



Lechêne, Iñiguez & Partners, SL

28, Diego de León St.

Mezzanine floor, left

28006 - Madrid

Spain

Telephones:

(+33) 7829 68 991

(+34) 691 43 66 55

(+240) 555 566 584 / 555 605 375

(+239) 998 0890 / 997 8070

(+258) 87 650 0066

1. TAX MATTERS

Most of the tax provisions in Equatorial Guinea (EG)'s system stem from Law N° 4/2004 dated 28th October 2004 regulating the taxation system of the Republic of Equatorial Guinea (generally referred to as the "Tax Code").

Two different tax and legal regimes coexist in Equatorial Guinea: a common law regime and a specific one for the hydrocarbon sector.

Any person or entity that does not belong to the hydrocarbon sector is subject to the common law regime.

1.1 Tax Residency in EG

An individual or legal entity which is present in EG more than three months within a calendar year, or more than six months within two consecutive calendar years, performing an economic activity or providing paid services in country is considered as a resident for tax and legal purposes.

From the text of Law N° 4/2004 regulating the Taxation System of the Republic of Equatorial Guinea, we understand that the term "present" implies and means "physical presence" in the territory of Equatorial Guinea.

The notion of residence applies equally to any kind of activity (even if there is some specificity in the Oil & Gas sector).

The notion of Permanent Establishment is not defined, nor used in EG's Tax Code. Authorities mainly refer to the notion of residence as defined above.

1.2 Tax rules for the residents not belonging to the hydrocarbon sector

1.2.1 Corporate Income Tax ("CIT")

CIT must be paid by any resident entity, according to the following conditions:

– Payment of a **Minimum Income Tax**, which must be made before the end of March, each year.

The MIT liability equals to 3% of the turnover of the previous Fiscal Year;

– Payment (as the case may be), of the remaining quota of CIT liability at a 35% rate in case of profits, after filing the CIT Return (before the 30 th April, each year).

1.2.1.1 Minimum Income Tax ("MIT")



Lechêne, Iñiguez & Partners, SL

28, Diego de León St.

Mezzanine floor, left

28006 - Madrid

Spain

Telephones:

(+33) 7829 68 991

(+34) 691 43 66 55

(+240) 555 566 584 / 555 605 375

(+239) 998 0890 / 997 8070

(+258) 87 650 0066

This amount cannot be lower than XAF 800,000 (even if the entity does not have any revenue). The MIT paid can be totally or partially deducted from the CIT liability.

The penalty for lack of payment or payment in arrears of MIT equals to 50% of the amount that should have been paid.

1.2.1.2 Deductions from the CIT taxable base

The following will be treated as deductible expenses: overheads of any type, staff expenses and labour, expenses relating to the premises and material and furniture, miscellaneous and special expenses, insurance premiums, gifts, donations and subsidies.

As a general rule, the following conditions must be met:

- The expense must be incurred in the interest of the company;
- The expense must represent a diminution of the net assets;
- The expense must be related to the Fiscal Year during which it was incurred;
- The expense must be justified.

Furthermore, the Tax Code states special deductibility conditions for some expenses.

1.2.2 Personal Income Tax ("PIT")

1.2.2.1 Salaries and Wages' category

Taxable income is:

- Income received and related to a work contract;
- Income received for an activity performed in EG.

The salaries of national and expatriate employees working in EG are subject to PIT.

Taxable base of the PIT on Salaries and Wages

According to the Tax Code, the taxable income is composed of:

- Basic salary;
- Bonuses indemnities and allowances;
- Expenses refunding;
- Benefits in kind.

**Lechêne, Iñiguez & Partners, SL**

28, Diego de León St.

Mezzanine floor, left

28006 - Madrid

Spain

Telephones:

(+33) 7829 68 991**(+34)** 691 43 66 55**(+240)** 555 566 584 / 555 605 375**(+239)** 998 0890 / 997 8070**(+258)** 87 650 0066**Calculation, declaration and payment of the PIT on Salaries and Wages**

The calculation is done in various stages.

The following amounts must be deducted from the taxable salary:

– Professional expenses: based on effective amounts, or according to the legal limit of 20% of the taxable salary (up to XAF 1,000,000 /year);

– The employee's part for the social contributions to the National Institute of Social Security (INSESO) and to the Work Protection Fund and Training Tax (WPF).

After this, the PIT rate is applied to the taxable salary according to the following annual progressive tax scale:

ANNUAL TAXABLE SALARY	APPLICABLE RATE
From XAF 0 to 1,000,000	0%
From XAF 1,000,001 to 3,000,000	10%
From XAF 3,000,001 to 5,000,000	15%
From XAF 5,000,001 to 10,000,000	20%
From XAF 10,000,001 to 15.000.000	25%
From XAF 15,000,001 to 20,000,000	30%
More than XAF 20,000,000	35%

According to the provisions of the Tax Code, the PIT liability shall be withheld each month by the employer and paid to the Public Treasury within the first 15 days of the month following the payment of the salaries.

However, in practice, the employer shall declare the PIT liability on Salaries and Wages within the first 15 days of the month following the month of payment of the salaries and then must pay said tax within the 15 days following the date when the tax liquidation is provided to the taxpayer.



Lechêne, Iñiguez & Partners, SL

28, Diego de León St.

Mezzanine floor, left

28006 - Madrid

Spain

Telephones:

(+33) 7829 68 991

(+34) 691 43 66 55

(+240) 555 566 584 / 555 605 375

(+239) 998 0890 / 997 8070

(+258) 87 650 0066

Penalties for lack of payment or late payment of the PIT liability equal to 25% of the amount due plus 10% per month in arrears.

1.2.2.2 Social Contributions

– To the National Institute of Social Security (“INSESO” for its Spanish acronym).

Contributions to INSESO include:

- An employer part, equal to 21.5% of the base salary;
- An employee part, equal to 4.5% of the base salary.

The employer withholds the employee’s part and declares it along with its own part within the first 15 days of the month following the month of payment of the salary.

Penalties for lack of payment or late payment of INSESO contributions equal to 20% of the amount due.

– To the Work Protection Fund (“WPF”)

Both employers and employees must pay their contributions to the WPF. This contribution includes:

- The employer’s part equals to 1% of the gross salary;
- The employee’s part, equals to 0,5% of the net salary.

Since it is impossible to calculate a contribution based on a net amount, the administrative practice is to calculate and pay both of these contributions based on the base salaries.

This contribution is monthly withheld by the employer who declares it to the Ministry of Labour and Social Security within the first 15 days of the month following the month of payment of the salary.

Penalties for lack of payment or late payment of contributions to the WPF equal to 20% of the amount due.

1.2.2.3 Income from Investments’ category

The following are considered Income from Investments:

- Proceeds from stock and corporate portions and related income;
- Income from bonds;
- Income from loans, deposits, guarantees and checking accounts except for special provisions that may exonerate them the interests of short-term bonds;
- Capital gains obtained through the sale of components of the investments’ capital.



Lechêne, Iñiguez & Partners, SL

28, Diego de León St.

Mezzanine floor, left

28006 - Madrid

Spain

Telephones:

(+33) 7829 68 991

(+34) 691 43 66 55

(+240) 555 566 584 / 555 605 375

(+239) 998 0890 / 997 8070

(+258) 87 650 0066

The calculation of the Income from Investments for resident individuals or resident legal entities is done by applying the aforementioned PIT annual progressive tax scale.

Income from Investments benefiting to individuals or legal entities not having their usual domicile or headquarters in Equatorial Guinea, are subject to a discharging tax of 25% by way of PIT.

1.2.3 Value Added Tax ("VAT")

1.2.3.1 Scope of VAT

The following are subject to VAT:

- Goods sold or assigned for valuable consideration;
- Services;
- Self-consumed goods and services;
- Imports of goods;
- Any other operation done by individuals or legal entities, related to their professional, individual or business activities.

1.2.3.2 Calculation of the VAT liability

The taxable base varies according to the nature of the concerned operation. In general, the taxable base amounts to the price, tax excluded, due in compensation of a sale of a good or a provision of a service.

Then, a normal rate of 15 % or a reduced rate of 6 % (mainly for the primary necessity goods) is applied to this basis.

There is also a 0% rate related to some products listed by the Tax Code (cranes, handling machines, paving machines, etc.).

The amount of VAT paid to the providers is deductible from the collected one.

When a company benefits from a tax exoneration for VAT, said the company must apply a pro rata deduction on the totality of VAT amount collected.

1.2.3.3 Declaration and payment modalities

VAT is declared monthly and the liability must be paid within the first 15 days of the month following the one in which the taxable event occurs.

As for the tangible movable property, the good's transfer determines the taxable event, the date when the tax can be claimed by the Tax Authorities thus being concomitant.

As for the services, the collection for the sums paid in compensation of said services determines the taxable event, and as a consequence, the date when the tax can be claimed by the Tax Authorities.



Lechêne, Iñiguez & Partners, SL

28, Diego de León St.

Mezzanine floor, left

28006 - Madrid

Spain

Telephones:

(+33) 7829 68 991

(+34) 691 43 66 55

(+240) 555 566 584 / 555 605 375

(+239) 998 0890 / 997 8070

(+258) 87 650 0066

Once liquidated by the General Direction of Taxes and Contributions, the VAT liability must be paid to the Public Treasury. Refund of VAT is not possible.

1.2.4 10% Withholding Tax for non-residents

Non-resident entities or individuals must pay an amount of 10% of their gross income earned in the Equatoguinean territory.

The Tax Administration considers said tax as a withholding tax for the client company. In practice, said 10% tax on gross income for non-residents must be declared within the first 15 days following the month when said tax was withheld.

1.3 Tax rules applicable to the Hydrocarbon sector

1.3.1 Notion of Hydrocarbon sector

The notion of Hydrocarbon sector is defined as "Companies, corporations, individuals and agencies of all kinds involved in the search, exploration, exploitation, and marketing of hydrocarbons in the Republic of Equatorial Guinea".

The Tax Code provides a list of taxes to which companies from the Hydrocarbon sector are subject to, as follows:

– Income Taxes

1. a) Corporate Income Tax;
2. b) Personal Income Tax;
3. c) Tax on Income from residents or non-residents individuals or entities;
4. d) Tax on individuals;

– Taxes on Transfer and Assignment generating Capital Gains not invested in Equatorial Guinea;

– Export duties;

– Gross Output Royalties;

– Surface premiums or rental rates;

– Discovery, production and marketing bonds.

Our position is that said list is exhaustive and therefore no other tax is applicable to companies belonging to the Hydrocarbon sector.

1.3.2 Tax on Income of Individuals and Legal Entities belonging to the Hydrocarbon sector



Lechêne, Iñiguez & Partners, SL

28, Diego de León St.

Mezzanine floor, left

28006 - Madrid

Spain

Telephones:

(+33) 7829 68 991

(+34) 691 43 66 55

(+240) 555 566 584 / 555 605 375

(+239) 998 0890 / 997 8070

(+258) 87 650 0066

This withholding tax is applicable to:

- Gross income related to the sale of goods and provision of services (even if in practice it is only applied to the provision of services);
- Performed by a resident or non-resident legal entity or individual;
- Within the Hydrocarbon sector
- In Equatorial Guinea's territory.

This withholding tax is equal to:

- 6.25% when payments are made to a resident entity;
- 10% when payments are made to a non-resident entity.

The taxable base are the gross amounts paid to the provider.

The amount withheld by the withholding agent during a fiscal year is deductible from the CIT liability to be paid for the following fiscal year.

2. BUSINESS MATTERS

2.1 Economic Incentives

Tax and Customs exemptions can be granted by the Government for some specific economic sectors (e.g. Oil & Gas, Public Works, etc.). These exemptions shall be negotiated in the contract to be signed between the company and the Administration (e.g. Production Sharing Contract, Public Work Contract, etc.).

Companies that have their management headquarters and effective centralization of their operations in District administrative centres not on the coast, including Annobón, will receive a rebate of 50% of the CIT levy.

However, said rebate shall not be applicable to companies which activities related to the extraction of raw materials of forestry, mining, hydrocarbons, energy generation, mineral and non-mineral water, emergent or obtained from drilling and fishing.

Any tax incentive should be in principle based on a legal norm according to the Tax Code.

2.2 Types of legal structures available to carry out business in EG

2.2.1 General provisions



Lechêne, Iñiguez & Partners, SL

28, Diego de León St.

Mezzanine floor, left

28006 - Madrid

Spain

Telephones:

(+33) 7829 68 991

(+34) 691 43 66 55

(+240) 555 566 584 / 555 605 375

(+239) 998 0890 / 997 8070

(+258) 87 650 0066

In order to carry out an activity in EG, a foreign Company can either set a Representation or Liaison Office, incorporate a Company or Subsidiary or register a Branch.

– Representation or Liaison Office

This relatively new legal structure presents itself as a very convenient way for companies to be able to participate in bidding rounds and tenders at a considerably lower cost, with no tax obligations.

– Companies or subsidiaries

According to the OHADA regulations, a subsidiary can take one of the three main legal forms:

- Simplified Stock Company;
- Private Limited Company; or
- Public Limited Company.

– Branch

It is a commercial, industrial or service-providing establishment which belongs to a company or an individual (and has no legal personality on its own) and which has been granted a certain degree of autonomy in its management.

2.2.2 Specific provisions applicable to companies belonging to the Oil & Gas sector

Presidential Decree n°127/2004 dated 14 th September 2004, which sets forth complementary norms empowering national participation in the Oil & Gas sector created the obligation for foreign companies operating in the Oil & Gas sector as well as their sub-contractors to enter into partnership with national investors. Moreover, Sections 2 and 8 of said Decree states the following rules regarding national partnership:

- GEPetrol (a Public Company representing the Oil interests of the EG State) has a pre-emptive right to be a national partner in foreign Oil & Gas companies and can be accepted as one sole partner if its participation is higher than 35% of the share equity capital;
- If GEPetrol is not to hold more than 35% of the shares of the company, the national participation shall not be less than 3 national partners (individuals or companies);
- National should have 1/3 representatives in the Board of Directors of the company.

We consequently assume that only companies with a board of directors can be constituted.

From these provisions, we understand that:

- Only Public Limited Companies can be constituted; and



Lechêne, Iñiguez & Partners, SL

28, Diego de León St.

Mezzanine floor, left

28006 - Madrid

Spain

Telephones:

(+33) 7829 68 991

(+34) 691 43 66 55

(+240) 555 566 584 / 555 605 375

(+239) 998 0890 / 997 8070

(+258) 87 650 0066

– A prior written waiver from GEPetrol of its pre-emptive right should be obtained where you would like to contract with other national partners.

September 2018

** The contents of this publication are based on our knowledge and interpretation of current law and practice which are likely to change over time. The publication is provided for information purposes only and does not constitute professional advice of any kind. The information provided in the publication should not be used as a substitute for consultation with professional advisers. Before making any decision, taking any action, or refraining from taking any action, the client should first consult a professional adviser who has been provided with the pertinent facts relevant to the client's particular situation. No responsibility for any loss occasioned to any person acting or refraining from acting as a result of any material in the publication can be accepted by LI&P, the author, copyright owner or publisher or any of their related entities, partners, directors, employees, agents or subcontractors.*