

Equatorial Guinea's Ministry of Finances issues new Ministerial orders on VAT and Corporate Income Tax

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Executive summary

Equatorial Guinea's Ministry of Finances issued two new Ministerial orders on 5 November 2019. The objective of the orders is to facilitate the analysis of information transmitted to the tax administration as part of its control operations.

The first Ministerial order (No. 06/2019) establishes additional measures on the application of value-added tax (VAT). The second Ministerial order (No. 07/2019) addresses the creation of Agents for the validation of corporate income tax (CIT).

This Alert summarizes the key provisions of the orders.

Detailed discussion

Ministerial order No. 06/2019 establishing additional measures on the application of VAT

The operations covered by VAT:

- ▶ The profitable sale or transfer of property
- ▶ Service delivery
- ▶ Self-consumption of goods and services

- ▶ Other operations carried out by natural or legal persons in the field of their commercial, professional and individual activities, including extractive activities of all types

Article 315.3 of the General Tax Code (GTC) specifies the mandatory information that must appear when issuing an invoice, namely:

1. The correlative number and the chronological date
2. The name, address and tax register number of the company
3. Prices, with separation of the corresponding VAT
4. The name, address and number of the taxpayer's tax register

Provisions

- ▶ Prohibition is made to the public administrations to pay any invoice of a supplier not complying with the requirements of article 315.3 of the GTC. See Article 4 of the Order.
- ▶ The tax authorities will automatically deduct from the total amount of the invoice presented by the economic operators, the amount corresponding to the VAT, when these are not reflected clearly and separately.
- ▶ Failure to comply with this Ministerial order will lead to the application of the penalties provided for in the Tax Law and the Penal Code in force, as the case may be (Article 7).

Implementation

A **period of three months** is fixed, from the publication of this provision, for the adaptation *by economic operators of their invoices, media and devices in general*, to the provisions of this Ministerial order, i.e., no later than **4 February 2020**.

Ministerial order No. 07/2019 concerning the creation of Agents for the validation of Corporate Income Tax (CIT)

Background of the environment prior to Ministerial order No. 7/2019

- ▶ Up to the 2016 financial year: CIT returns were submitted to the General Direction of Taxes and Contributions declaratively
- ▶ From fiscal year 2017 through 30 April 2019: Though not codified, CIT returns were reviewed by a Tax Inspector before the return was formally filed

Consequences of this unwritten practice

- ▶ Long periods of time for validation of the filing of the tax return often going beyond the deadline of 30 April
- ▶ Absence of a signed official document, subscribing the anomalies of the tax return
- ▶ Registration of corrective sums of those declared by the taxpayer and without reference to summary accounting documents
- ▶ Complaint regarding information that does not comply with the legal status of the taxpayer
- ▶ Lack of consistency of the tax administration (acceptance of certain tax returns and rejection of others with the same characteristics)

Who are the validation agents of the CIT Return?

Approved CEMAC (Economic Community of Central African States) and OHADA (Organisation for the Harmonisation of Corporate Law in Africa) individuals or corporation (article 2) in charge of the verification and certification of the veracity of the CIT Returns before submission to the Ministry of Finance (art.1).

It should be noted that the CEMAC Regulation No. 8 of 22 March 2019 mentions that CIT Returns are certified in close and intelligent collaboration with the professionals of other trades who can participate in its preparation.

EY has already submitted its file to evidence competence as a validation agent. The list of companies and individuals approved as agents is expected to be published in January 2020.

Incompatibility

The function of Validation Agent is incompatible with the status of civil servant or engaged staff (Tax inspector) by the Public Administration (art. 15). Accordingly, a tax inspector cannot be approved as a Validation Agent and will be unable to validate returns.

Responsibility of the Validation Agent

in case of commission of offenses (submission of false declarations, ...)

Sanctions incurred

If a Validation Agent commits an offense, he/she will be subject to loss of the status of Validation Agent as well as potential criminal penalties.

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