of section 14(2)(a) of the Finance Act, the taxable income from employment of a person who receives such income partly in Zimbabwe dollars and partly in United States dollars shall be taxed as if the income was all denominated in United States dollars, with the Zimbabwe dollar portion of the income being converted to its United States equivalent at the interbank rate prevailing when the income was received, and aggregated to the part of the income denominated in United States dollars.*” Therefore, if a portion of the employee's earnings is paid in US dollars to employees it will have the effect of making all earnings to be taxed using the US dollar tax tables for the purpose of determining the tax payable. The determination of the tax will be done using the US dollar tax tables, however, remittance will be done proportionately in both RTGS and USD based on the ratio of the taxable income in both currencies. Our view that taxing is separate from remittance is premised on the phrase “*shall be taxed.*” As used in section 14(2) of the Finance Act, our understanding is that the phrase denotes the levying of a tax or the application of the tax tables as expressed in section 14(2) (a) of the Finance Act. The process of taxing, is the application of those tables, whilst the remittance of tax is separate from the application of the tax tables. Section 14(2) as amended is dealing with process of arriving at a tax and not with the remittance of that tax. Taxing refers to the application of a tax rate to the taxable income. It is a process that is independent of the remittance of the tax thereof.

#### Decision Impact

The position has not changed from that of previous year only that the new provision is simplify the law making clear that tax tables in USD should be used when part of earnings are in foreign currency.

### 30% of airtime and data deemed fringe benefit

#### The law and interpretation

The definition of “advantage or benefit” in section 8 of the Income Tax Act to include 30% of the cost of the provision by the employer to the employee for use at the home of the employee or outside of the work premises of— mobile or landline telephone airtime; or airtime or .data for broadband or internet access. This is in response to the impact of covid-19 resulting in people working from home thereby exempting 70% of the cost of such airtime, data for broadband or internet access. Meanwhile it appears that the Minister has deleted the school fees benefit which creates a potential gap because the exemption of the same benefit up to 50% of the fees waived up to 3 children has been retained in the third schedule. A corresponding deletion to the provision in the third schedule has not been effected through the Finance Act 7 of 2021. This may potentially raise issues to do with the contra fiscum rule where certain benefactors continue to claim the deduction notwithstanding the gap in the law.

#### Decision Impact

Covid 19 has demonstrated the importance of having internet and telecommunications for purposes of fulfilling work related tasks in a working from home context. Internet and airtime are no longer a luxury but rather a necessity to ensure the continuity of operations throughout the government imposed lockdowns to curb the spread of the pandemic.

### VFSEX exemption from capital gains withholding tax over legislated

#### The law and interpretation

There is an intention to exempt from capital gains tax any shares or marketable securities listed on the Victoria Falls Stock Exchange in terms of section 10 (r) as amended by Finance Act 8 of 2020 which reads as follows: *“(r) amounts received or accrued on the sale or disposal of any shares or other marketable securities listed on the Victoria Falls Stock Exchange as defined in paragraph 4(f) of the Third Schedule to the Taxes Act.”* However, the shares remain subjected to Capital Gains Tax withholding in terms of the amendment to section 39(c) through Finance Act 7 of 2021 which reads as follows: *“(c) in the case of a sale of a marketable security that is a listed security, one comma five per centum of the price at which the security was sold if such security was held for at least six months on the date of its sale, or two per centum of the price at which the security was sold if such security was held for less than six months on the date of its sale.”* This provision does not discriminate between the Zimbabwe Stock Exchange and the Victoria Falls Stock Exchange. Furthermore, amendment no. 21 of the Finance Act no.7 of 2021 seeks to exempt from capital gains tax all securities that have been subjected to capital gains tax withholding in terms of section 39(c). The provision reads as follows: *“(n) amounts received by or accruing to a person on the sale of any marketable security which was subjected to withholding tax in terms of section 39(c) of the Charging Act.”* This provision entails that both Victoria Falls shares and Zimbabwe Stock Exchange shares are eligible for exemption under paragraph (n). It then begs the question whether it is necessary to have the exemption in terms of section 10(r) of the Capital Gains Tax Act if the same shares are to be exempted in paragraph (n) of the same section.

#### Decision Impact

Whilst it is government's intention to project the VFSEX as safe stock exchange and promoting investment through incentives, there is no need to over legislate as it may end up creating gaps in the law. The provision of section 10(r) of the CGT Act is rendered redundant through the provisions of section 39(c) of the Finance Act as read with the provisions of paragraph (n).

### New withholding tax on contracts regime

#### The law and interpretation

The threshold for withholding tax on contracts (local tenders) is reviewed to ZWL130 000 or USD 1000 if the payment is being made in foreign currency. The rate of withholding tax on contracts is increased from 10% to 30% with effect from 1 January 2021. The definition of contract entails that for purposes of section 80, a contract for the payment of amounts below USD1000 or ZWL130 000 in a year of assessment are not considered to be a contract to which withholding tax at 30% would apply in the absence of a tax clearance. Meanwhile the tax does not apply on payment of taxes to the ZIMRA, payment of levies or delictual claims, salaries and wages to employees, payments for the purchase of tobacco and payments by individuals not in trade to business (other than on a contract for the sale, letting or hire of immovable property). All registered taxpayers ranging from employers, persons registered for income tax purposes, VAT registered operators, Capital Gains Tax depositories etc are under an obligation to withhold and remit to the ZIMRA withholding tax on local contracts in instance where a tax clearance is not held upon making payment to such a supplier. The term payment is of broad import and would cover actual cash outlay, barter, setoff, crediting a director's loan accounts, intercompany debits and credits or any other settlement of obligations whatsoever and in any form the (Finance Act 1 of 2014). Thus payment is signified the extinguishing or settlement in whatever form.

#### Decision Impact

The adjustment of withholding tax to from 10% to 30% makes having a tax clearance certificate very important to do business. It coerces tax compliance because 30% has far reaching consequences to the bottom line of the business. Suppliers should be carefully selected in order to avoid the administrative issues of withholding and remitting the tax plus penalty and interest in the event of default. Administration of the tax is often challenged in case a supplier has monopoly is the sole or exclusive supplier and this could result in tax being passed on to customer or consumers through price increase of goods and services. Which means that the increased rate may be expensive for the country and be inflationary. Meanwhile, the new minimum threshold for application of withholding tax avail opportunity for tax avoidance for those dealing in small payments and possible splitting of payment in order to minimise or avoid the tax.



4. Announcement and Interpretations

**Beware of Fraudsters masquerading as ZIMRA officials**



**PUBLIC NOTICE**

**Beware of fraudsters posing as ZIMRA Officials**

The Zimbabwe Revenue Authority (ZIMRA) wishes to advise its valued clients, members of staff and the public in general to be on the lookout for male and female fraudsters pretending to be ZIMRA officials. The fraudsters masquerade as ZIMRA Loss Control Officers or as ZIMRA Domestic Taxes auditors. The fraudsters work as a group of three females and one male.

The fraudsters make numerous persuasive and threatening phone calls using landline numbers or cell phones, purporting to be calling from ZIMRA offices at Kurima House. The fraudsters convincingly extort money from unsuspecting companies and individuals on the pretext of conducting ZIMRA business, mainly tax audits. A number of companies and individuals have fallen prey to the fraudsters and lost money and valuables in the process.

Clients and the public in general, are warned against entertaining people who claim to be coming from ZIMRA and must be aware of the following:

- All ZIMRA employees have clearly defined work procedures and do not carry out ZIMRA business in the streets or over personal or unofficial social and digital media platforms.
- All ZIMRA employees carry with them valid staff identity card when on duty and do not ask for any form of monetary deposits into their personal bank accounts for them to conduct ZIMRA business.
- ZIMRA is not associated with and has no business links with these fraudsters conducting ZIMRA work in the manner described herein.
- ZIMRA clients and the public should not be intimidated into parting with their money through the actions of individuals whose identity has not been verified.

Anyone with information pertaining to suspicious individuals acting in the manner described above should immediately report to the nearest Zimbabwe Republic Police station or any nearest ZIMRA office, or contact ZIMRA via the following:

General Lines: 0242-758891-5.  
 Econet toll free: 0808190.  
 Telecel toll free: 0732880880.  
 Netone toll free: 0814880.  
 WhatsApp: 0772135690.  
 SMS: 0712790972.  
 Email: [webmaster@zimra.co.zw](mailto:webmaster@zimra.co.zw) / [pr@zimra.co.zw](mailto:pr@zimra.co.zw).  
 @Zimra\_11 Facebook [www.facebook.com/ZIMRA.ZW](https://www.facebook.com/ZIMRA.ZW) and website: [www.zimra.co.zw](http://www.zimra.co.zw)

**Decision Impact**

The fraud is a microcosm of what is happening within the Authority on a wider scale. The recent ban on the whistle blower reward, the issue of VAT refunds, the improper importation of vehicles through the border, the distribution of fake public notices, are all tell-tail signs of difficulty within the authority. There may potentially be motivational issues with employees which results in such shocking occurrences. There is need for serious weeding out of rotten crop within the authority to preserve the integrity of the organisation.



## Our Contact Details

For a detailed discussion of how these issues might affect your business and our other group offerings, please contact:

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## 6. Disclaimer Clauses

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