



# MONTHLY TAX UPDATE

July 2023

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# Monthly Tax Update – July 2023

We are honoured to present our July 2023 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 – 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:

- ZWL\$ PAYE tables revised.
- Senior Citizens get duty rebates.
- Clay Brick Manufacturers and ZIMRA VAT dispute on bricks still in limbo
- Income tax case in foreign currency thrown out on technicality.
- Legality of remitting ZWL\$ tax due in foreign currency
- LIBOR no longer in existence.
- Prescribed amounts to use in multicurrency taxable income.
- Onerous retrenchment rules enacted.
- Kariba border post suspended
- Unilateral Powers of RBZ to collect mineral royalties revoked.
- ZIMRA Marondera office temporarily closed.



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## 1. Matrix Group News!

### 1.1 Matrix Tax Summer School



**MATRIX TAX SCHOOL**  
beyond knowledge

# SUMMER SCHOOL

18 - 20 October  
Leopard Rock Hotel, Vumba

*Theme: "Managing compliance in the middle of a storm"*

## Speakers



Admire Ndurunduru  
CEO  
PAAB, Zimbabwe



Persistence Gwanyanya  
Managing Director  
Bullion Group



Marvellous Tapera  
CEO  
Matrix Tax School

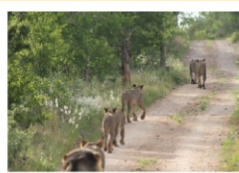
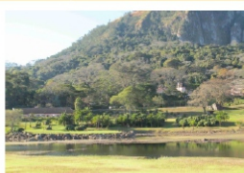


Tinashe Murerekwa  
Head-Risk & Advisory  
Kreston, Zimbabwe



## Investment Per Delegate

	Full Package (with no transport)	Conference only	Deadline
Early Bird	USD1190	USD840	25/09/2023
Late	USD1290	USD930	17/10/2023



**REGISTER NOW**

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## 1.2 Transfer Pricing Indaba Africa



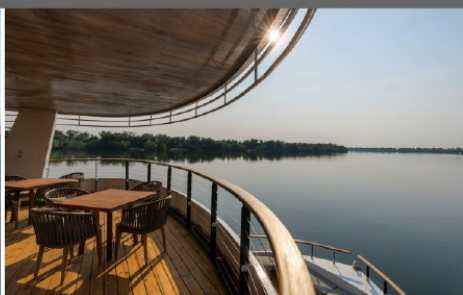
# Transfer Pricing Indaba Africa



08 - 11 November 2023



Radisson Blu Mosi-Oa-Tunya ,  
Livingstone Resort, Livingstone,  
Zambia



*Theme: "Transfer Pricing in Africa on the Edge"*

### Speakers



Misheck Govha  
Commissioner: Domestic Taxes  
Zimbabwe Revenue Authority



Marvellous Tapera  
Chief Executive Officer  
Matrix Tax School  
Zimbabwe



Keith Engel  
Chief Executive Officer  
South African Institute  
of Tax Professionals.



Solomon Choge  
Head of Sales  
Royalty Range  
South Africa



Dumisani Ngwenya  
Managing Director  
R&D Consulting  
Zimbabwe



Johannes Muchada  
Partner: Maguchu & Muchada  
Business Attorneys  
Zimbabwe

### Registration fee per person (USD)

	Full Package	Full Package without transport	Conference with activities	Conference Only	Deadline
Early Bird	USD2,300	USD1,970	USD1,620	USD1,530	13/10/2023
Standard	USD2,420	USD2,070	USD1,710	USD1,610	31/10/2023

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[www.matrixtaxschool.co.zw](http://www.matrixtaxschool.co.zw)



## 1.3 Inter City Income Tax Compliance Workshop



**MATRIX TAX SCHOOL**  
beyond knowledge

# Inter City Income Tax Compliance Workshop

 **14 - 15 SEPT 2023**  **CHENGETA SAFARI LODGE**

Companies and individuals in business are required to assess the income tax and remit the tax to the ZIMRA on a quarterly basis. However, computing such tax is never easy due to multicurrency trading and the swiftly evolving income tax laws. In terms of s37AA of the ITA a separate income tax return in foreign currency should be filed where trading takes place in multicurrency. It is this requirement that is complicating the income tax computation process. With this in mind, Matrix Tax School will be hosting a 2- day workshop on the 14<sup>th</sup> and 15<sup>th</sup> of September 2023 at Chengeta Safari Lodge in Chegutu in order to unpack these more complex tax rules so as to help businesses manage their income tax compliance.

### TOPICS FOR DISCUSSION

- A walkthrough of s 37AA of ITA- Income Tax Rules of Trading in Multicurrency
- The practical QPDs and Final Income Tax computations in multicurrency
- Completion of Income Tax Forms (ITF 12 C and ITF12B)
- Fixed Asset Register (Acquisitions & Disposals) and Tax Breaks
- Accounting for Deferred Taxes- Temporary Differences and Tax Rate Reconciliation
- Taxpayer clinic: A focus on Income Tax Deductions
- Transfer Pricing Return (ITF12C) and TP Adjustments
- Tax issues of foreign exchange difference, liquidations, and interbank transactions

### INVESTMENT PER DELEGATE

Package	USD
Full Package: Accommodation no sharing	\$580
Full Package: Accommodation sharing	\$530
Workshop Only	\$280
Workshop Only + Activities	\$320

### SPEAKERS



**Marvellous Tapera**  
Chief Executive Officer  
Matrix Tax School



**Tinashe Murerekwa**  
Head-Risk & Advisory  
Kreston, Zimbabwe



**Simbarashe Hamudi**  
Tax Partner  
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**David Masaya**  
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## 2. New Legislative Provisions

### 2.1 ZWL\$ PAYE tables revised.

#### Background

Inflation as measured by interbank rate rose about 6 times from the beginning of the year to 31 July 2023 resulting in the ZWL\$ tax tables, prescribed deductions, tax credits and exemptions rendered meaningless.

#### Law and interpretation

The Minister of Finance has through SI 149 of 2023 repealed the annual PAYE tables and replace them with two sets of tables ending 31 July and 31 December 2023, respectively in order to address the deficiency in the existing tables owing to inflation, as follows:

1 January to 31 July 2023			Monthly		
-	642,662	0%	-	91,809	0%
642,662	2,240,000	20%	91,809	320,000	20%
2,240,000	3,836,000	25%	320,000	548,000	25%
3,836,000	6,432,000	30%	548,000	918,857	30%
6,432,000	7,000,000	35%	918,857	1,000,000	35%
7,000,000	and above	40%	1,000,000	and above	40%
1 August to 31 December 2023			Monthly		
-	2,500,000	0%	-	500,000	0%
2,500,000	7,500,000	20%	500,000	1,500,000	20%
7,500,000	25,000,000	25%	1,500,000	5,000,000	25%
25,000,000	50,000,000	30%	5,000,000	10,000,000	30%
50,000,000	75,000,000	35%	10,000,000	15,000,000	35%
75,000,000	and above	40%	15,000,000	and above	40%

#### Decision Impact

The new rates align with inflation when measured against the interbank rate and as well the USD tax tables for now, but this not a permanent solution. Any movement in the interbank rate results in a mismatch. The amended ZWL\$ tables however may be not of wide impact since in a hybrid payroll the USD tax tables should be used, and it appears most employers currently pay in multicurrency. Meanwhile, whilst the Minister is empowered to make the regulations that changes tax rates, duty, levy or other charge etc. such regulations will need to be confirmed by a Bill which (a) passes its second reading stage in Parliament on one of the twenty-eight days on which Parliament sits next after the coming into operation of the instrument; and (b) becomes law not later than six months after the date of such second reading, otherwise the regulations will be of no force. The Parliament will therefore need to sit in the next 28 days to validate the rates as foresaid.

### 2.2 Senior Citizens get duty rebates.

#### Background

The government has given retired senior public servants rebated of duty upon importation of motor vehicles.



SI 134 of 2023 provides for duty rebate in respect of one motor vehicle imported by a retired senior public servant. The vehicle should be less than 10 years from date of its manufacture. Upon retirement, the person should have been employed by the Public Service or the Independent Commissions and retired on or after 30 June 2022. Only one motor vehicle may be imported on a once off basis. The person should claim the rebate within 5 years after retirement. The rebate is limited to a motor vehicle of USD40,000 in value for Chief Directors or equivalent grades and USD60,000 for Permanent Secretaries or equivalent grades. The Commissioner should be furnished with the retirement position held and a driver's license for the rebate to be granted. Where undervaluation of the motor vehicle is suspected, the Commissioner may revalue the motor vehicle.

## Decision Impact

Prior to this, duty rebates on importation of motor vehicles were only extended to serving public servants. The rebate to senior citizens is a further drain to the fiscus which is to be financed by taxpayers' money.

## 2.3 Clay Brick Manufacturers and ZIMRA VAT dispute on bricks still in limbo

### Background

The Clay Brick manufacturers had been locking horns with the ZIMRA over the VAT treatment of clay bricks. Although the intention of the legislator was to zero rate the supply of clay bricks since 2004 but the wrong tariff code used meant that the product was incapable of being zero rated. In the process ZIMRA alleged the product was standard rated since 2004 triggering a tripartite meeting of the Association, the ZIMRA and Minister of Finance to resolve the impasse and hence the current SI 134A of 2023.

### Law and interpretation

SI 134A of 2023 is meant to achieve 3 things namely, rectifying the wrong tariff code as aforesaid, provides certainty in VAT treatment of clay bricks for the period before 1 August 2022 and exempting bricks from VAT for the period after 31 July 2022. We summarise as follows:

#### VAT exemption of clay bricks effective 1 August 2022:

The following types of bricks are exempt from VAT with effect from 1 August 2022:

Heading No.	Commodity Code	Description of good
68.10	6810.11.10	building blocks of cement
	6810.11.90	building bricks of cement
69.01	6901.00.10	building bricks of clay

#### Rectification of error in tariff code

The SI also provides for the deletion from the VAT exemption list items as per the first table below and replacing them with those contained in the second table as below with effect from 28th of May 2014. It appears the intention is to correct the wrong tariff code. However, the table being repealed was never in the VAT Regulations which also makes the replacing table homeless as well.

#### Repealed table.

Heading No.	Commodity Code	Description of good
68.10	6810.1110	building blocks of cement
69.01	6901.1000	building bricks of clay

#### Substituted by

Heading No.	Commodity Code	Description of good
68.10	6810.11.10	building blocks of cement
	6810.11.90	building bricks of cement
69.01	6901.10.00	building bricks of clay



## Monthly Tax Update – July 2023

### Zero rating

The SI further sought to zero rate both clay and cement bricks for the period 28 May 2004 to 31 July 2022. Whilst this was the intention of the legislator and hence resolving the dispute between the ZIMRA and brick manufacturers, it appears the wrong tariff code used for the clay bricks i.e., 6901.10.00 instead of 6901.00.10 forestall this intention. The cited tables with the wrong tariff code for clay bricks as per the SI are as follows:

#### Repealed table.

Heading No.	Commodity Code	Description of good
68.10	6810.1190	building blocks of cement

#### Substituted by

Heading No.	Commodity Code	Description of good
68.10	6810.11.10	building blocks of cement
	6810.11.90	building bricks of cement
69.01	6901.10.00	building bricks of clay

### Decision Impact

The SI has not achieved its intended 3 objectives except for one. In a bid to correct the wrong tariff code on clay bricks it appears the issue has been compounded further resulting in the zero rating of the clay bricks zero rated for the period prior to 1 August 2022 not achieved. The government may need to correct the anomalies by repealing the SI and replace it with one citing correct tariff codes. However, from 1 August 2022 going forward brick manufacturers should ensure they exempt from VAT both cement and clay bricks and desist from claiming input tax incurred in the production of these products.



## 3. Court Case

### 3.1 Income tax case in foreign currency thrown out on technicality.

Case name	JK Motors (Pvt) Ltd vs ZIMRA HH 336-23
Summary of facts	<ul style="list-style-type: none"> <li>• JK Motors is a company that is registered in terms of the laws of Zimbabwe.</li> <li>• Its dispute with ZIMRA emanated from non-payment of tax in foreign currency as per s 4A of the Finance Act which requires remittance of tax in foreign currency on any taxable income earned, accrued or received in foreign currency.</li> <li>• This dispute is still pending in Special Court for Income Tax Appeals.</li> <li>• The ZIMRA alleged that JK had failed to apportion its tax liability according to the ratios of foreign currency and ZWL\$ sales so as to pay the tax in the currency in which the sales were realized.</li> <li>• Upon raising the assessments as aforesaid and disallowing JK's objection, the ZIMRA immediately effected the tax recovery measures before the Special Court for Income Tax Appeals could even decide on the matter.</li> <li>• This triggered JK's appeal to the High Court on an urgent basis seeking to bar ZIMRA from collecting the taxes as levied and hence the current court case.</li> </ul>
Jurisdiction	<ul style="list-style-type: none"> <li>• Harare High Court</li> </ul>
Issues	<ul style="list-style-type: none"> <li>• Whether the assessments are regular and lawful.</li> <li>• Whether the process of challenging the assessment was done correctly.</li> </ul>
Decision date	<ul style="list-style-type: none"> <li>• 02 June 2023</li> </ul>
Decision	<ul style="list-style-type: none"> <li>• JK Motors' pleadings do not explicitly express the correct factual basis upon which the case is premised.</li> <li>• That the preliminary point raised is with merit and is tenable.</li> <li>• That it will not be necessary for the court to delve into the merits of this application.</li> <li>• That the application is dismissed with costs.</li> </ul>

#### Facts

The fall out between the parties centres on the jurisdiction of ZIMRA to issue additional assessments against JK Motors and the taxpayer sought an order to set aside notices of assessment issued by ZIMRA. What started the wrangle is a tax assessment to which JK Motors objected to. When some of the objections were disallowed, JK Motors challenged the assessment itself before the Special Court for Income Tax Appeals and the challenge is still pending. The borne of contention was that the company had failed to apportion its tax liability according to the ratios of the sales received in local and foreign currency and pay the tax in the currency in which the sales were realised in terms of s 4A of the Finance Act. This result JK Motors being issued with manual amended notices of assessments for taxes due in foreign currency and penalties. Having failed to pay the tax required, the ZIMRA instituted collection measures. Aggrieved by this, JK Motors approached the High Court on an urgent basis seeking to bar the ZIMRA from collecting the taxes as levied and hence the current court case.



## Competing arguments

JK Motors' Argument	
Whether the assessments are regular and lawful.	<ul style="list-style-type: none"> <li>• That the jurisdictional facts justifying the issuance of additional assessments and additional tax are absent since there is no taxable income payable by it.</li> <li>• That for these reasons the additional assessments were wrong in principle and <i>ultra vires</i> the powers given to the ZIMRA under the Act</li> <li>• That ZIMRA having failed to impose penalties under the initial assessment its powers had ended with the initial assessments.</li> <li>• That the additional assessments and penalties are wrong in principle and unlawful.</li> <li>• That the assessment discloses no taxable income which should have been charged and has not been charged.</li> <li>• That ZIMRA can only validly issue additional assessments where there is taxable income due.</li> <li>• That the ZIMRA issued assessments that were identical save that the other one includes penalties and that the creation of two identical assessments renders both assessments unlawful.</li> <li>• That the ZIMRA is not empowered to issue additional assessments in terms of s 47(1) of the Act when it is only for penalties since penalties are not taxable income.</li> <li>• That further no law permits the levying of penalties in foreign currency which renders certain of ZIMRA assessments unlawful.</li> <li>• That it is also incorrect for the ZIMRA to resort to legislating to collect taxes through issuing public notices in order to fill in gaps in the Act.</li> <li>• That ZIMRA's use of the term "gross tax" reflected in notices of assessment is not defined in the Act rendering the assessments irregular.</li> </ul>

ZIMRA's Arguments	
Whether the assessments are regular and lawful	<ul style="list-style-type: none"> <li>• That the application is misplaced as it is premised on challenging the validity of notices of assessment which are wrongly described as assessments</li> <li>• That an assessment is a process unlike a notice of assessment which is a document.</li> <li>• That instead of challenging the assessments, JK wrongly challenges notices of assessment and that the court should dismiss the application on this basis alone.</li> <li>• That based on merits, it is entitled to issue additional assessments and impose penalties because of anomalies discovered in JK's tax declarations.</li> </ul>

## Court Reasoning and decision

Whether the assessments are regular and lawful	<ul style="list-style-type: none"> <li>• That an assessment in terms of s2 of the Act is a determination of taxable income and credits to which a taxpayer is entitled to.</li> <li>• That it is a process made up of different steps undertaken by the Commissioner in coming up with a computation of the tax due and notification thereof.</li> <li>• That in <i>Deputy Commissioner of Taxation v Anglo American Investments Pty Ltd, (2016)103ATR 649 at 657</i> the court held that an assessment is a process and that the 'process of assessment' is not merely the final arithmetical exercise that leads to the computation of the assessment.</li> <li>• That one ought to look to the acts carried out leading to the issuing and service of the notice of assessment as well.</li> <li>• That the notice constitutes notification of the assessment.</li> <li>• That once it is given to the taxpayer, the tax becomes due and payable.</li> </ul>
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<p>Whether the assessments are regular and lawful.</p>	<ul style="list-style-type: none"> <li>• That an assessment is a process constituted of the determination of tax liability by the tax authority together with the administrative steps taken by the Commissioner and the notice of assessment is one such step.</li> <li>• That notice of assessment is merely a document that records the fact of an assessment and is part of the assessment process.</li> <li>• That the notice of assessment does not usually show the different sources of income and is given after a determination of tax due and is not an assessment.</li> <li>• That in considering whether an assessment meets the requirements of the law, one should look at whether the Commissioner has carried out all the steps and actions required in accordance with the law and if one step of the process is not done in terms of the law, the entire assessment process falls.</li> <li>• That where a notice of assessment is found to be invalid or not properly served, the entire assessment is set aside.</li> <li>• That JK is challenging the validity of an assessment on the basis that it is wrong in principle effectively impugns the entire process of assessment.</li> <li>• That it cannot choose to request a court to set aside only one step of the assessment process.</li> <li>• That the fact that the notice of assessment is a record of the assessment does not justify it being singled out in such a challenge.</li> <li>• That a taxpayer challenging an assessment must spell out with clarity its cause of action leaving no doubt regarding what it is challenging.</li> <li>• That challenges to assessments should distinctly and accurately speak to the challenges pursued by the taxpayer and the other party must know what it is expected to respond to.</li> <li>• That it is based on the facts as pleaded that ZIMRA must either affirm or deny the allegations levelled against him.</li> <li>• That an applicant must plead a proper and recognizable cause of action.</li> </ul>
<p>Whether the process of challenging the assessment was done correctly.</p>	<ul style="list-style-type: none"> <li>• That whilst JK Motors challenges the validity of the additional assessments, it seeks to set aside notices of assessment instead of the assessments.</li> <li>• That it states that ZIMRA issued new assessments and is attaching copies of the assessment and the manual notices of assessment which is factually incorrect.</li> <li>• That JK Motors therefore regarded the notices of assessment as assessments.</li> <li>• That JK Motors incorrectly describes an assessment as a document.</li> <li>• That it is also incorrect to describe a notice of assessment as a statutory document because the Act does not specify its requirements.</li> <li>• That JK Motors picked on the notices of assessment, ascribed to them a name that does not belong to them and then criticized them on the basis that they do not comply with the definition of an assessment as defined in s2 of the Act.</li> <li>• That JK Motors conflated the term assessment with notices of assessment.</li> <li>• That JK Motors sought to set aside the wrong thing i.e., notices of assessment.</li> <li>• That the cited reference numbers relate to manual notices assessments which are not the assessments.</li> <li>• That JK Motors seeks to invalidate documents not specifically mentioned in the founding affidavit.</li> <li>• That the basis for seeking to set aside a step in the assessment process eludes the court aside.</li> <li>• That after deciding to challenge the legal authority for issuing the assessments, it was required to focus on the entire assessment process and make it clear in its pleadings.</li> <li>• That since JK Motors' challenge is on authority to issue additional assessments, it should not be complaining about notices of assessment.</li> <li>• That ZIMRA responded to a cause of action based on a challenge to notices of assessment which are wrongly described as assessments to its prejudice.</li> </ul>



	<ul style="list-style-type: none"><li>• That the case was badly pleaded through a lack of appreciation of the concept of an assessment and should therefore be thrown out on this basis.</li></ul>
Decision	<ul style="list-style-type: none"><li>• That JK Motors' pleadings do not explicitly express the correct factual basis upon which the case is premised.</li><li>• That the preliminary point raised is with merit and is tenable.</li><li>• The JK Motors is improperly before the court and is therefore not necessary for the court to delve into the merits of this application.</li><li>• That the application is dismissed with costs.</li></ul>

### Decision Impact

Where a taxpayer challenges the existence of an assessment or its validity, they need to make their intention known to the ZIMRA. There is a difference between a notice of assessment and an assessment. A notice of assessment cannot be objected to what must be objected to is an assessment. Therefore, taxpayers need to understand the clear distinction between the two before they proceed to the court.



## 4. Technical Interpretation

### 4.1 Legality of remitting ZWL\$ tax due in foreign currency

#### Background

The Minister of Finance and Economic Development recently announced that the June 2023 QPD due in foreign currency be paid 50% in local currency and 50% in USD and further insisted that where taxes are due in ZWL\$ these should strictly be paid in that currency. In the event of lack of local currency taxpayers should approach the RBZ to liquidate their foreign currency for local currency.

#### Law and Interpretation

Section 38(4) (4a) (b) of the VAT Act provides that where the price for the taxable supplies is paid for in legal tender other than foreign currency, the registered operator may pay the amount of the tax to the Commissioner in that legal tender or in a foreign currency. Meanwhile section 4A of the Finance Act mandates the settlement of corporate taxes, PAYE etc., in foreign currency where taxable income is part or wholly in foreign currency but does not deny payment of taxes due in local currency in foreign currency. The implication is that the statutes do not make it unlawful for one to pay taxes due in local currency in foreign currency. These laws are still in force. The powers of the authorities to collect or charge taxes are therefore driven from Acts of Parliament and Statutory Instruments. They cannot drive the powers from or resort to legislating through directives, announcements, communique, or public notices. This position was also confirmed in the Delta Corporation Ltd v ZIMRA (Case No. 15-HH-621) case.

#### Decision Impact

The ZIMRA may find it difficult to wield its powers on taxpayers who defy the Minister's communique in the absence of any other piece of legislation. However, the dilemma for taxpayers is that going against government directive may be viewed with suspicion and may also threaten their trading licenses or trigger other unspecified penalties. Meanwhile adhering to the Minister's statement as aforesaid not only does it result in transaction costs such as bank charges, IMTT etc. but could delay tax settlement due to processing time which could potentially result in penalties for late tax payment.

### 4.2 LIBOR no longer in existence.

#### Background

Since 2021 there has been a smooth transition from the London Inter Bank Offer Rate (LIBOR) to the use of Forward – looking Term rates as a replacement rate for LIBOR. The Federal Reserve Board (FRB) issued a final regulation identifying benchmark rates based on (Secured Overnight Financing Rate) SOFR, which will replace LIBOR in certain financial transactions after 30 June 2023. There has been significant progress concerning LIBOR transition since the reform was announced by different countries. The implication is that LIBOR will no longer be used as a reference point for setting the interest rates on other loans.

#### Law and Interpretation

The Zimbabwean tax legislation adopts the use of the LIBOR on employee loans and advances, specifically in the computation of a fringe benefit expressed in USD terms. The minimum interest rate for which no loan benefit would arise is calculated as LIBOR + 5% for USD loans and 15% ZWL\$ loans. An employee who obtains a loan from an employer or employer's affiliate, such as the parent business, subsidiary, or a fund to which the employer contributes for the benefit of its employees, is considered to be receiving a benefit from his or her employer as long as the interest rate is below the minimums as aforesaid.

#### Decision Impact

Since LIBOR is obsolete internationally, Zimbabwe might also need to consider shifting to SOFR. Thus, benchmarking for foreign currency loan benefit needs to be revised. The rate of Zimbabwe dollar employee loans is not affected by this change as these are pegged at 15%. Meanwhile loans for education, technical education, and medical purposes whether in foreign currency or ZWL\$ do not trigger an employee benefit.



## 4.3 Prescribed amounts to use in multicurrency taxable income.

### Background

The government has prescribed income tax values for exemptions, deductions, benefits, tax credits etc in both ZWL\$ and foreign currency. Examples of such values includes motoring benefits, tax credits, bonus, and retrenchment exemptions to mention but a few. The conversation then is how are these two sets of prescribed values to be applied in practice.

### Law and Interpretation

Section 4A of the Finance Act explicitly states that where taxable income is wholly or part in foreign currency tax on that part of taxable income in foreign currency is to be remitted in foreign currency. The corporate tax will then be computed in terms of s 37AA of the ITA separately by splitting expenses using the proportion of incomes in foreign currency and Zimbabwe dollar. For hybrid payroll, PAYE is computed using the USD tax tables. Finance Acts 2 of 2019, 3 of 2019 and 7 of 2021 provide guidance on what prescribed values to use when taxable income is in multicurrency. Finance Act 2 of 2019 which became effective from 1 August 2019 provides for the use of foreign currency tax credits where taxable income is wholly or part in foreign currency. Meanwhile Finance Act 3 of 2019, effective 1 January 2020 provides for the substitution of Zimbabwe dollar motoring benefits by foreign currency motoring benefits where taxable income is wholly or part in foreign currency. The Finance Act 7 of 2021 gazetted two sets of prescribed values in foreign currency and Zimbabwe dollar with effect from 1 January 2022 and made it clear that prescribed exemptions and deductions to be applied depends on the currency of the income or expenditure. The implication is that where taxable income is in foreign currency or hybrid payroll is in place USD prescribed values are used.

### Decision Impact

Taxpayers are argued to apply the correct prescribed values as aforesaid. Tax Credits and motoring benefits stipulated in foreign currency are to be applied in a hybrid payroll. Prescribed exemptions to be applied depend on the currency in which the income is received, earned, or accrued. The prescribed deductions are based on the currency of the expenditure. Incorrect application of the law is penalised.

## 4.4 Onerous retrenchment rules enacted.

### Background

The Labour Amendment Act 11 of 2023 recently gazetted into law has fundamentally changed the existing retrenchment rules by expanding the definition of retrenchment package and includes the extensive involvement of the works council and retrenchment board in the retrenchment process.

### Law and Interpretation

Retrenchment is termination of a contract for operational reasons. An employer with the intention to retrench must give 14 days' notice of such intention to the works council or the employment council where no works council exists or to the employee concerned. The employer must thereafter notify the retrenchment board of its retrenchment stating the particulars of the employee and the amounts to be paid. The retrenchment board will issue to the employer a notification certificate to show that the retrenchment is in order. It will post such on any actual or virtual notice board. If the employer does not comply with giving a notice of retrenchment to employees and retrenchment board then the minimum package of not less than one month's salary or wages for every two years of service will automatically vest in the employees and their representatives after 21 days from the date when the employee was retrenched. The benefit on retrenchment according to the Labour Act includes outstanding vacation, notice period, medical aid, social security, and any pension. The Income Tax Act however includes amounts of any severance pay, gratuity or similar benefit, other than a pension or cash in lieu of leave, which is paid to an employee on the cessation of his employment to constitute retrenchment package. The Income Tax further exempts from tax 1/3 of the retrenchment package, up to a maximum of a third of USD37,500 (ZWL\$18,750,000 in ZWL\$), or USD10,000 (ZWL\$5 million in ZWL\$), whichever is the greater amount.

### Decision Impact

Employers and employees will need to acquaint themselves fully with the new retrenchment rules. The rules are critically for tax purposes and in the event the scheme is disqualified as retrenchment scheme, it appears the CG has the right not to grant the retrenchment package exemption to the employee.



## 5. Announcements and Interpretations

### 5.1 Kariba border post suspended

#### Background

ZIMRA has suspended, with effect from 20 July 2023, the use of Kariba Border Post as a port of entry for cross border passenger ferrying buses and vehicles until further notice. Taxpayers are required to use Chirundu One Stop Border Post as the alternative. This decision comes in the wake of high traffic congestion being experienced at Kariba Border Post which has stretched the current infrastructure beyond its capacity to handle cross border traffic.

#### Decision Impact

Suitable intervention measures have been put in place to manage the adjustments of the port of entry (Zimbabwe) and port of exit (Zambia) on any declarations that had already been received and processed through the automated platforms of each Authority. All fresh declarations henceforth should reflect the port of exit and/or port of entry aligned to the changes effected by this notice.

### 5.2 Powers of RBZ to collect mineral royalties revoked.

#### Background

The Commissioner General has issued a public notice no 46 of 2023 stating that mining royalties are to be remitted to the ZMRA as opposed to the RBZ. The public notice further highlighted that any correspondence already issued regarding payment of mining royalties in kind contradictory to this is not valid and not enforceable. Financial Institutions shall be required to prepare and submit a schedule of royalties' payments made to ZIMRA on or before the 10th day of the month following the month in which they were deducted. Meanwhile mineral exporters are to complete the return Rev 5Cs in USD and ZWL as per table below:

THRESHHOLDS			
Minerals	Payable in ZWL	Payable in Foreign Currency	Payable in Kind
Platinum, Palladium, Lithium	40%	60%	None
Gold, Diamonds, Precious Stones	40%	10%	50%
All other minerals	50%	50%	None

These changes are with effect from 1 August 2023.

#### Decision Impact

The collection of taxes is a fiscal mandate which is within the ZIMRA jurisdiction and the RBZ operating in that space means that was being engaged in quasi monetary policy. However, the issue at stake is whether it is also within the mandate for ZIMRA to administer royalty in kind. The collection of royalties in kind is aimed to build strategic reserves for the country which appears within the space of RBZ from a monitoring, evaluation, administration, storage etc. point of view. Meanwhile, taxpayers in the mining industry and Financial Institutions are encouraged to take this notice seriously as there is potential exposure to for penalties and double payment of taxes.

### 5.3 ZIMRA Marondera office temporarily closed.

#### Background

ZIMRA has through public notice no 49 of 2023 announced the temporary closure of the ZIMRA Marondera office with effect from 1 August 2023. All Marondera taxpayers or those affected by this decision to be served in Harare at Kurima House Reception, Ground Floor Nelson Mandela Avenue. Meanwhile the public notice state further all Income Tax, PAYE And VAT Returns should be completed in full and submitted online, through the ZIMRA e-services platform <http://www.efiling.zimra.co.zw> or ZIMRA e-taxes platform <https://etaxes.zimra.co.zw>. The e-services platform is used to submit returns in local currency only whilst the e-taxes platform is used to submit returns in both local currency and foreign currency. We advise our valued clients to utilize the Contact Centre for all queries and enquiries on 585 Toll free / 08688007614 for landlines or [contactcentre@zimra.co.zw](mailto:contactcentre@zimra.co.zw). Currently the ZIMRA Contact Centre is operating between 8:00am-5:00pm Monday to Friday and between 8:00am - 12:30pm on Saturday with agents attending to client queries and enquiries.

#### Decision Impact

The decision will negatively impact on the affected clients in terms of time, travel costs and attention to their queries considering the Kurima office is already overwhelmed with its own queries. It is also not clear what has triggered this decision and for how long will the office remain closed.



### 6. Disclaimer Clauses

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