July 2023

WTS Africa Quarterly Newsletter

Editorial

Recent tax developments in Africa

Dear Madam/Sir,

We hope you may find interesting our second edition of the WTS Africa Regional Quarterly Newsletter where we collate and present taxation related news from six countries on the continent.

The following participants in the WTS Global network have contributed with a diverse range of international tax topics. These contributors are from the following countries:

- Angola – Vieira de Almeida (VdA)
- Kenya – Viva Africa Consulting LLP
- Mauritius – WTS Tax Consulting (Mauritius) Ltd.
- Nigeria - WTS Blackwoodstone
- Senegal - FACE Africa Tax & Legal
- South Africa - WTS Renmere

Our experts will be happy to answer any questions you may have.

We thank you for your interest.

Yours sincerely,

WTS Africa Team

wts global

Contents

Please find the complete list of contacts at the end of the newsletter.

wts global

Angola

Exporting Nationalized goods from Angola: understanding the rules in force

Angola has been suffering a significant transformation in its economic and political landscape. The growth of foreign investment in the country, among other consequences, led to a rise in the international trade and the need to ensure a legal framework for purposes of carrying out the relevant customs procedures.

However, in the last few years, with the purpose of stimulating the national production, diversifying the exports, and decreasing the need to import, the Angolan Government has been introducing amendments to the customs legislation, especially to the provisions applicable to the exportation of nationalized goods.

According with the rules foreseen in the Customs Code and the Customs Tariff Schedule (CTS), the exportation of domestic goods from Angola is exempt from customs duties – this rule aims at promoting the export of locally produced goods. Same does not apply to the exportation of nationalized goods, which is subject to the payment of customs duties. This being an undeniable fact, the question stands on the currently applicable rate.

Law 31/20, of August 11, which approved the revised State Budget for 2020, introduced a relevant amendment to the CTS, whereas the export of nationalized goods – including foodstuffs, medicines, and medical equipment – became subject to the payment of customs duties at a 70% rate, over the customs value. Up until this date, the export of nationalized goods was subject to customs duties at a 20% rate. Similar provisions have been included in both State Budgets for the years 2022 and 2023.

According to our best interpretation of the law, this rule was specially designed to deter the export of essential nationalized goods previously imported to Angola. However, the wording of the CTS on the general regime applicable to the exportation of nationalized goods has been raising doubts to investors on the scope of application of this 70% rate - namely, if same is applicable to the export of all nationalized goods or only to the export of goods deemed as essential and classified as priority domestic goods. Since this amendment was introduced in the context of the Covid-19 pandemic we tend to believe that this is only an ambiguous legislative drafting, which led to lack of coherence between the wording of the provisions in force. This notwithstanding, in order to bring certainty in future exports of nationalized goods, a case-by-case analysis and confirmation of the applicable rate with the competent authorities is highly recommended.

Joana Lobato Heitor
jlh@vda.pt

Bárbara Miragaia
bam@vda.pt

Kenya

Changing face of Taxation in Kenya

The tax regime in Kenya has been rapidly changing over the last decade. With increased pressure to meet revenue targets, the Government of Kenya has introduced measures to broaden the tax base, tighten tax loopholes, enforce strict compliance to tax laws, and enhance existing tax collection measures.

Typically, the Government introduces changes to tax laws through annual Finance Statutes/Acts. Over the past 5 years, the Finance Acts have introduced legislative changes targeting untaxed and emerging sectors, and enhanced tax compliance and administration. Some of the notable changes include:

Taxation of Emerging Sectors:

» Digital Economy: In response to technological advancements and digitization of the global economy, the Government has been enacting tax laws to tap into these emerging trends. The Finance Act, 2019 amended Kenya's Income Tax Act (ITA) to introduce Digital Service Tax (DST) to tax income accruing to non-residents from a digital marketplace.

» Financial Derivatives: Derivatives trading in Kenya began in 2019 with the launch of the Nairobi Securities Exchange Derivatives Market (NEXT). The Government introduced taxation of financial derivatives through the Finance Act, 2022 and Regulations gazetted in January 2023, which clarify the scope of Withholding Tax (WHT) on gains from financial derivatives and elaborate on the tax treatment of the income or loss arising therefrom.

» Digital Content Monetisation: The Finance Act, 2023 has introduced WHT of 20% for non-residents and 5% for residents on digital content monetisation (e.g., advertisement on social media, brand sponsorship, crowdfunding, and other activities by digital content creators).

Reforms in Tax Administration and Compliance Requirements:

» Integration of Invoicing Systems with KRA's System: In July 2022, the Government rolled out the Tax Invoice Management System (TIMS), aimed at improving compliance for Value Added Tax (VAT) registered businesses through real time invoice transmission. In February 2023, the Kenya Revenue Authority (KRA) launched a software solution (eTIMS) to eliminate the need for Electronic Tax Register (ETR) machines integrated to TIMS.

» Country-by-Country (CbC) Documentation Requirements: The Finance Act, 2021 introduced CbC reporting requirements to align local legislation with Action 13 of the OECD Base Erosion and Profit Shifting reporting framework. Subsequently, the Finance Act, 2022 introduced a CbC affiliated notification requirement for multinational entities (MNEs) resident in Kenya and filing requirements for the submission of master files, local files and CbC reports by MNEs to KRA.

Anne Mubia-Murungi
amubia@vivaafricallp.com

Sheila Mate
smate@vivaafricallp.com

Anthony Karanja
akaranja@vivaafrica llp.com

Given the myriad of legislative changes over the last 5 years, and the Government's laser-focused attention to tax collection and compliance, entities operating in Kenya are advised to evaluate their institutional tax compliance levels in tandem with their overall business strategies.

Mauritius

Taxation: Changes in Personal Taxation

The Minister of Finance, Economic Planning and Development has, in his 2023/2024 Budget Speech presented to the National Assembly on 02 June 2023, introduced a major tax reform with respect to taxation of individuals. The implementation of such reform is conditional upon the Finance (Miscellaneous Provisions) Act 2023 being enacted by the National Assembly. It is expected that such enactment will happen in July or August 2023, but to be effective as from 1 July 2023.

Had there not been any change to the tax regime applicable to individuals proposed by the 2023/2024 Budget Speech, a tax resident individual would have been taxed at the following rates as from 1 July 2023:

(a) 10%, if his/her annual net income does not exceed MUR 700,000 (approx. USD 15,500);

(b) 12.5%, if his/her annual net income falls between MUR 700,000 and MUR 975,000 (approx. USD 21,500); and

(c) 15%, if his/her annual net income exceeds MUR 975,000.

In addition to the above, a tax resident of Mauritius would also have been subject to Solidarity Levy depending on the level of his/her leviable income. Where the tax resident individual had a leviable income exceeding MUR 3 million (approx. USD 66,500), he / she would have been subject to Solidarity Levy at the rate of 25% on the amount in excess of the MUR 3 million. However, such Solidarity Levy would have been capped at 10% of the net income and dividends from any Mauritius-resident company.

Under the new income tax regime for individuals proposed by the 2023/2024 Budget Speech, income derived by a resident individual will be taxed as follows effective 1 July 2023:

Chargeable Income	Rate of Income Tax	Chargeable Income	Rate of Income Tax
First Rs 390,000	0%	Next Rs 300,000	12%
Next Rs 40,000	2%	Next Rs 300,000	14%
Next Rs 40,000	4%	Next Rs 400,000	16%
Next Rs 60,000	6%	Next Rs 500,000	18%
Next Rs 60,000	8%	On the remainder	20%
Next Rs 300,000	10%		

Mohammad Akshar Maherally
akshar@wts mauritius.com

Tarveen Teeluck
tarveen@wts mauritius.com

In addition, the Solidary Levy applicable on leviable income exceeding MUR 3 million is proposed to be abolished. Therefore, subject to enactment of the Finance (Miscellaneous Provisions) Act 2023, a tax resident individual should be subject to tax only at the rates specified above on income derived by them in Mauritius during an income year.

This paradigm shift in the taxation of individuals reinforces the position of Mauritius as a competitive jurisdiction for doing business and is expected to attract more expatriates to the island, alongside their respective businesses.

Nigeria

Highlights of the Finance Act, 2023

On the 28th of May 2023, prior to the former President of Nigeria - Muhammadu Buhari leaving his office, The Finance Act 2023 (the Act) was signed into law. The Act introduces a plethora of changes to existing legislation. Find highlighted below the significant changes to various tax laws in Nigeria.

Taxation of Digital Assets

Digital assets have been subjected to taxation under the Capital Gains Tax Act at the rate of 10% (ten percent).

New compliance obligation for Shipping and Air Transport Operators

Under the Companies Income Tax Act (CIT) international shipping and air transport companies who fail to provide audited financial statements when filing their CIT returns shall submit a comprehensive gross revenue statement of their Nigerian operations for the specified period, endorsed by at least one of the Company's director, external auditor and further supported with all invoices issued to relevant customers.

All regulatory agencies shall request evidence of income tax filing and TCC from shipping and air transport companies prior to processing and approving their business approvals and permits.

Withdrawal of Incentives

Taxpayers can no longer claim the additional investment allowance of 10% on qualifying expenditure incurred on plant and equipment under CIT Act. Notably, rural investment incentives for companies providing facilities e.g. road, electricity etc. has been repealed. However, where such income has been put in a fund for the purpose of expansion, then the exemption will continue until after 5 years or when it's fully utilized.

Elimination of double VAT on goods Purchased from a Non-resident Supplier

Where goods are purchased from a non-resident supplier ("NRS") through an online or digital platform, and such an NRS has remitted the associated VAT for the transaction to the FIRS, when the goods are physically imported in Nigeria, the

Nigerian Customs Service shall not collect VAT on those same goods, provided that the importer of the goods in Nigeria tenders proof that VAT has been remitted in respect of the good.

Increased Fines for defaulting Companies

On non-compliance to the provisions of PPT, fines payable has been increased from NGN10,000 to NGN10 million for non-compliance with the provisions of the Act and from NGN2,000 to NGN2 million for each day that the default continues. In addition, Also, an administrative penalty of NGN15 million and 1% of the amount of tax undercharged, on the filing of incorrect returns.

Kelechi Ugbeva
kelechi@wtsblack woodstone.com

Chidiebere Mbah
chidiebere@wtsblac kwoodstone.com

Temitope Adebeshin
temitope@wtsblack woodstone

Introduction of import levy

The CETA has been amended to provide for an import levy of 0.5% chargeable on all eligible goods imported into Nigeria from countries outside Africa.

Excise duty now payable on all services

Excise duties will now apply to all services (including telecommunication services) provided in Nigeria at rates that may be prescribed by the President through an Order

Senegal

Banking Sector: The Consecration of the Deductibility of Losses on Doubtful or Disputed Debts through the General Tax Code (GTC) in the Initial Finance Law for the Year 2023

For a long time a main concern of banking and financial institutions, the tax deductibility of losses on debts had finally been enshrined in Senegal by decision of the Minister of Finance No. 01719/MEFP/CAB/CT JK of March 4th, 2019.

However, in order to provide more legal certainty to the actors and specially to comply with community legislation, in particular the 2020 WAEMU Directive on the harmonization of the tax regime of credit losses, the Initial Finance Law for the year 2023 (IFL) adds a point 10 to article 10 of the GTC enshrining the deductibility of losses on debts recorded by lending institutions.

This reform, allows at least, on this specific issue, to reconcile a little the prudential standards in the banking sector with those tax since the provisions of the Instruction of the BCEAO No. 026-11-2016 of November 15th, 2016, have always prescribed to banking companies to write off debts classified as doubtful or disputed at the end of the fifth accounting period from the transfer in doubtful debts account.

However, for the benefit of the tax deductibility of credit losses enshrined in the IFL 2023, banking and financial institutions are required to meet certain substantive and formal requirements:

Substantive requirements:

- The debt must be granted in compliance with the prudential framework to which credit institutions are subjected;
- The debt must be qualified as doubtful or litigious, in accordance with the provisions of the Banking Chart of Accounts (BCA);
- The debt must remain uncollected at the end of the fifth accounting period from the date of its transfer to doubtful or disputed debt account.

Formal condition:

- An detailed statement of loss must be attached to the corporate tax return specifying the identity of the debtor, the date the loan or credit was granted, the original amount, the amount still to be recovered, the amount written off, the nature and value of the collateral, the date the debt was transferred, and the stage of the collection procedure.

Exceptions: however, it should be noted that this deduction does not apply to:

- debts against the State, public bodies and debts granted to related parties as defined by the banking regulations.
- to debts for which no collection action has been taken as well as those for which collection actions, although carried out, have been abandoned without failure recorded by a ministerial officer, either because of a settlement agreement, even partial, has been reached between the creditor and his debtor, or for any other reason resulting from the desire of the credit institution to put an end to the legal proceedings.

In a nutshell, this new measure is very consolidating for the taxation of banking institutions, but it is deplorable that it has not been extended to the institutions in the microfinance sector (IMF), which are confronted with the same problems as the banking institutions on the issue of credit losses. Indeed, in the same way, the IMF are also obliged to write off certain bad debts but without benefiting from this preferential tax regime.

El Hadji Sidy DIOP
sidy.diop@faceafrica.sn

Rajo RAKOTOSOLOFO
rajo.rakotosolofo@facafrica.sn

South Africa

New tax dispute resolution rules and enhancements to the tax dispute resolution process

The Minister of Finance has recently promulgated new South African Revenue Service ('SARS') dispute resolution rules in terms of section 103 of the Tax Administration Act, No. 28 of 2011 ('TAA'). These rules describe the procedures for objections and appeals, for the alternative dispute resolution ('ADR') mechanism and for the conduct and hearing of appeals before a Tax Board or Tax Court.

Whilst the new rules do not include many changes, one of the key changes is that the time period within which a taxpayer must lodge an objection has been increased from 30 business days to 80 business days. This extension is welcomed, given that the 30 business day period was often difficult to comply with. The time periods within which an appeal must be lodged have, however, remained unchanged.

Section 104(4) and (5) of the TAA nevertheless still entitles taxpayers to request a further extension of the period for objection. An extension of up to 30 business days may be granted where a senior SARS official is satisfied that reasonable grounds

exist for the delay in lodging the objection, but an extension in excess of 30 days may only be granted in exceptional circumstances.

In recognition of the new rules, SARS issued an updated version of the 'Dispute Resolution Guide' on 23 May 2023. On the topic of condonation of late objections, the guide simply reiterates the provisions of the TAA. It is, however, anticipated that requests for condonation of late objections will forthwith be considered by SARS on a much stricter basis, given the generous 80 day period granted in terms of the new rules.

Whilst taxpayers are held strictly to the timeframes as per the TAA and the SARS dispute resolution rules, SARS is seldom able to adhere to the stipulated timeframes. In an effort to improve its efficiency and effectiveness in resolving tax disputes, SARS announced certain system enhancements on 24 April 2023. The most significant changes include:

i. Automation of the calculation of the disputed amount;
ii. Taxpayers are able to amend their contact details on eFiling for purposes of a specific dispute;
iii. Automation of outcome of 'Request for Reasons' letters;
iv. Automation of ADR administration letters, including the following:
   a. Notice confirming that a dispute is suitable for ADR;
   b. Notice extending the period of the ADR proceedings;
   c. Notice terminating the ADR proceedings; and
   d. Notice confirming the outcome of an appeal.

Should these enhancements be implemented successfully, we anticipate that communication between SARS and taxpayers in relation to disputes will be significantly improved, thus potentially resulting more tax disputes being resolved outside of the courts. These developments are certainly welcomed in light of the high cost of litigation in South Africa.

Jané Visagie
jvisagie@renmere.co.za

Hendri Herbst
hherbst@renmere.co.za

wts global

Contact

Angola
Joana Lobato Heitor
jlh@vda.pt
Bárbara Miragaia
bam@vda.pt
Rua Dom Luís I
1200-151 Lisbon
www.vda.pt

Kenya
Anne Mubia-Murungi
amubia@vivaafricallp.com
T +254 (0) 202 465 567
Sheila Mate
smate@vivaafricallp.com
T +254 (0) 202 699 936
Anthony Karanja
akaranja@vivaafricallp.com
T +254 (020) 246 5567
Viva Africa Consulting LLP
P.O Box 50719
Rose Avenue, Off Denis Pritt Road
00200, Nairobi
www.vivaafricallp.com

Mauritius
Mohammad Akshar Maherally
akshar@wtsmauritius.com
Tarveen Teeluck
tarveen@wtsmauritius.com
WTS Tax Consulting (Mauritius) Ltd
5th Floor, Tower B, 1 Exchange
Wall Street, Ebene
+230 489 9900
www.wtsmauritius.com

Nigeria
Kelechi Ugbeva
kelechi@wtsblackwoodstone.com
Chidiebere Mbah
chidiebere@wtsblackwoodstone.com
Temitope Adebeshin
temitope@wtsblackwoodstone.com
T +234 (0) 9033501613
WTS Blackwoodstone
Rasheed Alaba Williams Street
Lekki, Nigeria
www.wtsblackwoodstone.com

Senegal
El Hadji Sidy DIOP
00221 77 639 73 65 / 00221 33 869
sidy.diop@faceafrica.sn
Rajo RAKOTOSOLOFO
rajo.rakotosolofo@facafrica.sn
Face Africa tax & legal
2, Place de l'Indépendance
Aliou Ardo Sow Building
4th Floor, 10 000, Dakar
www.faceafrica.sn

South Africa
Hendri Herbst
hherbst@renmere.co.za
T +27 678748096
Jané Visagie
jvisagie@renmere.co.za
WTS Renmere
2nd Floor, 8 Melville Road
Illovo
www.renmere.co.za

About WTS Global

With a representation in over 100 countries, WTS Global is one of the leading global tax practices offering the full range of tax services without the constraints of a global audit firm. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The exclusive member firms of WTS Global are carefully selected through stringent quality reviews. They are typically strong local players in their home market being united by the ambition of building the tax firm of the future. WTS Global effectively combines senior tax expertise from different cultures and backgrounds be it in-house, advisory, regulatory or digital.

For more information, please visit wts.com

Imprint
WTS Global
P.O. Box 19201 | 3001 BE Rotterdam
Netherlands
T +31 (10) 217 91 71 | F +31 (10) 217 91 70
wts.com | info@wts.de