Keeping you informed of tax changes in Africa.

AfriTax – Issue 3

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Introduction

Welcome to the third issue of AfriTax, our quarterly newsletter which provides you with a snapshot of the most significant recent tax changes on the African continent. For more detail on the relevant changes, go to the link containing a detailed document summarising the changes or (where applicable), go to the link to follow up with the relevant contact person.

Algeria: 2010 Financial Law

Changes introduced in the 2010 Financial law include the following: (i) The concession granted to expatriates since 1993 to be taxed at 20% instead of the scale rates, with a maximum of 35% has been removed; (ii) The sale of shares between Algerian tax resident individuals is now subject to capital gains tax at 20% (formerly at scale rates with a maximum of 35%); (iii) Companies now expected to file their tax returns on or before 31 April of every year; (iv) The carry over period for tax losses has been reduced from 5 to 4 years; and (v) Preliminary expenses can no longer be booked as an asset (due to IFRS) hence are deductible against corporate income.

Country Contact - Tax: Nicolas Granier, Karine Lasne

Cameroon: Special tax system reinstated

The draft Finance Law for 2010 adopted by the Cameroonian National Assembly reinstated the special tax system for subcontractors to oil companies which provides them with the option to be subject to tax either under the general tax regime of Corporate Income Tax or the withholding tax regime of 15% on their income.

Click here for more information

Country Contact – Tax: Nadine Tinen

Cape Verde: Holding companies regime approved

A regime for holding companies, named Sociedades Gestoras de Participacoes Sociais (SGPS) was introduced on 14 December 2009. To qualify, a company must hold a minimum of 10% shareholding in a subsidiary (directly or indirectly). Apart from managing a portfolio of shares, the company can only provide management and technical services. The company generally cannot provide loans (except under certain strict conditions) and cannot acquire immovable property for investment purposes. The tax treatment of the SGPS includes the following: (i) The general tax regime for resident companies in Cape Verde applies; (ii) Dividends received are excluded from Corporate Income Tax; (iii) Capital gains arising from transfer of shares held for more than 1 year are exempt from taxation; and (iv) Shareholders loans are subject to stamp duties at the rate of 0.5%.

Country Contact - Tax: Leender Verschoor

Congo (Brazzaville): Various

New Trader professional cards

The Minister of Commerce, Consumption and Supplies has introduced a new trader professional card to be held by commercial companies and individuals carrying on trade in the Republic of Congo. The new trader professional card has national validity for all territories of the Republic of Congo (the preceding one had only a departmental validity) and is valid for five years for commercial companies and three years for individuals.

Oil services companies - base salaries scale revision

In October 2009, the members of the Joint Commission in charge of the revision of the Collective Bargaining Agreement applicable to oil services companies agreed to a 6% general increase in base salaries effective retrospectively from 1 September 2009 and negotiation of the salary scale on 2 November of every year going forward.

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Country Contact – Tax: Moise Kokolo

Democratic Republic of Congo: 2010 Draft Budget

The draft budget for 2010 proposes the following changes: (i) Withdrawal of all discretionary tax grants and customs duty exemptions; (ii) A tightening up on the granting of exemptions; (iii) Enforcement of the 10% standard rates of excise duty on cellular phone calls; and (iv) Enforcement of the 20% standard rate of excise duty on cigarettes.

Country Contact - Tax: David Guarnieri

Gabon: Changes to the General tax code

New provisions for the tax treatment of employee benefits relating to accomodation have been enacted.

Click here for more information

Country Contact - Tax: Laurent Pommera, Pélagie Massamba Mouckocko

Ghana: 2010 Budget highlights

Changes introduced by the 2010 budget include: (i) Ad valorem excise taxes to replace specific excise duties on selected commodities. Drinks and tobacco businesses will be affected; (ii) Previous minimum mineral royalty rate of 3% to increase to a 6% fixed rate for all mining entities; (iii) Revision of personal income tax brackets and thresholds (but no guidance yet provided on the time lines for these amendments); (iv) Continued focus on administrative reform initiatives in the revenue agencies; (v) Elimination of several tax exemptions and waivers from the beginning of the 2010 fiscal year; (vi) Implementation of a new pension scheme from 1 January 2010; and (vii) Rationalisation of import duty on textiles and poultry products to prevent dumping.

Click here for more information

Country Contact - Tax: Darcy White

Ivory Coast: Various

Regulation of social mutuality within the UEMOA

A regulation was issued on 26 June 2009 that sets out the fundamental guidelines governing social mutuality within the Union Économique et Monétaire Ouest-Africaine (UEMOA) as well as the procedures for their creation, structural organisation and operation. The

regulation covers mutual insurance companies operating in the UEMOA and their organisational structures.

OHADA arbitration

According to the OHADA Common Court of Justice and Arbitration (CCJA), an exclusivity clause contained in an arbitration convention and relating to the settlement of disputes cannot prohibit the appeal (by one of the parties) against the validity of the arbitration award.

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Country Contact - Tax: Dominique Taty

Madagascar: Various

Budget 2010

Changes introduced by the 2010 budget include: (i) Reduction in the rate of corporate income tax, personal income tax, movable capital and capital gains tax from 24% to 23%; (ii) VAT registration is now irrevocable; (iii) 70% excise duty rebate is no longer applicable; and (iv) New import duty incentives have been granted.

VAT

Malagasy tax law states that services performed in Madagascar are subject to VAT and the export of goods and services is zero rated. In practice, the term “export of services” does not include services performed in Madagascar and provided to a foreign customer. Similarly, services performed by a foreigner and invoiced to a taxpayer established in Madagascar are subject to VAT at a rate of 20% to be remitted either through an appointed tax representative in Madagascar, or in the form of reverse VAT.

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Country Contact - Tax: Andriamisa Ravelomanana

Mauritius: 2010 Budget highlights

Changes introduced by the 2010 budget include: (i) Royalties payable to a non-resident will be subject to withholding tax at a rate of 15% (or relevant tax treaty rate, if lower) effective from the year of assessment commencing 1 January 2011; (ii) A company has now six months (previously three months) from the end of the last balance sheet date to request for a change of its approved return date; (iii) An objection to an assessment raised by the Mauritius Revenue Authority will, henceforth, be made in a form that is approved by the Director-General and sent to him by registered post. Further, where a person satisfies the Director-General that he is unable to pay the 30% of the amount claimed under an assessment raised while making an objection, he may pay that sum on such terms and conditions as may be determined by the Director-General (previously no payment facility was available); and (iv) The submission date for companies, with a due date of 31 December for Advance Payment System statement or final tax return, has been brought forward by two working days.

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Country Contact - Tax: Anthony Leung Shing

Morocco: 2010 Financial law

Changes introduced by the 2010 Financial Law include: (i) Favourable tax treatments have been introduced to encourage mergers between companies. In order to benefit from the regime, the restructuring must be concluded between 1 January 2010 and 31 December 2012; (ii) The tax scale rates for individuals have been reduced with the highest rate now at 38%; (iii) The tax rates applicable to offshore bank administrators or employees of offshore holding banks has been increased from 18% to 20%; and (iv) From 1 January 2010 registration duties will be applicable to the acquisition of unlisted Moroccan Public Limited Companies' shares at 3%.

Country Contact - Tax: Nicolas Granier, Marc Veuillot

Namibia: 2010 Budget highlights

The more significant recent changes are as follows: (i) The rate at which companies, other than mining companies are taxed, will be decreased from 35% to 34%; (ii) Withholding taxes are to be levied on amounts received by foreign consultants; (iii) Introduction of transfer duties on the transfer of shares and/or member's interest in companies or close corporations which own immovable property; (iv) Transfer duty rate on corporate bodies (foundations and trusts included) to increase from 8% to 12%; and (v) An environmental levy is to be introduced on disposable products which are harmful to the environment.

Country Contact - Tax: Stefan Hugo

Niger: 2010 Budget highlights

The following has been included in the Finance Law 2010 which will apply from 1 January 2010 upon approval: (i) The corporate income tax rate will be reduced from 35% to 30%; (ii) The top marginal rate for employment income tax will be lowered from 45% to 35%; and (iii) The ceiling for VAT refunds which applies to export businesses will be abolished.

Country Contact - Tax: Dominique Taty

Nigeria: Legality of Taxes and other Proposed Tax laws

Lagos State - consumption tax update

A State High Court has upheld the powers of the Lagos State government to impose a 5% consumption tax on goods and services supplied by hotels, restaurants, and event centres operating within the State. The judgment contradicts an existing order issued earlier by a Federal High Court restraining the State government from enforcing the tax on the basis that it constitutes double taxation in view of the existing VAT law. This creates a legal dilemma for affected stakeholders as both courts have equal judicial authority.

Rivers State - proposed social services tax

Rivers State, one of Nigeria's oil-producing states is seeking to pass a law imposing a social services tax on the incomes of individuals resident in the state. The new tax proposed by the state will affect local and expatriate employees as well as self-employed individuals. There are

questions around the legitimacy of the tax as only the Federal legislature (the National Assembly) can make laws that impose tax on income of individuals.

Education Tax Bill

A new bill is underway to replace the existing Education Tax Act. The bill, the Tertiary Education Act which imposes tax at 2% of assessable profits of Nigerian-registered companies, is substantially similar to the Education Tax Act, and will therefore not place any additional burden on companies already liable to Education Tax.

Country Contact - Tax: Ken Aitken, Russell Eastaugh, Taiwo Oyedele

Senegal: Reduction of VAT on tourism

In accordance with its efforts to boost the tourism sector, the government has made commitments to reduce the VAT rate for tourism related activities from 18% to 10%. This measure is predicted to become effective from January 2010. A law is expected to be passed in this regard which will also specify the mode of enforcement.

Click here for more information

Country Contact - Tax: Malick Fall

Sierra Leone: Goods and services tax introduced

A goods and services tax (GST) has been introduced effective from 1 January 2010. GST is applied at the rate of 15%, and replaces import sales tax, domestic sales tax, professional services tax, hotel accommodation tax, restaurant and food tax, messages tax and entertainment tax. Further information will be made available in the near future.

Country Contact - Tax: Darcy White

South Africa: Implementation of administrative penalties

SARS announced that it is to implement a phased-in-system of applying the section 75B penalties against non compliant taxpayers, beginning on 23 November 2009 for taxpayers with outstanding income tax returns. Although the penalty regulations for non-compliance offences came into effect on 1 January 2009, SARS delayed the implementation to allow taxpayers to rectify any non-compliance and to allow SARS to develop its own systems to automatically issue penalties.

Click here for more information

Country Contact - Tax: Mark Badenhorst

Zambia: 2010 Budget highlights

Changes introduced in the 2010 budget, effective from 1 January 2010, include the following: (i) VAT standard rating on the sale of commercial properties; (ii) Implementation of measures to collect the annual carbon emission tax on domestic vehicles; (iii) Increase in excise duty on

diesel from 7% to 10%; and (iv) Abolishment of the penal bond system applicable to manufacturers of excisable goods.

Click here for more information

Country Contact - Tax: Jyoti Mistry

Zimbabwe: 2010 Budget highlights

Changes introduced in the 2010 budget, effective from 1 January 2010, include the following: (i) The corporate tax rate has been reduced from 30% to 25%. This gives an overall effective tax rate of 25.75% (inclusive of the 3% AIDS levy); (ii) The mining tax rate has been increased from a rate of 15% to 25% (except for Special Mining Leases that remains at 15%); (iii) The highest band for personal income tax has been reduced from an effective rate of 36.05% to 30.9%; (iv) The Special Initial Allowance (SIA) has been reduced from 50% to 25% of capital expenditure; and (v) The reduced tax rate on certain developments has been abolished as part of the move towards the removal of most tax incentives.

In addition to the above, consideration is being given to simplifying the wording in the Income Tax Act, moving from a "source" basis to a "resident" basis, and introducing Transfer Pricing legislation.

Country Contact - Tax: Manuel Lopes

Other: Africa Tax Administration Forum

At a meeting on 19 to 20 November in Kampala, the African Tax Administration Forum ("ATAF") was officially launched by the President of Uganda. The ATAF mission is to mobilize domestic resources more effectively and increase the accountability of African states to African citizens whilst actively promoting an improvement in tax administration through sharing experiences, benchmarking and peer reviewing best practices. Francis Kamulegeya, tax partner in our Uganda practice, reports that transfer pricing was a key focus of discussion.

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Contact - Tax: Francis Kamulegeya

African Tax Treaties - update

East African Community Common Market

At a meeting held in Arusha, Tanzania on 20 November 2009, the 10th anniversary of the East African Community ("EAC"), the heads of state from the five EAC countries (Burundi, Kenya, Rwanda, Tanzania, and Uganda) signed a protocol for the establishment of the EAC Common Market. The signature of the protocol signals a commitment that freedom of movement will extend not only to goods (in place since 1 January 2005 under the EAC Customs Union Protocol) but also to people, labour, services and capital as well as the right of establishment and residence. The protocol does however make clear that its implementation will be progressive. Ratification of the protocol at national levels is timetabled to take place by 1 July 2010.

One of the articles of the protocol commits the Partner States to "progressively harmonize their tax policies and laws to remove tax distortions in order to facilitate the free movement of goods, services and capital and to promote investment within the Community". For an overview of the tax harmonisation challenges faced by the EAC, please refer to the presentation given in May 2009 by David Tarimo, tax partner in our Tanzania practice.

Click here for further information

There has been some progress in relation to one of the issues raised, namely intra-EAC withholding taxes. In particular, in early November the Finance Ministers of the EAC partner states agreed to reduce withholding taxes in the draft EAC double tax treaty to 5% on dividends and 10% on interest, royalties and service fees. We hope that the treaty will be signed and then locally ratified no later than 1 July 2010.

Libya - Austria double tax treaty

On 21 December 2009, Libya and Austria signed an income tax treaty in Vienna. Further information will be made available in the future.

Libya - Ukraine double tax treaty

On 3 December 2009, Ukraine ratified the income tax treaty between Ukraine and Libya, signed on 4 November 2008.

Bangladesh - Mauritius double tax treaty

Bangladesh and Mauritius signed a tax treaty in Port Louis on 1 December 2009. Further information will be made available in the future.

Mauritania - Sudan double tax treaty

Mauritania and Sudan signed a tax treaty on December 22 in Nouakchott.

Switzerland - Ghana double tax treaty

Switzerland announces the entry into force of the tax treaty with Ghana. The treaty is effective from 1 January 2011.

PwC publications of interest

An overview of VAT in Africa

In order to effectively manage VAT opportunities and risks when trading in Africa, a proper understanding of the VAT rules applying in Africa is essential. PwC has an extensive Indirect Tax network in Africa, which can assist businesses in this regard. To provide an overview of VAT in Africa to businesses engaged in trading, or intending to conduct business in Africa, this guide has been compiled by PricewaterhouseCoopers Indirect Tax specialists in the following African countries: Botswana, Cameroon, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Senegal, South Africa, Tanzania, Tunisia, Uganda, Zambia and Zimbabwe.

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Tax Times

"Tax Times" published by PwC Mauritius is designed to keep you abreast of tax developments in Mauritius. It features a variety of practical guidelines, tax law updates and news briefs.

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Paying taxes 2010

This is the fourth edition of a report from PwC and the World Bank Group that shows that tax authorities worldwide (including in Africa) continue to overhaul tax systems by reducing taxes, streamlining administrative processes and modernising payment systems. The report is based on data collected in connection with the "paying taxes" indicator from the World Bank Group's Doing Business project, which assesses the regulatory climate which impacts a domestic, small to medium sized business during its natural life cycle. In addition to the global report, we have also produced a summary with an African perspective of the results.

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Synopsis - November/December 2009

This monthly publication contains interesting articles on news within the tax arena in South Africa and globally.

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Substance - Aligning international tax planning with today's business realities

A new book, "Substance - Aligning international tax planning with today's business realities" authored by Axel Smits (International tax services partner) and Isabel Verlinden (Transfer pricing partner) has been launched. For further details click on the link (below) or contact International Tax Services partners Serge de Reus or David Lermer.

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PwC Africa Tax Desk in Johannesburg

The Africa Tax Desk in Johannesburg is currently staffed by tax specialists from East and West Africa and works closely and seamlessly with colleagues in PricewaterhouseCoopers' offices in other African countries and the Africa Tax Desk in New York to help clients address important issues facing their businesses. The Africa Tax Desk provides quick responses to specific and generic questions that companies need answered when considering investment in Africa. Clients wanting to invest into Africa or to restructure their African operations may contact Kenneth Erikume (West Africa) or Charlotte Arigye and Agnes Njaaga (East Africa).

Caveat

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