

newsletter

INVESTMENT-RELATED MEASURES | ALGERIA |

JANUARY 2017

THE FINANCE LAW FOR 2017

Law No. 16-14 dated 28 December 2016 implementing the Finance Law for 2017 (hereinafter the “**2017 FL**”) was published in the Official Journal of 29 December 2016. The 2017 FL takes place in a context of diversification of the national economy and rationalization of public spending.

This newsletter focuses on the key measures of the 2017 FL.

PROVISIONS REGARDING INVESTMENT

(i) Reinvestment obligation

Article 82 of the 2017 FL has repealed article 57 of the 2009 Complementary Finance Law (“**CFL**”), and clarifies the reinvestment obligation principle. Previously, two texts coexisted (article 142 of the Direct Tax Code and the former article 57 of the CFL), which made interpretation complex.

An interministerial decree dated 28 November 2016 has set out the conditions for implementing the obligation to reinvest 30% of profits, corresponding to tax exemptions and reductions granted in the context of investment support regimes. In particular, this decree specifies that:

- the reinvestment obligation only concerns tax exemptions or reductions **related to corporate income tax (IBS) and tax on professional activities (TAP)** granted during the investment **exploitation phase**. It applies to profits that must be reinvested as of 1 January 2016, and to profits from previous years that are not yet time barred;
- **the concept of reinvestment** encompasses (i) asset acquisitions for the creation of new production capacity or production capacity extension and rehabilitation activities; and (ii) participation in a company's share capital;
- where a partnership is signed between foreign investors and national companies (privately owned or state-owned companies), **the reinvestment obligation does not apply** when advantages granted have been fully injected in the price of finished goods and services produced by the company.

It is worth noting that, according to the above-mentioned framework, the amount of profits that must be reinvested cannot be distributed as dividends. In other words, it seems that any distributable profit exceeding the aforementioned reinvestment amount may be distributed to shareholders.

(ii) Improvement of access to land

Article 58 of the Finance Law for 2016 had set out the possibility for both individuals and legal persons to create, adapt and manage areas of activity or industrial areas on non-agricultural self-owned lands.

- Article 80 of the 2017 FL has restricted that possibility to private law legal persons (individuals being excluded) and extended it to encompass the creation of logistics areas. The land in question should be owned by these persons or be subject to a 33-year state-granted concession when part of state-owned land.
- The creation, development and management of these areas is subject to specifications prepared by the ministry in charge of investment (for private law land) or jointly by the ministries in charge of investment and finance (for state-owned land).

(iii) Withdrawal of the obligation to pay imports by documentary credit

Article 111 of the 2017 FL has repealed article 69 of the 2009 CFL which stated an obligation to pay imports only by documentary credit. Provisions of the Finance Law for 2014 had already enacted the possibility of paying imports by documentary remittance. The cancellation of the obligation to pay imports through the *Crédoc* offers more flexibility when choosing from the payment methods authorised by the Algerian exchange control regulation.

KEY TAX MEASURES

(i) Taxation of capital gains arising from the transfer for valuable consideration of built or not built properties

Articles 2 and 3 of the 2017 FL provide for the taxation of gains arising from the transfer of a built or not built property at a 5% global income tax (IRG) rate, and cancel the need for payment of the corresponding income tax. This provision concerns capital gains actually realised by persons who transfer, **other than in the course of their professional activity**, all or part of built or not built properties.

The taxable capital gain consists of the positive difference between the property transfer price and the transferor's acquisition price or initial creation value.

However, capital gains realised in the context of an estate wind-up or when lessors or lessees transfer their property in the context of leasing contracts such as lease-backs or when transferring a property owned for more than ten (10) years, are not concerned by such capital gains taxation. By contrast, donations to relatives further than second degree and non-relatives are considered to be transfers for valuable consideration and are therefore subject to the 5% IRG rate.

(ii) Transfer pricing

- **Requirement to keep analytical accounting** for companies conducting operations with related companies (article 8 of the 2017 FL).
- **Obligation to submit analytical accounting** in the context of transfer pricing policy verifications (article 44 of the 2017 FL).
- **Time extension of accounting verification in the context of transfer pricing controls:** Article 43 of the 2017 FL has extended by **six (6) months** the accounting control and spot-checks timeframe when the tax administration submits, in the context of administrative assistance and exchange of information, information requests to other tax administrations. This extension of control timeframe forms a part of the reinforcement of measures against tax avoidance implemented by the Algerian tax legislation.
- The **amount of the fine** applicable in case of production failure (or incomplete production) of a company's transfer pricing documentation has been increased from DZD 500,000 to **DZD 2,000,000**.

(iii) Withdrawal of the additional registration duty applicable to transfers of assets having benefited from regulatory re-evaluations

Article 69 of the 2017 FL has repealed article 28 of the 2009 CFL, which subjected transfers of shares having benefited from regulatory re-evaluation to a 50% additional registration duty. This registration duty was based on the amount of the realised capital gain and also applied to re-evaluated asset transfers. As a reminder, the additional registration duty rate had already been reduced to 30% by the 2015 CFL.

This registration duty was an obstacle, which has now been removed, to equity capital operations (transfers, mergers, contributions) on companies that had benefited from regulatory re-evaluations.

(iv) Possibility of deducting previously omitted deductible VAT

VAT deductions on purchases that had been omitted may now be stated on subsequent tax declarations until 31 December of the year following the omission. It should however be stated separately from deductible taxes related to the current period subject of the declaration.

(v) Legal suspension of payment provision increased to 30%

The suspension of payment legal framework provided by article 74 of Tax Procedure Code, which made it possible to delay tax payments being challenged by taxpayers during a claim, has been redesigned by the 2017 FL. The new framework introduces the possibility for taxpayers to constitute guarantees to ensure the recovery of such challenged taxes and if not, allows taxpayers to delay payment of the challenged amount by paying an amount equal to **30% of the disputed tax amount instead of the previous 20%**. This provision thus allows delaying the recovery of the remaining tax amounts until a decision on the matter at issue is rendered.

(vi) Modification of procedures related to claims

The claims timeframe set out in article 153 *bis* of the Tax Procedure Code has been extended from one (1) to two (2) months from the notification of the challenged act or the notification of the first proceeding act. Furthermore, the provisions governing claims admissibility have been specified with the possibility for claimants to rectify their claim within eight (8) days when such claim does not satisfy the admissibility requirements.

(vii) Creation of a payment plan subject to payment of 10% of the tax debt

Article 60 of the 2017 FL has introduced an obligation to pay 10% of the tax debt to benefit from a payment plan. Payment plans are thus granted for a maximum period of 36 months, provided that 10% of the tax debt is being paid in the first place.

(viii) Continuation of the tax compliance program

The tax compliance program has been extended **until 31 December 2017**.

As a reminder, this program, established by the 2015 CFL, aims to allow taxpayers owning lawfully acquired but undeclared funds to settle their situation with regards to the tax administration by paying a 7% fixed levy in full discharge tax.

(ix) Staggering of tax debts payment for distressed companies

Article 90 of the 2017 FL has introduced a mechanism to stagger tax debts owed by distressed companies over a period of time not exceeding 36 months, provided that such companies submit to the tax administration documents supporting financial difficulties that prevent them from paying such debts.

(x) Measures applicable to foreign companies with no permanent professional establishment in Algeria

Amounts received by **foreign companies not having a permanent professional establishment in Algeria** and operating under a service contract subject to the 24% withholding tax, when the tax base benefits from reduced tax rates or tax allowances, are now subject to VAT.

(xi) Creation of additional taxes or increase in existing tax rates

- **Creation of a 10% tax:** on the production or broadcasting of advertisements made for the benefit of goods not manufactured locally. This tax, based on the contract amount, is borne by the company that requests the advertisement broadcast. It cannot deduct the charge from its taxable income. The tax implementation conditions must however be determined by order of the ministry in charge of finance, which has not yet been published.
- **Creation of the energy efficiency tax (EET),** applicable to locally manufactured or imported goods running on electricity, gas and oil products consuming more than the energy efficiency standards provided by applicable regulations.
- **Increase of the value added tax (VAT)** from 17% to 19% for the standard rate and from 7% to 9% for the reduced rate.
- **Increase of the domestic consumption tax (DCT):** in the specific case of tobacco, the tax fixed part has been increased from DZD 1,260/kg to DZD 1,760/kg on light tobacco, from DZD 1,040/kg to DZD 1,240/kg on dark tobacco, and from DZD 1,470/kg to DZD 2,470/kg on cigars.

(xii) Tax incentive regime regarding assembly activities

Article 88 of the FL 2017 provides that production companies specialised in assembly benefit from the preferential tax regime existing in favour of collections dedicated to assembly industries and “CKD” collection parts. Three (3) conditions must be met to benefit from this regime: the implementation of an investment; job creation; and compliance with the integration rate for final products set by the joint order issued by both the ministries of Industry and Finance.

It should be noted that unpublished specifications related to motor vehicle assembly have already introduced an ambitious integration rate that companies involved in the assembly business must observe. When issuing the aforementioned joint order, authorities must clarify which integration rate these companies are actually subject to so as to remove any uncertainty.

- Article 110 of the 2017 FL exempts from customs duties and VAT, for a five-year period, components and raw materials imported or locally acquired by subcontractors in the course of their assembly and sub-assembly production activity for the mechanical, electronics and electrical industries.
- Cap on notaries' fees

Article 84 of the 2017 FL provides that the cap on notaries' fees must be fixed by regulation.

MEASURES REGARDING THE PHARMACEUTICAL INDUSTRY

(i) Increase of the registration applications tax on pharmaceutical products

This tax has been increased from DZD 4,000 to DZD 12,000 for batch control, from DZD 10,000 to DZD 30,000 for control and expertise of products subject to registration, and from DZD 5,000 to DZD 15,000 for analysis and control of raw materials.

(ii) Increase in registration applications fees on pharmaceutical products

A distinction is made between the pharmaceutical products concerned, whether they are essential or not, imported or locally manufactured.

(iii) Control of the regulation regarding medicine reimbursement arrangements

Articles 97 and 98 of the 2017 FL restrict eligibility conditions to social security reimbursement for onerous and very onerous medicine through:

- An annual cap in terms of both volume and amount on reimbursements, with the requirement that pharmaceutical laboratories whose products are subject to the cap annually refund to social security institutions the amount reimbursed in excess of capped volumes and/or capped amounts; and
- The introduction of the “performance contracts” concept entered into by social security institutions and pharmaceutical laboratories holding registration decisions in Algeria. These performance contracts aim to implement undertaking clauses at the expense of pharmaceutical laboratories, which shall refund to social security institutions the medicine reimbursements concerned in case of therapeutic failure.

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