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# African Footprint

Technical Newsletter of the Crowe Global African firms

## Inside This Issue

<b>Big win for HTL in West Africa</b>	<b>2</b>
<b>Legal obligations for General Terms &amp; Conditions sale in Reunion?</b>	<b>3</b>
<b>VAT Exemption for MICE in UAE</b>	<b>4</b>
<b>Post Kenyan Budget Tax Analysis 2018</b>	<b>5</b>
<b>Required documents for Foreign Branch Registration in Libya</b>	<b>9</b>
<b>Africa Tax Desk</b>	<b>11</b>
<b>Clients making Smart Decisions - Emergency sea water desalination plant for the City of Cape Town</b>	<b>13</b>

# Big win for HTL in West Africa



This week I had the pleasure of attending the first African Hotel and Tourism Conference (known as CITHA) run by Horwath HTL, France and Ivory Coast. The event, held in Abidjan at the Radisson BLU, was launched in partnership with Horwath HTL, PROPARGO (a Development Financial Institution partly owned by the French Development Agency (AFD) and private shareholders) and Radisson Hotel Group. The event was also endorsed by the Ivory Coast Ministry of Tourism.

The one day event focussed on hotel development, financing, legal and construction/operational issues and the wider tourism potential for the region. Philippe Doizelet was an excellent MC, Charlotte Specht set the scene for the conference brilliantly and Stephane Durand moderated a panel on large scale urban tourism projects.

Other speakers included:

- Helene Templier, DGD of Proparco
- Olivier Granet, CEO, Middle East and Africa, Accor
- Mossadeck Bally, CEO of the Azalai Group one of the region's most significant local chains
- Hichem Ghanmi, CEO Africinvest
- Serge Belinga, Afreximbank
- Mariame Travaly, Groupe Banque Mondiale
- Lala Maoulaye, Bank of Africa

They managed to attract well over 200 delegates, with a very high number of owners, banks, investors and the significant players in the West African hotel and tourism community. This meant that the quality of attendees was extremely high, matched by the quality of the panel discussions.

It was gratifying to hear very positive feedback from the attendees. Horwath HTL are clearly very well known and respected in the whole region. This annual event will cement our reputation as the number one in what is clearly one of the boom markets/regions in Africa.

Huge congratulations to Philippe, Stephane, Charlotte, Clemence and Medhi for all their hard work in organising this event and for the value that they have brought to the Horwath HTL brand.

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# Legal obligations for General Terms & Conditions sale in Reunion?

Crowe Reunion organized a meeting on Friday 1 June 2018 on legal risks related to pricing practices and general terms and conditions of sale (GTCS). This meeting was moderated by Abdoullah Lala, President of the firm in partnership with Dominique Andrieux, a lawyer primarily involved in economic law at "Labonne et associés", a law firm in France.

The questions addressed during this meeting highlighted the necessity of having GTCS which set out the conditions of a company's commercial policy. Without such conditions, companies would face great legal uncertainty: violation of economic law, lack of knowledge concerning the real nature of operations and ignorance of the precautions to be taken.

In order to limit business risks, it is necessary to have an expertly drafted contract and a clear understanding of its activities. According to Mr Andrieux "half of my clients make a mistake when it comes to the contractual qualification of their company". He goes on to say that "they think they are performing selling activities while they are actually performing services". This could lead to confusion as to the nature of the contract. Legal implications vary depending on the nature of the activities. On the other hand, the wording of jurisdiction clauses can facilitate the settlement of disputes.

The structure of the contract is simple: there is an offer and an acceptance with legal conditions. In addition, the principle of consensus is required; a contract is only binding if both parties agree. "The principle of contractual freedom emphasizes that the provisions of the contract are defined by the parties" says Mr Andrieux. The law sometimes restricts this freedom. This is the case with disclosure of information where the customer can sue the company if he does not know the information necessary in order to enter into the contract. Therefore, disclosure is now mandatory.

The enforceability of conditions requires disclosure and communication of the contract information with transparency, good faith and compliance with the obligations of the Code of Commerce. As Mr Andrieux attested, "it is necessary to get a strategy according to its activity and its customers and to mention the GTCS on all commercial documents" before adding "the GTCS are only enforceable if they are acknowledged and accepted by the other party". Sanctions can be imposed, if there is a denial of communication.

In conclusion, it is in the interests of both parties to enter into a written contract. It determines the obligations of each party and provides proof of the terms and conditions of the commercial relationship in the case of disputes between these parties.

This useful meeting provided answers to the participants' questions. Crowe Reunion commits to a professional approach aimed at transmitting to its clients, skills in the fields of tax, social and law which are necessary in the management of companies on Reunion Island.

Abdoullah Lala  
Crowe Reunion  
Reunion

## VAT Exemption for MICE in UAE

The UAE recently introduced a “booster” to what, in my opinion, is a stable economy. Some would argue that a stable economy is just another word for a stagnant economy. In their opinion, the booster was indeed the need of the hour.

There is now an exemption of MICE (Meetings, Incentives, Conferences and Exhibitions) from the 5% Value Added Tax. This would ensure Dubai and the Emirates remain competitive in attracting events to Dubai, especially in the run up to the EXPO 2020, where several events to be hosted are in the preparation stage.

A key benefit apart from the reduction in administration costs, is that the exemption from VAT will simplify the processes the industry needs to follow when complying with IFRS 15. Article 27 of the Federal Law Number 2 of 2015 requires commercial companies to comply with IFRS 15 as part of overall compliance with International Accounting Standards. As the implementation of IFRS 15 and VAT coincided on 1 January 2018, at least there is one less aspect that financial controllers in the industry need to worry about.

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# Post Kenyan Budget Tax Analysis 2018

The 2017/18 budget addressed Kenya's high levels of poverty and inequality. However, the 2018/19 budget does not seem to have addressed the same issues as the benefits have not been equally distributed, and the gap between rich and poor seems to widen, despite the theme being creating jobs, transforming lives and sharing prosperity. We give a brief overview of the budget and point out that whatever issues are presented here are subject to change upon publishing of the Finance Bill 2018 and subsequently Finance Act 2018.

## Income Tax

The Income Tax Act Cap 470 is under review and an Income Tax Bill 2018 is under discussion. However the following are the proposed amendments to the bill:

- The proposed tax band of 35% on individual incomes in excess of Kshs. 750,000/- to be reverted to 30%.
- A proposed tax of 20% on capital gains tax to be reverted to the current rate of 5%.
- Turnover tax to be replaced with presumptive tax which will be at the rate of 15% on business permit or trading licence fees.
- Introduction of withholding tax of 20% on demurrage charges made to non-resident persons.
- Introduction of capital gains tax on transfer of property by general insurance companies.
- Introduction of withholding tax at the rate of 5% on insurance premiums paid to non-residents excluding premiums paid for insurance of aircraft.
- The corporation tax rate of a company involved in business under the special operating framework arrangement to be preferential under the Income Tax Act.
- 30% of electricity bills by manufacturers to be treated as tax allowable deductions.
- Gains on transfer of property by a general insurance company to be subjected to capital gains tax at 5%.
- The requirement to maintain a dividend tax account has been scrapped with the introduction of distribution tax.

## **Value Added Tax (VAT)**

- Exemption from VAT on equipment used in the construction of grain storage.
- Exemption from VAT on certain raw materials used in the manufacture of animal feeds.
- Exemption from VAT on parts imported or purchased locally for the assembly of laptops and computers.
- Supply of postal stamps to be exempted from tax.
- Introduction of VAT to plant and machinery falling under chapters 84 and 85 of the Common External tariff.
- Introduction of VAT on garments and leather footwear manufactured in an EPZ.
- Maize corn seeds now taxable at 16%.
- Wheat, maslin and barley to be exempted from tax.
- Exemption of specialised equipment used for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power.
- Introduction of tax on services related to transportation of cargo to destinations outside Kenya.

## **Customs Duties**

- Changes relating to customs duties to be communicated through the East Africa Community (EAC) Gazette from 1 July 2018.

Some of the highlighted changes are:

- Import duty on a wide range of iron and steel products has been increased from 25% to 35%.
- Import duty on some paper and paper board has been increased from 25% to 35%.

### **Excise Duty**

- Amongst other increases, excise duty increased from 20% to 30% on private passenger motor vehicles with the engine capacity exceeding 2500cc for diesel and 3000cc for petrol powered vehicles.

### **Tax Procedures Act (TPA)**

- Extension of tax amnesty on foreign income from 30 June 2018 to 30 June 2019 and year of income declaration to be 2017 (initially it was 2016).
- Funds declared and transferred from the amnesty are exempted from the provisions of the Proceeds of Crime and Anti-Money Laundering Act and any other Act relating to reporting and investigation of financial transactions.
- Increase of late payment interest from 1% to 2% and a late payment penalty of 20%.
- Introduction of time limits in application and extension of time to file a return.
- Tax representatives to be held responsible for the tax obligation for which they have been appointed.
- At the Tax Appeals Tribunal, a notice of objection shall be considered to be validly lodged by a taxpayer if he or she has applied for an extension to clear the tax not in dispute.
- Penalty on late submission of VAT or excise duty returns to be charged at the higher of 5% of the tax payable or Kshs 10,000, individual returns at 5% of the tax payable or Kshs 2,000 and company returns 5% of the tax payable or Ksh 20,000.

### **Betting and Gambling**

- Introduction of a twenty percent penalty and two percent interest on late payment of tax in the Betting, Lotteries and Gaming Act. The tax will be considered to be final tax.

### **Export Levy**

- Introduction of export levy of 20% on copper waste and scrap metals.



## **Sectorial Budget Allocation: Big Four Agenda**

### **Manufacturing**

- The Government has allocated funds for the leather industrial park development, textile development and the modernization of RIVATEX and the New KCC.

### **Food Security (Kshs 13.4bn)**

- Amongst others, the Government has allocated funds for strategic food reserves, the Kenya Cereal Enhancement Programme, the mechanization of agriculture and crop diversification.

### **Universal Health Care (Kshs 55.6 bn)**

- Amongst others, Kshs 2.0 billion has been allocated for the Free Primary Healthcare, Kshs 0.8 billion for Health Insurance Subsidy Programme (Elderly & Disabled), and Kshs 2.5 billion for the rollout of universal health coverage to four counties on a pilot basis.

### **Affordable Housing (Kshs 24.4 bn)**

- Amongst others, Kshs 3.0 billion has been provided for the construction of affordable/social housing units by the Government and Kshs 1.5 billion for construction of housing units for police and Kenya prison officers. Kshs 1.5 billion has been allocated for the Civil Servant Housing Scheme Fund to support the off-take of the housing units.

Cephas Osoro  
Crowe Erastus & Co.  
Kenya

# Required documents for Foreign Branch Registration in Libya



Ahmed Ghattour

The application should be accompanied by the following documents:

1 Resolution of the Board of Directors of mother company abroad containing approval for the opening of a branch in Libya and including the following:

- a) Location of the branch in Libya. (Location can be our office during registration period).
- b) Activity to be carried out by the branch.
- c) The amount allocated for establishing the branch and its administration is to be not less than LYD250,000 (Two hundred and fifty thousand). A Certificate issued by a bank operating in Libya indicating that the company has transferred the allocated amount.

- d) Full names of the Branch Manager (Nationality of the manager should be the same as the mother company or a Libyan).
  - e) Full names of the deputy manager (deputy manager has to be Libyan National).
  - f) Power of Attorney of the legal person (firm) who will perform the company's registration process in Libya.
- 2 Memorandum and Articles of Association of the company.



- 3 Recent commercial extract proving registration of the company in the Commercial Register where its main office abroad is located, including registration number and date or registration certificate in the Chamber of Commerce in countries where the commercial extract is not available.
- 4 Experience Certificates of the company in the field of activity desired to be exercised in Libya, to be issued by the bodies for which the company carried out such works abroad. It must be attested by the Chamber of Commerce in the countries where such works have been executed and be issued by the real employers and describing the executed work.
- 5 Undertaking declaration letter by the Board of Directors of the Mother Company to prepare an Annual Budget / Balance Sheet and Profit and Loss Account of the Branch so as to disclose its the financial position.
- 6 Undertaking declaration letter by the Board of Directors of the Mother Company not to interfere in the political affairs of the country.
- 7 Copy of the manager's and deputy's passports (deputy manager has to be Libyan National).

All documents mentioned should be officially translated into Arabic language by a legal translator, and to be attested by the Libyan embassy in the country where the Main Office of the company exists abroad. The originals of the said documents and two copies of the original of each document separately should also be submitted.

Ahmed Ghattour  
Ahmed Ghattour & Company  
Libya

# Africa Tax Desk

Report by the Indirect Tax Steering Committee



Reinette Theart



Michael McKinon

The Crowe EMEA 2018 Tax Conference recently took place in Budapest, Hungary. It was well attended by members from the Europe and Middle East regions with more than 110 attendees, a record attendance. Representation from the African region, however, was slightly disappointing as only members from Ghana and South Africa attended the meeting.

The conference was very well organised by Crowe FST, our member firm in Budapest. The week consisted of a good mix of social events, including a much enjoyed dinner cruise along the Danube River, as well as 2 full days of informative discussions and presentations.

The central theme of the conference was the Digitalisation and Innovation of Tax and its implications for clients as well as for our practice. Jesus Romero, the chair of the EMEA Tax Committee opened the event together with Bernard Delomenie who is the EMEA Regional Executive.

During Day 1 each Steering Committee hosted a breakout session to provide in-depth discussions on topics relevant their respective areas of expertise.

These Steering Committees are divided into the following four broad focus areas:

- Global Mobility Services
- Indirect Tax
- International Tax Services
- Transfer Pricing

Crowe Tax & Advisory (JHB) is proud to say that its directors are represented on two of the above Steering Committees as well as the EMEA Tax Committee;

Michael McKinon has been involved in the work of the International Tax Services Steering Committee for the past few years and was also recently invited to join the EMEA Tax Committee. Michael, together with Chris Msuya from Tanzania, represents the African continent on the EMEA Tax Committee. The committee meets at least twice a year and holds regular conference calls to address opportunities and issues arising in the region.

Reinette Theart recently joined the Indirect Tax Steering Committee.

### **EMEA Indirect Tax Steering Committee (VAT / Sales Taxes)**

Structured to follow a regional approach, the committee which is headed by Rendall Hofman from Crowe Foederer in the Netherlands consists of four persons from the EU, Reinette Theart representing Africa and Markus Sisilo representing the GCC countries.

A key focus area for the next three years is to promote and develop Indirect Tax expertise within the Crowe network, and to create visibility in the market as leaders in the field of Indirect Tax. We call upon all members in Africa to also participate in this process, whether it be by publishing articles relating to Indirect Tax developments in your local country, or by contributing to publications such as this one. Our aim is to have at least one Indirect Tax specific article in every upcoming African Footprint newsletter.

The Crowe Africa VAT Guide which was last published in 2016 will also be updated this year, with thanks to Jiri Vanhuynegem from Crowe SG in Mauritius. This guide provides a concise overview of all 54 VAT / Sales Tax systems in Africa.

### **International Tax Steering Committee**

The objective of the International Tax Committee is to generate cross-border tax work for the Crowe Network.

Regional leaders and representatives work together to achieve the objectives of the committee, currently chaired by Hugo Everaerd from Crowe Foederer.

Building a strong tax team requires that we work together as a network to find solutions and offerings to potential and current MNE clients across the board. The work of the committee seeks to generate leads for all the identified Crowe tax specialties and identified focus areas.

If you have identified any potential MNE / cross border potential in the African region, please feel free to make contact with either Michael or Hugo and they will gladly assist.

Reinette Theart & Michael McKinon  
Crowe Tax & Advisory (JHB) (Pty) Ltd  
Johannesburg, South Africa

# Clients making Smart Decisions

## Emergency sea water desalination plant for the City of Cape Town

Proxa is a client of Crowe JHB in Johannesburg, South Africa. During 2017 and 2018, Cape Town stood the chance of being the first major city in the world to run out of water. Heavy water restrictions were imposed on residents and business whereby each person was allowed just 50 litres of water usage per day. Many Capetonians resorted to buying water tanks and installing well-points and boreholes to try and save every drop of this precious resource. Here is an article written by the Executive Chairman of Proxa regarding how they have assisted Cape Town.

“Proxa delivered two Sea Water Reverse Osmosis plants as part of the City of Cape Town's drought emergency response plan.

The “once in a century” Western Cape 3-year drought meant that the City of Cape Town had to consider alternative feed waters for the supply of potable water to its communities. The city identified three emergency sea water desalination projects as part of their drought management plan. Each of the plant's product water (potable water compliant to SANS 241 South African standards) would be injected directly into the City's distribution network. Proxa, in joint venture with Water Solutions SA, was awarded two of these projects which had to be delivered in record breaking time to help the City mitigate “day zero”.



Photo: Strandfontein Seawater Desalination Plant, Cape Town, South Africa

Proxa fast-tracked the design, assembly, construction and commissioning on a turnkey basis of two seawater treatment plants providing each 7500 m<sup>3</sup>/day (7.5 MLD) of potable water. The plants, located in the Monwabisi and Strandfontein areas, encompass the marine sea water intakes, the onshore process plants, the potable water injection infrastructure into the City's network and the brine return lines.

Innovation in design and construction to ensure rapid installation and minimal site works further reduced the project programme. Proxa also built the desalination plant in a modular format to enable future expansion. Given the shallow intake in the sea bay, robust pre-treatment was implemented using advanced filtration cleaning systems to protect the reverse osmosis membranes and ensure plant availability.

Proxa will continue to operate and maintain the plants for the duration of the contract. Full standby equipment was included to ensure that production is not interrupted during breakdowns or maintenance ensuring reliability.

Off-balance sheet financing on a Build Own Operate and Maintain (BOOM) basis, completed the solution provided to the City of Cape Town.

Engineered in Proxa's nearby Paarl R&D and Technical Centre, Proxa maximized the local value add by using Cape Town based subcontractors for the marine, civils, building and electrical works scopes.

Environmental protection and local communities involvement is critical in such projects. As such, the City of Cape Town, Proxa and Water Solutions SA collaborated with the local communities for local input. Local skills actively participated during the construction phase and the building used to house the plant is designed to serve as a community hall once the project is concluded.

At the contract end, the plant will be demobilized and the area will be rehabilitated. A portion of the plant consists of containerized mobile water desalination treatment plants (Proxa AquaMobile) that can be rapidly deployed to other locations.”

Patrick Ayoub  
Executive Chairman  
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## About Crowe Global

Ranked eighth largest accounting network in the world, Crowe Global has over 200 independent accounting and advisory firms in 130 countries. For almost 100 years, Crowe has made smart decisions for multinational clients working across borders. Our leaders work with governments, regulatory bodies and industry groups to shape the future of the profession worldwide. Their exceptional knowledge of business, local laws and customs provide lasting value to clients undertaking international projects.