

Cape Verde amends certain tax regimes and introduces Country-by-Country Reporting

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Executive summary

The Cape Verde Government published Law n. 86/IX/2020 (the Law) on 28 April 2020. The Law introduces several amendments to certain tax codes and republishes several regimes, as follows:

- ▶ Tax Benefits Code
- ▶ Corporate Income Tax (CIT) Code
- ▶ Personal Income Tax (PIT) Code
- ▶ General Tax Code
- ▶ General regime of tax related infractions
- ▶ Regime for small and medium enterprises

This Alert summarizes the principal and more relevant amendments introduced by the Law, including the introduction of Country-by-Country Reporting.

Detailed discussion

Tax Benefits Code

Several amendments were introduced to the Tax Benefits Code.

The Cape Verdean tax authorities are now bound to publish, on an annual basis, a list of taxpayers (legal entities) to which tax benefits have been attributed.

In order to be eligible for the tax benefits provided under this Code, taxpayers now need to meet additional requirements, among which are the need to have the investment project registered in the Cape Verde Investment Office (*Balcão Único de Investimento*) and the taxpayer may not have held a shareholding in a company that ceased its activity in the last five years, prior to the concession of the benefit, with outstanding tax liabilities.

Investment Tax Credit

The investments made under the Investment Law benefit from a tax credit, in the form of a tax deduction to the CIT and PIT due, applicable to taxpayers subject to the organized accounting regime, in a value corresponding to:

- a) 30% (previously 50%) of relevant investments made in health, environment, creative industry, tourism or tourism promotion and tourism real estate promotion, industrial activity, air and maritime transportation services and port and airport services, production of renewable energy, production and assembly of renewable energy equipment, scientific research and investigation, as well as the development of information and communication technologies
- b) 20% (previously 30%) of relevant investments made in other areas

The application of such benefit is dependent on the presentation, by the taxpayer, of the income tax return of the relevant fiscal year (FY) as well as evidence of the investments made, through the periodical income return and the annual statement for accounting and tax purposes.

Investment Law - Benefits on Custom Duties

Investments carried out under the Investment Law are now subject to a 5% rate of Custom Duties (previously an exemption was provided), whenever they entail the import of defined goods and provided they are linked to the main project of the taxpayer's investment.

The list of goods that may benefit from the reduced rate was also amended, limiting the type of goods that may benefit from such reduced rate.

Convention of establishment

The regime regarding the convention of establishment has also been amended.

The benefits are now granted by the Council of Ministers, under proposal of the Member of the Government responsible for the area of Finance and provided that the National Revenue Direction gives a favorable decision.

The requirements to apply the benefits under the convention of establishment are now stricter and include the following:

- a) The promoter needs to have technical and management skills and should meet the general conditions to apply the tax benefits (with the exception of an investment project registered in the Cape Verde Investment Office)
- b) The investment should be higher than CVE3,000,000,000
- c) The investment should be relevant for the promotion and acceleration of the development of the national economy
- d) The investment creates at least 20 qualified new jobs

The requirements referred to in b) and d) above are reduced by 50% when the investment is located in a municipality which has an average gross domestic product (GDP) per capita in the previous three years lower than the national average.

The exemptions granted under the convention of establishment cannot exceed five years.

The law also now sets forth the cases in which the exemption may be revoked.

Benefits applicable to Differentiated Merit Investment Projects (*Projeto de Mérito Diferenciado* or PMD) and Emigrant Investors

Law no. 80/IX/2020, of 26 March introduced the legal regime applicable to Differentiated Merit Investment Projects (PMD).

The regime is applicable to investments which cumulatively meet certain criteria, which include, but are not limited to, an investment equal or greater than CVE1,500,000,000, use of technology that minimizes environmental impacts or promotes environmental sustainability and the creation of at least five qualified jobs (those that require specialized technical training), among other requirements.

Taxpayers to which this status has been granted may benefit from the following tax benefits, as set forth in the Tax Benefits Code:

- ▶ 5% rate of Custom Duties due in the import of materials and certain equipment (namely regarding those provided for investments performed under the Investment Law)

- ▶ Customs Duties exemption related to the import of raw materials, goods, as well as finished or semi-finished products destined to be incorporated in products developed by the company at stake, together with the respective packaging and conditioning materials, provided it relates to an industrial investment and that the taxpayer is registered in the industrial record
- ▶ Tax credit of 30% of relevant investments effectively performed, to be deducted from the total amount of tax liability, up to the limit of 50% of the total tax liability of each year
- ▶ Stamp Duty exemption on the financing arrangements required for the investment at stake
- ▶ Exemption of Property Tax with respect to the acquisition of real estate required to conduct the main activity, including the expansion needs of such activities and during the five years following the acquisition of the abovementioned real estate (in accordance with Law no. 80/IX/2020)

It should also be noted that whenever the PMD is implemented in a municipality in which the GPD per capita is lower than the national average, the taxpayer may benefit from all the benefits listed above plus the tax credit is increased to 40% and an exemption of Property Tax is applicable during the first five years as from the acquisition of the immovable property.

The taxpayer, to which the PMD status is granted, may also benefit from the convention of establishment, provided the respective requirements are met. However, such benefits cannot be cumulated with those listed in the present section.

It is also worth noting that Law no. 73/IX/2020 of 2 March established the regime of emigrant investors (defined as any natural person, of Cape Verdean nationality, permanently resident abroad, who performs an external investment in the terms of this law). The Tax Benefits Code states that, in addition to the benefits granted to PMD (described above), emigrant investors may also benefit from:

- ▶ Incentives provided with respect to savings and the financial sector (under chapter V of the Tax Benefits Code) as well as those of social character (under chapter VI of the Tax Benefits Code)
- ▶ Possibility to benefit from the convention of establishment, provided certain requirements are met
- ▶ When the investment is performed in a municipality with GDP per capita lower than the national average over the last three years, the requirements mentioned in the previous bullets are only considered at 50% of their value

The tax credit benefits mentioned above may be cumulated with those provided for investments performed under the Investment Law, although respecting the same limit (50% of the total tax liability of each year).

Each taxpayer that exercises these benefits is subject to the scrutiny of the tax authorities, which may perform annual tax audits, to attest that the requirements are met.

International Business Centre of Cape Verde (IBC)

Some amendments were introduced regarding the regime applicable to entities licensed to operate in the IBC, notably, clarification on the income eligible for the benefit to apply and the need to have minimum operational expenses.

Entities licensed to operate in the IBC also benefit from Value-Added Tax exemptions, Stamp Duty exemption regarding financing to realize the investment, Property Tax exemption regarding the acquisition of immovable property to be used exclusively in the activity and notary fees exemptions on the incorporation and register of the companies.

The IBC regime can be applicable to the Special Economic Zone provided certain conditions are met.

Capital Gains from the disposal of shares held in land rich companies

The participation exemption regime applicable to the disposal of shares cannot be applicable if the assets of the entity whose shares are being transferred is constituted directly or indirectly in more than 50% by real estate located in Cape Verde.

Benefits on Custom Duties

It is clarified that industrial companies can benefit from the exemption on Custom Duties levied upon the import of defined goods during the installation phase of a project as long as this occurs under the execution of an investment project approved by the relevant sector. The attribution of the benefits can be renewed in certain circumstances.

With respect to entities developing their activities in the media sector, the list of goods that can benefit from the Custom Duties exemption was amended and updated.

Other amendments regarding Custom Duties were introduced notably in respect to development aid, definitive return of nonresidents and motor impaired persons.

Benefits applicable to cooperatives

Several benefits (notably CIT and Stamp Duty exemptions) applicable to cooperatives were introduced, provided some conditions are met.

Benefits applicable to internationalization

The benefits applicable to internationalization are revoked.

CIT Code

As a member of the OECD,¹ Cape Verde has committed to implement several measures that allow for greater transparency and tax justice. Some of the changes brought upon by this new law include an amendment to the permanent establishment definition in Cape Verde to reflect Action 7 of the BEPS² report.

Permanent establishment

With respect to the concept of permanent establishment, it is now stated that the exception provided for ancillary and preparatory activities should not apply to fixed premises of a company if such company, or another company strictly related to such company, performs its activity in the same place or in another place in Cape Verdean territory and:

- a) Such place or another place is a permanent establishment for that company or another strictly related company.
- b) The general activity of the fixed establishment resulting from the combination of the activities carried out by both companies in the same place, or by the same enterprise or another company strictly related in both places, is not deemed to be of ancillary or preparatory nature.

Provided that the activity performed by both companies in the same location, or by the same company and another strictly related company in two locations, is deemed to be complementary to such cohesive activity.

In addition, and concerning the dependent agent rule, it is now clarified that whenever someone is acting on behalf of a company and has, and habitually exercises, the powers to conclude contracts in the name of such company, or habitually performs a fundamental role that leads to the conclusion of contracts, concluded regularly and without material modifications by the company and such contracts meet one of the following criteria:

- a) Entered in the name of the company
- b) For the transfer of property or granting of the right to use property of such company or property which the company is allowed to use
- c) Related to the supplies of services by the company

It is deemed that such company has a permanent establishment in that State, with relation to any activities being performed by such person to the company, unless such activities may be considered as preparatory and ancillary under the relevant exception in Cape Verdean domestic law (which, if performed under a fixed establishment would not give rise to a permanent establishment).

A permanent establishment should also not be deemed to exist if a company performs its activity in a given state through a broker or intermediary, provided such persons act under the normal scope of their activity. However, if a person acts exclusively or almost exclusively in the name of one or more companies to which it is strictly related to, such person should not be considered an independent agent in accordance to this rule.

A given company may be a "strictly related company" if, taking into account all facts and circumstances, one company has the control of another, or both are controlled by the same company(ies) or people. In either case, a person or company should be deemed as "strictly related" if it holds, directly or indirectly, over 50% of interest in the other entity.

Income taxes of nonresidents without a permanent establishment

Income considered to be obtained in the national territory by nonresident entities without a permanent establishment in Cape Verde are taxed at the general CIT rate of 22% (previously 25%), through the submission of the respective tax return, whenever such income cannot be taxed under the withholding tax rates provided under the PIT regime (also applicable for CIT purposes).

It is also stated that the exemption applicable to capital gains realized by nonresident entities with the disposal of shares in resident entities, does not apply whenever the assets of the entity being disposed are composed by more than 50% of real estate situated in Cape Verde.

Financial and tax statement (Country-by-Country reporting)

The new law also introduces the Country-by-Country (CbC) reporting obligation, requiring entities with tax residence in Cape Verde to submit CbC reports pertaining to each reportable fiscal period if they meet all the following criteria:

- ▶ Are required to prepare consolidated financial reporting statements according to applicable accounting standards and laws
- ▶ Participate in or control (directly or indirectly) one or more entities with tax residence or permanent establishments located in other countries/tax jurisdictions, as well as entities having permanent establishments in other countries/tax jurisdictions
- ▶ Have consolidated income reported in the last fiscal period equal to or exceeding €750,000,000

In addition, entities in the following situations also are required to submit the CbC report per country/tax jurisdiction:

- ▶ Entities owned or controlled (directly or indirectly) by nonresident entities when these nonresident entities are not obliged to submit CbC reports.
- ▶ An international agreement with Cape Verde is in force in the jurisdiction in which the mother entity is resident, but on the date upon which the declaration should be submitted, a qualified agreement between both jurisdictions is not in force.
- ▶ A systemic failure occurs in the jurisdiction in which the mother entity is resident, which has been communicated by the tax authorities to the constituting entity.

Exceptions may apply.

The ultimate parent entity of the multinational group which is resident in Cape Verde, or any other declaring entity (such as those to which this obligation is extended as mentioned above), should submit a CbC reporting statement with respect to their last annual accounting period, in the 12 months following the last day of the reporting period of the multinational company group.

CbC reports should be sent to the tax authorities by the end of the 12th month after the end of the fiscal year in question.

Any entity that has a tax presence in Cape Verde through a legal entity or a permanent establishment and that is a member of a group in which at least one of the entities is

subject to submission of a CbC report should communicate electronically to the tax authorities which group entity is the reporting entity within the deadline to present the income tax return.

This new CbC reporting statement should include, in aggregate, for each country or jurisdiction, the following elements:

- a) Gross income, distinguished between those that are obtained through operations conducted with related entities and independent entities
- b) Earnings before CIT and other taxes on profits, of analogous or identical nature to CIT
- c) Amount of CIT due or other taxes on profits, of analogous or identical nature to CIT, including withholding taxes
- d) Amount of CIT (or similar taxes) paid, including withholding taxes
- e) Share capital, retained earnings and other equity variations, with reference to the date of the end of the FY in question
- f) Number of full-time employees, or equivalent, at the end of the FY
- g) Net amount of tangible assets
- h) Identification of each entity which is a part of the multinational group, with indication of the tax residency and, if different, the jurisdiction under which law such entity is established, as well as the nature of the activity(ies) performed by such entities

PIT Code

The exemption regarding rental income cannot be applicable when the immovable property integrates establishments that benefit from a CIT exemption or reduction of the CIT rate (with the exception of those granted under the establishment convention).

In line with what has been previously mentioned regarding CIT, the exemption applicable to capital gains realized by nonresident individuals on the disposal of shares in resident entities, does not apply whenever the assets of the entity being disposed is composed by more than 50% of real estate situated in Cape Verde.

General Tax Code

The General Tax Code now includes an additional requirement for taxpayers, which are now obliged to make available to their customers the means of authorized electronic payment of wide usage by each commercial establishment, by which all transactions performed pertaining to the respective activity must be recorded. Such obligation is also applicable to taxpayers under the simplified tax regime.

General regime of tax related infractions

Changes have also been introduced to the tax infractions regime, namely concerning the distribution of amounts collected via penalties through public entities.

Whenever a given taxpayer does not, in whole or partially, deliver to the State a tax installment either self-assessed, assessed, withheld or deducted, the taxpayer is punished with a penalty corresponding to the amount of the outstanding installment or its double (within the maximum legal amount of the penalty legally established). This penalty is applicable in the case of intention. Before, the penalty for this type of infraction was between CVE50,000 and the value of the outstanding installment.

The penalties regarding certain other types of infractions have been amended, notably lack or delay by the financial entities in presenting or delivering relevant documents or information, infringement of the obligation to issue or request invoices or receipts.

Moreover, the range of infringements (and, consequently, penalties) have been increased to include, notably, the lack of subscription of the electronic notification and the lack of organization and presentation of the transfer pricing file.

Regime for small and medium enterprises

The regime for small and medium enterprises has also been subject to a significant overhaul, establishing stricter requirements for companies to be able to benefit from such regime.

Endnotes

1. Organisation for Economic Co-operation and Development.
2. Base Erosion and Profit Shifting.

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