WTS Africa Quarterly Newsletter

July 2024 | 3rd Edition

#3/2024

wts global

WTS Africa Quarterly Newsletter

Editorial

Recent tax developments in Africa

Dear Madam/Sir,

We hope you may find interesting our third edition of the WTS Africa Regional Quarterly Newsletter for 2024, where we collate and present taxation related news from six countries on the continent.

The following participants in the WTS Global network have contributed with a diverse range of international tax topics. These contributors are from the following countries:

- Ghana – WTS Nobisfields
- Kenya – Viva Africa Consulting LLP
- Mauritius – WTS Tax Consulting (Mauritius) Ltd.
- Nigeria – WTS Blackwoodstone
- Senegal – FACE Africa Tax & Legal
- South Africa – WTS Renmere

Our experts will be happy to answer any questions you may have.

We thank you for your interest.

Yours sincerely,

WTS Africa Team

Contents

Ghana

Implementation of Electronic VAT Invoicing System

The Ghana Revenue Authority has started rolling out Electronic VAT Invoicing System that will help businesses and GRA to obtain real time monitoring of VAT transactions.

Following the successful completion of the pilot phase, the first rollout phase is to be completed by the end of June 2024. The aim is to onboard large taxpayers. Phase Two is expected to commence in the next quarter till year-end with medium and small taxpayers in focus. The third and final phase will onboard all other VAT registered taxpayers.

Implementation of VAT Invoice as Proof of Expense for Income Tax Purposes

The Commissioner General issued a directive in the last quarter on the need to obtain and retain VAT invoices as proof of expenses to qualify them as deductible. The implementation of this directive took effect at the beginning of this quarter.

Notwithstanding the above, expenses that do not require the issuance of VAT invoice or transactions from persons not required to register VAT, are allowable provided they meet the deductibility criteria stipulated in the Income Tax Act.

Application of VAT Flat Rate on Supplies of Estate Developers

In an administrative guideline issued, the Commissioner General has provided that in application of the amendment to the VAT chargeable on the taxable supply on immovable property for dwelling by an estate developer or immovable property for rental purposes, the COVID-19 Levy of 1% is applicable in addition to the flat rate of 5%.

However, such a person does not qualify to claim input tax on its purchases relating to that supply.

Ghana Revenue Authority Clarifies Status of Resident Individuals

The GRA has acknowledged recent concerns of the public on the tax status of individuals who earn income abroad and whether they are deemed by the Tax Laws as" resident individuals" for tax purposes.

The Authority specified that the definition of resident individual is vivid in the Income Tax Act 2015 (Act 896), Section 3(2) (a),103, and 111. By definition, a resident individual:

- Is a citizen with a permanent home in Ghana residing in the country throughout the year.
- Is present in Ghana for at least 183 days in any 12-month period that begins or ends within the year.
- Includes government employees or officials posted Abroad.

- › A citizen temporarily absents from Ghana for not more than 365 continuous days who maintain a permanent home in Ghana.

Theophilus Tawiah
theophilus.tawiah@wtsnobisfields.com

In preparation of the tax rollout, the GRA has opened a special window for taxpayers to rectify their records to facilitate easier declaration and payment of taxes for taxpayers to report undisclosed incomes. All eligible individuals are encouraged to utilize the opportunity to regularize their tax affairs.

If you wish to discuss these topics, please contact:
WTS Nobisfields

Kenya

Taxation of Software

The strides in technology experienced globally continue to elicit interest in the tax realms. Tax Authorities have channelled their efforts towards collecting taxes from the technology industry and the Kenya Revenue Authority (KRA) under the direction of The National Treasury is no exception.

This is evidenced by the propositions that were contained in the Finance Bill, 2024 (the Bill). The Bill has been rejected by the President after nationwide protests and been sent back to the National Assembly to dispense with it in its totality, in keeping with the wishes of the Kenyan public. Despite this, we note that one of the proposals in the Bill was to amend Kenya's Income Tax Act (ITA) to expand the definition of royalty. With respect to software, it was proposed to expand the definition as iterated below: -

"royalty" means a payment made as a consideration for the use or the right to use—
(b) any software, proprietary or off-the-shelf, whether in the form of licence, development, training, maintenance or support fees and includes the distribution of the software.

KRA seeks to introduce this change in the wake of a recent case decided by the High Court of Kenya, Seven Seas Technologies Limited V Commissioner of Domestic Taxes, KEHC 358 10 December 2021. The case set precedence on guidelines to determine whether the distribution of software constitutes a royalty. The gist of the case is that the KRA had sought to collect withholding tax on licence payments made by Seven Seas Technologies Limited to Callidus Software Inc (based in USA), on the basis that the payments constituted royalties. The former was a licensed distributor of software for the latter.

The key issue in contention was whether the procurement and consequent sale of copies of the software (referred to as copyrightable material) constituted a royalty. The taxpayer asserted that by purchasing software, it acquired copyrighted material, and it did not in any way acquire the rights to the Intellectual Property, that is, the copyright in the software. In its submission, KRA opined that software cannot be delinked from the medium in which it is embedded. Thus, the taxpayer had essentially acquired the rights to exploit the software which was encompassed in the licence as a distributor.

In determining the case, the court cited that the Organization for Economic Co-operation and Development (OECD) prescribes that in distribution-intermediary transactions, the distributors are paying only for the acquisition of the software copies and not to exploit any right in the software copyrights. More so, the rights of the distributor in such transactions do not constitute the rights to reproduce the software. Therefore, the medium in which the software is embedded is non-consequential in characterizing the transaction for tax purposes.

Notably, the proposed change in relation to the definition of royalty offers insights into the direction Kenya is seeking to take with respect to the taxation of software. This direction is however, in contravention of international best practice as well as the network of tax treaties that Kenya has entered into with various jurisdictions.

If you wish to discuss these topics, please contact:
Viva Africa Consulting LLP (WTS Kenya)

Anne Mubia-Murungi
amubia@vivaafricallp.com

Gladys Ngugi
gnagugi@vivaafricallp.com

Catherine Gate
cgate@vivaafricallp.com

Mauritius

Taxation of Individuals under the Remittance Rules

The Supreme Court recently provided an interesting interpretation of the application of the remittance rule, as well as the tax residency rule, in a judgment delivered in the now commonly called "Dilloo Case".

Under the Mauritius tax laws, an individual is tax resident in Mauritius if he (i) spends at least 183 days in an income year in Mauritius, (ii) spends at least 270 days, in aggregate, in an income year and two preceding years in Mauritius, or (iii) has his domicile in Mauritius unless his permanent place of abode is outside Mauritius.

As per the basis of taxation, a resident taxpayer is subject to tax on worldwide income while a non-resident is only subject to tax on income derived from Mauritius. However, as a separate section, the tax laws provide that, with respect to individuals only, income derived from outside Mauritius is only subject to tax on remittance to Mauritius.

In the Dilloo Case, the taxpayer was a Mauritian national employed as Sales Manager in a company based in Saudi Arabia. In view of not having spent the required number of days in Mauritius, he did not file his income tax returns for the assessment years 2016/2017 to 2018/2019. However, during this same period, he transferred his savings to Mauritius, some of which were used to purchase immovable property locally, and subsequently earned rental income.

The taxability of the rental income earned in Mauritius was not disputed. However, the issue at stake was whether (i) the taxpayer was a resident of Mauritius for the relevant assessment years; and (ii) the remittance basis of taxation is applicable to resident individuals only or both resident and non-resident individuals.

It is noteworthy that the Assessment Review Committee ("ARC"), being the lower appellate body to which the taxpayer appealed prior to lodging the case at the Supreme Court, took the view that income remitted to Mauritius is subject to tax irrespective of whether the individual is resident in Mauritius or not. Interestingly, both the taxpayer and the Mauritius Revenue Authority ("MRA") appealed to the Supreme Court against this interpretation.

The Supreme Court ruled in favour of the MRA, taking the view that:

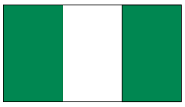
(i) It is imperative that an individual be resident in Mauritius for his foreign sourced income remitted to Mauritius to be subject to tax in Mauritius;
(ii) Since the taxpayer did not adduce sufficient evidence to establish he was not resident in Mauritius, he was deemed to be resident on the basis of his permanent place of abode being in Mauritius;
(iii) The fact that "savings" were transferred to Mauritius does not alter the "income nature" of the funds transferred into "capital nature";
(iv) As a resident, the taxpayer was subject to tax on the income remitted to Mauritius in the year of remittance, the more so that he could not produce sufficient evidence of any tax paid in Saudi Arabia, other than a letter from his employer confirming minimal "expatriate tax" paid; and
(v) Only a certificate from a foreign tax authority can be used to demonstrate evidence of foreign tax suffered.

If you wish to discuss these topics, please contact:
WTS Tax Consulting (Mauritius) Ltd.

Mohammad Akshar Maherally
akshar@wtsmauritius.com

Tarveen Teeluck
tarveen@wtsmauritius.com

Nigeria



Considerations from Nigeria's Tax Reform Efforts

As we noted in our 2024 Tax Outlook, following the establishment of the Presidential Committee on Fiscal Policy and Tax Reforms (the Committee), the Nigerian Tax system is currently undergoing significant reviews with the aim of improving the system. In this article, we identify some of the notable proposals and updates in the tax reform process.

1. The Committee is proposing reforms aimed at providing tax relief to small businesses in various sectors of the economy. It noted that Businesses earning below N25,000,000 (approximately $16,700) would be granted exemptions from various taxes which have previously stifled productivity.

2. The Committee is also proposing reforms to Nigeria's VAT regime with the aim of establishing a simplified and effective VAT system. It is proposing the following VAT reforms:

   a. Grant of full input VAT credit for businesses to reduce business cost/cost of production while easing the strain on cash flows.

b. Expanding the list of basic food items, educational and healthcare items exempted from VAT with a view to protecting the lower-class.
c. Harmonization of all consumption taxes and adjust the revenue sharing formula as an incentive in favor of sub-national units to address multiplicity of taxes.
d. Removal of VAT on export of service and intellectual property to promote non-oil exports.
e. Increasing the VAT exemption threshold for small businesses.
f. Enhancing and simplifying the VAT refund process to reduce the strain on working capital of businesses.
g. Introduction of VAT fiscalization and electronic invoicing.
h. Upward adjustment to the VAT rate on items not exempted to avoid a significant drop in revenue.

3. Further, Nigeria is set to launch its first Tax Inspectors Without Borders – Criminal Tax Investigations Program (the Program) in conjunction with the United Nations Development Program (UNDP) and the Organization for Economic Cooperation and Development (OECD). The Program is aimed at combating tax evasion, curbing illicit financial flows and entrenching tax transparency in the Nigerian fiscal regime. The objectives of the Program in developing jurisdictions are to:

   i. Build Capacity of tax crime investigators.
   ii. Facilitate knowledge sharing and skill development among tax authorities
   iii. Strengthen tax crime enforcement frameworks for the effective resolution of disputes.

   Ultimately, Nigeria aims to improve tax collection process and safeguard government income by combating tax evasion.

4. The Federal Inland Revenue Service (FIRS) has directed banks to apply, deduct and remit stamp duties at the rate of 0.375% on all facilities backed by legal mortgages, shares, debentures, or bonds. The charge would be applied on the value of the security while the deduction is to be made on the value of the facility.

5. The Federal Government released a new Deduction of Tax at Source (Withholding) Regulations 2024 which is to commence from 1st July 2024 which amongst other things widens the tax net, introduce new categories of transactions subject to WHT; provisions for exemption from WHT for manufacturers and other entities and provisions for ease of claim of tax credits.

If you wish to discuss these topics, please contact:
WTS Blackwoodstone.

Abel Awujoola
Abel@wtsblackwoodstone.com

Oluwatobiloba Adekoya
Tobi@wtsblackwoodstone.com

Senegal

The Innovations of Law No. 2023-15 of 20 August 2023 on the Senegalese Environmental Code

Senegal has made substantial updates to its environmental legal framework to better address current legal, socio-economic, and environmental realities while aligning with international standards. Senegal has adopted the new Environmental Code in 2023, which replaces the 2001 version, to address challenges arising from increased production activities, demographic pressures, and natural resource extraction.

The new Environmental Code, structured into seven main titles, aims to improve environmental management by addressing gaps in the previous legislation. These deficiencies include obsolete classifications of ecologically sensitive facilities, insufficient environmental assessment protocols, a lack of restrictions on hazardous materials and waste, and the need for thorough contingency plans. The new code also aims to be consistent with the core tenets of environmental law.

The revised Code also takes into account various international environmental agreements, such as the Montego Bay Convention, Basel Convention, Bamako Convention, Abidjan Convention, UN Framework Convention on Climate Change, Rotterdam Convention, and Stockholm Convention on Persistent Organic Pollutants. These agreements have underscored the need for an updated environmental management framework in Senegal.

The new code offers clearer legal definitions and concepts to better reflect current realities. Enhanced procedures now include environmental and social impact assessments, initial environmental assessments, and environmental audits for all development projects. Additionally, it creates specific funding for mining site restoration and environmental preservation. These funds are intended to oversee mining, oil, and gas operations as well as support environmental preservation initiatives. The establishment of these funds, which are mostly funded by external sources, responds to the state budget's insufficiency in handling the effects of climate change.

The introduction of a stricter framework for managing chemicals and waste includes the establishment of a national chemicals management commission. Strict rules for the transport of dangerous goods have been set to minimise risks to people, property, and the environment. The Code introduces financial fines and remedies, including facility closures, and establishes that legal entities are legally accountable for environmental offences. Before starting company' activities, it requires to go through an environmental evaluation and receive an environmental compliance certificate.

Senegal's environmental management has advanced significantly with the introduction of the new Environmental Code. It improves the legal framework to more effectively handle environmental concerns by bringing the nation's laws into line with current and global difficulties.

If you wish to discuss these topics, please contact:
Face Africa Tax & Legal

El Hadji Sidy DIOP
sidy.diop@faceafrica.sn

Rajo Rakotosolofo
ajo.rakotosolofo@faceafrica.sn

South Africa

An Overview of the Construction Permanent Establishment

One of the key issues that foreign investors in South Africa (ZA) need to consider is whether their activities in South Africa will create a Permanent Establishment (PE) and expose them to a corporate income tax liability in South Africa. The construction industry is one of the main sectors that may give rise to a PE in South Africa.

Section 1 of the Income Tax Act defines a PE with reference to article 5 of the OECD Model Tax Convention on Income and Capital (Model Convention), being a fixed place of business where the enterprise's business is wholly or partly carried on, including management places, branches, offices, factories, workshops, mines, and construction sites lasting over 12 months.

According to the Model Convention, a building site, a construction, installation or assembly project constitutes a PE only if it lasts more than 12 months (this time period can differ depending on the particular double taxation agreement in question). Based on the OECD Commentary, the phrase "*a building site or construction or assembly project*" should not be interpreted restrictively. The OECD Commentary further provides that a project should be regarded as a single unit, even if it is based on several contracts, provided that it forms a coherent whole commercially and geographically. It follows that a site exists from the date on which the contractor begins his work (time spent on mere negotiations excluded), including any preparatory work, in the country where the project is to be established.

If a general contractor which has undertaken the performance of the comprehensive project, sub-contracts all or parts of such a project to sub-contractors, the period spent by a sub-contractor must be considered as being time spent by the general contractor on the project for purposes of determining whether a PE exists for the general contractor.

A site continues to exist until the work is completed or abandoned. The period during which testing is performed by the (sub)contractor should be included in the period during which the site exists. The 12-month test applies to each individual site or project and temporary interruptions do not result in the disregarding of time on site. Once the 12-month threshold is exceeded, the PE is deemed to exist from the date of commencement of the project, and not only from the date of exceeding the threshold.

In addition to the potential income tax liability (at a rate of 27%), other taxes (such as value added tax and employees taxes) and regulatory requirements (such as reportable arrangements and external company registrations) should be considered when evaluating a potential project in ZA. Contractors and sub-contractors involved in cross-border construction projects should therefore carefully monitor the duration and nature of their activities in ZA and seek professional advice to avoid any unintended tax consequences.

Jane Visagie
jvisagie@renmere.co.za

If you wish to discuss these topics, please contact:
WTS Renmere

wts global

Contact

Ghana

Theophilus Tawiah
Theophilus.tawiah@wtsnobisfields.com
T +233 (0) 302 500 107

WTS Nobisfields
11 Nii Ablade Kotey Avenue
P.O Box DT 1210, Adenta-Accra
Accra
www.wtsnobisfields.com

Kenya

Anne Mubia-Murungi
amubia@vivaafricallp.com
T +254 (0) 202 465 567
Gladys Ngugi
gngugi@vivaafricallp.com
T +254 (0) 202 699 936
Catherine Gate
cgate@vivaafricallp.com
T +254 725 389 381

Viva Africa Consulting LLP
P.O Box 50719 - 00200
Rose Avenue, Off Denis Pritt Road
00200, Nairobi
www.vivaafricallp.com

Nigeria

Abel Awujoola
Abel@wtsblackwoodstone.com
Oluwatobiloba Adekoya
Tobi@wtsblackwoodstone.com
T +234 9033 501 613

WTS Blackwoodstone
22a, Rasheed Alaba Williams
Lekki, Lagos
www.wts.blackwoodstone.com

Mauritius

Mohammad Akshar Maherally
akshar@wtsmauritius.com
Tarveen Teeluck
tarveen@wtsmauritius.com
T +230 489 9900

WTS Tax Consulting (Mauritius) Ltd
5th Floor, Tower B, 1 Exchange Square
Wall Street
Ebene, Mauritius
www.wtsmauritius.com

Senegal

El Hadji Sidy Diop
sidy.diop@faceafrica.sn
T +221 77 639 73 65 / 33 869 91 66

Face Africa Tax & Legal
2, Independance Square
at the Aliou Ardo Sow Building
(Ex SDIH building)
4th floor, 17 015, Dakar
www.faceafrica.sn

South Africa

Jane Visagie
jvisagie@renmere.co.za
T +27 678 748 096

WTS Renmere
8 Melville Road
Illovo
South Africa
www.renmere.co.za

About WTS Global

With a representation in over 100 countries, WTS Global is one of the leading global tax practices offering the full range of tax services without the constraints of a global audit firm. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The exclusive member firms of WTS Global are carefully selected through stringent quality reviews. They are typically strong local players in their home market being united by the ambition of building the tax firm of the future. WTS Global effectively combines senior tax expertise from different cultures and backgrounds be it in-house, advisory, regulatory or digital.

For more information, please visit wts.com

Imprint
WTS Global
P.O. Box 19201 | 3001 BE Rotterdam
Netherlands
T +31 (10) 217 91 71 | F +31 (10) 217 91 70
wts.com | info@wts.de