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THE NEW GENERAL FRAMEWORK FOR LOCAL CHARGES IN ANGOLA

The General Framework for Local Charges in Angola was approved in the National Assembly by Law 7/11 and published in the official gazette for Angola on 16 February. This piece of legislation is one step on the road to tax reform in Angolan, the objectives of which are well-known. Although in general terms this material has not yet been subject to regulation in Portugal as it has in Angola, this new Angolan legislation does include some of the provisions of the General Framework for Local Authority Charges in force in Portugal since 2007.

The new Angolan General Framework for Local Charges applies to local charges and other financial contributions of this nature to central and indirect government and to independent State funds and services. It also applies to entities to which public interest activities have been delegated, such as regulatory agencies, public professional associations and companies that are concessionaires for public services. However, social security contributions are excluded from the scope of the application of this legislation because they have their own regulations, as is the case for regulation of activities or services provided by the State in the absence of *jus imperii*, in other words, when it acts in the area of private law.

The legislation allows for the creation of local charges on the provision of a specific public service, the use of a public asset, or even by removing a legal obstacle to the activity of individuals, which are ultimately the typical counterparts to

such local charges. It also presents a list - which is broad despite being merely illustrative - of the local charges that can be created, such as those relating to the procedures, licences, visas, registrations or administrative permits for other claims. Local charges can also be established in the case of issue of certificates or documents upon special request, legalisation and stamping of books or documents, review of projects, checks, contracts, appraisals, surveys, examinations and school, academic and complementary services. Local charges may also be established in other sectors, such as in port, airport and road services, economic and health services as well as in risk prevention, development and maintenance of urban infrastructure, traffic management and use of public and private domain.

With this General Framework for Local Charges, the principle of the user-payer is established in the context of the Angolan legal and taxation system, on the public side. It is guided by general principles of proportionality, fair distribution of public expenses, pursuit of the public interest and openness. Also, as regards general concepts and principles, the legislation is applicable on a subsidiary level to Angolan local councils, the specifics of which are dependent on their own regulations.

As regards the establishment of local charges in favour of public bodies, it is provided that they will have to be subject to a legislative act by the head of the executive himself. This act may be delegated, and must contain the

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economic and financial grounds for the amount to be charged, particularly the direct and indirect costs, the financial charges, repayment and future investments made or to be made by the public bodies. The level of the local charges must be based on the market value or utility derived from the service, and can be updated in accordance with the rate of inflation or the consumer price index if there is express provision to do so. It is clear that any other modification will require an amendment, properly grounded from the economic and financial standpoints, of the legislative act that created it. Provision has also been made in the Angolan General Framework for Local Charges that the public body that benefits from the local charges must pay the local charges back whenever, through no fault of the payer, the consideration required, in other words, the provision of the service itself or the removal of the legal obstacle, cannot take place.

In respect of taxpayer guarantees, it should be pointed out that the rule prohibits the State and other public bodies from denying the provision of services, the issue of authorisations or the continued use of property in the public domain by reason of the non-payment of local charges whenever the payment is subject to a complaint or challenge and a sound

guarantee is given. Further on this point, the provision of the possibility of presenting a complaint emerges as a requirement and condition necessary for a legal challenge and the periods imposed are thirty days from the notice to make the complaint and sixty days from the express or tacit refusal of the complaint to present a legal challenge.

As far as the deadline for the expiry of the right to recover local charges is concerned, the new General Framework for Local Charges maintains the five-year period established in the Angolan General Tax Code. This does not apply in the case of local charges owed to public bodies which expire, according to the legislation under analysis, ten years from the date on which the taxable event occurred. This is contrary to other general rules that stipulate a period of twenty years for the expiry of tax debts.

Perhaps now the new Portuguese government will be open to the possibility of approving and publishing a General Framework for Local Charges for Portugal, in compliance with what the Constitution of the Republic and the General Taxation Law have imposed since 1997 and 1999 respectively. The government may even do this by taking up the legislative authorisation from the State Budget Law for 2002.

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