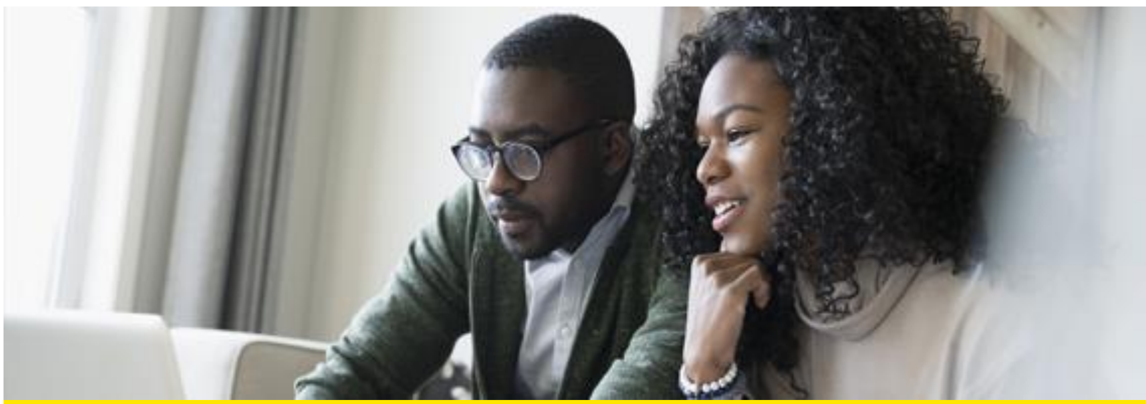
Zoom out to get a better view if you're reading this newsletter from a smartphone

Africa Tax News

September 2019



In this issue

Other legislative developments

- South Africa
  - National Treasury issues the Draft Taxation Laws Amendment Bill 2019 for public comments
- Zambia
  - Implementation of sales tax further postponed

Treaty updates

- African Continental Free Trade Agreement
- South Africa and Netherlands
- Zambia and Switzerland

Base Erosion and Profits Shifting (BEPS)

Go to top

African Tax Administration Forum (ATAF)

ATAF issues paper on "The Place Of Africa In The Shift Towards Global Tax Governance"

In June 2019, the African Tax Administration Forum (ATAF) issued a paper on "The Place Of Africa In The Shift Towards Global Tax Governance: Can the taxation of the digitalized economy be an opportunity for more inclusiveness?" The paper reviews the current international tax governance landscape and the inroads made toward inclusiveness. It suggests that the relatively new field of the taxation of the digitalized economy provides an opportunity to implement a framework in which international tax governance is conducted on an expanded multilateral basis. The report acknowledged that the Organisation for Economic Co-operation and Development (OECD), the EU and some countries have begun addressing the issue of the taxation of the digitalized economy on a bilateral basis, but noted that the discussions offer a relatively clean slate for developing countries and African countries, in particular, to proactively participate in steering the direction of the global standard agenda, rather than providing inputs into a predetermined agenda.

Botswana

Transfer pricing regulations published in government gazette

On 12 July 2019, Botswana's transfer pricing regulations (the Regulations) were published in the government gazette. The Regulations are effective from 1 July 2019 and are based on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD TPG). Under the Regulations, taxpayers have an obligation to prepare and provide transfer pricing documentation to allow the tax administration to assess the arm's-length nature of intra-group transactions. The documentation content requirements are relatively broad and are in line with the elements recommended by OECD TPG.

The Regulations highlight that this obligation is applicable for all direct or indirect transactions with "connected persons." Although the regulations have not specified how this relationship is assessed, the assumption is that "connected persons" shall have the meaning assigned to them in the principal act. For domestic transactions, the Regulations have been limited only to transactions relating to an International Financial Services Center (IFSC) company.

The local file should be filed together with the tax return on the prescribed return-filing date. However, the detailed group information (Master File) will be required only from those taxpayers whose transactions with connected persons exceed BWP5 million. The Master File will be filed on notification from the tax authority, and the due date will be stated in the notice. Failure to submit the required documentation will result in a penalty not exceeding BWP500,000 (approximately US$45,000) being charged.

Eswatini and Nambia

Eswatini and Namibia join BEPS Inclusive Framework

On 26 July 2019, Eswatini joined the BEPS Inclusive Framework. According to an OECD update published on 9 August 2019, Namibia has also joined the Inclusive Framework, bringing the total number of jurisdictions that have joined to 134. As new BEPS members, Eswatini and Namibia have committed to comply with the BEPS minimum standards, which are contained in Action 5 (countering harmful tax practices), Action 6 (preventing treaty abuse), Action 13 (transfer pricing documentation) and Action 14 (enhancing dispute resolution). Both countries will also participate on an equal footing with other members of the Inclusive Framework on the remaining standard setting, as well as the review and monitoring of the implementation of the BEPS package.

Mauritius

Mauritius aligns intellectual property incentives with OECD's nexus approach

On 7 June 2019, the Mauritian Finance Minister issued regulations amending the scope of the eight-year income tax exemption applicable to companies involved in the development of Intellectual Property (IP) assets in Mauritius. The amendments adopt the nexus approach prescribed in the OECD BEPS Action 5 report. The following conditions must be met to qualify for the income tax exemption:

- The income must be derived from qualifying IP assets. Qualifying assets are patents and copyrighted software. In relation to smaller companies, qualifying assets include IP assets that are functionally equivalent to patents if those assets are certified as being novel, non-obvious and useful by the Mauritius Research Council.
- The qualifying IP assets must result from research and development (R&D) activity undertaken by the company in Mauritius.
- The company must track the overall income, the qualifying R&D expenditure and the overall expenditure incurred and should be able to substantiate how the income and expenditures are linked to the qualifying assets or family of products or assets.

The amendments will apply prospectively from 7 June 2019. Companies engaged in IP-related activities should review and reconsider their business model in Mauritius, in light of these changes, to confirm that the exemptions continue to apply.

Controversy trends

Go to top

Mozambique

Mozambique grants tax debt relief

On 30 May 2019, Law no. 1/2019, which grants taxpayers relief from fines, interest and penalties imposed on tax assessments, entered into force. The amnesty is subject to the following conditions being met:

- Interest, fines and penalties were outstanding as of 31 December 2018.
- An application to regularize the taxes must be made by the taxpayer, requesting payment in full or in installments within 12 months of the date on which the law came into force (i.e., by 30 May 2020).

This amnesty is only granted in respect of fines, interest and penalties and does not apply to national and municipal taxes in debt, which must be paid in full.

Nigeria

Nigeria's Court of Appeal upholds judgment on VAT on non-resident service providers.

On 27 June 2019, Nigeria's Court of Appeal upheld the judgment of the Federal High Court in the case of *Vodacom Business Nigeria Limited vs. Federal Inland Revenue Service* (FIRS) on the imposition of Value-Added Tax (VAT) on services rendered by a non-resident company. In confirming the judgment, the Court noted that a service rendered by a foreign company to a company in Nigeria is subject to VAT if the service is not specifically exempted by the VAT Act (First Schedule) and the service is provided for a consideration.

Other legislative developments

Go to top

South Africa

National Treasury issues the Draft Taxation Laws Amendment Bill 2019 for public comment.

On 21 July 2019, the National Treasury issued the Draft Taxation Laws Amendment Bill 2019 (Draft TLAB) for public comment. The Draft TLAB introduces various amendments to implement the proposals noted in the 2019/2020 Budget Speech. The highlights of the amendments are as follows:

- Revision of the anti-dividend stripping provisions to counter abusive arrangements
- Clarification of the interaction between corporate reorganization rules and other provisions of the Income Tax Act
- Amendment of the interest deduction rules in respect of share acquisitions funded by debt to allow for interest deductions after affecting an unbundling transaction
- Harmonization of the timing of de-grouping charge provisions for intra-group transactions and the Controlled Foreign Company (CFC) rules
- Reduction of the CFC high-tax exemption threshold from 75% to 67.5%
- Revision of the definition of the "permanent establishment" in domestic legislation to align with South Africa's position under the BEPS Multilateral Instrument
- Extending the transfer pricing rules to include "associated enterprises" so as to align with the OECD Guidelines
- Limiting the validity of declarations and undertakings for withholding tax purposes (dividends, interest and royalties) for a period of two years
- Review of the special economic zone anti-profit shifting and anti-avoidance measures
- Clarification of the interaction of capital gains tax and foreign exchange transactions rules

- Revision of the VAT corporate reorganizations rules.

The deadline for the submission of written comments on the Draft TLAB was 23 August 2019. The bill will pass into law after its approval by Parliament and assent by the President.

Zambia

Implementation of sales tax further postponed.

On 2 August 2019, the Sales Tax Bill was withdrawn from the current sitting of parliament. Deliberations on the bill will recommence in September. Consequently, the proposed implementation date for the tax, which was earlier moved to September 2019, has been further postponed to January 2020. This sales tax will replace the currently applicable VAT when it comes into force.

Treaty updates

Go to top

African Continental Free Trade Area Agreement

On 7 July 2019, the African Union launched the operational phase of the African Continental Free Trade Area (AfCFTA), following the coming into force of the trade area on 30 May 2019. Nigeria and Benin also signed the AfCFTA agreement on that date, bringing the number of signatories to 54 countries.

The launch of the AfCFTA will create a single continental market for goods and services which will allow for the free movement of business persons and investments, thus paving the way for the establishment of the Continental Customs Union and the African Customs Union. However, some of the measures that are required for full implementation, such as tariff liberalization, guidelines on the implementation of trade remedies and rules of origin, are still under discussion and are expected to be resolved by 2021.

South Africa and Netherlands

On 18 July 2019, the South African Revenue Service published the decision of the South Africa Tax Court on 12 June 2019 which confirmed the application of the most-favored-nation clause contained in the Netherlands-South Africa Double Taxation Agreement. Additional guidance on claiming withholding tax refunds will be provided when it becomes available.

Zambia and Switzerland

On 7 June 2019, the new Double Taxation Agreement (DTA) between Zambia and Switzerland entered into force. The provisions of the 2017 Treaty will take effect from 1 January 2020. The DTA will supersede the earlier agreement that had been signed by the United Kingdom and Switzerland prior to Zambia's independence in 1954 which was extended to Zambia in 1961. Notably, the treaty, which is largely based on the OECD Model Tax Treaty, removes some of the treaty benefits (0% rates) that were provided under the 1954 Treaty.

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

Go to top

Ernst & Young LLP (US),
Pan African Tax Desk, New York

Brigitte Keirby-Smith | +1 212 466 9450
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

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com.

This news release has been issued by EYGM Limited, a member of the global EY organization that also does not provide any services to clients.

EYG no. 003959-19Gbl

1908-3260428
ED None

ey.com