# wts taxmatrix

## Monthly Tax Update

June 2024

# June 2024 MTU

- > Keeping businesses and individuals well-informed on current tax issues and adding value for all.
- Each month, we analyze the most recent changes in tax rules—including new legislation, pivotal case law, and critical announcements or interpretations from Revenue Authorities—to ensure relevance in today's business climate.

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#### Topics

- » Value Added Tax Complexities
- >TARMs
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#### 2.1 Revision of Capital Gains Tax Rates on Listed Shares.

SI 110 of 2024, effective from 28 June 2024, announces changes to the capital gains tax and capital gains withholding tax rates on listed shares. It repeals 4% capital gains tax on listed shares held for less than 180 days of date of acquisition and revises upwards final capital gains withholding tax to 2% (from 1.5%) of price of listed shares. The SI also repeals capital gains withholding tax of 40% for listed marketable security sold within 180 days of date of acquisition. The new rates are valid for a period of 6 months from 28th of June 2024

#### »Decision Impact

The new law frees trading on the stock exchange by removing prohibitive taxes for a period of 6 months. Previous fears that trading on the stock exchange caused speculation thereby creating local currency instability has been allayed by the introduction of ZIG which has brought about local currency stability.

#### 2.2 Changes in En-route Navigation Fees.

SI 98 of 2024, effective from 1 June 2024, standardizes and updates en-route navigation fees in Zimbabwean airspace. This regulation impacts all aircraft operators flying through Zimbabwean airspace, both local and international. Key provisions include a fee calculation formula based on distance flown and aircraft weight, with exemptions for specific flight purposes.

#### **»**Decision Impact

Enhances revenue for navigation facilities, ensures fee transparency, and accurately reflects operational costs.

#### 2.3 Updates to Pension and Other Benefits Scheme.

SI 99 of 2024, effective from 1 January 2024, updates Zimbabwe's National Social Security Authority benefits. Changes include a US\$200 funeral grant, payable in ZiG at the official interbank rate, and a US\$700 contribution ceiling. It suspends pensions for re-employed pensioners under 65, treats additional employment separately, and offers refunds plus interest for short-term contributors. Survivor's pensions are updated to ensure one pension per recipient at a time, with provisions for remarriage.

#### » Decision Impact

Enhanced financial support and security for pensioners, aligning benefits with living costs.

#### 2.4 Updates to Accident Prevention and Workers' Compensation Scheme.

SI 100 of 2024, effective immediately, enhances benefits under Zimbabwe's Workers' Compensation Scheme. Key provisions include a US\$200 compensation payment for workers or pensioners in case of fatal accidents, increased penalties for employer non-compliance, and adjusted liability limits to US\$5,000 for the general manager or employer, with provisions for additional payments in cases of serious injury.

#### »Decision Impact

Enhanced financial support for workers and families, boost in workplace safety, and improved compliance.

#### 2.5 Amendments to Value Added Tax Regulations.

SI 105 of 2024, effective from 12 June 2024, amends the VAT Act by introducing zero-rating for specified goods and services to boost economic growth and investment. The key provision is the zero rating of gold supplied to Fidelity Gold Refinery (Private) Limited, as listed in the newly added Second Schedule.

#### »Decision Impact

Reduces tax burden on gold refining, fostering local production and attracting investment.



#### 2.6 Exemption of Water Levy for Commercial Farmers.

SI 106 of 2024, effective from 1 November 2023, exempts commercial farmers from water levies for the 2023/2024 season. This exemption applies specifically to raw water abstraction from dams and rivers used for irrigation purposes. It aims to alleviate financial burdens on agricultural operations by eliminating fees associated with water abstraction and storage works until the Minister reviews the levy through a future statutory instrument.

#### »Decision Impact

Reduces financial burdens on farmers, promotes agricultural sustainability, and lowers irrigation costs.



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Case Name: Nestle Zimbabwe (Pvt) Ltd v ZIMRA (236 of 2024) [2024] ZWHHC 236	
Summary of facts	<ul> <li>Nestle Zimbabwe (Nestle) claimed deductions for various expenses which the ZIMRA disallowed resulting in a tax shortfall assessment.</li> <li>Disallowed deductions included royalties, management services, shared services, research services, zone services, and canteen meals.</li> <li>ZIMRA imposed a 40% penalty for alleged repeated tax evasion.</li> <li>Nestle appealed the disallowances and the penalty</li> </ul>
Jurisdiction	• High Court of Zimbabwe
lssues	<ul> <li>Should royalties for products manufactured by other affiliates be deductible.</li> <li>Validity of deductions for management services and shared services.</li> <li>Deductibility of research services and zone services.</li> <li>Classification of canteen meals as entertainment.</li> <li>Legitimacy of the 40% penalty imposed by ZIMRA.</li> </ul>
Decision Date	• 11 June 2024
Decision	<ul> <li>Appeal allowed for royalties, shared services, research services, canteen meals, and the 40% penalty.</li> <li>Appeal dismissed for management services and zone services.</li> <li>Each party to bear their own costs.</li> </ul>

#### 3.1 Another court case re. management services and canteen meals:

#### Facts

Nestle Zimbabwe, a subsidiary of Nestle SA, operated under a Global Licensing Agreement (GLA) to manufacture and distribute products in Zimbabwe. The ZIMRA undertook an audit on the company and found it was consistently reporting assessed losses and disallowed several deductions. Nestle argued that these expenses were legitimate, incurred in the production of income, and included royalties, management services fees, shared services fees, research services costs, zone services costs, and canteen meals. The deductions in question included royalties paid for the right to manufacture and sell products under the Nestle brand. Management services fees paid to Nestle Equatorial African Region Limited (NEARL) for various support functions. Shared services fees for accounting and human resources services from Nestle Central and West Africa's Nestle Business Services (NBS). Research services costs associated with quality tests conducted in a laboratory in Singapore. Zone services costs related to the importation of raw materials. Canteen meals provided to employees to prevent contamination in food production areas. ZIMRA contended these expenses were either not incurred in the production of income, duplicated services, or classified as entertainment, thus not deductible under the Income Tax Act. ZIMRA imposed a 40% penalty for alleged tax evasion. Nestle appealed to the Special Court for Income Tax Appeals.

#### Competing Arguments

Nestle's Argument	
Royalties	<ul> <li>That royalties were legitimate expenses under the GLA, providing exclusive manufacturing and distribution rights.</li> <li>That the GLA was not a tax avoidance scheme but a standard international business arrangement.</li> </ul>
Validity of deductions for certain expenses	<ul> <li>That services provided by NEARL reduced business costs by avoiding duplication.</li> <li>That expenses were genuinely incurred as evidenced by invoices and correspondence.</li> <li>That functions performed by NBS were distinct from those done locally.</li> </ul>

	• That local personnel and NBS services were not duplicative.
Deductibility of research services and zone services	<ul> <li>That specialized tests done in Singapore were necessary for product compliance.</li> <li>That local facilities lacked the capability for such tests.</li> <li>That discrepancies in import values were due to fraudulent activities by a third-party clearance agent.</li> <li>That the ZIMRA had been informed of these issues.</li> </ul>
Classification of canteen meals as entertainment	<ul> <li>That the canteen meals were provided to prevent contamination in a sensitive food production environment.</li> <li>That they are necessary for business operations and not entertainment</li> </ul>
Legitimacy of the 40% penalty	<ul> <li>That previous tax audits had been successfully appealed.</li> <li>That there was no deliberate tax evasion, but genuine business costs were claimed</li> </ul>

ZIMRA's Argument	
Royalties	<ul> <li>That ZIMRA is incorrect in alleging income splitting arrangement in respect of royalties paid since such arrangement applies to individuals and corporates</li> <li>That ZIMRA's also incorrect to allege taxpayer breach tax avoidance rules since the GLA is not unique to Nestle but applied in over 189 countries</li> <li>That royalties paid for products manufactured by affiliates were therefore incurred in the production of Nestle's income.</li> </ul>
Validity of deductions for certain expenses	<ul> <li>That there is no evidence of services rendered by NEARL.</li> <li>That local personnel could perform the services claimed.</li> <li>That there was duplication of services performed locally and by NBS.</li> </ul>
Deductibility of research services and zone services	<ul> <li>That the payments were part of Nestle's obligation to ensure food safety, not deductible.</li> <li>That the excess value of imports was unverified.</li> <li>That they relied on ASYCUDA system for verification</li> </ul>
Canteen meals	• That the meals are classified as entertainment, not deductible under the Act.
40% penalty	• That Nestle was a repeat offender, justifying the penalty.

#### Court Reasoning and decision

ZIMRA's Argument	
Royalties	<ul> <li>That GLA provided Nestle the right to arrange manufacturing by affiliates.</li> <li>That royalties were for exclusive rights to manufacture and sell products.</li> <li>That ZIMRA's disallowance of royalties was incorrect.</li> </ul>
Management services	<ul> <li>That it was held in CF [Pvt] Ltd v ZRA HH 99-18 and other cases that expenditure is incurred when work has been done or the eservice has been rendered.</li> <li>That the lack of cogent proof for services rendered renders the cost disallowed.</li> <li>That ZIMRA's disallowance was reasonable.</li> <li>That the RBZ fee cap of 2% does not substitute the requirement to render services or to do work for an expenditure to be deemed incurred.</li> </ul>

Shared services	<ul> <li>That services from NBS were distinct from local functions.</li> <li>That however it is too sweeping a conclusion that the services rendered by NBS were the same as those performed by its local personnel here.</li> <li>That, consequently, ZRA's decision on this expenditure item should be set aside.</li> </ul>
Research services and zone services	<ul> <li>That costs for specialized tests were deductible.</li> <li>That local laboratory lacked necessary equipment.</li> <li>That ASYCUDA system was a reasonable basis for verifying import values.</li> <li>That excess claims were unverified.</li> </ul>
Canteen meals	<ul> <li>That the meals are necessary to prevent contamination in food production.</li> <li>That they are deductible under s 15(2)(a) of the Act.</li> </ul>
40% penalty	• No deliberate tax evasion.
Decision	<ul> <li>Appeal allowed for royalties, shared services, research services, canteen meals, and the 40% penalty.</li> <li>Appeal dismissed for management services and zone services.</li> <li>Each party to bear their own costs.</li> </ul>

#### »Decision Impact

The ruling clarifies deductible expenses for multinational companies under the ITA emphasizing proper documentation and evidence of services rendered. Transparency and compliance are crucial to avoid penalties.







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#### 4.1 Estimated Income Tax Assessments

#### Background

Taxpayers must file their returns on time to avoid estimate of taxes by revenue authorities. With the ZIMRA intensifying its collection power to boost revenue collection, estimate assessments are now common.

#### Law and Interpretation

From an income tax standpoint, the Commissioner General of ZIMRA can raise estimated assessments of taxpayer's income tax liability where a taxpayer fails to lodge a return, is about to leave the country before submitting the return or where the Commissioner is not happy with the return so submitted by the taxpayer or where there are no proper books of accounts or records. If it appears to the Commissioner that a taxpayer is unable from any cause to furnish an accurate return, the Commissioner may agree with the taxpayer his/her taxable income or assessed loss. The agreed position is not subject to any objection or appeal. However, this may be revised if the Commissioner receives new information or discovers that the taxpayer withheld the information, in both cases the new information once known results in a favourable position to the fiscus.

#### **»**Decision Impact

Taxpayers are advised to file their returns timeously and accurately supported by relevant information or documentation, to avoid estimated assessments which may be prejudicial to them. Although estimated assessments must be reasonable, ZIMRA often pushes this to taxpayers to prove otherwise. In essence it shifts the onus of proof to the taxpayer to prove that the relevant income is not taxable or that an expense is deductible.

#### 4.2 Currency of payment of 2024 second QPD

#### Background

Section 4 A (1) of the Finance Act requires income tax to be paid in the currency in which the taxable income is earned, received or accrued. However, the treasury has through a press release dated 19 June 2024 sanctioned a 50:50 split of the tax payments in foreign currency and ZIG in respect of the second QPD.

#### Law and Interpretation

The press release outlined that currency of paying income tax must be guided by standing legislative provisions in section 4 A (1) of the Finance Act, which provides for payment of tax in proportionate to the currency of trade. The press release states further that, notwithstanding these provisions, the treasury authorizes the payment of 2024 second QPD in both local and foreign currency on a 50:50 basis. Those that have ready settled their obligation based on the standing law are not to be affected by the change.

#### » Decision Impact

The press release has no force of the law to make taxpayers held accountable if they fail to observe it. Further, the press release is couched in non-mandatory language but in a way that seeks to relief taxpayers of the burden to pay their taxes in foreign currency through a Ministerial approval. Unless a new SI is issued to this effect, taxpayers must be guided by the standing law.



#### 4.3 Input Tax and Fiscalisation.

#### Background

Input tax is a cornerstone of the VAT system, enabling businesses to recover VAT on goods and services used for taxable outputs. Fiscalisation, introduced to improve VAT administration, ensures that input tax claims are accurate and verifiable. The Fiscalisation Data Management System (FDMS) exemplifies modern approaches to VAT management, integrating technology to streamline tax processes and enhance transparency.

#### Law and Interpretation

Input tax includes VAT paid on supplies, imports, and second-hand goods transactions. The VAT Act covers VAT charged by suppliers and on imports, with specific rules for second-hand goods and fixed properties. To claim input tax, goods or services must be used for taxable supplies, operators need a proper fiscal tax invoice, and detailed records must be maintained. Legal precedent emphasizes a direct link between expenses and taxable supplies. Zimbabwe's FDMS ensures that all fiscal devices are connected and compatible for real-time transaction recording, enhancing VAT compliance and accuracy.

#### »Decision Impact

Effective input tax management and fiscalisation reduce administrative burdens and enhance compliance. The FDMS improves accuracy and expedites input tax claim verification, supporting a more efficient and transparent VAT system.

#### 4.4 VAT on Repossessed Goods.

#### Background

Economic pressures have led to an increase in goods repossessions due to consumers defaulting on instalment payments. Repossession triggers VAT implications despite not being a standard business transaction.

#### Law and Interpretation

When goods are repossessed from instalment credit agreements, the VAT Act (s7(9)) deems this a supply from debtor to creditor, subject to VAT, unless the goods weren't part of the debtor's business assets. If the debtor couldn't claim input tax on the goods (s16(3)), no supply is recorded. The timing of the supply is based on the repossession date or the day following the reinstatement period (s8(8)). The value of the supply is the outstanding portion of the original cash value, excluding interest and finance charges (s9(13)). Registered debtors require creditors to issue tax invoices (s20(3)), while non-registered debtors must keep detailed acquisition records.

#### »Decision Impact

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Clear understanding and compliance with VAT regulations on repossessed goods are vital to avoid penalties and ensure financial transparency. Stakeholders must manage transactions diligently to uphold VAT compliance and operational efficiency.



#### WTS Tax Matrix's Tax Inquiry Portal

Our team of experienced tax professionals is ready to assist with your tax-related questions and concerns through our website. Simply fill out the form via the link below, and one of our tax experts will get back to you promptly.

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#### 5.1 Minister of Finance Press Release.

On the 5th of April 2024, the minister presented a Monetary Policy Statement where a transfer from the Zimbabwean Dollar to the Zimbabwe Gold Zig was advised. To date, the introduction of Zimbabwe's new gold currency has improved the economy's stability envisaged through reduced inflation. On the 19th of June 2024 the Minister alleged that taxes should be remitted guided by section 4A of the Finance Act [Cap. 23:04] which requires corporate income tax to be paid in proportion to the currency of trade. Companies that only transact in local currency must pay taxes in that currency (ZiG). For example; where a corporate transacts in the ratio of 60:40 percent, that is, local and foreign currency, respectively, Corporate Income Tax should, accordingly be accounted for in the same ratio.

Notwithstanding the current legislative provisions, for the second quarter corporates are obligated to pay taxes in both local and foreign currency on a 50:50 basis. Corporates who have already paid tax for the second quarter are advised that the Commissioner General is authorized to manage such transactions administratively as per the law. The scope of the use of local currency was also extended to governmental fees and customs duty on imported goods except for designated foreign currency dutiable and non-essential or luxury products. In due course, the law shall be amended to specify the taxes which will exclusively be payable in local currency.

#### 5.2 Relocation of ZIMRA Chiredzi Office.

Public Notice 47 of 2024 announces the relocation of the ZIMRA Chiredzi office from 606 Baobab Road to 356 Chilonga Drive, Chiredzi. Taxpayers are encouraged to use the TaRMS Self-Service Portal for submitting returns in local (ZiG) and US\$ currencies, and for ZIMRA registrations. The Contact Centre, available from 8:00 am to 10:00 pm on weekdays and 8:00 am to 12:30 pm on Saturdays, is recommended for queries and enquiries.

#### 5.3 A Call for Inputs on 2024 Mid-Term Budget and 2025 Budget.

The Ministry of Finance, Economic Development, and Investment Promotion invites public input for the 2024 Mid-Term Budget and Economic Review and the 2025 Budget Strategy Paper (BSP), following the guidelines of SI 135 and SI 127A of 2021. Stakeholders are encouraged to contribute insights on economic developments, progress in implementing the 2024 National Budget, and necessary adjustments to meet budget and NDS1 objectives. Submissions are due by 28 June 2024, allowing time for comprehensive consideration.

#### 5.4 Swipe for ZiG Cash.

The Reserve Bank of Zimbabwe, in a recent press statement, announced an initiative to enhance the circulation of ZiG cash for normal business transactions and economic activities. This includes partnering with Homelink to expand access through its branch network, offering denominations like ZiG1, ZiG2, ZiG5, and ZiG10. Starting 10 June 2024, the public can visit Homelink branches to swipe local currency debit/credit cards for ZiG cash, and exchange foreign currency at the interbank rate.

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# DURABLEY

#### Waica Re Zimbabwe (Private) Limited triumphs as Zimbabwe Reinsurance Leader

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With coverage in over 100 countries, WTS Global is among the world's largest non-audit tax practices offering the full range of tax services. We deliberately refrain from conducting annual audits in order to avoid any conflicts of interest. We are guided by our commitment to be a long-term trusted advisor for our clients, both locally and globally. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The member firms of WTS Global are carefully selected through stringent quality reviews. They are strong local players in their home market united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the newdigital tax world.

WTS Global combines senior tax expertise from different cultures and backgrounds and offers world-class skills in tax advisory, tax compliance and accounting as well as tax digital, coupled with the ability to think like experienced businesspeople in a constantly changing world.



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