

## LEGAL ALERT

### ANGOLA – UNITED ARAB EMIRATES: DOUBLE TAX TREATY

#### **MAIN FEATURES OF THE DOUBLE TAX TREATY ENTERED INTO BETWEEN ANGOLA AND THE UNITED ARAB EMIRATES**

The Republic of Angola and the United Arab Emirates Government (UAE) have signed a Double Tax Treaty (DTT), which will come into force after its ratification, a long-awaited initiative mainly in Angola. Thus, Angola signs its first DTT, and UAE has become the first treaty partner of Angola, followed by Portugal with which Angola signed its second DTT.

We will highlight herewith some important features of this DTT.

**A DTT negotiated under the UN Model** – the DTT, is mostly in line with the latest (2017) UN Model Double Taxation Model (UN Model) update, although with some very particular nuances, many of them due to the exploration and production of petroleum and its derivatives that is made in both countries.

Therefore, it is foreseen, among other provisions of the DTT, certain definitions that intend to cover certain features, such as the definition of resident of UAE that includes the individuals that have nationality from the UAE.

**Permanent establishments** – in what concerns permanent establishments, it includes offshore drilling sites as well as drilling rigs and ships used for the exploration, extraction and exploitation of natural resources, when these activities have a duration of more than six months. Another provision to be taken into account in this DTT, is the one that considers that there is a permanent establishment when a person (that is not an independent agent) acts in a Contracting State on behalf of an enterprise of the other Contracting State, if such person: (i) acts by concluding contracts on behalf of that

company; (ii) usually intermediates orders exclusively or almost exclusively for the enterprise itself or others controlled by it; (iii) holds a deposit of goods or merchandise intended for be delivered on behalf of the company; or (iv) manufactures or processes goods or merchandise belonging to the company.

**Activities regarding the exploration and production of petroleum and its derivatives are excluded from the scope of the DTT** – it is expressly provided, that the DTT provisions do not in any way limit the right of both Contracting States or any of their Local Governments and their administrative authorities to apply their domestic laws and regulations relating to the taxation of profits and proceeds arriving from hydrocarbons and related activities in their respective territories.

**International shipping and air transport** – profits from the operation of ships or aircraft in international traffic shall be taxed in the Contracting State in which the effective management of the enterprise is situated. In addition, the same principle applies to profits from the sale of tickets on behalf of another company and to income derived from bank deposits, securities and shares if such income is incidental to the company operating in international traffic.

**Unique withholding tax rates for dividends, interests and royalties** – the DTT foresees a unique withholding tax for dividends, interest and royalties in the Source State that may not exceed an 8% rate of its gross amounts. In the specific case of interest it is foreseen an exemption of tax at source: (i) when the debtor of such income is the source State, a political or administrative subdivision thereof; (ii) when the beneficiary of such income is the other Contracting State, a political or administrative subdivision thereof or an institution (including financial institutions) totally held by them; or (iii) in case of interest from long term loans (five years or more) granted by a bank or a financial institution resident in the other Contracting State.

**The DTT also establishes a withholding tax rate applicable to the payment of fees charged for the provision of certain technical services** – in accordance with the 2017 UN Model, the DTT establishes a withholding tax rate of 5% applicable to the remuneration of certain technical services, which under the DTT means any payment related to any service of technical nature, management or consulting, except when the service is paid: (i) to an employee of the person making the payment; (ii) a teacher of an educational institution or to an educational institution as a consideration for teaching; or (iii) by and individual for services for the personal use of another individual.

**Capital gains** – in what concerns capital gains, it should be highlighted, on the one hand, that the gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including the gains from the alienation of such a permanent establishment (alone or with the whole enterprise), can only be taxed in the State where the permanent establishment is located. On the other hand, apparently when the beneficial owner of the capital gains is the State, the government, the local authorities or its financial institutions, the capital gains will only be taxed in the residence State.

**The DTT foresees a tax sparing clause** – the residents of Angola and of the EAU may deduct the tax that would have been paid in the other State, but that was not taxed due to an exemption or a tax rate reduction granted according to the laws of Angola and of the EAU.

**The granting of any benefits under the DTT is subject to the main purpose test** – the DTT chooses to include a simplified version of the limitation of benefits clause, which is basically a main purpose test. According to this test, the benefits of the DTT shall not be granted if it is reasonable to conclude, taking into account all the relevant facts and circumstances, that the attainment of such benefits was one the main purposes of any agreement or transaction, which directly or indirectly results in such benefits, unless if it is determined that the granting of such benefits, in such circumstances, is consistent with the object and purpose of the relevant provision of the DTT.

We are at your disposal to discuss the impact of this relevant DTT on your enterprise's activity.

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