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Client Alert
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AFRICA TAX

With insights from Africa-focused tax advisers from Baker McKenzie and our network of African hub firms, we aim to provide you with regional updates and practical guidance on the tax implications of doing business across the large and diverse African continent.

In this special edition of the Baker McKenzie Africa Tax Newsletter, we focus on the most recent tax-related developments in **Ethiopia** as well as other news and updates from the African region.

Ethiopia enacts new excise tax law among other tax changes

In depth

New Excise Tax Law

The New Excise Tax Proclamation No. 1186/2012 (E.C. 1186/2020) (the New Law), which was enacted on 13 February 2020, has repealed and replaced the former Excise Tax Proclamation No. 307/1995 (E.C. 307/2002) and its amendments, in their entirety. The new law has introduced substantial changes to the rates, base and manner of calculation of the excise tax. Although the excise tax is typically imposed on goods that are considered *"luxury, hazardous to health, cause social problems or…are demand inelastic"*, the new law surprisingly covers a wide range of products.

Taxable goods

The list of excisable goods and the applicable tax rates are listed on Schedule I of the new law and includes:

1. vehicles, motorcycles and heavy equipment;
2. alcoholic and certain non-alcoholic beverages such as soft drinks and bottled water;
3. tobacco products;
4. motor fuels;
5. edible oils and fats;
6. sugar, candy and chocolates;
7. perfumes, cosmetics and hair accessories;
8. precious stones and pearls;
9. electronics;
10. fireworks;
11. plastic bags;
12. tires;
13. textiles and home decor;
14. construction products; and
15. machines used in gambling operations, carnivals, magic shows and video games.

Exemptions

A long list of exemptions (provided under Article 9 and Schedule II of the new law) can be grouped generally into the following categories:

1. exempt purchasers such as tax-exempt entities and diplomatic missions;
2. exempt uses such as alcohol produced for use in healthcare;
3. goods destined for export;
4. special exemptions granted by a governmental entity; and
5. excisable goods destroyed on the factory floor or in transit.

Goods that are previously exempted and are later put to taxable use or are re-imported will be subject to excise tax at the time of such use or re-importation.

Taxpayers and points of imposition

Importers and manufacturers of excisable goods are liable for the payment of the excise tax. They must secure a license from the Ministry of Revenues prior to engaging in any activity for which excise tax reporting is required.

Imported goods are subject to the excise tax at the time of completion of customs formalities; if the imported goods are produced in a foreign trade/export zone, they are subject to the excise tax at the time of departure of the goods from the zone for domestic use. Importers must remit the excise tax to the Customs Authority.

Manufacturers, on the other hand, are subject to the excise tax at the time of departure of the goods from the factory; if the goods are consumed or used within the factory, they are subject to the excise tax at the time of such use or consumption. Manufacturers must remit the excise tax to the Ministry of Revenues.

Tax base

The taxable base has changed from production cost under the previous law to selling price (with certain adjustments) for goods manufactured domestically, and from the sum of cost, insurance and freight (CIF) to the sum of the customs value plus duties payable for imported goods. The taxable value is determined based on the quantity and/or weight of the goods, and includes packaging materials.

Excise tax stamps

The Ministry of Revenues will provide further guidance concerning the procedures, manner of placement and other requirements relating to stamps and other markings on goods upon which the excise tax has been paid.

Tax rates

The rates remain high with notable changes based on shifting priorities and policies. For example, under the previous law, the excise tax on motor vehicles was progressive with the horsepower of the vehicle but declined with the age of the vehicle. Under the new law, the excise tax is progressive with the age of the vehicle and horsepower and ranges between 5% and 500%. Another example is the excise tax on sugar, which has been reduced from 33% to 20%. The changes in rates for these products are intended to support the nascent domestic vehicle manufacturing industry and facilitate the upcoming privatization of the 13 state-owned sugar production facilities respectively.

Penalties

The new law prescribes civil and criminal penalties for various infractions such as producing excisable goods without a permit or misusing excise tax stamps.

Credits and other relief

With certain exceptions, the new law provides relief from double taxation by allowing the excise tax paid on raw materials to be credited against the excise tax due on finished goods.

Repeal of Export Tax on Leather Products

The Ministry of Finance has issued a directive to repeal the 150% export tax on semi-finished leather products effective 6 January 2020. The export tax was intended to encourage the domestic manufacturing industry for finished leather products. Teka Gebreyesus, State Minister of Trade and Industry, blamed the high export tax for the decline in the performance of the sector. It should be noted that the 150% export tax remains in effect for unprocessed/raw hide and leather. The leather industry has been identified as a strategic sector for foreign investors by the Ethiopian Investment Commission.

Income Tax

In a recently issued directive, the Ministry of Finance has clarified that share premiums are taxable as business income rather than capital gain to the company that issued such shares. This means that there is no Ethiopian counterpart to Internal Revenue Code §1032 in the United States, or similar laws in other countries where capital raised is not taxed. Therefore, significant consideration should be given to how the issue price/par value of stock is determined for share companies that are organized in Ethiopia.

Controversies

On 13 February 2020, the Ethiopian Parliament passed a bill to ratify the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention, for matters considered “commercial” under Ethiopian law. This is a welcome step for foreign investors as it opens the door for arbitral awards entered in other countries to be enforced by Ethiopian courts. Although there are still outstanding questions, the enforcement of arbitral awards relating to tax indemnity clauses in a wide range of business contracts, for which the primary legal authority is the Commercial Code of Ethiopia 1960, presumably falls within the purview of the ratification.

Economic Development Incentives

The Ministry of Finance has lifted customs duties and indirect taxes levied on certain machinery and equipment imported for use in agriculture, irrigation and animal feed. The exemption list of such equipment is included in the approval letter by the Ministry to the Ethiopian Customs Commission.

For any queries on tax issues in Ethiopia, please contact the lawyer below or your usual Baker McKenzie contact.

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Other Africa Tax News

Angola / Mozambique

COVID-19: Managing the impacts of COVID-19 in Angola and declaration of State of Emergency in Mozambique.

Contact Samuel Fernandes de Almeida of VdA Legal Partners.

Kenya

Amendments to **Income Tax Act, Cap 47** of the Laws of Kenya; **Value Added Tax, 2013**; and **Excise Duty, 2015**; plus notable tax decisions. View here.

Contact Kenneth Njuguna and George Gitau of Anjarwalla & Khanna.

South Africa

COVID-19: Assistance to small businesses and employees through the tax system and introduction of new export control regulations.

Contact Virusha Subban and Jana Botha of Baker McKenzie, Johannesburg.

Tanzania

Amendments to **Income Tax Act, 2004**; **Value Added Tax Act**; **Excise (Management and Tariff) Act**; and **Tax Administration Act, 2015**. View here.

Contact Kenneth Njuguna and George Gitau of Anjarwalla & Khanna.

Tunisia

COVID-19: Financial and fiscal measures by the Ministry of Finance and postponement of payment of credit maturities.

Contact Omar Besbes and Khalil Laabidi of United Advisers.

Uganda

2019 amendments to tax legislations and recent **Court of Appeal ruling** in *Airtel Uganda Ltd V Commissioner General Uganda Revenue Authority*. View here.

Contact Fiona Magona and Flavia Suubo of MMAKS Advocates.

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Baker McKenzie's Africa Tax Group manages an African-centred regional hub system on a Baker McKenzie platform, providing a coordinated and quality-focused process for managing tax work across a large and diverse continent. Over 30 specialist tax lawyers and advisers cover all tax disciplines and deliver tailored, solutions-based advice.