

MONTHLY TAX UPDATE

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Table of Contents

1. Executive summary.....	2
2. Employees’ tax tables in United States.....	3
3. Income tax exemptions for Great Dyke	3
4. Tollgate fees pegged in United States Dollar	4
5. Government hikes fines for offences.....	4
6. Source of fees in domestic law vs Germany DTA	5
7. What vacuum are the new PAYE tables in foreign currency seeking to close?	8
8. Addressing purchasing power parity only on employee loans not adequate	10
9. Objection and appeal matters a complete overhaul	10
12. VAT Adjustment the most forgotten matter	13
13. Your Transfer Pricing (“TP”) Documentation update now!!!	14
14. Public Notice 7 of 2021 on Tax Clearances a “tax trap”	15
15. Contacts	17
16. Disclaimer Clauses	17



1. Executive summary

We are honoured to present our January 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.

Employees' tax tables in United States dollar: The Minister of Finance and Economic Development has published SI 36 of 2021 which seeks to reintroduce United States Dollar PAYE already in existence.

Income tax exemptions for Great Dyke: The mining enterprise to get exemptions of income tax for 5 years from the date it commences selling mining output.

Tollgates fees pegged in United States dollar: The Minister of Transport and Infrastructural Development has pegged tollgate fees in USD and the Zimbabwe dollar equivalent to be tracked using the auction rate.

Government hiked fines for offences: The government has hiked fines for offences and concurrently enacted fine for breaking lockdown regulations.

Source of fees in domestic law vs Germany DTA: This is a tax case of CUT vs the Zimra. The case seeks to resolve the battle of payment of NRTFs and the appropriateness of the court at which the appeal was filed in terms of its constitutional capability of handling the case.

What vacuum are the new PAYE tables in foreign currency seeking to close? This article is an analysis of whether it was necessary for the government to gazette SI 36 of 2021 that contains the United States PAYE tables.

Addressing purchasing power parity only on employee loans not adequate. The article deals with new interest free rate on ZWL\$ employee loans and advances views on why same principle should be applied in similar cases.

Objection and appeal matters a complete overhaul: The 11th Sch to the ITA is overhauled to open up for more decisions taxpayers can object to.

VAT Adjustments the most forgotten matter: These are the VAT adjustments which are necessary when calculating VAT and filing the VAT 7 return.

Your Transfer Pricing ("TP") Documentation update now!!!: Taxpayers with intercompany transactions will find this article useful in their bid to comply with the transfer pricing tax laws;

Public Notice 7 of 2021 on Tax Clearances a "tax trap": The article speaks of the timing of publication of Zimra Public notice no 7 and the possible ramifications thereof.

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



2. Employees' tax tables in United States

The law and Interpretation

The government has published United States dollar employees' tax tables through SI 36 2021. The SI replaced SI28 of 2021 which was gazetted a few days earlier but repealed because it had erroneously repealed the ZWL\$ rates. SI 36 amends s14(2) (a1) of the Finance Act by substituting the 5 months period 1 August – 31 December 2020 tables with annual tables with effect from 1 January 2021 as follows::

Annual USD bands		Rate
	840	-
841	3,600	20%
3,601	12,000	25%
12,001	24,000	30%
24,001	36,000	35%
36,001	and above	40%

Decision Impact

The SI reinforces the government policy to collect taxes in foreign currency where earnings are received, accrued or earned in foreign currency. These tables are to be used where a person earns any part of his or her taxable income from employment in foreign currency. However, this SI has duplicated the rates that are already in existence. Refer to article below for full details.

3. Income tax exemptions for Great Dyke

The law and Interpretation

The government published SI 26 2021 which exempts Great Dyke Investments (Private) Limited from income tax and additional profit tax payable in terms of its Special Mining lease area. The receipts and accruals that are exempted must be those generated from the mining activity that is the exploitation of Platinum Group Metal deposits. The exemption commences on the date of the receipts from the mining operations and sale of mining output. The SI also exempts from resident shareholders' tax the dividends paid by Great Dyke Investments (Private) Limited in connection with special mining lease operations of Great Dyke. The SI is with effect from 1 January 2020.

Decision Impact

Great Dyke may not fully benefit from the said reliefs. Most mining entities usually incur heavy capital expenditure at the beginning of the mining operations such that the first years of operation will be unprofitable. Further if Great Dyke accumulates losses during the exemption period it would not be able to utilise by them after the exemption period. Section 16(1) (f) of the ITA prohibits the claiming of expenditure

and assessed losses when one is making exempt income. It should have opted for the income to be zero rated instead. The SI also discriminates against non-resident shareholders of Great Dyke as the dividend exemption appears applicable to resident shareholders only.

4. Tollgate fees pegged in United States Dollar

The law and Interpretation

The Ministry of Transport and Infrastructural Development has gazetted SI32 of 2021 which restores the USD toll fees converted into ZWL\$ through SI33 of 2019. It further states the ZWL\$ will be determined using the auction rate prevailing on the date the toll fees are paid. The restored rates are as follows:

Vehicle	Toll fees (\$US)
Motorcycles	Exempted
Light motor -vehicles	2.00
Minibuses	3.00
Buses	4.00
Heavy vehicles	5.00
Haulage trucks	10.00

The SI also mentioned that toll fees for foreign-registered vehicles shall be payable in United States Dollars or equivalent in other foreign currencies, using the above rates. Meanwhile, residents living in areas within a 10km radius from a tollgate situated in their area will pay a daily toll fee of US\$4.00 (without discount).

Decision Impact

The SI restores the value of the toll fees and this may assist in mobilising revenue for refurbishing of our roads. Fixing the toll fees in United States dollar means that their value in real terms will be easy to monitor and adjust in Zimbabwe dollar terms in the event of change in auction rate.

5. Government hikes fines for offences

The law and Interpretation

The Ministry of Justice, Legal and Parliamentary Affairs has, through SI 25 of 2021 announced a new fine schedule for various offences which take effect the 25th of January 2021. Members of the public who violate lockdown regulations will be liable to a fine of ZWL\$5 000 with immediate effect up from ZWL\$500. Offences that may attract the penalty include breaking curfew, not wearing masks correctly and moving around without exemption letters. Also the SI reviewed the level penalty amounts as follows:

Level	Penalty (ZWL)	Level	Penalty (ZWL)
Level 1	1 000	Level 8	200 000
Level 2	2 000	Level 9	240 000
Level 3	5 000	Level 10	280 000
Level 4	20 000	Level 11	400 000
Level 5	30 000	Level 12	800 000
Level 6	60 000	Level 13	1 200 000
Level 7	120 000	Level 14	1 600 000

Decision Impact

The new penalties will act as deterrence against committal of offences and assist in fighting the spreading of the COVID-19 pandemic.



6. Source of fees in domestic law vs Germany DTA

Case name	CUT (PVT) LTD vs ZIMRA HH 684-19 ICT 10/16
Summary Facts	<ul style="list-style-type: none"> CUT is a registered tobacco merchant and exporter of tobacco in Zimbabwe. It sold tobacco to CNT, a company incorporated in Germany from which it secured credit facilities in the form of loans from CNT and concluded agreements thereto. The loans were charged interest rates, commitment and arrangement fees. CUT made a voluntary disclosure of the withholding tax on the commitment and arrangement fees it remitted to CNT and paid the relevant NRTFs to Zimra at 15%. Upon realizing the Double Taxation Agreement (“DTA”) between Germany and Zimbabwe, it revised the rate of tax to 10% and sought a refund in this regard. This was further reduced to 7.5% after being altered of the correct explosion of the DTA by its tax consultant whereupon the constant sought of a refund of NRTFs, which was rejected by the Zimra. CUT further wrote a very detailed letter to the Zimra seeking a refund of the NRTFs paid, in the letter it explained its relationship with CNT. In the same letter it highlighted the provisions of the DTA and concluded that the NRTFs were paid under the misconception that all fees paid to Non-Residents’ require withholding tax to be deducted with no exceptions. It argued that it was not liable to pay NRTFs on the commitment fees and arrangement/underwriting fees since no services were rendered by CNT in Zimbabwe which is one of the requirement in terms of Art 12(4) of the DTA. The Zimra denied this, arguing that technical and administrative services were rendered by the lender in Zimbabwe in return for the amounts paid. After partially allowing the objection by reducing the chargeable NRTFs to 7.5%, the Zimra refused to refund CUT of the paid NRTF and then alerted CUT of its right in s65 of the Taxes Act to appeal either to the High Court or to the Special Court if not happy with the decision.
Jurisdiction	<ul style="list-style-type: none"> Special Court for Income Tax Appeals
Issues for determination	<ul style="list-style-type: none"> Whether the Special Court for Income Tax Appeals had jurisdiction to determine this appeal. Whether CUT was obliged to account for NRTFs due by it to CNT.
Decision Date	<ul style="list-style-type: none"> 26 September 2017 and 22 October 2019
Decision	<ul style="list-style-type: none"> That the appeal was incorrectly filed in the Special Court for Income Tax Appeals as it has no jurisdiction to determine the whole appeal. That the decision to refund is one of the many matters not included in the 11th Schedule to the Taxes Acts as matters taxpayers entitled to object or appeal against.

- That CUT was entitled to pay the NRTFs arising from the payment of the commitment and arrangement or underwriting fees.
- That CUT failed to discharge the onus that Article 12(4) of the DTA is inapplicable and that no services were rendered by CNT in Zimbabwe

The Facts

CUT is a private company incorporated in Zimbabwe as a tobacco merchant, which is engaged in the business of purchasing farmer tobacco and processing and blending it for export. It sold processed and blended tobacco to CNT, a company incorporated in Germany. It was a requirement of the Reserve Bank of Zimbabwe regulations during the 2012 to 2014 tobacco seasons for tobacco merchants to purchase local tobacco from offshore finances. In line with this requirement, CUT secured some credit facilities and concluded credit facility agreements from the German Company. The loans were charged interest rates, commitment and arrangement fees. CUT made a voluntary disclosure of the withholding tax which it assessed from the commitment and arrangement fees it remitted to CNT and paid the relevant tax to the Zimra at the WHT rate of 15%. However CUT later realised the existence of the DTA between Zimbabwe and Germany and hence it assumed a WHT rate of 10% due to the DTA. After consulting its tax experts the correct exposition of the law was that the rate was instead 7.5%. It further dawned to CUT that in any event the DTA requires services to be rendered by the payee in Zimbabwe for NRTF provisions to apply. Hence it argued that the fees were not even subject to NRTFs at all based on the relationship of CUT and CNT in context with the DTA because no services were rendered in Zimbabwe by CNT. The position the Zimra denied, arguing that the commitment and underwriting fees paid to the lender were charged and paid for technical and administrative services and were made for administrative and consultancy services. The Zimra denied refund and informed CUT to go ahead file an appeal if it is unhappy with this decision. CUT went ahead filing an appeal to the Special Court for Income Tax Appeals against the decision by the Zimra to deny refund of improperly paid NTRF.

Issue	Court reasoning and decision
Whether the Special Court had jurisdiction to determine this appeal	<ul style="list-style-type: none"> • That whilst CUT is entitled to refund of overpaid WHT in terms of the 17th SCH to the ITA this has not been linked to s 65 of the same Act regarding appealable matters • That the matter appealed against does not confer jurisdiction on the Special Court. • That this right is enforceable in any forum other than the Special Court which is a creature of statute that cannot exceed its statutory mandate. • That the Special Court did not have all the powers wielded by the High Court in civil actions and its general procedure and practice. • That an appeal lies on the shoulders of a valid objection and the fact that the ZIMRA treated the objection as valid does not make the Court bound by an erroneous view of the law of treating the denial to refund as appealable to the Special court • That the matter under contention does not relate to an assessment but to a decision against a refusal to refund and this is not covered under s62 and 11th Schedule • That the objection was invalid ab initio and was of no force or effect on so is the appeal that followed from the objection and CUT’s case must be struck off the roll.
Whether CUT was obliged to account for NRTFs due by it to CNT?	<ul style="list-style-type: none"> • That whether CUT was entitled to pay the NRTFs depends on the construction of the Zimbabwe and Germany DTA. • That Art 12 of the DTA which deals with the matter at hand reads in part as follows: “(1) Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. (2) However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner

	<p>of the royalties or of the fees for technical services the tax so charged shall not exceed 7 ½ per centum of the gross amount of such royalties and fees for technical services. The competent authorities of the Contracting States shall, by mutual agreement, settle the mode of application of this limitation. (3) ... (4) The term “fees for technical services” as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments, in consideration for any services of a managerial, technical, administrative or consultancy <u>nature rendered in the Contracting State of which the payer is a resident” (underlined words our own emphasis)</u></p> <ul style="list-style-type: none"> • That therefore the essential factors upon which CUT is entitled to pay NRTFs are these: “(a) Payments of any kind to any person, other than employee of the payer, (b) In consideration for any services of a managerial, technical, administrative or consultancy nature, (c) <u>Rendered in the Contracting State where the payer is a resident” (underlined our own emphasis)</u> • That there is no doubt that the situation of CUT satisfies requirements (a) and (b) • That the payment was made to a non-resident person who was not an employee of CUT in respect of managerial, technical, administrative or consultancy services. • That as was stated in both <i>G Bank Zimbabwe Ltd v ZIMRA 2015 (1) ZLR 348 (H) at 379G-380A and M Co (Pvt) Ltd, supra, at 125F-128B</i>, that there are “hardly any activities of a taxpayer that would escape the wide embrace of each of those four categories”, namely technical, managerial, administration and consultancy • That regarding requirement (c), the onus in terms of s 63 of the Act is on CUT is to show that CNT did not render services in Zimbabwe • That the purchase and sale of the tobacco was taking place in Zimbabwe. • That the very fact that the parties signed so many facilities in any given year in the three years confirmed the provision of the money in Zimbabwe. • That the nature and context of the facilities, most of the services for which the commitment and arrangement or underwriting fees were paid for, were provided by the foreign entity in Zimbabwe. • That based on these facts and other surrounding circumstances CNT rendered services in Zimbabwe which makes the ZIMRA entitled to NTRF
Decision	<ul style="list-style-type: none"> • That the appeal was erroneously filed in the Special Court for Income Tax Appeals. • That the court had no jurisdiction to determine the whole appeal. • That CUT was entitled to pay the NRTFs arising from the payment of the commitment and arrangement or underwriting fees.

Decision Impact

Taxpayers should be aware of the proper procedure to be followed when raising objections and appeals. This is necessary to avoid losing a case solely for the reasons of lack of proper raising of an appeal. It is also advisable that taxpayers know that they have the burden of proof in objection and appeal matters reinforcing the need to maintain records. Lastly, taxpayers that pay fees to foreigners must closely look into the DTA terms of Zimbabwe and the foreign company’s country to ensure taxes are enforced properly. This is a necessary step considering the rules may not be the same compared to the domestic law and even amongst the DTAs themselves. For instance the requirement to render services in country as per Germany DTA is found in very few Zimbabwe DTAs. Mostly the focus in the domestic law and most DTAs is on whether the payer of the fees is a resident of Zimbabwe



7. What vacuum are the new PAYE tables in foreign currency seeking to close?

Background

The government recently gazetted SI 36 of 2021 that contains the United States PAYE tables. Apart from repealing SI28 of 2021 which had been gazetted earlier on the same matter, we do not see the purpose SI36 is serving. The law it seeks introduce is already in place.

The law and Interpretation

These United States dollar PAYE tables were gazetted through clause 4 of the Finance Act 3 of 2019 which reads in part as follows: “(1) Section 14 (“Income tax for periods of assessment after 1.4.88”) (2) of the Finance Act [Chapter 23:04] is amended— (a) with effect from the year of assessment beginning on the 1st January, 2020— “(a) in the case of a person other than a company, a trust or a pension fund, at the specified percentage of each dollar of each of the following parts of his or her taxable income from employment— (i) so much as does not exceed twenty-four thousand dollars... Provided that where a person earns any part of his or her taxable income from employment in foreign currency, there shall be substituted for the figures referred to in subparagraphs (i) to (vi) the following figures— A. in subparagraph (i), “eight hundred and forty United States dollars...”. The Finance Act no 1 of 2020 which introduced Zimbabwe dollar and United States PAYE tables for the 5 months period 1 August – 31 December 2020 did not repeal this provision. It reads in part as follows: “Section 14 (“Income tax for periods of assessment after 1.1.88”) (2) of the Finance Act [Chapter 23:04] is amended with effect from the period beginning on the 1st August, 2020, and ending the 31st December, of the year of assessment beginning on the 1st. January, 2020, by the insertion after paragraph (a) of the following paragraph— “(a1)... Provided that where a person earns any part of his or her taxable income from employment in a foreign currency, there shall be substituted for the figures referred to in subparagraphs (i) to (vi) the following figures— A. in subparagraph (i), “three hundred and fifty United States dollars” (underlined our own emphasis). Even Finance Act 2 of 2020 did not repeal the United States dollar PAYE tables. It reads in part as follows: “Section 14 (“Income tax for periods of assessment after 1.4.88”) (2)(a) of the Finance Act [Chapter 23:04] is amended with effect from the year of assessment beginning on the 1st January, 2021, by the repeal of subparagraphs (i) to (vi) and the substitution of— (i) so much as does not exceed one hundred and twenty thousand dollars; (ii) so much as exceeds one hundred and twenty thousand dollars but does not exceed three hundred and sixty thousand dollars”.

Technical Analysis

Two sets of PAYE tables both in United States dollar and Zimbabwe dollar operated at the same time for the period 1 August – 31 December 2020 namely those created by a new s 14(2)(a1) inserted through Finance Act no 1 of 2020 and those enacted through Finance Act no 3 of 2019. In other words, Finance Act 1 of 2020 introduced ZWL\$ and USD rates for the 5 months but did not repeal the full year rates for 2020

gazetted through Finance Act 3 of 2019. Instead the Zimbabwe dollar rates per Finance Act no 3 of 2019 were replaced by the new rates through Finance Act no 2 of 2020 with effect from 1 January 2021. Again the United States tables introduced through Finance Act 3 of 2019 were not repealed. At this point we do not see how it became necessary to have SI36 of 2021. What SI 36 of 2021 went on to do is to repeal United States tables as per s14 (2) (a1) introduced through Finance Act 1 of 2020 and marries the Zimbabwe dollar rates which were for 5 months 1 August – 31 December with United States dollar PAYE tables. In all this, United States dollar tables as per Finance Act no 3 of 2019 stood and yet a similar set of same table is now contained in the newly gazetted SI36 of 2021. The table below is summary of the events:

Description	The Law and interpretation			
	Fin Act 3/2019	Fin Act 1/2020	Fin Act 2/2020	SI36 of 2021
Effective date	1 January '2020	1 August '2020	1 January '2021	1 January '2021
Affected section of Finance Act	s 14 (2)(a)	S14(2)(a1)	s14(2)(a)	S14(2)(a1)
Effect	Introduced ZWL\$ & USD PAYE tables	Introduced PAYE tables in USD & ZWL for 5 months 1 August to 31 December 2020	Amended s 14(2)(a) in relation to the ZWL\$ PAYE tables	Introduced the United States dollar PAYE tables and marries them to 5 months ZWL\$ tables.
Problem Statement	None	Section14 (2) (a) in Finance Act 3 of 2019 is not repealed. Rather a new s14 (2) (a1) is created with ZWL\$ and USD rates for 5 months	Amended ZWL\$ tables in Fin Act 3 of 2019. USD tables not amended. New s14(2)(a1) is not technically repealed	SI36 is introducing USD rates which are ready in existence as per s 14(2) (a). At the same time it is putting them under s 14(2) (a1) which had a shelf life of up to 31 December 2020. Thereby putting the proviso under the ZWL\$ tables which technically lapsed.

Decision Impact

Regarding the Zimbabwe dollar there is no implication to the tax paying community since the new rates which were introduced at each point provided tax relief as opposed to increasing tax burden. Contra fiscum rule will be applied to give less burden to the taxpayers. SI36 is redundant, the government does not need this. Finance Act 2 of 2020 which superimposed the Zimbabwe dollar on the s 14(2) (a) per Finance Act no 3 of 2019 is adequate enough. During the mid-term (Finance Act 1 of 2020), the government was supposed to put a proviso in s 14(2) (a) amending ZWL\$ tables only for the period of 5 months 1 August to 31 December 2020. This is what is now needed as well as repealing both sI36 and section 14(2) (a1).

8. Addressing purchasing power parity only on employee loans not adequate

Background

The Finance Act 2 of 2020 (Act No. 10 of 2020) gazetted a new Zimbabwe dollar interest free rate on employees' cheap loans. This is a revision from LIBOR plus 5% which applied on both United States and Zimbabwe dollar loans up to 31 December 2020. The amendment means that Zimbabwe and United States dollar employees' cheap loans' statutory rates are now different. The United States dollar rate remains fixed at LIBOR plus 5%, whilst that on ZWL\$ employees loans is now at 15%.

Technical Analysis

The amendment cures the disparity caused by the multi-currency regime and the requirement of paying tax in foreign currency for incomes received in that currency. As with the foreign currency employment tax tables, it was necessary that the Minister makes a review of the other legislative amounts that would affect the calculation of tax in foreign currency. With the revaluation of the ZWL currency, it became necessary for the ZWL\$ interest rate on employees' cheap loan to be reviewed in sync with the purchasing power parity rule. We however question why the same principle cannot be extended to statutory interest on tax due and refunds which is currently fixed at 25% for both currencies. All long statutory interest rate on tax due and refunds had been fixed at 10% until amended by SI280, 281, 282 and 283 of 2019 in relation to Customs and Excise, Capital Gains Tax, Value Added Tax and Income Tax Acts, respectively with effect from 1 January 2020. These SIs were responding to the devaluation of the Zimbabwe dollar and whereupon government needed to be compensated sufficiently due to inflation. However there was no merit in raising the interest on United States dollar tax due and refunds to 25%. If the intention of the Minister is to correct this imbalance as he did on interest on employees' loans he may as well adjust the statutory interest rate on tax due and refunds and many other items needing same attention.

Decision Impact

Different rates for employees' cheap loans in United States and Zimbabwe dollar will reduce tax arbitrage. Meanwhile high interest rate on tax due coupled with a penalty of 100% discourages direct investments as the country may be considered a high tax jurisdiction. Even with the most compliant taxpayer, errors resulting in penalties and interest will always occur due to the complex and ever changing tax laws.

9. Objection and appeal matters a complete overhaul

Background

The 11th Sch to the ITA is overhauled to open up for more decisions taxpayers can object to in terms of section 62(1) (b). The Schedule was last amended as far back as 1997 despite new laws being introduced every year.

Technical Analysis

The table summarises the new matters gazetted through the Finance Act no 2 of 2020 which took effect from 1 January 2021.

Section	Decision
98A(3)	<ul style="list-style-type: none"> Determination of whether a taxpayer is seeking to split income with an associate leading to the reduction of taxes paid by the taxpayer.
98B(2)(a)	<ul style="list-style-type: none"> Amendment of an assessment made from incomes that would have accrued to associated persons in a controlled transaction which resulted in the avoidance, reduction or postponement of the liability to tax.
28 th Sch	<ul style="list-style-type: none"> Where the determination relates to— <ul style="list-style-type: none"> whether a person has entered Zimbabwe; or whether a visitor to Zimbabwe has stayed in Zimbabwe for a longer

	period than the period for which he or she originally paid carbon tax;
30 th Sch	<ul style="list-style-type: none"> where the determination relates to— <ul style="list-style-type: none"> whether or not an institution is a financial institution; or whether or not a financial institution has mediated the transfer of money;
31 st Sch	<ul style="list-style-type: none"> where the determination relates to— <ul style="list-style-type: none"> whether an oil company and any other person or entity (other than the State) has purchased any petroleum product from NOCZIM or imported any petroleum product; or whether the required NOCZIM debt redemption and strategic reserve levy has been paid to the Zimbabwe Revenue Authority
32 nd Sch	<ul style="list-style-type: none"> where the determination relates to— <ul style="list-style-type: none"> the definition of a “freelance agent; or whether property or insurance commission tax was paid on commission paid to a freelance agent; or the refund of a payment in terms of paragraph 6;
33 rd Sch	<ul style="list-style-type: none"> where the determination relates to— <ul style="list-style-type: none"> whether director’s fees were paid to a director; or whether tax was withheld and paid by the payer the refund of a payment in terms of paragraph 7;
34 th Sch	<ul style="list-style-type: none"> where the determination relates to— <ul style="list-style-type: none"> whether a petroleum operator has imported petroleum products; or whether petroleum levy was paid; or the refund of a payment in terms of paragraph 3;
35 th Sch	<ul style="list-style-type: none"> where the determination relates to— <ul style="list-style-type: none"> whether or not the conditions of a controlled transaction are consistent with the arm’s length principle; or whether or not the transaction is comparable to a controlled transaction; or whether or not the selected transfer pricing method is the most appropriate one; or whether or not the corresponding adjustment made by the Commissioner to the taxable income of the taxpayer in relation to the domestic transaction is appropriate;
36 th Sch	<ul style="list-style-type: none"> where the determination relates to— <ul style="list-style-type: none"> whether or not the person is a bookmaker; or Whether or not an amount is gross takings for the purposes of the Schedule.”

Decision Impact

The additions allows taxpayer to file objections regarding matters relating to IMTT, transfer pricing among others. Meanwhile matters relating to objection regarding non –resident tax on interest have been removed following the repeal of the 16th Schedule of the ITA as these longer served any purpose.

10. New remittance date for VAT on imported services

Background

VAT on imported service is payable on the importation of services by any person resident in Zimbabwe in terms of s6(1) (c) of the VAT Act. The tax has always been remitted not later than 30 days following the date of invoicing of the service or payment of the non-resident person whichever is earlier since the introduction of VAT in Zimbabwe on 1 January 2004. The Finance Act no 2 of 2020 has revised this date as more fully explained below.

Technical Analysis

Section 13 (1) of the VAT Act requires VAT to be declared within 30 days of time of supply. The time of supply for imported services is the time an invoice is issued by the supplier or recipient in respect of the supply or the time any payment is made by the recipient in respect of that supply, whichever time is the earlier. This means that where recipient of imported services received an invoice or made a payment in respect of imported services, he/she should account and remit the tax to the ZIMRA within 30 days of invoice date or of paying the non-resident supplier, whichever occurs first. The Finance Act 2 of 2020 amended s13 of the Value Added Tax Act regarding the due date for remitting the tax which is the 25th day of the first month commencing after the month of the date of supply of the imported services. This aligns the due date for VAT on imported services to that of remitting local VAT with effect from the 1st of January 2021. Meanwhile, VAT registered operators are entitled to reclaim VAT on imported services where the services are used in the production of taxable supplies. The claim is subject to settling the invoice and remittance of VAT on imported services first to the ZIMRA.

Decision Impact

The change synchronises multiple VAT on imported services declarations and remittances to the Zimra as well with declarations and remittances of the local VAT thereby easing tax administration. However it reduces the credit period previously afforded by the fiscus to the taxpayers.

11. Compliance imperative for self-employed professionals

Background

Every person who derives income from trade is required in terms of the law to pay income tax on such income. A trade encompasses any profession, trade, business, activity, calling, occupation or venture etc. Therefore informal businesses and self-employed persons are duty bound to pay taxes on the profit they make. The government has through Finance Act 2 of 2020 imposed steep presumptive taxes on them in order to force them to comply with the tax law.

Technical Analysis

The table shows the Zimbabwe dollar presumptive taxes per month for the various self-employed persons which we have also converted into USD equivalent using an exchange rate of ZWL\$82 to 1USD:

Nature of Profession	Presumptive Tax Per Month(ZWL)	USD Equivalent (@ 82)
Health practitioners	500 000	6,098
Engineers or technicians	500 000	6,098
Legal practitioners	500 000	6,098
Architects	250 000	3,049
Realtors	1 000 000	12,195

These are high taxes by any standard considering very few of these professionals earn that much per month. However this is not the intended tax regime for them. If one complies with the law and is in possession of a valid Tax Clearance Certificate for the year of assessment, he/she will be exempt from paying presumptive tax. It is therefore imperative to note that the new law is compelling self-employed professionals to formalise their tax affairs or ship out. A presumptive tax is not a formal tax but a form of penalty for errant taxpayers. To avoid presumptive tax, proper records have to be kept for income tax and tax returns submitted. Income tax is payable on the profit after taking into account operating expenses. It is paid on quarterly basis in advance, through quarterly payment dates (“QPDs). Presumptive tax on the other hand, is applied on turnover. It remains payable even when one is sustaining a loss. In addition, a person paying presumptive tax is also exposed to 10% withholding tax on contracts. For instance doctors will receive their claims from medical insurers less 10% if they have not availed valid tax clearances to

the medical insurers. This may be an additional cost to the self-employed personnel which they may not be able to pass on to their clients. Further, the payment of presumptive tax does not exonerate the self-employed person from paying income tax. The Zimra is still entitled to audit the person and make an estimate of tax liability on the person's affairs even after a period of six years. Therefore staying out of the tax net does not guarantee the self-employed peace of mind.

Decision Impact

It is imperative that self-employed persons should regularise their tax affairs to avoid the exorbitant presumptive tax. They must register for tax purposes, pay their taxes and obtain a tax clearance certificate from the Zimra.

12. VAT Adjustment the most forgotten matter

Background

The Value Added Tax system is premised on documentation such as tax invoices, credit and debit notes. There are however instances wherein some VAT transactions can be accounted for without the need for such documentation because there are no third parties involved in the transactions. These include where there is a decrease or increase in use of capital goods or change in use of supplies or capital goods necessitating VAT adjustments. These are often overlooked by registered operators when completing VAT returns.

Technical Analysis

A VAT adjustment is required whenever an operator acquires any goods or services for his business and claims input tax, but subsequently uses such goods or services for own use private or whenever there is diversion of use. The first category of VAT adjustments is whenever there is a change in use of goods or services for example goods that were acquired with the intention of producing taxable supplies are taken by the owners of the business for personal consumption. A change in use adjustment can also arise whenever goods that were acquired with the intention of producing taxable supplies are subsequently used to produce exempt supplies. In both cases the registered operator must account for VAT output in its return. This has the effect of reversing input tax previously claimed on those goods or services. The second category of VAT adjustments is in respect of decrease or increase in use of capital goods. As a general rule acquisitions or importation of capital goods for use in the production of taxable supplies qualifies for input tax credit subject to meeting certain conditions such as: VAT should have been incurred, an operator should have a valid tax invoice, the claim should be made within 12 months of date on invoice etc. If the capital goods are used to produce exempt supplies input tax claim is denied. The withdrawal or decrease in use of capital goods in the production of taxable supplies may necessitate clawing back of input tax previously claimed by the operator. The reversal of such input tax should be entered on the VAT return. The reverse can also occur, that is there is an increase in use of capital goods in the production of taxable supplies the registered operator will qualify for additional claim whenever such event occurs. The legislation however has de minimis rules and for this reason no VAT adjustment is required for increase or decrease in use of capital goods not exceeding 10%. Additionally, an adjustment will not be required where the cost of the capital goods has an insignificant value. VAT adjustment for change in use of goods or services is required whenever such event occurs or in the tax period in which such change occurs. Whereas decrease or increase in use of capital goods is a yearend adjustment. Such an adjustment is affected by comparing the extent of use of capital goods in the previous year and that of the current year based on the last day of each year of assessment. Notwithstanding all that has been said above no VAT adjustment is required whenever the change in use of goods or services or decrease or increase in use of capital goods is triggered by the government policy. This provision was enacted in 2018 and has since back dated to 1 January 2017. An adjustment is not required where change in use occurs as

a result of one ceasing to be a registered operator. The law deems a supply to have been made in respect of fixed assets and stock held by the taxpayer on date of the taxpayer ceasing to be a registered operator. Another situation which does not require an adjustment is the transfer by an operator of his goods or services to an independent branch or main business of the registered operator located outside Zimbabwe

Decision Impact

VAT adjustment lacks paper trail and often omitted whenever one is completing the VAT return. Such adjustments are recognized in terms of our law and if not properly accounted for can either disadvantage a taxpayer through forgoing tax savings or create a tax risk in the form of penalties and interests.

13. Your Transfer Pricing (“TP”) Documentation update now!!!

Background

The TP return (ITC12C2) was filed for the first time in Zimbabwe in 2020 in relation to 2019 year of assessment. The return was due on 31 August 2020 together with the Income Tax return (ITF12C). Those that are yet to do so face the risk of penalties being imposed on them. ZIMRA can make an estimate of the tax liability based on its transfer pricing adjustments in the absence of the return.

Technical Analysis

In relation to the tax year ended 31 December 2020 both the income tax and the TP return are due on 30 April 2021. Companies with intercompany transactions should therefore be ready with their tax computations and returns by then. Contemporaneous documentation is a requirement of transfer pricing laws in many jurisdictions. Documentation is considered to be contemporaneous if it is in place at the statutory tax return’s filing date. Although the Zimbabwean TP rules reference both the Organisation for Economic Co-operation and Development (“OECD”) and United Nations (“UN”) transfer pricing guidelines there are however instances the rules deviate from the OECD and UN TP guidelines. Of note is that the OECD guidelines recommend for the updating of the TP documentation every three years while in Zimbabwe there is a requirement to update the TP document annually. Businesses are therefore urged to update their documents in order to comply with the Zimbabwe TP rules. The TP documentation update is triggered by a number of factors in respect of 2020 year of assessment. Firstly the economic environment was very volatile owing to inflation and secondly the impact of the Covid 19 pandemic took a toll on pricing and other economic conditions. The adjustments can be effected on the taxable income or to the price paid or payable in the controlled transaction. An adjustment to the price paid or payable can only be made by the taxpayer and not by the tax authority. In the first case, the adjustment is reflected in the calculation of taxable income only. In the second case, the adjustment is reflected in the financial accounts, and thus ultimately in the calculation of taxable income.

Decision Impact

Although TP documentation update is less complex and strenuously compared to original TP documentation drafting, it takes a bit of sometime as well. Therefore taxpayers should commence the process now to ensure they bit the 30th of April deadline. It is our view that ZIMRA may not grant an extension for the 2020 tax year and this means that taxpayers should be ready with all their returns before the due date in order to avoid any penalties from the tax authority.



14. Public Notice 7 of 2021 on Tax Clearances a “tax trap”



www.zimra.co.zw

PUBLIC NOTICE
ISSUANCE OF THE 2021 TAX CLEARANCE CERTIFICATES
[ITF263]

The Zimbabwe Revenue Authority (ZIMRA) wishes to thank the public and all registered taxpayers on the support and patience during the period when our Information Communication Technology (ICT) team together with the service providers were working to rectify some of the technical challenges encountered as registered operators were trying to access Tax Clearance Certificates (ITF263) for 2021.

ZIMRA is glad to advise the public that all compliant registered clients can now apply and access Tax Clearance Certificates (ITF263) from their ZIMRA e-Services Portal.

Please be reminded that, Tax Clearance Certificates (ITF263) will be processed ONLY for taxpayers who are compliant with the following:

1. If registered for VAT, should fully fiscalise for multi-currency invoices/receipts showing currency of transaction and their devices interfaced with ZIMRA servers. Please note that the devices should be configured to show:
 - a) transactions done in local currency ZW\$
 - b) transactions done in foreign currency like the USD.
 - c) Where clients have devices that cannot be configured for multicurrency, different devices should be configured to show either of the above requirements separately,
2. Up to date in all tax affairs, that is in:
 - (i) submission of tax returns,
 - (ii) tax payments and
 - (iii) master data information must be up to date and current (Address, Telephone, Email, Bank Accounts, Industry etc.). This will enable you to receive communication to access your ITF263

For any queries and challenges encountered in the processing of the Tax Clearance taxpayers are advised to contact ZIMRA using the following email addresses:

1. Large Client Office (LCO) - itf263queriesdesklco@zimra.co.zw
2. Medium Clients Office (MCO) - itf263queriesdesklmco@zimra.co.zw

3. Small Clients Office (SCO)- itf263queriesdesk@zimra.co.zw
4. Region 2 - itf263queriesdesk@region2@zimra.co.zw
5. Region 3 - itf263queriesdesk@region3@zimra.co.zw

NB: All TAXPAYERS ARE ADVISED THAT PUBLIC NOTICE No.1 of 2021 IS HEREBY REPLACED BY THIS PUBLIC NOTICE.

My Taxes, My Duties: Building my Zimbabwe!

Public Notice Number 7 of 2021.



Decision Impact

The Zimra in its public notice no 1 of 2021 deemed every taxpayer to be having an ITF 263 for the period ending 31 January 2021. Part of this notice reads: “ZIMRA would like to advise the public that all registered clients are deemed to have a valid tax clearance up to 31 January 2021”. , Ironically Public Notice no 7 of 2021 states that “NB: All TAXPAYERS ARE ADVISED THAT PUBLIC NOTICE No.1 of 2021 IS HEREBY REPLACED BY THIS PUBLIC NOTICE”. This notice was issued on Thursday

the 28th of January 2021. Therefore the effect of replacing public notice no 1 of 2021 on that date invalidates the extension of previously issued Tax Clearances to 31 January 2021. This may be a tax trap to taxpayers who settled their suppliers between 28th and 31 January 2021 on the basis of public notice no 1. We appeal to the Zimra to communicate in a more transparent way in accordance with the values enshrined in its Charter.

15. Contacts



Contacts

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16. Disclaimer Clauses

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