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An Independent Law Firm based in Cameroon

**ANALYSIS
OF THE MAIN
AMENDMENTS
OF THE 2018
FINANCE LAW**

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February 22, 2018

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The 2018 finance law of Cameroon was published in the official journal on December 21, 2017.

We will present below the main tax and customs measures of this finance law, in force since January 1, 2018.

1. TAX AMENDMENTS OF THE FINANCE LAW

Tax amendments can be classified in four categories of measures: support to companies (1.1), fight against tax evasion and other frauds (1.2), broadening of the tax base (1.3) and rationalization and modernization of the tax system (1.4).

1.1. Support to companies

Measures of support to companies deal with the reduction of the tax burden in order to encourage companies to carry out more investments. Three measures in particular are to be raised.

1.1.1.

Extension of the scope of valued added tax (VAT) and registration duties exemptions

From now on, interests remunerating loans of a value lower than CFAF 2 million granted by microfinance institutions of first category to their members are exonerated from VAT.

The new finance law also introduces an exemption from registration duties on loans backed by pledges and mortgages granted by microfinance institutions of first category, as well as the replevins and securities related thereto.

The combined reading of these two provisions makes it possible to note that one can get a double exemption from VAT and registration duties where the loan meets the following cumulative conditions:

- to have a value lower than CFAF 2 million;
- to be granted by a microfinance institution of first category; and
- to be backed by a pledge or mortgage.

1.1.2.

Extension of the scope of special income tax (SIT) exemptions

For recall, SIT is a tax based on incomes paid to foreigners by people domiciled in Cameroon, in remuneration for service provided or used in Cameroon. An exception is however set for the remuneration paid to foreign contractors within the framework of public procurements: in this case, SIT concerns both the provision of service and delivery of equipment.

At the introduction of the various rates of SIT by the 2017 finance law, the reduced rate of 5% only applied to remuneration paid within the framework of public procurements whose contractors were not domiciled in Cameroon.

The new finance law broadens the scope of the said reduced rate to remuneration paid for the provision of access to audio visual service with digital content, as well as those paid to oil companies during the exploration and development stages. These remunerations are now subject to the reduced rate of 5% instead of the general rate of 15%.

1.2. Fight against tax evasion and other frauds

1.2.1.

Removal of the condition of filiation between cameroonian and foreign entities with regard to the reintegration of profits indirectly transferred abroad where the foreign entity is located in a tax haven

Previously, the reinstatement of profits indirectly transferred by cameroonian companies to foreign entities was subject to a condition of filiation, *i.e.* a relationship of control or dependence between the two entities.

Henceforth, this condition is no longer required when the entity receiving the indirect transfer of profits is located in a tax haven. It does not matter that there are filiation links between the cameroonian entity and the foreign one; the profits indirectly transferred will be systematically reinstated into the results of the former where the foreign entity is domiciled in a tax haven.

Through this reform, the tax administration intends to hunt taxpayers who carry out tax and financial packages allowing them to domicile their income in tax havens.

1.2.2.

Non-deductibility of actual losses resulting from the embezzlement by a partner or an executive officer and the obligation of full refund of VAT deducted for goods and service subsequently misappropriated by a partner or an executive officer

From now on, losses related to an embezzlement by a partner or an executive officer of a company (hereinafter referred as directors), or imputable to their negligence are non-deductible.

Similarly, in the event that goods and services for which VAT has been deducted are subsequently diverted by a director, the deducted VAT must be fully refunded to the tax administration.

The tax administration therefore intends to fight against tax and accounting fraud perpetrated through the misappropriation of funds.

Circular dated January 15, 2018 laying down the implementing rules of the tax provisions of the finance law (the "**Tax Circular**") also specifies that embezzlement committed by an employee may also be indirectly imputable to directors in the absence of a control process and that the proof of the non-imputation of the embezzlement to directors is the responsibility of the company.

¹ Section 8 (b) (3) of the general tax code (GTC) defines tax haven as a state or territory wherein the income tax rate of natural persons or legal entities is less than a third of the rate in force in Cameroon, or any state or territory considered not to be cooperative in matters of transparency or exchange of information for tax purposes by international financial organizations.

Moreover, the embezzlement is established as soon as it is ascertained by the company. This provision makes perfect sense since as a matter of fact, in the event of an administrative appeal, the administrative judge has to defer his judgment until the decision of the criminal court on the preliminary rulings of the embezzlement or negligence of the directors. Taking into account the remedies of the preliminary criminal proceedings, the main proceedings related to the tax litigation would have been tremendously long.

1.3. Broadening of the tax base

1.3.1.

Introduction of a special Corporate Income Tax / Personal Income Tax instalment of 5.5% on public procurements of less than CFAF 5 million, regardless of their tax regime

For recall, the tax instalment is a method of prepayment of taxes. It is due monthly and based on the monthly turnover, so that at the end of the financial year, the total amount of instalments already paid is deducted from the amount of the annual tax.

It is worth noting this instalment only applies to remuneration earned with respect to the public procurement. Income earned out of the scope of the public contract therefore remains subject to the common tax payment system.

1.3.2.

Widening of the scope of SIT to remuneration for service provided to oil companies by an affiliated company during the exploration and development stages

Previously, SIT applied to remuneration for service provided to oil companies, including during the exploration and development stages, but excluding paid services provided by an affiliated company.

Henceforth, even these services provided by an affiliated company during the exploration and development stages fall within the ambit of SIT.

1.4. Rationalization and modernization of the tax system

Although the new finance law seems to introduce an obligation of automatic transmission of documents relating to transfer pricing, it shall be noted that this is not new.

Indeed, since the enactment of the 2012 finance law, the obligation to transmit documents relating to transfer pricing systematically applies to companies registered with the Large-sized Taxpayers Unit, under the same terms and conditions than those provided by the new finance law. The latter therefore merely makes official the expression “documentation relating to transfer pricing”.

1.4.1.

Strengthening of the verification process for refunding VAT credits

The verification process for refunding VAT credits has been reorganized according to three categories of tax risk. Below is a summary table:

	PRIOR CONTROL by the administration	POSTERIOR CONTROL by the administration	COMMENTS
Low risk ² companies	NO	YES Validation control of VAT credits	In the event of an adjustment, penalties of 150% plus interests for late payment are applied without capping and without possibility of voluntary remission. These penalties appear to be very high even though the administration could have arranged the possibility of carrying out a prior control.
Medium risk ³ companies	YES Validation control of VAT credits	YES General accounting audit	In the event of an adjustment, penalties of 100% plus interests for late payment are applied without capping. These penalties also seem to be very high.
High risk ⁴ companies	YES General accounting audit	NO	

1.4.2.

Introduction of a right of access to the premises of taxpayers

Sworn tax officers with at least the rank of inspector are now entitled to carry out visits into companies' business premises and individual's private premises.

This right of access is carried out as follows:

- visiting hours: between 8 and 20 o'clock or outside these hours when access to the public is allowed ;
- possibility of taking conservatory measures during the visit.

However, the legislator protects taxpayers against the abusive exercise of this right of access, by requiring the prior authorization of the President of the court of first instance.

² They must fulfil the following cumulative criteria:

- being registered with the Large-sized Taxpayers Unit;
- to have no outstanding taxes including within the framework of a tax dispute;
- to have regularly benefited from VAT refunds during the last three financial years not questioned during a tax audit.

³ They must fulfil the following cumulative criteria:

- being registered with the Large-Sized Taxpayers Unit or the Medium-Sized Taxpayers Unit;
- to have no outstanding taxes except within the framework of a tax dispute;
- to have regularly benefited from VAT refunds during a closed financial year not questioned during a tax audit.

⁴ These are companies that do not fit into either of the two previous categories.

1.4.3.

Reorganization of some rules relating to the procedure before the administrative court

(i) Easing of the criteria of territorial jurisdiction in regard to referral to the administrative court

Previously, the taxpayer wishing to bring his claim before a judge absolutely had to refer to the administrative court of his tax collection office.

From now on, he can also refer to that of his residence or of his head office, to his convenience.

(ii) Reduction of time limits relating to administrative proceedings

The various time limits governing the procedure before the administrative court have been modified as follows:

STAGES OF PROCEEDINGS	TIME LIMITS IN THE FORMER LEGISLATION	TIME LIMITS IN THE NEW LEGISLATION
Application to court	60 days	30 days
Request for suspension of payment: deadline for reply from the Minister of Finance ⁵	None	30 days
Production of the defence brief of the Minister of Finance / negative prescription relating to the production of the aforesaid defence brief, equivalent to acquiescence	3 months, 2 of which shall be used by the Director General of Taxation to study the file; it may be extended for 2 months	2 months, 1 of which shall be used by the Director General of Taxation to study the file; it may be extended for 1 month
Production of the rejoinder brief of the Minister of Finance, if necessary ⁶	None	15 days
Production of the pleadings of the General Prosecutor's Office	None	2 months

In general, there is a clear reduction in the existing time limits and the creation of new time limits, with the aim of speeding up the proceedings before the administrative court.

⁵ It shall be noted that the suspension of payment in the administrative phase is now valid only for this phase. In the litigation phase, if necessary, the taxpayer must make a new request for suspension of payment.

⁶ The Minister of Finance produces a rejoinder brief where new means have been raised by the taxpayer in his reply. The rejoinder brief terminates the written exchanges

2. CUSTOMS AMENDMENTS OF THE FINANCE LAW

2.1. Reorganization of the exit fee rates for some products and entry into force of the preferential rate of the Economic Community of Central African States (ECCAS)

The common rate of exit fee remains 2% of the taxable value. However, the new finance law modifies it for the following products:

- arabic rubber, rice, palm oil, chilli, kola nut, millet, sorghum, pepper and “gnetum africanum” (“eru”/“okok”): 5%;
- rough timber: 30%;
- worked and semi-finished wood (wood already processed into semi-finished or finished product): 5.56%.

Regarding the ECCAS preferential rate, it consists of a total exemption from customs duties both on import and export within ECCAS. From now on, cameroonian products exported to ECCAS member States⁷ are exempted from the exit fee. Correlatively, products from ECCAS member States imported into Cameroon benefit from the zero rate of customs duties.

2.2. Establishment of a warehouse of used vehicles aged less than ten years

The new finance law introduces a special warehouse for used vehicles aged less than ten years. The particularity of this warehouse is that it is exempt from customs duties. Used vehicles aged less than ten years are thus exempt from customs duties.

2.3. Introduction of the right of resumption of a customs audit

Henceforth, the customs administration is entitled to repeat a previous audit over the same subject and period, provided that the following cumulative conditions are met:

- discovery of new elements which had been hidden by the taxpayer during the first audit; and
- this discovery must relate to accounting or financial entries that are less than three years old.

As for the circumstances in which this discovery may occur, the circular dated January 4, 2018 laying down the implementing rules of the customs provisions of the finance law (the “**Customs Circular**”) specifies that this subsequent discovery can be made both on elements materializing the accounting and financial operations of the audited entity and those of entities with which it has been in relation.

2.4. Modification of some rules relating to the customs dispute

The new finance law makes the following changes to the customs dispute procedure:

- extension of the time limit for lodging the appeal from two weeks to 30 days;
- introduction of a litigation submission for first-line and deferred controls:
it consists of the totality of the amount of the disputed rights and taxes.

⁷ As a reminder, ECCAS currently has 10-member states, namely: Angola, Burundi, Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea, Democratic Republic of Congo, Sao Tome & Principe and Chad.

This last measure is particularly severe for the taxpayer, who must advance in full the very amount of duties and taxes he contests.

2.5. Attribution to the customs administration of an exceptional power of sanctions in the fight against tax incivism

The Customs Circular provides that if it is established that a taxpayer is not in good predispositions of tax civism, the customs administration is empowered, after formal notice had no effect, to force him through several means, namely:

- the suspension of all customs activities;
- the instruction of the blocking of bank accounts of the indebted taxpayer;
- affixing seals on means of transport and premises that may contribute to the realization of fraud;
- the exercise of seizure to third party holder.

This innovation of the new finance law raises the issue of safeguarding the legal certainty of taxpayers. Indeed, as regards the establishment of “bad predispositions of tax civism”, we are entitled to ask on what objective criteria the administration will be based to assess the said civism. The Customs Circular has attempted to answer this question by listing in a non-exhaustive way behaviours falling within the field of tax incivism.

Nonetheless, in the absence of precise criteria or an exhaustive list of behaviours of tax incivism allowing both the administration and the taxpayer to determine what falls or not within the field of tax incivism, the customs administration is almighty and can freely decide which behaviour denotes or not tax incivism.

Although the intention of the legislator to strengthen the fight against tax incivism is laudable, this should not be done to the detriment of the legal certainty of taxpayers.

The 2018 finance law seems to have been particularly focused on securing revenue through:

- the fight against tax fraud;
- the multiplication of the supervisory and sanctioning powers of the administration;
- the improvement of the procedural rules relating to tax and customs disputes.

Some measures may nevertheless be considered excessive for the taxpayer.

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Authors:

Aurélié Chazai, Lawyer admitted to the Cameroon and Paris Bars, managing partner of Chazai & Partners law firm.

Alexandre Ekollo Moundi, trainee lawyer at Chazai & Partners law firm.

CHAZAI+PARTNERS

An Independent Law Firm based in Cameroon

1149, Bld. de la République – SUNU Assurance Building (next SOMATEL Hotel), Bali
PO Box 4937 Douala, Cameroon

T: +237 233 432 617 | M: +237 6 66 97 14 88 | M: +33 6 13 15 85 26

contact@chazai-partners.com

www.chazai-partners.com