

# TAX ALERT

INSIGHTS INTO RWANDA'S NEW  
LAW N° 020/2023 OF 31/03/2023  
ON TAX PROCEDURES

JUNE 2023

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# INTRODUCTION

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The Republic of Rwanda has been on a transformational path to ensure it achieves its goal of transforming itself into an international financial destination that is attractive to investors. In an effort to create an attractive investment climate, to conform with international standards, and to fill certain gaps identified in the now repealed Law **No. 026/2019 of 18/09/2019 relating to tax procedures (repealed law)**, effective 31st of March 2023, Rwanda has a **new Law n° 020/2023 of 31/03/2023 governing tax procedures**.

This article discusses the notable changes identified in this newly enacted Law.

## I. HARMONIZATION OF THE NEW LAW WITH THE OECD/GF REQUIREMENTS AND PROVISIONS OF THE DOUBLE TAX TREATIES (DTTs) AND OTHER RECENTLY ENACTED LAWS.

Rwanda is a member of the Organization for Economic Cooperation and Development's Global Forum on transparency and exchange of information for tax purposes (OECD/GF) which offers support to its members in tackling offshore tax evasion through monitoring, reviewing and assisting jurisdictions to implement the international standards on transparency and exchange of information for tax purposes.

The new law provides a different definition of tax evasion from the one that was in the repealed law. It defines tax evasion as any illegal act intended to hide or ignore all or part of liability to tax. This has been revised to comply with the OECD/GF terminology.

Regarding implementation of DTTs, an amendment has been introduced in the new law in relation to documents to be maintained by withholding agents. From now onwards, in addition to the records that were provided for under the repealed law, if payments concern residents of countries having concluded tax treaties (DTTs) with Rwanda, and a reduced withholding tax rate under the relevant DTT is applied, the withholding agent must produce a tax residence certificate of the payee issued by the competent authority of the contracting state.

Several amendments have been made in efforts to harmonize provisions of this new law with some recently enacted laws. On maintenance of books of accounts and records, the repealed law provided that taxpayers must keep books of accounts and records for five years, but the new law has extended this to ten years starting from 1st January of the year following the tax period to which books relate. This is to harmonize the new law with the Law governing companies, law on prevention and punishment of money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction (AML/CFT Law) and laws governing partnerships, trusts and foundations respectively, all of which provide that records are to be kept for ten years. In addition, the new law also provides that these records are prepared in one of the official languages and can be electronically accessed and shared in electronic form.

In order to harmonize with the Income Tax law, 2022 which does not oblige taxpayers below two million Rwandan francs of annual turnover to file their tax declaration, this new law specifies that those taxpayers are not subject to non-declaration penalties.

The new law adds trustees to the list of persons considered as representatives of non-residents with a permanent establishment in Rwanda that was outlined in the repealed law.

## II. EXCHANGE OF INFORMATION (EOI)

To ease the process of complying with the OECD/Global Forum on Transparency and Exchange of information for tax purposes, this new law has introduced several amendments.

The information to be included in required books of Accounts and records for a small business has been amended to meet the EOI standards on availability of information. In addition to the information in the repealed law, they are also required to submit records of all daily sales which indicates all daily cash and credit sales, all daily purchases which indicates goods or services acquired by cash and by credit to constitute stock in trade or constitute necessary operating expenditures and all financial transactions which indicates cash entries and cash expenditures.

The new law has introduced a raft of new penalties for entities exempt from income tax that do not submit their financial statements as well as for any person who does not provide timely information, does not provide information or provides, incorrect or misleading information following a request from the tax administration.

In order to facilitate exchange of information in tax matters under tax treaties, the new law has introduced the duty of professional secrecy to ensure that every employee of the Tax Administration does not disclose any information on tax status, nature and use of property of a taxpayer except in circumstances deemed necessary and where the disclosure is to enforce provisions of this law or tax treaties. It also empowers the Tax Administration to access information held by any person and that may facilitate its implementation of this Law, other tax laws in force and all tax treaties ratified by Rwanda. Information requested by the Tax Administration from any person and institution including those bound by confidentiality has to be provided within ten working days from the receipt of the request.

Unlike the repealed law which did not provide for this, under this new law, the Tax Administration has an obligation to immediately inform the taxpayer if it takes initiative to register him or her for VAT purposes.

### III. AUDIT

A number of changes have been introduced with regard to the Audit process.

In the facilitation of the Audit process, on receiving the audit notice, taxpayers are prohibited from making any changes to their declarations and accounting records for the period to be covered by the audit, unless authorized by the Tax Administration.

Two new types of tax audit have been introduced: transfer pricing and tax refunds audits. These have also been added to circumstances where the tax administration is permitted to depart from the unique audit principle and conduct a comprehensive tax audit.

The burden of proof in case of audit is put on the taxpayer subject to a transfer pricing audit. This is likely to be discharged when the taxpayer has furnished documentation indicating that the terms and conditions of its controlled transactions are consistent with the arm's length principle. The burden of proof would then shift to the tax administration which would have to prove that the transfer pricing method and information used by the taxpayer are not reliable, and generally the controlled transaction was not consistent with the arm's length principle.

The burden of proof is now removed from the taxpayer and transferred to the Tax administration when the latter conducts an audit without notice, which was not the case in the repealed law.

In order to ensure a best preparation of audit, the tax period to be audited has been included as part of the information to be provided by the Tax Administration to the taxpayer through the audit notice.

Regarding the time limit of the power to audit, the new law specifies that as the statutory period for conducting an audit affects the power of Tax Administration to audit, it equally affects the taxpayer's right of rectification of a tax declaration, unless such a rectification increases the tax to be paid or leads to the taxpayer's loss.

### IV. VOLUNTARY DISCLOSURE

Under this new law, interests for late payment and penalties related to the non-payment and non-declaration of tax referred to won't apply to the taxpayer who voluntarily discloses to the Tax Administration and pays due taxes that he or she didn't pay before being notified of imminent audit.

However, the voluntary disclosure leads to waiver of interests for late payment and penalties only if it is done by a taxpayer not registered with the Tax Administration or by a registered taxpayer who voluntarily discloses and pays tax after the provided statutory time limit for audit.

The new law also provides that to promote voluntary disclosure, the Minister is entrusted with the power to open a voluntary disclosure period, and by a Ministerial Order, to determine modalities and conditions to benefit from voluntary disclosure incentive.

## V. NEW TAX OFFENCES AND PENALTIES AND REVISED PENALTIES

The new law has revised penalties and late payment interest that were provided for by the repealed law. Late payment interest rate has been reduced from 1.5% as was in the repealed law to 0.5% where the delay does not exceed six months and 1% where the delay is between six months and twelve months. The interest rate of 1.5% has been maintained in case the delay is more than twelve months.

Administrative fines imposed to a taxpayer who declares tax due in the time limits provided by law but who delays to pay the declared taxes within prescribed time limits not exceeding thirty and sixty days have been reduced by half to facilitate taxpayers overcome hardships on the presumption that the taxpayer faithfully has declared tax on time. The reductions are from 10% to 5% and 20% to 10%.

The new law also provides that a taxpayer with accounts receivable from the Tax Administration is entitled to suspension of penalties and accrual of late payment interests on the total outstanding amount owed by the Tax Administration. This suspension takes effect from the day the debt due by the Tax Administration comes into existence.

In order to avoid fraud, a new tax offence has been introduced in the new law to punish taxpayers who fraudulently claim any tax refund punishable by a term of imprisonment between two and five years and a fine equivalent to a hundred percent of the tax amount unduly claimed.

## VI. OTHER NOTABLE CHANGES

In addition to the changes discussed above, a summary of other notable changes introduced by this new law include: Additional requirements for books keeping previously set for a company in the repealed law are now extended to “a person in real regime declaration” in order to cater for natural persons and other entities under real regime. As for tax declaration by related parties, it is required to file tax declaration accompanied by the transfer pricing documentation prepared in accordance with relevant legislation.; the suspension of collection of tax that is subject of administrative appeal when the taxpayer has paid the undisputed portion of the tax; the likelihood of the Commissioner General designating another person authorized to withhold the Value Added Tax other than procuring public entities under public tenders; the leeway period of fifteen days from the day of seizure of the property granted to a defaulting taxpayer by the Tax Administration to sell the seized property in order to clear tax due and ; the amendment to the provision on publication of auction as was in the repealed law to ensure that the auction process follows the relevant that govern the auction process and to avoid any conflict with these laws.

## CONCLUSION

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This new law will help ensure that individuals and businesses to comply with the tax laws and regulations. Its proper implementation will eventually facilitate economic growth by creating a stable and predictable tax environment that encourages investment and entrepreneurship. It has a transitional period of three months to allow Rwanda Revenue Authority adjust its E-Tax system.

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