

Angola tax changes out of sync with country's mining code

Angola is rich in metallic and non-metallic mineral resources and the mining sector represents roughly 1% of the country's gross domestic product – the majority of which stems directly from the diamond sector.

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However, it is worth noting that iron ore was one of the country's major exports prior to the civil war, which ravaged the country from 1975-2002. Although Angola is home to many other mineral resources, including copper, tungsten and manganese, iron ore could once again become a significant commodity for the country's mining industry.

As part of the long desired tax reform in Angola, several new diplomas including revised corporate and personal income tax codes and a new general tax code were gazetted at the end of 2014.

However, these new diplomas do not include corresponding amendments to special regimes, such as the one set out in the country's existing mining code, which may create difficulties to conciliate this special regime with the new general rules.

First and foremost, the general corporate income tax rate has been reduced from 35% to 30%. Thus, if the 25% corporate tax rate applied to mining companies as set out in the mining code is kept the same it will probably no longer be deemed such a relevant incentive for investments in this capital intensive industry.

In light of this, it is interesting to note that mining tax legislation has always lagged a little behind general taxation in Angola. For instance, in 1992 the general corporate tax rate was 40% plus 10% on the excess in case of income of more than 10,000 ngozos kwanzas – the local currency at the time.

It was only four years later in 1996 that a special regime for the mining sector denoting a rate of 40% without an additional tax was finally approved. The time it took to approve this special regime led to a new general law being gazetted in 1999, which reduced the additional tax rate to 0%, thus setting the rate at 40% and bringing mining in line with the general corporate tax rate.

Some work on the amendment of the mining code is apparently underway, but it is not yet clear whether the amendment will complement the existing mining tax regime and the new general regime.

Another relevant issue raised by the new corporate income tax code, which came into force on January 1, 2015, concerns costs and losses which are deductible in order to determine taxable income.

The mining code includes a list of deductible costs and losses which, as per the wording of the law, should prevail over the general provisions set out in the general corporate income tax code. Consequently, in theory at least some of the new rules set out in the corporate income tax code on deductible costs and losses should not be applicable to the mining sector.

However, the mining code states that certain articles of the corporate income tax code shall apply to depreciation and amortisation charges. The reality is these articles in the new corporate income code do not govern the same matter and the provisions on the same subject have changed.

Therefore logically it begs the question whether new articles of the corporate income tax code on depreciation or amortisation still apply to the mining sector by way of the aforementioned remittance, or whether they do not.

Since it is impossible to exactly match the articles of the revoked and the new corporate income tax code, it seems the rules of the new code should not apply to the mining sector, which, as stated above, has a special regime that recognises the importance of the sector for the Angolan economy.

The new corporate income tax code also includes new rules on provisional self-assessments, whereby a provisional self-assessment at a rate of 2% will apply to all taxpayers on the sales turnover made in the first half of the financial year. Payment is made on account and generates a tax credit, to be set against the final annual assessment, and also against the payments-on account of the following years, until the statute of limitations term of five years.

While the wording of the law makes it unclear whether the regime will also apply to the mining sector or not, it can be reasonably understood that such a regime should also be applicable to the sector since the mining code does not include provisions on this matter. In any case, it would be helpful if the legislator would clarify this matter in, for example, the amendment of the mining code that is currently being drafted.

The recent approval of so many new diplomas on taxation that modernise Angola's tax system is certainly a positive and big step towards the further development of the country's economy. Notwithstanding this, the special regime set out in the mining code should not be forgotten and greater clarity is needed in order that mining companies are aware of how this tax reform could affect their businesses.

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