**BILL WATCH 21/2019**

**[16th April 2019]**

**Both Houses of Parliament are in Recess until Tuesday 7th May**

**Government Gazettes 15th to 29th March**

This bulletin provides an update on all statutory instruments [SIs] and the more important General Notices [GNs] published in Government Gazettes during the period 15th to 29th March.  Before our customary listing by Gazette according to date of publication we highlight the following items of particular interest:

**Partial Excise Duty Refunds on Fuel Supplied**

Statutory Instrument [SI] 72/2019, gazetted on Friday 22nd March, enacts regulations providing for partial refunds of excise duty on fuel paid at the higher rate that came into operation with effect from 13th January 2019.  Section 1(2) deems the regulations *“to have come into operation on 13th January 2013, up to 22nd February 2013”*, and ZIMRA is applying the refunds only to  fuel purchased during the period 13th January to 22nd February.

Cut-off date for refunds  The SI reads as if the cut-off date of 22nd February was a clumsy afterthought added at the last minute without any regard to how it would dovetail with the rest of the SI.  On 12th January – when the President and the Minister *[*[*link*](http://www.veritaszim.net/node/3480)*]* announced both the fuel price increase and the intended refund scheme for certain sectors [which should, they said, ward off generalised knock-on price increases for basic goods], they did not mention that the operative period for refunds would last only a few weeks.  Nor was a cut-off date mentioned in ZIMRA’s Public Notice at the end of January announcing how the refund scheme would work *[*[*link*](http://www.veritaszim.net/node/3467)*]*; it is interesting that this notice gave the impression that the refund framework was already in place and operational – despite the fact that there was then no existing legal basis for the refunds.

22nd February was the date on which the latest Monetary Policy Statement was brought into legal force by SI 33/2019 *[*[*link*](http://www.veritaszim.net/node/3432)*]* which ended the parity between the US dollar and the local bond dollar/RTGS dollar.  But, as excise duty on fuel and both fuel prices remained unchanged, why should 22nd February be chosen as the cut-off date for a refund of excise duty intended to control generalised price increases?

Backdating  The SI’s backdating to 13th January is not a problem.  Section 125 of the Customs and Excise Act, cited as the enabling provision, expressly allows the Minister to make regulations granting refunds with retrospective effect if he deems it expedient.

Who qualifies for refunds?  Only registered business entities in five sectors – manufacturing, mining, commerce, agriculture and transport – qualify for refunds, subject to compliance with the criteria and procedures stated in SI 72.  In other words the refunds of duty will not go to the fuel procurers who paid the excise duty to ZIMRA, but to the business entities to whom the increase in excise duty was passed on as part of the price they paid.

Size of the refunds  For those fortunate enough to qualify for them, refunds will be equivalent to the difference between the prevailing rates of excise duty and the rates that were applicable prior to the 13th January [that difference is $1.65 per litre for diesel and $1.86 for petrol].

As the regulations came out on 22nd March, and as they also state that claims have to be made by the 10th of the month following the purchase of fuel, those who purchased fuel in the period covered would face a task that is impossible to fulfil.

It is high time that the Ministry of Finance thought ahead and made timely and appropriate regulations – as it is, confusion reigns.

**Parliament invalidates ultra vires provisions in statutory instruments after PLC adverse reports**

General Notice 522/2018, gazetted by the Clerk of Parliament in a Gazette Extraordinary published late on 29th March, is the first instance of Parliament’s exercise of its power to invalidate provisions of statutory instruments on the strength of an adverse report from the Parliamentary Legal Committee [PLC].  This new [since 2013] power is conferred by paragraph 9(4) of the Fifth Schedule to the Constitution, which provides that if either House of Parliament, after considering a report from PLC, resolves that a provision of a statutory provision is *ultra vires* its enabling Act, “the provision thereupon ceases to have effect” and the Clerk of Parliament must gazette a notice informing the public accordingly.

In the present case the Senate resolutions were approved on the 6th March, so the provisions concerned all ceased to have legal effect on 6th March.  The statutory instruments and provisions affected are:

Civil Aviation regulations: SI 253/2018 [section 18(6)], 255/2018 [section 18] and SI 271/2018 [section 55]

These regulations all suffered from the same defect.  Their penalty provisions were *ultra vires*, i.e., went beyond the powers conferred on the Minister of Transport and Infrastructural Development by the Civil Aviation Act.  The Act limits penalties for offences under regulations to a fine not exceeding level five or imprisonment for a period of six months; these regulations provided for “a fine not exceeding level 14 and imprisonment for a period of two years”.

Vungu RDC Environmental By-laws and Bikita RDC Environmental By-laws

Here, too, the defect was an *ultra vires* penalty: a fine of level six when the enabling provision set level five as the maximum.

**Regular Gazette of 15th March**

**Statutory Instruments**

Customs and Excise – Textile Manufacturers Rebate

SI 66/2019 - Amendment No. 4 to the principal regulations, adding four new items to the list of goods qualifying for this rebate.

Labour – Collective Bargaining Agreements

SI 57/2019 - Catering Industry wages May 2018 to April 2019.

SI 65/2019 - Ferro Alloy Industry in Zimbabwe, moving of Grade 1 employees to Grade 2 minimum wages.

SI 67/2019 - Sugar Milling Industry, giving effect to 22nd November 2018 arbitral award re wage increases, house service charges and travelling and subsistence  allowances.

Local authority by-laws

*Chikomba Rural District Council*

SI 58/2019 - (Traffic, Clamping and Tow-away) By-laws, 2019

SI 59/2019 - (Dog Licensing) By-laws, 2019

*Binga Rural District Council*

SI 60/2019 - (Trading) By-laws

SI 61/2019 - (Livestock Management and Control) By-laws

SI 62/2019 - (Hawkers and Street Vendors) By-laws

SI 63/2019 - (Public Health) By-laws

SI 64/2019 - (Communal and Resettlement Land)(Land Use and Conservation) By-laws

**Gazette Extraordinary of 15th March**

Customs and Excise – Duty rebate on motor vehicles imported/taken out of bond under Health Service Vehicle Loan Scheme

SI 68/2019 *[*[*link*](http://www.veritaszim.net/node/3458)*]*  provides for this rebate in terms similar to those used for the duty rebate for Public Servants in SI 52/2019 of 8th March *[*[*link*](http://www.veritaszim.net/node/3457)*]*.

**Regular Gazette of 22nd March**

**Statutory instruments**

Customs and Excise – Rebate on goods for religious purposes

SI 71/2019 *[*[*link*](http://www.veritaszim.net/node/3465)*]*  allows for a discretionary rebate on religious reading, audio and video material donated to and imported by religious organisations solely for free distribution among persons in need.

Customs and Excise – Refund of duty paid on fuel supplied to approved beneficiaries in agricultural, mining, manufacturing, transport sectors

SI 72/2019 *[*[*link*](http://www.veritaszim.net/node/3466)*]* is the subject of the detailed note at the beginning of this bulletin.

Labour – collective bargaining agreement – Funeral Industry wages

SI 70/2019 sets out minimum wages for 2019.

VAT – new exemption plus zero-rating for white canes for the blind

SI 69/2019 makes two changes to the VAT (General) Regulations of 2003: (1) to add goods and services supplied by “Medical Statutory Bodies” [not defined] to the list of exemptions in Part II [this should be Part I] of the First Schedule to the regulations; (2) to add “mobility white canes” to the list of zero-rated goods for disabled people in Part III of the Second Schedule.

**General Notices**

Legal practitioners struck off the register

GNs 238 and 465/2019 notify the names of two legal practitioners de-registered by order of the Legal Practitioners Disciplinary Tribunal.

Competition and Tariff Commission

GN 448/2019 *[*[*link*](http://www.veritaszim.net/node/3462)*]*  gives public notice of an investigation into allegations of restrictive practices in the distribution of stock feed. and day-old chicks and calls for stakeholders and members of the public to submit written representations, in confidence, to the Commission no later than 31st March.  The GN gives the Commission’s contact details.

**Regular Gazette of 29th March**

**Statutory Instruments**

Intermediated Money Transfer Tax – exemption for tobacco crop payments

SI 80/2019 *[*[*link*](http://www.veritaszim.net/node/3473)*]* is the Finance (Rate and Incidence of Intermediated Money Transfer Tax) Regulations made by the Minister of Finance and Economic Development.  The objective is to grant exemptions from the tax for (1) the transfer of funds from buyers or contractors to auction floors for the purchase of auction or contract tobacco, and (2) the transfer from contractors and auction floors to growers of tobacco of funds for deliveries of tobacco.  Like the similarly titled SI 205/2018 of October last year that introduced the tax, the SI purports to amend the Income Tax Act and is therefore clearly invalid as we explained in Bill Watch 32/2018 of 23rd October 2018 *[*[*link*](paid)*]*

Public Debt Management Regulations

SI 79/2019 *[*[*link*](http://www.veritaszim.net/node/3476)*]* is a set of regulations made by the Minister of Finance and Economic Development under the Public Debt Management Act *[*[*link*](http://www.veritaszim.net/node/1347)*]*, an Act of 2015.  Matters provided for are: the operations and procedures for the External and Domestic Debt Committee [EDDC] constituted in terms of section 7 of the Act; the Technical EDDC working party; Government guarantees and on-lending; authorising public entities to exercise borrowing powers; the operations and structure of the Public Debt Management Office in the Ministry; reports to Parliament and other stakeholders; and the holding of all Sinking Funds in a Fund controlled by a Trust to be chaired by the Minister and managed by the Reserve Bank or International Financial Institutions such as the PTA Bank, Afreximbank, etc.   An Arrangement of Sections [table of contents] would have helped to make the nineteen sections of these important regulations easier to navigate.

Labour – collective bargaining agreements

SI 73/2019 concerns the *Banking Sector* and records the salary increases periodically applicable for the years 2012 to 2018.

SI 78/2019 sets minimum salaries for 2019 for the *Electronics Communications and Allied Industry*, based on a 50% increase.

Local authority by-laws – Ruwa Local Board

SIs 74 to 77/2019 add four sets of by-laws to the nine gazetted by the Ruwa Local Board earlier in the year: the new by-laws deal with Cycle-Licensing [SI 74]; Fire [SI 75]; Food Hygiene [SI 76]; and Traffic, Clamping and Tow-away [SI 77].

**General Notices**

Consolidated Monthly Statements of Financial Performance of the Consolidated Revenue Fund

GNs 508 to 514/2019 notify the publication, as supplements to the Gazette, of the Accountant-General’s statements for the months of April, May, June, August, September, October and November 2018 [July and December not published].  This is very belated compliance with section 38(1) of the Public Finance Management Act, which requires their publication in the Government Gazette within 30 days of the end of each month.

Establishment of Zimbabwe National Geospatial and Space Agency

GN 483/2019 *[*[*link*](http://www.veritaszim.net/node/3481)*]* is a notice by the Minister of Higher and Tertiary Education, Science and Technology Development.  It notifies the Minister’s establishment of this Agency in terms of the Research Act.  The GN sets out the Constitution of the Agency providing for its objects and functions, the composition of its Board, its Director-General and departments, and its funding.  Article 17 vests in the Agency all copyright and other intellectual property rights (IPR) in the work of the Agency’s employees in the course of their employment.  The official acronym for the Agency is ZINGSA.

Blend petrol

GN 486/2019 from the Minister of Energy and Power Development notifies his approval of the current rate of mandatory blending [5%] of ethanol with unleaded petrol.

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