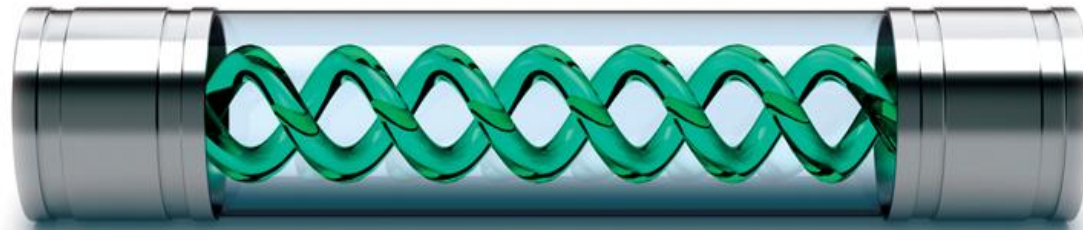




The Deloitte School of Tax  
Infusing tax technical skills



# VAT - The Emerging Issues

# General rules

## Charging of VAT

Section 6 of VAT provides for the charging, levying and collecting of VAT.

On

- The supply by any registered operator of goods or services supplied by him on or after the 1st January, 2004, in the course or furtherance of any trade carried on by him, excluding on second-hand motor vehicles that are subject to special excise duty on sales or disposals of second-hand motor vehicles referred to in section 172B of the Customs and Excise Act [Chapter 23:02]
- The importation of any goods into Zimbabwe by any person.....
- The supply of any imported services by any person .....

## Charging of VAT

- The supply of goods and services, in the course or furtherance of any trade carried on a by registered operator, is the precondition for the registered operator's liability under VAT Act. Without limitation, the provision applies also to non-residents who carry on business in Zimbabwe, whether through a fixed base or not, on regular basis.
- The supply must be for a consideration, otherwise a gratuitous cannot constitute a supply of goods or services.
- *Section 2 of the VAT Act defines supply as:*
  - “including all forms of supply, irrespective of where the supply is effected, and any derivative of “supply” shall be construed accordingly”

## Meaning of trade

*Section 2 of the VAT Act defines trade as meaning:*

“In the case of any registered operator, other than a local authority, any trade or activity which is carried on **continuously** or **regularly** by any person in Zimbabwe or partly in Zimbabwe and in the course or furtherance of which goods or services are supplied to any other person for a **consideration**, whether or not for profit, including any trade or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern or any other concern of a continuing nature or in the form of an association or club....”

## Meaning of trade

Trade includes the following activities:

- Supplies by any public authority in the course or furtherance of a trade
- Activities of any private voluntary organisation (PVO)
- Supply by a local authority of water, drainage, removal or disposal of sewage or garbage;
- Anything done in connection with the commencement or termination of any such trade or activity

## Meaning of trade

A trade does not include the following activities:

- Employment relationship where remuneration is paid or is payable to such employee or office holder, other than services rendered by an independent contractor
- Any activity carried on by a natural person essentially as a private or recreational pursuit or hobby or any activity carried on by a person other than a natural person which would, if it were carried on by a natural person, be carried on essentially as a private or recreational pursuit or hobby
- An activity involving the making of exempt supplies is deemed not to be trade.



## Consideration

### Section 2 meaning of “consideration”

- *“in relation to the supply of goods or services to any person, includes any payment made or to be made, including any deposit on any returnable container and tax, whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as an unconditional gift to any association not for gain”*
- *Provided that a deposit, other than a deposit on a returnable container, whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited”*

## Value Added Tax Registration

- Section 23 of the VAT Act provides for compulsory registration for VAT when either their taxable supplies for the last twelve months cumulatively exceed USD 60 000 or where at the beginning of any month there are reasonable grounds for believing that the threshold taxable supplies in the next twelve months will be exceeded
- The 12 month period should be taken as a rolling twelve month rather than a “tax year”
- Secondly compulsory registration is required where there are “reasonable grounds for believing” that the threshold will be exceeded in the future. An example being, where a lessor enters into a 12 month lease agreement for a monthly rental of USD 5000 or more.

## Value Added Tax Registration

- The VAT Act under Section 23 (3) allows for voluntary registration where the Commissioner is satisfied that that person intends to carry on any trade from a specified date. This is to cater for longer term projects (e.g. mining ventures) that may only commence making taxable supplies at a date beyond the 12 months for compulsory VAT registration.
- ZIMRA has the capacity to back date registration to the date when you should have effectively registered..

## General rules of time of supply

- Time of supply rules dictate when VAT becomes due, a mistake can lead to accounting for output tax late or input tax early.
- Generally a supply is deemed to take place at the time an invoice is issued OR any payment is made whichever time is the earlier.
- In the absence of payment or invoice, a supply between connected parties shall be deemed to take place for goods which are to be removed, at the time of the removal and for goods which are not to be removed, at the time when they are made available to the recipient AND for services, at the time the services are performed.

## General rules on value of supply

- The value of supply shall, subject to exception, be the value of the consideration for such supply, less postage stamp and VAT.
- The value of any consideration shall be to the extent it is expressed in money, the amount of the money; and to the extent that it is not expressed in money, the open market value of that consideration.
- A supply not expressed in monetary terms e.g. barter or donation, is valued at the open market value of an item received or given away.
- Where a supply is made for no consideration, the value of supply is nil, unless the supply is between connected persons.

## General rules of value of supply

- Value of supply of goods to connected persons below market value can be deemed to be market value if in the hands of the recipient he would not be availed an input tax deduction or a full input tax deduction.
- Where the supply is between connected parties and the goods or services are supplied for a nil consideration or for a consideration less than the open market value, the value of supply is determined as follows:
  - If the recipient can claim input tax - the value of supply is the consideration,
  - If the recipient cannot claim input tax – the value of supply is the open market value.

## General rules of value of supply

### *Meaning of open market value section 3*

- Is the consideration in money that the supply of those goods or services would generally fetch if supplied in similar circumstances on the relevant date in Zimbabwe in an arms length transaction
- The open market value of a supply shall include any VAT charged.
- “similar supply”, means any other supply of goods or services that, in respect of the characteristics, quality, quantity, functional components, materials and reputation of the first mentioned goods or services, is the same as, or closely or substantially resembles, that supply of goods or services;

Deemed supplies



## Deemed supplies

Section 7 brings into VAT certain supplies other than ordinary sales, for example:

- Sales in execution of a debt where debtor has not given a written notice that the goods would not be taxed if sold by him
- Deregistration of a person as a registered operator
- Sale of a going concern
- Receipt of an insurance indemnity
- Transfer of shares and loan obligations in share block companies
- Importation of goods by an agent for a foreign principal

# Zero rated supplies

## Zero rated supplies

Section 10 (1) zero rating certain supplies of goods, for example:

- Exports of goods
- Goods used or consumed in respect of temporary imports
- Leasing of goods used in an export country
- Disposal of a going concern
- Agricultural goods (unprocessed, not served as meals for immediate consumption and supplied along supply chain), foodstuffs and disabled person's goods
- Supplies to branches in export countries

## Zero rating of exports

Export of goods in terms of a sale or instalment credit means:

- Consigned or delivered by the registered operator to the recipient at an address in an export country
- Delivered by the registered operator to the owner or charterer of any foreign-going aircraft destined for an export country and such goods are for use or consumption in such aircraft
- Removed from Zimbabwe by the recipient, who is a resident of Zimbabwe, for conveyance to an export country

## Zero rating of a going concern

- A supply of a trade or part of a trade as a going concern between VAT registered buyer and a seller is zero rated, provided that:
  - At the time of the conclusion of the agreement the buyer and seller agreed in writing that such trade or part of a trade will be an income-earning activity on the date of transfer thereof; and
  - Assets necessary for carrying out the trade are transferred to the purchaser and
  - Agreement provides that the going concern will continue as an income generating activity on the date of transfer.
- The sale of a going concern occurs on the date of registration of transfer into the purchaser's name.

## Zero rated supplies

Section 10 (2) zero rating certain supplies of services, for example:

- International transportation of passengers or goods
- Local air transport as part of international transport
- Local transport and ancillary transport services
- Transport and related services rendered directly to a foreigner
- Services rendered directly in connection with land or improvement thereto in export countries
- Services rendered directly in respect of movable property which is situated in export country at the time services are rendered
- Services which are physically rendered outside Zimbabwe supplied to any person who utilises such services in Zimbabwe; excluding telecommunication services
- The services are supplied for the benefit of and contractually to a person who is not a resident of Zimbabwe and who is outside Zimbabwe at the time the services are rendered,

# Exemption supplies



# Exemptions

Section 11 exempts certain supplies of services, for example:

- Financial services, excluding those which are zero rated
- Supply by an association not for gain of any donated goods or services or manufactured goods (80% of material must have donated to the association)
- Accommodation in a dwelling under agreement for letting or hiring including provision of accommodation by employer to its employees
- Supply of leasehold land by way of letting to the that the land is used to erect a dwelling or for existing dwellings
- Sale or letting of land and improvements thereto outside Zimbabwe
- Transportation of fare paying passengers by road or rail (services of commuter omnibus, intercity buses, tour operators etc.)





# Exemptions

Section 11 exempts certain supplies of services, for example:

- Educational services (at any level), in any institution which is registered under any law administered by the Ministry responsible for education or higher education including supply of sporting facilities, accommodation, hostel or canteen services to own students or fellow students
- Tobacco supplied on the auction floors in terms of the [Tobacco Industry and Marketing Act \[Chapter 18:20\]](#) (S.I. 106 of 2004)
- Commission charges on tobacco sales at auction floors (by S.I.193/05)
- SI 81 of 6/2013 (effective 1 February 2013)- tobacco sold on the auction floors was extended to include tobacco not sold on the auction floors e.g. tobacco sold under contract farming.

Imported services

## Imported services

- *Section 2 also defines imported services as.*
  - “a supply of services that is made by a supplier who is resident or carries on business outside Zimbabwe to a recipient who is a resident of Zimbabwe to the extent that such services are utilised or consumed in Zimbabwe otherwise than for the purpose of making taxable supplies”
- BUT does not include:
  - Services supplied to a registered operator and used for the purpose of making taxable supplies including
  - Exempted services if they had been rendered in Zimbabwe
  - Zero rated if they were to be rendered in Zimbabwe

## VAT on imported services

- Value of supply for imported services is the consideration paid for the supply or its open market whichever is greater
- Barter or donation is valued at the open market value of an item received or given away, while a supply for no consideration has nil value, unless it is between connected persons.
- Supply is deemed to take place at the time an invoice is issued by the supplier or recipient in respect of the supply OR the time any payment is made by the recipient in respect of that supply, whichever time is the earlier.

Input tax

## Claiming of input tax

- Documentation (tax or fiscalised tax invoices, debit and credit notes and bills of entry) is key to the functioning of the VAT system
- Zimra will not refund input tax against non-compliant tax invoices and bills of entries and may also invoke penalties for making wrongful claims using invalid supporting documents.
- A valid tax invoice must have the following features:
  - The word “Tax Invoice” in a prominent place
  - Name, address and registration number of the supplier
  - Name, address and registration number of the recipient
  - Individual serialized number and invoice date
  - Description of goods or services supplied
  - Quantity or volume of goods or services supplied
  - Either the value of the supply, the amount of tax charged and the consideration for the supply

## Claiming of input tax

- ANY one missing renders the invoice non-compliant
- The features required of a tax invoice apply equally to a credit note or a debit note.
- Notify Zimra of any change of name or address
- A bill of entry or a tax invoice which is more than 12 months old from the date of delivery to the operator or his agent cannot be used to claim input tax.

## Claiming of input tax

- Where goods or services are acquired or imported partly for purposes of making taxable supplies input tax claimed shall be that applicable to the ratio intended for making taxable supplies bears to the total intended use.
- Extend of at least 90% of the total use of goods or services, whole input tax is claimed and extend of use is at least 90% in the making of exempt supplies the whole input tax refund is denied.
- Apportionment shall be based the turnover:  
$$\frac{\text{Total value of taxable supplies (excluding VAT)}}{\text{Total value of all supplies (excluding VAT)}}$$



## Prohibited deductions

- Section 16 (2) deals with situations where VAT paid on some purchases cannot be claimed as a deduction i.e.:
  - Goods or services acquired for purposes of entertainment
  - Fess or subscriptions for non-business associations
  - Superannuation schemes
  - Non-commercial motor vehicles
- Section 2 of VAT Act defines entertainment as:
  - *“.. the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a registered operator whether directly or indirectly to anyone in connection with a trade carried on by him”*



# Entertainment

## Excluded as entertainment

- Bona fide promotion made free of charge to business clients or customers in the ordinary course of the operator's trade
- Provision of travelling and subsistence to an employee or partner away overnight on the business of the employer or partnership which is refundable by the employer or partnership.
- On cost of meals or refreshments for participants during a seminar or similar event, unless the charge to participant is insufficient to cover the direct or indirect costs of the meal.

## Passenger Motor vehicle:

- No input tax deduction on acquisition of or rentals of a PMV.
- “Passenger motor vehicle” means any motor vehicle propelled by mechanical or electrical power and intended or adapted for use or capable of being used on roads mainly for the conveyance of passengers, e.g an estate car, station wagon, double cab, van etc.
- Exception:
  - Motor dealers purchase exclusively for purposes of trade or in the production of income
  - Motor dealers purchase by operator in the ordinary course of business e.g. car dealers, car rental companies, demonstration vehicles
  - Running expenses e.g. repairs, insurance etc.

# Adjustments

## Adjustments

Section 17 deals with adjustments to the output tax or input of a registered operator as follows:

- Change in the intended use or goods or services
- Reduction in use of capital goods
- Granting of fringe benefits to employees
- Input tax adjustment goods acquired after fixed date
- Partial input tax initially claimed on capital goods
- Output tax adjustment on fixed property (notional input tax)

## Fringe benefits

- The granting of fringe benefits (Income Tax Act s8(1)(f)) by a registered operator to an employee or the holder of any office is a deemed supply of goods or services made by the registered operator
- The taxable value of the supply is calculated based on the amount of the Income Tax Act section 8(1)(f), computed as  $\frac{3}{23}$  of that value
- A fringe benefit is deemed to accrue at the end of the month in which the employee or holder of office becomes liable for PAYE on the benefit, BUT if the fringe benefit is not required to be included as remuneration for the employee, the time of supply is the last day of the year of assessment in which the fringe benefit has been granted.

## Fringe benefits

- VAT will not be payable in the following instances:
  - Provision of fringe benefits that are exempt (travel, entertainment, accommodation, loans etc.) or zero rated if supplied in the ordinary course of trade (basic food stuff, bread, sugar etc.)
  - Fringe benefits provided by an employer making exempt supplies in the ordinary course of his trade
  - To the extent to which the employee has paid for the fringe benefit or where the employer claim VAT portion of supply from the employee.

## Over due invoices

- Adjust for output tax on invoices not been paid within a period of 12 months after the expiry of the tax period within which input tax deduction was made
- The output shall be an amount equal to the tax fraction
- The output tax is charged in the next following tax period after the expiry of the period of 12 months
- Once the invoice is settled an operator can reclaim the input tax



# VAT Pitfalls

## Common VAT Pitfalls

- Failure to register by new or incumbent business as operator after surpassing registration turnover threshold.
- Claiming of input tax using non-compliant documents
- Failure to account for output tax on group shared services i.e. use of property for free by a group member, intercompany transactions etc.
- Omission to charge VAT on cost recoveries and employees benefits e.g. motoring benefit, use of cellphones etc.
- Bookkeeping errors- failure to reconcile VAT returns to Income Tax return of the same period, keep accounting records
- One party not registered for VAT on a disposal of a going concern transaction
- Failure to apportion input tax in respect of mixed supplies i.e. operators supplying taxable and exempt supplies

# Compliance



## Compliance principles

- Compliance is timely filing and reporting of required tax information, the correct self assessment of taxes owed, and the timely payment of those taxes without enforcement action
- Non compliance is the failure to file returns, report income, calculate deductions properly and to pay correctly and on time
- Taxpayer's behaviour (e.g. gross negligence).

## Tax calendar

- Taxes must be paid as follows:
  - VAT by the 25<sup>th</sup> of the month following end of the tax period
  - PAYE by the 10<sup>th</sup> of the following month
  - Withholding taxes on contracts 10<sup>th</sup> of the following month
  - Other withholding taxes within 10 days (subject to exceptions)
  - Capital gains withholding tax within 3 working days of receiving proceeds from sale of specified asset
  - QPDs, 25<sup>th</sup> March, 25<sup>th</sup> June, 25<sup>th</sup> September and 20<sup>th</sup> December
  - Presumptive by the 10<sup>th</sup> of the month following end of quarter

## Returns and records

- Returns must be submitted on time, by 25<sup>th</sup> VAT, 10<sup>th</sup> PAYE, 30<sup>th</sup> April income tax, 10<sup>th</sup> withholding tax
- Returns are required even if no tax is payable
- Taxpayer may submit amended return before original assessment to correct errors
- Audit or dispute: Records must be retained until concluded (6 years is the minimum period records must be kept)



# Cost of non-compliance

- Penalties and interest (100% and 10% p.a respectively).
- A civil fine of \$30 a day (up to 181 days) for late submission of an Income Tax or VAT return or not registering as a VAT operator see next page
- Civil penalty of USD25/day per point of sale, for each day the taxpayer remains in default up to a period of 181 days, for not fiscalising
- Garnishing of accounts
- Seizure and sale of properties of defaulters.
- Legal action through the courts and can cause your business to be wound up or sequestrated



# Due dates for returns

Return	Due date
• ITF1- Trade and Investment individual	Public notice
• ITF12 - Trade and Investment Company	Public notice
• ITF12C- Self Assessment	30 <sup>th</sup> April
• ITF16- PAYE Reconciliation	31 <sup>st</sup> January
• REV5- Withholding taxes	10 days of payment
• REV5A- Presumptive tax	10 <sup>th</sup> of following month per quarter
• CGT1- Capital Gains Tax	30 days of sale
• VAT7- VAT Return	25 <sup>th</sup> of the following month



## Local contracts- refresher

- Withhold 10% of amounts payable under contracts to a PAYE who has not issued you with a valid tax clearance certificate.
- Applies to payments made by a **registered taxpayers** employer, VAT registered operator, any person in Zimra's records as a taxpayer totaling or aggregating to \$250 or more (aggregation).
- Burden of proof where withholding not made, that you have on file a valid tax clearance certificate of the PAYE – else liability falls to payer to account.

## Local contracts- refresher

- A tax clearance or ITF 263 is only issued to taxpayer with up to date in terms of their tax affairs (some are on annual and some on bi-annual or partial months)
- The amount remitted to ZIMRA is retained and credited against any tax due by the payee.



# Local contracts refresher – where WHT does not apply

Contracts not subject to withholding tax:

- Employment contracts.
- An agreement for the settlement of a delictual claim against the State or a statutory corporation
- A sale effected in any shop in the ordinary course of the business of such shop, or any other consumer contract for the sale or supply of goods or services or both (not a contract for the sale, letting or hire of immovable property), in which the seller or supplier is dealing in the course of business and the purchaser or user is not
- Purchase of farm produce and livestock from the farmer (per ZIMRA notice)- beware of middlemen/brokers.

## New Issues – Definition of Payment enhanced

### **New definition of payment:**

- Payment is paying by cash, barter, set-off, crediting a director's loan accounts, intercompany debits and credits or by other settlement of obligations whatsoever and in any form.

Concept of “payment” is broad and encompassing.

## Practical Considerations

Managing compliance:

- Include as part of standard purchasing terms or on purchase orders requirement for ITF263 before making payment and a reservation of right to re-claim taxes paid over.
- Deduct the tax on every payment not supported by ITF263 and pay over by 10<sup>th</sup> of following month.
- Collect missing tax clearance certificates from suppliers and build a file thereof if there are gaps.
- Where gaps in compliance are identified then rectify immediately.
- Try and imbed compliance in your accounting system (e.g. include on compliance checklist for making payments).

## Practical Considerations

- Beware of accumulated thresholds- If you use a regular contractor the 250 can be exceeded. Monitor accumulation of total payments.
- Beware of brokers – e.g. Purchase of livestock or farm produce through an intermediary does not exempt compliance.
- Be aware of exact period stated and covered by the tax clearance certificate
- Be wary of validity of tax clearance certificates- many fraudulent ones. If in doubt confirm with ZIMRA.

THANK YOU

