

Equatorial Guinea Tax Administration clarifies certain tax measures of Financial Law 2019

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On 26 March 2019, the Equatorial Guinea (EG) Tax Administration issued a letter clarifying its position regarding certain tax measures under the Financial Law 2019 (FL 2019). The letter followed a meeting between the Tax Administration and EY and other firms operating in EG regarding clarification of tax measures under FL 2019.

The summary of this letter is the following:

- ▶ The provisions of article 9 (modifying certain articles of the General Tax Code (GTC)) of the FL n°03/2018 dated December 2018 are applicable as from 1 January 2019
- ▶ The 6.25% withholding tax (WHT) is considered a deductible expense
- ▶ The WHT applies to any income received from EG, even if the service was not carried out in EG

Based on the meeting and letter, we note the following:

- ▶ The effective date of the 6.25% WHT. Specifically, the Tax Administration tends to consider that that it should be applicable from the filing of the 2018 corporate income tax (CIT) return (to be filed on 30 April 2019). However, our position is that it should have been for the 2019 CIT return (to be filed on 30 April 2020).

- ▶ The economic activities realized in EG (article 469 of the GTC) does not refer to nonresident entities but to resident entities which indeed perform their activities in EG and as retention agents (article 467 of the GTC), they should apply the WHT on all payments to their vendors, residents and nonresidents as provided in article 469 of the EG GTC. This position was recently confirmed by the Secretary of State in charge of audit.

The meeting also addressed the following issues (which are not mentioned in the letter from the General Direction of Taxation):

- ▶ **The WHT credit accumulated before the entry into force of the FL 2019:** during the discussions, the Tax Administration informed us that the process should be the following:
 - A public treasury tax certificate should be obtained near the public treasury, in accordance with the provisions of article 473 of the GTC

- The tax administration should verify, through a tax inspection, any tax credit accumulated and issue a tax certificate

- ▶ **The credit resulting from the Secretary of State in charge of Audit,** mainly the fact that the General Direction of Taxation will not consider any credit coming from an audit performed by the Secretary of State in charge of Audits (through the General Direction of Audit); they informed us that are still discussing internally how to resolve this issue which negatively impacts taxpayers.

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