



## Africa tax in brief

by Celia Becker

### DEMOCRATIC REPUBLIC OF CONGO: Amendment of Mining Regulation published

Decree No. 18/024, amending the Mining Regulation, was published in the Official Gazette on 12 June 2018. Significant amendments include:

- subjecting transactions of group-related entities of mining companies to the standard tax regime;
- allowing payments made by a mining company to an associate company as deductible if the provisions of the standard tax rules are complied with;
- limiting the amount of deductible interest paid by a mining company to a foreign associate company to an interest rate not exceeding the annual average effective rate used by credit institutions in the residence country of the foreign entity;
- exempting interest paid by the holder of a mining licence on foreign currency loans from tax if the arm's length interest rate is charged;
- allowing the carry-forward of losses for a maximum of five years. Losses arising from depreciation may be carried forward indefinitely;
- extending the minimum corporate income tax applicable under the standard corporate tax regime to mining companies;
- introducing a special tax on capital gains realised on the direct or indirect transfer of shares representing Congolese mining titles by foreign companies;
- introducing an exceptional tax on super profits where the average price of the mining product for a specific financial year is higher than 25% of the price expected in the feasibility study;
- determining the taxable base of mining royalties as the commercial value of the mining product;
- introducing a number of new taxes including:
  - a 1% tax on the nominal value of shares transferred in mining companies;
  - a tax on export of mineral samples at a rate of USD0.2 per kg of mineral products;
  - a tax on the foreign treatment of raw ore;
  - a tax on precious minerals found occasionally;
  - a tax on explosives used by mining companies;
  - a tax on deforestation. The relevant tax rates are to be determined through an inter-ministerial decree from the Minister of Mining/Forestry and the Minister of Finance; and
  - an environmental tax based on Law No. 11/009 of 9 July 2011.
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### GHANA: High Court rules that payment of minimum disputed amount is a prerequisite for filing an appeal

The Commercial Division of the High Court, in its decision of 13 July 2018, in the case of *Beiersdorf Ghana Limited v. The Commissioner General of the Ghana Revenue*

*Authority* (CM/TAX/0001/2018), ruled that the payment of at least a quarter of the tax liability contained in a disputed notice of assessment in the first quarter of the year of assessment is a prerequisite for filing a tax appeal in accordance with Rule 4 of Order 54 of the High Court (Civil Procedures) Rules 2004.

In the case at hand, the Ghana Revenue Authority (“**GRA**”) conducted a tax audit on Beiersdorf Ghana Limited (“**BGL**”) and issued an additional tax assessment, disallowing royalty payments made in accordance with a distribution licence on the basis that the agreement was not registered as a technology transfer agreement with the Ghana Investment Promotion Centre (“**GIPC**”).

BGL objected on the basis that the distribution licence agreement is not a technology transfer agreement as contemplated by the GIPC Act (Act 865) and was, therefore, not required to be registered with the GIPC. BGL also disagreed with the GRA recharacterising reimbursements paid to its distributors for work done by third-party vendors as sales commission and subjecting such payments to withholding tax.

The GRA subsequently issued a revised assessment taking into consideration tax credits to which BGL was entitled, but BGL disagreed with the revised assessment and filed an appeal with the High Court.

The High Court ruled in favour of the GRA on the basis that it was precluded from hearing the appeal because BGL failed to provide evidence of the payment of at least a quarter of the tax due in the notice of appeal and hence, the appeal was not properly filed.

### **NIGERIA: Revised Transfer Pricing Regulations published**

The Federal Inland Revenue Service (“**FIRS**”) released revised Income Tax (Transfer Pricing) Regulations, 2018 (the “**new Regulations**”), which repeal the Income Tax (Transfer Pricing) Regulations, 2012 and apply to basis periods of taxpayers commencing after 12 March 2018.

The new Regulations require companies to include supporting documents in respect of goods, assets, services or other items procured from unrelated parties through a connected person in the contemporaneous documentation. However, connected persons whose total value of controlled transactions is less than NGN300-million are exempt from maintaining contemporaneous documentation.

The term “connected taxable persons” as per the 2012 Regulations, is replaced with “connected persons”. Persons are now deemed to be connected where “one person has the ability to control or influence the other person in making financial, commercial or operational decisions, or there is a third person who has the ability to control or influence both persons in making financial, commercial or operational decisions”.

In terms of the new Regulations, “capital-rich low-function companies” would be entitled to only risk-free returns where they do not control the financial risks associated with their funding activities and the profits or losses associated with the actual risks would be allocated to the entity(ies) carrying out the risk management functions. A “capital-rich-low function company” is defined as one that has significant equity capital but limited capacity to carry out risk management functions.

The new Regulations specify the maximum amount that will be allowable for tax purposes in respect of “transfer of rights in an intangible, other than the alienation of an intangible” to be 5% of direct earnings before interest, tax, depreciation and amortisation derived from the commercial activity in which the right was exploited. The modalities provided in the Organisation for Economic Cooperation and Development Transfer Pricing Guidelines for determining the existence of intra-group services and intangibles and compliance with the arm’s length principle have been adopted by the new Regulations.

The new Regulations specify certain trigger events for the filing of updated declarations by connected persons, including a change in directorship, merger and acquisition transactions involving the connected person or its parent company, and “any other change in the structure, arrangement or circumstances of the person ... which influences whether it will be considered to be connected or not connected to another person”. The updated declaration is to be submitted to the FIRS within six months of the end of the accounting year in which the event occurred.

## **NIGERIA: FIRS orders the freezing of bank accounts to recover taxes due**

The FIRS has been appointing banks as collection agents of taxpayers considered to be in default of tax payments, directing the relevant banks to freeze the accounts of non-compliant taxpayers to prevent them from drawing funds from the accounts.

In terms of section 31 of the FIRS (Establishment) Act, the FIRS is granted powers to appoint a person as an agent of a taxpayer for the recovery of tax payable by the taxpayer, by paying any tax due by such taxpayer from money held by the agent on behalf of the taxpayer.

However, the provision does not define when “tax is payable” for the purposes of exercising the power to appoint an agent and does not specify what must be presented by the FIRS to demonstrate to the agent that the tax is in fact due and payable. This creates a risk that the FIRS can arbitrarily allege that tax is payable and the agent may be obliged to withhold a taxpayer’s money even though the tax may be under dispute.

## **NIGERIA: Tax administration embarks on withholding tax reconciliation with taxpayers**

In preparation for the planned automation of withholding tax administration, the FIRS has been issuing notices to taxpayers to reconcile their unutilised withholding tax credit balances with the FIRS within 15 days of receiving the notice. Taxpayers are required to submit their unutilised withholding tax credit notes to the FIRS for confirmation, reconciliation and approval.

It is expected that the withholding tax credit balances agreed by the FIRS and taxpayers will be transferred to the taxpayers' withholding tax account on the FIRS' online platform and where taxpayers fail to present their reconciliations within the specified timeline, they will have to accept the withholding tax credit balance per the FIRS' records.

## **RWANDA: Draft law on property taxes passed by parliament**

Parliament passed a draft law on property taxes on 2 August 2018. The draft law proposes to repeal and replace Law No. 59/2011 of 31 December 2011 and contains the following proposals:

- harmonising the fixed asset tax regime by repealing the provision requiring only taxpayers with a freehold land title to pay fixed asset tax. Currently, property owners pay either land lease fees or fixed asset tax based on their choice of title (ie, leasehold or freehold);
- gradually increasing the fixed asset tax rate for residential buildings over a period of four years from 0.25% in the first year to 1% in the fourth year and beyond;
- granting the district councils discretionary power to set the rates of land tax;
- exempting one residential house per person from fixed asset tax;
- exempting government properties that do not make profit, properties donated by the government to vulnerable groups, immovable properties that belong to foreign diplomatic missions, as well as land used for agriculture activities not exceeding two hectares, from the fixed asset tax regime;
- granting a reduced fixed asset tax rate of 0.1% for other buildings and for small and medium-sized enterprises (“SMEs”) and granting a two-year exemption from trade licence tax for SMEs recently established;
- incentivising the construction of high-rise residential apartments to promote organised settlement and granting preferential fixed asset tax rates for commercial buildings in order to support urbanisation;
- providing special fixed asset tax rates for industrial buildings to make them competitive on both regional and international markets;
- providing a standard plot size per type of building for determining the applicable land tax rate. The land tax will be increased by 50% for each extra square meter beyond the set standard plot size;
- increasing the income threshold reserved for the maintenance and upkeep of rented property from 30% to 50%;
- permitting businesses with several branches to use the turnover of the main business as the basis for determining the trading licence tax to be paid by each business branch where the individual branch does not maintain separate accounting records; and
- capping the maximum amount of trading licence tax to be paid per year at RWF250 000.

## TANZANIA: Zanzibar filing deadlines amended

The Finance (Public Revenue Management) Act, 2018 (the “**Finance Act**”) was assented to by the President of Zanzibar and Chairman of the Revolutionary Council on 3 July 2018 and came into force on the same date.

The Finance Act has, *inter alia*, amended the Tax Administration and Procedures Act, 2009 to revise the filing and payment dates for business operations in Zanzibar to the 20th day of each month following the end of the accounting period. Previously, monthly returns were due for filing on or before the 10th day of each month, whereas payments were due on the 15th day of the month following the end of the accounting period.

The due dates are now aligned with mainland Tanzania, easing the administrative burden for companies operating in both mainland and Zanzibar.

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



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