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International tax

DR Congo Highlights 2015

Investment basics:

Currency – Congolese Franc (CDF)

Foreign exchange control – Banks are required to report significant foreign exchange transactions to the central bank. Carrying or holding foreign currency in the DRC is not prohibited. Any payment from or to a foreign destination is subject to a 0.2% exchange control fee. Funds carried by travelers that exceed the equivalent of USD 10,000 should be reported.

Exporters are required to repatriate a percentage of proceeds resulting from exports via commercial banks.

Accounting principles/financial statements – IFRS is not locally required. Financial statements must be prepared in the OHADA accounting system, which applies as from 1 January 2014. The books or accounting records should be maintained in French and denominated in local currency, except for mining operations, which are allowed to report in foreign currency.

Principal business entities – These are the joint stock company and the limited liability company. Foreign companies also can set up a branch or subsidiary.

Corporate taxation:

Residence – A company is resident in the DRC if it is incorporated in the DRC or has its principal place of business there. A permanent establishment (PE) will be deemed to exist if a person maintains a physical installation in the DRC, regardless of the form (i.e. shop, warehouse, branch, factory, leased building, office, etc.) or conducts professional activities under its own name for more than six months.

Basis – The DRC operates a source-based tax system. Resident and nonresident corporate entities are subject to tax on income derived from activities carried out in the DRC.

Taxable income – Corporate income tax is levied on a company's gross income, less allowable deductions. Expenses incurred to realize taxable income generally are deductible for tax purposes.

Taxation of dividends – Dividends received are treated as taxable income.

Capital gains – Capital gains are treated as taxable income and are subject to the standard rate of corporate income tax.

Losses – Losses may be carried forward for an unlimited period, but may offset a maximum of 70% of the profit before tax in any year. Losses may not be carried back.

Rate – The general rate of 35% applies to a DRC-incorporated company, subsidiary or branch of a foreign company. The rate is 30% for mining companies.

Surtax – No

Alternative minimum tax – No

Foreign tax credit – The DRC does not provide for a unilateral foreign tax credit, and foreign taxes paid may not be deducted in calculating taxable income. There is no tax equalization or hypothetical tax in the DRC.

Participation exemption – No

Holding company regime – No

Incentives – Various incentives are available to qualifying companies, including mining companies. Incentives generally are in the form of reduced tax rates or an exemption.

Withholding tax:

Dividends – Dividends or other distributions made to a resident or nonresident are subject to a 20% withholding tax; the rate is 10% for mining companies.

Interest – Interest paid to a resident or nonresident is subject to a 20% withholding tax. An exemption applies to interest paid to a mining company if certain conditions are satisfied.

Royalties – Royalties paid to a resident or nonresident are subject to a 20% withholding tax on the net amount (royalty expenses may be deducted in an amount equal to 30% of the gross payment).

Technical service fees – Technical service fees are subject to a 20% withholding tax on the net amount (expenses may be deducted in an amount equal to 30% of the gross payment).

Branch remittance tax – No

Other – Amounts paid by a resident to a nonresident individual or entity for any service performed and rendered in the DRC over a period not exceeding six months and that does not create a PE are subject to a 14% withholding tax.

Other taxes on corporations:

Capital duty – No, but see under "Stamp duty."

Payroll tax – Employers are required to submit monthly Pay As You Earn (PAYE) returns on behalf of their employees before the 10th of the month following the month the salary is paid or made available. Salaries tax rates are banded and range from 0% to 40%; however, the total amount paid may not exceed 30% of taxable income.

Real property tax – Land "rates" are assessed by the provincial and tax authorities. See also under "Stamp duty."

Social security – The employer is required to contribute 9% of the salary paid to social security. The employee contributes 3.5% of salary, which is withheld by the employer and remitted to the authorities. Since April 2013, a 0.5% ONEM (national agency for employment) tax has been imposed. The employer is required to contribute 0.5% of the salary paid to ONEM.

Stamp duty – A 3% stamp duty applies to the transfer of land and building property.

Transfer tax – No

Other – No

Anti-avoidance rules:

Transfer pricing – The 2015 finance law introduced a tax regulation on transfer pricing: Congolese companies must make available to the tax administration documentation that justifies the prices charged in connection with transactions with related companies located abroad. The required documentation includes general information about the group of companies and specific information about the controlled company.

Thin capitalization – There are no general thin capitalization rules, but a holder of a mining license must observe a ratio of less than 75/25 between borrowed funds and equity.

Controlled foreign companies – No

Other – No

Disclosure requirements – The tax authorities can require information from a taxpayer concerning its tax affairs and may request information from a bank or public administration relating to payments of interest, remittances of funds, etc.

Compliance for corporations:

Tax year – Calendar year

Consolidated returns – Consolidated returns are not permitted; each company is required to file a separate return.

Filing requirements – In accordance with the 2015 finance tax law, the corporate tax return on profits must be filed before 30 April in the year following the end of the company's accounting period. Two provisional installments of tax due must be made by 1 August and 1 December; each installment must represent 40% of the tax due for the previous tax year.

Penalties – Failure to self-assess tax, understated tax returns or defaulted tax payments are subject to a 20% penalty for a first offense and 40% for a second offense, plus 3% monthly interest on the amount due.

Rulings – A taxpayer may request a nonbinding interpretation from the head of the tax administration.

Personal taxation:

Basis – There is no personal taxation per se in the DRC: taxes due by individuals are remitted to the authorities by the employer. Both residents and nonresidents are taxable on employment income derived from the DRC. Individuals engaged in a business are taxed under the rules governing companies, i.e. all income accruing in or derived from the DRC is subject to tax in the DRC.

Residence – An individual is resident for tax purposes if he/she spends more than six months in the country.

Filing status – Although the tax law contains provisions applicable to individuals, "personal taxes" are collected through business entities.

Taxable income – All income accruing in or derived from the DRC is subject to tax. Employment income is restricted to salaries and other remuneration received as compensation for activities carried out in the country. All fringe benefits are taxable, except for housing, transport and legal family allowances.

Capital gains – Capital gains are taxable.

Deductions and allowances – Nontaxable housing allowances should not exceed 30% of basic salary, and nontaxable transport and family allowances may not exceed the legal limits.

Rates – Progressive rates ranging from 3% to 40% apply.

Other taxes on individuals:

Capital duty – No

Stamp duty – No

Capital acquisitions tax – No

Real property tax – No

Inheritance/estate tax – No

Net wealth/net worth tax – No

Social security – An employee must contribute to the national social security at a rate of 3.5% of gross salary. The employer is required to contribute 9% of the salary paid to social security.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – As noted above, although the tax law contains provisions applicable to individuals, "personal taxes" are collected through business entities.

An individual's personal tax is fully settled through the PAYE system and any balance of tax payable is due by the employer by 10 January of the year following the calendar year.

Penalties – Penalties are payable by the employer for noncompliance with tax obligations. See under "Corporate taxation."

Value added tax:

Taxable transactions – VAT is levied on the supply of goods and services and on the import of goods and services into the DRC.

Rates – The standard rate is 16%; exports of goods and similar transactions are zero-rated.

Registration – Registration is compulsory for all persons (business or individual) that are liable to tax. Registration must take place within 15 days following commencement of a business.

Filing and payment – VAT returns and related payments are due by the 15th day of the following month.

Source of tax law: DRC Tax Code, Tax Procedure Law, VAT Decree Laws

Tax treaties: The DRC has concluded two tax treaties.

Tax authorities: Customs Office, Tax Administration and Tax Administration for Land Related and Administrative Revenue

International organizations: SADC (Southern African Development Community), WTO (World Trade Organization)

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