

Angola: Developments in tax reform and foreign exchange regulations

The Angolan government is in the process of reforming the Angolan tax system. This process commenced in 2011. An important objective of the tax reform is to increase the country's non-oil related tax revenues. Next to the tax reform the Angolan government has also introduced changes to the foreign exchange regulations that have a focus on the oil and gas industry and the import of goods. This client briefing provides an overview of the impact of these changes.

Tax reforms

The Angolan tax rules used to be based on often outdated legislation. It was therefore difficult to increase the country's non-oil related tax revenues without a complete overhaul of the existing legislation, as well as the administrative procedures involved in the assessment and collection of taxes. Apart from legislative changes, the Angolan government also made substantial investments in information systems and staffing, both of which should facilitate the application of the new rules. It is also expected that a transparent and modern tax regime will attract more foreign investment.

Amendments have already been made to the tax rules relating to real estate transfers, sale of consumer goods and services as well import and export duties. In addition, specific rules were introduced for (i) invoices and equivalent documents and (ii) the largest Angola tax payers, dealing, for example, with transfer pricing and their tax payment obligations.

As a next step in the reform process, the Angolan government published

the following tax codes in the Angolan official gazette (*Diário da República*):

- Law 18/14 of 22 October 2014 (*Lei 18/14 de 22 Outubro*), including the Personal Income Tax Code (*Código do Imposto sobre os Rendimentos de Trabalho*);
- Law 19/14 of 22 October 2014 (*Lei 19/14 de 22 Outubro*), including the Industrial Tax Code (*Código do Imposto Industrial*);
- Law 20/14 of 22 October 2014 (*Lei 20/14 de 22 Outubro*), including the Tax Collection Code (*Código das Execuções Fiscais*); and
- Law 21/14 of 22 October 2014 (*Lei 21/14 de 22 Outubro*), including the General Tax Code (*Código Geral Tributário*).

In addition, the following codes were amended:

- The Capital Application Tax Code (*Código do Imposto sobre a Aplicação de Capitais*) on 20 October 2014 pursuant to *Decreto Legislativo Presidencial no. 2/14*; and

- The Stamp Duty Code (*Código do Imposto de Selo*) on 21 October 2014 pursuant to *Decreto Legislativo Presidencial no. 3/14*.

The new regulations have different dates on which they come into force.

The new Industrial Tax Code will come into force on 1 January 2015, although the industrial tax for the year

Important dates

- The new Industrial Tax Code, Tax Collection Code, the Personal Income Tax Code and the General Tax Code will apply as from 1 January 2015.
- The amendments to the Stamp Duty Code will already apply as from 21 October 2014.
- The amendment of the Capital Application Tax Code came into force 30 days after its publication on 20 October 2014.

2014 will already be reduced from 35% to 30%. It also clarifies that the withholding tax rates applicable to construction contracts and subcontracts and to the rendering of services remain in 2014 at 3.5% and 5.25%, respectively.

The Industrial Tax Code also introduces a special regime applicable to entities without head-office, place of effective management or permanent establishment in Angola is introduced. Income obtained by such entities that result from services rendered in Angola or to Angolan tax resident entities will be subject to withholding tax at a rate of 6.5%. The withholding has to be made by the entity making the payment.

The Tax Collection Code, the Personal Income Tax Code and the General Tax Code will apply as from 1 January 2015. The amendments to the Stamp Duty Code will already apply as from 21 October 2014. The amendment of the Capital Application Tax Code will come into force 30 days after its publication on 20 October 2014. The regulations generally provide for transitional rules.

It is expected that the Tax Procedures Code (*Código de Processo Tributário*), already approved by Angola's National Assembly, will be promulgated soon.

The Tax Collection Code also includes a tax amnesty for tax debts that were incurred prior to 31 December 2012 (including interest and fines) in respect of industrial tax, personal income tax, property tax, stamp duty and capital application tax. If the state of Angola has debts towards the tax payer (including non-tax related), these debts will, as part of the amnesty, be offset against the taxes that would have been otherwise payable by the tax payer.

Companies that are active in the oil, gas or mining sector as well as publicly owned companies are excluded from the amnesty arrangements. The amnesty arrangements do also not apply to custom duties.

Changes to foreign exchange regulations

Oil and gas industry

On 3 October 2013 the Angolan Central Bank (*Banco Nacional de Angola*; "BNA") adopted *Aviso No. 7/2014* (published in the *Diário da Republica* on 8 October 2014) relating to the sale of foreign currency by companies that are subject to the special foreign exchange regime for entities operating in the Angolan oil and gas industry.

The rules describe the procedures that apply to the sale of foreign currency by the national concessionary (*Sonango*), domestic and foreign investors and operators (including the entities that constitute the Angola LNG Project).

Based on these rules and already applicable legislation, the national concessionary and the domestic and foreign investors must sell an amount of foreign currency that corresponds to their Angolan tax payment obligations to BNA for conversion in local currency (*kwanza*). However, certain amounts to be received by the national concessionary as well as contractual bonuses and price cap excess fees (as referred to in Articles 54 and 55 in Law 13/04 of 24 December 2004 on the taxation of Petroleum Activities (*Lei no. 13/04 de 24 de Dezembro, sobre a tributação das actividades petrolíferas*)) are not subject to this obligation.

Operators that require local currency in order to make payments for goods and services to Angolan residents must also sell their foreign currency to BNA. This obligation also applies to investors that conduct petroleum exploration activities in Angola. Other investors can sell the foreign currency required to make local currency payments to residents to Angolan commercial banks.

The exchange rate applied for the sale of foreign currency to BNA shall be BNA's primary market purchase rate which will be displayed on BNA's internet page. No commissions will be payable to BNA in connection with the foreign exchange transactions.

Operators must inform BNA before the 28th day of each month of the expected amount of funds which they require during the subsequent month to cover the costs relating to their oil and gas related activities.

The *Aviso* grandfathers tri-partite agreements which operators may already have concluded with commercial banks and services providers relating to the sale and purchase of foreign currency until BNA publishes specific rules in respect of such agreements. The agreement should have been registered with BNA within 15 days after the publication of the *Aviso* or the date on which the agreement was entered into. The exchange rate to be applied under the agreement is fixed at BNA's rate of exchange. The operators must also inform BNA about the terms of the sale of foreign currency effected pursuant to the tri-partite agreement. The exchange rate applied by commercial bank for the sale of foreign currency under these agreements may not be higher than the average purchase-sell rate

applied by BNA plus a spread of not more than 0.15%.

Import of goods

BNA adopted on 7 August 2014 *Aviso No. 04/2014* (published in the *Diário da Republica* on 12 August 2014) which provides for a simplified procedure for the payments in relation to the import of goods.

This new procedure exempts certain approved importers from submitting transaction related documentation to banking institutions when they request them to make payment to exporters. It also allows these importers, subject to certain limitations, to make advance payments in connection with the import of goods.

In order to benefit from this simplified regime, the importers must be approved by BNA and, for this purpose, submit certain documentation to BNA (routed via a banking institution, the importer cannot do this directly). In order to determine whether an importer can benefit from this simplified regime, BNA will, amongst others, take the following factors into account:

Financial robustness of the importer

- Volume of imported goods during the past 36 months
- Compliance with foreign exchange rules
- Auditor's report regarding the financial statements of the importer for the last three years.
- Auditor's report in accordance to ISAE 3000 - Assurance Engagements Other Than Audits or Reviews of Historical Financial Information regarding compliance with the foreign exchange law and related regulations in the previous 12 months.

If BNA decides to grant an importer the right to use the simplified regime, it will grant a licence with a validity of 12 months, renewable upon request for further 12 months periods.

The *Aviso* further describes the process for making advance payments and the limits that apply to such payments.

The banking institutions through which the foreign exchange payments are made are obliged to monitor the financial capacity of the importer to make the relevant payments and the reason and legitimacy of the transaction. It should also ascertain that the beneficiary of the payment is indeed the exporter of the goods. The banking institution is obliged to contact BNA within 72 hours in case it detects any anomalies.

The *Aviso* also imposes specific obligations on the board of directors and the auditors of the importers that are subject to the special regime.

Also noteworthy is BNA's *Aviso No. 03/2014* (published in the *Diário da Republica* on 12 August 2014), which increases the limit for advance payments in connection with the import of goods from 10 million kwanza to 30 million kwanza.

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