

## LEGAL ALERT

### ANGOLA – CHINA: DOUBLE TAXATION TREATY

On 16 March 2022, the Letter of Ratification no. 1/22 was published, concerning the Double Taxation Treaty between the Republic of Angola and the People's Republic of China (DTT), approved by Resolution no.29-A/19, of 24 June 2019.

With the ratification of this DTT, it is assumed that direct foreign investment by Chinese companies in Angola will be boosted.

#### MAIN FEATURES

**UN Model Convention** – like the two previous conventions concluded by Angola, the DTT is, for the most part, in line with the latest update of the UN Model, dated 2017.

**Within the scope of the definition of permanent establishment definition** – we highlight the fact that the DTT considers the following to be included in this concept: “installations or structures used for research and exploitation of natural resources located in a Contracting State, provided that, such installations or structures remain for a period exceeding 90 days” (this provision is not foreseen in the UN Model).

The DTT also considers a permanent establishment to exist where a person (other than an independent agent) is acting in a Contracting State on behalf of a company and by doing so, habitually concludes or plays a leading role in the conclusion of contracts which are repeatedly concluded without any material change by that company and such contracts are: (i) on behalf of the company; or (ii) involve the transfer of title to property or the granting of a right of use; or (iii) for

the provision of services by the company, unless the activities of such person are limited to activities of a preparatory or auxiliary nature.

**Withholding tax rates applicable to dividends, interest and royalties, as follows:**

Dividends	5% / 8% <sup>1</sup>
Interest	8%
Royalties	8%

**Dividends and interest** – the present DTT diverge from the UN Model relating to an exemption applicable to dividends and interest.

Regarding the dividends, whenever they are paid by a company resident in a Contracting State to a resident of the other Contracting State, they shall be deemed taxation exempt in the first Contracting State mentioned, if the effective beneficiary of such dividends is: (i) the Government of the other Contracting State; (ii) its political or administrative subdivisions; (iii) the Central Bank; or (iv) any entity the majority of whose capital is held by the other Contracting State.

Regarding the interest, the same rule will apply with respect to loans guaranteed or secured by the Government of the other Contracting State.

**Royalties** – the DTT provides that the applicable tax rate established for royalties in the State of Source may not exceed 8% of the gross amount of the royalties.

**Capital Gains** – concerning capital gains, it should be noted that gains from the alienation of movable assets that are part of the assets of a permanent establishment that a company of a Contracting State has in the other Contracting State or movable assets allocated to a fixed installation that a resident of a Contracting State has in the other Contracting State for the exercise

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<sup>1</sup> The rate of 5% on the gross amount of the dividend is applicable, when the beneficial owner is a company (except a partnership) that holds, directly, at least 10% of the capital of the company paying the dividend during a period of 365 days, including the day of the payment of the dividend (for the purpose of calculating this period, changes in the ownership directly resulting from a restructuring, such as a merger or demerger, of the company holding the shares or paying the dividend will not be taken into account). The 8% rate applies to the remaining cases.

of a self-employed profession, including gains from the disposal of that permanent establishment (alone or with the company as a whole) or of that fixed installation, may be taxed in the State where the permanent establishment is located.

The DTT authorises the State of Source to tax the alienation of equity interests in companies and similar rights in other entities, such as Partnerships and Trusts, when, at any time during the 365 days prior to the alienation, the value of such equity interests or similar rights arises, directly or indirectly, by more than 50% from real estate in that same State.

**Fees charged for technical services** – a withholding tax rate of 5% is also established applicable to the payment of fees charged for the provision of certain technical services, which, according to the DTT, consist of any payment relating to any service of a technical, management or consulting nature, with the exception of services paid to:

- An employee of the person making the payment;
- A teacher at an educational institution or to an educational institution for teaching; or
- An individual for personal services provided to another individual.

The inclusion of the referred article in the DTT should guarantee the State of Source the right to tax income of this nature, essentially considering that currently it is no longer seen as necessary to have a local presence to participate in the economy of other states, as well as clarifying what should be taxed as royalties and what should be taxed as “services”, according to their technical nature.

**Elimination of double taxation** – the DTT provides, in relation to dividends paid by a company resident in Angola in favour of a company resident in China and holding at least 10% of the shares of the company paying the dividends, that the tax credit shall consider the tax paid in Angola by the said Angolan company. It is further stated that by tax paid in Angola should be considered not only the income tax effectively paid in Angola, but also any amount of tax that would have been paid in Angola but was not due to an exemption or reduction granted in accordance with the laws establishing schemes for the promotion of the economic development of Angola. Thus, the DTT provides for a rule establishing tax sparing, applicable for 10 years from the date of entry into force of the DTT.

This is to ensure that initiatives to create tax advantages from the source state to attract foreign direct investment are not invalidated by taxation rules of the State of Residence.

**Activities related to the oil and gas sector are excluded from the scope of the DTT** – the DTT expressly clarifies that its provisions do not in any way limit the right of both Contracting States or any of their Local Governments and their administrative authorities to apply their special taxation regime to oil and gas and other related activities.

**Exchange of information** – under the DTT, the competent authorities of the Contracting States will exchange predictably relevant tax information, as they may be necessary for the application of the DTT, as well as information on the domestic laws of the Contracting States.

**Entitlement to CTT benefits** – the DTT foresees a benefit limitation clause consisting of a principal purpose test. Under this test, the benefits of the DTT, in respect of an item of income, will not be granted if it is reasonable to conclude, having regard to all relevant facts and circumstances, that the obtaining such benefits was one of the principal purposes of a construction or transaction from which such benefits result, directly or indirectly, unless it is determined that the granting of such benefits in such circumstances is consistent with the object and purpose of the relevant provisions of the DTT.

**Entry into force and effective date** – with the publication in the Official Gazette of the Ratification Letter no. 1/22, of 16 March 2022, the legal formalities necessary for the ratification of the DTT were completed, and, therefore, the DTT will remain in force if not denounced by any of the Contracting States.

In regard to the effective date, the DTT is deemed to apply to income earned during the tax year beginning on or after the first day of January of the year following the year in which the DTT came into effect – *i.e.*, 1 January 2023.

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