

MONTHLY TAX UPDATE

DECEMBER 2022

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Contents

December 2022 MTU.....	2
1. Matrix Events and News!.....	3
1.1 2023 Tax Update Seminar.....	3
1.2 Transfer Pricing Convention.....	4
2. New Legislative Provisions.....	5
2.1 Finance Act 2 of 2022 with new laws for 2023 out.....	5
2.2 Rate of Interest on income tax arrears and refunds.....	5
2.3 Rate of Interest on capital gains tax arrears and refunds.....	6
2.4 New rules on exportation of unbeneficiated lithium.....	6
3. Court Case.....	7
3.1 The ZIMRA not permitted by law to seize computers.....	7
4. Technical interpretation.....	10
4.1 Use of spot rate in income tax computation mission impossible.....	10
4.2 Tax landmines that can close your business in 2023.....	11
4.3 Fiscal tax invoices to apply also under income tax.....	11
4.4 Employment tax tables in ZWL\$ marginally adjusted.....	12
5 Announcements.....	14
5.1 ZIMRA Public notice 2 of 2023 New VAT rate.....	14
6. Disclaimer Clauses.....	15

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

Each month we consider the latest changes to the tax rules – legislation, case law, and 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 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:

- Finance Act 2 of 2022 with new laws for 2023 out
- Rate of interest on tax income tax arrears and refunds
- Rate of interest on capital gains tax arrears and refunds
- New rules on exportation of unbeneficiated lithium
- Court case
- Use of spot rate in income tax computation mission impossible
- Tax landmines that can close your business in 2023
- Fiscal tax invoices to apply also under income tax
- Employment tax tables in ZWL\$ marginally adjusted



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1. Matrix Events and News

1.1 2023 Tax Update Seminar



25 Jan 2023



Cresta Lodge
(Msasa)



2023 Tax & Business Updates Seminar

Investment Per Delegate:

US\$120 - Non members

US\$100 - MTU members (with up-to-date
2023 subscription)

The Minister has released the Finance Act for 2023. The tone of the Act is the tightening of tax administration on revenue collection in all currencies through the provision of further guidance on computation of Income Tax in foreign currency, increase in interest rates, punitive penalty regimes, the new VAT rate and consequences to mention but a few. Matrix Tax School and ZIMRA in attendance, is hosting a full day Tax Seminar on 2023 Tax Developments. We hope to serve and interact with you during this worthwhile Tax interaction platform. We are inviting you or your nominated delegates to join us for this very important seminar.

Key discussion points:

- The change in VAT rate and how to manage transition
- Guidance on computation of QPDs and final income tax including a walkthrough
- ZIMRA guidance on the two BP numbers
- The new tables and prescribed rates for allowances, credits and exemptions
- The new penalty regime on tax arrears
- Other tax and business developments

Registration is in progress!!!

Time: 0830 to 1600hrs



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1.2 Transfer Pricing Convention



TRANSFER PRICING CONVENTION



16 - 18 March 2023



Troutbeck Resort,
Nyanga



TOPICS

- ◆ Benchmarking Challenges and Alternative Courses of Action
- ◆ What to expect in a ZIMRA Transfer Pricing Audit
- ◆ Transfer pricing regime and developments in Zimbabwe
- ◆ From The ZIMRA Transfer Pricing Unit Desk
- ◆ Shared Costs - Service Level Agreements
- ◆ Implications of Pillar 1 & Pillar 2 on Zimbabwe Industry

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Investment Per Delegate

Package	Up to 28 Feb 2023 Early Bird	28 Feb - 18 Mar 2023 Late Entry
Full package (excluding Transport)	US\$1,250	US\$1,400
Conference only	US\$1,000	US\$1,150



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2. New Legislative Provisions

2.1 Finance Act 2 of 2022 with new laws for 2023 out

Background

The President has ascended into law most of the provisions as announced by The Minister of Finance and Economic Development, Professor Mthuli Ncube in his 2023 National Budget, the brief as follows:

Law and interpretation

Employment tax rates in ZWL\$: The tax-free threshold has been set at ZWL\$1,100,000 per annum and the threshold on which a rate of 40% is to apply remains unchanged at ZWL\$12,000,000 per annum.

Rebasing of capital allowances: Taxpayers, other than miners entitled to claim capital allowances are eligible to revalue their unclaimed capital expenditure as at 31 December 2022 using the auction rate as at 1 January 2023 as long as the capital expenditure was incurred in foreign currency and supported by foreign currency invoice.

Fiscal tax invoices for income tax purposes: Only fiscal tax invoices will be admissible in claiming income tax deduction if the purchases were made from a VAT registered operator.

Basis of conversion for income tax purposes: To facilitate submission of a separate return in foreign currency, the spot rate has been added as an option to average auction rate where it has become necessary to convert transactions when computing final income tax (see topic 4:1 below for details).

VAT rate back to 15%: The VAT rate has been revised upward to 15% from 14.5%, a position which was obtaining prior to 1 January 2020. The revised rate is with effect from 1 January 2023.

Taxpayers with accounting date other than 31 December: Taxpayers with accounting dates other than 31 December to submit income tax returns (ITF12C and ITF12C2, income tax and Transfer Pricing return, respectively) within 4 months of the accounting date. QPDs to be aligned to quarters within the accounting year.

Mining and Special Economic Zones: Miners have been removed from the list of those who can qualify as licensed investors for purposes of Special Economic Zone incentives.

Penalties for banks not paying over taxes on time: Banks have been given 48 hours in which to transfer tax collections to the ZIMRA bank account or they risk interest of 200% per annum and 15% per annum ZWL\$ and foreign currency taxes, respectively. The ZWL\$ interest to be adjusted by the Minister through an SI from time to time in line with the bank rate policy.

IMTT on foreign currency: IMTT on foreign currency transfers has been aligned to the Zimbabwean dollar transfers i.e., revised downwards from 4% to 2% on the value of transaction with effect from 1 January 2023.

Mineral royalties in commodities: The Finance Act has confirmed to substantive law SI189 of 2022 which provides that 50% of the royalties are payable in kind and 50% in currency shared as 10% USD and 40% ZWL\$ in respect of diamond, lithium, gold and platinum group metals in the form, purity and quality prescribed by the Bank in a statutory instrument. Other minerals are however excluded from paying royalties in kind and these would pay royalties 50% in ZWL\$ and 50% USD.

Decision impact

There is very little offered by the new laws to the taxpayers other than the tightening of tax administration as testified also by the new penalty regimes outlined below. Taxpayers should therefore be vigilant regarding paying their taxes, submission of returns and retaining support paper work going forward so as to void penalties.

2.2 Rate of Interest on income tax arrears and refunds

Law and interpretation

The Minister of Finance and Economic Development has gazetted the rate of interest for tax arrears and refunds in ZWL\$ income taxes to be 200% per annum. The gazettion is through SI 212 of 2022 which also repeals SI 79 of 2021

which had set the interest rate at 25% p.a ZWL\$ and 10% p.a foreign currency on tax arrears and refunds. This is with effect from 1 December 2022. The foreign currency rate of interest remains unchanged. Meanwhile interest on refunds will only be payable after they have been outstanding for a period of more than 60 days. In the case of refunds pertaining to incorrect or incomplete returns, the 60-day period shall commence to run afresh from the date of resubmission of the correct or complete return.

Decision impact

The new rate applies on late paid PAYE and; late paid QPDs and those which are out by more than 10% margin of error. This impress on the need for taxpayers to prioritise ZWL\$ PAYE and QPDs remittances. They must correctly forecast their taxable incomes to avoid the 10% margin of error and pay their QPDs on time as they cannot afford to be late in the face of such punitive interest regime.

2.3 Rate of Interest on capital gains tax arrears and refunds

Law and interpretation

SI 211 of 2022 was also gazetted on the same date as SI212 stated above. It repealed SI54 of 21 by increasing the rate of interest on ZWL\$ Capital Gains Tax arrears and refunds to 200% per annum with effect from 1 December 2022. The USD rate has remained unchanged at 10% per annum. The interest is not payable in respect of refunds whose reason for nonpayment is due to incomplete or defective returns submitted by the taxpayer. The interest will only start to run counting from the date correct or amended returns are filed. Such returns should be submitted within 30 days of notification by the Commissioner General of the incomplete or defective returns. Meanwhile, interest on refund will only start to accrue after 60 days of the date it became due and payable.

Decision impact

Taxpayers should ensure that they make their payment of taxes timely to avoid hefty interest payments.

2.4 New rules on exportation of unbeneficiated lithium

Law and interpretation

The Minister of Mines and Mining Development has, through SI213 of 2022, introduced the need to seek written approval by all operators before exporting lithium bearing ores or unbeneficiated lithium. Those wishing to export samples of lithium bearing ore or unbeneficiated lithium for assaying outside Zimbabwe or to a miner or exporter are required to seek written approval. The application should be supported by a proof satisfactory to the Minister that there are exceptional circumstances justifying the exportation in question. When seeking to export the lithium bearing ores or unbeneficiated lithium, exporters should demonstrate that these have been valued in terms of the of the Value Added Tax Act for purposes of payment of the export tax on unbeneficiated lithium.

Decision impact

Any person who contravenes or fails to comply with any order or with the terms and conditions of any permit issued to him or her under an order shall be guilty of an offence and liable to a fine twice the value of the base minerals in respect of which the offence is committed, whichever is the greater or imprisonment for a period not exceeding two years; or to both such fine and such imprisonment.



3. Court Case

3.1 The ZIMRA not permitted by law to seize computers

Case name	Hilmax Engineering (Pvt) Ltd v ZIMRA HH 832-22
Summary facts	<ul style="list-style-type: none"> • Hilmax Engineering is a company that is registered according to the laws of Zimbabwe. • The ZIMRA in pursuance of an investigation to understand the business operations of Hilmax and assess tax compliance searched and seized company documents and laptops. • Hilmax asked ZIMRA officers to present authorization to search and seize which the ZIMRA officers failed to produce. • Hilmax contends the seizure was unlawful because the public officers failed to present the warrant for the search and seizure and hence the current court case to decide whether or not the ZIMRA officers were authorized to act in the manner they did
Jurisdiction	<ul style="list-style-type: none"> • The High Court, Harare
Issues	<ul style="list-style-type: none"> • Whether whosoever opposes the application must have authority to do so • Whether the search and seizure was unlawful
Decision date	<ul style="list-style-type: none"> • 17 November 2022
Decision	<ul style="list-style-type: none"> • That the laptops be returned back by ZIMRA. • That each party bears its own costs.

The Facts

Hilmax Engineering is a company registered and operating according to the laws of Zimbabwe. Sometime in October 2022, ZIMRA officers presented themselves at the Hilmax's premises, unannounced. They were attended to by the Hilmax's Public Officer then searched the premises and took away five laptops and various documents belonging to the company. This was allegedly in pursuance of an investigation to understand the business operations of the company and assess compliance with the various tax Acts. Hilmax insists that the case officers from ZIMRA were requested to produce authorization to act in the manner they did but they failed to do so. Hilmax contended that the removal and seizure of the laptops and files was therefore unlawful on that basis. It filed an urgent chamber application seeking the ZIMRA to return the documents and computers it unlawful seized, which the ZIMRA sought to oppose. Hence the current court case. During the hearing, Hilmax pointed out that no proper opposition by the ZIMRA was before the court as the deponent to the opposing affidavit has not produced a resolution which authorizes him to defend this matter on behalf of the ZIMRA. Hilmax relied on the case of *Dube v Premier Service Medical Aid Society & Anor SC 73/19* for this contention.

Court reasoning and decision

Whoever opposes the application must have authority to do so	<ul style="list-style-type: none"> • That it is clear that ZIMRA is a body corporate. • That when it is suing or being sued, it requires to act through some natural persons. • That such persons would need to be properly authorised. • That in the case of <i>Madzivire & Ors v Zvarivadza & Ors (06-SC-010)</i> the court stated that "<u><i>A company, being a separate legal person from its directors, cannot be represented in a legal suit by a person who has not been authorised to do so</i></u>". • That this is a well-established legal principle, which cannot be ignored.
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	<ul style="list-style-type: none"> • That an exception to this rule is where a company has only one director who can perform all judicial acts without holding a full meeting.” • That a person who represents a legal entity must show that he is duly authorized. • That a board resolution is evidence that the board of entity represented is aware. • That the need to produce such proof is necessary only in those cases where the authority of the deponent is put in issue. • That this represents the current state of the law in this country. • That it is insufficient for ZIMRA's deponent to simply say he is authorized to depose to the affidavit by virtue of his position as head of business investigations. • That it is inadequate for ZIMRA to point to the point of inconvenience of ZIMRA's board sitting every time there is litigation. • That ZIMRA should show where in legislation it is exempted to the law. • That there are many ways of securing a board resolution in order to comply with the legal requirements set out above. • That there is no proper notice of opposition by the ZIMRA before the court
The Search and Seizure was unlawful	<ul style="list-style-type: none"> • That ZIMRA officers are authorised by law to enter a business premise for search and seizure if according to them the search will assist in the collection of taxes. • That the Customs and Excise Act [Chapter 23:02] s 9(2) has slightly different provisions. • That the Customs and Excise Act mention of, “<i>and may take possession of any document, record or other thing for as long as may be necessary for the purpose of any examination, investigation, trial or inquiry</i>”. • That could it be said that the use of other thing extends to the taking of computers? • That the “<i>other thing</i>” should be construed in the context of the <i>eiusdem generis</i> rule which states that “<i>Where general words are found, following an enumeration of persons or things all susceptible of being regarded as specimens of a single genus or category, but not exhaustive thereof, their construction should be restricted to things of that class or category unless it is reasonably clear from the context or the general purview of the Act that Parliament intended that they should be given a broader signification</i>” • That in the case of <i>Quazi v Quazi</i> [1980] AC 744 at 807 -8 it was also stated that “<i>The presumption then is that the draftsman's mind was directed only to the genus indicated by the specific words and that he did not, by his addition of the word “other” to the list, intend to stray beyond its boundaries, but merely to bring within the ambit of the enacting words those species which complete the genus but have been omitted from the preceding list either inadvertently or in the interests of brevity.</i>” • That if it was intended to include computers and information retrieval systems, then the draftsman would have said so • That this position was settled in the case of <i>PIL Pvt Ltd v ZIMRA & Anor</i> 17-HH-213 wherein it was held that “Generally, in terms of s 61 of the Act, the Commissioner is authorised to seize documents including computer printouts for further examination, investigation, trial or enquiry. • That the section does not authorize seizure of computers or other information retrieval systems. • That the taking of the laptops was an illegal act as it was not authorized by the law • That nevertheless the taking of documents and files by the ZIMRA, through its officers in the course of an investigation as set out above is lawful. • That the court cannot interdict a lawful act. • That ZIMRA shall return Hilmax's five laptops unlawfully seized. • That the return should be done within 24 hours of the court order. • That each party will bear its own costs.

Decision Impact:

The authority is authorized by the law to perform a search and seizure if it believes that the taxpayer has defrauded the authority of any taxes. However, based on the current laws, it is not legal for the authority to seize any other equipment which is not documentation such as computers. Taxpayers should also be weary of who is representing that authority as defendant in the courts of law. The law as it stands requires a representative to be one that have been authorized to do so by way of board resolution authorizing the representative.



4. Technical interpretation

4.1 Use of spot rate in income tax computation mission impossible

Background

The Finance Act 2 of 2022 has given as an option the use of spot rate of exchange to facilitate conversion of expenses and allowances where there is need in the computation of final income tax in both ZWL\$ and foreign currency. This is given as an alternative to the use of average auction rate in the computation of income tax liability for the year of assessment beginning 1 January 2022. The use of spot rate seems ideal and in sync with the way transactions were recorded by most business during 2022. However, there are some unforeseen consequences that might not have been contemplated at the time of drafting the law as fully explained below.

Law and interpretation

Section 37AA of the Income Tax Act was 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 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. The term spot rate has been 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;". This is the real time exchange rate of a transaction and is in reference to time and place of transaction. As transactions are posted into the accounting system every day each transaction will be converted to the functional reporting currency based on the ruling rate at the time the transaction occurred. Thus, transactions in alien currencies will have to be converted to the functional reporting currency based on the spot rate prevailing on the time of the transaction. To then apply the provisions of section 37 AA of the Income Tax Act, the ratio of incomes namely the percentages of foreign currency income and ZWL\$ must be determined. These percentages will then be used to apportion expenses and allowances expressed in common currency to each return. After the apportionment is completed, one should then identify the individual expenses and allowances and convert these back to their original currency based on spot rate of each expense or allowance. While this may be simple and straight forward for taxpayers with low volume of transactions, this is next to impossible for taxpayers with too many transactions. For instance, teas and cleaning ledger on its own may have multiple transactions each with its own spot rate. In other words, to ensure the expenses and allowances are converted back to the original currency using spot rate for each apportioned expense or allowance based on the date of transaction is impossible even for a medium sized business. It is also impossible to split expenses and allowances on a going basis because the actual ratio of incomes is only known at year end.

Decision Impact:

The government may need to refine the methodology a bit to make the spot rate usable in practice. For instance, it can advocate for the "average spot rate" on income. This for instance can be the aggregated of foreign currency income as converted into ZWL\$ using the spot rate divided by the aggregate of actual foreign currency income. Taxpayers, really do not have a choice but to opt for average auction rate for the year in the computation of final income tax. Despite its other deficiencies, the average auction rate can be applied in practice as long as one is able to identify incomes and expenses in their original currencies. For those unable to do so, there are at no man's land. The government directive or guidance is required to solve this paradox. It is incorrect to fault them because the law was backed, and nobody anticipated the provisions of section 37AA of the ITA on 1 January 2022.

4.2 Tax landmines that can close your business in 2023

Background

Looking ahead into 2023, it is promising to be a tough year for errant taxpayers because of omnibus measures introduced by the treasury as fully explained below:

The law and interpretation

Increase in interest rates: Interest rate on late paid ZWL\$ income tax (QPDs), PAYE and capital gains tax has been increased from 25% per annum to 200% per annum and 10% per annum for late paid foreign currency taxes remain unchanged. The ZWL\$ interest rate to be revised from time to time to align with the bank policy rate.

Penalty for late submission of returns: There is an intention to dollarize penalty on late submitted returns currently at ZWL\$300 a day to US\$30 a day payable at local currency equivalent for each day the return remains outstanding. This was said during the National Budget presentation and will soon be published through an SI.

Dividend on excess management fees: Total ban of management fees or intra group services is being contemplated by imposing 15% dividend tax also on excessive management, administration and fees paid to a local affiliate. Previously this applied only to excessive fees payable to a foreign based affiliate. The enactment was made through Finance Act 8 of 2022 with effect from 24 October 2022.

Payment of taxes in foreign currency: The government stressed its quest for income tax in foreign currency and has amended the laws to provide for a separate return in foreign currency filed through a separate Business Partner Number. The method for apportioning expenses or allowances where required have been identified as the proportion of incomes in ZWL\$ and foreign currency. To facilitate this split where conversions from one currency is required, the auction rate or the spot rates are to be used. This is not a walk in the park and taxpayers require guidance to avoid understating their income tax liabilities, which may result in interest and penalties of at least 200% and 100%, respectively

VAT rate increase: The VAT rate goes back 15% with effect from 1 January 2023. This increases cost of doing business for those who cannot claim input tax or recover the VAT from their customers, but the immediate landmine is regarding how businesses manage the transitional time of supply rules. The rules as outlined under s 73 of the VAT Act and to deal with overlapping or transitional supplies is not easy, if not well managed can create unwanted cost to the business.

Fiscal tax invoices: Fiscal tax invoices are affecting both income tax and VAT effective 1 January 2023. Lack of them could cost the business in VAT and income tax disallowance resulting in a huge knock-on effect on working capital and consequently business profitability.

Intensification of tax audits: Tax Audits by the ZIMRA are set to intensify tax audits as the government has proposed the use of a fiscalised back-end solution which will assist Tax Audits and promote utilization of data obtained from fiscalisation project and other various tax revenue mobilisation activities. The authority is in the process of procuring the system which is expected to be operational during the second quarter of 2023.

Decision Impact:

Taxpayers are warned to be vigilant in order to survive the tax storm. The risks are too many to make mistakes and are advised to carefully watch over their tax affairs. The risks can be mitigated by conducting tax health checks, on time payment of taxes or negotiation of payment plans, on time submission of returns even if the tax cannot be immediately paid, regular consultation of tax advisors among others. A more proactive approach also is to ensure having in place or set up compliance tool kit such as the Tax Policy and Procedures Manual (TPPM).

4.3 Fiscal tax invoices to apply also under income tax

Background

Fiscal tax invoices are now mandatory to qualify for deduction under income tax. In that lack of them increase cost of doing business. Thus, it is confirmed fiscal tax invoices span VAT and income tax with effect from 1 January 2023 as fully explained below.

The law and interpretation

Finance Act 2 of 2022 has stated that expenses that are to be allowed for income tax purposes should be supported by fiscal tax invoices where the purchases are from a VAT registered operator. Fiscal tax invoices should be printed by a fiscalised electronic register or fiscal memory device used by a registered operator. Noncompliance with the requirements of fiscal tax invoice result in potential loss to the business amounting to 39.72% of the expense (15% VAT +24.72%). A business cannot afford such a loss under the obtaining harsh economic environment. This requires that measures are put in place to ensure that suppliers are scrutinized and only deal with VAT compliant registered suppliers with ability to issue valid fiscal tax invoices. Suppliers who may not be VAT registered but supplying taxable supplies and with potential to meet the US\$40,000 annual turnover registration threshold should be sniffed and screened out. The law deems a person not VAT registered but meeting the registration threshold to be a VAT registered operator.

Decision Impact:

The income tax claim in respect of purchases from persons that are not required to be VAT registered is not affected by the new rules. Meanwhile penalties of 100% apply under both income tax and VAT for claiming invalid fiscal tax invoices. Taxpayers should track the input tax schedules with valid fiscal tax invoices when preparing income tax return for 2023 onwards. If an invoice has been disallowed under VAT, it should also be disallowed for income tax purposes. The ZIMRA is expected to reconcile input tax schedule to income tax claims when auditing taxpayers among other validations going forward.

4.4 Employment tax tables in ZWL\$ marginally adjusted

Background

The Finance Bill no. 2 of 2022 presented to the House of Assembly had offered nothing to the employees but there has been a change of mind, albeit regarding the employment tax tables in ZWL\$ as outlined below.

Law and interpretation

The Finance Act 2 of 2022 has marginally adjusted the ZWL\$ employment tax tables for year 2023 compared to those of 2022. The annual tax-free threshold has been set at ZWL\$1,100,000 per annum and the threshold on which a rate of 40% is to apply remains unchanged at ZWL\$12,000,000 per annum. Hence the full tables with effect from 1 January 2023 are as follows:

Employment Income in ZWL – 1 January to 31 December 2023

Annual Tables (ZWL\$)

					Rate
From	0	To	1,100,000	multiply by	0%
From	1,100,001	To	3,840,000	multiply by	20%
From	3,840,001	To	6,576,000	multiply by	25%
From	6,576,001	To	9,312,000	multiply by	30%
From	9,312,001	To	12,000,000	multiply by	35%
From	12,000,001	And above		multiply by	40%
Aids Levy is 3% of the Individuals' Tax payable after credits					

The USD tax tables remains unchanged as follows

Employment Income in USD – 1 January to 31 December 2023

Annual Tables (USD)

					Rate
From	0	To	1,200	multiply by	0%
From	1,201	To	3,600	multiply by	20%
From	3,601	To	12,000	multiply by	25%
From	12,001	To	24,000	multiply by	30%
From	24,001	To	36,000	multiply by	35%
From	36,001	And above		multiply by	40%
Aids Levy is 3% of the Individuals' Tax payable after credits					

Decision Impact:

Taxpayers earning in ZWL\$ only will be heavily taxed compared to their counter parties earning in foreign currency. This because the highest rate of 40% apply on amounts exceeding US\$3,000 per month and yet the ZWL\$ converted is the equivalent of US\$1,492 per month at an official exchange rate of ZWL\$670: 1USD. Meanwhile, low level employees appear cushioned in ZWL\$ compared to USD (equivalent of US\$137 per month tax free threshold compared to actual US\$100 at official rate). However, this is not so when an official rate is used. We also do not anticipate the revision of tax tables until mid-year 2023. Employers should contemplate remunerating in multicurrency in order to reduce employment costs and as well as cushioning their employees from high taxes. The USD tax tables are applied for a multicurrency payroll.



5. Announcements

5.1 ZIMRA Public notice 2 of 2023 New VAT rate

The Zimra has issued public notice 2 of 2023 advising taxpayers of the change in VAT rate from 14.5% to 15% as per the Finance Act Number 2 of 2022. It further indicated that all fiscal devices should record VAT at 15% and that VAT Registered Operators should approach their respective Approved Suppliers to configure the fiscal devices so as to reflect VAT rate of 15%. Before this happens, operators should ensure they have carefully dealt with cross over supplies. In terms of section 73 of the VAT Act the increase or decrease in the rate results in variation of time of supply rules to close the vacuum that may be left by the general time of supply rules. The general time of supply rule dictates that VAT should be levied the earliest of the invoice date, payment date, date goods are removed in the case of movable goods, date of possession or occupation in the case of immovable property and date services are rendered or performed, whichever is the earliest. In that regard where payment was made in 2022 for goods to be delivered or services to be rendered in 2023, VAT will be based on the old rate. The fiscal tax invoice when eventually issued should be based on the rate of 14.5%. The specific rules in section 73 generally focuses on timing of delivery of goods and the performance of services. When these precedes the general time of supply rule, they trigger the time of supply. Therefore, where goods were delivered in 2022 and yet no payment or invoice was made or issued in that year, the old rate would apply. The same applies for services performed in 2022. In the case of goods or services delivered before or after VAT rate change, apportionment is 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 (for detail refer to our November 2022 MTU).

Decision Impact

Once the fiscal device has been configured with the new rate, it may be difficult to go back to the old rate. Besides, fiscal tax invoices are meant to be issued in real time. The dilemma is then on the invoicing of deliveries made, services performed, or payment received in 2022 after configuration has taken place. It appears the operator may be forced to issue the fiscal tax invoice for such supplies based on the new rate. And to claw back the overcharged amount the ZIMRA engagement may be necessary since the route of credit or debit notes as per section 21 does not appear covering errors arising from failure to manage transitional rules as per section 73 of the VAT Act.

6. Disclaimer Clauses

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