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Building the future

Approval of the new Private Investment Law in Angola

Law No.14/15, of 11 August 2015

The new private investment regime in Angola, created by Law No.14/15, has been published in the Official Gazette, repealing the regime enacted by Law No.20/11, of 20 May 2011. This Private Investment Law has been in force since its publication and the main changes resulting from the new law are summarised in this newsletter.

Scope

The new law applies to foreign investment of any amount and domestic investments amounting in aggregate to Kz 50,000,000 (fifty million kwanzas) or more.

This private investment regime does not apply to investments made by state-controlled legal persons governed by private law, by the State or by other public legal entities subject to specific regulation.

Mandatory partnerships

Foreign investment in Angola in the electricity and water sectors, hospitality management and tourism, transport and logistics, civil construction, telecommunications and information technology and media requires the establishment of partnerships with Angolan citizens, state-owned companies or Angolan companies who hold at least 35% of the share capital and participate effectively in its management, as reflected in the shareholders' agreement.

Except in cases of overwhelming public interest, duly authorised by the competent authority to approve investment, the aforementioned minimum limit of investment in the capital should be maintained throughout the execution of the investment project.

Benefits and investment incentives

Application of the law

Incentives and benefits under the new law apply to foreign investment of USD 1,000,000 (one million US dollars) or more, or its equivalent in national currency, and national investments of USD 500,000 (five hundred thousand US dollars) or more, or its equivalent in national currency.

Investors that do not seek to benefit from tax incentives are governed by the general rules applicable to trade and business, as well as the foreign exchange laws. Nevertheless, they should be registered, under the regulations that are yet to be drafted.

Development Zones

For the purposes of granting tax incentives to investment projects, the country is divided into the following Development zones:

i) Zone A – The province of Luanda and the municipalities of the provincial capitals of Benguela, Huíla and the municipality of Lobito;

ii) Zone B – The provinces of Cabinda, Bié, Cunene, Huambo, Cuando Cubango, Lunda-Norte, Lunda-Sul, Moxico, Zaire, Bengo, Cuanza-Norte, Cuanza-Sul, Malanje, Namíbe, Uije and other municipalities of the provinces of Benguela and Huíla.

Criteria for granting incentives and tax benefits

The granting of incentives and fiscal benefits is decided on a case-by-case basis and takes into account the score obtained by each private investment proposal by reference to the following criteria:

i) Creation of jobs for Angolan workers;

ii) Value of the investment in Kz;

iii) Location of the investment;

iv) Activity in the sectors of agricultural production, livestock, forestry, fisheries and their agro-industries and related;

v) Output produced for export;

vi) Angolan participation in the share capital;

vii) National value added.

Duration of tax benefits

Reductions in Industrial Tax, Property Transfer Tax and Investment Income Tax are available for periods of one to ten years, according to the following rationale:

a) For investments scoring between 10 and 30 percentage points of tax reduction: 4 years;

b) For investments scoring between 31 and 50 percentage points of tax reduction: 6 years;

c) For investments scoring between 51 and 70 percentage points of tax reduction: 8 years;

d) For investments scoring more than 71 percentage points of tax reduction: 10 years.

Extraordinary granting of incentives

The extraordinary granting of fiscal benefits by the Head of Government is available by negotiation, under the contractual regime for private investment, for investments in Kwanzas of USD 50,000,000 (fifty million US dollars) or more and capable of managing at least 500 or 200 jobs for Angolan citizens in Development zones A and B, respectively.

Management of the Incentive System

The tax and customs incentives and benefits system will be managed by the Angolan government.

Benefits and customs incentives

The granting and withdrawal of benefits and customs incentives is governed by the tax regime set out in the Customs Tariff Schedule of Import and Export Duties.

Limits of application

Tax benefits cease immediately where the investor has benefited from a tax saving equal to or higher than the investment made or on expiry or the elapse of a maximum period of ten years.

Repatriation of profits and dividends

Where a private foreign investment project has been implemented, and on presentation of proof of its execution, the right to transfer the following abroad is guaranteed:

a) Dividends or profits;

b) The proceeds of liquidation of investments, including capital gains, upon payment of any applicable taxes;

c) The proceeds of indemnities;

d) Royalties or other earnings resulting from payments for indirect investments, associated with the transfer of technology.

Supplementary rate of Investment Income Tax

Dividends and profits distributed are subject to a supplementary rate of Investment Income Tax, to the extent that they exceed the participation in the capital as follows:

a) 15% where the excess is up to 20%;

b) 30% where the excess is between 20% and 50%;

c) 50% where the excess is over 50%.

This regime does not apply to dividends or profits reinvested in Angola.

Indirect investment

All national or foreign investments that individually or cumulatively take the form of loans, shareholder loans, supplementary capital contributions, patented technology, technical processes, industrial secrets and models, franchises, registered trade marks, technical assistance and other forms of access to the use thereof, either through exclusive franchising or licensing limited to geographical areas or industrial and/or commercial sectors is considered to be indirect investment.

Whenever national or foreign investors intend to make an indirect investment, the indirect component shall not exceed 50% of the total investment.

Shareholders loans

Shareholders' loans shall not exceed 30% of the amount of investment made by the company, and may be repaid only after three years from the date of being recorded in the borrowing company's accounts.

Projects of reinvestment, modernisation and expansion

The projects of reinvestment, modernization and expansion may benefit from tax incentives granted by the relevant governmental body on the basis of a prior opinion of the government ministry responsible for finance.

Previous investment projects

The new Private Investment Law and related regulations will not apply to investment projects approved prior to their coming into force. These investments continue to be governed by the laws and/or the specific contracts on the basis of which they were made and authorisation granted.

However, private investors are free to apply to have projects which have already been approved made subject to the provisions of this new Private Investment Law, and the relevant authority for approval shall decide on any such application, in accordance with the value or characteristics of the project.

Tax and customs incentives and benefits and other facilities already granted under previous legislation shall remain in force throughout the time periods set, and shall not be extended.

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