Foreign Currency Payments for Zesa and other Services (A review of SI 249/2019)

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Introduction

On the 29th of November 2019 Statutory Instrument 249 of 2019
(A review of SI 249/2019 - Exchange Control (Payment For Electricity And Related Services In Foreign Currency By Exporters And Partial Exporters)- Order 2019
relating to the payment for electricity and related services in foreign currency was published. The statutory instrument obliges exporters to pay for electricity in foreign currency, in United States Dollars in particular. The order is for a period of six months from the date of publication which period may be extended. This order comes after numerous reports in the local papers pertaining to mismanagement at ZESA (the body responsible for the supply of generation, transmission and distribution of electricity and related services).

According to its provisions, there are two categories of exporters:

a. *Exporter* – being a licensed investor; or a business organization which exports on average 80% or more per quarter of its total output of goods or services produced or provided and for which it lawfully receives any foreign currency.
b. *Partial Exporter* – being a business organization which exports on average less than 80% per quarter of its total output of goods or services produced or provided and is lawfully receives any foreign currency.

Legal Position – Highlights/ Summary

In summary SI 249/19 prescribes the following:

1. ***Payment of electricity bills***- For the duration of this order, the two categories of exporters may be billed in foreign currency (United States Dollars or the equivalent in Euros or any other allowable currency) for electricity consumption. Other customers who are not in the category of exporters may also be billed in foreign currency. Partial exporters will be billed for up to 35% of the electricity supplied in foreign currency with the balance settled by payment of the local currency equivalent at the date of payment. Agreements may be entered with ZESA for payment to be wholly in foreign currency which agreement must be submitted to ZERA and the Reserve Bank of Zimbabwe prior to implementation.

2. ***Manner of Payment***- Exporters and partial exporters are required to make their payments from
   2.1. a foreign currency account operated by it after retentions have been applied;
   2.2. the foreign currency account where the export proceeds are lawfully credited and from which account the CD1s are processed in the case of a partial exporter or business organization;
   2.3. income or revenue received from a source outside the country held as free funds by the customer.

3. ***Advance payments*** - Prepayments in foreign currency may be made but these are subject to there being a Memorandum Agreement with ZESA, a copy of which must be submitted to ZERA and the Reserve Bank of Zimbabwe prior to implementation.

4. ***Accounting of Foreign currency***- All foreign currency received by ZESA must be deposited into a foreign currency account. Withdrawals or payments from such account are permissible only with the prior written approval of the Reserve Bank. Any amounts withdrawn shall be strictly used for:-
   4.1. Purchasing of electricity;
   4.2. Importation of spare parts, critical assets and components needed;
   4.3. Payment of external insurance for critical infrastructure;
   4.4. Payment of external loan repayments.

Conclusion

Therefore, until May 2020 ZESA may bill exporters and partial exporters in foreign currency. Customers may also be billed in foreign currency. Payment by exporters and partial exporters for such bills shall be in foreign currency with a partial exporter being allowed to pay 35% of their bill in actual foreign currency and the balance in the local currency equivalent at the time of paying. The bill is therefore pegged and rated in foreign currency. Prepayments for electricity may be made in foreign currency by exporters and customers.

The regulations refer to prior notification being given the ZERA and the Reserve Bank with respect to any agreements for advance payment and payment of electricity wholly in foreign currency without stipulating whether approval for these arrangements is a condition. In addition, the Reserve Bank is now tasked with monitoring the accounts into which these amounts are to be paid and to allow sanction withdrawals for limited transactions. A much needed control in the present circumstance which is yet to be tested.

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