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Corporate Tax

Angola

MC Jurist Advogados Attorneys-at-Law

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Law and Practice

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1. Types of Business Entities Commonly Used, Their Residence and Their Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Angolan businesses generally adopt a corporate form, notably a company, a branch or a representative office, depending on the type of activity to be carried out. The most common corporate form for long-term businesses is a duly incorporated company.

In this context, and although Angolan corporate law sets forth two types of unlimited liability companies, the types of companies that are typically used for business purposes in Angola are private limited companies or limited companies by quotas (sociedades por quotas) and joint stock companies (sociedades anónimas). It is also possible to incorporate a sole-shareholder company.

From a tax perspective, companies and branches are subject to the same tax treatment. Angolan taxation may vary depending on the type of activities carried out (there are special business sectors subject to specific taxation regime), the type of companies – notably whether they are micro, small or medium companies – and the location of the companies within the Angolan territory.

1.2 Transparent Entities

Angolan tax legislation does not set forth a tax transparency regime under which the revenues/profits of a given entity are deemed to be profits of its members/shareholders, even if no distribution of profits has occurred, and shall be deemed to be their individual taxable income and subsequently be taxed as individuals' or companies' revenue.

1.3 Determining Residence

For Angolan tax purposes, Angolan taxpayers have a specific tax domicile included in their taxpayer card, which is the registered head office of the incorporated companies/branches or otherwise the place of "effective direction" – ie, the place in which the management of the companies normally effectively occurs. Companies that are non-resident entities and have appointed a tax representative are deemed to be domiciled in the typical place of residence/registration of the tax representative. Lastly, and by default, if it is not possible to determine the residence of incorporated businesses, such entities will be deemed to be domiciled in the area of the First Tax Department of Luanda.

1.4 Tax Rates

Incorporated businesses (companies and branches) are subject to a general 30% Industrial Income Tax, notwithstanding specific regimes and incentives better detailed below.

Individuals carrying out business directly (without incorporated businesses) are subject to a 10.5% Personal Income Tax (not Industrial/Corporate Income Tax).

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation of Taxable Profits

Angolan taxable income corresponds to the difference between the revenues and costs reflected in the relevant accounting records subject to the Angolan General Accounting Plan.

Resident businesses will be subject to tax on their profits, whether they are obtained in Angola or abroad (worldwide taxation). The taxation is divided into two groups:

- Group A – public companies, companies with a capital stock equal to or higher than AOA2 million, and companies with an annual profit amount equal to or higher than AOA500 million; and
- Group B – companies that are not included in Group A and companies that only carried out one operation or a single act of a commercial or industrial nature (lasting not more than 180 days).

Taxable income of a business is broadly defined to include all earnings and gains resulting from any activity carried out by a business, of ordinary or occasional nature, deemed principal or secondary, with the deduction of all costs and losses required to obtain such revenues, except for taxpayers in Group B.

2.2 Special Incentives for Technology Investments

The Angolan tax system does not set forth special incentives for technology investments, such as patent box or R&D expenses. Such costs shall be included as tax-deductible costs related to the activity of the taxpayer.

This being said, any profits declared as reserves for reinvestment that are effectively used within the subsequent three years for premises or new equipment allocated to the activities of the taxpayer may be deducted from the taxable income within the three years after the completion of the investment, up to a maximum limit of 50% of the reinvestment.

2.3 Other Special Incentives

A reduced tax rate applies to agriculture, aquaculture, aviculture, livestock, fishing and forestry activities. Taxpayers of Group B with organised accounting records are subject to a 6.5% tax rate over their turnover.

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There are certain types of companies and/or activities that may be subject to different Industrial Income Tax rates, notably:

- investment funds (7.5% tax rate);
- real estate funds (15% tax rate); and
- micro (2% tax rate), small and medium companies may be subject to tax rates ranging from 15% up to 27%, depending on the location of the company.

Companies incorporated and/or acquired by non-resident entities may also be subject to a special regime of tax incentives under investment project legislation, including a range of Industrial Income Tax from 3% up to 24% (depending on the location) and for a period of time from two up to eight years.

2.4 Basic Rules on Loss Relief

Losses generated in the previous three fiscal years may be deducted from the taxable income of the relevant fiscal year, unless such losses are generated in an activity and/or during a period in which the company has benefited from tax exemption or reduction.

2.5 Imposed Limits on Deduction of Interest

Interest on loans, in any form, of the holders of the share capital or shareholder loans is acceptable as a deductible cost, except for the portion exceeding the average annual reference rate established by the Angolan Central Bank (which will be accrued to the taxable income).

2.6 Basic Rules on Consolidated Tax Grouping

Consolidated tax grouping qualifies as a special tax regime in Angola, and is applicable if one of the members of the group is deemed to be a Large Taxpayer included in a list regularly published by the Angolan Ministry of Finance. In this context, the Large Taxpayer, as a member of a group of entities, may be taxed by the algebraic sum of positive or negative results of the entities that comprise the group.

A group of companies exists in a scenario in which one of the entities is dominant, holding at least 90% of the share capital of the other(s), directly or indirectly, provided that such majority participation entails the majority of voting rights.

The tax group special regime is subject to the verification of the following requirements:

- all entities included in the group must have a head office or effective direction in Angola;
- the participation of the dominant entity in the dependent entities must be registered for more than two years, unless the dominant entity originally incorporated the dependent entities; and

- the dependent entities may not be deemed to be dependent on any other entity with a head office or effective direction in Angola.

The group of companies may not be composed of entities that do not carry out any activity for more than one year or that have bankruptcy or insolvency judicial actions pending, nor of entities that registered losses in the previous two years or that benefit from tax incentives granted under investment project legislation.

2.7 Capital Gains Taxation

Sale of Shares – the positive balance between the sale price and the original acquisition price of shares resulting from the sale of shares is subject to a 10% withholding of Investment Income Tax.

Dividends – the payment of dividend shares is subject to a 10% withholding of Investment Income Tax. If dividends are related to shares admitted to negotiation in a regulated market, the tax rate is reduced to 5%. Dividends paid to resident companies in respect of a participation of at least 25% held for more than one year are exempt from withholding tax.

Capital Gains – capital gains are subject to a 10% tax rate for investment income tax purposes; in some specific circumstances this tax rate is reduced by 50% to an effective tax rate of 5%.

Interest – the payment of interest in respect of bonds or financial instruments is subject to a 10% withholding of Investment Income Tax. Interest from shareholder loans or any sort of allowance made by shareholders to the companies is also subject to a 10% withholding of Investment Income Tax. Interest from shares admitted to negotiation in a regulated market are subject to a reduced 5% withholding of Investment Income Tax. Interest for late payment or general loan agreements is subject to a 15% rate of Investment Income Tax – interest is presumed to be of 6% annually, unless another interest rate has been agreed between the parties, in writing with recognised signatures.

Royalties – the payment of royalties is subject to a 10% withholding of Investment Income Tax. Consideration for the use of industrial, commercial or scientific equipment is regarded as a royalty payment.

2.8 Other Taxes Payable by an Incorporated Business

In addition to Industrial Income Tax, Angolan companies are also subject to Value Added Tax (VAT), effective as of 1 October 2019, subject to different regimes. Companies may also be subject to Stamp Duty in specific transactions, notably the importa-

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tion of goods and equipment into Angolan territory, as well as on lease agreements.

Companies are also subject to taxation on immovable property, depending on whether the immovable property has been leased (15% withholding of Real Estate Property Tax settled by the tenant) or acquired (0.5% Real Estate Property Tax settled by the holder of the property title).

Also, companies that process payments to non-resident entities under technical assistance and management services agreements are also subject to a 10% special contribution over the net amount to be transferred outside Angola. Although this special contribution is not deemed to be a tax obligation, it is deemed to be a quasi-tax obligation.

2.9 Incorporated Businesses and Notable Taxes

Depending on the type of activity, the following distinctive taxation may be applicable:

- oil and gas companies are subject to a special tax regime, with different types of taxes on petroleum income, profit oil and other charges; and
- soft drinks distributors and tobacco distributors are subject to Excise Duty Tax enacted with VAT, effective in Angola as of 1 October 2019.

3. Division of Tax Base Between Corporations and Non-corporate Businesses

3.1 Closely Held Local Businesses

Most small businesses related to small retail (ie, directed to private consumers) may operate in a non-corporate form, subject to Personal Income Tax on individuals. However, there is a micro/small/medium companies special tax regime that has been used by small businesses. Sole-shareholder entities are also allowed to be created in Angola, which is gradually being considered for small businesses.

In general, larger businesses (which may be subject to local content/angolanisation requirements) operate as incorporated businesses.

3.2 Individual Rates and Corporate Rates

There is no general rule that prevents individual professionals from performing activities through an incorporated company. However, considering that the individual/personal income tax rate is lower than the corporate tax rate, small businesses typically decide to pursue their activities through an incorporated company if and when the business expands and there is a need

to hire personnel or to pursue a specific activity that is subject to a corporate legal format.

3.3 Accumulating Earnings for Investment Purposes

There are no specific provisions that may prevent accumulating earnings (which will be deemed as taxable income subject to the general 30% tax rate over profits after the deduction of costs) for investment purposes. However, as mentioned in 2.2 **Special Incentives for Technology Investments**, any profits declared as reserves for reinvestment that are effectively used within the subsequent three years for premises or new equipment allocated to the activities of the taxpayer may be deducted from the taxable income within the three years after the completion of the investment, up to a maximum limit of 50% of the reinvestment.

3.4 Sales of Shares by Individuals in Closely Held Corporations

The taxation of individuals on dividends and on gains resulting from the sale of shares corresponds to 10% on Capital Gains Tax (or Investment Income Tax – IAC), except on dividends of shares admitted to negotiation in a regulated market, which will be subject to a 5% tax rate (only until 7 November 2019).

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

Dividends of shares admitted to negotiation in a regulated market will be subject to a 5% tax rate (only until 7 November 2019).

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

As mentioned in 2.7 **Capital Gains Taxation**, interest, dividends and royalties are subject to Capital Gains Tax (IAC). Angolan Income Tax rules set forth that any revenues or profits subject to IAC shall be deducted from the taxable income of Industrial Income Tax.

By the same token, the amount of IAC settled to Angolan tax authorities is not accepted as a tax-deductible cost.

Furthermore, under approved investment projects, the Angolan local entity may benefit from tax reductions, notably on IAC due and payable for the distribution of dividends.

4.2 Primary Tax Treaty Countries

Angola is currently in the process of ratifying two tax treaties – one with Portugal and the other with the United Arab Emirates (UAE) – but they have not yet started to be implemented fully by investors from those jurisdictions.

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Until now, Angola has been targeted by investors based upon specific industry sectors, notably oil and gas, mining, fishing and other manufacturing industries, irrespective of the investors' place of origin.

4.3 Use of Treaty Country Entities by Non-treaty Country Residents

As the tax treaties in Angola were only approved for ratification in March 2019 (Portugal) and June 2019 (UAE), the tax authorities have not yet started to scrutinise the use of entities in treaty countries that are held and/or controlled by non-resident entities/citizens of those treaty countries.

4.4 Transfer Pricing Issues

Tax authorities introduced transfer pricing rules in October 2013, with the following two main principles:

- taxable income may be subject to corrections insofar as there are transactions between entities with special relationships with different conditions from those that would have been agreed between independent entities generating profits above or below what would be expected if such special relationships did not exist ("arm's length" principle"); and
- taxpayers with annual profits exceeding AOA7 billion shall prepare and submit a transfer pricing dossier evidencing pricing structures practised with companies with which they may have special relationships.

Special relationships exist if any of the following requirements are verified:

- direct or indirect shareholding control;
- powers to appoint the managers of the local entity;
- existing commercial relationships that represent more than 80% of the business volume of the local entity; or
- corporate funding of more than 80%.

The assessment of standard conditions agreed between independent entities is based upon the method of comparable market price, the method of reduced resale price, or the method of increased cost.

4.5 Related-Party Limited Risk Distribution Arrangements

Tax authorities may challenge an arrangement on the sale of goods or provisions of services with a related party based upon its effects, notably if the use of such type of arrangement provides (or is expected to provide) a tax advantage, and tax authorities would thus be expected to conduct a more thorough review and to potentially challenge such arrangements.

In a scenario in which there is evidence of attempted or concrete tax evasion and/or tax advantage in terms that no actual goods or services have been supplied, then tax authorities will be empowered to review and reassess the taxable income of the companies involved.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

Although Angola is not included in the OECD country profiles on transfer pricing, the existing legislation reflects OECD standards and guidelines on transfer pricing (without making explicit reference to the OECD). The transfer pricing principles have accrued increasing significance as a result of the complex operations carried out by Large Taxpayers (defined and listed as companies that represent a significant portion of tax revenue in the country – mainly foreign investors with a legal or tax presence in Angola).

As a result, Angola does not have any transfer pricing rules that may differ from OECD standards. However, the country may still need to develop action plans for the enforcement and scrutiny of the application of transfer pricing rules.

5. Key Features of Taxation of Non-local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims are Settled

Angola has not been enforcing transfer pricing claims, but rather correcting taxable income annual returns from previous fiscal years under investigation procedures. Compensation/offset adjustments may only be accepted if they are duly recognised by the tax authorities.

5.2 Taxing Differences

In general, local branches of non-resident entities in Angola are subject to the same taxation as corporate entities, as a local branch is deemed to be the permanent establishment (PE) of the non-resident entity and all profits allocated to such PE are subject to Angolan income taxation.

Furthermore, a local subsidiary will be able to declare a portion of the interests paid on loans to a parent company as tax deductible costs, but the branches will not, as this regime is only relevant to shareholder loans, and is not applicable to branches.

5.3 Capital Gains of Non-residents

Subject to the rules of subjective application, capital gains on the sale of shares held directly by a non-resident entity in a local entity shall only apply if the shares are sold to a local entity. Otherwise, it will be a challenge to apply and enforce the capital

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gains taxation as the entity that will transfer the shares and the entity that will acquire the shares are not resident in Angola, and capital gains taxation on the sale of shares operates by way of withholding. Nevertheless, the capital gains generated by the transfer of shares (the positive balance between the price of sale and the price of acquisition) would be subject to 10% withholding insofar as it is related to a direct transfer of shares in a local entity.

Only the tax treaty with Portugal states that the taxation on the sale of shares may be taxed in Angola and the amount of tax settled shall be deducted from the taxable income of the foreign shareholder based in Portugal. The UAE treaty does not make any reference to the capital gains generated by the sale of shares.

5.4 Change of Control Provisions

The Angolan tax system does not set forth change of control provisions, other than those that apply to the direct transfer of shares.

5.5 Formulas Used to Determine Income of Foreign-owned Local Affiliates

In principle, there are no specific formulas to determine the income of foreign-owned local affiliates that provide goods or services to local entities, as in such scenarios the sale of goods corresponds to an importation operation subject to Angolan taxation and the supply of goods is subject to a withholding of 6.5% to be settled by the local entity before the tax authorities.

This being said, in an investigation, tax authorities may scrutinise the prices offered by the non-resident entity based on an industry comparison (if possible) or such other appropriate formulas to determine whether the cost of the goods or the services is in line with effective costs practised as a standard practice. Ultimately, the taxable income of the local entity may be subject to adjustments by the tax authorities if the prices practised are higher than standard practice.

5.6 Deductions for Payments by Local Affiliates

Angolan Industrial Income Tax sets forth a provisional regime for the payment of Industrial Income tax, whereby the provision of services is subject to a 6.5% withholding of anticipated payment of income tax that will be deducted in the annual tax return to the aggregate amount of tax due. However, this 6.5% withholding will not apply to related entities if the Angolan taxpayer is in a position to evidence that the transaction constitutes a mere recharge/reimbursement of costs. Only the overheads/margins that may be included to support the management and administrative will be subject to the 6.5% withholding.

5.7 Constraints on Related-Party Borrowing

From a tax perspective, there is no specific tax constraint on related party borrowing, the interest on which is subject to Capital Gains Tax at a 10% withholding tax rate. Interest amounts are then acceptable as tax-deductible costs, subject to the comments under **2.5 Imposed Limits on Deduction of Interest**.

However, under any investigation process, tax authorities may at all times proceed with taxable income corrections and non-acceptance of interest amounts as tax-deductible costs if there is evidence that the loan arrangements are intended to achieve tax avoidance, notably as a way of avoiding taxation on dividends.

Nevertheless, loan arrangements with non-resident entities (irrespective of whether they are a shareholder or not) face significant foreign exchange control restrictions, notably prior licensing requirements. This means that loan agreements with non-resident entities are typically not used for the purposes of funding local entities.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

The Industrial Income Tax Code sets forth the principle under which entities with a head office and effective direction/management in the Angolan territory are subject to Industrial Income Tax for the aggregate amount of their revenue/profits, earned either in the country or abroad. As a result, there is no difference between the taxation of foreign income that is subject to Industrial Income Tax and in-country income, provided that such profits are duly invoiced and recorded in the accounting records and balance sheets of the local entities.

6.2 Non-deductible Local Expenses

Foreign income generated by local entities is not exempt from Industrial Income Tax, and will be considered for purposes of the assessment of taxable income in Angola. Regarding the deductibility of local expenses, although not related to the location of the income, there are certain rules related to the acceptance of expenses as tax-deductible costs.

The following costs are not acceptable for purposes of Industrial Income Tax:

- Industrial Tax, Real Estate Property Tax over rent premises, Personal Income Tax, and IAC;
- Social Security contributions;
- penalties and fines related to infractions;
- indemnities paid over insured events;
- conservation and repair costs for immovable property;

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- taxable income corrections from previous years; and
- life and health insurance, which is not granted to the majority of the workforce.

Further undocumented costs and confidential costs are also not accepted as tax-deductible costs, and are subject to autonomous taxation at a rate between 2% and 50%, and will accrue in the corresponding percentage to the taxable income.

6.3 Taxation on Dividends from Foreign Subsidiaries

There is no difference between the taxation of dividends paid to local shareholders from foreign or local subsidiaries. Investment Income Tax on dividends will apply if the income is either paid or earned by an entity with a head office or effective direction/management in the Angolan territory. As a result, the payment of dividends is subject to a 10% rate of Investment Income Tax. If dividends are related to shares admitted to negotiation in a regulated market, the tax rate is reduced to 5%.

Dividends paid to an Angolan entity by its foreign foreign subsidiary are subject to a 10% Investment Income Tax. Tax must be reported and assessed directly by the local entity (not subject to withholding mechanism). Dividends subject to Investment Income Tax are not subject to Industrial Tax (the local entity may fully deduct the amount of the dividends received as there is no differentiation between dividends originated from a foreign subsidiary and dividends originated from a local subsidiary).

6.4 Use of Intangibles

There are no specific provisions for the taxation of intangibles allocated by local entities to non-resident subsidiaries. Typically, the use of intangibles is inverted in terms whereby the non-resident entities allocate the intangibles to the local entities in Angola.

However, Industrial Income Tax clearly sets forth that revenue generated from IP rights or other similar revenue shall qualify as profit to be allocated to the taxable income, as well as scientific or technical services.

This means that companies are free to allow the use of intangible property within the group, subject to general transfer pricing principles and IP rights taxation. Tax authorities may require an examination and subsequently challenge and correct taxable income that includes intangibles if no payments are received and/or paid for the use of intangibles.

6.5 Taxation of Income of Non-local Subsidiaries Under CFC-Type Rules

Angola has no specific “controlled foreign company” rules. As a result, the income of non-resident subsidiaries incorporated in special jurisdictions with a more favourable tax system is not taxed in Angola. The only applicable taxation will be on dividends that may be distributed to the local entity.

Non-resident branches of local corporations may fall under the worldwide income general principle, under which Angolan entities may be taxed on the income earned abroad, as a branch is not a standalone entity.

6.6 Rules Related to the Substance of Non-local Affiliates

From a tax perspective, there are no specific provisions related to the substance and effective existence of non-resident affiliates of Angolan entities, provided that the costs that are intended to be recorded are duly supported and qualify as tax-deductible costs (ie, costs that are imperative to pursue activities in Angola). This being said, under tax investigation processes, tax authorities may require additional information/documentation related to the corporate substance of the non-resident affiliate, as well as evidence of the effective supply of goods or provision of services, especially if such goods and/or services would not be available within the Angolan territory at a competitive price. However, this topic has a more significant impact on foreign exchange control regulations in order to prevent the use of foreign currency to settle payments outside Angola related to non-performed services.

6.7 Taxation on Gain on the Sale of Shares in Non-local Affiliates

There is no difference between the taxation of the sale of shares in non-local affiliates and local affiliates, provided that the income will be earned by the Angolan entity/individual in its capacity as transferor. As a result, the positive balance between capital gains (sale price) and capital losses (price of original acquisition/subscription) resulting from the acquisition or sale of shares is subject to a 10% withholding of Investment Income Tax, provided that such transfer is not included in the ordinary activities of the taxpayer (local entity) and thus is not subject to Industrial Income Tax. If the operation is executed under a regulated market, only 50% of the gain on the sale of shares will be deemed to be subject to the 10% withholding of Investment Income Tax.

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7. Anti-avoidance

7.1 Overarching Anti-avoidance Provisions

There are no general anti-avoidance or anti-abuse rules in Angola. However, any action, arrangement or agreement that is put in place to obtain an unlawful advantage that generates the non-payment of taxes is deemed to be punishable as a tax transgression.

Furthermore, the Angolan tax system also sets forth special clauses that may be deemed to be anti-avoidance provisions – notably, the transfer pricing principle of arm's length transactions, and the limitation of interest deductibility as a cost. However, to date there are no provisions related to payments to non-resident entities of low tax rate jurisdictions.

8. Other

8.1 Regular Routine Audit Cycle

The type of companies outlined below are subject to mandatory audits by qualified accountants registered at the relevant Professional Bar of Registered Accountants in Angola:

- state-owned companies;
- joint-stock companies (ie, *Sociedades Anónimas*);
- limited liability companies whose structure includes an Audit Board (in Portuguese “*Conselho Fiscal*”);
- limited liability companies in respect of which the sum of the gross assets and the aggregate revenues equals or exceeds the amount of AOA6 million; please note that this amount is updated automatically every calendar year in accordance with a formula indexed to the USD/AOA exchange rate;
- companies incorporated under investment projects for the purposes of licensing the repatriation of dividends;
- companies operating under a special tax and foreign exchange legal framework – notably, petroleum and mining companies; and
- companies that are subject to the obligation of preparing audit accounts by special provisions applicable to the relevant sector of activity.

Furthermore, the following penalties would be applicable for a material breach of the obligation set forth above:

- immediate examination of the relevant accounts by the authorities by way of inspection;
- termination of any tax incentives granted to the relevant company under the scope of an investment project (or such other legal framework); or
- suspension of the payment of dividend repatriation or other revenues due and payable to the non-resident shareholder.

9. BEPS

9.1 Recommended Changes

Although Angola has been invited and included as a member of the OECD/G20 Inclusive Framework on BEPS, Angola is not an OECD Member State and has not implemented any specific changes related to Base Erosion and Profit Shifting (BEPS).

9.2 Government Attitudes

The Angolan tax system currently focuses on the enactment and implementation of Value-Added Tax and Excise Duty Tax, which have been requested notably for purposes of increasing the sophistication of the Angolan tax system. For that purpose, tax authorities have also been implementing legislation related to the optimisation of the exchange of communication between taxpayers and the authorities, notably by way of electronic communication systems and electronic software for invoicing procedures. This means that the tax system seems to be gradually moving towards a more sophisticated system, in line with other more developed African jurisdictions. However, it would still take a significant change in the tax system towards the BEPS recommended changes.

9.3 Profile of International Tax

As mentioned above, the tax system has been gradually implementing new taxes that are more in line with international tax, notably the Value-Added Tax and Excise Duty Tax, and will be increasingly directed to absorb international tax practices and guides. However, it seems that the degree of tax sophistication required in terms of procedures, the preparation of authorities and the profile of the taxpayers for the implementation of BEPS recommendations will take significant time, effort and use of resources to be achieved, and may not yet be a priority.

9.4 Competitive Tax Policy Objective

The current government focus is on attracting foreign investment and maintaining significant tax revenues using the current tax framework.

In this context, investment appeals are made by way of tax incentives/reductions upon the approval of investment projects, including benefits on Industrial Income Tax, IAC on dividends, Real Estate Property Tax on the acquisition of immovable property and Stamp Duty on receipts (which in the meantime has been revoked by VAT). BEPS measures and recommended changes are intended to terminate tax avoidance strategies that take advantage of “gaps and mismatches” in tax regulations to avoid paying tax. These objectives may still be achieved, along with a competitive tax system that intends to attract foreign investment and collect significant tax revenues, provided that incentives and competitive tax policies are subject to time limi-

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tations, the verification of effective economic and tax benefits for the country, and regular and strict scrutiny.

9.5 Features of the Competitive Tax System

In the short term, the tax incentives granted to attract foreign investment may reduce tax revenues while investors are starting operations in country. However, the risk of generating low amounts of tax revenue for newly incorporated businesses with foreign investors is duly mitigated by the limited duration of the incentives, which are coincident with the commencement of activities that companies do not start immediately to raise taxable profits.

9.6 Proposals for Dealing with Hybrid Instruments

To date, Angola has not implemented any rules related to hybrid instruments, and there is no expectation that such rules will be implemented in the near future. Angola is still implementing the VAT reform along with the Excise Duty Tax and such other ancillary mechanisms to provide further sophistication to the tax system, notably via the electronic transmission of data and electronic invoicing systems.

Hybrid instruments are not yet used on a familiar and ordinary basis, due especially to foreign exchange control regulations in Angola, and thus the tax system has not yet considered the creation of rules for hybrid instruments, which are treated as capital-related operations and are potentially subject to capital gains taxation (IAC).

9.7 Territorial Tax Regime

The Angolan tax system is mostly a territorial tax system, although local entities are also taxed on their worldwide income. Furthermore, the limits to interest deductibility relate to the average annual interest rate established by the Angolan Central Bank (BNA). In light of this, foreign investors are typically not interested in the deductibility of interest as a significant criterion to invest in Angola.

9.8 CFC Proposals

As mentioned above, Angola is not an OECD Member State and has not implemented any specific changes related to Base Erosion and Profit Shifting (BEPS) or CFC. The Angolan tax system is still a territorial tax regime in terms that there is a need to link taxable income to the territory.

The challenges raised by non-resident subsidiaries or affiliates incorporated in low tax rate jurisdictions have been handled mostly from a foreign exchange control standpoint in order to prevent the process of payments outside Angola to non-resident entities that are not effectively providing goods and services to Angolan entities.

As a result, the government has created and enforced the special contribution regime by applying a rate of 10% over all payments of services to be processed outside Angola.

Authorities and commercial banks have also implemented regulations on payments processed to trading entities, which may only be settled after the verification of specific substance requirements related to such non-resident trading entities.

9.9 Anti-avoidance Rules

The existing double taxation treaties include the limitation of benefit or anti-avoidance rules in terms that any existing benefits included in the relevant treaty will not apply if there is relevant and concrete evidence that the underlying transactions have been implemented for purposes of obtaining such advantages, notably if the ultimate beneficiaries of the advantages are residents in third party countries.

However, considering that the existing tax treaties are with Portugal and the UAE only, the extension of the limitation of benefits is not expected to be significant until more double taxation treaties are enacted and approved.

9.10 Transfer Pricing Changes

Angola has not yet enacted specific transfer pricing rules other than those mentioned in **4.4 Transfer Pricing Issues**. As a result, the tax authorities' scrutiny is still significantly focused on inspection actions covering all corporate taxes that may be applicable to corporate entities in the previous five years.

The taxation of industrial property rights, including patents and trade marks, falls under the definition of royalties, which are subject to 10% withholding of IAC to be settled by the payer entity (the licensee) if it is a local entity. However, the most challenging topic related to IP is not from a taxation standpoint, but rather from a foreign exchange control perspective, as IP licensing agreements must obtain prior approval from foreign exchange control authorities – prior to any payment and subsequent settlement of taxes. Considering that the payment of royalties is ranked as a lower-priority payment, IP licensing agreements and subsequent taxation is not considered to be a relevant topic on transfer pricing, especially if the IP holder/owner is a non-resident entity.

9.11 Transparency and Country-by-country Reporting

Angola has not yet been part of any arrangements for the exchange of country-by-country reports, as the Angolan tax system is not yet prepared for the internal or international exchange of information and reports.

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9.12 Taxation of Digital Economy Businesses

Angola has not yet adopted any changes to the tax system that directly address digital economy businesses, as it is still a jurisdiction in which the foreign exchange control regulations have a significant impact on doing business in Angola. As a result, the digital economy has not yet been explored in Angola and thus has not been subject to any specific tax regime and/or tax changes.

9.13 Digital Taxation

Although Angola is a member of the OECD/G20 Inclusive Framework on BEPS, it has not yet started to implement specific changes related to Base Erosion and Profit Shifting (BEPS), including in respect of digital taxation. Angola is still very engaged in the implementation of consumption-related taxes, notably VAT as a result of the Official Development and Monetary Assistance granted by the IMF.

9.14 Taxation of Offshore IP

With reference to **9.10 Transfer Pricing Changes**, the taxation of industrial property rights, including patents and trade marks, falls under the definition of royalties, which are subject to 10% withholding of IAC to be settled by the payer entity (the licensee) if it is a local entity. The tax rate will apply to the

agreed amount of royalties (typically a percentage of revenue) that will be supported by the relevant invoice issued by the IP holder/owner. The Angolan tax authorities do not differentiate the applicable taxation if the IP holder/owner is based in a jurisdiction with a more favourable tax system from any other type of entities based worldwide, except for countries that benefit from a double tax treaty in terms of which the maximum applicable tax rate is 8%.

IP taxation through royalties will not be subject to 8% taxation on royalties under the relevant tax treaties if the IP right is deployed to a PE of the foreign entity (from Portugal or UAE) based in Angola, notably a branch, but will rather be subject to taxation on income.

9.15 Other General Comments

Angola is not a member State of OECD, so any intended implementation of BEPS competitive tax policy proposed measures will be subject to significant discussions and take significant time to be effectively put in place. The first topic to address would be whether or not to become an official member of OECD, which is not expected to occur, although Angola has been trying to implement the recommendations of OECD reports on the Angolan economy.

ANGOLA LAW AND PRACTICE

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MC Jurist Advogados Attorneys-at-Law was established in early 2009 in Angola, with a liaison office in Lisbon. It is a boutique type corporate and investment law firm based in Luanda and specialises in providing legal and tax consultancy assistance to corporate clients carrying out business and/or holding investments in the Republic of Angola. MC JURIST currently

has 20 fee earners in both Angola and Portugal, with significant experience in industry sectors such as petroleum services, private equity, banking and insurance. The firm focuses mainly on corporate and investment, tax and customs, employment and HR assistance.

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Nuno de Miranda Catanas is the firm's founding partner and heads the Corporate Transactions and Investment Projects group. He has been heavily involved in international transactions for more than 20 years, handling corporate and commercial issues. He practised for five years in Macao

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