



MONTHLY TAX UPDATE

MAY 2022

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We are honoured to present our May 2022 Monthly Tax Update (“MTU”) which is designed to keep businesses and individuals informed of the latest tax issues and also bring value to both.

Each month we will consider the latest changes to the tax rules – legislative, case law, and Authorities announcements and interpretations that bring relevancy to the business environment.

Monthly Tax Updates ensure that our valued members are kept in tune with changes in the tax arena. They provide you an opportunity to stay on top of developments that directly and indirectly affect you and your clients/business. The focus is on key guidance from legislation, tax agencies and the courts that represent new interpretations, as well as guidance on new laws.

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

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

The contents of this month's MTU edition are as follows:

- Issue of a new banknote
- Alternative Trading Platform securities fees
- 50% foreign currency duty on motor vehicles
- Amendment of regulations on rebate of motor vehicles
- Rebate of duty on vehicles imported by serving members of Parliament of Zimbabwe
- Suspension of duty on ammonium nitrate solution
- Open general import license fees
- New tax measures in line with Presidential speech
- NOCZIM Debt Redemption and Strategic Reserve Levy
- Suspension of duty on basic commodities
- The tax debate on Indigenization donations
- What can be done about delayed VAT refunds?
- The exchange rate to use for tax reporting purposes
- Tax treatment of exchange difference on bank and cash balances
- Payment of tax in the currency of transaction

A handwritten signature in blue ink, appearing to read 'Marvellous Tapera'.

Marvellous Tapera,
Chief Executive officer



1. Matrix Group News!

Matrix Tax School brings you the Accounting for Tax in Financial Statements course

Matrix Tax School presents the Accounting for Tax in Financial Statements course that will take part from 1st to the 30th of June 2022. The investment fee is \$360 and Classes will be rendered online on Wednesday and Friday from 1430hrs to 1630hrs. The course is designed for tax practitioners and tax personnel and focuses on the implementation of tax legislation into a company's financials. See the below information for more details:

Registration Link: <http://www.matrixtaxschool.co.zw/accounting-for-tax/>



MATRIX TAX SCHOOL
beyond knowledge

Accounting For Tax In Financial Statements

01 June - 30 June 2022

The course is designed for tax practitioners and tax personnel. The course focuses on the implementation of tax legislation into a company's financials. It focuses on putting the tax law into practice by training personnel to apply the tax law appropriately. While accounting contains all financial transactions to some degree, accounting for tax in financial statements focusses solely on those transactions that affect an entity's tax burden and how those items relate to proper tax calculation and tax document preparation.

MODULES

- 1 Leases improvements and related matters
- 2 Finance lease and credit installment agreements
- 3 Deferred and current tax
- 4 Lease accounting under IFRS16
- 5 Accounting for tax in construction contracts
- 6 IFRS9 financial instruments and tax reporting
- 7 Accounting for taxes in property transactions

Who Should Attend?

- Finance Managers
- Finance Advisors
- Registered Tax Accountants
- Chartered Management Accountants
- Tax Consultants
- Directors(Finance)
- Certified Industrial Accountants
- Company Secretaries
- Accounting Managers
- Certified Public Accountants
- Accountants
- In-house Tax Personnel
- Financial Controllers
- Chief Financial Officers

Course Delivery

This course is delivered through an interactive online platform. Learning resources include study guides, prescribed reading, numerous short video lectures, short self assessments and longer simulated scenarios. During the course we will address your specific questions subject to the amount of time available, the relevance of the questions and the order in which the questions are received.

US\$360 PER DELEGATE

4 WEEKS | 12 CPD HOURS

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2. New Legislative Provisions

Issue of a new banknote

The law and Interpretation

The Reserve Bank of Zimbabwe (RBZ) has issued a one-hundred-dollar banknote through S.I. 68A of 2022. The form, colour, size and material of the one-hundred-dollar banknote is below:

Banknote	Composition	Watermark	Size	Basic Colour
One hundred Dollar	Cotton paper	Zimbabwe Bird	156 mm x 66 mm	Brown

Decision Impact

The new note is meant to improve convenience for the transacting public as the use of small-value denominations has been rendered more cumbersome by inflation. Nonetheless its introduction is a clear indication of a rise inflation in the economy.

Alternative Trading Platform securities fees

The law and Interpretation

S.I. 70 of 2022 has amended the securities and derivative fees and charges as follows:

Type of charge	Old rates		New rates			
	Buying %	Selling %	Short term		Long term	
			Buying %	Selling %	Buying %	Selling %
Securities and Exchange Levy	0.16	0.16	0.16	0.16	0.16	0.16
Investor Protection Levy	0.025	0.025	0.025	0.025	0.025	0.025
Platform Levy	0.1	0.1	0.28	0.28	0.28	0.28
Capital Gains Withholding Tax	0	1.00	-	2.00	-	1.5
Stamp Duty	0.25	-	0.25	-	0.25	-
Brokerage Fees (Maximum)	0.92	0.92	0.28	0.28	0.28	0.28
VAT @ 15% on Brokerage	0.1380	0.1380	0.04	0.04	0.04	0.04
Total transaction costs	1.693	2.443	1.035	2.785	1.035	2.285
Total costs for buying and selling	4.136		3.82		3.32	

The new fee structure seeks to discourage speculation by both the investor and brokers thereby controlling the parallel market exchange rate. Meanwhile the VAT on brokerage fees, which the SI y put as 15% and not 14.5%, will reduce due to the reduction in the maximum brokerage fees.

SI 70 additionally published charges applicable to transactions in derivatives as follows:

Type of charge	Buying %	Selling %
Securities and Exchange Levy	0.05	0.05
Investor Protection Levy	0.025	0.025
Platform Levy	0.14	0.14
Guarantee Fund Levy	0.025	0.025
Brokerage Fees (Maximum)	0.14	0.14
VAT @ 15% on Brokerage	0.0145	0.0145
Total transaction costs	0.3945	0.3945
Total costs for buying and selling	0.789	

This SI has also revised the initial registration fee for a Platform to ZWL\$304 875 and the annual renewal fee of registration for a Platform to ZWL\$271 000 from ZWL\$207 000 and ZWL\$184 000 respectively.

Decision Impact

The new CGWT rates are meant to promote long term investments. However, the increase may result in undesired outcome of discouraging investment by foreign investors. Furthermore, the use of VAT at 15% by the SI may mean this was not reduced when the general VAT rate was reduced.

50% foreign currency duty on motor vehicles

The law and Interpretation

SI 252A of 2018 gazetted the payment of duty in foreign currency upon importation of motor vehicles. In recent the government announced its intention to make 50% this duty paid in ZWL dollars. This has now been put into law through SI 72A of 2022. Hence 50% of the duty on motor vehicles to be payable in foreign currency, whereas the remainder is to be payable in local currency at the official weekly average foreign currency exchange rate. The SI however stipulated that duty on motor vehicles imported by Government Ministries and Departments are to be paid in local currency at the official weekly average foreign currency exchange rate.

Decision Impact

The new law to pay duty partially in the local currency is an indication of the government's efforts to promote the local currency. A half-way house approach however is an indication of government's appetite of foreign currency.

Amendment of regulations on rebate of motor vehicles duty

The law and Interpretation

SI 52 and 68 of 2019 published the rebate of duty on motor vehicles imported by specified serving public servants and imported under the Health Service Vehicle Loan Scheme respectively. SI 080A of 2022 was published to amend some regulations in regards to these rebates. Under the rebate of duty on motor vehicles imported by specified serving public servants, SI 080A provided that duty shall not be granted for motor vehicles designed for transport of 15 or more people, including the driver; or to motor vehicles whose gross vehicle weight exceed five tonnes. Furthermore, the SI has also additionally granted the rebate to a serving public servant and not only to a Senior Public Servant as was gazetted in SI 52 of 2019. However, the civil servant must not be a senior civil servant issued with a condition of service motor vehicle and must not be under any disciplinary proceedings. This is so for vehicles imported or purchased after the 31st of March 2022. The maximum amounts to be availed to the serving public servants have been revised as follows:

New amounts		Old amounts	
Grade of Public Servant	Maximum Amount (US\$)	Grade of Senior Public Servant	Maximum Amount (US\$)
B and C	3 500	Principal Directors and equivalent	40 000
D and E	5 000	Directors and equivalent	30 000
Deputy Director	10 000	Deputy Directors and equivalent	20 000

The following conditions have been added in SI 080 applicable for those qualifying for the rebate:

- The rebate may only be granted for motor vehicles purchased from traceable and registered car dealers;
- In consideration of an application for a rebate the Commissioner may— (a) revalue the motor vehicle in line with the existing customs valuation regulations in cases where he or she suspects undervaluation of the motor vehicle; or (b) disqualify any applicant that wilfully undervalues a motor vehicle imported in terms of this rebate.
- Any serving public servant who imports or takes out of bond a motor vehicle in terms of this section including motor vehicles purchased on or before 31st March, 2022 shall be required to clear for consumption the motor vehicle by 31st May, 2022, failing which full duty due on the vehicle shall become payable.

In regards to the rebate of duty on motor vehicles imported under the Health Service Vehicle Loan Scheme, SI 080 has re-worded the title of the rebate to Rebate of duty on motor vehicles imported under Health Service Motor Vehicle Scheme and also revised the maximum duty rebate amounts as follows:

New amounts		Old amounts	
Grade of serving public health worker	Maximum Amount (US\$)	Grade of serving health worker	Maximum Amount (US\$)
B and C	3 500	E1 and Below	3 500
D and E	5 000	E2 – E3	7 500
Deputy Director	10 000	E4-E5	15 000
		F	30 000

Decision Impact

The new measures are all meant to curb misuse of the incentives. This is so because incentives like these are very costly to the fiscus, even though they are provided to support our economy.

Rebate of duty on vehicles imported by serving members of Parliament of Zimbabwe

The law and Interpretation

The provisions for the rebate granted to member of the parliament on importation of motor vehicles have been amended to provide for additional conditions through SI 080B of 2022. One of the conditions is that the restriction to import only one vehicle will be waived for the life of the current parliament and that a serving parliament shall be allowed to import not more than 2 vehicles provided that the maximum allowable value of the second motor vehicle shall not exceed US\$60 000.

Decision Impact

This is an extension of duty rebate privileges to the current parliament in allowing the members to import 2 vehicles. Though the value of the second vehicle is restricted, US\$60 000 is still massive to make the maximum amount not useful in restricting anything.

Suspension of duty on ammonium nitrate solution

The law and Interpretation

SI 084 of 2022 has suspended duty on ammonium nitrate solution imported by Intrateam (Private) Limited with effect from 28th November, 2021, and for a period of twelve months for 1500 metric tonnes of the ammonium nitrate solution per month.

Decision Impact

Intrachem is a sole distributor of Sasol explosives and accessories in Zimbabwe. The suspension of duty will aid the company in reducing costs so as to serve the country.

Open general import license fees

The law and Interpretation

The Open General Import Licence fees have been revised to ZWL\$3000 by SI 94 of 2022. This is an amendment from ZWL\$150 previously published in SI 60 of 2020.

Decision Impact

This intended to revise the fee which had been eroded by inflation

New tax measures in line with Presidential speech

The law and Interpretation

The government announced policy measures meant to restore confidence, preserve value and restore macroeconomic stability. Some of measures had to do with the adjustment of tax policies, which were published with immediate effect, despite not having published proper law to enact the measures. SI 96 of 2022 has enacted the measures and put them into force.

Automated financial transactions tax (AFTT)

AFTT chargeable in terms of s36B of the ITA as read with 25th Schedule to be computed as follows:

- for each withdrawal of one thousand Zimbabwe dollars or above, five Zimbabwe cents;
- for each withdrawal below one thousand United States dollars, five United States cents;
- for each withdrawal of one thousand United States dollars or above, 2% of value of the withdrawal.

Intermediated Money Transfer Tax (IMTT)

IMTT chargeable in terms of s36G of the ITA as read with 30th Schedule to be calculated as follows:

- 2% on every ZWL\$ or part thereof transacted for each transaction on which the tax is payable;
- 4% or part thereof on every US\$1 transacted for each transaction on which the tax is payable
- Max IMTT ZWL\$1,320,000 and US\$10,150 on at least ZWL\$66,000,000 and US\$500,000.

Rates of Capital Gains Withholding Tax (CGWT)

CGWT is chargeable at 1.5% of the price at which a listed marketable security was sold if such security was held for at least 270 days on the date of its sale, or 4% of the price at which the security was sold if such security was held for less than 270 days on the date of its sale. This is a revision from 1.5% and 2% in respect of holding period of at least 6 months and less than 6 months, respectively.

Decision Impact

- The measures have been published with immediate effect (13 May 2022).
- They all meant to make cost of transacting in foreign currency expensive thereby discouraging its use and encourage the use of ZWL\$ as a way of reducing activities in the black market.
- SI 96 of 2022 has been used to remove AFTT on debits effected on one's account using an Atm as the levy is now only applicable on cash withdrawal and appear removal of double dipping since the transaction is capable of being levied IMTT.
- New AFTT regime makes AFTT at significant cost regarding its income tax deductibility status. Currently there is no law that prohibits its deduction

NOCZIM Debt Redemption and Strategic Reserve Levy

The law and Interpretation

SI 97 of 2022 has with effect from 26th April, 2022 and for a period of 7 days, revised the NOCZIM Debt Redemption and Strategic Reserve Levy to US\$0.00 per litre of diesel. This effectively means the levy will be suspended for the 7 days aforementioned. Further, with effect from 9th May, 2022, and for a period of 7 days again, this levy shall be calculated at the rate of US\$ 0,047 per litre of diesel.

Decision Impact

The reduction in the levy is way for the government to affect the prices for diesel which have been increasing of late. This may however not be enough considering the increases in the prices are being caused by external, uncontrollable reasons.

Suspension of duty on basic commodities

The law and Interpretation

With effect from the 17th May, 2022, to the 16th November, 2022, for a period of 6 months, duty is wholly suspended on some basic commodity goods as published under S.I. 98 of 2022. These goods include cooking oil, margarine, rice, flour, salt, bath soap, laundry soap, washing powder, toothpaste, petroleum jelly etc. The publication of the SI follows a letter wrote by the Secretary for Finance and Economic Development to the ZIMRA's Commissioner authorising the ZIMRA to suspend duty on these basic commodities as part of the measures to improve availability of basic commodities.

Decision Impact

This suspension is part of the government's measures to stabilise inflation levels in the country, by allowing the general public to directly import goods from outside, and pushing local suppliers to reduce their prices. This is counter measure against possible shortages and at the same time directly impacting business of local manufacturers, wholesalers and retailers.



3. Court Case

The tax debate on Indigenization donations

Case name	Unki Mine (Pvt) Ltd vs ZIMRA SC 15/22-35/20
Summary Facts	<ul style="list-style-type: none"> • This is an appeal against the whole judgment of the Fiscal Appeal Court which dismissed Unki's appeal against the decision of the Commissioner in respect of deductibility of indigenization donation which Unki had allowed.
Jurisdiction	<ul style="list-style-type: none"> • Supreme Court of Zimbabwe
Issues	<ul style="list-style-type: none"> • Whether Unki was obliged at law to donate the sum of US\$10 million to the Community Share Ownership Trust. • Whether the court a quo erred in finding that the payment was of a capital nature.
Decision date	<ul style="list-style-type: none"> • 8 September 2020 & 3 February 2022
Decision	<ul style="list-style-type: none"> • That the judgment of the court <i>a quo</i> cannot be disputed. • That the donation was paid by Unki on behalf of its holding company Amhold, which is a separate legal entity. • That Unki had no legal obligation to comply with the Indigenisation and Economic Empowerment Act. • That the ZIMRA was successful in resisting the appeal and hence the appeal was rejected in full.

The Facts

Unki carries on the business of mining platinum in Zimbabwe. Unki and a related company known as Southridge Limited are subsidiaries of a registered company known as AmZim Holdings Limited Group ('Amzim'). Amzim is, in turn, a member of the Anglo American Group ('Amhold'). Amhold is not a trading or operating entity and is also not a Zimbabwean company. Unki is the holder of a Special Mining Lease issued to it in March 2008 by the Government of Zimbabwe ('GOZ') in respect of the mining of platinum in an area known as Middleridge Claims. The GOZ, the National Indigenisation and Economic Empowerment Fund, the Anglo-American Platinum Limited, Amzim, Southridge Limited and Unki entered into an agreement to implement the indigenisation implementation plan and indigenisation transaction. The agreement also provided for the 51 per cent equity ownership in Amhold being issued to Indigenous Entities. The founding document of the agreement was termed the Heads of Agreement ('Heads of Agreement'). In terms of the indigenisation implementation plan, Amhold committed to donate US\$ 10 million as seed capital to the Trust through Unki, its subsidiary. The actual payment of the US\$ 10 million donation was thus made by Unki, which Unki deducted for income tax purposes, whereas the ZIMRA disallowed the donation. Hence the tax dispute. Unki filed a notice of objection arguing that it had made the US\$ 10 million payment in compliance with the Indigenisation and Economic Empowerment Act and the Indigenisation and Economic Empowerment Regulations. Consequently, Unki contended that the payment was of a revenue nature, as it was incurred for the purpose of trade or in the production of income. The ZIMRA disallowed the objection and reasoned that the amount was not made wholly and exclusively for the purposes of the special mining lease operations but largely for obtaining approval of the indigenisation implementation plan and for this reason the expenditure was of a capital nature. The matter was taken to Fiscal Court which dismissed Unki's appeal on the basis that the payment was designed to preserve Unki's income-earning structure hence it was expenditure of a capital nature and not of a revenue nature.

It further ruled that the amount was paid in compliance with the indigenisation implementation laws of Zimbabwe and on the provisions of the indigenisation implementation plan and was a donation which had been made by Unki on behalf of its holding company, Amhold, which was a separate legal entity and as such Unki could not claim a deduction of the same. The court further found that the provisions of the Indigenisation Act and its Regulations did not require Unki to make any donation in order to be indigenous compliant as it was a Zimbabwean company. Dissatisfied by the decision of the court a quo Unki noted the present appeal

Issue	Competing arguments
Whether Unki was obliged at law to make the donation	<p>Unki's arguments</p> <ul style="list-style-type: none"> • That the donation by it to the Trust was not a donation in the strict sense considering the context in which the payment was made. • That it was obligated to make the donation in order to be compliant with the requirement for indigenisation in accordance with the indigenisation laws. <p>ZIMRA's arguments</p> <ul style="list-style-type: none"> • That the payment was a donation which is not tax deductible. • That the donation did not benefit Unki but was designed to benefit Amhold, its parent company, a 3rd party. • That there was no legal obligation on Unki to make the donation or to be compliant with the indigenisation laws of Zimbabwe. • That no consequence would have befallen Unki had it not made the donation. • That even if there would have been any such consequence, it would have befallen Amhold, which had the obligation to indigenise and not Unki.
Whether the court a quo erred in finding that the amount was of a capital nature.	<p>Unki's Arguments</p> <ul style="list-style-type: none"> • That the payment was a deductible expenditure of a revenue nature because it was for licensing purposes in order for it to trade and had the donation not been made its mining license would have been revoked. <p>ZIMRA's Arguments</p> <ul style="list-style-type: none"> • That the amendment to the ITA allowing deductions of payments made to Community Share Ownership Trusts was only made on 1 January 2013. • That Unki could not claim a deduction in its tax assessment report compiled in 2011 in relation to the donation as the amendment did not apply retrospectively.

Issue	The Court's reasoning and decision
Whether Unki was obliged at law to donate the sum of US\$10 million to the Community Share Ownership Trust.	<ul style="list-style-type: none"> • That the relationship between the GOZ, Amzim and its subsidiary companies has always been regulated by different laws and agreements. • That the Heads of Agreement were signed between the GOZ, Anglo American Platinum Limited, Amzim Holdings Limited, Southridge Limited and Unki. • That the agreement provides for Amzim which is a member of the Anglo-American Group ('Amhold'). • That the agreement further defines "Amhold Group" means "Amhold and all its direct and indirect subsidiaries including Unki Mine ..." • That the agreement provides for the nature of the indigenisation transaction as follows: <i>"... 51% equity ownership of Amhold shall be issued to the indigenous entities, utilising a notional vendor funded mechanism to be facilitated by Amhold. The implementation of the Indigenisation Transaction will result in the Amhold Group being in compliance with the indigenisation Requirements for the duration of the Indigenisation Compliance Period."</i>

Issue	Court reasoning and decision
<p>Whether Unki was obliged at law to donate the sum of US\$10 million to the Community Share Ownership Trust.</p>	<ul style="list-style-type: none"> • That the agreement is also worth quoting as it provides as follows: “... following the implementation of the Indigenisation Implementation Plan through the Indigenisation Transaction, each member of the Amhold Group shall qualify as, and shall for the duration of the Indigenious Compliance Period continue to qualify as, an Indigenous Entity in compliance with the Indigenous Act...” • That an Indigenous Entity is further defined in the agreement under clause 2.1.49 as follows: “means a company in which issued shares are owned directly or indirectly by Indigenous Zimbabweans in the percentage proportion no less than that prescribed from time to time under the Indigenisation Act as the 'minimum indigenisation and empowerment quota'...” • That lastly the agreement provides for the indigenisation implementation plan which was submitted by Amhold and approved by the Minister of Youth Development, Indigenisation and Empowerment in accordance with the Indigenisation and Economic Empowerment Act. • That the collective effect of the provisions of the Heads of Agreement show that Amhold is the parent company which has subsidiary companies being Unki and Southridge Limited. • That it can be deduced that it is the parent company which submitted an indigenisation implementation plan which was approved by the Minister. • That it should also be noted that it was an agreed provision between the parties to the agreement that the parent company was obligated to issue 51 per cent of its shares to indigenous entities in compliance with the Indigenisation and Economic Empowerment Act. • That the Heads of Agreement further make it clear that during the implementation of the indigenisation plan the subsidiary companies of Amhold were to be treated as indigenous companies owned by indigenous Zimbabweans. • That it is thus apparent that the indigenisation laws and agreements placed an obligation on Amhold to issue 51 per cent of its shares in order to comply with the indigenisation laws of Zimbabwe. • That it was the parent company that was given that legal mandate as it is a foreign entity and not its subsidiary companies. • That it follows that the Heads of Agreement and indigenous implementation plan were made for and on behalf of Amhold so that it is able to fulfil its legal obligations, as a foreign company. • That having arrived at this conclusion, the Court must determine whether or not Unki, as a subsidiary of Amhold, had a legal obligation to make the payment of US\$10 million. • That the Heads of agreement provide as follows; “5.3 It is hereby recorded that as part of the indigenisation implementation plan, Amhold has donated US\$ 10 000 000.00 to the Community Trust for purposes, inter alia funding community projects”. • That the Heads of Agreement show that the amount was donated by Amhold, the holding company of Unki to the Trust for purposes of funding community projects. • That it is quite apparent from the record that Amhold is a separate company from its subsidiary companies. • That consequently, Unki could not claim a deduction, based on the donation, because it was not incurred by it but by the holding company. • That it is trite that a holding company is a separate legal entity for income tax purposes. (GC (Pvt) Ltd v Commissioner-General ZIMRA 2015(2) ZLR 116). • That in the Amhold revised indigenisation implementation plan dated 5 June 2012 it was stated that: “... in November 2011, Unki donated US\$ 10 million as seed capital to the Tongogara Rural District Community Share Ownership Trust (“TSOT”)”

Issue	Court reasoning and decision
<p>Whether Unki was obliged at law to donate the sum of US\$10 million to the Community Share Ownership Trust.</p>	<ul style="list-style-type: none"> • That the revised plan further showed that the Anglo-American Platinum Limited (through its subsidiaries Unki and Southridge Limited together being Amzim) donated US\$10 million and further implemented a phase allocation of shares which would amount to 51 per cent. • That it is thus clear, from the revised plan, that the US\$10 million payment made by Unki was made on behalf of its parent company. • That in GC (Pvt) Ltd v Commissioner General, ZIMRA (supra), the principle was laid down that a taxpayer is not entitled to make deductions in respect of expenses incurred by other companies in the same group. • That each individual company must be assessed according to its own taxes. • That Unki's argument that it paid the amount to comply with the indigenisation laws of Zimbabwe is without merit as it had no legal obligation to do so. • That it was Amhold that was required by law to transfer 51 per cent ownership shares as a foreign-owned company to indigenous entities. • That the fact that Unki paid the money on behalf of Amhold is of no moment as it had no legal obligation to make this payment. • That if there was, Unki did not provided the basis mandating it to do so. • That the donation was amount that foreign mining companies pledged to donate to give effect to the indigenisation and empowerment schemes initiated by the GOZ. • That the Trust's main object was to use the proceeds of the Trust Assets to undertake various development programmes for the benefit of the residents of the area. • That it is for this reason it was Amhold which submitted the indigenisation implementation plan as required by the indigenisation laws and it is the one is entitled to an indigenisation clearance certificate and not Unki. • That the agreement also records that it was Amhold that donated the amount to the Community Share Ownership Trust through Unki and for these reasons the decision arrived at by the court a quo cannot be faulted. • That the provisions of the Indigenisation and Economic Empowerment Act and its Regulations did not place a legal obligation on Unki to donate to a Community Trust for it to be indigenous compliant. • That the parent company was obligated at law to comply with the indigenisation legislation by disposing of 51 per cent of its shareholding to indigenous partners which it did in its revised indigenous implementation plan which was approved by the Minister of Youth Development, Indigenisation and Empowerment. • That having, concluded Unki had no legal obligation to comply with the indigenous laws and be indigenous compliant so as to enable it to continue operating its special mining license, it follows that Unki had no legal obligation to pay the amount.
<p>Whether the court a quo erred in finding that the amount was capital nature.</p>	<ul style="list-style-type: none"> • That because Unki had no legal obligation to make the payment it is not necessary to determine whether the payment was of a capital or revenue nature. • That moreover, even if Unki had made the payment on its own behalf it was not entitled to claim such a deduction of the donation under the ITA in 2011 and since at the time the donation was the law did not allow for such a deduction. • That the provisions of s 15(2) (ii) only came into force on 1 January 2013.
<p>Decision</p>	<ul style="list-style-type: none"> • That the judgment of the court <i>a quo</i> cannot be disputed. • That the donation was paid by Unki on behalf of its holding company Amhold, which is a separate legal entity. • That Unki had no legal obligation to comply with the Indigenisation and Economic Empowerment Act. • That Unki's appeal was rejected in full.

Decision Impact

Taxpayers who make donation should closely inspect the deductibility, being guided by the legislation. Hence the amounts allowed for must be those specifically provided for in section 15 (2). On the other hand, based on this judgement, donations paid as mandatory or as a legal requirement cease to be donations and become a business expense which is deductible.



4. Technical interpretation

What can be done about delayed VAT refunds?

The law and interpretation

Under the current inflation environment one of the last things a business may need is unexpected delays in planned cash inflows. This is the case currently for some businesses owing to delayed tax refunds, particularly VAT refunds from ZIMRA. Processing of VAT refunds by the authority is taking long and there are concerns by the business community regarding the ZIMRA delaying the verification process. On the other hand, the ZIMRA is weary of fraudulent claims and have sought to verify the genuineness of the claims, and would not authorise a refund until such time this verification, inspection or audit process is completed. This process, compounded by the effects of covid 19 is unfortunately taking longer than expected.

Taxpayers who are aggrieved with this delay, are permitted in terms of s45 of the VAT Act to charge interest where the Commissioner does not within 30 days after the date on which the operator's return for a tax period was submitted to the ZIMRA refund any amount refundable. The return submitted however must not be defective or incomplete. In addition, the operator must not have any other returns outstanding or tax due. Interest can also be paid if the reason for delay is due to non-supply of information or banking details by the operator. Some of the delays can be shortened by the proactive action of the taxpayer, so as to shorten the verification process, among which would include:

Proof that expenditure was incurred in the production of taxable supplies

An operator has to provide solid evidence that an input tax credit relates to a purchase that was for furtherance of business. It must therefore eliminate input tax claims on purchases that can be considered to be used to provide entertainment, hospitality, membership in social clubs or other expenditures incurred on passenger vehicles.

Supporting the claims.

VAT claims can only be made against fiscal tax invoice which must be held by the operator at the time of submitting the relevant VAT return. These must be ready upon inspection by the ZIMRA. Additionally, the operator may also consider submitting them to the ZIMRA, particularly invoices with high valued together with the relevant VAT return.

Accounting reconciliations

The ZIMRA will also not refund it is satisfied that the correct output VAT has been accounted for. In this case reconciliations of the VAT returns and financial accounting information for each period before one applies for refund is unavoidable.

Early submission of VAT returns

When a return has a VAT refund, there is no point in delaying its submission to the ZIMRA. The return must be quickly finalised and submitted well in advance of the due date. This gives the ZIMRA ample time to undertake its verification process.

Meeting of understanding what the liaison officers or verification team want

Understanding of what the ZIMRA team want when they carry out their verification process is very critical and can considerable reduce misunderstand and the verification period. Hence the operator must obtain an understanding of the ZIMRA expectation and demands when undertaking their audits in order to be well prepared.

Offset refunds against taxes due to the ZIMRA

Last but not least, taxpayers with refunds should consider setting off their refunds against taxes due to the ZIMRA and must consider making an application for such set offs well in advance. However, only refunds that have been audited or verified can be refunded.

Decision Impact

Cash management is central to business success. Prudent businesses would do well to not overlook the importance of improving internal controls and reviews before lodging refund claims. On the other hand, the ZIMRA should not be frivolous in their refund process. Delaying a genuine refund is about affecting future tax remittances. It is therefore wise for the ZMRA to apply KYCs and risk-based audits in their VAT refund process so as not to collapse genuine and compliant taxpayers.

The exchange rate to use for tax reporting purposes

The law and Interpretation

The President announced that the exchange rates are to be determined by the market based on the willing buyer-willing seller ("WBWS"). Retailers and wholesalers are to benchmark their pricing to the average interbank rate with a maximum allowable variance of 10%. Whereas taxpayers are to use the same rate in calculating their taxes. WBWS foreign exchange system is parallel to the auction rate. It is derived from trades carried out by banks and not the RBZ, between willing buyers and willing sellers for the sale of their foreign currency. The willing buyer and willing seller rate is higher than the auction rate.

The auction-rate is derived from bids that are submitted by companies taking into account the highest and lowest bid for purposes of allocation of foreign currency. The auction rate will then be derived from the weighted average of the bids taking into account the lowest and the highest bid. The forgoing platform is utilised by the RBZ. Exchange Control Circular 3 of 2022 provides that surrender on exports and domestic receipts shall now be sold to the RBZ at the prevailing interbank rate as determined by the willing buyer willing seller rate. It appears that the price discovery for exchange rate is departing from the auction rate in key areas. For surrender, the auction rate has been departed from. For ZIMRA purposes, the auction rate has also been departed from in favour of the willing buyer willing seller rate. For the reasons its now clear thar taxpayers can use the WBWS for accounting, tax and other purposes.

Decision Impact

The WBWS rate is to be used for pricing and for conversion of sales from foreign currency to Zimbabwe dollars for purposes of tax. It also finds utility for reporting purposes as provided for in SI 33 of 2019 as read with Exchange Control Circular 3 of 2022. This rate avoids variations in income tax declaration and reporting and conforms to the vision of a unitary exchange rate which government is driving towards as specified in the presidential measures which are a representation of legislative intention.

Tax treatment of exchange difference on bank and cash balances

The law and Interpretation

Foreign exchange differences are taxable or deductible in terms of s 8 (2) and s 15 (1)(a) of the ITA respectively when they are realised. A realisation occurs when a taxpayer facilitates payment or receives income. There must be a movement in exchange rate on date of receipt of income or payment of expense, respectively compared to the date the transaction accrued. Only realised foreign exchange differences of a revenue nature are taxable or deductible. Where no transaction has taken place in the accounting period but the balances are adjusted in this period, any exchange difference thereof is unrealised which is neither taxable nor tax deductible. Meanwhile, foreign exchanges difference of a capital nature e.g., exchange difference on fixed assets or equities whether realised or unrealised are neither taxable nor deductible. Turning to foreign currency cash and bank balances held by the taxpayer which are converted to the Zimbabwe dollar at year end. There are no taxable or tax-deductible difference since there is no transaction that has taken place. The cardinal principle is that taxable or tax-deductible foreign exchange gains or losses should arise when a transaction has taken place. Until a transaction has taken place, the exchange differences that may arise from exchange rate movement is considered unrealised.

Decision Impact

Taxpayers should analyse the foreign exchange gain and loss ledgers in order to arrive at more accurate taxable or tax-deductible exchange difference.



5. Announcement and Interpretations

Payment of tax in the currency of transaction

Background

The ZIMRA issued public notice 32 of 2022 where taxpayers are being advised that for the purposes of conversion of foreign currency to Zimbabwean dollar, where applicable, the rate of exchange established through the Willing-Buyer Willing-Seller exchange rate system as provided by the Reserve Bank of Zimbabwe (RBZ) should be used with immediate effect. All taxpayers should ensure that tax is accounted for in the currency of transaction. Payments for all taxes should be remitted on time, in full, and in the currency of transaction through banks. Taxpayers continue to be urged to submit all tax returns on time and payments should be in full.

Decision Impact

This notice follows the announcement by the president on the policy measures to restore confidence, preserve value and restore macroeconomic stability. It reinforces those taxes are still required to be paid in foreign currency when transaction has been made in foreign currency.



6. Contact us

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

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