



**MONTHLY
TAX
UPDATE**

November 2023

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Contents

- November 2023 MTU.....2
- 1.Matrix Group News!.....3
- Annual Tax Conference.....3
- 2.New Legislative Provisions.....4
- 2.1Tax highlights from the 2024 National Budget Proposal and Finance Bill.....4
- 2.2Re-assignment of ministerial function functions.....8
- 2.3Assignment of presidential functions.....8
- 2.4Zimbabwe Investment and Development Agency (Special Economic Zones) Regulations.....9
- 2.5Zimbabwe Investment and Development Agency (General Investments) Regulations.....9
- 2.6Traffic Safety Council Levy.....10
- 3.Court Case.....11
- 3.1Customs case dismissed on technicality.....11
- 4.Technical Interpretation.....14
- 4.1Bonus/performance rewards.....14
- 4.2Value of considerations in scenarios where monetary expressions are absent.....15
- 4.3Stock disposed of otherwise than by sale or exchange.....15
- 4.4Income tax on assets sold to related party.....15
- 5. Announcements and Interpretations.....17
- 5.1TaRMS steps into action.....17
- 5.2AVIS Bank Limited’s license cancelled.....17
- 5.3FBC in a take over.....17
- 5.4No writing of new business for Sunset Funeral Assurance company.....17
- 6.Disclaimer Clauses.....18

Monthly Tax Update - November 2023

We are honored to present our November 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:

- Tax highlights from the 2024 National Budget Proposal and Finance Bill
- Re-assignment of ministerial function functions.
- Assignment of presidential functions.
- Zimbabwe Investment and Development Agency (Special Economic Zones) Regulations
- Zimbabwe Investment and Development Agency (General Investments) Regulations
- Traffic Safety Council Levy
- Customs case dismissed on technicality.
- Bonus/performance rewards.
- Value to be placed on a consideration.
- Stock disposed of otherwise than by sale or exchange.
- Transfer Pricing: Related Companies.
- TaRMS steps into action
- AVIS Bank Limited's license cancelled.
- FBC in a takeover
- No writing of new business for Sunset Funeral Assurance company



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1. Matrix Group News!

1.2 Annual Tax Conference 2024



8th Annual Tax Conference

 22 - 26 May 2023

 Elephant Hills Resort, Victoria Falls

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2. New Legislative Provisions

2.1 Tax highlights from the 2024 National Budget Proposal and Finance Bill

Background

The Minister of Finance and Economic Development presented his budget under the theme “Consolidating Economic Transformation” on the 30 of November 2023. The focus is on the implementation of the various economic measures which will lead to a sustainable economic recovery and resilience, with the following proposals:

Corporate Income Tax measures (CIT):

- An increase corporate income tax rate from 24% to 25%.
- To enact Domestic Minimum Top Up Tax (DMTT rules with effect from 1 January 2024).
- Exempt from IMTT transfers of compensation money to former farm owners for expropriation of land under the land reform programme undertaken in the year 2000.
- Waiver IMTT upon payment from Grain marketing Board and other approved buyers to the farmers on their delivery of wheat, maize, and small grain.
- Reduction of the IMTT on gold backed digital token transaction to 0.5%
- Removal of the limitation on transactions relating to debt servicing.
- The tax exemption on agreements entered by government ministries and agencies is proposed to be cancelled in favour of the exemption on personal income tax, non-residents' tax on fees and royalties to apply only to government-to-government agreements through recommendation of the Public Agreement Advisory Committee.
- Fix all prescribed income tax values (prescribed values of deductions, incomes, and exemptions) in foreign currency which shall be converted in Z\$ using the prevailing rate on the date of expenditure.
- The date of payment of withholding tax on payment of non-resident fees, royalties and foreign remittances is proposed to be changed from 10 days after the payment to the 10th of the following month in which the payment is made.
- Increased the threshold for withholding tax on smallholder and subsistent farmers in the delivery of grain to the Grain Marketing Board and other commercial on agricultural commodities that include soya beans, sunflower, groundnuts, and cotton seed from US\$1 000 per annum to US\$5 000 or local currency equivalent.
- The payment dates for presumptive taxes be due on the same date, that is, within ten days after the end of each quarter.
- New insurance levy payable by an insurer who has less claims than the set threshold in a year of assessment. The rate of tax shall be set in the Finance Act from time to time.

Employment tax

- The revised employment tax rates to a tax-free threshold of ZWL\$750,000 per month and top rate of 40% will apply on amounts exceeding ZWL\$ 22 500 000, per month. The following are the full tax rates for the year of assessment 1 January 2024 to 31 December 2024:

Monthly Table (ZWL\$)			
Band		Rate	
0	-	750 000	0%
750 001	-	2 250 000	20%
2 250 001	-	7 500 000	25%
7 500 001	-	15 000 000	30%
15 000 001	-	22 500 000	35%
Above 22 500 000			40%

Monthly Tax Update - November 2023

- The following are the ZWL\$ annual tax tables from 1 January to 31 December 2024

Annual Table (ZWL\$)			
Band		Rate	
0	-	9 000 000	0%
9 000 001	-	27 000 000	20%
27 000 001	-	90 000 000	25%
90 000 001	-	180 000 000	30%
180 000 001	-	270 000 000	35%
Above 270 000 000			40%

- The USD tax tables have not been revised and are as follows:

Annual Tax Tables (USD)

Band		Rate	
0	-	100	0%
101	-	300	20%
301	-	1000	25%
1001	-	2000	30%
2001	-	3000	35%
Above 3000			40%

- The tax-free threshold for bonuses has been reviewed upwards from ZWL\$500,000 to ZWL\$7,500,000, with effect from 01 November 2023.

Capital Gains Tax

- Exemption from capital gains tax the deemed disposal of farms expropriated under the land reform programme.
- Introduction of a Wealth Tax levied at a rate of 1% of market value of residential properties with a minimum value of US\$100 000. However, owners of principle private residential properties aged at least 70 are exempted.
- Introduction of a special capital gains tax on any transaction involving the transfer of a mining right, stack within and out of Zimbabwe transferred to an entity at a rate of 20% of the value of the transaction. The tax will be payable in US dollars or any other foreign currency at the international cross rate of exchange. Special CGT should be paid by the 1st of April 2024 for transactions from 10 years ago and for current transaction, it should be paid within 30 days after conclusion of transactions.

Value Added Tax

- Operators who fail to honour VAT deferred be indefinitely excluded from benefitting from the facility.
- The deferment of VAT on commencement of production up to a maximum of 2 or 3 years for operators in mining and manufacturing subject to the approval of the Minister of Finance. Meanwhile, all deferred VAT will be pegged in foreign currency at the time of importation however, it can also be paid in local currency at the prevailing rate at time of payment.
- A downward review of VAT registration threshold to US\$25 000 or local currency equivalent effective from the 1st of January 2024 is being proposed. The failure to register for VAT will result in penalties. Is proposed to take effect 1 January 2024.
- To limit the VAT zero ratings to exports in line with the VAT Destination Principle. Furthermore, the VAT exemptions to be limited to medicine and medical services, goods for use by the physically challenged persons, sanitary wear, fuel and fuel products, agricultural inputs, implements and produce. However, the exemption shall not apply to live animals, groundnuts, cotton seed, soya beans and products thereof wheat, milk and salt. These measures to take effect from 1 January 2024.

Monthly Tax Update - November 2023

- The supply of imported services be deemed to take place at the time of issuance of the invoice by the supplier, the time of performance of service and the time payment is received or whichever is earlier.
- All transactions be issued with a fiscal invoice at the time of supply and every operator should issue an invoice when supply is made. This is a deviation from the current position providing for the issuance of an invoice within 30 days of supply.
- A penalty for failure to acquire or use an electronic fiscal device of US\$1 000 or the equivalent amount in ZWL. The failure to use a fiscal invoice attracts a penalty of US\$1 000. It appears that the \$1000 is applied for failure to issue invoices regardless of the number.
- A person without a fiscal device is charged with US\$25 for each point for sale up to a maximum of 180 days. A person who fails to interface the fiscal device with the ZIMRA server within 30 days of registration will be liable to US\$25 per day for each point of sale that remains un-interfaced.
- The tempering with electronic devices has a penalty of US\$1 000. The failure to retain an invoice will result in the goods being liable to seizure unless a fiscal receipt or invoice has been produced within 24 hours. This is to promote the purchasing of goods with an invoice.
- Failure to configure or install electronic device by approved supplier within seven days of receipt of instruction and full payment shall be liable to US\$100 penalty every day that he fails to configure. Failure to attend to calls within seven days of reporting an error will result in \$25 penalty for each day.
- To replace VAT registration number with Taxpayer Identification Number (TIN) and BP number and provide for features including electronic signatures, authentication codes and quick response codes for verification of the fiscal tax invoice.
- The Casino Act should be replaced with the Value Added Tax Act since the Casino Act has been repealed. Betting and Gaming was levied and receipted by temporary casino license which was in terms of the Casino Act
- An upward review of the export tax on un-beneficiated lithium, cut and uncut dimensional stones and diamonds from five per centum to six per centum.

Customs and Excise

- Introduction of a digital platform that provides real time, traceable and authentic data on locally manufactured goods. The platform will benefit the fiscus through the provision of authentic data in real time for locally manufactured goods to prevent the deceleration of growth of the fiscus.
- Suspension of duty on new motor vehicles imported by the Safari and Tour Operators has been extended for a further 2 years, beginning 1 January 2024 to allow the full recuperation of the tourism sector.
- Upward review of surcharge on motor vehicles:

FOB Value (US\$)	Surcharge (%)
120 000-300 000	30
300 001-700 000	40
Above 700 000	50

- Reduction of allowable thresholds of Rebate of Duty on Motor Vehicles imported by Civil and Public Health Servants as follows from the 1st of January 2024:

Grade	Proposed US\$	Current US\$
B and C	2 500	3,500
D and E	4 000	5,000

- It is proposed to prohibit from disposing motor vehicles which had been granted the rebate duty within 5 years of importing the vehicles with effect from 1 January 2024. A beneficiary who disposes of a vehicle before 5 years will be subject to residual duty.
- The removal of suspension duty on basic commodities with effect from 31 January 2024. The removal of the suspension has been made to cushion consumers from price increases and to stabilize prices.
- Introduction of a levy of US\$0.02 per gram of sugar contained in beverages, excluding water, with effect from 1 January 2024. Funds derived from this levy will be ring-fenced for therapy and procurement of cancer equipment for diagnosis.

Monthly Tax Update - November 2023

Mines and Minerals Taxes

- Introduction of a 1% levy on gross proceeds of selected minerals which includes lithium, black granite and other cut or uncut dimensional stones and quarry stones. The funds will be used to develop the community where the mining operates.
- Election of a specified agent to collect mining royalties in kind who will replace financial institutions who lack capacity of valuating the minerals and require insurance and storage for the minerals.
- Payment of interest on unpaid royalties in kind to be paid in kind also.
- Any lithium value addition process that does not result in the production of lithium carbonate is not regarded as beneficiation, hence, is liable to an export tax. Additionally, lithium producing companies should submit their beneficiation plans no later than 31 March 2024 and no licenses shall be granted to a prospective lithium company without approval of a beneficiation plan.

Tax Administration and Other Miscellaneous

- Taxpayers who fail to settle their dues within the prescribed timeframe shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment. The minister further proposes that taxpayers who commit such an offense have their property attached.
- The commissioner to be authorized to appoint agents to issue tax lien certificates which show the taxes owed including any interest and penalties.
- The commissioner to be empowered to seal the business premises of the trader where the trader failed to remit in prescribed time. The goods shall be deemed to be attached and at the disposal of the commissioner.
- Where stock in trade is seized, the proposal is to compel the trader to register for vat, where such trader meets the registration threshold.
- Only licensed and tax compliant operators procure goods from manufacturers and wholesalers. Additionally, the minister proposes that only traders registered for vat purposes and in possession of valid tax clearance certificates be eligible to procure goods from manufacturers. This measure is contained in the budget speech.
- To allow ZIMRA to have access to financial transactions through integration of systems with the financial institutions for digitalised businesses.
- To extend the scope of items that can be seized by the commissioner for tax administration purposes, to include storage devices.
- The commissioner to be empowered to open custody vaults at any time to ascertain contents and that financial institutions and other companies that offer custodial services receipt the contents of cash in their custody.
- An increase in ZIMRA board members from 9 to 11.
- Strategic reserve levy be reviewed by us\$0.03 and us\$0.05 per litre of diesel and petrol, respectively. These measures take effect from 1 January 2024. Nonetheless, there is a divergence between the finance bill and the budget speech where the finance bill reduces the levy to u\$0.05 per litre of petrol and u\$0.03 per litre of diesel from u\$0.087 and u\$0.127 respectively.
- ZIMRA to link with the financial institutions, in order to match the bill of entry with the goods that are imported, where funds are obtained through the auction or interbank market.
- The government to assume third-party motor vehicle insurance, to private and public motor vehicles with the inclusion of the following as part of benefits: medical benefits, rehabilitation, injury grants, and funeral grants and loss of income. These measures take effect from 1 April 2024.
- An upward review of Toll Fees on premium roads, that is, Harare-Beitbridge and Plumtree-Mutare and other roads. These measures take effect from 1 January 2024.

Types of vehicles	Current Fee (US\$)	Proposed Fee: Premium Roads (US\$)	Proposed Fee: Other Roads (US\$)
Motorcycles	Exempted	Exempted	Exempted
Light Motor-Vehicles	2	5	4
Minibuses	3	8	6
Buses	4	10	8
Heavy Vehicles	5	15	10

Monthly Tax Update - November 2023

Haulage Trucks	10	25	20
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- An upward review of Motor Vehicle Registration Fees with from 1 January 2024 as follows:

Nature of Services	Current	Proposed
Vehicle Registration	US\$80	US\$100 for vehicles with engine capacity of 1500cc. US\$500 for vehicles with engine capacity above 1500 cc.
Issuance of Personalised Number Plates	1200	US\$2500 for vehicles with engine capacity of 1500 cc US\$5 000 for vehicles with engine capacity above 1500 cc.

- An upward review of passport acquisition fees with effect from 1 January 2024 as follows:

Nature of Fee	Proposed Fee (US\$)
Ordinary Passport	200
Emergency Passport (3days)	300

Decision Impact

The budget is to be debated in parliament and some proposals will be adopted while others will be rejected. However, the budget proposals point to a massive shift in tax regime and revenue streams. The budget also speaks to an increased attempt to tax the informal sector.

2.2 Re-assignment of ministerial function functions.

Background

SI224 of 2023 removes the item pertaining to the "Zimbabwe Investment and Development Agency Act [Chapter 14:38] (Act No. 10 of 2019)" from the Schedule. The deletion of this item from the Schedule denotes a reconfiguration of the functions previously entrusted to the Minister of Finance, Economic Development, and Investment Promotion regarding the oversight and execution of provisions outlined within the ZIDA Act. This alteration holds significance as it alters the ministerial authority and involvement concerning crucial matters related to investment facilitation and developmental strategies outlined within the ZIDA Act. This statutory amendment signals a change in the ministerial landscape, potentially reallocating responsibilities and shifting the locus of authority concerning matters directly associated with the ZIDA Act. The removal of the Act from the ministerial functions Schedule implies a revaluation of roles and delineation of duties, reflecting a nuanced approach in the governance and regulation of investment and developmental agendas within Zimbabwe.

Decision Impact

SI224 of 2023 acts as a directive, formally removing the Minister of Finance, Economic Development, and Investment Promotion from the outlined functions related to the Zimbabwe Investment and Development Agency Act, possibly reassigning, or redistributing these functions to other ministerial bodies or entities, thereby impacting the administrative landscape regarding investment and developmental strategies. Therefore, taxpayers dealing with ZIDA should ensure that they do so through the right authority.

2.3 Assignment of presidential functions.

Background

SI 225 of 2023 includes the "Zimbabwe Investment and Development Agency Act [Chapter 14:38] (Act No. 10 of 2019)" into the schedule. By incorporating the Zimbabwe Investment and Development Agency Act into the Schedule, this statutory instrument denotes a significant expansion of the functions allocated to His Excellency the President of Zimbabwe. The Act itself represents a fundamental legislative framework instrumental in the

establishment and operations of the Zimbabwe Investment and Development Agency (ZIDA). The inclusion of the Act within the Schedule implies an extension of presidential authority concerning the overarching aspects encompassed within the ZIDA Act. This Act is fundamental in shaping the policies, frameworks, and regulations that govern investment and development initiatives within Zimbabwe. This inclusion further aligns the President's authority with the mandates and provisions outlined in the ZIDA Act, allowing for a more comprehensive oversight mechanism, and facilitating a more streamlined approach to decision-making, policy implementation, and strategic direction concerning investments and developmental initiatives within the country.

Decision Impact

SI 225 acts as an enabler, providing a formal channel through which the President can exert authority and influence in the critical realms of investment, economic development, and the realization of the objectives set forth within the Zimbabwe Investment and Development Agency Act. Therefore, taxpayers dealing with ZIDA should be aware of authority which oversees ZIDA.

2.4 Zimbabwe Investment and Development Agency (Special Economic Zones) Regulations

Background

SI226 of 2023 emphasizes the criteria for land ownership, application procedures, and conditions for eligibility serve as pivotal determinants. An applicant must adhere to stringent requirements, including demonstrating compliance with eligibility criteria such as employment, technology transfer, and investment capabilities. Furthermore, the regulations detail the roles and obligations of key entities within the SEZ framework, delineating the responsibilities of SEZ owners, developers, and operators. This includes obligations related to infrastructure development, investment facilitation, compliance with environmental standards, and financial reporting in accordance with international standards. The licensing process for SEZ investors is another pivotal aspect covered in the regulations. Requirements for license applications, the nature of permissible activities within SEZs, and criteria for issuing licenses are meticulously outlined. Additionally, the regulations establish a fee structure, outlining various fees applicable for different stages of the SEZ lifecycle. The regulations underscore the importance of monitoring and enforcement, empowering the Agency to conduct inspections to ensure compliance with laws and operational standards. Non-compliance can lead to the suspension or cancellation of permits or licenses, emphasizing the significance of adherence to the stipulated regulations. Moreover, provisions for resizing existing SEZs, abolishing designations, and safeguarding against speculative investments are embedded within the regulations. These encompass a comprehensive set of conditions, guidelines, and penalties aimed at ensuring the integrity and effectiveness of SEZ operations.

Decision Impact

SI 226 represents a meticulous and all-encompassing framework, detailing the processes, obligations, and parameters governing the establishment and operation of SEZs in Zimbabwe. Taxpayers are further burdened with institutional requirements for operation within these designated zones.

2.5 Zimbabwe Investment and Development Agency (General Investments) Regulations

Background

SI 227 of 2023 establishes the scope of application, encompassing all investors in Zimbabwe, emphasizing their adherence to these regulations. For example, Part II delves into the registration and licensing of investors. It outlines the procedures for existing projects to secure benefits under the Act and mandates the submission of requisite documents and fees for registration. It further delineates the process for acquiring a general investment licence, detailing the application requirements, considerations for approval, and the validity period of the licence. The regulations emphasize accountability and compliance by necessitating investors to inform the Agency of any changes requiring amendments to their licences. They also stress the importance of timely project implementation and renewal, outlining penalties for non-compliance and procedures for renewal applications. Part III introduces an investment grievance response mechanism to address investor grievances arising from state actions or control that may affect investments. It establishes reporting requirements for Ministries and public entities overseeing investors' operations and outlines the steps for handling investor grievances. Lastly, Part IV contains general provisions, including information on forms, fees, and procedures for authentication of investment licences.

Decision Impact

Taxpayers are encouraged to engage in responsible investment practices. Taxpayers also have mechanisms for addressing their grievances, which ultimately foster a favourable investment climate.

2.6 Traffic Safety Council Levy

Background

SI 233 of 2023 mandates that every insurer must remit levies to the Council in the currency received by the insurer. This amendment reflects a strategic shift in the financial mechanism of levies associated with insurance policies and their contribution to the Traffic Safety Council. By stipulating that insurers remit levies in the currency they receive, this notice aligns financial responsibilities with the economic transactions conducted by insurance entities. The amendment seems designed to enhance financial efficiency and transparency within the framework of the Traffic Safety Council. It seeks to streamline the levy collection process by tying remittances directly to the currency received, possibly reducing conversion costs and ensuring a more direct and accurate flow of funds to support the Council's initiatives and operations. Furthermore, this amendment signifies a proactive approach by the Minister, taken after due consultation with the Board and with the approval of the Minister responsible for finance. Such collaborative decision-making ensures that financial policies are comprehensive, considerate of industry dynamics, and serve the overarching goals of enhancing traffic safety and management.

Decision Impact

SI 233 stands as a pivotal amendment that intricately connects insurance policy transactions with the financial obligations to the Traffic Safety Council. This move not only streamlines financial processes but also emphasizes the Council's commitment to fostering a safer and more efficient traffic environment for taxpayers.



3. Court Case

3.1 Customs case dismissed on technicality.

Case name	Bakers Transport (Proprietary) Limited v Zimbabwe Revenue Authority and Another (520 of 2023) [2023] ZWHHC 400
Summary of facts	<ul style="list-style-type: none"> • ZIMRA is a creature of statutes established in terms of the Revenue Authority Act. • Bakers Transport (Proprietary) Limited is a legal entity registered under the laws of South Africa. • ZIMRA declared forfeited to the State property four motor vehicles and their trailers belonging to Bakers Transport. • Bakers Transport appealed to the Commissioner of Excise and was not successful. • Bakers Transport therefore made a court application in which the relief sought is for the decision to forfeit the vehicles to be declared null and void and of no force or effect, and for ZIMRA to pay the costs of this application on an attorney and client scale, if it opposes the relief sought.
Jurisdiction	<ul style="list-style-type: none"> • High Court of Zimbabwe
Issues	<ul style="list-style-type: none"> • Whether the declaration to forfeit Bakers Transport motor vehicles and their trailers by ZIMRA was done by official authorized by law to perform such a function. • Whether, if, the declaration to forfeit was done by official not authorized by law to perform such a function would make the declared null and void and of no force or effect and therefore would result in the vehicles being released.
Decision date	<ul style="list-style-type: none"> • 6 February and 12 September 2023
Decision	<ul style="list-style-type: none"> • The decision of the ZIMRA declaring forfeited to the State property belonging to the Bakers Transport was declared null and void and of no force or effect.

Facts

Bakers Transport (Proprietary) Limited is a legal entity registered under the laws of South Africa. Bakers Transport business is logistics services that include cross border transportation of goods. Bakers Transport was hired by a South African company known as Sasol (Pty) Ltd to transport fuel purchased by a client of Sasol. Sasol nominated an agent for customs clearance and to deliver the customs clearance documents to Bakers Transport. Bakers Transport submitted to the ZIMRA, the clearance documents given to it by the nominated clearing agent. According to the Bakers Transport, it was at this time that it discovered that customs clearing documents were fake and fraudulent. Bakers Transport was advised that all the vehicles had been forfeited and was further advised to appeal to the ZIMRA's Commissioner of Customs and Excise. The appeal to the Commissioner of Excise was not successful. Bakers Transport submitted the application on premise of the Customs and Excise that shows that only the Commissioner-General can declare property forfeited whereas the Regional Manager was unlawful and null and void. Bakers Transport, therefore, seeks relief from the declaratory order.

Monthly Tax Update - November 2023

Bakers Transport's Argument	
Whether the declaration to forfeit Bakers Transport motor vehicles and their trailers by ZIMRA was done by official authorized by law to perform such a function.	<ul style="list-style-type: none"> • That there is neither a provision in the Act for an appeal to the Commissioner of Customs and Excise, nor for a further appeal to the Commissioner-General which shows that the processes were contrary to the Act. • That s 193 of the Customs and Excise [Chapter 23:02], shows that only the Commissioner-General can declare property forfeited. • That the declaration by the Regional Manager was unlawful and null and void. • That the matter had not prescribed. • That an application for declaratory relief has no time limit. • That as such, s 193 (12) of the Customs and Excise Act does not apply in this matter.
Whether, if, the declaration to forfeit was done by official not authorized by law to perform such a function would make the declared null and void and of no force or effect and therefore would result in the vehicles being released	<ul style="list-style-type: none"> • That the decision of the first respondent declaring forfeited to the State property be released. • That the first respondent pays the costs of this application on an attorney and client scale, if it opposes the relief sought.

Court Reasoning and decision

ZIMRA's Arguments	
Whether the declaration to forfeit Bakers Transport motor vehicles and their trailers by ZIMRA was done by official authorized by law to perform such a function.	<ul style="list-style-type: none"> • That the vehicles in question were used to commit an offence of smuggling, • That the forfeiture was done in terms of the law. • That the Regional Manager did not declare the vehicles forfeited. • That instead, the Regional Manager made a statement that the motor vehicles will be forfeited. • That the Commissioner-General eventually declared the motor vehicles forfeited to the State.
Whether, if, the declaration to forfeit was done by official not authorized by law to perform such a function would make the declared null and void and of no force or effect and therefore would result in the vehicles being released	<ul style="list-style-type: none"> • That the Baker Transport's claim for the release of its motor vehicles had prescribed • That contended that the vehicles claimed by the Baker Transport were formally seized by the ZIMRA in 2020 • That in terms of s 193 (12) of the Customs and Excise Act, proceedings for the recovery of seized goods or payment of compensation in their respect, must be instituted within three (3) months of the date when the notice of seizure was issued

Monthly Tax Update - November 2023

Court Reasoning and decision

<p>Decision</p>	<ul style="list-style-type: none"> • That the applicant is seeking a declaration of its rights in terms of the Customs and Excise Act. • That it is well established that a declaratory order and is the most appropriate remedy where rights and interests are in question. • That a declaratory order is not subject to time –limits because a nullity is a nullity nothing flows from it. • That in terms of the Customs and Excise Act, seizure and forfeiture are two distinct acts. • That Section 193 (1) of the Act states that an officer may seize an article on reasonable grounds of believing the article is liable to seizure, • That s 193 (5) provides that after the seizure, the officer is required to report the fact of seizure to the Commissioner. • That s 193 (6), inter alia, requires the Commissioner on receipt of the report of seizure, to do one of three things. <ul style="list-style-type: none"> ○ First, she may order the release of the article from seizure. ○ The second option is to declare the article forfeited to the State. ○ Finally, if the article cannot be found, the Commissioner may declare that the person concerned pays an amount equal to the duty-paid value of such article. • That according to the law only the Commissioner may declare an article forfeited. • That the declaration made by the Regional Manager was in the circumstances unlawful and null and void.
<p>Whether, if, the declaration to forfeit was done by official not authorized by law to perform such a function would make the declared null and void and of no force or effect and therefore would result in the vehicles being released</p>	<ul style="list-style-type: none"> • That the decision of the first respondent declaring forfeited to the State property belonging to the applicant, the property in question being four motor vehicles and their trailers must be released to the applicant subject to the following conditions: <ul style="list-style-type: none"> ○ Payment of a fine as determined by the respondent. ○ Payment of storage charges.
<p>Decision</p>	<ul style="list-style-type: none"> • That decision of ZIMRA declaring forfeited to the State property belonging to Baker Transport is null and void and of no force or effect. • That Baker Transport's vehicles must be released subject to the following conditions: <ul style="list-style-type: none"> ○ Payment of a fine as determined by the respondent. ○ Payment of storage charges. • That each party shall bear its own costs.

Decision Impact

A taxpayer needs to be cognisant of tax law and how the rules around customs and excise duty work. For example, where goods are seized, if an officer other than the commissioner general seizes the goods, the seizure becomes null and void. Furthermore, the taxpayer must be careful when using an agent by appointing trusted individuals.



4. Technical Interpretation

4.1 Bonus/performance rewards.

Background

In the realm of taxable income, bonuses or performance-related awards serve as integral components, encompassing various forms such as annual bonuses, thirteenth cheques, profit shares, or production awards. These financial supplements are received by or accrue to employees or agents in recognition of services rendered. However, within the tax framework, certain exemptions exist to alleviate the tax burden on these earnings.

Law and Interpretation

Paragraph 4(0) of the 3rd Schedule to the TTA (Taxation Act) delineates a crucial exemption regarding bonus or performance-related awards. This exemption stipulates that the initial ZWL\$500,000 of the cumulative bonus or performance-related awards within a tax year is exempt from taxation. Notably, if the aggregate amount of bonuses or performance awards remains below this threshold, the entire sum qualifies for exemption from taxation. An important amendment was introduced through Finance Act no (8) of 2022, marking a significant shift in the exemption threshold. Effective from the 15th of November 2022, the exemption threshold rose from ZWL\$100,000 per annum to ZWL\$500,000 per annum. This adjustment aimed to provide individuals with a more substantial tax relief on their bonus or performance-related earnings, thereby easing their tax liabilities. Additionally, the exemption threshold for individuals earning in foreign currency stands at US\$700 per annum, however one cannot enjoy both ZWL\$500,000 and US\$700. This delineation recognizes the earnings in foreign currency and offers a separate exemption limit for such individuals, ensuring parity in tax treatment across different income brackets and currencies. It's essential to note that while these exemptions provide relief for individuals within certain income brackets, they do not negate the overall responsibility of taxpayers to report their earnings accurately and comply with tax regulations. The exemption thresholds offer a buffer for a portion of these earnings, but compliance with tax laws remains pivotal.

Decision Impact

Bonus or performance-related awards form an integral part of individuals' income streams, and the taxation thereof involves specific exemptions aimed at reducing the tax burden on these earnings. The recent amendments in exemption thresholds are crucial to the taxpayer especially with the prevailing economic conditions, ensuring a fair and equitable tax system while acknowledging individuals' efforts in the workforce.

4.2 Value of considerations in scenarios where monetary expressions are absent.

Background

Understanding the value placed on a consideration is fundamental in various commercial and legal contexts. In the realm of taxation and transactions, defining the value of consideration—whether in monetary terms or not—holds significant weight. Section 9(3) outlines the criteria for ascertaining the value of considerations in scenarios where monetary expressions are absent.

Law and Interpretation

When a consideration is in the form of money, its value is straightforward—the amount of money exchanged stands as the value. However, complications arise when considerations lack explicit monetary value. In such instances, the concept of "open market value" becomes pivotal. The open market value denotes the price at which goods or services would typically be transacted if offered freely between independent entities in similar circumstances. This concept serves as a benchmark for determining the value of non-monetary considerations. Section 3 of the VAT Act precisely defines the open market price, emphasizing the importance of fair, arm's length transactions between unrelated parties. It underscores the need for genuine, market-driven transactions to establish the value of goods or services, ensuring that the value attributed is reflective of the prevailing market conditions. The Act further elaborates on scenarios where determining the open market value becomes challenging. In cases where the open market value cannot be readily ascertained, the Act provides alternative methods. It suggests considering the monetary value that a similar supply would command under similar circumstances. This approach aims to maintain consistency and reliability in valuation, even when direct comparisons are challenging.

Moreover, the Act allows for the Commissioner's approval of alternative valuation methods, ensuring flexibility in cases where conventional means of valuation are impractical. This provision acknowledges the complexity of certain transactions and allows for the adoption of objectively sound methods that offer a reasonable approximation of the consideration's monetary value. The criteria for defining "similar goods or services" are critical in determining the value of considerations. The Act emphasizes that goods or services considered similar should possess comparable characteristics, quality, quantity, functional components, materials, and reputation to those being valued. This criterion ensures that comparisons are made between entities that closely resemble each other, maintaining fairness and accuracy in valuation.

Decision Impact

The valuation of considerations under Section 9(3) of the VAT Act is a meticulous process, aiming to establish fair and market-driven values for goods and services exchanged in transactions. The emphasis on open market principles, alternative valuation methods, and the definition of similarity between goods or services ensures a comprehensive framework for determining value in both monetary and non-monetary considerations. The principles laid out are therefore a guide for taxpayers in scenarios where monetary expressions are absent.

4.3 Stock disposed of otherwise than by sale or exchange.

Background

A significant ambiguity stands in regard to the definition of the phrase "disposal otherwise than by way of sale." This lack of clarity poses challenges for taxpayers and tax authorities alike, as it has broad implications for the taxation of stock.

Law and Interpretation

In the world of taxation, there is a concept called "disposal otherwise than by way of sale" that is used to determine how stock or assets are treated for tax purposes. However, the exact definition of this phrase is not clearly defined in the Act. According to Gunn's Commonwealth Income Tax, this principle ensures that any stock or assets that are disposed of, regardless of the means, are included in taxable income. To further understand this concept, let's turn to Webster's Third New International Dictionary, which defines "disposition" as a transfer from one person to another or placing elsewhere. Based on this definition, it can be argued that any event, act, forbearance, or operation of law that results in a variation or transfer of stock can be considered a disposal other than by way of sale. This includes actions such as forfeiture, set-off, release, waiver, renunciation, and distributions of stock.

In a recent development, taxpayers have been granted the option to value their stock disposed of, other than through a traditional sale. This new provision allows individuals to choose between three different methods of valuation: cost, market value, or replacement cost. The selection is made at the time of submitting the income tax return, which includes the trading stock. According to para. 4 of part II of the 2nd schedule, the date of valuation for this type of stock is the date it was disposed of. This means that taxpayers need to determine the value of their stock on the specific day it was disposed of, rather than using a generalized valuation. Imagine you have a business where you sell products. Let's say you have a stock of 100 units of a particular item that you bought for \$10 each. Over time, the value of these items may change due to various factors like market demand, competition, or even seasonal trends. So, when you decide to sell these items, it is important to know their current value. However, there may be instances where it is deemed impossible or impracticable to determine the value of the trading stock. In such cases, the Commissioner has the authority to accept alternative methods of valuation that are considered appropriate in the circumstances.

Decision Impact

Taxpayers need to be cognisant of the options available, that are cost, market value, or replacement cost as well as the principle of date of valuation when considering of disposing of stock. This is crucial as the year comes to an end and most enterprises are reviewing stock.

4.4 Income tax on assets sold to related party.

Background

The landscape of corporate structures often involves inter-company transfers or transactions between entities under the same control, frequently observed in related companies or spouses. These transfers come under specific

tax scrutiny and are subject to regulations that aim to maintain fairness and prevent tax evasion. A fundamental principle governing these transfers involves treating asset transfers between related companies or spouses similarly, contingent upon an election made by the parties involved.

Law and Interpretation

Central to these regulations is the necessity of the transfer between companies to occur within the framework of a scheme of reconstruction, merger, or similar business operations. This is crucial for the Commissioner to consider the nature of the transfer. The election, once made, allows the transferor to employ the Income Tax Value (ITV) as the transfer value, irrespective of the terms agreed upon in any sales agreement. This ITV essentially supersedes the fair market value of the asset at the time of transfer. Importantly, recoupment only materializes when the transferee eventually sells the asset to a third party. Upon such a sale, the recoupment is calculated as if the asset had always been under the possession of the transferor. This approach aims to limit the transferee's recoupment to a maximum equivalent to the cost of the asset established in the hands of the transferor. Continual inter-company asset transfers do not trigger tax recoupment, provided the election has been made. The process of election necessitates specific documentation, including a board resolution approving the scheme of reconstruction, the sale agreement detailing selling prices and ITV of assets, an overview of the group structure pre- and post-reconstruction, incorporation certificates, Articles and Memorandum of Association, and approval from the Reserve Bank of Zimbabwe.

Decision Impact

The regulations surrounding transfers between related companies or spouses seek to strike a balance between facilitating genuine corporate restructuring and preventing tax evasion. Taxpayers need to be aware of the intricate guidelines and documentation requirements aim to ensure transparency, legitimacy, and adherence to commercial motives in these transactions, safeguarding the integrity of the tax system.



5. Announcements and Interpretations

5.1 TaRMS steps into action.

Background

Through public notice 77 of 2023, ZIMRA advises that tax clearance certificates (ITF263s) will be issued through TaRMS with effect from 1 January 2024. Additionally, The VAT registered operators should ensure that all points of sale operated are installed with upgraded Fiscal Devices which are compatible and interfaced with the ZIMRA FDMS. Public notice 78 emphasises that ZIMRA will publicize approved Registered Agents with effect from 24 November 2023 on its website. Moreover, public notice 80 of 2023 states that all facilities will be offered in TaRMS from 1 December 2023 therefore, E-Taxes and E-Services platforms will be live to the 27th of November 2023, after which these two platforms will be shutdown. Taxpayers are also informed of using the return module to trigger a payment and then the payment module to pay.

Decision Impact

Taxpayers are advised to migrate to TaRMS and ensure all their details are correct. This is for compliance with ZIMRA to receive their tax clearance certificates, make return and payments from 1st of January 2024 and 1st of December 2023 respectively. Taxpayers are also encouraged to keep an eye out for approved registered agents on ZIMRA's website.

5.2 AVIS Bank Limited's license cancelled.

Background

The RBZ through a public notice dated 21st of November 2023, noted that AVIS Bank failed to put in place requisite systems and structures required to commence banking business. Having failed to meet licensing conditions, the institution did not have any depositors on its books. This is after been granted a Merchant Bank Licence on 7 June 2022. Therefore, the Registrar at the RBZ has cancelled the bank's licence.

Decision Impact

Avis Bank Limited is no longer a banking institution as defined in the Banking Act and are advised not to undertake any banking business with the institution.

5.3 FBC in a take over

Background

The RBZ through a public notice dated 14th of November 2023, advises the public that FBC acquired 100% shareholding in Standard Chartered Bank Zimbabwe Limited.

Decision Impact

Taxpayers are therefore advised that FBC is now in control of Standard Chartered Bank Zimbabwe Limited and its operations.

5.4 No writing of new business for Sunset Funeral Assurance company

Background

IPEC through a public notice dated 16th of October 2023 advises the public that it has suspended Sunset Funeral Assurance Company from writing new business. This is after an onsite inspection which revealed significant compliance and governance deficiencies. Therefore, IPEC issued a Corrective Order is the suspension of the entity from writing new business while it addresses the identified areas of regulatory concern. During the period of addressing concerns, Sunset Funeral Assurance Company is allowed to continue managing the existing business so that current policyholders continue to receive services.

Decision Impact

Sunset Funeral Assurance Company for a prescribed period is not permitted to write new business, taxpayers are advised not to undertake any new insurance business with the institution until IPEC has given the greenlight.

6. Disclaimer Clauses

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