INTERNATIONAL TAX PLANNING
INBOUND INVESTMENTS INTO WEST AFRICA
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Foreword

West Africa has in the past few years seen much stronger interest from foreign investors, attracted by its rich mineral deposits, its demand for telecommunications and banking services, and by the general push in the various countries towards privatisation, the strengthening of institutions, deregulation and trade liberalisation. Industries that appear to hold the most promise for investors include:

- Oil and gas extraction and refining equipment industries
- Mining
- Agro-industrial machinery and chemical
- Food processing equipment and technology
- Telecommunications
- Power and utilities
- Transportation
- Construction and infrastructure building
- Generic pharmaceutical products
- Industrial equipment

As would be the case elsewhere, foreign investors are primarily concerned about macroeconomic and political stability, transparency, economies of scale, operating costs, infrastructure, human resource development and the regulatory environment. Taxation on its own is not often a major issue, but it does feed into or affect many of these primary concerns. This summary guide provides an overview of the major tax issues that the foreign investor would have to contend with when investing in the region but, as the region is wide and complex, it does not attempt to provide a one size fits all perspective. It sets out summaries of the tax regimes of a representative sample of key tax jurisdictions and gives a broad overview of tax issues which investors should be appraised of, and then plan for, as part of their decision making process.

Sample West African tax Regimes

The sample tax regimes covered are those of 5 countries; 3 Anglophone countries (Nigeria, Ghana and Gambia) and 2 Francophone countries (Senegal and Cote d'Ivoire). For each country, the key cross border tax issues from the investors perspective (taxable presence, corporate structuring options, tax efficient financing of the investments, tax incentives, tax efficient repatriation of cash and tax efficient exits) are considered, and the future tax environment are previewed by looking at the tax policy directions and trends.

Key tax issues for Investors

As with investing in other places, prospective investors in West Africa would mainly be seeking clarity and certainty on the applicable tax rules, and would want to ensure that their tax liability is managed within comfortable zones.

Overview

Much of the economy in West Africa is informal and consequently the respective regimes are difficult to enforce within that economy. On the other hand the need to increase government revenues to fund the development programs is immense. Many of the countries in West Africa have comprehensive income tax rules, but the governments are becoming more attracted to Value Added Tax as a fairer and easier way to collect taxes, although much of the administrative support infrastructure still needs strengthening. More pressure is therefore increasingly

being imposed on the formal economy, particularly on the larger companies and foreign investments, to meet government revenue needs. It is therefore important for foreign investors to adequately ensure that their tax affairs are in order.

The main body of the tax laws of many of the countries date back to the early post colonial days of the respective countries and would now require comprehensive overhaul. The governments are conscious of the need to bring the rules up to date. Whilst it is likely that the tax regimes would continuously evolve in the medium term, investors should take the following general observations into consideration.

1. It is important to first check on the type of entity that may be set up in the country, including whether full foreign participation would be permissible or whether local partners are required. In some cases, such as Nigeria, branches of foreign companies are not allowed to carry on commercial activities. The type of entity or corporate structure could also impact the tax costs (e.g. in some countries the tax rates applicable to a local corporate entity may be different from those applicable to a branch). Also, in some countries, the disposal by a foreign investor of its shares in the local entities could be subject to tax in the countries. In such cases, if equity dilution is expected, it could make more sense for business to be set up as a branch (where possible) instead of being locally incorporated.

2. In recent years, the trend has been to reduce corporate income tax rates and introduce/increase consumption taxes such as VAT and sales tax, which are perceived to be an easier and fairer way to collect taxes. It is therefore likely that VAT rates would increase and the base widen. Investors should consider putting in place systems to adequately handle VAT compliance.

3. There are numerous tax incentives; the rules for many of which are unclear and the approval and enforcement processes not often transparent. Many of the incentives are geared towards new businesses, investments in economically deprived areas, particular industries such as agriculture, capital intensive projects and exports. Free zones are also becoming popular. It is doubtful whether many of these incentives have achieved the desired objective, and there has been growing pressure to reduce or eliminate them. The reduction or eliminate these incentives is therefore likely in the near future.

4. Another health warning on the incentives is that in a few cases, the tax “exemptions” effectively become deferrals, because tax is imposed once the dividends are declared out of the exempt profits. This is the case in Nigeria and Cote D’Ivoire.

5. The respective governments are clearly geared to increasing foreign investments and cross border trading, but there is very little or few fiscal reliefs to encourage intra regional trade and relatively few double tax treaty agreements between the respective countries. It is expected that more of these would be introduced in the near future.

6. When considering the tax rules, it would be important to bear in mind that the practice may not always follow the clear wording of the rules and that the dispute resolution process could sometimes be unsatisfactory. Therefore, it would be critical to always check to understand how the rules are actually being applied in practice, and factor this into the tax planning.

Cross border tax planning opportunities

The focus of tax planning for investors will be to minimise the local tax charges, within the permissible boundaries, and mitigate residual taxes on income outflows to the investors. The objective would therefore be to enhance the

value of the projects by maximising post tax cash flows within the acceptable boundaries. There are some more obvious examples of cross border tax planning possibilities within the region.

1. Investors should first consider whether they could do business with the country rather than in the country. If it is unnecessary to create a formal business presence in the country, it may be more tax efficient (depending on the base country) to simply do business from outside the country (i.e. offshore contracts or supplies) in a tax efficient location. The reverse could also be the case i.e. doing business in the country may be more tax beneficial.

2. Locate the holding company within a suitable jurisdiction. Suitable jurisdictions would include those that have favourable tax regimes for foreign investments (such as the Netherlands and Luxembourg which have good network of tax treaties and exempt tax on foreign dividends if certain conditions are met, and the so called tax haven countries where taxes are not imposed or are imposed at minimal rates).

3. As none of the West African countries allows tax consolidation for groups of companies, the establishment of wholly owned groups of companies for various group businesses is less tax efficient than simply having a single company, albeit with divisions for the respective businesses. Transactions between group companies result in tax leakages (including VAT and withholding taxes).

4. Dividends are not deductible in all the countries whilst interest is generally deductible. It would be sensible to ensure that the local subsidiaries are geared within the acceptable limits. This would consequently reduce the local income taxes. The tax savings could be further enhanced by locating the lending entity in a favourable tax jurisdiction.

5. Where there are favourable double tax treaties, then the corporate and operating structures could be optimised by investing or carrying out activities through companies based in the relevant treaty country. A favourable location could reduce withholding taxes, avoid tax on divestments and generally minimise double taxation for the company and the employees.

6. The manner in which transactions are structured could have significant impact on the tax consequences. For example if employees are to be seconded to the local company, it may be more efficient for the staff to be assigned to and employed by the local company, even if their payrolls were managed elsewhere, rather than have them employed elsewhere and then have the local company pay service fees (which would attract significant withholding taxes plus payroll taxes).

7. Investors may want to make use of tax incentives where available; but it would be important to put corporate structures in place that would avoid residual taxes in the home country (on repatriation of the income) or avoid tax being clawed back under the rules of the investee country when distributed.

8. Tax efficient corporate structures may still be feasible even after the business has long been operating. In many of the West African countries, internal corporate reorganisations and restructuring can be effected free of tax.

Trends

As would be seen from the summaries on the 5 sample countries, and the above overview, the general trend has been to streamline the tax incentives system, introduce or increase Value Added taxes, reduce direct income taxes, and conclude more double tax treaties. Also the lengthy number of taxes that were prevalent in the past in many countries in the region is being gradually reduced. The main driver for these is the need to encourage of foreign direct investment and to make the tax system simpler, fairer and more transparent.

On the other hand, there is a desperate need to increase government revenues to meet spending commitments. Due mainly to less effective tax administrative systems and the large informal economies, tax collection has been poor in many countries. It is likely therefore that the coming years would see more aggressive enforcement of the tax rules across the board, particularly on companies and foreign investors. Ensuring full compliance, and installing the mechanism to do so, would therefore be important for investors.

1. COTE D'IVOIRE

Corporate tax rates and withholding taxes

There is no specific corporate income tax, but income tax is imposed depending on the nature of the schedule of income. The tax rate on industrial or commercial profits is 27% (reduced in recent years from 40% and then 35%). For companies, a minimum tax calculated at the rate of 0.5% on the previous financial year's turnover, with a minimum of FCFA 2 million (minimum annual tax). Banks, other credit institutions and insurance companies are, however, subject to a 0.15% rate; petroleum companies, electricity enterprises and water enterprises are subject to a 0.1% rate. The minimum amount of flat rate tax payable is F.CFA 2 million and the maximum F.CFA 30 million.

The withholding tax on dividends ranges from 10-18% (10% for listed companies, 12% for unlisted companies and 18% on the distribution of profits which had been exempt from tax). Dividends paid by a resident "parent" company are not subject to withholding tax. The withholding tax rate is 6-18% for interest and 2.5% to 27% for royalties.

There is in addition a branch remittance tax at the rate of 12% of 50% of taxable profit (making a final tax charge of 6%). This tax will be payable even if the profits in question are not remitted to headquarters or transferred to the account of the headquarters.

Taxable presence

Tax is levied on a territorial basis. A company registered in Cote d'Ivoire is subject to tax in the country. A company will be regarded as carrying on business in the Ivory Coast on a regular basis if it has an independent establishment in Cote d'Ivoire, if it carries on business through an authorized agent; or if the business activities which it carries on in the Cote d'Ivoire form a complete business cycle.

Setting up

A business may be incorporated (e.g. joint stock companies and limited liability companies) or unincorporated (eg as partnership). Companies and are regarded as domestic if a minimum of 51% of the share capital is owned by individuals or companies resident in Cote d'Ivoire.

Tax incentives

There are various incentives for companies which depend in some sectors on the business sector. The main incentives which are available to companies are:

1. Tax exemption:

Exemption from profits tax may be available for specific periods to new investments in any of the following sectors

(a) agriculture, fishing and stockbreeding;

(b) manufacturing industries;
(c) Mineral exploration and production
(d) culture;
(e) health, education and tourism;
(f) other sectors with the exception of construction and public works, trade, transport and banking and financial services.

The exemptions are granted for 5 years if the investment is in the Abidjan area and for 8 years in the rest of the country, with the last 2 years being partial exemptions (50% in the penultimate year and 25% in the last year).

For new investments (including new activities and development activities) in all other sectors, with the exception of the construction and public works sectors and banking and financial services, which exceed F.CFA 500 million the applicable customs duty would be a flat 5% (nil if the investment exceeds F.CFA 2 billion) . These investments are also exempt from profits tax at the exploitation stage. In addition, equipment and material including, commercial vehicles and spare parts, whether imported or acquired on the domestic market, are exempt from VAT. The exemption is given on approval by the tax authorities and is similarly available for 5 or 8 years (with reduced rates in the last 2 years).

2. Holding or parent companies are able to claim some tax reliefs or exemptions.

(1) Capital gains from the disposal of shares are exempt or taxed a reduced rate of 20% if certain conditions apply. The minimum holding period is 2 years;
(2) Interest payable in respect of sums lent or advances to the company by shareholders over and above their interests in the share capital of the company is deductible; and
(3) Interest payments in respect of loans from foreign financial institutions or payable to shareholders or associates of the company for the financing of the acquisition or subscription of shares in investee companies are subject to a reduced withholding tax rate of 9%, instead of 18%.
(4) Parent companies may deduct 95% of the dividends received from subsidiary companies. Ordinarily, enterprises in receipt of distributed dividends should include 50% of the net amount thereof in their tax return.

The special holding company regime applies to Cote d'Ivoire joint-stock companies and limited liability companies (holding company can be incorporated in the form of a public or private limited company). At least two thirds of its capital should consist of holdings, and it should hold at least 10% of the share capital of each investee company. It must satisfy the following conditions:

(1) The share capital certificates must be registered or be deposited in a registry designated for the purpose by the tax authorities;
(2) The participation must account for at least 10% of the capital of the subsidiary company: the percentage of the participation is calculated at the time of payment of income from the investment to the parent company. However, no minimum percentage is required in respect of a partial allotment arising from qualifying mergers. The minimum percentage is also not required where the cost of holdings exceeds F.CFA 1 billion; and
(3) The shares must have been subscribed at the time of issue, or the company owning the shares must undertake to retain them for at least 2 years.

3. The Government recently commissioned a free trade zone dedicated to biotechnology and new information technologies at Grand-Bassam, 40 km southeast of Abidjan. The zone, known as the Mahatma Gandhi Park, will be built on an area of 600 hectares for an estimated cost of $400 million.

Companies operating in the zone will be exempt from corporate tax for the first five years and could import raw materials or semi-finished goods free of customs duty. Starting from the sixth year, the companies will pay 1 percent corporate tax in addition to a 2.5 percent royalty on turnover.

Indirect taxes

Value added tax (VAT) is levied at the standard rate of 18% on transactions carried out in the country.

Cross border financing

Interest paid to related companies resident outside the country are deductible if the debt to equity ratio does not exceed 1:1. This limit does not apply to holding companies. In addition, the interest rate should not exceed lending rate of the Central Bank of West African States increased by three percentage points.

Interest, financial charges, royalties, and service fees paid by a resident to a person who is neither resident nor established in the country, will only be deductible if it can be demonstrated that expenses were connected with actual transactions and not in excess of what would normally be expected. The deductible amount may also not exceed 5% of the turnover or 20% of the general expenses.

The withholding tax rate on interest is generally 18%. Interest paid by banks in the country is subject to withholding tax of 16.5% for companies and 13.5% for individuals. The withholding tax on interest paid to foreign banks from Cote d'Ivoire borrowers is 9%, if loan is used to finance capital goods and the term of the loan exceeds three years.

Tax on divestments

Capital gains are taxed in the same way as ordinary income. There are a few exemptions.

1. Capital gains realized by non-resident companies from the sale of movable capital (including shares) are exempt from taxation.

2. Capital gains realized on a company merger or on a partial contribution of assets, which result from the allocation of shares, are exempt.

3. Gains from the transfer of fixed assets which are reinvested within 3 years from the end of the tax year in which the gain was realized are exempt. The gain is rolled over (to reduce the tax base cost of the new asset). Shares are regarded as forming part of fixed assets when they have been owned by the transferor for at least 5 years before the date of transfer. Shareholdings are also regarded as fixed assets, if they constitute 30% or more of the capital of another company.

Tax treaties

There are a number of tax treaties including those with Belgium, Canada, France, Germany, Italy, Norway, Switzerland and the UK. The withholding tax rates which are applicable under these treaties are however not materially different from the domestic withholding rates.

Tax planning:

Some tax planning ideas to be considered by a cross border investor would include:

1. Based on current data, it would be more tax advantageous for foreign investors to set up business as branches rather than local subsidiary companies. The branch remittance tax is 6%, whilst the dividend withholding tax is 18%.

2. Where it becomes necessary to set up as subsidiaries (e.g. in the case of joint ventures) it may be beneficial to set them up as holding or parent companies by creating subsidiaries underneath to carry on parts of the business. This should then effectively reduce the aggregate withholding taxes on dividends, and the withholding tax rate on interest payments. Re the latter, the debt to equity ratio would need to be within the 1:1 ratio. In essence

therefore, the joint venture can be tax efficiently funded 50% by debt, and of the 50% balance (equity) 33.3% could be injected into a subsidiary company.

3. Depending on the nature of the business, the investor may take advantage of the numerous tax incentives available. When considering these, however, a key point to note is that distributions from such investments would be subject to withholding tax of 18%.

4. Banks could more efficiently provide medium to long term loans through affiliate outside CIV.

5. The free trade zones (details not yet clear at the time of this article) could provide tax beneficial opportunities for technology companies.

Important to note that where profits are transferred between related parties through pricing, the authorities may adjust taxable income to counteract the transfer.

Future trends

As can be seen the trend has been towards lowering the tax rate, to encourage investments. The likelihood is that this would soon be accompanied by a widening of the tax base and the simplification (and possible reduction) of the current tax incentives schemes.

2. GAMBIA

Corporate tax rates and withholding taxes

The corporate rate of tax is 35% of the profits of audited accounts or 2% of turnover of audited accounts (or 3% of turnover of unaudited accounts) whichever is greater. Capital gains are taxed at the greater of 25% of taxable gains or 10% of sales proceeds. The withholding tax on dividends, interest, royalties and technical service fees is 15%.

Taxable presence

A company is tax resident in Gambia if incorporated in Gambia or controlled and managed in Gambia. Resident companies are generally assessed to tax on all receipts and accruals from The Gambia and on any income brought into or received in The Gambia. Non-resident companies are taxed in the same manner as residents although only on Gambian-source income or turnover.

Setting up

Businesses (including those incorporated in the form of limited liability companies) may be wholly owned by foreigners or jointly owned with participation by local investors.

Tax incentives

(2) Companies within the Free Economic Zones are exempt from corporate income tax for the first 10 years, and are thereafter taxed at a maximum of 6%. The corporate tax rate on tourism activities within the zones is a flat 10 percent, and this rate will be guaranteed over a period of 20 years. The companies are exempt from withholding tax from dividends and other payments during the tax holiday period, are exempt from import

duty, excise duty and sales tax on raw materials, intermediate goods and supplies for manufacturing imported into the zones; and on goods produced within or imported into the zones except those for consumption inside the customs territory. Lastly there is no import duty on capital equipment.

(3) Holders of special investment certificates are exempt from import duties and sales tax on plant, machinery and construction material imported for the investment; and for 5 years from withholding tax and tax on dividends; customs duties and sales tax on approved capital equipment, machinery, appliances, furniture and fittings to be used in establishing the project; and the approved quantity of semi-finished products, spare parts, raw materials, and other supplies to be used in the production process; and turnover tax.

(4) The income of an offshore company is exempt from income tax. An annual licence fee will be payable; USD 300 if authorized capital does not exceed USD 50,000 and all its shares have par value; USD 1,000 if authorized capital exceeds USD 50,000; and USD 350 if authorized capital does not exceed USD 50,000 and some or all of the company's shares have no par value (or the company has no authorized share capital) and all its shares have no par value. An offshore company must have a registered office in The Gambia to which communications and notices may be addressed and every such company must have at least two directors.

Companies may carry on offshore business activities such as offshore banking, insurance and shipping business. A foreign incorporated company may also apply to be re-registered, as incorporated under the Offshore Companies law. Offshore companies may not carry on business with a resident of The Gambia and none of its shares may be held by a resident of The Gambia, and their business must not be carried on in Gambian currency, except for defraying administrative and statutory expenses; it cannot own real property but can rent property for the purpose of its operations or as accommodation for its offices or employees; otherwise it may not hold any real property in The Gambia; offshore companies may not carry on the business of providing registered offices for offshore companies nor carry on trust business (i.e. act as trustee, executor or administrator) in The Gambia; banking and insurance business may only be carried to the extent that this is specifically permitted under special legislation (e.g. the Offshore Banking Act); and an offshore company may carry on shipping activities in The Gambia but only: as the owner of a sea-going vessel registered under the Registration of Shipping Act; or as the holding company of a domestic company which has as its sole or main object the ownership, management, administration or operation of ships.

Indirect taxes

Sales tax is levied on goods manufactured or imported into the Gambia and on certain services at the rate of 10%.

Tax efficient financing

Interest is deductible if the loan is used for the purposes of deriving gross income. The maximum deductible amount for a tax year is restricted through the formula A+ (50%x (B—C)), where A is the interest income derived by the person during the year; B is the person's gross income for the year, other than interest income; and C is the total amount of deductions allowed to the person for the year, other than for interest incurred. Any excess can be carried forward for deduction in subsequent years.

The amount of any interest not deducted in a tax year as a result of subsection (2) shall be carried forward as interest incurred in the following tax year.

Tax losses may be carried forward for up to 6 years.

Tax on divestments

The capital gains tax payable by a company on the disposal of a capital asset is the greater of 25% of the capital gain or 10% of the disposal proceeds.

Tax treaties

Gambia has concluded tax treaties with Norway, Sweden, Switzerland, Taiwan and the UK. The tax treaties with Switzerland and the UK are particularly favourable as regards dividends.

Tax planning

There a number of anti-avoidance measures to take note of:

- If more than 50% of the ownership of a company changes, then any carry forward loss incurred in the tax year before the change would not be deductible in the tax year after the change, unless (a) the entity carries on the same business after the change as it carried on before the change until the loss has been fully deducted and (b) does not, until the loss has been fully deducted, engage in any new business or investment after the change if the principal purpose of the entity or the owners of the entity is to utilise the loss so as to reduce the income tax payable on the income arising from the new business or investment.

- The Commissioner of Taxes can adjust the liability of the taxpayer if an artificial or fictitious transaction or disposition has not been entered into at arm's length, and was carried out for the purpose of avoiding, reducing or postponing tax liability.

Future Trends

Gambia's tax rate is high relative to other West African countries (including neighbours Senegal) and it would be logical to assume that the rate would be reduced in the near future.

3. GHANA

Corporate tax rates and withholding taxes

The general corporate tax rate is 25%. Capital gains are taxed at 5%. Oil mining companies are generally taxed at 50% under a separate statute, the Petroleum Income Tax Law, but special regimes may be negotiated with the government under hydrocarbon contracts.

There is a dividends withholding tax of 8% which is final tax, and the branch profits remittance tax is 10%. The withholding tax on interest is 10%. It is 15% for royalties and management fees and 8% for rent.

Taxable presence

Resident companies (companies incorporated in Ghana or companies which are controlled and managed in Ghana) are taxed on income from business, employment or investment accruing in, derived from, brought into or received in Ghana. Non-residents are, on the other hand, subject to tax on income accrued in or derived from Ghana.

Setting up

Foreign companies may set up Ghanaian subsidiaries and are in general free to create branches in Ghana and to engage agents. The branches have the same obligations to register, keep accounts and file annual returns with the Registrar of Companies. The foreign capital invested should be at least USD 10,000 in the case of a joint venture with a Ghanaian partner, or USD 50,000 in the case of a wholly foreign-owned enterprise, but the foreign investment in a trading enterprise involved only in purchasing and selling of goods wholly or partly owned by a non-Ghanaian, must be at least USD 300,000 and the enterprise must employ at least 10 Ghanaians. Foreigners are excluded from participating in some enterprises, such as market sales, operation of small fleet of taxis, pools betting and the operation of beauty salons.

Tax incentives

(1) Free zone developers and enterprises will be exempt from income tax on profits for the first 10 years from commencement of operations. Thereafter, the income tax rate may not exceed 8%. Shareholders will be exempt from the payment of withholding taxes on dividends arising out of free zone investments. Imports of a free zone developer, sub-contractor or enterprise into a free zone will be exempt from all taxes and duties.
(2) Companies in the hotel industry will be subject to a reduced 22% rate of tax.
(3) Companies engaged in the export of non-traditional goods will be subject to a rate of 8%.
(4) Companies engaged in manufacturing located in regional capitals of Ghana will pay tax at the rate of 75% of the basic rate of company income tax. All other manufacturing companies located elsewhere will pay tax at the rate of 50% of the basic rate of company income tax.
(5) Rural banks and Free Zone enterprises pay nil tax in the first 10 years and 8% thereafter.
(6) Income accruing to a company engaged in the construction for the sale or letting of residential premises during the first 5 years following the commencement of operations of that company.
(7) Agro processing and agriculture are eligible for 5 year or 10 year tax exemptions depending on the activity.
(8) The business income, capital gains and dividends of eligible venture capital financing companies are tax exempt for a period of 10 years of assessment. In order to qualify such companies. Losses incurred on the disposal of shares during the 5 year period may also be carried forward 5 years. Investments made in such companies by banks and other financial institutions may be deducted in full, and subscriptions for shares in such companies are exempt from stamp duty.

Indirect taxes

Value added tax is imposed on every supply of goods and services made in Ghana, on every importation of goods, and on the supply of any imported service (other than exempt goods and services). The standard rate is 12.5% of the value of the taxable supply of goods, services or imports. Certain goods and services are liable to a zero rate of tax, including exports, the supply of goods shipped as stores on vessels and aircraft leaving the territory of Ghana, and locally printed textbooks and exercise books. Taxable persons are persons registered under the law, and there are varying thresholds for registration based on levels of turnover over set periods e.g. 100m Ghanaian Cedis over a 12 month period.

Import duties are levied on goods imported into Ghana at rates of zero, 5%, 10% and 20%. Special concessionary rates are available to ECOWAS members (Economic Community of West African States) and hotels, restaurants and local film production and electronic media units will be entitled to a zero rate of tax on machinery, furniture and equipment imported.

There is an import levy of 0.5% of the c.i.f. value of all non-petroleum products imported in commercial quantities.

Tax efficient financing

Interest expenses and foreign exchange losses in relation to debts in excess of a 2:1 debt to equity ratio are disallowed. The withholding tax on interest is 10%.

Losses may be carried forward 5 years in the case of a farming, manufacturing (a business that manufactures mainly for exports), agro-processing, tourism, information technology or mining business.

Any loss incurred by a venture capital financing company on the disposal of shares in a subsidiary company during a tax-holiday period may also be carried forward for up to 5 years.

Dividends paid to a resident company by another resident company are exempt from tax where the company receiving the dividends controls, directly or indirectly, 25% or more of the voting power in the company paying the dividends.

Tax on divestments

The sale of shares in a resident company is subject to capital gains tax at 5%. The following are exempt

(a) Capital gains accruing to or derived by a company arising out of a merger, amalgamation, or reorganization of the company where there is continuity of underlying ownership in the assets of at least 25%;

(b) The capital gains of an eligible venture capital financing company are exempt for 10 years.

(c) Capital gains reinvested, within 1 year of realization, in acquiring a replacement chargeable asset.

Tax treaties

There are tax treaties with Denmark, France, Gambia, Germany, the Netherlands, Nigeria, Sierra Leone, South Africa, Sweden and the UK. The withholding tax rate on dividends paid to these countries under the respective treaties does not differ from the domestic withholding rates.

Tax planning

1. Prior to setting up the business in Ghana, the various incentives highlighted above should be considered, as they do provide substantial benefits.
2. In particular, banks lending to SMEs should consider set up venture capital fund subsidiaries through which the loans can be provided. Any losses would be available for tax relief, and any dividends received from the fund would not be taxable.
3. The taxable income could be reduced by maximising the gearing of the local entities, through loans from low tax jurisdictions. A withholding tax of 10% would be payable on the interest payments but this would be less than the 25% tax (plus the 8% dividends tax) that would have arisen in relation to the profits that would otherwise be unsheltered.
4. As capital gains are taxable at a lower rate, there would be scope for structuring long term profit yields as capital gains (instead of income) and thereby reduce the tax rate by 20%.

There is a general anti-avoidance rule under which arrangements may be re-characterized or disregarded if they are entered into or carried out as part of an avoidance scheme if it is fictitious or does not have a substantial economic effect or if its form does not affect its substance. Losses and bad debts incurred prior to a change in control in an entity (more than 50% ownership) that takes place within a year would not be deductible. Losses incurred on the disposal of shares as part of dividend stripping arrangements would not be deductible.
There are also specific tax anti-avoidance rules relating to income splitting (splitting income between associates in order to reduce tax liabilities) and transfer pricing (prices for non arms length transfers may be adjusted).

Future trends

The tax system in Ghana appears to be quite competitive and geared to attracting foreign investors. Taxes are progressively being reduced and simplified, and it is likely that the existing tax incentives would be streamlined. More tax treaties are likely to be negotiated, as part of this trend. On the other hand, it is not unlikely that the VAT rates may be increased to fund any gaps in government revenues from reductions to income tax.

4. NIGERIA

Corporate tax rates and withholding taxes

The standard corporate income tax rate is 30%.

For petroleum companies, in general, tax is levied on chargeable profits at a rate of 85%. However, companies which have not yet commenced to make a sale or bulk disposal of chargeable oil under a programme of continuous production and sales will pay tax at the rate of 65.75% until their pre-production costs are fully amortized. An education tax is levied at the rate of 2% of assessable profits; the assessable profit being the same as that calculated for income tax or petroleum profits tax. Capital gains are taxed at 10%.

The withholding tax on interest, dividends, royalties, rent and fees is 10%.

Taxable presence

The law only draws a distinction between a Nigerian and a foreign company. A Nigerian company is one incorporated in Nigeria under domestic law, while a foreign company is one established outside Nigeria under the law in force in the foreign country. Generally, tax is charged on the income of a Nigerian company which accrues in, derives from, is brought into or received in Nigeria. The profits of Nigerian companies are chargeable to tax irrespective of where they arise or whether or not they are remitted to Nigeria. Tax is also imposed on the profits of foreign companies only to the extent that they are attributable to operations in Nigeria.

Setting up

Foreign companies are to be incorporated as domestic companies before they can commence business in Nigeria. Branches of foreign companies are therefore not permissible, but foreign companies may have a place of business before incorporation only to receive notices and documents preliminary to incorporation.

Tax incentives

(1) The corporate tax is 20% for companies engaged in manufacturing or agricultural production whose turnover does not exceed NGN 1 million, in the assessment year in which the company commenced business and the following 2 years of assessment. On application, this period may be extended by a further 2 years.
(2) Pioneer Status: In the event of "pioneer status" being granted, a company may enjoy a tax holiday of between 3 and 5 years. Such status is only granted to companies involved in pioneer or infant industries. Pioneer companies are not, however, exempt from capital gains tax.
(3) Tax exemption is granted on interest on loans made by banks for the purposes of an agricultural trade or business, the fabrication of local plant and machinery, or for working capital for an eligible cottage industry will

be exempt from tax, provided the moratorium is not less than 18 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted.

(4) The profits of export-oriented enterprises operating in an export free zone will subject to certain conditions be exempt from tax for the first 3 years.

(5) The profits of any Nigerian company in respect of goods exported from Nigeria, provided that the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts, and the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export are exempt.

(6) Income from dividends, interest, rent, royalties, fees, commission earned from abroad and brought into Nigeria by a Nigerian resident, provided that such income is brought into Nigeria in convertible currency and paid into a domiciliary account in a bank approved by the government, would be exempt.

Indirect taxes

VAT is payable at 5% on taxable supplies of goods and services supplied in Nigeria by a taxable person, and on the importation of goods into Nigeria by persons whether or not they are taxable persons.

Tax efficient financing

Any sum payable by way of interest on any money borrowed and employed as capital in acquiring the profits would be deductible. The withholding tax on interest is 10%.

Dividends paid by a Nigerian company are subject to a withholding tax of 10% deducted at source including dividends paid by one Nigerian company to another. All dividends received by resident companies are regarded as franked investment income and are not included in taxable income of the recipient companies. Upon redistribution of the profits, the redistributing company may offset the withholding tax paid on the received dividends against the withholding tax on redistributed profits.

It is important to note however that dividends paid out of profits which have not been subject to tax (such as income that was tax exempt under the available incentives) would effective be subject to tax at the normal corporate tax rates when declared.

Losses may be carried forward indefinitely.

Tax on divestments

Capital gains are taxed at 10%. Capital losses arising from the disposal of an asset cannot be set off against a capital gain arising from another disposal.

There is nil tax on the sale of stocks and shares in companies.

Tax treaties

Nigeria has signed tax treaties with Belgium, Canada, Czech Republic, France, Netherlands, Pakistan, Romania, Slovakia and the United Kingdom.

Although there is no domestic law in support, in practice the payments of dividends, royalties, interest and fees to countries with which Nigeria has concluded a double taxation treaty are subject to a rate of 7.5%.

Tax planning

1. Consider whether any of the tax incentives would be suitable. As earlier explained, however, under the rules (as interpreted) the tax exemption would be effectively clawed back when dividends are declared out of the exempt profits.
2. The gearing levels of the local subsidiary can be maximised, and thereby reduce the effective tax, by lending to the subsidiary through tax efficient structures. Although there would be withholding tax on interest at 10%, this would be the same as the withholding tax on dividends and the mainstream corporate income tax relief at 30% would be available on the interest expense.
3. Capital gains are taxed at a lower rate (10%) and it should be possible to plan, where possible, for long term profit yields to be classified for tax purposes as capital gains instead of income.
4. Given that group tax consolidation is not possible under the tax regime, it would be more tax efficient to create divisions within a single entity, instead of separate 100% subsidiaries within the group. This would not only help cross offsets of tax losses, it would also help mitigate the tax claw back impact highlighted under point 1 above.
5. Foreign income received in Nigeria is ordinarily taxable, but it should be possible to defer a tax charge through advance planning.

There are a few tax avoidance rules. The tax liability of a company may be adjusted in cases where a transaction of the company, which reduces or would reduce the amount of any tax payable, is considered to be artificial or fictitious. These would include transactions that do not appear to have been carried out at arm's length. If it appears that the business has produced no assessable profits for the year, or where those produced are less than could have been expected, or where such profits cannot readily be ascertained, then tax may be assessed on that company on the basis of turnover.

Future Trends

The Nigeria tax rules are long due for a comprehensive overhaul. It is likely that, as with the regional competition, that the corporate tax rates will be lowered. It is also likely that the VAT rates would increase, and that the current unwieldy tax incentives and exemptions would be streamlined. The tax enforcement mechanism particularly with SME sector of the economy has been benign, and it is expected that this would be strengthened and that the tax authorities would adopt a more aggressive approach against tax evasion.

5. SENEGAL

Corporate tax rates and withholding taxes

The standard rate of company tax is 25% and this applies to domestic companies as well as branches of foreign companies; it was reduced from 33% in 2006. The withholding tax on dividends and on branch profits is 10% (previously 16%).

There is a minimum lump-sum tax of F.CFA 500,000, which is payable by companies with turnover of less than F.CFA 250 million. Companies with turnover of between F.CFA 250,000,001 and F.CFA 500 million are liable to F.CFA 750,000 minimum lump-sum tax, and those with turnover exceeding F.CFA 500 million are liable to a minimum lump sum tax of F.CFA 1 million. This tax represents an advance payment, but no refunds are due when the actual tax payable is less than the minimum lump sum tax.

Taxable presence

Companies are taxed on a territorial basis. Therefore, income from a trade or business carried on outside Senegal is not taxable in Senegal. Foreign companies with activities in Senegal are also only subject to tax on Senegalese-source profits.

<u>Setting up</u>

Businesses may be incorporated or unincorporated. A foreign company is allowed to carry on business in Senegal through a subsidiary. There are no local participation requirements. Foreign companies are free to establish branches in Senegal, and may also engage agents in Senegal.

<u>Tax incentives</u>

1. Corporations may apply for various categories of priority status and corresponding tax exemptions. The priority status varies depending on the nature of the project and the level of investments (including free industrial zone facilities). The favoured sectors include agriculture and fishing, health and education and telecommunications.

- The following main tax incentives would be available at the start phase (first 3 years) to an approved enterprise:

- Exemption from customs duties on equipment and material imported for use in approved activities.

- Suspension of VAT on imports of material and equipment for use in the approved activities; and on VAT invoiced by local suppliers on goods and services utilised for the approved activities.

- The following additional incentives are available.

- New jobs created are exempt from payroll tax for a 5-years or 8 years (if the number of jobs created exceed 200 or if 90% of the jobs created are outside the Dakar area);

- Deduction of 40% of the approved investment from taxable income (up to a maximum of 50% of the taxable income), if the expenditure is on plant and computer equipment; vehicles and commercial machines, tourism vehicles to be used exclusively for tourist transport; construction and development activities, assembly and installation of equipment included in the approved programme. The deduction may be spread over 5 years. Where projects are extended the maximum deduction is 25% of taxable income.

2. Companies whose exports constitute a significant proportion (as defined by decree) of turnover may, on approval, entitled to certain tax benefits for a set period. The benefits include exemption from the minimum lump sum tax and reduced company tax based on the growth in volume of exports of products over a set period.

3. Companies operating in the Dakar free zone will be exempt from taxes.

4. A parent corporation may exclude up to 95% of the net dividends received from a subsidiary, and the onward distribution of the subsidiary's dividends would not be subject to withholding tax, if all of the following apply :

- The parent corporation and the subsidiary are either joint-stock companies or limited liability companies.

- The parent corporation has its registered office in Senegal and is subject to corporate income tax.

- The parent corporation holds at least 20% of the shares of the subsidiary.

- The shares of the subsidiary have been held by the parent corporation since the formation of the subsidiary or for two years in registered form.

<u>Indirect taxes</u>

Value added tax is levied on sales, services and imports. The standard rate is 18%.

Tax efficient financing

Withholding tax of on loan interest is 16%. However there are reduced rates for interest on long term bonds (6%) and bank interest (8%). The withholding tax on deposit interest is 20%. Interest on government bonds and securities is exempt from withholding tax. Also interest on current accounts provided for industrial, commercial, agricultural or mining activities are exempt, if both the lender and borrower carry on the industrial, commercial, agricultural or mining activities and the transactions entered in respect of which the current account arose relate exclusively to the activities of the lender and borrower.

Tax on divestments

Capital gains are taxed at the rate of 25%, as ordinary income. If the proceeds are utilised within 3 years in acquiring new assets then the tax on the gain may be deferred (with the gain being effectively rolled over into the acquisition cost of the new asset) Gains realised on a corporate merger or partial contribution of capital may also be deferred.

On a full or partial termination or transfer of a business, only 50% of the capital gain would be taxed if the event occurred less than 5 years after the start of the business. Only 1/3rd would be taxed if the event occurred after 5 years.

Tax treaties

Senegal has signed a number of tax treaties, including Canada, France, Belgium and Italy but the withholding tax rates available under these treaties do not materially differ from the domestic withholding tax rates. The treaties do not therefore confer significant advantages.

Tax planning

1. Consider setting up in the free zone or taking up the available incentives.

2. Given that tax is imposed on a territorial basis, consider conducting business in the neighbouring countries from within Senegal. This would however need to be very carefully managed.

3. The withholding tax rates vary depending on the types of loans. Companies and banks may therefore want to structure their lending portfolios in a manner that would minimise the withholding taxes.

4. Capital gains are taxable at the normal corporate tax rates, but here are various ways of mitigating or deferring the capital gains. These need to be considered prior to disposals.

Future Trends:

The Tax rules may need to be simplified. The trend has been towards reducing the corporate income tax rates, but as the standard VAT rate is already high it is difficult to see the corporate tax rates being reduced further. The tax incentives rules and process may need to be simplified.

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