

MONTHLY TAX UPDATE

July 2021

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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 July 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 contents of this issue as follows:

Company registration fees review: This is SI 103 of 2021 which came in to review fees payable for the registration of companies at the Zimbabwe Companies Registry.

Income Tax exemption: The Traffic Safety Council of Zimbabwe has been exempted from income tax. This has been gazetted through SI 206 of 2021

Customs and excise exemption: The Minister has once again added a mining entity to the list of entities granted duty suspension through SI 207 of 2021.

Yet another loss on technicality: This is a tax case of MGZ vs the ZIMRA, where MGZ had objected against the ZIMRA assessments with possibly reasonable point but lost the case on technical grounds.

Share option: computation of benefit: Share option schemes can arise to benefit where shares are offered at a discount or for free. This article looks at the practical aspects encountered in calculating the benefits especially considering the economic changes.

Taxation of disposal of shares under the SA/ZIM DTA: In this article we analyze the provisions to the SA-ZIM DTA in regards to the taxation of the disposal of shares. There are also comparisons with the OECD and UN model convention.

Income Tax treatment of insurance compensation on damaged assets: Insurance compensations received by taxpayers from an insurer have income tax implications. The determination of whether the compensations are taxable or not is dependent on a number of factors guided by section 8 (1)(j) of the ITA.

Rebasing of capital allowance- Practical Approach: This is a practical evaluation of the legislative provisions on the rebasing of capital expenditure as published in the Finance Act number 2 of 2020.

Master data update programme: This is public notice number 72 of 2021 which is introducing a new programme by the ZIMRA which seeks to capacitate the updating of taxpayer’s information.

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. Company registration fees review

The law and Interpretation

SI 103 of 2021 came in to amend fees applicable under the Companies and Other Business Entities Regulations. The SI has reviewed the fees payable when registering companies with the Zimbabwe Companies Registry as follows:

Name search and registration fees

Activity	Fees ZWL\$
Name search	250
Registration of Private Company	1 800
Registration of Public Company	6 000
Registration of Company Limited by Guarantee	6 000
Registration of Cooperative Company	6 000
Registration of Private Business Corporation	300
Registration of Partnerships/ joint Venture or Unregistered Association	1 000

Post registration fees to be paid by any registered business entity

Transactions	Fees ZWL\$
Alteration in company's Memorandum or Articles	1 500
Registration of any increase in shares	20 000
Registration of Assumed Name	1 000
For delivery of any return, document or notice not provided for pursuant to the Act	300
Filing of Financial Statements	2 000
For application for an extension of the time in terms of section 12	300
For every report prepared for the court by the Registrar	5 000
For any certificate issued by Registrar	600
For every entry extracted from any register for publication	100
For a copy of document per page	20

For a search conducted on a file	100
Certificate by Registrar per document	200
Application for conversion of Private Business Corporation to Private Company	600
Registration of a resolution to convert a private to a public company and vice versa	3 000
Penalty for late holding of an annual general meeting	3 000
For any act done by the registrar not referred elsewhere in this Schedule	2 000
For any rental of a lodging box per year or part thereof	12 000
Registration as a consultant per year or part thereof	12 000
Filing an objection	5 000
Request for a hearing	5 000
Application for conversion of private company into PBC	600
Application for authority to use an electronic mail address, website, portal etc.	10 000
Application for replacement of lost, defaced or destroyed documents	2 000
Notice of postal address of a company's office, principal place of business	600
Notice of change of list of directors and secretaries	600
Special resolution	600
Notice of conversion, buy back of shares	600
Return of allotments	600
Notice of place where register of mortgages and debentures is kept	600
Notice of where branch register of members or debenture holders is kept	600
Statement by directors for strike off or voluntary wind up	600
Beneficiary ownership declaration form	600
Declaration that annual general meeting was held	600
Declaration of shelf and shell companies per company	600
Affidavit in terms of section 158 of the Act	600
Statement by company of the amount or rate agreed to be paid in respect of shares	600
Statutory report	600
Declaration of continuance of incorporation of company limited by guarantee	1 000
Declaration that annual general meeting was held (PBC)	600
Amendment of incorporation statement	600
Declaration that an entity is still in existent	600
Application to inspect entity documents and registers	600

Decision Impact

The Zimbabwean business community is urged to take note of the fees above, and sole traders are encouraged to invest in registering their business setups with the company registry.

2. Income Tax exemption

The law and Interpretation

The Traffic Safety Council of Zimbabwe has been exempted from income tax with effect from the 1st of January 2019. This has been gazette through SI 206 of 2021.

Decision Impact

The exemption is to serve the purpose of lightening the cost and expenses burden on the Traffic Safety Council. This is to likely lead to better service rendering by the council.

3. Customs and excise suspension

The law and Interpretation

The Minister of Finance and Economic Development gazetted SI 207 of 2021 whose effect was to add Ming Chang Sino Africa Mining Investment (Pvt) on to the list of miners qualifying for duty suspension in respect of specified goods which, during a specified period, are imported by that miner for use solely and exclusively for the entity's mining development operations. The suspension specified period is from 26 May 2021 to 25 May 2024. The specified goods are goods of a capital nature specified in a list agreed to between the miner and the Commissioner-General.

Decision Impact

The back dating of the incentive to May 2021 allows the company to obtain duty refund on already goods imported. Further the duty suspension provided in SI 207 is not the first of its kind. Sis 275 and 276 of 2020 were also published to grant duty suspensions to some mining companies. These suspensions are aiding the operation of mining activities in Zimbabwe, which is a critical sector for foreign currency generation.



4. Yet another loss on technicality

Case name	MGZ (PVT) LTD vs THE CG ZIMRA HH 269-21 ITC 01/16
Summary Facts	<ul style="list-style-type: none"> • MGZ carries on mining business in Zimbabwe. • The ZIMRA carried out tax investigations on its affairs for the years 2009 to 2012. • Whereupon it issued amended assessments to which MGZ objected to. • The ZIMRA dismissed the objections filed and notified MGZ of its decision. • MGZ then filed an appeal against the ZIMRA's dismissal of its objections. • In the appeal initially, the ZIMRA and MGZ both agreed to two main issues of determination, but the appeal took a different direction when the ZIMRA raised, a point in limine.
Jurisdiction	<ul style="list-style-type: none"> • Special court for income tax appeals
Issues for determination	<ul style="list-style-type: none"> • Whether the point in limine raised was justifiable
Date of decision	1 June 2021.
Decision	The appeal was dismissed

The Facts

MGZ is a limited liability company, registered and incorporated in Zimbabwe. MGZ carries on mining business and is one of the largest gold producers in Zimbabwe. MGZ has five mines which are located in various parts of the country. The mines report to the Head office in Harare. The Head Office in turn reports to the Regional Head Office in South Africa. The five mines are registered separately with the Registrar of Companies. For some time, the ZIMRA carried out tax investigations on the affairs of MGZ for the tax years 2009 to 2012. From the audit the ZIMRA issued amended assessments and MGZ objected to these assessments. The ZIMRA dismissed the objections filed and notified MGZ of its decision. MGZ then filed an appeal against the ZIMRA's dismissal of its objections.

In the appeal initially, the ZIMRA and MGZ both agreed to two main issues of determination. One of the issues was on whether or not the separate mining operations under the MGZ's portfolio were inseparable and substantially interdependent, such that capital allowances in respect of the different mines should have been allowed under one tax return for each tax year period. Furthermore, in the event of a finding

being made that the issuance of separate income tax assessments for each mining unit was proper. The second issue was on whether or not such assessments were invalid to the extent that they did not take into account various expenses incurred by the MGZ’s head office and its mining units.

However, the appeal took a different direction when the ZIMRA raised, for the first time, a point in limine based on what it termed “a fatally defective appeal”. A point in limine is a process that addresses a technical legal point, which is raised prior to getting into the merits of the case and relates to matters of jurisdiction. The determination of the success of the whole appeal became dependent on the justifiability of the point in limine.

Issue	Court reasoning and decision
Whether the point in limine raised was justifiable	<ul style="list-style-type: none"> • That the ZIMRA raised a point in limine based on what it termed “a fatally defective appeal”. • That the citation of the Commissioner General of the ZIMRA in MGZ’s submissions render the appeal fatally defective. • That section 3 of the Revenue Authority Act (Chapter 23: 11) provides for the establishment of the Zimbabwe Revenue Authority in the following manner: “There is hereby established an authority, to be known as the Zimbabwe Revenue Authority, which shall be body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.” • That the ZIMRA cited a number of authorities which included the recently decided case, <i>G (Pvt) Ltd v The Commissioner General Zimbabwe Revenue Authority, HH347/20</i>. • That in the case of <i>G vs The CG</i> the below was concluded on: “It seems to me that the law on the matter has been clearly stated. For the purposes of this application there is no legally recognized ZIMRA before this court. Unfortunately for MGZ, there is no mis-description that can be rectified by amendment. It is an invalid citation contrary to statute- the Revenue Authority Act [Chapter 23:11] which has specific power to litigate to the Zimbabwe Revenue Authority. It is a nullity and cannot be amended. In the circumstances, the application is invalid in that there is no ZIMRA before the court. The matter must be accordingly be struck off the role.” • That MGZ submitted that the ZIMRA had chosen not to lead any evidence and is content to rely on the documents filed prior to the hearing. • That only after the hearing was complete did the ZIMRA affect to raise some objections in limine in its submissions. • That it would appear that the ZIMRA chose not to object during the five years that this matter has been pending out of the realization that there was no objective prejudice to it on account of the matters that it now pleads. • That the unfortunate impression is formed that it is only after it was further confirmed through the evidence that its position was untenable on the merits that the ZIMRA scrambled to gather some dust to throw about in the hope of detracting from the substance of the matter: • That admittedly, this issue, which is a point of law capable of being raised in the manner it was, came in the form of an ambush to both the court and MGZ. • That this practice, if deliberate, should be frowned upon. • That in terms of applying the law as stated in <i>G (Pvt) Ltd</i> the court was found in

	<p>a situation where departure from the already stated position will not enjoy the support of the law.</p> <ul style="list-style-type: none"> • That the stated position of the law does not allow the issue of estoppel as suggested in the case cited in the second passage above. • That apart from dwelling on the issue of possible prejudice, MGZ does not deny that a wrong party was cited. • That MGZ merely objects to the timing with respect to the raising of the point in limine. • That unfortunately the law permits the raising of the issue at any time before judgment. • That the judge felt disabled from rejecting the point in limine raised by the ZIMRA. • That to that end, the point in limine was to be upheld. • That this meant the appeal should be struck of the role. • That the decision means there was no appeal before this court and accordingly the merits of the case, and indeed any other issue pertaining to the case, cannot be addressed. • That proceeding further with the case was to be improper because there is no proper appeal before the court.
Decisions	<ul style="list-style-type: none"> • That the appeal was dismissed.

Decision Impact

MGZ had undoubtedly a reasonable appeal before the courts, but lost the case simply on the basis that it failed to administratively and properly file its appeal with the court. This is yet another indicator of the importance to comply and be aware of the proper procedures in filing appeals with courts and even filing objections with the ZIMRA.



5. Share option: computation of benefit

Background

A share option scheme is a plan which gives the holder of the option a right to buy shares in a company for a certain price subject to meeting certain specified conditions. The scheme is meant to motivate and retaining managerial staff. A share option is therefore a benefit in respect of employment service and is taxable under the income tax act.

The law and interpretation

A benefit arises when an employee acquires or purchases an employer's shares at a discount. The benefit is computed as the market value of the shares on date of accrual or receipt less the cost of the shares to the employee. Where the shares are granted in terms of the share option scheme the income is brought into the gross income of the employee in terms of section 8(1)(t) of the Income Tax Act.

Section 8(1)(t) provides for the calculation of the taxable benefit on share option or scheme as follows for a share option granted post 1 February 2009:

"A-(B+C) where:

A = sale value of the shares at the time of the exercise of the share option by the employee;

B = exercise price or strike price

C = the inflation allowance on strike price

C = [(D-E) x B]/E where:

D= Consumer price index (inflation rate on date of share option exercise

E =Consumer price index (inflation rate on date of share option offer"

The inflation allowance in the formula was conveniently inserted by the legislature in a bid to capture the inflationary adjustments affecting the prices of the shares. Nevertheless, application of the inflationary adjustment i.e., Consumer Price Index as per the ZIMSTATS (<https://www.zimstat.co.zw>) currently

makes less logical sense, considering the spike in Zimbabwe’s inflation rate since 2019. The implication of this is that benefits calculated hence forth may result in negative balances that imply nil tax despite the theoretical existence of the benefit. Given this, the fiscus may lose significant taxes from this practical challenge which is inbuilt in calculating the share option benefit factoring the inflation allowances. It is hence necessary that Finance Minister looks at this issue and consider adjustment of the provisions. Meanwhile the benefit is 5% of sales proceeds for share option granted prior to 1 February 2009.

Decision Impact

Despite the recent 2021 mid-budget presentation not containing any tax legislative amendments as was the norm previously in other presentations, the Minister still has amendments to consider especially considering the inflationary changes in the economy. One such amendment will have to be in regards to section 8 (1) (t).

6. Taxation of disposal of shares under the SA/ZIM DTA

Background

The disposal of shares is taxable generally in Zimbabwe under Capital Gains Tax. As a result of different tax legislation available in different nationalities, the taxation of the disposal of shares can be complicated in international trade situations. Nonetheless, Double Taxation Agreements are available to assist in the taxation of such transactions. The South African – Zimbabwean DTA contains some guidelines which taxpayers doing transactions with SA can utilize.

The law and interpretation

The taxation of the disposal of shares is provided for in article 14 of the SA-ZIM DTA. Paragraph 1 of the article provides that gains derived by a resident of a state from the disposal of immovable property situated in the other state, or from the disposal of shares in a company the assets of which consist directly or indirectly principally of such property, may be taxed in that other state. This implies that gains benefited by a Zim taxpayer in regards to the disposal of property situated in SA may be taxed in SA.

Paragraph 5 of the same article goes on to say that gains from the disposal of shares of a company which is a resident of one of the states derived by an individual who was a resident of that state and who after acquiring such shares has become a resident of the other state, may be taxed in the first-mentioned state if the disposal of the shares occurs at any time during ten years following the date on which the individual has ceased to be a resident the first-mentioned State.

Paragraph 1 of article 13 of the OECD Model Tax Convention coincides with paragraph 1 of the SA-ZIM DTA. The convention goes on to provide those gains from the disposal of shares which derive more than 50% of their value from immovable property situated in a state may be taxed in that state.

The above facts on the OECD model convention are similarly true for the UN model convention. Since the OECD and UN conventions are the “model” treaties to be adopted in DTAs, the SA-ZIM DTA may need to be revised to take into effect the missing provisions.

Decision Impact

It is important for taxpayers to be alert for the provisions in the DTAs to ensure proper compliance and also to ensure the enabling of utilization of incentives. Taxpayers engaged in international trade must consider DTAs in their investment and tax payments decisions.

7. Income Tax relief on insurance compensation on damaged assets

Background

Insurance compensations are received by the insured from the insurer upon the damaging, theft or destruction of the insured assets. In many cases the insured is usually an individual, hence there are no questions as to how the incomes are treated for tax. However, there are greatly many cases in which the insured is a company or business corporation registered for taxes with the ZIMRA. In such cases it is crucial to know how the incomes are treated for tax purposes.

The law and interpretation

The taxation of insurance receipts for damaged assets is in terms of section 8 (1)(j) of the Income Tax Act. An insurance compensation fits into the definitions of an amount for purposes of the definition of gross income in s 8(1) of the ITA, provided it has a value that can be reliably ascertained. Hence the amount to be included in gross income, which is referred to as recoupment is the insurance proceeds less income tax value (“ITV”) of the asset for which the compensation is paid for, but restricted capital allowances previously granted. To apply this, it means that the asset should have been ranked for capital allowances.

Meanwhile s 8(1) (j) of the ITA also provides for a full relief when the insurance proceeds are fully applied towards replacement of the asset within 18 months of date of damage of the asset and the new asset is brought into use within 3 years from that date. To the extent the proceeds are partially utilised only recoupment applicable to the amount not expended shall be taxed. It is necessary that taxpayers keep evidence of the asset being replaced such as building plans, quotations and these should be supported by board resolutions etc. Armed with these, the taxpayer will be able to qualify for the relief contemplated under s 8 (1)(j) in the year the insurance accrues or is received whichever occurs first. This relief is however not available to mining businesses as their recoupment is computed in terms of the provisions set out in s 8(1)(i) of the ITA.

Decision Impact

It is important that taxpayers who receive insurance compensations test their incomes with the provisions of s 8 (1) (j). Taxpayers should also take note of the relief and the conditions thereto to allow utilization of the incentive.

8. Rebasing of capital allowance- Practical Approach

Background

The Finance Act number 2 of 2020 provided for the rebasing of unredeemable capital allowance balances from 1 January 2021. The provisions implied that entities were to convert their Income Tax Values (for assets initially purchased in US Dollars) to RTGS dollars using the interbank prevailing on the 1st of January 2021. The finance act provision dealt with the theoretical aspect of the principle, however put this into practice has been in some instances challenging.

The law and interpretation

The rebasing of capital allowances can mean that if an asset had two years of SIA remaining half of the rebased invoice is what should have been written off over the remaining two years. Simply put, SIA in each year will be the foreign cost of the invoice multiplied by 25% (SIA rate) then multiplied by interbank rate as at the 1st January 2021. The procedure appears a bit more complicated regarding claiming of wear and tear on movable assets. One must get to the reducing balance of the foreign currency invoice by subtracting deemed capital allowances in foreign currency before computing wear and tear on the reduced balance.

The rebasing of capital allowances may be a theoretically easy approach, but applying the theory to practice can be challenging. The process involves rebasing assets purchased in USD only. Hence this does not apply to assets purchased in ZWL\$. Furthermore, rebasing is for assets that are yet to be fully depreciated for tax purposes as at 31 December 2020. It is therefore possible that these assets could be purchased any day as long as it is before 1 January 2021.

It is important to note that SIA and wear & tear principles are not changed by rebasing, meaning if one claimed SIA the write off period will remain 4 years. For instance, if an entity rebases its assets and claims one year SIA in 2020, (2 years for 2019 assets or 3 years for 2018 assets) the rebased amount is spread over the remaining period in equal instalment for SIA purposes. Hence the entity cannot rebase 2017 assets because they are considered fully tax depreciated for SIA purposes by 1 January 2021.

Rebasing of capital allowances is not a new concept, as a matter of fact this is an accounting principle. It is a principle which involves obtaining the net replacement value of the asset which is gross replacement less depreciation at the gross replacement value. This is widely practised by property valuers also.

Below is a numerical example of how the principle is applied:

Details	USD	Rate	ZWL\$
Cost	100,000.00	81.00	8,100,000.00
Less SIA	- 25,000.00	81.00	- 2,025,000.00
ITV 31 December 2019	75,000.00		6,075,000.00
Less SIA	- 25,000.00	81.00	- 2,025,000.00
ITV 31 December 2020	50,000.00		4,050,000.00
SIA 2021	- 25,000.00	81.00	- 2,025,000.00
ITV 31 December 2021	25,000.00	81.00	2,025,000.00
SIA 2022	- 25,000.00	81.00	- 2,025,000.00
ITV 31 December 2022	-		-

Decision Impact

It is important for tax payers to note that rebasing of the capital allowances is to be done without violating the already existing rules for claiming SIA and wear and tear. The principles highlighted above should also be taken note of in applying the rebasing of the costs to ensure compliance with the legislation.



9. Master data update program

Background

The ZIMRA through public notice 72 of 2021 advised its valued clients that according to section 61 of the Income Tax Act [Chapter 23:06] and Section 25 of the Value Added Tax Act [Chapter 23:12], every business is required in terms of the Law to update any changes thereto on company details to the Commissioner should there be changes. ZIMRA therefore, wishes to advise its esteemed taxpayers of an ongoing master data update programme, which specifically aims at updating areas that include taxpayers’:

- a) Email address,
- b) Telephone number,
- c) Physical address, bank account,
- d) Industry type and
- e) Public officers’ information.

Businesses are encouraged to fill in the REV 2 forms, which specifically deal with updating of the master data. These forms are obtainable from the ZIMRA website. Completed forms should be sent through email to nationalmasterdataupdate@zimra.co.zw. Please note only the public officer is required to complete the REV2 form. Where there has been a change in the public officer, a letter of appointment should accompany the REV2 form.

Decision Impact

Updating details with the ZIMRA is essential in that it ensures taxpayers do not lose communication with the authority. This is essential in situations where taxpayers need the ZIMRA to respond to or action out certain requests promptly, for instance where the ZIMRA will be processing tax refunds.

10. Contacts

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