

**International Bar Association Annual Conference 2023**

**Recent Developments in International Taxation**

**ANGOLA**

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**National Reporter:**

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**1. Angolan Tax System Framework**

The Angolan tax system has been progressively developing over the years as a result of a tax reform plan aimed to attract investment and to strengthen the business environment. The tax reform also emerged due to the strong economic impact caused by the reduction in oil prices and production, which has been further increased by the current post-COVID-19 pandemic context, leading to an urgent need for these measures.

Accordingly, tax reform does not only operate within the administrative tax services, which are now more modern and IT-friendly but also at the regulatory level, with the approval of several relevant legislation regarding the operation of the Angolan tax system.

**2. Recent International Tax Developments**

Angola has celebrated and negotiated several international agreements related to the elimination of double taxation, and four agreements are currently in force with the following

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countries: Portugal, United Arab Emirates (UAE), Cape Verde and, more recently, the Republic of China.

On 16 March 2022, the Letter of Ratification no. 1/22 was published, concerning the Double Taxation Treaty between the Republic of Angola and the People's Republic of China (DTT), approved by Resolution no.29-A/19, of 24 June 2019. Like the two previous conventions concluded by Angola, the DTT is, for the most part, in line with the latest update of the UN Model, dated 2017.

As the main features, we highlight the fact that the DTT considers the following to be included in permanent establishment definition: *“installations or structures used for research and exploitation of natural resources located in a Contracting State, provided that, such installations or structures remain for a period exceeding 90 days”* (this provision is not foreseen in the UN Model).

The DTT also considers a permanent establishment to exist where a person (other than an independent agent) is acting in a Contracting State on behalf of a company and by doing so, habitually concludes or plays a leading role in the conclusion of contracts which are repeatedly concluded without any material change by that company and such contracts are: (i) on behalf of the company; or (ii) involve the transfer of title to property or the granting of a right of use; or (iii) for the provision of services by the company, unless the activities of such person are limited to activities of a preparatory or auxiliary nature.

Regarding the dividends, DTT diverge from the UN Model relating to an exemption applicable to dividends and interest, whenever they are paid by a company resident in a Contracting State to a resident of the other Contracting State, they shall be deemed taxation exempt in the first Contracting State mentioned, if the effective beneficiary of such dividends is: (i) the Government of the other Contracting State; (ii) its political or administrative subdivisions; (iii) the Central Bank; or (iv) any entity the majority of whose capital is held by the other Contracting State. Regarding the interest, the same rule will apply with respect to loans guaranteed or secured by the Government of the other Contracting State.

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Concerning capital gains, it should be noted that gains from the alienation of movable assets that are part of the assets of a permanent establishment that a company of a Contracting State has in the other Contracting State or movable assets allocated to a fixed installation that a resident of a Contracting State has in the other Contracting State for the exercise of a self-employed profession, including gains from the disposal of that permanent establishment (alone or with the company as a whole) or of that fixed installation, may be taxed in the State where the permanent establishment is located.

Overall, it is estimated that with the ratification of this DTT direct foreign investment by Chinese companies in Angola will be boosted.

### **3. Domestic Tax Developments**

Having a need to adjust the tax rules to the current context and dynamics of the national economy, during the past year, the government approved the following the of all tax changes during 2022/2023:

#### **A. Value-Added Tax (“VAT”)**

The Law No. 7/19 of 24 April approving the value added tax code was recently amended by the 2023 National Budget Law, provides the following amendments:

- The VAT percentage for revenue allocated to the refund account has been reduced from 25 to 20%.
- In 2022, all taxpayers in the manufacturing industry were included in the general VAT system. For 2023, only those who, in the previous financial year, had a turnover or import operations greater than Kz 10 000 000.00 (ten million kwanzas) are required to be included in the general Value Added Tax regime.

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- Taxpayers under the simplified VAT taxation regime can now request the refund of the credit in their favour accumulated for more than 12 months, which is always granted in a tax certificate, under the regulated terms.
- Taxpayers who switch from the simplified to the general VAT taxation regime must pay tax at the rate of 7% (the simplified VAT regime rate) on the receipts they receive from invoices issued during the period in which they were covered by that regime.
- Was excluded the possibility for AGT<sup>1</sup>, under any circumstances, decide on the inclusion or exclusion of taxpayers from the duty to withhold tax, whenever justified on the grounds of protecting public revenue.
- The provision which determines the withholding tax at source at the rate of 2.5% on all receipts made via the Multicaixa payment terminals was eliminated.

## **B. Industrial Tax**

The Law 19/14 of 22 October 2014, approving the Industrial Tax Code, in its article 73, was recently amended by the Law 27/22 of 22 August 2022, providing that the income earned by foreign legal persons without effective management or a permanent establishment in Angola, resulting from services provided to Angolan entities or entities with effective management or a permanent establishment in Angola, regardless of where the services are provided, are subject to the payment of industrial tax at a rate of 6.4% by withholding at source, and no longer 15% as previously provided.

The Industrial Tax regime was also amended by the 2023 National Budget Law providing that the VAT not deducted within the deadline stipulated in the VAT Code is considered a non-deductible cost for the purposes of calculating the taxable amount for Industrial Tax purposes.

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<sup>1</sup> Angolan Tax Administration (in portuguese “*Administração Geral Tributária*” or “AGT”)

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The 2023 National Budget Law also provides that the stamp duty on debt settlement receipts paid by VAT taxpayers that engage in VAT exempt transactions is considered as a deductible cost when calculating the taxable amount of the Industrial Tax.

### **C. Personal Income Tax**

The 2023 National Budget Law has determined the suspension of Article 9(2) of the Personal Income Tax Code ( Law 18/14 of 22 October of 2014) which provided that whenever the Group C taxpayer (commercial and industrial activities income) verifies, through any means, that its turnover is 4 (four) times higher than the maximum value corresponding to its activity in the Table of Minimum Profits<sup>2</sup>, the taxable income shall correspond to the volume of sales of goods and services not subject to withholding tax during the financial year.

The taxable income of Group C taxpayers whose turnover, in the financial year 2022, is equal to or less than Kz 10 000 000.00 (ten million kwanzas), corresponds to the volume of sales of goods and services not subject to withholding tax, on which the rate of 6.5% will apply.

The 2023 National Budget Law also provides that, regardless of the volume of invoicing, taxpayers of Group C who have organized accounting, must follow the rules applicable to the calculation of the taxable income of taxpayers under the Corporate Income Tax regime, with the relevant adjustments.

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<sup>2</sup> The table provides the minimum income to be used to determine the Group C taxpayers' taxable amount.

## **D. Other Tax Developments**

### - Tax Benefits Code

The Tax Benefits Code (“TBC”) approved by the Law No. 8/22 of 14 April 2022, is the result of a long legislative process resulting from the draft law published on 15 September 2020. TBC is a unique instrument for the simple and modern regulation of various tax benefits to update and broaden the tax base and increase the supervision and control of the Angolan tax system by the Angolan Tax Administration and other public entities.

In line with the provisions of the General Tax Code with regard to the classification of tax benefits, the TBC determines that these may be (i) automatic or of administrative recognition (nonautomatic) and (ii) personal or real.

The TBC sets the general maximum duration of tax benefits at 10 years, with certain exceptions, as is the case of tax benefits granted under the Contractual Regime for Private Investment, with a maximum term of 15 years.

Regarding the ability to transfer tax benefits, the TBC now allows the transfer of tax benefits in the scope of M&A restructuring operations, namely, mergers, demergers, or any other transformation of commercial companies, on the condition that the resulting company must maintain the corporate purpose underlying the grant of the tax benefit concerned.

The code revokes several specific diplomas and preserves the specific tax benefits granted prior to the entry into force of the code (grandfather clause). The code does not apply to tax benefits granted under the special taxation regimes, namely for oil and mining activities, which will continue to be regulated by specific legislative instruments.

### - Special Tax Regime for Cabinda Province

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Presidential Legislative Decree no. 4/22 of 23 July 2022, authorised by Law 23/22 of 20 July 2022, regulates the special regime applicable to Cabinda Province. This special regime provides for a taxation model that is more adjusted to the current context of the province, adjusting the previous regime that only contemplated issues in customs duties, port and VAT matters, extending it in order to address taxation not only in the external aspect but also in the internal aspect.

The Regime is applicable to companies domiciled in the Cabinda Province, to real estate properties and tax residents in the said province and is not applicable to the oil sector.

In summary, we highlight the following tax rules applicable to the Cabinda Province:

- i. Food products from bordering countries, brought within the scope of border trade, by local population, for their own use, in quantities that do not present commercial signs, are exempt from the payment of customs duties and other impositions;
- ii. Agricultural activities and activities in the industrial sector will now be taxed under the Industrial Tax at the applicable rates of 3% and 10%, respectively. The rate applicable to the agricultural sector may be adjusted if there are changes associated with the general rate;
- iii. The distribution of profits or dividends decided by companies in the agricultural sector and the industrial sector will be subject to Capital Gains Tax at the applicable rate of 5%
- iv. Real Estate Tax which is levied on income and property ownership must be paid at the applicable rates of 10% and 0.05% respectively.

- Legal Framework for Electronic Communication in Tax Procedures and Tax Enforcement Proceedings

Presidential Decree No. 95/23 of 6 April 2023 defines the rules applicable to notifications and other communications, by electronic means, of the tax procedure and tax



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enforcement proceedings, regarding acts within the competence of the administrative body of tax enforcement. The law also defines the acts and formalities for the electronic submission of taxpayers' declarations and the all the documents that must be submitted with such declarations.