



Africa tax in brief

by Celia Becker

AFRICA: Continental Free Trade Agreement approved by Ghana and Rwanda

The Council of Ministers of Rwanda approved the African Continental Free Trade Area Agreement (“ACFTA”) on 11 April 2018 and the Ghanaian Parliament ratified the ACFTA on 26 April 2018. As reported earlier, the ACFTA will come into force upon ratification by at least 22 countries.

DEMOCRATIC REPUBLIC OF CONGO: Amendment to the Mining Code published

The new law amending the Mining Code, signed by the President on 9 March 2018, was published in the official gazette on 28 March 2018. The implementing provisions must be discussed between the state and major players in the mining sector and such provisions must be adopted within 90 days after the enactment of the new law. Significant tax amendments include:

- the stability clause is now granted for a period of five years from the enactment of the new Mining Code;
- the mining royalty rate is to be increased (from 0% to 6% depending on the type of mineral and 10% for strategic minerals which will be determined by the government) and to be calculated on the basis of gross commercial value;
- the corporate income tax rate applicable to mining operations remains at 30%, but a new 50% windfall profit tax is introduced;
- loss carry-forward is limited to five years and the imputation is to be in accordance with the provisions of the income tax law;
- capital gains arising from the sale of shares or stocks in mining companies are to be subject to tax;
- the transfer of mining titles between affiliates must be conducted on an arm’s length basis;
- the straight line depreciation method is to be used;
- an obligation is introduced to book a provision for site rehabilitation and the provision for restoration of a mineral field is decreased from 5% to 0.5% of the turnover of the mining operator;
- the special tax rate on expatriate wages and salaries is increased to 12.5% for the first 10 years of the project and at the standard rates for the following years;
- customs duty is to apply at preferential rates of between 3% and 10% for intermediary goods and other consumables and 5% for fuel and lubricants;
- a new contribution to local community development projects at a rate 0.3% of turnover and a tax on the exportation of samples for analysis have been introduced.

ETHIOPIA: Treaty with Slovak Republic enters into force

The Ethiopia/Slovak Republic Income Tax Treaty, 2016 entered into force on 26 February 2018 and generally applies in Ethiopia from 1 January 2019 for withholding taxes and from 8 July 2019 for other taxes, whereas in the Slovak Republic, the treaty generally applies from 1 January 2019.

KENYA: Tax Laws (Amendment) Bill, 2018 published

The Tax Laws (Amendment) Bill, 2018 was published in Official Gazette Supplement No. 24 of 10 April 2018. Significant proposed amendments include:

- the imposition of a final withholding tax on winnings at the rate of 20% on both residents and non-residents;
- subject to meeting specified requirements, increasing the allowable deduction of funds deposited in a home ownership savings plan from a maximum of KES48 000 per year to KES96 000 per year and exempting the purchase of a house by a first time home owner under an affordable housing scheme from stamp duty;
- exempting developers and operators of licensed special economic zones from capital gains tax and compensating tax;
- limiting value-added tax (“VAT”) zero-rating to exports by reclassifying, inter alia, the following current zero-rated supplies to exempt supplies:
 - the transfer of a business as a going concern between two VAT-registered persons;
 - supply of natural water by the government, its political subdivision or another approved person;
 - protective apparel used in hospitals and clinics and fire-fighting apparel and equipment used by the county governments;
 - inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments and medicaments of prescribed tariff numbers;
 - liquefied petroleum gas;
 - milk, cream, maize (corn) flour, ordinary bread and cassava flour, wheat or meslin flour; and
 - goods imported by passengers arriving from places outside Kenya, subject to the specified limitations and conditions.

LESOTHO: Income Tax and VAT Regulations, 2018 published in Official Gazette

On 23 March 2018, the Income Tax (Amendment of Monetary Amounts) Regulations, 2018 and the Value Added Tax (Amendment) Regulations, 2018 were published in the Official Gazette. In terms of the Regulations, with effect from 1 April 2018:

- the annual tax credit is increased from LSL6 960 to LSL7 260;
- the minimum annual taxable income is increased from LSL34 800 to LSL36 300;
- the threshold of the tax bracket is increased from LSL58 680 to LSL61 080;
- the standard VAT rate is increased from 14% to 15%, whereas the VAT rate on electricity is increased from 5% to 8% and the VAT rate on telecommunications is increased from 5% to 9%.

The Value Added Tax (Remission of Additional Tax and Penalties) (Voluntary Disclosure) Regulations, 2018 were published in the Official Gazette on the same day and the Income Tax (Remission of Additional Tax and Penalties) (Voluntary Disclosure) Regulations, 2018 were published in the Official Gazette on 9 February 2018. These Regulations, which were issued following the launch of the Voluntary Disclosure Programme, provide guidance on, *inter alia*, the percentage of relief to be granted based on the mode of disclosure, the waiving of additional taxes and the mode of objections and appeals.

NIGERIA: National Action Plan 2017-2019 published

The National Action Plan 2017-2019 was published by the Budget Office on 16 April 2018. Key proposals committed to by the government in the National Action Plan include:

- adopting the common reporting standard and the Addis Tax Initiative (on enhancing the mobilisation and effective use of domestic revenues and improving the fairness, transparency, efficiency and effectiveness of tax systems);
- enhancing disclosure in the extractives sector through a concrete set of disclosures related to payments by companies, and receipts by governments, on all transactions across the sector's value chain;
- establishing a public register of beneficial owners of companies to aid tracing money linked to tax evasion, corruption, money laundering, drug trafficking and terrorism financing; and
- introducing unexplained wealth orders.

NIGERIA: Industrial Development (Income Tax Relief) Amendment Bill, 2018 passed by Senate

The Industrial Development (Income Tax Relief) Amendment Bill, 2018 was passed by the Senate on 12 April 2018. Proposed amendments include:

- extending the maximum tax holiday granted under a pioneer certificate from five years to seven years for companies investing in providing infrastructure in specified rural areas and 15 years for companies that invest in agriculture and agro-processing where over 90% of the inputs are local materials;
- permitting companies that are expanding operations in a pioneer industry or product to reapply for a new pioneer certificate;
- requiring that an application for a pioneer certificate be approved or rejected within one year;
- increasing the minimum qualifying capital expenditure to be incurred in the case of an indigenous company from NGN50 000 to NGN100-million, and in the case of any other company from NGN150 000 to NGN120-million;

RWANDA: New income tax law published in Official Gazette

A new Income Tax Law 16 April, 2018 (Law No. 016/2018 of 13 April 2018) was published in the Official Gazette and became effective from 16 April 2018, repealing and replacing Law No. 16/2005 of 18 August 2005.

Significant amendments include:

- the introduction of capital gains tax on the sale or transfer of shares;
- the introduction of a definition of "employee", capturing employment arrangements disguised as consultancy contracts;
- an amendment to the definition of "related person" to include direct or indirect participation in the management, control or capital of the company;
- an amendment to the definition of "permanent establishment" in line with international practice, with a Rwandan permanent establishment only being created if foreign companies' activities in Rwanda exceed 90 days in a 12-month period;
- an overhaul of the income sourcing provision to include the direct or indirect transfer of shares or debentures, a change in profits into shares that increases the capital of partners and services performed by non-residents abroad for consumption in Rwanda,
- the introduction of a flat rate tax on the road transport of persons and goods and clarifying the application of the 3% lump sum tax regime;
- a restriction on the deductibility of management, technical fees and royalties to a non-resident person to 2% of the company's turnover;
- removing the investment allowance from the Income Tax Act, with incentives now generally only available under the Investment Code (Law No. 06/2015);
- the introduction of conditions for the claiming of a deduction in respect of bad debts;
- restricting the carry-forward of tax losses to five years;
- requiring related persons involved in controlled transactions to maintain transfer pricing documentation supporting the arm's length basis of such transactions; and
- clarifying the tax treatment of income from the rent of moveable and immovable assets.

SWAZILAND: Sekulula VAT Easy System processing fee introduced

On 5 April 2018, the Swaziland Revenue Authority announced the imposition of a SZL50 administration fee for processing the 1% refund due to importers using the Sekulula VAT Easy System as a result of the increase in the standard VAT rate of South Africa to 15% with effect from 1 April 2018, whereas the standard VAT rate of Swaziland currently remains at 14%. An increase to 15% was proposed in Swaziland's 2018/19 Budget on 1 March 2018.

UGANDA: 2018 Tax Bills presented to Parliament

The Minister of Finance, Planning and Economic Development presented a number of tax bills to Parliament on 3 April 2018. Significant proposed amendments include:

- introducing a minimum tax at the rate of 0.5% on the gross turnover of taxpayers who have been in a loss position for seven consecutive years of assessment;
- subjecting the income of savings and cooperative societies to tax;
- repealing and replacing the thin capitalisation rules in respect of interest expenses by limiting the amount of deductible interest in respect of all debts owed by a taxpayer who is a member of a group to 30% of the tax earnings before interest, tax, depreciation and amortisation, but allowing the carry-forward of excess interest for a period of three years;
- mandating a telecommunications service provider who pays a commission for airtime distribution or provision of mobile money services to withhold tax at the rate of 10% on the gross amount of the payment;
- permitting the deduction of interest incurred by an individual on a mortgage obtained from a financial institution for the acquisition or construction of premises that generate rental income;
- specific tax relief measures for developers and operators of industrial parks or free zones;
- revising the tax rules in respect of a change in control of companies and expanding the source rule to include "income derived by direct and indirect disposal of ownership of 50% or more by a person located in Uganda";
- specifying supplies made to government ministries, departments or agencies upon which VAT is due;
- specifying that VAT due remains payable irrespective of whether an objection has been filed against an assessment;
- introducing VAT withholding agents who are required to withhold 50% of the VAT due before making a payment for a taxable supply and to remit the VAT so withheld to the Uganda Revenue Authority;

- capping the interest due and payable on VAT overpayments and late refunds to the principal tax;
- imposing stamp duty on instruments used in Islamic financial transactions; and
- requiring the submission of weekly returns by the licensed operators of casino, gaming and betting activities, in addition to the submission of monthly returns.

Sources include IBFD's Tax Research Platform; www.allafrica.com; <http://tax-news.com>



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