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SIMEZA | SANGWA

NEWSLETTER

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Inside the Issue

The Trademarks Act No. 11 of 2023

Parliament has enacted the Trademarks Act No. 11 of 2023 which repeals and replaces the Trademarks Act, Chapter 401 of the Laws of Zambia. The Act expands the definition of a mark to include non-traditional marks such as sounds, smells and shapes of goods. It further introduces collective trademarks and geographical indications as well as the registration of service marks.

The Act also domesticates the Madrid Protocol relating to the International Registration of Marks, the Paris Convention for the Protection of Industrial Property and the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights which are international treaties or conventions to which Zambia is a party.

The Minister of Commerce, Trade and Industry is yet to issue a Commencement Order and regulations relating to the Act

The Criminal Procedure Code (Economic and Financial Crimes Court) Rules, 2024

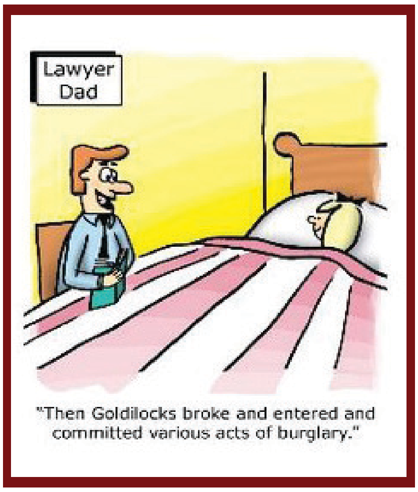
The Economic and Financial Crimes Court Rules of 2024 were passed into law to provide for the procedure in for the Economic and Financial Crimes Court. Most notably, these Rules stipulate that economic & financial crimes cases will be heard within 5 months effective 1st March, 2024. This is with an option to extend the specified period by application of the party or at the Court's instance

Bank of Zambia increases Monetary Policy Rate

The Bank of Zambia on 12th and 13th February increased the monetary policy rate by 150 basis points to 12.5 per cent. The upward adjustment was informed by the increase in inflation and is intended to steer inflation to the Bank of Zambia's target band of 6-8% and help anchor inflation expectations.

The Investment, Trade and Business Development (Amendment) Bill 2024

The Investment, Trade and Business Development (Amendment) Bill 2024 is currently at the first reading before the National Assembly. The Bill intends to amend the Investment, Trade and Business Development Act No. 18 of 2022 by deleting the definition of "rural area"; extending the eligibility for incentives to investors who invest in an expansion project in a special economic zone; priority sector or rural area; and extending the eligibility for incentives to investors who invest in a new project or expansion project in a farm block.



Tax Strategy; Is it Relevant?

By Sula Chungu Ching'ambu - Head of Corporate & Commercial

Taxes, world over are levied to raise revenue to fund government expenditure. It is important for a tax policy design to be intentional and deliberate to achieve an effective outcome. A relevant question for consideration in a developing country like Zambia, is: Is a tax strategy relevant, if taxes levied by the government shift each year and tax policy formulation is usually a trade-off affected by changing legal, social, political and economic environment?

Zambia does not have a written taxation system policy document as the taxation policy is deciphered from the tax laws and regulations. Tax law and regulations however are subject to revisions each year in the spirit of the national budgets presented by the government.

It is a well-established fact that tax policy inconsistency is a constraint to private sector competitiveness and impacts long term investment decisions in the private sector. The inconsistency in tax policy/strategy may be deemed to amount to poor tax administration which may also have macro-economic effects.

In assessing Zambia's tax strategy, reference is made to the 8th National Development Plan 2022 – 2026 which stipulates that the Zambian Government intends to formulate measures that enhance domestic revenue mobilisation and increase its contribution to the overall resource envelope of the nation. The increase in domestic revenue will be achieved through, streamlining the tax system and creating a stable and predictable tax environment. The Government intends to source a total of K649.2 billion to be raised domestically from tax and non-tax revenues.

Since taxes are important for raising revenue, it is imperative that despite the changes in national budgets, governments formulate clear written tax strategy frameworks outside the tax laws and regulations.

A comprehensive tax strategy has the following advantages:

- sets general approach of taxation, strategy and identifies key challenges in the tax systems hence providing solutions for the challenges in the tax system.

- supports policy and fiscal opportunities which promote fairness.

- develop capacity and expertise in tax forecasting and the management of fiscal devices.

- considers the impact of taxation on the overall competitiveness of the economy and the balance between taxation and the level of investment in economic and social assets.

- brings clarity to stakeholders and provides the basis for making the tax policy process as transparent.

Overall, a tax strategy framework plays a crucial role in guiding policy formulation, fairness and competitiveness, building institutional capacity and enhancing transparency and stakeholder engagement. It provides a roadmap for achieving the governments revenue objectives while supporting economic growth, investment and social development and is indeed relevant.

Can you Apply for Review of Taxation after a Certificate has been signed?

Nkhumbwizya Alikipo – Head of Taxation

A certificate of taxation indicates the sum awarded by the Court after taxation. The question however is whether a party can move the Taxing Officer/Master to review the taxed sum or any amount allowed in respect of any item taxed after the certificate of taxation has been signed by the Taxing Officer/Master.

The High Court Rules seem to suggest that, "provided that no application under the rule for review of a decision in respect of any item may be made after the signing of the taxing officer's certificate dealing finally with that item."

Thus, a party can apply to review the decision of the Taxing Officer if dissatisfied with such decision provided the application is made within fourteen (14) days after the decision of the Taxing Officer, or any shorter period of time so permitted. No application however can be made once the Taxing Officer/Master has signed the certificate of taxation.

What then happens, when through no fault of your own, fourteen days lapse and the certificate of taxation has been signed?

The Rules of the Supreme Court of England 1965 do allow the Taxing Officer to set aside a certificate of taxation issued by him to enable him to extend the time within which a party may apply for review.

Thus, a party can apply to have a certificate of taxation set aside, after which an application for extension of time within which to apply to have the taxed sum reviewed can be made. In hindsight therefore, it appears you are not doomed after all.

"When you're thrust into litigation, you obviously have to make sure you're prepared to deal with that."

-Roger Goodell

Increased Monetary Policy Rate and its effect on Loan Agreements

by Nyasha M. Chayamiti and Chawezi Ngoma

Monetary policy refers to the measures or actions taken by the Bank of Zambia (BOZ) to alter the quantity, availability and cost of money or credit in the economy. The Monetary Policy Rate (hereinafter called "the policy rate") is one of the tools employed by the BOZ to achieve and maintain price stability and promote financial system stability in Zambia. The policy rate influences lending rates and loan demand in the country which ultimately affects economic growth, employment inflation, and price stability among other macroeconomic fundamentals.

The Monetary Policy Committee (hereinafter called "the Committee"), a sub-committee of the Bank of Zambia is responsible, among other things, for the formulation of the policy rate. In February 2024, the Committee sat and resolved to raise the policy rate by 150 basis points to 12.5 percent. This decision was influenced by various economic factors including increased inflation in the last quarter of 2023 and the government's ambitious goal to achieve the inflation target band of 6-8 percent.

There is a correlation between inflation and price stability because an increase of the monetary policy rate will increase the cost of borrowing and may raise default rates as consumers have to repay more money to meet their loan obligations.

Commercial banks use the policy rate as the base rate when setting the price or interest for their loans and advances. This is because banks typically pass on the increased policy rate to their customers by raising interest rates on loans. This makes borrowing more expensive such that borrowing becomes less attractive to customers. Generally, as the cost of borrowing increases, the demand for loans consequently decreases and default rates rise, leading to a slowdown in credit growth. When inflation is high however, a rise in the policy rate does not necessarily lead to a decrease in demand for loans. The demand for loans continues to be high on account of loss of value of the local currency with attendant high default rates.

Despite the foregoing, banks do stand to benefit from the spread between the policy rate and interest rates they charge don loans. To that end, an increase in the policy rate will generally lead to higher revenue for banks, holding other factors constant.

In addition, the increase in the policy rate is said to indirectly improve the exchange rate by impacting the supply of the local currency, hence making the currency more attractive to foreign investors, leading to demand for the currency and an appreciation in its value. Imported goods will likely be cheaper, which will help to control inflation. The impact of an increased policy rate can vary across different sectors of the economy however. Sectors that are more reliant on borrowing such as agriculture and small-to-medium enterprises may be more negatively affected by the increase. Also, individual borrowers whose lending rate is tethered to the MPR are also one of the sectors that bears the brunt of an increased policy rate

In light of the foregoing, it is prudent to visit your nearest financial provider branch to determine the impact of the policy rate on the credit services offered by the bank and the impact, if any on your existing interest rates with the creditor. Banks will usually allow for one of two options; increase in monthly loan repayments or an extension of the tenure. It is prudent either way to consult your financial service provider in order to make an informed decision regarding your loan agreement.

The CEC Green Bond: Pioneering Green Finance on The Zambian Capital Market

by Kamungoma Mate

On 5th December 2023, while on the sidelines of the 2023 United Nations Climate Change Conference (known as COP) held in the United Arab Emirates, Copperbelt Energy Corporation PLC (CEC) announced the registration with the Securities and Exchange Commission (SEC) of its US$200 million green bond. Suffice to state that this is the first ever Green Bond registered on the Zambian capital market. The purpose of this bond is to actualize the company's goal of generating at least 200MW of renewable energy and more specifically solar energy and possible storage of the same.

Subsequent to the Green Bond registration announcement, CEC announced that the first tranche subscription towards the US$200 million green bond programme was oversubscribed by over 178 percent. The first tranche of US$53.5 million, issued as a private placement, to a select few investors closed on 28th December 2023.

A green bond is a debt security or debt instrument issued by a company for the purpose of financing or refinancing projects that will have a positive impact on the environment and the climate. Essentially, there is not much of a distinction between a green bond and the normal bonds issued on capital markets: i.e loans made by an investor to a company for the financing of a project. The only distinction between the two is the underlying project that is financed with the proceeds.

Green bonds are issued exclusively to finance projects that will have a positive impact on the environment and climate. On the other hand, conventional bonds are primarily issued to finance general projects, general working capital purposes, or refinance existing debt.

It is worth noting that the regulatory framework for the issuance of Green Bonds on the Zambian market has been in place since the year 2019 when SEC issued the Securities (Green Bonds) Guidelines. The successful issuance of the Green Bond is a pivotal moment for the Zambian capital market. CEC has taken the first step and has demonstrated to other players in the Zambian energy sector that it is possible to raise green finance using the Zambian capital market.

Secondly, CEC has demonstrated that although it is in the business of making profits, it is also committed to protecting the environment. This demonstrates that it endeavours to be accountable to itself, its stakeholders, as well as the Zambian public. Environmental protection is in fact a constitutional mandate imposed upon every citizen of Zambia, whether natural persons or legal. Article 256 of the Constitution of Zambia (Amendment) Act No. 2 of 2016 guides as follows:
"A person has a duty to co-operate with state organs, state institutions and other persons to-
a) Maintain a clean and safe environment.
b) Ensure ecologically sustainable development and use of natural resources respect, protect, and safeguard the environment.
c) Prevent or discontinue an act which is harmful to the environment."

That said, it is indeed more difficult to resuscitate our environment than our economy given that some activities have an almost irreversible impact on the environment. In the premises, it is hoped that the CEC has boldly set the stage for businesses to drive their growth from the Green perspective.

Amendments To Tax Laws – Highlights

By Christine C. Lundu – Head of Banking & Finance

Following the presentation by the Minister of Finance Dr. Situmbeko Musokotwane of the country's 2024 budget to the National Assembly, the following tax law amendments have been made to the tax laws:

Introduction of Tax Levy on Mobile Money Transactions

Parliament passed the Mobile Money Transaction Levy Act No. 16 of 2023 which came into operation on 1st January 2024. The Act provides for the imposition, payment and collection of mobile money transaction levy. This levy is to be borne by the sender of the electronic money. The rates of tax chargeable are prescribed as follows:

Amount range (ZMW)	Levy (ZMW)
Between 1 to 150	0.08
Between 151 to 300	0.10
Between 301 to 500	0.20
Between 501 to 1000	0.50
Between 1001 to 3000	0.80
Between 3001 to 5000	1.00
Between 5001 to 10000	1.50
Above 10000	1.80

Notably, this levy is not payable on transactions between a person to Government and vice versa; payment of utility bill or payment to a merchant and on transfers from a bank account.

Income Tax Act

The Income Tax (Amendment) Act No. 22 of 2023 has introduced an electronic invoicing system to ensure income tax compliance. The Act has also increased Pay-As-You-Earn tax threshold for individuals to ZMW61,200 per annum from ZMW57,600 per annum; reduces the top-marginal tax rate to 37%; and adjusts the income bands accordingly.

In addition, the Act has introduced the following:

- depreciation of up to 100% on any new implement, plant or machinery for developers in a special economic zone;
- withholding tax of 15% on discount income earned from Government Securities which are issued at a discount from face value;
- a five year tax holiday on profit from local producers of cotton seed or from ginning of cotton; and
- a ten year tax holiday for on profit made from spinning of cotton and weaving of thread.

Value Added Tax

The Value Added Tax (Amendment) Act No. 27 of 2023 provide for the implementation of the electronic invoicing system to ensure tax compliance. Following the enactment of the Act and the gazetting of the Value Added Tax (Electronic Invoicing System) Regulations, Statutory Instrument No. 58 of 2023, ZRA now requires all VAT registered tax payers to issue electronic invoices using the Smart Invoice with effect from 1st July 2024.

The Act further revised the provisions relating to taxation of cross border electronic services. The Act has introduced a tax which is payable on the importation of a service by a recipient of an imported service. Such tax will be payable if: (a) the recipient of the imported service has not paid tax due in the country of exportation; (b) the supplier who is resident in Zambia has not appointed a tax agent; (c) services supplied are not under the scope of cross-border electronic services.

Customs and Excise Duty

The Customs and Excise Duty (Amendment) Act No. 25 of 2023 came into operation and revised the customs and excise duty rates payable on certain goods; revised the list of goods to be subject to surtax at importation. The Act also increased excise duty on non-alcoholic beverages and cigarettes and introduced excise duty on coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated, retort carbon.

In addition, the Act revised the basis of excise duty valuation for spirits, liquers, and other spiritous beverages; reduced customs duty on hybrid and electric motor vehicles; and removed customs duty on rolling stock and locomotives.

The Zambia Revenue Authority

The Zambia Revenue Authority (Amendment) Act No. 26 of 2023 came into operation on 1st January 2024 and has introduced the granting of rewards by the Zambia Revenue Authority (ZRA) for the disclosure of information leading to the recovery of a tax. The reward however excludes ZRA employees or relatives of ZRA employees, auditors of ZRA, a member of the ZRA Governing Body or an investigating authority or officer thereof.

Simeza Sangwa & Associates Commemorates 30 Years in Operation.

We are pleased to announce that Simeza, Sangwa & Associates is reaching a significant milestone this year, celebrating our 30th anniversary. Over the past three decades, our law firm has evolved into a reputable institution known for legal excellence and dedicated client representation. This moment prompts us to reflect on the journey that has led us to this important juncture.

Established in 1994 as a litigation-focused firm, our initial commitment was to uphold justice, excellence, and the rights of our clients. Our steadfast dedication to legal proficiency earned us a reputation for tenacity, expertise, and integrity in the courtroom.

In response to the changing legal landscape and the growing needs of our clients, we strategically expanded our services to include corporate law. This adaptation allows us to offer comprehensive legal solutions, addressing a broad spectrum of our clients' needs.

As we mark our 30th anniversary, we take pride in our transition into a full-service law firm with a team of seasoned litigators and corporate law specialists. Our multidisciplinary approach enables us to provide practical legal guidance, empowering our clients to navigate complex challenges with confidence.

Moving forward, our commitment to innovation, excellence, and client satisfaction remains steadfast. As we enter the next chapter of our journey, we reiterate our dedication to serving our clients with professionalism, integrity, and expertise.

We express our sincere gratitude to our clients, partners, and team members whose consistent support has been instrumental in our success over the past three decades. Together, we look forward to continuing our work in shaping the legal landscape and making a meaningful impact in the lives of those we serve.

Here's to 30 years of commitment and growth, and to the ongoing pursuit of legal excellence.

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Simeza | Sangwa

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