



DMH LEGAL
PRACTITIONERS

DMH LEGAL INSIGHTS

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THE EXISTING LEGAL FRAMEWORK

The current land registration system is only a slight improvement from the system put in place during colonial times. It is paper based and follows formalities and traditions carried over the years. It is no secret that this system has, over the years, become marred by serious inefficiencies such as improper record keeping and missing documentation and information and, in some cases, physical damage to documentation. It has also not been spared by the evil of fraud and corruption. The need to digitize the system was recognized in 2017 when the Deeds Registries Act [Chapter 20:05], (*"the Act"*) was amended to include Part VIII which introduced the Electronic Registry and empowered the Registrar to set up the structures to operationalize it. The recently enacted Deeds Registries (Amendment) Regulations, 2025 (SI 76 of 2025) (*"the Regulations"*), in particular, Part VI, appear to have now set this process into motion. It is important to highlight that, as at the date of this publication, both Part VIII of the Act and the Regulations have not yet come into effect. The former was intended to have come into effect on 23 June 2017, and the latter is awaiting the gazetting of the date of commencement by the Minister of Justice, Legal and Parliamentary Affairs (*"the Minister"*).

WHAT IS VALIDATION AND SECURITISATION?

From a reading of the Regulations, to "validate" refers to the review and confirmation that the information recorded on the paper title deed aligns with the information held by the Registrar, thereby confirming the authenticity of title. To "securitize and digitize" is to record the information in the electronic system and print a new title deed on paper that has security features. The Regulations prescribe the process by which existing title deeds will be validated and exchanged for new securitized copies of the same title deeds. It is not a transfer of the property, and there will be no changes made to the description or size of the property.



Validation, Securitisation And Digitisation Of Title Deeds In Terms Of The Deeds Registries Regulations, 2025

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WHY IS IT NECESSARY?

The requirement to validate and securitize your title deed shall be compelled by law and failure to comply within the given time frame (currently 24 months from the date of commencement), will invalidate the paper copy of the title deed that property owners currently hold. In addition, these changes affect all property owners and aim to create a more secure, digital system for land ownership records. It is envisaged that once the system is running, there will be less or no incidence of fraud as digital deeds are harder to forge, property transactions will be faster and more dependable, and records will protect physical damage or loss.

WHEN WILL THE PROCESS START?

While the Regulations have been formally enacted into law, the actual commencement date for the title deed validation process has not yet been announced. The 24-month validation period will begin to run once the Minister officially declares the start date. Discussions with officers of the Registrar have revealed that the Registrar's office is working on the internal administrative structures including system trials and preparations. In addition, the Act requires that the Registrar enters into User Agreements with Conveyancers and Notary Publics to allow them to access the system on behalf of their clients. This process is not dissimilar to how the Collateral Registry at the RBZ works.

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WHAT DO PROPERTY OWNERS DO?

At present, no immediate action is required from property owners. However, we strongly recommend using this interim period to gather and review all title documents in your possession to ensure they are complete and in order. Any errors should be rectified immediately. This includes verifying that deeds are safely stored, checking for any discrepancies in property details, and resolving any outstanding ownership or disputes that may complicate the validation process. It is recommended that holders of title deeds should only work with and seek professional advisors, such as their lawyers, bankers, or accountants in order to ensure the integrity of the documents and the processes.

IS DMH READY?

Our office is closely monitoring developments and maintains regular contact with the Deeds Registry to track progress. We will promptly notify all our clients as soon as the commencement date is announced, and we have been onboarded on the system as Users, as defined by the Act. At this point we will issue a further guide on the submission process, required documentation, and key deadlines.

Team DMH has set up a dedicated team to assist you. Please contact members of our team to immediately give instructions and start the process of putting together the information required. Should you require further information or assistance in the above matter or are simply eager to ensure that you are ready and prepared for the validation process, please contact any of the following members of our team

R. Matambo rmatambo@dmh.co.zw (Rumbidzai Matambo heads the Conveyancing and Securitization Unit, is the immediate past President of the Law Society of Zimbabwe and a long serving member of the Ad-hoc Conveyancing Sub-committee of the Law Society of Zimbabwe)

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Legal Insight:
Conglomerate Taxation: Paperhole Investments (Pvt) Ltd And Profeeds (Pvt) Ltd V Zimra

OVERVIEW

A recent decision of the Special Court for Income Tax Appeals, in Paperhole Investments (Pvt) Ltd & Profeeds (Pvt) Ltd v Zimbabwe Revenue Authority, addresses significant concerns regarding corporate tax obligations, allowable deductions, and the penalties imposable for non-compliance with Zimbabwe's tax framework.

BACKGROUND

The appellants, Profeeds and Paperhole, appealed against ZIMRA's decision in respect of objections to assessments and re-assessments of their tax obligations. Profeeds and Paperhole earned revenue in both local and foreign currency, and their operational capital expenditure was also incurred in both local and foreign currency. They submitted their income tax returns and tendered payments in local currency. Additionally, Profeeds entered into service-level agreements with Innscor and Progroup for the provision of corporate head office management support services and claimed deductions for the management fees paid to Progroup in its tax assessments.

ZIMRA conducted audits on the appellants for the 2019 and 2021 tax years. It found that the appellants ought to have calculated the tax payable and apportioned it in the respective currencies using the exchange rates prevailing at the quarterly payment dates (QPDs). Next, ZIMRA disallowed the deductions sought by Profeeds and imposed a penalty of 20% against the appellants for allegedly overdue income tax. The appellants unsuccessfully challenged this decision against ZIMRA through an objection. They subsequently approached the Special Court for Income Tax Appeals for relief

DISPOSITION

The appeal in the Special Court for Income Tax Appeals was allowed in respect of the management fees and penalty imposed. On the applicable currency and rate of exchange for tax obligations the Court found that for companies earning revenue in both local and foreign currency, ZIMRA could validly require two separate returns in respect of the different currencies.

In respect of the deductibility of management fees paid by Profeeds to Progroup, the court found in favour of the appellants. It concluded that ZIMRA, whilst justified in scrutinizing agreements, arrangements, and practices in view of the law on transfer pricing and the arms-length principle, it should not demand absolute proof or proof beyond a reasonable doubt that the expenditure claimed for the deduction was incurred. The Court reasoned that additionally there were 3 requirements to demonstrate that these were incurred ; (a) basis for it being an agreement ; and (b) some proof that the services were rendered ,whether by correspondence ,meetings ,reports etc ; and (c) invoices raised .

The big point made by the Court was essentially that the way that a business is managed is up to the taxpayer, irrespective of the preferences of the tax collectors. The court concluded that ZIMRA should have accepted the evidence supplied by the appellants as proof that the services in question had been rendered and incurred and were, therefore, deductible. The court was satisfied that there had been no duplication of services and set aside ZIMRA's decision on the management fees and duplicated services.



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In respect of the penalty imposed, the court found that the correct approach to the question of an additional tax or penalty is whether there has been a deliberate evasion, a careless or inadvertent omission, or a misstatement by the taxpayer. Here, the court is required to consider objectively whether an amount that ought to have been included was omitted or whether an incorrect statement was rendered on a case-by-case basis. Applying this to Profeeds and Paperhole, the court found that the appellants did not intend to evade tax. Rather, they sought to avoid paying taxes, which they genuinely considered not to be due, and in a currency that they genuinely considered not to be the legal tender. There was therefore no basis for punishing them through the imposition of a penalty, and this decision was set aside.

The Court refused to hear and decide on all aspects of the matter raised by the taxpayers on ancillary aspects raised by them as regards to ancillary aspects to the payment of taxes in USD, including the submission of more than one return, the value for money to the taxpayer arising out of the local payments made.

This judgement was appealed by the taxpayers on the USD aspects and ancillary matters to this. The Supreme Court dismissed the cross appeal by Zimra against all the aspects found in favour of the taxpayers in the Court below. The Supreme Court also referred the case back to the Special Court for Fiscal Appeals for rehearing on the USD taxes and ancillary aspects and before a different Judge.



In our opinion, the decision of the Fiscal Court on the decided aspects is therefore likely to be retained and remains persuasive in that regard

CONCLUSION

The decision of the Special Court for Income Tax Appeals upholds several principles for companies operating within Zimbabwe's multi-currency economy. Firstly, businesses must take heed of ZIMRA's foreign currency tax obligations. Thorough documentation of management fees and service agreements must be maintained in order to justify tax deductions. Where a penalty is imposed against a company, this can be challenged upon demonstration that there was a reasonable and genuine belief that they were tax compliant.

The judgement represents a significant victory for DMH's Tax Group, dedicated to providing exceptional legal advisory services in complex tax matters and formulating workable solutions for its clients.





EDWIN I. MANIKAI



TENDERO MAKANGA



ROMEO CHATERENZA



ISAAC MANIKAI

DMH TEAM

In this issue we are pleased to introduce the Tax Team led by Mr Edwin Isaac Manikai, supported by Ms Tendero Makanga and Mr Isaac Manikai. This is the team that has been working on our tax mandates including the successful appeals to the Special Court for Fiscal Appeals and Supreme Court. Edwin has a wealth of experience spanning 39 years in practice. With him leading the team, the DMH Tax Unit has acted for light manufacturing conglomerates, mining houses, listed and unlisted entities in tax disputes with the tax collector. Edwin is internationally recognised as a Band 1 Commercial Lawyer by Chambers Global.

Edwin is ably supported by Tendero Makanga who joined the Firm in 2021 as an Associate and quickly rose through the ranks becoming Partner in January 2024. Tendero has established herself as a powerhouse in tax law. She has successfully acted for clients from noting Objections with the Commissioner up to the Supreme Court. She is well versed in both procedural and substantive tax law.

Tendero is assisted by Isaac Manikai (not Edwin). Isaac Manikai holds a Bachelor of Laws from the University of London and a Master's in Law from the University of Law (UK). He successfully converted his UK qualifications and was admitted as a legal practitioner of the High Court of Zimbabwe in 2024. Having risen through the ranks to become an Associate in the Firm's Commercial, Financial Services, and Tax Group, Isaac is recognised for his meticulous attention to detail, pragmatic problem-solving skills, and dedication to delivering outcomes that create lasting value.

Finally, we are also pleased to introduce our newest Partner Mr Romeo Chaterenza with effect from 1 January 2025. Romeo has extensive experience in Civil and Commercial Litigation. Over the years he has acted for multinationals, financial institutions, state owned enterprises in high value disputes, with considerable success. As we continue to grow and adapt to meet our Clients' needs, Romeo's experience will further strengthen our capabilities particularly in commercial dispute resolution. Please join us in welcoming Romeo to the Partnership. We look forward to the opportunity to continue to serve you with enhanced depth and expertise in a timely manner.



CONTACT US



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