Regional Developments

ANGOLA

ANGOLAN TAX REFORM

Angola; Oil companies; Tax

Introduction

The main Angolan tax statutes are dated from the colonial period and underwent only moderate change following the country's independence in 1975.

At the turn of the millennium, oil taxes represented more than 80 per cent of the State's revenues, well above general income taxes, import and export duties and taxes on production and commercial activities.

A modern tax system is better suited to existing institutions and fosters investment, and so, over the last couple of years, the country undertook a major tax reform aimed, among other things, at reducing the State's dependence on oil tax revenues. This is to be achieved by broadening the tax base of other taxes. Cutting the umbilical cord from oil revenues is key, as they are declining and economic growth is still quite dependent on public expenditure. However, the question of whether or not this goal will be achieved still goes unanswered. Non-oil revenues have been slowly growing since 2010, although not quite at the expected pace.[1,2]

The tax reform has been characterised by a stepwise introduction of new legislation. 2011 was marked by the overhaul of several general tax codes, including Consumption Tax, Stamp Duty, Investment Income Tax and taxes on property.

Additional tax codes were published in October 2014, containing several new rules with a direct impact on oil companies (in particular Consumption Tax), while other rules impact primarily on oil service providers. Both have the effect of significantly raising the cost of oil-related transactions in Angola. Below we discuss the main features of the new laws and their effect on these players.

Consumption Tax

There is no value added tax in Angola. Instead, there is a monophasic indirect tax—Consumption Tax—which is levied on certain transactions. Before the tax reform, Consumption Tax was only levied on a limited number of operations, such as importations, local production of goods and a restricted number of services (e.g. hotel and telecommunications services).

From 2012 onwards, following the approval of Presidential Legislative Decree No.7/11 of December 30, 2011, the scope of the Consumption Tax was significantly broadened and a number of taxable events were added, including consultancy services (accounting, audit, financial, engineering and IT consultancy services, among others), works on personal property or lease of machinery or other equipment that do not give rise to the payment of royalties subject to the Investment Income Tax.

[1] See: *Angola Economy Back on Track, Non-Oil Sector Expands*, Press Release, *http://www.worldbank.org/en/news/press-release/2014/07/07/angola-economy-back-on-track-non-oil-sector-expands* [Accessed January 13, 2015].
[2] See: Press Release No.14/410, September 3, 2014, *https://www.imf.org/external/np/sec/pr/2014/pr14410.htm* [Accessed January 13, 2015].

As a rule, oil companies are exempt from Consumption Tax in connection with their petroleum exploration and production activities, an exemption entrenched in several petroleum concession decrees, decree-laws and the Petroleum Taxation Law (Law No.13/04 of December 24, 2004). However, their suppliers being subject to Consumption Tax, oil companies are also impacted by the changes introduced to this tax.

The enactment of the 2011 Consumption Tax rules was surrounded by heated debate as to how the exemption enjoyed by oil companies would come into play. Executive Decree No.333/13 of October 8, 2013, sought to address the issue by introducing a new mechanism for payments made by oil companies. The Decree established that resident companies supplying taxable services to oil companies must assess Consumption Tax (if applicable) on every invoice issued. On paying the service, oil companies would pay the net value of the service and set aside the Consumption Tax due for remittance to the State.

If anything, this only fuelled the debate regarding Consumption Tax further, particularly in the oil sector, eventually culminating in the publication of the revised Consumption Tax Regulations, by means of Presidential Legislative Decree No.3-A/14 of October 21, 2014.

The 2014 Regulations consolidate the Consumption Tax rules relating to the petroleum industry, and allow for a more clear understanding of: (i) who is subject to Consumption Tax; (ii) the duties to assess and pay the tax; and (iii) the possibilities of passing on Consumption Tax to third parties.

They also offer a wider range of exemptions specifically targeted at the petroleum industry. For instance, there is an exemption expressly applicable to the purchase of "new" taxable services (i.e. those that became subject under the broadening of taxable events approved by the 2011 rules) whenever they are acquired by an oil company during the exploration and development phases, provided they have a direct connection with the activities carried out in the corresponding concession areas. Such exemption must be validated by a Certificate of Exemption issued by the National Tax Directorate.

The exemption may also be extended to the production phase, on application by oil companies, whenever the tax proves so burdensome as to render the corresponding contracts economically unfeasible.

Certain services that had been introduced by the 2011 Consumption Tax rules, including "works carried out on tangible movable property", were removed from the list of services subject to Consumption Tax.

Industrial Tax

Oil companies are not subject to Industrial Tax (the general corporate income tax in Angola) but the amendments introduced to this tax will surely have an impact on transactions between oil companies and oil contractors, particularly the changes to the Withholding of Industrial Tax (WHT). The existing 5.25 per cent and 3.5 per cent WHT rates are replaced with a single rate of 6.5 per cent as of January 1, 2015.

The new Industrial Tax Code supersedes Law No.7/97 of October 10, 1997, and introduces two different WHT regimes for services, depending on the residency of the service provider, as follows.

- **Services provided by Angolan resident companies or permanent establishments of non-resident companies (provisional assessment and payment regime for service supplies)**

  Corporate service providers that have head offices, effective management or a permanent establishment in Angola will be subject to 6.5 per cent WHT on amounts received for services supplied to companies.

The WHT generates a tax credit that can be set off against the final annual assessment.
The WHT, which must be made by corporate customers paying for the services, applies to all types of service supplies. However, certain services are excluded from WHT, as follows: (i) education services, services provided by kindergartens, milk dispensaries, nurseries and similar establishments; (ii) services with an aggregate value not exceeding AOA 20,000; (iii) passenger transport services; (iv) leasing of machinery or equipment against the payment of royalties; (v) medical and healthcare services, and services provided by clinics, hospitals, and similar establishments; (vi) telecommunications services; (vii) hotel services and similar; and (viii) financial and insurance brokerage services.
Raw materials, parts and materials needed to supply taxable services are also excluded from the tax base for the purposes of WHT.
Finally, the mere recharging of costs between related entities is excluded from WHT, provided that the costs are duly documented. As a consequence, only a mark-up (if any) is subject to WHT.

Services provided by non-resident companies (special tax regime for occasional services)

Corporate service providers that do not have head offices, effective management or a permanent establishment in Angola will be subject to 6.5 per cent WHT on amounts received for all types of services supplied to Angola-based taxpayer companies. The list of exempted services for non-resident suppliers is smaller than that of their resident counterparts and does not include telecommunication services and financial and insurance brokerage services, among others.
Another difference is that WHT applies to the aggregate amount invoiced for the services by non-resident service providers, not just to the mark-up.

Stamp Duty

Stamp Duty is an indirect tax, quite particular to Angola and Portuguese-speaking countries, levied on a wide range of acts, contracts, documents and other facts set out in the Schedule attached to the Stamp Duty Code.

The old Stamp Duty Code dated from 1945. 2012 saw the approval and coming into force of a brand new Code (Presidential Legislative Decree No.6/11 of December 30, 2011). The list of taxable events was extensively revised and slimed down.

More recently, Presidential Legislative Decree No.3/14 of October 21, 2014, approved a revised Stamp Duty Code and Schedule. The revised rules are mainly aimed at clarifying the Stamp Duty scope of application and better identifying taxpayers and entities bearing the Stamp Duty burden. Also, several Stamp Duty rates have been amended.

The entities bearing the Stamp Duty burden are not usually the taxpayer, i.e. the entity ultimately paying the tax is not the entity subject to the obligation of assessing and remitting the tax to the State. For example, in the case of financial leases, the holder of the economic interest is the lessee, who will bear the tax burden, while the taxpayer is the lessor who will be responsible for assessing and delivering the tax to the State. On the other hand, in real estate leases, for instance, the taxpayer and entity bearing the tax burden is the lessor. The rule varies according to the specifics of each taxable event.

According to the new Stamp Duty rules, where a resident entity engages a non-resident entity, the responsibility for assessing and paying Stamp Duty due by the non-resident entity (as holder of the economic interest) lies with the resident entity. Still, oil companies' Stamp Duty obligations must be analyzed taking into consideration the special tax regime applicable to them, as under most concession decree-laws no taxes may be levied other than those foreseen in the concession decree law (and the issues is then when and under which conditions exemptions granted under the concession decrees will continue to apply).

Personal Income Tax

A revised Personal Income Tax Code, approved by Law No.18/14 of October 22, 2014, entered into force on January 1, 2015. Although the general rules applicable to salary income and ancillary obligations pending on oil companies will not be much different under the revised Personal Income Tax Code, certain modifications to the taxable base, including exemption of certain allowances received by employees, may have an impact on the salary package of employees.

Tax General Codes

In addition to amendments to the different taxes, procedure and general rules have been revamped and significantly detailed. In that context, several new codes were enacted, including a new General Tax Code, a new Tax Proceedings Code and a new Tax Collection Code.

The main objective of these revised codes is essentially to modernise the basic principles applicable within the Angolan tax system and the relevant tax procedural rules. Hopefully, this will have a positive impact on the relations between taxpayers and tax authorities.

Final remarks

The Angolan legislator made a very significant effort to reform the tax system, though a number of open-ended issues and grey areas still remain. Clarification from the authorities and further regulations will be required to deal with these issues and areas.

On the other hand, the intensive training of Tax Administration officials should secure a more expedite and substantiated decision-making process that will contribute to the protection of taxpayers. Also praiseworthy is the modernisation of the tax authorities' working conditions, notably the introduction of a new software system. These measures were complemented by the implementation of control mechanisms for the taxpayers' registration and reporting obligations, which are expected to be made on online platforms in the near future. All in all, the trend seems to be a stricter control and enforcement by a more prepared and trained tax authority that is using modern control mechanisms.

International taxation still requires greater development. Angola has yet to enter into a tax treaty. A good network of tax treaties, along with domestic provisions for the mitigation of double taxation would go a long way to bolster international and Angolan investment.

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