



ANGOLAN EXTRAORDINARY TAX AND EXCHANGE AMNESTY RULES

According to the news published in various media sources, a draft law that establishes a framework for an extraordinary tax and exchange regularisation programme (Regime Extraordinário de Regularização Tributária e Cambial – referred to here by its Portuguese initials, “RERTC”) is awaiting approval by the Angolan authorities. In the meantime, the draft law has been circulated by various media outlets. This is the version of the draft law we will analyse below, noting that this information will have to be confirmed in light of the final text of the law and the regulations established under it, after they are published.

The essential elements of the RERTC are a tax and exchange control amnesty, as well as a criminal amnesty. The amnesties cover unlawful acts relating to assets and the corresponding undeclared income that were kept outside Angola as at 31 December 2017.

According to the draft law, assets are: (i) bank deposits above USD 100,000 (or equivalent in another foreign currency) (ii) depository receipts (iii) securities in general and (iv) other financial instruments, including life insurance policies linked to investment funds or to capitalisation operations.

This extraordinary programme is open to individuals with Angolan citizenship who are resident in Angola, and to companies and other legal entities with their domicile, seat, centre of effective management or a permanent establishment in Angola, that are holders of the above assets and of the corresponding income held abroad.

The draft law does not make it clear whether the assets and income may also be held indirectly. In other words, it is not clear whether undeclared assets held outside Angola whose beneficial owner - but not the legal holder - falls within one of the categories of individuals or entities referred to above, can qualify for the RERTC programme. Under most tax amnesty programmes implemented in countries that abide by the new automatic information exchange standards imposed by the FATCA and CRS, the broader interpretation has been adopted.

The period to sign up for the RERTC is 180 days from the date on which the legislation is published.

In terms of procedure, any individual or company that wishes to sign up for the RERTC must: (i) File a tax regularisation declaration, using the official form to be approved by the Minister of Finance, with Banco Nacional de Angola or with the commercial bank in Angola handling the operation. This declaration must be accompanied by any applicable documentation that proves ownership of the assets. This documentation should be provided by the foreign financial institution where the assets are registered or deposited (ii) Repatriate the assets held abroad at 31 December 2017 to a bank account opened in their name in Angola, by the deadline established for signing up to the programme.

However, the draft law provides for a waiver from the obligation to repatriate the assets whenever: (i) for proven legal or administrative reasons, or (ii) by court order, transferring the assets from the jurisdiction where they are located to Angola is a legal impossibility. The draft law does not make it clear what should be understood by «administrative reasons. Based on the known text it appears that such reasons may not refer to difficulties of an operational nature or to limitations on the transferability or liquidation of the assets inherent to their characteristics. In fact, in the latter case, the draft law maintains the obligation to repatriate, even while allowing this to take place up to the end of March 20 (in this case the general period of 180 days for signing up to the programme does not apply).

It is not necessary to pay any tax or rate to benefit from the RERTC.

Additionally, anyone who signs up to the RERTC: (i) benefits from a waiver of the tax and exchange obligations they did not comply with in relation to the assets and corresponding income repatriated (except in the cases the repatriation waiver applies) relating to the taxation periods that had ended by 31 December 2017 (ii) benefits from the exclusion of criminal liability for any tax and exchange offences relating to these assets, (iii) is not obliged to declare the origin of such assets, and (iv) benefits from the legal confidentiality of the tax regularisation declaration, whose information, in particular, may not be used as a relevant indication or item of evidence in any criminal or administrative tax proceedings against the taxpayer/offender.

Nevertheless, the above benefits do not apply in cases where, on the date of filing the tax regularisation declaration, a tax inspection or other tax procedure, or a criminal or administrative proceeding has already started. This rule applies provided that, on the filing date, (i) the interested party is already legally aware of it, and (ii) the procedure or proceeding in question targets the assets to be regularised.

The failure to file the tax regularisation declaration, and any omissions or inaccuracies in it, entail, in relation to the assets not declared, omitted or about which the information is inaccurate: (i) the application of the final of up to 50% of the amount of tax, if any, that would be due on the income corresponding to these assets, and (ii) non-exclusion from any criminal, tax and administrative offence liability that applies to the case.

Even though draft law does not expressly say so, as this is an amnesty, in order to benefit from the RERTC programme, the assets held abroad must be assets that should have been declared and taxed in Angola. Put differently, they must result from or be related to unlawful acts or omissions provided for and punishable by the Angolan legal system.

For this reason, while the final text of the RERTC is still not known, and before taking any decision on whether to sign up for the programme, those holding any assets abroad (whether directly or indirectly) that were transferred from Angola, should (i) review the operations underlying these transfers and (ii) confirm the tax regime applicable in Angola to the income generated by these assets, in order to ensure compliance with Angolan tax and exchange control legislation. Furthermore, because of its criminal nature, before signing up for any amnesty programme like the RERTC, we recommend to carry out a case-by-case analysis with the help of qualified professionals.

Finally, Angola has entered into judicial cooperation agreements with a number of foreign countries, including Portugal. These agreements make it possible for the Angolan criminal authorities to obtain the assistance of such States criminal authorities (e.g. to collect evidence or seize assets) within a criminal proceeding taking place in Angola.

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