

MONTHLY TAX UPDATE

March 2021

Our Contact Details

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

Table of Contents

1. Outcry as importation of second-hand motor vehicles banned	3
2. Hospitality industry nailed again	4
3. Errors in SI 55 foreign currency income tax interest rate corrected	5
4. New royalty regime for gold from small scale miners.....	6
5. Another one gets 2% IMTT exemption	6
6. Factors for consideration in penalty reduction	8
7. Matters to watch out for when preparing 2020 income tax return.....	11
8. ZIMRA must notify date for submission of TP Return (ITF12C2).....	13
9. Income tax treatment of vaccination cost to employers	13
10. VAT claims on staff bus costs.....	14
11. ZIMRA back from lockdown- Intensifying Tax Audits	16
12. No extension for 2020 income tax returns they are due by 30 th of April 2021	18
13. Contacts.....	20
14. Disclaimer Clauses	20



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

Outcry as importation of second-hand motor vehicles banned: The ban on the importation of second-hand motor vehicles with manufacturing date of more than 10 years an immediate outcry by those with vehicles in transits.

Hospitality industry nailed again: VAT exemption on supply of services including food to domestic tourists to serve the industry from collapsing due to the effects of Covid 19 pandemic not what the industry is asking for.

Errors in SI 55 foreign currency income tax interest rate corrected: SI79 of 2021 serves to correct drafting errors in SI55 of 2021 which reduces the interest rate on foreign currency overdue tax and refunds to 10%.

New royalty regime for gold from small scale miners: Government move to incentivise gold deliveries by holders of a gold buying agency permit to a holder of a gold dealing license a bid to curtal gold smuggling.

Another one gets 2% IMTT exemption: The list of IMTT exemption continues to grow as another player successfully lobbied for the exemption.

Factors for consideration in penalty reduction: Penalty waiver is not automatic, there must be a merited case backed by factors as the taxpayer (V)’s appeal case for penalty waiver is thrown out.

Matters to watch out for when preparing 2020 income tax return: The laws for payment of taxes in foreign currency brings with it complexity to tax computation and the margins of errors are very high requiring necessary guidance.

ZIMRA must notify date for submission of TP Return (ITF12C2): Submission of a TP return by persons engaged in intercompany transactions is mandatory but the ZIMRA could have forgotten to announce its submission date.

Income tax treatment of vaccination cost to employers: The trade embargo caused by Covid 19 pandemic threatens business continuity such that vaccination costs have become a necessary cost in the production of income.

VAT claims on staff bus costs: VAT claims require a critical analysis of transaction regarding intended use of goods or services and we walk you through the claiming of VAT on staff bus cost.

ZIMRA back from lockdown- Intensifying Tax Audits: Intensified ZIMRA foreign currency tax audits and investigation in the horizon as the authority has initiated the process as a follow up to its call for voluntary disclosure a year ago. Those who did not heed the call for voluntary disclosure have every reason to worry.

No extension for 2020 income tax returns they are due by 30th of April 2021: This answers to the ZIMRA public notice no. 23 of 2021 calling for income tax returns for 2020 year of assessment.



Marvellous Tapera
Chief Executive officer



1. Outcry as importation of second-hand motor vehicles banned

Background

The Control of Goods Act [Chapter 14:05] empowers the President to provide by regulation for the control of the distribution, disposal, purchase and sale, and the wholesale and retail prices, of any manufactured or unmanufactured commodity or of any animal or poultry specified by the President by order or of any class of any such commodity, animal or poultry, for the control of imports into and exports from Zimbabwe; and for other purposes incidental and supplementary to the foregoing.

Law and Interpretation

SI 89 of 2021 also cited as the Control of Goods (Open General Import Licence) (Amendment) Notice. 2021 (No.9) provides that the Minister of Industry and Commerce has, in terms of s4 (1) (a) of the Control of Goods (Import and Export) (Commerce) Regulations, 1974, published in Rhodesia Government Notice 766 of 1974 amends the First Schedule by adding the following as controlled goods:

Main heading	Product	Tariff Code	
Second hand motor vehicles which are 10 years older from date of manufacture	Motor vehicles for the transport of ten or more persons, including the driver.	8702	
	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87. 02), including station wagons and racing cars	8703	
	Motor vehicles for the transport of goods (diesel or semi diesel) not exceeding 5 tones: Double cabs	8704:2120	
	Motor vehicles for the transport of goods: of a payload not exceeding 800kg	8704:2130	
	Motor vehicles for the transport of goods. Of a payload more than 800kg but not exceeding 1400kg	8704:2140	
	Motor vehicles for the transport of goods. Other	8704:2190	
	Motor vehicles for the transport of goods (petrol) not exceeding 5 tones: Double cabs/twin cab	8704:3120	
	Motor vehicles for the transport of goods. Of a payload not exceeding 8000kg	8704:3130	
	Motor vehicles for the transport of goods. Of a payload more than 800kg but not exceeding 1400kg	8704:3140	
	Motor vehicles for the transport of goods. Other	8704:3190	
	Sugar	Cane or beet sugar and chemically pure sucrose, in solid form	17.01
		Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel	17.02
		Mollasses resulting from the extraction or refining of sugar.	17.03
Sugar confectionery (including white chocolate), not containing cocoa.		17.04	

Portland Cement	White cement, whether or not artificially coloured	2523:2100
	Other	2523:2900

The SI further provides that the Second-hand motor vehicles aged ten (10) years and above, from the date of manufacture at the time of importation shall require an Import Licence from the Ministry of Industry and Commerce. Commercial vehicles (tractors, haulage trucks, earth-moving equipment) and other specialised vehicles used in mining and construction sectors shall be exempted. Only sugar requires an Import Licence whilst sweets are exempted from requiring an Import Licence.

Decision Impact

The implication of the SI is to ban the importation of second-hand motor vehicles aged 10 years and above, from the date of manufacture at the time of importation. This is with immediate effect and hence those with the affected motor vehicles in transits will not be permitted to import them without suffering penalties. In terms of s 37 of the Customs and Excise (Chapter 23:02) the time of importation of goods is when they cross the Zimbabwean boarder. Whilst the second-hand motor vehicles have the effect on the environment and the lives of people as consequences of accidents as alluded to by the Minister of Finance in the 2020 Budget presentation in November, the question is whether the local industry has the capacity to manufacture the motor vehicles as aforesaid and at the price affordable to the generality of Zimbabwe who can not afford brand new cars.

2. Hospitality industry nailed again

The law and Interpretation

The Minister of Finance gazetted SI 87 of 2021 which provides for the exemption from VAT “...Supply of the following services to domestic tourists for a period of twelve months from date of publication— (i) food and beverages served at places of accommodation; (ii) shuttle services; (iii) car rental services; (iv) marine and ferry services; (v) sport fishing; (vi) safari operations; (vii) touring and exploring national museums and monuments; and (viii) recreational activities provided by companies registered with the Zimbabwe Tourism Authority.”. The term domestic tourists are defined as including any person who visits but does not sleep over at the place or in the area visited. This SI should be read together with SI 10 of 2015 which zero rates tourism services supplied to non-resident persons generally and SI193 of 2020 which exempts accommodation supplied to domestic tourists. The table below provides an analysis of the VAT

Type of services	Consumer	
	Resident tourist	Non-resident tourists
Accommodation	Exemption SI 193 of 2020	Standard rated SI10 of 2015
Food generally	Standard rate s6 (1)(a) VATA	Standard rate s6 (1)(a) VATA
Food and beverages served at places of accommodation	Exemption SI87 of 2021	Standard rate s6 (1)(a) VAT Act
Shuttle services	Exemption SI87 of 2021	Zero rated SI10 of 2015
Car rental services	Exemption SI87 of 2021	Zero rated SI10 of 2015
Marine and ferry services	Exemption SI87 of 2021	Zero rated SI10 of 2015
Sport fishing	Exemption SI87 of 2021	Zero rated SI10 of 2015
Safari operations	Exemption SI87 of 2021	Zero rated SI10 of 2015
Touring and exploring national museums and monuments	Exemption SI87 of 2021	Zero rated SI10 of 2015

Recreational activities by companies registered with ZTA	Exemption SI87 of 2021	Zero rated SI10 of 2015
Other services	Standard rated	

Decision Impact

A person who makes exempt supplies pays for VAT on his purchases but cannot to claim it as a credit against its liability on sales as he cannot impose VAT on his exempt sales. VAT borne is built into his price which makes the services unaffordable by customers. The operator must also face administrative challenge of having to track and apportion input VAT. He must first determine whether direct attribution can be used to determine the VAT input based on the intended use or purpose of the goods or services acquired. The claim is fully denied if the purpose was wholly for the making exempt supplies or other non-taxable purposes and apportioned if the VAT is incurred partly for the purpose of consumption, use or supply in the course of making taxable supplies and partly for exempt or other non-taxable purposes. The apportionment must be determined using turnover basis or any method subject to ZIMRA approval.

3. Errors in SI 55 foreign currency income tax interest rate corrected

The law and Interpretation

The government has gazetted SI 79 of 2021 to address typos in the recently gazetted SI 55 of 2021. The had published the new rate of foreign currency tax directly under the heading *title* instead of under *Rate of interest on unpaid or overpaid income tax in foreign currency*. Below is an illustration of the changes:

55 of 2021	SI 079 of 2021
<p>Statutory Instrument 55 of 2021. [CAP. 23:06]</p> <p style="text-align: center;">Income Tax (Rate of Interest) Notice, 2021</p> <hr/> <p>THE Minister of Finance and Economic Development, in terms of sections 48, 71 and 73 of the Income Tax Act [<i>Chapter 23:06</i>], hereby makes the following notice:—</p> <p>1. This notice may be cited as the Income Tax (Rate of Interest) Notice, 2021.</p> <p style="text-align: center;"><i>Title</i></p> <p>2. (1) Subject to subsection (2), the rate of interest for any month or part thereof during which tax remains unpaid shall, for the purposes of section 48, 71 or subparagraph (1) of paragraph 3 of the Thirteenth Schedule of the Act, be ten per centum with effect from 1st January, 2020.</p> <p style="text-align: center;"><i>Rate of interest on unpaid or overpaid income tax in foreign currency</i></p> <p>(2) The Commissioner-General shall pay interest at the rate referred to in subsection (1) on any amount of refund due in terms of section 48 which has not been refunded by him or her within thirty days after the date of receipt of a tax return:</p>	<p>Statutory Instrument 79 of 2021. [CAP. 23:06]</p> <p style="text-align: center;">Income Tax (Rate of Interest) Notice, 2021</p> <hr/> <p>THE Minister of Finance and Economic Development, in terms of sections 48, 71 and 73 of the Income Tax Act [<i>Chapter 23:06</i>], hereby makes the following notice:—</p> <p style="text-align: center;"><i>Title</i></p> <p>1. This notice may be cited as the Income Tax (Rate of Interest) Notice, 2021.</p> <p style="text-align: center;"><i>Rate of interest on unpaid or overpaid income tax in foreign currency</i></p> <p>2. (1) Subject to subsection (2), the rate of interest for any month or part thereof during which tax remains unpaid shall, for the purposes of sections 48, 71 or paragraph 3(1) of the Thirteenth Schedule of the Act, be ten per centum with effect from 1st January, 2020.</p>

Decision Impact

Other than the said corrections the provisions of SI55 of 2021 have not been changed. The interest rate on foreign currency overdue due tax or refund have been set at 10% backdated to 1 January 2020. Refer to our February 2021 Monthly Tax Update (“MTU”) for details. Of great concern however is the increase in drafting errors in recent times.

4. New royalty regime for gold from small scale miners

Background

The government operates different gold royalty rate regime for small and large-scale gold miners. For the period 1 January 2014 to 31 July 2019 the gold royalty rate for small scale gold miners was fixed at 1% and was then increased through Finance Act no 2 of 2019 to 2% with effect from 1 August 2019. On the other hand, large scale gold miners are subject to royalty rate of 5% (reduced to 3% effective 1 August 2019 if gold price does not exceed US\$12,000 per ounce). The rate of 3% also applies on incremental gold output of large-scale miners in the year of assessment compared to prior year. The latest law makes changes to gold royalty regime for small scale gold miners as fully explained below:

The law and Interpretation

The Finance Minister has through SI 83 of 2021 amended the rates of royalties of small-scale gold miners in s245 of the Mines and Mineral Act with effect from 1 February 2021. The rate before this SI was fixed at 2% and the new amendment to the rates based on gross fair market of the mineral as follows:

Rate	Status
1%	for the first 0.5kgs of gold delivered to a holder of a gold dealing license in a calendar month.
1%	if the gold is delivered by a holder of a gold buying agency permit to a holder of a gold dealing license in a calendar month.
2%	if the gold delivered to a holder of a gold dealing license in a calendar month exceeds 0.5kgs

Decision impact

The SI seeks to encourage gold deliveries to the government by gold buying agents in order to reduce smuggling as these are the ones with capacity to smuggle the gold than miners themselves whilst also providing incentive for other deliveries by providing reduced rate for the first 0.5kgs. Meanwhile the only tax that small scale gold miners bear is the mineral royalty since their presumptive tax rate is fixed at zero percent in terms of s22 C of the Finance Act (Chapter 23:04).

5. Another one gets 2% IMTT exemption

Background

Since the inception of the 2% intermediated money transfer tax (IMTT) on 13th of October 2018 there have been regular changes to the tax triggered mainly by lobbies in a bid to resist the tax. To date there are over 30 list of exemptions and yet when the tax was introduced there were fewer than 16 exemptions. The tax is levied on transfer of money mediated by a financial institution and lately extended to include transfer from Nostro Accounts subject to exemptions relating to transaction on RBZ currency auction system and payments for imports of goods and services.

The law and Interpretation

The Finance Minister Honourable Professor Mthuli Ncube has gazetted SI 80 of 2021 that adds another candidate to the IMTT exemption list. This relates to transfers from Designated Special Purpose Accounts created for the delivery of projects by Implementing Partners of organisations covered under the Privileges and Immunities Act [*Chapter 3:03*].

Decision impact

The SI is introducing an additional transaction to the transactions that are subject to IMTT. With these exemptions coming financial institutions will need to continuously upgrade their systems to accommodate the changes. The minister appears to be yield to the pressure for exemption.



6. Factors for consideration in penalty reduction

Case name	V versus ZIMRA HH 643/19 FA 24/16
Summary Facts	<ul style="list-style-type: none"> • V is a travel agent appointed authorized to sell air passenger transport services on behalf of airlines who remunerate it for the services rendered. • It did not charge VAT on all the commission earned stating that no VAT was due at all on the transactions but later admitted that some airlines were resident in Zimbabwe and commissions earned from such airlines was subject to VAT. • The ZIMRA issued amended assessments and requested V to furnish the ZIMRA with the breakdown of the commissions from resident and non-resident airlines. • Despite this request V did not provide the necessary information and in the interim filed the present appeal and it was not until after the Appeal Pre-Trial hearing that it finally decided to provide the requested information. • After taking into account the information supplied by V, the ZIMRA issued amended assessments and levied penalty at 10% in terms of s 39 of VAT Act. • V initially persisted with its ground that no penalty should be charged on it. • At the hearing of the appeal V was a “self-actor” as it was represented by its MD.
Jurisdiction	<ul style="list-style-type: none"> • Fiscal Appeal Court
Issues for determination	<ul style="list-style-type: none"> • Whether the penalty charged by the ZIMRA was appropriate
Date of decision	<ul style="list-style-type: none"> • 1 & 7 October 2019
Decision	<ul style="list-style-type: none"> • That the 10% was justifiable. • That the appeal was rejected.

The Facts

V is an International Air Transport Association travel agent appointed in terms of a Passenger Sales Agency Agreement. In terms of the agreement, V is authorized to sell air passenger transport services on behalf of airlines and remunerated by way of commission for the services rendered to the carriers. It received commission for the sale of tickets on behalf of resident and non-resident airlines which it did not identify or distinguish in its books and records. It also did not charge VAT on all its commission arguing that no VAT was due at all on the transactions but subsequently admitted following meetings with the ZIMRA that there were some airlines that were resident in Zimbabwe and that VAT was due on the commissions earned from those airlines. The ZIMRA then issued an amended assessment and called upon V to furnish the ZIMRA

with the breakdown of the commission earned from resident and non-resident airlines to enable the ZIMRA to further amend its assessment if necessary. Despite this request V for over a year did not provide the necessary information and in the interim filed the present appeal. It was not until after the Appeal Pre-Trial hearing that V finally decided to provide the requested information. After taking into account of the information supplied by V, the ZIMRA issued amended assessments and levied penalty at 10% on V in terms of s 39 of VAT Act. V initially persisted with its ground that no penalty should be charged in the present case and hence the current court case.

Issue	Court reasoning and decision
Whether the penalty charged was appropriate	<ul style="list-style-type: none"> • That the initial assessed liability was US\$135 834 with 100% penalty thereon and later reduced by the ZIMRA to \$69 006 with penalty levied at 10% • That the matter of determination is whether the 10% penalty fair in this matter. • That the blameworthiness of each taxpayer depends on the facts of each case. • That the general objectives of penalties are retribution, deterrence, prevention and rehabilitation and that the penalizing provision enjoins the CG or the Court to conduct an inquiry on the intention of the taxpayer. • That s 39 of the VAT Act enjoins the CG to enquire whether in default the taxpayer had the intention of evading tax which V contended it never intended evading tax. • That the failure was due to an incorrect interpretation of the law as it believed that the “commission” was a “discount” and therefore no VAT was charged. • That however, the issue was settled in <i>T (Pvt) Ltd v ZIMRA ZWHHC 285</i>, when it was held that it was a commission and not a discount. • That V genuinely believed that the commission was a discount which was not subject to VAT and furthermore that the transport services were rendered from Zimbabwe to a foreign destination and therefore no VAT at standard rate was charged. • That V genuinely believed that it was paying the correct tax. • That on the other hand ZIMRA contended that V was not cooperative and did not provide information timeously. • That a penalty is by definition punishment, it may also be compensatory in effect, but that is not why it exists. • That the quantum of the penalty is determined by the nature of the wrongdoing for which the taxpayer is responsible; expressed as a percentage. • That the penalty varies depending not on the prejudice suffered by the fiscus, but on the level of blameworthiness of the conduct – <i>A & Anor v Comm. for SARS [2018] ZATC 10</i>. • That V on its own decided that the commission was zero rate. • That during this hearing the public officer gave detailed submissions on the taxation applicable to his industry. • That V evinced reluctance to pay VAT and the penalty. • That V’s public officer took almost a year just to provide the ZIMRA with information requested in terms of the Act. • That whatever V’s interpretation of the Act is, it had no justification to withhold the information. • That even after the filing of this appeal V withheld the information required by the ZIMRA until the pre-trial hearing. • That it took V more than a year to provide the ZIMRA with the breakdown of the commission earned in order to assist in the calculations.

Decision	<ul style="list-style-type: none"> • That this conduct clearly reflects that V was not keen or cooperating with the ZIMRA. • That the reduction of the penalty from 100% to 10% by the ZIMRA was reasonable and sufficiently generous. • That the penalty of 10% strikes a balance between the need to punish V for breaching the law and its viability concerns – PL Mines (Pvt) Ltd v ZIMRA 2015 (1) ZLR 708 (H) at 735. • That 10% penalty is on the lenient side for a taxpayer who did not cooperate over a year. • That hence the appeal is devoid of merit and was dismissed with costs and the penalty of 10% on the revised assessment is hereby confirmed.
	<ul style="list-style-type: none"> • That the 10% was justifiable and the appeal is hereby rejected.

Decision Impact

Taxpayers should know that the waiver of penalties is not automatic, but is rather an accumulation of a number of factors considered by the court. One of the factors include the conduct of the tax payers before, during and after the ZIMRA’s audit. In addition, the court also considered the taxpayer’s blameworthiness, and the loss incurred by the fiscus. Also, V in this case was reckless with providing information as information is needed as evidence and works as burden of proof. Furthermore section 44 of the ITA gives the ZIMRA unlimited powers to demand information, and it is an offence to refuse with the information requested. Also, it is uncharacteristic of the ZIMRA to be patient with taxpayers not able to supply information as in this case.



7. Matters to watch out for when preparing 2020 income tax return

Background

The payment of income tax in foreign currency bothers the tax paying community so much. Nevertheless, taxpayers should watch out for traps leading to violation of this requirement when preparing their income tax returns. We run through what you need to watch for as you prepare your 2020 income tax return which is due on the 30th of April 2021.

The law and interpretation

Item	The law
Currency of income tax Basis of split	<ul style="list-style-type: none"> • Section 4 A (1) (b) & (c) of the Finance Act provides for payment of income tax in foreign currency where trading takes place in foreign currency • Section 4 A (1) (c) of the Finance Act reads: “<i>. a company, trust, pension fund or other juristic person whose taxable income is earned, received or accrued in whole or in part in a foreign currency shall pay tax in the same or another specified foreign currency on so much of that <u>income as is earned, received or accrued in that currency</u>”.</i> • Although the intention is to provide for the basis of split to be on income, the reading of s 4 A (1) (c) above seems to suggest the use of taxable income rather than income. • The use of income is more reasonable and practical since it is not distorted by the taxpayer’s expenditure profile (currency of expenses). • Taxable income is affected by the currency of expense and can create controversy in that after expenses are deducted from income in multi-currency, it is difficult to define the currency of taxable income. • Thus, from a global perspective, the currency of taxable income may be difficult to discern since it will be a result of income and expenses of different currencies. • Please take note that the ZIMRA public notice 49 of 2020 relates to 2019 tax year and may not be applicable for 2020 tax year and in the absence of ZIMRA guidance for 2020, the provisions of s4 A (1) (b) & (c) apply

Currency of tax computation	<ul style="list-style-type: none"> Unless guidance has been provided by ZIMRA, SI 33 of 2019 prescribes the use of the ZWL as the functional currency for accounting and other purposes. It would appear, “other purposes” are of wide import and include the computation of taxes. From an administrative perspective, ZIMRA would conduct its audits on the basis that accounts and tax have been prepared in ZWL\$. 																								
Currency of tax return	<ul style="list-style-type: none"> The above is also applicable in respect of returns. Currently, the ZIMRA system is not configured to accept foreign currency returns. 																								
Conversion rate	<ul style="list-style-type: none"> Since for accounting purposes as per SI 33 of 2019, the ZWL is the functional currency, items expressed in foreign currency are converted using the exchange rate prevailing on the date of the transaction. 																								
Assessed loss	<ul style="list-style-type: none"> Assessed losses for the year assessment 2018 are converted at 1:1 to the ZWL on the 22nd of February 2019 and carried forward in ZWL. If these losses and other losses are to be converted to US\$ after this date, they will be converted at the rate applicable at year end (date of accounts). 																								
RBZ surrender	<ul style="list-style-type: none"> Section 4A (10) in the Finance Act (Chapter 23:04) providing for payment of taxes on RBZ surrender in ZWL\$ with effective 1 January 2021. Before this date, it appears the tax on RBZ surrender is payable in foreign currency 																								
Rebasing & Capital allowances	<ul style="list-style-type: none"> Finance Act 2 of 2020 provides for rebasing of unredeemed balance of capital expenditure established at 1st of January 2021 in respect of foreign currency capital expenditure invoices. This is for purposes of computing capital allowances for the year of assessment 31 December 2021 and this is inapplicable for 2020 tax year The effect for 2020 is that capital allowances will be based on historical cost. 																								
Tax rate	<ul style="list-style-type: none"> The income tax rate for 2020 in respect of all other operators except those deriving income from mining operations is 24.72% and 25.75% for mining operations. 																								
Prescribed values	<ul style="list-style-type: none"> Watch out that there have been changes to prescribed values regarding limits for capital allowances, deductions and exemptions and the up-to-date list for 2020 year of assessment must be obtained (Tax Matrix can assist list upon your request) Most of the prescribed values have been gazetted in ZWL and should tax computation be performed in USD; these can be converted using the year end exchange rate 																								
Rate of conversion of USD liability computed in ZWL\$	<ul style="list-style-type: none"> Although income tax is computed on an annual basis, income tax liability is payable on quarterly basis by a method of QPDs. Each tax liability is due on the QPD and the rate of conversion into USD tax liability is the rate applicable on each QPD date, example is as follows: <table border="1" data-bbox="478 1635 1276 1881"> <thead> <tr> <th></th> <th>ZWL\$</th> <th>Rate</th> <th>USD</th> </tr> </thead> <tbody> <tr> <td>Tax liability for the year</td> <td>10,000,000</td> <td></td> <td></td> </tr> <tr> <td>Q1</td> <td>1,000,000</td> <td>17</td> <td>58,824</td> </tr> <tr> <td>Q2</td> <td>2,500,000</td> <td>25</td> <td>100,000</td> </tr> <tr> <td>Q3</td> <td>3,000,000</td> <td>81</td> <td>37,037</td> </tr> <tr> <td>Q4</td> <td>3,500,000</td> <td>82</td> <td>42,683</td> </tr> </tbody> </table>		ZWL\$	Rate	USD	Tax liability for the year	10,000,000			Q1	1,000,000	17	58,824	Q2	2,500,000	25	100,000	Q3	3,000,000	81	37,037	Q4	3,500,000	82	42,683
	ZWL\$	Rate	USD																						
Tax liability for the year	10,000,000																								
Q1	1,000,000	17	58,824																						
Q2	2,500,000	25	100,000																						
Q3	3,000,000	81	37,037																						
Q4	3,500,000	82	42,683																						

Decision impact.

Understated or delayed foreign currency QPD attracts interest at the rate of 10%. 10% interest rate is gazetted by SI 79 of 2021. 25% interest is applicable on ZWL understated or late paid QPD. In terms of s 72 of the Income Tax Act understated QPD that is subject to interest is that which has a margin of error exceeding 10%. Where good cause is shown by a taxpayer as to why the margin of error exceeded 10%, the Commissioner may waive the interest.

8. ZIMRA must notify date for submission of TP Return (ITF12C2)

Background

Section 98B of the Income Tax Act enjoins the application of the arm's length principle in transactions involving associates. It further empowers the Commissioner to "distribute, apportion or allocate" tax liability arising from such transactions such that the tax incurred, commensurate with similar transactions between unrelated parties, is accurately reflected. The same section requires associates to file TP return (ITF 12 C 2) regarding their intercompany transactions which we discuss its lodgment date with the ZIMRA making reference to the return for 2020 year of assessment.

The law and interpretation

The filing of TP return (ITF12C2) is compulsory for taxpayers with intercompany transaction in terms of s98 B (6) of the Income Tax Act (Chapter 23:06). The submission date for the return is prescribed by s98B (7) as read with s 37(1) of the same Act. According to s 98B (7), the Commissioner when exercising his/her powers in terms of s 37 (10) may request any taxpayer to submit a return. Section 37(10) is an omnibus provision that empowers the Commissioner to request any return not specifically mentioned in terms of the Act. It states that *"The Commissioner may, when and as often as he thinks necessary, require any person to make fuller or further returns respecting any matter of which a return is required or prescribed by this Act"*. The submission of ITF12C2 return is therefore predicated on the Commissioner making a request for it. In compliance with this requirement the Commissioner General has through public notice 23 of 2021 given notice to this effect but unfortunately did not state the due date for the submission of this return. The notice reads: *"in terms of Sections 37; 37A and 98B of the Income Tax Act [Chapter 23:06], "to all persons who received taxable income or gains, or to whom taxable income or gains accrued from a source within or deemed to be within Zimbabwe, that they are required to submit Income Tax Returns or Capital Gains Tax Returns for the tax year ended 31st December 2020 as follows:"*. The notice is silent on the submission date for ITF12C2 while all other returns are due by 30th of April 2021 (see public notice 26 below)

Decision Impact

It is clear that ITF12C2 submission is not automatic each year. The Commissioner must therefore notify its submission date and the absence of this date suspends any penalties that may be levied for late submission of this return. It also means that taxpayers are not obligated to submit it by 30th April 2021 despite the return being mentioned in the first paragraph of the notice (see details of the public notice below). The ZIMRA should consider notifying the return submission date. Meanwhile the TP documentation is not lodged with the ZIMRA. It must however be available upon its request by the ZIMRA.

9. Income tax treatment of vaccination cost to employers

Background

The lockdowns have placed involuntary trade embargos which has had a severe economic impact especially on establishments relying on actual customer contact. This is also not to mention that these are also threatening the livelihood of the low-income earners. There is no doubt that the regulations were completely necessary and unavoidable for the immediate protection of people's health. Although some nations continue to impose restrictions, the advent of the vaccine is giving the world hope in the absence of a universal cure for COVID-19. It is this vaccine that many businesses and societies at large are pinning their hopes on for now, for the return to normalcy. The tax question is whether the cost of vaccination when incurred by the by employer on behalf its employee or the community which it operates would be tax deductible to the employer.

The law and interpretation

Section 15 (2) (a) of the Income Tax Act provides for the deduction of “... *expenditure and losses to the extent to which they are incurred for the purposes of trade or in the production of the income except — (i) to the extent to which they are expenditure or losses of a capital nature; (ii) expenditure that constitutes prepayment for goods, services or benefits that will be used up in any subsequent year of assessment (in which event the expenditure will be allowed proportionately over the years of assessment in which the goods, services or benefits are used up*”.

In *COT v Rendle 1965 (1) SA 59 (SRAD), 26 SATC 326* it was held that an expense is incurred in the production of income if it is necessary for the performance of the business operation or if it is attached to the performance of the business operation by chance or closely connected to the performance of the business operation or if it is a bona fide expense incurred for the more efficient performance of business operations. The vaccination as stated above gives hope for business survival. It restores normalcy and capacity for business to do business uninterrupted by lockdowns thus making it necessary for the performance of business operations. It was also held in the case *Port Elizabeth Tramway Company Limited v CIR 1936 CPD 241, 8 SATC 13* that expenditure is incurred in the production of income if the act to which the expenditure is attached is performed for purposes of trade, and the expenditure is closely linked to the production of income. Employers are incurring costs of vaccination for their employees and community, which all add up to a huge cost base and this cost is sufficiently connected with running the business operation in a Covid 19 pandemic era. A purposive interpretation of the law would support the deductibility of vaccination costs except those of a capital nature or that have been prepaid for future periods.

Decision Impact

The Covid 19 pandemic has resulted in a lot of misfortunes for most entities and vaccination costs are to reduce this misfortune. It is therefore necessary that businesses treasure the tax incentives and advantages available by deducting the vaccination costs. The costs can be safely deemed incurred in the production of income hence income tax deductible. The cost should not be limited to what employers incur on behalf of their employees but also on behalf of the community they operate in as the impact of Covid 19 pandemic on the community can directly affect their employees and operations. We also implore the government to gazette vaccination incentives in order to encourage investment by private sector in the vaccination project.

10. VAT claims on staff bus costs

Background

Some businesses provide transport to their employees to come to work and vice versa and the numbers of employers doing so has surged in recent times owing to lockdowns triggered by Covid 19 pandemic and the

government ban on the use of commuter omnibuses. This is triggering expenditure on acquisition, importation or hiring of staff busses as well their running expenses. The tax question is whether any VAT incurred by employers on acquisition, importation, hire or use of these staff busses is claimable.

The law and interpretation

Deduction of input tax

A registered operator is entitled in terms of s 15(3)(a)(i) to deduct in each tax period input tax incurred on its acquisition or importation of goods or services for the purpose of use, consumption or supply in the course of making taxable supplies from its output tax. Therefore, as long as the staff bus is used by a business to transport its employees engaged in the production of taxable supplies, the input tax on its acquisition, importation or hire as well on its running expenses is claimable.

Employees paying for the transport

Where employees pay for the transportation it is a different matter. Section 11(f) of the VAT Act exempts from VAT the supply by any person in the course of a transport business of any services comprising the transport by that person in a vehicle operated by him of fare-paying passengers and their personal effects by road or railway. Where the business charges fee to its employees for transporting them, the staff bus would be deemed used to supply VAT exempt transport to fare-paying passengers, as a result the business will be denied input tax deduction in respect of the acquisition, importation or hire of the bus including any VAT incurred on its running expenses.

The type and size of staff bus

The claim should also be evaluated taking into account the type of the staff bus in question. One should therefore look at the provisions of s 18 of the VAT Regulations (SI273 of 2003) as read with para 14(2) of the 4th Schedule to the Income Tax Act to determine whether the staff bus is not a passenger motor vehicle. A passenger motor vehicle is defined as any motor vehicle propelled by mechanical or electrical power and intended or adapted for use or capable of being used on roads mainly for the conveyance of passengers, including an estate car, station wagon, van or similar vehicle but exclusive of a vehicle used wholly or almost wholly for the conveyance of passengers for gain, a vehicle used by hotels to convey their guests, a vehicle with seating capacity of 15 or more passengers, excluding the driver of the vehicle and a vehicle acquired by lessor for purposes of lease under a finance lease, caravans and ambulances and single cabs bakkies, single cabs delivery vehicles. According to *Mincer Motors Ltd v Commissioner of Customs* what connotes a passenger motor vehicle is that it is a vehicle that is designed for carrying passengers as distinct from goods. Also alluded to in ITC 1596 (1995) 57 SATC 341 (T) (ITC 1596) the test is whether the vehicle was constructed wholly or mainly for the carriage of passengers and mainly in this case means a quantitative measurement of more than 50%. This requires a one-dimensional measurement of the length of the area designed for the carriage of passengers in relation to the dedicated loading space in a vehicle. The above underlined words are our own emphasis and are relevant to this discussion. Section 16(2)(d) of the VAT Act denies an input tax deduction in respect of the supply of a passenger motor vehicle to a registered operator. Therefore, employers whose staff busses with seating capacity of less than 15 passengers excluding the driver should evaluate their entitlement to claiming input tax on the acquisition or hire of such busses. VAT incurred on running expenses of such staff busses remaining deductible.

Transportation of employees to events

Last but not least, where the staff busses are also used to transport employees to sporting or other entertaining events, this ceases to be supply of taxable event requiring that input tax associated with such event be disallowed in terms of section 16(2)(a) of the VAT Act.

Decision Impact

Businesses should evaluate the efficiency of their staff bus model in light of the tax laws in order to minimize their costs of doing business as well as violation costs arising from incorrect VAT treatment.



11. ZIMRA back from lockdown- Intensifying Tax Audits

Background

With the easing of lockdown and rescission of the covid 19, ZIMRA is gradually reopening and is resuming its intensive tax collection measures. It is issuing audit review letters seeking for information from clients and the sample of the letters that are being sent to clients is as follows.

Kindly be advised that we are carrying out a tax review for your company for the period 2018 to 2020 (Income Tax) and 2018-2020 (Value Added Tax) and the following information is being requested to be submitted by **8 April 2021**:

1. Audited Financial Statements for the tax periods 2018 and 2019
2. Monthly-itemized sales schedules for the periods 1 January 2018 to 31 December 2020 showing (System extracts). Kindly indicate separately your export sales as shown on the income tax returns.
3. Input tax schedules for the period 1 January 2018 to August 2020.
4. Cost of sales schedules for 2018 and 2019
5. Bank statements for the period 1 January 2018 to 31 December 2020 (ZWL and Nostro Accounts).
6. Cash book and monthly cash reconciliations.
7. Any Tax opinions obtained during the period.
8. A schedule and invoices for 2018 and 2019 consultation fees.
9. A schedule and invoices for 2018 and 2019 management fees.
10. A schedule for bad debts for 2019 and any proof to substantiate that they had become bad.

The request of Information is being done in terms of Section 39 and 44 of the Income Tax Act (Chapter 23:06) and Section 57 and 62 of the Value Added Tax Act (Chapter23:12). Further requests may be made after receiving your financial statements.

Our interpretation of the contents of the letter

- The audited financial statements for 2018 may be required for the purpose of observing the trends of the business as a comparative to 2019 as well as ascertaining the volume of foreign currency business in an attempt to collect taxes in foreign currency for this period. However, this is challengeable due to the provisions of SI 33 of 2019 which turned liabilities and assets prior to 22nd of February 2019 into ZWL\$.
- The Monthly-itemised sales schedules for 1 January 2018 to December 2020 may be for purposes of checking declarations on the VAT returns, reconciled with declarations for income tax and the financial statements. They may also be used to ascertain completeness of VAT output declarations.
- The input tax schedules are also used to check if the input tax was correctly claimed for the period.

- The cost of sales schedule is meant to check if the cost of sales is genuine. During the period 2018 and 2019, some foreign currency transactions were entered into to enable business preserve value and these could have fictitiously overstated cost of sales. Furthermore, they may be used to check who were the suppliers of the taxpayer and whether they were genuine suppliers and had tax clearances.
- The banks statements in Nostro and foreign currency may be required to check whether all incomes that went through the bank were declared for tax purposes.
- Regarding tax opinions, the ZIMRA may want to observe the tax practice and guidance on how taxes were being treated. Section 44 of the Income Tax Act empowers ZIMRA to request this information and a taxpayer may be penalised for not availing the opinion. Furthermore, refusal with information may result in ZIMRA refusing any remission of penalties during audit.
- The cashbook is requested for purposes of observing the movements in cash. It is an essential account to ZIMRA because this is where most cash transactions are recorded and most of it is foreign currency.


Decision Impact

These letters appear to be a follow up to the Voluntary Disclosures that were made by the taxpayers in order to observe if the disclosures that were made were truthful and to track down on those taxpayers that did not comply with the request. Taxpayers are encouraged to make voluntary disclosure of any amounts outstanding if they had not done so to avoid penalties on discovery through audits. To pre-empt the exposures that taxpayers should also consider undertaking tax health checks to verify the disclosures that were made and other areas of exposure.

12. No extension for 2020 income tax returns they are due by 30th of April 2021

Background

The ZIMRA has issued public notice 23 of 2021 which directs taxpayers to submit tax returns for the year of assessment 31 December 2020. Unlike the submission for the 2019 year of assessment return, which was deferred by 4 months from the submission due date, the ZIMRA continues to retain the due date to be the 30th of April 2021, and is not considering to extend this date. This is despite the fact that the same lockdown conditions were effected in 2021 as in 2020.



www.zimra.co.zw

**PUBLIC NOTICE:
SUBMISSION OF INCOME TAX RETURNS (ITF 12C, ITF12C2, ITF1, CGT1)
FOR TAX YEAR ENDED 31ST DECEMBER 2020**

The Commissioner General of the Zimbabwe Revenue Authority (ZIMRA) hereby gives notice in terms of Sections 37; 37A and 988 of the Income Tax Act [Chapter 23:06], to all persons who received taxable income or gains, or to whom taxable income or gains accrued from a source within or deemed to be within Zimbabwe, that they are required to submit Income Tax Returns or Capital Gains Tax Returns for the tax year ended 31st December 2020 as follows:

1. Income from Employment [Non-Final Deduction System cases]
Persons in receipt of income from employment should submit Income Tax Returns [ITF 1] by 30 April 2021. This applies to persons who, during the year 2020:

- Terminated employment before the end of 12 months; or
- Were employed for periods less than 12 months; or
- Changed employers; or
- Received income from more than one employer; or
- Received pension in addition to employment income.

2020 year of assessment has two tax periods January to July and August to December. January to July and August to December P6 forms should be attached to separate returns. For the avoidance of doubt, persons in receipt of income from employment, which has been subjected to Pay As You Earn (PAYE) or Employees' Tax and were employed by the **same employer same payroll** throughout the year, are **NOT** required to furnish Income Tax Returns.

2. Income from Trade and Investments
All taxpayers who were specified by the Commissioner General to be on Self-Assessment in terms of Section 37A of the Income Tax Act [Chapter 23:06] are reminded that they should submit ITF 12C Returns, accompanied by the relevant financial statements, by **30 April 2021**. Nil returns must be submitted where there was no income received or accrued.

3. Income from disposal of Specified Assets and Marketable Securities.
Individuals and persons who disposed of specified assets and marketable securities in 2020, and did not submit Capital Gains Tax Returns are also required to submit returns on Form CGT1 by 30 April 2021.

4. Taxpayers with approved Accounting Years

Taxpayers with approved accounting years other than 31st December should ensure that returns are submitted on dates set by the Commissioner General in respect of their accounting periods.

5. Dormant Companies

Dormant companies that are registered for tax must submit Nil returns. Dormant companies that are not registered for tax must register and submit Nil returns.

Please Note:

All taxpayers with outstanding returns, i.e. returns for previous years, are reminded to submit without further delay. Late submission of returns attracts penalties and interest.

- a) Income Tax Returns are submitted on line on <http://efiling.zimra.co.zw>. Those that fail to go through e services and returns completed by taxpayers on employment income should be submitted through email addresses provided under Note (d).
- b) Taxpayers are encouraged to start using the e-services well before the deadline. Any requests for extensions must be lodged before due date to the nearest ZIMRA Offices.
- c) Tax Agents who submit returns for their clients in bulk are encouraged to contact their station managers and agree on return lodgment plans well before the due date.
- d) Failed and manual tax returns should be scanned and emailed to the applicable/relevant email address selected from the list below:

1. LCO INCOME TAX RETURNS	lcoreturn@zimra.co.zw
2. MCO INCOME TAX RETURNS	incometaxmcoreturn@zimra.co.zw
3. SCO INCOME TAX RETURNS	incometaxscoreturn@zimra.co.zw
4. VICTORIA FALLS INCOME TAX RETURNS	viffallsreturn@zimra.co.zw
5. HWANGE INCOME TAX RETURNS	hwangereturn@zimra.co.zw
6. GWANDA INCOME TAX RETURNS	gwandareturn@zimra.co.zw
7. BEIT BRIDGE INCOME TAX RETURNS	beithridgereturn@zimra.co.zw
8. MASVINGO INCOME TAX RETURNS	masvingoreturn@zimra.co.zw
9. MUTARE INCOME TAX RETURNS	mutarereturn@zimra.co.zw
10. GWERU INCOME TAX RETURNS	gwerureturn@zimra.co.zw
11. CHIREDCI INCOME TAX RETURNS	chiredzireturn@zimra.co.zw
12. ZVISHAVANE INCOME TAX RETURN	zvishavanereturn@zimra.co.zw
13. CHIPINGE INCOME TAX RETURNS	chipingereturn@zimra.co.zw
14. 15. RUSAPE INCOME TAX RETURNS	rusapereturn@zimra.co.zw
16. KWEKWE INCOME TAX RETURNS	kwekwereturn@zimra.co.zw
17. KADOMA INCOME TAX RETURNS	kadomareturn@zimra.co.zw
18. CHINHUYI INCOME TAX RETURNS	chinhoyireturn@zimra.co.zw
19. KARIBA INCOME TAX RETURNS	karibareturn@zimra.co.zw
20. MARONDERA INCOME TAX RETURNS	maronderareturn@zimra.co.zw
21. BINDURA INCOME TAX RETURNS	hindurareturn@zimra.co.zw

For any further clarification, kindly contact your nearest ZIMRA office.

Decision Impact

Taxpayers should take heed of the Commissioner's public notice to avoid facing the consequences which may include late penalty returns, denial of tax clearances (for those not in possession of full ITF263) and withdrawal of other fiscal incentives. Meanwhile we expected the ZIMRA to offer an extension considering business was closed for the first two months of the year and the traumatic effects being experienced by taxpayers who have lost loved ones, as well as businesses who have lost staff, during the devastating second wave of Covid-19. Furthermore, the social distancing protocols have been slowing down the preparation of information on time. As returns submission approaches paying taxes in foreign remains a contentious matter.

13. Contacts

Contacts

Marvellous Tapera
 +263772349740 | mtapera@taxmatrix.co.zw

Alfa Madamu
 +263778363600 | vinadamu@taxmatrix.co.zw

Tafadzwa Mhonde
 +263774454016 | tafadzwa@matrixtaxschool.co.zw

46 Van Praagh Ave, Milton Park Harare

www.matrixtaxschool.co.zw

@matrix_tax

Matrix Tax School

Matrix Tax School

MATRIX TAX SCHOOL
 Beyond Knowledge

14. Disclaimer Clauses

The information contained in this MTU is for general guidance only and is not intended as a substitute for specific advice in considering the tax effects of particular transactions. Whilst a lot of care has been taken in the compilation of the information and opinions contained in this publication, no liability is accepted for the consequences of any inaccuracies contained in this guide. The information does not constitute a legal advice nor can it be relied on in any dispute with the tax authorities and shall not constitute any legal or tax opinion in this or any jurisdiction. The analysis contained in this MTU is based on the current legal framework which is subject to change and Tax Matrix (Pvt) Ltd or its employees assume no obligation to update or otherwise revise the materials contained in this or any of its MTUs. In making their considerations, recipients or people with access to the MTU are advised to make their own independent assessments, and, in this regard, to consult Tax Matrix or their own professional advisors before taking any action. The information and opinions contained in this MTU is valid as at the date of uploading on the website, preparation or compilation, any of its contents may be subject to change without notice. The information contained and opinions contained in this MTU are for the purpose of general information (“the purpose”) and for no other purpose. The company disclaims any responsibility for the use of the information contained herein for a different purpose or context. The information contained and opinions contained herein must not be copied, published, reproduced or distributed in whole or in part to others at any time by the recipients. Tax Matrix (Pvt) Ltd retains all intellectual copyright information contained and opinions contained in this MTU. Recipients should seek the written permission of the company before distributing copies of information and opinions contained in the MTU to third parties.