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ANGOLA-PORTUGAL: MUTUAL ASSISTANCE AND COOPERATION IN TAX MATTERS

Lisboa-Porto
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MAIN FEATURES OF THE AGREEMENT BETWEEN ANGOLA AND PORTUGAL ON MUTUAL ASSISTANCE AND COOPERATION IN TAX MATTERS

On the past 18th September in Luanda it was signed by the Portuguese Republic and the Angolan Republic an Agreement on Mutual Administrative Assistance and Cooperation on the Recovery of Claims Relating to Taxes (as well as a Double Tax Treaty). For the moment, both these treaties await the ratification process to be completed by the Portuguese parliament in an uncertain timing.

This agreement on mutual administrative assistance and cooperation on the recovery of claims relating to taxes (“the Agreement”) does not follow the structure previously used by Portugal (with Cape Verde, in 1999, with Brazil, in 2000 and with Mozambique, in 2008), creating an innovative structure.

It is set to cover mutual administrative assistance covering residents and nationals of any State on the following matters:

- i.* Simultaneous tax audits and participation in tax audits held in the other Contracting State;
- ii.* Assistance on the recovery of claims relating to taxes as well as provisional measures (“*providências cautelares*”);
- iii.* Notification of documents.

The Agreement has no exhaustive list of the applicable taxes, opting for a broad statement saying that “all taxes of any nature or denomination, except for custom duties and

social security contributions” are covered by the Agreement.

In detail:

Simultaneous tax audits – both States may agree to choose the relevant cases to be subject to simultaneous tax audits and the procedures to be applied to those tax audits. In these cases, both Authorities agree to audit the same person, with a common or complementary interest with the intent of providing any information which is foreseeably relevant to the applicant authority for the administration or execution of its domestic law in relation to the taxes covered by the Agreement;

Participation in tax audits held abroad – at the request of the applicant authority, the requested authority may allow representatives of the applicant authority to be present in a tax audit to be executed by the requested authority as long as it is relevant to provide any information which is foreseeably relevant to the applicant authority for the administration or execution of its domestic law in relation to the taxes covered by the Agreement;

Assistance on the recovery of claims relating to taxes – at the request of the applicant authority, the requested authority shall adopt the necessary measures to recover the tax claims at question as they were their own tax claims, provided the applicant authority has an enforceable title and, except for an agreement on the contrary between



the competent authorities, there is no pending administrative or judicial challenging against such tax claim;

Provisional measures – at the request of the applicant authority, the requested authority takes provisional measures to recover the tax claims even if there is pending administrative or judicial challenging against such tax claims or there is not yet an enforceable title;

Notification of documents – at the request of the applicant authority, the requested authority notifies the taxpayer of the relevant documents, namely judicial decisions related with a tax covered by the Agreement.

The Agreement shall entry into force when the ratification processes are completed. On that date one must distinguish between “criminal tax matters” (specially defined as any tax matter involving a cross border action that may give rise to criminal prosecution accordingly to the laws of the applicant party) and the “remaining matters”. Regarding “criminal tax matters”, the Agreement enters into force immediately (with no transitory rules), which allows the argument that it should be applicable to pending cases. Regarding the “remaining matters”, the Agreement shall enter into force only regarding tax years initiated on or after such date, or for taxable events occurred after the entry into force of the Agreement.

This Agreement is set to remain in force for a period of eight years, automatically renewed for equal and successive periods.



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