

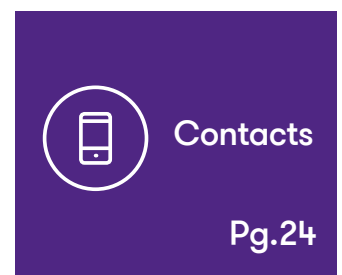


Africa Budgets Analysis

In recent months a number of African governments published changes or proposed changes to tax legislation. In this issue Senior Partners from Grant Thornton cover developments from Kenya, Uganda, Mauritius, Nigeria, Côte d'Ivoire, Senegal, Mauritania, Togo and the Republic of Congo.

What appears to be a common theme on the changes or proposed changes is measures intended to expand the existing tax base of the various countries with a focus on related party transactions, cross border trade in some and taxation of the digital economy in some. Contact the experts who contributed to this publication if you wish to engage further on any of the matters highlighted.

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Kenya

Samuel Mwaura
Partner: Taxation
Grant Thornton Kenya
samuel.mwaura@ke.gt.com

The President assented to the Finance Act 2022 on 21st June 2022. We have highlighted some of the key changes introduced by the Finance Act 2022 in relation to Income Tax and Value Added Tax.

Income Tax

Taxation of gains from financial derivatives

The Act has amended the Income Tax Act by introducing tax on gains accruing to non-residents from financial derivatives. The Act defines a financial derivative as:

“A financial instrument the value of which is linked to the value of another instrument underlying the transaction which is to be settled at a future date”

The gains accruing to non-residents shall be subject to withholding tax at 15% subject to Regulations to be issued by the Cabinet Secretary National Treasury.

It is important to note that the gains accruing to non-resident persons from derivatives listed on the NSE shall be exempt from the tax.

The Financial derivatives market went live on 4th July 2019 in Nairobi making it the second derivatives market in Sub-Saharan Africa after the Johannesburg market. The desk has traded over KES 168M since its launch making it a soft target for the taxman.

This amendment took effect on 1st July 2022.

Relief from DST for non-resident with PE in Kenya

The Act has introduced an amendment to the Income Tax Act to the effect that a non-resident person with a permanent establishment in Kenya shall be exempt from DST.

Non-resident persons with a PE in Kenya shall no longer be required to account for DST on services rendered through a digital market place.

This amendment took effect on 1st July 2022

Capital Gains Tax

The Act has increased the capital gains tax (CGT) rate from 5% to 15%. Kenya has enjoyed a lower CGT rate compared to its counterparts in the East African region. The sharp increase

has elicited an outcry from real estate industry players who are struggling with reduced spending due to increased inflation.

The amendment is set to take effect on 1st January 2023.

Transfer Pricing

Transfer-Pricing implications for entities operating in a preferential tax regime

The Act has amended section 18 (A) of the Income Tax Act (ITA) to include within the ambit of transfer pricing (TP) transactions between resident persons and the following persons located in a preferential tax regime;

- A related resident person;
- A non-resident person;
- An associated enterprise of a non-resident person; and
- A permanent establishment of a non-resident person.

The Act defines a preferential tax regime as:

- Any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base; or

A foreign jurisdiction which:

- Does not tax income;
- Taxes income at a rate that is less than 20%;
- Does not have a framework for exchange of information;
- Does not allow access to banking information; or Lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure or regulatory supervision.

The amendments will not only expand the tax scope to net in non-residents operating in preferential tax regimes but is also in line with the implementation of the global minimum tax provisions under Pillar 2 of the BEPs Action Plan.

The amendments are set to take effect on 1st January 2023.

Enhanced reporting for Multi National Enterprises

The Income Tax Act currently provides that a reporting Multi National Enterprise shall provide key financial information concerning each jurisdiction in which the group operates. In addition, the Income Tax, (Transfer Pricing), Regulations 2006, impose a requirement to provide transfer-pricing documentation, upon request by the Commissioner. Such information will usually contain the master and/or local file and other financial reports.

The Act has introduced a requirement to file a master file and local file on an annual basis as opposed to the current on request basis. The master file and local file shall include the following information:

The master file shall contain;

- A detailed overview of the group;
- The group's growth engines;
- A description of the supply chain of the key products and services;
- The group's research and development policy;
- A description of each constituent entity's contribution to value creation;
- Information about intangible assets and the group intercompany agreements associated with them;
- Information on any transfer of intangible assets within the group during the tax period, including the identity of the constituent entities involved, the countries in which those intangible assets are registered and the consideration paid as part of the transfer;
- Information about financing activities of the group;
- The consolidated financial statements of the group;
- Tax rulings, if any, made in respect of the group; and
- Any other information that the Commissioner may require.

The Local File shall contain:

- Details and information on the resident constituent entity's activities within the multinational enterprise group;
- Management structure of the resident constituent entity;
- Business strategies including structuring, description of the material-controlled transactions, the resident constituent entity's business and competitive environment
- The international transactions and amounts paid to the resident constituent entity or received by the entity; and
- Any other information that the Commissioner may require.

The reporting requirements are aimed at aligning Kenya to international standards as outlined in the OECD Transfer Pricing Guidelines, 2022.

Value Added Tax

Value Added Tax on Digital Supplies

The Act has introduced a series of amendments in relation to VAT on digital supplies as follows:

Definition of digital market place

- Amend the definition of a digital market place by deleting the expression "sell or provide services, goods or other property" and substituting it with the words "sell goods or provide services"

The amendment shall provide clarity on the scope of the tax on digital supplies as it removes the ambiguity created by the broad use of the term other property

VAT on imported digital service

- Exclude an import of services made over the internet or an electronic network or through a digital marketplace from Reverse VAT under Section 10 of the VAT Act

The exemption from reverse VAT means that all non-resident persons shall be required to register and account for VAT irrespective of the recipient of the goods or services is.

Registration threshold for digital supplies

- The Act has amended the VAT Act by excluding persons supplying imported digital services over the internet or an electronic network or through a digital marketplace from meeting the KES 5 million VAT registration threshold.

The exemption from the registration threshold means that all persons providing digital supplies over a digital market place shall be required to register and account for VAT on the digital supplies regardless of the value of the supplies made to persons located in Kenya.

The amendments took effect on 1st July 2022.

VAT on Export of Service

The Finance Act has amended the VAT Act by deleting the provision on exemption of export of service and introducing a provision on zero rating of an export of service in respect of business process outsourcing.

This means that any service, which does not fall within the definition of business process outsourcing, shall be subject to VAT at the standard rate of 16%.

The Finance Act does not define what shall be classified as business process outsourcing. We expect that the Kenya Revenue Authority shall release guidelines to this effect.

The amendment took effect on 1st July 2022



Uganda



Anil Patel
Managing Partner
Grant Thornton Uganda
anil.patel@ug.gt.com

Summary of Key amendments passed into Law

The Parliament approved the tax measures for the financial year 2022-23, which came into effect from 1st July 2022. Below is summary of the Key amendments as well as the potential impact of the same.

Income Tax

Amendment in definition of Beneficial Owner:

The beneficial owner definition has been changed in order to facilitate the automatic exchange of information. The new definition specifies the different qualifying criteria for a beneficial owner, such as the percentage of shareholding, influence on transactions as well as personal or financial superiority, power to make or influence a decision-making process.

Fixed percentage allowed as expenditure or losses in deriving the tax payable on rental income:

For rental income, a fixed 50% of gross rental income is to be allowed as expenditure and losses for non-individuals and any expenditure and losses in excess of 50% shall not be carried forward to be claimed in subsequent years. No deduction in form of wear and tear, interest etc will be allowed over and above the prescribed limit of 50%. With the applicable income tax rate of 30% the effective tax rate on gross rental income shall be 15% for non-individuals. For rental income earned by individuals and partners of partnership firms who are individuals the proposed tax rate is 12% of the gross rental income. The mortgage interest deduction which has been previously allowed to individuals has been scrapped.

Income from the carriage of passengers, or cargo or mail which is not embarked in Uganda, is not subject to tax as income derived from a Ugandan-Source Services contract:

The amendment to Section 86 of the ITA is aimed at clarifying the position that no WHT is chargeable on income derived from the carriage of passengers who do not embark or international transport of cargo or mail which is not embarked in Uganda.

VAT

VAT on imported services applicable, even if the same is used in provision of exempt supply:

The VAT Amendment Act 2021 kept importation of any service

out of the ambit of VAT, which would be used in the provision of exempt supply (Financial, Medical, Education and insurance services, which are exempt as per Second Schedule of The VAT Act). With the new amendment, VAT on imported services becomes applicable (18%), even if the same is to be used in provision of the exempt supply. The VAT paid on imported services is non-creditable and is to be paid by importer of the service

Key Amendment to Second Schedule (Exempt supplies) and Third Schedule (Zero-Rated Supplies)

- Supply of menstrual cups currently considered as exempt supply is now considered as a Zero-rated supply.
- The VAT Act zero rates educational materials manufactured in Uganda, however with the new amendment, the same treatment is to be accorded to educational materials manufactured in the East African Community

Customs

In a move aimed at encouraging import substitution as well as encouraging investment in domestic manufacturers, the East African Community agreed to the introduction of an additional fourth band to the East African Community External Tariff (CET). Items included under the fourth band shall attract import duty at 35%. Some of the products include; dairy and meat products, cereals, cotton and textiles, iron and steel, edible oils, beverages & spirits, furniture, leather products, fresh cut flowers, fruits and nuts, sugar and confectionery, coffee, tea and spices, textiles and garments, head gears, ceramic products and paints, among others. It should not be noted that the new fourth band is to be effected across all the East African Community states

Note: Persons engaged in zero-rated supplies pay VAT at zero rate but are entitled to claim input VAT.

Tax Procedures Code Act

Amended Penalties for non-compliance of tax stamps and electronic receipting and invoicing:

Proposed Penalties for non-compliance of tax stamps and electronic receipting and invoicing

Sec. Ref	Summary nature of an Offence	Approved amendment
62B	Failure to affix or activate a tax stamps	Fine not exceeding Ush 30,000,000 or imprisonment not exceeding 10 years or both
62C	Prints over or defacing of tax stamps	
62D	Forgery of tax stamps	
62E	Failure to use an electronic receipting or invoicing	
62F	Forgery of electronic receipt or invoice	
62G	Interference with the electronic fiscal device or electronic dispensing control device	
62H	An offence relating to the automatic exchange of information	Fine not exceeding Ush 50,000,000 for each day of default or imprisonment not exceeding 10 years or both
	Fails to file an information return	
	Fails to maintain records for automatic exchange of information	
	Makes a false or misleading statement in the information return	
	Omits from a statement made in the information return	

The payment to informers on the provision of information leading to the identification of unassessed tax or duty is proposed as below.

Particulars	Approved amendment
Provide information leading to the identification of unassessed tax or duty	1% of the tax or duty assessed or Ush. 15,000,000 whichever is less
Provide information leading to the recovery of unassessed tax or duty	5% of the tax or duty or Ush. 100,000,000 whichever is less.



Nigeria

Nkwachi Abuka
Senior Partner & Head
Tax Services
nkwachi.abuka@ng.gt.com

Finance Act 2021

Capital Gain Tax (CGT)

Gain on disposal of Shares.

Gains accruing to a person from the disposal of shares in any Nigerian company will be chargeable to Capital Gain Tax (CGT) at the rate of 10%. CGT will apply on the whole or part of the proceeds that are not reinvested in the acquisition of shares in the same year of assessment. Disposal of shares below N100 million in any 12 consecutive months, transfer of shares between an approved borrower and lender in a Regulated Security Lending Transaction and gains on disposal of Nigerian government securities are exempted from CGT.

Company Income Tax Act

Compensating payment from the Borrower or Approved agent

Dividends resulting from compensating payment received by a lender from its approved agent or borrower in a Regulated Securities Lending Transaction will be a taxable income in ascertaining company income tax payable.

Arms Length Adjustment of Related Party Transactions

The service shall make necessary adjustment to any related party transaction that is deemed artificial or fictitious in the opinion of the service. Such adjustment may vary the established tax liability and result in additional payment or refund.

Taxation of Insurance companies

Insurance business will be taxed on two classes: General Insurance Company and Life Insurance Company. The two classes of insurance shall be assessed separately to company income tax. Furthermore, where there is more than one type of insurance business in a class of insurance, the loss in one type of insurance business shall not be allowed against the profit from the other type but shall be carried forward against the profit of the same type of insurance business until it is fully relieved. A Nigerian Insurance company shall be charged to tax as though the whole profit of the company is derived from Nigeria while a Non-resident Insurance company shall be charged to tax on profits derived in Nigeria.

General Insurance Company

The profit that will be subjected to tax shall be the gross premium and other income receivables less reinsurance and other allowable expenses incurred in Nigeria. A general insurance company shall be allowed to deduct reserve for unexpired risks and reserve for outstanding claims and outgoings from its premium.

Reserve for unexpired risk is that which is calculated on time apportionment basis of the risks accepted in the year while reserve for outstanding claims and outgoings is the total estimate of all outstanding claims and outgoings for the year and any unutilized amount shall be carried forward and added to the total profit of the following year.

Life Insurance Company

The profit of a life insurance company shall be investment income i.e., income derived from investment of shareholders' fund less the management expenses including commission, allowable deductions include transfer to:

- General reserve fund an amount equal to net liabilities on policies in force at the time of actuarial valuation.
- Special reserve fund an amount equal to higher of 1% of gross premium earned and 10% of profit.

Dividend distributed from the actuarial revaluation of unexpired risks and other revaluation shall be deemed to be part of the total profits for tax purposes. Note that the insurance company should provide the service with the full particulars and certificate of an actuarial all revaluation including unexpired risks within three months after such revaluation.

Reinsurance Company

A reinsurance company shall be allowed to deduct from its gross profit and credit it to general reserve fund.

- 50% of the gross profits of the reinsurer for the year where the general reserve fund is less than the initial statutory minimum authorized share capital.
- 25% of the gross profit of the reinsurer for the year where the general reserve fund is equal to or exceeds the initial statutory minimum authorized share capital.

Note: Any insurance company that engages the services of an insurance agent, a loss adjuster and an insurance broker shall include in its annual tax returns, schedule showing the name and address of that agent, loss adjuster and insurance broker, the date their services were employed and terminated as applicable, and payments made during period covered by the tax returns. Minimum tax shall be applicable to insurance companies on their gross turnover which means gross premium and other income for general insurance business and only gross income for life insurance business.

Educational Institution is liable to Company Income Tax

An educational institution registered in Nigeria as a limited liability or as an unlimited liability company is liable to company income tax. Schools and other educational Institutions of public character whether it shares profit or not are no longer exempted from company income tax.

Profit from export business of Upstream, Midstream or Downstream Petroleum companies

Profits of a Nigerian company that engages in the Upstream, Midstream or Downstream Petroleum operation in respect to goods exported from Nigeria are no longer exempted from company income tax whether or not the proceeds are used for the purchase of raw materials, plant, equipment, and spare parts.

Other profits currently exempted from tax

1. Profit of a small company in any relevant year of assessment provided that such company complies with tax registration and self assessment provisions.
2. Dividend and rental income received by a real estate investment company on behalf of its shareholders. A minimum of 75% of such income must be distributed within the financial year in which it was earned.
3. Dividend received by a lender as a compensating payment from its approved agent or a borrower in a Regulated Securities Lending Transaction.
4. Dividend or interest received by an approved agent as a compensating payment from a borrower or lender on behalf of a borrower or lender in a Regulated Securities Lending Transaction.

Turnover Assessment of Non-Resident Companies

Non-resident companies that carry out business through electronic or wireless means in Nigeria may be assessed to company income tax on a fair and reasonable percentage of the turnover derived in Nigeria to the extent that such non-resident company has significant economic presence in Nigeria. This is applicable where there is no assessable profit or the assessable profit is below expectation.

Treatment of Capital Allowance relating to both Taxable and Non-Taxable Income

Only capital allowance relating to the qualifying capital expenditure incurred in generating the assessable profits shall be allowed as deduction in that year of assessment. When the qualifying capital expenditure is in relation to an asset that is partially utilised in generating the taxable income, the qualifying capital expenditure shall be pro-rated and only the portion

relating to the taxable income shall be allowable as a deduction if the portion of non-taxable income is greater than 20%.

This is not applicable to company that is enjoying pioneer status under the Industrial Development (Income Tax Relief) Act.

Capital Allowance for Small and Medium Companies

A small and medium company as defined by Company Income Tax Act shall compute capital allowance relief using the relevant restriction in a year of assessment. Such amount so computed shall be deemed to have been consumed in that year of assessment and it will not form part of the amount to be carried forward into subsequent year of assessment.

Application of the reduced minimum tax rate of 0.25%

The reduced minimum tax rate of 0.25% can only be enjoyed in two accounting years either from 1 January 2019 to 31 December 2020 or 1 January 2020 to 31 December 2021. The full minimum tax rate of 0.5% shall take effect immediately a company has enjoyed the two years of reduced minimum tax rate.

Restriction on Incentive to Gas Utilisation Company

The tax incentive available to companies that engage in gas utilisation in the downstream operation shall only be claimed once by the same company. The incentive is not available to any gas utilisation company formed from reorganization, restructuring, buy-stock and other similar schemes out of a company that has already enjoyed this incentive. Also, a company that has claimed an incentive for same trade or business under any law in Nigeria including Petroleum Profit Tax Act and Industrial Development (Income Tax Relief) Act is not eligible for this incentive.

Penalty for late filing of returns: on reduced minimum tax rate

Where a company fails to submit its tax returns to the authority within the specified time and such company qualifies for the reduced minimum tax, the penalty for late filing shall be the amount of relief on the minimum tax (0.25% of the gross turnover less franked investment income). By implication, such company will pay 0.5% of the gross turnover less franked investment income as it tax and penalty for late filing.

Time frame for payment of tax assessment

The tax charged by any assessment that is not objected or appealed within 30 days after the service of such notice shall be payable to the service. The time frame may be extended by the service based on its discretion. Where there is objection, the assessment shall be suspended until the determination of such objection or appeal. However, the company is expected to pay the undisputed portion of the assessment. Once the objection or appeal is determined, the service will issue a revised assessment that shall be payable within 30 days from the date of such notice.

Every company can make payment of tax due in one lump sum or in instalments; the final instalment must be paid on or before the due date.

Any balance of tax that remains unpaid after the due Taxes due shall be paid in the currency in which the income is derived or received. Medium-sized companies shall enjoy a tax rebate of 2% of tax due if such tax is paid 90 days before the due date while other companies shall enjoy 1%. Such rebate will be available as a credit against future taxes.

Withholding tax on Interest payment as a final tax

Interest payment made to Non-resident and unit trust companies, from which withholding tax has been deducted, shall not be subjected to further tax in the hands of the recipient: it is a final tax.

Custom, Excise Tariffs, etc (Consolidation) Act

Excise duty on non-alcoholic, carbonated, and sweetened beverages

Non-alcoholic, carbonated, and sweetened beverages shall be subjected to excise duty of N10 per litre.

FIRS (Establishment) Act

FIRS power to automate the tax administration processes

FIRS has been empowered by law to deploy proprietary or third-party technology to automate the tax administration including both tax assessment and information gathering. However, the service must give the taxpayer a minimum of 30 days' notice before the deployment of the technology. Taxpayers can also request for an additional extension from the initial 30 days upon demonstrating a good cause.

Any person who fails to grant access to the Service after the required periods of notice shall be liable to an administrative penalty of #25,000 for each day that the failure continues.

Penalty for failure to file Quarterly returns by Banks

Any bank which fails to file its quarterly returns with FIRS shall be liable to a penalty of N1,000,000 for each quarterly returns or information not provided.

Confidentiality of Taxpayers Information

Any staff of FIRS assigned to administer this Act will have access to the taxpayer information and must deal with such information as secret and confidential.

FIRS as the primary collection agent of the Federal Government

FIRS is currently the primary collecting agent of the Federal Government of Nigeria or any of its agencies for all the taxes and levies listed under the First Schedule of FIRS Establishment Act including any other laws enacted by the National Assembly that is imposing taxes or levies in Nigeria. FIRS shall administer, assess, collect, account and enforce the provisions of such laws except where it is authorized by the Minister of Finance as approved by the National Assembly or in the case where such provision is subjected to litigation in a court of competent jurisdiction.

The provision of First Schedule of FIRS establishment Act shall override any provision of any other law in any inconsistency between the two provisions. FIRS may collaborate with relevant

MDAs or Institutions of the Federal Government to enforce compliance and to avoid revenue loss. Any person who contravenes the provisions is liable on conviction to 5 years imprisonment or a fine of N10,000,000 or both.

Personal Income Tax Act

Deduction of life insurance premium

Taxpayer shall be allowed to deduct annual amount of premium paid in the year preceding the year of assessment to insurance company on his life or the life of his spouse.

Period of Notice to call for returns, books, documents and other information

The time limit for a notice to any person for the purpose of obtaining full information in respect of the income or gain of a person by any relevant tax authority shall not be less than 7 days from the date of the service of the notice. Also, an officer who should not be below the rank of a Senior Manager or Grade Level 14 equivalent may require a taxpayer to produce for the purpose of the examination any book, document, account, return and give orally or in writing any other information which the relevant authority may deem necessary.

Penalty for failure to provide information

A person engaged in banking in Nigeria who fails to provide information after a notice signed by the chairman of relevant tax authority, or fails to file quarterly returns with the relevant tax authority, will be liable to a penalty of #1,000,000 for each information or returns not provided.

Penalty for other offences under PITA

Any person who is guilty of an offence or contravenes the provision of Personal Income Tax Act and any regulation under the Act for which no penalty is specified, shall be liable to a fine of #20,000 on conviction.

Where the offence is failure to furnish a return, statement or information or to keep records required, such person shall be liable to a further sum #2,000 for every day during which the failure continues. If the offence is default of payment, such person shall be liable to imprisonment for six months.

Stamp Duties Act

Distribution of Electronic Money Transfer Levies (EMTL) and stamp duties.

The Minister of Finance under the approval of the National Assembly shall make regulations for the imposition, collection and distribution of EMTL and Stamp Duties to the relevant tax authority.

It is expected that all arrears of Electronic Money Transfer Levies and Stamp Duties collected between 2015 to 2019 fiscal years shall be distributed before 30th January 2022. Subsequently, all Electronic Money Transfer Levies collected are to be distributed within 30 days following the month of collection.

Tertiary Education Trust Fund (Establishment) Act

Increase in Education Tax Rate

Education Tax has been increased from 2% to 2.5% on assessable profit of all company registered in Nigeria except small company with turnover less than or equal to #25,000,000 in any year of assessment. Non-resident companies are also exempted from Education Tax. Education Tax shall be due and payable within 30 days after the notice of assessment.

Value Added Tax Act

Registration of Non-resident person for VAT

Non-resident person that makes taxable supply to Nigeria need to register for tax purposes with FIRS and shall include VAT on its invoice for all taxable supplies. The non-resident person may appoint a representative for the purpose of compliance with its tax obligation in Nigeria.

A taxable person to whom a taxable supply is made to in Nigeria by non-resident person or any other person appointed by FIRS shall withhold and remit the withheld VAT to the Service on or before 21st day of the following months in the currency of the transaction.

Removal of Upstream petroleum companies from VAT threshold

Any company operating in the upstream petroleum industry is expected to charge, withhold, and remit VAT on all taxable supplies whether its total taxable supplies for the preceding year is up to N25,000,000 threshold or not.

Nigeria Police Trust Fund (Establishment) Act

FIRS Power to assess and collect Nigeria Police Trust Fund Levy

FIRS has been empowered to assess, collect, account, and enforce the payment of the Nigeria Police Trust Fund Levy (NPTFL). Nigeria Police Trust Fund Levy is 0.005% of the Net Profit for the relevant years of assessment. The Nigeria Police Trust Fund is to operate for 6 years except where it is extended by an Act of the National Assembly. Recall that the Nigeria Police Trust Fund (Establishment) Act 2019 was assented to by the president on 24 June 2019 but no effective date was communicated.

National Agency for Science and Engineering Infrastructure Act

NASENI levy is 0.25% of Profit before tax

All companies and firms in banking, mobile telecommunication, ICT, aviation, maritime, oil and gas industries with turnover of N100,000,000 and above shall pay a levy amounting to 0.25% of profit before tax into National Agency for Science and Engineering Infrastructure Trust Fund.

Finance (Control and Management) Act

Payment of all revenue into Consolidated Revenue Fund

Any revenue or money that does not make up statutory transfer nor form part of other such payment required by law to be first paid into any fund before being paid into the consolidated revenue fund and subsequently transferred into the fund shall be

paid into the consolidated revenue fund of the federation.

No money shall be withdrawn from the consolidated revenue fund or any public fund except to meet expenditures that are charged to the consolidated revenue fund or other public fund by the constitution of the federal republic Nigeria or where the issues of such money has been approved by an appropriation act, supplementary appropriation act or any act passed in pursuance of section 81 of the constitution.

Responsibility of officials of MDAs in charge of public assets

Every official of MDA's or any other responsible body for collection, receipts, custody, issue or payment of public moneys, stores, stamps, investments, securities or negotiable instruments whether the property of the government, or on deposit or entrusted with the government shall abide by the rules, regulations, guidelines and instructions that may be issued by or under the supervision of the minister for finance in respect to custody, handling and accounting of such public assets.

The official shall ensure all Taxes, levies, revenues or other monies raised or received by the federation, the federal government of Nigeria or an agency of the Federal government of Nigeria shall be paid in gross into the federation account, the consolidated revenue fund or special purpose account as provided by the constitution or act enacted by the national assembly.

Any person who being an officer of any federal MDAs or institution of government to which this section refers and who fails to pay, or authorizes the payment of any part of tax or taxes, levies and other revenue collected on behalf of the federation, federal government, MDAs or institution of the federal government to any person before the money is paid into the federation account or consolidated revenue fund except authorized by the national assembly or minister for finance commits an offence and shall be convicted to imprisonment for a term not more than five years or a fine of 5,000,000 or both.

Fiscal Responsibility Act

Debt management framework for all tiers of government

All tiers of government shall only borrow for capital expenditure, human development and projects that are significant to national impact. They must be on concessional terms, low interest rate and long amortization period and be approved by the legislative arms of the government. Every Government must ensure that the level of public debt it holds is at a sustainable level. This means that it should be a proportion of national income.



Focus on Tax Updates in West Africa.

The year 2022 represents a year of transition and economic recession for the world economy following the Covid-19 health crisis and in the context of the crisis in Ukraine. Most of the States have had to implement strong support measures for the population, accompanied by measures to rationalize State expenditure.

Grant Thornton proposes to review some of the key tax measures that have been implemented in some West African countries during the first half of 2022. Our regional teams remain available to assist you in understanding or implementing these measures in your activities.

ECOWAS

The 2022 tax year began within ECOWAS with the coming into effect of the provisions of the Additional Act A/SA, 5/12/18 adopting Community rules for the elimination of double taxation on income, capital and succession and the prevention of fiscal evasion and avoidance between ECOWAS member states.

Published in the ECOWAS Official Gazette Volume 1 No.1 and in force since January 2022, the provisions of the additional act apply to commercial and financial transactions between ECOWAS member countries. The main applicable rates are as follows :

Type of income	Rate of the Withholding
Dividend	10%
Interest	10%
Royalties	10%
Technical service fees	5%

Reminder :

The ECOWAS member countries are :

- Bénin
- Burkina Faso
- Côte d'Ivoire
- Gambie
- Ghana
- Guinée
- Guinée-Bissau
- Liberia
- Mali
- Niger
- Nigeria
- Sénégal
- Sierra Leone
- Togo
- Le Cap Vert



Côte d'Ivoire

Jean-Louis Dattie
Senior Partner
jean-louis.dattie@ci.gt.com

Charles-Alexandre Koffi
Lead Tax Associate
charles.koffi@ci.gt.com

The 2022 fiscal year began in Côte d'Ivoire with the entry into force of Law No. 2021-899 of December 21, 2021, on the State Budget for the year 2022.

Developed with the objective of consolidating the recovery of the economy, the Tax Act includes 25 articles.

Among the important measures of this law, we have:

- The subjection to VAT of online sales platforms and digital services not established in Côte d'Ivoire. Henceforth, the commissions perceived by the operators are taxable in Côte d'Ivoire as soon as the operator of the digital platform, the salesman of the good or the purchaser, the supplier of the service or the user are on the Ivorian territory at the time of the sale of the good or the execution of the online service.

A simplified tax registration procedure has been introduced so that these platforms can register. They are required to submit a declaration by the 15th of each month indicating the turnover in Côte d'Ivoire, the rate, and the amount of tax due.

- Regarding the sums paid to foreign companies belonging to the same group for services, VAT and Withholding Tax are also due as soon as the sums appear in accountancy after a period of two (2) years without payment of the service.
- The obligation to disclose in the statement of international intra-group transactions, the expenses recorded and not only the amounts paid, as well as a description of the transfer pricing method used by the taxpayer to value the transactions concerned.
- Transposition into domestic law of the provisions of Directive No. 02/2011/CM/UEMOA of 24 June 2011 on the harmonization of taxation applicable to fixed capital investment companies within the WAEMU.

Are considered as fixed capital investment companies, the companies which usually contribute, with their own resources or similar, to the reinforcement of the equity capital and similar of other companies and which

have obtained a license to operate from the competent authorities.

Own resources and similar means capital, reserves, investment subsidies and regulated provisions and similar funds.

Closed-end investment companies include, by way of limitation:

- Venture capital financial institutions.
- Venture capital companies.
- Equity capital financial institutions.
- Equity capital investment companies

Any fixed capital investment company must have a minimum of 50% of the net value of the overall portfolio composed of shares of unlisted companies.

Companies that meet the above conditions are eligible for a 15-year exemption from corporate income tax and dividend tax as well as an exemption from registration fees on certain deeds.

- Tax adjustments applicable to small and medium-sized companies (companies with a turnover of less than XOF 200,000,000 (304,800€)). The flat tax rate applicable to companies with a turnover between XOF 50,000,000 (€76,200) and XOF 200,000,000 (€304,800) is reduced by 1 point to 6%.

A preferential rate of 4% is applicable for taxpayers belonging to management centers approved by the State and those followed by a chartered accountant signing an agreement with the State.

- In addition to the provisions of this law, various administrative notes have clarified hesitations and points that may be sources of confusion for taxpayers. Among others:
- Regarding the Tax on wages, the administrative note No. 01221/MBPE/DGI/DLCD/04-2022 of April 12, 2022, has specified the tax treatment of mixed expenses.

The term “mixed expenses” refers to the amounts or means made available to employees by employers which are used both for the operation of their activities and which also constitute elements of salaries for the beneficiaries when they are partially used by them for private purposes. The note specifies that, with respect to mixed expenses, the portion of the expenses used for private purposes by the employee must be subject to tax on wages. In the absence of a precise estimate to distinguish between private and professional elements, one third of the total amount should be subject to tax on wages.

- Regarding the tax on advertising, the administrative note No. 01492/MBPE/GDI/DLCD/04-2022 dated May 4, 2022, specifies that the tax basis is the amount excluding tax of the advertising message.
- Regarding VAT, the administrative note No. 01136/MBPE/DGI/DLCD of April 6, 2022, specifies the modalities of declaration and payment of VAT by special Treasury checks.

Special treasury checks is a mechanism for deferred payment of VAT and/or customs duties set up instead of exemption from VAT on contracts totally or partially financed by the Ivorian Government. Thus, the VAT burdening the portion of the State in these projects, is paid by way of special checks from the treasury

- Regarding stamp duty, the administrative note no. 01837/MBPE/DGI/DLCD-SDL/tc/05-2022 specifies that cash flow agreements concluded between a parent company and its daughter are subject to a proportional stamp duty of 1%. Advanced payment on export invoices granted by a parent company to its daughter are subject to the same proportional duty of 1%, when they are made within the framework of a treasury agreement.
- Regarding Corporate Income Tax, the administrative note no. 01696/MBPE/DGI/DLCD/SDL/ski/05-2022 specifies that for the determination of the end-of-year adjustment, the cumulative amount of professional

taxes to be considered for the comparison with the microenterprise tax is composed of Corporate Income Tax and Business License Tax.





Mansour Gaye
Managing Partner
mansour.gaye@sn.gt.com

Talla N'diaye
Manager
talla.ndiaye@sn.gt.com

The 2022 fiscal year began in Senegal with the entry into force of Law No. 2021-42 of 20 December 2021 on the Finance Act for the year 2022.

Developed with the objective of consolidating the recovery of the economy, the finance law contains 24 articles.

Among the changes to the Tax Code, we can note:

- The extension of the benefit of the status of the straightforward export enterprise until December 31, 2024.

As a reminder, the status of the straightforward export enterprise is granted to industrial, agricultural or teleservices companies established in the Senegalese customs territory, and which intend the totality of their production of goods or services for export. Those companies are exempt from dividend tax on dividends paid, from all payroll taxes payable by the employer, from all registration and stamp duties, from the contribution of patents, and from property taxes. They are subjected to the collection of a flat tax of 15%.

- The supply of pasteurized milk is now exempted from VAT. However, this operation is eligible for deduction.
- Textiles acquired by a taxable person subject to a real taxation system and intended for the manufacture of clothing in Senegal are now exempt from tax on textile products
- Raw oils intended to be refined in Senegal are now exempt from the specific tax on food fats
- In addition to this law, Order No. 004130 of March 4, 2022, has established the list of organizations that can benefit from tax-deductible donations. This list of 11 organizations includes, among others, the “Servir le Senegal” foundation, the “SOS Children’s Village” association, and the National Foundation for Social Action of Senegal (FNASS).



Benin

Jean-Louis Dattie

Senior Partner

jean-louis.dattie@ci.gt.com

Charles-Alexandre Koffi

Lead Tax Associate

charles.koffi@ci.gt.com

The 2022 fiscal year began in Benin with the entry into force of Law No.2021-15 of 20 December 2021 on the General Tax Code of the Republic of Benin.

The Code has been completely restructured to consider new innovations and international requirements.

This restructuring has led to the simplification and structuring of companies in terms of income tax.

From now, commercial, or non-commercial companies with a turnover of less than 50,000,000 FCFA (76,200 €) are subject to the synthetic professional tax. To limit the perverse effects of under-declaration of turnover by taxpayers (to benefit from the said system), the rate of the tax is increased from 2% to 5%.

In terms of corporate income tax, the conditions for deducting interest on shareholders' current accounts from taxable income have been revised. From now, the following are deductible:

- Interest paid by a company to its partners or to companies belonging to the same group, including financial institutions, within the limit of those calculated at the key rate of the Central Bank of West African States increased by three (3) points and on condition that the share capital has been fully paid up.
- The total amount of deductible net interest due annually on all debts contracted by a company is limited to 30% of the result before tax, interest, depreciation, and provisions. The fraction of non-deductible interests immediately can be carried forward and deducted for the following fiscal years, within the limit of five (5) years, under certain conditions.
- Interest due on loans is deductible if the commitments to which it relates are not overdue, within the meaning of Instruction No. 026-11-2016 of November 15, 2016, of the Central Bank of West African States.

In terms of Value Added Tax, e-commerce operations are now subject to the said tax.

In terms of the Financial Activities Tax, a reform of the tax has been undertaken by broadening its base to include interest paid to foreign banks and insurance contracts (formerly subject to the Tax on Insurance Contracts). This tax on financial and insurance activities is levied at the common law rate of 10%. This tax is not recoverable.

In terms of procedures, the new book of tax procedures provides a framework for verification and taxation procedures in terms of form and time. The procedures of ex officio assessment and ex officio rectification are now grouped under the name "ex officio taxation". The procedural acts (notice of verification, report, rectification proposal) are subject to a particular formalism (compulsory mentions to be included on the acts, formalization of exchanges).



Burkina Faso

Jean-Louis Dattie

Senior Partner

jean-louis.dattie@ci.gt.com

Charles-Alexandre Koffi

Lead Tax Associate

charles.koffi@ci.gt.com

The 2022 fiscal year began in Burkina Faso with the promulgation by Decree No. 2021-1352/PRES of Law No. 042-2021-AN of December 16, 2021, on the Finance Law for the execution of the State budget, Fiscal Year 2022.

Among the innovations of this Finance Act 2022, various measures to strengthen the fight against money laundering and terrorist financing in Burkina Faso have been adopted.

These measures concern, among other things, the rules related to the determination of transfer prices and the declaration of beneficial owners of Burkina Faso companies.

From now, companies established in Burkina Faso, regardless of their form and activities, must keep a register of their beneficial owners. A beneficial owner is defined as the person or persons who ultimately own or control a customer and/or the individual on whose behalf a transaction is carried out. The definition also includes persons who ultimately exercise effective control over a legal person. The register must be kept up to date with all changes in the beneficial ownership of the legal entity and presented to the Administration at any time.

In addition to this register, companies are also required to file, in support of their declaration of existence, a declaration of beneficial owners using a form provided by the tax authorities. Pre-existing companies and those created after January 1, 2022, will be required to file the declaration of beneficial owners at the same time as the corporate income tax return.

In terms of transfer pricing, related companies whose annual turnover excluding taxes or gross assets is greater than or equal to 1,000,000,000 FCFA (1,524,000 €) are required to submit, by May 31 at the latest, the annual transfer pricing declaration for the accounting period ended December 31 of the previous year. This declaration is made on a form in accordance with the model of the Tax Administration.

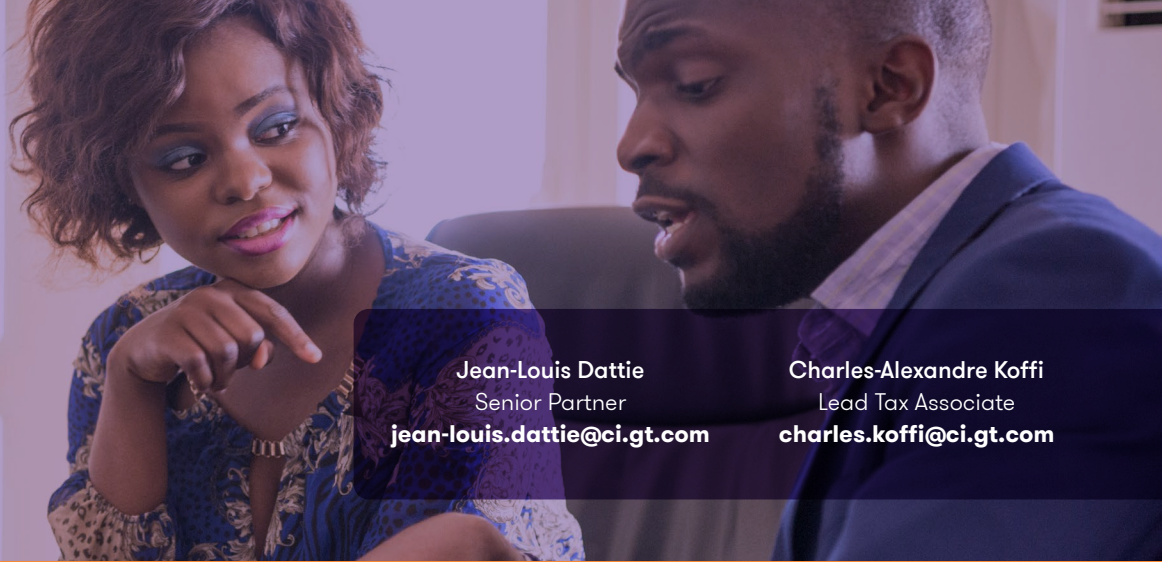
In addition, any company operating in Burkina Faso, whose annual turnover excluding tax or gross assets is greater than or equal to 1,000,000,000 FCFA (1,524,000€), which owns or is owned directly or indirectly by a company that realizes in Burkina Faso an annual turnover excluding tax or gross assets is greater than or equal to 1,000,000,000 FCFA (1,524,000€) is required to keep at the disposal of the tax authorities a documentation to justify the pricing policy practiced in the context of transactions of any kind carried out with these companies.

In terms of procedures, taxpayers are now required to keep duplicates of invoices, bills of fees, purchase orders, delivery notes and any other document of the elements contained in the declarations submitted for 10 years.





Mali



Jean-Louis Dattie
Senior Partner
jean-louis.dattie@ci.gt.com

Charles-Alexandre Koffi
Lead Tax Associate
charles.koffi@ci.gt.com

The 2022 fiscal year began in Mali with the entry into force of Law No. 2021-071 of December 23, 2021, on the Finance Law for the year 2022.

Drafted in a context of political crisis, the tax annex to this finance law contains only 6 articles.

Among the new measures,

- An annual flat-rate contribution to be paid by the operators of two-wheeled vehicles used for transporting people or goods has been introduced. This contribution is XOF 18,000 (€28) for machines that are at least 2 years old and XOF 15,000 (€22) for machines that are more than 2 years old.
- The contribution to be paid by the operators of three-wheeled machines used for the public transport of goods or persons is reduced.
- Agricultural equipment, previously exempt from VAT, is now subject to a reduced rate of 5%.
- Accommodation and catering services provided by hotels, restaurants and similar organizations and services provided by organizers of approved tourist circuits are now subject to the reduced VAT rate of 5%.
- The creation of a one-stop service for the financial statements, in charge of collecting the annual financial statements of companies operating in Mali and verifying that the financial statements are complete and certified by a chartered accountant before they are sent to the relevant tax authorities.





Mauritania

Jean-Louis Dattie
Senior Partner
jean-louis.dattie@ci.gt.com

Charles-Alexandre Koffi
Lead Tax Associate
charles.koffi@ci.gt.com

The 2022 fiscal year began in Mauritania with the entry into force of Law No. 2022-001 of January 13, 2022, on the finance law for the year 2022.

Among the new measures,

- A simplified tax regime for commercial fishing has been instituted. This regime is aimed at companies that export frozen products on land or on board, finished products and fresh or live products excluding fish meal and oil, consignments for the foreign regime, processing and freezing, small pelagic products, ship chandler and free license contracts. The tax is set at 1% of the gross exported value for artisanal exporters who have fixed assets intended only for the processing of their own production. This rate is set at 1.2% for artisans who do not have processing plants.

The authority in charge of the marketing of “fishery products intended for export” deducts the withholding tax based on the net commercial value and remits it to the tax administration the 15th of the following month at the latest.

For the inshore and offshore fishing companies, the tax is calculated annually on the production of the previous year. Exporters are obliged to determine and pay spontaneously, within 30 days following the expiry date of the filing of the income tax return, the amount of tax due based on their onboard fishing log for the previous year.

- Capping at 20% of the amount of tax on wages due by staff working under written contracts with a national or foreign press company or establishment established in Mauritania, airlines and air navigation agencies
- VAT exoneration for the transport equipment of public transport companies for passengers or goods, sales to airlines and public transport companies of goods intended to be incorporated into aircraft or their transport equipment
- Reduction of VAT rate for telephony company to 16%
- An annual property tax on undeveloped land is introduced. This tax, the rate of which will be fixed by regulation of Ministry of Finance, does not apply to land used for commercial, industrial, or artisanal purposes; to land owned by the State, foreign States, local authorities, public administrative establishments, national companies, and companies with majority public holdings.



Niger

Jean-Louis Dattie
Senior Partner
jean-louis.dattie@ci.gt.com

Charles-Alexandre Koffi
Lead Tax Associate
charles.koffi@ci.gt.com

The 2022 fiscal year began in Niger with the entry into force of Law N°2021-50 of 20 December 2021 on the 2022 Finance Law.

These measures, which are essentially aimed at broadening the tax base and strengthening the existing normative framework, include:

- In terms of income tax, unrealized gains related to foreign exchange are not included in the taxable profit. When there is a probable exchange loss, the taxpayer makes a provision, deductible from his taxable income.
- The taxation of a portion of the amounts set aside in reserves by the companies as soon as these exceed 20% of the company's share capital. When the reserves exceed the limit, the excess is subject to the Dividend Tax at a rate of 50% of the undistributed net income. The tax rate is 15%.
- The repeal of the fictitious VAT mechanism which consisted in the taxpayer calculating fictitiously the VAT on operations carried out with non-taxable persons.
- The exemption of VAT on services provided to oil companies and their subcontractors when the said services are directly related to the execution of oil operations.
- Regarding tax audits, any document rejected or not presented during the audit operations, as recorded in an official report, is inadmissible in the litigation phase. In addition, in the event of hierarchical or jurisdictional referrals, the rate of advance payments to be made has been revised.

From now, no payment is required in the event of a referral to the Head of the Tax Administration or the Minister of Finance.

In case of referral to the arbitration committee of tax appeals, the rate of advance payment is set at 15% of the disputed amounts. In case of referral to the judge, the rate of advance payment is set at 25% of the disputed amounts. The advanced amounts paid are fully refunded when the litigation procedure results in a decision in favor of the taxpayer.



Togo

Patrick Gnali Kouassi
Managing Partner
patrick.kouassi@tg.gt.com

Biva OURO-DONI
Senior Manager
biva.ourodoni@tg.gt.com

The fiscal year 2022 started in Togo with the entry into force of the Law No. 2021-032 of December 28, 2021, on the finance law for the year 2022.

Among the new measures, we may note:

- In terms of wages tax, the basis of calculation of benefits in kind according to the provision of a vehicle has been reviewed. The value retained is no longer 10% of the gross taxable salary but is now one third of the normal depreciation year of the vehicle
- In the area of transfer pricing, the scope of the obligation to maintain transfer pricing documentation has been clarified.

The following are required to maintain complete documentation in French to justify their transfer pricing policy

- Companies established in Togo whose annual turnover excluding taxes or gross assets on the balance sheet exceeds 20,000,000,000 FCFA (30,480,000€).
- Companies established in Togo that own or control, or are owned or controlled, at the end of the fiscal year, directly or indirectly, more than half of the capital or voting rights of a company whose annual turnover before tax or gross assets shown on the balance sheet is greater than 20,000,000,000 FCFA (30,480,000€).

In addition, any company carrying out transactions with companies of the same group must provide, at the same time as its income tax return, a simplified declaration summarizing its transfer pricing policy and indicating the nature, the exact amount of the transactions, the company name, and the address of the registered office of the related companies.



Democratic Republic of Congo

Jean-Louis Dattie
Senior Partner
jean-louis.dattie@ci.gt.com

Charles-Alexandre Koffi
Lead Tax Associate
charles.koffi@ci.gt.com

The fiscal year 2022 started in DRC with the entry into force of Law No. 21/029 of 31 December 2021 on the finance law for the year 2022.

Among the new measures, we note:

- The deliveries of Fuel Oil Internal Market are now exempt from VAT
- A VAT reduced rate of 8% is applicable to certain food products (husked rice, herring, cod, anchovy, tilapia, beef, iodized salt, ...)
- Penalties for failure to submit a VAT return on time. The fine is 1,500,000 Congolese Francs (712€) to which is added the loss of a quota of 10% of the amount of credit. As regards the nil declarations, the fine is 500 000 Congolese Francs (238 €)
- Extension of the professional income tax due on foreign suppliers' services to professional activities exploited or used in DRC.

The list of deductible professional expenses for Corporate Income Tax has been extended to:

- expenses incurred in connection with operations that condition the existence or development of the company but whose amount cannot be related to specific productions of goods and services. These expenses appear on the assets side of the balance sheet under the name " establishment fees ".
- Applied research and development expenses provided that they relate to clearly individualized projects.

Establishment fees and research and development expenses must be amortized on a straight-line basis over a period of 3 years.

- Regarding Corporate Income Tax, the list of non-deductible expenses is now extended to confiscations, penalties of any kind (including transactional fines) as well as 50% of professional communication expenses and 60% of professional representation expenses.

Provisions made for losses, expenses or impairment of assets are not deductible, except for:

- Provisions for reconstitution of mining deposits
- Mandatory provisions for receivables established by credit and microfinance institutions in accordance with banking regulations. These provisions must be confirmed by the auditor.
- provisions constituted, within the framework of regulated commitments, by insurance and reinsurance companies in accordance with insurance regulations. These provisions must be confirmed by the auditor.

Extension of the scope of dividend tax to income deemed distributed and other reinstatements into the taxable profit. The tax basis is equal to the sum of reinstatements less income tax.



In terms of tax procedures, various measures have been adopted to clarify and simplify audit procedures:

- The tax authorities are now obliged to notify the taxpayer in the event of a dismissal following an audit, by means of a notice of dismissal
- The tax authorities now have 45 days to notify the taxpayer of its decision to abandon all or part of the notified adjustments, when the taxpayer's observations have been formulated within the deadline.
- Clarification relating to the rule prohibiting double checks tax audit only concerns accounting tax audits
- From now on, the conclusion of public contracts, the obtaining of certain administrative documents and the benefit of certain services are subordinated to the presentation of a tax clearance delivered by the Tax Authorities.

The thresholds for ordering tax relief in the context of a tax claim are now set as follows:

Recipient of the appeal	Old referral threshold	New referral threshold
Head of the Tax Administration	Any amount exceeding 500,000,000 Congolese francs (€237,000€)	Any amount exceeding 10,000,000,000 Congolese francs (€4,740,000)
Co-Head of Corporate companies		Any amount less than 10,000,000,000 Congolese francs (€4,740,000)
Head of Provincial or Urban companies	Any amount between 50,000,000 (€23,700) and 500,000,000 (€237,000) Congolese francs	Any amount between 100,000,000 Congolese francs (€47,400) and 10,000,000,000 Congolese francs
		Any amount between 100,000,000 Congolese francs (€47,400) and 10,000,000,000 Congolese francs (€4,740,000) when the taxpayer is under the jurisdiction of the tax center.
Head of the tax center	Any amount under 50 000 000 (23 700€)	Any amount less than 100 000 000 Congolese Francs (47 400€)

As regards the calculation of deadline, the legislator now specifies that when a time limit is expressed in an act of the Tax Administration, the date from which this time limit starts to run is the first working day following the acknowledgement of receipt. If the last day of the time limit is a non-business day, the date of performance of the obligation or exercise of a right is postponed to the next business day.



Mauritius



Raeesa Haneed
International Tax
Raeesa.Haneef@sng.gt.com

Treaty updates

Treaty	Update
Bangladesh – Mauritius Income Tax Treaty (2009)	Negotiations are underway for an amending protocol
India – Mauritius Income Tax Treaty (1982), as amended by the 2016 protocol	Negotiations for an amending protocol have been concluded and the protocol is now awaiting signature
Mauritius – Mozambique Income Tax Treaty (1997)	Negotiations for an amending protocol to update the Mauritius – Mozambique Income Tax Treaty (1997) have been concluded and the protocol is now awaiting signature
Mauritius – Oman Income Tax Treaty (1998)	Negotiations are underway for an amending protocol
Mauritius – Uganda Income Tax Treaty (2003)	Negotiations for an amending have been concluded and the protocol is now awaiting signature.

Careers

Please visit our website www.grantthornton.co.za for available positions within the Tax Division.

Contact Us

For all tax related queries, please contact the following individuals:



Corporate Tax

Khanyisa Cingo-Ngandu
Khanyisa.Cingo@sng.gt.com



Corporate Tax

Azwinndini Magadani
Azwinndini.Magadani@sng.gt.com



Tax Services

Nkwachi Abuka
nkwachi.abuka@ng.gt.com



Senior Partner

Jean-Louis Dattie
jean-louis.dattie@ci.gt.com



Managing Partner

Anil Patel
anil.patel@ug.gt.com



Lead Tax Associate

Charles-Alexandre Koffi
charles.koffi@ci.gt.com



International Tax

Raeesa Hannef
Raeesa.Haneef@sng.gt.com



Samuel Mwaura

Partner: Taxation
samuel.mwaura@ke.gt.com

- **General Tax queries:** Ms Evelyn Vilane @ Evelyn.Vilane@sng.gt.com