

The Supplementary Finance Act for 2009, Main Measures

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This note is not intended to be a comprehensive analysis but a simple presentation of the main provisions of the supplementary budget law published in the OG No. 44 of 26 July 2009 (Ordinance No. 09-01 of 22 July 2009 on the Supplementary Finance Act for 2009).

I CHANGES TO ORDINANCE NO. 01-03 ON INVESTMENT DEVELOPMENT

Articles 58, 59, 60, 61, 62, LFC

Measures relating to shareholders

- Foreign investment can only be achieved through a partnership in which the resident national shareholding represents 51% of the capital. Several partners may be included in the quota of national ownership (art.4 b added to Ord. 01-03).

- The foreign trade activities may only be carried out by individuals or foreign legal entities in partnership with the resident national shareholding which is not less than 30% of the share capital (art. 4 b added to Ord. 01-03).

The supplementary budget law contains no provision on the compliance requirements of existing companies.

- Foreign investments made in partnership with the economic public companies (EPEs) must meet the new provisions of Article 4 b (see above, first paragraph). These provisions are also applicable in cases where their capital is opened to foreign ownership (art. 4 b added to Ord. 01-03).

- Investments made by resident nationals in partnership with public economic companies (EPEs) may only be achieved through a minimum participation of these companies, equal to or over 34% of the capital. These provisions are also applicable in the case of the opening of their capital to resident national shareholders (section 4 d added to Ord. 01-03).

It adds that the national shareholders may waive, after approval of the CPE (Council of State Participation), the option to purchase shares held by the public economic company (EPE) at the end of a period of 5 years.

- The State and the economic public companies (EPEs) have a right of first refusal on all transfers of shares of foreign shareholders or in favour of foreign shareholders (section 4 d added to Ord. 01-03).

- Share in national import companies may be held by public participation. To this end, a company may be created, which will be responsible for the acquisition of shares as part of the legal minimum of the possible public participation in the capital of export trading companies (Article 74 LFC).

Other measures

- The funding required for the realization of foreign investment, whether direct or in partnership, with the exception of the constitution of share capital, should be established, except in special cases, through the use of local financing (art. 4 b added to Ord. 01-03).

- Foreign investments made in the economic production of goods and services are subject to a declaration of investment with ANDI prior to their implementation (art.4 added to Ord. 01-03).

- Any proposed foreign direct investment or investment in partnership with foreign capital must be subject to prior review by the National Board of Investment (CNI). Thus, all foreign investment eligible or not for tax benefits must first be reviewed by the CNI (art. 4 b added to Ord. 01-03). Concerning Algerian investments equal to or exceeding 500 million dinars, the granting of benefits under the general scheme is subject to a mandatory decision of the CNI (section 9 c added to Ord. 01-03).

- The time limits for processing applications for benefits are deleted (for reminder, these times were 72h for the benefits provided under the realisation and 10 days for those provided in respect of the exploitation) (Article 7 ord. 01-03).

- Foreign investments, whether direct or in partnership, are made with the condition of producing foreign exchange balance surplus in favor of the Algerian economy during the lifetime of the project (a text of the monetary authority will specify the detailed application) (art. 4 added to ord. 01-

03).

- The granting of benefits under the general scheme is necessarily subject to a written undertaking by the beneficiary to give preference to products and services of Algerian origin (article 9 b added to Ord. 01-03). The rate is fixed by a regulation.

- The granting of VAT exemptions is limited to acquisitions of Algerian origin. However, this advantage may be made when it is duly established the absence of similar local production (article 9 b added to Ord. 01-03).

- The CNI has the authority to grant, for a period not exceeding five years, exemptions or reductions of duties, taxes or charges, including value added tax, levied on the price of goods produced by inward investment as part of emerging industrial activities (article 12 c added to Ord. 01-03).

- Amending Article 9 of Ordinance No. 01 03 on investment development, an exemption period of 05 years for IBS is granted to companies that create over 100 jobs and starting out. This privilege, which aims to promote employment, in addition to other tax, para-fiscal and customs incentives, and removes the 3-year period as provided previously to Article 9 of Ordinance No. 01 -03 (LFC Art. 35).

II EXTENSION OF THE OBLIGATION TO REINVEST TO ALL THE EXEMPTIONS GRANTED UNDER THE PREFERENTIAL TAX SCHEMES

The supplementary finance law for 2008 introduced the obligation to reinvest profits equivalent to the tax exemptions or reductions granted on corporate profit (IBS).

In order to promote sustainable investments, taxpayers who receive tax exemptions or reductions with respect to all taxes, customs duties, para-fiscal taxes and other benefits are required to reinvest

the profits of these exemptions or reductions within four years from the date marking the end of the financial year, which were subject to the preferential tax scheme (Art. 57 suppl.). The investor may be exempted from this obligation by a decision of the CNI.

The reinvestment must be made for each financial year or for several consecutive financial years. If over several years, the period of 4 years is deducted from the closing date of the first financial year. The requirements of this Article shall apply to losses for the years 2010 onward, and to earnings of pending assignment at the date of promulgation of the supplementary finance law for 2009. Failure to respect this obligation entails the repayment of the exempted taxes and the application of a tax penalty of 30%.

III TAXES ON PROFITS OF COMPANIES AND GROUPS OF COMPANIES

The tax on corporate profits (IBS)

- Definitions of activities in the rate of IBS at 19% or 25%

Article 7 suppl. - Article 150 of the Tax Code

With this measure, the issue of corporate taxation is further clarified with the formal definition of activities benefiting from one of the two rates under IBS.

Under IBS at 19%: building activities and public works, that are activities registered as such with the Trade Registry and give rise to specific sectorial social security contributions.

The management of resorts and spas are classed as tourist activities. Activities conducted by travel agencies, on the other hand, are not regarded as tourist activities and therefore do not benefit from the 19% IBS rate.

Groupings

- Application of differential rates of IBS (19% and / or 25%) to consolidated profits of corporate groupings

Article 3 suppl. - Article 138 b of the Tax Code

The Supplementary Finance Act for 2008 fixed IBS rates by type of activity and established the following rates:

- 19% for the production of goods, construction, public works and tourism activities;
- 25% for commercial activities and services.

The provisions of Article 150-1 of the Tax Code (Article 5 of the Supplementary Finance Act for 2008) set a 25% IBS rate for mixed activities, where earnings from commercial activities and services is over 50% of total earnings excluding taxes.

The supplementary financial act for 2009 determines the IBS rate to be applied to the consolidated earnings of corporate grouping for tax purposes.

Where the activities carried out by members corporations of the grouping are taxed at different IBS rates, the profits resulting from the consolidation is subject to tax at a rate of 19% where earnings under this rate are significant. Otherwise, the consolidation of profits is permitted by earning category.

Profit consolidation refers to all balance sheet accounts, not the mathematical addition of the earnings for each of the companies within the grouping.

Thus, when total revenues at the 19% IBS rate exceed 50%, this rate applies to the consolidated taxable income.

Otherwise, to avoid penalizing the consolidation scheme, the SFA for 2009 provides for the simultaneous application of two rates of IBS for each type of earnings.

In the absence of a specific application rate, for mixed activities, each of the two rates (19% and 25%) is applied to half of the taxable profit.

- Consolidation of VAT by the parent company

Article 18 suppl. - Article 31 b of the Tax Code

The 2009 Finance Act introduced VAT and TAP exemptions for transactions between member firms in order to avoid multiple taxation of transactions within the same group of companies.

The accounts are consolidated at the parent company in accordance with Article 138 b of the Tax Code, and VAT charged on goods and services purchased by or for the various member companies of the grouping.

This measure authorizes the consolidation of VAT in the parent company in order to allow recovery of the tax by avoiding the formation of structural withholdings.

IV ARRANGEMENTS OF BENEFITS TO COMPANIES

- Maintenance of the amount of capital gains from revaluation in the capital of the company

Article 27 of the Tax Code

The provisions of Article 45 of the Finance Act 2006 (amended and supplemented in particular by Article 56 of the Finance Act 2007) would provide for exemptions from tax on company profits, subject to their incorporation into the capital of the company, the gains from the revaluation of depreciable and non-depreciable property, plant and equipment on accounts closed as at 31 December, 2006.

The revaluation was permitted only for those assets on the balance sheet for the year 2006 (filed with the tax authorities before 1 April 2007) and between the date

of issuance of Executive Order (i.e. 4 July 2007) and 31 December 2007.

The new provision freezes the amount of the company's capital gains from revaluation in the share capital, in addition to the statutory minimum, to avoid speculative measures to reduce the share capital of the gain included, and therefore distribute it. If the company has benefited from the incentives linked to investment promotion, the legal minimum is equivalent to the initial capital of the company plus the revaluation surplus included in equity.

- Taxation of shares or capital stock in companies that benefited from the revaluation and re-evaluated fixed assets

Article 28 of the Tax Code

Disposals of shares or capital stock in companies that benefited from regulatory revaluations give rise to payment of an additional registration fee whose rate is set at 50%. The fee is based on the amount of generated capital gains.

Disposals of re-valued assets are also subject to this fee. This right is based on the amount of capital gains from revaluation.

No time limit is provided for the implementation of this measure.

- The exemptions granted to securities transactions payable on 1 January 2008 instead of 1 January 2009

Article 33 suppl Finance Act.

The renewal of exemptions for tax on global income (IRG), corporate taxes (IBS) and registration fees under Article 46 of the 2009 Finance Act, for five (5) years, for the tax years 2008 to 2012 as the first exemption period expired on 31 December 2007.

However, article 46 established the exemption period of five (5) years with effect from 1st January 2009. The new measure pushes forward the beginning of

the exemption period to 1 January 2008.

V IMPLICATIONS OF THE IMPLEMENTATION OF NEW FINANCIAL ACCOUNTING SYSTEM

- Definitions of the new accounting system must be respected by businesses.

Article 6 suppl. - 141 c of the Tax Code

Companies must comply with the definitions laid down by the new system provided that they are not inconsistent with the tax rules applicable to the tax base.

- Limits of the percentage-of-completion method regarding accounting for revenues resulting from long-term contract

Article 4 suppl. - Article 140 of the Tax Code

Regarding long-term contracts, the measure requires accounting for the percentage-of-completion method rather than the completed method.

By this measure, "the taxable profit for long term contracts which relate to the creation of goods, services or both goods and services whose production covers at least two accounting periods or years, is calculated exclusively with "percentage-of-completion method", regardless of the type of contracts: lump sum contracts or cost-plus contracts.

The Act provides for, moreover, a legal obligation to have, under these provisions, the management tools, system of calculating costs and internal control to validate the percentage of completion and review, as the project progresses, the estimated costs of revenue and income.

The measure aims to encourage construction companies to keep records of costs and exclude the provision for loss on termination of deduction rights.

The benefit of real estate companies is, in principle, reached following the method of

accounting for income and expenses of operations in progress.

- Tax support for low-value assets

Article 5 suppl. - Article 141 of the Tax Code

Low-value items including tax-free amount which does not exceed 30 000 DZD may be recognized as expenses deductible for the year of their commitment and property acquired free of charge are recorded as assets at fair value.

This provision is intended to simplify the management and tax accounting for low-value items and thereby reduce the constraints for management and monitoring of depreciable property.

In addition, the uses referred to in Article 141-3 of the Tax Code, in terms of depreciation, have been amended, as the provision now refers to use "provided by regulation."

- Reversal of preliminary expenses

Article 8 - Article 169 of the Tax Code

Preliminary costs included in accounting, before the entry into force of the financial accounting system, are deductible from taxable income in line with the initial reversal scheme.

The tax legislation in force does not provide for a specific tax treatment of preliminary expenses. This aspect is dealt with by the chart of accounts, which provided their absorption within a maximum of five (05) years while the new accounting framework provides for their immediate elimination.

To avoid projecting the expenses entirely on the year 2010, or all charges pending preliminary elimination at 31/12/2009, the supplementary Finance Act maintains the original plan for reversing this charge.

- Taxation of capital gains for the revaluation of fixed assets

Article 10 - Articles 185 and 186 of section 8 of the Tax Code

Capital gains resulting from the revaluation of fixed assets at the date of entry into effect of the new financial accounting system and will be posted to the tax result within a maximum period of five years.

The supplement of depreciation expenses derived from the revaluation of operations will be posted to the income of the year.

VI CONTROL OF THE ECONOMY, INVESTMENT PROMOTION AND NATIONAL CONTROL OF FOREIGN INVESTMENT

- Bank loans limited to real estate loans

Article 75 suppl.

Banks are only allowed to grant loans to individuals as part of real estate loans. The procedure for applications might be specified by regulation.

- Removal of tobacco approvals issued by tax administration to distributors and retailers of tobacco products

Article 19 suppl.

The measure removes the authorizations and approvals issued by the Tobacco Tax Administration to distributors and retailers of tobacco products. Only tobacco companies are involved in the authorization.

- Set threshold for ownership of the national capital by residents to 51% or more for the activities within the tobacco industry

Article 19 suppl. - Article 298 of the Tax Code

The capital held by national residents must be not be less than 51%.

- Assumption by the foreign partner of taxes due in connection with the execution of a contract

Article 31 suppl.

Taxes, duties and taxes payable in

connection with the execution of a contract and legally incumbent on the foreign partner cannot be borne by institutions, public bodies and companies incorporated under Algerian law.

The new provision applies to contracts concluded after the date of enactment of the supplementary Finance Act, provided that amendments to original contracts are considered new contracts. Therefore, they will be subject to the new provisions.

- Measures to encourage business creation by the unemployed: the exemptions due under the approved investments prolonged

Article 65 suppl.

Article 54 (amended) of the 2005 Finance Act provides for an exemption from taxes on total income or the tax on corporate profits, the tax on professional activity and the tax on built properties, under income or profits of the activities authorized before 31 December 2009 over a period of three (3) years from the year during which the activity began. This deadline is cancelled.

- Tax and customs exemptions for interbank companies specializing in asset management and debt collection companies

Article 70 suppl.

The benefits to interbank asset management companies and debt collection companies are designed to promote the development of these activities. The companies are:

- Exempted from registration fees upon registration;
- Exempt from land registration fees for real estate acquisitions in the framework of their registration;
- Exempted from customs duty and exemption from the value added tax;
- Exempt from tax on corporate profits and corporate taxes for a period of three (03) years from the year of start of activity.

- The exemptions in question run from the enactment of this Act and until 31 December 2012.

- Suspension of exports of non-ferrous scrap

Article 64 suppl. - Article 84 of 2007 Finance Act

Article 84 of the 2007 Finance Act had a regulation laying down the conditions governing the export activity of certain products, materials and goods, including waste of ferrous and nonferrous metals, leather and cork. With the new provision, the export of non-ferrous metals is suspended.

- Establishment of a tax applicable for charging prepaid mobile phones

Article 32 suppl.

The measure establishes a tax applicable to prepaid charges. It is due monthly by the mobile operators regardless of the mode of charging.

The tax rate is 5%. It applies to the amount charged each month. The product is paid by operators to tax authorities with the relevant tax jurisdiction within twenty (20) days of the following month.

VII MEASURES LIMITING IMPORTS

- Extension of the scope of the bank debit tax on imports of services

Article 63 suppl.

The provisions of Article 2 of the supplementary Finance law for 2005 established the banking domiciliation tax on operations and costs of imports of ten thousand dinars (10 000 DZD) for any request to open a domiciliation file on an import transaction, within further clarification.

The new measure clarifies that this tax is due both on imports of goods and services.

The fee is:

- 10 000 DZD for any requests to open a domiciliation file to an import transaction of goods or merchandise.
- 3% of the amount of the domiciliation for services imports.

The capital goods and raw materials that are purchased for resale are specifically excluded from this requirement, subject to underwriting prior to each import of a commitment not to sell the property.

- Establishment of a tax on trucks and cranes and higher tax rates on passenger cars and utilities

Article 13 suppl.

For new vehicles whose engine capacity exceeds 2500 cm³, the tax is increased to 200 000 DZD for petrol engines and 300 000 DZD for diesel engines.

The vehicle tax is extended to trucks and cranes: 340 000 DZD for trucks and cranes from 8 to 22 tonnes, 500 000 DZD for equipment over 22 tons.

- Prohibition of foreign trade operations for operators without a tax ID

Article 36 suppl.

The procedures for direct debit (domiciliation) and clearing operations related to foreign trade are subject to the submission of tax identification number (TIN).

- Penalties for offences relating to customs clearance and commercial laws and regulations

The fight against fraud has led to the inclusion in the *Fichier National des Fraudeurs* (blacklist of fraud offenders) of serious offenders concerning banking and financial laws and regulations, including those related to transfer of funds and money laundering (art. 30 suppl.) and in case annual accounts are not published.

The penalties for inclusion on this list are

not being eligible for the tax and customs related incentives related to investment promotion, exclusion from incentives granted by the tax authorities, from submissions to public tenders and from foreign trade operations (Article 29 suppl.).

- Imports operations may not be carried out by third parties

Article 66 suppl.

Banking procedures relating to the imports business should be performed necessarily by the holder of registration certificate or the manager of the importing company. The presence of the holder is required for border control formalities.

- Banking domiciliation procedures, prerequisite for all imports operations

Article 67 suppl.

Banking domiciliation procedures for any imports operation is essential prior to its implementation, with financial transactions and clearance.

- The documentary credit (credit letter) as the only means of payment for imports

Article 69 suppl.

Payments for imports must be completed by credit letter.

With regard to this last point, documentary credit accounts may only be opened with correspondents approved by Algerian banks. Because of the bank commitment, this payment method requires credit authorization granted at the discretion of the bank.

VII Other measures

- Obligation to pay a deposit for issuing occupation permits (art. 51 suppl).
- Restructuring charges fees related to private occupation of public roads and highways (Article 52 suppl).

- Change of the name of the Algerian Development Fund now called the *Fonds National d'Investissement - Banque Algérienne de Développement* ("National Investment Fund - Development Bank of Algeria) (art 55 suppl).
- Capital of National Investment Fund - Development Bank of Algeria set at 150 billion DZD (art. 56 suppl).
- Support for agricultural activity through measures of VAT exemption in respect of rent paid under the lease contracts on hardware and equipment manufactured in Algeria (art. 24 suppl).
- Any request for cancellation of a trade register is subject to the submission of a tax certificate issued by the competent authorities (art. 39 suppl) to be issued within 48 hours after application, regardless of the tax situation of the person concerned. This does not exclude, however, prosecution if the person concerned is indebted to the tax administration.
- Possibility of customs administration to resort to specialized companies and agreed to check the goods before their shipment into the customs territory.
- The maximum period during which goods at port is reduced by 2 to 4 months (art. 41 suppl).
- Tourism: measures mainly aim to promote this sector. The supplementary law requires the incorporation of companies in the tourism sector and the capital increases are exempt from the registration fee (section 43 suppl).
- The benefits linked to tourist activities, hotels, spas, tourist restorations classified, travel and rental of tourist vehicles are subject to reduced rate of VAT (art. 42 suppl).

ENTRY INTO FORCE

The provisions of the 2009 Supplementary Finance Act enter into force one day after their publication (publication in the Official Gazette on 26 July 2009).

Contact us

KPMG Algérie S.P.A.

Algiers office

42, rue Abou Nouas 16035 Hydra
16035 Alger
Tel: +213 (0)21 60 02 38
Fax: +213 (0)21 60 02 29

Oran office

1, avenue Cheikh Larbi Tebessi
(ex-avenue Loubet)
31000 Oran
Tél. : +213 (0)41 40 59 09
Fax : +213 (0)41 40 59 10

E-mail : info@kpmg.dz
web : www.kpmg.dz

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