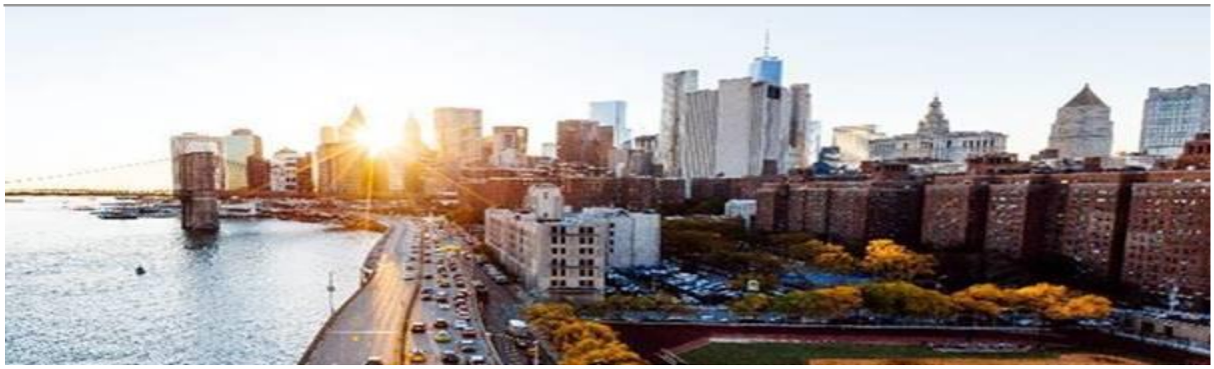
Zoom out to get a better view if you're reading this newsletter from a smartphone

Africa Tax News

January 2019



In this issue

BEPS update

Go to top

Mauritius

Mauritius submits updated draft MLI position to the OECD

On 10 October 2018, Mauritius submitted an updated draft MLI position to the Organization for Economic Co-operation and Development (OECD) Secretariat in preparation of Mauritius' definitive MLI position to be provided upon the deposit of its instrument of ratification. According to the updated MLI position, Mauritius added 18 treaties to the list of tax treaties in force that it would like to designate as Covered Tax Agreements. Mauritius also updated some of its notifications. The MLI will enter into force for Mauritius on the first day of the month following the expiration of a period of three calendar months beginning on the date of the deposit by Mauritius of its instrument of ratification with the OECD.

Tanzania

Tanzania issues new transfer pricing regulations

In November 2018, the Government of Tanzania published the Tax Administration (Transfer Pricing) Regulations, 2018. The regulations revoke and replace the Income Tax (Transfer Pricing) Regulations of 2014. The key changes introduced by the Regulations are as follows:

- Taxpayers with related-party transactions of TZS10 billion (i.e., approximately US$4.3 million) or more in a taxable year are required to file transfer pricing documentation along with the final return of income. Other taxpayers would be required to submit the documentation within 30 days, upon request by the Tanzania Revenue Authority.
- The owner of a locally developed intangible that is transferred outside Tanzania should be compensated appropriately at the time of the transfer. Royalty payments may not be made when such an intangible is licensed back for use in Tanzania.
- Allocation keys used for allocating intragroup services performed for various related parties should be measurable and relevant for the type of services performed.
- The penalty for noncompliance is set at a minimum of 3,500 currency points as prescribed from time to time by the Commissioner (currently, 1 currency point equals TZS15,000), which results in a penalty of TZS52,500,000 (i.e., approximately US$23,000). Additionally, a penalty of 100% of the adjusted amount may be imposed for failure to comply with the arm's-length principle when transacting with associates.

Other legislative changes

Go to top

Cameroon

Finance Law 2019 enacted

On 11 December 2018, the Finance Law 2019 was enacted. The key highlights of the income tax changes that became applicable from 1 January 2019 are as follows:

- Reduction from 10% to 5% of the rate of the withholding tax due on capital gains earned on disposal of real property.
- Introduction of a super reduced rate of Special Income Tax (SIT) of 2% applicable on remunerations paid by Cameroonian shipping companies to foreign companies for vessel rentals and charter, space rentals in foreign vessels, as well as commissions paid to foreign port agents
- Exemption of local purchases of petroleum products by marketers registered in the portfolio of the Large Taxpayers' Unit from the advance payment (withheld at source), which generally applies to purchases made by companies from industrialists, farmers, importers, wholesalers and loggers
- Introduction of a tax credit of 30% for enterprises that invest in the reconstruction of their production facilities in an economic disaster area, which is capped at FCFA100 million (approximately US$175,000) and chargeable to taxable income for the three years following the year of investment, by taxpayers validated by the tax authorities
- Introduction of the obligation for investors to use raw materials produced in an economic disaster area in order to benefit from tax incentives granted for the rehabilitation of the said area.

Chad

Finance Law 2019 enacted

Chad's Finance Law 2019 was enacted on 31 December 2018. The key changes impacting multinational companies are as follows:

- In addition to the nondeductibility of intragroup transactions, noncompliance with the transfer pricing documentation requirement will be sanctioned by a fine of 5% of the gross intragroup transaction with a minimum of FCFA50 million (approximately US$87,000).
- The definition of a tax haven has been revised. In addition to territories included in the "black list" published by the OECD, tax havens now include countries on the list published by the European Union or by the Chadian competent authority (i.e., Ministry of Finance and Budget). Sums paid to entities located in tax havens in respect of overhead cost or technical assistance fees are only deductible up to 50% of the gross.
- Private companies are required to withhold VAT charged to them by suppliers that are not included in the list periodically published by the tax authority.
- Imported goods will be subject to an import levy of 4%.

The changes are generally effective from 1 January 2019.

Equatorial Guinea

Finance Law 2019 enacted

On 19 December 2019, Equatorial Guinea's Financial Law 2019 was published. The following are the key changes affecting companies:

- The minimum income tax rate remains at 3% of the turnover realized during the previous year.
- Withholding tax on nonresident subcontractors is increased from 10% to 20% on the gross income obtained in Equatorial Guinea.
- A 10% withholding tax has been introduced for dividend payments to resident legal entities. The applicable rate for dividend payments to nonresident companies remains at 25%.
- The tax provision that allows tax withheld on a service payment to be treated as an advance payment of the income tax liability has been removed. This change will have a significant impact on taxpayers who may become subject to withholding tax on gross income, as well as full income tax on their net profits. Further clarification on this is being sought from the General Directorate of Taxes and Contributions.
- Public contracts awarded by the state and of autonomous entities and public companies will be subject to a 2% tax rate on the value of the contract, as a right of registration.

The changes are generally effective from 1 January 2019.

South Africa

South African Revenue Service publishes a guide on valuation of assets

On 8 November 2018, the South African Revenue Service (SARS) published the Guide on Valuation of Assets for Capital Gains Tax Purposes. The guide provides general guidelines on the determination of the market value on the valuation date, including time limits for performing valuations, who may perform valuations, valuation methods to be adopted in valuing specified assets, submission and retention requirements, rules to limit losses when the market value method is used to determine the valuation date value of an asset and burden of proof.

The guide does not constitute an official publication that could serve as a source to establish a binding practice.

South Africa

Taxation Laws Amendment Act 2018 published

On 17 January 2018, the Taxation Laws Amendment Act 2018 was published in the official gazette. The key amendments introduced by the Act are as follows:

- Amendments to the dividend stripping anti-avoidance rules regarding preference shares
- Amendments to the interaction between the dividend stripping anti-avoidance rules and the corporate reorganization rules
- Amendments to the rules for debt-financed acquisitions of a controlling interest in an operating company
- The introduction of new rules to address the use of foreign trusts to avoid tax in respect of controlled foreign companies
- Addressing tax avoidance through the use of collateral arrangements.
- Review of venture capital rules
- Review of international shipping rules

Zambia

Income Tax (Amendment) Act 2018 enacted

On 23 December 2018, the Income Tax (Amendment) Act 2018 was enacted. The key changes impacting the taxation of multinational companies are as follows:

- The deduction of interest has been limited to 30% of the tax earnings before interest, tax, depreciation and amortization. Disallowed interest will remain subject to withholding taxes. Excess interest on which a deduction is not allowed may be carried forward to future periods up to five years.
- The withholding tax rate on interest, dividends and payments to nonresident contractors has been increased from 15% to 20%.
- The prescription period stipulated for retentions of records for transfer pricing purposes has been increased from six years to ten years.

The changes are generally effective from 1 January 2019.

Zimbabwe

2019 national budget presented to Parliament

On 22 November 2018, Zimbabwe's Minister of Finance presented the 2019 national budget to Parliament. The key tax changes proposed in the budget include the following:

- Satellite broadcasting and e-commerce income received by nonresidents from Zimbabwean residents would be subject to income tax in Zimbabwe.
- Taxpayers who have related-party transactions or transact with entities in low tax jurisdictions will be required to submit a return disclosing the transactions. Additionally, penalties for noncompliance will apply as follows:
    - Transfer pricing adjustments resulting from fraud or evasion will be liable to a 100% penalty.
    - Absence of transfer pricing documentation or documentation that does not comply with the guidelines will be liable to a 30% penalty.
    - Transactions that do not comply with the arm's-length principle will be liable to a 10% penalty.
- Directors and shareholders will be jointly and severally liable for the tax debts of a company voluntarily wound up in circumstances that give rise to a reasonable suspicion that it was deliberately put into liquidation to avoid any tax liability.

The changes have been incorporated in a Finance Bill, that is before Parliament. Additional information will be provided when the bill is enacted into law.

Treaty updates

Go to top

African Continental Free Trade Agreement

Three additional countries, Guinea, South Africa and Uganda, have deposited their instruments of ratification in respect of the African Continental Free Trade Agreement (ACFTA), which was signed by 49 of the 55 member states. This brings the number of countries that have deposited their instruments to nine. The ACFTA will create a single free trade area for participating countries and will enter into force 30 days after the 22nd country has deposited its instrument of ratification.

Botswana and Malta

On 13 November 2018, the DTA between Botswana and Malta entered into force. For Botswana, the treaty generally applies from 13 December 2018 for withholding taxes and 1 July 2019 for other taxes. For Malta, the treaty generally applies from 1 January 2019 for income taxes.

Ghana and Switzerland

On 29 October 2018, the amending protocol to the DTA between Ghana and Switzerland entered into force. The protocol generally applies from 1 January 2019.

Mauritius and Jersey

On 19 December 2018, the DTA between Mauritius and Jersey entered into force. The treaty generally applies from 1 July 2019 for Mauritius and 1 January 2019 in respect of Jersey.

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

Go to top

Ernst & Young LLP (US), Pan African Tax Desk, New York	Dele Olagun-Samuel | +1 212 773 2546
Ernst & Young LLP (UK), Pan African Tax Desk, London	Rendani Neluvhalani | +44 20 7980 0463 Byron Thomas | +44 20 7951 4144

EYG no. 000382-19Gbl
ED None.