

ANGOLAN TAX REFORM – THE CONSUMPTION TAX REGULATION

As part of Angola's on-going tax reform process, Presidential Legislative Decree 3-A/14 of 21 October amends and republishes the Consumption Tax Regulation (*Regulamento do Imposto do Consumo - "NRIC"*). Presidential Legislative Decree 3-A/14 thus repeals Decree 41/99 of 10 December, including the laws that amended or developed it: Decree 29/02, of 21 May, Presidential Legislative Decree 7/11 of 30 December and, more recently, Executive Decree 333/13 of 8 October.

As a consequence, with the entry into force of the NRIC, Consumption Tax is now regulated in a single law. A number of amendments have been introduced that help clarify some issues surrounding the application of the tax. The NRIC also changes the rates for certain services - a comparison of the rates in the production and importation of goods will be addressed in a separate Newsletter. Finally, the NRIC introduces new rules, which we hope to see clarified, on subjecting oil sector operators to this tax.

■ WHAT THE TAX IS CHARGED ON

In general, there have been no fundamental changes to what the tax is charged on. This contrasts with what happened in 2011, when there was a significant increase in the types of services consumption of which, from that time, became subject to this tax.

However, it is important to note the changes introduced in this respect. Alongside telecommunications services, there is now an express reference to electronic communication services, in both cases, *regardless of their nature*. The reference to tickets for cultural, sports and artistic events is now included in the concept of recreation rather than artistic events. On this face of it, this has been done to broaden the scope of application of the tax to entertainment in general, which happens to be an even greater area. Further in relation to the list of services subject to the tax, the (very broad and indefinite) reference to "*works done on movable tangible property*", which implemented the provision on leasing of machinery, is eliminated. (incio of the destaque) The NRIC also eliminates the previous paragraph I) on *port and airport services and consignment services*, which are no longer subject to Consumption Tax.

Finally on the question of services subject to the tax, there is a new and significant change to the application of this tax. This time it relates to vehicle rentals where the reference to *sea and air transport of passengers, cargo and containers* and the *storage* related to this transport is eliminated as long as it takes place in Angola. In fact, under the letter of the law, Consumption Tax now only applies to *vehicle rentals*, in other words to the rental of land vehicles. This necessarily excludes the rental of air and sea transport. Therefore, this change amounts to a reduction in the scope of the tax.

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■ WHO THE TAX APPLIES TO

The NRIC clarifies a point that was not always historically present in the interpretation of this tax, which relates to the distinction between the concept of the taxable person and the entity on which the burden of the tax falls, which are not always the same, particularly in the case of services. The NRIC makes it clear that the burden of the tax falls on those who acquire the goods or services subject to Consumption Tax, while the status of taxable person in the case of services continues to apply to the providers, who are under the obligation to assess and pay the tax to the tax authorities fiscal.

Certain services, including private security, canteen, dormitory, real estate, vehicle rental and consulting services, among others, are exempt from Consumption Tax when the acquirer is an oil investment company.

■ EXEMPTIONS: OIL OPERATIONS

One of the main changes introduced by the NRIC relates to the exemption applicable to oil operations, which was previously contained in Executive Decree 333/13 of 8 October, now repealed by the NRIC as we have mentioned.

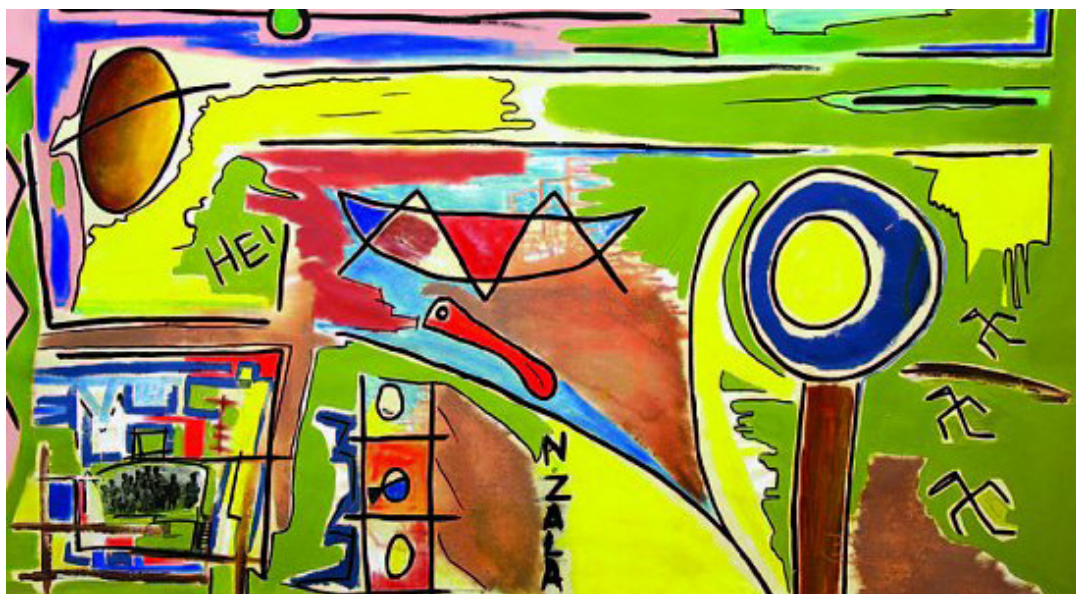
The NRIC establishes that certain services, including private security, canteen, dormitory, real estate, vehicle rental and consulting services, among others, are exempt from Consumption Tax when the acquirer is an oil investment company and certain conditions are met. Specifically in terms of conditions, the services must relate to the areas of the concession in the research or development phase.

It is important to note the the exemption procedure has been changed, from the procedure that existed under Decree Executive 333/13. The NRIC provides that, the oil investor is under an obligation to obtain and present in advance an authenticated copy of a Certificate of Exemption issued by the National Directorate of Taxes, as a condition precedent to not charging the tax in the invoice and as long as the invoice meets the formal requirements under the law and mentions the exemption as prescribed by law.

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Nevertheless, the new law also provides for the possibility for the exemption from Consumption Tax to apply to the services mentioned above when it is demonstrated that the burden of the Consumption Tax causes imbalances that make contracts in the production phase economically unviable. This is particularly so in the case of marginal fields and applies upon Joint Order of the Minister of Finance and the Minister of Oil, after the issuance of a favourable opinion of the National Concessionaire until the previous imbalance is restored.

If the exemption does not apply, the oil investor will be under an obligation to withhold the tax in order to be paid to the tax authorities. Failing this, the investor will not be able to deduct the cost for the purposes of its income tax.



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LINO DAMIÃO - ANGOLA
(detail)

Na Boca do Povo II, 2012
Pasta para modelagem, impressão
serigráfica, acrílico e colagem sobre tela
113 x 130 cm
From the collection of
the PLMJ Foundation

■ **ENCOURAGING NATIONAL PRODUCTION**

As a further point on exemptions, the NRIC maintains the rule introduced in 2011 on the definition of the *principle of equivalency of exemptions*, according to which any tax benefits or advantages granted or to be granted for Consumption Tax on the importation of certain goods must also apply to the production of these same goods in Angola.

■ **DETERMINATION OF THE TAXABLE AMOUNT**

For goods produced in Angola, for the purposes of determining the tax base, the taxable amount subject to the tax is the cost price and the reference to the “warehouse door” cost price has been eliminated. Clarification of the definition of the concept of cost price has also been provided. It is made clear that this concept includes costs incurred in the production of the goods, including raw materials and incorporated products, labour, technology and other goods or services necessary to production. However, the concept excludes the costs of distribution, transport, insurance or others arising after warehousing.

The wording of the rule on official determination of the tax currently includes an express reference to indirect methods and has been subject to extensive amendment. The wording is now more concise but its coverage is broader. The reference to indirect methods does not include a definition of its scope beyond the previously established possibility of recourse to accounting and tax information relating to the taxable person under the General Tax Code.

A new rule has been introduced providing that the tax is due and becomes payable in relation to services at the time of actual payment of the invoice or equivalent document. Previously, it was payable as from its assessment (issue of the invoice). A final point is that the NRIC maintains the rule of inversion of the obligation to assess and pay the tax applicable in cases in which the service provider is not resident in Angola but the acquirer has its residence, domicile, registered office of effective centre of management in Angola. In this case, the burden of the tax and the obligation to assess and pay it to the tax authorities falls on the resident acquirer.

■ **RATES**

There are no substantial changes to the tax rates, which apply to both the alterations production of goods in Angola and their importation, without prejudice to the exemption rules that apply in both these cases. This means the general Consumption Tax rate of 10% is maintained.

However, the rate has been reduced in the case of some services: a reduction from 10% to 5% for services of (i) leasing of machinery or other equipment; (ii) leasing of areas intended for conferences, seminars, exhibitions positions, advertising or other events and (iii) tourism and travel services provided by travel agencies of equivalent tourism operators.

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