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FEATURED PERSPECTIVE

Angola's New Tax on Payments to Nonresidents

by Paula Rosado Pereira

Paula Rosado Pereira is a tax lawyer at SRS Advogados and a professor at the University of Lisbon Law School.

The author discusses Angola's new special contribution on transfers related to the payments to nonresident entities for some technical assistance or management contracts, saying that while the enacted version has flaws, it is an improvement over earlier proposals.

A new Angolan tax — the Special Contribution on Invisible Exchange Transactions (the special contribution) — was enacted by Presidential Legislative Decree No. 2/15 on June 29 and entered into force the following day.

The special contribution taxes at 10 percent any transfers related to the value of payments for technical assistance and management services rendered by nonresidents governed by Presidential Decree No. 273/11, of October 27, 2011.

Background

The special contribution was enacted after several months of uncertainty regarding its approval.

The first proposals were much harsher than the approved regime, with higher tax rates between 15 and 18 percent and a much broader range of situations subject to tax. Under early proposals, the tax would have been a withholding tax, applicable to most payments and transfers of money abroad, including the repatriation by foreign workers of salaries earned in Angola.

Those proposals met considerable opposition, both in Angola and abroad, regarding their possible effects on Angola's economy and ability to attract foreign investment.

At some point, given the absence of further news, most observers assumed the idea had been put aside. But proposals for a special contribution resurfaced, and the regime was enacted.

Objectives and Effects

Given the characteristics of the special contribution tax and the economic situation in Angola, the purpose of the regime seems to be twofold: increase Angolan tax revenue and help keep capital in Angola by reducing payments to foreign entities. Those objectives oppose one another in terms of efficiency. If the country succeeds in reducing the exchange transactions, which will alleviate the shortage of foreign currency, it will deny itself the desired tax revenue increase.

The special contribution is also a new source of tax revenue for the Angolan treasury intended to help compensate for Angola's financial difficulties, caused namely by the fall in oil prices in international markets. The Angolan economy is extremely dependent on oil-related revenue, so the difficulties arising from that price reduction were severe, requiring an amendment to the State Budget Law for 2015. The legal authorization for the enactment of the special contribution was part of the amendment to the State Budget Law.

The special contribution is also intended to discourage economic agents from sending capital out of Angola by imposing a tax burden on transferring money abroad. Angola has been facing a shortage of foreign currency for some time, rendering it difficult — or even impossible — for it to cope with all the requests for foreign payments and for transferring money abroad. By creating a tax cost on transfers for payments to nonresident entities, the special contribution tries to encourage the use of economic structures that keep money in Angola.

The tax burden of the special contribution is on the payer entity, which might be seen as creating an incentive to the acquisition of services from Angolan entities

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instead of from nonresident entities. However, considering the shortage of Angolan entities providing various administrative, scientific, and technical specialized services, the measure might encourage international providers of those services to establish themselves in Angola to provide services through local structures. That would prevent the correspondent service payments from being subject to the special contribution.

Nature of the Tax

The special contribution is a true tax — that is, a unilateral tax levied by the state without any direct consideration being granted to the taxpayer regarding its payment, which is different from what happens with other types of taxes, such as levies and contributions. With levies, there is a direct and effective consideration to the taxpayer for its payment — for instance, the use of an asset in the public domain or the effective use of a public service. With contributions, there is a generic and indirect consideration corresponding to a general benefit assumed to exist for a particular group of taxpayers as a result of a specific public activity. None of those characteristics seem to be present in the special contribution.

The Regime

The special contribution taxes any transfers related to the payments to nonresident entities for technical assistance or management service contracts governed by Presidential Decree No. 273/11. Those contracts include any that involve the acquisition, to entities not resident in Angola, of administrative support services or of scientific and technical expertise services with the purpose of maintaining, improving, or increasing the internal productive capacity or the professional training of local workers.

Consequently, some relevant payments, in terms of their frequency and overall value, are outside the scope of the special contribution. Those payments include salaries, interest, royalties, patent rights and trademarks, travel and transport, commissions, and brokerage, as well as any money transfers that are not related to the contracts governed by Presidential Decree No. 273/11.

Taxpayers subject to the special contribution are individuals and corporate entities (including private entities and public companies) with their domicile, head office, effective management, or permanent establishment in Angola that require a financial transfer abroad for the payment of services stemming from contracts subject to the tax.

Some entities are exempt, such as the state and any of its services, branches, or institutions (except public companies), public social security institutions, public utility associations recognized by law, and religious institutions legally constituted. However, the exemption ceases to apply if any of those entities carries on economic activity with a business or of a commercial nature.

The taxable basis is the amount in local currency to be transferred abroad, and the tax rate is 10 percent. The taxable event occurs before the completion of the transfer; taxpayers must provide the financial institution a tax form evidencing payment of the special contribution so that the transfer can be processed. Therefore, the taxpayer is the entity responsible for assessing and paying the special contribution and is the one to bear the burden of the tax.

What Could Go Wrong

The introduction of the special contribution raises some concerns about its potential effects on the Angolan economy and on foreign investment. Although the payer entity bears the tax burden, economic agents might be tempted to push that burden up the production chain to the final consumer through an increase in prices.

That behavior depends on the elasticity of demand in the various sectors of activity in the face of a price increase. However, in a market like Angola's, the demand for some goods and services — particularly those with a technical or scientific component — frequently exceeds their supply, thus facilitating the increase in prices without major constraints.

Therefore, the special contribution might often contribute to the increase in the price of goods and services that have the input of technical assistance or management rendered by nonresident entities. Consequently, it can also increase inflation in an already inflated economy.

Those potential consequences should not be overlooked in a market already characterized by extremely high prices, especially in specific sectors.

Another aspect to consider is that the continuation of price increases in the Angolan market might discourage foreign investment. In particular, if the costs of maintaining a structure or of launching a new business in Angola are so high that they seem not to be compensated by the foreseeable turnover, foreign investors will doubt the attractiveness of the level of net profit they might be able to obtain in Angola. For instance, if lower oil prices persist, that sector might be harmed.

What Could Go Right

If Angola manages to reinforce the country's appeal to foreign investors, namely by improving the economy, reducing administrative and bureaucratic constraints, and strengthening confidence, the potential negative effects of the special contribution might be reduced or even eliminated.

If the right circumstances are met, the measure might even encourage international providers of

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administrative, scientific, and technical specialized services to establish themselves in Angola to provide those services through local structures. As mentioned above, that would prevent the correspondent service payments from being subject to the special contribution, because they would be paid to local, not foreign, entities.

From an Angolan perspective, the next challenge is to foster the confidence needed to contribute to the maintenance of the capital in Angola and avoid the tendency to expatriate profits.

If the harsher first proposals of the special contribution had been approved, it would be much harder to overcome the measure's harmful effects on foreign investment, given the higher tax rates and the broader range of situations subject to tax. For instance, it would be harder to encourage international service providers to establish themselves in Angola if the repatriation of salaries of the foreign individuals providing those services in Angola would be taxed when the salaries were transferred abroad. As such, the approval and entry into force of the more moderate system provide brighter perspectives regarding related outcomes. ◆

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