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Africa Tax News

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Nigeria

The Federal Inland Revenue Service publishes guidelines on Mutual Agreement Procedures in Nigeria

On 21 February 2019, the Nigerian Federal Inland Revenue Service (FIRS) published detailed [Guidelines on Mutual Agreement Procedures](#) (MAP). The guidelines are closely aligned with the recommendations of the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action 14 (Making Dispute Resolution Mechanisms More Effective) Final Report. The guidelines include detailed information on the eligibility for MAP, access to MAP, overview of the MAP request process, and the implementation of a MAP decision. The guidelines are supplemented by Public Notice and Certificate of Residency forms for both Nigerian and foreign residents.

Controversy trends

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Kenya

Court of Appeal issues decision on timing of withholding-tax payments

On 5 February 2019, the Court of Appeal overruled an earlier judgment by the High Court of Kenya that had held that the term “paid” implied an actual delivery of money or any other valuable consideration in the context of the Income Tax Act. The court affirmed that the term “paid” includes accruals for purposes of the Act, and consequently, withholding becomes payable on the earlier of an accrual (that is, when the expense is booked) or the actual transfer of money or some other valuable consideration.

Persons who receive services subject to withholding tax should evaluate how this ruling will affect their current, as well as future, tax obligations. In particular, they should consider if the accounting treatment accorded to certain expenses requires them to immediately account for withholding tax.

Kenya

High Court issues ruling on Treaty between Kenya and Mauritius

On 15 March 2019, the High Court of Kenya ruled that the Double Taxation Agreement (DTA) between Mauritius and Kenya was void because the cabinet secretary to the treasury failed to present it for parliamentary approval prior to publishing it in the Legal Notice No 59 of 2014. The case was brought to court by the Tax Justice Network-Africa (TJN-A), a nonprofit organization advocating for the review of DTAs with African countries. The decision may have an impact on other DTAs with Kenya (specifically those signed post the 2010 Constitution) that were published without parliamentary approval.

Digital developments

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Namibia

Namibia Inland Revenue Service launches e-service portal

On 17 January 2019, The Namibia Inland Revenue Service launched its e-service portal, which can be accessed on the [Integrated Tax Administration System](#) (ITAS) website. Taxpayers are required to sign up and link their tax identification number (TIN) in order to create an e-service profile. Taxpayers must create payment reference numbers for all tax payments after 17 January 2019 by using their commercial bank's electronic fund transfer system to ensure payments are allocated correctly by the Inland Revenue Service.

Other legislative developments

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South Africa

Finance minister delivers 2019 Budget Review

On 20 February 2019, the minister of finance delivered the 2019/2020 budget review. The highlights of the proposed corporate tax changes are as follows:

- ▶ Share buybacks and dividend-stripping arrangements that involve the target company distributing a substantial dividend to its current company shareholders (thus diluting its value) and subsequently issuing shares to a third party, will be amended to address “abusive arrangements.” The changes are proposed to become effective from 20 February 2019.
- ▶ The controlled foreign company high tax exemption threshold will be revised downward from the current threshold of 75%.
- ▶ The definition of “permanent establishment” in the domestic legislation will be revised to align with South Africa’s options under the BEPS Multilateral Instrument.
- ▶ The transfer pricing rules’ definition of “affected transaction” currently refers to transactions between “connected persons” but will be revised to align with the definition of associated enterprises under the Organization for Economic Co-operation and Development Model Tax Convention.
- ▶ Amendments will be made to the special interest deduction relating to debt-financed acquisitions of controlling shares in an operating company.
- ▶ Revisions will be made to clarify the interaction between capital gains tax and foreign exchange transaction rules.
- ▶ Revisions will also be made to the real estate investment and the venture capital tax regimes.

The proposals will be incorporated into draft legislations for public comments and subsequent approval by Parliament.

Treaty updates

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African Continental Free Trade Agreement

Three additional countries, Botswana, Guinea Bissau and Zambia, have signed the African Continental Free Trade Agreement (ACFTA), bringing the number of signatories to 52 of the 55 member states. Nigeria is the only major country to not sign the agreement. Thirteen countries have deposited their instruments of ratification. 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.

Lesotho and the United Kingdom

On 5 March 2019, the UK revenue authorities published an update that the DTA between Lesotho and the UK entered into force on 18 September 2018. For Lesotho, the treaty generally applies from 1 November 2018 for withholding taxes and 1 April 2019 for other taxes. For the UK, the treaty generally applies from 1 November 2018 for withholding taxes, 1 April 2019 for corporate taxes and 6 April 2019 for income and capital gains taxes.

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