

A summary of the finance act for 2012

This summary of the Finance Act for 2012 deals with the main measures pertaining to investors.

1- Tax measures:

The Finance Act for 2012 has introduced many measures to change the various tax codes (code of direct taxes and similar taxes, the indirect tax code, the tax code on sales, the registration code and the stamp code).

1-1-The code of direct taxes and similar taxes:

- The amendment of **article 8** of the code of direct taxes and similar taxes which determines the place of taxation of taxpayers:
 - The place of taxation of the taxpayer with a unique residence that was located in the place of his residence is now set at his/her main establishment.
 - Paragraph 2 of this provision has been completely rewritten: it sets the place of the taxation at the place where the activity or the occupation is carried out, for:
 1. Taxpayers subject to the simplified scheme and the overall income tax.
 2. Associates of partnership and joint ventures with respect to their income.

- The amendment of **Article 138 bis** of the code of direct taxes and similar taxes:

This article that was first introduced in the code of direct taxes and similar taxes in 1997 and that set up a preferential taxation ,for groups, has undergone several changes. The change made by the Finance Act for 2012 excludes, automatically, from the group the companies that no longer fulfil the requirements, namely to be incorporated as a corporation and be controlled at a rate of 90% by the parent company. The condition on two successive deficits, reintroduced in 2007, is thus removed.

- The amendment of **Article 144 / 2** of the Code of direct taxes and similar taxes:

This provision relates to capital grants awarded by the State or local

authorities. The change relates to the amortization periods of the subsidies meant for the acquisition of equipments amortized over 5 years that is linked to the years of the amortization period.

- The amendment of **article 193** of the Code of direct taxes and similar taxes:
The sanctions for tax evasion are reduced by half, and they go from 200% to 100% and from 100% to 50% depending on the unpaid taxes.

- The amendment of **article 218** of the Code of direct taxes and similar taxes:
The exemption from the tax on the professional activity of the promoters of activities and projects that is eligible for the fund support of the micro credit of the National Agency for the Management of Micro Credits.

- The insertion of a **section 2bis of Title III** of part I of the code of direct taxes and similar taxes called "operative event".
Article 221 bis defines the operative event of the represented tax on the professional activity as:
 - The legal or material delivery of the goods for sales,
 - The total or partial receipt of the price for the construction work and service provision.

- The amendment of **article 303** of the Code of direct taxes and similar taxes:
The amendment introduces a softening of the imprisonment applicable to tax fraud, it goes:
 - From "two months to six months' imprisonment instead of" one to five years "when unpaid taxes are between 100,000 and 1 000 000 DZD.
 - From "six months to two years' imprisonment instead of" two to ten years ", when unpaid taxes are between 1 000 000 and 5 000 000 DZD.

The offense of tax evasion remains a tort.

However, the amount of fines incurred has been substantially increased.

The recurrence within 5 years causes a duplication of both tax and criminal sanctions.

- The amendment of **article 387** of the Code of direct taxes and similar taxes:
This provision pertaining to the implementation of the privilege of the state and the local authorities, defines the proportions in which wages, salaries and public and private treatments and balances are seized. Rates are increased in the percentages of the granted minimum wage.
- The amendment of **article 222** of the registration code:
Leases and subleases of business assets or any premises reserved for professional or commercial use as well as the minutes of communal contract awards are subject to a proportional registration fee of 2%, calculated on the award rent amount , plus expenses.

1-3 - The stamp code:

- The amendment of **article 34** of the stamp code:
The amendment of this provision on tax evasions, points to article 104 of the code of tax procedures establishing the conditions set for prosecution.
- The amendment of **article 298** of the stamp code:
The amendment provides a possibility of the grant of a relief of penalties and fines other than criminal proceedings from the tax administration, in accordance with the tax code.

1-4 - Code of taxes on the turnover:

- The amendment of **article 50** of the Code of taxes on the turnover:
This change is intended to:
 - Not to subject the reimbursement of the VAT resulting from the cessation of activity to the regularization of professional value added.
 - Delete the requirement of credit balance established over a period of 3 consecutive months, with regard to the reimbursement of the VAT credit resulting from the difference in rates.

- VAT exemption and the application of a 5% rate of custom duties on infant medical milks.
- The amendment of **article 50** bis of taxes on sales:
The new version softens the procedure for the reimbursement of VAT credits.

1-5-Other tax measures:

- The establishment of an additional tax of 5% of the right of movement on alcohol, applicable to certain products containing alcohol referred to in Article 47 of the Code of indirect taxes.
The proceeds of the tax is paid to the CAS No. 302-138, a fund for the fight against cancer.
- The provision of tax incentives for equipment purchases made by lessor credits , within the framework of a financial leasing contract concluded with investors who received benefits granted pursuant to Ordinance 01-03 relating to investment development:
 - Exemption from customs duty,
 - Exemption from the transfer tax in return for payment.
- The removal of the applicable tax on durum wheat imported at a price lower than the regulated price (2500 DZD per quintal) that was established by the complementary finance act for 2010.
- The VAT exemption: equipments and sports material manufactured in Algeria, unconditional (amendment of the complementary finance act for 2009).
- The exemptions of the bakery business from the tax on polluting activities or those which are hazardous to the environment.
- The establishment of a 1% tax on the turnover of mobile telephony operators, deposited partly into the fund for the fight against cancer.

- The establishment of a 5% tax on the turnover of the companies that produce or import soft drinks; it is deposited into the fund for the fight against cancer.

2 - Tax Procedures

The finance act for 2012 has adjusted the tax procedures code towards a greater flexibility; some of these adjustments will be mentioned below.

- The amendment of **article 20** of the Tax Procedure Code:

The on-site inspection times of books and account records of companies have been reduced: They are from now and on:

- 3 months for companies (utility companies) whose turnover is between 1 000 000 and 2,000,000 DZD.
 - 6 months for companies (utility companies) whose turnover is between 5,000,000 and 10 000 000 DZD.
 - 9 months for other companies.
- The amendment of **Articles 21, 73** of the Code of Tax Procedures:
 - The establishment of an administrative procedure before transmitting the adjustment notification to the taxpayer: the latter is requested to provide clarifications and justifications.
 - A period of 30 days is granted to the taxpayer to present supporting documents regarding claims made against the tax applied to him/her.
 - The amendment of **Articles 92 and 93** of the Code of Tax Procedures relating to the administrative recourse for discount or moderation: The new provisions allow indigent taxpayers, in good faith, who are unable to pay their taxes, to ask the tax authorities for a discount *ex gratia*. This discount is subject to specific conditions depending on the type of taxes due.

3 - Miscellaneous provisions:

- The amendment of **law No. 90-21** concerning public accounting:
The quality of a secondary authorizing officer is granted to delegated public project managers (public establishments or institutions, whatever their nature) when performing operations of public facilities. This grade is granted for the project purposes and ends at the final acceptance of the completed work or after the termination of the delegated project management agreement.
- Tax exemption of direct debit set up by the supplementary finance act for 2005 (amended by the SFA for 2009), in favor of imports of services performed in connection with reinsurance transactions.

4-Measures pertaining to investments:

- The amendment of the ordinance 01-03 dated August 20, 2001, amended and supplemented, on the development of investment:
 - ✓ Article 4 bis, inserted in that ordinance by the SFA for 2009, and which has been the subject of multiple patches, undergoes the legislator's intervention, with two amendments:
 1. The first amendment provides that the sale and exchange of shares of guarantee between old and new directors, to a maximum limit of 1% of the capital, are not subject to the rule of 49/51%.
The actions in question are held by directors (20% of the social capital) and are assigned to the guarantee of management actions of the latter.
 2. The second amendment is editorial and reformulates the points:
 - ❖ 1 of paragraph 3 about the respect for the rule of 49/51% in the increase and decrease of the social capital;
 - ❖ 3 of the same paragraph relating to the appointment of the senior executives of partnership corporations.

✓ Articles:

- 9, defining the general regime,
- 11, on investments achieved in areas whose development requires a special contribution of the state and
12 ter relating to investments falling within the regime of the Convention, are amended to provide the concessions granted for the purposes of such investments with the exemption from:
 - 1 - registration fees,
 - 2 - the costs of land registration,
 - 3 – the state-owned property compensation.Investments already granted by the Council of Ministers also benefit from these advantages.

5-Provisions pertaining to the state-owned property:

- The Finance Act for 2012 reintroduces the non-transferability, for a period of 5 years, of assisted housing: the subsidized social housing, the assisted promotional housing, the rural housing.
- It allows recipients to grant land developers, at their request, a schedule of payment of the sale price of state-owned land meant for the construction of assisted housing.
- It pays the product of the concession of the tourist exploitation of beaches to coastal communes concerned.