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Africa Tax News

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BEPS update

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Mauritius

Mauritius proposes tax changes to address OECD BEPS Action 5

On 14 June 2018, the 2018–19 budget was delivered to the parliament. The budget proposes several measures required under the Organization for Economic Co-operation and Development Base Erosion and Profit Shifting (OECD BEPS) Action 5, including the following notable measures relating to the Global Business License regimes:

- Abolition of the deemed foreign tax credit regime available to companies holding a Category 1 Global Business License, effective from 31 December 2018, and replaced with a partial exemption regime that exempts 80% of specified income from income tax. The exemption will be granted to all companies except banks, in respect of the following types of income:
  - Foreign-source dividends and profits attributable to a foreign permanent establishment
  - Interest and royalties
  - Income from the provision of specified financial services

  The partial exemption would only apply if the company satisfies certain predefined substantial activities requirements, the details of which have not been announced. The existing credit system for double taxation relief will continue to apply where partial exemption is not available.
- Abolition of the Category 2 Global Business License regime. A grandfathering clause will be introduced that allows the current regime to continue to apply until 30 June 2021 for companies that were granted a license before 16 October 2017.

- Extension of the corporate tax rate of 3% applied on profits derived by any company from export of goods to global trading activities.

The proposals are subject to parliamentary debate, along with other related fiscal and non-fiscal changes.

Nigeria

Nigeria releases Income Tax (Country-by-Country Reporting) Regulations, 2018

Nigeria has released the Income Tax (Country-by-Country Reporting) Regulations, 2018. The highlights of the regulations, which have an effective date of 1 January 2018, are as follows:

- Constituent entities (CEs) of multinational enterprises (MNEs), with consolidated revenues of N160 billion (approximately US$440 million) or more in the previous reporting period, must file a notification of the reporting entity required to file the annual Country-by-Country (CbC) report with the Federal Inland Revenue Service no later than the last day of the group's accounting year end.
- Ultimate parent entities (UPEs) that are residents in Nigeria must file the annual CbC report based on the prescribed template within 12 months after the last day of the group's accounting year end.
- The designated CE of an MNE must file the annual CbC report, where:
  - The entity is a tax resident in Nigeria and one or more of the following conditions apply:
    - The UPE of the MNE is not obligated to file the report in its country of residence
    - Nigeria is not party to a Qualifying Competent Authority Agreement with the jurisdiction in which the UPE is a tax resident
    - There has been a systemic failure of the automatic exchange of the report with the country where the UPE is tax resident
  - The CE will not be required to file the CbC report where the MNE group has filed the CbC report through a surrogate parent entity.

Penalties prescribed for noncompliance include a late notification penalty of N5 million (approximately US$14,000) for the first month of default and N10,000 (approximately US$30) for every subsequent day of default. Companies are expected to begin complying from accounting years beginning on or after 1 January 2018.

South Africa

SARS issues draft guide on mutual agreement procedures

South African Revenue Service (SARS) recently released a draft guide on mutual agreement procedures (MAP) in order to comply with BEPS minimum standard on dispute resolution. Issues covered by the draft guide include the scope of the MAP, documentation and timing requirements, as well as interaction of MAP with the application of domestic or treaty-based anti-abuse rules.

Controversy trends

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Ghana

Ghana issues guidelines on the Tax Amnesty Act 2017

On 3 May 2018, the Ghana Revenue Authority published the Guidelines on the Tax Amnesty Act 2017. The guidelines, which were issued following the enactment of the Tax Amnesty Act 2017, detail the procedure for applying for and obtaining amnesty from interest and penalty charges that would otherwise have applied to defaulting taxpayers.

South Africa

SARS establishes new initiative to prosecute taxpayers that are non-compliant with CbC reporting obligations

On 11 May 2018, SARS released a public notice to advise multinational entities who are required to file CbC reports that noncompliance will result in a fixed amount penalty, varying from ZAR250 (approximately US$20) to ZAR16,000 (approximately US$1,260) per month, dependent on the amount of an assessed loss or taxable income for the preceding year. The amount of the penalty will increase automatically by the same amount for each month that the person fails to remedy the noncompliance.

SARS's public notice on CbC reporting, dated 20 October 2017, requires the submission of the CbC report as well as Master File and Local File documentation. The imposition of penalties became effective on 11 May 2018. Prior to that date, the filing of the CbC report was compulsory, but no specific interest or penalties were assigned for noncompliance.

Digital developments

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Ghana

Ghana enacts mandatory use of fiscal electronic device for VAT purposes

On 4 May 2018, the Taxation (Use of Fiscal Electronic Device) Act 2018 was enacted and published in the *Official Gazette*. The Act provides for the mandatory use of fiscal electronic devices (FED) at each point of sale by specified categories of taxable persons for value-added tax purposes. The use of FED is intended to promote cashless payments in sales transactions. Taxable persons are required to issue FED receipts with respect to all sales to customers. Failure to use the devices in the specified manner would be liable to fines or terms of imprisonment or both.

Other legislative changes

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Equatorial Guinea

Equatorial Guinea modifies and clarifies law on participation of Equatorial Guinea nationals in the share capital of foreign companies

On 20 April 2018, a decree was published to clarify that the requirement for local participation of Equatorial Guinea (EG) nationals is only required in the oil and gas sector. Prior to the decree, all foreign-owned companies were required to have EG national participation in the share capital of their companies. The decree provides that participation of EG nationals in oil and gas companies created by foreign investors, or in foreign companies registered in EG, shall not be lower than 35%. National participation shall not be less than three local partners and the board of directors of public companies shall be composed of a minimum of one-third nationals.

Foreign companies incorporating in EG for the purposes of a Public Works Agreement, are required to enter into participation agreements with EG nationals with respect to benefits generated in public markets and investments with a national coefficient set between 5% and 10% of the net benefits.

Kenya

Kenya publishes 2018 Finance Bill

On 14 June 2018, the 2018 Finance Bill was published, following the presentation of the budget to parliament. The highlights of the changes expected to become effective on 1 January 2018 when enacted are as follows:

- The definition of dividends has been broadened to include any amount expended by the company for the benefit of or on behalf of a shareholder or persons related to the shareholder, including amounts incurred in discharging debts owed to the company, settling third party debts, or discharging additional tax liability to the company.
- Transfer of property by general life insurance companies will be subject to capital gains tax at 5%.
- Demurrage charges paid to non-resident persons will be subject to withholding tax at 20% of the gross amount.
- Insurance premiums paid to non-resident persons, with the exception of premiums paid for insurance of aircraft, will be subject to withholding tax at 5% of the gross amount.
- Excise duty of 0.05% of the amount transferred will be due on money transferred by banks, money transfer agencies and other financial service providers, where the amount transferred is equal to or exceeds KES 500,000 (approximately US$5,000).

Highlights of changes are expected to become effective on 1 January 2019 are as follows:

- Compensating tax (previously imposed on dividends distribution of untaxed profits at an effective rate of 42.3%), will be repealed and replaced with the imposition of 30% corporate tax on profits from which such dividends are distributed.
- Manufacturers will be entitled to an additional deduction of 30% of electricity costs incurred in manufacturing, in addition to claiming the actual electricity expense.

Nigeria

Nigerian Senate passes bill on business reform

On 15 May 2018, the Nigerian Senate passed a bill to repeal the Companies and Allied Matters Act 1990. The highlights of the bill, which is expected to improve the country’s business environment, include the following:

- A provision allowing a private company to be formed with one person. A minimum of two persons is required under the current Act.
- The creation of the limited liability partnership (LLP) as a new legal entity format for businesses. The LLP is targeted at increasing foreign direct investment in Nigeria.
- Elimination of the need for a court order as a condition precedent to share capital reduction. A special resolution will be sufficient to reduce the share capital.

- Provision for registration of business entities using the e-registration platform, reducing the time and cost of registration.

Rwanda

Rwanda enacts new income tax law

On 13 April 2018, a new income tax law was enacted. Some highlights of the new law are as follows:

- The list of activities giving rise to income sourced from Rwanda has been expanded. Notably, Rwandan sourced income will now include all payments made by a resident of Rwanda on services performed abroad other than those consumed abroad.
- The definition of a permanent establishment has been widened to include “a place of provision of services, including consulting services, carried on by a person, with the support of employees or other personnel, for more than 90 days in a 12-month period, either continuously or intermittently.”
- The following items have been added to the list of nondeductible expenses from taxable income:
- Management fees exceeding 2% of the total turnover
- 20% of expenses paid on business overhead as in the case of telephone, water, electricity and fuel for which private and business use cannot be practically separable
- A capital gains tax has been introduced on the sale or transfer of shares at the rate of 5% of the gain. The tax should be withheld by the seller. Capital gains from transactions on the capital market or those involving units of the collective investment schemes are exempted from the tax.
- Withholding tax exemption will apply on interest on deposits in financial institutions for at least a period of one year, loans granted by a foreign development financial institution exempted from income tax under applicable law, as well as interest paid by banks operating in Rwanda to banks or other foreign financial institutions.
- Tax losses may be carried forward for five years. A taxpayer may apply to the Commissioner General of Rwanda Revenue Authority for carry forward beyond five years provided the conditions specified by the Minister in a Ministerial Order are fulfilled.

The new law became effective on 16 April 2018, following publication in the *Official Gazette*.

Treaty updates

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Algeria and Netherlands

- On 9 May 2018, Algeria and the Netherlands signed a double taxation agreement (DTA). The treaty will enter into force following the exchange of ratification instruments.

Gambia and Turkey

- Officials from Gambia and Turkey have announced that the DTA between the two countries, which was signed on 11 February 2014, entered into force on 26 January 2018 and becomes effective on 1 January 2019.

Mauritius and Cyprus

- On 30 April 2018, the amending protocol to the DTA between Mauritius and Cyprus, which was signed on 23 October 2017, entered into force. The protocol generally applies from 1 July 2018 in respect of Mauritius and from 1 January 2019 in respect of Cyprus.

Nigeria and United Arab Emirates

- The text of the DTA between Nigeria and the United Arab Emirates (UAE) has been released. The treaty, which was signed on 19 January 2016, will enter into force after it is ratified by both parties and its provisions will apply on or after the first day of January of the year in which the treaty was signed.

Senegal and United Arab Emirates

- On 4 May 2018, officials from Senegal and the UAE announced that the DTA signed between the two countries on 22 October 2015 entered into force on 2 July 2017 and is effective retroactively from 1 January 2015.

Zambia and India

- On 11 April 2018, India and Zambia signed a DTA, which will enter into force following the exchange of ratification instruments. Once in force and effective, the treaty will replace the current treaty signed in 1981.

For further advice on any information provided above, please contact:

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