



International tax

Equatorial Guinea Highlights 2015

Investment basics:

Currency – *Franc de la Communauté Financière d'Afrique Centrale (XAF)*.

Foreign exchange control – Transfers within the Central African Economic Monetary Community (*Communauté Economique et Monétaire de l'Afrique Centrale, CEMAC*) zone are not restricted. An advance declaration is required for inward direct investments, which are capital investments in an entity to acquire control (excluding the purchase of less than 10% (or XAF 100 million) of the share capital of an unquoted company).

Loans obtained by EG companies from foreign shareholders or from a foreign enterprise within the same group also require prior authorization. The reinvestment of undistributed profits is not subject to prior declaration, but transfers of at least XAF 1 million outside the CEMAC zone do require authorization.

Expatriate employees may repatriate part of their earnings on a regular basis. Transfers to cover family and dependent expenses outside the CEMAC zone may be made without limit.

Accounting principles/financial statements – The Uniform Act relating to the Organization and Harmonization of Accounting Systems applies.

Principal business entities – These are the public and private limited liability company, partnership and branch of a foreign corporation.

Thirty-five percent of the share capital of any company set up in Equatorial Guinea must be held by EG citizens or companies belonging to EG citizens. At least three EG-citizen partners are required and one-third of the board of directors must be EG citizens, with EG citizens involved in the management of the company.

Corporate taxation:

Residence – A commercial entity operating in EG for more than three months in one calendar year or for six months within a two-year period is considered resident.

Companies operating in the oil and gas sector in EG for more than three months in one calendar year are considered resident.

Basis – Resident entities are assessed on their worldwide income. Nonresident entities are subject to a 10% withholding tax on gross income derived from EG sources.

Taxable income – Taxable income is a company's gross income, less allowable deductions and losses. Income of a capital nature is not included in taxable income.

Taxation of dividends – All dividends received by a resident company are subject to corporate income tax. However, the recipient company may offset any domestic tax withheld from dividends against its company tax liability. A participation exemption applies so that only 10% of net dividends received by a corporate shareholder is subject to tax, provided the shareholder holds at least 25% of the shares in the payer and the shares remain registered in the name of the shareholder for at least two consecutive years.

Capital gains – Capital gains are treated as ordinary business income and taxed at the standard corporate income tax rate. However, capital gains realized on the disposal of fixed assets in the course of trading are excluded from income for a three-year period if the taxpayer reinvests the gain in new fixed assets for the business.

Capital gains arising from a gratuitous allocation of shares, founders' shares or debentures on the merger of limited liability companies or limited partnerships with share capital also are excluded, provided the company resulting from the merger has its

registered office in EG.

Net capital gains arising on the assignment, transfer or cessation of a company within five years following its creation or purchase will be assessed at only half their value. If such an event takes place more than five years after the company is formed or purchased, net capital gains will be assessed at one-third of their value.

Losses – Losses may be carried forward for up to three years (five years for companies in the oil and gas industry), but may not be carried back. Losses of one entity may not be transferred to another entity following a corporate reorganization. After three consecutive years of losses, companies will be de-registered from the Tax Registry (except new companies).

Rate – 35%

Surtax – No

Alternative minimum tax – The minimum company tax is 1% of the previous year's turnover. The AMT is payable when the operations of the company result in a taxable loss or when the minimum tax is more than 35% of the taxable profits.

Foreign tax credit – No

Participation exemption – A partial tax exemption on dividends applies to CEMAC groups. See also under "Taxation of dividends."

Holding company regime – No

Incentives – The Investment Code is intended to encourage and stimulate productive investment in EG. It provides certain general guarantees, such as no expropriation or nationalization without just and equitable prior compensation. Specific customs and tax incentives are available for certain sectors, including the oil industry. Special incentives also are offered under tax regulations for companies located in non-coastal areas, including Annobón.

Withholding tax:

Dividends – Dividends paid to a nonresident entity are subject to a 25% withholding tax.

Interest – Interest paid to a nonresident entity is subject to a 25% withholding tax on the gross amount.

Royalties – Royalties paid to a nonresident entity are subject to a 10% withholding tax on the gross amount. See "Other", below, for oil and gas companies.

Technical service fees – Technical service fees paid to a nonresident entity are subject to a 10% withholding tax on the gross amount.

Branch remittance tax – No

Other – All payments made by companies in the oil and gas sector are subject to a withholding tax at the following rates: 10% on the gross EG income of nonresidents obtained from commercial or industrial activities or services (6.25% for EG residents); and 5% on mobilization, demobilization and transportation services in EG.

Other taxes on corporations:

Capital duty – No

Payroll tax – There is no payroll tax. Salaries are subject to the Work Protection fund and INSESO contribution (see under "Social security").

Real property tax – Rural property tax of XAF 100 is levied for each hectare or fraction thereof of the surface area of property. An urban property tax equal to 1% of 40% of the sum of the value of the land and the buildings constructed on it is levied.

Social security – The employer contributes monthly to the National Social Security Fund (INSESO) and the Work Protection Fund. The contributions are 21.5% of the gross salary to INSESO and 1% to the Work Protection Fund.

Stamp duty – Stamp duty is payable on a variety of instruments and transactions, such as the creation or increase of capital, stock transfers of unquoted companies, property transfers, etc.

Transfer tax – Rates are 3% for the transfer of goods and chattels for valuable consideration (both between residents and nonresidents and between nonresidents); 5% on transfers of real estate for valuable

consideration between residents and 25% between residents and nonresidents; and 5% on transfers for valuable consideration of goods and chattels and livestock, credits and rights not expressly specified.

Other – Other potential taxes include property taxes; the tax on vehicle and boat ownership and use; and the tax on the screening and distribution of image and audio recordings.

Anti-avoidance rules:

Transfer pricing – EG law and CEMAC regulations provide for a general rule on the prohibition of a direct or indirect transfer of income to an affiliated company by way of a diminution or increase in sale or purchase prices or interest on loans. The tax authorities can assess such indirect transfers by comparing them with transactions of similar companies operating normally in EG.

Thin capitalization – No

Controlled foreign companies – Controlled foreign company provisions apply where at least 35% of the share capital is held by nationals.

Disclosure requirements – No

Compliance for corporations:

Tax year – Calendar year. A company's financial year must correspond to the tax year.

Consolidated returns – Consolidated returns are not permitted; each company must file a separate return.

Filing requirements – A return showing the company's results for the fiscal year must be filed by 30 April following the end of the tax year. A minimum company tax equal to 1% of the previous year's turnover is payable annually before 31 March. The final instalment is paid on 30 April.

Penalties – A fine of XAF 200,000 per month is levied, capped at 75% of the tax due. The penalty for an understatement of tax liability ranges from 50% (when the amount is 10% higher than the taxpayer's profits) to 100% (bad faith). The authorities also may impose a "best judgment" assessment: from 50% to 100% (bad faith). A 50% penalty applies for failure to pay the minimum income tax.

Rulings – No

Personal taxation:

Basis – Resident individuals are assessed on their worldwide income and subject to personal income tax on transactions carried out in EG, from the first day of work performed in the country. Nonresident individuals are subject to a 10% withholding tax on their gross income from EG.

Residence – A person operating in EG and staying more than three months in one calendar year or six months in two years is considered resident. In the oil and gas sector, only individuals operating in Equatorial Guinea and staying more than three months in one calendar year are considered resident. Absences of less than 30 days are not taken into account in computing the period of residence.

Filing status – The head of a family is subject to personal income tax on his/her own income and on the income of his/her dependent children and spouse, subject to the individual's right to elect to be assessed separately. A married woman is assessed separately if she is separated from her husband or if her husband is not subject to tax in EG.

Taxable income – Income from salaries, wages, pensions, annuities and per diems for attending meetings of boards of directors is taxable, excluding special allowances to cover expenses relating to the position, to the extent those expenses are effectively incurred for their objective and not excessive. Benefits in kind and cash allowances are taxable at specific rates (see below).

Capital gains – Capital gains include proceeds from the sale of stock and options, income from securities, bonds, loans, deposits or from the sale of real estate assets. Capital gains accruing to individuals as a result of company mergers are not subject to personal income tax if the new company has its registered office in EG or another CEMAC state. The standard tax rate on such income is the same as for the other categories. Capital gains are subject to the general tax rate, except for gains realized by nonresidents, which are subject to 25% withholding tax.

Deductions and allowances – The extent to which a deduction from income will be

allowed depends on the category of income. Allowable deductions include business expenses, contributions to pension funds (under specific conditions), interest on loans taken out to build or repair the taxpayer's first house in EG, alimony and payments made to the welfare fund on behalf of domestic employees. For salaries, wages, pensions and annuities, allowable deductions for business expenses amount to 20% of income but cannot exceed XAF 1 million.

Rates – Rates are progressive to 35%. Income up to XAF 1 million is exempt; tax is payable at the following rates: 10% on income between XAF 1 million and XAF 3 million; 15% on income between XAF 3 million and XAF 5 million; 20% on income between XAF 5 million and XAF 10 million; 25% on income between XAF 10 million and XAF 15 million; 30% on income between XAF 15 million and XAF 20 million; and 35% on income in excess of XAF 20 million. Additionally, benefits in kind and cash allowances are taxable at the following rates on gross salary: housing, 15%; water, electricity, housekeeping and company car, 5%; food, 20% (imposed on gross salary up to a maximum XAF 150,000).

Other taxes on individuals:

Capital duty – No

Stamp duty – Stamp duty is levied on the execution of various documents at rates ranging from 1% to 10%.

Capital acquisitions tax – See "Transfer tax" under "Corporate taxation."

Real property tax – Rural property tax of XAF 100 is levied for each hectare or fraction thereof of the surface area of the property.

An urban property tax equal to 1% of 40% of the sum of the value of the land and the buildings constructed on it is levied.

Inheritance/estate tax – A tax on "mortis causa" applies for all kinds of hereditary successions (10%), donations (5%) and life insurance (10%).

Net wealth/net worth tax – No

Social security – Employees contribute monthly to the National Social Security Fund (INSESO) and the Work Protection Fund. Employee contributions are 4.5% of gross salary to INSESO and 0.5% of net salary to the Work Protection Fund.

Compliance for individuals:

Tax year – Calendar year

Filing and payment – Tax payments on income from salaries and wages are withheld by companies or other entities at source before the 15th of the month following payment.

Penalties – The same penalties apply as for corporate income tax. Additionally, failing to withhold is subject to a 25% penalty and a failure/delay in paying personal income tax withheld is subject to a 25%, plus a 10% interest per month penalty, capped at 100% of the total tax withheld.

Value added tax:

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

Rates – The standard VAT rate is 15%. A zero rate applies to exports and similar transactions. Some products are subject to a reduced rate of 6%, others are exempt and

others are assessed to a special duty tax at a rate of 30%.

Registration – Resident VAT payers must be registered. Nonresident VAT payers must appoint a solvent resident representative to be jointly responsible for the payment of VAT and the discharge of other VAT obligations.

Filing and payment – Registered VAT vendors are required to file monthly VAT returns within 15 days of the end of the month. The tax due must be paid within 15 days following the filing of the VAT return.

Source of tax law: Law 4/2004, Regulating the Taxation System in the Republic of Equatorial Guinea (dated 28 October 2004)

Tax treaties: EG has signed a treaty with the other CEMAC member states to improve tax cooperation between CEMAC administrations and to limit double taxation. There also is an agreement dated 22 November 2003 between and EG for the promotion and reciprocal protection of investments.

Tax authorities: *Ministerio de Hacienda y Presupuestos (Ministère des Finances et du Budget)*

International organizations: OHADA, CEMAC

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