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Africa Tax News

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BEPS update

Ivory Coast and Tunisia

New signatories of the multilateral instrument

Ivory Coast and Tunisia have signed the Organization for Economic Cooperation and Development (OECD) Base Erosion and Profit Shifting (BEPS) multilateral instrument and submitted their lists of reservations and notifications.

Nigeria

The Federal Inland Revenue (FIRS) issues the Income Tax Regulations (Country-by-Country Reporting) 2018

On 21 January 2018, the FIRS announced the signing of the Income Tax Regulations (Country-By-Country Reporting) 2018 (The Regulations). The Regulations constitute a significant landmark toward establishing the necessary framework for the automatic exchange of Country-by-Country Reports in accordance with the Multilateral Competent Authority Agreement signed by Nigeria in January 2016 and ratified by the Federal Executive Council in August 2016.

South Africa

South African Revenue Service publishes a list of jurisdictions without Qualifying Competent Authority Agreements

On 29 December 2017, the South African Revenue Service (SARS) released an updated list of jurisdictions with which South Africa does not have a Qualifying Competent Authority Agreement in effect by the time the Country-by-Country (CbC) report must be filed (note that first filings are due 28 February 2018). This means that South African taxpayers forming part of a foreign Multinational Enterprise group may be required to file a CbC report with SARS, even though the Ultimate Parent Entity is resident in a country other than South Africa, for example the United Arab Emirates or China.

Zambia

Zambia joins OECD BEPS inclusive framework association

On 14 December 2017, Zambia joined the Inclusive Framework for the global implementation of the BEPS Project. As an associate of the Inclusive Framework Zambia has committed to participate on the OECD's Committee on Fiscal Affairs, including monitoring the implementation of the four minimum standards. The four minimum standards are countering harmful tax practices (Action 5), preventing the granting of treaty benefits in inappropriate circumstances (Action 6), implementation guidance on transfer pricing and country-by-country reporting (Action 13) and making dispute resolution mechanisms more effective (Action 14).

Controversy trends

Equatorial Guinea

A new tax amnesty program is established

In early January 2018, Law n° 9/2017, dated 20 November 2017, on the waiver of certain tax debts for tax incentive purposes (the tax amnesty program) was published. The law grants automatic amnesty in respect of corporate income tax, personal income tax, value added tax and land registration duties at the following rates:

- A total waiver of non-declared tax debts through Fiscal Year (FY) 2014
- A 50% waiver of tax debts for FYs 2015 and 2016
- A 15% waiver of tax debts for FY 2017
- A fixed rate for land registration duties

The program is open to taxpayers that are not involved in exploration, exploitation and production of hydrocarbons. Qualified taxpayers must file a Special Tax Return and obtain the signature of a Tax Waiver Agreement from the Tax Administration.

Ghana

A tax amnesty bill is passed by parliament

The Parliament of Ghana has passed a tax amnesty bill, which is currently pending the assent of the President. The bill is expected to come into force in February 2018. The amnesty is part of the government's effort at encouraging voluntary compliance by taxpayers. Further details will be provided when the bill is enacted into law.

Kenya

Kenya Revenue Authority (KRA) continues its focus on transfer pricing audits and income attribution for permanent establishments (PEs)

The KRA has continued to scrutinize related-party transactions. In addition to review of intragroup service recharges, royalties and triangulated sales, income attribution for permanent establishments has become an area of focus. The need for multinational enterprises to localize their transfer pricing documentation and be audit ready therefore remains a critical objective.

Nigeria

Expiration date of Voluntary Asset and Income Declaration Scheme approaching

There is still time for companies to take advantage of the tax amnesty program, the Voluntary Asset and Income Declaration Scheme (VAIDS), which is set to expire on 31 March 2018. VAIDS is available for all taxes administered by both Federal and State Authorities for the preceding six years of assessment. And provides for the waiver of penalties for noncompliance and interest on unpaid taxes. Once amnesty is granted for a year of assessment, it cannot be subject to audit by Federal and State Authorities.

A tax health check is recommended for clients with existing or uncertain tax positions relating to Nigerian operations to determine the extent of the exposure for the purpose of participating in the VAIDS and taking the relevant steps to rectify these issues before the expiration of the scheme.

Other legislative changes

Angola

Draft law on Extraordinary Regime on Tax and Foreign Exchange Compliance approved

In December 2017, the parliament approved a draft law on the Extraordinary Regime on Tax and Foreign Exchange Compliance. Based on the draft law, companies that are resident, or have a head office, effective management or permanent establishment in Angola, as well as resident individuals are mandated to repatriate assets held abroad that have not been declared in Angola, where the value of such assets exceed US$100,000 or the equivalent in another currency. Relevant assets must be declared within 180 days from the publication of the law, and the corresponding amounts repatriated to Angola.

All persons that comply with the above procedures are not obliged to declare the origin of the said assets and will be exempt from the payment of any tax and from any tax obligations for prior tax periods up to the tax period ending 31 December 2017.

South Africa

Taxation Laws Amendment Act Passed

On 18 December 2017, the Taxation Laws Amendment Act (TLAA) of 2017 was promulgated. The TLAA contained the following notable international tax amendments:

- Implementation of measures to curb circumvention of dividend stripping rules and use of share buyback schemes. Currently any pre-sale dividends (i.e. dividends declared to a shareholder before the shareholder disposes of the shares in the company paying the dividend) is treated as income or proceeds and therefore subject to income tax/capital gains tax provided certain requirements are met:
  - if the pre-sale dividend was indirectly funded by a prospective buyer or a related party in connection with the prospective buyer, and
  - the shareholder holds more than 50% of shares in the company paying the dividends).

  The TLAA amends the rules by:
  - removing the funding requirement (i.e. the anti-dividend stripping rules will apply irrespective of how the dividend was funded);
  - reducing the percentage shareholding requirement from more than 50% to at least 50% in relation to unlisted shares or at least 20% where there is no other majority shareholder and to 10% in relation to listed shares.

  The anti-dividends stripping rules will apply where dividends are received/accrue to shareholder within 18 months prior to the disposal of shares or where the receipt/accrue of dividends is by reason/consequence of the disposal of shares. These measures are effective from 19 July 2017 and apply to disposals on or after that date other than a disposal in terms of an agreement wherein all the terms were finally agreed to before that date by all parties to the agreement.
- Collateral and securities lending arrangement provisions extended to listed foreign government bonds. The Income Tax Act provides for relief on the transfer in beneficial ownership of specific financial instruments for both collateral and lending arrangements. Generally there would be no income tax, capital gains tax and securities transfer tax implication if a listed share or government bond is transferred provided that identical shares/bonds are returned within a specified period of time. The above mentioned relief is extended to listed foreign government bonds in order to allow taxpayers to mitigate and diversify risk. This amendment is effective on 1 January 2018 and applies in respect of collateral arrangements and lending arrangements entered into on or after that date.

South Sudan

Finance Act 2017/2018 enacted

The Finance Act 2017/2018 which was recently enacted contains the following notable changes:

- Withholding tax rate on technical fees paid to nonresident persons has increased from 10% to 15%. The tax rates on other income categories subject to withholding tax remain the same.
- Work permit fees have been reduced by more than 50% from the 2016/2017 rates. The fee will depend on the category of work permits. For example, the fees for a work permit for a professional category has been reduced to US$3,000.

Companies should note that confirmation of tax changes should be obtained from the Directorate of Taxes, before they are applied to any specific transaction or activity.

Zimbabwe

2018 budget proposals presented

The Minister of Finance and Economic Development presented the 2018 budget statement to the Parliament of Zimbabwe on 7 December 2017. The highlights of the direct tax proposals that are expected to take effect from 1 January 2018 are as follows:

- Payments for tobacco purchased on both the auction and contract floors are exempt from 10% withholding taxes
- Power generation projects will be taxed at 0% for the first five years of operations. A reduced rate of 15% will apply thereafter.
- Interest expenses incurred where debt is more than three times equity is not deductible. The interest is deductible if the debt is from a local financial institution or from any other local source and in both cases where the parties are not related.
- Anchor farmers are allowed a deduction of 150% of costs related to technical and support services.
- Introduction of a new tax amnesty law. Disclosures made under the program should be done between 1 January and 30 June 2018. The amnesty covers penalty and interest on all taxes. The amnesty will preclude the Commissioner or the Prosecuting Authority from prosecuting the taxpayer. The principal outstanding amount should be settled by 30 June 2018, in order to qualify for the amnesty.

Highlights of the indirect tax proposals are as follows:

- Value added withholding tax reduced from 2/3 to 1/3 of VAT of the amount that is paid to a supplier
- Services provided by or on behalf of a banking institution registered or required to be registered in terms of the Banking Act are exempt from VAT

These proposals have been incorporated into the Finance Bill 2018, but will only become effective after the bill is enacted into law.

Treaty updates

Ethiopia and Singapore

- On 8 December 2017, the double tax agreement (DTA) between Ethiopia and Singapore entered into force. The DTA generally applies from 1 January 2018 for Singapore and from 8 July 2018 for Ethiopia.

Ivory Coast MLI

- Ivory Coast signed the OECD Multilateral Instrument (MLI) on 24 January 2018. The OECD released Ivory Coast's provisional list of Reservations and Notifications on the same date.

Kenya and Korea

- On 1 January 2018, the DTA between Kenya and Korea, which entered into force on 3 April 2017 became applicable.

Kenya and Iran

- On 1 January 2018, the DTA between Kenya and Iran, which entered into force on 13 July 2017 became applicable in Kenya. The treaty will apply for Iran from 21 March 2018.

Kenya and United Arab Emirates (UAE)

- On 1 January 2018, the DTA between Kenya and the UAE, which entered into force on 22 February 2017 became applicable.

Tunisia MLI

- Tunisia signed the MLI on 24 January 2018. The OECD released Tunisia's provisional list of Reservations and Notifications on the same date.

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