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Africa Tax News

June 2019

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Gabon

Ministry of Finance suspends submission of country-by-country reporting notification

On 20 February 2019, the Ministry of Finance of Gabon issued a note announcing that the obligation to submit a country-by-country reporting notification in Gabon is suspended. According to the note, no penalty for failure to file such notification will be imposed.

Controversy trends

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Equatorial Guinea

Tax administration clarifies certain tax measures in the Finance Law 2019

On 26 March 2019, the tax administration issued a letter clarifying its position regarding certain tax measures under the Financial Law 2019. The highlights of the issues addressed in the letter are as follows:

- The 6.25% withholding tax deducted from gross income will be treated as a deductible expense. Previously, the withholding tax was considered as an advance payment of income tax and deducted from the final income tax computation. The tax administration will verify the withholding tax credit accumulated before the entry into force of the change in treatment. A public treasury tax certificate will be issued for the accumulated tax credit.
- The withholding tax credit applies to any income received from Equatorial Guinea even if the service was not carried out in Equatorial Guinea.

Based on the meeting and letter, the tax authorities have taken the position that the above changes should be effective from the filing of the 2018 corporate income tax (CIT) return (filed on 30 April 2019). However, EY Equatorial Guinea’s position is that it should have been effective for the 2019 CIT return (to be filed on 30 April 2020).

South Africa

Tax court renders verdict on application of MFN clause in the South Africa-Netherlands tax treaty

The Western Cape division of the South Africa Tax Court recently delivered a judgment on the application of the ‘most favored nation (MFN) clause in the dividend article of the South Africa-Netherlands double tax treaty. The court, ruling in favor of the taxpayer, held that dividends paid from South Africa to the Netherlands are exempt from dividends tax.

The judgment is consistent with the decision of the Dutch Supreme Court, delivered on 18 January 2019, which held that dividend distributions from a Dutch tax resident entity to a South African tax resident entity may effectively be exempt from withholding tax by virtue of the MFN clause.

Where tax has been levied at source in excess of the tax chargeable, the treaty provides for a refund within a period of three years from the end of the calendar year in which the tax was withheld. Impacted taxpayers should take steps to seek refunds of dividend tax withheld from dividends paid by South African companies to Dutch resident shareholders. Application for tax refunds should be made by 31 December 2019 for any dividends tax paid on or after 1 January 2016.

Obtaining a refund is especially important since a dividend payment by a South African tax resident entity to its Dutch shareholder may potentially be subject to a participation exemption at the level of the receiving Dutch tax resident entity. This means that any dividends tax withheld in South Africa would not be creditable nor deductible as tax expense at the level of the Dutch tax resident entity.

Additional analysis of the implications and outcomes of the judgment will be issued in due course.

South Africa

South African Revenue Service focuses on bad debt deductions during audits

Given the recent audit activity by the South African Revenue Service (SARS), taxpayers should carefully consider the manner in which bad debts are written off. A taxpayer is entitled to claim a tax deduction for “any debt due to the taxpayer which has during the year of assessment become bad.” The Income Tax (the Act) does not, however, provide clarity on when a debt is considered “bad” as contemplated in section 11(i) of the Act.

In the absence of strong precedence under South African case law on this issue, SARS has, together with the ordinary meaning of the phrase “bad debt,” sought guidance from selective international interpretation and has formulated the following shaped view:

- The writing off a debt as “bad” for tax purposes requires that all the appropriate steps to collect the debt must have occurred. These steps would include exhausting both in-house and external agency efforts. A debt is only “bad” when every reasonable avenue of recovery has been exhausted and there is no reasonable hope of collecting the debt. If there is a chance of collecting the debt, however remote the possibility, then the debt should be considered “doubtful” rather than “bad.”

SARS has been applying this relatively new-formed view regularly in its integrated audits, resulting in the disallowance of bad debt where taxpayers have not been able to adequately defend the manner in which their bad debts have been written off.

Uganda

East African Court of Justice rules that goods brought into Uganda from EAC partner states are not imports

On 26 March 2019, the East African Court of Justice held that cigarettes brought into Uganda from Kenya, a member state of the East African Community (EAC), should not be considered "imports" for the purposes of determining the applicable rate of excise tax.

Uganda imposes excise tax at a lower rate on goods manufactured locally compared to the rate applicable to imported ones. The treaty establishing the EAC generally defines imports to mean to bring or cause to be brought into the customs territory (comprising EAC partner states) from a foreign country. However, Uganda's Value-Added Tax (VAT) Act defines import as goods from any foreign country. The court ruled that the misconstruction of the word import as goods brought into Uganda from any foreign state constitutes an infringement of the EAC treaty. The ruling clarified that goods brought in from EAC partner states do not constitute imports for purposes of customs duties and, as such, partner states should not treat them differently from those manufactured locally.

Digital developments

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Nigeria

Federal Inland Revenue Service to commence collection of VAT on online transactions

On 18 May 2019, the Chairman of the Federal Inland Revenue Service (FIRS) announced that the FIRS intends to collect VAT on online transactions. Banks will be instructed to impose VAT on all online transactions involving purchases of goods and services. The Chairman explained that the new measure is part of a number of actions being taken by the FIRS to meet its revenue target for 2019.

No further information or guidance has been provided with respect to the proposed date of commencement and the modalities around the introduction of this measure.

Other legislative developments

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Kenya

2019/20 budget presented to Parliament

On 13 June 2019, Kenya's Treasury Cabinet Secretary presented the 2019/20 fiscal budget to the National Assembly. The highlights of the proposed changes are as follows:

- Capital gains tax (CGT) to be increased from 5% to 12.5%
- Corporate internal legal restructures to be exempted from CGT
- Withholding tax to apply on services rendered by a head office to its Kenyan permanent establishment, where such services are deemed to be tax deductible under a treaty
- E-commerce platforms to be brought into taxation
- Corporate income tax rate applicable to investors operating plastic recycling plants to be reduced from 30% to 15%
- Foreign investors to be exempted from the requirement to obtain a Personal Identification Number or tax number when opening a bank account, in certain situations
- Exemption of income for real estate investment trusts (REITs) to be extended to the investee companies of the REITS
- Withholding VAT to be reduced from 6% to 2%

Additional information will be provided when the bill incorporating the changes is passed by the National Assembly.

Mozambique

Mozambique grants tax debt relief to taxpayers

The Mozambique Parliament approved a law granting forgiveness of fines, interest and tax execution costs related to national and municipal taxes or noncompliance with accessory obligations for debt outstanding as of 31 December 2018. Eligibility for the tax amnesty is subject to the following conditions:

- That the interest, fines and other penalties owed were outstanding as of 31 December 2018
- That an application for regularization of tax debt is made by the taxpayer requesting payment (in full or in installments) and providing a settlement schedule
- That the regularization of the tax due is made within 12 months from the date from which the law entered into force (i.e., by 30 May 2020)

The law does not grant forgiveness of the national and municipal taxes owed, which must be paid in full. Failure to settle the payments will result in the loss of the benefit of tax debt relief.

The amnesty presents an opportunity for clients with existing or uncertain tax positions relating to Mozambique operations to assess the extent of their exposure and take the relevant steps to rectify these issues before the expiration of the relief.

Rwanda

Rwanda amends income tax law

On 6 May 2019, Rwanda enacted ministerial orders amending the income tax law. The key amendments impacting international transactions are as follows:

- A taxpayer, other than a natural person, is deemed to have its effective place of management in Rwanda under any of the following circumstances:
  - Day-to-day control and management are performed in Rwanda.
  - Shareholders’ meetings are held in Rwanda.
  - Books of accounts are prepared and maintained in Rwanda.
  - The main shareholders or directors are residents of Rwanda.
- Taxpayers that seek to carry losses forward beyond five years will be required to provide supporting justification, including audited financial statements, and a written application detailing justification for the losses and ways to overcome the losses. Additionally, such taxpayers must have been tax compliant in the preceding five tax years and not involved in fraudulent activities.

The ministerial orders came into force on 6 May 2019, the date of their publication in the official gazette of Rwanda.

South Africa

National Treasury publishes initial list of proposed corporate tax amendments, focusing on anti-tax avoidance measures

On 10 June 2019, the South African National Treasury published an initial list of proposed corporate tax amendments in the Draft Taxation Laws Amendment Bill, 2019. The list, which focuses on anti-tax avoidance measures, includes the following two anti-avoidance proposals identified by the National Treasury as more urgent:

- Clarification of the interaction between the anti-avoidance rules dealing with dividend stripping and the corporate reorganization rules
- Alignment of the effective date of tax-neutral transfers between retirement funds with the effective date of retirement reforms (1 March 2021)

Written comments on the proposed amendments are due on or before 25 June 2019. Additional legislation will be issued by the National Treasury during July 2019.

Uganda

Income Tax (Amendment) Act, 2019 passed into law

The Income Tax (Amendment) Act, 2019 has been passed into law. The amendments will take effect from 1 July 2019 after they have been published in the official gazette. The key proposals impacting multinational companies are as follows:

- The term “beneficial owner” to be defined as a natural person who owns or has controlling interest over a legal person other than an individual and who exercises control over the management and policies of a legal person or legal arrangement directly or indirectly, whether through ownership or voting rights. The proposal is intended to limit the availability of tax benefits under Uganda tax treaties to tax residents of Uganda, including Ugandan entities in which underlying ownership is in the control of individuals that are tax residents in Uganda.
- Income and losses arising from rental property to be ring-fenced. Losses arising from one rental property may not be offset against profits arising from another.
- Interest paid on infrastructure bonds with a maturity period of at least 10 years to become tax exempt.
- Financial institutions and insurance companies to be exempted from the cap on interest deduction of 30% of the earnings before interest, tax, depreciation and amortization.
- The withholding value-added tax rate to be reduced from 18% to 6% of the taxable value.
- A 6% withholding tax to be introduced on the purchase of a business or business asset by a resident person.
- The withholding tax on government securities in which the maturity period is at least 10 years to be reduced from 15% to 10%. A 20% withholding tax to apply on government securities with maturity periods less than 10 years.
- The 1% withholding tax that currently applies to agricultural supplies to be abolished.
- The minimum investments required to be eligible for tax exemption on the income earned by eligible operators and lessors in the free zone to be reduced.

Zambia

Zambia postpones implementation of sales tax and releases proposed sales tax exemption list

The Minister of Finance announced that the introduction of sales tax, which was scheduled to replace VAT on 1 April 2019, has been postponed to 1 July 2019. In the meantime, the Zambia Revenue Authority (ZRA) has committed to finalizing the audits of all outstanding VAT refund claims and enforcing all outstanding VAT assessments.

Additionally, the ZRA has published a proposed schedule of exemptions from sales tax, which would become effective on 1 July 2019. The proposed exemption schedule is based on the Harmonized Commodity Description and Coding System (HS codes) for various products as provided in the Customs and Excise Act. The exemptions are focused on items that are presently subject to customs duty rates between 0% to 5%.

Taxpayers should review the schedule and pay specific attention to the HS codes on the schedule and compare them with their inputs and products. The minister has indicated that further submissions with respect to exemptions may still be made as the bill undergoes consultation.

Treaty updates

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African Continental Free Trade Agreement

On 30 May 2019, the African Continental Free Trade Agreement (ACFTA) entered into force. The agreement came into force after Sierra Leone and the Sahrawi Arab Democratic Republic deposited their instruments of ratification on 29 April 2019, bringing the number of deposited ratifications to 22 countries.

Ghana and Singapore

On 12 April 2019, the double taxation agreement (DTA) between Ghana and Singapore entered into force. The DTA provides for withholding tax not exceeding 7% on interest, dividends and royalties. The DTA generally applies from 1 January 2020.

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 DTA generally applies from 1 November 2018 for withholding taxes and 1 April 2019 for other taxes. For the UK, the DTA 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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