



MONTHLY TAX UPDATE

NOVEMBER 2022

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We are honoured to present our November 2022 Monthly Tax Update ("MTU") which is designed to keep businesses and individuals informed of the latest tax issues and 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 with 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:

- The revised Finance Bill, what is new
- New Tariff Codes
- Proper procedure to challenge Income Tax assessments after Objection
- The proposed increase in VAT rate what does this mean
- How to prepare a tax computation for 2022 year of assessment
- Rebasing of tax debts and 200% interest double tragedy
- Employment tax return (IFT16) 2022
- Payment of duty in foreign currency for designated goods
- Public Notice 68 of 2022: Creation of FOREX Business partner number



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1. Matrix Group News!

Unpacking Tax
Developments
2023 Seminar

18th of January 2023

SAVE THE DATE!!!



2. New Legislative Provisions

2.1 The revised Finance Bill, what is new

A few changes as follows have been made to the Finance Bill submitted for discussion by the House of Assembly:

VAT on motor vehicles and good or services sold by auctioneers: There was an attempt to fix in the Charging Act a 15% VAT rate on motor vehicles sold by persons who are not motor dealers etc. in the earlier Finance Bill. In the process, the Minister inadvertently removed the rate chargeable to goods and services sold through an auctioneer (as defined in section fifty-six (6)) by persons who are not registered operators. The recent published Finance Bill has corrected the error by removing the 15% rate on the on supply of motor vehicles as aforesaid and fixing the 15% rate for the latter.

Rebasing restricted to ITVs as at 1 January 2023: There was intention in the Budget Statement to uplift Income Tax Values not yet claimed by 31st of December 2022 where the capital expenditure was incurred in foreign currency to enable businesses other than mining operators to recover more capital allowances. The uplifting for conversion into ZWL\$ to be done using the RBZ auction rate prevailing on the 1st January, 2023. The rebasing would then be happening every year thereafter. This provision has been incorporated in the recent Finance Bill with the exception of the rebasing "every year thereafter". Meanwhile the provision has missed the word "be" in the statement that reads in part: ".... any such unredeemed balance shall be rebased to the local currency equivalent of the outstanding foreign currency invoice value using the Reserve Bank auction rate prevailing on the 1st January, 2023.". Underlining our own emphasis.

Provision on rebasing of tax debts refined: The Budget Statement made a proposal for the rebasing of outstanding ZWL\$ tax debts to their foreign currency equivalent on the date the debt is due and then convert to the ZWL\$ using prevailing exchange rate on date of settlement so as to retain their value to the fiscus. The proposing is adopted in the Finance Bill but further added that if a lower ZWL\$ amount on the date of tax settlement compared to the original ZWL\$ nominal amount, the nominal amount will be payable. In addition, the rebasing is to apply as well to all tax debts outstanding on the 31st December, 2022.

Conversion rates to be applied for purposes of separate income tax returns: Section 37AA of the Income Tax Act is to be amended to provide for the election between average auction rate during the year of assessment and the spot rate of exchange prevailing on the date or dates of the transaction or expenditure during the year of assessment for purposes of conversion of allowances or deduction where there is need to convert them when computing income tax liability other than QPDs for the year. The spot rate is defined as follows: "A. in respect of the period from the 1st January to the 13th May, 2022, the auction rate of exchange of the Zimbabwe dollar to the United States dollars; and B. in respect of the period beginning on the 14th May, 2022, the interbank rate of exchange of the Zimbabwe dollar to the United States dollars; prevailing on the date of the transaction or any other event by reference to which that rate is to be applied;". The election to use auction or spot rate as aforesaid is binding and shall apply to all transactions and expenditures in the return for the year of assessment concerned. When computing the QPDs, the average auction rate for the quarter is to be applied.

2.2 New Tariff codes unveiled

The Minister of Finance and Economic Development has through Statutory Instrument 203 of 2022 published a new tariff hand book. The new SI has the effect repealing the current tariff handbook as published by Statutory Instrument 53 of 2017. The tariff codes are essential reference points regarding categorization of goods for purposes of importation, exportation and value added tax purposes etc.

Decision Impact

Taxpayers are required to familiarize with the new tariff code to avoid disqualification of goods for purposes of customs duty or value added tax purposes so as not to understatement or overpay these taxes. The tariff handbook can be distributed to you upon request.



3. Court Case

3.1 Proper procedure to challenge Income Tax assessments after Objection

Case name	JK Motors v ZIMRA HH762-22
Summary Facts	<ul style="list-style-type: none"> • JK Motors is a company that is registered according to the laws of Zimbabwe. • ZIMRA carried tax assessments on payments made by JK Motors during its trade. • JK Motors was against the assessments and made its complaints. • JK did an urgent Chamber Application to stop ZIMRA from garnishing them. • The application was dismissed with the court stating the matter was not urgent. • Matter was enrolled as an ordinary application for the determination. • It is JK Motors' contention that ZIMRA's assessment were wrong hence the current court case.
Jurisdiction	<ul style="list-style-type: none"> • Harare High Court, Harare
Issues	<ul style="list-style-type: none"> • That the assessments by ZIMRA were not proper and correct. • That the Application for a declaration by JK Motors is not right before the court.
Decision date	<ul style="list-style-type: none"> • 28 October 2022
Decision	<ul style="list-style-type: none"> • That the Application is proper before the court. • That the costs shall be in the cause.

The Facts

JK Motors is a company duly registered and operating as such according to the laws of Zimbabwe. ZIMRA made tax assessments for payment of tax by JK Motors and asserted that the company was in arrears and imposed penalties as a result of that. The company was not in agreement with the assessments from ZIMRA and made an objection to the Commissioner. JK went on to make an urgent court application against the assessments as a way of stopping the ZIMRA from garnisheeing them. However, the urgent application was dismissed on the basis that it was not an urgent matter. The case was struck off from the roll of urgent matters and re-admitted as an ordinary application for determination. Zimra asserted that the matter before the court was not correct before the judge and was supposed to have been presented to the Special Court of Income Tax Appeals first before it came forward to the High court. As an objection JK Motors argued that its application was right as they were requesting a declaration from the High court to dismiss ZIMRA's assessments. Hence the current court case.

Competing arguments

JK Motors (Taxpayer)	
Assessments were not proper and correct	<ul style="list-style-type: none"> • That the assessments from ZIMRA did not reflect the taxable income for which the assessments were made. • That it is unlawful for the respondent to issue out an assessment just for penalties. • That on that basis the assessments were unlawful and invalid. • That it is on that same note that they request the court to set aside the assessments.

That the application is not right before the court	<ul style="list-style-type: none"> • That it has made an application for a declaration from the high court dismissing ZIMRA's garnish order. • That the application for a declaratur was right before the court. • That it has an entitlement to seek a declaratur and consequential relief. • That the court was right in hearing this particular application.
ZIMRA	
Assessments were not proper and correct	<ul style="list-style-type: none"> • That the assessments were carried out as per the laws governing the authority. • That the assessments made on the company were right and were carried out in a manner supposed to be. • That the main objective of the assessments was to ascertain whether the company was tax compliant • That the company has a right to object against the assessments but not in the manner which the company did.
That the application is not right before the court	<ul style="list-style-type: none"> • That JK Motors' need for urgent application is not right before the court. • That the application to set aside assessments did not belong to the High court. • That the application belongs to the Special court of Income Tax Appeal. • That if assessments are set aside this would enable JK Motors to circumvent statutory procedure for the resolution of the tax disputes. • That JK Motors was supposed to first exhaust all domestic remedies by appealing to the Special Court of Income Tax Appeal.

Court reasoning and decision

That assessments were not proper and correct	<ul style="list-style-type: none"> • That a taxpayer who is aggrieved by “any assessment of the tax authority is entitled to lodge an objection against the assessment • The first step that a taxpayer who is aggrieved by "any assessment" of the tax authority is entitled to take in terms of the Act is to lodge an objection against the assessment • That Section 62 (1)(a) of the Income Tax Act deals with challenges done by way of objection to assessments which the taxpayer considers to be valid and not assessments which the taxpayer challenges on the basis that they are invalid or unlawful. • That an objection is an internal review mechanism for resolving disputes between taxpayer and tax authority in this case being ZIMRA. • That in the case of <i>Qingsham Investments (Pvt) Ltd v ZIMRA 17-HH-207</i>, the court said: “The applicant is obliged to exhaust domestic remedies by seeing the appeal process through.” • That the duty to exhaust all domestic remedies compels a person challenging the conduct of an administrative body to first exhaust all remedies available to them before approaching the High Court. • That an aggrieved taxpayer is not expected or required to pursue domestic remedies where the domestic remedies available are incapable of affording effective redress, are unfair, cause undue delay. • That an aggrieved taxpayer cannot be expected to exhaust domestic remedies where no remedy exists in terms of the legal framework available. • That in the case on <i>Nestle Zimbabwe (Pvt) Ltd v ZIMRA</i> the court also stated that, “Where there is no assessment, there can be no valid objection or appeal. If the appellant felt that there were no valid assessments, it should have approached the High Court seeking a declaratur to that effect”
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- That where a taxpayer cites that there is no proper assessment or that an assessment is unlawful and invalid, a taxpayer's recourse lies with the High Court for a declaration on its validity.
- That if the applicant's argument that there are no valid assessments is correct, the remedy of an appeal in terms of the Act is incapable of affording effective redress to it.
- That if the court invalidates the assessments, the assessments will have been deemed a nullity resulting in there being no proper assessments to relate to and without legal consequences rendering the need to set them aside nugatory.
- That the application was right before the court.
- That the respondent has been partly successful albeit for different reasons.

That the application is not right before the court

- That there must be good reason why a litigant cannot exhaust the domestic remedies available to him.
- That anyone who is aggrieved is not necessarily expected to pursue domestic remedies available, they cannot be expected to exhaust domestic remedies where no remedy exists in terms of the legal framework available.
- That the domestic remedies available in ss 62(1) (a) and 65(1) of the Income Tax Act are incapable of affording redress to a taxpayer who challenges the validity of an assessment.
- That a taxpayer aggrieved by the conduct of the tax authority in an assessment must first decide whether it considers that there was an assessment.
- That where a taxpayer is of the view that there is a valid assessment, it ought to take the objection route.
- That where the taxpayer challenges the existence of an assessment or its validity, it has no entitlement to lodge an objection and must approach the High Court for a declaratur from the outset.
- That even in a case where the taxpayer has lodged an objection and follows the appeal route, if a legal contention questioning the validity of the assessment and whether the assessments create an obligation to pay tax arises, these questions ought to be resolved first.
- That the best course to resolve a challenge to the validity of an assessment is a *declaratur*.
- That the facts of this case are distinguishable from those in *Delta Beverages v ZIMRA* [16-HH-378 where after an objection was determined, the taxpayer filed an urgent chamber application seeking to interdict recovery of taxes due pending an appeal it had noted.](#)
- That in that particular case the taxpayer challenged the legal standing of the respondent to carry out an assessment. The court took issue with what it termed attempts to prevent lawful recovery measures of the tax authority on an urgent basis.
- That in the event that the court invalidates the assessments, the assessments will have been deemed a nullity resulting in there being no proper assessments to relate to and without legal consequences rendering the need to set them aside of no value
- That the assessments are invalid
- That the Application is properly before the court
- That the costs shall be in the cause

Decision Impact:

Any taxpayer who is aggrieved by any assessment made upon him has to firstly make an objection in writing to the ZIMRA Commissioner. If the taxpayer is not pleased with the result, they should make an appeal to the Special Court for Income Tax Appeals from which if they are not satisfied with the result, they can take the appeal to the High Court, then to the Supreme court depending on the result. Where a taxpayer challenges the existence of an assessment or its validity, the law provides through legal precedence that the taxpayer has the right not to lodge an objection and approach the High Court in the first instance for a declaration from the outset.



4. Technical interpretation

4.1 The proposed increase in VAT rate what does this mean

Background

The Minister is proposing to revise the VAT rate from 14.5% to 15% with effect from 1 January 2023. This comes after 3 years following downward revision from 15% to current 14.5% on 1 January 2020.

The law and interpretation

The rate increase and time of supply rules

The change of VAT rate as aforesaid may result in the variation of time of supply rules particularly on pipeline or overlapping supplies namely; supplies initiated in the period before the change and concluded thereafter. The VAT Act defines the general time of supply in terms of 5 aspects namely the invoice date, payment date, date goods are removed in the case of movable goods, date possession or occupation taken in the case of immovable property and date services are rendered or performed, whichever is the earliest. Specific time of supply rules exist for certain supplies for instance those between connected persons, rental agreements, continuous supplies, hire purchase, finance leases etc. General and specific supply times may be varied in the event of VAT rate change as follows:

Supply	Examples	Time of Supply	How the transaction will be treated
Deposit or payment received	Goods/services not yet supplied.	The happening of any of the general time of supply rules	The old rate if the payment was received prior to 1 January 2022 unless the deposit is not applied as part of the consideration for the supply.
Instalment credit agreement	Hire purchase, finance lease etc.	When delivery or any payment of any part of the purchase price occurs.	The old rate if delivery or any payment is made before 1 January 2023 and 15% if these happen thereafter
Lay by agreement	Layby	The date of delivery of the goods to the purchaser	14.5% if the agreement was concluded or deposit was paid before 1 Jan 2023. If such a lay-by agreement is cancelled and any part of the amount paid to the seller is retained, the seller must declare output tax using the old rate.
Fixed property or real right	Sale of buildings, land other than farmland etc.	Registration in deeds registry or date any payment is made or date of agreement registration or payment has not been made	Rate applicable on the date of supply. If a "deposit" is paid and held in trust it will not trigger the time of supply until applied as consideration for the supply. <i>NB The VAT component is equal to the payment received as a proportion of total purchase price multiplied by applicable rate i.e., rate applying on the date of registration or first part payment.</i>
Rental agreement	e.g., short-term letting of movable or immovable goods	When a payment becomes due or is received, whichever occurs first	<p>If specific or general time of supply rule occurred before 1 January 2023, apply 14.5%.</p> <p>If by 1 Jan 2023 specific or general time of supply rule has not occurred but delivery or occupation has taken place, apply 14.5%.</p> <p>If none of the above rules occurred, apply 15%</p>

Continuous supplies	Contracts providing for regular payments e.g., construction, cleaning contract etc.	Earlier of the date of progress payment or invoice date.	Services performed before 1 Jan 2023, apply 14.5%. Services not performed 15% unless general supply of rules has occurred before 1 January
Service contracts	e.g., construction contracts, retainer agreement, a regular maintenance contract etc.	Earlier of the date of progress payment or invoice date.	If performance of services occurred before 1 January 2023, apply 14.5%. If performance of services has not taken place apply new rate unless general supply of rules has occurred before 1 January
Goods delivered or services performed before and after rate change	Operating lease, progressive or periodic supplies of the goods, construction contracts, or services excluding fixed property	Specific and general time of supply rules as stated above	Apportionment to be made on fair reasonable basis and treated as follows: 14.5% for that part which falls before 1 Jan 2023 and 15% for that part which falls after this date.

Other consideration

The VAT rate change will also require that businesses take critical decisions regarding the following matters:

Transaction	Transitional rules
Review of contracts	<ul style="list-style-type: none"> Relevant to certain industries (such as leasing) – documents need to be updated? Do existing contracts state prices on a VAT-exclusive or VAT-inclusive basis? Is engagement needed with suppliers or customers
Pricing	<ul style="list-style-type: none"> Business may need to assess the impact of the increase and whether the increase is capable of being transferred to its customers For business making exempt or other non-taxable supplies, the increased VAT may become a cost to the business.
System update	<ul style="list-style-type: none"> Adjustment will be required to effect new rate in the system for instance the fiscal devices and ERP systems must be adjustment in time to accommodate new rate
Suppliers' engagement	<ul style="list-style-type: none"> The business may need to engage with its suppliers before 1 January 2024 regarding the change and also clear un-invoiced work before the new rate comes into effect
Import guarantees	<ul style="list-style-type: none"> Engagement may be required with the ZIMRA regarding whether the deposit on import guarantee remains sufficient following the rate change
On two-month tax period (Dec & Jan)	<ul style="list-style-type: none"> Consideration should be made regarding splitting the sales in two categories December 2022 transactions (time of supply is Dec 2022 or before) apply old rate January 2023 transactions (time of supply is after 31 Dec 2022), apply new rate
Credit/debit notes	<ul style="list-style-type: none"> Apply rate applicable on the date of original supply

Decision Impact

The increase in VAT rate has implications for businesses requiring that proper planning is undertaken to avoid cost of non-compliance and of doing business. Internal engagement and those with stakeholders namely customers, suppliers etc. is required to manage the transition and the VAT liability going forward. Unlike the previous revision do wards, the ZIMRA will be more interested in seeing how the transition is being managed.

4.2 How to prepare a tax computation for year of assessment 2022

Background

Businesses trading in multicurrency are mandated in terms of the Finance Act 8 of 2022 to file a separate return in foreign currency with effect from 1 January 2022. The ratios of incomes in ZWL\$ and USD shall be used to allocated expenses and allowances between the two tax computations. Where there is a need for conversion of expenses and allowances, average auction and spot rates as mentioned in 2.1 above are applied. We envisage the following implications to businesses as consequence of this law:

The law and interpretation

Separate accounting systems for ZWL\$ and USD transactions

To facilitate separate return in foreign currency an accounting system that segregates foreign currency and ZWL\$ transactions is required. This is also implied in SI 185 of 2020 which requires separate fiscal device or register for transactions in foreign currency. Therefore, VAT registered operators should be capable of tracking foreign currency transactions separately.

Trial balance and tax computation

The split of expenses, allowances and incomes between separate tax returns may trigger the preparation of an extended trial balances as follows to facilitate correct tax computation:

Transaction	Original TBs		Ave. rate	Converted USD	Extended Trial Balance			
	ZWL\$	USD			Total	Split		
					ZWL\$	ZWL\$	Equiv of USD	Actual USD
Turnover	30,000	400	500	200,000	230,000	13%	87%	
Restated Turnover				-	-	30,000	200,000	400
Operating expenses				-	-			
Fuel	3,400	45	500	22,500	25,900	3,378.26	22,521.74	45.04
salaries and wages	15,000	130	500	65,000	80,000	10,434.78	69,565.22	139.13
IMTT	600	16	500	8,000	8,600	1,121.74	7,478.26	14.96
Admin costs	20,000	20	500	10,000	30,000	3,913.04	26,086.96	52.17
Net profit before	(9,000)	189		94,500	85,500	11,152	74,348	149
Tax computation to be based on 7th and 9th columns								
You can either convert into USD or ZWL%								

The above template is based on our understanding of the law and persons who maintain separate books in foreign and ZWL\$. If one set of books was maintained, the template starts from the column named Total (column). The one set of books should nevertheless have been prepared by converting transactions in other currencies using spot rate (see 2.1 above regarding cases where spot rate is applied)) to the reporting currency.

Prior year balances

The ZIMRA through its public notice 75 (explained in full below) has mentioned that balances brought forward from prior year such trading stock, assessed losses, income tax values etc., are not to be split between two assessments but are deducted or added to ZWL\$ assessment. The ZIMRA public notices are not binding on 75 (taxpayers as fully explained under s 34D of Revenue Authority Act which defines what constitutes an advanced ruling.

Adjustment for yearly movement

There are adjustments such as provisions e.g., for leave pay, bonus etc., foreign exchange movement which as matter of practice are eliminated from the tax computation by either adding back/deducting opening balance and deducting/adding closing balances.

Decision Impact

Taxpayer should take note of the above administrative steps so as to comply the requirements to file a separate return in foreign currency. If in the event one had kept one set of books in 2022, it may be appropriate to elect to use the spot rate so as to dispense with requirement of keeping separate books backdated to 1 January 2022.

4.3 Rebasing of tax debts and 200% interest rate a double tragedy

Background

It is being proposed that all ZWL\$ outstanding tax debts are to be converted to the foreign currency equivalent at the time the debt is incurred, and payment will be made in ZWL\$ using the prevailing inter-bank exchange rate at the time of payment. If the original nominal value turns out to be more than the rebased amount, the fiscus will seek to be paid the original nominal debt. Meanwhile, the Budget Statement indicated the intention to raise the interest rate on late paid taxes to the bank rate policy (currently standing at 200% p.a.). The interest rate on tax arrears and refunds in foreign currency has not been mentioned as being up for a review.

The law and interpretation

The rebasing of ZW\$ tax debts ensures there is retention of value to the fiscus. Whilst non-compliance with tax laws cannot be condemned, the rebasing of tax debts and levying on the same interest rate as high as 200% interest rate appears a huge punishment for taxpayers. Meanwhile, the fixing of interest rate on tax arrears and refunds is within the powers of the Minister through a Statutory Instrument and hence the reason there no mention of this in the circulated the Finance Bill. Therefore, if the Minister successfully fix the contemplated policy on interest rate there will be double tragedy for the business community. The Finance Bill is silent about preservation of value of tax refunds. Some businesses are owed a lot of monies by the ZIMRA because of the onerous administration requirements for to effect refunds to the extend this is now crippling the operations of such businesses. We feel the same measures should be applied to outstanding refunds to taxpayers from the ZIMRA as this will result in a notional gain to the ZIMRA.

Decision Impact

Taxpayers are urged to comply with tax laws in order to avoid huge penalties as aforesaid. For the government the effect of stiff penalty regime is to scare away investment, promote tax evasion, among other adverse consequences. All these may stifle economic growth. An appropriate balance is thus required if the government is to continue to receive sanctionable tax revenues from the same taxpayers and from new investments. Therefore, the Minister needs to reconsider the intended policy on interest rate especially on tax debts that the subject of rebasing. If the rebasing as aforesaid implies the tax debt has been equated to the foreign currency equivalent. For this reason, the disparity between the intended bank rate policy and the 10% interest on foreign currency dents needs to be looked into. In addition, the Minister should also consider rebasing tax refunds in order tax administration and maintenance of value of refunds by the business community.

4.4 Employment tax return (ITF16) 2022

Law and Interpretation

Employers are required in respect of each year of assessment to furnish the Commissioner with an ITF 16 within 30 days of end of the year of assessment. The ITF 16 is a summary of all employees' remuneration, deductions, credits, and taxes paid or applied during the tax year or part of it. According to Finance Act 8 of 2022 there are two periods in 2022

but only year of assessment running from 1 January to 31 December 2022. Therefore, one ITF 16 return will have to be filed for 2022 year of assessment but the two periods represented in that one return. This return is due 30th of January 2022 and failure to file it within 181 days of due date attracts a civil penalty of USD30 per day, converted to ZWL\$ using the prevailing interbank rate on date of settlement and beyond 181 days the employer is liable for prosecution.

Decision Impact

The submission of return present practical challenges in joining the two tax periods in one return and correct computation of any tax overs or unders when closing the 2022 Final Deduction System (FDS). The challenge emanates from the fact for the period 1 January to August 2022 PAYE computation was based on tax tables which were for the full year to 31 December 2022. Taxpayers should consider closing each period separately based on the recomputed 7 months tax tables for the period 1 January to 31 August 2022 and the 5 months enacted tax table for 1 August to 31 December 2022. After which it should join the two together whereupon underpayment and overpayment will then be appropriately adjusted.



5. Announcement and Interpretations

5.1 Public Notice 73 of 2022; Payment of duty in foreign currency for designated goods

The Zimbabwe Revenue Authority (ZIMRA) wishes to advise all valued clients that it has amended its customs and excise laws to give importers of non-designated goods (whose duties are ordinarily payable in local currency) an option to pay duty in foreign currency. Clearance of consignments of non-designated goods for which importers opt to pay duty in foreign currency shall be done through lodgment of manual bills of entry and the following procedure shall be adopted; (1) The importer or clearing agent shall apply to the Shift Manager/Station Manager to lodge a manual bill of entry and (2) When authority to lodge the manual bill of entry has been granted, the importer or clearing agent shall submit the manual bill of entry and supporting documents for processing in the usual manner.

Decision Impact

The introduction of payment of duty in foreign currency will permit to the claim of VAT also in foreign currency. This may turn out to be a huge relief for taxpayers who have not been able to reclaim their VAT from ZIMRA on time as a consequence losing value on the ZWL\$ outstanding refunds. The Customs and Excise Act has in some cases defined duty as including VAT paid on imputation of goods.

5.2 Public Notice: 75 of 2022: Creation of Forex Business Partner Numbers

The Zimbabwe Revenue Authority (ZIMRA) wishes to advise its valued taxpayers that Finance Act No. 8 of 2022 inserted Section 37AA to the Income Tax Act [Chapter 23:06] which provides for the submission of separate tax returns where any part of income from trade or investment is earned in foreign currency. Considering the above requirement ZIMRA advises as follows; ZIMRA has introduced a separate business partner (BP) number that will be used for processing of forex returns. The forex BP number will have the same contract accounts that the taxpayer is registered under the ZWL BP number. Taxpayers will be expected to submit all the forex returns and make forex tax payments through this new forex BP and applicable contract account number. The ZWL BP number will remain in use for the submission of ZWL returns and the tax payments thereof. The Authority has automatically created the forex BP numbers and respective contract accounts for taxpayers with ZWL BP numbers and these will be emailed, by respective Regional Managers, to taxpayers using email addresses already captured in the ZIMRA master data. Taxpayers who do not have a ZWL BP number should follow the normal BP registration process. The effective date for submission of two separate returns, where tax is payable in both local and foreign currency, are as follows: 1 January 2022 for the year of assessment ending 31 December 2022 for income tax and 1 December 2022 for all the other tax heads. In computing provisional tax payable on QPDs, taxpayers should apply the quarterly average auction rate of exchange to convert allowable expenditure to either local or foreign currency. Balances brought forward from the 2021 year of assessment (e.g., trading stock, income tax values of assets, assessed losses) should be claimed against local currency income except where the Commissioner has approved otherwise.

Decision Impact

The fact that the ZIMRA want the 2022 opening tax balances treated and reported under ZWL\$ return this will either disadvantage or give advantage to some taxpayers. This may also create a scenario a taxpayer can have ZWL\$ assessed loss and USD taxable income, or vice versa at the same time. We mentioned above that public notices are not advanced rulings.



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