KPMG Avocats KPMG

Tax alert

KPMG Avocats & KPMG Sénégal

Senegal

This tax alert deals with the followings topics: i) Main tax measures deriving from Amending Senegalese Finance Bill for 2019 enacted on 30 June 2019 and Senegalese Finance Bill for 2020 adopted on 20 December 2019 and ii) Onshore/offshore contract split tax issues.

Amending Senegalese Finance Bill for 2019 reveals mostly tax amendments relating to the **hydrocarbon sector**. The most significant changes relate to i) corporate income tax, ii) capital gains, iii) tax compliance, iv) local taxes, v) registration duties, vi) tax fraud and vii) investment tax credit. The purpose of this law is to complete and adjust the tax provisions in order to allow the Senegalese Government **to optimize the resources coming from hydrocarbons.**

Senegalese Finance Bill for 2020. **To support start-ups in the digital sector**, Senegalese government has introduced **tax incentives for the small and medium-sized enterprises** relating to i) the flat minimum tax (*impôt minimum forfaitaire*) and payroll tax (*contribution forfaitaire à la charge des employeurs*). Moreover, Senegalese Government has introduced a tax compliance levy on imports (*prélèvement de conformité fiscale*) and the methods for calculating the unique global contribution (*contribution globale unique*) are amended. The aim is to adapt taxation rules to small and medium-sized enterprises in a view to value their real potential and facilitate their growth.

Topic 1: Main tax measures deriving from Amending Senegalese Finance Bill for 2019 and Senegalese Finance Bill for 2020

Corporate income tax

- The Uniform Act relating to commercial companies dated 5 May 2014 has introduced a new form of company: "*société par actions simplifiées".* The Amending Senegalese Finance Bill for 2019 has removed "*sociétés anonymes*" term and replaced it by "*sociétés par actions*" so that formally the "*sociétés par actions simplifiées"* are included in the scope of companies subject to the Senegalese corporate income tax.

- Companies holding participating interest (mining) in Production Sharing Contract will have to **calculate their tax profit on a separate basis** for each prospecting, exploration or exploitation area and no longer on all activities as a whole.

Capital gains tax on indirect sale of shares

- Capital gains deriving from the transfer of shares issued by a company located abroad and dealing, **directly** or **indirectly**, with participating interest in a Senegalese Production Sharing Contract are subject to the Senegalese corporate income tax.

- If a capital gain is realized by a company located abroad, the payment of the capital gains tax must be done, within a one-month period, under the liability of a tax representative. **However, if the payment of the capital gains tax has not been completed within a one-month period, the capital gain tax is jointly due by the company located in Senegal and holding participating interest in the related Production Sharing Contract**.

Tax compliance

Companies holding participating interest in a Production Sharing Contract must provide **by 30 April of each year at the latest**: the list of their subcontractors, their addresses, and the amount and nature of the operations carried out with each subcontractor during the previous calendar year. Any failure to comply could trigger a fine from FCFA 200.000 to FCFA 1.000.000.

Local taxes

- For contribution on rental value of business premises purposes, extraction and liquefaction units, wells, offshore installations and equipment used for the joint development and exploitation of hydrocarbon fields governed by an agreement between Senegal and another State will not be taken into account for the assessment of the taxable rental value of O&G companies.

- O&G companies are subject to **a contribution of 0.02% of their annual turnover** resulting from the joint exploitation of hydrocarbon fields governed by an agreement between Senegal and another State. This contribution will **apply in lieu of the contribution on value added**.

- The temporary exemption from the land contribution on built properties is extended to mining and oil companies **also holding a prospection or an exploration license**.

Registration duties

The transfer of shares held in companies established either in Senegal or abroad and holding, **directly** or **indirectly**, participating interest in a Senegalese Production Sharing Contract is subject to registration duties within a one-month period as of the date of the transfer. The transfer of a company’s shares relating to the participating interest in a Production Sharing Contract are subject to registration duties in the same conditions as the transfer of the participating interest in the Production Sharing Contract.

Tax fraud

Amending Senegalese Finance Bill for 2019 has broadened the fraud definition to the followings:

- Production of false documents or fraudulent practices in order to benefit from a tax refund.
- Fraudulently arranging or aggravating an insolvability in order to avoid paying tax.

Investment tax credit

Mining and oil operations are no longer eligible for the investment tax credit.

Flat minimum tax (impôt forfaitaire minimum)

- An exemption of the flat minimum tax will be granted, during a **3 years period** as of the creation date, to new companies that are outside of the scope of the department in charge of large companies of the tax administration.

- In principle, a flat minimum tax is levied on the annual turnover (excluding taxes) realized during the previous tax year at the rate of 0.5%. The flat minimum tax may not be less than FCFA 500.000 or exceed FCFA 5 million. However, Senegalese Finance Bill **removed the FCFA 500.000 threshold** due to the detrimental effect for small and medium-sized enterprises in a deficit situation.

Payroll tax (contribution forfaitaire à la charge des employeurs)

- In the same way as for the flat minimum tax, an exemption of the payroll tax will be granted, during **a 3 years period** as of the creation date, to new companies that are outside of the scope of the department in charge of large companies of the tax administration.

- Amending Senegalese Finance Bill for 2019 states that the temporary exemption from the payroll tax is extended to mining and oil companies **in exploration phase holding a prospection or an exploration license.**

Unique global contribution (contribution globale unique)

The methods for calculating the unique global contribution are simplified. Indeed, Finance Bill for 2020 **removed the progressive tax**. The amount of unique global contribution is fixed to 5% and 2% respectively for suppliers of services and traders and producers.

Tax compliance levy on imports (prélèvement de conformité fiscale)

A tax is levied on the imports carried out by the individuals or companies breaching their reporting and payment obligations.

- Excluding VAT, registration and stamp duties, the rate is fixed to 12% of customs value of products plus the customs duties.

- The products subject to the tax compliance levy on imports and its terms and conditions are to be set by an order of Minister of Finance.

Topic 2: Onshore/offshore contract splits related tax risks

Context

EPC (Engineering, Procurement, Construction) contract, used for infrastructure development projects, are often split between onshore and offshore activities:

- Activities of the offshore entity: one entity of the contracting Group, outside the country of operation/project, performs activities such as engineering, design, commercial services (intellectual/commercial service activities).
- Another entity of the Group performs the onshore activities that are more physical such as construction and operation and control activities.

However, clients (i.e., State, Local Bodies or National Companies) often request not having to deal with two different entities with different sets of responsibilities, but request that the contractor's entity with the highest financial profile takes responsibility for the overall project.

The first reason of the split of EPC contracts is that the resources relating to the services are usually located abroad in the State of the offshore entity. The second reason is that the offshore entity wishes to repatriate the contract's revenues tying to its functions through a direct payment from the client in foreign currency (Euros or US dollars).

Issue

In some cases such as joint liability or where the activities carried out are not distinct enough under the contract(s), the local tax administration tries to attract part (or all) of the offshore profits within the taxable onshore entity's profits.

Recommendations

When facing this situation and the related risk of double taxation, different parameters can be appropriately combined, depending on the tax rules of the project's country and of the contractor's country, such as: 1) contracts defining clearly and with enough details the nature and value of services as well as each party's responsibility, 2) generally implementing a subsidiary rather than a branch, 3) using available double tax treaties, 4) make a robust transfer pricing analysis and have available the related documentation, and above all, do not forget that contractual and corporate structuring must be analyzed by the contractor's tax department before starting the contract negociation.

KPMG Tax in Senegal and the Paris based Africa Desk tax team of KPMG Avocats wish you a Happy New year!

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