KPMG ACOR TAX

# African Tax Matters

Quarterly newsletter

Q4 2018 – 4th edition

## Dear reader

The last quarter of 2018 is almost over, and before starting your well-deserved Christmas Holidays, it is yet time to dive into the relevant matters impacting the African tax landscape in 2018.

One of the latest highlights is the European Commission's new proposal of initiating a new alliance between EU and Africa. The proposal aims at creating and strengthening the economic partnership between the two continents while moving away from the historical approach with providing development aid. Thus, instead of supply of development funds, Europe should strengthen and boost the investment plan focused on Africa.

President Juncker was, among other things, at the State of the Union proposals quoted for saying:

*"Africa does not need charity, it needs true and fair partnership. And we, Europeans need this partnership just as much. Today, we are proposing a new Alliance for Sustainable Investment and Jobs between Europe and Africa. This Alliance, as we envision it, would help create up to 10 million jobs in Africa in the next 5 years alone. I believe we should develop the numerous EU-African trade agreements into a continent-to-continent free trade agreement, as an economic partnership between equals."*

Finally, this quarterly newsletter highlights tax-related news updates affecting the developing tax regimes as well as new or amended tax rules and incentives. Moreover, the purpose of this newsletter is to shred light on the vast tax aspects in connection with the significant business potential for Danish public and private investors in Africa.

We wish you a pleasant reading.

KPMG Acor Tax Team

■ = African countries covered in this newsletter

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## Africa on the EU Commission's agenda

### Opportunities – Africa and Europe Alliance

The EU is Africa's biggest trading partner, accounting for 36% of Africa's trade in goods, worth EUR 243.5 billion, and EU remains the world's most open market to African exports in particular to manufactured and processed products.

The EU currently has trade agreements in place with 37 African nations.

The financial sources of the EU are intended to support the wider environment to facilitate trade, such as connectivity, infrastructure, sustainable energy, transport, data economy and information and communication technologies among others.

Some of the initiatives in the proposal include:

- Strengthening business environment and investment climate
- Booting strategic investment and strengthening the role of the private sector.

The new measures and focuses proposed are good news to Danish companies, who are excelling in growth and sustainability and with both public and private financing. As an example, Vestas recently published an agreement to export 46 wind turbines to Senegal, which is co-financed by the Danish State export credit fund.

Projects like these are considered to contribute to both the local job creation and the creation of sustainable energy.

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## Relevant tax news for Q4 2018

### Ghana

*Tax News – National budget 2019*

According to the most recent National Budget, Ghana published that its priority areas are to protect the public purse and to collect taxes more efficiently. Thus, in order to ensure that revenues are collected efficiently, the suggested tax measures propose to reform the Ghana Revenue Institutions and to enforce the Tax Identification Number (TIN) system.

Another tax incentive is aiming at bringing punitive actions against habitual defaulting taxpayers in order to retrieve unpaid taxes.

Further, it has been proposed to accelerate the implementation of automated systems, such as Fiscal Electronic Device (FED), to enhance effective collection of certain VAT and Excise Stamp Policy and minimize human interference in tax administration.

The above is perceived as boosting entrepreneurship within the private sector including easing the process of doing business in Ghana to better attract foreign investment and strengthen Ghana's trade links.

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## Nigeria

*Tax news – oil and gas industry taxpayers*

Eight years after enactment of the Nigerian Oil and Gas Industry Content Development Act, the landscape for Nigerian-held companies with relatively large oil and gas projects has begun to change.

In general, the Nigerian Content Development and Monitoring Board (NCDMB) imposes to clarify some provisions in the law that are considered to be vague and to rephrase the section on penalty for effectiveness. The NCDMB intends to engage the services of third party auditors to conduct audits on companies in order to track and recover unpaid levies.

Companies operating in the Nigerian oil and gas industry are advised to engage with their consultants and partners with a view to bringing their compliance status up-to-date.

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*Tax News – tax holiday, incentives for "pioneer"*

Pioneer status is a fiscal incentive provided under the Industrial Development (Income Tax Relief) Act since 2004, but the pioneer list has now been reviewed and expanded. The incentive entitles eligible companies to income tax holiday for up to five (5) years – three (3) years in the first instance, renewable for an additional maximum period of two (2) years. In addition to an income tax holiday, pioneer companies may also enjoy other benefits, such as exemption of dividends paid out of pioneer profits from withholding tax.

The pioneer list now comprises 99 pioneer industries and indicates eligibility for the incentive. The following are some of the highlights, i.e.: Agriculture, Mining and quarrying, Manufacturing, Electricity and gas supply, Waste management, Construction, Trade, Information and communications, Professional services, Financial services and Administrative services.

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## South Africa

*Tax news – dividend-stripping provisions*

For a number of years, the South African Income Tax Act has contained anti-tax avoidance provisions to prevent an activity known as "dividend-stripping". The current dividend stripping provision unintentionally affected legitimate transactions when shares were disposed of using roll-over corporate relief. Consequently, it has been proposed to amend the existing dividend stripping provisions.

Currently, dividend-stripping occurs when a resident shareholder avoids income tax arising on the sale of shares in the target company by ensuring that the target company declares an extraordinary large dividend to the shareholder prior to the sale of such shares. In the absence of the dividend-stripping rules, the extraordinary distribution of dividends also decreases the value of the shares in the target company and results in a reduction or elimination of the Capital Gain Tax or Income Tax. Prior to the amendment, the dividend-stripping rules currently apply when:

- The taxpayer must be a company.
- The person disposing of the shares must hold a "qualifying interest" in the company declaring the dividend (either at the time of disposal or at any stage within the preceding 18 months). The qualifying interest may be held by the taxpayer alone or together with one or more connected persons.
- There is an "extraordinary dividend". There would be new measures to apply to a "deferral transaction."

With the proposed amendments, the rule should be amended, so the existing reorganization rules will not be overridden. However, going forward, the anti-dividend stripping rules should still be triggered where the corporate reorganization / roll-over corporate relief is "abused", meaning those who have the intention of subsequently disposing of the respective shares within 18 months after the corporate reorganization.

Read more here

## South Africa (cont.)

*Tax news – non-compliance penalties*

The South African Revenue Service announced its draft regulation and intention to introduce administrative non-compliance penalties on outstanding corporate tax returns.

The penalty is levied in respect of each month, or part thereof that the taxpayer fails to remedy the non-compliance, but limited to a maximum of 48 months after the date of non-compliance.

The South African Revenue Service will issue a final demand to the taxpayer company and the taxpayer has to submit the outstanding tax return within 21 business days. The penalty will be imposed after the issue of final demand, and only after the 21 business days have passed.

The penalty ranges between R 250 to R 16,000 per month and is determined with reference to the assessed loss or taxable income of the taxpayer for the year of assessment.

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*Tax news – new royalty tax system*

The South African Revenue Services is introducing a new system for the royalty tax in its draft regulation. Currently, the withholding tax on royalties is 15% (possibly to be reduced under a treaty).

Effective 7 December, the roll-out of unique identification tax numbers for royalty purposes will commence.

Effective 1 February 2019, all royalty tax payments will need to be made via an e-filing profile.

Effective September 2019, royalty tax returns must be submitted online, and taxpayers will have an e-account and statement of account functionality.

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## South Africa (cont.)

*Tax news – anti-avoidance provisions*

South African taxpayers have seen a number of anti-avoidance provisions proposals over the last three years. The draft of the Taxation Law Amendment Bill relating to trusts and controlled foreign companies ("CFC") has been proposed, but tax practitioners and the public has contributed with comments and amendments to the draft. The proposal further shows South Africa's progress in implementing the OECD BEPS Action 3 – strengthening controlled foreign company rules.

The initial draft proposed removal of the participation exemption, but this should be accounted for in the final draft. We will follow the process closely and inform our readers once the final draft has been received.

Read more here

## Zambia

*Tax News – national budget 2019*

The Zambian budget proposal for 2019 includes tax measures that should come into effect already on 1 January 2019 and seek to gradually condense the fiscal deficit and maintain a sustainable debt position. The budget proposal indicates a focus on relief for certain industries. One of the significant changes in the proposed budget is a measure that would reduce the corporate income tax rate from 35% to 15% for companies that add value to copper cathodes.

Further, a tax incentive granting 0% on import duty may be applied on plant, machinery and equipment acquired for an investment.

Lastly, the national budget proposes a change to the thin capitalization threshold. The proposed change will limit the amount of deductible interest to 30% of earnings before tax, depreciation and amortization (EBITDA) for corporate tax purposes.

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