



Monthly Tax Update

March 2024



March 2024 MTU

- > We are honoured to present our March 2024 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 consider the latest changes to the tax rules – legislation, case law, and the Revenue Authorities announcements and interpretations that bring relevance to the business environment. Monthly Tax Updates ensure that our valued members are kept in tune with changes in the tax field. They provide 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 representing new interpretations and 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 to:

- 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:

- Assessment standards for imported goods.
- More companies added to Mutapa Investment Fund
- Sour ruling for miners mineral royalties determination.
- Curbing the abuse of corporate structure.
- New Customs Compliance
- Income tax deductibility of Interest
- Presumptive Taxes
- Mining Returns
- The New Tax Agent Module
- Upcoming Tax Deadlines: A Reminder for Taxpayers
- Excise Duty Returns

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1.1 8th Annual Tax Conference



8th Annual Tax Conference

22 - 25 MAY 2024

ELEPHANT HILLS RESORT, VIC FALLS

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Conference Fees Per Person (USD)

	Full Package	Own Transport	Conference Only	Deadline
Standard	2,210	1,900	1,400	30/04/24
Late	2,430	2,100	1,550	17/05/24

*Full Package includes conference fee, travel costs, accommodation, meals and activities

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1.2 Insurance Tax Indaba



Insurance Tax Indaba



Investment per Delegate: USD140

CPD Points: 6



24 April 2024



TBA

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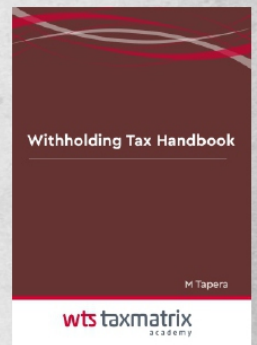
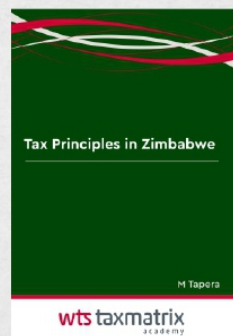
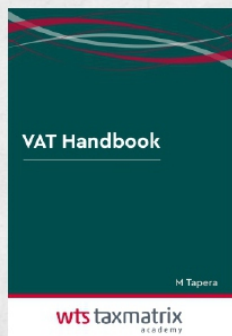
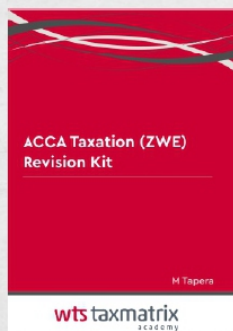
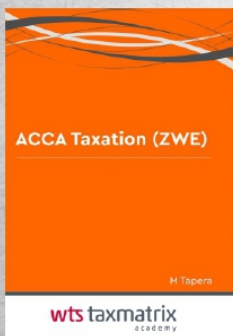
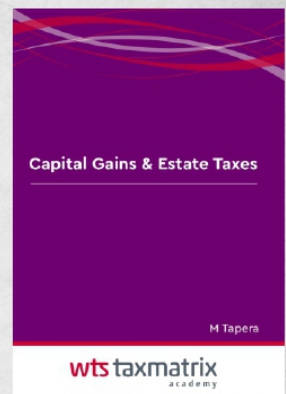
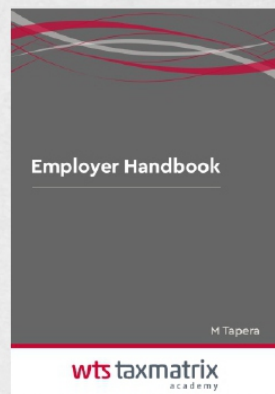
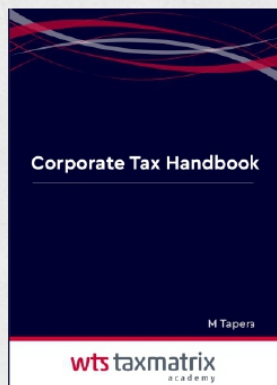
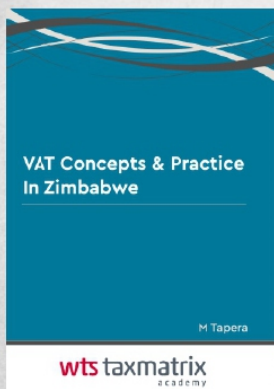
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1.3 2024 Taxation Books



2024 Taxation Books

Matrix Tax School (Pvt) Ltd proudly presents the 2024 Taxation Books that are in stock and available at our offices. Stay ahead of the game in 2024 with our comprehensive collection of tax books. Our books cover all the latest changes and updates to tax laws. Stay compliant and make informed decisions for your business. Order now and stay ahead of the curve!"



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2.1 Assessment standards for imported goods.

Background

Statutory Instrument 35 of 2024 introduces regulations for the assessment of standards for goods imported under the Open General Import Licence, emphasizing consignment-based conformity through inspection, verification, and testing to ensure compliance with prescribed standards. The SI provides a list of goods in the first and fourth schedule together with assessment fees and the procedure for assessment.

» Decision Impact

This instrument mandates a conformity assessment for imported goods with a free on-board value of US\$1,000 or specified categories, impacting taxpayers by potentially increasing import costs and requiring adherence to specified product standards.

2.2 More companies added to Mutapa Investment Fund

Background

The Sovereign Wealth Fund of Zimbabwe (Amendment of Fourth Schedule) Notice 2024, published under SI51 of 2024, introduces additions to the Mutapa Investment Fund's initial capital assets, including Aurex Private Limited, the Export Credit Guarantee Corporation of Zimbabwe, and Fidelity Gold Refinery, among others, enhancing the Fund's investment portfolio.

» Decision Impact

This amendment diversifies and strengthens the Fund's asset base, potentially leading to improved national wealth management and economic stability, benefiting taxpayers through more robust financial security and economic growth opportunities.



3.1 Sour ruling for miners mineral royalties determination.

Afrochine Smelting (Pvt) Ltd v The ZIMRA (83 of 2024) [2024] ZWHHC 83	
Summary of facts	<ul style="list-style-type: none"> • Afrochine Smelting (Pvt) Ltd is a company incorporated in terms of Zimbabwe laws and a large-scale ferrochrome producer. • The ZIMRA assessed the company of penalties and interest for under-declared royalties, based on the gross fair market value. • Afrochine objected to this assessment arguing that the basis it used, namely the computation of royalties based on the face value of invoice was correct. • The company further stated that the ZIMRA was also incorrect to raise double penalty (200%) in respect of outstanding royalties. • The objection was dismissed in full forcing the Afrochine to appeal to the court for intervention and hence the current court case.
Jurisdiction	<ul style="list-style-type: none"> • High Court of Zimbabwe
Issues	<ul style="list-style-type: none"> • Whether the company erred in declaring royalties on the face value of the invoice instead of on the "gross fair market value" • Whether the exclusion of the cost of freight from the invoice value a deduction from the fair market value and it is prescribed by s37(9) of the Finance Act • Whether reference to "double the amount of royalties payable" means that penalty should be charged at 200%
Decision Date	<ul style="list-style-type: none"> • 29 February 2024
Decision	<ul style="list-style-type: none"> • The application by Afrochine is hereby dismissed and the ZIMRA's assessment and interpretation upheld. pay the costs of the suit.

Facts

Afrochine Smelting (Pvt) Ltd (hereinafter called Afrochine) is a company incorporated in terms of Zimbabwe laws and a large-scale ferrochrome producer. The company was audited by ZIMRA whereupon it was discovered that it was computing mineral royalties based on the face value of invoice namely the ex - works price of 10 cents less than the Fast Markets Ferro Alloys price. The ZIMRA then assessed the company to royalties based on the gross fair market value of mineral produced and raised double penalty in respect of understated royalties. The borne of contention therefore emanated from the fact s 245 of the Mines and Minerals Act as read with SCHEDULE TO CHAPTER VII (Section 37) in the Finance Act based royalties on the percentage of gross fair market value of mineral produced which the ZIMRA used, while s37 of the Finance Act mandated the royalties collecting agents to collect the royalty based on the face value of invoice. Afrochine sought a declaratory order against ZIMRA's assessment basis of royalties and penalties applied and hence the current court case.

Competing Arguments

Taxpayer's Argument	
Exclusion of freight costs in the calculation royalties	<ul style="list-style-type: none"> • That their royalty declarations were based on the face value of invoices, adhering to legal requirements. • That excluding freight costs was permissible and that ZIMRA's reinterpretation was incorrect and imposed unfair penalties. • That the court to recognize their calculation method and the imposition of penalties as compliant with legal standards. • That in terms of <i>G Bank v Zimbabwe Revenue Authority HH207/15</i> the ZIMRA cannot tell a taxpayer how to conduct its business. • That as long the price is the gross market value price and the purchaser is not given a discount, the rest is a business decision.

	<ul style="list-style-type: none"> • That s 245 of the Mines and Minerals Act sets out that royalties are to be paid whereas the rates are in terms of the Finance Act which provides for the royalties to be deducted at source based on the face value of the invoice thereof. • That the approach in precedent resolves the question whether the invoice should have been ex works or ex destination • That the deduction of freight does not fall within the deductions prohibited by section 37(2) of the Finance Act • That it never received the cost of freight as part of the purchase price and then deducted the freight charge before paying royalty • That freight charges do not relate to production as required in section 37(9) of the Finance Act.
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ZIMRA's Argument	
Exclusion of freight costs in the calculation royalties	<ul style="list-style-type: none"> • That royalties are to be calculated based on the gross fair market value, before deducting any costs. • That excluding freight costs from the calculation was not permissible and that their assessment, including penalties, was correct and lawful. • That section 37 of the Finance Act sets out the rate of levying royalties based on the percentage of the gross fair market value of the mineral produced and the Mines and Minerals Act sets out the computation of royalties. • That s37 A (1) as cited by Afrochine must be read in the context and that it provides a mechanism for collection of royalties at source by appointing agents of the ZIMRA to collect royalties. • That therefore Afrochine erred in arguing on section 37A (1) of the Finance Act as this applied to agents who collected at source on the face value of the invoice. • That it was not an alternative basis for computation of royalties • That the words "gross" and "fair market value" should be interpreted using their ordinary grammatical meaning • That gross fair market value is the means a value based on what a hypothetical willing buyer and willing seller dealing at arm's length on an open market would agree as a whole and without any deductions being made on such value. • That reference to the agreement of sale provides for the use of the fast markets ferro-alloys price as a benchmark and the price represents the open market value. • That the Selous market price used by Afrochine is not objective and lacks the competition element • That Afrochine was aware that it was not invoicing the gross fair market value of the mineral as required by law because its price had an (ex) after the price. • That section 37(4) and 37(5) of the Finance Act makes provision for a primary and secondary civil penalty. • That the primary civil penalty is said to be calculated using the principal debt which is the amount of 200% due • That the Selous market price used by Afrochine is not objective and lacks the competition element • That Afrochine was aware that it was not invoicing the gross fair market value of the mineral as required by law because its price had an (ex) after the price. • That section 37(4) and 37(5) of the Finance Act makes provision for a primary and secondary civil penalty. • That the primary civil penalty is said to be calculated using the principal debt which is the amount of 200% due.

Court Reasoning and Decision

<p>Exclusion of freight costs in the calculation royalties</p>	<ul style="list-style-type: none"> • That the golden rule of interpretation is that words should be given their ordinary grammatical meaning and that this is trite • That the details on how to calculate royalties are in the Finance Act and this is made clear by the Mines and Minerals Act • That section 37 of the Finance Act provides that the rate of mining royalties should indeed be based on the gross fair market value of the mineral produced, inclusive of freight costs, according to the legal framework. • That s37 A which the applicant seeks to rely on provides for the collection of mining royalties through persons appointed as agents of the ZIMRA. • That the agents can only deduct the royalties based on the minerals at source based on the value of the invoice. • That it is not their role to check if the miner has included in the invoice the gross fair market value of the mineral produced which is the role of ZIMRA. • That the levying of royalties using a standard benchmark is not interference with the taxpayer • Afrochine erred in declaring royalty on the face value of the invoice, namely the ex-works price of 10 cents less than the Fast markets Ferro Alloys price. • That the intention of the legislature to ensure uniformity in deductible costs would fall by the wayside because the miner's distribution costs may differ under section 37(9) of the Finance Act • That Afrochine erred by deducting the freight costs from the invoice value. • That the legislature should not be constrained by the mischief spelt out in s37(9) being deductions for beneficiation and processing or production costs • That ZIMRA's interpretation of the penalty provisions was correct, affirming that the "double the amount" phrase implies a 200% penalty on the unpaid royalty amount over and above the due royalty. • That the penalty aligns with the legislative intent for strict compliance and accurate royalty declaration.
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» **Decision Impact**

The High Court's decision emphasizes strict adherence to statutory provisions regarding mining royalties, ensuring that companies accurately declare royalties based on the gross fair market value of minerals. It clarifies the inclusion of all relevant costs in the calculation and reinforces the severe penalties for non-compliance. This ruling sets a significant precedent, underscoring the need for mining companies in Zimbabwe to meticulously w their royalty calculations and comply with the Finance Act to avoid substantial penalties.



4.1 Curbing the abuse of corporate structure.

Background

The Revenue Authority Act [Chapter 23:11] has been amended with the inclusion of section 24F that seeks curb the misuse of corporate structures to evade tax obligations. This addition addresses the abuse of corporate vehicles by detailing the responsibilities and liabilities of beneficial owners and entities in control.

Law and Interpretation

Section 24F introduces comprehensive definitions and provisions to tackle the avoidance of tax liabilities through corporate entities. A "beneficial owner" is defined as an individual or entity that benefits from ownership while the title may be held by another. Control involves the capacity to significantly influence the entity's decisions, regardless of the formal governance structure. This section applies to various entities, including partnerships and companies, whether domestic or foreign. The law allows the Revenue Authority to seek an "imputed liability order" from the High Court against individuals or entities evading tax obligations. s leading to such an order include the failure to appoint a public officer, hindering access to financial accounts for garnishment, and actions that materially impact the entity's ability to meet tax obligations, such as asset transfers or entity dissolution. Should an entity fail to comply with tax assessments due to deliberate actions by those in control, the court can hold these individuals personally liable for the tax debt. Moreover, the law empowers the Revenue Authority to conduct searches and seize documents or assets relevant to enforcing tax compliance. It also stipulates that financial institutions cannot refuse to comply with these measures on grounds of secrecy or confidentiality, providing legal protection for their cooperation.

» Decision Impact

For taxpayers, particularly those in control of entities, the implications are profound. There's an increased onus on ensuring compliance with tax obligations, as failure to do so could result in personal liability. This legislative change encourages ethical business practices and deters the use of corporate structures for tax evasion, potentially leading to a fairer tax system where everyone contributes their rightful share. The section 24F are tantamount to piercing of the corporate veil by making individuals personally liable for debts owed by the company to the ZIMRA.

4.2 New Customs Compliance

Background

The Customs and Excise Act [Chapter 23:02] introduces a significant amendment with the insertion of section 98L. This change mandates the integration of financial institutions' automated payment systems with the customs and excise computer system.

Law and Interpretation

The new section, 98L, under the Customs and Excise Act, signifies a step towards enhancing the efficiency and transparency of customs transactions. Previously, the interaction between financial institutions and the customs and excise system was disjointed, leading to potential delays and inconsistencies in the processing of customs duties and taxes. With the implementation of section 98L, all automated payment systems of financial institutions are required to interface directly with the customs and excise computer system. This direct linkage is anticipated to streamline the payment and processing of customs duties, thereby reducing the administrative burden on both the customs authority and the financial institutions. It aims to ensure that payments are made accurately and reconciled in real time, enhancing compliance and minimizing errors. The regulations to be developed under section 235 will detail the operational aspects of this interface, including technical standards, security protocols, and compliance requirements. This integration is part of a broader initiative to digitize and automate customs procedures, aligning with global best practices in customs administration.

» Decision Impact

For taxpayers, particularly businesses involved in import and export, this change is likely to translate into quicker clearance times, reduced administrative hassles, and potentially lower costs associated with customs compliance. This integration could also lead to improved transparency and reduced opportunities for corruption within the customs process. However, the requirement for direct system integration may initially pose challenges for smaller financial institutions or those with less sophisticated systems without the human resources to manage the system.

4.3 Income tax deductibility of Interest

Background

Income tax deductibility of interest in Zimbabwe by the general deduction formula, thin capitalisation rules and arm's length rule. These play a significant role in the financial planning of both businesses and individuals, impacting their tax liabilities and overall financial health.

Law and Interpretation

In Zimbabwe, what constitutes deductible interest is primarily derived from case law, with the landmark South African case of CIR v Genn providing much of the foundational understanding. The Act does not explicitly define "interest," leaving the courts to establish that the deductibility of interest hinges on the purpose of the borrowed funds. If funds are used to acquire working capital, the interest on these loans is typically deductible. This principle underscores the importance of the intention behind borrowing. Scenarios where interest is non-deductible include borrowing for to acquire fixed assets, the acquisition of shares, interest incurred upon business cessation, and borrowing to pay dividends etc. These principles are encapsulated in the general deduction formula which stipulates that expenditure that is deductible must be incurred for purposes of trade or in the production of income exclusive of capital nature and prepaid expenditure. Further, the law introduces measures against excessive deductions in related parties' transactions by capping deductible interest at rates consistent with those ordinarily offered between independent parties operating at arm's length. Additionally, thin capitalization rules limit the amount of debt that can generate deductible interest in related parties' transactions and foreign borrowings. Interest and other borrowings costs on debt as aforesaid exceeding 3 times the equity is disallowed income tax deduction.

» Decision Impact

Properly leveraging the deductibility of interest can lead to substantial tax savings and improved cash flow management. However, the complexity and nuances of the law also present challenges, particularly for small to medium-sized enterprises (SMEs) that may lack the resources to fully comprehend or keep abreast of these regulations. For taxpayers, the key to harnessing the benefits of interest deductibility lies in strategic financial planning and, when necessary, seeking expert advice.

4.4 Presumptive Taxes

Background

Presumptive tax is designed to simplify tax collection from small-scale businesses and informal sectors by taxing presumed income. It targets informal traders, small-scale miners, cottage industry operators, transport operators, and self-employed professionals like lawyers and doctors, provided they don't have up-to-date bookkeeping.

Law and Interpretation

Presumptive tax operates on a simple basis: it taxes individuals and businesses based on a presumed income rather than actual earnings. This system is particularly aimed at segments of the economy where traditional accounting practices are not prevalent or where income is hard to track, such as informal traders and small-scale businesses. Finance Act No. 2 of 2020 extended its applicability to include self-employed professionals such as lawyers, engineers, and doctors, acknowledging the challenges in tracking their actual income. Presumptive tax is payable to the ZIMRA not later than 10 days after the end of each month. The tax paid is not final, it can be credited against income tax due on trade and investment income, encouraging compliance and regularizing tax affairs.

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» 4. Technical Interpretation

Furthermore, the appointment of local authorities and agencies like Zinara for tax collection underlines a collaborative approach between government entities to ensure efficiency and broaden tax compliance. The following table shows the monthly rates of presumptive taxes:

Operators	Description	USD per vessel or vehicle
Commercial vessel or fishing rig	1-5 passengers	80
	6-15 passengers	100
	16-25 passengers	150
	26-49 passengers	200
	50 and above	300
	Fishing rig	250
Omnibuses	Not more than 7 passengers	100
	8 to 14 passengers	150
	15 to 24 passengers	175
	25 to 36 passengers	300
	From 37 passengers and above	450
Tax-Cabs	Not more than 7 passengers	100
Driving Schools	Class 4 vehicles	300
	Class 1 and 2 vehicles, whether or not with other classes	600
Goods Vehicle	More than 10 tonnes, but less than 20 tonnes	1,000
	More than 20 tonnes	2,500
	10 tonnes or less, but with combination of truck and trailers of more than 15 tonnes, but less than 20 tonnes	3,000
Operators	Description	USD per person
Health profession	Health practitioners	1,500
	Engineers or technicians	2,000
	Legal practitioners	1,500
	Architects	1,500
	Realtors	1,500
Operators	Description	USD per item or chair
Others	Cottage industries and bottle stores	300
	Restaurants and bottle stores	300
	Hairdressing saloon	300

» Decision Impact

While this approach helps in formalizing the economy and ensuring a broader tax base, it raises questions about equity and the capacity of these sectors to comply. The challenge for taxpayers lies in balancing the benefits of simplified tax compliance against the potential for increased tax liability, especially for those newly included professionals. For the Revenue Authority, this tax implies that those that would ordinarily fall outside the scope of tax collection are now tax liable.

5.1 Mining Returns

Background

The Finance Act No. 13 of 2023 has introduced a 1% levy on local sales and exports of listed minerals, including lithium, black granite, quarry stones and both uncut and cut dimensional stone. Additionally, a withholding tax has been implemented to safeguard the value chain's integrity. Taxpayers through public notice 17 are advised to adhere to the specified deadlines for the submission of returns and payments. Local sales require a Rev 5 return by the 5th of the month following the sale. Payments are due by the 10th of the month following the sale. For exports, the levy is payable upon the export bill of entry's lodgement, eliminating the need for a Rev 5 form.

» Decision Impact

This public notice significantly impacts taxpayers dealing in listed minerals by enforcing stringent due dates for levy and tax submissions. Timely compliance is crucial to avoid penalties and ensure smooth operations within the mining sector.

5.2 Excise Duty Returns

Background

Public Notice 19 of 2024, issued by the Commissioner of Customs & Excise, mandates that all Airtime Operators, Spirit Rebate Users, Excise Manufacturers, and Manufacturers of Beverages with added sugar submit their excise and special surtax returns and payments by specific dates. Returns are to be submitted electronically to designated email addresses, and payments are to be made through a bill of entry (Form 21)..

» Decision Impact

The notice emphasizes the importance of timely submission and payment of taxes to avoid penalties, interest, or potential suspension or cancellation of licenses. It serves as a reminder to taxpayers to fulfil their obligations promptly to support the nation's development.

5.3 The New Tax Agent Module

Background

Public Notice 18 of 2024 introduces the Tax Agent Management Module in the Tax and Revenue Management System (TaRMS), rolling out on 1 March 2024. This module allows taxpayers with a TIN to register as Tax Agents and to appoint tax agents for managing their tax affairs. It mandates previously registered tax agents outside TaRMS to re-register within this new system to benefit fully from its functionalities, ensuring compliance with the Tax Agent (Licensing) Regulations (Statutory Instrument 125 of 2023).

» Decision Impact

The implementation of the Tax Agent Management Module streamlines the process of managing tax affairs, significantly benefiting taxpayers by facilitating the easier appointment of tax agents. This advancement promotes efficiency and compliance in tax management, enhancing the tax administration ecosystem.

5.4 Upcoming Tax Deadlines: A Reminder for Taxpayers

Background

Public Notice 23 of 2024 informs taxpayers of the due dates for two critical tax returns. The first quarter provisional income tax (QPD) returns for 2024 is due by 25 March 2024, with the return available on taxpayers' Self-Service Portal (SSP) profiles from 24 March. Additionally, the 2023 Income Tax Return (ITF12C) must be submitted by 30 April 2024, with notifications regarding its availability on SSP to be issued soon. The public notice further that penalties for late submission of the QPD return will be charged if the QPD return is not submitted within 60 days from due date.

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» 5. Announcements and Interpretations

» Decision Impact

This notice emphasizes the importance of timely submission to avoid penalties, specifically highlighting a 60-day window post-due date for the QPD return without incurring fines. However, the QPD return has not been stipulated in section 35 (2) of the Revenue Authority Act as a return subject to penalty if submitted late. Nevertheless, taxpayers are urged to ensure compliance to maintain good standing and avoid potential financial repercussions.

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