Ten Spots in the Rwanda Income Tax Law 2022

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On 28 October 2022, Rwanda passed a new law on income tax. This is the law No. 027/2022 of 20/10/2022 establishing taxes on income (OG No. Special of 28/10/2022). This law replaces the law No. 016/2018 of 13/04/2018, which had been in force since April 2018. From a legal point of view, the adoption of a new law is not a pleasure for simple changes. It is and should be motivated by socio-economic changes in society. These changes must be significant enough to justify the need for amendments. This understanding is based on the philosophical dynamic nature of law. The social dynamism must, therefore, be aligned with the legal dynamism. This philosophy might be one of the reasons for the frequent changes of laws in Rwanda, as the socio-economic landscape of Rwanda also changes rapidly. In this regard, the new income tax law replaces the law of 2018, which was also still considered new as it was only four years old. While this discussion is relevant, it is not the concern of this brief opinion, which takes the 2018 income tax law as baseline, to highlight ten spots in the new income tax law as follows:

1 Alignment with the company law

The 2021 company law has introduced several aspects that are quite new in the Rwandan legal system. These include, for example, the regulation of protected cell companies, the special purpose vehicles, to name a few. All these corporate structures are taken into account in the new income tax law. According to article 44(6°), protected cell companies are subject to CIT, depending on the investor's choice at the time of registration of the company. The taxation of special purpose vehicles is governed by article 45(12°), which lists entities that are exempt from CIT. For the purposes of this article, special purpose vehicles are exempt from tax, unless if the income received exceeds the corresponding expenses. Intra-company dividends are exempt from corporate taxable income provided that both companies are resident (art. 47(2). Corporate transactions classified as restructuring of business entities are defined in article 53, while the taxation of restructured business entities is governed by article 54. The taxation regime in case of liquidation of a business entity is regulated in article 55. Foundations, trustees, and enforcers or protectors of trustees are also subject to CIT. At this point, it is important to mention that the corporate income tax rate remains untouched, i.e. it remains at the famous 30%.

2 Alignment with investment law

In the past, there have been contradictions or overlaps between income tax laws and investment laws on some issues, especially tax incentives. In such cases, lawyers have usually found solutions by applying the famous legal principle "*lex specialis derogat legi generali*", which literally means that 'a special law overrides a general law'. It is commendable that the new income tax law provides an explicit solution in article 69 according to which any tax reduction or exemption from income tax for the purpose of investment promotion and facilitation must be made pursuant to the law on investment promotion and facilitation.

3 Alignment with the law on partnerships

In Rwanda, the law on partnerships is new. For the first time in history, Rwanda has enacted a separate law on partnerships. This is the law No. 08/2021 of 16/02/2021 (OG No. Special of 17/02/2021). This law was followed by two implementing instructions of the Registrar General, namely Instructions No. 001/2022/RG of 23/05/2022 on the conversion of a private company into a limited liability partnership, and Instructions No. 002/2022/RG of 23/05/2022 on partnerships registration fees. Even though the partnerships are not yet registered, as the registration system and other practical modalities are not yet finalized, the legal recognition of partnerships in Rwandan law justifies a specific taxation regime of partnerships. In terms of articles 52, an income generated from partnerships is taxable at the level of each partner. The same article mentions that the corporate partners are subject to CIT, while the individual partners are subject to personal income tax. Even though the responsibility for the preparation of the financial accounts, the determination, declaration, and withholding of taxes due lies with the partnership, both the partnership and the partners are jointly liable if they fail to meet their tax obligations.

4 Favourable for employees

Compared to the law of 2018, whose situation was the same as that of its predecessors, the 2022 income tax law looks favourable to employees. In fact, the 2018 law had only three progressive tax rates. On a monthly basis, income (in Frw) ranging between 0 and 30,000 was taxed at 0%, income between 30,001 and 100,000 was taxed at 20%, and income above 100,000 was taxed at 30%. With the new income tax law, the situation will be improved by two factors. First, the range that is taxed at 0% is increased by 100%, i.e. from 30,000 per month to 60,000 per month. In the same vein, unlike the old law where income above 100,000 per month was taxed at 30%, the new law will start taxing at 30% an income above 200,000. Second, the 2022 law introduces four progressive tax rates instead of the three (art. 56). With the new law, an employment income (in Frw) ranging between 0 and 60,000 is taxed at 0%. Income between 60,001 and 100,000 is taxed at 10%. Income between 100,001 and 200,000 is taxed at 20%, while income above 200,000 is taxed at 30%. It is, therefore, apparent that the new law favors employees, who can expect a relatively small increase in their net salary.

5 Favorable for personal income taxpayers

As for employees, the new law is also beneficial for personal income taxpayers (see art. 14). This is also based on two factors. First, the range that is taxed at 0% has been increased by 100%, i.e. from less than 360,000 frw per year to less than 720,000 Frw per year. The same is for an income that was taxed at 30%, whose threshold has also doubled, from over 1,200,000 frw per year under the old law to over 2,400,000 Frw per year under the new law. Second, the new law has also introduced four progressive tax rates. These are 0% for an annual income (in Frw) of less than 720,000; 10% for an annual income between 720,001 and 1,200,000; 20%

for an annual income between 1,200,001 and 2,400,000; and 30% for an annual income above 2,400,000. As with employees, personal income taxpayers can expect to pay less overall tax compared to what would be paid under the old system.

6 Taxation of digital services

The new law explicitly introduces the taxation of digital services. This is mentioned in article 6(15°), which explicitly includes digital services among taxable income. Article 3(17°) defines digital services as including online advertising services, the supply of user data, online search engines, online intermediary platforms, social media platforms, online media, digital content services, online games, cloud computing services and standardized online teaching services.

7 Introduction of anti-abuse rules on avoidance arrangements

For the first time, the Rwandan income tax law contains specific anti-abuse rules on avoidance arrangements. Under this new law, abuse can occur in four cases (art. 68(1), namely an arrangement whose main purpose is to obtain a tax advantage; an arrangement that lacks commercial substance in whole or in part; an arrangement that creates rights or obligations that would not normally be created between persons dealing at arm's length; and an arrangement that may result, directly or indirectly in the abuse of the Rwanda's tax laws. To counter abuses, the new law empowers the tax administration with four anti-abuse measures (art. 68(2), namely, treating the avoidance arrangement as if it had not been carried out; recharacterizing the nature of the income, payment, expense, or other transaction; disallowing or reallocating, in whole or in part, any income, loss, deduction, allowance, relief, credit, exemption, or exclusion; classifying two or more persons as related persons or as the same persons.

8 Some matters are still unpacked

As with previous legislation, some issues are still open for discussion. This applies, for example, to the definition of casual work, which is again defined with reference to the performance of work that does not require 'special skills'. It is very ambiguous to define what special skills are and where their limits are, i.e what falls under them and what does not.

9 Progressive application of tax rates

It seems to me that yearly progressive application of tax rates is a new trend in Rwanda. This was recently introduced in the law No. 75/2018 of 07/09/2018 determining the sources of revenue and property of decentralized entities. In the new law on income tax, the new tax rates for personal income and withholding tax on employment income, have two years progressive application.

10. The fate of the existing orders

Unlike some laws that are gazetted without reference to the effect on orders and instructions that applied under the old law, the 2022 income tax law explicitly states the fate of such orders. As per article 70, all existing orders issued under the 2018 law on income tax will remain in force for a maximum period of one year, as long as there is no inconsistency with the current law.