



MONTHLY TAX UPDATE

OCTOBER 2022

Contact Details

c. +263 775 911 383
e. info@taxmatrix.co.zw
a. 14185 Gunhill Ave, Gunhill, Harare

Contents

October 2022 MTU.....	2
1.Matrix Group News!.....	3
1.1A preview of the annual Matrix Tax School Summer School.....	3
2New Legislative Provisions.....	4
2.1Finance Act No.8 of 2022 highlights.....	4
2.2Import license for importation of fertilizers.....	5
2.3Payment of Royalties in kind: Statutory Instrument 189/22.....	5
3Court Case.....	7
4Technical interpretation.....	10
4.1VAT implications on group management fees.....	10
4.2Effect of two periods in one year of assessment.....	10
4.3Keeping Books in Foreign Currency; A requisite for the taxpayers.....	10
5Announcements and Interpretations.....	12
5.1Tax clearance season is here!!!.....	12
5.2Public notice 68 of 2022: Creation of FOREX Business Partner Numbers.....	12
6Our key personnel.....	13
7Disclaimer Clauses.....	14

October 2022 MTU

We are honoured to present our October 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:

- A preview of Matrix Tax School Summer School
- Finance Act 8 of 2022 highlights
- Court Case; The right to equality and non-discrimination
- VAT Implications on group management fees
- Effects of 2 periods in one year of assessment
- Keeping Books in Foreign Currency: A requisite for the taxman
- Tax Clearance Season is here!!!
- Public Notice 68 of 2022: Creation of FOREX Business partner number



Marvellous Tapera
Chief Executive officer



Keamuhetsoe Masiane
Tax Research Assistant



Rosewinter Manjowe CA(Z)
Head of Business Operations



1. Matrix Group News!

1.1 A preview of the annual Matrix Tax School Summer School

MTS's Annual Summer school was held from the 20th to the 22nd of October 2022 at Inyanga. This brought together Tax Consultants, Accountants, Industry key personnel, ZIMRA, PAAB and the Business Community. This year's conference was held over a period of two days, with the first day hosting discussions in the breadth, depth, and extent of IMTT, Demystifying the new laws on income tax and foreign currency, Taxpayer's clinic. The second day hosted the following topics: VAT compliance in multicurrency system, midterm fiscal policy-a stimulating tax scrutiny and a call for taxpayer's inputs as well as Demystifying the Gold Coins and the tax implications involved therein. The summer school was a success, and the institution will love to express its gratitude to everyone who took time out of their busy schedules to be in attendance and to thank everyone who was not able to be in attendance but contributed to making this year's summer school a success.



2. New Legislative Provisions

2.1 Finance Act No.8 of 2022 highlights

The Finance Act No. 8 of 2022 was gazetted on the 24th of October 2022.

1. The following areas are for noting as well as highlights from the Act.

- Most of the provisions in the Finance Act do not have date of effect. In the absence of an effective date, the Constitution of Zimbabwe Amendment (No.20) Act 2013 under s132 provides that an Act of Parliament will come into operation at the beginning of the day on which it is published in the Government Gazette. In the case of Finance Act No. 8, this was published on 24 October 2022, and this becomes the effective where the Act is silent.
- The Act has a table of prescribed Zimbabwean dollar values which refers to proposed monetary values. We least expected the Finance Act to contain words such as "proposed" since the Act is a law in itself. This could project the fact that it's not a final position.
- The Finance Act clause number 20 which intended to repeal the previous section 36 has the words, "*payment of tax pending decision on objection and appeal*", which according to our view is not clear.

2. We provide a summary of the Act as follows:

- **Payment of certain taxes in foreign currency:** The Finance Act provides for separation of tax returns for foreign currency transactions with effect from the year of assessment beginning 1 January 2022.
- **Definition of assessment:** The definition of assessment has been expanded to include self-assessment which was previously excluded.
- **The revision of the 30% withholding tax on local contracts:** Threshold on which withholding tax applies has been revised to an aggregate of ZWL\$500,000 from ZWL130,000 per annum and the USD threshold remain on USD1,000 with effect from 1 January 2022.
- **Withholding tax on importations:** There is a revision of the presumptive tax from 10% to 20% of the value for duty purpose. This is with effect from 24 October 2022.
- **Intermediated Money Transfer Tax:** The definition of financial institution is amended to incorporate money transfer agent services. The transfer value exempt from IMTT is reduced from USD10 to USD5 for USD transactions and the ZWL\$ threshold has been reviewed upwards from ZWL\$1,000 to ZWL\$2,500. The maximum tax payable per transaction is reviewed upwards to ZWL\$3,300,000 on transactions with values exceeding ZWL\$165 million and US\$20,000 on transactions with values exceeding US\$500,000.
- **IMTT deductibility:** IMTT is disallowed for income tax purposes. The previous law had quoted the wrong section (s 22G of the ITA instead of s 36G), the Finance Act has corrected the error.
- **Automated financial transactions tax [on cash withdrawals]:** The Finance Act has confirmed and amended the recently gazetted SI 96/22 which provided for 5 ZW cents for a ZWL withdrawal of more than ZWL\$ 1,000 as well as 5 US cents for a withdrawal of US\$ 1,000 or less. It has also reviewed downwards the rate on USD cash withdrawals exceeding USD1,000 from 2% to 1%.
- **Resident shareholders:** Excessive management fees payable to any resident affiliated company to be deemed dividend subject to 15% withholding tax. Excessive fees are those that exceed 1% of the paying entity's total expenditures.
- **ZWL\$ PAYE tables:** With effect from 1 August 2022, a monthly salary of ZWL\$ 75,000 will be tax-free and a monthly salary of ZWL\$ 1,000,000 will be taxed at the highest rate of 40%. *There was no change to the tax threshold or bands for incomes in US dollars.*
- **Year of assessment for employment tax:** The Act provides for 2 periods in the 2022 year of assessment. The first period runs from 1 Jan 2022 to 31 July 2022 and the second period runs from 1 Aug 2022 to 31 Dec 2022. Two periods as opposed to two years of assessment implies only one ITF16 is required.
- **Bonus Tax Free Threshold:** Now ZWL\$500,000 from ZWL\$100,000 effective 1 November 2022.

- **Claiming of Input Tax:** The law that gives the Commissioner discretion to allow claiming of input tax on tax invoices that have prescribed (older than 12 months) is repealed with effect from 24 October 2022.
- **Payment of VAT in Foreign Currency:** Electronic currency has been included as a legal tender for VAT purposes in line with the provisions of the Reserve Bank Act with effect from 1 February 2019.
- **Capital Gain Withholding tax:** In the case of a sale of a listed marketable security, withholding tax of 40% of capital amount to apply if the security is sold or disposed of within 180 days of its acquisition.
- **Capital Gain Tax:** In the case of a sale of a listed marketable security, capital gains tax of 40% of capital gains to apply if the security is sold or disposed of within 180 days of its acquisition
- **Capital Gains Tax Act:** Revised to deem non-transfer of ownership of the specified asset until CGT clearance certificate is issued by ZIMRA. Furthermore, no court of law shall take judicial notice of any such purported acquisition of a specified asset on which such tax is payable until the CGT certificate has been issued by the ZIMRA.
- **Exchange Control:** Transacting in foreign currency has been permitted for the National Development Period (NDS) period from 1 Jan 2021 to Dec 2025. Any person who borrows foreign currency or receives credit from a financial institution must repay the loan back in the foreign currency. Furthermore, persons found selling goods or services at a rate above 10% of the current RBZ interbank rate are to be penalised.
- **Sharing of information between Government Departments:** The CG may request for information on non-residents with work permits between ZIMRA and Department of Immigration and shall be given.
- **Export Tax on Un-Beneficiated Platinum:** The government suspends export tax on exports of matte.
- **Mines and Minerals: Royalty rates:** The mining royalty rate for platinum and lithium is 7% with effect from 1 January 2023.

2.2 Import license for importation of fertilizers

Statutory Instrument 185/2022 has excluded fertilizers, packaging materials and plastic polymers from the list of goods that fall under products which qualify for the open general import license. The tariff code for the said fertilizers have been amended through Statutory Instrument 186/2022 as follows:

Product Description	Tariff Code
Fertilizer and Fertilizer Products; Urea	3102:1000
Ammonium Nitrate	3102:3000
Compounds and Blends	31 05:2000
CAN and LAN	31 02:6000
Single Superphosphate	3103:1000

Decision Impact

Statutory Instrument 122 of 2017 provides the procedure for applying for the import license. This is done through a letter addressed to the Permanent Secretary for Industry and Commerce.

2.3 Payment of Royalties in kind: Statutory Instrument 189/22

Presidential Powers (Temporary Measures) (Amendment of Reserve Bank of Zimbabwe Act and Finance Act) Regulations, 2022 has through SI189/22 amended section 37A of the Finance Act. Royalties remitted to the ZIMRA shall be paid 50% in kind in the form of the mineral concerned. The SI has not given the form, purity and quality of the minerals which as may be prescribed by the Bank by notice in a statutory instrument. The Commissioner General has however been given the right to prescribe a substitution to the form, purity, and quantity of the mineral to settle the 50% royalty. The Commissioner General will only be able to do this substitution after six months of the initial Bank SI mentioned above.

The remainder of the royalty will be paid 10% in foreign currency and 40% in Zimbabwean Dollars. For the Minerals not listed under reserves against domestic and international obligations, they shall be paid half in foreign currency and half in Zimbabwe Dollars. Diamonds, platinum and lithium and any other precious stone or valuable metal specified by the Bank in a form, purity or of a quality or of a kind specified by the bank by notice in a statutory instrument is now inclusive in the list of internationally recognized reserve assets.

Decision Impact:

The taxpayers to include as part of their production quantities, minerals that will go as royalty paid in kind. This may release cashflow pressures.



3. Court Case

The right to equality and non-discrimination

Case name	IPOMEA Enterprises (Pvt) Ltd v ZIMRA HH701-22
Summary Facts	<ul style="list-style-type: none"> • IPOMEA (Pvt) Ltd is a logistics company that hires out its tankers for transporting of clients' consignments. • ZIMRA seized IPOMEA's trucks after being found fully laden with fuel instead of crude degummed soya bean oil as per declaration on customs clearing. • Taxpayer refuted it was not involved in the whole consignment but rather was just employed to transport and that ZIMRA should have not forfeited its trucks but should have penalized them like how it has done before to other logistics companies. • IPOMEA alludes to the fact that they tried to communicate in writing to ZIMRA. • It was not pleased by the decision of the ZIMRA hence the current court case.
Jurisdiction	<ul style="list-style-type: none"> • Harare High Court, Harare
Issues	<ul style="list-style-type: none"> • Prescription of application • Whether intention to sue was issued. • Contravention of the right to equality and non-discrimination
Decision date	<ul style="list-style-type: none"> • 11 October 2022
Decision	<ul style="list-style-type: none"> • That the order is granted • That ZIMRA release the tankers in its possession • That each party bear its own costs

The Facts

IPomea is a Logistics company duly registered according to the laws of Zimbabwe. Sometime in 2020 one energy company hired it to transport a consignment from Mozambique to Zimbabwe. Unfortunately for Ipomea, the trucks were seized by ZIMRA for having declared a wrong consignment. Instead of the declared crude degummed soya bean oil, the tankers were fully laden with fuel. The energy company then notifies IPomea of the situation and assured the company that they were going to deal with the issue. IPomea then proceeded to issue a letter to the ZIMRA through its lawyers to exclude themselves from the activities done by the energy company. It is Ipomea's contention that it was not to blame but ZIMRA was of a different view on that, stating that it oversaw the consignment since it was not accompanied by the energy company and refused to release the tankers advising it to appeal to the Commissioner on that decision. The appeal was declined and IPomea was advised to approach the courts for redress. Hence the current court case.

Competing arguments

ZIMRA	
Prescription of Application	<ul style="list-style-type: none"> • That IPOMEA failed to comply with s196(1) & s193(12) of the Customs Act. • That no proceedings shall be instituted against the state/ZIMRA for anything relating to the Customs and Excise Act until 60 days after notice has been given. • That with this case, the prescriptive period was 3 months from the date of seizure. • That the prescriptive period is from the date of issue, as this was not done, the application should fail. • That IPOMEA had to first exhaust domestic remedies before approaching the court.
Whether intention to sue was issued	<ul style="list-style-type: none"> • That the precedence stated by IPOMEA where ZIMRA had previously fined other parties with tankers found heavy laden with illegal consignments were irrelevant to the issue at hand. • That in the examples given by IPOMEA where ZIMRA did not forfeit the vehicles was because fuel was offloaded in Zimbabwe and never went out of the country. • That the conditions imposed were payment of customs duty, payment of a fine calculated as a percentage of the customs duty, payment of fines. • That IPOMEA must deal with its own case and stop referring to matters that are not before this court and that the circumstances in all the cases referred to by IPOMEA are not relevant to this case and must not be used. • That it was not something that could be discussed, therefore needed to be dismissed
The Taxpayer	
Prescription of application	<ul style="list-style-type: none"> • That ZIMRA had advised the company that its plea had been dismissed by the Commissioner and they could proceed by way of an appeal with the courts. • That this application was right before the court.
Whether intention to sue was issued	<ul style="list-style-type: none"> • That a letter had been sent to ZIMRA as a notice to institute court proceedings. • That it is because of that, that the objections by the ZIMRA do not hold much water. • That IPOMEA's application is correct before the court.
The right to equality and non-discrimination	<ul style="list-style-type: none"> • That in some instances ZIMRA fined logistics companies whose tankers were found with illegal consignments. • That all persons in similar situations should not be treated differently. • That it should have been hit with the same penalty provided for in Customs and Excise Act and not forfeit the trucks and trailers.

Court reasoning and decision

Prescription of application	<ul style="list-style-type: none"> • That the cause of action arises from the time a final decision is made when one pursues an administrative body's internal remedies. • That IPOMEA's affidavit asserts that it had to exhaust all internal remedies before approaching this court. • That there is an apparent conflict between s 193 (12) and s 196 (2) of the Customs and Excise Act.
-----------------------------	--

<p>Prescription of Application</p>	<ul style="list-style-type: none"> • That had IPOMEA relied on s 196 of the Customs and Excise Act which reads “(2) <i>Subject to subsection (12) of section one hundred and ninety-three, any proceedings referred to in subsection (1) shall be brought within eight months after the cause thereof arose</i>”, to resist the prescription argument, the court would have readily come to the same conclusion that this application was instituted timeously. • That this argument commends itself and, on that basis, find no merit in the preliminary objection founded on prescription and dismiss it.
<p>Whether intention to sue was issued</p>	<ul style="list-style-type: none"> • That the court received evidence the intent to sue was handed over to the ZIMRA. • That the matter brought forth by the ZIMRA was not valid. • That letter presented by IPOMEA was self-explanatory as sufficient evidence. • That the court granted IPOMEA's request based on the letter received as evidence. • That there is clearly no merit in the preliminary objection
<p>The right to equality and non-discrimination</p>	<ul style="list-style-type: none"> • That IPOMEA was not aware that a false declaration had been made to ZIMRA • That the general principle of equal treatment before the law is that if an administrative official or entity elects to differentiate between persons in the same situation, he/she/it ought to justify such uneven treatment. • That the example given by IPOMEA has facts similar to the case at hand. • That there is no rationale for treating IPOMEA differently to the other cases. • That IPOMEA is justified in feeling that it has been the victim of unfair treatment. • That ZIMRA has not given a rational basis for the discrimination. • That forfeiture clause requires one to show that they were unaware that the vehicle would be used for smuggling goods liable to pay duty. • That no evidence IPOMEA was aware the agent would falsely declare to ZIMRA. • That there was no reason based in law for the forfeiture • That ZIMRA should unconditionally release IPOMEA's vehicles forfeited. • That each party to bear its costs.

Decision Impact

Taxpayers are advised to make sure that they cross check consignments in their tankers if hired by an external party. There is need to always make it a point in the tax community to tick all boxes to enable compliance with the revenue authorities.



4. Technical interpretation

4.1 VAT implications on group management fees

Value Added Tax is centred on the subject of “goods/services”. VAT is levied on transactions rather than directly on income and on an importation of goods and services. The issue with regards to the subject of management fees, raises the aspect of the benefit test, which seeks to inquire whether there were any services that have been rendered by the related party. Management fees payable for no services rendered are disallowed in terms of s 15 (2)(a) of the ITA. For VAT purposes before claiming input tax on these management fees, there are three questions that must be answered i.e., were the services acquired by the company for the purpose of consumption, use or supply in the course of making taxable supplies at all; (b) If so, were they acquired ‘wholly’ for that purpose; (c) If so acquired, but not wholly, to what extent they were acquired for such purpose. For input tax to be claimed there must be a direct or immediate link between that expense and a taxable supply made by that operator and that the ultimate purpose for incurring the expense is immaterial. If there were no services rendered in the production of taxable supplies, then no input tax shall be claimable on management fees expenses. There is really need to stress on the point that VAT is an indirect tax centred around consumption, charged on transactions. The company paying management fees will not be able to claim input tax if there were no services rendered.

Decision Impact

Taxpayers should prove that services were rendered so that they do not lose out on claiming input tax.

4.2 Effect of two periods in one year of assessment

The gazetted Finance Act No.8 of 2022 provided that the year of assessment beginning on the 1st of January 2022, in respect of the taxable income from employment of a person consists of two periods being - the seven-month period beginning on the 1st of January 2022 and ending on the 31st of July 2022; and the five-month period beginning on the 1st of August 2022 and ending on the 31st of December 2022. It also provided for another set of rates which will be applicable for the second period from 1 August to 31 December 2022.

Decision Impact:

The taxpayers are advised to take notice of the new law and submit one ITF16 within 30 days of end of year of assessment i.e., 30 days from 31 December 2022.

4.3 Keeping Books in Foreign Currency; A requisite for the taxpayers

There are new methodologies that have been brought forward by the New Finance Act. It has provided for the need to provide two returns respective of one’s currency of earnings. This has been one area of tax that seems to be shaking the taxpayers. Since the taxpayers will be required to share/submit a return in foreign currency, it is presumed that there will be need for the taxpayer to keep separate books in foreign currency as proof for their return that they will have rendered. This is also in line with the requirements for self-assessment that one does in line with the returns that they render in with the ZIMRA. This has an effect of encouraging parallel bookkeeping i.e., to say one set of accounts for accounting and another for the taxpayer. Accounting requires one to record on the day of transaction and choose the reporting currency. For taxpayers there is a requisite to keep your transactions in the currency in which they were transacted in.

Decision Impact

Administration burden will arise on business entities as they will have to maintain separate sets of accounts, one whereby there are tracking the USD transactions separately and another one where they comply with the standards for financial reporting.



5. Announcement and Interpretations

5.1 Tax clearance season is here!!!

The publishing of Public Notice 67 of 2022 has announced that tax clearance certificates for tax year 2023 will be auto generated by the ZIMRA system and sent to compliant taxpayers. This is giving hazards to the tax community to put their houses in order i.e., submit all tax returns and tax payments, update their master data as well as reconcile accounts. The Public Notice mentions that the tax clearance will only be shared through an email address in their database, meaning that if the email is no longer in use, the email will bounce back. There is need to update the master data forthwith. The Commissioner has also raised concerns of taxpayers declaring that they are not operating and upload NIL returns in the system for the purposes of getting ITF263 whilst they are still operational.

Decision Impact

The taxpayers are urged to always to make correct declarations as ZIMRA audit teams in the field to verify the correctness of such declarations.

5.2 Public notice 68 of 2022: Creation of FOREX Business Partner Numbers

The ZIMRA wishes to inform its valued taxpayers that considering the need to clearly separate and account for tax in ZWL and forex, ZIMRA has introduced a separate business partner number that will be used for processing forex returns. Taxpayers will be expected to submit all the forex returns and make forex tax payments through this new forex BP number. The ZWL BP number will remain in place for the ZWL returns and payments thereof. For the forex contract accounts, the effective date of registration is the date of first forex payment i.e., for all tax heads. The authority will split returns already submitted into ZWL and forex guided by the various declarations already submitted to ZIMRA.

Decision Impact

There is a possibility of administrative issues to loom, the question would also be What then will happen to the businesses solely trading in USD, what happens to the BP number. Suffice to mention that could be an extra burden on the taxpayers especially on bringing sense around the effective date of return which is the date of first forex payment i.e., it's a first forex payment to who by who? Is Customer to Taxpayer or Taxpayer to ZIMRA.?



7. Contact Us

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

Marvellous Tapera

Chief Executive Officer
Matrix Group

+263 772349740

mtapera@taxmatrix.co.zw

Rosewinter Manjowe CA(Z)

Head of Business Operations
Matrix Tax School

+263 771 544 243

rosewinter@matrixtaxschool.co.zw

Tafadzwa Mhonde

Head of Business Operations,
Tax Matrix Advisory

+263 774 454 016

tafadzwa@matrixtaxschool.co.zw

Tapiwa Musariri

Tax Manager
Tax Matrix Advisory

+263 773 195 198

tmusariri@taxmatrix.co.zw

Keamuhetsoe Masiane

Tax Research Assistant
Matrix Tax School

+263 774 821 662

keamuhetsoe@matrixtaxschool.co.zw

Rumbidzai Makoni

Commercial Training Coordinator
Matrix Tax School

+263 713 720 092

rumbidzai@matrixtaxschool.co.zw

Gasper Chawaipira

Transfer Pricing Assistant Tax Consultant
Tax Matrix

+263 772 279 452

gasper@taxmatrix.co.zw

Allan Chikosha

Manager Business Services
Tax Matrix Advisory

+263 774 072 552

achikosha@taxmatrix.co.zw

7. Disclaimer Clauses

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