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ENSight

tax

Africa tax in brief

ANGOLA: Introduction of VAT postponed

The introduction of value-added tax ("**VAT**"), scheduled for 1 July 2019, was postponed to October following discussions between the Angolan Government and the Business Technical Group ("**GTE**"), which advocated implementing VAT only in January 2020.

GTE also recommended reducing the VAT rate for taxpayers subject to the transitional regime to 7% and assessing if VAT should be implemented in the context of private sector education and teaching.

DEMOCRATIC REPUBLIC OF CONGO: Deadline for submission of financial statements for financial year 2018 announced

On 18 June 2019, the General Manager of the Congolese Accounting Authority (*Conseil Permanent de la Comptabilité au Congo*) confirmed the deadline for filing financial statements for the financial year 2018 with the Congolese Accounting Authority to be 30 June 2019. Failure to meet the deadline is liable to a penalty equivalent to USD100.

ETHIOPIA: Directive on taxation of undistributed profit issued

The Ministry of Finance recently issued Directive no. 7/2019 on the Taxation of Undistributed Profit as provided for by article 61 of the Federal Income Tax Proclamation 979/2016. In terms of the Directive:

- tax at a rate of 10% is payable on the undistributed profits of a company, partnership, public enterprise or public financial agency, or other body of persons whether formed in Ethiopia or elsewhere;
- "undistributed profit" is defined as after-tax profits, which are not paid as dividends within 12 months of the end of a company's accounting year in which the profit was earned, or unrepatriated profit of a permanent establishment in Ethiopia of a non-resident entity, or profit which is not reinvested in the entity;
- the tax authority is to be provided with proof, authenticated by a notary, of dividend distribution and the payment of dividend tax or reinvestment of the profit; and
- in the case of reinvestment of profit, an entity must submit the necessary proof to the tax authority within two months following a 12-month period from the end of the tax year.

ETHIOPIA: Proclamation amending VAT approved by parliament

On 4 July 2019, the House of People's Representatives approved Value Added Tax (Amendment) Proclamation No. 1157/2019 amending provisions of Value Added Tax (VAT) Proclamation No. 285/2002. Significant amendments, effective from the date of publication in the *Negarit Gazette*, include:

- VAT-registered taxpayers with annual turnover of at least ETB70-million are obliged to file monthly VAT returns, whereas taxpayers with annual turnover below ETB70-million must file their VAT returns every three months;

- the maximum amount of VAT that a purchaser may withhold under the reverse charge mechanism is 50% of the total VAT charged on a supply of goods or services, with the supplier obliged to declare the remaining 50% of VAT according to its annual turnover;
- a registered VAT vendor is entitled to an input tax credit for VAT paid on capital goods purchased in the six months prior to its registration, or prior to the obligation for registration arising, during the accounting period following the date of its registration, or the obligation to register, provided that:
  - its annual taxable transactions exceed ETB100-million; and
  - the capital goods were used or were to be used for taxable transactions, and provided that they were approved by the tax authority;
- "capital goods" are defined as assets with a life cycle of more than one year, to be used directly or indirectly in the production of goods or the rendering of services, including buildings, vehicles, machinery, equipment and other similar tangible assets.

IVORY COAST: clarification on country-by-country reporting issued

On 7 May 2019, the Ivorian Tax Office (*Direction Générale des Impôts*) issued Ruling No.1606/SEPMBPE/DGI/DLCD-SDCFI/mn/09-2018, clarifying the filing of country-by-country ("**CbC**") reports as provided for by article 36*bis*(4) of the General Tax Code. In summary:

- CbC reports must be filed during the fiscal year following the turnover return filing and must be filed by the latest within 12 months after of the year covered by the declaration;
- the first CbC reports are due for submission by 31 December 2019; and
- the minimum threshold for filing CbC reports is a consolidated annual turnover, excluding taxes, of F.CFA491 967 750 (EUR750-million at the time of writing).

KENYA: 2019/20 Finance Bill published

The 2019/20 Finance Bill 2019/20 was published on 14 June 2019 following the presentation of the budget to parliament by the Cabinet Secretary to the National Treasury on 13 June 2019. Significant proposed amendments include:

Corporate income tax

- income chargeable to tax now includes income from a digital marketplace, which is defined as a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means;
- the equalisation tax that replaced compensating tax will not apply to distributions from income that are exempt from tax;
- the definition of income of a non-resident ship owner, deemed to accrue in Kenya, has been expanded to include any income from delays in taking delivery of goods or returning any of the equipment used for transportation of goods;
- the income of an investee company (as defined under the Capital Markets Authority Act) from a real estate investment trust is exempt from tax;
- the corporate income tax rate for companies operating a plastic recycling plant is reduced to 15% for the first five years of operation; and
- small and medium enterprises listed under the "Growth and Enterprise Market Segment" will be entitled to a tax amnesty on any outstanding penalties and interest for two years prior to the listing but principal tax will remain payable.

Personal income tax

- youths registered under the Ajira Programme are to pay a registration fee of KES10 000 per year in lieu of income tax; and

- the affordable housing relief is reduced from 15% of gross emoluments to 15% of the contributions made by employees.

VAT

- the definition of "supply of imported services" will be amended to provide for a supply made to any person. Previously, the definition referred to a supply made to a registered person;
- supplies made through a digital marketplace will be subject to VAT;
- the withholding VAT rate will be reduced from 6% to 2%;
- goods removed from a special economic zone for domestic use will be deemed to have been imported and thus subject to VAT at the time of removal from the zone;
- the VAT exemption for specialised equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power, will now require recommendation from the cabinet secretary responsible for matters relating to energy;
- the following are now exempt from VAT:
  - inputs for electric accumulators and separators, including lead battery separator rolls supplied to manufacturers of automotive and solar batteries in Kenya, upon the recommendation of the cabinet secretary responsible for industrialisation. These were previously zero-rated;
  - agricultural pest control products;
  - locally manufactured motherboards;
  - inputs for the manufacture of motherboards approved by the cabinet secretary responsible for information communication technology; and
  - plant, machinery and equipment used in the construction of a plastics recycling plant; and
- the supply of denatured ethanol will be zero-rated.

Excise duties

- betting transactions will be subject to excise duty at the rate of 10% of the amount staked or wagered at the time when a person wagers or stakes money on the platform or media provided.

Other taxes

- the capital gains tax rate is increased from 5% to 12.5%; and
- capital gains arising in the following circumstances to be exempt from tax:
  - internal restructurings (provided there is no transfer to a third party);
  - transfers pursuant to a legal or regulatory requirement;
  - gains arising from compulsory acquisition from the government; and
  - transfers determined to be in the public interest and approved by the cabinet secretary;
- turnover tax, which was abolished in 2018, has been reinstated at 3% of turnover. The tax will be charged in addition to presumptive tax, with presumptive tax being treated as an advance tax and deducted from subsequent turnover tax payable;
- withholding tax on demurrage charges paid to non-residents (introduced in the 2018 Finance Act) is abolished;
- reinsurance premiums paid to a non-resident person are subject to withholding tax at a rate of 5% on the gross amounts. This, however, does not apply to premiums paid for insurance of aircraft;
- payments relating to security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods excluding air transport services, sales promotion and marketing and advertising services are subject to withholding tax at the rate of 5% if paid to a resident person and 20% if paid to a non-resident person;

- the import declaration fee on intermediate goods and raw materials used by manufacturers will be reduced from 2% to 1.5%, but the import declaration fee on finished goods will be increased from 2% to 3.5%;
- the railway development levy will be increased from 1.5% to 2%; and
- an export levy of 10% will be payable on export of various hides and skins.

Tax administration

- the commissioner can grant exemptions to foreigners from the personal identification number requirement in certain circumstances;
- the period during which the commissioner must respond to an objection will be amended to a period of 60 days after which additional information is requested from the taxpayer. Previously, the period was 60 days upon receipt of the objection; and
- the 20% tax penalty for unpaid tax will be repealed.

MOZAMBIQUE: Decrees issued on customs and income tax benefits for areas affected by cyclones Idai and Kenneth

Mozambique recently issued Decree 27/2019 of 11 April and Decree 45/2019 of 22 May, granting certain customs and income tax benefits for the recovery and reconstruction of the areas affected by cyclones Idai and Kenneth, including:

- the importation of construction materials and food products free of customs duties, up to 31 December 2019, subject to the following conditions:
    - authorisation of the competent customs services, upon confirmation of the domicile of the economic agent and destination of the goods;
    - presentation of a guarantee by means of a statement of responsibility; and
    - respective regularisation of the above-mentioned importation procedures must be made within a maximum period of 90 days, within the period up to 31 December 2019.
- deferral of the annual payment of corporate and individual income tax (2nd category) for the 2018 fiscal year, from May 2019 to December 2019; and
- waiver of the advance payments for the 2019 fiscal year.

MAURITIUS: Guidelines for tax objection and appeal published

On 28 June 2019, the Mauritius Revenue Authority ("**MRA**") published the Guidelines for Tax Objection and Appeal. In summary:

- the guidelines apply to objections by a taxpayer in relation to assessments or certain decisions or claims issued under the Income Tax Act, the VAT Act, the Gambling Regulatory Authority Act, the Customs Act or the Excise Tax Act;
- objections must be lodged within 28 days of the date of the notice of assessment or decision or claim by means of a form approved by the Director General of the MRA;
- an objection form may be submitted electronically or by registered post, provided that, *inter alia*:
    - the grounds of objection are clearly stated;
    - the tax specified in the relevant return or statement has been duly paid; and
    - 10% of the tax assessed has been paid (except for customs objections), or a bank guarantee that satisfies the MRA has been furnished.
- an appeal is to be lodged with the Clerk to the Assessment Review Committee within 28 days of the date of any decision, determination, notice or claim of the MRA; and
- any party who is dissatisfied with the decision of the Assessment Review Committee on a point of law may lodge an appeal with the Supreme Court.

MAURITIUS: 2019/20 Budget delivered

On 10 June 2019, the Prime Minister and Minister of Finance and Economic Development delivered the Budget speech for 2019-2020. Significant proposed amendments, generally effective from 1 July 2019 include:

Corporate income tax

- companies will not be considered tax resident in Mauritius if they are managed and controlled outside Mauritius;
- an eight-year tax holiday on income derived from intellectual property assets developed in Mauritius by a newly set-up company involved in innovation-driven activities;
- an eight-year income tax holiday on income derived from intellectual property assets developed in Mauritius by existing companies after 10 June 2019;
- a five-year tax holiday for companies incorporated in Mauritius before 30 June 2025 and setting up an e-commerce platform;
- a five-year tax holiday for companies operating in peer-to-peer lending that start operations prior to 31 December 2020;
- an exemption from the levy under the VAT Act for income derived by banks from global business companies;
- an increase in the rate of the levy from 4% to 4.5% of operating income for banks with operating income exceeding MUR1.2-billion a year. A cap on the levy is to be introduced;
- banks granting at least 5% of their new banking facilities to:
  - small and medium enterprises in Mauritius;
  - enterprises engaged in agriculture, manufacturing or production of renewable energy in Mauritius; or
  - operators in African or Asian countries,

will benefit from a reduced tax rate of 5% applicable to the chargeable income of banks in excess of their chargeable income in the base year; and

- the threshold of capital expenditure incurred on plant or machinery that may be fully deducted as an expense in the year incurred is increased from MUR30 000 to MUR60 000.

VAT

- the following items are to be exempt from VAT:
  - foodstuffs such as linseed, mustard seeds, poppadum (also known as papad or appalam, sagoo (pearl seeds), sesame seeds, tukmaria (basil seeds), and vermicelli; and
  - specialised compression garments used for medical purposes, such as graduated compression garments, graduated compression hosiery, graduated compression gloves, and graduated compression head gear.
- the following items are to be zero-rated for VAT purposes:
  - cooking gas in cylinders of up to 12kg for domestic use by households; and
  - bread, previously classified as exempt for VAT purposes, is to be zero-rated with retrospective effect as from 1 March 2019;
- the following list of equipment has been included under the VAT refund scheme:
  - greenhouse cooling pads, greenhouse fans and greenhouse grow lights;
  - hydroponic trough systems, agricultural dehumidifiers and dutch buckets/pot systems and net cups and spots;
  - insect traps, plant support clips, mesh bags and aquaponics test kits; and
  - generators, machinery for preparing animal feed, and pregnancy diagnosis kits for cows.

NIGERIA: Tax Appeal Tribunal rules that excess dividend is liable to tax at 30%

The Nigerian Tax Appeal Tribunal recently ruled that excess dividend tax should be levied, even when there is no incidence of tax avoidance.

In terms of section 19 of the Companies Income Tax Act, 30% tax (excess dividend tax) is imposed on a company where it declares and pays dividends in excess of its total profit, ie, the profit of the year from which the dividend was declared and not the profit of the year in which the dividend was paid.

In the case at hand, a company declared and paid dividends to its shareholders in financial year 2014 even though it had no taxable profits for the year. Based on the audited financial statements, the dividends paid were from retained earnings that had suffered tax in previous accounting years. The taxpayer argued that excess dividend is aimed at curbing tax avoidance and that the tax should not be due on these dividends as the retained earnings from which the dividends were paid had already been subject to tax in previous years, and the levying of excess dividend tax will result in double taxation.

However, the Federal Inland Revenue Service ("**FIRS**") argued that section 19 should be interpreted literally and where the dividend exceeds the taxable profit or there is no taxable profit, the excess should be deemed as profit and subject to tax.

The Tax Appeal Tribunal ruled against the taxpayer, even though there was evidence that the taxpayer paid tax in previous years on the profits from which the dividend was paid. The implication is that companies that defer distribution of profit to a later period or pure holding companies who redistribute dividends to ultimate shareholders, would be subject to double taxation.

NIGERIA: Court of Appeal judgment of services rendered outside Nigeria

The Court of Appeal, on 24 June 2019, upheld the High Court's decision in *Vodacom Business Nigeria Limited ("Vodacom") vs Federal Inland Revenue Service (FIRS)* regarding the applicability of VAT on satellite-network bandwidth capacities provided to Vodacom outside Nigeria by New Skies Satellites, a Netherlands-based non-resident company.

In terms of the Federal High Court's judgment, the "destination principle" is to be used to determine whether imported services were liable to VAT in Nigeria, and VAT is applicable in the territory where goods and services are consumed instead of where they are produced.

As a result of the Court of Appeal judgment, Nigerian companies carrying on business with other companies outside Nigeria would be required to self-account for VAT on their transactions, notwithstanding that the services were rendered outside Nigeria, and regardless of whether the service providers charged VAT on their invoices.

REPUBLIC OF CONGO: deadline for payment of first instalment for advance tax for financial year 2019 announced

On 25 June 2019, the General Manager of the Congolese Tax Authority (*Direction générale des impôts*) in statement No.01/0026/DGI/DG/DESCOM/MT/2019 confirmed the deadline for payment of the first instalment of advance tax for the financial year 2019 for large taxpayers to be 31 July 2019. Failure to pay the instalment by the due date is subject to a penalty of 50% of the amount of the instalment due.

The first instalment due is calculated at 40% of the corporate income tax paid in the prior financial. A taxpayer may utilise a tax credit limited to 20% of the first instalment to be paid.

RWANDA: 2019/20 Budget

On 13 June 2019, the Minister of Finance and Economic Planning presented the 2019/20 Budget to both chambers of the parliament. Significant proposed amendments include:

- every person undertaking commercial activities would be required to use an electronic billing machine. Under the current regime, only VAT-registered taxpayers are required to use electronic billing machines;

- reducing penalties for the non-payment of taxes to 10% if the tax due is paid within 30 days of the due date, 20% if paid between 30 and 60 days of the due date, and 50% if paid after 60 days following the due date;
- mandating the commissioner general to extend the period for the payment of tax in instalments from 12 to 24 months;
- ring-fencing mining income and expenses per individual concession;
- reducing import duty rates on, *inter alia*:
  - road tractors for semi-trailers from 10% to 0%;
  - motor vehicles for transport of goods with gross weights exceeding five tonnes but not exceeding 20 tonnes, from 25% to 10%;
  - motor vehicles for transport of goods with gross weight exceeding 20 tonnes from 25% to 0%;
  - buses for transportation of more than 25 persons from 25% to 10%;
  - buses for transportation of 50 persons and above from 25% to 0%;
  - capital machinery and raw materials used in manufacturing of textile garments and footwear from 10% or 25% to 0%;
  - telecommunication equipment from 25% to 0%;
  - specific raw materials used in industries from 10% or 25% to 0%; and
  - electronic transaction devices (smart cards, point of sale, cash registers and cashless machines) from 25% to 0%.

TANZANIA: 2019/20 Budget presented

On 13 June 2019, the Minister of Finance presented the 2019/20 Budget. Significant proposed amendments, effective from 1 July 2019, include:

Corporate income tax

- an exemption from withholding tax on service fees on loans provided by banks and financial institutions to the government;
- an increased threshold for statutory filing of tax returns from TZS20-million to TZS100-million; and
- the introduction of a presumptive tax regime to taxpayers with annual turnover of between TZS4-million and TZS100-million who will not be obliged to submit financial accounts to the Tanzania Revenue Authority for determining income tax.

VAT

- the following are to be exempt from VAT:
  - airline tickets, flyers, calendars, diaries, labels and employees' uniforms with the names of the airline operator if they are imported by airlines recognised under bilateral air service agreements;
  - aircraft lubricants imported by domestic operators, the air force, or airline corporations recognised in the Bilateral Air Service Agreement;
  - imported refrigeration boxes (HS Code 8418.69.90);
  - grain drying equipment to reduce costs incurred in grain drying for storage purposes with the aim of stimulating the production of grain crops; and
- the supply of electricity services from the Tanzanian mainland to Zanzibar is to be zero-rated, whereas VAT is to be reintroduced on sanitary pads.

Tax administration

- extension of the tax amnesty period to December 2019 for existing applications; and
- the establishment of an independent "Office of Tax Ombudsman", responsible for receiving unbiased complaints from taxpayers against the administration of tax affairs by the Tanzania

Revenue Authority.

UGANDA: Bill to increase levy on coffee export sales tabled

On 24 June 2019, the National Coffee Bill was tabled to parliament, proposing:

- an increase in the tax on the export sales of coffee from 1% to 2%, calculated with reference to the unit value of the crop on the international market; and
- the registration of all coffee farmers and other industry role players, including owners of nursery beds, traders, exporters and processors and gardeners.

UGANDA: 2019/20 Budget presented to parliament

The Budget 2019-20 was presented to parliament by the Minister of Finance, Planning and Economic Development on 13 June 2019. Significant proposed amendments include:

Corporate income tax

- the definition of "beneficial owner" has been amended to a natural person who owns or has a controlling interest over a legal person other than an individual and who exercises control over the management and policies of a legal person or legal arrangement, directly or indirectly whether through ownership or voting securities, by contract or otherwise;
- a "citizen" has been defined as:
    - a natural person who is a citizen of a partner state of the East African Community ("**EAC**");
    - a company or body of persons incorporated under the laws of a partner state of the EAC in which at least 51% of shares are held by a person who is a citizen of a partner state of EAC;
- a 10-year exemption for income from the letting or leasing of facilities in an industrial park or free zone. The threshold for the minimum investment capital required has also been adjusted to USD50-million for a foreigner and USD10-million for a citizen;
- a 10-year exemption for operators in an industrial park or free zone or other persons carrying on business outside an industrial park or free zone with a minimum investment capital of at least USD10-million for foreigners or USD1-million for a citizen and, in the case of an existing operator, from the date the operator makes an additional investment to equate to USD10-million for foreigners and USD1-million for a citizen;
- an exemption for operators in specified industries such as the processing of agricultural goods in an industrial park or free zone or single factory with the same investment capital as above, subject to the use of at least 50% of raw materials sourced locally, and employment of least 60% citizens of Uganda;
- an exemption for interest paid on an infrastructure bond;
- limiting the interest deduction in respect to all debts owed by a taxpayer who is a member of a group other than financial institution or insurance business to 30% of earnings before interest, taxes, depreciation and amortisation;
- the introduction of 6% withholding tax on the purchase of a business or business asset;
- repealing the 1% withholding tax in the agricultural sector introduced in 2018/2019;
- exempting agricultural supplies from any form of withholding tax; and
- introducing withholding tax on interest payments on government securities to a non-resident person at a rate of 20% for government securities with a maturity period not exceeding 10 years and 10% for those with a maturity period of at least 10 years.

VAT

- the following is to be exempt from VAT:
    - aircraft insurance services;

- rice mills and agricultural sprayers;
- the specified supply of services and material for the development of an industrial park or free zone, a factory or a warehouse, the construction of a premises and other infrastructure, machinery and equipment or furnishings and fittings for technical or vocational institute operators and the supply of locally produced raw materials and inputs or machinery and equipment to an operator within an industrial park/free zone;
- the supply of drugs and medicines and medical sundries;
- the supply of imported mathematical sets and geometry sets, imported crayons, coloured pencils, lead pencils, rulers, erasers, stencils, technical drawing sets, educational computer tablets, educational computer applications or laboratory chemicals for teaching science subjects used in educational services;
- the supply of woodworking machines; and
- the supply of sewing machines.

Tax administration

- the use of electronic fiscal devices to improve compliance in VAT;
- the use of digital tax stamps to reduce under-declaration of excise and customs duties; and
- payment to be made by the commissioner general to whistle-blowers for information leading to the recovery of tax equivalent of 5% of the principle tax recovered.

UGANDA: Insurance agents are not to be treated as employees of insurance companies

On 14 June 2019, the High Court of Uganda (Commercial Division), in its decision in the case of *Insurance companies in Uganda (several appellants) v. Uganda Revenue Authority,* held that insurance agents are self-employed freelancers earning commission-based payments and, therefore, cannot be employees of insurance companies, regardless of the contracts signed between the insurance company and the insurance agents.

Based on the ruling, going forward, insurance companies will withhold 6% on commission paid to agents, unless the agent is exempt. A annual personal income tax return must be filed by the agents in which a credit for the withholding tax paid can be claimed against their annual personal income tax liability.

ZAMBIA: Zambia to introduce digital tax stamp on excisable products

On 28 June 2019, the Zambia Revenue Authority announced its intention to introduce a digital tax stamp on cigarettes and other excisable products in order to improve excise revenue collection and reduce the illegal importation and manufacturing of products liable to excise duties.

The digital tax stamp will be incorporated into the production facility of manufacturers of excisable products with the affixing of stamps to products to be automated and monitored in real time.

ZAMBIA: Sales tax implementation date postponed

On 28 June 2019, the Minister of Finance announced that the implementation date for sales tax has again been postponed to 1 September 2019. The of sales tax was initially scheduled to take effect on 1 April 2019 but was subsequently postponed until 1 July 2019.

ZIMBABWE: Regulations make Zimbabwe dollar sole currency for legal tender

On 24 June 2019, the Ministry of Finance and Economic Development of Zimbabwe issued Reserve Bank of Zimbabwe (Legal Tender) Regulations, 2019 by statutory Instrument 142 of 2019, in terms of which the Zimbabwe dollar is to be the sole currency for legal tender purposes. Foreign currencies such as the British pound, United States dollar, South African rand, and Botswana pula are to be banned with effect from 24 June 2019.

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