

Tax Matrix

**MONTHLY TAX
UPDATE**

November 2021

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We are honoured to present our November 2021 Monthly Tax Update (“MTU”) which is designed to keep businesses and individuals informed of the latest tax issues and also bring value to both. Each month we will consider the latest changes to the tax rules – legislative, case law, and Authorities announcements and interpretations that bring relevancy to the business community. Monthly Tax Updates ensure that our valued members are kept in tune with changes in the tax arena and are provided with an opportunity to stay on top of developments that directly and indirectly affect them and their clients/business. The focus is on key guidance from legislation, tax agencies and the courts that represent new interpretations, as well as guidance on new laws.

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

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

The contents of this issue are as follows:

- Suspension of duties on various products
- Fuel Levy adjustment
- Interpretation of law on 1% management fees
- Analysis of the revenue proposals in 2022 National Budget
- ZIMRA announcements



Marvellous Tapera
Chief Executive officer



1. New Legislative Provisions

Suspension of duty for miners

The law and Interpretation

SI 253 of 2021 is granting the suspension of duty for a mining entity, Kygar Resources (Pvt) Ltd for the period 9 June 2021 to 8 June, 2024.

Decision Impact

The Minister continues to support the mining industry by granting such suspensions. It is our hope that these incentives will indeed assist the industry, and in turn improving our economy.

Oranges granted suspension of duty

The law and Interpretation

SI 254 of 2021 is granting the suspension of duty for low grade oranges imported by the Beitbridge Juicing (Pvt) Ltd as follows:

Company	Quantities subject to suspension	Period
Beitbridge Juicing (Pvt) Ltd	5000	5 November to 31 December 2021.

Decision Impact

The suspension was granted for a specific importation of the oranges as seen by the few quantities and the short period. As such the incentive will fail to assist the entity enough to affect overall prices of the oranges in the long run.

Fuel levy adjustment

The law and Interpretation

SI 254 A of 2021 has temporarily adjusted the fuel levy payable by fuel importers. The SI has adjusted the NOCZIM debt redemption and strategic reserve levy subsequently after SI 227 of 2021 which was also adjusting those fees. Below is a summary of both Sis:

SI	Levy ZWL		Levy USD	
	Diesel	Petrol	Diesel	Petrol
227 of 2021	\$11 per litre	\$8 per litre	\$0.127 per litre	\$0,087 per litre
254A of 2021	Not published	Not published	\$0.047 per litre	\$0,057 per litre

The Minister seems to be resorting to charging the levies in USD without pegging the fees in the ZWL currency. This has the effect of reducing the levies, as can be seen from the change in the fees in USD terms.

Decision Impact

The fuel levies contribute to the overall price of the commodity. The pegging of the levies in the USD currency will go a long way in ensuring stability of fuel prices.

Duty suspension on poultry eggs

The law and Interpretation

Duty is wholly suspended on fertilised poultry eggs for hatching imported by approved poultry breeders through SI 262 of 2021 for 6 months period 1 October 2021 to 31 March, 2022, ring fenced as follows:

Name of poultry breeder	Quantities
Irvine's Zimbabwe (Private) Limited	4500000
Charles Stewart Day Old Chicks (Private) Limited	1800000
Twowork Enterprises, trading as Supa chick	2100000
Kudu Creek Farm (Private) Limited	1800000
Zim Avian (Private) Limited	1200000
Doctor Henn Investment (Private) Limited	1800000
Novafeeds (Private) Limited	1800000
Charles Stewart Day Old Chicks (Private) Limited	1200000
Zim Avian (Private) Limited	1200000
Novafeeds (Private) Limited	300000
Doctor Henn Investment (Private) Limited	300000
Total	18000000

Decision Impact

The duty suspension could reduce the prices of poultry eggs.



2. Court Case

Interpretation of law on 1% management fees

Case name	MBCA Bank (Private) Limited v ZIMRA-140 of 2021-[2021] ZWSC 140
Summary Facts	<ul style="list-style-type: none"> • MBCA Bank filed its income tax self-assessment with the ZIMRA for the tax year ending 31 December 2011 whereupon it deducted in full specific administration and management fees and bad debts in respect of non-performing loans • The ZIMRA disallowed both expenses in terms of s 16 (1) (r) and s 15 (2) (a) as read with (ARW) s 15 (2) (g) of the Income Tax Act ("ITA"), respectively. • This resulted in MBCA appealing to the Special Court for Income Tax Appeals and eventually to the Supreme Court after its loss the Special Court
Jurisdiction	<ul style="list-style-type: none"> • Supreme Court of Zimbabwe
Issues	<ul style="list-style-type: none"> • Whether the Special Court erred in determining that there was no distinction between general and specific costs incurred by a subsidiary in favour of its foreign holding company. • Whether the Special Court erred in finding that the disputed debts were improperly written off as bad debts and therefore not deductible.
Decision date	<ul style="list-style-type: none"> • 7 September 2021 and 12 November 2021
Decision	<ul style="list-style-type: none"> • That the Special Court correctly interpreted s 16 (1) (r) ARW s 26 of the ITA. • That the provision was enacted to prevent associates from overloading expenses on the local entity whilst reducing Zimbabwean's tax base. • That the Special Court considered each borrower's debt and correctly held that the security for each debt did not prove that the debts were unrecoverable. • That the court correctly dismissed MBCA Bank's appeal.

The Facts

MBCA Bank is a subsidiary of MBCA Holdings Limited a local holding company which in turn, is a subsidiary of Nedbank Limited (Nedbank) a South African company. During the 2011 tax year, Nedbank (South Africa) met several expenses on behalf of MBCA Bank including travelling costs, telecommunications costs and postage and freight costs. It also rendered services such as group technology infrastructure and operation support services, system support service for the Africa Banking and e-commerce, strategic planning assistance and risk advisory service assistance. MBCA Bank subsequently paid Nedbank (South Africa) for the incurred expenses and accounted for all the payments made thereto, including reimbursement, payment for services rendered and general and specific administration costs through a single ledger account headed "Operating Costs". The ZIMRA's amended assessment was based on its treatment of all the payments made to Nedbank (South Africa) by MBCA Bank as general administration and management costs. The ZIMRA disallowed all amounts in excess of limits set in terms of s 16 (1) (r) (ii) of the Act. In respect of bad debts, the ZIMRA's position was that bad debts could only be claimed in terms of s 15 (2) (g) of the Act and that the debts written off as "bad debts" by MBCA Bank and that these failed to meet the criteria established in terms s 15 (2) (g) of the Act. MBCA Bank submitted that general costs and not specific costs fell under s 16 (1) (r) of the Act, while the ZIMRA adopted the contrary view that s 16 (1) (r) of the Act did not differentiate between general and specific costs, but rather gave effect to all costs incurred by a subsidiary company to its holding company as general administration and management expenses which were deductible in terms of the formula provided by s 16 (1) (r) (i) and (ii) of the Act.

In determining the appeal, the Special Court for Income Tax Appeals held that s 16 (1) (r) of the Act constituted an anti-tax avoidance measure against a local taxpayer by limiting its allowable deductions in respect of general administration and management expenses incurred by a foreign holding company. In regards to the bad debts, the Special Court for Income Tax Appeals held that MBCA Bank had failed to establish, on a balance of probabilities, that the debts written-off were unrecoverable and constituted a loss. It held that MBCA Bank was precluded from claiming income tax deductions thereon. The Special Court for Income Tax Appeals therefore dismissed MBCA Bank's appeal. Aggrieved by the decision of the Special Court for Income Tax Appeals, MBCA Bank noted an appeal to the Supreme Court, hence the current tax case.

Issue	Court reasoning and decision
<p>Whether or not the Special Court erred in stating that there was no distinction between general and specific costs</p>	<ul style="list-style-type: none"> • That MBCA believed that had the legislature intended that there should be no distinction, the inclusion of “expenditure incurred on <u>general administration and management</u>” would not have been included. • That the objective of interpretation of statutes is to discover the intention of the legislature and once established, the intention must be applied as the law governing the interpreted provisions of the statute. • That the provisions of a statute must be interpreted within the context of the statute in which they are found. • That s 16 (r) (i) and (ii) ARW s 26 establishes the intention and that this is to prevent related parties from colluding to overload expenses on the local entity as well reducing Zim's tax liability and increasing the foreign entity's profits. • That the formula in s 16 (r) (ii) clearly states that the limit cannot be exceeded. • That the judge was satisfied that the interpretation adopted by the special court is consistent with the intention of the legislature. • That the determination of the meaning of “general administration and management” was of no consequence. • This is so as the overriding consideration in the circumstances, was that the intention of the legislature supersedes a literal interpretation • The decision of the special court was upheld.
<p>Whether or not the Special Court erred in finding that the disputed debts were improperly written off as bad debts and therefore not deductible?</p>	<ul style="list-style-type: none"> • That a taxpayer has to prove to the Commissioner that a debt is a bad debt. • That the law requires the Commissioner to be satisfied that the debt is indeed a bad debt in terms of s 15 (2) (g) before allowing deductions to be made. • That the Commissioner should therefore carefully assess the alleged bad debts for him to be satisfied that they have been properly claimed in terms of the law. • That if he is reasonably and justifiably not satisfied the law allows him to refuse to allow the deduction of the alleged bad debts. • That a perusal of the record establishes that in respect of each borrower MBCA had indeed not exhausted its rights against sureties and was receiving payments from the borrowers during the period of litigation. • That it was, therefore, not legally correct for such debts to be deducted as bad debts whilst they could still be recovered from the sureties and while the borrowers were making further payments. • That a company under liquidation can be sued subject to being granted leave to do so by the court. • That if sureties have not yet been sued a debt cannot be classified as a bad debt.

Decision	<ul style="list-style-type: none"> • That MBCA had to join the queue of other creditors and could only treat it as a bad debt if all this had been exhausted.
	<ul style="list-style-type: none"> • That the Special Court correctly interpreted s 16 (1) (r) ARW s 26 of the ITA. • That the Special Court considered each borrower's debt and correctly held that the security for each debt did not prove that the debts were unrecoverable. • That the court correctly dismissed MBCA Bank's appeal.

Decision Impact

The 1% limit enunciated under s16 (1) (r) cannot be avoided by classifying administration, management and fees as for specific services for the period prior to 1 January 2017. From 1 January 2017 the law was amended to remove the term “general” thereby removing the interpretation ambiguity as reflected in this case. As for the bad debts, it is clear that bad debts should only be allowed if all the conditions in s 15 (2) (g) are met. This entails the undertaking of certain steps by the creditors among them sending reminders and invoking security provisions before the debt can be regarded as irrecoverable.



3. Technical interpretation

Analysis 2022 Revenue proposals

Background

The 2022 Finance Bill was published on the 25th of November 2021 where the Minister of Finance and Economic development presented the National Budget for the year 2022. There were many proposed tax updates, and below is a summary of the major issues taxpayers are to watch out for.

The law and interpretation

Title	Measures	Decision Impact
Donation limit	<ul style="list-style-type: none"> • Limit on donation for the health sector set at USD100 000 and this will be converted to ZWL at the auction rate on the date of donation. 	<ul style="list-style-type: none"> • Use of auction rate at date of donation creates room for inflationary time difference
New Tax Credit	<ul style="list-style-type: none"> • Credit created for hiring physically challenged persons. • Set at USD50 (or the ZWL equivalent) /employee/ month. • Up to a maximum of USD2250 (or the ZWL equivalent.) /year. 	<ul style="list-style-type: none"> • Value is too little to incentivise large entities to employ physically challenge people.
	<ul style="list-style-type: none"> • The regularization of the current SIA claiming practice for the period 1 January 2014 going forward as the allowance had elapsed 31 December 2013 	<ul style="list-style-type: none"> • Necessary to prevent assessments by ZIMRA against those who incorrectly claimed SIA for the period after 31 December 2013

Title	Measures	Decision Impact
Deemed income on contracts	<ul style="list-style-type: none"> Income for a contract signed virtually when one of the parties is ordinarily resident in Zimbabwe deemed from a source within Zimbabwe. 	<ul style="list-style-type: none"> Contracts signed virtually with the government may be easy to track whilst other contracts may be difficult to tax.
Foreign currency thresholds	<ul style="list-style-type: none"> Thresholds of tax credits, exemptions, deductions and other prescribed values pegged in foreign currency. 	<ul style="list-style-type: none"> This will ease administration
Tax invoices	<ul style="list-style-type: none"> The definition of tax invoice is revised to a fiscal tax invoice produced and printed by a fiscalised electronic register. This is with effect from 1 January 2021. Tax invoices before 31 December 2021 to be claimed before 31 March 2022. 	<ul style="list-style-type: none"> The effect is to disallow input tax claims in respect of invoices issued by non-fiscalised operators. This may force companies to want to deal with compliant registered operators so as not to lose the benefit of input tax claims.
Fiscalisation	<ul style="list-style-type: none"> Taxpayers not compliant with the requirement to fiscalise will not be issued with a tax clearance certificate. The device should be interfaced with the ZIMRA server for one to be considered fiscalised. Only fiscalised tax invoices will be used for input tax claims. 	<ul style="list-style-type: none"> Compulsory fiscalisation thereby enhancing revenue collection. Failure to fiscalise may result in loss of business as more and more people sham away from non-fiscalised and interfaced suppliers. The reason being that dealing with non-fiscalised operator who charges will increase cost of doing business to them as they will not be able to recover input tax.
Airtime and data	<ul style="list-style-type: none"> The definition of an advantage is expanded to include 30% of the value of airtime and data granted to employees. 	<ul style="list-style-type: none"> This eases the administration burden of proving on part of businesses and also promoting working from home
Tax tables ZWL	<ul style="list-style-type: none"> Employment tax tax-free threshold revised to of ZWL\$25,000 per month and threshold for top rate of 40% starts from ZWL500 000 per month. : 	<ul style="list-style-type: none"> This is an adjustment in line with inflation. At both parallel and official rate the ZWL\$ rates are competitive over USD table but the benefit will erode with inflation.
Tax tables USD	<ul style="list-style-type: none"> The Minister has revised tax free threshold upwards from USD70 per month to USD100. The Minister used the word "received" excluding accruals. 	<ul style="list-style-type: none"> Despite the revision the tax free threshold in USD terms remains loss post 2019 (minimum threshold was USD300 then) and in the region thereby making the

Tax tables USD		Zimbabwean low income earners bearing a heavy tax burden now compared to period prior to 2019 and the region.
Bonus	<ul style="list-style-type: none"> Bonus tax free amount -ZWL100000 and USD700 from November 2021. 	<ul style="list-style-type: none"> Taxpayers to take note of these
Non-executive directors fees	<ul style="list-style-type: none"> Remuneration liable to non-executive directors' fees is exempt from employees' tax. 	<ul style="list-style-type: none"> The change brings about certainty by ensuring that fees payable to the NED are subject to 20% withholding tax whilst remuneration items will be subject to PAYE. This brings about discord to corporate governance and possible tax barrage as directors could want
Withholding tax on contract	<ul style="list-style-type: none"> The rate of withholding tax on contracts is increased from 10% to 30% with effect from 1 January 2021 whilst minimum threshold on which tax clearance would not apply is would pegged at ZWL\$120,000 and USD1000 effective 1 January 2022. 	<ul style="list-style-type: none"> The backdating of the 30% rate means taxpayers that had no ITF 263s may incur 20% additional tax. The increase rate will force compliance with the tax laws as this affect both local purchases and imports. The tax clearance will therefore form ley requirement in awarding of tenders as more and more people will reject dealing with people with no tax clearances. This rate may also force some consultants to reassess whether should be employees
Airtime benefit	<ul style="list-style-type: none"> 30% of airtime and data given considered a taxable benefit whilst 70% is considered expended on employer business. 	<ul style="list-style-type: none"> The amendment is in response to the impact of covid-19 resulting in people working from home
Retrenchment package	<ul style="list-style-type: none"> Exemption of retrenchment package reviewed to the greater of ZWL400 000 or 1/3 of the retrenchment package, but capped to a third of ZWL2 million starting 1 November 2021. 	<ul style="list-style-type: none"> The revision is in recognition of loss of value through inflation. At unofficial rate the Minister is granting a minimum exemption of USD2 000 and USD10 000 yet the actual gazetted USD exemptions are minimum of USD3 200 and USD5 0333.33, respectively. The currency of retrenchment package should be considered for now in the negotiation with employers.

<p>Immigrant rebate</p>	<ul style="list-style-type: none"> • The immigrants rebate on motor vehicle to be replaced by the suspension of duty and the benefit will be granted only to vehicles purchased at least six months prior to arrival. Maximum value of the motor vehicle that benefits under the scheme to be pegged at US\$ 40 000; · In the event of change of residential address, a person granted Rebate of Duty should notify the Commissioner within a period of fourteen days. · Any person who has been granted Rebate of Duty should report to the nearest customs office once a year, failure of which full duty waived at the time of importation becomes due and payable; and, · Any person who contravenes the rebate conditions shall be guilty of an offense and liable to a fine not exceeding level seven or imprisonment for a period not exceeding twelve months or both fine and imprisonment. 	<ul style="list-style-type: none"> • The new conditions especially the six month period is likely result in huge reduction in incidences of abuse of rebate as no one will be will to tie up money for six months. Meanwhile those who genuinely qualify for the rebate may also lose out particularly where there is a sudden loss of employment contract or unseen events resulting in them having to return to Zimbabwe at short notice.
<p>Withholding tax rate for listed marketable securities</p>	<ul style="list-style-type: none"> • Final withholding taxes on listed marketable securities are reviewed as follows: Increased from 1% to 1.5% for shares held for a minimum period of months. Increased from 1% to 2 % for shares held for less than 6 months 	<ul style="list-style-type: none"> • This an indication of the government promoting long term direct investment but the increase in the rate may scare away investors.
<p>Capital gains tax rate</p>	<ul style="list-style-type: none"> • With effect from 22nd of February 2019 the minister proposes 5% and 25% of gross capital amount for assets acquired before this date and sold thereafter in ZWL and USD, respectively. • Meanwhile for assets acquired on 22nd of February 2019 and sold thereafter he is proposing 20% of gross capital amount for ZWL disposal and 20% of the capital gain for foreign currency disposal. 	<ul style="list-style-type: none"> • The Minister is increasing CGT on foreign currency disposal from 5% of capital gain to 25% on gross capital amount thereby appearing to penalise disposals in foreign currency. He also appears to have disregarded exemption that may be provided in terms of s 10 of Capital Gains Tax Act by requiring that the tax is computed on gross capital amount. We also do not understand the logic of imposing 20% on gross capital amount for disposals in ZWL We are of the view that there may be drafting errors in the Finance Bill as these new proposals lack logic and will eventually be corrected by the Finance Act replacing the bill.



4. Announcement and Interpretations

Auto generation of the 2022 tax clearance

Background

As per public notice 111 of 2021, 2022 tax clearances will be auto-generated by the ZIMRA system for compliant clients and sent through email addresses held in the ZIMRA database. Compliant taxpayers are those with up to date tax payments and returns. Additional requirement for VAT registered operators is that they must be fiscalised and having their gadgets interfaced with the ZIMRA server

Decision impact

Non-compliant taxpayers will have difficulties securing their tax clearances which may cause them to face 30% withholding tax on their payments which the government is proposing through its 2022 national budget. They may wish to engage expert advice in order assist them with their compliance.

Deadline Extension for renewal of Clearing Agents Licenses for 2022

Background

The ZIMRA through Public Notice 106 of 2021 advised remaining registered Customs Clearing Agents that applications for the Agents Bond license renewal for the year 2022 which must be done on e-Form No. 64 has been extended from 31st October 2021 to 30th November 2021.

Decision Impact

Although the deadline passes, all agents should make sure they have renewed their licenses as soon as is possible.

Falsification of Forex Declarations

Background

The Zimbabwe Revenue Authority, ZIMRA) has noted with concern that there are traders who are falsifying their financial records. ZIMRA is therefore, urging all traders to come forth and make voluntary disclosures of all under declared or non-payment of tax by 31 December 2021 to avoid vigorous audits, prosecution and penalties that will be instituted soon after the deadline. Taxpayers are encouraged to take advantage of this window by making voluntary disclosures and payment thereafter. (Public Notice 114 of 2021).

Decision Impact

Falsifying financial records is a criminal offence and all perpetrators of such acts should take advantage of the ZIMRA's call for voluntary disclosures.



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6. Disclaimer Clauses

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