

ETHIOPIA – TAXATION

Context

The Ethiopian taxation of foreign companies operating in Ethiopia applies as follows:

Before July 2016 :

- Withholding system for technical services rendered by a non-resident company in Ethiopia (WHT): 10% for services rendered abroad and 30% for services rendered in Ethiopia
- Value added tax (VAT): 15%.

Since July 2016 :

- Withholding system for the Non-Resident Tax (NRT): 15%
- Value added tax (VAT): 15%.

When a foreign company provides a benefit (not having a permanent establishment in Ethiopia) to an Ethiopian company, the NRT and a reinstatement of VAT apply, withheld by the Ethiopian customer who is the beneficiary of the service.

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Ethiopian Revenue and Customs Authorities (ERCA) does not recognize the parent company benefits rebilled to its subsidiaries. Technical fees, legal assistance, tax, human resources, etc.

According to audits conducted by ERCA's teams, French companies working on public projects, some of which are defined as strategic, as well as companies based in Ethiopia for many years, have recently undergone taxes adjustments, following a refusal to recognize these refills, or even a rejection of recharges accounted in previous years. These adjustments raise artificially and very significantly the tax result of these companies with a 30% tax on profits + interest + penalties.

Despite the illegality of the measure, the audits conclusions are very difficult to challenge, as each target company must start a long, expensive and tedious procedure.

It should be noted that during the audit period, ERCA's auditors request various documents in order to verify the veracity of the contributions of the international experts:

- Work permit / residence permit of international experts;
- Letter from customers, certifying that all the international experts in charge of permanent establishments have actually taken action on the contracts;
- Copy of contracts specifying the inputs of international experts;
- Amounts and original invoices of each service.

It turns out that despite the documents submitted, the auditors refused all the expenses related to the international experts.

Companies familiar with these practices are therefore faced with the problem of reloading these costs in order to avoid a recovery. ERCA's position thus far stipulates that these costs, normally deductible from turnover, may be taxed under the combination of TNR and VAT.

The financial viability of these projects is therefore questioned, being more often financed by international donors.

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In the context of audits conducted by ERCA, several French companies saw their profits fictitiously increase via the non-recovery of local taxes, even when the French company had locally paid its taxes. This profit enhancement is therefore subject to an income tax of 30%, to which is added an annual rate penalty on the amount due (ERCA does not communicate the compensation tables applied, according to the examples received this very high penalty exceeds the rates of inflation and devaluation of the cumulative currency, some companies have reported a 27% annual rate) and interests. Moreover ERCA applies retroactive taxes over the last 9 years during this audits (the deadline for foreclosure in Ethiopia would be 10 years for companies).

With regard to the exchanges with the impacted companies the amounts of the adjustments, penalties and interests can exceed in the first instance 1/3 of the turnover of the Project Office even 1/3 of the total investment of a project.

Non application of the bilateral tax treaty

ERCA rejects the expenditure without deductions at the source to French companies despite a non-double taxation agreement signed on July 17, 2008 and ratified in 2012 by the Ethiopian authorities. (Banks refuse to transfer payments without a withholding statement). ERCA does not respect the bilateral tax convention ratified by France and Ethiopia on this point.

Appeal possibilities

Audits concerning French companies are therefore carried out by ERCA and the company concerned has 21 days to appeal this decision to the ERCA Technical Comity. In the event that this request is rejected, the company may appeal the decision to the federal authorities but must pay 50% of the total amount (taxes, penalties and default interest) to the Ethiopian authorities.

Litigation with the tax authorities

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Fiscal risk (and often arbitrary controls conduct by inexperienced inspectors) tends to give an unfavorable image of Ethiopia and limits potential investments and future projects. French investors, wishing to settle in Ethiopia, having learned about these difficulties, have canceled their investments projects.

For international donors, these practices have the effect of calling into question the intrinsic costs of their projects through the reinstatement of taxes, often in contravention of the financing agreements of international donors, which explicitly exclude the imposition of taxes on aid amounts of public development.