Payments in Francophone African countries: a few recent trends

*By Ana Pinelas Pinto, Lilia Azevedo, and Vincent Olivier**

Companies operating in Africa make payments to public authorities at least on a monthly basis. Given the frequency and usually modest amounts of each payment, making them sounds like a simple thing to do, whether companies are paying taxes or customs duties on goods they are importing, or paying penalties after an inspection or discharging other obligations. However, making payments to public authorities entails a certain number of hurdles, and breaches of local and international compliance laws and requirements must be avoided.

In most regions of Africa, economies are still cash-based and have incipient systems of payment in place. This reality has been evolving though, in particular as a result of the contribution of regional organizations. For the majority of sub-Saharan African countries, the rules for making payments to authorities are contained in regulations of regional organizations of which they are members: in West African Countries, the West African Economic and Monetary Union (in French, "Union Economique et Monétaire Ouest Africaine" or "UEMOA"), which includes Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo, and in Central African countries, the Economic and Monetary Community of Central Africa (in French, "Communauté Économique et Monétaire de l'Afrique Centrale" or "CEMAC") which includes Cameroon, the Central African Republic, Chad, Equatorial Guinea, Gabon and the Republic of Congo. These regulations are often complemented by domestic laws applicable in each country.

The key principles arising from regional regulations and domestic laws are twofold: (1) any payment exceeding a certain amount shall not be made in cash, but rather by wire transfer, check, or postal order, and (2) payments to any public bodies shall be made to a Public Treasury's bank account. These are generally the key rules, depending on the specific case and/or country at stake, exceptions may apply and other means of payment may be allowed. A step-by-step analysis needs to be conducted for each situation.

In general terms, a lawful payment is one that is due under a law, made through adequate means and to the rightful beneficiary. From a compliance standpoint, the first step in the due diligence that should be undertaken includes confirming that the payment demand is supported by a law or regulation. Taxes and customs payments are typically provided for, respectively, in general tax laws (normally, the General Tax Code adopted by each country, as updated by the Finance Laws or other statutes introducing amendments to the General Tax Code), regional statutes (e.g. the UEMOA or CEMAC Customs Tariff Schedules), and/or other domestic legislation. Other payments to the State can be due as a result of specific obligations applicable to certain sectors of activity or for tasks performed by government officials.

The second step determines how the payment can and should be made. Given the stand of international legislation, compliance, and anti-corruption requirements, it is common knowledge that payments in cash should be avoided. Regional and local legislation often expressly regulate the matter. In CEMAC countries, for instance, payments in cash above a certain threshold are expressly prohibited. Under CEMAC Regulation no. 02/03/CEMAC/UMAC/CM, of March 28, 2003, any payment exceeding XAF 500,000 (approximately EUR 762) shall not be made in cash.

Finally, the third step ensures that the payment is made to the rightful beneficiary. As a rule, all payments made to a State, including taxes, penalties, fees, and other charges should be made to a bank account of the Public Treasury. Typically, this rule is provided for in Finance Laws, public accounting regulations, Public Treasury statutes, or in tax laws. Although as a rule there is a centralization of the collection of public revenues, in some countries, certain public entities enjoy financial autonomy and are allowed to collect revenues.

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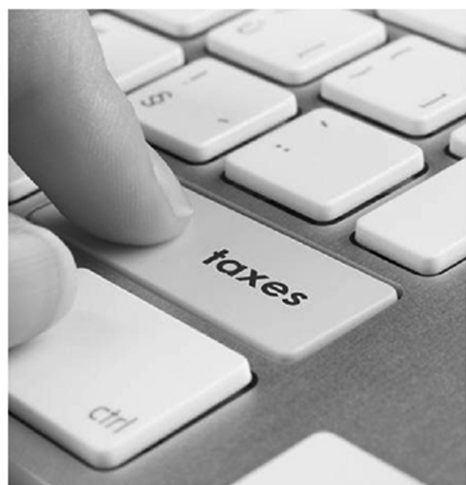
If the rule is making the payment to the Public Treasury, one may ask what does this mean, what is the Public Treasury in African francophone countries? The Public Treasury ("Trésor public" in French) is typically a body of the State and is not a separate legal entity. Such entity has different offices that usually answer to a General Directorate of the Treasury ("Direction générale du Trésor") and sometimes places public accountants at the premises of other State bodies. The Public Treasury is in charge of receiving, collecting, and managing State revenues (such as taxes) through an account, typically opened with the Central Bank, and provides financial advice to different public bodies and manages their resources.

Measures are being implemented by Francophone African countries to reduce the risks of breaches of compliance and anti-corruption requirements. Anti-corruption watchdogs have been created (e.g. CONAC in Cameroon, HABG in Côte d'Ivoire, CNLCEI in Gabon, OFNAC in Senegal) to monitor the practices of the administration and to sanction corrupt practices.



Another solution adopted by a growing number of countries is digitization, through the implementation of electronic platforms for submission of tax returns and transfer of payments (for example in Senegal, Côte d'Ivoire, or Cameroon). Filing of tax returns through such platforms and making payments by wire transfer have actually been made compulsory in

Cameroon and Côte d'Ivoire for large taxpayers. This allows authorities to ensure that payments are directly received into the right bank accounts. These countries also offer the possibility of paying taxes through a mobile application in smartphones.

While these means of payment have been fully adopted and have allowed for an increase of revenues in countries of East Africa, such as Kenya, the level of their adoption in West and Central African countries has not been measured yet and, in any event, appears to be still at its early stages.

Also confirming that the current trend consists in better managing public funds, several countries in French-speaking Africa are setting up public financial institutions based on and named after the French Caisse des dépôts et consignations (CDC). Their primary mission is to manage funds earned from surety bonds, guarantee deposits, and other instruments, as well as the cash flow of the State, local communities, pension funds, mutual organizations, etc.— notably, by financing small and medium businesses, social housing construction projects and urban development policies. They also include surveillance committees whose mission is to control the CDC's strategic guidelines, equity investment, auditing of accounts as well as its major decisions to ensure good management of the State's revenue. This goes a long way in showing the intention of these countries, since, for their CDCs to have funds to manage, they first have to improve the cashing in of their expected revenues. The most recent CDC was created in Niger, while earlier adopters were Côte d'Ivoire, Senegal, Mauritania, Gabon, Benin, and Burkina Faso. Cameroon and Congo have legally created their own institution, but have yet to set them up.

Rules on means of payment play a critical role in determining if a payment is considered lawful. Typically, this is defined by regional and local legislation, and rules may differ from country to country. The trend observed in Francophone African countries points towards the centralization of payments to the Public Treasury which is being emphasized through the issuance of written orders stating that payments have to be made in the Public Treasury's account, as well as through the empowerment of anti-corruption watchdogs. In turn, knowing which rules apply and adhering to best practices in terms of means of payment will no doubt help companies operating in Africa to be aligned with their own national and international compliance requirements.