



## LEGAL NEWS

# Republic of the Congo

November 2019 through January 2020

### TAX AND FINANCE

#### Congo Approves Budget Law for 2020

The Republic of the Congo has recently approved the State Budget Law for 2020 (Law No. 42-2019, of 30 December 2019). This statute contains a number of relevant changes to tax laws, in particular with respect to the following items, among others:

- Registration Duties, notably in relation to transfers of interests, rights and obligations under a given contract, including petroleum contracts, and in relation to purchase orders by oil companies;
- The concepts of “Permanent establishment” and “Royalties”;
- The withholding tax on service fees payable to non-residents; and
- The tax residency of managers of branches of foreign companies.

## OIL & GAS

### New Oil & Gas Regulations Enacted

The legal framework applicable to the oil & gas industry has been supplemented by four important statutes, which are of particular relevance with respect to subcontracting activities and local content requirements:

- Decree No. 2019-342, of 15 November 2019, defining the terms and conditions for the carrying-out of subcontracting activities in the petroleum upstream sector. This statute imposes requirements in terms of local content and restrictions in terms of corporate forms to the entities which may engage in subcontracting activities. It also provides that the procurement of subcontractors is subject to tendering procedures, and that only entities holding an activity-specific license may submit bids. Under this statute, subcontracting activities are subject to one of three competition regimes (exclusive, restricted and free); the activities subject to each of these regimes are to be itemized in an Order of the Minister of Hydrocarbons. Also noteworthy is that payments by petroleum companies to subcontractor companies (and by subcontractor companies to third parties) for activities performed in Congo must be made through Congolese banks. This statute also requires that subcontractor companies take out policies with insurance companies established in Congo;
- Decree No. 2019-343, of 15 November 2019, defining the terms and conditions for the provision of services in the petroleum upstream sector. As happens with subcontracting under Decree No. 2019-342, this statute also calls for the launching of tendering procedures for the provision of services, the supply of goods and the making of manpower available. These activities are also divided into the exclusive, semi-competition, and competition regimes (in terms to be further detailed in an Order of the Minister of Hydrocarbons), and only the holders of an authorization may submit bids;

- Decree No. 2019-344, of 15 November 2019, setting out the penalties for failure to comply with the provisions on Local Content in the petroleum upstream sector. It details the penalties to which petroleum companies, subcontractor companies, service providers and suppliers operating in the petroleum upstream sector are subject for failure to comply with the Local Content provisions – namely those governing the employment and training of Congolese personnel, and those relating to the promotion and use of local goods and services;
- Decree No. 2019-345, of 15 November 2019, approving the regulations on the employment, promotion and training of Congolese personnel in the petroleum sector. This statute imposes stringent obligations on contractors, subcontractors, service providers and suppliers, including without limitation, in terms of (a) the execution of a program-contract for recruitment, (b) the preparation of a Congolization plan for the positions within their organization, and (c) the hiring of expatriate personnel.

## **COMPLIANCE & ANTI-CORRUPTION**

### **Details on how Elected or Appointed Senior Public Officials are to Disclose their Wealth**

With a view to promoting greater transparency and facilitating the investigation of corruption-related crimes, particularly in what concerns unlawful enrichment, Decree No. 2019-320, of 12 November 2019, defines in detail the procedures for the preparation and filing of wealth disclosure statements by public officials elected or appointed to senior public offices. This obligation derives from a Constitutional requirement, and was formally regulated in early 2019 by Law No. 4-2019, of 7 February 2019.

## High Authority for the Fight Against Corruption now has Organizational Framework

The organizational framework of the High Authority for the Fight Against Corruption (created in February 2019, and upon which the prevention and combatting of corruption-related crimes is incumbent), was approved by Decree No. 2019-391, of 28 December 2019. This statute defines the structure of the High Authority and the terms of its operation. Its missions and responsibilities will be carried out by four departments: (i) the department charged with prevention, awareness and communication functions; (ii) the department entrusted with the financial and tax and customs investigations; (iii) the department in charge of the economic and administrative investigations; and (iv) the department to which the internal planning, evaluation and control is entrusted.

### **BUSINESS**

## Regulatory Authority for Special Economic Zones Created

The legal framework on Special Economic Zones (“SEZs”) has been supplemented by Law No. 36-2019, of 26 November 2019, which creates the SEZs Regulatory Authority. This Authority is tasked with ensuring the regulation of the activities carried out within the SEZs, as well as compliance with the guidelines and decisions issued by the SEZs National Committee, and with settling disputes between the planning agency, developers, operators and investors. The organizational framework of the Regulatory Authority is expected to be approved by the Council of Ministers in the coming months.

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