

Labor Newsletter

ANGOLA

October 2018

OPINION

SIGNIFICANT BROADENING OF TAXABLE AMOUNT FOR SOCIAL SECURITY CONTRIBUTIONS

Presidential Decree No. 227/18, of 27 September 2018, approved a new Legal Framework for Social Security Contributions for Employees, repealing the previous framework approved by Decree No. 38/08, of 19 June 2008. The new decree will enter into force 90 days after its publication date (i.e. on 26 December 2018).

This new Presidential Decree maintains several obligations, notably, the 30-day deadline for the registration by the employer of the employees and their dependents with the Social Security National Institute of (“INSS”). Also, the contribution rate remains at 8% for the employer and 3% for the employee. However, the decree implies a significant broadening of the taxable amount for social security contributions.

Under the previous framework, only the base salary and benefits and supplementary allowances paid directly or indirectly in cash, listed in Decree No. 38/08, were subject to contributions to the compulsory social protection system. After the new rules enter into force, only the following will now be exempted from social security contributions: (i) the vacation allowance; (ii) the family allowance and other social benefits paid by the employers; and (iii) the amounts paid by employees and employers in the form of complementary social protection. This means that the base salary and all other complements will, as a rule, now be subject to contributions to the compulsory social protection system.

Given the above, and in order to avoid late-payment penalties or the application of possible fines, employers will be required to carry out procedural changes when calculating and remitting monthly contributions to the INSS. In addition, employers may need to revise current remuneration packages and their structure in order to mitigate the impact of this amendment to the law on their employees’ net remuneration and any tax optimization systems previously being implemented, which may in turn have an impact on remuneration policies and/or on collective bargaining agreements that may be in force.

JURISPRUDENCE

Definition of Remuneration in Kwanzas vs Definition of Other Allowances in Foreign Currency (Ruling by the Labor Chamber of the Provincial Court of Cabinda, 28 September 2018)

This case involved a challenge to a collective dismissal claim. Notwithstanding the Court’s ruling on several questions presented by the parties, of most importance is its understanding in respect of the practices and customs of a

company that, despite defining its salary levels in Kwanzas, simultaneously establishes some allowances in foreign currency in its policies and even in employment contracts entered into with its employees.

Since the employees requested the payment of remuneration differentials related to the calculation and payment of various allowances from 2014 to 2016, the Court understood that, in a situation in which the employees' base salary is expressed in Kwanzas and several allowances, notably the isolation and shift or rotation allowances, are initially set in a foreign currency in the employment contracts, without the employer being required to pay them in Kwanzas at the National Bank of Angola exchange rate at the time of payment, this is deemed a company custom that does not clash with the employees' rights. Furthermore, the Court did not set aside the possibility of full payment of employees' remuneration in national currency.

Indeed, the Court made a reference to Law No. 2/12, of 13 January 2012, on the Foreign Exchange Regime for Oil Operations, along with Notice No. 20/12, of 12 April 2012 (particularly Article 3.3), under which it is determined that payment for the acquisition of goods and services must be made in national currency, the Kwanza, except for non-exchange residents, as set forth in Article 4 of Law No. 5/97, of 27 June 1997, and in Article 267 of Law No. 7/15, of 15 June 2015 (LGT), which expressly provides that "the cash part of remuneration shall be paid in Kwanzas", in order to decide that the employer's action was legal as it was, in effect, a labor practice or custom, and therefore the employees were not entitled to receive the remuneration differences between the amounts defined in the employment contracts and the amounts resulting from the application of the exchange rate at the date of the request, nor any interest.

LABOR LEGAL NEWS

- **Presidential Decree No. 227/18, of 27 September 2018** – Establishes the Legal Framework for Social Security Contributions for Employees. It repeals Decree No. 38/08, of 19 June 2008, and all legislation that contradicts the provisions of the statute.
- **Law No. 11/18, of 28 September 2018** – Amendment to Law No. 10/11, of 16 February 2011 – Law of National and Local Holidays and Dates of National Celebration.

UPCOMING LABOR OBLIGATIONS TO BE TAKEN INTO ACCOUNT

- Prepare and submit payroll forms to the INSS (companies with more than 20 employees are required to submit same electronically) and proceed with the payment of contributions by the 10th of the following month.
- Oil companies with Program Contracts in force must submit to the Ministry of Mineral Resources and Petroleum, by 31 October, the Human Resources Development Plan ("HRDP") for 2019. The HRDP should be submitted through the SIASP computer platform, already in use for the issuance of opinions regarding applications for entry visas for oil-sector employees. The HRDP must be submitted on the official forms approved by the Ministry of Petroleum and include objectives for the recruitment and training of national and foreign personnel, as well as 2019 targets for the Angolanization of the workforce.

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